

## **Planning Agreement**

### **Glenlee Estate – Menangle Park**

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Campbelltown City Council (ABN 31 459 914 087) (**Council**)

William David Wilson and Patricia Maree Wilson (**Developer**)

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Draft

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# Planning Agreement

## Glenlee Estate – Menangle Park

### Parties

<b>Council</b>	<b>Name</b>	Campbelltown City Council
	<b>Address</b>	PO Box 57 Campbelltown NSW 2560
	<b>ABN</b>	31 459 914 087
<b>Developer</b>	<b>Name</b>	William David Wilson and Patricia Maree Wilson
	<b>Address</b>	Glenlee House 60 Glenlee Road Menangle Park NSW 2563

### Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied for the Instrument Change with respect to the Development.
- D** The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the carrying out of the Development, on and subject to the terms of this document.

### Operative Provisions

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#### 1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

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#### 2 Definitions and interpretation

##### 2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

##### 2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

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#### 3 Application and operation of document

##### 3.1 Planning agreement

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

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### **3.2 Application**

This document applies to both the Land and the Development.

### **3.3 Operation**

This document will only operate if and when Council grants the Instrument Change.

## **4 Application of s7.11 and s7.12**

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### **4.1 Application**

This document does not exclude the application of section 7.11 or section 7.12 of the Act to the Development.

### **4.2 Consideration of benefits**

Section 7.11(6) of the Act does not apply to the Contributions that are to be carried out or provided pursuant to this document.

### **4.3 Section 7.24**

This document does not exclude the application of s7.24 of the Act to the Development.

## **5 Provision of Contributions**

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### **5.1 Developer must make Development Contributions**

The Developer must make Development Contributions to Council in accordance with this document, and in particular in accordance with **Schedule 3** and **Schedule 4**.

### **5.2 Designated Land**

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.
- (2) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1) of this clause, including any costs incurred by Council in relation to that dedication.
- (3) For the purpose of this document, the Designated Land is dedicated to Council:
  - (a) if the relevant land is dedicated in a plan registered with NSW Land Registry Services, when that plan is so registered; or
  - (b) otherwise when the Developer delivers to Council:
    - (i) a transfer of the Dedicated Land in registrable form;
    - (ii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not impede the intended use of all or any part of the Designated Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

### **5.3 Restoration Works**

The Developer, at its cost, must:

- (1) obtain Development Consent, and any other form of consent required by a relevant Authority, to conduct the Restoration Works;
- (2) carry out and complete the Restoration Works by the time specified in **Schedule 4**; and

- 
- (3) carry out and complete the Restoration Works:
    - (a) in accordance with the specifications referred to in **Schedule 4**;
    - (b) in accordance with any relevant Development Consent;
    - (c) in accordance with the CMP;
    - (d) in accordance with the requirements of, or consents issued by, any Authority; and
    - (e) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Restoration Works.

#### **5.4 Contribution Value**

If the Developer's actual cost to perform an obligation to carry out the Restoration Works or dedicate land under this document differs from the Contribution Value, then:

- (1) neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference; and
- (2) the Developer is not required to carry out further work, dedicate further land or pay money to Council to make up the difference between the Contribution Value and the cost incurred by the Developer in performing the obligation.

#### **5.5 Access to the Land and location of Restoration Works**

- (1) The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Restoration Works.
- (2) Where Council, its officers, employees, agents and contractors enter the Land for the purposes outlined within this clause 5.5, Council must abide by all reasonable work, health and safety requirements of the Developer.

### **6 Completion of Restoration Works**

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#### **6.1 Issue of Completion Notice**

If the Developer considers that the Restoration Works are Complete, it must serve a notice on Council which:

- (1) is in writing; and
  - (2) specifies the date on which the Developer believes the Restoration Works are Completed;
- (Completion Notice).

#### **6.2 Inspection by Council**

- (1) Council may inspect the Restoration Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) of this clause 6.2, the Restoration Works referred to in the relevant Completion Notice will be deemed to be Complete.

