

# **Deed of Assignment and Variation**

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**Trustees of the Sisters of Saint Joseph**

**Aqualand Baulkham Hills Development Pty Ltd as trustee for the Aqualand Baulkham Hills Development Trust Trustees**

**The Hills Shire Council**

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**大成 DENTONS**

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# Deed of Assignment and Variation

Dated 21 February 2022

## Parties

1. Trustees of the Sisters of Saint Joseph (**Assignor**).
2. Aqualand Baulkham Hills Development Pty Ltd as trustee for the Aqualand Baulkham Hills Development Trust Trustees (**Assignee**).
3. The Hills Shire Council (**Council**).

## Background

- A. The Assignor and the Council are parties to the Planning Agreement, which concerns the development of land for a residential subdivision.
- B. Clauses 5.1 and 35 of the Planning Agreement contemplate an assignment of the Planning Agreement when the land the subject of the Planning Agreement is transferred.
- C. By contract dated 19 December 2016 between the Assignor and Aqualand Dee Why Development Pty Limited ACN 614 065 299 (**Contract**) the Assignor contracted to sell land for the residential subdivision being Lots 1001 and 1002 in Deposited Plan 1190982 (**Subdivided Land**) being land formerly contained in Lot 2 in DP817696, the subject of the Planning Agreement.
- D. By direction under the Contract, Aqualand No 3 Pty Ltd ABN 38 608 352 003, a predecessor to the Assignee (**Aqualand No 3 Pty Ltd**) acquired the Subdivided Land on 2 August 2017 (**Effective Date**) and Council consented to that sale and purchase by resolution on or about 25 July 2017.
- E. On 2 February 2018, the Assignee purchased the land the subject of the Planning Agreement from the Aqualand No 3 Pty Ltd, which is a related body corporate to the Assignee.
- F. The Assignor and the Assignee have agreed to the assignment of all of the Assignor's rights, obligations and interests under the Planning Agreement to the Assignee from the Effective Date on the terms set out in this document. The Council has agreed to consent to this assignment.
- G. Separate to the assignment and with effect from the date of this deed, the Assignee and the Council agree to vary the Planning Agreement on the terms of this document.

# Operative provisions

## 1. Defined meanings

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

## 2. Consent

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The Council consents to the assignment of the Planning Agreement from the Assignor to the Assignee on and from the Effective Date on the terms set out in this document.

## 3. Assignment

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- (a) The Assignor assigns to the Assignee all of its rights, obligations and interests under the Planning Agreement with effect from the Effective Date.
- (b) The Assignee accepts the assignment.

## 4. Assumption of rights and obligations

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- (a) On and from the Effective Date, the Planning Agreement is assigned to the Assignee so that the Assignee replaces the Assignor under the Planning Agreement as if it were an original party to the Planning Agreement.
- (b) On and from the Effective Date, the Assignee:
  - (i) will be bound by and must comply with the Planning Agreement; and
  - (ii) obtains the rights and assumes the obligations of the Assignor under the Planning Agreement.
- (c) The Council acknowledges that on and from the Effective Date, the Assignee has replaced the Assignor under the Planning Agreement in accordance with this document and must comply with the Planning Agreement on that basis.

## 5. Variation

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With effect from the date of this Deed, the Planning Agreement is:

- (a) varied to read as set out in Annexure 1; and
- (b) continues in full force and effect on and subject to its provisions, except to the extent amended by this clause.

## 6. Acknowledgements

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The Assignor and the Council each acknowledge that they are not aware of any breaches of the Planning Agreement:



- (a) by the Assignor which have not been remedied or waived by the Council; or
- (b) by the Council which have not been remedied or waived by the Assignor prior to the Effective Date.

## **7. Release by Council**

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- (a) The Assignor remains liable to the Council for all its obligations under the Planning Agreement which fell due for performance before the Effective Date.
- (b) Despite anything in the Planning Agreement, the Council releases and discharges the Assignor from all its obligations and any liability under or in respect of the Planning Agreement which fall due for performance on or after the Effective Date and any claims, actions, demands and proceedings which the Council has or, but for this clause would have had, against the Assignor under or in respect of the Planning Agreement, on or after the Effective Date.
- (c) The Council does not release or discharge the Assignor from any liability of the Assignor in connection with the Planning Agreement which accrued before the Effective Date, including any liability in respect of a cause of action which would have accrued if loss or damage had been suffered by the Council before the Effective Date.

## **8. Release by Assignor**

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- (a) The Council remains liable to the Assignor for all its obligations under the Planning Agreement which fell due for performance before the Effective Date.
- (b) Despite anything in the Planning Agreement, the Assignor releases and discharges the Council from all its obligations and any liability under or in respect of the Planning Agreement which fall due for performance on or after the Effective Date and any claims, actions, demands and proceedings which the Assignor has or, but for this clause would have had, against the Council under or in respect of the Planning Agreement on or after the Effective Date.
- (c) The Assignor does not release or discharge the Council from any liability of the Council in connection with the Planning Agreement which accrued before the Effective Date, including any liability in respect of a cause of action which would have accrued if loss or damage had been suffered by the Assignor before the Effective Date.

## **9. Indemnities**

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- (a) The Assignor indemnifies the Assignee against any loss, damage, claim, action, penalty, liability, cost, charge, expense, outgoing or payment (including legal costs and expenses on a full indemnity basis) which the Assignee pays, suffers, incurs or is liable for at any time under or in connection with the Planning Agreement before the Effective Date.
- (b) The Assignee indemnifies the Assignor against any loss, damage, claim, action, penalty, liability, cost, charge, expense, outgoing or payment (including legal costs and expenses on a full indemnity basis) which the Assignor pays, suffers, incurs or is liable for at any time under or in connection with the Planning Agreement on or after the Effective Date.

## **10. General provisions**

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### **10.1 Costs**

- (a) The Assignee must pay the Council's and the Assignor's reasonable costs in relation to the negotiation, preparation, execution and performance of this document.
- (b) The Assignee must pay its own costs in relation to the negotiation, preparation, execution and performance of this document.

### **10.2 Governing law and jurisdiction**

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales..
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

### **10.3 Amendments**

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

### **10.4 Third parties**

This document confers rights only upon a person expressed to be a party, and not upon any other person.

### **10.5 Precontractual negotiation**

This document and the Contract:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject-matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject-matter or any term of that agreement.

### **10.6 Further assurance**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

### **10.7 Severability**

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

### **10.8 Counterparts**

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

## 10.9 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

## 11. Definitions and interpretation

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### 11.1 Definitions

In this document unless the context otherwise requires:

**Planning Agreement** means the Planning Agreement between the Assignor and the Council dated 30 October 2013, as amended or assigned from time to time; and

**Effective Date** means 2 August 2017.

### 11.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;



- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
  - (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
  - (l) reference to an item is a reference to an item in the schedule or annexure to this document;
  - (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document; and
  - (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment.
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### Execution Page

The common seal of the Trustees of the Sisters of Saint Joseph ABN 33 293 441 659 was affixed in the presence of the Congregational Leader and two other Members of the Body Corporate in accordance with s 7 of the *Roman Catholic Church Communities' Lands Act 1942*



M M Cavanagh  
Signature of Congregational Leader

MONICA MARY CAVANAGH  
Print name

C. L. Reeves  
Signature of Member 2

CECILIA LOUISE REEVES  
Print name

J. Houbie  
Signature of Member 1

JOSEPHINE HEATHER DUBIEL  
Print name

I have no notice of the revocation of the power of attorney under which I sign this document.  
**Executed** on behalf of Aqualand Baulkham Hills Development Pty Ltd ACN 619 300 873 as trustee for the Aqualand Baulkham Hills Development Trust Trustees by its attorney under power of attorney registered book 4726 no 549 in the presence of:

X 黄柔  
Witness

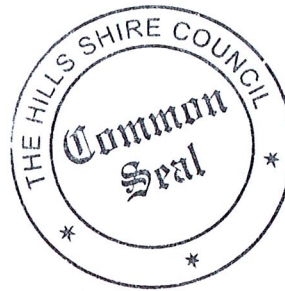
HUANG, Rou  
Print name  
Level 46, 5 Xiancun Road, Tianhe District,  
Guangzhou, Guangdong Province,  
China 510000  
Print address

X Shangjin Lin  
Attorney

Shangjin Lin  
Print name




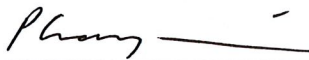
The common seal of The Hills Shire Council was  
affixed under a resolution passed by council on  
26 October 2021 in the  
presence of:



