

# DEED OF VARIATION PLANNING AGREEMENT FOR THE KOLODONG ESTATE

MID-COAST COUNCIL

ABN 44 961 208 161 (COUNCIL)

HAZCORP PROPERTY GROUP PTY LTD

ABN 74 630 141 132 (LANDOWNER)

EUCA VALLEY PTY LTD

ABN 74 630 141 132 (DEVELOPER)

Ref EJF:216849

## DEED OF VARIATION

This deed is dated

2022

### First Deed of Variation to Planning Agreement for Kolodong Estate

Under Clause 203(5) of the Environmental Planning and Assessment Regulation 2021

#### Parties

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<b>Name</b>	<b>MID-COAST COUNCIL</b> ABN 44 961 208 161 of 2 Biripi Way, Taree NSW 2430
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Short form name	<b><i>Council</i></b>
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<b>Name</b>	<b>HAZCORP PROPERTY GROUP PTY LTD</b> ABN 74 630 141 132 of 975 The Northern Road, Bringelly NSW 2556
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Short form name	<b><i>Landowner</i></b>
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<b>Name</b>	<b>EUCA VALLEY PTY LTD</b> ABN 74 630 141 132 of 975 The Northern Road, Bringelly NSW 2556
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Short form name	<b><i>Developer</i></b>
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#### Background

- (A) On 19 December 2019 the Former Landowners and the Council entered into the Planning Agreement.
- (B) The Landowner have purchased the land to which the Planning Agreement applies. Pursuant to clause 7.1 of the Planning Agreement on and from the date of sale or transfer the Former Landowners were released from its obligations under the Planning Agreement and the Landowner was substituted for the Former Landowners under the Planning Agreement.
- (C) Pursuant to clause 15 of the Planning Agreement, the Parties agree to amend the Planning Agreement in relation to:
  - replacing the names of the Former Landowners with the name of the Landowner and the Developer;
  - removing references to the Planning Proposal as the trigger for the Planning Agreement;

- inserting new clauses relating to the obligation of the Developer to construct the Intersection Works if the Council notifies the Developer that it will not complete the Intersection Works; and for the Council to proportionally reimburse the Developer for the costs of the Intersection Works by funding 45% of the lesser of the Actual Intersection Costs or Cost Cap (subject to CPI).
- removing clauses and making associated changes in respect of the above changes.
- Inclusion of Concept Plans and Bill of Quantities relating to the Intersection Works to the Schedules of the Planning Agreement.

## Operative Provisions

### 1 Interpretation

1.1 In this deed the following definitions apply:

2 **Actual Intersection Costs** means the costs expended in upgrading the intersection of Kolodong and Wingham Road as recorded in the final certified contract cost inclusive of variations at completion of the Intersection Works and includes all design, survey and approval costs, service investigation and relocation, traffic control and all construction activities.

**Cost Cap** means the maximum amount of \$3m (subject to annual CPI from the financial year following signing of this amended Agreement) to undertake the Intersection Works used as a cap in calculating the developer contribution (see Schedule 2) or Council contribution (see Schedule 4).

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

**Former Landowners** means Wayne Peter Green & Nancy Jean Green of 353-377 Kolodong Road, Taree NSW 2430 and Benwaydan Pty Ltd (ACN 625 484 335) of Suite 7, 24-30 Wharf Street, Forster NSW 2428.

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

**Intersection Works** means the Work to significantly upgrade the intersection of Kolodong Road and Wingham Road Taree with the design and construction of a roundabout generally in accordance with the Concept Plan contained in Schedule 3 of the Amended Planning Agreement.

**Planning Agreement** means the document titled "Planning Agreement" first entered into between the Council and the Former Landowners on 19 December 2019 pursuant to section 7.4 of the Environmental Planning and Assessment Act 1979.

2.1 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.



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## **2 Status of this Deed**

- 2.1** This Deed is an amendment to the Planning Agreement within the meaning of clause 203(5) of the Regulation.
- 2.2** This Deed is not a planning agreement within the meaning of s7.4(1) of the Act.

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## **3 Commencement**

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

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## **4 Warranties**

- 4.1** The Parties warrant to each other that they:
- have full capacity to enter into this Deed; and
  - are able to fully comply with their obligations under this Deed.

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## **5 Amendment to Planning Agreement**

- 5.1** On and from the date of this Deed takes effect, the Planning Agreement is amended in accordance with the copy of the Planning Agreement contained in the Schedule 1.

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## **6 Registration of Deed of Variation**

- 6.1** The parties agree that clause 16 of the Planning Agreement as amended by this Deed applies to and forms part of this Deed with all references to 'Deed' in that clause being read to refer to this Deed.

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## **7 Costs**

- 7.1** The Parties are to bear their own costs of preparing, negotiating, executing and stamping this Deed and the amendments to the Planning Agreement the subject of this Deed.

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## **8 Explanatory Note**

- 8.1** Schedule 2 contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 8.2** Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.




## Signing page(s)

### Executed as a Deed

Dated: 3 November 2022

### Executed on behalf of the Council

 Richard Pamplin  
General Manager R.  
Principal Land Use Planner -  
Projects, Contributions and  
Planning Agreements

~~Mayor~~ R.

C. Very  
Witness CAROLIN VERY

Witness

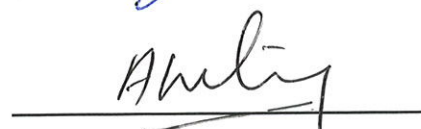
### Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

  
Name/Position ANDREW HAZLETT / DIRECTOR

  
Name/Position WINTON ANTON / SECRETARY

### Executed on behalf of the Landowner in accordance with s127(1) of the Corporations Act (Cth) 2001

  
Name/Position ANDREW HAZLETT / DIRECTOR

  
Name/Position WINTON ANTON / SECRETARY

## **SCHEDULE 1**

**(clause 5)**

### **Amended Planning Agreement**

## **SCHEDULE 2**

**(clause 8)**

### **Explanatory Note**



THIS PLANNING AGREEMENT made on *3 November* 2022

BETWEEN

Parties

**MID – COAST COUNCIL (ABN 44 961 208 161)** of 2 Biripi Way, Taree New South Wales, 2430 (**Council**); and

**EUCA VALLEY PTY LIMITED (ABN 94 637 395 754)** of 975 The Northern Road Bringelly NSW 2556 (**Developer**)

**HAZCORP PROPERTY GROUP PTY LTD (ABN 74 630 141 132)** of 975 The Northern Road Bringelly NSW 2556 (**Landowner**)

## Background

- A The Landowner owns the Land. The Land is situated in the area of the Council.
- B On 3 April 2020 the Land was rezoned to allow future residential development of the Land with an estimated residential lot yield of approximately 450 lots.
- C Traffic studies carried out in association with the rezoning identified that the Development will contribute to the need to upgrade the intersection of Kolodong Road with Wingham Road. The contribution to intersection load during peak hours is roughly 50:50 between the traffic from existing uses and the traffic generated by the Development of the Land.
- D On 10 June 2021, the Developer made a Development Application to the Council for the Development of the Land.
- E The Developer has agreed to provide the following Developer Contributions:
  - (a) in the event that the Council carries out the Intersection Works, to contribute to the costs of the Intersection Works by funding the lesser of either 55% of the Cost Cap or 55% of the Actual Intersection Cost (subject to CPI); or
  - (b) in the event that the Council does not carry out the Intersection Works, to carrying out the Intersection Worksif Development Consent is granted to the Development Application.
- F If the Developer constructs the Intersection Works, then the Council acknowledges and agrees that it will contribute to the costs of the Intersection Works by funding the lesser of 45 per cent of the Actual Intersection Costs or 45 per cent of the Cost Cap.
- G The Development Contributions obligations under this Agreement are intended to replace the obligations under the Earlier Planning Agreement.
- H As contemplated by section 7.4 of the Act, the Development Application is accompanied by an offer by the Developer to enter into this Agreement (as amended) in terms that reflect this Agreement.
- I The parties have therefore agreed to enter into this Agreement.

## Operative Provisions

### 1 Definitions and interpretation

1.1 In this Agreement, unless the context admits otherwise the following definitions apply:

**Actual Intersection Costs** means the costs expended in upgrading the intersection of Kolodong and Wingham Road as recorded in the final certified contract cost inclusive of variations at completion of the Intersection Works and includes all design, survey and approval costs, service investigation and relocation, traffic control and all construction activities.

**Agreement** means this planning agreement.

**Authority** means the Commonwealth or New south Wales government, a Minister of the Crown, a government department, state-owned corporation, 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.

**CPI** means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics from time to time or if that index ceases to be published, such other index as the parties may agree.

**Concept Plans** means the plans included at Schedule 3 namely: Concept Plan drawing number 375-20C-63-RA-6301 to 6308 Revision B dated 15 February 2022 prepared by Craig & Rhodes and Landscape Concept Plan Reference 13560.5 L16 Revision C dated 11 February 2022 by Terras Landscape Architects.

**Cost Cap** means the maximum amount of \$3m (subject to annual CPI from the financial year following signing of this amended Agreement) to undertake the Intersection Works used as a cap in calculating the developer contribution (see Schedule 2) or Council contribution (see Schedule 4).

**Dealing**, in relation to the Land, means, without limitation, a sale, transfer, disposal, assignment, novation, mortgage, charge, encumbrance or other dealing with the Land or any part thereof, and "Deal" is to be interpreted accordingly.

**Defect** means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

**Defect Liability Period** means the period of 1 year commencing on the day immediately after Work is completed for the purposes of this Agreement.

