

Deed

Biodiversity Land Dedication
Billabong Parade & 7 Caldera Street, Chisholm

Planning Agreement

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

Maitland City Council

AVID Residential Estates Pty Ltd

**Biodiversity Land Dedication – Billabong Parade & 7 Caldera Street,
Chisholm**

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Chisholm****Maitland City Council****AVID Residential Estates Pty Ltd****Regulatory Compliance Tables****Table 1 – Provisions of Act**

Act Provision	Requirement	Compliance
S.7.4(1)	'Planning Authority'	Council
	'Developer'	Developer
	Person associated with Developer	N/A
	Development Application / Modification Application	See definitions of ' <i>Development Application</i> ' and ' <i>Modification Application</i> ' in clause 1.1 and Item 4.a of the VPA Particulars
	Development Contributions	See Part 2 and Development Contributions Table
S.7.4(1), (2)	Public Purpose	See Column 2 of the Development Contributions Table
S.7.4(3)(a)	Land	See Definition of ' <i>Land</i> ' in clause 1.1 and Item 1 of the VPA Particulars
S.7.4(3)(b)(i)	Instrument Change	N/A
S.7.4(3)(b)(ii)	Development	See definition of ' <i>Development</i> ' in clause 1.1 and Item 2 of the VPA Particulars
S.7.4(3)(c)	Details of Developer's Provision	See Development Contributions Table
S.7.4(3)(d)	Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development	See clauses 8.1, 8.3 and 8.3 and Item 7.a, 7.c and 7.d of the VPA Particulars
S.7.4(3)(e)	Whether benefits under Deed are or are not to be taken into consideration in determining a Development	See clause 8.2 and Item 7.b of the VPA Particulars

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	Contribution under s7.11	
S.7.4(3)(f)	Mechanism for the Resolution of Disputes	See Part 3
S.7.4(3)(g)	Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer	See Part 4 and Items 15–18 of the VPA Particulars
S.7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S.7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S.7.6	Registration	See clause 21
S.6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	Yes, see clauses 11 and 17.

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Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Environmental Planning and Assessment Regulation 2021		
S.203(1)	Form & Subject-Matter	Yes
S.203(7)	Secretary's Practice Note	Yes
S.204	Public Notice & Public Inspection of Draft Agreement	Yes
S.205	Explanatory Note	See Appendix
Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021		
Ss.21, 34	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate or subdivision works certificate for the work is issued?	N/A

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Parties

Council	Maitland City Council ABN 11 596 310 805 of PO Box 220 Maitland NSW
Developer	Avid Residential Estates Pty Ltd ABN 96 054 228 929 of Level 5, 7 Macquarie Place, Sydney NSW 2000

Background

- A The Developer owns the Land.
- B The Developer has lodged DA/2023/497 with the Council seeking consent under the Act to carry out the subdivision of land into 281 residential lots in three stages and one residue lot at, 7 Caldera Street, 29 Stillwater Parade, 40 Goldring Street, 3 Caldera Street, 18 Darkmouth Street, 16 Darkmouth Street, 9 Rockmaster Street, Emperor Parade, and 261 Settlers Boulevard, Chisholm.
- C The Developer has offered to dedicate to Council the BMP Land free of cost to the Council to ensure the completion of the BMP Works and the VMP Works in connection with the Development, and to provide security to the Council to secure the completion of any outstanding BMP Works and VMP Works, as set out in this Deed.
- D The Parties wish to enter into this Deed to give effect to the offer made by the Developer.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

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Column 1	Column 2
Word or phrase	Meaning
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Applicable Contributions Plan	means the contributions plan (within the meaning of the Act) specified in Item 6 of the VPA Particulars as amended or substituted from time to time.
Applicable Development Consent	means the development consent specified or described in Item 5 of the VPA Particulars or granted in respect of the Development.
Approval	includes approval, consent, licence, permission or the like.
Approved Person	means a person reasonably approved by the Council to undertake construction, supervision, inspection, testing or certification of the BMP Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.
Authority	means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
BMP Land	means the land specified or described in Item 1.a of the VPA Particulars.
BMP / VMP Site Location Map	means the map appearing in Schedule 2 of this Deed.
BMP	means the Biodiversity Works Management Plan required to be prepared and approved pursuant to the Applicable Development Consent.
BMP Works	means the works, activities and other obligations on and with respect to the biodiversity management of the BMP Land set out in the BMP.

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BMP Works Commencement Notice	means a notice in writing given by the Developer to the Council specifying a date, not sooner than 7 days from the date of the notice, on which the Developer intends to commence the BMP Works.
BMP Works Completion Certificate	means a certificate in writing issued by the Council to the Developer stating that, in the Council's opinion, the BMP Works have been completed and maintained by the Developer in accordance with the BMP and any Defects in those works have been Rectified to the Council's reasonable satisfaction.
BMP Works Security	means a Bank Guarantee, Bond or cash deposit in an amount specified in Item 15.a of the VPA Particulars indexed in accordance with Item Error! Reference source not found. of the VPA Particulars.
Background Intellectual Property	means Intellectual Property that: (a) relates to the BMP Works and VMP Works, (b) exists at the date of this Deed or is later created but not as a result of performing this Deed, (c) does not belong to a third party.
Bank Guarantee	means an irrevocable and unconditional undertaking to be returned in accordance with clause 17.8 and 17.9 in favour of the Council to pay an amount or amounts of money to the Council on demand and includes an adequate description of the development to which it relates and the work or action being secured issued by: (a) one of the following trading banks: (i) Australia and New Zealand Banking Group Limited, (ii) Commonwealth Bank of Australia, (iii) Macquarie Bank Limited, (iv) National Australia Bank Limited, (v) St George Bank Limited, (vi) Westpac Banking Corporation, or (b) any other financial institution approved by the Council in its absolute discretion.
Bond	means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an

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Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.

Claim

includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Clearance Certificate

means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Confidential Information

means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential,
- (b) has been designated as confidential by the giver of the information acting reasonably,
- (c) is capable of protection at common law or equity as confidential information, or
- (d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above,

but does not include information that:

- (e) is in the public domain, or was known to the recipient of the information at the time of disclosure other than through breach of this Agreement,
- (f) is independently known or developed by the recipient of the information, or
- (g) is required by Law to be disclosed.

Construction Certificate

has the same meaning as in the Act.

Construction Contract

means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer.

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Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
CPI	means the ' <i>Consumer Price Index – Sydney All Groups</i> ' published by the Australian Bureau of Statistics.
Deed	means this Deed and includes any schedules, annexures and appendices to this Deed.
Defect	means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.
Defects Liability Period	means, in relation to the whole or any specified part of the BMP Works or the VMP Works, the period specified in Item 13 of the VPA Particulars.
Development	means the development specified or described in Item 2 of the VPA Particulars.
Development Application	means the development application within the meaning of the Act specified or described in Item 4.a of the VPA Particulars.
Development Contribution	means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them.
Development Staging Plan	means Drawing Reference Number. 190433(JENSEN)-DA-120) submitted with the Development Application as approved (with or without amendments) by the Applicable Development Consent.
Dispute	means a dispute or difference between the Parties under or in relation to this Deed.
ELNO	has the meaning given to that term in the Participation Rules.
Equipment	means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.
Final Stage	means Stage 83 of the Development shown on the Development Staging Plan.

