

Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue, Lot 2309 DP1159612 and
Lot 2310 DP 1159612 Arncliffe, NSW 2205

**Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue,
Lot 2309 DP1159612 and Lot 2310 DP1159612 Arncliffe, NSW 2205**

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Rockdale City Council

and

Canberra Estates Consortium No.42 Pty Ltd

[date to be inserted on execution]

**Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue and
Lot 2310 DP1159612 Arncliffe, NSW 2205**

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Lot 2310 DP1159612 Arncliffe, NSW 2205**

Contacts Sheet

Council:

Name: Rockdale City Council

Address: 2 Bryant Street, ROCKDALE NSW 2216

Telephone: (02) 9562 1666

Facsimile: (02) 9562 1777

Email: rcc@rockdale.nsw.gov.au

Representative: The General Manager

Developer:

Name: Canberra Estates Consortium No. 42 Pty Ltd

ACN: 161 284 251

Address: PO Box 178 Mitchell ACT 2911

Telephone: (02) 6241 9844

Facsimile: (02) 6241 6677

Email: kineson@villagebuilding.com.au

Representative: Ken Ineson

Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue and Lot 2310 DP1159612, Arncliffe, NSW 2205

This Agreement constitutes a planning agreement within the meaning of s93F of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions for the Public Benefit.

Parties

Rockdale City Council

ABN 66 139 730 052 of 2 Bryan Street, ROCKDALE NSW 2216
(Council)

and

Canberra Estates Consortium No. 42 Pty Ltd

ACN 161 284 251 of PO Box 178, MITCHELL ACT 2911
(Developer)

Background

- A. The Developer has reached an agreement to purchase the land identified in **Schedule 2**.
- B. Rockdale LEP 2011 zones the majority of the land described as 45-47 Bonar Street as RE1 Public Recreation. The Bonar Street Precinct provisions of part 7.2 of Rockdale DCP 2011 identifies this land for the provision of a Central Square and Community Park.
- C. Rockdale Section 94 Contributions Plan 2004 identifies the acquisition and embellishment of this Community Park and the embellishment of the Central Square as items for which development contributions will be levied under the plan. It also recognises the possibility of dedication of land by developers in exchange for the transfer of development rights from the area to be dedicated to the remainder of the development site.
- D. Council has previously adopted a strategy to acquire the land for the Community Park by seeking to negotiate Planning Agreements with affected property owners for the dedication of this land at no cost, in exchange for a higher FSR on the remainder of their sites. This is similar to the transfer of development rights permitted in relation to the Central Square.
- E. The Developer has lodged a Development Application for the Development, which is accompanied by a clause 4.6 request to vary the development standards for FSR (to allow an FSR of 3.1:1 on the balance of the land, after dedication of the RE1 Public Recreation land) and height (to allow for a maximum RL equal to the adjoining development at 45 Bonar Street) under clauses 4.3(2) and 4.4(2) of Rockdale LEP 2011.
- F. The Developer has offered to enter into a Planning Agreement in accordance with section 93F of the Act in connection with the Development Application that will provide for the embellishment and dedication of the Central Square and Community Park to Council at no cost (area of approximately 2,194 square metres).
- G. The Developer is prepared to make Development Contributions in connection with carrying out of the Development of the land in accordance with this Agreement.
- H. The Value of the Contributions, as set out in column 3 of Schedule 3 will be deducted from the Section 94 contributions that would otherwise apply in respect of the Development.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

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

Agreement means this Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement.

Central Square means the public square proposed to be provided within the Bonar Street Precinct, located adjacent to the proposed to the proposed Community Park and identified in the DCP.

Community Park means the public park proposed to be provided within the Bonar Street Precinct, as shown zoned 7(a) Open Space Reservation under Rockdale LEP 2000, including that part of the proposed park located within the Land.

Construction Certificate means a construction certificate within the meaning of s109C(1)(b) of the Act.

Construction Value means the estimated value of the Development Contribution as shown in Column 3 of **Schedule 3** or as otherwise adjusted to the date of provision in accordance with RCP 2004.