  
\_\_\_\_\_  
Signature of General Manager

Michael EDUAR  
\_\_\_\_\_  
Print name

  
RACHAEL DANARY  
WITNESS

  
\_\_\_\_\_  
Signature of Mayor

Peter Gangemi  
\_\_\_\_\_  
Print name

## **Annexure 1 – Variation**

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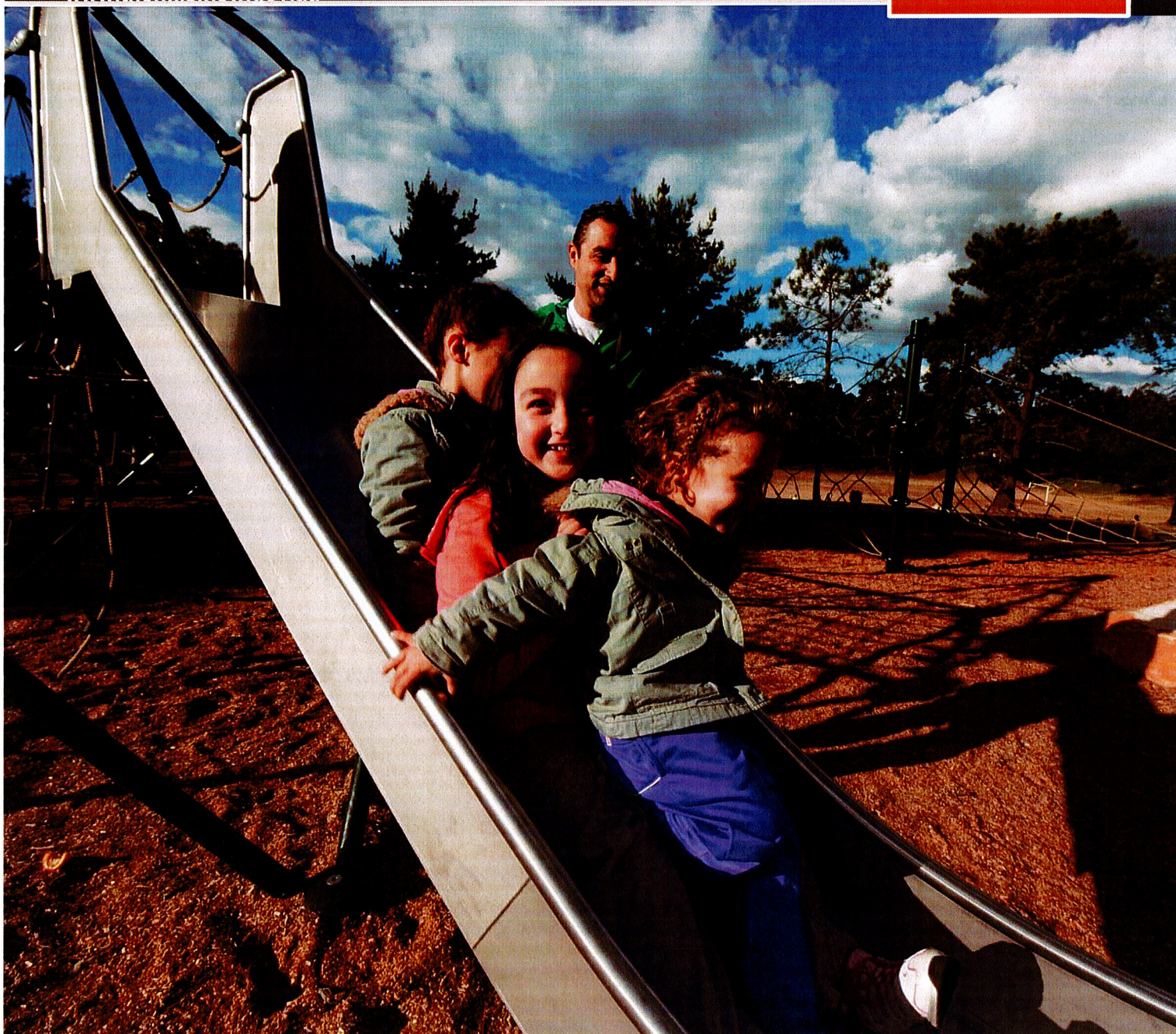
## PLANNING AGREEMENT

~~TRUSTEES OF THE SISTERS OF SAINT JOSEPH~~

Aqualand Baulkham Hills Development Pty Ltd

THE  
**HILLS**  
Sydney's Garden Shire

[www.thehills.nsw.gov.au](http://www.thehills.nsw.gov.au)





## Summary Sheet

<b>Council</b>	<p>Name The Hills Shire Council</p> <p>Address <del>129 Showground Road, Castle Hill, NSW 2154</del> <a href="#">3 Columbia Court, Norwest, NSW 2153</a></p> <p>Telephone (02) 9843 0555</p> <p>Facsimile (02) 9843 0409</p> <p>Email <a href="mailto:council@thehills.nsw.gov.au">council@thehills.nsw.gov.au</a></p> <p>Representative Mr <del>Michael Edgar Dave Walker</del> – General Manager</p>
<b>Developer</b>	<p>Name <a href="#">Aqualand Baulkham Hills Development Pty Ltd</a> as trustee for the <a href="#">Aqualand Baulkham Hills Development Trust</a> <del>Trustees of the Sisters of Saint Joseph</del></p> <p>Address <a href="#">Level 47, Tower 1, 100 Barangaroo Ave, Barangaroo NSW 2000</a> <del>Mount Street, North Sydney, NSW 2060</del></p> <p>Telephone <a href="#">(02) 9228 1888</a> <del>0418 686 646</del></p> <p>Facsimile <del>(02) 9894 8103</del> <a href="#">N/A</a></p> <p>Email <a href="mailto:azammit@updm.com.au">azammit@updm.com.au</a> <a href="mailto:david.hore@aqualand.com.au">david.hore@aqualand.com.au</a></p> <p>Representative <del>Mr Alan Zammit – UPDM Pty Limited</del> <a href="#">David Hore</a></p>
<b>Land</b>	<a href="#">The land formerly contained in P<del>ro</del>posed lot 116 being part Lot 2 in DP817696, and now being Lots 214, 215 and 216 in DP 1239622 as set out in (See Schedule 1.)</a>
<b>Development Application</b>	DA 6/2012/JP
<b>Development</b>	Part of the development proposed by the Development Application known as Stage 1B being the subdivision of the land into 56 residential allotments, 1 public reserve, public roads and pathways
<b>Dedication Land</b>	<a href="#">Lot 214 in DP 1239622 (being the former P<del>ro</del>posed lot 257)</a> being part of the Land as shown in the plan attached at Schedule 2.
<b>Works</b>	See Schedule 3
<b>Monetary Contribution and Second Monetary</b>	See Schedule 4

**Contribution**

**Security Amount** [Not applicable-\\$600,000](#)

**Application of** [s94s7.11](#), See Clause 24  
[s94A—s7.12](#) and [s94EF](#)  
[s7.24](#) of the Act

**Registration** Yes. See Clause 32

**Restriction on dealings** See clause 5.1

**Dispute Resolution** Expert determination and mediation. See clause 31



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## Planning Agreement

Dated 21 February 2022

### Parties

**The Hills Shire Council** ABN 25 034 494 656 of 3 Columbia Court, Norwest, 2153 429 Showground Road, Castle Hill, NSW 2154 (**Council**)

Aqualand Baulkham Hills Development Pty Ltd (ACN 619 300 873) as trustee for the Aqualand Baulkham Hills Development Trust Trustees of the Sisters of Saint Joseph ABN 33 293 441 659 of Level 47, Tower 1, 100 Barangaroo Avenue, Barangaroo New South Wales 2000 9 Mount Street, North Sydney, New South Wales 2060 (**Developer**)

### Background

- A. The ~~Joint Regional~~ Sydney Central City Planning Panel is the consent authority pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**) for the Proposed Development.
- B. The Council is required to assess the Proposed Development prior to the granting of consent by the Joint Regional Planning Panel.
- C. The Developer lodged the Development Application for consent to a Concept Master Plan and Staged Residential Subdivision over land in Lot 2 DP 817696 on 4 July 2011 and has made amendments to the Development Application.
- D. As part of its development proposal for the subdivision of land, the Developer offers to dedicate ~~proposed lot 257 the~~ (Dedication Land) as Public Reserve at no cost to Council.
- E. The Developer lodged a modification to the Development Application for consent to amend the approved Stormwater Management Strategy as it relates to Lot 214 in DP 1239622 (Dedication Land).
- ~~E.F.~~ In support of the development proposals, the Developer submitted to Council a Stormwater Management Strategy. As part of its proposals, the Developer offers to install drainage detention tanks within the Dedication Land designed for the 100 year stormwater event in accordance with Council's design parameters for the Shire and sized to allow for an increase in rainfall intensities by a further 20% for such part of the proposed Development as drains to the south. offers to conduct the Works.
- ~~F.G.~~ As part of its development proposal, the Developer offers to pay the Monetary Contribution. ~~The contribution is~~ towards the cost of stormwater quality improvement works within the downstream catchment in lieu of water quality treatment devices being located within the land and the Second Monetary Contribution towards offsite bioretention.

### Operative provisions

#### 1. Defined meanings

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

#### 2. Planning agreement under the Act



The Parties agree that this document is a planning agreement within the meaning of **subdivision 2, Division 6, Part 4** of the Act.

### 3. Application of this document

This document is made in respect of the Proposed Developments and applies to the Land.

#### **No restriction on Council's Powers**

This Agreement or anything done under this Agreement:

- (a) is not to be taken as approval or consent by Council as a regulatory authority; and
- (b) does not in any way inhibit, deter or prejudice Council in the proper exercise of its functions, duties or powers,

pursuant to any legislation including the Act, the *Roads Act 1993* (NSW) and the *Local Government Act 1993* (NSW).

### 4. Operation of this Agreement

4.1 Until the planning agreement operates, this document constitutes the Developer's offer to enter into the planning agreement if consent under section ~~80~~4.16 of the Act is granted to the Development Application forming part of the Proposed Developments.

4.2 The planning agreement operates only if:

- (a) the carrying out of the Proposed Development is subject to a condition imposed under section ~~93~~7.7(3) of the Act requiring this planning agreement to be entered into, and
- (b) the planning agreement is entered into as required by the condition in accordance with clause 25C(1) of the Regulation.

4.3 This document provides for Development Contributions to be made with respect to the Development Consent that comprises the Proposed Development.

### 5. Dedication Land

5.1 Developer and Owners must not deal with property

The Developer and Owners must not during the term of this Agreement sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Dedication Land without first obtaining Council's consent in writing. Council may, at its absolute discretion, refuse its consent or give consent with conditions.

5.2 Caveat

- (a) The Developer agrees that its obligations under this document create an equitable interest in the Dedication Land held by Council and they agree to grant to Council a right to register a caveat on title over the Dedication Land provided that any such caveat shall not be lodged for registration by the Council until a Plan of Subdivision creating the Land as a separate Lot is registered at Land & Property Information.