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Force Majeure Event	means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.
Foreign Resident Capital Gains Withholding Amount	mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> .
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST.
Insurances	means the insurances specified in Item 19 of the VPA Particulars and such other insurances required by law in relation to the BMP Works.
Intellectual Property	means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.
Item	means a numbered item appearing in the VPA Particulars or the Development Contributions Table.
Just Terms Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991 (NSW)</i> .
Land	Means the land the subject of the Applicable Development Consent being: • Lot 2 DP1295677, • Lot 6121 DP1268036, • Lot 6140 DP1284398, • Lot 3001 DP1264314, • Lot 2726 DP1237666, • Lot 2531 DP1224018, • Lot 2425 DP1224017, • Lot 4 DP1222785, and • proposed Lots 6284 to 6131 of DP1268036, otherwise known as 7 Caldera Street, 29 Stillwater Parade, 40 Goldring Street, 3 & 7 Caldera Street,

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18 Darkmouth Street, 16 Darkmouth Street, 9
Rockmaster Street, Emperor Parade, Billabong
Parade and 261 Settlers Boulevard, Chisholm

N/A

means Not Applicable

Participation Rules

means the participation rules as determined by the
Electronic Conveyancing National Law as set out
in the *Electronic Conveyancing (Adoption of
National Law) Act 2012* (NSW).

Party

means a party to this Deed.

PEXA

means Property Exchange Australia Ltd.

Principal Contractor

means the Person defined in as the Principal
Contractor under the *Work Health and Safety Act
2011* (NSW) or *Work Health and Safety
Regulation 2011* (NSW) or an equivalent under
Commonwealth work health and safety laws.

Rectify

means rectify, remedy or correct.

Regulation

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

**Section 7.11
Contribution**

means a monetary contribution payable to the
Council under s7.11 of the Act pursuant to the
Applicable Development Consent.

Subdivision Certificate

has the same meaning as in the Act.

Technical Data

means all technical know-how and information in
material form, including manuals, designs,
standards, specifications, reports, models, plans,
drawings, calculations, software, source code and
test results.

**Third Party Intellectual
Property**

means Intellectual Property relating to the BMP
Works and VMP Works that is owned by a person
other than the Council or the Developer.

VPA Particulars

means the information contained in Schedule 1.

VMP

means the Vegetation Management Plan required
to be prepared and approved pursuant to the
Applicable Development Consent.

VMP Land

means the land specified or described in Item 1.b
of the VPA Particulars.

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VMP Works	means the works, activities and other obligations on and with respect to the vegetation management of the VMP Land set out in the VMP.
VMP Works Commencement Notice	means a notice in writing given by the Developer to the Council specifying a date, not sooner than 7 days from the date of the notice, on which the Developer intends to commence the VMP Works.
VMP Works Completion Certificate	means a certificate in writing issued by the Council to the Developer stating that, in the Council's opinion, the VMP Works have been completed and maintained by the Developer in accordance with the VMP and any Defects in those works have been Rectified to the Council's reasonable satisfaction.
VMP Works Security	means a Bank Guarantee, Bond or cash deposit in an amount specified in Item 15.b of the VPA Particulars indexed in accordance with Item 15.c of the VPA Particulars.
WHS	means work health and safety.
WHS Law	means the <i>Work Health and Safety Act 2011</i> (NSW) and <i>Work Health and Safety Regulation 2011</i> (NSW).
Work	means the physical result of carrying out work in, on, over or under land.

Interpretation

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday or a public holiday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and

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any subordinate legislation or regulations issued under that legislation or legislative provision.

- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Deed.
- 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

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4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.
- 4.2 The Developer acknowledges and agrees that the Applicable Development Consent may be granted subject to a condition requiring this VPA to be complied with in connection with the carrying out of the Development and the Developer is not to object to, or seek a review of, of or appeal against the imposition of such a condition.

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 & Subdivision 4, Division 7.1 of the Act

Section 7.11 of the Act

- 8.1 Item 7.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 8.2 If Item 7.a of the VPA Particulars states that this Deed does not wholly exclude the application of section 7.11 of the Act to the Development, Item 7.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

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Section 7.12 of the Act

- 8.3 Item 7.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.

Subdivision 4 of Division 7.1 of the Act

- 8.4 Item 7.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of Subdivision 4 of Division 7.1 of the Act to the Development.

Part 2 – Development Contributions

9 [Not Used]

10 [Not Used]

11 Dedication of BMP Land

Requirement to dedicate BMP Land

- 11.1 The Developer is to dedicate the BMP Land to the Council as an *existing lot* in a *current plan* (within the meaning of the *Conveyancing Act 1919* (NSW)) free of any Cost to the Council as part of, or in conjunction with, the registration of a plan of subdivision authorised by a Subdivision Certificate for the Final Stage of the Development.

Use by Council of dedicated BMP Land

- 11.2 The Council is to apply the BMP Land dedicated to it under clause 11.1 for the public purpose of the vegetation management of the BMP Land in accordance with this Deed.

When dedication of BMP Land is made

- 11.3 The BMP Land is dedicated to the Council for the purposes of this Deed when:
- 11.3.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the BMP Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the BMP Land, and
- 11.3.2 one of the following (as applicable) has occurred:

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- (a) a deposited plan is registered in the register of plans maintained by the Registrar-General that dedicates the BMP Land as a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
- (b) the Council is given evidence that a transfer of the BMP Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Developer to facilitate dedication of BMP Land

- 11.4 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer of the BMP Land to Council to occur.

BMP Land to be dedicated free of encumbrances

- 11.5 The Developer is to ensure that the BMP Land is dedicated to the Council free of all encumbrances and affectations (whether registered or unregistered other than those appearing on the title to the BMP Land or otherwise notified in writing by the Developer to Council before this Deed is entered into and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.6 Without limiting clause 11.5, the Developer is to ensure that registered Mortgage AT362854 is removed from the folio of the register maintained under the *Real Property Act 1900* (NSW) for the BMP Land (to the extent to which it encumbers the title to such land) on or before the dedication of such land to the Council.

Developer to bear Cost of dedication of BMP Land

- 11.7 The Developer is responsible for meeting all of the Council's Costs of and incidental to the dedication of the BMP Land to the Council as notified in writing by the Council to the Developer.

No Dispute

- 11.8 Clauses 15 and 16 of this Deed do not apply to a notice issued by the Council to the Developer under clause 11.7 or to the amount of Costs specified in the notice.

Caveat by Council

- 11.9 The Developer acknowledges that the Council has an equitable estate or interest in the BMP Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.
- 11.10 Council agrees to remove any registered caveat referred to in clause 11.9 after this Deed has been registered on title to the BMP Land.

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12 BMP Works & VMP Works

Developer to undertake BMP Works & VMP Works

- 12.1 The Developer is to:
- 12.1.1 undertake and maintain the BMP Works on the BMP Land for a period of seven (7) years, starting from the date of the commencement of the BMP Works, and
 - 12.1.2 undertake and maintain the VMP Works on the VMP Land for a period of seven (7) years, or until regeneration targets are met, whichever is greater, starting from the date of the commencement of the VMP Works.