DCP means Rockdale Development Control Plan No 80 – Bonar Street Precinct and includes any development control plan applying to the Land that supersedes Rockdale Development Control Plan No 80.

Defect means a defect with respect to any item in **Schedule 3** which adversely affects the ordinary use and/or enjoyment of the particular item.

Defects Liability Period means 12 months from the Practical Completion of a Work

Defects Security Amount means an amount that is equal to 5% of the construction cost of the relevant Work.

Defects Security Bond means a bond of bank guarantee for the Defects Security Amount.

Development means the proposed erection of a residential flat building with basement car parking on the Development Site with an FSR of 3.1:1 (after dedication of the RE1 Public Recreation land) and a maximum RL of 38.115m (equal to the adjoining development at 45 Bonar Street)..

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, a dedication of land free of cost, the carrying out of Work, or the provision of any other material public benefit, or any combination of them by the Developer, to be used for, or applied

towards, the provision of Public Infrastructure or another Public Purpose as set out in **Schedule 3**.

Development Site means that part of the Land shown coloured pink on the map in Schedule 2 on which the Development is proposed to be carried out and includes those areas so coloured that are to be dedicated as new road or road widening (but excluding the area required to be dedicated as road widening pursuant to Item A2 of **Schedule 3**).

FSR means floor space ratio and is the ratio of the GFA of the Development to the area of the Development Site.

GFA means gross floor area and has the same meaning as in the Rockdale LEP 2000.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in A New Tax system (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Item means the object of a Development Contribution specified in Column 1 of **Schedule 3**.

Land means the land specified and described in **Schedule 2** and all other land that may be required to carry out the Works.

Loss means any loss (including loss of profit and loss of expected profit), claim, action, liability, damage, demands, cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to):

- (a) Liabilities on account of tax;
- (b) Interest and other amounts payable to third parties; and
- (c) Legal (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts paid in settlement of any claim or action

Minister means the minister administering the Act unless otherwise specified.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Agreement, including their successors, agents and assigns.

Practical Completion means in relation to the Works in **Schedule 3**, the point of time at which the Works are fit for use and occupation, and are capable of being used and occupied for their intended purpose.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Infrastructure has the same meaning as in the Act.

Public Purpose has the same meaning as in the Act.

RCP 2004 means Rockdale Section 94 Contributions Plan 2004 as the date of this Agreement even if this plan is revoked and/or superseded before or during the life of the Agreement.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Security means the security afforded by the registration of this Agreement for the purposes of s.93H of the Act, pursuant to **clause 25**.

Strata Certificate has the same meaning as in the Strata Schemes Act.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Streetscape Design Manual means the Wolli Creek Streetscape Design Manual, as referred to in the DCP, and includes any public domain plan or manual applying to the Land that supersedes the Wolli Creek Streetscape Design Manual.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

- 1.2 In the interpretation of this Agreement, 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 Agreement.
 - 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference to time is local time in Sydney,
 - 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

- 1.2.9 a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.18 A reference in this Agreement to the name and number of a zone under Rockdale LEP 2011 includes a reference to an equivalent zone under any local environmental plan that supersedes RLEP 2011.

2. Application of this Agreement

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

3. Status and operation of this Agreement

- 3.1 Until the Agreement operates, this Agreement constitutes an irrevocable offer by the Developer to enter into the Agreement in connection with the Instrument Change.
- 3.2 The Agreement only operates if:
 - 3.2.1 Development Consent is granted to the Development;
 - 3.2.2 a condition of Development Consent under section 931(3) of the Act requires this Agreement be entered into;
 - 3.2.3 this Agreement is entered into as required by clause 25C(1) of the Regulation; and
 - 3.2.4 the Developer gives Council notice of its intention to commence development pursuant to section 81A(2)(c) of the Act and the Development is physically commenced as provided in s 95 of the Act.