- (b) Upon registration of the Plan of Subdivision creating the Land as a separate Lot at Land & Property Information and prior to commencement of construction of the Works, the Developers must provide Council with a survey plan for the Dedication Land.
- (c) On the date of execution of this document, the Developer will give to Council in registrable form a caveat over the Dedication Land endorsed with Owner's consent in the form and on the terms of the caveat attached to this document as Annexure A. The Developers acknowledges and agrees that to be in registrable form the caveat must identify the land by a survey plan in accordance with the *Real Property Regulation 2008* (NSW) including Schedule 4.
- (d) Council must not unreasonably withhold its consent to the registration of any dealing by a mortgagee that would not have a material adverse effect on Council's interest in the Dedication Land.
- (e) Council will give to the Developer a withdrawal of caveat within 7 days of this document being validly terminated.

## 6. Dedication

- 6.1 The Developer must at its cost dedicate to Council the Dedication Land in conjunction with the subdivision of the Land.
- 6.2 The Dedication will be effected when:
  - (a) a plan of subdivision is registered dedicating the Dedication Land to Council; or
  - (b) Council becomes the registered proprietor of the Dedication Land (being part of the Land) as a result of the registration of a transfer of a Lot which constitutes the Dedication Land.
- 6.3 After the Dedication Land is transferred to Council, Council will use the land for public purposes being the provision of public open space, drainage and such other public purposes in the future as Council may consider appropriate.

## 7. Monetary Contributions

### 7.1 Payment

The Developer must pay:

~~(a)~~ the Monetary Contribution prior to the release by Council of the plan of subdivision of the Land for registration at Land & Property Information; and

~~(a)~~(b) the Second Monetary Contribution within thirty (30) days following the issue of a Construction Certificate for the Works.

Payment of the Monetary Contribution and Second Monetary Contribution may be made by cheque or electronic bank transfer to Council's nominated bank account.

### 7.2 Annual Increases

On each anniversary of the date of this document the Monetary Contribution and Second Monetary Contribution applicable immediately prior to that anniversary will be



increased by the same percentage as the annual percentage increase, if any, in the Consumer Price Index most recently published prior to the relevant anniversary. The increased Monetary Contribution and Second Monetary Contribution will be the Monetary Contribution and Second Monetary Contribution in the subsequent 12 months.

### ~~7.3 Pro rata payment~~

~~7.3.1 The parties acknowledge that the Proposed Development may be undertaken in a number of stages.~~

~~7.3.2 The Monetary Contribution is to be paid on a pro rata basis prior to the issue of each Subdivision Certificate if further staging of the 'Development' (as defined in the Summary Sheet) is pursued.~~

~~7.3.3 The proportion of the Monetary Contribution payable at each relevant Subdivision Certificate will be calculated in accordance with the below formula:~~

$$b = \frac{y}{x} \times 100$$

~~Where:~~

~~b = proportion of Monetary Contribution payable in connection with the Subdivision Certificate~~

~~x = total number of approved allotments in the Development Consent~~

~~y = number of allotments to be created under the Subdivision Certificate~~

### ~~7.47.3 Public Purpose~~

The Monetary Contribution is required for the funding of the construction of improvements to the public domain in the vicinity of the Land (including those specified in section ~~93(F)~~7.4(2) of the Act) as determined by the General Manager of Council from time to time and Council will apply the Monetary Contribution for those purposes.

The Second Monetary Contribution is required for the purpose of offsite bioretention facilities as determined by the General Manager of Council from time to time and Council will apply the Second Monetary Contribution for those purposes.

## 8. Works

### 8.1 Obligation to Carry Out Works

8.1.1 The Developer is to carry out and complete the Works at the location on the Dedication Land approved by Council or a person specified by Council.

8.1.2 The Developer's obligation under clause ~~888.1.1~~ exists irrespective of whether the Developer:

- (a) carries out the Works itself, or
- (b) enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.

- 8.1.3 Before the Developer commences the Works, the Developer, at its own cost, is to prepare and submit to the Council or a person specified by the Council, detailed plans and specifications in relation to the item.
- 8.1.4 The Developer is not to commence the Works unless the Council or the person specified by the Council has given the Developer written approval of the plans and specifications relating to the item.
- 8.1.5 The Developer is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council, in accordance with:
- (a) the Development Consent, and
  - (b) all applicable laws, including those relating to occupational health and safety, and
  - (c) this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law, and
  - (d) the written approval given under clause ~~8.1.48-1.48-1.4~~.
- 8.1.6 In the event of an inconsistency between this Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- 8.1.7 It is the Developer's responsibility to ensure that everything necessary for the proper performance of its obligations under this Agreement is supplied or made available.
- 8.1.8 The Works are to be Handed-Over to the Council by:
- (a) not later than the Hand-Over Date for the Works, and
  - (b) otherwise in accordance with this Agreement.
- 8.1.9 If the Hand-Over of the Works does not occur by the Hand-Over Date for the Works then the Works must be Handed-Over before the issue of the first Subdivision Certificate that would otherwise be required to be issued after the Completion Date.

## **8A Licence to occupy Dedication Land**

- 8A.1. The Council grants the Developer a non-exclusive personal licence to enable the Developer and its agents, employees, contractors, subcontractors or consultants to access and use the Dedication Land for the purposes of carrying out the Works (Licence).
- 8A.2. The Licence expires upon the Hand-Over of the Works or otherwise on the termination of this Agreement.
- 8A.3. The Developer must observe all reasonable directions and requirements of the Council at all times regarding its access, use and occupation of the Dedication Land.



8A.4 Except to the extent necessary under law and subject to clause 8A.3, the Council must not do anything to restrain or hinder the Developer or its agents, employees, contractors, subcontractors or consultants from accessing and using the Dedication Land under the Licence for the purposes described in clause 8A.1.

8A.5 The Developer indemnifies the Council against any Claim (of whatever nature) made in respect of the Developer's, or its agents, employees, contractors, subcontractors or consultants, access, use, possession and occupation of the Dedication Land, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, agents and contractors.

8A.6 For the purpose of complying with its Work, Health, and Safety obligations, the Developer will be permitted to fence the Dedication Land and control access to the Dedication Land, for the duration of the carrying out of the Works.

## **9. Ownership of Works**

9.1 Ownership of the Works is transferred to Council on Hand Over and nothing in, or done under, this Agreement gives the Developer, after Hand-Over any right, title or interest in the Works.

9.2 On Hand Over the Developer must cause the legal title in the Works and all materials and component of the Works to pass to Council free of any charge or other interest. The Developer warrants that after Hand Over the Works are not subject to any security interest (as defined in the *Personal Property Securities Act 2009 (Cth)* (PPSA)) and any security interest noted in the Personal Property Securities Register has been discharged. The Developer indemnifies Council for all claims, costs, losses and expense Council may suffer arising from any breach of this warranty or any claim or action taken by any person in respect of any security interest (as defined in the PPSA) in the Works.

## **10. Effect of Developer's Compliance with this Agreement**

N/A

## **11. Determination of Value**

N/A

11.1 For the purposes of this document, the Parties acknowledge that the Contribution Value in relation to the Works is the amount specified in Schedule 3.

11.2 If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works is Handed- Over to the Council, is in excess to the Contribution Value, then the Developer will not be entitled to claim credit or reimbursement, as the case may be, for the difference.

11.3 If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works is Handed- Over to the Council, is less than the Contribution Value, then the Developer must pay the difference between the cost and the Contribution Value to Council.

11.4 For the purposes of this clause 11, the Developer must produce to Council any and all documents and invoices requested by Council evidencing the Developer's actual cost of carrying out the Works.

11.5 Any amount required to be paid by the Developer to Council under clause 11.3 is due and payable within twenty (20) business days of Council providing written notice to the Developer of the amount required to be paid.

## **12. Access to the land and location of Works**

12.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Dedication Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any the Works.

12.2 The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

## **13. Protection of People, Property and the Environment**

13.1 The Developer is to ensure in relation to the carrying out of the Works that:

13.1.1 all necessary measures are taken to protect people, property and the Environment,

13.1.2 unnecessary interference with the passage of people and vehicles is avoided;

13.1.3 nuisances and unreasonable noise and disturbances are prevented;

13.1.4 all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the Protection of the Environment Operations Act 1997 (NSW) are adhered to.

## **14. Damage and Repairs to the Works**

14.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works and the Dedication Land from any cause whatsoever which occurs prior to the date on which the Works is Handed-Over to the Council.

## **15. Variation of Works**

15.1 The Works are not to be varied by the Developer, unless:

15.1.1 the Parties agree in writing to the variation, and

15.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and

15.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.

15.2 For the purposes of clause 15.1.1~~15.1.1~~15.1.4 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

15.3 If Council requests a variation to the Works after Council has given its written approval under clause 8, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Works, which results from the variation requested by the Council.



15.4 Council shall repay the amount referred to in clause ~~15.315.315.3~~ to the Developer after the Works are complete, and within 28 days of receipt of:

15.4.1 a tax invoice for the amount claimed by the Developer; and

15.4.2 documentation which demonstrates to Council's reasonable satisfaction the increase in costs as a result of the variation requested by the Council.

## 16. Hand-Over of Works

16.1 The Developer is to give the Council not less than 20 days written notice of:

16.1.1 the date on which it proposes to Hand-Over any Works to the Council, being a date not later than the Hand-Over Date, and

16.1.2 the Items of Work the subject of the notice.

16.2 The Council may, at any time before the date specified in the notice referred to in clause ~~16.1.116.1.116.1.1~~, direct the Developer in writing:

16.2.1 to carry out work specified in the notice to complete the Works in accordance with clause ~~8.1.58.1.58.1.5~~ before it is Handed-Over to the Council, and

16.2.2 to Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.