Grant of licence

- 12.2 The Council hereby grants to the Developer a non-exclusive licence to enter the BMP Land following its dedication to Council in accordance with this Deed for the purpose of undertaking the BMP Works and VMP Works, respectively, and otherwise complying with its obligations under this Deed.

When BMP Works & VMP Works commence

- 12.3 The Developer is to commence:
- 12.3.1 the BMP Works prior to any clearing works occurring on the Land, or if the conditions of Applicable Development Consent specify a different time for commencement of the BMP Works then the Developer must commence those works by the time required in the Applicable Development Consent.
 - 12.3.2 the VMP Works prior to any clearing works occurring on the Land, or if the conditions of Applicable Development Consent specify a different time for commencement of the VMP Works then the Developer must commence those works by the time required in the Applicable Development Consent.

BMP Works and VMP Works to be undertaken in accordance with BMP and VMP

- 12.4 The Developer is to undertake the BMP Works strictly in accordance with the BMP and the VMP Works strictly in accordance with the VMP, subject to any written agreement with Council to the contrary.

Developer to bear cost of BMP Works and VMP Works

- 12.5 The Developer is to bear the full cost of undertaking the BMP Works and the VMP Works.

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13 Application of Schedule 3 to BMP Works & VMP Works

- 13.1 *Schedule 3 – BMP Works & VMP Works Provisions* have effect in relation to the BMP Works and the VMP Works required to be undertaken by the Developer under this Deed.

14 [Not Used]

Part 3 – Dispute Resolution

15 Dispute Resolution – mediation

Application of clause

- 15.1 This clause 15 applies to any Dispute arising in connection with this Deed other than a dispute to which clause 16 applies.

When Dispute arises

- 15.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 15.3 If a notice is given under clause 15.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

- 15.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.

Exercise of legal rights

- 15.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

Costs

- 15.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.

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- 15.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

16 Dispute resolution – expert determination

Application of clause

- 16.1 This clause 16 applies to a Dispute arising in connection with this Deed if:
- 16.1.1 the Parties agree that the Dispute can be appropriately determined by expert determination, or
 - 16.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

- 16.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

- 16.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

Expert determination binding

- 16.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

Costs of Parties

- 16.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.

Costs of Expert

- 16.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

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Part 4 - Enforcement

17 Security for Performance of BMP Works & VMP Works

Application of this clause

- 17.1 This clause 17 applies to and in respect of:
- 17.1.1 the BMP Works and the BMP Works Security as detailed in Item 15.a of the VPA Particulars, and
 - 17.1.2 the VMP Works and the VMP Works Security as detailed in Item 15.b of the VPA Particulars.

Determination of estimated cost of BMP Works and VMP Works

- 17.2 For the purposes of Item 15.a and Item 15.b of the VPA Particulars, the estimated cost of the BMP Works and the VMP Works that are incomplete immediately before the issuing of a Subdivision Works Certificate for the Final Stage of the Development is to be determined as follows:
- 17.2.1 immediately before the Developer makes an application for the issuing of a Subdivision Works Certificate for the Final Stage of the Development, the Developer, at its cost, is to submit to the Council a written opinion of the estimated cost from a registered quantity surveyor of the BMP Works and the VMP Works that are incomplete at that time,
 - 17.2.2 the Council, acting reasonably and in good faith, is to consider the written opinion submitted to by the Developer under clause 17.2.1, and is to inform the Developer by written notice whether it accepts the opinion as being the estimated cost of the uncompleted BMP Works and the uncompleted VMP Works for the purposes of Item 15.a and 15.b of the VPA Particulars and this clause 17,
 - 17.2.3 if the Council informs the Developer that it does not accept the opinion submitted under clause 17.2.1, the Developer, at its cost, is to submit to the Council a second written opinion of the estimated costs from another registered quantity surveyor and the average of the two opinions is to be accepted as the estimated cost of the uncompleted BMP Works and the uncompleted VMP Works for the purposes of Item 15.a and 15.b of the VPA Particulars and this clause 17.

17.3 N/A

Provision of BMP Works and VMP Works Security

- 17.4 The Developer is to provide the BMP Works Security and VMP Works Security to the Council within twenty (20) days of receiving the written notice from the Council relating to the relevant security under clause 17.2.2.

Purpose of BMP Works Security and VMP Works Security

- 17.5 The Council is to hold:

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17.5.1 the BMP Works Security as security for the Developer performing its obligations under this Deed relating to the BMP Works, and

17.5.2 the VMP Works Security as security for the Developer performing its obligations under this Deed relating to the VMP Works, respectively.

17.6 [Not Used]

Call-up of BMP Works Security and VMP Works Security

17.7 Subject to clause 19.2, if the Developer breaches any its obligations under this Deed relating to the purpose of the BMP Works Security and VMP Works Security or if there is a Defect in the BMP Works or the VMP Works, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, call-up the BMP Works Security or VMP Works Security (as the case requires) and apply it to remedy the Developer's breach or Rectify the Defect (as the case requires) and towards the Council's Costs specified in clause 19.5 of so doing.

Release & return of BMP Works Security and VMP Works Security

17.8 Subject to clause 17.9, the Council is to release and return the BMP Works Security and the VMP Works Security or any unused part of them to the Developer within 14 days of having issued to the Developer a BMP Works Completion Certificate or a VMP Works Completion Certificate (as the case may be).

17.9 Clause 17.8 does not prevent the Parties entering into a written agreement providing for the progressive release of the BMP Works Security or VMP Works Security upon completion of particular BMP Works or the VMP Works to the Council's reasonable satisfaction as specified in the agreement.

Replacement BMP Works Security and VMP Works Security

17.10 The Developer may provide the Council with a replacement BMP Works Security or VMP Works Security at any time but not more frequent than once every 2 years.

17.11 The amount of the replacement BMP Works Security or VMP Works Security (as the case may be) is to be calculated in the following manner:

17.11.1 if the Developer wishes to replace the BMP Works Security or the VMP Works Security, the Developer is to notify the Council in writing as such,

17.11.2 within 7 days of receiving the Developer's written notice in clause 17.11.1, the Council is to undertake an audit and inspection of the BMP Works or VMP Works (as the case may be),

17.11.3 clauses 29 – 32 of Schedule 4 applies to the audit and inspection referred to in clause 17.11.2,

17.11.4 if the Council is satisfied that the BMP Works or VMP Works (as the case may be) have been carried out to the standard required in the BMP or VMP (as the case may be) the Council is to give the Developer written notice as such,

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- 17.11.5 upon receiving the Council's notice referred to in 17.11.4 the parties are to re-determine the estimated cost of the BMP Works or the VMP Works (as the case may be) that are incomplete in accordance with clause 17.2,
- 17.11.6 the amount of the replacement BMP Works Security or VMP Works Security (as the case may be) is 120% of the estimated cost of the BMP Works or VMP Works (as the case may be) that are incomplete as subsequently re-determined in accordance with this clause 17.11 and clause 17.2.
- 17.12 On receipt of a replacement BMP Works Security or VMP Works Security, the Council is to release and return the replaced BMP Works Security or VMP Works Security (as the case may be) to the Developer.
- 17.13 If the Council calls-up the BMP Works Security or VMP Works Security or any portion of them in accordance with clause 17.7, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement BMP Works Security or VMP Works Security to ensure that the amount of BMP Works Security or VMP Works Security held by the Council equals the amount the Council is entitled to hold under this Deed.

