

## **Planning Agreement**

### **168 Narellan Road, Campbelltown**

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

Franciscan Order of Friars Minor (ABN 63 004 232 633) (**Developer**)

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# Planning Agreement

## 168 Narellan Road, Campbelltown

### Parties

<b>Council</b>	<b>Name</b>	Campbelltown City Council
	<b>Address</b>	91 Queen Street Campbelltown NSW 2560
	<b>ABN</b>	31 459 914 087
<b>Developer</b>	<b>Name</b>	Franciscan Order of Friars Minor
	<b>Address</b>	47 Victoria Road, Waverley NSW 2024
	<b>ABN</b>	63 004 232 633

### Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has obtained the Development Consent with respect to the Development.
- D** The Developer agrees to make the Contributions 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**

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#### **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 Division 7.1 of Part 7 of the Act.

#### **3.2 Application**

This document is made in respect of the Development and applies to both the Land and the Development.

#### **3.3 Operation**

This document operates as a planning agreement for the purpose of the Act on and from the date it is executed by both parties.

#### **3.4 Further agreements relating to this document**

The parties, at any time and from time to time, may enter into agreements relating to the subject matter of this document that are not inconsistent with this document for the purpose of implementing this document.

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### **4 Application of s7.11 & s7.12 and s7.24**

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#### **4.1 Application**

This document:

- (1) does not exclude the application of section 7.11 of the Act to the Development; and
- (2) does not exclude the application of 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.

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### **5 Provision of Contributions**

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#### **5.1 Contributions**

The Developer must deliver the Contributions to Council in accordance with this document.

#### **5.2 No limit created by Contribution Value**

- (1) A Contribution Value specified in relation to a Contribution other than a Monetary Contribution does not define or limit the extent of the Developer's obligation in that regard.

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- (2) Further to paragraph (1), the Developer is not entitled to any payment, reimbursement, credit or off-set to the extent that any costs incurred by it in making a Contribution exceed the relevant Contribution Value.

### 5.3 Designated Land

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances in accordance with **Schedule 3**.
- (2) For the purpose of this document, Designated Land is dedicated to Council:
- (a) in relation to Item 2 in **Schedule 3**, when a deposited plan is registered at NSW Land Registry Services that dedicates the relevant part of the Land as a public road under the *Roads Act 1993* (NSW); and
  - (b) in relation to all other Designated Land:
    - (i) when a deposited plan is registered at NSW Land Registry Services that dedicates the relevant part of the Land as a public road (including temporary public road) under the *Roads Act 1993* (NSW);
    - (ii) when a deposited plan is registered at NSW Land Registry Services that creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW); or
    - (iii) otherwise when the Developer delivers to Council an instrument of transfer under the *Real Property Act 1900* (NSW) in registrable form, including any consent required by an interested party in the relevant land.

### 5.4 Works

The Developer, at its cost, must:

- (1) obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council in accordance with **Schedule 4**; and
- (3) carry out and complete the Works:
- (a) in accordance with the specifications referred to in **Schedule 4** for the relevant item of Work;
  - (b) in accordance with any relevant Development Consent;
  - (c) in accordance with the requirements of, or consents issued by, any Authority;
  - (d) ensuring that:
    - (i) all necessary measures are taken to protect people, property, and the Environment;
    - (ii) unnecessary interference with the passage of people and vehicles is avoided;
    - (iii) nuisances and unreasonable noise and disturbances are prevented; and

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- (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with;
  - (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
  - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

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

- (1) The Developer must 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 Works.
- (2) The Developer must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
- (3) The Developer acknowledges and agrees that:
  - (a) access to any Council owned land upon which any Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those Works to be carried out;
  - (b) the Developer must obtain any such approvals or consents before commencing the Works; and
  - (c) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

## **5.6 Monetary Contributions**

- (1) The Developer must pay the Monetary Contributions in accordance with **Schedule 5**.
- (2) A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Monetary Contribution payable under this document in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

## **5.7 Indexation of Amounts payable by Developer**

Unless an indexation methodology is specified in **Schedule 5** in relation to the Contribution Value for a Monetary Contribution (in which case that indexation methodology will apply to that Contribution Value), each Monetary Contribution will increase annually (with the calculation to be made as from the date the relevant Monetary Contribution is required to be provided to Council under this document) in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

**A** = the indexed amount;

**B** = the relevant amount as set out in this document;



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**C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

**D** = the Index most recently published before the commencement date of this document.

If **A** is less than **B**, then the amount of the relevant Monetary Contribution will not change.

