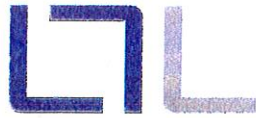


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**Harrington Grove Planning Agreement**  
**Deed of Variation**

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

**The Council of Camden**  
**Dandaloo Pty Limited**

Date:

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lawyers

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## Harrington Grove Planning Agreement Deed of Variation

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## Harrington Grove Planning Agreement Deed of Amendment

### Summary Sheet

**COPY**

#### **Council:**

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

#### **Developer:**

**Name:** Dandaloo Pty Limited  
**Address:** PO Box 42, NARELLAN NSW 2567  
**Telephone:** (02) 4631 3200  
**Facsimile:** (02) 4631 3299  
**Email:** terry@harrington.com.au  
**Representative:** Terry Goldacre



## **Harrington Grove Planning Agreement**

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

### **Parties**

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

and

**Dandaloo Pty Limited** ABN 77 002 338 543 of PO Box 42, NARELLAN NSW 2567 (**Developer**)

### **Background**

- A The Parties are parties to the Planning Agreement.
- B Pursuant to clause 20.6 of the Planning Agreement the Parties agree to amend the Planning Agreement to include provisions relating to varying Contribution Works, deferral of work, access to land by Council, owners' consent to making of a development application and amending the Contribution Works and Financial Contributions to be provided under the Planning Agreement.

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **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 document titled '*Voluntary Planning Agreement – Harrington Grove*' pursuant to s93F of the *Environmental Planning and Assessment Act 1979* entered into between the Council of Camden and Dandaloo Pty Limited on 22 August 2008, and amended on 31 August 2010.



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

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

- 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.
- 1.3 Clauses 15, 20.2, 20.7, 20.8, 20.9 and Part 2 of Annexure 1 of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

## 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.
- 2.2 This Deed is not a planning agreement within the meaning of s93F(1) of the Act

## 3 Commencement

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

## 4 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.

## 5 Amendment of Planning Agreement

- 5.1 On and from the date this Deed takes effect:
  - 5.1.1 the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement contained in Appendix 1,
  - 5.1.2 Schedule 1, Schedule 2 and the plans in Annexure 2 of the Planning Agreement are deleted and replaced with Schedule 1, Schedule 2 and the plans in Appendix 2 of this Deed.



## **6 Costs**

- 6.1 The Developer is to pay to the Council fifty per cent of 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 Explanatory Note**

- 7.1 Appendix 3 contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 7.2 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.



**Execution**

**COPY**

Executed as a Deed

Dated: 27 August 2015

**Executed on behalf of the Council of Camden**

**General Manager** Paul Rofe as Attorney.  
Signed pursuant to a resolution of Council of 23 June 2015 (ORDIS1/15).

**Witness** Megan Roberts  
Senior Governance Officer  
Camden Council

**Mayor**

**Witness**

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

**Name/Position**

PETER DONE  
DIRECTOR

**Name/Position**

LEE THOMAS

## GENERAL POWER OF ATTORNEY

### PART 1 – GENERAL

**THIS POWER OF ATTORNEY** is made on the 2<sup>nd</sup> 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*;

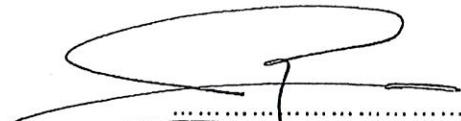


- (3) any instrument creating, varying, terminating, extinguishing or otherwise affecting any right, obligation or interest of the Council;
  - (4) any contracts for the performance, provision or receipt of works, services and/or goods;
  - (5) any agreement with the New South Wales Government or the 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. Spindak*  
.....  
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 L. Symkowiak .....  
Lara Jane Symkowiak

**Acceptance by Attorney**

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

Dated 2/9/13 .....

Signature SK .....  
Steven Scott Kludass

**Acceptance by Attorney**

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

Dated 2/9/13 .....

Signature N. Magurren .....  
Nicole Maree Magurren

**Acceptance by Attorney**

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

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

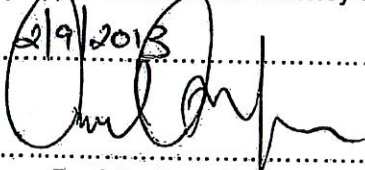
Signature .....  .....

**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**



## **Appendix 1**

(Clause 5)

### **Amended Planning Agreement**

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



## **WARNING TO PURCHASERS**

**Before completing the purchase of any land to which this planning agreement relates, be sure that you understand the rights and obligations of the Developer under the *Environmental Planning & Assessment Act (NSW) 1979*, including s93H(3) of that Act which provides that:**

***“A planning agreement that has been registered by the Registrar-General under section 93 is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement”***

## **Voluntary Planning Agreement - Harrington Grove**

Dandaloo Pty Limited (ABN 77 002 338 543) (**Developer**)

The Council of Camden (ABN 31 117 341 764) (**Council**)

### **MARSDENS LAW GROUP**

Level 1  
49 Dumaresq Street  
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077

Fax: 02 4626 4826

DX: 5107 Campbelltown

Ref: 02 33 6824 JHM:JRT

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## SCHEDULE

<b>Developer</b>	<b>Name</b>	Dandaloo Pty Limited
	<b>Address</b>	P O Box 42 NARELLAN NSW 2567
	<b>ABN</b>	77 002 338 543
	<b>Telephone</b>	(02) 4631 320047-3200
	<b>Facsimile</b>	(02) 4631 329947-3036
	<b>Email</b>	terry@-harrington.com.augoldacre@harpak.com.au
	<b>Representative / Contact</b>	Terry Goldacre
<b>Council</b>	<b>Name</b>	The Council of Camden
	<b>Address</b>	37 John Street CAMDEN NSW 2570
	<b>ABN</b>	31 117 341 764
	<b>Telephone</b>	(02) 4654 7777
	<b>Facsimile</b>	(02) 4654 7829
	<b>Email</b>	<a href="mailto:mailgreg.wright@camden.nsw.gov.au">mailgreg.wright@camden.nsw.gov.au</a>
	<b>Representative / Contact</b>	<del>Greg Wright</del> <a href="#">The General Manager</a>
<b>Land</b>	That part of Certificates of Title Folio Identifiers 3420/1105169 and 101/1107591 as shown on the plans set out at <b>Annexures 11 &amp; 12</b> .	
<b>Current LEP</b>	Camden Local Environmental Plan No 138 - Harrington Grove	

**Requirements Under Section 93f**

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application – (Section 93F(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p><b>Description of land to which this deed applies – (Section 93F(3)(a))</b></p>	<p>The whole of the Land.</p>
<p><b>Description of change to the environmental planning instrument to which deed applies - (Section 93F(3)(b))</b></p>	<p>The amendments made to the LEP by the New LEP.</p>
<p><b>Application of section 94 of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94 is excluded and therefore does not apply to the Development.</p>
<p><b>Applicability of section 94A of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94A is excluded and therefore does not apply to the Development.</p>
<p><b>Consideration of benefits if under this deed if section 94 applies - (Section 93F(3)(e))</b></p>	<p>Not applicable as s94 does not apply to this development.</p>
<p><b>Mechanism for Dispute resolution - (Section 93F(3)(f))</b></p>	<p>See clause 12.</p>
<p><b>Enforcement of this deed (Section 93F(3)(g))</b></p>	<p>See clause 10.</p>
<p><b>No obligation to grant consent or exercise functions - (Section 93F(3)(9))</b></p>	<p>See clause 15.</p>

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# Voluntary Planning Agreement

## Harrington Grove

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### PARTIES

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- 1 The Developer.
  - 2 The Council.
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### BACKGROUND

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- A The Developer is the registered proprietor of the Land.
  - B The Developer has previously made an application to the Council to change the zoning provisions of Camden Local Environmental Plan No. 48 as they apply to the Land to those contained in the New LEP for the purpose of making an application for the Development Consents.
  - C The New LEP has been made and the Developer has applied for, or been granted, the Development Consents.
  - D The parties have reached agreement on a number of matters relating to the Developments which they wish to record in this Agreement.
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### OPERATIVE PROVISIONS

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#### 1 DEFINITIONS

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Unless the context otherwise requires the definitions and interpretational rules contained in ~~Voluntary Planning Agreement - Annexure 1~~ ~~Voluntary Planning Agreement - Annexure 1~~ ~~Voluntary Planning Agreement - Annexure 1~~ apply in the interpretation of terms used in this Agreement.

