

VOLUNTARY PLANNING AGREEMENT

CHANGE TO AN ENVIRONMENTAL PLANNING INSTRUMENT

1055 & 1055A Bruxner Highway, Goonellabah

Lismore City Council (ABN 60 080 932 837) (Council)

Nimble Estates Pty Ltd (ACN 656 265 575) (Land Owner)




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PLANNING AGREEMENT for CHANGE TO AN ENVIRONMENTAL PLANNING INSTRUMENT

Parties to this Deed

Land Owner	Name	NIMBLE ESTATES PTY LTD
	Address	151 Federal Drive, Eureka NSW 2480
	ACN	656 265 575
	ABN	21 656 265 575
	Contact Name	Brian Grant
	Contact email	
Council	Name	Lismore City Council
	Address	43 Oliver Avenue, Goonellabah NSW 2480
	ABN	60 080 932 837
	Contact Name	
	Contact email	

Background

- A On 4 November 2022 the Land Owner submitted the Planning Proposal to Council seeking the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B The Planning Proposal was accompanied by an offer by the Land Owner to enter into this Deed to make Development Contributions if the Instrument Change is made, and Development Consent is granted to development facilitated by the Instrument Change.

Operative provisions

Part 1 – Preliminary

1 Definitions and Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Approved Work Drawings means the detailed plans and drawings for the Works approved by the Council referred to in Schedule 5.

Authority means any:

- (a) federal, state or local government;
- (b) a Minister of the Crown;
- (c) department of any federal, state or local government;
- (d) any court or administrative tribunal; or
- (e) public authority established under any legislation;
- (f) statutory corporation or regulatory body.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand 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,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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)*.

CLM Act means the *Contaminated Land Management Act 1997*.

Complete or **Completed** means delivered or concluded in accordance with the requirements of the Works Provisions.

Confidential information means any information and all other knowledge at any time disclosed (whether in writing and orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may be reasonably considered to be of a confidential nature.

Construction Contract means a contract or arrangement entered into between the Land Owner 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 Land Owner.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act.

Contractor means the contractor under a Construction Contract.

Contributions Table means the table in Schedule 1.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Deed means this agreement and includes any schedules, annexures and appendices to this Deed.

Development means residential, mixed use, commercial, industrial and open space development and associated infrastructure.

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, the dedication of land free of cost, the carrying out of works, or the provision of any other material public benefit which is required to be made under 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 the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

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 Land Owner in connection with the performance of its obligations under this Deed.

Event of Default means a breach of this Deed.

Foreign Resident Capital Gains Withholding Amount means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Instrument Change means the amendment of the Lismore Local Environmental Plan 2012 as a consequence of the Planning Proposal which is given effect by the publication of the amending instrument on the NSW legislation website.

Land means Lot 42 in Deposited Plan 868366 and Lot 1 in Deposited Plan 957677, known as 1055 Bruxner Highway, Goonellabah including any lots created as a result of the subdivision or consolidation of that land.

Land Dedication Provisions means the provisions in Schedule 3, if any.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Occupation Certificate has the same meaning as in the Act.

Part 6 Certificate means a certificate under Part 6 of the Act.

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, including their successors and assigns.

PEXA means Property Exchange Australia Ltd.

Planning Proposal means PP-2022-3907.

Planning Application means a Development Application, an application to modify a Development Consent, an application for a complying development certificate (within the meaning of the Act) or an application for a Part 6 Certificate.

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct.

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

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Site Audit Report has the same meaning as in the CLM Act.

Site Audit Statement has the same meaning as in the CLM Act.

Subdivision Certificate has the same meaning as in the Act.

Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed, as shown in the Contributions Table or as otherwise agreed between the Parties.

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

Works Provisions means the provisions in Schedule 4, if any.

- 1.2 **Interpretation** - 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 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 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 A reference to '**dedicate**' or '**dedication**' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Planning agreement under the Act

- 2.1 This Deed is a planning agreement governed by Subdivision 2 of Part 7 of the Act.

3 Application of this Deed

- 3.1 This Deed applies to the Land, the Development and the Instrument Change.

4 Date upon which this Deed takes effect

- 4.1 This Deed takes effect when signed by both Parties. The date on which it takes effect is specified at the end of this Deed.

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.

Part 2 – Development Contributions - General

8 Development Contributions to be made under this Deed

- 8.1 The Land Owner is required to make the Development Contributions described in the Contributions Table in Schedule 1 in accordance with the Contributions Table and the provisions of this Deed.
- 8.2 In summary the Development Contributions are:
- 8.2.1 Dedication of land at no cost in the form of 10 serviced lots or equivalent land area for affordable housing;

- 8.2.2 Dedication of land at no cost in the form of a total of 2000m2 of serviced land for affordable housing;
- 8.2.3 Dedication of land free of charge along the Tucki Tucki Creek corridor
- 8.2.4 Embellishment of the Tucki Tucki creek corridor in the form of revegetation and construction of a public footpath
- 8.2.5 Dedication of land free of charge within the northern precincts for the purpose of public recreation;
- 8.2.6 Embellishment of land within the northern precincts for the purpose of public recreation; and
- 8.2.7 Construction of a shared path that crosses the Tucki Tucki creek and connects the northern and southern precincts.