#### **5.8 Council to issue invoices and receipts for Monetary Contributions**

- (1) Council must provide a Tax Invoice to the Developer in the amount of the Monetary Contribution.
- (2) Council will provide the Developer with a receipt acknowledging payment of a Tax Invoice within 5 business days of receiving confirmation that the relevant Monetary Contribution has been paid.

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### **6 Completion of Works**

#### **6.1 Completion**

For the purpose of this document, an item of Works is Completed when:

- (1) the Developer has provided Council with a full works-as-executed-plan in respect to the item of Works
- (2) the item of Works has been accepted as, or deemed to have been, Completed in accordance with this clause 6; and
- (3) any other obligation with respect to the item of Works which must be discharged prior to the Completion of the item of Works in accordance with this document has been discharged.

#### **6.2 Issue of Completion Notice**

If the Developer considers that any particular item of the Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of the Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of the Works was completed,

(Completion Notice).

#### **6.3 Inspection by Council**

- (1) Council must inspect the 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) the Works referred to in the relevant Completion Notice will be deemed to be Complete.

#### **6.4 Rectification Notice**

- (1) Within twenty (20) business days of inspecting the Works set out in a Completion Notice Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:

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

## **6.5 Acceptance of Works**

Council accepts ownership, possession and control of, and risk in, any Works carried out on Designated Land when:

- (1) those Works are Completed; and
- (2) the relevant land has been dedicated to Council.

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## **7 Defects Liability**

### **7.1 Defects Notice**

- (1) Where any part of the Works has been Completed but those Works contain a material defect which:
  - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
  - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect;

(Defect) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and

- 
- (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

## **7.2 Developer to Rectify Defects**

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

## **7.3 Right of Council to Step-In**

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

## **7.4 Consequence of Step-In**

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
  - (a) enter upon any part of the Land that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

## **7.5 Costs of Council**

Where Council exercises its step-in rights Council may call upon any Security provided by the Developer pursuant to clause 13 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Security and the costs incurred by the Council in rectifying the Defects.

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# **8 Variation of scope or timing for provision of Works**

## **8.1 Variation to the scope of an item of Work**

- (1) The Developer may request that Council approve in writing a variation to the scope of any item of Work.
- (2) The scope of an item of Work is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may withhold its consent to a variation of an item of Work at its absolute discretion.

## **8.2 Deferral of the timing of Completion of an item of the 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 any item of the Works by the time specified in **Schedule 4**; or

- 
- (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 4**,
- (Deferred Works), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:
- (c) identifying the relevant item of Work that the Developer proposes to defer;
- (d) specifying the reason for the request to defer the Completion of that item of the Works; and
- (e) identifying the anticipated time for Completion of the relevant item of Work.
- (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 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 Works, then the following applies:
- (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
- (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 relevant Deferred Works by the time for Completion specified in this document.
- (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

## **9 Developer Warranties, Insurance and Indemnities**

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### **9.1 Warranties**

The Developer warrants to Council that it:

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

### **9.2 Insurance**

- (1) The Developer must take out and keep current to the satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer

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under this document, up until the time that the Work is taken to have been Completed in accordance with this document:

- (a) contract works insurance, noting 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 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.
- (2) If the Developer fails to comply with paragraph (1), 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 Council and may be recovered by Council as it deems appropriate, including:
- (a) by calling upon any Security provided by the Developer to Council pursuant to clause 13; or
  - (b) recovery as a debt due in a court of competent jurisdiction.
- (3) The Developer must not commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in paragraph (1)

### 9.3 Indemnity

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

## 10 Contamination

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### 10.1 Definitions

For the purpose of this clause 10:

**Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation or contravention of any Environmental Law.

**Contaminated** means subject to Contamination.

**Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

### 10.2 Warranties and Indemnities

The Developer:

- 
- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
  - (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Climate Change, Energy, the Environment and Water and any other relevant Authority.