4. Further agreements relating to this Agreement

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.
- 4.2 A further agreement for the purpose of **Clause 4.1** may include (but is not limited to) matters pertaining to:
 - 4.2.1 Access to Land;
 - 4.2.2 Completion and hand-over of Work;
 - 4.2.3 The rectification of Defects;
 - 4.2.4 Detailed design and specification;
 - 4.2.5 Ongoing Maintenance Agreements; and
 - 4.2.6 Release and indemnity

5. Surrender of right of appeal

- 5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this agreement to be performed according to the terms of this Agreement.

6. Application of s94, s94A and s94EF of the Act to the Development

- 6.1 This Agreement excludes the application of section 94, s94A and s94EF of the Act in respect of the Development to the extent stated in **Schedule 1**.

Part 2 – Development Contributions

7. Provision of Development Contributions

- 7.1 **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 7.2 The Developer is to make Development Contributions to Council in accordance with this Agreement and otherwise to the satisfaction of Council.
- 7.3 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Purpose for which it is made and otherwise in accordance with this Agreement.
- 7.4 The value of the Development Contribution as set out in **Schedule 3** is to be indexed in accordance with RCP 2004 from the date of the Agreement, until provided or paid.
- 7.5 Despite **clause 7.1**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by

applying the Development Contribution towards that other purpose rather than the purpose so specified.

8. Procedures relating to the dedication of land

- 8.1 The Development Contribution comprising the dedication of land is made for the purposes of this Agreement when Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to Council when registered.
- 8.2 For the purposes of **clause 8.1**:
 - 8.2.1 the Developer is to give Council, for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
 - 8.2.2 Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,
 - 8.2.3 the Developer is to lodge the instrument of transfer for registration at the Department of lands within 7 days of receiving it from Council duly executed,
 - 8.2.4 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

9. Carrying out of Work

- 9.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any design, specification or timing specified by Council, any relevant Development Consent and any other applicable law, and otherwise to the reasonable satisfaction of Council.

10. Access of the Land

- 10.1 The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land or any other land being the subject of Works at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- 10.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by Council for the purpose of enabling the Developer to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

11. Protection of people and property

- 11.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 11.1.1 all necessary measures are taken to protect people and property, and
 - 11.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 11.1.3 nuisances and unreasonable noise and disturbances are prevented.

12. Damage and repairs to Work

- 12.1 The Developer, at its own cost, is to repair and make good to the satisfaction of Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

13. Variation of Work

- 13.1 A Work is not to be varied by the Developer, unless:
- 13.1.1 the Parties agree in writing to the variation, and
 - 13.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 13.1.3 the Developer bears all of Council's costs of and incidental to agreeing to and approving the variation under this Agreement.
 - 13.1.4 For the purposes of **clause 13.1** a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

14. Procedures relating to the completion of work

- 14.1 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the developer under this Agreement is complete, the Developer is to give to Council a notice in writing of the work that has reached Practical Completion.
- 14.2 The Council is taken to have accepted Practical Completion of a Work that is the subject of a notice referred to in **clause 14.1**.
- where:
- 14.2.1 Council has either provided written confirmation of its acceptance of Practical Completion, or has failed to respond, within 10 Business Days; and
 - 14.2.2 The Developer has provided to Council the Defects Security Bond relating to that Work.
- 14.3 If Council does not accept Practical Completion of a Work, it must, within 10 Business Days, provide the Developer with a written notice that identifies the errors or omissions which have been identified and which in the opinion of the Council prevent Practical Completion.
- 14.4 On acceptance of Practical Completion of the work, Council accepts responsibility for the work subject to anything to the contrary in this Agreement.

15. Procedures relating to the rectification of Defects

- 15.1 During the Defects Liability Period, Council may give to the Developer a Rectification Notice.
- 15.2 A Rectification Notice must specify:
- 15.2.1 The nature and extent of the Defect;

15.2.2 The Work Council requires the Developer to undertake to rectify the Defect: and

15.2.3 The time within which the Defect must be rectified.

15.3 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of Council.