**Development** means development of the Land in accordance with the Development Application.

**Development Application** or DA2021/1593 means Development Application No DA 2021/1593 as amended under section 4.55 of the Environmental Planning and Assessment Act 1979 from time to time), lodged with Council on 10 June 2021, for the staged creation of approximately 478 residential lots with associated civil and landscaping works, boundary adjustment and car park on the Land.

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

**Development Contribution** means a monetary contribution, the carrying out of a work, the dedication of land free of cost or the provision of a material public benefit, or any combination of them, to be used for, or applied towards a public purpose (subject to the provisions of this Agreement) but does not include any other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Agreement for the purposes of s7.4(3)(g) of the Act

**EP&A Act or Act** means the Environmental Planning and Assessment Act 1979 (NSW).



**Earlier Planning Agreement** means the document titled "Planning Agreement" first entered into between the Council and Wayne Peter Green & Nancy Jean Green and Benwayden Pty Ltd (ACN 625 484 335) on 19 December 2019.

**Explanatory Note** means the explanatory note required by the Regulation and as amended in accordance with this Agreement.

**GST** has the same meaning as in the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Intersection Works** means the Work to significantly upgrade the intersection of Kolodong Road and Wingham Road Taree with the design and construction of a roundabout generally in accordance with the Concept Plan included at Schedule 3.

**Land** means the land the subject of this Agreement, being part of the Site, owned by the Landowner and described in Schedule 1.

**Monetary Contributions** means a Development Contribution in the amount calculated in accordance with clause 6 and payable by the Developer to the Council in accordance with Schedule 2, for the Public Purpose.

**Reimbursement Costs** means the amount calculated in accordance with clause 11.2 and clause 11.3 that is payable by the Council to the Developer in accordance with Schedule 4 for the Public Purpose.

**Occupation Certificate** has the same meaning as in section 6.4 of the Act.

**Party** means a party to this Agreement, including its successors and assigns.

**Public Purpose** means the provision of (or recoupment of the cost of providing) transport infrastructure related to the Development, specifically the Intersection Works, being a purpose that benefits the public or a section of the public as specified in section 7.4(2) of the Act.

**Real Property Act** means *Real Property Act 1900 (NSW)*.

**Rectification Notice** means a notice in writing:

- (a) identifying the nature and extent of the Defect;
- (b) specifying the works or actions that are required to Rectify the Defect;
- (c) specifying the date by which or the Period within which the Defect is to be rectified.

**Rectify** means rectify, remedy, or correct.

**Registrable Form** means the document is properly executed and witnessed, bears an imprint from the Revenue NSW to the effect that all necessary duties have been paid, and is otherwise capable of immediate registration by the Registrar-General on the title of the relevant piece or parcel of land.

**Registrar-General** means the Registrar-General, under the Real Property Act.

**Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW)

**Site** means the Land.

**Subdivision Certificate** has the same meaning as in section 6.4 of the Act.

**Work** means the physical result of any building, engineering or construction work associated with the Intersection Works.

**1.2** In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.



- (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- (l) A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.
- (o) Any dimension given is approximate.
- (p) Nothing contained in this Agreement will be deemed or construed as creating the relationship of partnership.
- (q) No waiver of any breach of this Agreement or of any of its terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed, and no waiver of any breach will operate as a waiver of any other breach or subsequent breach.
- (r) In the interpretation of this agreement no rule of construction shall apply to disadvantage one party on the basis that that party put forward the particular covenant, term or provision.

## **2 Planning Agreement under the Act**

- 2.1 The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the EP&A Act.

## **3 Application of this Agreement**

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

## 4 Operation of this Agreement

- 4.1 This Agreement operates from the date the Agreement is executed by all parties, as required by clause 203 of the Regulation.
- 4.2 This Agreement remains in force until:
- (a) terminated by operation of law;
  - (b) the Parties agree in writing to terminate this Agreement;
  - (c) all the Parties' obligations under this Agreement have been performed;
  - (d) Wingham Road is transferred to the NSW Government (unless the Intersection Works have commenced).

## 5 Nomination of Party to complete the Intersection Works

- 5.1 Within fourteen (14) days from the date of determination of the Development Application, the Council must give written notice, in accordance with clause 21, to the Developer which confirms:
- (a) whether the Council will construct the Intersection Works; or
  - (b) whether the Council will not construct the Intersection Works.
- 5.2 Where the Council fails to provide written notice to the Developer under clause 5.1, the Council is deemed to have elected not to construct the Intersection Works and the Developer is to construct the Intersection Works in accordance with the Agreement.
- 5.3 If the Developer has not commenced the Intersection Works within 2 years from the date of determination of the Development Application, the Council may issue written notice to the Developer that the Council will construct the Intersection Works.
- 5.4 Any notice referenced in clause 5.3 must be served on the Developer not less than twenty-eight (28) days before any works associated with the Intersection Works are to commence.
- 5.5 Parties acknowledge and agreed, that the Developer is deemed to be responsible for the Intersection Works in circumstances where the Council does not elect to carry out the works in accordance with clause 5.2 and clause 5.3.

## 6 Monetary Contributions

- 6.1 Clause 6 applies in circumstances where construction of the Intersection Works is performed by the Council or its engaged contractors. Under this clause, the Developer must pay the Monetary Contributions calculated in accordance with clauses 6.5 and 6.6 to Council in five (5) instalments, in the amounts provided for in column 2 of Schedule 2 and at the times specified in column 3 of Schedule 2.
- 6.2 The Monetary Contributions payable by the Developer to the Council is the lesser of (subject to CPI):
- (a) 55% of the Actual Intersection Costs; or
  - (b) 55% of the Cost **Cap**.
- 6.3 Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

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



Where:

- A= the indexed amount at the time the payment is to be made.
- B= the contribution amount rate stated in clause 6.5 of this Agreement.
- C= the CPI most recently published before the date of payment.
- D= in respect of the Actual Intersection Costs (in clause 6.5(a) of this Agreement), the CPI most recently published before the date the Intersection Works are completed;  
in respect of the Cap (in clause 6.5(b)) of this Agreement) the CPI most recently published before this Agreement operates in accordance with clause 4.1.

For the avoidance of doubt, if C is less than D (that is, if there has been deflation over the relevant period), then A will not change.

- 6.4 The Council shall utilise the Monetary Contributions to recoup part of the costs of the Public Purpose.
- 6.5 Where the Council elects to complete the Intersection Works, should the intersection works not be commenced or completed prior to the release of Subdivision Certificate for the 27<sup>th</sup> final residential lot in DA 2021/1593, the Council acknowledges and agrees that the Subdivision Certificate may be released before the completion of the Intersection Works provided the Developer has made **all** of the required Monetary Contributions pursuant to this clause.
- 6.6 For the avoidance of doubt, the Developer is only required to pay the Monetary Contributions under this Agreement if the Council constructs the Intersection Works.

## **7 Construction of the Intersection Works by the Developer**

- 7.1 This clause 7 applies in circumstances where the Developer will construct the Intersection Works.
- 7.2 Where the Developer carries out the Intersection Works, the Developer is required to construct and complete those works in accordance with the Concept Plans contained at Schedule 3 of this Agreement and prior to the release of a final Subdivision Certificate for the 27<sup>th</sup> final residential lot in DA 2021/1593.
- 7.3 The Parties acknowledge and agree that the Intersection Works are to be constructed generally in accordance with the indicative Bill of Quantities contained at Schedule 5.
- 7.4 The Developer's obligations under this clause exists irrespective of whether the Developer:
  - (a) carried out the Intersection Works itself, or
  - (b) enters into an agreement with another person under which the other person carries out the Intersection Works on the Developer's behalf.
- 7.5 The Developer is to obtain any Approvals necessary for the carrying out of the Intersection Works in accordance with the responsibilities in Schedule 3.

## **8 Variation to the Intersection Works**

- 8.1 This clause 8 applies in circumstances where the Developer constructs the Intersection Works.
- 8.2 The design or specification of any part of the Work that is required to be carried out by the Developer under this Agreement may be varied by agreement in writing



between the Parties, acting reasonably, without the necessity for an amendment to this Agreement.

- 8.3 Without limiting clause 8.2, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work 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.
- 8.4 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 8.3. Council is to provide a response to the request for a variation within twenty eight (28) days of the Developer's submission in writing being received.

## 9 Access to land by Developer

- 9.1 In circumstances where the Developer is to carry out the Intersection Works, the Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter, occupy and use any:
  - (a) Council owned or controlled land on which the Intersection Works are to be located,
  - (b) other Council owned or controlled land agreed with the Council,
 in order to enable the Developer to properly perform its obligations under this Agreement. For the purposes of this clause reasonable notice is taken to be fourteen (14) days.

## 10 Completion of the Intersection Works by the Developer

- 10.1 The Developer must give the Council written notice of the date on which it will complete the Intersection Works ("**Notice to Complete**") required to be carried out under this Agreement.
- 10.2 The Council is to inspect the Intersection Works within 10 (ten) business days of the date specified in the Notice for Completion of the Intersection Works.
- 10.3 The Council is to inspect the Intersection Works the subject of the notice referred to in the clause 10.2 within 10 (ten) business days of the date specified in the notice for completion of the Work.
- 10.4 Work required to be carried out by the Developer under this Agreement is completed for the purposes of this Agreement when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 10.5 The Council assumes responsibility for the Work upon the issuing of the notice referred to in clause 10.4.
- 10.6 Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that it is unable to complete the intersection works in accordance with the timing specified in clause 7.2 then:
  - (a) the Developer must provide written notice to the Council to that effect;
  - (b) the Developer must provide the Council with Security in an amount being 100% of the value of the uncompleted part of the Work (calculated with reference to and not exceeding the Contribution Value of the Work) before

the date on which the application for the relevant Subdivision Certificate is made;

- (c) the Developer must provide to Council, for Council's approval, a revised completion date for the Work;
- (d) Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Work; and
- (e) the time for completion of the Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 10.6(d) above.
- (f) If the Developer complies with clause 10.6, then it will not be considered to be in breach of this Agreement as a result of a failure to complete a Work by the time for completion of the Work specified in clause 7.2
- (g) If the Work is not completed by the revised date for completion of the Work agreed under clause 10.6 (d), then the Council may call on the Security to meet any of its reasonable costs incurred under this Agreement in respect of the failure to complete the Work by the revised date for completion.
- (h) The Developer is to ensure that the Security held by the Council at all times equals the amount of the Security as indexed.