### **10.3 Remediation**

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts):
  - (a) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land (**Investigation Reports**); and
  - (b) provide copies of all Investigation Reports to Council.
- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

## **11 Council may withhold Subdivision Certificate**

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### **11.1 Subdivision Certificate**

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in the Development if, at the date of the application, the Developer is not in breach of its obligation to make Contributions under this document.
- (2) If an application for a Subdivision Certificate in the Development is made in spite of paragraph (1), Council may withhold the issue of that Subdivision Certificate until the Developer has made all Contributions under this document required to be made prior to that Subdivision Certificate being issued.

### **11.2 Council may withhold Subdivision Certificates**

The Developer acknowledges and agrees that the issue of a Subdivision Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make Contributions under this document until such time as:

- (1) the breach is rectified; or
- (2) Council calls upon the Security provided by the Developer in respect of the Contributions to which the breach relates and any amount required to be paid by the

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Developer under this document on account of that breach over and above the amount of the Security is paid in full.

## **12 Security for the dedication of land**

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### **12.1 Council may acquire**

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 required to be dedicated, the Developer agrees that Council may compulsorily acquire that land:

- (1) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Acquisition Act; and
- (2) at any time after which that land would be required to be dedicated under this document.

### **12.2 Agreement to acquire**

The parties acknowledge and agree that clause 12.1 constitutes an agreement for the purpose of section 30 of the Acquisition Act.

### **12.3 Additional comfort for Council**

- (1) If, as a result of an acquisition referred to in clause 12.1, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council, as a Contribution, for that amount upon a written request being made by Council.
- (2) The Developer and Landowner 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.
- (3) The Developer must promptly do all things necessary, and consent to Council doing all things necessary, to give effect to this clause 12, including without limitation:
  - (a) signing any documents or forms;
  - (b) giving land owner's consent for the lodgement of any Development Application;
  - (c) producing certificates of title (or other relevant documents evidencing title) to the Registrar-General under the *Real Property Act 1900* (NSW); and
  - (d) paying Council's costs arising from this clause 12.

### **12.4 Developer and Landowner must not deal with property until this document is registered**

- (1) The Developer and Landowner must not during any period prior to the registration of this document pursuant to clause 14, sell, transfer, mortgage, or charge the Land to be dedicated to Council without first obtaining Council's consent in writing.
- (2) The Developer and Landowner must not during the term of this document, grant a lease or licence or any other right of occupancy to any person over the Land to be dedicated to Council, other than any temporary licence necessary for the conduct of the Development

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## **13 Security for carrying out of Work**

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### **13.1 Provision of Security**

Subject to paragraph 13.2, prior to the issue of a Subdivision Certificate for the Development, the Developer must provide Council with the Security.

### **13.2 Floating Security**

The Developer may satisfy clause 13.1 by allowing Council to retain any Security previously provided under this document, provided that Council holds Security in an amount no less than the aggregate required to be provided by the Developer under this clause 13 at the relevant time.

### **13.3 Council may call on Security**

If:

- (1) the Developer has defaulted under this document and has not complied with a notice issued by Council under this document in respect of Works; and
- (2) Council has either rectified the Works or been forced to carry out the Works itself,

then without limiting any other remedies available to it, Council may call on any Security held by Council at that time.

### **13.4 Top up of Security**

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security which Council is entitled to hold at that time under this document.