9 Application of Development Contributions

- 9.1 The Council will apply any Development Contributions made under this Deed towards the public purpose for which it is made, in the manner and to the standards required by or under this Deed.
- 9.2 Council will under no circumstances refund any monetary Development Contributions made under this Deed, including where the amount of the monetary Development Contribution exceeds the amount necessary to meet the public purpose for which the monetary Development Contribution was made.

10 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 10.1 This Deed does not exclude the application of s7.11 to the Development.
- 10.2 This Deed does not exclude the application of s7.12 to the Development.
- 10.3 This Deed does not exclude the application of s7.24 to the Development.
- 10.4 Benefits under this Deed are to be taken into consideration by Council in determining any development contributions under s7.11 of the Act in relation to the Development.

Part 3 – Dedication of Land

11 Land Dedication Provisions

- 11.1 If the Contributions Table shown in Schedule 1 of this Deed indicates that any land is required to be dedicated under this Deed, the Land Dedication Provisions in Schedule 3 apply to the dedication of that Land.

Part 4 – Carrying out of Work

12 Works Provisions

- 12.1 If the Contributions Table shown in Schedule 1 of this Deed indicates that any Works are required to be carried out by the Land Owner under this Deed, the Works Provisions in Schedule 4 apply to the carrying out of those Works.

Part 5 – Review, Monitoring and Dispute Resolution

13 Review of Deed

- 13.1 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 the Party may request a review of the whole or any part of this Deed.
- 13.2 For the purposes of clause 13.1, 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 Authority to restrict or prohibit any aspect of the Development.
- 13.3 If a review is requested in accordance with clause 13.1, the Parties are to use all reasonable endeavours, in good faith, to agree on and implement appropriate amendments to this Deed.
- 13.4 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.
- 13.5 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 13.1 (but not 13.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

- 13.6 If the Parties agree to amend this Deed under this clause 13, any such amendment must be in writing and signed by the Parties and exhibited in accordance with the Act and Regulation.

14 Monitoring and Reporting

- 14.1 The Land Owner acknowledges that the Council will continuously monitor compliance with the Land Owner's obligations under this Deed.
- 14.2 The Land Owner must provide an annual report to Council on or before 31 July each year in respect of its compliance with the provisions of this Deed in the previous financial year, and the progress of the Development in the previous financial year, including all Planning Applications made.
- 14.3 The annual report is to be in such a form and to address such matters as required by the Council from time to time and notified to the Land Owner and be prepared in a clear manner.
- 14.4 When lodging any Planning Application, the Developer must provide to Council or a certifier to whom the Planning Application is made, a report identifying what Development Contributions are required to be made in connection with the part of the Development the subject of the Planning Application, and the trigger for the making of those Development Contributions.

15 Notation on Planning Certificate

- 15.1 The Land Owner acknowledges that the Council may, pursuant to section 10.7(5) of the Act make a notation on a planning certificate within the meaning of the Act in respect of the Land stating that the Land is subject to this Deed.

16 Dispute resolution – expert determination

- 16.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 16.1.1 the Parties to the Dispute agree that it can be so determined, or
- 16.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 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.

- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 16.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 16.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 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.
- 16.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

17 Dispute Resolution - Mediation

- 17.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause applies.
- 17.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 17.4 If the Dispute is not resolved within a further 20 business 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.
- 17.5 If the Dispute is not resolved by mediation within a further 20 business 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.
- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 17.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 6 – Enforcement and Consequences of Non-Compliance

18 Security for performance of obligations

- 18.1 A Subdivision Certificate must not be issued for the Development until the Developer has provided the Development Contributions required by this Deed.
- 18.2 If the Development is to be carried out in stages, then the Subdivision Certificate for each stage will not be issued until Council is satisfied that the Development Contributions associated with each stage have been made or other suitable further arrangements have been made to the satisfaction of Council.
- 18.3 The parties may enter into further written agreements and/or agree on the payment of security in substitution for the issuing of a Subdivision Certificate under this clause 18.

19 Default in Performance and Step-in Rights

- 19.1 If the Council reasonably considers that the Land Owner has committed an Event of Default the Council may give a written notice to the Land Owner:
 - 19.1.1 specifying the nature and extent of the breach,
 - 19.1.2 requiring the Land Owner to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 19.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 19.2 If the Developer fails to comply with a notice given under clause 19.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 19.3 Any costs incurred by the Council in remedying a breach in accordance with clause **Error! Reference source not found.** may be recovered by the Council by as a debt due in a court of competent jurisdiction.