#### **6.3 Restoration Works Notice**

- (1) Within twenty (20) business days of inspecting the Restoration Works, Council must provide notice in writing (**Restoration Works Notice**) to the Developer that the Restoration Works set out in the Restoration Works Notice:
  - (a) have been Completed; or

- 
- (b) have not been Completed, in which case the Restoration Works Notice must also detail:
    - (i) those aspects of the Restoration Works which Council believes have not been Completed; and
    - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Restoration Works.
  - (2) If the Developer provides Council a Completion Notice and Council does not provide the Developer with a Restoration Works Notice in accordance with paragraph (1), the Restoration Works set out in the Completion Notice will be deemed to have been Completed.
  - (3) Where Council serves a Restoration Works Notice on the Developer, the Developer must:
    - (a) rectify the Restoration Works in accordance with that notice; or
    - (b) serve a notice on the Council that it disputes the matters set out in the notice.
  - (4) Where the Developer:
    - (a) serves notice on Council in accordance with paragraph (3)(b) of this clause 6.3, the dispute resolution provisions of this document apply; or
    - (b) carries out the Restoration Works in accordance with paragraph (3)(a) of this clause 6.3, it must serve upon the Council a new Completion Notice for the Restoration Works it has rectified.

## **7 Variation of scope or timing for provision of Restoration Works**

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### **7.1 Variation to the Restoration Works**

- (1) The Developer may request that Council approve in writing a variation to the scope of the Restoration Works.
- (2) The Restoration Works are not to be varied unless Council and the Developer, acting reasonably, agree in writing to the variation.

### **7.2 Deferral of the timing of Completion of an item of the Restoration Works**

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
  - (a) it is unable to Complete the Restoration Works by the time specified in **Schedule 4**; or
  - (b) it believes that there is a risk of damage to the Restoration Works if they are delivered by the time required in **Schedule 4**,

(Deferred Restoration Works), then the Developer may seek Council's approval to defer the Completion of the Restoration Works by providing written notice to the Council:

  - (c) specifying the reason for the request to defer the Completion of the Restoration Works; and
  - (d) identifying the anticipated time for Completion of the Restoration Works.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) Business Days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
  - (a) whether or not it consents to the deferral of the Deferred Restoration Works;

- 
- (b) the revised date for Completion required by Council; and
    - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works).
  - (3) If the Council consents to the deferral of the Deferred Restoration Works, then the following applies:
    - (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) of this clause 7.2;
    - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the Deferred Restoration Works by the time for Completion specified in this document; and
    - (c) The time for completion of the Deferred Restoration Works under this document is the revised date for Completion approved by Council.

## **8 Developer Warranties and Indemnities**

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### **8.1 Warranties**

The Developer warrants to Council that it is:

- (1) legally and beneficially entitled to the Land;
- (2) able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

### **8.2 Indemnity**

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Restoration Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

## **9 Ongoing Maintenance Works**

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### **9.1 Conduct**

The Developer, at its cost, must register the Positive Covenant on the title to the Homestead Lot in accordance with **Schedule 3**.

## **10 Security**

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### **10.1 Compulsory acquisition of the Designated Land**

- (1) If the Developer does not dedicate any part of the Land required to be dedicated under this document by the time by which it is to be dedicated, the Developer agrees that Council may compulsorily acquire that Land:
  - (a) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Acquisition Act; and
  - (b) at any time determined by Council.
- (2) The parties acknowledge and agree that this clause 10.2 constitutes an agreement for the purpose of section 30 of the Acquisition Act.

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- (3) If, as a result of an acquisition referred to in paragraph (1), council is required to pay compensation to any other person other than the Developer, the Developer must reimburse Council, as a Development contribution, for that amount upon a written request being made by Council.
  - (4) The Developer indemnifies and keeps indemnified Council against all claims made against Council as a result of any acquisition by Council of the whole or any part of the Land that is required to be dedicated under this document.
  - (5) The Developer must promptly do all things necessary, and consent to Council doing all things necessary, to give effect to this clause 11.2, including without limitation:
    - (a) signing any documents or forms;
    - (b) giving land owners' consent for the lodgement of any development application;
    - (c) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and
    - (d) paying Council's costs arising from this clause 11.2.