Replacement BMP Works Security and VMP Works Security upon sale of BMP Land, assignment or novation

- 17.14 Upon receipt by Council of a replacement security provided by a purchaser, transferee, assignee or novate pursuant to clause 22.1.5, the Developer's security will be released and returned to the Developer within 7 days.

18 Acquisition of Dedication Land

Compulsory acquisition of BMP Land

- 18.1 Subject to clause 19.2, if the Developer does not dedicate the BMP Land at the time at which it is required to be dedicated under this Deed, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 18.2 The Council is to only acquire land pursuant to clause 18.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the BMP Land required to be dedicated under this Deed.

Pre-acquisition agreement

- 18.3 Clause 18.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

Re-imbursement of Council for third party compensation

- 18.4 If, as a result of the acquisition referred to in clause 18.1, the Council is required to pay compensation to any person other than the Developer, the

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Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on the BMP Works Security or VMP Works Security, or both, for that purpose.

Indemnity

- 18.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the BMP Land except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 18.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 18, including without limitation:
- 18.6.1 signing any documents or forms,
 - 18.6.2 giving land owner's consent for lodgement of any Development Application,
 - 18.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - 18.6.4 paying the Council's reasonable Costs arising under this clause 18.

19 Breach of obligations

Notice of breach

- 19.1 If the Council reasonably considers that the Developer is in breach of its obligations under this Deed in relation to the BMP Works or the VMP works or that there is a Defect in the BMP Works or the VMP Works, it may give a written notice to the Developer within 7 days of becoming aware of the breach or the Defect:
- 19.1.1 specifying the nature and extent of the breach or the Defect,
 - 19.1.2 requiring the Developer to:
 - (a) remedy the breach, or
 - (b) Rectify the Defect if it reasonably considers it is capable of Rectification,
 - 19.1.3 specifying the period within which the breach is to be remedied or the Defect Rectified, being a period that is reasonable in the circumstances.

Notice of breach pre-requisite to exercise of rights

- 19.2 The Council may not exercise its rights under clause 17.7 or 18.1 unless it has first given the Developer a notice under clause 19.1 and the Developer has failed to comply with the Notice.

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Step-in right relating to BMP Works & VMP Works

- 19.3 If the Developer fails to comply with a notice given under clause 19.1 relating to the provision of BMP Works or the VMP Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment, to the extent the Equipment is owned by the Developer, on such land for that purpose.

Recovery of Costs by Council as debt due

- 19.4 Despite any other provision of this Deed, subject to Council giving the Developer a notice under clause 19.1 and the Developer failing to comply with the Notice, any Costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 19.5 For the purpose of clause 19.4, the Council's Costs of remedying a breach the subject of a notice given under clause 19.1 include, but are not limited to:
- 19.5.1 the Costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 19.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 19.5.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 19.6 Nothing in this clause 19 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

20 Enforcement in a court of competent jurisdiction

- 20.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 20.2 For the avoidance of doubt, nothing in this Deed prevents:
- 20.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 20.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

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Part 5 – Registration & Restriction on Dealings

21 Registration of this Deed

Application of clause

- 21.1 This clause 21 applies if Item 18 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

- 21.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:
- 21.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
 - 21.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.
- 21.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

- 21.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 21.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 21.4.2 in relation to any other part of the Land:
 - (a) once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council,
 - (b) if agreed by Council in its absolute discretion in writing that the Developer has provided an alternative form of security to Council's satisfaction, or
 - (c) if this Deed is terminated or otherwise comes to an end for any other reason.

22 Restriction on dealings

Restriction

- 22.1A This clause does not apply to the following events if, at the time the event occurs, this Deed is registered pursuant to clause 21:

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22.1A.1 the Developer selling or transferring the BMP Land where the disposal or transfer occurs as part of a larger transaction, or is otherwise interdependent with the settlement of other disposals or transfers; or

22.1A.2 a change in control occurring in respect of the Developer, which includes any of the following occurring:

- (a) the corporate restructure of the Developer;
- (b) a change in the beneficial ownership of the issued share capital of the Developer;
- (c) any change in the composition of the board of directors of the Developer;
- (d) any change in control of the Developer; or
- (e) its holding company or ultimate holding company listing on the Australian Stock Exchange.

22.1 The Developer is not to:

22.1.1 sell or transfer the BMP Land, or

22.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

22.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the relevant land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council and the Developer, and

22.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

22.1.5 the purchaser, transferee, assignee or novatee provides the Council with Security to replace any Security provided by the Developer under this Deed, and

22.1.6 the Developer is not in breach of this Deed, and

22.1.7 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

22.2 Subject to clause 22.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 0.

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Exclusion from restriction

- 22.3 Clause 0 does not apply in relation to any sale or transfer of the BMP Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

23 Risk

- 23.1 The Developer performs this Deed at its own risk and its own cost.

24 Release

- 24.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

25 Indemnity

- 25.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council, as a result of death or injury to any person or loss of or damage to the property as a consequence of the breach of this Deed by the Developer, and the enforcement or preservation of any rights of the Council under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 25.2 The Developer also agrees to keep the Council indemnified from and against all Claims incurred by the Council in respect of or arising from, for so long as the Developer is in occupation or control of the BMP Land or any part of the BMP Land (in which case this clause applies to that part):
- 25.2.1 any faulty plant, equipment, fittings or fixtures of the Developer;
 - 25.2.2 any damage to property or person caused or contributed to by the use of the BMP Land by the Developer;
 - 25.2.3 any damage to the BMP Land occasioned or contributed to by any negligent act or omission, default or misconduct by the Developer;
 - 25.2.4 any injury, loss or damage of any kind to any property real or persona, where the injury, loss or damage arises out of or in the course of or is caused by the execution of the BMP Works,
- except if, and to the extent that, the Claim arises because of the Council's negligence or default.

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26 Insurance

Requirement for Developer insurances

- 26.1 The Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the BMP Works and the VMP works until they are completed in accordance with this Deed.

Failure to comply with requirement

- 26.2 If the Developer fails to comply with clause 26.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 26.2.1 by calling upon the BMP Works Security and VMP Works Security provided by the Developer to the Council under this Deed, or
 - 26.2.2 recovery as a debt due in a court of competent jurisdiction.
- 26.3 The Developer is not to commence to provide any BMP Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 26.1.

Part 7 – Other Provisions

27 Annual report by Developer

Requirement for Developer to provide report

- 27.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed commences a report ('**Annual Performance Report**') detailing the performance of its obligations under this Deed in the previous 12 month period ('**Reporting Period**').