- 19.4 For the purpose of clause 19.3, the Council's costs of remedying a breach the subject of a notice given under clause 19.1 include, but are not limited to:
- 19.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 19.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 19.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 19.5 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 Land Owner, 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.

21 Conditions of Consent

- 21.1 The Land Owner acknowledges that Council may impose a condition on any Development Consent granted to the Development requiring this Deed to be complied with.

Part 7 – Registration & Restriction on Dealings

22 Registration of this Deed

- 22.1 This Deed must be registered on the title of the Land pursuant to section 7.6(1) of the Act.
- 22.2 On the commencement of this Deed, the Land Owner is to deliver to the Council:

- 22.2.1 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
- 22.2.2 the written irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration.
- 22.3 The Land Owner is to do such other things as are reasonably necessary to enable registration of this Deed to occur electronically through PEXA or another ELNO.
- 22.4 The Council agrees that the registration of this Deed can be removed from the title to any part of the Land if:
 - 22.4.1 the part of the Land is a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided;
 - 22.4.2 in relation to any other part of the Land, once the Land Owner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

23 Restriction on dealings

- 23.1 The Land Owner is not to:
 - 23.1.1 sell or transfer the Land, other than a lot to be sold to end-purchasers or otherwise created for separate occupation and disposition and which is not intended to be further subdivided, or
 - 23.1.2 assign the Land Owner's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 23.1.3 the Land Owner has at no cost to the Council, first procured the incoming purchaser or assignee to enter into a novation deed on terms reasonably satisfactory to the Council under which the incoming purchaser or assignee agrees to perform the Land Owner's obligations under this Deed, and
 - 23.1.4 the Council has given written notice to the Land Owner stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 23.1.5 the Land Owner is not in breach of this Deed, and
 - 23.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 23.2 Subject to clause 23.3, the Land Owner 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 23.1.

- 23.3 Clause 23.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 8 – Indemnities & Insurance

24 Risk

- 24.1 The Land Owner performs this Deed at its own risk and its own cost.

25 Release

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

26 Indemnity

- 26.1 The Land Owner indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Land Owner's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

27 Insurance

- 27.1 The Land Owner is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Land Owner under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 27.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Land Owner's liability in respect of damage to or destruction of the Works,
 - 27.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Land Owner and any subcontractor of the Land Owner, for liability to any third party,
 - 27.1.3 workers compensation insurance as required by law, and
 - 27.1.4 any other insurance required by law.

- 27.2 If the Land Owner fails to comply with clause 27.1, 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 Land Owner to the Council and may be recovered by the Council as it deems appropriate including:
- 27.2.1 by calling upon the Security provided by the Land Owner to the Council under this Deed, or
- 27.2.2 recovery as a debt due in a court of competent jurisdiction.
- 27.3 The Land Owner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 27.1.

Part 9 – Other Provisions

28 Confidentiality

- 28.1 This agreement is a public document, and its terms are not confidential.
- 28.2 The parties acknowledge that:
- 28.2.1 Confidential Information may have been supplied to some or all of the Parties in negotiations leading up to the making of this agreement; and
- 28.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this agreement.
- 28.3 Subject to clauses 28.4 and 28.5, each Party agrees:
- 28.3.1 not to disclose any Confidential Information received before or after the making of this agreement to any person without the prior written consent of the Party who supplied the Confidential Information; or
- 28.3.2 to take all reasonable steps to ensure all Confidential Information received before or after the making of this agreement is kept confidential and protected against unauthorised use and access.
- 28.4 A Party may disclose Confidential Information in the following circumstances:
- 28.4.1 in order to comply with the law, or the requirements of any Authority; or
- 28.4.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers

or contractors undertake to keep the Confidential Information confidential.

- 28.5 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

29 Notices

- 29.1 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:
- 29.1.1 delivered or posted to that Party at its address, or
 - 29.1.2 emailed to that Party at its email address.
- 29.2 For the purposes of this clause a Party's address and email address are as noted under '**Parties to this Deed**'.
- 29.3 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.
- 29.4 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 29.4.1 delivered, when it is left at the relevant address,
 - 29.4.2 sent by post, 2 business days after it is posted, or
 - 29.4.3 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.
- 29.5 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 5 pm 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.

30 Approvals and Consent

- 30.1 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.
- 30.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

31 Costs

- 31.1 The Land Owner is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping and registering this Deed, and any document related to this Deed within 10 business days of a written demand by the Council for such payment, limited to a maximum amount of \$5000AUD.
- 31.2 The Land Owner is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 10 business days of a written demand by the Council for such payment.

32 Entire Deed

- 32.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 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.

33 Further Acts

- 33.1 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.