### **13.5 Release of Security**

Unless:

- (1) Council has made a demand against the Defects Security provided to it;
- (2) the relevant Defects Liability Period has not expired; or
- (3) at the relevant time the Developer has not remedied a breach of this document of which it has been given notice by Council,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) Business Days of such a request being made.

### **13.6 No double up of security**

If the Developer has provided security in accordance with a condition of Development Consent for the same purposes as the Security, then that security will be held as the Security under this document in addition to being held by Council as security in accordance with a condition of Development Consent.



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## **14 Registration of this document**

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### **14.1 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) it must:
  - (a) do all things necessary to allow the registration of this document to occur under paragraph (1) on the title of the land; and
  - (b) pay any reasonable costs incurred by Council associated with registration.

### **14.2 Obligations of Developer**

- (1) The Developer, at its own expense, must promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Works Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - (a) the consent of each person who:
    - (i) has an estate or interest in the Land; or
    - (ii) is seized or possessed of an estate or interest in the Land;
  - (b) the execution of any documents; and
  - (c) the production of any relevant title documentation,to enable the registration of this document in accordance with clause 14.1.
- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
  - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
  - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

### **14.3 Removal of this document from Title of the Land**

- (1) After the Developer has satisfied its obligations in accordance with this document (and the Developer is not otherwise in default of this document), Council will do all things reasonably necessary to remove any notation relating to this document from the title to the Land.
- (2) From time to time, the Developer, by notice in writing, may request that Council facilitate the removal of any notation relating to this document from the title to any part of the Land.

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- (3) This document will 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 obligations to make Contributions under this document with respect to that part of the Land from which the removal is sought; and
  - (b) the Developer is not otherwise in default of any of its material obligations under this document.

## **15 Assignment**

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### **15.1 Restriction on Assignment**

Other than in accordance with this clause 15 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

### **15.2 Procedure for Assignment**

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document,then the Developer must:
  - (c) provide a written notice to Council advising of the proposed Assignment and requesting Council's consent to that Assignment;
  - (d) 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;
  - (e) obtain the written consent of Council to the relevant Assignment; and
  - (f) at no cost to Council, procure:
    - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
    - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

## **16 Dispute Resolution**

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### **16.1 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:

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- (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 five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

#### **16.2 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.

#### **16.3 Further steps required before proceedings**

Subject to clauses 16.14 and 16.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 16.5 or determination by an expert under clause 16.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days of the date a notice under clause 16.1(2) is served.

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

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under clause 16.5 or expert resolution under clause 16.6.

#### **16.5 Disputes for mediation**

- (1) If the parties agree in accordance with clause 16.4 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 16.6.

#### **16.6 Choice of expert**

- (1) If the Dispute is to be determined by expert determination, this clause 16.6 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 document 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.

- 
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the date that the matter is required to be determined by expert determination, either party may refer the matter to 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.
- (4) 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.
- (5) The parties must promptly enter into an agreement with the expert appointed under this clause 16.6 setting out the terms of the expert's determination and the fees payable to the expert.

#### **16.7 Directions to expert**

- (1) In reaching a determination in respect of a dispute under clause 16.6, 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.

#### **16.8 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 16.6(5) of this document.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

#### **16.9 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.

#### **16.10 Other courses of action**

If:

- (1) the parties cannot agree in accordance with clause 16.4 to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in clause 16.5 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.

#### **16.11 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.

#### **16.12 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.

#### **16.13 Costs**

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

#### **16.14 Remedies available under the Act**

This clause 16 does not operate to limit the availability of any remedies available to Council under the Act.

#### **16.15 Urgent relief**

This clause 16 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

### **17 Breach of this document**

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#### **17.1 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.

## **17.2 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.

## **17.3 Consequences of Events of default**

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

# **18 Termination, Rescission or Determination**

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## **18.1 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 Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 17.1.
- (3) The Development Consent lapses.

## **18.2 Consequence of termination**

Upon termination of this Planning Agreement:

- (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.

## **18.3 Determination**

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

# **19 Position of Council**

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## **19.1 Consent authority**

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

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## **19.2 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).