#### 2 APPLICATION AND OPERATION OF AGREEMENT

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##### 2.1 Planning Agreement

The parties agree that this Agreement is a planning agreement:

- (1) within the meaning set out in s93F of the EPAA Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the EPAA Act.

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## **2.2 Application**

This Agreement applies to both the Land and the Developments.

## **2.3 Operation**

- (1) Unless set out in paragraph (2) this Agreement operates immediately upon being entered into, within the meaning set out by clause 25C(1) of the Regulations.
- (2) Clause 7 will only operate when, and be effective from the date on which, the Council issues either of the Development Consents to the Developer.

## **2.4 Heads of Planning Agreement**

The parties agree that on the date of this Agreement the Heads of Planning Agreements will be terminated.

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## **3 HERITAGE - HARRINGTON PARK**

### **3.1 Harrington Park Heritage Agreement**

- (1) The Developer will use its best endeavours to enter into the Harrington Park Heritage Agreement.
- (2) The Developer will comply with the terms of the Harrington Park Heritage Agreement irrespective of whether that agreement has been entered into.

### **3.2 Maintenance Prior to Commencement of Harrington Park Heritage Works**

- (1) Once the Harrington Grove East Development Consent is issued by the Council the Developer will carry out any works on Harrington Park that are necessary to ensure that it is maintained in its present condition prior to the commencement of the Harrington Park Heritage Works.
- (2) Within one (1) month of the Harrington Grove East Development Consent being issued by the Council the Developer will prepare and submit to the Council a condition report detailing the present condition of Harrington Park.

### **3.3 Timing of Harrington Park Heritage Works**

The Developer warrants to the Council that it will not object to or appeal against any condition of any consent issued for the Harrington Grove East Development which stipulates that if:

- (1) the Developer is obligated under this Agreement to carry out the Harrington Park Heritage Works; and
- (2) the Developer fails to complete the Harrington Park Heritage Works in accordance with the time limitations set out in clause 6 of the Harrington Park Heritage Agreement,

the Council may refuse to issue Subdivision Certificates for any Residential Lots in that development in excess of the first three hundred (300) Residential Lots until such time as the Developer rectifies the relevant default.

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### **3.4 Certification of Completion of Harrington Park Heritage Works**

- (1) If the Developer is required to complete the Harrington Park Heritage Works in accordance with the Harrington Park Heritage Agreement then the Developer will complete the Harrington Park Heritage Works in full prior to the earlier of:
  - (a) Council issuing the final Subdivision Certificate for the last remaining stage of the Harrington Grove East Development Consent; and
  - (b) the date that is five (5) years after the date of this Agreement.
- (2) The Harrington Park Heritage Works will be deemed to be complete upon the issue of a certificate to that effect by a "qualified practising heritage consultant" appointed by the Developer and approved by Council. The costs associated with this appointment are to be met by the Developer.
- (3) The Developer may serve a notice (**Completion Notice**) on the Council advising that, in the opinion of the Developer, the Harrington Park Heritage Works have been completed. The qualified practising heritage consultant referred to in paragraph (2) is to assess the merits of the Completion Notice.
- (4) If the Council fails to advise the Developer within seventy (70) days of service of a Completion Notice that, in the opinion of the consultant referred to in paragraph (2), the works set out in the Completion Notice have not been completed then those works will be deemed to have been completed for the purpose of this Agreement.

## **4 HERITAGE - ORIELTON**

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### **4.1 Orielton Heritage Agreement**

- (1) The Developer will use its best endeavours to enter into the Orielton Heritage Agreement.
- (2) The Developer will comply with the terms of the Orielton Heritage Agreement irrespective of whether that agreement has been entered into.

### **4.2 Maintenance Prior to Commencement of Orielton Heritage Works**

- (1) Once the Harrington Grove West Development Consent is issued by the Council the Developer will carry out any works on Orielton that are necessary to ensure that it is maintained in its present condition prior to the commencement of the Orielton Heritage Works.
- (2) Within one (1) month of the Harrington Grove West Development Consent being issued by the Council the Developer will prepare and submit to the Council a Condition Report detailing the present condition of Orielton.

### **4.3 Timing of Orielton Heritage Works**

The Developer warrants to the Council that it will not object to or appeal against any condition of any consent issued for the Harrington Grove West Development which stipulates that if:

- 
- (1) the Developer is obligated under this Agreement to carry out the Orielson Heritage Works; and
  - (2) the Developer fails to complete the Orielson Heritage Works in accordance with the time limitations set out in clause 6 of the Orielson Heritage Agreement,

the Council may refuse to issue Subdivision Certificates for any Residential Lots in that development in excess of the first two hundred (200) Residential Lots until such time as the Developer rectifies the relevant default.

#### **4.4 Certification of Completion of Orielson Heritage Works**

- (1) If the Developer is required to complete the Orielson Heritage Works in accordance with the Orielson Heritage Agreement then the Developer will complete the Orielson Heritage Works in full prior to the earlier of:
  - (a) Council issuing the final subdivision certificate for the last remaining stage of the Harrington Grove West Development Consent; and
  - (b) the date that is five (5) years after the date of this Agreement.
- (2) The Orielson Heritage Works will be deemed to be complete upon the issue of a certificate to that effect by a "qualified practising heritage consultant" appointed by the Developer and approved by Council. The costs associated with this appointment are to be met by the Developer.
- (3) The Developer may serve a notice (**Completion Notice**) on the Council advising that, in the opinion of the Developer, the Orielson Heritage Works have been completed. The qualified practising heritage consultant referred to in paragraph (1) is to assess the merits of the Completion Notice.
- (4) If the Council fails to advise the Developer within seventy (70) days of service of a Completion Notice that, in the opinion of the consultant referred to in paragraph (1), the works set out in the Completion Notice have not been completed then those works will be deemed to have been completed for the purpose of this Agreement.

## **5 BUSHLAND CONSERVATION – HARRINGTON GROVE EAST**

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### **5.1 Conservation Management Strategy (CMS) & Conservation Management Plan (CMP)**

- (1) The parties acknowledge that the Developer has lodged the Harrington Grove East CMP with the Council as part of its application for the Harrington Grove East Development Consent.
- (2) Subject to paragraph (3), the Developer will:
  - (a) be bound by the terms of the Harrington Grove CMS & the Harrington Grove East CMP as approved by the Council; and
  - (b) will carry out the Harrington Grove East Bushland Conservation Works in accordance with the terms of the Harrington Grove CMS, the Harrington Grove East CMP and this Agreement.

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- (3) The Developer will not be required to carry out the Harrington Grove East Bushland Conservation Works unless and until the Council issues the Harrington Grove East Development Consent to the Developer.

#### **5.2 Maintenance Prior to Commencement of Harrington Grove East Bushland Conservation Works**

- (1) Once the Harrington Grove East Development Consent is issued by the Council the Developer will carry out any works on the Harrington Grove East Bushland Areas that are necessary to ensure that those areas are not further degraded from their condition as assessed in the study supporting the LES prior to the commencement of the Harrington Grove East Bushland Conservation Works.
- (2) The works referred to in paragraph (1) must not be inconsistent with the Harrington Grove CMS & the Harrington Grove East CMP.