15.4 If the Developer breaches **clause 15.3**, Council may elect to carry out the works in the Rectification Notice (or such part or parts as are outstanding) or appoint a contractor to carry out this work on Council's behalf, and may draw on the Defects Security Bond to pay for such work.

15.5 If Council draws on any Defects Security Bond under **clause 15.4**, the Developer must, within 5 Business Days of a written request from Council, provide a replacement Defects Security Bond to ensure that the full Defects Security Amount is held by Council until the expiration of the Defects Liability Period for the Work.

16. Failure to carry out Work

16.1 If Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, Council may elect to give the Developer a notice requiring:

16.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and

16.1.2 the breach to be rectified to Council's reasonable satisfaction.

16.1.3 A notice given under **clause 16.1** is to allow the Developer a period of not less than 20 Business Days or such further period as Council considers reasonable in the circumstances to rectify the breach.

16.1.4 Without limiting any other rights Council has to enforce this Agreement, Council may, if the Developer does not comply with a notice given under **clause 16.1** carry out and complete the Work the subject of the Developer's breach

17. Works-as-executed plan

17.1 No later than 60 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to Council a full works-as-executed plan in respect of the Work the subject of the notice.

Part 3 – Other Provisions

18. Indemnity and insurance

18.1 This clause applies until the expiration of the Defects Liability only.

18.2 The Developer indemnifies Council, its employees, officers, agents, contractors and workmen from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.

18.3 The Developer is to take out and keep current to the satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer

under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:

- 18.3.1 contract works insurance; noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 18.3.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 18.3.3 workers compensation insurance as required by law, and
 - 18.3.4 any other insurance required by law.
- 18.4 If the Developer fails to comply with **clause 18.3**, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to Council and payable within 30 days after providing an invoice and which may be recovered as a debt due in a court of competent jurisdiction.
- 18.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in **clause 18.3**.

19. Provision of Security

- 19.1 The Parties agree that the Security for the Works identified in Part B of **Schedule 3** will be provided through the registration of this Agreement for the purposes of s.93H of the Act, pursuant to **clause 25**.
- 19.2 The Parties agree that Council may impose conditions of Development Consent on the Development under section 80A of the Act specifying that:
- 19.2.1 the first Construction Certificate for the Development must not be issued until the Works required by Item B1 of **Schedule 3** have been completed to the satisfaction of Council, and
 - 19.2.2 the first Occupation Certificate for the Development must not be issued until:
 - the Works required by Items B2, B3, B4 and B6 have been completed to the reasonable satisfaction of Council, and
- 19.3 The Parties agree in respect of the Works identified in **Schedule 3** that, where Council is the certifying authority, it may withhold the issue of the relevant Construction Certificate or Occupation Certificate (as appropriate) until such time as the identified item of Work is completed.

20. Release & return of Security

- 20.1 The Council is to release the Security to the Developer as soon as practical following the completion by the Developer of all of its obligations under this Agreement to the satisfaction of Council.

21. Recovery of cost of Work carried out by Council

- 21.1 If Council incurs a cost in carrying out, completing or rectifying a Defect in a Work, it may draw on the Defects Security Bond in accordance with **clause 15** or alternatively, this cost shall be debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.
- 21.2 For the purpose of **clause 21.1**, Council's costs of carrying out, completing or rectifying a Defect in a Work includes, but is not limited to:
- 21.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,
 - 21.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Work carried out, completed or rectified, and
 - 21.2.3 without limiting **clause 21.2.2**, all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

22. Enforcement in a court of competent jurisdiction

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

23. Dispute resolution – expert determination

- 23.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 23.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 23.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 23.4 If a notice is given under **clause 24.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 23.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 23.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.

- 23.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 23.8 This clause survives the completion or termination of this Agreement.

24. Dispute resolution – mediation

- 24.1 This clause applies to any dispute under this Agreement other than a dispute to which **clause 23** applies.
- 24.2 Such a dispute is taken to arise if on party gives another Party a notice in Writing specifying particulars of the dispute.
- 24.3 If a notice is given under **clause 24.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 24.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 24.5 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.
- 24.6 This clause survives the completion or termination of this Agreement.