## **19.3 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 19 is substantially satisfied; and
  - (b) in the event that paragraph (1)(a) 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.

## **19.4 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 Development Consent, the Land or the Development in a certain manner.

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## **20 Confidentiality**

### **20.1 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.

### **20.2 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:



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- (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 20.

## **21 GST**

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### **21.1 Defined GST Terms**

Defined terms used in this clause 21 have the meaning ascribed to them in the GST Law.

### **21.2 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.

### **21.3 GST Obligations to Survive Termination**

This clause 21 will continue to apply after expiration of termination of this document.

## **22 Miscellaneous**

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### **22.1 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.

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## 22.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the legal costs and disbursements of Council up to a maximum of \$3500 plus GST:
  - (a) for the negotiation, preparation and execution of this document; and
  - (b) arising from the ongoing administration and enforcement of this document including in relation to:
    - (i) the registration or removal of this document on the title to the Land in accordance with clause 14; and

within ten (10) business days of receipt of a Tax Invoice from Council.

- (2) The Developer will pay its own costs of negotiation, preparation, execution and stamping of this document.
- (3) The Developer will pay the Council's reasonable legal costs and disbursements arising from a breach of this Agreement by the Developer.

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## 23 Administrative Provisions

### 23.1 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 by hand to that person's address;
  - (b) sent by pre-paid mail to that person's address; or
  - (c) transmitted by electronic mail to that person's then current e-mail address.
- (2) A notice given to a person in accordance with paragraph (1) is treated as having been given and received:
  - (a) if delivered by hand 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 if posted to an address outside of Australia, on the tenth Business Day after posting; and
  - (c) if transmitted by electronic mail to a person's then current e-mail address, on the day of transmission if a Business Day, otherwise on the next Business Day unless the sender receives an automated message that the e-mail has not been delivered (other than an 'out of office' or similar greeting).
- (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.

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### **23.2 Entire Document**

This document is the entire agreement of the parties on the subject matter. All representations, communications, undertakings and prior agreements in relation to the subject matter (whether orally or in writing) are superseded by this document.

### **23.3 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.

### **23.4 Cooperation**

Each party must sign, execute and deliver all deeds, 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.

### **23.5 Counterparts**

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

### **23.6 Amendment**

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

### **23.7 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.

### **23.8 Power of Attorney**

Each attorney who executes this document on behalf of a party declares that the attorney:

- (1) has the authority to do so under the power of attorney; and
- (2) has no notice of:
  - (a) the revocation or suspension of the power of attorney by the grantor; or
  - (b) the death of the grantor.

### **23.9 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

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- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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## 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>(c) sought a change to an environmental planning instrument.</li> <li>(d) made, or proposes to make, a Development Application.</li> <li>(e) 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) No</li> <li>(b) Yes</li> <li>(c) Not applicable</li> </ul>
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	Lot 3 Deposited Plan 1213869 and Lot 954 DP1027535
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	No
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Does apply
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Does apply
<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 16.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 11, 12 and 13.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 19.

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## Schedule 2 – Defined Terms and Interpretation

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### Part 1 – Definitions

<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any:  <ol style="list-style-type: none"><li>(1) federal, state or local government;</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>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:  <ol style="list-style-type: none"><li>(1) Australia and New Zealand Banking Group Limited.</li><li>(2) Commonwealth Bank of Australia.</li><li>(3) Macquarie Bank.</li><li>(4) National Australia Bank Limited.</li><li>(5) St George Bank Limited.</li><li>(6) Westpac Banking Corporation.</li><li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li></ol>
<b>Claim</b>	means, 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>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.1.
<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></ol>

