

# PLANNING AGREEMENT

## CLOVERLEIGH FIELDS CROOKWELL STAGE 5

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

BETWEEN

***Darjeeling Pastoral Pty Ltd***

AND

***Upper Lachlan Shire Council***

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**This Agreement includes any attached schedules.**

## Recitals

<b>Date</b>		
<b>Parties</b>	<b><i>Darjeeling Pastoral Pty Ltd and Upper Lachlan Shire Council</i></b>	
<b>Details</b>	Name	Darjeeling Pastoral Pty Ltd (the <b>Developer</b> )
	ACN	618237371
	Address	PO Box 267 Bowral NSW 2576
	Contact	Philip Purnell
	Email	phil@cgpnsw.com.au
	Telephone	0417 686 156
<b>Details</b>	Name	Upper Lachlan Shire Council (the <b>Council</b> )
	ABN	81011241552
	Address	PO Box 42, Gunning NSW 2581
	Contact	Alex Waldron
	Email	council@upperlachlan.nsw.gov.au
	Telephone	02 4830 1107

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**Recitals**

- A. The Developer has made a development application for a fifty-two (52) lot subdivision of the Land comprising fifty (50) new residential lots, a community reserve and a drainage reserve, which is to house a proposed sewer pump station and drainage basin (being Stage 5 of the residential subdivision at Lot 99 DP 1232773). This planning agreement is made in relation to that development application.
- B. This planning agreement requires the Developer to make the following development contributions if the development application is approved:
  - I. The construction of works comprising a sewer pump station, a detention basin and embellishment works of a proposed area of public open space;
  - II. The dedication of land.
- C. Development consent DA75/04 was granted on 16 December 2004 for the subdivision of land at Lot 99 DP 1232773 as Stages 3 and 4. The Developer is the beneficiary of that consent.
- D. The Council requires the carrying out of water management works to serve the Development (including stages 3, 4 and 5) under section 306 of the *Water Management Act 2000* prior to the issue of a certificate of compliance.
- E. The Developer has agreed to carry out the Works to satisfy the requirements under section 64 of the *Local Government Act 1993* and the *Water Management Act 2000* in relation to the Development. The requirement to carry out the works is set out in a separate Works in Kind Agreement between the Developer and the Council.

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**This Agreement is as follows:**

## General terms

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### 1 Preliminary

#### 1.1 Definitions

These meanings, together with the meanings in the Details, apply unless the contrary intention appears.

**Agreement** means this agreement.

**Approval** means any approval, consent, licence, permission or the like.

**Authority** means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

**Claim** means any demand, claim or assertion by one of the parties for any cost, damages, debt, monies, expense, payment claim, security, liability, loss, allegation, fault, suit, action, demand, cause of action or proceeding (other than those given by or arising out of this Agreement), as a matter of right, or other relief with respect to the terms of the Agreement and includes any dispute or matter of issue between the parties and arising out of or in connection with the Agreement.

**Completion Notice** means a written notice issued under cl.4.1 of this Agreement, being a notice issued by Council that the Work specified in the notice is completed and may be used for its intended purpose except for minor Defects and omissions specified in the notice.

**CPI** means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

**Dedication Land** means the land identified at Schedule 5 of this agreement.

**Defect(s)** means an unapproved departure from any approved plan or standard and anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of the Works or any part of the Works.

**Defects Liability Period** for a Work means a period of 12 months commencing from the date of the issue for the Completion Notice for that Work.

**Defect Rectification Bond** means a cash bond of 5% of the Works Value.

**Development** means the Development proposed under the Development Application.

**Development Application** means development application PAN-351495 lodged with Council for a fifty-two (52) lot subdivision on the Land comprising fifty (50) new residential lots, a

community reserve and a drainage reserve which is to house a proposed sewer pump station and detention basin.

**Development Consent** means any development consent issued in relation to the Development Application under the EPA Act.

**Dispute** means any controversy or claim arising out of or relating to this agreement, including any question regarding its existence, validity or termination.

**Effective Date** means:

- (a) if counterparts of this Agreement are not used, the date on which all parties have signed the Agreement; or
- (b) if counterparts of this Agreement are used, the date of exchange.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Agreement.

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

**Subdivision Certificate** means a Subdivision Certificate issued in relation to the Development.

**Land** means the portion of Lot 99 DP 1232773 to which the Development Application relates and shown on the Site Plan at Schedule 1 of this Agreement.

**Maintain**, in relation to the Works, means keep in a good state of repair and working order, and includes repair of any damage to the Works.

**Occupation Certificate** has the same meaning as in the EPA Act.

**Onsite Detention System Works** means the construction of an onsite detention system in accordance with the requirements set out at Schedule 3 of this Agreement.