34 Governing Law and Jurisdiction

- 34.1 This Deed is governed by the law of New South Wales.
- 34.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 34.3 The Parties are not 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 Deed:
 - 35.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
 - 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 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the Act.
- 36.2 This deed is not intended to operate, and shall not be construed as operating to fetter, in any unlawful manner:
 - 36.2.1 the power of Council to make any law; or
 - 36.2.2 the exercise by Council of any statutory power, discretion or duty.
- 36.3 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.

37 Illegality

- 37.1 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.

38 Severability

- 38.1 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.
- 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 Deed, but the rest of this Deed is not affected.

39 Amendment

- 39.1 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.

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 Deed, 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:
 - 40.2.1 is in writing,

- 40.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 40.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 40.2.4 is signed and dated by the Party giving the waiver.
- 40.3 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.
- 40.4 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.
- 40.5 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.

41 GST

- 41.1 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 of GST on that supply.

- 41.2 Subject to clause 41.4, 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.
- 41.3 Clause 41.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 41.4 No additional amount shall be payable by the Council under clause 41.2 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.

- 41.5 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:

41.5.1 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;

41.5.2 that any amounts payable by the Parties in accordance with clause 41.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

- 41.6 No payment of any amount pursuant to this clause 41, 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.

- 41.7 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.

- 41.8 This clause continues to apply after expiration or termination of this Deed.

42 Explanatory Note

- 42.1 The Appendix contains the Explanatory Note relating to this Deed required by s205 of the Regulation.
- 42.2 Pursuant to s205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

43 Electronic Execution

- 43.1 Each Party:
- 43.1.1 consents to this Deed being signed by electronic signature by the methods set out in clause 43.3;
- 43.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this Deed;
- 43.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this Deed, and

43.1.4 agrees that electronic signing of this Deed by or on behalf of a Party by those methods indicates that Party's intention to be bound.

43.2 If this Deed is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.

43.3 For the purposes of clause 43.1, the methods are:

43.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the Deed; or

43.3.2 insertion of the person's name onto the Deed; or

43.3.3 use of a stylus or touch finger or a touch screen to sign the Deed,

provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the Deed; or

43.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Deed; or

43.3.5 as otherwise agreed in writing between the Parties.

Schedule 1: Contributions Table

Development Contribution Note: for example, 'Monetary Contribution for Roads' or Dedication of open space' or construction of road'	Public Purpose Note: for example, 'open space' or 'roads' or 'community facilities' or Affordable Housing	Manner and Extent Note: Include detailed description of the item in terms of amount, design, land size etc., including by reference to plan contained in annexures	Timing/ Trigger Note: for example, prior to the issue of a specified Construction Certificate or Subdivision Certificate'	Value	Party Responsible Note: for example, Land Owner or Landowner	Property Affected, if relevant	Development Stage Affected, if relevant	Third Party, if relevant
A. Dedication of Land – See Part 3 and Schedule 3								
Dedication of land	Affordable Housing	10 serviced lots (or equivalent land area)	Post subdivision certificate for the low-density area in the northern precinct	At not cost	Landowner	[TBC]	[TBC]	
Dedication of land	Affordable housing	2000sqm of serviced land	Post subdivision certificate of the first stage of the MU1 zoned land in the northern precinct	At no cost	Landowner	[TBC]	Subdivision	

Dedication of land	Public Open Space – recreational land	Tucki Tucki Creek Corridor	Five (5) years after commencement of revegetation and embellishment	Free of charge	Landowner	Tucki Tucki Creek Corridor, as zoned as RE1	NA	NA
Dedication of land	Public Open Space – recreational land	As shown on precinct structure plan Parcel a - Xsqm Parcel b – Xsqm	One (1) year after construction.	Free of charge	Landowner	tbc	Subdivision	
B. Carrying out of Works – See Part 4 and Schedule 4								
Embellishment of Public Open Space	Public Open Space – revegetation	Tucki Tucki Creek corridor revegetation and continued maintenance	VMP agreed by Council prior to subdivision certificate, works to commence within 3 months of issue, vegetation to be maintained for a period of five years	Free of charge	Landowner	Tucki Tucki Creek Corridor, as zoned as RE1		
Construction of	Public Open Space -	Tucki Tucki Creek Corridor, east to	VMP agreed by Council prior	[TBC]	Landowner	Tucki Tucki Creek	Occupation or release of	

footpath	footpath	west along the corridor	to subdivision certificate, works to commence within 3 months of issue. Works to be complete prior to dedication of land			Corridor, as zoned as RE1	final lots	
Construction of shared path (Bridge)	Public Open Space – shared path	Shared path connecting the northern and southern precincts, crossing the Tucki Tucki Creek	VMP agreed by Council prior to subdivision certificate, works to commence within 3 months of issue. Works to be complete prior to dedication of land.			Tucki Tucki Creek Corridor, as zoned as RE1		
Embellishment of Public Open Space	Public Open Space -	Landscape design and construction for each parcel As shown on precinct structure	Plans to be agreed by Council prior to the first subdivision certificate in the northern					