25. Registration of this Agreement

- 25.1 The Parties agree to register this Agreement for the purposes of s93H of the Act.

25.2 Release and discharge of deed by Council

The Council must promptly do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land (such that the deed is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon the earlier of:

- 25.2.1 the issuing of a Strata Certificate in respect of any Strata Plan, provided that the Developer is otherwise in compliance with this deed to the reasonable satisfaction of the Council at that time,
- 25.2.2 the lapse or surrender of the Development Consent,
- 25.2.3 the issuing of an Occupation Certificate; or
- 25.2.4 the Developer having provided all of the Contributions in accordance with this Agreement.

25.3 Registration of Strata Plans

- 25.3.1 This Agreement will not remain or be newly registered by the Registrar-General under section 93H in relation to any newly created strata lot, subject to the Developer being in compliance with this Agreement to the reasonable satisfaction of the Council at that time.

- 25.3.2 For each Strata Plan lodged with the office of the Registrar-General, where that Strata Plan is intended to create a strata lot(s), the Council must do all things reasonably required by the Developer to ensure that this Agreement is not registered by the Registrar-General under section 93H of the Act in relation to any such lot.
- 25.3.3 If through error or other reason this Agreement is registered on the title to any strata lot, each party must do such things as are reasonably necessary, within 5 Business Days after being requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that lot

26. Assignment and transfer

- 26.1 Unless the matters specified in **clause 26.2** are satisfied, the Developer is not to do any of the following:
- 26.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
- 26.1.2 assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 26.2 The matters required to be satisfied for the purposes of **clause 26.1** are as follows:
- 26.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
- 26.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
- 26.2.3 the Developer is not in breach of this Agreement, and
- 26.2.4 Council otherwise consents to the transfer, assignment or novation.
- 26.2.5 Any purported dealing in breach of this **clause 26.2** is of no effect.
- 26.3 Notwithstanding **clause 26.1** the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot on a proposed Strata Plan, without compliance with **clause 26.2**.

27. Review of this Agreement

- 27.1 The Developer is to provide to Council by not later than each anniversary of the date on which this Agreement is entered into a report detailing the performance of its obligations under this Agreement.
- 27.2 The report referred to in **clause 27.1** is to be in such a form and to address such matters as may be notified by Council to the Developer from time to time.
- 27.3 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

- 27.4 For the purposes of **clause 27.3**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 27.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in **clause 27.3** the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 27.6 If this Agreement 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 Agreement is entered into.
- 27.7 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 27.3** is not a dispute for the purposes of **clauses 23 and 24** and is not a breach of this Agreement.

28. Notices

- 28.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 28.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,
 - 28.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.
- 28.2 If a Party gives the other Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 28.3 Any notice, consent, information, application or request is to be treated as given or made if it is;
 - 28.3.1 delivered, when it is left at the relevant address.
 - 28.3.2 sent by post, 2 Business Days after it is posted.
 - 28.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 28.4 If any notice, consent, 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.

29. Approvals and consent

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

30. Costs

- 30.1 The Developer is required to pay to Council the Council's costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by Council for such payment.
- 30.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 30.3 The Developer is also required to pay to Council the Council's costs of enforcing this Agreement within 7 days of a written demand by Council for such payment.

31. Entire Agreement

- 31.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 31.2 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 Agreement was executed, except as permitted by law.

32. Further acts

- 32.1 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 Agreement and all transactions incidental to it.

33. Notations on section 149(2) Planning Certificates

- 33.1 The Parties agree that Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

34. Governing law and jurisdiction

- 34.1 This Agreement is governed by the law of New South Wales.
- 34.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 34.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

35. Joint and individual liability and benefits

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

36. No fetter

- 36.1 Nothing in this Agreement 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.

37. Representations and warranties

- 37.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

38. Severability

- 38.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 38.2 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 Agreement, but the rest of this Agreement is not affected.