#### **5.3 Timing of Works**

The Developer will adhere to the program for the completion of the Harrington Grove East Bushland Conservation Works set out in the Harrington Grove East CMP and in any event will complete those works prior to the issue of the final Subdivision Certificate for the Harrington Grove East Development.

#### **5.4 Annual Reports**

- (1) During the period set out in clause 5.3 the Developer must provide the Council with a report on each anniversary of the date on which the Harrington Grove East Development Consent is issued by the Council that sets out:
  - (a) the Harrington Grove East Bushland Conservation Works carried out in the preceding twelve (12) month period;
  - (b) any matters that may impact upon the Developer's ability to carry out further Harrington Grove East Bushland Conservation Works in accordance with the Harrington Grove CMS and the Harrington Grove East CMP; and
  - (c) the extent to which the desired outcomes set out in the Harrington Grove CMS & the Harrington Grove East CMP were achieved in the preceding twelve (12) months.
- (2) The Developer will be discharged from its obligation under paragraph (1) upon completion of the Harrington Grove East Bushland Conservation Works.

#### **5.5 Completion of the Harrington Grove East Bushland Conservation Works**

- (1) Upon completion of the Harrington Grove East Bushland Conservation Works in accordance with the Harrington Grove East CMP, the Developer and the Council will ensure that:
  - (a) any ongoing obligations with respect to the maintenance of the Harrington Grove East Bushland Areas to be owned by the Harrington Grove East Community Association become the responsibility of the Harrington Grove East Community Association; and



- 
- (b) the obligation referred to in paragraph (a) will be included in the management statement of the Harrington Grove East Community Association.
  - (2) Upon satisfaction of the obligations in paragraph (1), the Developer is discharged from any future obligations under the Harrington Grove CMS & the Harrington Grove East CMP.

## **6 BUSHLAND CONSERVATION – HARRINGTON GROVE WEST**

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### **6.1 Conservation Management Strategy (CMS) & Conservation Management Plan (CMP)**

- (1) The parties acknowledge that the Developer has lodged the Harrington Grove West CMP with the Council as part of its application for the Harrington Grove West Development Consent.
- (2) Subject to paragraph (3), the Developer will:
  - (a) lodge the Harrington Grove West CMP with the Council as part of, or prior to, its application for the Harrington Grove West Development Consent;
  - (b) be bound by the terms of the Harrington Grove CMS & Harrington Grove West CMP as approved by the Council; and
  - (c) will carry out the Harrington Grove West Bushland Conservation Works in accordance with the terms of the Harrington Grove CMS, the Harrington Grove West CMP and this Agreement.
- (3) The Developer will not be required to carry out the Harrington Grove West Bushland Conservation Works unless and until the Council issues the Harrington Grove West Development Consent to the Developer.

### **6.2 Maintenance Prior to Commencement of Harrington Grove West Bushland Conservation Works**

- (1) Once the Harrington Grove West Development Consent is issued by the Council the Developer will carry out any works on the Harrington Grove West Bushland Areas that are necessary to ensure that those areas are not further degraded from their present condition prior to the commencement of the Harrington Grove West Bushland Conservation Works.
- (2) The works referred to in paragraph (1) must not be inconsistent with the Harrington Grove CMS & the Harrington Grove West CMP.

### **6.3 Timing of Works**

The Developer will adhere to the program for the completion of the Harrington Grove West Bushland Conservation Works set out in the Harrington Grove West CMP and in any event will complete those works prior to the issue of the final subdivision certificate for the Harrington Grove West Development.

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#### **6.4 Annual Reports**

- (1) During the period set out in clause 6.3 the Developer must provide the Council with a report on each anniversary of the date on which the Harrington Grove West Development Consent is issued by the Council that sets out:
  - (a) the Harrington Grove West Bushland Conservation Works carried out in the preceding twelve (12) month period;
  - (b) any matters that may impact upon the Developer's ability to carry out further Harrington Grove West Bushland Conservation Works in accordance with the Harrington Grove CMS and the Harrington Grove West CMP; and
  - (c) the extent to which the desired outcomes set out in the Harrington Grove CMS & the Harrington Grove West CMP were achieved in the preceding twelve (12) months.
- (2) The Developer will be discharged from its obligation under paragraph (1) upon completion of the Harrington Grove West Bushland Conservation Works.

#### **6.5 Completion of the Harrington Grove West Bushland Conservation Works**

- (1) Upon completion of the Harrington Grove West Bushland Conservation Works in accordance with the Harrington Grove West CMP, the Developer and the Council will ensure that:
  - (a) any ongoing obligations with respect to the maintenance of the Harrington Grove West Bushland Areas to be owned by the Harrington Grove West Community Association become the responsibility of the Harrington Grove West Community Association; and
  - (b) the obligation referred to in paragraph (a) will be included in the management statement of the Harrington Grove West Community Association.
- (2) Upon satisfaction of the obligations in paragraph (1), the Developer is discharged from any future obligations under the Harrington Grove CMS & the Harrington Grove West CMP.

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### **7 PROVISION OF CONTRIBUTIONS**

#### **7.1 Provision**

The Developer acknowledges that the carrying out of the Developments could, if this Agreement were not required to be entered into, have been subject to a requirement to make contributions under section 94 of the EPAA Act.

#### **7.2 Manner of Provision**

The Developer will:

- (1) provide the Contribution Works; and
- (2) pay the Financial Contribution,

as provided and as described in **Annexure 2** to the satisfaction of the Council.

### **7.3 Variation to Contribution Works**

- (1) The Contribution Works may be varied without the need for variation to this agreement provided that the Council is satisfied that the variations to scope of the Contributions Works are consistent with the intent and objectives of this agreement.

### **7.4 Deferral of Contribution Work**

- (1) Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that it is unable to make a Contribution comprising a Contribution Work by the time that Contribution Work is required to be completed under this Agreement, then:
  - (a) the Developer is to provide written notice to the Council to that effect;
  - (b) the Developer is to provide the Council with a Security for 100% of the value of the uncompleted part of the Contribution Work (as determined by the Council) before the date on which the Contribution Work is required to be completed under this Agreement;
  - (c) the Developer is to provide to Council, for Council's approval, a revised completion date for the Contribution Work;
  - (d) 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 Contribution Work, the Council and Developer are to negotiate in good faith and agree upon a revised completion date for the Contribution Work; and
  - (e) the time for completion of the Contribution Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 7.4(1)(d).
- (2) If the Developer complies with clause 7.4(1), then it will not be considered to be in breach of this Agreement as a result of a failure to complete a Contribution Work by the time for completion of the Contribution Work specified in Annexure 2.
- (3) If the Contribution Work is not completed by the revised date for completion of the Contribution Work agreed under clause 7.4(1)(d) 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 Contribution Work by the revised date for completion.
- (4) 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.

### **7.47.5 Indexation of amounts payable by the parties**

All amounts referred to in this Agreement are to be adjusted (with the calculation to be made as from the date any such amount is due to be paid under this Agreement) in accordance with the following formula:

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$$A = B \times C/D$$

where:

- A** = the adjusted amount;
- B** = the relevant amount as set out in this Agreement;
- C** = the CPI most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = in relation to the Financial Contribution for the Narellan Sports Hub, the CPI for the December 2014 quarter and in relation to any other amount, the CPI most recently published before the date of this Agreement.

#### **7.6 Access to land by Council**

- (1) The Developer grants to the Council a licence on the terms set out in Annexure 12 to enter the Narellan Sports Hub Land to construct the Narellan Sports Hub.

#### **7.7 Consent to making of development application**

- (1) Within 7 days of a request by the Council, the Developer is to provide to the Council its consent in writing to the Council making a development application, within the meaning of the EPAA Act, for the Narellan Sports Hub.