16.3 The Developer is to comply with a direction according to its terms and at the Developer's own cost.

16.4 Before the Works are handed-over to the Council, the Developer is to remove from the Land:

16.4.1 any rubbish or surplus material, and

16.4.2 any temporary works, and

16.4.3 any construction plant and equipment, relating to the carrying out of the Works as the case requires.

16.5 The Works are taken to be Handed-Over to the Council when the Council gives the Developer written notice to that effect.

## 17. Failure to Carry out and Hand-Over Works

17.1 The parties agree that the Hand-Over Date may be extended due to:

17.1.1 any Force Majeure Event,

17.1.2 any delays on the part of any government authority (including the Council) in granting any approval, consent, licence or permit necessary for the Works to be completed, or

17.1.3 any direction the Council gives extending the Hand-Over Date.

17.2 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council must give the Developer a notice requiring:

17.2.1 the breach to be rectified to the Council's satisfaction, or



- 17.2.2 the carrying out of the Works to immediately cease, except in relation to the rectification of the breach, and the breach to be rectified to the Council's satisfaction.
- 17.3 A notice given under clause ~~17.2~~~~17.2~~ is to allow the Developer a reasonable period (and in any case not less than 28 days) to rectify the breach.
- 17.4 If the Developer fails to rectify the breach the subject of a notice given under clause ~~17.2~~~~17.2~~, the Council may:
- 17.4.1 call upon the Security, and
- 17.4.2 carry out and complete or make safe the Works.
- 17.5 For the purposes of clause ~~17.4~~~~17.4~~~~17.4~~:
- 17.5.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land for the purpose of completing the Works, and
- 17.5.2 any difference between the amount of the Security called upon pursuant to clause ~~17.4~~~~17.4~~~~17.4~~, and the costs incurred by the Council in carrying out, completing, or making safe the Works, may be recovered by the Council from the Developer as a debt due in a court of competent jurisdiction.
- 18. Works-As-Executed-Plan**
- 18.1 No later than 60 days after a notice is given under clause ~~16.5~~~~16.5~~, the Developer is to submit to the Council a full Works-As-Executed-Plan in respect of the Works the subject of the notice.
- 18.2 The Developer shall provide with the Work-as-Executed Plan(s) all appropriate certificates to verify that the Works have been carried out in accordance with relevant standards.
- 19. Rectification of Defects**
- 19.1 During the Defects Liability Period the Council may give to the Developer a Rectification Notice in relation to the Works specifying:
- 19.1.1 the Works requiring rectification,
- 19.1.2 the action required to be undertaken by the Developer to rectify those Works, and
- 19.1.3 the date on which those Works are to be rectified.
- 19.2 The Developer must comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 19.3 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 19.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 19.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:
- 19.5.1 call upon the Security to meet its costs in rectifying the defect, and

- 19.5.2 recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.

## **20. Cost of Works carried out by the Council**

- 20.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Developer in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 20.2.
- 20.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include, but are not limited to:
- 20.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 20.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified, and
  - 20.2.3 without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

## **21. Indemnity and Insurance**

- 21.1 The Developer indemnifies the Council, its employees, officers, agents, contractors from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of the Works and any other obligation under this Agreement, except to the extent that such losses, damages, costs, charges, expenses, actions, claims and demands are caused by Council, its employees, officers, agents and contractors..
- 21.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:
- 21.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 21.2.2 public liability insurance for at least \$10,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 21.2.3 workers compensation insurance as required by law, and
  - 21.2.4 any other insurance required by law.
- 21.3 If the Developer fails to comply with clause 21.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 21.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
  - 21.3.2 recovery as a debt due in a court of competent jurisdiction.



- 21.4 The Developer is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause ~~21.221-221.2~~.

## 22. **Provision of Security**

- 22.1 This clause does not apply if:
- 22.1.1 the Summary Sheet at the front of this Agreement contains the words "Not Applicable" in relation to the Security Amount, or
  - 22.1.2 the Council, by notice in writing to the Developer, has otherwise waived compliance by the Developer with this clause.
- 22.2 The Developer is not to commence the Works unless it has given the Security to the Council.
- 22.3 The amount of the Security is to be equivalent to the cost to complete the Works plus a contingency of ~~4550~~% which on the date of this Agreement is the amount specified in the Summary Sheet.
- 22.4 In the event of any failure by the Developer to perform or observe any part of this Agreement, Council may without notice to the Developer call on the Security for any amount payable to Council.
- 22.5 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this clause.
- 22.6 On each anniversary of the date of this Agreement the amount of the Security will be increased by the same percentage as the annual percentage increase (if any) in the Consumer Price Index most recently published prior to the relevant anniversary.
- 22.7 The Developer must at the request of Council increase the amount of the Security held by Council to the amount of the Security to be provided under this Agreement.

## 23. **Easements Covenants and Restrictions on Title**

- 23.1 Prior to any dedication of the Dedication Land to Council, the parties are to resolve what easements, covenants and/or restrictions on title must necessarily be created upon any subdivision of the Land, having regard to the provisions of Part 6 of the *Conveyancing Act 1919* (NSW).
- 23.2 The parties warrant one with the other to do all things necessary to procure the registration on title to the Land or title(s) to any relevant lot created by subdivision of the Land of any easement, covenant or restriction on title as referred to in this clause.

## 24. **Application of ~~s94s7.11~~, ~~s94A-s7.12~~ and ~~S94EF-S7.24~~ of the EPAA**

- 24.1 For the purpose of section ~~93F7.4~~(5) this document does not exclude the operation of sections ~~947.11~~, ~~94A-7.12~~ and ~~94EF-7.24~~ of the Act in relation to the Development Application(s) for the Proposed Development.

~~24.2 Notwithstanding Clause 24.1 the application of Section 94A of the Act is excluded in relation to the Development (as defined in the Summary Sheet) resulting a waiver of~~



~~the contributions that would otherwise have been payable of \$48,147.18 as indexed in accordance with the Consumer Price Index.~~

## 25. Modifications

25.1 In the event that the Proposed Development is changed, modified or amended prior to completion of the development, and a further development or modification application is made for the development of the Land, then any Development Contribution made pursuant to this Agreement shall, to the extent that it is lawful:

- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and
- (b) be taken into account in determining any development contribution under section [94-7.11](#) and ~~s94A-7.12~~ of the Act; and
- (c) be taken into account in determining whether or not any planning agreement excludes the operation of section [94-7.11](#) and/or section [94A-7.12](#) of the Act; and
- (d) be taken into account for the purposes of section [947.11](#)(6) of the Act; and
- (e) be taken into account for the purposes of section ~~79C-4.15~~ of the Act.

## 26. Termination

### 26.1 Development Consents

If Development Consent is granted by the ~~Joint Regional Planning Panel~~[Sydney Central City Planning Panel](#) with respect to the Development Application, this document terminates with respect to that particular Development Consent:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or
- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

## 27. Consequences

27.1 On the date of termination or rescission of this document, subject to the following sub-paragraphs each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.

27.2 Any unapplied Monetary Contribution, bond or Bank Guarantee that has been provided to Council will be refunded to the Developer as soon as practicable after the date of termination.

27.3 Within 7 days of termination or rescission of this document, Council will at its expense lodge a withdrawal of any caveat lodged over the Land at Land & Property Information.

27.4 Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

## 28. Private Certifiers

Where Council is not the certifying authority for any aspect of the Proposed Development the Developer must on the appointment of a private certifier provide a copy of this Agreement to the private certifier.

## 29. Notices

- 29.1 Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- 29.2 Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in the Summary Sheet or most recently notified by the recipient to the sender.
- 29.3 Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

## 30. Breach Notice and Rectification

- 30.1 If the Developer is, in the opinion of Council, in breach of a material obligation under this document, Council may provide written notice of the breach to the Developer and require rectification of that breach within a reasonable period of time (**Breach Notice**).
- 30.2 Unless there are compelling reasons to extend or abridge the period of time permitted for rectification, a reasonable period of time is taken to be fourteen days from receipt of written notification of the breach.
- 30.3 If the breach is not rectified within the time specified in the Breach Notice, or otherwise agreed between the Parties, Council may rectify the breach as the agent of the Developer and at the risk of the Developer. The Developer must pay all reasonable costs incurred by the Council in remedying the breach.

## 31. Dispute resolution

### 31.1 Disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document that dispute must be referred for determination under this clause.

### 31.2 No legal proceedings

The Parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

### 31.3 Notice of disputes (Dispute Notice)

A Party referring a Dispute for determination must do so by written notice to the other parties which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.



### 31.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice the receiving Parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each Party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

### 31.5 Assistance to the Expert (the Expert)

- (a) Once the Expert has been appointed (the Expert), the Parties must:
  - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and
  - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The Parties may give written submissions to the Expert but must provide copies to the other Parties at the same time.

### 31.6 Expert's decision

- (a) The decision of the Expert must:
  - (i) be in writing and give reasons; and
  - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

### 31.7 Expert's costs

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.



- (b) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

#### 31.8 Continual performance

Each Party must continue to perform its obligations under this document while any dispute is being determined under this clause.

### 32. Registration of document on Title

#### 32.1 Acknowledgement

The Developer ~~acknowledges that Council intends agrees~~ to register this document under section 93H of the Act on the Land ~~(when it is created as a separate Lot by registration of a Plan of Subdivision at Land & Property Information)~~ and on registration by the Registrar-General the document will be binding on and enforceable against the owners of the Land from time to time as if each owner for the time being had entered into this document.

#### 32.2 Consents to Registration

This document must be registered on the title of the Land by the Developer as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land. The Developer must provide Council with written evidence of registration within 14 days of registration occurring.