**Onsite Detention System Works Plan** means the Works Plan for the Onsite Detention System Works as approved by the Council under cl.3.1 of this Agreement.

**Open Space Works** means the carrying out of works for the purpose of a public recreation area in accordance with the requirements set out at Schedule 4 of this Agreement.

**Open Space Works Plan** means the Works Plan for the Open Space Works as approved by the Council under cl.3.1 of this Agreement.

**Regulation** means the Environmental Planning and Assessment Regulation 2021.

**Registration on Title** means the registration of this Agreement under section 7.6 of the EPA Act in the folio of the Register kept under the Real Property Act in relation to the Land.

**Sewer Pump Works** means the construction of a sewer pump station in accordance with the requirements set out at Schedule 2 of this Agreement.

**Sewer Pump Works Plan** means the Works Plan for the Sewer Pump Works as approved by the Council under cl.3.1 of this Agreement

**Stage 5** means the development the subject of the Development Application (being Stage 5 of the residential subdivision at part Lot 99 DP 1232773).

**Site Plan** means the plan at schedule 1 of this Agreement.

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

**WM Act** means *Water Management Act 2000*.

**Works** means the Sewer Pump Works, the Onsite Detention System Works and the Open Space Works.

**Works Plans** means the Sewer Pump Works Plan, the Onsite Detention System Works Plan and the Open Space Works Plan.

**Works Value** means the estimated cost of construction of the Sewer Pump Works, the Onsite Detention System and the Open Space Works provided by the relevant Works Plan.

## **1.2 Interpretation**

In this Agreement:

- (a) Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) Words of any gender include all genders
- (d) Other parts of speech and grammatical forms of word or phrase defined in this Agreement have a corresponding meaning.
- (e) An expression importing a person includes any employer, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual.
- (f) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement.
- (g) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.



- (h) A reference to a party to a document includes that party's successors and permitted assignees.
- (i) A promise on the part of 2 or more persons binds them jointly and severally.
- (j) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision.
- (k) If any part of this Agreement is for any reason unenforceable, that part must be read down to the extent necessary to preserve its operation. If it cannot be read down, it must be severed.
- (l) Every clause and subclause will, where context permits, be severable from every other.
- (m) A reference in this Planning Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business in NSW.
- (n) If the day on which any act, matter or thing is to be done under this Planning Agreement is not a business day, the act, matter or thing must be done on the next business day.

### **1.3 Agreement components**

This Agreement includes any schedules.

### **1.4 Planning Agreement**

This Agreement is a planning agreement within the meaning of section 7.4(1) of the EPA Act.

### **1.5 Operation of this Agreement**

- (a) This Agreement commences on the date of the Development Consent.
- (b) Despite any other provision of this Agreement, the Developer is under no obligation or responsibility in accordance with this Agreement until, if and when the Development Consent is granted.
- (c) This Agreement will remain in force until the earlier of:
  - (i) when it is terminated by operation of law;
  - (ii) when all obligations under the Agreement are performed or satisfied; or
  - (iii) when any Development Consent obtained by the Developer to carry out the Development has lapsed, been surrendered or otherwise ceases to be in force.

### **1.6 Further Agreements**

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.

### **1.7 Warranties**

- (a) The parties warrant that they:
  - (i) have full capacity to enter into this Agreement.
  - (ii) are able to fully comply with their obligations under this Agreement.
- (b) Except as expressly stated in this Agreement, the parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Acquisition Land unless:
  - (i) that warranty, representation, agreement or term is contained in the express terms of this Agreement.
  - (ii) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

### **1.8 Application of s7.11, s7.12 and s7.24 of the EPA Act to the Development**

- (a) This Agreement does not exclude the application of s7.11, s7.12 and s7.24 of the EPA Act to the Development.
- (b) The benefits under this Agreement are not to be taken into consideration when determining a development contribution under s7.11 of the EPA Act in relation to the Development.
- (c) The Parties acknowledge and agree that the Works required to be undertaken by the Developer under the Works in Kind Agreement will satisfy the requirements for the granting of a certificate of compliance under s.306 of the *Water Management Act 2000* in respect of the Development.

### **1.9 No Fetter**

Nothing in this Agreement shall be construed as requiring the Council to do anything that would cause Council 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.

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## **2 Development Contributions**

### **2.1 The Development Contribution**

- (a) The Developer must carry out the following Works:
    - i) The Sewer Pump Works;
    - ii) The Onsite Detention System Works;
    - iii) The Open Space Works;
- prior to the issue of a Subdivision Certificate for the Development.

- (b) The Developer must dedicate the Dedication Land to the Council concurrently with registration of the Subdivision Certificate for the Development at no cost to Council.
- (c) This clause operates as a restriction on the issue of a Subdivision Certificate for the Development pursuant to section 6.15 of the EPA Act.