### **8 APPLICATION OF s94 & s94A**

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- (a) **For the purposes of s93F(3)(d) of the EPAA, this Agreement excludes the application of sections 94 & 94A of the EPAA Act to the Developments.**

### **9 COMPLETION, RECTIFICATION AND HANDOVER OF WORKS**

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#### **9.1 Application**

This clause 9 applies to any Contribution Works required to be provided by the Developer under this Agreement other than those subject to clauses 3 to 6 inclusive.

#### **9.2 Meaning of Defects Liability**

In this clause:

- (1) **Defect** means any inadequacy in a relevant item of the Contribution Works that results from that item not being carried out in accordance with the provision and description of the item as set out in **Schedule 1 of Annexure 2** to the satisfaction of the Council,
- (2) for each item of the Contribution Works, the **Defects Liability Period** means the period specified for that item in **Schedule 1 of Annexure 2**, commencing on and from the date on which the Developer gives the Council a notice under clause 9.3; and
- (3) **Rectification Notice** means a notice that sets out:
- (a) the nature and extent of the relevant Defect;

- 
- (b) the rectification work the Council considers necessary to rectify the Defect; and
  - (c) the time within which the Defect must be rectified by the Developer, which must be a reasonable time.

### **9.3 Provision of notice**

When the Developer considers that:

- (1) an item of the Contribution Works is complete, or
- (2) an item of the Contribution Works has been rectified in accordance with a Rectification Notice,

the Developer will give the Council a notice in writing to that effect (**Completion Notice**).

### **9.4 Service of Rectification Notice**

During the Defects Liability Period, the Council may give the Developer a Rectification Notice.

### **9.5 Developer to rectify**

- (1) The Developer will comply with a Rectification Notice at its own cost according to its terms.
- (2) Council must:
  - (a) inspect the relevant rectification work within fourteen (14) days after it is given a relevant Completion Notice; and
  - (b) advise the Developer by notice in writing if that work:
    - (i) has been completed to the satisfaction of the Council; or
    - (ii) has not been completed to the satisfaction of Council, in which case the notice will be deemed to be a further Rectification Notice concerning that work,

within seven (7) days of the relevant inspection.

### **9.6 Council may carry out rectification**

If the Developer breaches clause 9.5(1), the Council may have the relevant Defect rectified and may recover the reasonable costs incurred by it of so doing as a debt due in a court of competent jurisdiction.

### **9.7 Acceptance of item of Contribution Works**

- (1) The Council is taken to have accepted the condition of an item of the Contribution Works that is the subject of a Completion Notice where:
  - (a) if the Council has not given the Developer a Rectification Notice, at the expiration of the Defects Liability Period, or

- 
- (b) if the Council has given the Developer a Rectification Notice, on the date which the Council gives a notice in writing to the Developer stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction; or
  - (c) if, upon the expiry of the periods set out in clause 9.5(2) the Council fails to carry out the required inspection or serve the required notice, as the case may be.
- (2) For the purpose of this Agreement, the hand over of an item of the Contribution Work to the Council occurs on the earlier of:
- (a) Council providing confirmation that the relevant item of the Contribution Work has been completed to the satisfaction of the Council in accordance with clause 9.5(2)(b)(i); or
  - (b) Council being deemed to have accepted the condition of the relevant item in accordance with paragraph (1)(c).
- (3) On hand-over of any item of the Contribution Works, the Council accepts ownership, possession and control of the relevant item.
- (4) A contribution comprising an item of the Contribution Works is made by the Developer for the purposes of this Agreement when the Council accepts the hand over of that item in accordance with this clause 9.

## **10 SECURITY**

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### **10.1 Prohibition**

Neither party may Assign their rights under this Agreement without the prior written consent of the other party.

### **10.2 Assignment of Land**

- (1) The Developer must not Assign its interest in the Land (other than the Assignment of a Residential Lot) unless:
  - (a) the Council consents to the assignment in its absolute discretion; and
  - (b) the proposed assignee enters into an agreement to the satisfaction of the Council under which the assignee agrees to be bound by the terms of this Agreement.
- (2) If the Developer breaches this clause 10.2 then the Developer is not released from, and remains liable to perform, the obligations imposed on it under this Agreement.

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### **10.3 Provision of bond**

- (1) The Developer will provide to Council a bank guarantee in an amount of thirty five thousand dollars (\$35,000) to secure the obligations of the Developer under this Agreement.
- (2) The parties acknowledge that the amount of the bond referred to in paragraph (1) has been requested by the Council on the basis that it will secure the payment of any legal costs incurred by the Council in instituting legal proceedings against the Developer as a result of any breach of this Agreement by the Developer.

### **11 REVIEW & AMENDMENT**

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- (1) If either party requests a review of the whole or any part of this Agreement then the parties must use their best endeavours, acting in good faith, to review the Agreement in accordance with that request.
- (2) If the parties agree to amend this Agreement as a result of a review conducted under paragraph (1) then any such amendment must be made in writing signed by both parties.

### **12 DISPUTE RESOLUTION**

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#### **12.1 Notice of Dispute**

If a party believes that there is a Dispute then:

- (1) that party must give notice in writing to the other party stating that there is a Dispute; and
- (2) the notice referred to in paragraph 12.1(1) must outline:
  - (a) what the party believes the dispute to be; and
  - (b) what the party wants to achieve; and
  - (c) what the party believes will settle the Dispute; and
  - (d) who will be the party's Representatives to negotiate the dispute.

#### **12.2 Consultation between the Representatives**

Within fifteen (15) business days of a notice served in accordance with clause 12.1(1) the Representatives must meet in order to resolve the Dispute.

#### **12.3 Settlement of Dispute and mediation**

- (1) If the Dispute cannot be resolved by the Representatives within a further fifteen (15) business days of a meeting between the Representatives in accordance with clause 12.2 then the Dispute must be submitted to mediation by a mediator selected:
  - (a) by the parties; or

- 
- (b) if the parties cannot agree on a mediator, by the President of the Australian Commercial Disputes Centre.
  - (2) The parties are to appoint a mediator who is appropriately qualified and have practical experience in the area of the Dispute.
  - (3) Any costs incurred in the mediation of the Dispute are to be borne equally by the parties.

#### **12.4 Exclusivity of dispute resolution procedure**

- (1) Both parties must adhere to the dispute resolution procedure set out in this Agreement.
- (2) The only time that either party may depart from the dispute resolution procedure set out in this clause is when urgent interlocutory relief is required to restrain a breach or threatened breach of this Agreement.

### **13 DEFAULT IN PERFORMANCE**

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#### **13.1 Events of default**

The Developer commits an "Event of Default" if:

- (1) it breaches a term of this Agreement; or
- (2) fails to comply with the terms and conditions of the Development Consents; or
- (3) fails to comply with the terms of the Heritage Agreements; or
- (4) fails to comply with the terms of the Harrington Grove East CMP and the Harrington Grove West CMP.

#### **13.2 Consequences of Events of default**

Where the Developer commits an Event of Default the Council may serve a notice on the Developer requiring the relevant breach to be rectified within seventy two (72) days of the date of the notice.

#### **13.3 No restriction on rights**

The rights vested in the Council pursuant to clause 13.2 do not prevent the Council from exercising any other rights that it may possess at law.

### **14 TERMINATION**

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#### **14.1 Termination**

This Agreement terminates in the following events:

- (1) the parties agree in writing to terminate the operation of this Agreement at any time; or
- (2) the Council serves notice on the Developer terminating this Agreement where the Developer has failed to comply with a notice issued in accordance with 13.2; or



- 
- (3) the Developer:
- (a) discharges its obligations under this Agreement in accordance with the Development Consents; and
  - (b) discharges its obligations under any further agreement entered into between the parties in relation to Contribution Works.

#### **14.2 Consequence of termination**

Upon termination of this Agreement:

- (1) all future rights and obligations of the parties are discharged;
- (2) any security held under this Agreement will be released; and
- (3) all pre-existing rights and obligations of the parties continue to subsist.