## 11 Reimbursement Costs

- 11.1 Where the Developer constructs the Intersection Works, the Council is to pay the Developer the amounts calculated in accordance with clauses 11.2 and 11.3 within five (5) instalments as provided for in column 2 of Schedule 4 and at the times specified in column 3 of Schedule 4.
- 11.2 For the purposes of clause 11.1, the amount payable by the Council to the Developer is 45% of the lesser of the Actual Intersection Costs or Cost Cap (subject to CPI).
- 11.3 Where this Agreement provides that an amount is subject to CPI, then the amount will be increased in accordance the following formula:

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

Where:

- A= the indexed amount at the time the payment is to be made.
- B= the reimbursement amount rate stated in clause 11.2 of this Agreement.
- C= the CPI most recently published before the date of payment.
- D= in respect of the Actual Intersection Costs (in clause 11.2 of this Agreement), the CPI most recently published before the date the Intersection Works are completed;

For the avoidance of doubt, if C is less than D (that is, if there has been deflation over the relevant period), then A will not change.

- 11.4 The amount to paid by the Council under clause 11.1 is for the public purpose component of the Actual Intersection Costs.

- 11.5 Where Wingham Road is transferred to the NSW Government and construction of the Intersection Works has commenced, clause 11 continues to apply.
- 11.6 For the avoidance of doubt, the Council is only required to pay the Reimbursement Costs under this Agreement if and when the Developer constructs the Intersection Works.

## **12 Rectification of defects**

- 12.1 Where the Developer constructs the Intersection Works, the Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 12.2 The Developer, at its own costs, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 12.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 12.1.
- 12.4 A Rectification Notice issued by the Council in accordance with clause 12.1 may only require Work undertaken by the Developer to be completed to the standard specified and approved for the Intersection Works.

## **13 Removal of Equipment**

- 13.1 When the Intersection Works are completed by the Developer for the purposes of this Agreement, the Developer is to:
  - (a) remove any equipment from the Council owned or controlled land and make good any damage or disturbance to the land as a result of that removal; and
  - (b) leave the land in a neat and tidy state, clean and free of rubbish.

## **14 Application of sections 7.11 and 7.12 of the Act to the Development.**

- 14.1 Sections 7.11, 7.12 and 7.24 of the Act shall apply to Development of the Land, however if the Developer completes the Intersection Works in accordance with this Agreement, or pays the monetary contributions outlined in Schedule 2 (calculated in accordance with clause 6.3) in accordance with this Agreement, the Developer is not liable to pay any Development Contributions for road upgrades required in respect of the Development under any Development Contribution Plan made by the Council applicable at the time.

## **15 Assignment and other dealings**

### **15.1 Dealings by Landowner**

The Landowner must not Deal with its right, title or interest in the whole or any part of the Land or its rights or obligations under this Agreement to another person (Transferee), unless before such Dealing:

- (a) the Landowner gives to Council at least 20 Business Days prior notice in writing of the proposed Dealing;
- (b) any default by the Landowner has been remedied by the Landowner or waived by Council;
- (c) the Landowner delivers to the Council a Deed of Assignment executed by the Landowner and the Transferee in form and substance acceptable to Council containing provisions under which:



- (i) the Landowner's rights and obligations under this Agreement are assigned to the Assignee on and from the date of the assignment or any other date specified in the Agreement;
- (ii) the Transferee undertakes to comply with the Landowner's obligations under this Agreement as if it were the Landowner (including obligations which arose before the transfer or assignment) with respect to the Land or other interest being dealt with; and the Assignee undertakes to pay the Council's reasonable costs in relation to the assignment.

**15.2** Any purported Dealing in breach of this clause is of no effect.

**15.3** If the Landowner sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of clause 15.1, the Landowner will be deemed to be released from any further obligation under this Agreement with respect to the land being sold, transferred or disposed of on and from the date of assignment.

## **16 Ownership of the Land and Registration of this Agreement – Section 7.6 of the Act**

**16.1** The Landowner represents and warrants to Council that as at the date of this Agreement, they are the legal and beneficial owners of the Land.

**16.2** As contemplated by s7.6 of the Act, the Landowner agrees to lodge this Agreement for registration under the Real Property Act 1900 on the relevant folios of the Register for all of the Land, within 1 month of the date of this Agreement, and to do all things required to procure registration as soon as practicable thereafter and prior to the Publication Date.

**16.3** The Landowner shall provide to Council a copy of the relevant folios of the Register within 20 Business Days after the date of registration of this Agreement.

**16.4** If:

- (a) the Developer has made the Development Contributions in respect of the carrying out of the Intersection Works, or
- (b) this Agreement is rescinded or terminated, or
- (c) the matters referred to in clause 4.1 have not occurred and this Agreement does not commence to operate,

then within 28 days of the Landowner submitting to Council the documentation necessary to remove this Agreement from the relevant folio of the Register, the Council must promptly execute the documentation and do all things reasonably requested by the Landowner to have this Agreement removed from the relevant folio of the Register.

## **17 Variation of this Agreement**

**17.1** Any amendment to this Agreement shall only be effective if in writing and signed by all parties and registered under section 7.6 of the Act.

## **18 Dispute Resolution**

**18.1** If a dispute arises out of or relates to this Agreement, including any dispute as to breach or termination of this agreement or as to any claim in tort, in equity or under any legislation, a party cannot commence any court proceedings relating to the dispute unless that party has complied with the following clauses except where that party seeks urgent interlocutory relief.

- 18.2** A party claiming that a dispute has arisen must serve a notice on the other parties specifying the nature of the dispute.
- 18.3** On receipt of that notice by the other parties, all of the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or similar techniques agreed by them.
- 18.4** If the parties do not agree within 21 days of service of the notice, or any further period agreed in writing by them, as to:
- (a) the dispute resolution technique and procedures to be adopted;
  - (b) the timetable for all steps in those procedures;
  - (c) the selection and compensation of the independent person required for that technique; and
- the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales and must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

## **19 Security and Enforcement**

- 19.1** The Landowner acknowledges and agrees that:
- (a) When this agreement comes in to operation, Council is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the site for the purposes of Section 74F(1) of the Real Property Act and consequently Council has a sufficient interest in the site with respect of which to lodge with the LPI a caveat notifying that interest.
  - (b) It will not object to Council lodging a caveat in the relevant folio of the register for the site nor will it seek to remove the caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan other than a transfer; and
  - (c) It will obtain the consent of the lodgement of the caveat of each person who has an interest in the site registered under the Real Property Act.
- 19.2** Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 19.3** For the avoidance of doubt, nothing in this Agreement prevents 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.

## **20 Insurance**

- 20.1** This clause applies in circumstances where the Developer constructs the Intersection Works.
- 20.2** The Developer, and/or its agents and/or contractors, is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work (excluding any cash contributions or monetary payments) required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- (a) 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;

- (b) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
- (c) workers compensation insurance as required by law; and
- (d) any other insurance required by law.

**20.3** If the Developer fails to comply with clause 20.2, 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:

- (a) by calling upon the Security provided by the Developer to the Council under this Agreement; or
- (b) recovering the amount as a debt due in a court of competent jurisdiction.

**20.4** The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 20.2 and all necessary approvals have been obtained.

## **21 Notices**

**21.1** Any notice, consent, information, application or request that must or may be given or made to a party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that party at its address set out below.
- (b) sent by electronic mail to the electronic mail address of the addressee.

Council

Attention: General Manager  
Mid – Coast Council  
Address: PO Box 482, TAREE, NSW 2430  
Email: council@midcoast.nsw.gov.au

Landowner

Attention: Hazcorp Property Group Pty Ltd  
Address: 975 The Northern Road Bringelly NSW 2556  
Email: pmitchell@cambrae.com.au

**Developer**

Attention: Euca Valley Pty Limited  
Address: 975 The Northern Road Bringelly NSW 2556  
Email: pmitchell@cambrae.com.au

**21.2** If one party gives to another party 3 business days notice of a change of its address or email address, any notice, consent, information, application or request is only given



or made by that other party if it is delivered, posted or emailed to the latest address or email.

- 21.3** Any notice, consent, information, application, or request is to be treated as given or made at the following time:
- (a) if it is delivered, when it is left at the relevant address.
  - (b) if it is sent by post, 2 business days after it is posted.
  - (c) if sent by electronic mail before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt. However, electronic mail is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the email is received or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 21.4** If any notice, consent, information, application or request is delivered, or an electronic mail is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **22 Expenses and stamp duty**

- 22.1** Each party shall bear its own legal costs and disbursements in connection with the negotiation, preparation and execution of this Agreement.