#### 32.3 Release from Registration

Council will at the request of the Developer release part of the Land from registration of this document where the Development Contributions have been made including completion of the Works and no other money is owing to Council under this document. The obligations of the Council are satisfied when Council provides the Developer with a signed Request in registrable form for the release of registration of this document.

#### 32.4 Registration Expenses

The Developer must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this document and the subsequent removal of registration, on an indemnity basis.

The Developer will be entitled to the benefit of any special or discounted rates charged to Council by its consultants and legal advisers and will be entitled to seek assessment of any legal costs, as a third party payer under s 350(2) of the *Legal Profession Act 2004* (NSW).

### 33. Costs

33.1 The Developer is to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

33.2 Each Party must bear its own costs arising from or in connection with the entry into this Agreement.

34. ~~Exhibition fees or fees payable to the NSW Department of Planning & Infrastructure in any way associated with this document~~GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

35. **General**

35.1 **Assignment**

- (a) The Developer must not transfer any right or liability under this document without the prior written consent of Council.
- (b) In the event that the Developer enters into a contract for the sale of the Land the subject of the Development Consent, the Developer (as vendor) shall disclose to the purchaser the existence of this Agreement.

35.2 **Governing law and jurisdiction**

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

35.3 **Amendments**

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

35.4 **Third parties**

This document confers rights only upon a person expressed to be a party, and not upon any other person.

35.5 **Pre-contractual negotiation**

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.



### 35.6 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

### 35.7 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.

### 35.8 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

### 35.9 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

### 35.10 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

### 35.11 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.



### 35.12 Representations and warranties

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

### 35.13 Severability

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

## 36. Definitions and interpretation

In this document unless the context otherwise requires:

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

**Bank Guarantee** means a written guarantee without a time limit acceptable to Council issued by an Australian Bank.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

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

**Contribution Value** means the amount specified as the contribution value of the Works as shown in Schedule 3.

**Consumer Price Index** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics or if this price index is discounted then such price index as Council may select.

**Dedication** means the creation or transfer of an estate in fee simple free of any mortgage, lease, easement or other encumbrance of a lot registered under the *Real Property Act 1900* (NSW).

**Dedication Land** means that part of the Land specifically identified for dedication to Council as Public Reserve being Lot 214 in DP 1239622~~proposed lot 257 in plan annexed in Schedule 2.~~

**Developer** means a persons who has sought a change to an environmental planning instrument or who has made, or proposes to make, an application for development consent.

**Development Application** means the development application(s) specified in the Summary Sheet.

**Development Consent** means the development consent to be granted by the Joint Regional Sydney Central City Planning Panel under Section 80-4.16 of the Act to the Development Application.

**Development Contributions** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit including the Works, or a combination of any of them.

**Dispute Notice** means written notice provided by a Party referring a dispute for determination, specifying the nature of the dispute and a nominated officer of the referring party with sufficient authority to determine the dispute.

**Defects Liability Period** means the period of 12 months from the date of Hand-Over.

**Development** means the *Development* as defined in the Summary Sheet.

**Encumbrance** includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre.

**Environment** has the same meaning as set out in the Dictionary to the *Protection of the Environment Operations Act 1997* (NSW).

**Force Majeure Event** means any event or circumstance, or a combination of events or circumstances:

- (a) which arises from a cause beyond the reasonable control of a party, including:
  - (i) an act of God,
  - (ii) strike, lockout, other industrial disturbance or labour difficulty,
  - (iii) war (declared or undeclared), act of public enemy, blockade, revolution, riot, insurrection, civil commotion,
  - (iv) lightning, storm, flood, fire, earthquake, explosion, epidemic, quarantine
  - (v) embargo, unavailability of any essential equipment or materials, unavoidable accident, lack of transportation, or
  - (vi) anything done or not done by or to a person, except the party relying on force majeure;
- (b) which the Developer takes all reasonable precautions to protect itself against, and uses all reasonable endeavours to mitigate the consequences of (which does not require the Developer to settle a labour dispute if, in the Developer's opinion, that is not in its best interests); and
- (c) which the Developer notifies the Council of, as soon as practicable after becoming aware of the event or circumstance.

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

**Hand-Over** means the hand-over to the Council of the Works in accordance with this Agreement.

**Hand-Over Date** means ~~the date of registration of the Plan of Subdivision creating Lot 257 (being the Dedication Land) by the Land & Property Information~~ the date that



is eighteen (18) months from the date of the document entitled "~~Deed of Variation Planning Agreement – Mackillop Drive, Norwest~~", approval of the modification application referred to in recital E or any other date agreed between the parties from time to time.

**Hand-Over Notice** means a notice issued by the Council under clause 16.

**Item of Works** means an item of the Works.

~~Joint Regional Planning Panel means a joint regional planning panel constituted under section 23G of the Act.~~

**Land** means the land identified in Schedule 1.

**Material Public Benefit Approval** means an approval under subclause ~~8.1.48.1.48.1.4.~~

**Monetary Contribution and Second Monetary Contribution** means the amounts specified in ~~Schedule 4~~ the Summary Sheet.

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

**Proposed Development** means the development approved by the Development Consent.

**Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

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

**Regulation** means the *Environmental Planning and Assessment Regulation 2000* (NSW).

**Security** means a Bank Guarantee or bond in favour of the Council on terms satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

~~Sydney Central City Planning Panel means a planning panel constituted under section 2.12 of the Act.~~

**Works** means the works specified or described in Schedule 3 and includes any item of Works and any part of any Item of Works.

**Works-As-Executed-Plan** means detailed plans and specifications of the completed Works.

## 36.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;

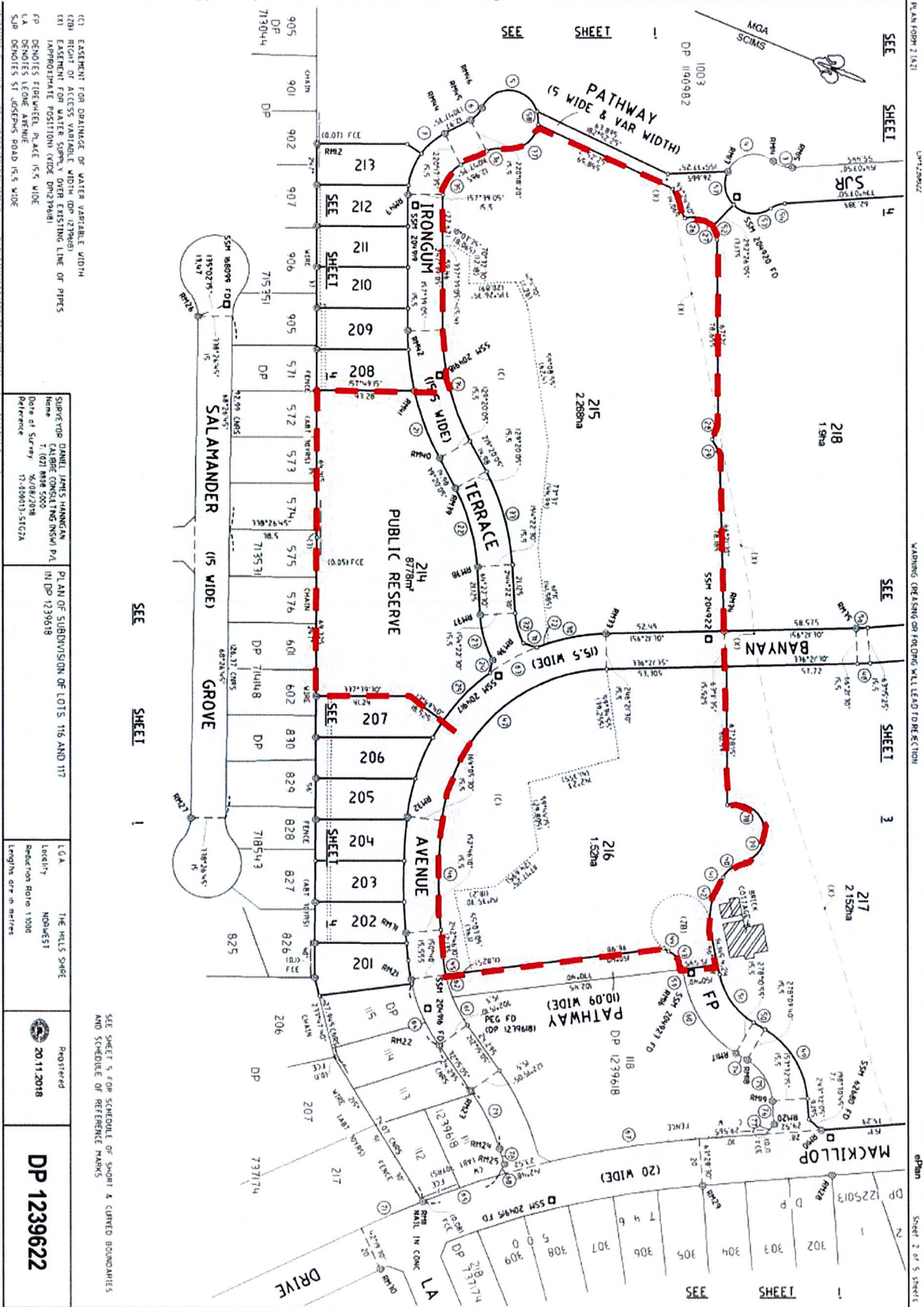


- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

12059289 112059289 110875808\_1  
92807268.1







(1) EXISTING FOR DRAINAGE OF WATER VARIABLE WIDTH  
(2) RIGHT OF ACCESS VARIABLE WIDTH (DP 1239622)  
(3) EXISTING FOR WATER SUPPLY OVER EXISTING LINE OF PIPES  
(4) APPROXIMATE POSITION (VIDE DP1239622)  
FP DENOTES FIREWHEEL PLACE 15.5 WIDE  
LA DENOTES LEONE AVENUE  
SLP DENOTES ST JOSEPHS ROAD 15.5 WIDE