#### **10.2 Developer must not deal with property**

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

#### **10.3 Council may withhold Subdivision Certificate**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

### **11 Registration of this document**

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#### **11.1 Registration of this document**

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2, Council will undertake that registration at the cost of the Developer.

#### **11.2 Obligations of Developer**

The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps to enable the registration of this document in accordance with clause 11.1.

#### **11.3 Discharge**

- (1) After the Developer has satisfied its obligations in accordance with this document, Council will do all things necessary to remove this document from the title to the Land as quickly as practicable.

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- (2) From time to time, the Developer, by notice in writing, may request that Council facilitate the removal of this document from the title to any part of the Land.
  - (3) The Council will provide a release and discharge of this document so that it may be removed from the title to any part of the Land if the Developer gives Council a written notice requesting such removal and:
    - (a) the Developer satisfies Council that the Developer has fulfilled its Development Contribution obligations under this document with respect to that part of the Land from which a removal is being sought; and
    - (b) the Developer is not otherwise in default of any of its material obligations under this document.
  - (4) The parties agree that as long as this document is in effect it must be registered on title to the Land on which the Ongoing Maintenance Works are located.

## 12 Assignment

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If the Developer:

- (1) wishes to Assign any part of the Land; and/or
- (2) wishes to Assign its rights or obligations under this document,

then the Developer must:

- (1) provide a written request to Council for the consent of Council to the relevant Assignment;
- (2) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
- (3) obtain written consent of Council to the relevant Assignment; and
- (4) at no cost to Council, procure:
  - (a) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
  - (b) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional security if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

## 13 Dispute Resolution

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### 13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within two (2) Business Days of receipt of the notice of dispute, provide a notice to the First Party designating its representative to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

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### **13.2 Meeting of the Representatives**

Within five (5) Business Days of the notice of Dispute issued under clause 13.1(1), the Representatives must meet and reasonably endeavour to settle the Dispute.

### **13.3 Conduct pending resolution**

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

### **13.4 Disputes for mediation or expert determination**

If the Representatives have not been able to resolve the Dispute in accordance with clause 0, the parties must agree to either refer the matter to mediation under clause 13.5 or expert resolution under clause 13.6.

### **13.5 Disputes for mediation**

- (1) If the parties agree in accordance with clause 13.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

### **13.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
  - (a) agreed between and appointed jointly by the parties; or
  - (b) in the absence of agreement, within five (5) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (3) The expert appointed to determine a Dispute:
  - (a) must have a technical understanding of the issues in Dispute;
  - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (4) The parties must promptly enter into a document with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

### **13.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.

- 
- (2) The expert must:
- (a) act as an expert and not as an arbitrator;
  - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - (c) not accept verbal submissions unless both parties are present;
  - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - (h) issue a final certificate stating the expert's determination (together with written reasons); and
  - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.

### **13.8 Expert may commission reports**

- (1) Subject to paragraph (2):
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
  - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(4) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

### **13.9 Expert may convene meetings**

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

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### **13.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 13.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation,

then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

### **13.11 Confidentiality of information provided in dispute resolution process**

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
  - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
  - (b) not to disclose any confidential documents, information and other material except:
    - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
    - (ii) if required by Law or any Authority to do so; and
  - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
  - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
  - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
  - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

### **13.12 Final determination of expert**

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

### **13.13 Costs**

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

### **13.14 Urgent relief**

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

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## 14 Force Majeure

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### 14.1 Definition

In this clause 0, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

### 14.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:
  - (a) give to the other party prompt written notice of the Force Majeure with reasonably full particulars; and
  - (b) suggest an alternative method, if any, of satisfying its obligations under this document.
- (2) If a party is unable to satisfy its obligations under this document by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.
- (3) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.