## **23 Entire Agreement**

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

## **24 Further acts**

- 24.1** Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

## **25 Governing law and jurisdiction**

- 25.1** This Agreement is governed by the law of New South Wales. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

## **26 Joint and individual liability and benefits**

- 26.1** Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **27 No fetter**

- 27.1** Nothing in this Agreement shall be construed as requiring Council or the Council to do anything that would cause it to be in breach of any of its obligations at law, and

without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

## **28 Representations and warranties**

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

## **29 Severability**

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

Note: This clause does not void the ability of either party to undertake mediation under clause 18.

## **30 Waiver**

- 30.1** The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **31 Explanatory Note**

- 31.1** The Explanatory Note shall not be used to assist in construing this Agreement.

## **32 GST**

### **32.1 Interpretation**

Words used in this clause that are defined in the GST Law have the meaning given in that legislation.

### **32.2 Consideration GST exclusive**

Unless expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

### **32.3 Payment of GST**

If GST is payable on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### **32.4 Timing of GST payment**

The recipient will pay the amount referred to in clause 32.3 in addition to and at the same time that the consideration for the supply is to be provided under this document.

### **32.5 Tax Invoice**

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under clause 32.3. The recipient can

withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

**32.6 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under clause 32.3 will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

**32.7 No merger**

This clause 32 will not merge on completion or termination of this Agreement.

**33 Execution by counterparts**

- 33.1** This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.



**SCHEDULE 1**

**THE FIRST SCHEDULE – THE LAND**

The Land is:

Lot 101 DP 1266464 known as 443 Kolodong Road and Lot 61 DP 1252146 known as 327 Kolodong Road Taree NSW 2430 as adjusted in boundary adjustments proposed in DA 2021/1593 and owned by Hazcorp Property Group Pty Ltd (ABN 74 630 141 132)

**SCHEDULE 2****THE SECOND SCHEDULE – MONETARY CONTRIBUTIONS**

<b>Column 1 Payment Number</b>	<b>Column 2 % of Monetary Contribution</b>	<b>Column 3 Timing</b>
1	20% of the Monetary Contribution	Immediately after the release of the first Subdivision Certificate for 27 <sup>th</sup> final residential lot in DA 2021/1593 as modified
2	20% of the Monetary Contribution	Immediately after the release of the Subdivision Certificate for the 50 <sup>th</sup> final residential lot in DA 2021/1593 as modified
3	20% of Monetary Contribution	Immediately after the release of the Subdivision Certificate for the 90 <sup>th</sup> final residential lot in DA 2021/1593 as modified
4	20% of Monetary Contribution	Immediately after the release of the Subdivision Certificate for the 150 <sup>th</sup> final residential lot in DA 2021/1593 as modified
5	20% of Monetary Contribution	Immediately after the release of the Subdivision Certificate for the 200 <sup>th</sup> final residential lot in DA 2021/1593 as modified

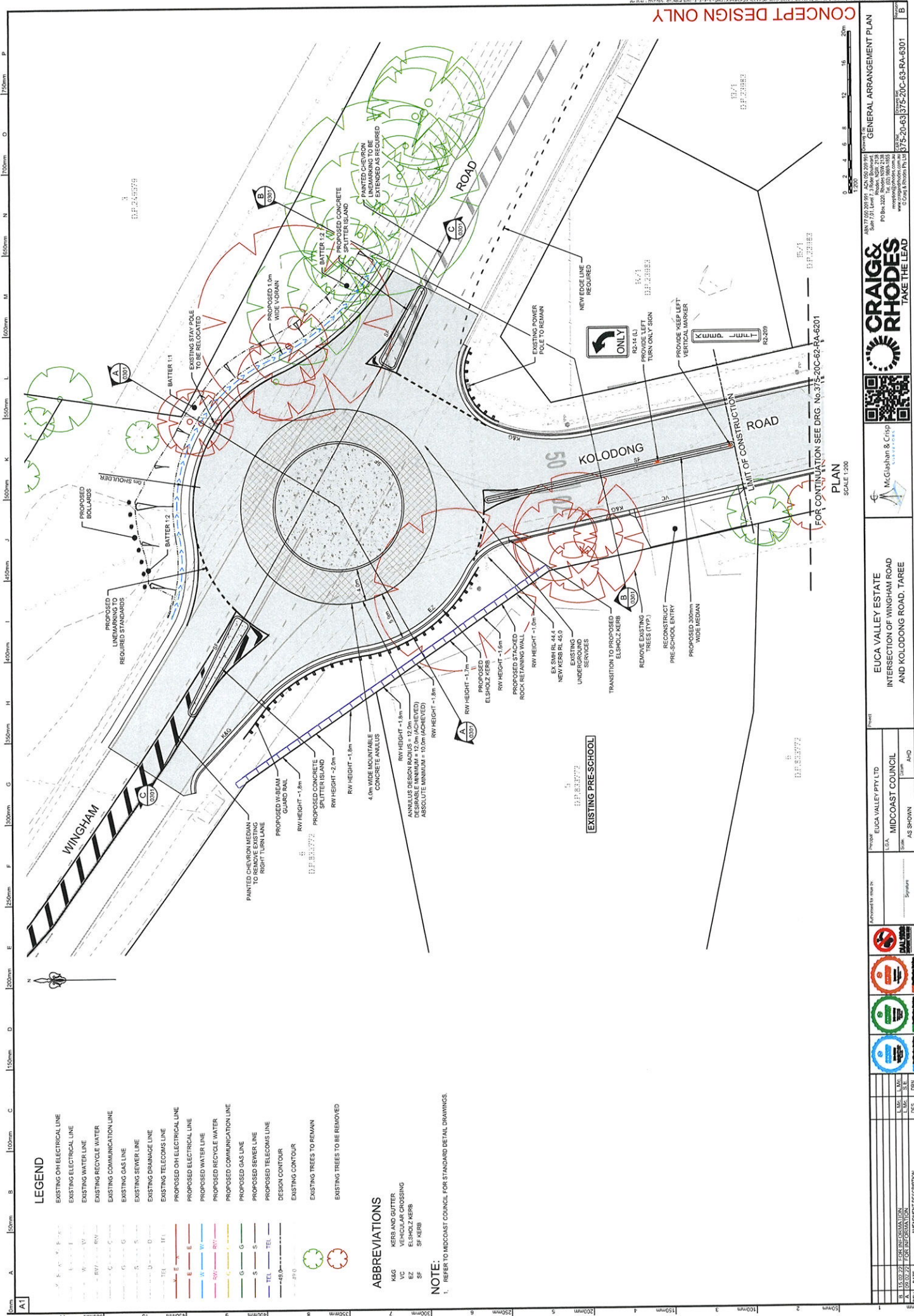
**SCHEDULE 3**

**THE THIRD SCHEDULE - CONCEPT DESIGN AND DELINEATION OF  
RESPONSIBLE PARTIES FOR INTERSECTION WORKS**

**Concept Plans**

- Drawing numbers 375-20C-63-RA-6301 to 6308 Revision B dated 15<sup>th</sup> February 2022 prepared by Craig & Rhodes