SUPERVISOR DANIEL JAMES HANNAN  
Name CARLIE CONSULTING (NSW) PTY LTD  
Date of Survey 11/02/2018  
Reference 17-000013-5852A

PLAN OF SUBDIVISION OF LOTS 116 AND 117  
IN DP 1239622

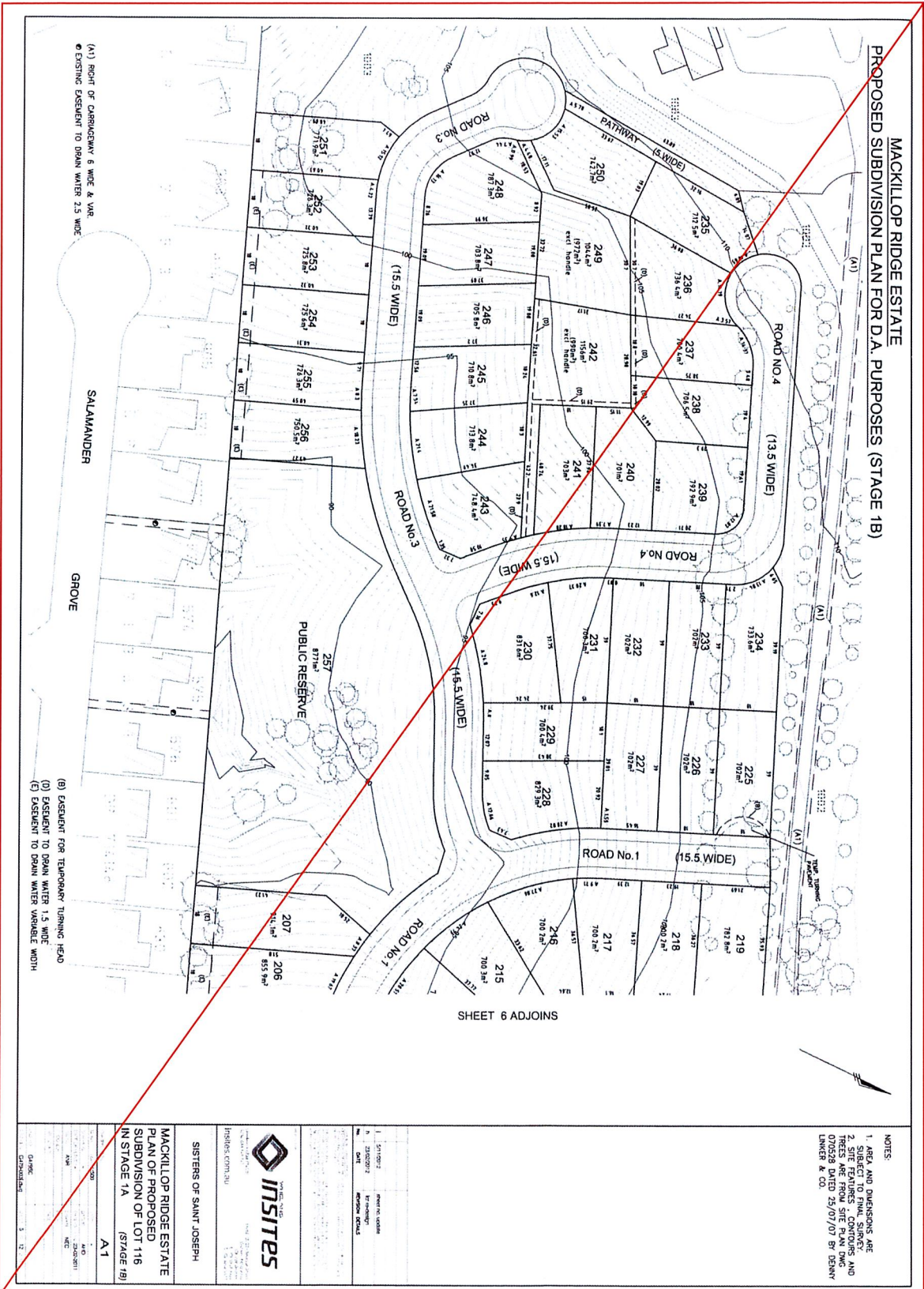
LGA THE HILLS SHIRE  
Locality MOWBESLEY  
Reduction Ratio 1:1000  
Lengths given in metres