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### **15 POSITION OF COUNCIL**

#### **15.1 Consent authority**

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

#### **15.2 Construction of Agreement to fetter powers**

No term of this Agreement is to be construed, or to operate, so as to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty.

#### **15.3 Reading down of provisions**

If any provision of this Agreement would, or could likely, operate so as to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty then that provision is, to the extent necessary for it not to fetter, limit, restrict or otherwise interfere with the exercise of Council's statutory powers, discretion or duty:

- (1) be read down, if possible; or
- (2) severed from this Agreement.

#### **15.4 No Obligations**

Nothing in this Agreement will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the LEP, the Land or the Development in a certain manner.

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### **16 CONFIDENTIALITY**

#### **16.1 Agreement not Confidential**

The parties acknowledge that this Agreement:

- 
- (1) is not confidential;
  - (2) may be treated as a public document by the Council; and
  - (3) may be publicly exhibited and reported without restriction by either party.

#### **16.2 Non-disclosure**

- (1) A party must not disclose Confidential Information disclosed to it by the other party except:
  - (a) with the prior written consent of the disclosing party; or
  - (b) in accordance with the terms of this Agreement.
- (2) A party may not unreasonably withhold its consent to disclosure in accordance with paragraph 16.2(1)(a) where:
  - (a) the requested disclosure is made for the purpose of facilitating the proper performance of a party's obligations under this Agreement; and
  - (b) the disclosure is to be made to persons who:
    - (i) reasonably require the disclosure of the information; and
    - (ii) are subject to a duty of confidentiality on the same or similar terms to that contained in this clause.

#### **16.3 Use of Confidential Information**

A party may use, copy, reproduce or otherwise deal with the Confidential Information disclosed to it only:

- (1) during the term of this Agreement; and
- (2) in accordance with the terms of this Agreement; and
- (3) in a manner that is related to the proper and lawful conduct and performance of its obligations under this Agreement.

#### **16.4 Exceptions to non-disclosure**

A party may disclose Confidential Information that has been disclosed to it:

- (1) where such disclosure is made to those of its employees, advisers, related bodies corporate and shareholders who:
  - (a) have a need to know (and only to the extent each has a need to know); and
  - (b) are aware and agree that the information that is to be disclosed must be kept confidential; or

- 
- (2) which, at the time of disclosure, is within the public domain or after disclosure comes into the public domain other than by a breach or breaches by any party (whether the party to this Agreement or a third party) of any obligation owed to the other party; or
  - (3) where:
    - (a) required by law or any order of any court, tribunal, authority, regulatory body or the rules of any securities exchange (whether in Australia or elsewhere) to be disclosed; and
    - (b) the party ensures that information is disclosed only to the extent reasonably and lawfully required.

#### **16.5 Duration of confidentiality obligations**

Unless otherwise agreed by the parties in writing the obligation of confidentiality set out in this Agreement operates indefinitely and does not terminate on the expiry or earlier termination of this Agreement.

### **17 GST**

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- (1) The amount of any payment required to be made under this Agreement does not include GST.
- (2) If the party receiving a payment under this Agreement is or will become liable to pay GST in respect of the supply then the amount payable will be increased by the amount of any GST payable.
- (3) The party receiving payment of any amount referred to in the preceding paragraphs must issue a tax invoice on payment of any GST under this clause.

### **18 CHANGE OF LAWS**

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- (1) If, at the time a Financial Contribution is required to be made by the Developer under this Agreement, a contributions plan (within the meaning of the EPAA Act) is in force that would, but for this Agreement, have authorised the Council to impose a condition under s94 of the Act in respect of the Developments requiring the payment of a monetary s94 contribution towards the same or a similar purpose as that for which the Financial Contribution is required to be made, then, despite any other provision of this Agreement, the amount of the Financial Contribution to which referred to in paragraph (1) is not to exceed the amount of the relevant monetary s94 contribution as provided for in the contributions plan.
- (2) If, at the time a Financial Contribution is required to be made by the Developer under this Agreement, the council is not authorised by a contributions plan (within the meaning of the EPAA Act) to impose a condition under s94 of the Act in respect of the Developments requiring the payment of a monetary s94 contribution towards the same or a similar purpose as that for which the Financial Contribution is required to be made, the Developer is not required to make the Financial Contribution under this Agreement.

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## **19 MISCELLANEOUS**

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### **19.1 Obligation to act in good faith**

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this Agreement; and
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and
- (3) make approvals or decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this Agreement; and
- (4) be just and faithful in its activities and dealings with the other parties.

### **19.2 Consultation concerning development applications**

If the Developer is required to lodge an application for development consent for any matter required to be carried out by it under this Agreement then it will consult with the Council in good faith in relation to the relevant works before lodging any such application.

### **19.3 Legal costs**

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of the Council for the negotiation, preparation, execution, and stamping of this Agreement.
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within fourteen (14) days of receipt of a Tax Invoice from the Council.
- (3) pay or reimburse the legal costs and disbursements of the Council arising from the ongoing administration and enforcement of this Agreement including any breach or default by the Developer of its obligations under this Agreement.

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## **20 ADMINISTRATIVE PROVISIONS**

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### **20.1 Notices**

- (1) Any notice, consent or other communication under this Agreement shall be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address; or
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:

- 
- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
  - (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

## **20.2 Entire Agreement**

This Agreement is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

## **20.3 Waiver**

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

## **20.4 Cooperation**

Each party must sign, execute and deliver all Agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this Agreement and the rights and obligations of the parties under it.

## **20.5 Counterparts**

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

## **20.6 Amendment**

This Agreement may only be amended or supplemented in writing signed by the parties.

## **20.7 Unenforceability**

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

## **20.8 Power of Attorney**

Each attorney who executes this Agreement on behalf of a party declares that the attorney has no notice of:

- 
- (1) the revocation or suspension of the power of attorney by the grantor; or
  - (2) the death of the grantor.

**20.9 Governing law**

The law in force in the State of New South Wales governs this Agreement . The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement ; and
  - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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**EXECUTION**

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**Executed as an agreement**

Dated:

**Signed, Sealed and Delivered by Camden Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with a resolution of the Council dated

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General Manager (Signature)

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Mayor (Signature)

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Name of General Manager (Print Name)

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Name of Mayor (Print Name)

**Signed, Sealed and Delivered by Dandaloo Pty Limited** in accordance with section 127(1) of the Corporations Act by authority of its directors.

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Director/Secretary (Signature)

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Director (Signature)

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Name of Director/ Secretary (Print Name)

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Name of Director (Print Name)

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## Voluntary Planning Agreement - Annexure 1

### Defined Terms and Interpretation

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#### Part 1 - Definitions

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<b>Agreement</b>	means this agreement <u>and includes any annexures to this agreement.</u>
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any:  <ol style="list-style-type: none"><li>(1) federal, state or local government; or</li><li>(2) department of any federal, state or local government; or</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b><u>Bank Guarantee</u></b>	<u>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:</u>  <u>(a) one of the following trading banks:</u>  <ol style="list-style-type: none"><li><u>(i) Australia and New Zealand Banking Group Limited,</u></li><li><u>(ii) Commonwealth Bank of Australia,</u></li><li><u>(iii) Macquarie Bank Limited,</u></li><li><u>(iv) National Australia Bank Limited,</u></li><li><u>(iv) St George Bank Limited,</u></li><li><u>(v) Westpac Banking Corporation, or</u></li></ol> <u>(b) any other financial institution approved by the Council in its absolute discretion.</u>
<b>Bushland Conservation Works</b>	means the Harrington Grove East Bushland Conservation Works and the Harrington Grove West Bushland Conservation Works.
<b>Confidential Information</b>	means:  <ol style="list-style-type: none"><li>(1) <b>intellectual property:</b> any and all Intellectual Property;</li></ol>



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and

- (2) **financial information:** information regarding costs, profits, markets, sales and other financial information; and
- (3) **business information:** information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers; and
- (4) **personal information:** any personal information relating to the officers (as defined in s9 of the *Corporations Act 2001*), partners, employees, agents, contractors or clients of the disclosing party; and
- (5) **information obtained through performance:** all information which becomes known to a party as a consequence of it performing the obligations under this Agreement including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party; and
- (6) **technical information:** information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and
- (7) **disclosed information:** any other information disclosed by a disclosing party that:
  - (a) is identified as being confidential; or
  - (b) would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

**Contribution Works**

means the Contributions comprised of the "Contribution Works" set out in **Schedule 1 of Annexure 2**.