39. Modification

- 39.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

40. Waiver

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

41. Rights cumulative

- 41.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

42. Duty

- 42.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- 42.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to

pay such duty, the Developer must pay that amount to the paying Party on demand.

43. Effect of Schedules

- 43.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

44. Relationship of the Parties

- 44.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

45. GST

- 45.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have the meaning given by the GST Law.

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 on GST on that Supply.

- 45.2 Subject to **clause 45.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 45.3 **Clause 45.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 45.4 No additional amount shall be payable by Council under **clause 45.2** unless, and only to the extent that, 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.
- 45.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 45.6 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;

- 45.7 that any amounts payable by each Party in accordance with **clause 45.2** (as limited by **clause 45.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 45.8 No payment of any amount pursuant to this **clause 45**, 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.
- 45.9 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.
- 45.10 This clause continues to apply after expiration or termination of this Agreement.

46. Explanatory Note relating to this Agreement

- 46.1 The **Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 46.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in the **Appendix** is not to be used to assist in construing this Planning Agreement.

Execution

Executed as an Agreement at Rockdale

date:

Executed on behalf of Council:

General Manager (sign)

Witness (sign)

Name of General Manager (print)

Witness – Name/Position (print)

Executed on behalf of the Developer under s 127 of the *Corporations Act 2001*:

Canberra Estates Consortium No. 42 Pty Ltd

Director (sign)

Director/Secretary (sign)

Name of Director (print)

Name of Director/Secretary (print)

Schedule 1

(Clause 6)

Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument	No
(b) made, or proposes to make, a Development Application.	(b) yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(c) no
Description of the land to which this Agreement applies – Section 93F(3)(a)	The whole of the Land described in Schedule 2 to this agreement
Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))	No
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))	See Schedule 3 to this Agreement
Applicability of Sections 94 and 94A of the Act – (Sections 93F(3)(d) and 93F(5A))	Excluded
Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),	n/a
Dispute Resolution – (Section 93F(3)(f))	See clauses 23 & 24

Security & Enforcement of this Agreement – (Section 93F(3)(g))	See clauses 19, 21, & 22
Registration of the Agreement – (Section 93H)	Yes, see clause 25
Restriction on dealings	See clause 26
No obligation to grant consent or exercise functions – (Section 93F(9))	See clause 36

Schedule 2

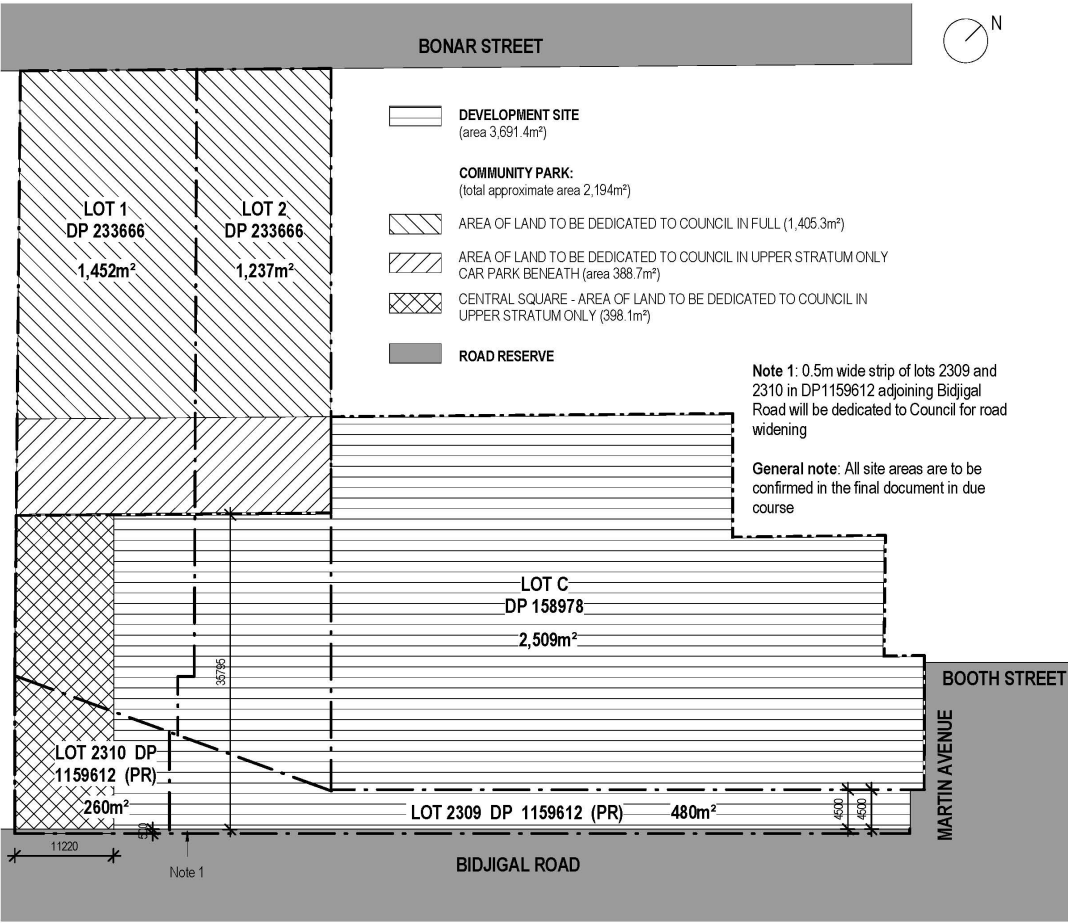
(Clause 1)