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	<ul style="list-style-type: none"> <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> </ul>
<b>Construction Certificate</b>	has the same meaning as in section 6.4(a) of the Act.
<b>Contributions</b>	means the Works, the Designated Land and the Monetary Contributions.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3, 4 and 5</b> in the column headed "contribution value" for each item of the Contributions as indexed in accordance with this document.
<b>Defect</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	means a period of 12 months from the registration of the plan of subdivision in connection with the Development.
<b>Designated Land</b>	means that part of the Land detailed in the plan that is attached as <b>Annexure 1</b> and as set out in <b>Schedule 3</b> .
<b>Development</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(1) the subdivision of existing Lot 3 in Deposited Plan 1213869 to create 57 residential lots and one residue lot;</li> <li>(2) demolition of all existing structures;</li> <li>(3) clearing of vegetation;</li> <li>(4) earthworks;</li> <li>(5) construction of an underground onsite detention basin;</li> <li>(6) construction of internal roads and cycleways; and</li> <li>(7) associated landscaping.</li> </ul>
<b>Development Application</b>	means DA No 1933/2022/DA-SW
<b>Development Consent</b>	means the consent issued under the Act in relation to the Development Application for the Development pursuant to Land & Environment Court Proceedings no 2022/00346358.
<b>Dispute</b>	has the meaning ascribed to it in clause 16.1.
<b>Encumbrance</b>	<p>means an interest or power:</p> <ul 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> </ul>

- (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

- (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**Encumber** means to grant an Encumbrance.

**Event of Default**

has the meaning ascribed to it in clause 17.2.

**GST Law**

means *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.

**Index**

means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.

**Item**

means each separate Contribution item specified in column 1 of **Schedule 3, Schedule 4 and Schedule 5**.

**Insolvency Event**

means the happening of any of the following events:

- (1) 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.
- (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 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



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	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.
<b>Land</b>	means the "Land" set out in <b>Schedule 1</b> .
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Location Plan</b>	means the plan that is attached as <b>Annexure 2</b> .
<b>Monetary Contributions</b>	means the monetary contributions set out in <b>Schedule 5</b> .
<b>Occupation Certificate</b>	has the same meaning as in section 6.4(c) of the Act.
<b>Planning Legislation</b>	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
<b>Quantity Surveyor</b>	means a person who: <ol style="list-style-type: none"> <li>(1) is a member of their respective professional organisation and has been for at least five (5) years;</li> <li>(2) practises as a quantity surveyor for works of the same nature as the relevant Works;</li> <li>(3) is active as a quantity surveyor at the time of his appointment;</li> <li>(4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and</li> <li>(5) undertakes to act fairly and promptly in accordance with the requirements of this document.</li> </ol>
<b>Rectification Notice</b>	has the meaning ascribed to it in clause 6.4.
<b>Security</b>	means a Bank Guarantee or other form of security to the satisfaction of Council provided in accordance with clause 13.
<b>Subdivision Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Subdivision Certificate</b> <b>Works</b>	has the same meaning as in section 6.4(b) of the Act.
<b>Tax Invoice</b>	has the same meaning as in a <i>New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> .

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**Works**

means the works specified or described in **Schedule 4**.

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**Part 2 - Interpretational Rules**

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**clauses, annexures and schedules**

a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.

**reference to statutes**

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.

**singular includes plural**

the singular includes the plural and vice versa.

**person**

the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.

**executors, administrators, successors**

a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

**dollars**

Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.

**calculation of time**

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.

**reference to a day**

a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.

**accounting terms**

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.

**reference to a group of persons**

a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

**meaning not limited**

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.

**next day**

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.

**next Business Day**

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.

**time of day**

time is a reference to Sydney time.

**headings**

headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.

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**agreement**

a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.

**Gender**

a reference to one gender extends and applies to the other and neuter gender.