Form and content of report

- 27.2 The Annual Performance Report is to be in such a form and to address such matters as is reasonably required by the Council from time to time but must at a minimum detail the following:
- 27.2.1 all Approved Persons during the Reporting Period and any changes to Approved Persons during that period,
 - 27.2.2 all Development Contributions made by the Developer pursuant to this Deed during the Reporting Period and the dates on which the contributions were made,
 - 27.2.3 all Development Contributions due to be made by the Developer pursuant to this Deed in the next 12 month period,

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- 27.2.4 all Developers Works that had been commenced prior to the Reporting Period or were commenced during the Reporting Period but were not completed in that period,
- 27.2.5 all Developers Works due to be commenced or completed within the next 12 month period,
- 27.2.6 the BMP Works Security and VMP Works Security provided by the Developer to the Council under this Deed and held by the Council during the Reporting Period and the current value of each such Security.

Strict requirement

- 27.3 The Developer acknowledges and agrees that the provision of the Annual Performance Report each year in accordance with this clause 27 is a strict requirement of this Deed.

28 Review of Deed

Obligation to review Deed

- 28.1 The Parties agree to review this Deed if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

Review triggers

- 28.2 For the purposes of clause 28.1 the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

Duty of Parties

- 28.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 28.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

- 28.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

No Dispute

- 28.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 28.1 (but not 28.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

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29 Confidentiality

Confidentiality Obligations

- 29.1 Each party must keep confidential and must not publicly announce or disclose Confidential Information.
- 29.2 In particular, any party receiving Confidential Information must:
 - 29.2.1 treat the information as it would its own confidential material,
 - 29.2.2 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,
 - 29.2.3 ensure that only authorised persons have access to the information and that it is stored safely and securely.

Breach of confidentiality

- 29.3 The Parties must immediately notify each other if they become aware of a breach of Confidential Information relating to the subject-matter of this Deed.

Exceptions to confidentiality obligation

- 29.4 The confidentiality obligations contained in this Deed do not apply if a disclosure of Confidential Information is required:
 - 29.4.1 by law,
 - 29.4.2 by the Listing Rules of the Australian Securities Exchange Limited,
 - 29.4.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under the Works-in-Kind Deed,
 - 29.4.4 under this Deed,but only if, before the Party discloses any confidential information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

Survival of confidentiality obligations

- 29.5 The confidentiality obligations contained in this Deed survive this Deed unless otherwise agreed in writing between the Parties.

30 Ownership of Intellectual Property

Certain rights not affected by Deed

- 30.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.

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Ownership of Intellectual Property relating to BMP Works & VMP Works

- 30.2 The Council owns all Intellectual Property relating to the BMP Works and the VMP Works that does not belong to a person other than the Council or the Developer.

Licence by Developer

- 30.3 To the extent the Developer is legally capable, the Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:
- 30.3.1 using, maintaining and disposing of the BMP Works or the VMP Works or support systems,
 - 30.3.2 modifying and developing the BMP Works or the VMP Works and support systems, linked works or associated infrastructure,
 - 30.3.3 completing the BMP Works or the VMP Works on termination of this Deed,
 - 30.3.4 Rectifying Defects relating to the BMP Works or the VMP Works.
- 30.4 The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the BMP Works and the VMP Works.
- 30.5 The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.

31 Technical Data

- 31.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the BMP Works and the VMP Works.
- 31.2 The Council may provide Technical Data to any person for a purpose relating to the BMP Works or the VMP Works.

32 Moral rights

- 32.1 The Developer is not to enforce any moral rights against the Council relating to the BMP Works or the VMP Works.
- 32.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the BMP Works or the VMP Works.

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33 Force Majeure

Notification

- 33.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 33.1.1 full details of the event,
 - 33.1.2 an estimate of its duration,
 - 33.1.3 the obligations under this Deed it affects and how much it will affect them,
 - 33.1.4 the steps either taken or planned to manage its effects.

Suspension of obligations

- 33.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- 33.3 A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

34 Notices

- 34.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 34.1.1 delivered or posted to that Party at its address set out in Item 20 or 21 of the VPA Particulars, or
 - 34.1.2 emailed to that Party at its email address set out in Item 20 or 21 of the VPA Particulars.
- 34.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 34.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 34.3.1 delivered, when it is left at the relevant address,
 - 34.3.2 sent by post, 2 business days after it is posted, or
 - 34.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 34.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

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35 Approvals and Consent

- 35.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 35.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

36 Costs of this Deed

Costs of Deed

- 36.1 The Developer is to pay to the Council the Council's Costs not exceeding \$25,000.00 (GST Inc.) in relation to preparing, negotiating, publicly notifying and exhibiting, executing, amending, registering, and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

No Dispute

- 36.2 Clauses 15 and 16 of this Deed do not apply to a demand issued by the Council to the Developer under clause 36.1 or to the amount of Costs specified in the notice.

Enforcement Costs

- 36.3 The Council may serve a notice in writing on the Developer ('**Enforcement Cost Notice**') requiring the Developer to pay all or any reasonable Costs and expenses incurred by the Council in connection with:
 - 36.3.1 investigating a non-compliance by the Developer with this Deed, and
 - 36.3.2 enforcing compliance by the Developer with this Deed.
- 36.4 For the avoidance of doubt, the Costs and expenses referred to in clause 36.3 may include the Costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 36.5 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.
- 36.6 The Council may recover any unpaid Costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 36.7 Part 3 of this Deed does not apply to anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 36.

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37 Entire Deed

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

38 Further Acts

- 38.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

39 Governing Law and Jurisdiction

- 39.1 This Deed is governed by the law of New South Wales.
- 39.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 39.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

40 Joint and Individual Liability and Benefits

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

41 No Fetter

- 41.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

42 Illegality

- 42.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

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43 Severability

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

44 Amendment

- 44.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

45 Waiver

- 45.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 45.2 A waiver by a Party is only effective if it:
 - 45.2.1 is in writing,
 - 45.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 45.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 45.2.4 is signed and dated by the Party giving the waiver.
- 45.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 45.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 45.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

46 GST

- 46.1 In this clause:
Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

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GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 46.2 Subject to clause 46.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 46.3 Clause 46.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 46.4 No additional amount shall be payable by the Council under clause 46.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 46.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
 - 46.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 46.5.2 that any amounts payable by the Parties in accordance with clause 46.2 (as limited by clause 46.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 46.6 No payment of any amount pursuant to this clause 46, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 46.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 46.8 This clause continues to apply after expiration or termination of this Deed.