The Land

DEVELOPMENT SITE:

47 Bonar Street (Lot 1, DP 233666), 49 Bonar Street (Lot 2, DP233666), 8 Martin Avenue (Lot 2309, DP 1159612), 10 Martin Avenue (Lot C, DP 158978) and Lot 2310, DP 1159612

The Developer has entered into an agreement to purchase these lands.



Schedule 3

(Clause 7)

Development Contributions

Part A: Land Dedications

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
A	Community Park – land dedication		
A1	Dedicate for public open space that part of the Land zoned RE1 Open Space Reservation under Rockdale LEP 2011 and coloured green on the map in Schedule 2 , including all associated survey, subdivision and legal costs.	\$ TBA	Prior to the issue of the first Occupation Certificate for the Development.
Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
B	Community Park – Embellishment		
B1	Prepare detailed design ⁽²⁾ for the Community Park and the Central Square for the approval of Council, in accordance with the Wolli Creek and Bonar Street Precinct Public Domain Park.	\$TBA	Prior to the issue of the first Construction Certificate for the Development.
B2	Demolish all buildings on the land referred to in item A1.	Included in Item A1	Prior to the issue of the first Occupation Certificate for the Development.
B3	Remediate any contamination on the land referred to in Item A1 so that it is suitable for use as public open space to the satisfaction of Council.	Included in Item A1	Prior to the issue of the first Occupation Certificate for the Development.

Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue, Lot 2309 DP1159612 and
Lot 2310 DP 1159612 Arncliffe, NSW 2205

B4	Construct the portion of the Community Park and Central Square within the Land in accordance with the Council approved design referred to in Item B1.	\$TBA	Prior to the issue of the first Occupation Certificate for the Development.

Note ⁽¹⁾ the Contribution Values for the 2014/15 financial year. Where the Public Benefit is provided after 30 June 2015, the Contribution Value will be adjusted to the date of provision in accordance with the formula in RCP 2004.

Note ⁽²⁾ the design for the proposed development works in the Community Park and the public Square (item B1) are to respond to the objectives of the DCP while being sustainable, both environmentally and financially. The design is to give particular consideration and attention to the principle of minimising the ongoing maintenance costs.

Appendix

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note [will need to be updated once final VPA drafting is settled]

Proposed Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

1. Parties

Rockdale City Council ABN 66 139 730 052 of 2 Bryant Street, ROCKDALE NSW 2216
(Council)

and

Canberra Estates Consortium No.42 Pty Ltd ACN 161 284 251 of PO Box 178 Mitchell,
ACT 2911

(Developer)

2. Description of the Land to which the proposed Planning Agreement applies

2.1 47 - 49 Bonar Street, 8-10 Martin Avenue and Lot 2310 DP 1159612, as described in
Schedule 2 to the Agreement.