**Contributions**

means a monetary contribution, 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.

**Council**

means "Council" as set out in the **Schedule**.

**Developer**

means the "Developer" set out in the **Schedule**.

**Developments**

means the subdivision and development of the Land in

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	accordance with the Development Consents.
<b>Development Consents</b>	means the Harrington Grove West Development Consent and the Harrington Grove East Development Consent, as amended from time to time.
<b>Dispute</b>	means a dispute regarding the terms or operation of this Agreement.
<b>EPAA Act</b>	means the <i>Environmental Planning &amp; Assessment Act (NSW) 1979</i> .
<b>Explanatory Note</b>	means the Explanatory Note set out at <b>Annexure 132</b> .
<b>Financial Contributions</b>	means a monetary Contribution comprised of the "Financial Contributions" as set out in <b>Schedule 2 of Annexure 2</b> .
<b>GST</b>	means goods and services tax payable in accordance with the <i>A New Tax System (Goods and Services Tax) Act 1999</i> and all incidental and ancillary legislation and regulations.
<b>Harrington Grove CMS</b>	means the conservation management strategy set out at <b>Annexure 7</b> , or such other strategy as agreed between the parties from time to time.
<b>Harrington Grove East Bushland Areas</b>	means those areas of the Harrington Grove East Development that are subject to the Harrington Grove East CMP.
<b>Harrington Grove East Bushland Conservation Works</b>	means the works required to be carried out under the Harrington Grove East CMP.
<b>Harrington Grove East CMP</b>	means the Conservation Management Plan prepared by the Developer and submitted to the Council in accordance with Clause 6.1(2)(a) as set out at <b>Annexure 5</b> , or such other plan as agreed between the parties from time to time.
<b>Harrington Grove East Community Association</b>	means the community association(s) constituted under the <i>Community Land Development Act (NSW) 1989</i> for the Harrington Grove East Development.
<b>Harrington Grove East Development</b>	means the development subject to the Harrington Grove East Development Consent.
<b>Harrington Grove East Development Consent</b>	means a consent or consents granted by the Council for approval of the development substantially as described in the Indicative Master Plan set out at <b>Annexure 8</b> for a minimum of at least 77.53 hectares of land zoned 2(d) and 41.69 hectares of land zoned 7(d4) under the provisions of the New LEP (or the equivalent zoning under any new planning instrument that might be adopted by the Council for the Land following the signing of this Agreement).
<b>Harrington Grove East Land</b>	means the whole of the Land contained in Certificate of Title

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Folio Identifier 3420/1105169

<b>Harrington Grove West Bushland Areas</b>	means those areas of the Harrington Grove West Development that are subject to the Harrington Grove CMP.
<b>Harrington Grove West Bushland Conservation Works</b>	means the works required to be carried out under the Harrington Grove West CMP.
<b>Harrington Grove West CMP</b>	means the Conservation Management Plan prepared by the Developer and submitted to the Council in accordance with Clause 6.1(2)(a) as set out at <b>Annexure 6</b> , or such other plan as agreed between the parties from time to time.
<b>Harrington Grove West Community Association</b>	means the community association(s) constituted under the <i>Community Land Development Act (NSW) 1989</i> for the Harrington Grove West Development.
<b>Harrington Grove West Development</b>	means the development subject to the Harrington Grove West Development Consent.
<b>Harrington Grove West Development Consent</b>	means a consent or consents granted by the Council for approval of the development substantially as described in the Indicative Master Plan set out at <b>Annexure 9</b> for a minimum of at least 44.78 hectares of land zoned 2(d), 19.91 hectares of land zoned 7(d4) and 13.70 hectares of land zoned 1(f) under the provisions of the New LEP (or the equivalent zoning under any new planning instrument that might be adopted by the Council for the Land following the signing of this Agreement).
<b>Harrington Grove West Land</b>	means the whole of the Land contained in Certificate of Title Folio Identifier 101/1107591.
<b>Harrington Park</b>	means the building and curtilage defined as "Harrington Park" in the Harrington Park Heritage Agreement.
<b>Harrington Park Heritage Agreement</b>	means the proposed agreement between the NSW State Heritage Office and the Developer as set out in draft form at <b>Annexure 3</b> .
<b>Harrington Park Heritage Works</b>	means the works defined as "Conservation Works" in the Harrington Park Heritage Agreement.
<b>Heads of Planning Agreements</b>	means the Heads of Planning Agreement - Harrington Grove West and the Heads of Planning Agreement - Harrington Grove East entered into between the parties and dated 9 October 2006.
<b>Heritage Agreements</b>	means either or both the Harrington Park Heritage Agreement and the Orielton Heritage Agreement as the context requires.
<b>Heritage Works</b>	means either or both the Harrington Park Heritage Works and the Orielton Heritage Works as the context requires.

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<b>Land</b>	means the "Land" set out in the <b>Schedule</b> and being the Harrington Grove East Land and the Harrington Grove West Land.
<b>Law</b>	means all legislation, plans, regulations, by-laws, common law and other binding order made by any Authority.
<b>LES</b>	means the Local Environmental Study undertaken with respect to the Development.
<b><u>Narellan Sports Hub</u></b>	<b><u>means a sports facility on the Narellan Sports Hub Land.</u></b>
<b><u>Narrellan Sports Hub Land</u></b>	<b><u>means the land shown outlined by a dashed line and marked 'DPF' on the plan of the Developments in Annexure 2.</u></b>
<b>New Law</b>	means an amendment, variation or change made to a Law in force at the date of this Agreement, or a Law that comes into force on or after the date of this Agreement.
<b>New LEP</b>	means the "New LEP" as set out in the <b>Schedule</b> .
<b>Orielton</b>	means the building and curtilage defined as "Orielton" in the Orielton Heritage Agreement.
<b>Orielton Heritage Agreement</b>	means the proposed agreement between the NSW State Heritage Office and the Developer as set out in draft form at <b>Annexure 4</b> .
<b>Orielton Heritage Works</b>	means the works defined as "Conservation Works" in the Orielton Heritage Agreement.
<b>Planning Legislation</b>	means the EPAA Act and the <i>Local Government Act (NSW) 1993</i> .
<b>Representatives</b>	means the nominated representatives of the parties from time to time.
<b>Residential Lot</b>	means a single residential lot within the Development.
<b><u>Security</u></b>	<b><u>means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.</u></b>
<b>Subdivision Certificate</b>	has the same meaning as that set out in the EPAA Act.

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**Part 2 - Interpretational Rules**

<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

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<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this Agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>gender</b>	a reference to one gender extends and applies to the other and neuter gender.