### Schedule 3 – Designated Land

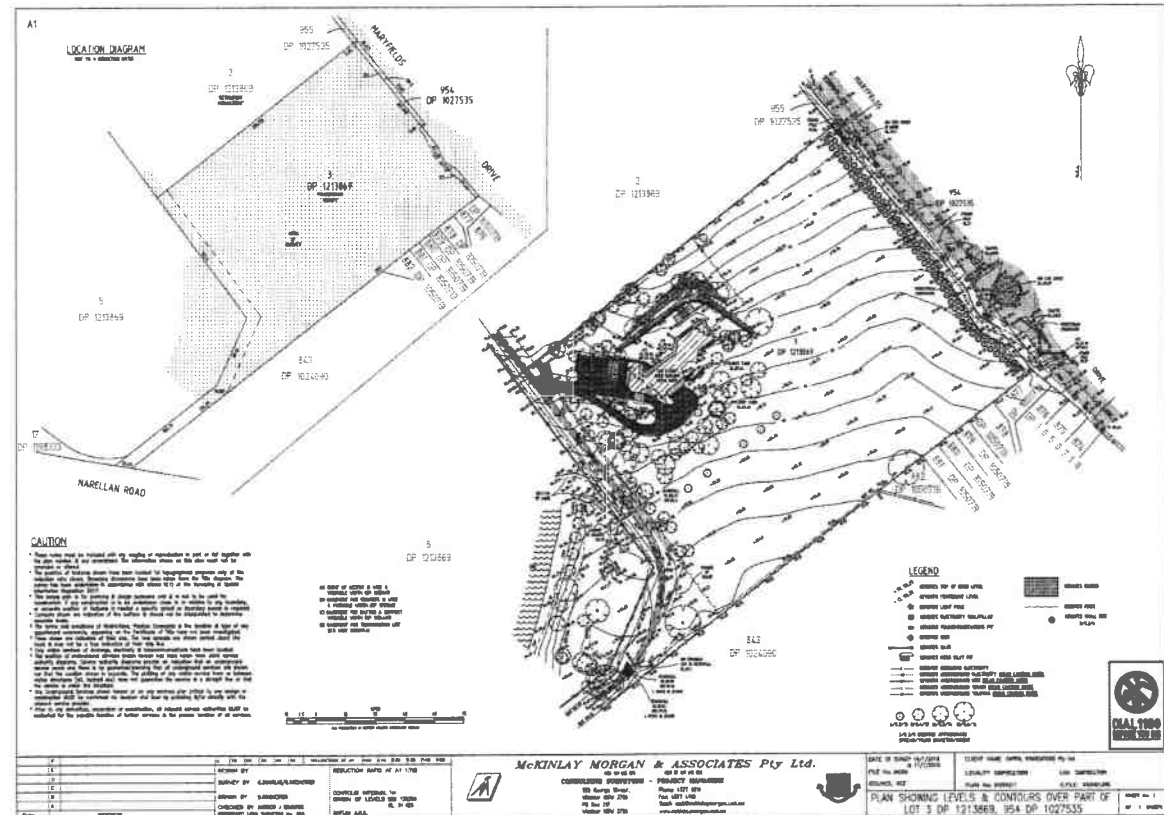
Item	Description	Time for Completion	Contribution Value
1	That part of the Designated Land identified as roads and associated footpaths and the onsite detention basin within the land identified as Lot 3 in Deposited Plan 1213869.	Upon registration of the plan of subdivision in connection with the Development.	Not Applicable
2	The whole of the Land identified as Lot 954 in Deposited Plan 1027535.	Simultaneously with (or prior to) the registration of the plan of subdivision in connection with the Development.	Not Applicable

## Schedule 4- Works

Item	Description	Specification	Time for Completion	Contribution Value
1	Construction of all roads and associated footpaths and Onsite Stormwater Detention Basin within the Land identified as Lot 3 in DP1213869 and as reflected in the Location Plan.	Road and drainage plan sheet 1 of 3 – 368-21C-DA-0101 Rev F, sheet 2 of 3 – 368-21C-DA-0102 Rev F, and sheet 3 of 3 – 368-21C-DA-0103 Rev F prepared by Craig and Rhodes.	Prior to issue of the first Subdivision Certificate in connection with the Development.	\$ 1,703,135.00
2	Construction of approximately 87 lineal metres of shared footpath on the Land identified as Lot 954 in Deposited Plan 1027535 and as reflected in the Location Plan.	Road and drainage plan sheet 1 of 3 – 368-21C-DA-0101 Rev F prepared by Craig and Rhodes.	Prior to issue of the first Subdivision Certificate in connection with the Development.	\$17,861.00