### 14.3 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 13.

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## 15 Breach of this document

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### 15.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

### 15.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

### 15.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law at its absolute discretion, enter upon the Land for the purpose of carrying out any work specified in the relevant Breach Notice, but only after giving the Developer five (5) business days written notice of its intention to do so.

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## **16 Termination or Determination**

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### **16.1 Termination**

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with clause 15.1.

### **16.2 Consequence of termination**

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

### **16.3 Determination**

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

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## **17 Position of Council**

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### **17.1 Consent authority**

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

### **17.2 Document does not fetter discretion**

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (Discretion).

### **17.3 Severance of provisions**

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 17 is substantially satisfied; and
  - (b) in the event that paragraph (1)(a) of this clause 17.3 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
  - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

### **17.4 No Obligations**

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

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## **18 Confidentiality**

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### **18.1 Document not Confidential**

The terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

### **18.2 Other Confidential Information**

- (1) The parties acknowledge that:
  - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
  - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
  - (c) Subject to paragraphs (2) and (3), each party agrees:
    - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
    - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
  - (a) in order to comply with the Law, or the requirements of any Authority; or
  - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

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## **19 GST**

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### **19.1 Defined GST Terms**

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

### **19.2 GST to be Added to Amounts Payable**

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

### **19.3 GST Obligations to Survive Termination**

This clause 19 will continue to apply after expiration of termination of this document.

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## **20 Miscellaneous**

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

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;

- 
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
  - (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
  - (4) be just and faithful in their activities and dealings with the other parties.

## **20.2 Legal costs**

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document up to an amount of \$10,000.00; and
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within thirty (30) business days of receipt of a Tax Invoice from Council.

## **21 Administrative provisions**

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### **21.1 Notices**

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - (a) delivered to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - (b) if sent by pre-paid mail, on the third Business Day after posting; and
  - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

### **21.2 Entire agreement**

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

### **21.3 Waiver**

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

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#### **21.4 Cooperation**

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

#### **21.5 Counterparts**

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

#### **21.6 Amendment**

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

#### **21.7 Unenforceability**

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

#### **21.8 Power of Attorney**

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

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

#### **21.9 Governing law**

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

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

## Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) No</li> <li>(c) Not applicable</li> </ul>
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	(1) Lot 1 in Deposited Plan 713646; (2) Lot 2 in Deposited Plan 713646; and (3) Lot 3 in Deposited Plan 713646, known as 60 Menangle Road, Menangle Park 2563
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	Yes. See definition for “Instrument Change” <b>Schedule 2.</b>
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Applies
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Applies
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	Refer to clause 4.2 of the Planning Agreement.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 13.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 10.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 17.

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## Schedule 2 – Defined Terms and Interpretation

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### Part 1 – Definitions

<b>Acquisition Act</b>	means the Land Acquisition (Just Terms Compensation) Act 1991.
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Assign, Assigned or Assignment</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any:  <ol style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ol>
<b>Claim</b>	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>CLEP</b>	means the “ <i>Campbelltown Local Environmental Plan 2015</i> ”.
<b>CMP</b>	means the “ <i>Glenlee Estate, Lots 1, 2 &amp; 3 DP713646, Glenlee Road, Menangle Park Conservation Management Plan</i> ”.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Confidential Information</b>	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:  <ol style="list-style-type: none"><li>(1) is by its nature confidential;</li><li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li><li>(3) any party knows or ought to know is confidential;</li><li>(4) is information which may be reasonably considered to be of a confidential nature.</li></ol>
<b>Contributions</b>	means the Restoration Works, Ongoing Maintenance Works and the Designated Land.
<b>Contribution Value</b>	means the amount specified in <b>Schedule 3</b> and <b>Schedule 4</b> (if any) under the column headed “contribution value” for each of the Contributions.