**Appendix 2**

(Clause 5)

**Schedules 1 and 2 and plans in Annexure 2 of  
Planning Agreement**

# Harrington Grove Planning Agreement – Deed of Variation

## The Council of Camden

### Dandaloo Pty Limited



SCHEDULE 1 CONTRIBUTION WORKS		HARRINGTON GROVE - VOLUNTARY PLANNING AGREEMENT						
CONTRIBUTION WORKS (Works-in-kind)	SYMBOL	PROVISION Quantity, Area or Length	TIMING OF PROVISION	OWNERSHIP	ACCESS	DEFECTS LIABILITY PERIOD	DESCRIPTION OF FACILITY	
Local Community Centre (Country Club)	LCC	1 No.	By the time 1000 lots are created.	HG Community/Assoc.	HG Community members	Not Applicable	The Country Club is to include at least: 2 Function rooms 1 Multi-purpose room 1 Bar 1 Kitchen 1 Kitchen facility 1 Office space 1 Storage area Outdoor component including: 4 hardcourts 1 swimming pool playground barbecue / picnic facilities	
Local Neighborhood Centres Harrington Park Oxilton	LNCT LNCC	1 No. 1 No.	By completion of development of Precinct F By completion of development of Precinct M	HG Community Assoc. HG Community Assoc.	HG Community members HG Community members	Not Applicable Not Applicable	Each Local Centre is to contain at least: 1 swimming pool 1 bar 1 barbecue / picnic facilities	
Local Recreation Facilities Hard Courts	C1 C2 C3 C4	4 No. 1 No. 1 No. 2 No.	With Local Community Centre (LCC) With Local Neighborhood Centre (LNCT) With Local Neighborhood Centre (LNCC) With District Playing Fields (DPF)	HG Community Assoc. HG Community Assoc. HG Community Assoc. General Council	HG Community members HG Community members HG Community members General public	Not Applicable		
Swimming Pools	S1 S2 S3	1 No. 1 No. 1 No.	With Local Community Centre (LCC) With Local Neighborhood Centre (LNCT) With Local Neighborhood Centre (LNCC)	HG Community Assoc. HG Community Assoc. HG Community Assoc.	HG Community members HG Community members HG Community members	Not Applicable		
Playgrounds	P1 P2 P3 P4 P5 P6 P7 P8	1 No. 1 No. 1 No. 1 No. 1 No. 1 No. 1 No. 1 No.	With Local Community Centre (LCC) With Local Neighborhood Centre (LNCT) By completion of development of Precinct H By completion of development of Precinct F By completion of development of Precinct B By completion of development of Precinct M By completion of development of Precinct L	HG Community Assoc. HG Community Assoc. HG Community Assoc. HG Community Assoc. HG Community Assoc. HG Community Assoc. HG Community Assoc.	HG Community members HG Community members HG Community members HG Community members HG Community members HG Community members HG Community members	Not Applicable	The 8 play grounds are to be designed so that between them, they are suitable for a wide range of ages.	
Local Open Space	LS1 LS2 LS3 LS4 LS5 LS6 LS7 LS8	0.2 ha 0.23 ha 0.23 ha 0.88 ha 0.47 ha Removed	By completion of development of Precinct B By completion of development of Precinct D By completion of development of Precinct F By completion of development of Precinct H By completion of development of Precinct L	HG Community Assoc. HG Community Assoc. HG Community Assoc. HG Community Assoc.	HG Community members HG Community members HG Community members HG Community members	Not Applicable	Local Open Spaces are to include: Turf Landscaping Sealing	
Child Care Centre Site	CC1	1 No.	By completion of development of Precinct F	Private	General Public	Not Applicable	A site is to made available within or adjacent to this Local Neighborhood Centre (LNCT). A site is to be made available privately subject to connectivity viability.	





# Harrington Grove Planning Agreement – Deed of Variation

## The Council of Camden

### Dandaloo Pty Limited



HARRINGTON GROVE - VOLUNTARY PLANNING AGREEMENT 27 Feb 15

1.0 CONTRIBUTION WORKS (Works-in-kind)	SYMBOL	PROVISION Quantity, Area or Length	TIMING OF PROVISION	OWNERSHIP	ACCESS	DEFECTS LIABILITY PERIOD	DESCRIPTION OF FACILITY
Public Art & Interpretive signs		6 No.	With various pathways	Camden Council	General Public	6 months	approximately 6 pieces of public art and a number of interpretive signs to be installed on various pathways and public art themes on landscaping plans which are to be submitted to Council for approval prior to construction.
Meridian Sports Hub Land	DPF	Area of land approx. 1.5 hectares to be acquired by PNG	As soon as possible, but no later than 31 October 2016	Camden Council	General Public	Not Applicable	Land shown outlined by a dashed line and designated 'DPF' on the plan in this Annexure 2