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### **3 The Works**

#### **3.1 Design and approval of the works**

- (a) The Developer must, at its own cost, prepare a detailed Draft Works Plan for each of the Works in accordance with:
  - (i) For the Sewer Pump Works, the requirements in Schedule 2;
  - i) For the Onsite Detention System Works, the requirements in Schedule 3;
  - ii) For the Open Space Works, the requirements in Schedule 4.
- (b) The Draft Works Plan must specify the Works Value.
- (c) The Parties may, by written agreement, vary the requirements of Schedule 2, 3 or 4.
- (d) The Draft Works Plan must be submitted, in writing, to the Council for its approval.
- (e) On receipt of a Draft Works Plan in accordance the Council must, within 28 days:
  - (i) Notify the Developer, in writing, that the Draft Works Plan is accepted by the Council; or
  - (ii) Give a written notice to the Developer to the effect that the Draft Works Plan is not accepted, and specify any matter whist must be addressed. The Developer may then submit a further Draft Works Plan in accordance with cl.3(c).
- (f) Once accepted by the Council, a Draft Works Plan is taken to be a Works Plan for the purpose of this Agreement.

#### **3.2 Carrying out the Works**

The Works are to be carried out generally in accordance with the relevant Works Plan, any relevant Development Consent, any relevant approval under section 68 of the *Local Government Act 1993*, any relevant approval under section 138 of the *Roads Act 1993*, and any applicable law before the issuing of the Subdivision Certificate for the Development.

#### **3.3 Variation to Works Plan**

- (a) A Works Plan may be varied by agreement in writing between the parties acting reasonably, without the necessity for an amendment to this Agreement.
- (b) Without limiting clause 3.3(a), the Developer may make a written request to the Council to approve a variation to a Works Plan in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to

the carrying out of the Work, or to accommodate a latent issue in relation to the land on which it is located following physical commencement of the Sewer Work.

- (c) The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 3.3 .
- (d) For the avoidance of doubt, the preparation of detailed design and construction drawings does not constitute a variation to a Works Plan provided the detailed design and construction drawings are conceptually consistent with the Plan.

#### **3.4 Access to land by Developer**

- (a) The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter Council owned or controlled land that is reasonably necessary in order to enable the Developer to properly perform its obligations under this Agreement.
- (b) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 3.4(a).
- (c) The Developer is not to store any material or Equipment on Council owned or controlled land except with the prior approval of the Council.

#### **3.5 Access to land by Council**

- (a) The Council may enter any land on which a Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work.
- (b) The Council is to give the Developer prior reasonable written notice before it enters land under cl. 3.5(a).

#### **3.6 Council's obligations relating to the Works**

- (a) The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.

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

- (a) The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Agreement that:
  - (i) all necessary measures are taken to protect people and property.
  - (ii) unnecessary interference with the passage of people and vehicles is avoided.

#### **3.8 Maintenance of Works**

The Developer is to Maintain each Work until the Work is Completed for the purposes of this Agreement or such later time as agreed between the parties.

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## 4 Completion of the Works

### 4.1 Completion

- (a) The Developer is to give the Council a written notice of the date on which it will complete each of the Works (**Notice of Completion**). As part of the Notice of Completion the Developer must pay the Defect Rectification Bond to Council.
- (b) Within 7 days of receiving a Notice of Completion from the Developer, the Council must inspect the relevant Work in the presence of a representative of the Developer.
- (c) Promptly following the inspection referenced at clause 4.1(b) , the Council is to:
  - (i) issue a Completion Notice for the relevant Work to the Developer, or
  - (ii) give a written direction to the Developer to complete, rectify or repair any specified part of the Work as a pre-condition to the issuing a Completion Notice. A written direction may also include a requirement for the Developer to submit particular evidence of the works undertaken by the Developer to the Council.
- (d) The Developer is to promptly comply with a written direction given to it by the Council under clause 4.1(c)(ii).
- (e) If the Council issues a direction under clause 4.1(c)(ii) , the Council may do one or more of the following:
  - (i) require the Developer to certify that any rectified work has been carried out and completed in accordance with the requirements of this agreement;
  - (ii) inspect the rectified work within 14 days of being given notice that the defect has been rectified, following which the process at clause 4.1(c) is to apply to the rectified works.
- (f) The Council is to issue a Completion Notice to the Developer once it is satisfied that the Developer has complied with any written direction given under clause 4.1(c)(ii).
- (g) A Completion Notice issued by the Council under this clause 4:
  - (i) is final and binding on the Council and the Developer according to its terms despite any other provision of this Agreement.
  - (ii) may identify minor Defects or omissions in the Work, which the Developer is to promptly remedy.
- (h) The Council is to do such things as are reasonably necessary to enable the Developer to remedy any Defect identified in a Completion Notice.
- (i) A Work is taken to be completed and handed-over to Council on the date the Completion Notice for the Work is issued in accordance with this clause. For the avoidance of doubt, the Developer is required obtain a Completion Notice in respect of each of the Sewer Pump Works, the Detention Basin Works and the Open Space Works.