<b>Designated Land</b>	means that part of the Land proposed to be zoned “ <i>RE1 Public Recreation</i> ” as shown on the plan that is attached as <b>Annexure 1</b> .
<b>Development</b>	<p>means the residential development of the Land that will be permitted if the CLEP is amended in accordance with the Instrument Change, with the residential development of the Land being:</p> <ol style="list-style-type: none"> <li>(1) limited and responsive to, and protective of, the Land’s heritage significance;</li> <li>(2) restricted to <i>the “E4 Environment Living”</i> zoned areas applying to the Land under the amended CLEP;</li> <li>(3) subject to detailed Development Controls; and</li> <li>(4) subject to the MPCP.</li> </ol>
<b>Development Consent</b>	means the consent issued under the Act for the Development.
<b>Development Controls</b>	means detailed development controls to be added to the <i>Campbelltown (Sustainable City) Development Control Plan 2015</i> .
<b>Dispute</b>	has the meaning ascribed to it in clause 13.1.
<b>Encumbrance</b>	<p>means an interest or power:</p> <ol style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ol> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>Event of Default</b>	has the meaning ascribed to it in clause 15.2.
<b>Force Majeure</b>	has the meaning ascribed to it in clause 0.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Homestead Lot</b>	means Lot in in DP713646.
<b>Insolvency Event</b>	<p>means the happening of any of the following events:</p> <ol style="list-style-type: none"> <li>(1) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.</li> <li>(2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of</li> </ol>

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a body corporate or one of them is appointed, whether or not under an order.

- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

#### **Instrument Change**

means the proposed amendment to the CLEP to permit limited residential development of the Land by way of:

- (1) rezoning the Land from “*RU2 Rural Landscape*” to part “*E2 Environmental Conservation*”, part “*E3 Environmental Management*”, part “*E4 Environmental Living*” and part “*RE1 Public Recreation*”;
- (2) amending the “Lot Size” and “Lot Size for Dual Occupancy Development” under the CLEP; and
- (3) amending the “Height of Building Map” under the CLEP.

#### **Land**

means the “Land” set out in **Schedule 1**.

#### **Law**

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

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<b>MPCP</b>	means the “ <i>Menangle Park Contributions Plan 2020</i> ”.
<b>Ongoing Maintenance Work</b>	means the ongoing maintenance of the existing main residence known as “Glenlee House” and the Gatehouse on the Land
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Positive Covenant</b>	means a positive covenant on the terms set out in <b>Schedule 5</b> .
<b>Restoration Works</b>	means the works specified or described in <b>Schedule 4</b> .
<b>Subdivision Certificate</b>	has the same meaning as in section 6.4(d) of the Act.

## Part 2 - Interpretational Rules

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

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<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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### Schedule 3 – Designated Land

Item	Time for Completion	Contribution Value
<b>Dedication of Open Space</b> The Developer will dedicate the whole of the Designated Land to Council at no cost to Council	Prior to the release of the first Subdivision Certificate for the creation of a residential lot as part of the Development.	Nil
<b>Registration of Positive Covenant</b> The Developer must register the Positive Covenant on the Homestead Lot.	Prior to the release of the first Subdivision Certificate for the creation of a residential lot as part of the Development.	Nil

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## Schedule 4 – Restoration Works

Item Description	Specification	Time for Completion	Contribution Value
Restoration of Gatehouse	The “Gatehouse” situated on the Land will be restored to the standard identified in the CMP.	Prior to the release of the first Subdivision Certificate for the creation of a residential lot as part of the Development.	\$250,000

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## Schedule 5 – Terms of Positive Covenant

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### 1 Definitions

**“Bank Guarantee”** means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (1) Australia and New Zealand Banking Group Limited.
- (2) Commonwealth Bank of Australia.
- (3) Macquarie Bank.
- (4) National Australia Bank Limited.
- (5) St George Bank Limited.
- (6) Westpac Banking Corporation.
- (7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.

**“Registered Proprietor”** means the registered proprietor of the Burdened Land from time to time, and all its heirs, executors, assigns and successors in title to the Burdened Land and, where there are two or more registered proprietors of the Burdened Land, the terms of this covenant shall bind all those persons jointly and severally.