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47 Explanatory Note

- 47.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 47.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

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Schedule 1: VPA Particulars

(Clause 1.1)

Item	Details
1. BMP & VMP Land: a. BMP Land b. VMP Land	Land being the part of Lot 4 in DP 1222785 and the part of Lot 2 DP 1295677 distinctively shown as BMP Land on the BMP / VMP Site Location Map or as otherwise agreed in writing between the parties. Land being the part of Lot 4 DP 1222785 and the part of Lot 2 DP 1295677 distinctively shown as VMP Land on the BMP/ VMP Site Location Map or as otherwise agreed in writing between the parties.
2. Development	The development the subject of the Development Application being the subdivision of the land to which the Development Application Applies into 281 residential lots and 1 residue lot in 3 Stages.
3. [Not Used]	N/A
4. Application: a. Development Application b. [Not Used]	Development Application 2023/497 made by the Developer and lodged with the Council on 5 June 2023 and the subject of Land and Environment Court Proceedings No. 2024/00089901 at the time this Deed is entered into. N/A
5. Applicable Development Consent	The development consent granted under the Act to the Development Application as modified, substituted or replaced from time to time.
6. Applicable Contributions Plan	Thornton North Development Contributions Plan 2008
7. Application of the following provisions of the Act to the Development: a. Section 7.11	Not excluded

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b. Consideration of benefits	Not to be considered
c. Section 7.12	Not excluded
d. Subdivision 4 of Division 7.1	Not excluded
8. Council Land Dedication Contribution Amount	N/A
9. [Not Used]	N/A
10. [Not Used]	N/A
11. [Not Used]	N/A
12. [Not Used]	N/A
13. Defects Liability Period	Seven (7) years commencing from the date of the commencement of the BMP & VMP Works or until the Council has issued the BMP & VMP Works Completion Certificates, whichever occurs first.
14. Maintenance Period	Seven (7) years commencing from the date of the commencement of the BMP & VMP Works or until the Council has issued the BMP & VMP Works Completion Certificates, whichever occurs first.
15. BMP Works Security and VMP Works Security:	
a. BMP Works Security	120% of the estimated cost, determined in accordance with clause 17.2, of the BMP Works that are uncompleted immediately before the issuing of a Subdivision Works Certificate for the Final Stage of the Development or 120% of the estimated cost of the BMP Works that are uncompleted as subsequently re-determined in accordance with clause 17.11 and 17.2.
b. VMP Works Security	120% of the estimated cost, determined in accordance with clause 17.2, of the VMP Works that are uncompleted immediately before the issuing of a Subdivision Works Certificate for the Final Stage of the Development or

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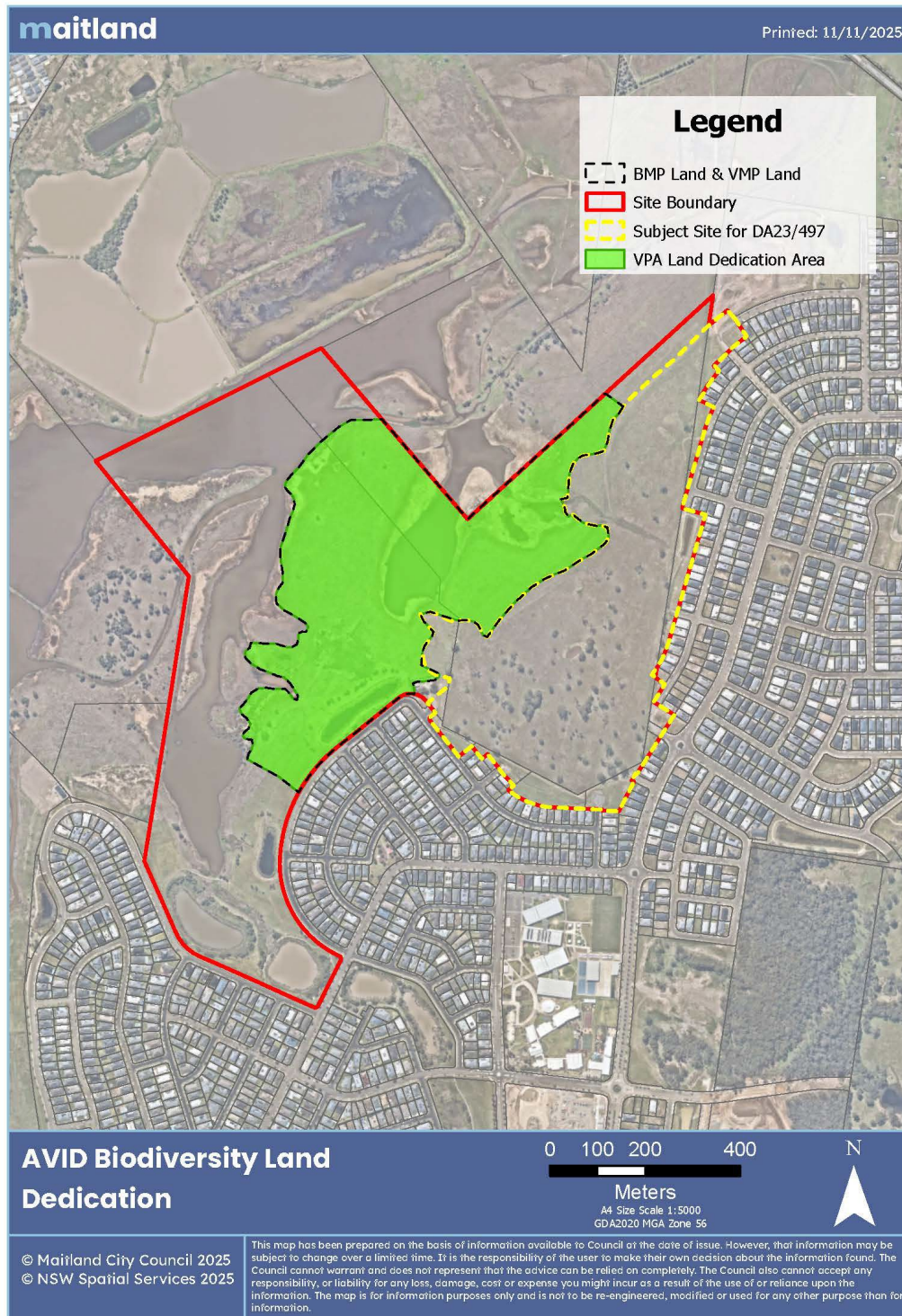
	120% of the estimate cost of the VMP Works that are uncompleted as subsequently re-determined in accordance with clause 17.11 and 17.2.
16. [Not Used]	N/A
17. [Not Used]	N/A
18. Registration of this Deed	Yes
19. Insurances:	
a. Contract Works Insurance	For the full replacement value of the Works (including 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	For at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party.
a. Professional Indemnity Insurance	\$20,000,000
b. Workers Compensation Insurance	As required by law.
c. Other insurance	As required by law.
20. Council Contact for Notices	Postal Address: 263 High Street, Maitland, NSW 2320 Email: melissa.harvey@maitland.nsw.gov.au Telephone: 02 4934 9817 Representative: Melissa Harvey
21. Developer Contact for Notices	Postal Address: Level 5, 7 Macquarie Place, Sydney, NSW 2000 Email: dboubli@avid.com.au Telephone: +61 417 256 778 Representative: Danny Boubli
22. Review Period	N/A.

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Schedule 2: BMP / VMP Site Location Map



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Schedule 3: BMP Works & VMP Works Provisions

General obligations relating to BMP Works & VMP Works

- 1 The Developer is to undertake and maintain the BMP Works and the VMP Works in a good and workmanlike manner having regard to the intended purpose of the BMP Works and the VMP Works in accordance with:
 - 1.1 all applicable laws,
 - 1.2 any Approval required by any law relating to the provision of the BMP Works and the VMP Works, and
 - 1.3 the lawful requirements of any Authority.
- 2 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the BMP Works and the VMP Works is supplied or made available for that purpose.