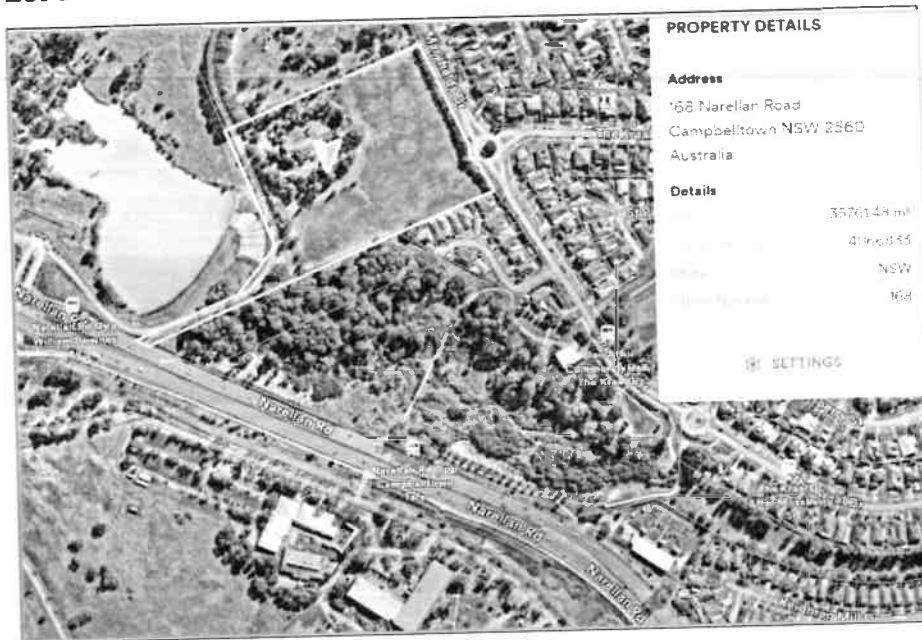
## Schedule 5 – Monetary Contributions

Item	Description	Timing	Contribution Value
1	<p>Loss of Koala Habitat calculated in accordance with the Campbelltown Koala Plan of Management being for:</p> <ol style="list-style-type: none"> <li>1. tree 10 Eucalyptus tereticornis;</li> <li>2. tree 13 Eucalyptus tereticornis.</li> <li>3. tree 54 Lophostemon confertus;</li> <li>4. tree 61 Lophostemon confertus;</li> <li>5. tree 75 Eucalyptus tereticornis;</li> </ol>	Prior to the issue of the first Subdivision Certificate for the Development.	\$44,578.56
2	Ongoing maintenance of Onsite Stormwater Detention Basin by Council, including replacement of cartridges as and when required within Lot 3 Deposited Plan 1213869.	Prior to the issue of the first Subdivision Certificate for the Development.	\$300,000.00



## Annexure 2 – Location Plan

### Lot 3



### Lot 954





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## Execution page

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**Executed as an agreement.**

Dated: 27 May 2025

**Executed by Campbelltown City Council** by its Chief Executive Officer by the affixing of the Common Seal of Council in accordance with resolution dated

  
\_\_\_\_\_  
Chief Executive Officer (Signature)

LINDY DEITZ  
\_\_\_\_\_  
Name of Chief Executive Officer (Print Name)

**Executed by Franciscan Order of Friars Minor** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

  
\_\_\_\_\_  
Director/Secretary (Signature)

PHILIP ANTHONY MISCAMBLE  
\_\_\_\_\_  
Name of Director/ Secretary (Print Name)

  
\_\_\_\_\_  
Director (Signature)

SHU WING CHAN  
\_\_\_\_\_  
Name of Director (Print Name)