Approved 20/11/2018

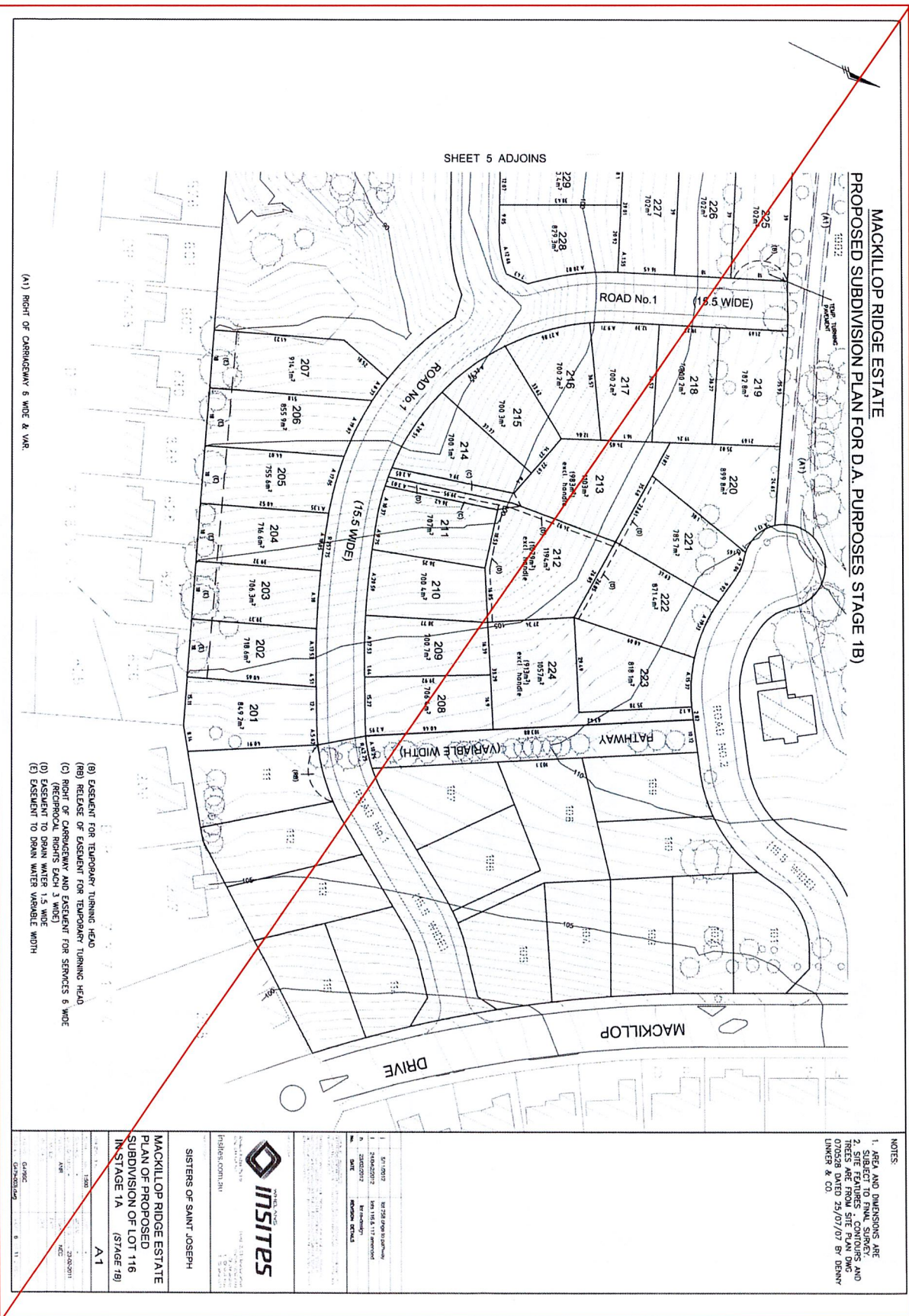
DP 1239622

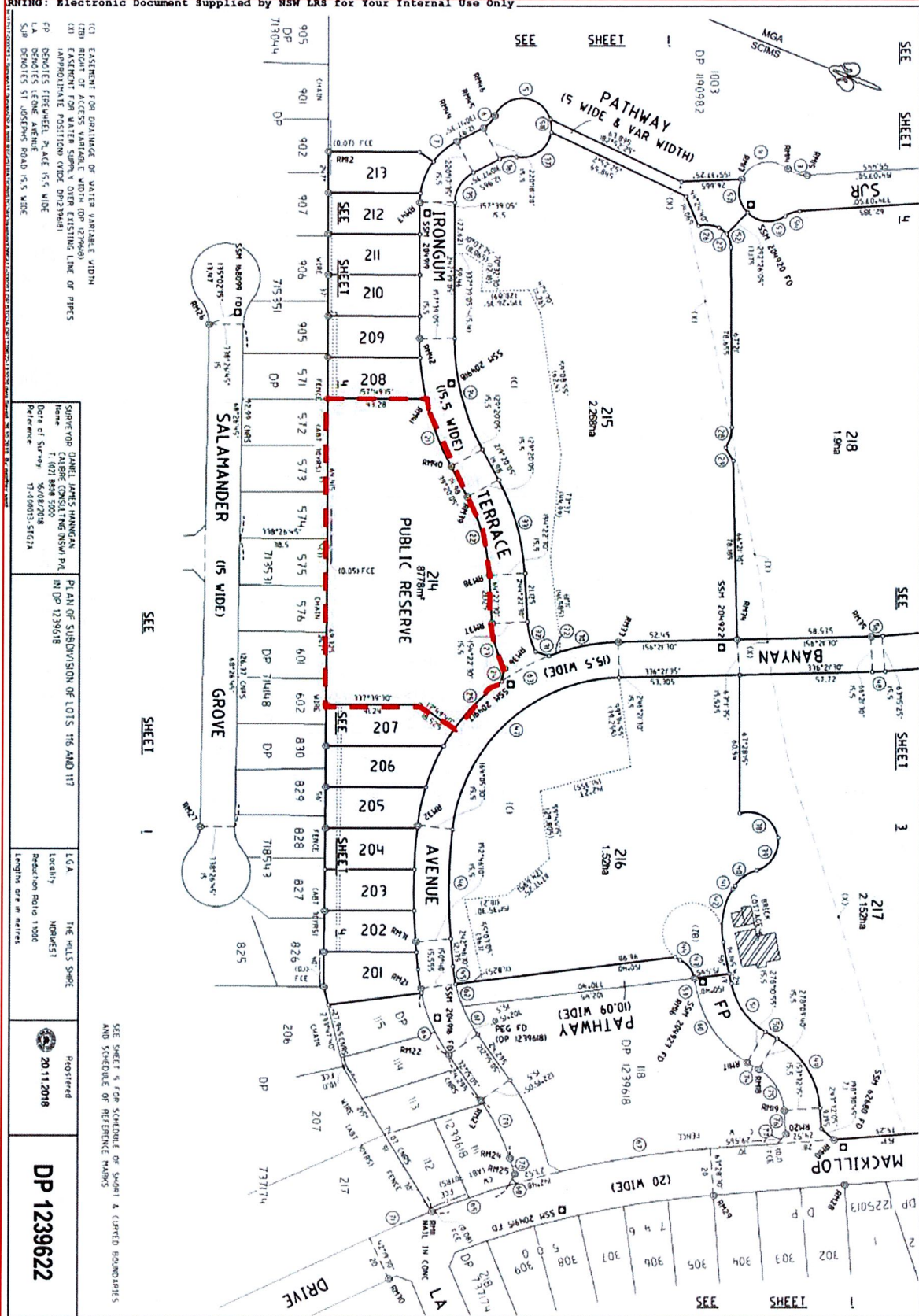


Schedule 2 – Dedication Land











### Schedule 3 – The Works (Clause 8)

---

~~Stormwater detention within the Dedication Land sized on the basis that 100-year ARI rainfall intensities are increased by 20% to ensure that overland flow does not occur through downstream properties located at 32 and 36 Salamander Grove and 12 Albion Place, Baulkham Hills.~~

#### Description of the Works

Embellishment of the Dedication Land for the purpose of a local park with the following inclusions to be undertaken by the Developer in accordance with the Council's landscape design specifications and generally in accordance with the plan set out in this Schedule 3 below:-

- 1 x underground on-site stormwater detention tank
- 1 x access road to tank
- 1 x swing set (double swing)
- 1 x junior play structure with slide
- 1 x rocker
- Mulch soft fall and edging around playground area
- Sheltered picnic area
- Landscaping, pathways and plantings

#### Contribution Value of the Works

The Contribution Value of the Works is \$400,000, excluding the on-site stormwater detention tank and access road.



#### Schedule 4 – Monetary Contribution

Monetary Contributions	Timeframe for Payment
<u>Monetary Contribution</u> \$360,000	<del>Except where Clause 7.3 Pro Rata Payment applies then the date of</del> <u>Prior to the issue of the subdivision certificate for that part of the Land in the development stage the Development.</u>
<u>Second Monetary Contribution</u> <u>\$382,000.00</u>	<u>On the earlier of:</u>  <u>(a) the date that is 30 days after the issue of a Construction Certificate for the Works; and</u>  <u>(b) the Hand-Over Date.</u>  <u>For the purpose of clarity, if clause 8.1.9 applies with respect to the Hand-Over of the Works the payment of the Secondary Monetary Contribution must be paid before the issue of the relevant Subdivision Certificate referred to in that clause.</u>



## Execution Page

The common seal of ~~The Hills Shire Council~~  
was affixed under a resolution passed by council  
on  
2013 in the presence of:

\_\_\_\_\_  
General Manager

\_\_\_\_\_  
Mayor

**Executed by Aqualand Baulkham Hills Development Pty Ltd** (ACN 619 300 873) as trustee for  
the ~~Aqualand Baulkham Hills Development Trust~~ in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by authority of its directors:

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

**THE COMMON SEAL** of the body corporate called  
**TRUSTEES OF THE SISTER OF SAINT JOSEPH**  
ABN 33 293 441 659 was affixed in the presence of  
the Congregational Leader and two other Members  
of the Body Corporate all of whom have signed  
below

Authority: Roman Catholic Church Communities' Lands  
Act 1942 (sec.7)

Signature of authorised person:

Name of authorised person [print]:

Office Held: Congregational Leader

Signature of authorised person:

Signature of authorised person:

Name of authorised person [print]:

Name of authorised person [print]:

Office Held: — Member

Office Held: — Member

## Annexure A – Caveat

Form: 08X  
Release: 4-1

### CAVEAT

Prohibiting Recording of a Dealing or Plan  
or Granting of a Possessory Application  
New South Wales

Section 74F Real Property Act 1900

Leave this space clear. Affix additional  
pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Office of State Revenue use only

(A) TORRENS TITLE

Identifier 116/

(B) REGISTERED  
DEALING

Number

Torrens Title

(C) LODGED BY

Document  
Collection  
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Reference:

X

(D) REGISTERED  
PROPRIETOR

TRUSTEES OF THE SISTERS OF SAINT JOSEPH ABN 33 293 441 659  
9 Mount Street  
NORTH SYDNEY NSW

Postcode: 2060

(E) CAVEATOR

Insert the full name and postal address

THE HILLS SHIRE COUNCIL ABN 25 034 494 656  
129 Showground Road  
CASTLE HILL NSW

Postcode: 2158

(F) NAME AND  
ADDRESS IN  
NEW SOUTH  
WALES FOR  
SERVICE OF  
NOTICES ON  
THE CAVEATOR

The address **must** be a street address. If desired, a Document Exchange box in NSW may be provided in addition.

Name: THE HILLS SHIRE COUNCIL  
Street Address: 129 Showground Road,  
CASTLE HILL NSW

NSW postcode: 2158

Document Exchange Box in NSW (additional):

*IMPORTANT NOTE: if the caveator's name or address for service of notices changes, notification must be lodged on form 08CX.*

(G) ACTION  
PROHIBITED

As set out in item 1 of Schedule 2

(H) The caveator claims to be entitled to the estate or interest in the above land specified in Schedule 1 by virtue of the instrument set out in that schedule and prohibits the Registrar General from taking, with respect to the above land, the action specified above unless the caveator has consented in writing or this caveat has lapsed or been withdrawn.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

1208

Page 1 of 4



WARNING: care should be exercised in completing a caveat form. An insupportable caveat may be challenged in the Supreme Court; damages may be awarded for lodging a caveat without justification; and penalties could be imposed for a breach of the Oaths Act 1900 and section 117 of the Real Property Act 1900. Furthermore failure to observe the requirements of section 117 of the Real Property Act 1900 and regulations 7 and 8 of the current Real Property Regulation may make the caveat invalid.

(I) SCHEDULE 1 Estate or interest claimed

Nature of the estate or interest in the abovementioned land		
Equitable interest in the dedication to the Caveator of Lot 257 as Public Reserve shown on the Plan attached and marked with the letter "A".		
By virtue of the instrument referred to below		
Nature of Instrument	Date	Parties
Voluntary Planning Agreement	../../2013	The Registered Proprietor and the Caveator
By virtue of the facts stated below		

(J) SCHEDULE 2 Action prohibited by this caveat

1. The recording in the Register of any dealing other than a plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
2. The registration or recording of any plan other than a delimitation plan affecting the estate or interest claimed by the caveator and set out in Schedule 1.
3. The registration of delimitation plan<sup>1</sup> No. \_\_\_\_\_
4. The granting of any possessory application<sup>2</sup> with respect to the land in the Torrens Title referred to above.
5. The recording in the register of any dealing affecting the estate or interest of which the caveator is registered proprietor.
6. The granting of an application to extinguish the NOT APPLICABLE created by NOT APPLICABLE No. \_\_\_\_\_
7. The recording in the Register of a writ affecting the estate or interest claimed by the caveator and set out in Schedule 1.

(K) STATUTORY DECLARATION<sup>3</sup>

I, \_\_\_\_\_  
solemnly and sincerely declare that—

1. To the best of my knowledge, information and belief the caveator has a good and valid claim to the estate or interest set out in Schedule 1.
2. This caveat does not require the leave of the Supreme Court or the endorsed consent of the registered proprietor; I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 and I certify this caveat to be correct for the purposes of the Real Property Act 1900.

Made and subscribed at \_\_\_\_\_ in the \_\_\_\_\_ on \_\_\_\_\_  
in the presence of \_\_\_\_\_ of \_\_\_\_\_,  
☐ Justice of the Peace (J.P. Number: \_\_\_\_\_)    ☐ Practising Solicitor  
☐ Other qualified witness [specify] \_\_\_\_\_

<sup>4</sup> who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person / I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months / I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was a \_\_\_\_\_ [Omit ID No.]

Signature of witness: \_\_\_\_\_ Signature of declarant: \_\_\_\_\_

Capacity of declarant if other than the caveator: \_\_\_\_\_

(L) CONSENT OF THE REGISTERED PROPRIETOR of the estate or interest affected by the caveat (section 74F Real Property Act 1900)

I, the registered proprietor named at letter (D), for the purposes of section 74F(6) Real Property Act 1900 only, consent to this caveat.