#### **4.2 Works-As-Executed-Plan**

- (a) No later than 60 days after a Work is Completed for the purposes of this Agreement the Developer is to submit to the Council two full sets of works-as-executed-plans in respect of the Work and an electronic copy of the Plans in CAD form.
- (b) The works-as-executed plans are to:
  - (i) include sufficient details of the Work to enable a complete check of the Work as executed as compared to the original approved design, including locations and levels of any below ground infrastructure and WAE plan drawings with GPS electronic data.
  - (ii) show any deviation from the approved engineering plans as agreed under cl.3.3.
  - (iii) contain the certification of the Developers supervising engineer;
  - (iv) be accompanied by information as to the asset value and include a schedule of materials used in construction.

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### **5 Rectification of Defects**

- (a) The Council may, acting reasonably, inspect a Work and give the Developer a Rectification Notice during the Defects Liability Period to the effect that a Work which the Developer carried out under this Planning Agreement must be rectified in order to comply with the requirements of this Planning Agreement (a Rectification Notice).
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice.
- (d) The Developer is to give notice to the Council when it considers the Rectification Notice has been complied with.
- (e) The Council is to inspect the Work the subject of any Rectification Notice within 14 days of the date it receives the notice under clause 5(d) or, if no notice is received, within 14 days of the date specified for compliance in the Rectification Notice.
- (f) If, following an inspection carried and pursuant to clause 5(e), the Council considers a Rectification Notice has been complied with, then it is to issue a notice to the developer within 14 days from the date of the inspection to that effect.
- (g) If, following an inspection carried out pursuant to clause 5(e), the Council considers all the defects identified in the Rectification Notice have not rectified, or it identifies further defects, it may;
  - (i) Issue a further Rectification Notice in respect of the Works which need to be rectified;

or

- (ii) Following the giving of 5 days' notice, carry out such works as are necessary to complete the works required under a Rectification Notice.
- (h) If the Council undertakes rectification works in accordance with cl.5(g)(ii) it may apply the Defect Rectification Bond to any costs and expenses incurred by the Council in rectifying any defects in the Works. The Council may recover, as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Defect Rectification Bond and the costs incurred by the Council in carrying out the rectification works.
- (i) Council must release the Defect Rectification Bond to the Developer within 14 days of the conclusion of the Defects Liability Period.

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## **6 Dedication of Land**

- (a) The Developer is to dedicate the Dedication Land to the Council for the various purposes of a sewer pump station, an onsite detention basin and a public reserve concurrently with lodgement and registration of the Plan of Subdivision for the Development.
- (b) The development contribution comprising the dedication of the Dedication Land is made when the Dedication Land is shown as being in the ownership of the Council.
- (c) The Developer is to do all things reasonably necessary to ensure the transfer of the Dedication Land to the Council occurs.
- (d) The Developer is to ensure that land dedicated to the Council under this Planning Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitations any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- (e) If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Planning Agreement is free from all encumbrances and affectations, the Developer may request that Council agree to accept the Dedication Land to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

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## **7 Registration**

### **7.1 Developer agreement to registration**

The Developer must, at its own cost, register this Agreement to the title of the Land under section 7.6 of the EPA Act within 28 days of Commencement.

### **7.2 Registration of this Agreement**

- (a) The Developer must give the Council a copy of the relevant folio of the register and a copy of the registered dealing within 21 Business Days of registration of this Agreement on the Land.

- (b) The Council must, in response to a reasonable request of the Developer, take such action that is reasonably necessary to facilitate efforts by the Developer to achieve Registration of this Agreement on the title of the Land.

### **7.3 Release and discharge of this Agreement**

- (a) The parties agree to do all things reasonably required by the other party to, as soon as practicable, release and discharge this Agreement with respect to:
  - (i) any Final Lot, upon its creation.
  - (ii) all parts of the Land, once the Developer has completed its obligations under this Agreement or this Agreement is terminated or otherwise comes to an end for any other reason.

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## **8 Breach of Obligations**

### **8.1 Security**

The parties acknowledge and agree that:

- (a) this Agreement requires the Developer to carry out and complete the Works before the issuing of a Subdivision Certificate;
- (b) a Work is complete when the Council issues a Completion Notice in respect of that Work;
- (c) the Developer is required to provide the Defect Rectification Bond to the Council; and
- (d) the developer is required to register this agreement on the title of the Land.