		<p>plan</p> <p>Parcel a - Xsqm</p> <p>Parcel b – Xaqm</p>	<p>precincts (Stage 1). Works to commence within 3 months of subdivision certificate issue. Works to be completed prior to dedication of land (one year after construction commencement)</p>					
C. Other material public benefits								

Schedule 2: Table of other Obligations

Item	Details
1. Security:	Nil.
2. Maintenance Period	1 year after completion of the Work – see clause 1.1
3. Defects Liability Period	1 year after completion of the Work – see clause 1.1
4. Defects Liability Security	Not applicable
5. Maintenance Security	Not applicable – See Clause 17 of Schedule 4
6. Registration (section 7.6(1) of the Act)	Registration required – see clause 21
7. Insurances:	See clause 26. Insurances required are: <ul style="list-style-type: none">• Contract Works Insurance• Public Liability• Workers Compensation Insurance
8. Costs of Deed	At the Land Owner's cost – see clause 30

Schedule 3: Land Dedication Provisions

How Land is Dedicated

- 1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 1.1 the Council is given:
 - 1.1.1 a Clearance Certificate that is valid at the time of dedication of the land, or
 - 1.1.2 the Foreign Resident Capital Gains Withholding Amount in respect of the land, and
 - 1.1.3 evidence that a transfer of the land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 2 The Land Owner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur and is to give Council 10 business days prior notice of the lodgement of a subdivision plan involving the land to be dedicated with LRS.
- 3 The Land Owner is to ensure that land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 4 If, having used all reasonable endeavours, the Land Owner cannot ensure that the land is free from all encumbrances and affectations, the Land Owner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 5 Before dedicating the land to the Council, the Land Owner, at its cost, is to obtain and provide to the Council a Site Audit Report and Site Audit Statement stating that the land is suitable for the purpose for which the land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.
- 6 The Land Owner indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the land being dedicated but only in relation to Contamination that existed on or before the date that the land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.

Land on which Works are carried out

- 7 If the Land Owner is required to dedicate land under this Deed, or to provide public access to land under this Deed, and the Land Owner is also required to construct a Work on that land, then the land must be dedicated to Council, or the public access provided, within 10 business days of Council accepting that the Work is Complete, or at such earlier time as may be agreed with Council.

Acquisition of land required to be dedicated

- 8 If the Land Owner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Land Owner 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.
- 9 The Council is to only acquire land pursuant to clause 9 of this Schedule if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Land Owner to dedicate the land required to be dedicated under this Deed.
- 10 Clause 9 of this Schedule constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 11 If, as a result of the acquisition referred to in clause 9 of this Schedule, the Council is required to pay compensation to any person other than the Land Owner, the Land Owner is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 22 in Part 7 of this Deed.
- 12 The Land Owner 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 land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 13 The Land Owner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to clause 9 of this Schedule, including without limitation:
- 13.1 signing any documents or forms,
 - 13.2 giving land owner's consent for lodgement of any Development Application, and
 - 13.3 paying the Council's costs arising under clause 9 of this Schedule.

Schedule 4: Works Provisions

Cost Of Works

- 1 The Land Owner is responsible for meeting all Costs of and incidental to carrying out the Works, regardless of the Value of the Development Contribution comprising a Work.

Deed not Construction Contract

- 2 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Land Owner.

General obligations relating to Works

- 3 The Land Owner is to provide and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and in accordance with:
 - 3.1 all applicable laws,
 - 3.2 any Approval required by any law relating to the provision of the Works, and
 - 3.3 the lawful requirements of any Authority.
- 4 The Land Owner is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Works is supplied or made available for that purpose.

Warranties relating to Works

- 5 The Land Owner warrants to the Council that:
 - 5.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Works,
 - 5.2 it accepts that, if any aspect of the Works do not comply this Deed, the Council is entitled to require the Land Owner to cease the Works 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,
 - 5.3 the Works, when completed, are to be fit for purpose.
- 6 When a work is Completed, the Land Owner is to procure in favour of the Council any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Works.

Design of Works

- 7 If the design of a Work is agreed prior to the date of this Deed, Approved Work Drawings will be included in Schedule 5.
- 8 Clauses 9 – 14 of these Works Provisions apply if the design of a Work has not been agreed by Council prior to the date of this Deed, and no Approved Work Drawings are included in Schedule 5.
- 9 The Land Owner may not commence construction of the Works unless the Works are designed and approved in accordance with this Deed.