### 2 Conduct

The Registered Proprietor, at its cost, must carry out the ongoing maintenance of the existing main residence known as “Glenlee House” and the Gatehouse on the Burdened Land (**Ongoing Maintenance Works**):

- (1) in accordance with the “Glenlee Estate, Lots 1, 2 & 3 DP713646, Glenlee Road, Menangle Park Conservation Management Plan” from time to time;
- (2) in accordance with the requirements of, or consents issued by, any relevant authority; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards.

### 3 Inspection by Council

Council may inspect the Ongoing Maintenance Works:

- (1) no more than one (1) time per calendar year; and
- (2) provided it gives the Registered Proprietor not less than ten (10) business days notice prior to carrying out an inspection of the Ongoing Maintenance Works.

### 4 Ongoing Maintenance Works Notice

Within ten (10) business days of inspecting the Ongoing Maintenance Works, Council may provide notice in writing (**Ongoing Maintenance Works Notice**) to the Registered Proprietor that the Ongoing Maintenance Works have not been conducted in accordance with clause 2 and detail the work Council requires the Registered Proprietor to carry out in order to rectify the deficiencies in those Ongoing Maintenance Works.

### 5 Failure to rectify

5.1 If the Registered Proprietor fails to rectify the Ongoing Maintenance Works in accordance with the Ongoing Maintenance Works Notice, Council may:

- (1) issue a further Ongoing Maintenance Works Notice in accordance with the provisions of clause 4, which will apply to the Ongoing Maintenance Works subject to the Rectification Notice; or

- 
- (2) at its absolute discretion, enter upon the Burdened Land for the purpose of carrying out the Ongoing Maintenance Works in accordance with the Ongoing Maintenance Works Notice, but only after giving the Registered Proprietor five (5) business days written notice of its intention to do so.

5.2 Where Council exercises its step-in rights, Council may call upon the Security provided by the Registered Proprietor to cover the costs incurred by Council in carrying out the Ongoing Maintenance Works.

## **6 Provision of initial Security**

The Registered Proprietor must ensure Council holds a Bank Guarantee in an amount equivalent to the estimated value of the cost of the Ongoing Maintenance Works for the two (2) year period commencing on the date of delivery of the Bank Guarantee (**Security**).

## **7 Ongoing Security**

7.1 No more than once in any calendar year, Council may serve a notice on the Registered Proprietor (**Updated Security Notice**) which:

- (1) states that it is a notice issued for the purpose of this clause 7.1;
- (2) provides an estimate of the cost of the Ongoing Maintenance Works for the two (2) year period commencing on the date of the Ongoing Security Notice (**Updated Security Amount**); and
- (3) requires the Registered Proprietor to provide a replacement Bank Guarantee in an amount equal to the Updated Security Amount (**Updated Security**).

7.2 Where Council serves an Updated Security Notice on the Registered Proprietor, the Registered Proprietor must within forty (40) business days from the date of the Updated Security Notice, provide the relevant Updated Security.

## **8 Replacement of Security**

On receipt of any Updated Security, Council must immediately release the Security then held by it and return it to the Registered Proprietor.

## **9 Release of Security**

Council must return the Security within ten (10) days of the release of this document from the title to the Burdened Land.