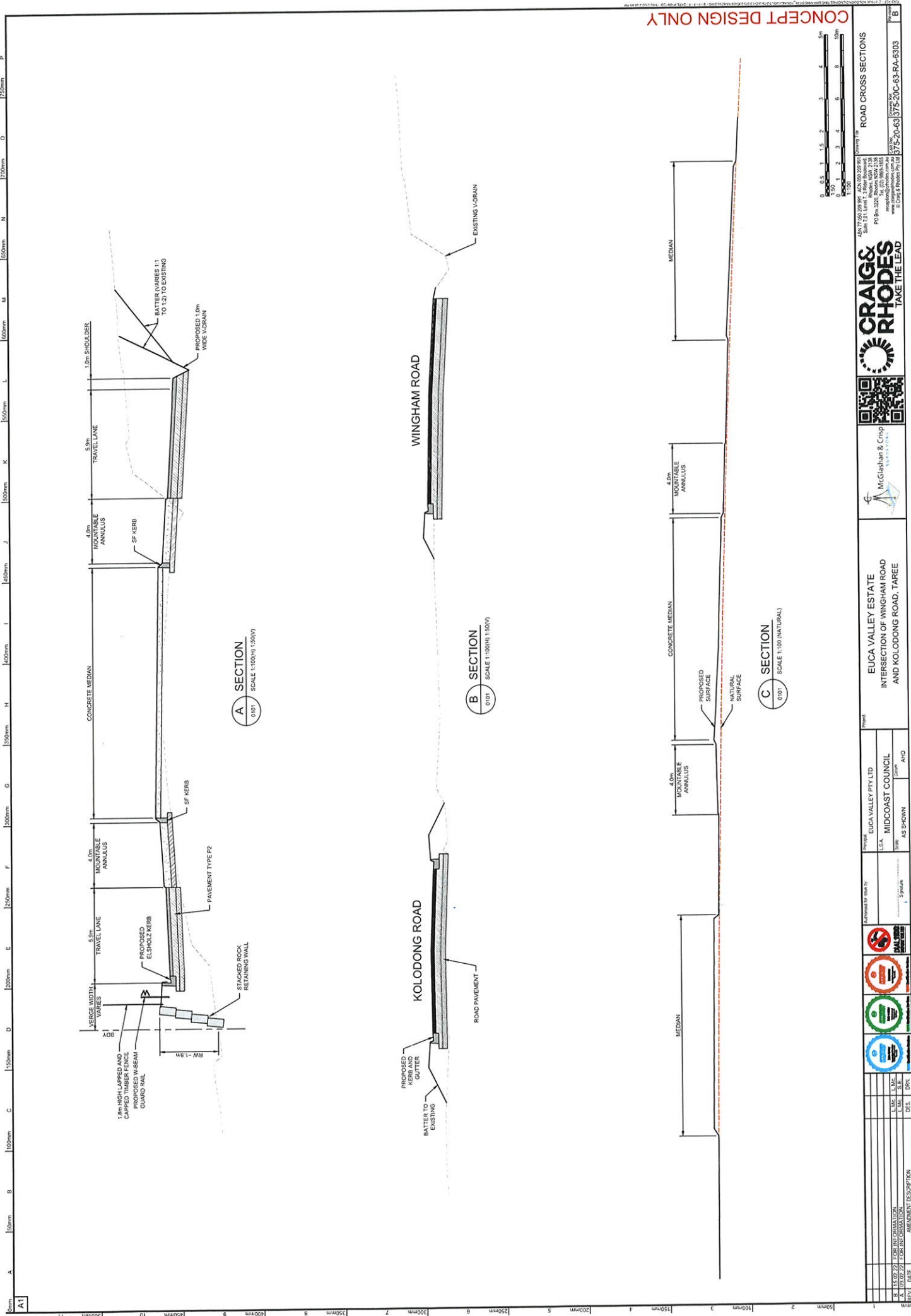




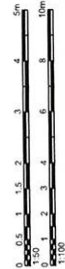








CONCEPT DESIGN ONLY

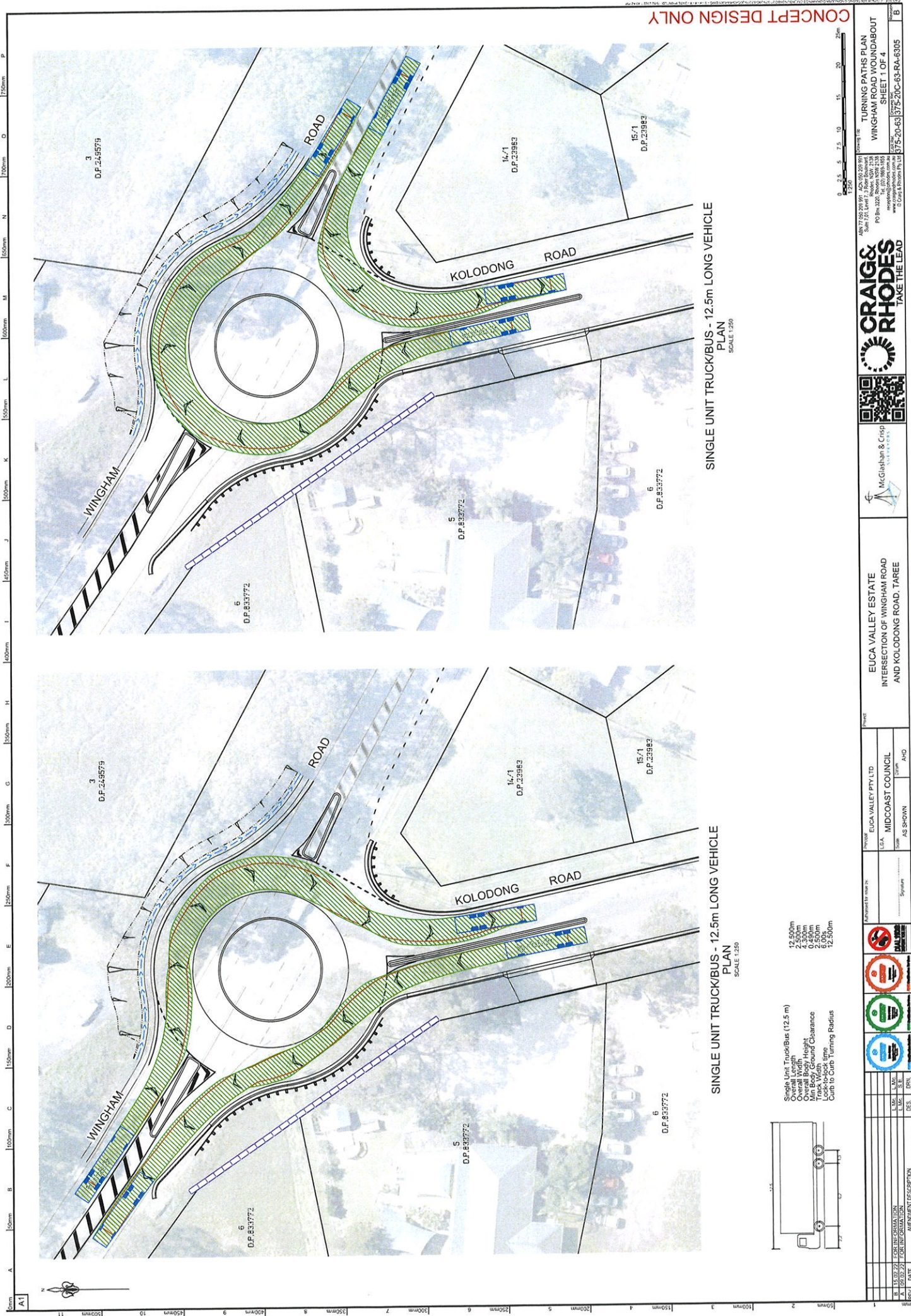


						ROAD CROSS SECTIONS 450/77 600 08 041 124 020 020 041 Scale 1:100 (H) 1:50 (V) P.O. Box 3222, Rhodes NSW 2138 www.mcglashan.co.nz G. Craig & Rhodes Pty Ltd	
ECUA VALLEY ESTATE INTERSECTION OF WINGHAM ROAD AND KOLONONG ROAD, TAREE		Project ECUA VALLEY PTY LTD U.S.A. MIDCOAST COUNCIL AS SHOWN AND		Drawn by U.S.A. MIDCOAST COUNCIL AS SHOWN AND		Checked by U.S.A. MIDCOAST COUNCIL AS SHOWN AND	
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REV	DATE	DESCRIPTION	DES.	CHK.	APP.	DATE	DESCRIPTION

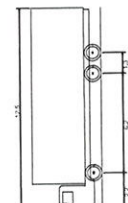








CONCEPT DESIGN ONLY



Single Unit Truck/Bus (12.5 m)  
Overall Length 12.500m  
Overall Width 2.500m  
Overall Body Height 4.300m  
Overall Ground Clearance 2.500m  
Min. Breakdown 2.500m  
Lock-to-lock time 6.00s  
Curb to Curb Turning Radius 12.500m

SINGLE UNIT TRUCK/BUS - 12.5m LONG VEHICLE  
PLAN  
SCALE 1:250

SINGLE UNIT TRUCK/BUS - 12.5m LONG VEHICLE  
PLAN  
SCALE 1:250

EUCAL VALLEY ESTATE INTERSECTION OF WINGHAM ROAD AND KOLODONG ROAD, TAREE		McGlashan & Crisp CONSULTANTS		CRAIG & RHODES TAKE THE LEAD		TURNING PATHS PLAN WINGHAM ROAD WOUNDABOUT SHEET 1 OF 4 PO Box 3228, Taree NSW 2138 www.mcglashanandcrisp.com.au 02 6334 6334		PROJECT NO: 175-20-63-375-20C-63-RA-6305 DATE: 17/03/22 FOR INFORMATION FOR INFORMATION		EUCAL VALLEY PTY LTD U.S.A. MIDCOAST COUNCIL U.S.A. AS SHOWN AND		11 10 9 8 7 6 5 4 3 2 1	
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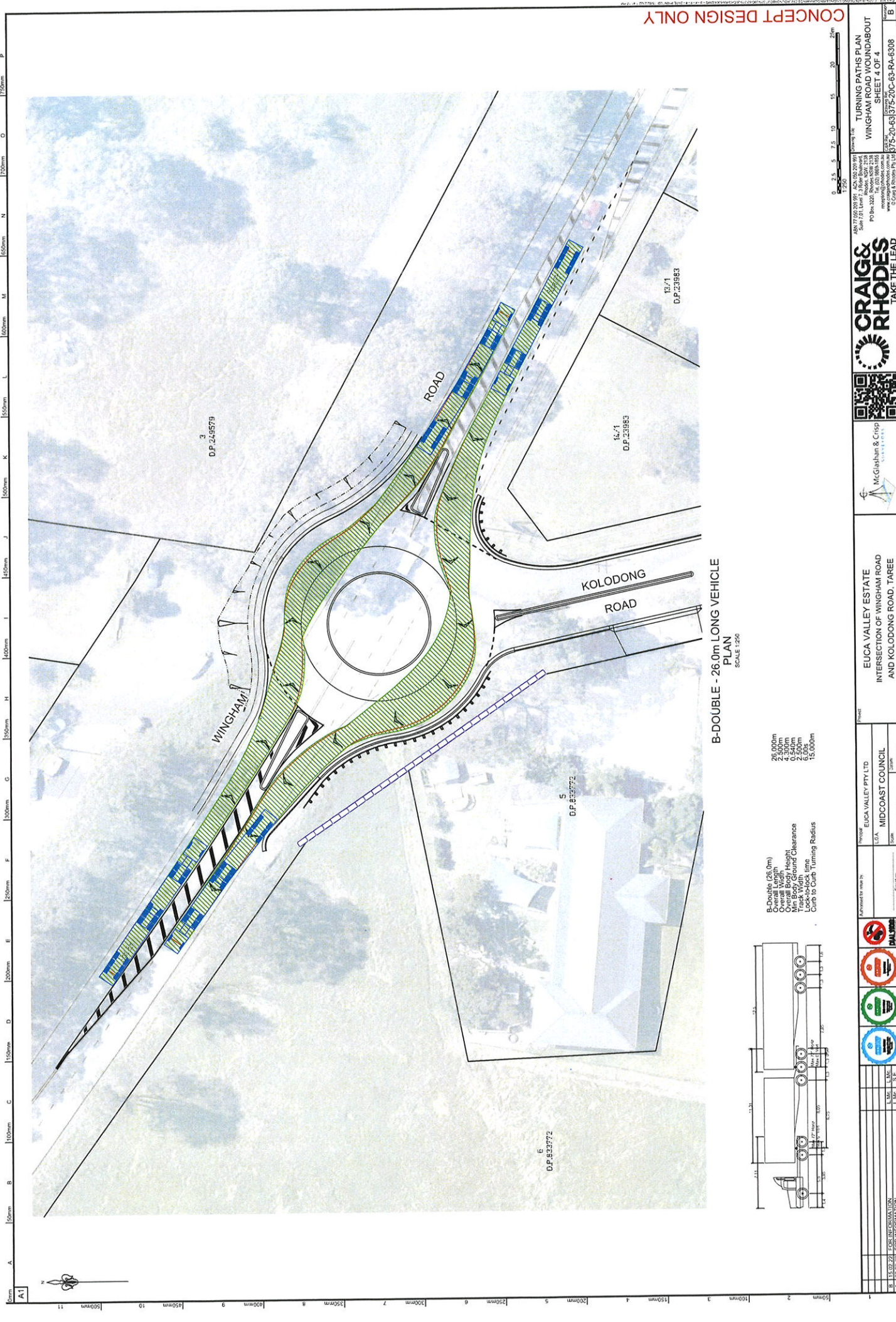