### **8.2 Security for dedicated land**

- (e) If the Developer does not comply with its obligations in clause 6 of this Planning Agreement, the Developer agrees that the Council may acquire the Dedication Land. For the purposes of the *Land Acquisition (Just Terms Compensation) Act 1991*, the Developer agrees that the compensation payable for the acquisition of the Dedication Land will be \$1.00 and that all relevant matters concerning the acquisition have been agreed.
- (f) The Developer agrees to do all things necessary to facilitate a transfer under this clause.

### **8.3 Breach of obligations**

- (a) If a party reasonably considers that another other party (the **Breach Party**) is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Breach Party:
  - (i) specifying the nature and extent of the breach; and
  - (ii) requiring the Breach Party to rectify the breach if it reasonably considers it is capable of rectification, in a period that is reasonable in the circumstances.



- (b) Any reasonable costs incurred by a party in rectifying a breach of this Agreement may be recovered from the Breach Party.
- (c) Nothing in this clause 8.2 prevents or restricts:
  - (i) a Party from exercising any other rights under this Agreement;
  - (i) the parties from exercising any rights it may have at law or in equity in relation to a breach of this Agreement, including but not limited to seeking relief in an appropriate court.
  - (ii) a party from disputing under clause 10 that:
    - (A) it is in breach as stated in a Breach Notice; or
    - (B) it has failed to comply with such a notice.

#### **8.4 Enforcement in a court of competent jurisdiction**

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

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## **9 Termination**

### **9.1 Termination of this Agreement — when there is no Development Consent**

- (a) A party may terminate this Agreement by giving written notice to the other party if any of the following circumstances arise:
  - (i) a Subdivision Certificate has not been issued in relation to the Development Consent or the Development Consent:
    - (A) has been surrendered in accordance with clause 68 of the Regulation;
    - (B) is declared by a Court to be void;
    - (C) lapses; or
    - (D) otherwise ceases to have effect.

### **9.2 Termination of this Agreement on the completion of obligations**

Subject to cl.9.3, this Agreement terminates when all the parties have completed all of their obligations under this Agreement, including remedying any breaches of this Agreement.

### **9.3 Termination of this Agreement by consent of the parties**

The parties may, by written agreement, terminate this Agreement at any time.

### **9.4 Consequences of termination of this Agreement**

- (a) If this Agreement is terminated by consent under clause 9, the parties are released and discharged from their obligations under this Agreement at and from the date of termination.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

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## **10 Dispute Resolution**

### **10.1 Determination of disputes**

- (a) Any Dispute must be the subject of the process as set out under this clause 10.
- (b) The parties must not bring or maintain any action on any Dispute until it has been the subject of the process as provided in this clause 10. For the avoidance of doubt, this clause does not prevent:
  - (i) proceedings being commenced, maintained and concluded pursuant to the class 1 jurisdiction of the Land and Environment Court.
  - (ii) legal proceeding being commenced, maintained and concluded in connection with Council exercising its regulatory functions under the EPA Act or any other legislation.

### **10.2 Notice of Dispute**

If a party claims that a dispute has arisen under this Agreement (**Claimant**), it must give written notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

### **10.3 Response to notice**

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

### **10.4 Negotiation**

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 20 business days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

### **10.5 Further notice if not settled**

If the dispute is not resolved within 15 business days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

### **10.6 Mediation**

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply).
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator.
- (c) the Mediator appointed pursuant to this clause must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute.
  - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment.
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of their duties.
- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation.
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement.
- (g) in relation to costs and expenses:
  - (i) each party will bear their own professional and expert costs incurred in connection with the mediation.
  - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

### **10.7 Exchange of information**

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 10.7(ii) for any purpose other than an attempt to settle a dispute between the parties.

### **10.8 Continue to perform obligations**

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

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## **11 Miscellaneous**

### **11.1 Notices**

- (a) Notices under this Agreement must be in writing. They must be sent to the address or email stated in the Details, or as otherwise advised by either party from time to time, and marked for the attention of the person stated in the Details.
- (b) A notice given under this Agreement will be deemed to have been given and received:
  - (i) if hand delivered, upon receipt;
  - (ii) if posted via registered post, three business days after posting;
  - (iii) if sent by electronic mail:
    - (A) on a business day, the date it is sent;
    - (B) if not sent on a business, on the next business date;unless the sender receives a notification to the effect that the email has not been transmitted or received.

### **11.2 Costs**

Each party must pay its own costs and expenses (including legal and accounting fees) arising from the negotiation, preparation, completion, advertising, signing and implementation of this Agreement and any related documentation.