# Harrington Grove Planning Agreement – Deed of Variation

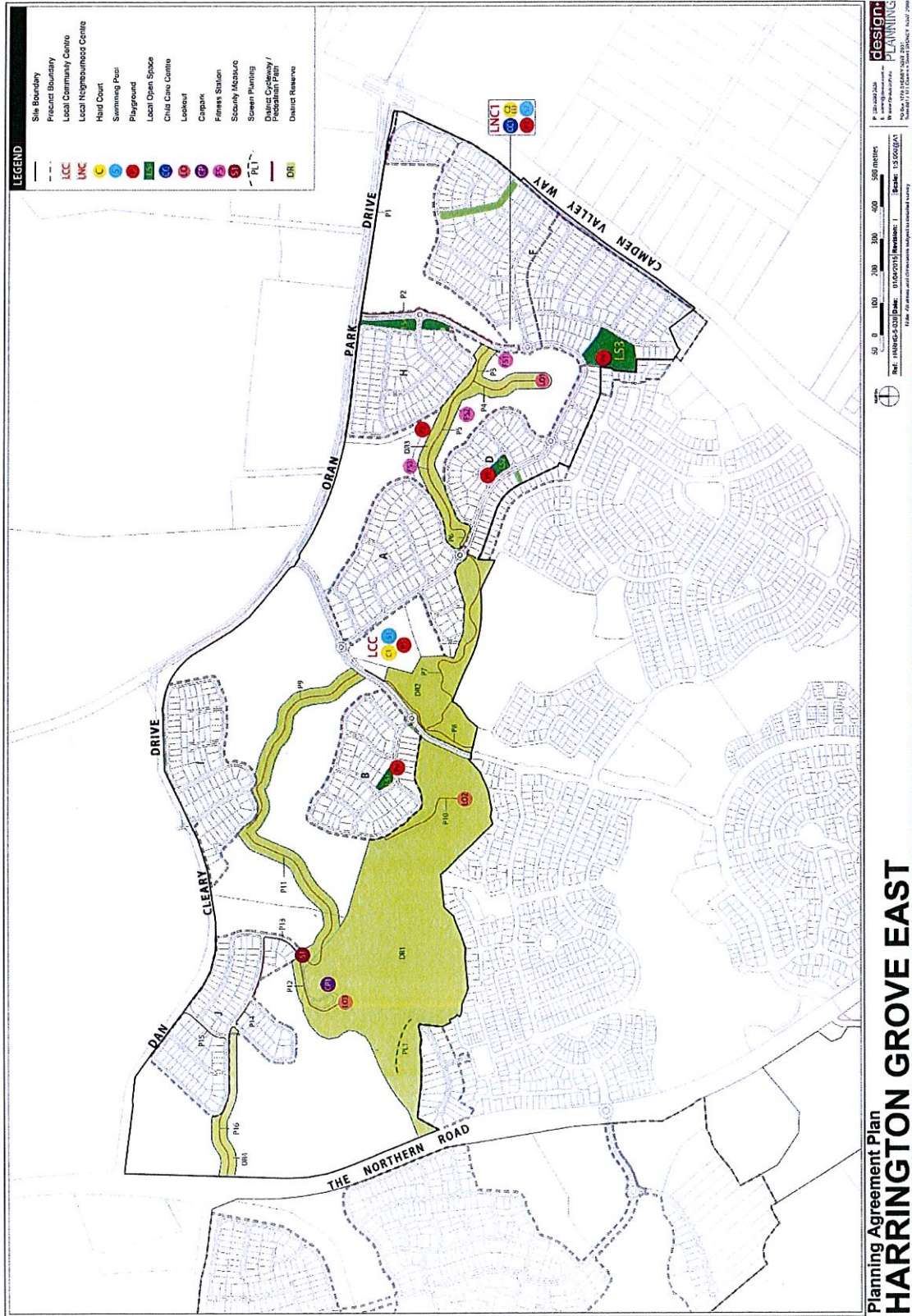
## The Council of Camden

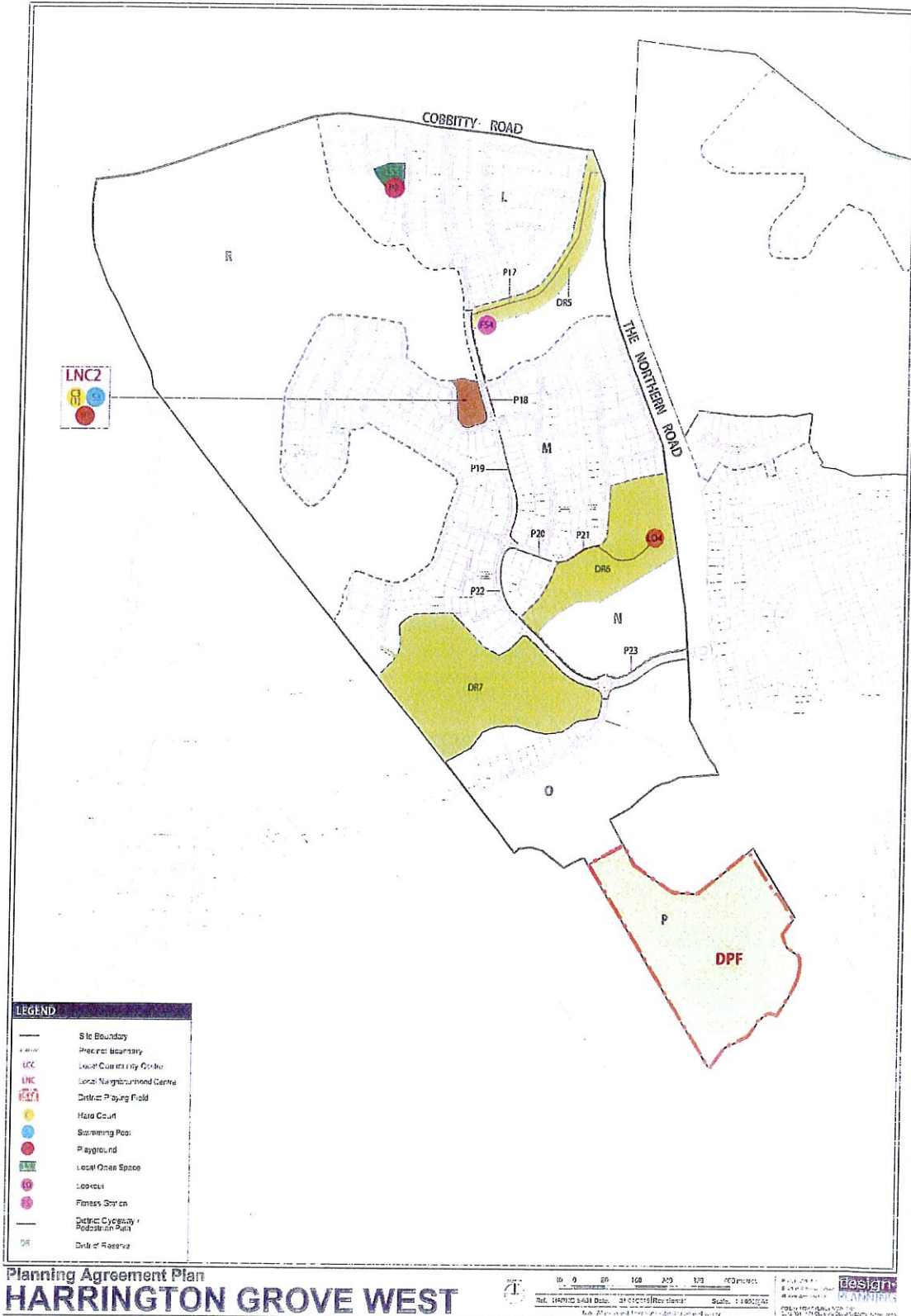
### Dandaloo Pty Limited



SCHEDULE 2 FINANCIAL CONTRIBUTIONS		HARRINGTON GROVE - VOLUNTARY PLANNING AGREEMENT				27 Feb-15		
2.0 FINANCIAL CONTRIBUTIONS		CONTRIBUTION (per Lot)	TOTAL CONTRIBUTION Approx.	PROVISION	OWNERSHIP	ACCESS	DEFECTS LIABILITY PERIOD	DESCRIPTION OF FACILITY
District Library	48.70	51,468	Paid on progressively with Sub. Certificates				Not applicable	Based on \$13.50/person * 3.1 persons / lot
Branch Library	392.30	-431,029	Paid on progressively with Sub. Certificates				Not applicable	Based on \$113.00/person * 3.1 persons / lot
Lecture Centre	618.80	680,778	Paid on progressively with Sub. Certificates				Not applicable	Based on \$176.74/person * 3.1 persons / lot
SNS administration	300.35	365,365	Paid on progressively with Sub. Certificates				Not applicable	Based on \$237.42 / lot
Notes based on CPI - All Groups Sydney Dec 2007 = 159.5	1318.44	1,387,786						
<b>Narekari Sports Hub</b>		<b>2,700,000</b>	<b>31 August 2015</b>				<b>Not applicable</b>	

**Harrington Grove Planning Agreement – Deed of Variation**  
**The Council of Camden**  
**Dandaloo Pty Limited**









## **Appendix 3**

(Clause 6)

## **Explanatory Note**

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Deed of Variation to the Harrington Grove Planning Agreement**

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

### **Parties**

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

**Dandaloo Pty Ltd** ABN 77 002 338 543 of PO Box 42, NARELLAN NSW 2567  
(Developer)

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

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

### **Description of Proposed Development**

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





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

### **Objectives of the Deed of Variation**

The objective of the Deed of Variation is to amend the Planning Agreement to include provisions relating to varying Contribution Works, deferral of work, access to land by Council, owners' consent to making of a development application and amending the Contribution Works and Financial Contributions to be provided under the Planning Agreement.

### **Nature of the Deed of Variation**

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

### **Effect of the Deed of Variation**

The Deed of Variation amends the Planning Agreement in the manner set out in clause 5 and Appendix 1 of this Deed.

## **Assessment of the Merits of the Draft Deed of Variation**

### **The Planning Purposes Served by the Deed of Variation**

The planning purposes served by the Deed of Variation are the same as those set out in the Planning Agreement.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Deed of Variation promotes the public interest in the same manner set out in the Planning Agreement.

### **For Planning Authorities:**

#### ***Development Corporations - How the Deed of Variation Promotes its Statutory Responsibilities***

N/A

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

N/A

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

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

- (i) directly providing, after due consultation, adequate, equitable and appropriate services and facilities for the community and





- ensuring that those services and facilities are managed efficiently and effectively,
- (ii) promoting, providing and planning for the needs of children,
  - (iii) having regard to the long term and cumulative effects of its decisions,
  - (iv) allowing the Council to act as an effective custodian and trustee of public assets by allowing the Council to effectively account for and manage the assets for which it is responsible,
  - (v) raising funds for local purposes by requiring the payment of monetary contributions by the parties that create the need by for infrastructure and services, and thus easing the financial burden on the community at large, and
  - (vi) keeping the local community and the State government (and through it, the wider community) informed about its activities.

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

The Deed of Variation requires that specified works be carried out by the Developer for the purposes of providing public facilities, particularly recreation facilities.

These works are not included in the Council’s relevant current capital works program. It is noted that the developer will make a financial contribution toward the construction of recreation facilities at the Narellan Sports Hub site. This monetary contribution will part fund the works on this site, which Council will undertake in accordance with its capital works program.

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

This Deed of Variation does not specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued. However, the Planning Agreement does specify such requirements.