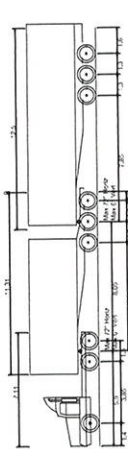


CONCEPT DESIGN ONLY



B-DOUBLE - 26.0m LONG VEHICLE  
PLAN  
SCALE 1:250

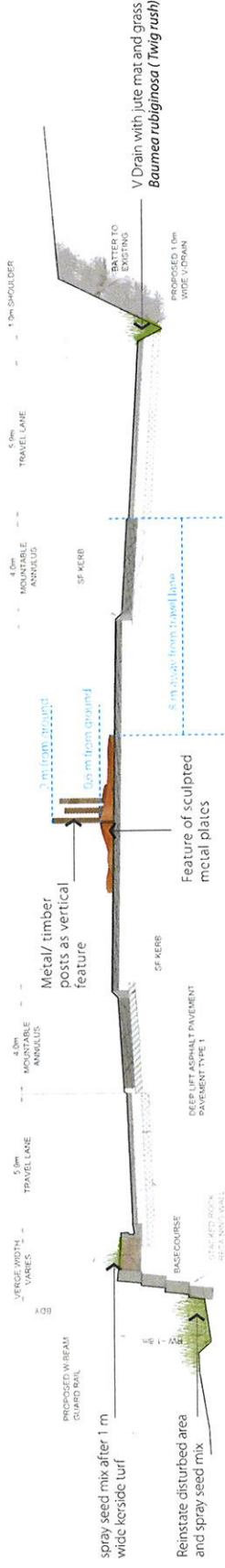
- B-Double (26.0m)
- Overall Width
- Overall Length
- Min Body Ground Clearance
- Track Width
- Wheelbase
- Curb to Curb Turning Radius



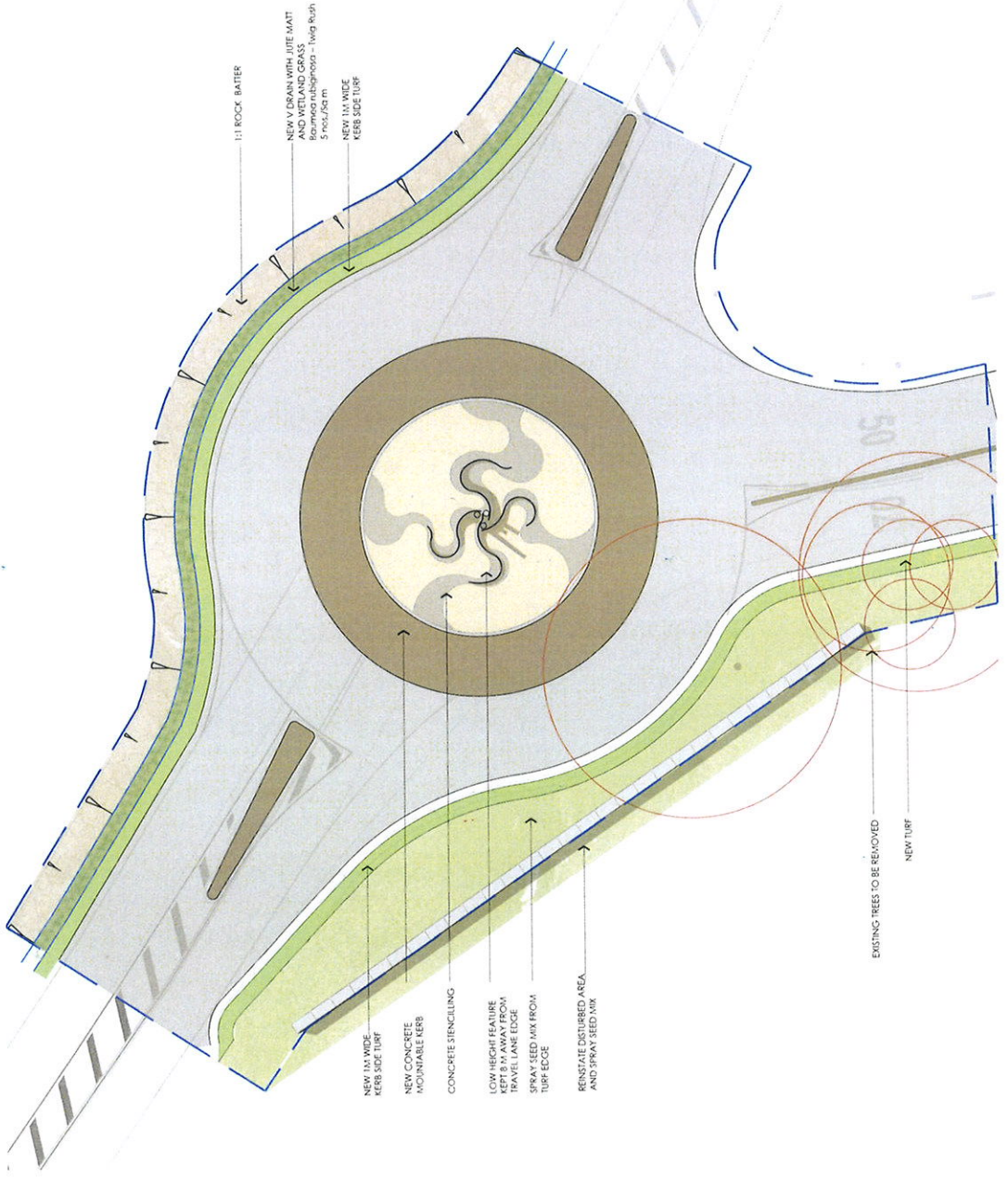
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- Landscape Concept Plan Reference 13560.5 L16 Revision dated 11 February 2022 prepared by Terras Landscape Architects





Roundabout section



Roundabout plan

REV DATE 1/04/2021

PROJECT: Kolodong Road Subdivision

DRAWING:

SITE: 327-443 Kolodong Road, Taree

CLIENT: Euca Valley Pty Ltd

DRAWN: MA DATE: 11/02/2022 SCALE:

JOB NUMBER: 13560.5 PHASE: DKG/RY: REV: L16 C



The **responsible parties** for the actions if the Developer undertakes the Intersection Works are itemised in Table 1 below

Column One - Action	Column Two - Responsible party
Complete Design of Intersection Work including service research and investigation, survey and Review of Environmental Factors	Euca Valley Pty Ltd. MidCoast Council to release all available information in its possession to facilitate the design.
Submit S138 application to MidCoast Council	Euca Valley Pty Ltd.
Process S138 application	MidCoast Council.
Compile and tender Intersection Work project	Euca Valley Pty Ltd. MidCoast Council to assist in providing appropriate specifications and details for the works.
Select successful tenderer	Euca Valley Pty Ltd, in consultation with MidCoast Council.
Complete on-site construction activities to details agreed and approved for the Intersection Works	Euca Valley Pty Ltd.
Superintendency for Intersection Works	Euca Valley Pty Ltd.
Inspect Intersection Works at required stop points and provide final approval	MidCoast Council.
Compile and provide final Actual Intersection Costs	Euca Valley Pty Ltd.