### **11.3 Assignment**

- (a) The Developer may not assign or otherwise deal with its rights or obligations under this Agreement unless:
  - (i) the person to whom the rights are transferred agrees to be bound by this Agreement at no cost to Council;
  - (ii) Council is satisfied that the person to whom the Land or rights are to be transferred is able to perform the obligations under the Agreement, based on such reasonable evidence as the Council requires to be provided;

- (iii) The Developer is not in breach of the agreement; and
  - (iv) the Council otherwise consents to the transfer, novation or assignment.
- (b) Consent under clause 11.3(a) must not be unreasonably withheld or delayed.
- (c) Any change of ownership or control (as defined in section 50AA of the Commonwealth Corporations Act 2001) of the Developer is be deemed to be an assignment for the purposes of this clause.

#### **11.4 Parties to the Agreement**

- (a) A reference to a party to this Agreement includes that party's successors and assigns,.
- (b) If covenants or obligations are undertaken or benefits are received by a party to this Agreement comprising two or more persons or a group of parties described by one term by this Agreement, then:
  - (i) they are undertaken or received by those persons or the persons comprising the group of parties jointly and severally; and
  - (ii) claims the subject of the release or indemnity include claims by or against those persons or the persons comprising the group of parties or any one or more of them.

#### **11.5 Rights and obligations are unaffected**

Rights given to the parties under this Agreement and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

#### **11.6 Variation and waiver**

A provision of this Agreement or a right created under it, may not be waived or varied except in writing, signed by the party's representative.

#### **11.7 Entire agreement**

This Agreement constitute the entire agreement of the parties about its subject matter. This Agreement supersedes all prior discussions, previous agreements, understandings and negotiations on that subject matter. No representations, undertaking or covenant given by either party to the other prior to the date of this Agreement has any effect on the terms of this Agreement.

#### **11.8 Serving documents**

Without preventing any other method of service, any document in an action may be served on a party by being delivered to or left at that party's address in the Details.

#### **11.9 Counterparts**

- (a) This Agreement may be executed in any number of counterparts and all counterparts, taken together, constitute one instrument. A party may execute this Agreement by executing any counterpart.

(b) The date on which the last counterpart is executed is the date of the Agreement.

**11.10 Legal Advice**

The parties warrant that they have had the opportunity to obtain professional legal advice in relation to this Agreement prior to entering into it.

**11.11 Governing law**

This Agreement is governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales.

Signature of Authorised Delegate

.....  
Signature of Witness

Name of Authorised Delegate (block letters)

Name of Witness (block letters)

Signed sealed and delivered for  
**Darjeeling Pastoral Pty Ltd (ACN  
618237371)**, in accordance with Section  
127(1) of the *Corporations Act 2001*  
(Cth):