Warranties relating to BMP Works & VMP Works

- 3 The Developer warrants to the Council that:
 - 3.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the BMP Works and the VMP Works,
 - 3.2 it accepts that, if any aspect of the BMP Works or the VMP Works do not comply this Deed, the Council is entitled to require the Developer to cease the BMP Works or the VMP Works (as the case requires) and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 3.3 the BMP Works and the VMP Works, when completed, are to be fit for purpose, and
 - 3.4 only Approved Persons are to be engaged in relation to the BMP Works and the VMP Works.
- 4 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the BMP Works and the VMP Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the BMP Works and the VMP Works.

Ownership & care of BMP Works & VMP Works

- 5 The Developer is responsible for care of the BMP Works and the VMP Works, and bears all risk and liability in connection with the BMP Works and the VMP Works, until the Council has issued to the Developer a BMP Works Completion Certificate or a VMP Works Completion Certificate (as the case requires).

Work health & safety

- 6 The Developer acknowledges that it is the Principal Contractor under WHS Law for the BMP Works and the VMP Works unless and until such time that:

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- 6.1 the Developer engages the Contractor to construct the BMP Works and the VMP Works, or
 - 6.2 engages another person to be the Principal Contractor for the BMP Works and the VMP Works,and authorises the person to have management or control of the workplace relating to the BMP Works and the VMP Works and to discharge the duties of a Principal Contractor under WHS Law.
- 7 For the purpose of the Developer's compliance with its obligations under clause 6, the Council:
 - 7.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
 - 7.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations under clause 6.
- 8 If the Developer at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 6 to be the Principal Contractor for the BMP Works and the VMP Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the BMP Works and the VMP Works.
- 9 The Developer is to use its best endeavours to ensure that all persons involved in the BMP Works and the VMP Works comply with relevant WHS Law and procedures, including but not limited to:
 - 9.1 following published government and industry WHS guidelines,
 - 9.2 providing WHS induction training,
 - 9.3 keeping and regularly updating WHS records,
 - 9.4 preparing and maintaining an WHS management plan,
 - 9.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 9.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 9.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 9.8 identifying hazards and assessing risks using due diligence,
 - 9.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 9.10 reviewing risk assessments and controlling measures,
 - 9.11 providing information to employers and contractors about WHS, and
 - 9.12 documenting site-specific safety procedures.
- 10 The Developer is to use its best endeavours to ensure that:

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- 10.1 the Council can audit, inspect and test the BMP Works and the VMP Works without breaching WHS Law, and
- 10.2 the Council can access and use the BMP Works and the VMP Works without breaching WHS Law.
- 11 The Developer is to promptly inform the Council of any incident occurring in relation to the BMP Works and the VMP Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

BMP Works & VMP Works commencement

- 12 The Developer is to give the Council a BMP Works Commencement Notice before it commences the BMP Works and a VMP Works Commencement Notice before it commences the VMP Works.
- 13 The BMP Works are to be commenced in accordance with the BMP Works Commencement notice and the VMP works are to be commenced in accordance with a VMP Works Commencement Notice.
- 14 Each of the BMP Works Commencement Notice and VMP works Commencement Notice given to the Council is to be accompanied by:
 - 14.1 a copy of all approved plans and drawings for the BMP Works or the VMP Works (as the case requires) in electronic format, and
 - 14.2 a list of all Approved Persons and their contact details.
- 15 If requested in writing to do so by the Council, the Developer is to organise and conduct a pre-start meeting with Council personnel before commencing the BMP Works and the VMP Works.

Accidents & dangerous occurrences

- 16 The Developer is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the BMP Works or the VMP Works.
- 17 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 18 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 19 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 20 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 21 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the BMP Works or the VMP Works.

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Protection of people, property & utilities

- 22 The Developer is to use all reasonable endeavours to ensure that, in providing the BMP Works and the VMP Works:
- 22.1 all necessary measures are taken to protect people and property,
 - 22.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 22.3 nuisances and unreasonable noise and disturbances are prevented.
- 23 The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the BMP Works and the VMP Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 24 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the BMP Works or the VMP Works.
- 25 The Developer must replace or fix any Council asset the Developer loses or damages while performing the BMP Works and the VMP Works in accordance with any reasonable requirements of the Council.
- 26 If an audit, inspection or test of the BMP Works or the VMP Works shows that:
- 26.1 the BMP Works or the VMP Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 26.2 damage has occurred to a Council asset or the property of another person in connection with the BMP Works or the VMP Works,
- the Council may give the Developer a notice in writing requiring it to take corrective action to bring the BMP Works or the VMP Works into conformity or repair the damage, as the case requires.
- 27 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clause 26, the Council may take the action required of the Developer and recover the Council's Costs of so doing from the Developer.

Audit, inspection, testing of BMP Works & the VMP Works

- 28 The Council may undertake an audit, inspection or test of the BMP Works and the VMP Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 29 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the BMP Works and the VMP Works.
- 30 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the BMP Works or the VMP Works, the Developer is to:

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- 30.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 30.2 provide evidence to the Council that the action has been taken.
- 31 If an audit, inspection or test shows that the BMP Works or the VMP Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 32 If the Council reasonably decides that a further and more detailed audit, inspection or test of the BMP Works or the VMP Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

- 33 The Council may make a written request to the Developer:
 - 33.1 to provide information to the Council concerning the BMP Works and the VMP Works,
 - 33.2 to allow the Council to inspect the Developer's records concerning the BMP Works and the VMP Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 34 The Developer is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Completion of BMP Works & VMP Works

- 35 The Developer may make a written request ('**Developer's Request**') to the Council to issue a BMP Works Completion Certificate for the BMP Works or a VMP Works Completion Certificate for the VMP Works.
- 36 Before making the Developer's Request under clause 35, the Developer is to ascertain from the Council the information the Council reasonably requires to accompany the Developer's Request, and the Developer's Request is to be accompanied by such information.
- 37 Upon receipt of the Developer's Request under clause 35, the Council is to inspect the BMP Works or the VMP Works (as the case requires) in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 38 As a precondition to issuing a BMP Works Completion Certificate or a VMP Works Completion Certificate, the Council acting reasonably may direct the Developer in writing to complete, Rectify or repair or maintain any specified part of the BMP Works or the VMP Works the subject of the Developer's Request under clause 35 within a period specified in the direction in order to bring the BMP Works or the VMP Works (as the case requires) into conformity with the BMP or the VMP.
- 39 The Developer is to promptly comply with any such direction given by the Council.
- 40 The Council may undertake more than one inspection and acting reasonably may issue more than one direction to the Developer in order to be satisfied that a BMP Works Completion Certificate may be issued for the BMP Works or a VMP Works the subject of the Developer's Request under clause 35.

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- 41 The Council is to promptly issue a BMP Works Completion Certificate for the BMP Works or a VMP Works Completion Certificate the subject of the Developer's Request under clause 35 when it is reasonably satisfied that no aspect of the relevant BMP Works or the VMP Works (as the case may be) reasonably requires completion, Rectification or repair, or maintenance.