## SCHEDULE 4

### THE FOUR SCHEDULE –REIMBURSEMENT COSTS BY THE COUNCIL

Column 1 Payment Number	Column 2 % of Reimbursement Costs	Column 3 Timing
1	20% of the Reimbursement Costs	Immediately after the release of the Subdivision Certificate for 27 <sup>th</sup> final residential lot in DA 2021/1593 as modified
2	20% of the Reimbursement Costs	Immediately after the release of the Subdivision Certificate for the 50 <sup>th</sup> final residential lot in DA 2021/1593 as modified
3	20% of Reimbursement Costs	Immediately after the release of the Subdivision Certificate for the 90 <sup>th</sup> final residential lot in DA 2021/1593 as modified
4	20% of Reimbursement Costs	Immediately after the release of the Subdivision Certificate for the 150 <sup>th</sup> final residential lot in DA 2021/1593 as modified
5	20% of Reimbursement Costs	Immediately after the release of the Subdivision Certificate for the 200 <sup>th</sup> final residential lot in DA 2021/1593 as modified



**SCHEDULE 5**  
**THE FIFTH SCHEDULE –INDICATIVE BILL OF QUANTITIES**

Cost Estimate

 Reference: **375-20.63**
Wingham Rd and Kolodong Rd Roundabout

Item			Description	Qty	Unit	Rate	Amount
1			<b>CONSTRUCTION</b>				
			<b>GENERAL</b>				
	a)		Site establishment including notice boards, site office, site facilities, meeting room, survey setting out, dust control, construction and maintenance of site access tracks.	1	item	\$ -	\$ -
	b)		Regular inspection of soil and water control devices, maintenance and rectification as required.	1	item	\$ -	\$ -
	c)		Contractor Project Engineer for duration of construction contract to attend to claims, variations, construction matters, program & weekly site meetings.	1	item	\$ -	\$ -
	d)	1	Investigation, location and survey levels on existing services prior to earthworks.	1	item	\$ -	\$ -
		2	Make adjustments and reconnect to utility services to adjacent properties. Maintain temporary supply during period of works.	1	item	\$ -	\$ -
	e)		Provision for traffic management. Inclusive of all Traffic Control labour, devices & signals for the entire Contract Period . (Lump Sum)	1	item	\$ -	\$ -
	f)		Provide construction exit pad.	1	item	\$ -	\$ -
	g)		Dilapidation Report prior to construction	1	item	\$ -	\$ -
	h)		Dilapidation Report at conclusion of construction	1	item	\$ -	\$ -
	i)		Works Insurance	1	item	\$ -	\$ -
	j)		Quality Assurance - Materials and Testing	1	item	\$ -	\$ -
	k)		Attendance to, compliance and management of WH&S documentation including monthly reporting, site induction, SWMS, subcontractors & site visitor management.	1	item	\$ -	\$ -
	l)		Dust suppression utilising water cart	1	item	\$ -	\$ -
	m)		Remove all rubbish, refuse and dumped waste and dispose off-site at surface following site strip and clearly visible.	1	item	\$ -	\$ -
	n)		Clearing and Grubbing to road and allotment areas including chipping and disposal off site.	1	item	\$ -	\$ -
	o)		Side roads, tracks for traffic management during construction, establish and maintain.	1	item		\$ -
			<b>Subtotal - General</b>				\$ -
2			<b>Sediment and Erosion Control</b>				
			Construct sediment and erosion control as per Craig & Rhodes Sediment and erosion control plan				
	a)		Site Fence(1.8m ATF)	200	m		\$ -
	b)		Silt Fence	200	m		\$ -
	c)		Kerb Inlet Filters	10	each		\$ -
	d)		Geotextile Inlet Filter (Around existing culverts)	0	each		\$ -
	e)		Construct Sediment and erosion control as per Craig & Rhodes sediment and erosion control plan	1	item	\$ -	\$ -
			<b>Subtotal - Sediment and Erosion Control</b>				\$ -

Wingham Rd and Kolodong Rd Roundabout

Item			Description	Qty	Unit	Rate	Amount
<b>2</b>			<b>EARTHWORKS</b>				
	a)		Strip topsoil and stockpile. average 300mm depth throughout the site (refer to geotech report)	2,000	m <sup>3</sup>	\$ -	\$ -
	b)		Respread topsoil to a depth of 100mm on footpaths, batters and allotments.	2,000	m <sup>3</sup>	\$ -	\$ -
	c)		Excavate in all classes of material within the site, fill in areas to be compacted in 300mm layers under geotechnical supervision and subject to geotech testing.				
		1	Cut	3,000	m <sup>3</sup>	\$ -	\$ -
		2	Fill	3,000	m <sup>3</sup>	\$ -	\$ -
		3	Excess Cut to Stockpile (subject to geotech testing)	0	m <sup>3</sup>		\$ -
			<b>Subtotal - Earthworks</b>				\$ -
<b>3</b>			<b>ROADWORKS</b>				
	a)		Trim and compact pavement subgrade	1,525	m <sup>2</sup>		\$ -
	b)		Trim & consolidate footpaths & verge and associated batters	5,000	m <sup>2</sup>		\$ -
	c)		Supply and install complete kerbs as detailed incl foundation				
		1	K&G	100	m	\$ -	\$ -
		2	EZ	40	m	\$ -	\$ -
		3	SF (Kolodong Rd back to back)	60	m	\$ -	\$ -
		4	SF (Medians)	118	m	\$ -	\$ -
		5	VC (Pre School Entry)	15	m	\$ -	\$ -
	d)		Turfing and seeding				
		1	Place turf behind all new kerb and footpaths, including watering and maintainace as per landcape design	1,200	m <sup>2</sup>	\$ -	\$ -
		2	Hydroseeding to footpaths (Provisonal)	2,000	m <sup>2</sup>	\$ -	\$ -
	e)		Pavement material as specified. Supply and spread including compaction. (refer to final Geotech report). Pavement Type P2 Deeplift Asphalt Pavement. Refer to MCC Specification				
		1	Wearing Course AC14 3 layers 150mm thickness	1,400	m <sup>2</sup>	\$ -	\$ -
		2	Prime Seal	1,400	m <sup>2</sup>	\$ -	\$ -
		3	Asphalt Deep Lift AC20 300mm thickness	1,400	m <sup>2</sup>	\$ -	\$ -
		4	Prime Seal	1,525	m <sup>2</sup>	\$ -	\$ -
		5	Basecourse Stabilised 200mm thickness	1,525	m <sup>2</sup>	\$ -	\$ -
	f)		2.0 m wide Concrete shared path at 125mm thick including reinforcements(Council Standards)	0	m <sup>2</sup>	\$ -	\$ -
	g)		2.5 m wide Concrete shared path at 125mm thick including reinforcement(Council Standards)	0	m <sup>2</sup>	\$ -	\$ -
	h)		100mm dia corrugated PVC subsoil pipe including excavation, supply, lay, connection to gullies or manholes, cleanouts and backfill with approved filter material. including disposal.	200	m	\$ -	\$ -



Wingham Rd and Kolodong Rd Roundabout

Item		Description	Qty	Unit	Rate	Amount
	i)	Supply & install Signs & Line marking including pole and concrete footing				
	1	Roundabout Give Way signs (R1-3)	6	item	\$ -	\$ -
	2	E4 lines	0	item	\$ -	\$ -
	3	TF1 lines	0	item	\$ -	\$ -
	4	TB lines	0	item	\$ -	\$ -
	5	L3 lines	0	item	\$ -	\$ -
	6	Lines and painted chevrons complete	1	item	\$ -	\$ -
	7	PX	0	item	\$ -	\$ -
	8	Street Signs to Council Requirements - Allowance	12	item	\$ -	\$ -
	9	Sreet Name Signs to Council Standard	3	item	\$ -	\$ -
	j)	Saw cut into existing pavement and make smooth connection of new pavement and kerbing with existing	30	m	\$ -	\$ -
	k)	Construct Roundabout Mountable Anulus islands as per plan	285	m <sup>2</sup>	\$ -	\$ -
	l)	Construct Roundabout Centre Anulus as per plan	190	m <sup>2</sup>	\$ -	\$ -
	m)	Construct concrete infill medians	40	m <sup>2</sup>	\$ -	\$ -
	n)	Form swale and embankment to northern extent of roundabout as detailed	70	ln.m	\$ -	\$ -
	o)	Supply & spray single coat seal	0	m <sup>2</sup>	\$ -	\$ -
	p)	Armco Barrier and MELT ends complete	50	ln.m	\$ -	\$ -
	q)	Concrete driveway footway crossing (Pre School entry)	65	m <sup>2</sup>	\$ -	\$ -
	r)	Raise existing sewer chamber (0.6m)	1	Item	\$ -	\$ -
		<b>Subtotal Roadworks</b>				\$ -
4		<b>RETAINING WALLS</b>				
	a)	Supply & construct block retaining wall to detail including excavation in all classes of material, fence post support, footings, piers, backfill, granular material, geotextile and subsoil drainage including connection to stormwater drainage	100	m <sup>2</sup>	\$ -	\$ -
	b)	Lap and cap fence	100	ln.m	\$ -	\$ -
	c)	Remove, adjust, reinstate and dispose existing fencing and signage to adjacent properties. Maintain temporary fencing during period of works	1	Item	\$ -	\$ -
		<b>Subtotal Retaining Walls</b>				\$ -
5		<b>STORMWATER DRAINAGE &amp; ASSOCIATED WORKS</b>				
		Excavate in all classes of material., supply, lay and joint drainage pipes including sand backfill, trench backfilling, compaction and disposal of surplus spoil as specified for:				
	a)	Stormwater - Allowance	1	item	\$ -	\$ -
		<b>Subtotal - Stormwater</b>				\$ -
6		<b>WATER</b>				
		<b>Potable Water</b>				
	a)	Site Establishment	1	item		\$ -
	b)	Excavate in all types of material supply, wrap, bed, lay, joint, back fill and compact DICL Class PN35 water pipe inclusive.				
	1	100mm dia	0	m		\$ -
	c)	Provide cement stabilised sand backfill under roadways	0	m <sup>3</sup>		\$ -
	d)	Adjustments	1	m		\$ -
		<b>Subtotal - Potable Water</b>				\$ -