- 10 Before commencing the design of the Works, the Land Owner is to request the Council to provide the Land Owner with the Council's design requirements for the works.
- 11 Upon receipt of the Land Owner's request, the Council may:
- 11.1 initially request the Land Owner to provide a written proposal concerning the design of the Works, including preliminary concept designs, to assist Council in determining and notifying the Land Owner of its requirements, and subsequently request the Land Owner to submit the plans and drawings of the Works to the Council for approval, or
- 11.2 request the Land Owner to submit the plans and drawings of the works to the Council for approval.
- 12 The Council may reasonably require the Land Owner to make any change to the plans and drawings of the Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Land Owner is to make any such change.
- 13 The Council is to inform the Land Owner in writing when it approves the plans and drawings of the Works.
- 14 The Land Owner is not to make any application for any Approval relating to the Works unless the Council approved the plans and drawings of the Works under this clause.

Ownership & care of Works and land

- 15 The Land Owner owns, and is responsible for care of a Work and bears all risk and liability in connection with the Work, until:
- 15.1 20 business days after the Work is complete; or
- 15.2 any land on which the Work is located which is to be dedicated to Council under this Deed has been dedicated to Council, provided the Work is Complete,
- whichever is the earlier.

Work health & safety

- 16 The Land Owner acknowledges that it is the Principal Contractor under WHS Law for the Works unless and until such time that:
- 16.1 the Land Owner engages the Contractor to construct the Works, or
- 16.2 engages another person to be the Principal Contractor for the Works,
- and authorises the person to have management or control of the workplace relating to the Works and to discharge the duties of a Principal Contractor under WHS Law.
- 17 For the purpose of the Land Owner's compliance with WHS Law the Council:
- 17.1 acknowledges that the Land Owner (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
- 17.2 authorises the Land Owner (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Land Owner to discharge its obligations and responsibilities under WHS Law.
- 18 If the Land Owner at any time terminates the engagement of the Contractor or terminates its authority for the Contractor or other person referred to in clause 20 of

these Works Provisions to be the Principal Contractor for the Works, the Land Owner becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Works.

Variations to approved Works & Costs

- 19 The detail or specifications of Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 20 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 21 The Party to whom the request is made must respond to the request within 20 business days or such other period considered by the Party to be reasonable in the circumstances.
- 22 A Party is not to unreasonably withhold its Approval to the request.
- 23 The Party who seeks the variation of the Works must meet the costs of the variation unless the other Party otherwise agrees.
- 24 Despite anything else in clauses 23 to 27, if Council considers, in its absolute discretion, that a variation requested under clause 23 and 24 is not in the public interest or does not lead to a better planning outcome than the originally designed Works, then it is entitled in its absolute discretion to refuse to agree to the variation.
- 25 In determining whether a variation is in the public interest or leads to a better planning outcome, Council will consider, without limitation:
 - 25.1 the needs of the community;
 - 25.2 Council's applicable planning controls and policies;
 - 25.3 the benefit to the public of the Works as originally proposed and as proposed to be varied;
 - 25.4 any impact of the variation on the public or a section of the public;
 - 25.5 any costs implications for Council of the variation;
 - 25.6 integration of the Works with existing Council infrastructure;
 - 25.7 whether the variation will result in any delay in the provision of the Works;
 - 25.8 the guiding principles for councils under the *Local Government Act 1993*;
 - 25.9 whether the variation significantly improves, increases or enlarges the physical, financial, and environmental benefit of the Works to the wider community (other than occupants of the Development);
 - 25.10 whether the variation significantly improves access to enjoyment of the Works by the wider community;
 - 25.11 whether the variation better achieves implementation of Council' adopted strategies relevant to the Works and public benefits more generally.

Construction commencement notice

- 26 The Land Owner is to notify the Council of its intention to commence construction of the Works not less than 10 business days before that construction commences.

Protection of people, property & utilities

- 27 The Land Owner is to use all reasonable endeavours to ensure that, in providing the Works:
- 27.1 all necessary measures are taken to protect people and property,
 - 27.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 27.3 nuisances and unreasonable noise and disturbances are prevented.
- 28 The Land Owner 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 Works unless authorised in writing by the Council or any relevant Authority.

Damage to assets & property

- 29 The Land Owner 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 Works.
- 30 The Land Owner must replace or fix any Council asset the Land Owner loses or damages while performing the Works in accordance with any reasonable requirements of the Council.
- 31 If an audit, inspection or test of the Works shows that:
- 31.1 the Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 31.2 damage has occurred to a Council asset or the property of another person in connection with the Works,
- the Council may give the Land Owner a notice in writing requiring it to take corrective action to bring the Works into conformity or repair the damage, as the case requires.
- 32 Without limiting any other remedies available to the Council under this Deed, if the Land Owner does not comply with the Council's requirements under clause 35, the Council may take the action required of the Land Owner and recover the Council's costs of so doing from the Land Owner.