**Name of Authority with the right to release, vary or modify this positive covenant:**

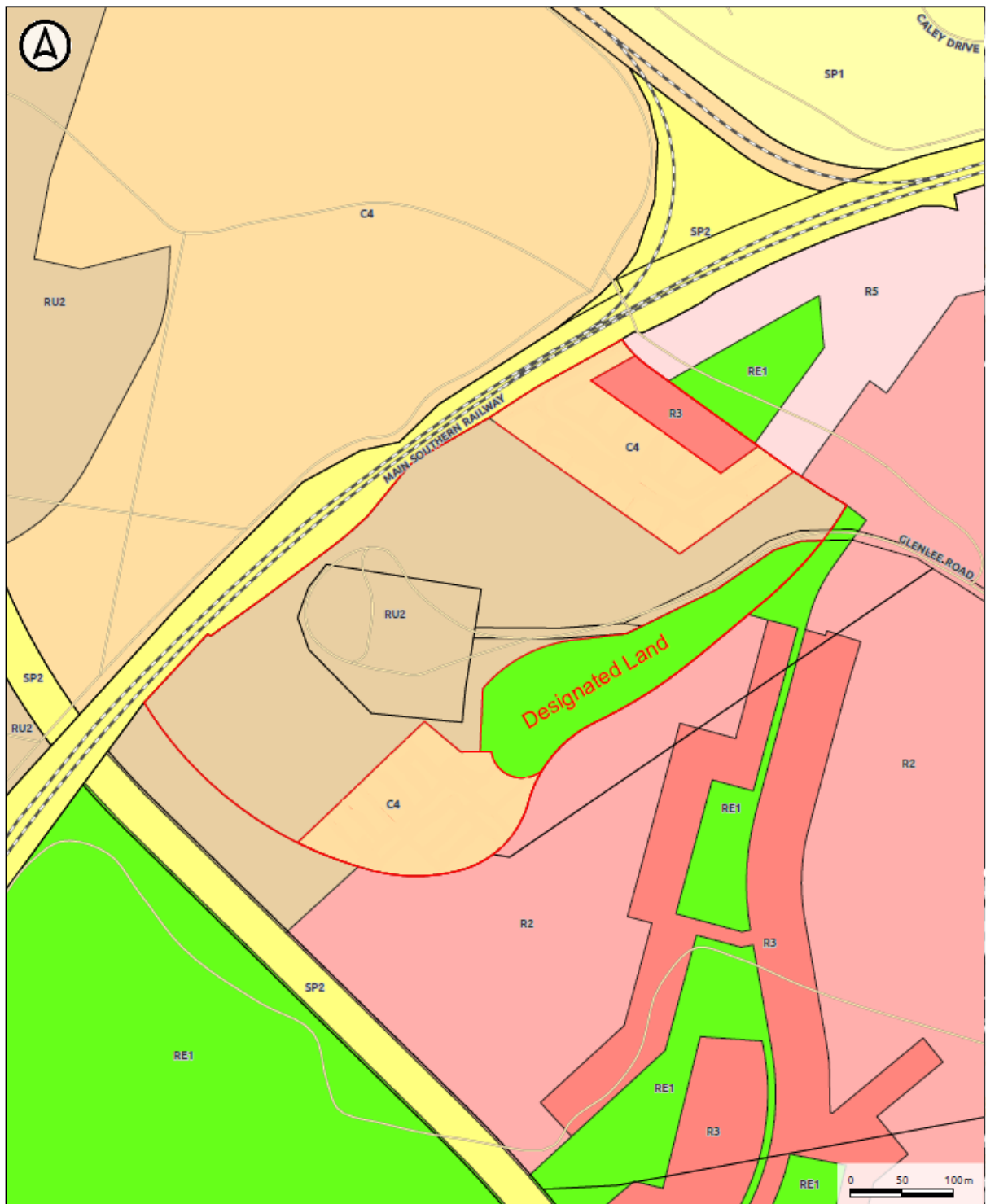
Campbelltown City Council.

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## **Annexure 1 – Plan of Designated Land**

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## Execution page

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### Executed as an agreement

Dated: 12 November 2024

Executed by **Campbelltown City Council ABN 31 459 914 087** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated


  
General Manager (Signature)

LINDY DEITZ  
Name of General Manager (Print Name)

  
Mayor (Signature)

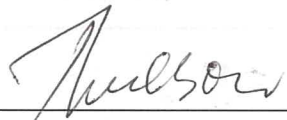
Jim Bannister  
Name of Mayor (Print Name)

Executed by **William David Wilson and Patricia Maree Wilson** in the presence of:

  
Witness (Signature)

Sean Bunnell  
Name of Witness (Print Name)

  
William David Wilson (Signature)

  
Patricia Maree Wilson (Signature)