Signature of registered proprietor: See execution under Seal on Annexure "B" page 4.

1. A plan defining the boundaries of land in a limited folio of the Register. See Part IVB Real Property Act 1900.
2. An application made by a person claiming title to land by virtue of adverse possession. See Part VIA Real Property Act 1900.
3. As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. 4. If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

ALL HANDWRITING MUST BE IN BLOCK CAPITALS.

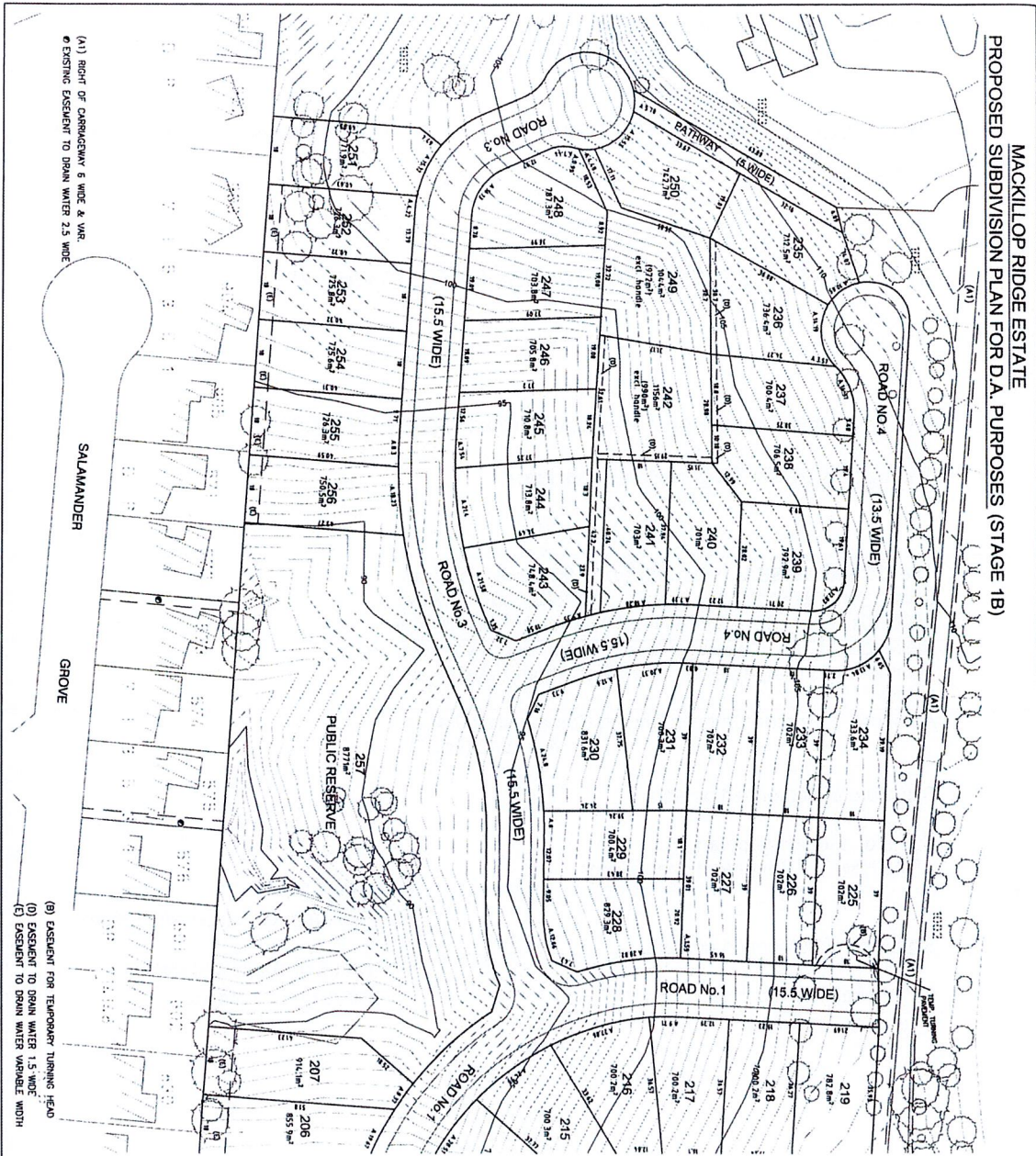
Page 2 of 4

1208



THIS IS THE ANNEXURE "A" ANNEXURED TO CAVEAT BY THE HILLS SHIRE COUNCIL ABN 25 034 494 656

**MACKILLOP RIDGE ESTATE**  
**PROPOSED SUBDIVISION PLAN FOR D.A. PURPOSES (STAGE 1B)**



(A1) RIGHT OF CARPENTRY 6 MIDE & VAR  
EXISTING EASEMENT TO DRAIN WATER 2.5 MIDE

(B) EASEMENT FOR TEMPORARY TURNING HEAD  
(C) EASEMENT TO DRAIN WATER 1.5 WIDE  
(D) EASEMENT TO DRAIN WATER VARIABLE WIDTH

SHEET 6 ADJOINS

NOTES  
1. AREAS AND PARCELS ARE  
SHOWN TO THE PLAN  
2. SITE FEATURES - CONTIGUOUS AND  
THEIR ARE FROM SITE PLAN DWG  
070268 DATED 25/07/07 BY DENNY  
LUNGER & CO.

**insites**  
insites.com.au

SISTERS OF SAINT JOSEPH

MACKILLOP RIDGE ESTATE  
PLAN OF PROPOSED  
SUBDIVISION OF LOT 116  
IN STAGE 1A  
(STAGE 1B)

A1

DATE: 25/07/07  
DRAWN: 25/07/07  
CHECKED: 25/07/07  
APPROVED: 25/07/07

Annexure "B" to CAVEAT

Parties:

TRUSTEES OF THE SISTERS OF SAINT JOSEPH ABN 33 293 441 659 (Registered  
Proprietor)

and

THE HILLS SHIRE COUNCIL ABN 25 034 494 656 (Caveator)

Dated:

Certified correct for the purposes of the Real Property Act 1900

Execution by the Registered Proprietor:

The **COMMON SEAL** was affixed by the body corporate  
called **TRUSTEES OF THE SISTERS OF SAINT  
JOSEPH** ABN 33 293 441 659 was affixed in the  
presence of the Congregational Leader and two other  
Members of the Body Corporate all of whom have signed  
below

Authority: Roman Catholic Church Communities' Lands  
Act 1942 (sec.7)

*M. M. Cavanagh*

Signature of authorised person:  
*MONICA MARY CAVANAGH*

Name of authorised person:

Office Held: Congregational Leader

*C. L. Reeves*

Signature of authorised person:

*CECILIA LOUISE REEVES*

Name of authorised person:

Office Held: Member



*J. O'Neil*  
Signature of authorised person:

Name of authorised person:

Office Held: Member

*JOSEPHINE HEATHER  
DUBIEL*



## EXPLANATORY NOTE TO

## VOLUNTARY PLANNING AGREEMENT

### DEVELOPMENT OF THE LAND SITUATED AT 64 MACKILLOP DRIVE, BAULKHAM HILLS IN THE HILLS SHIRE LOCAL GOVERNMENT AREA.

[Note: [This is the original Explanatory Note to the Voluntary Planning Agreement](#)]

#### Background

The developer is the owner of the Land and has lodged the Development Application. Stage 1B of this Development Application provides for the subdivision of Lot 116 (of 6.484 hectares) into 56 residential Lots and the dedication of one Public Reserve Lot, public roads and pathways to Council.

The developer has offered to enter into the Planning Agreement in connection with the Proposed Development to specify the development contributions to be made to Council in connection with the carrying out of the Proposed Development subject to and in accordance with the Planning Agreement.

#### Summary of Objectives, Nature and Effect of the proposed Planning Agreement

The objective of the proposed Planning Agreement is to record the terms of the offer made by the developer and its obligations (if the Planning Agreement is entered into with the Council) to:

- dedicate land to the Council being Lot 257 having an area of 8,771 square metres;
- pay the monetary contribution to Council of \$360,000.00 towards water quality improvement works within the downstream catchment in lieu of water quality treatment devices being located within the Land; and
- to carry out works in kind specified in Schedule 3 to the Planning Agreement

#### (Development Contributions).

The Planning Agreement relates to the delivery of infrastructure to support the increased demands for facilities arising from the development and is generally consistent with the earlier development within the Crestwood Release Area.

If the proposed Planning Agreement is entered into between the developer and the Council, the developer will be required to make the Development Contributions as set out in Schedules 2, 3 and 4 of the Planning Agreement.

#### Assessment of the Merits of the proposed Planning Agreement and Impact on the Public

The Planning Agreement has been entered into to provide certainty for the developer and the Council as to the proposed drainage infrastructure required to be constructed and the amount to be paid by way of contribution.

#### Identification of how the proposed Planning Agreement promotes the public interest

The Planning Agreement will support the provision of new development to meet demand for housing consistent with the Metropolitan Strategy, North West Sub Regional Strategy and Council's Residential Direction (2009). The Planning Agreement supports the delivery of infrastructure required to meet expectations regarding safe and efficient functioning of the local road network, provision of open space for recreation and passive use and improvement of the public domain to provide attractive safe streets for future residents.

**Identification of how the proposed Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993**

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act* 1993 by providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively. The Planning Agreement further keeps the local community informed of Council's activities.

**Identification of the planning purpose served by the proposed Planning Agreement and whether the proposed Planning Agreement provides for a reasonable means of achieving that purpose**

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by the Development Application in respect of the Crestwood Precinct.