Rectification of Defects

- 42 The Council may give the Developer a Rectification Notice in relation to any part of the BMP Works or the VMP Works.
- 43 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 44 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

Removal of structures & Equipment

- 45 Upon the issuing of the BMP Works Completion Certificate or the VMP Works Completion Certificate by the Council to the Developer the Developer is to:
- 45.1 remove from the land any structure not comprising or required in connection with the completed BMP Works or the VMP Works and make good any damage or disturbance to the land as a result of that removal,
 - 45.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 45.3 leave the land in a neat and tidy state, clean and free of rubbish.
-

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Maitland City Council
AVID Residential Estates Pty Ltd

Execution

Executed as a Deed

Dated:

Executed by the COUNCIL pursuant to a resolution passed at a duly convened meeting held on 9 December 2025:

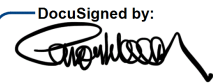


General Manager

Linda McLaren

Witness

Executed by the Developer in accordance with s127(1) of the Corporations Act 2001 (Cth)

DocuSigned by:


14ADD2607EB9440...
Director

Signed by:


02C535710A0440A...
Director / Secretary

Cameron Holt

Name

Richard Amos

Name

**Biodiversity Land Dedication – Billabong Parade & 7 Caldera Street,
Chisholm**

Maitland City Council

AVID Residential Estates Pty Ltd

Appendix: Explanatory Note

(Clause 47)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Planning Agreement

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

Parties

Council

Maitland City Council ABN 11 596 310 805 of PO Box
220 Maitland NSW

Developer

Avid Residential Estates Pty Ltd ABN 96 054 228
929 of Level 5, 7 Macquarie Place, Sydney NSW 2000

Description of the Land to which the Planning Agreement Applies

The land to which the Planning Agreement applies is described as:

The part of Lot 4 in DP 1222785 and remaining area of Lot 2 DP 1295677, known as Billabong Parade and 7 Caldera Street, Chisholm NSW 2322, which is not proposed to be a drainage reserve. Generally comprising of wetlands, exotic & pasture improved grasslands.

Description of Proposed Development/Instrument Change

The development application to which the Planning Agreement relates is DA/2023/497 for the subdivision of multiple existing lots into 181 residential allotments and associated infrastructure. The proposal includes the following more specifically; removal of vegetation, associated earthworks, two drainage reserves and associated drainage works, three residual lots, roads, landscaping and servicing.

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Description of Development Contributions

There are no Development Contributions the subject of this Agreement. This Agreement does not exclude the Development Contributions applicable to the Development under DA/2023/497.

Summary of Objectives, Nature and Effect of the Planning Agreement

Objectives of Planning Agreement

The Planning Agreement will require the dedication of the Land as a public reserve and ensure the undertaking of the Biodiversity Management Plan and Vegetation Management Plan, approved under the relevant Development Consent, to facilitate the preservation and regeneration of part of a regional biodiversity corridor identified in the Environmental Sustainability Strategy 2030 (ESS). The Planning Agreement makes provision for security to ensure the undertaking of approved Biodiversity Management Plan and Vegetation Management Plan works relating to the Land at no net cost to Council.

Nature of Planning Agreement

This Planning Agreement is an agreement between the two parties which creates reciprocal obligations on each party with the intent of achieving the objectives of the agreement in providing community benefit.

Effect of the Planning Agreement

To legally bind both parties to the performance of their respective obligations conferred under this Agreement.

Assessment of the Merits of the Planning Agreement

The Planning Purposes Served by the Planning Agreement

In line with Council's adopted ESS, this Agreement serves to protect the important ecological values of a regional biodiversity corridor identified within the ESS that adjoins the Thornton North Urban Release Area. The preservation and regeneration of the Dedication Land aligns with Council's adopted Green and Blue Map and aligns with Council's ESS Targets to deliver functional biodiversity corridors and improve waterway health.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement makes provision for the dedication of environmentally significant land which forms part of a regional biodiversity corridor identified within the ESS. The Agreement provides a mechanism to ensure the completion of approved Biodiversity Management Plan and Vegetation Management Plan Works, at no cost to Council, to restore the Land to a functional biodiversity corridor. In taking ownership of the Land as a public reserve Council will manage the land to provide ongoing positive environmental, educational,

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and recreational outcomes for the residents of the Thornton North Urban Release Area and wider community.

Assessment of the positive or negative impact of the Planning Agreement on the public or relevant section of the public

The positive outcomes for the public include the dedication of part of a biodiversity corridor identified within the ESS to be managed by Council as a public reserve. In the absence of this Agreement the Land would remain under private ownership and the site would likely be subject to further environmental degradation. Council's management of the Land will ensure ongoing positive environmental, educational, and recreational outcomes for the residents of the Thornton North Urban Release Area and wider community. There are no negative impacts anticipated as a result of the implementation of the Planning Agreement.

Whether the Planning Agreement Conforms with the Planning Authority's Capital Works Program

The provision of the Land proposed by the Planning Agreement is outside the scope of Council's current Capital Works Program. However, the land forms part of a biodiversity corridor identified within the ESS and aligns with Council's adopted Green and Blue Map. The cost of the Biodiversity Management Plan and Vegetation Management Plan Works will be borne by the Developer at nil net cost to Council. The provision of the works aligns with Council's adopted ESS.

Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The Developer must dedicate the Land specified in Schedule 1 Item 1 of the Agreement to Council at or before registration of any subdivision for the final stage (shown as Stage 83 on the staging plan) of the Development Drawing Reference Number. 190433(JENSEN)-DA-120) forming part of the documents comprising the Development Application.

The Developer must provide Council with security in the form of bond or bank guarantee (or other form acceptable to Council) to be 120% of the value of the outstanding Biodiversity Works Management Plan and/or Vegetation Management Plan (as determined in accordance with Item 15 of Schedule 1 and Part 4 of this Agreement prior to the issue of the subdivision certificate for the final stage (shown as Stage 83 on the staging plan) of the Development Drawing Reference Number. 190433(JENSEN)-DA-120) forming part of the documents comprising the Development Application.

VPA Draft 24 signed by AVID 110326

Final Audit Report

2026-03-26

Created:	2026-03-26
By:	Luke Mannix (Luke.Mannix@maitland.nsw.gov.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAA1UPv1FJamn0una3bimBYMth3Uogsyf5o

"VPA Draft 24 signed by AVID 110326" History

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2026-03-12 - 9:18:18 PM GMT

 Document created by Luke Mannix (Luke.Mannix@maitland.nsw.gov.au)

2026-03-26 - 10:51:27 AM GMT

 Document emailed to gm@maitland.nsw.gov.au for signature

2026-03-26 - 10:53:06 AM GMT

 Email viewed by gm@maitland.nsw.gov.au

2026-03-26 - 9:19:42 PM GMT

 Signer gm@maitland.nsw.gov.au entered name at signing as Jeff Smith

2026-03-26 - 9:20:18 PM GMT

 Document e-signed by Jeff Smith (gm@maitland.nsw.gov.au)

Signature Date: 2026-03-26 - 9:20:20 PM GMT - Time Source: server

 Document emailed to Linda McLaren (linda.mclaren@maitland.nsw.gov.au) for signature

2026-03-26 - 9:20:22 PM GMT

 Email viewed by Linda McLaren (linda.mclaren@maitland.nsw.gov.au)

2026-03-26 - 9:20:40 PM GMT

 Document e-signed by Linda McLaren (linda.mclaren@maitland.nsw.gov.au)

Signature Date: 2026-03-26 - 9:21:07 PM GMT - Time Source: server

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2026-03-26 - 9:21:07 PM GMT