Entry onto Land

- 33 The Land Owner is responsible for obtaining all necessary rights to permit the Land Owner to lawfully enter, occupy, and provide the Works on any land not owned by Council or the Land Owner, and to enable the Council to enter that land to inspect the Works in accordance with this Deed.
- 34 Upon receiving reasonable prior written notice from the Land Owner, the Council is to allow the Land Owner to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Land Owner is reasonably necessary for the Works.
- 35 The Council is not required to allow the Land Owner to enter, occupy and use any Council owned land that is used for public purposes unless and until the Land Owner has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 36 Upon receiving reasonable prior notice from the Council, the Land Owner is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Works are being, or have been, provided.

- 37 The Council must comply with the Land Owner's reasonable safety requirements while on any land on which the Works are being provided.

Audit, inspection, testing of Works

- 38 The Council may undertake an audit, inspection or test of the Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Land Owner.
- 39 The Land Owner 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 Works.
- 40 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Works, the Land Owner is to:
- 40.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 40.2 provide evidence to the Council that the action has been taken.
- 41 If an audit, inspection or test shows that the Works have not been provided in accordance with this Deed, the Land Owner is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 42 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Works is required, the Council may determine an approved fee in that regard and the Land Owner is to pay to the Council the fee so approved.

Access to information & records

- 43 The Council may make a written request to the Land Owner:
- 43.1 to provide information to the Council concerning the Works,
 - 43.2 to allow the Council to inspect the Land Owner's records concerning the Works, including by giving the Council access to premises owned, occupied or controlled by the Land Owner for that purpose.
- 44 The Land Owner is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Easements, covenants etc. relating to Works

- 45 The Land Owner must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Works.
- 46 The Costs required to be incurred by the Land Owner in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Completion of Works

- 47 The Land Owner must provide the Council with at least 20 business days' notice of the date on which it considers it will Complete a Work it is required to carry out under this Deed and the notice must be accompanied by the following documents (where relevant):
- 47.1 construction plans;

- 47.2 data and modelling assumptions;
- 47.3 certification and inspection sign offs by Council or any certifier;
- 47.4 maintenance manuals and other operating information; and
- 47.5 maintenance schedules,

(Completion Request Notice)

- 48 Council will inspect the Works the subject of the Completion Request Notice within 20 business days of receipt of the Completion Request Notice, and the Land Owner must agree on a time for the inspection within that period.
- 49 After the inspection, the Council will give the Land Owner written notice of whether the Work the subject of the Completion Request Notice:
 - 49.1 has been satisfactorily Completed; or
 - 49.2 has not been satisfactorily Completed and directing the Land Owner to complete, rectify or repair any specified part of the Work the subject of the Completion Request Notice within a period specified in the direction in order to bring the Works into conformity with this Deed or any Approval.
- 50 The Land Owner is to promptly comply with any such direction given by the Council.
- 51 The Council may undertake more than one inspection and issue more than one direction to the Land Owner in order to be satisfied that a Work the subject of a Completion Request Notice is Complete.
- 52 The Work is Complete for the purposes of this Deed when the Council issues the Land Owner a notice to that effect under clause 53.1 of these Works Provisions or after compliance by the Land Owner with any direction under clause 53.2 or 55 of these Works Provisions.

Works-As-Executed Plan

- 53 No later than 15 business days after Completion of all of the Works, the Land Owner is to submit to the Council a full Works-As-Executed-Plan for the Works in a format agreed to by the Council.
- 54 If the Land Owner owns the copyright in the Works-As-Executed Plan, the Land Owner must assign the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 55 If the Land Owner is not the copyright owner of the Work-As-Executed Plan, the Land Owner is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Maintenance of Works

- 56 The Land Owner is to Maintain a Work during the Maintenance Period.
- 57 The Council is to permit the Land Owner to enter any land owned or controlled by the Council to enable the Land Owner to Maintain a Work during the Maintenance Period.

Rectification of Defects

- 58 The Council may give the Land Owner a Rectification Notice during the Defects Liability Period.
- 59 The Land Owner is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.

- 60 The Council is to do such things as are reasonably necessary to enable the Land Owner to comply with a Rectification Notice given by the Council.

Removal of structures & Equipment

- 61 When providing the Works on any Council owned or controlled land is completed for the purposes of this Deed, the Land Owner, without delay, is to:
- 61.1 remove from the land any structure not comprising or required in connection with the completed Works and make good any damage or disturbance to the land as a result of that removal,
 - 61.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 61.3 leave the land in a neat and tidy state, clean and free of rubbish.

Contribution for Maintenance or other Recurrent Charges

- 62 Not applicable

Schedule 5: Approved Work Drawings

Not applicable

DRAFT

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Land Owner in accordance with s127(1) of the *Corporations Act 2001 (Cth).*

Name/Position

Name/Position

DRAFT

APPENDIX: EXPLANATORY NOTE

For the purposes of *Environmental Planning and Assessment Regulation 2021* (section 205) in respect of a draft Planning Agreement under s7.4 of the *Environmental Planning and Assessment Act 1979*.

1. Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the planning agreement).