Wingham Rd and Kolodong Rd Roundabout

Item			Description	Qty	Unit	Rate	Amount
7			<u>NOT USED</u>				
8			<u>OPTIC FIBRE</u>				
	a)		Adjustments	1	item	\$ -	\$ -
	b)		Protection of Optic Fibre cables	1	item	\$ -	\$ -
			<b>Subtotal - Optic Fibre</b>				\$ -
9			<u>ELECTRICAL</u>				
	a)		Lighting and reticulataion	1	item	\$ -	\$ -
	b)		Adjustments	1	item	\$ -	\$ -
			<b>Subtotal - Electrical</b>				\$ -
10			<u>LANDSCAPE</u>				
	a)		Supply and install complete as per plan	1	item	\$ -	\$ -
	b)		Landscape Maintance 12 months	1	item	\$ -	\$ -
			<b>Subtotal - Landscape</b>				\$ -
			<b>SUB TOTAL - CONSTRUCTION (Ex GST)</b>				\$ -



Wingham Rd and Kolodong Rd Roundabout

Item	Description	Qty	Unit	Rate	Amount
	<b>PROFESSIONAL FEES</b>				
<b>11</b>	<b>Engineer</b>				
a)	Engineering Design	1	Item	\$ -	\$ -
b)	Construction Tender, Contract Administration, Superintendent	1	Item	\$ -	\$ -
c)	Project Management	1	Item	\$ -	\$ -
	<b>Subtotal - Engineer</b>				\$ -
<b>12</b>	<b>Survey</b>				
a)	Detail - Topographic	1	Item	\$ -	\$ -
b)	Detail - Utility Service Investigation	1	Item	\$ -	\$ -
c)	Construction	1	Item	\$ -	\$ -
d)	WAE Survey	1	Item	\$ -	\$ -
	<b>Subtotal - Survey</b>				\$ -
<b>13</b>	<b>Electrical</b>				
a)	Design	1	Item	\$ -	\$ -
b)	Construction Supervision	1	Item	\$ -	\$ -
c)	Fees and Charges	1	Item	\$ -	\$ -
	<b>Subtotal - Electrical</b>				\$ -
<b>13</b>	<b>Optic Fibre</b>				
a)	Design	1	Item	\$ -	\$ -
b)	Construction Supervision	1	Item	\$ -	\$ -
c)	Fees and Charges	1	Item	\$ -	\$ -
	<b>Subtotal - Optic Fibre</b>				\$ -
<b>14</b>	<b>Landscape</b>				
a)	Design	1	Item	\$ -	\$ -
b)	Construction	1	Item	\$ -	\$ -
c)	Arborist / Ecologist	1	Item	\$ -	\$ -
	<b>Subtotal - Landscape</b>				\$ -
<b>15</b>	<b>Geotechnical</b>				
a)	Construction Supervision and Certification	1	Item	\$ -	\$ -
	<b>Subtotal - Geotechnical</b>				\$ -
<b>16</b>	<b>Structural</b>				
a)	Design	1	Item	\$ -	\$ -
b)	Construction Supervision and Certification	1	Item	\$ -	\$ -
	<b>Subtotal - Structural</b>				\$ -
<b>17</b>	<b>Community Relations</b>				
a)	Professional Fees	1	Item	\$ -	\$ -
	<b>Subtotal - Community Relations</b>				\$ -
<b>18</b>	<b>Fees and Charges - Council</b>				
a)	Fees and Charges	1	Item	\$ -	\$ -
b)	Long Service Levy	1	Item	\$ -	\$ -
	<b>Subtotal - Fees and Charges</b>				\$ -
	<b>SUB TOTAL - PROFESSIONAL FEES AND CHARGES (Ex GST)</b>				\$ -
	<b>TOTAL (Ex GST)</b>				\$ -

**Executed** as a Deed

**Executed by MID COAST COUNCIL**

by its authorised delegate, pursuant to resolution  
made on *28 September 2022*

in the presence of:

*C. Very*

Signature of Witness

*CAROLYN VERY*

Name of Witness in full

*[Signature]*

*Richard Pamplin*

General Manager *RP*

*Principal Land Use Planner –  
Projects, Contributions and  
Planning Agreements*



Executed by Hazcorp Property Group Pty Ltd (ABN 74 630 141 132)  
pursuant to s127 of  
the *Corporations Act 2001* in the  
presence of:



Winton Anton  
Secretary



Andrew Hazlett  
Director



Name of Witness in full





Signature of Witness

Executed by Euca Valley Pty Ltd (ABN 94 637 395 754)  
pursuant to s127 of  
the *Corporations Act 2001* in the  
presence of:

  
.....  
Winton Anton  
Secretary

  
.....  
Andrew Hazlett  
Director

  
.....  
Name of Witness in full

  
.....  
Signature of Witness



# Explanatory Note

## Deed of Variation to the Planning Agreement for the Kolodong Estate

*Environmental Planning & Assessment Act 1979, section 7.4*  
*Environmental Planning & Assessment Regulation 2021, clause 203*

### 1. Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the exhibition of the Deed of Variation to the existing planning agreement (**Deed of Variation**) between the parties prepared under section 7.4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This Explanatory Note is not to be used to assist in construing the Deed of Variation.

### 2. Parties

The parties to the existing Planning Agreement and Deed of Variation are MidCoast Council ("**Council**") and the owners of the land Hazcorp Property Group Pty Ltd ("**Landowner**") and the developer of the land, Euca Valley Pty Limited ("**Developer**"). This explanatory note has been prepared jointly by the parties.

### 3. Description of the Subject Land

The Deed of Variation applies to the "Land" under the existing Planning Agreement owned by the Landowners and currently described as:

Lot 101 DP 1266464 known as 443 Kolodong Road, Tree NSW 2430

Lot 61 DP 1252146, known as 327 Kolodong Road, Taree NSW 2430 (the **Land**).

### 4. Description of the Development

The Landowner proposes to develop part of the Land for residential purposes (the **Development**).

In order to facilitate the Development, a former Landowner sought an amendment to the *Greater Taree Local Environmental Plan 2010* (the **Amendment**). The proposal was accepted by Mid Coast Council changing the planning controls and zoning applying to part of the Land (and other adjoining land) from RU1 (Primary Production) to R1 (General Residential) and E2 (Environmental Conservation).

The current Landowner has lodged a Development Application DA2021/1593 to develop a residential subdivision.

Traffic studies carried out in association with the preparation of the Land rezoning and the development application DA2021/1593 identified that the Development will contribute to the need to upgrade the intersection of Kolodong Road with Wingham Road (the **Intersection Works**). More specifically, the contribution to intersection load during peak hours is roughly 50:50 between the traffic from existing uses and the traffic generated by the Development of the Land.

## 5. Summary of Objectives, Nature and Effect of the Planning Agreement Objectives

The Deed of Variation amends the Planning Agreement so to provide an obligation on the Developer to construct the Intersection Works if the Council notifies the Developer that it will not complete the Intersection Works; and for the Developer to be proportionally reimbursed for its costs associated with the construction of the Intersection Works from the Council, in accordance with the Planning Agreement (as amended by the Deed of Variation). The Deed of Variation also seeks to make consequential changes resulting from this new obligation as well as include concept plans and the bill of quantities relating to the Intersection Work to the schedules of the Planning Agreement (as amended by the Deed of Variation).

The **intent** of the Deed of Variation is to ensure that public benefits in the form of the Intersection Works are provided by the Developer either through the provision of monetary contributions or the carrying out of the Intersection Works.

The **nature** of the Deed of Variation is a contractual relationship between the Council, the Developer and the Landowner for the provision of Development Contributions to support the development of the Land.

The **effect** of the Deed of Variation is that the Developer will provide the Development Contributions in the manner provided for by the Planning agreement (as amended by the Deed of Variation).

The Deed of Variation does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act. However if the Landowner carries out the Intersection Works or contributes to the Council in accordance with the agreement if Council completes the intersection works, the Landowner is not liable to pay development contributions for road upgrades that would otherwise be imposed.

### Assessment of the merits of the Deed of Variation

The merits of the Deed of Variation are the same as those set out in the existing Planning Agreement.

In accordance with section 7.4(2) of the Act, the Deed of Variation promotes the following public purpose:



- (1) the provision of (or the recoupment of the costs of providing) public amenities and public services.
- (2) the provision of (or the recoupment of the costs of providing) transport or other infrastructure relating to land.

The timing of the payment of Monetary Contributions allows the Landowner or Council to proportionally recoup the costs of carrying out the Intersection Works as the Land is developed.

The Deed of Variation promotes the public interest because it promotes the social and economic welfare of the community and sustainable development and is consistent with and promotes the objects in section 1.3 of the Act. In particular:

- 1.3 (c) to promote the orderly and economic use and development of land,
- 1.3 (g) to promote good design and amenity of the built environment.

The Deed of Variation will not preclude the public being involved with the opportunity for involvement and participation in development assessment. The public have been provided the opportunity to be involved with the development assessment and are invited to make comment on the Deed of Variation, particularly with regard to the public interest.

#### **How the Deed of Variation promotes the objects of the Local Government Act 1993**

The Deed of Variation is consistent with and promote the objects in section 7 of the *Local Government Act 1993*. In particular:

- 7 (e) to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

#### **How the Deed of Variation promotes the elements of the Councils' charter (now the principles for local government)**

The Planning Agreement promotes the principles for local government under Chapter 3 of the *Local Government Act 1993*. In particular:

- 8A (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- 8A (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- 8A (g) Councils should work with others to secure appropriate services for local community needs.
- 8B (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- 8C (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.

#### **Whether the Deed of Variation conforms with the Councils' capital works program**



The Councils' capital works program provides for the maintenance and upgrade of roads, including the Intersection Works if undertaken prior to the Development occurring.

**Further information**

The Deed of Variation to the Planning Agreement is available on the Council's website.