Signature of Director

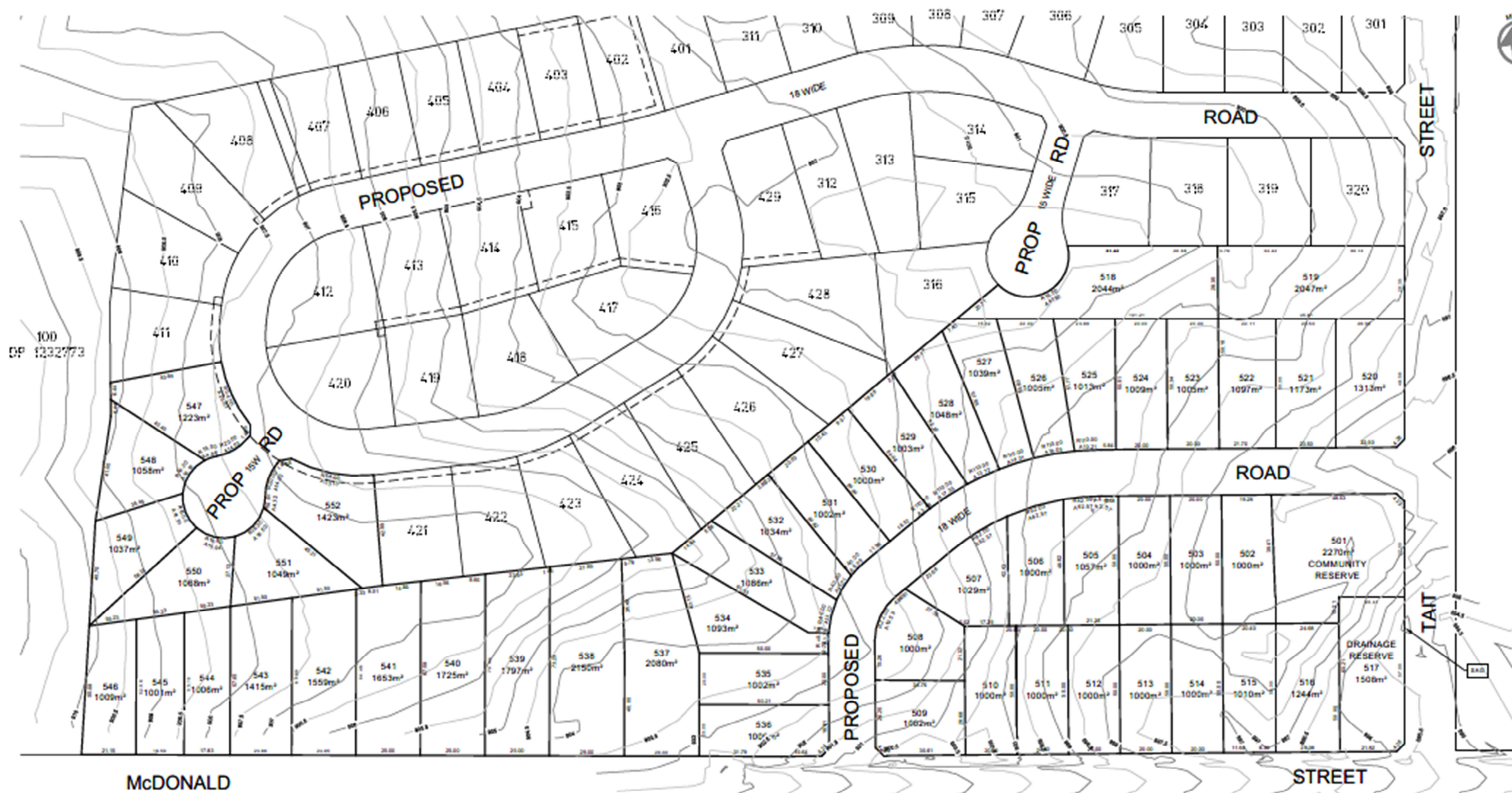
.....  
Signature of Director / Secretary

Name of Director (block letters)

Name of Director / Secretary (block letters)

## Schedule 1 – Site Plan





**NOTES:**

THIS PLAN WAS PREPARED AS A PROPOSED SUBDIVISION TO ACCOMPANY A DEVELOPMENT APPLICATION TO WINGECARRIBEE SHIRE COUNCIL AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE. THE SUBDIVISION AREA AND TOTAL NUMBER OF LOTS SHOWN HEREIN ARE SUBJECT TO FURTHER SURVEY AND ALSO TO THE REQUIREMENTS OF COUNCIL AND ANY OTHER AUTHORITY WHICH MAY HAVE REQUIREMENTS UNDER ANY RELEVANT LEGISLATION. IN PARTICULAR, NO RELIANCE SHOULD BE PLACED ON THE INFORMATION ON THIS PLAN FOR ANY FINANCIAL OR LEGAL PURPOSES. THE LAND SHOWN HEREIN MAY BE SUBJECT TO CURRENT OR PROPOSED EASEMENTS AND/OR RESTRICTIONS ON THE USE OF LAND. DRAINAGE EASEMENTS, WATER LINES AND OTHER UNDERGROUND SERVICES MAY BE CONSTRUCTED UPON ANY OF THE LOTS. THIS PLAN IS SUBJECT TO EXISTING DEEDS, AND/OR REQUIREMENTS OF THE COUNCIL OR RELEVANT AUTHORITY. THIS NOTE IS AN INTEGRAL PART OF THIS PLAN.

revision	revision details	date	drawn
A	Initial Issue	01/09/23	J.C.
B	Layout Revised	29/10/23	J.C.



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WINGECARRIBEE SHIRE COUNCIL DA -  
 LOTS 321, 322 & 430 DP  
 TAIT STREET,  
 CROOKWELL  
 DARJEELING PASTORAL

**PLAN OF PROPOSED  
 SUBDIVISION**

0 1 2 3 4 5 6 7 8 9 10 METRES  
 SCALE 1:1000

designed: J.C.	A1 sheet	revision B
drawn: J.C.	Job Drawing Number	
checked: R.A.	<b>2124</b>	
date: 01/09/23	<b>DA03</b>	
	sheet 1	sheet 1



## Schedule 2 –Sewer Pump Works

The Draft Works Plan for the Sewer Pump must address and be in accordance with the following requirements.

New Sewer Pump Station to be constructed on the land to be dedicated to the Council must be designed and constructed in accordance with WSA 04 Sewage Pumping Code of Australia.