2.2 This Developer is the owner of the Land.

3. Description of proposed Development

3.1 The proposed erection on the Land of a residential flat building with basement car
parking having a Floor space Ratio of 3.1:1 (being a maximum Gross Floor Area of
11,443.3 square metres), calculated over the balance of the Land not required to be
dedicated for public open space or public road under the agreement (land area 3,691.4
square metres).

3.2 In conjunction with this Development, the design, construction and dedication of land
(2,194 square metres) for the first stage of the proposed Community Park and the widening
of Bonar Street adjacent to the park.

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form
of the dedication of land free of cost and the carrying out of Work, as
outlined below; and

- achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible through the outright purchase of the land or the use of section 94 development contributions alone.

4.2 Nature and effect of proposed Planning Agreement

- 4.2.1 The proposed Planning Agreement will not come into effect until the proposed instrument Change comes into force.
- 4.2.2 The proposed Planning Agreement will require the Developer to dedicate approximately 2,194 square metres of their Land to Council free of cost for the following public purposes (as described in Part A of **Schedule 3** to the Agreement):
- public open space for a proposed community Park; and
- 4.2.3 The proposed Planning Agreement will also require the Developer to carry out the following Work for a public purpose (as described in Part B of **Schedule 3** to the Agreement):
- Prepare a detailed design for the whole of the proposed Community Park and a proposed Public Square;
 - Demolish all buildings on the land that is to be dedicated to Council and remediate any contamination on that land;
 - Construct the portion of the community Park within the Developer's Land; and
 - Design and construct the widening of Bonar Street around the perimeter of the community Park.
- 4.2.4 The estimated value of the land to be dedicated and Work to be provided under the proposed Planning Agreement is \$TBA

5. Assessment of the merits of the proposed Planning Agreement

5.1 The impact of the proposed Agreement on the public or any relevant section of the public

- 5.1.1 The proposed Planning Agreement impacts on the public by promoting the public interests as outlined in **paragraph 5.2.1**.

5.2 How the proposed Planning Agreement promotes the public interest and one or more objects of the Environmental Planning and Assessment Act 1979

- 5.2.1 The proposed Planning Agreement promotes the public interest by securing the provision of Development Contributions, including the dedication of land free of cost and the carrying out of Work, for the purposes of improving community facilities, infrastructure and services and, in general, for the purposes of improving and promoting the community's quality of life.
- 5.2.2 The proposed Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979 by;
- encouraging the development and conservation of natural and urban resources for the purpose of promoting the social and economic welfare of the community and a better environment

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Comment [1]: This should be deleted

- encouraging the promotion and co-ordination of the orderly and economic use and development of land;
- encouraging the provision of land for public purposes;
- encouraging the provision and co-ordination of community services and facilities; and
- encouraging ecologically sustainable development and the protection of the environment.

5.3 For Planning Authorities:

5.3.1 Development corporations – How the proposed Planning Agreement promotes its statutory responsibilities

N/A

5.3.2 Other public authorities – How the proposed Planning Agreement promotes the objects (if any) of the Act under which it is constituted

The proposed Planning Agreement promotes the Principles of the Local Government Act 1993 by:

- allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area through the provision of the new community park and road widening
- allowing Council to implement the principles of ecologically sustainable development through provision of the Community Park and the remediation of any contamination on the Land.

5.3.3 Councils – How the proposed Planning Agreement promotes the elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by:

- providing appropriate services and facilities for the community in the form of a new Community park and road widening.
- providing for the needs of children by providing the Community Park with appropriate facilities.
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of the new Community Park, the enhancement of the existing road network and the remediation of any contamination on the Land.

5.3.4 All planning authorities – Whether the proposed Planning Agreement confirms with the authority's capital works program

The proposed Planning Agreement confirms with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.