This explanatory note explains what the planning agreement is proposing, how it delivers public benefit and whether it is an acceptable means of achieving the proposed planning outcomes.

2. The parties to this planning agreement are:

Lismore City Council; and

Nimble Estates Pty Ltd (ACN 656 265 575) as the Land Owner

3. The land subject to the planning agreement is:

Lot 42 in Deposited Plan 868366 and Lot 1 in Deposited Plan 957 677, known as 1055 & 1055A Bruxner Highway, Goonellabah.

A map of the subject land is attached to this explanatory note.

Will the planning agreement be registered on the subject land titles?

Yes.

4. Description of the proposed Change to the Environmental Planning Instrument

The Land Owner is seeking an amendment to the planning controls for the subject land in accordance with Planning Proposal (PP) PP-2022-3907 and has made an offer to enter into a planning agreement in connection with the planning proposal. The amendments outlined in the related planning proposal are:

Planning Instrument provision	Current	Proposed
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Land Zoning Maps, Sheet LZN_005 and Sheet LZN_006	RU1	R1, MU1 and E4 – see Planning Proposal report for detail
Lot Size Maps, Sheet LSZ_005 and Sheet LSZ_006	40ha, 20ha	R1 – 400m2 MU1 – 300m2 E4 – 1500m2
Height of Building Maps, Sheet HOB_005 and Sheet HOB_006	NA	R1 – 8.5m MU1 north – 13.5m

5. Description of the planning agreement

The planning agreement will provide residential lots and residential developable land to the Lismore City Council or to the NSW Government entity (at Councils' discretion) and/or a registered community housing provider to provide as affordable housing and other strategic housing benefitting the Lismore local government area.

Will the contributions be in the form of land, works or a monetary contribution?

The contributions required by the planning agreement will be provided in the form of dedication of land and works, being:

- 10 serviced residential lots (or equivalent land area) within the R1 General Residential zone.
- 2000m2 of serviced medium-density residential land within the MU1 zoned land north of Tucki Tucki Creek (in up to two development lots).
- XXsqm of land that forms the Tucki Tucki Creek corridor, for the purpose of public recreation. Land to be revegetated in accordance with a Council approved Vegetation and Landscaping Management Plan (VMP) with a footpath constructed running east to west on at least one side of the creek. The corridor is to be maintained for the period stipulated in the VMP;
- XXsqm of land located xxx, for the purpose of public recreation; and
- Shared path connection to be constructed across the Tucki Tucki Creek linking the northern and southern precincts.

A map of the proposed land to be dedicated is attached to this explanatory note.

Will the contributions be provided in addition to or in lieu of other contributions?

The contributions required by this Deed will be provided in addition to contributions under any applicable contributions plan. Benefits under this Deed are to be taken into consideration in Council determining any development contributions under section 7.11 of the Act in relation to the Development and will be lieu of the Open Space and Recreation Facilities required under Council's applicable contributions plan.

When will the contributions be provided?

The contributions required by the planning agreement will be provided in accordance with Schedule 1 of the planning agreement.

6. Assessment of the merits of the planning agreement

How is the planning agreement in the public interest?

Contribution Element	Public Interest
10 serviced residential lots (or equivalent land area)	The dedication (at no cost) of 10 serviced lots (or equivalent land area) to the Lismore City Council is in the public interest as it is specifically dedicated to help Lismore's recovery following the natural disaster of February 2022 for affordable housing. The serviced lots are dedicated to the Lismore City Council.
2000 sqm of medium-density land	The dedication (at no cost) of 2000 sqm of serviced land is for the purpose of affordable housing.
Tucki Tucki Creek corridor	The Tucki Tucki Creek Corridor embellishment and land dedication is for the purpose of public recreation. The Tucki Tucki Creek from the west of the site into Goonellabah has been identified in the Lismore's Contribution Plan and Council already owns majority of the corridor where footpaths either exist or are planned. The dedication and embellishment of the creek corridor within this landholding will further contribute to the value and scale of the corridor for the community and region.
Urban public recreation land	Dedication and embellishment of land within the MU1 zoned land to the north of the creek is for the purpose of public recreation that will serve the residents of the urban release area. The intention is that the land will be utilised to provide social/family recreation function.

What is the impact, positive or negative, of the planning agreement on the public or any section of the public?

The planning agreement has a significantly positive impact on the public:

- Provision of land available for flood-impacted residents of Lismore who wish to remain in Lismore and can take up a land swap offer through the NRRC;
- Provision of affordable housing, benefiting those who are in housing stress;
- Provision of public recreation land benefiting all members of Goonellabah and beyond by facilitating greater opportunity for exercise, socialization and connection with nature.

How does the planning agreement conform with the planning authority's capital works program, if any?

Does the planning agreement specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued?

Yes.

Are there any other matters which a reasonable member of the public would wish to know in understanding this planning agreement?

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