The design must be based on:

- Average Day Demand per person = 230 L/Person/Day
- Storm Allowance = 0.058 L/s/ET
- Average Dry Weather Flow (ADWF) and Peak Wet Weather Flow (PWWF) as per WSA
- EP per single dwelling = 3.5 EP as per WSA 02
- I/I rates of 2% of the total area for each proposed lot.
- SPS will also need to be able to be operated from a portable generator if there is a power failure.

An estimate of the cost of construction for the Sewer Pump Works must be provided in the Draft Works Plan.

## Schedule 3 –Onsite Detention System Works

The Draft Works Plan for the Onsite Detention System must address and be in accordance with the following requirements.

- The design of the Onsite Detention System (**OSD**) must be prepared by an appropriately qualified professional. The design must meet the following requirements and current best practice/principles outlined in the Australian rainfall and run-off guideline:
  - The design must be certified by a chartered civil engineer stating that it has been prepared accordingly and supported by hydraulic calculations;
  - Detailed diagrams and construction notes for these devices are included the guideline document prepared by NSW Government 'Managing Urban Stormwater: Soils and Construction -Volume 1 Fourth Edition (or as amended);
  - The proposed basin shall be designed on a principle of a dry basin/soak away;
  - Incorporate good aesthetics and landscaping and consider efficient long-term viability and maintenance, including suitable access for maintenance purposes;
  - The OSD storage is to be designed to the storage/discharge relationship appropriate for the development type. Computations must be performed for the existing and fully developed site conditions for a low recurrence interval (5 and 10-year ARI), a medium recurrence interval (20 or 50-year ARI), and the upper value, which will be the 100-year ARI storm. Time of concentration for the site are to be calculated for the fully developed site conditions and not assumed.
  - The contributing catchment and the capacity of the downstream drainage system shall be assessed in the design of the discharge points and detention system.
  - The rate of stormwater runoff (both piped and overland) from the post development site shall not exceed the rate of runoff from the pre-developed site for the storm events;
  - The determination of the volume of the site storage requirement is to be undertaken using the above run off constraints and control the rate of discharge to ensure the downstream stormwater assets can handle the permissible site discharge:
- Permissible site discharge being the maximum rate of discharge for the fully developed site that the existing downstream stormwater system can handle;
- Site storage requirements being the minimum storage volume needed to temporarily store and offset the excess stormwater run-off from a fully developed site.
- These calculations are to be provided and certified by a chartered civil engineer, to Council as part of the design and approval process;

- The development's drainage system must be able to transport all run-off from a 100-year ARI storm event to the OSD storage;
- A high level outlet is to be provided to cater for surcharge during major storm events
- Maximum depth of the above ground storage must not be over 300mm at full capacity;
- The maximum water level of the OSD systems storage at capacity must be at least 300mm below all habitable floor levels within the subdivision and 150mm below pedestrian entries and exit facilities
- Access to the discharge control pit is to be provided for inspections and maintenance of the silt trap and mesh screen;
- Surface inlets must have suitable grates to stop debris from entering the OSD system. This minimizes blockages that may slow the steady discharge of run-off and potentially cause flooding;
- Such opening is to have a minimum size of 600mm x 600mm to be fitted with a removable galvanized steel grate and to be placed above the outlet and silt trap.
- A stainless steel or galvanized mesh screen (Maxi-mesh RH3030 or equivalent) fitted with a lift handle, shall be provided between the orifice and the inlet. The screen is to be a minimum distance from the orifice equal to 1.5 times the diameter of the orifice or 200mm, whichever is the greater. The screen should be positioned so that the inflows are directed perpendicular to the screen.
- The orifice plate is to be a minimum 200mm x 200mm flat stainless steel plate, 3mm thick.
- The orifice is to be tooled to the exact dimensions as calculated, uniform circular shape with sharp (not rounded) edges. The plate is to be affixed onto the wall and epoxied and securely fixed over the outlet pipe by at least four dyna-bolts or similar, one at each corner;
- The orifice diameter must be 40mm or more. Generally an orifice diameter which is smaller than 25mm will not be approved;
- The system is to be designed to maximise ease of maintenance and ensure safety;

An estimate of the cost of construction for the Onsite Detention System Works must be provided in the Draft Works Plan.

## Schedule 4 – Open Space Works

[The Council is expecting the public open space land to be dedicated to it to be in a suitable condition for use for public recreation – the condition and extent of landscaping and any embellishments of the land is an item for discussion /developer to propose.]

The Draft Works Plan for the Open Space must address and be in accordance with the following requirements.

...

An estimate of the cost of construction for the Open Space Works must be provided in the Draft Works Plan.

## Schedule 5 – Dedication Land

[Plan to be inserted once the area of land to be dedicated to the Council for the sewer and stormwater infrastructure, and the open space is finalised]

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