

Our reference
LC/LL/OAKS30029-9171418

8 Chifley
8-12 Chifley Square, Sydney NSW 2000, Australia
GPO Box 9925, Sydney NSW 2001, Australia
Tel +61 2 9210 6500
Fax +61 2 9210 6611
www.corrs.com.au



Sydney
Melbourne
Brisbane
Perth
Port Moresby

25 May 2023

By email: council@orange.nsw.gov.au
General Manager
Orange City Council
PO Box 35
Orange NSW 2800

Contact
Max Newman (02) 9210 6822
Email: max.newman@corrs.com.au

Partner
Louise Camenzuli

Dear Sir/Madam

Proposal to negotiate a Voluntary Planning Agreement

1 Background

Orange Enterprises No. 1 Pty Ltd (**Developer**) wishes, subject to the negotiation and finalisation of the following terms, to make a formal offer under section 7.4 of the *Environmental Planning and Assessment Act 1979* (**EPA Act**) to enter into a Voluntary Planning Agreement (**VPA**) with Orange City Council (**Council**).

This VPA offer relates to land at Lot 1 DP630681, Lot A DP381933, Lot 1 DP381932 and Lot A DP381935 located at 12-20 Shiralee Road, Orange (**Site**) and is made in connection with:

- a) a planning proposal to: (see *Planning Proposal, Currajong Pty Ltd, Rev A*, as issued in draft Council) to:
 - i. rezone part of the Site from RE1 Public Recreation to R1 General Residential, and part of the Site from R2 Low Density Residential to R1 General Residential;
 - ii. amend the minimum lot size controls for parts of the Site currently zoned R1; and
 - iii. apply minimum lot size controls to that part of the Site to be rezoned from RE1 to R1 (**Planning Proposal**); and
- b) the proposed subdivision of the Site to facilitate the development of approximately 198 residential lots plus 1 super lot (4,989m²), equating to approximately 206 dwellings, and approximately 41,553m² of public open space.

2 Council's VPA Procedure

This VPA offer constitutes a 'proposal to negotiate' for the purposes of Council's *Voluntary Planning Agreement Procedure* and is comprised of the following details:

- (a) **A map depicting the subject land that may be affected by the possible VPA**
Plans depicting the Site are **attached** and are further described below.

(b) **The proponent's objective for the VPA**

The Developer proposes to deliver a high-quality residential precinct in Shiralee. The proposed VPA will facilitate this objective by consolidating the terms of an agreement with Council with respect to the additional residential lots to be achieved in connection with the proposed dedication of RE1-zoned land to Council, to absolve the need for Council to return to the Developer any contributions credits in connection with that dedication.

Further details about the proposed development of the Site and terms of the proposed VPA are set out below.

(c) **The current obstacle to the objective**

The Developer had initially intended to subdivide the Site into approximately 157 residential lots and approximately 6.1 ha of open space, in line with the Shiralee Master Plan included in the Shiralee Development Control Plan 2015 (**Shiralee DCP**) and the underlying land zoning.

According to section 3.3 of the Shiralee DCP, land zoned RE1 is to be dedicated as open space, and compensation for the dedicated land is to be provided by Council in accordance with Council's Section 7.11 Contributions Plan.

As shown on the first **attached** plan, the initially intended subdivision of the Site included a total of approximately 60,913m² of land zoned RE1. As the land is unencumbered, this equates to contributions credits of \$1,827,390 (\$30/m² x 60,913m²) under Council's Contributions Plan.

Council has advised the Developer that an inconsistency occurs within its Contributions Plan pertaining to compensation payable for the dedication of the RE1-zoned land to Council.

(d) **The possible solution to the obstacle**

In order to address the matter of compensation and progress the proposed land dedication in the absence of an amendment to the Contributions Plan, the Developer proposes the following be agreed via a VPA:

- i. re-zoning, via the Planning Proposal, part of the RE1-zoned land to R1 General Residential and amend the minimum lot size controls for parts of the Site currently zoned R1 to create approximately 50 additional lots/dwellings with access pathways comprising of:
 - a. 32 additional lots and 1 super lot (4,989m²) on the Site (being the land shaded orange in the second **attached** plan, which includes one "super lot" that is likely to be further subdivided into 8 community title lots), resulting in up to **40 additional dwellings**; and
 - b. the Planning Proposal would also seek to amend the minimum lot size for parts of the Site currently zoned R1 General Residential to create 10 further lots (being the land shaded blue in the second **attached** plan). The site-specific and strategic merit of this proposal will be separately addressed in the Planning Proposal itself;

Proposal to negotiate a Voluntary Planning Agreement

- ii. dedication of the resulting RE1-zoned land (approximately 41,553m², being the land shaded green in the second **attached** plan) to Council at nil cost to Council, such that no section 7.11 contributions credits arise for the dedicated land (i.e. the Developer forfeits the \$30/m² in contributions credits, equal to \$1,827,390 in value to Council); and
- iii. the section 7.11 contributions payable for the additional lots or dwellings (\$1,000,000 - 50 x \$20,000 per lot/dwelling) created by the re-zoned areas are to be offset by the cost of embellishing the dedicated RE1-zoned land, which will be performed to a value equal to or greater than the Developer's section 7.11 liability.

Please refer to the **attached** table for a worked calculation of the section 7.11 contributions liability for the proposed development of the Site (based on an indicative yield), the contributions credits arising from the dedication of RE1-zoned land and how the dedication and embellishment of the proposed open space land will fully offset Council's credit liability, with an additional \$1,000,000 (50 x \$20,000 per lot/dwelling) in embellishment works to be contributed by the Developer at no cost to Council.

Therefore, total value of the proposed embellishment works to the RE1-zoned land is \$2,000,000 (in other words, effectively, 50 x \$40,000 per lot).

The Developer notes that the Contributions Plan details work items within the Site such as road widening, 'park edge' half road construction, detention basin and cycleways. These items are listed as partially funded under the Contributions Plan. It is intended that the timing and value of these items are yet to be worked through with Council's Technical Services Team and that any credits arising from this work, if carried out by the Developer, would be addressed separately to the proposed VPA.

(e) **The planning rationale and potential public benefit of the proposal**

The proposal will facilitate the embellishment and dedication of a substantial area of open space to Council, for use as public reserve.

The proposal is in line with the Shiralee DCP and Master Plan included therein, will benefit the natural, social and economic environment of Shiralee and is therefore in the public interest.

(f) **Request for Statement of Issues**

The Developer respectfully requests that Council provides a Statement of Issues to guide VPA preparations and negotiations having regard to the above proposal.

3 Proposed terms of VPA

In summary, the terms of the VPA offer are as follows:

Parties	Orange Enterprises No. 1 Pty Ltd Orange City Council
Description of the land (s7.4(3)(a))	Lot 1 DP630681, Lot A DP381933, Lot 1 DP381932 and Lot A DP381935 located at 12-20 Shiralee Road, Orange.
Description of the planning proposal and proposed development (s7.4(3)(b)(i) and (ii))	<p>(a) A proposed planning proposal to:</p> <ul style="list-style-type: none"> i. rezone part of the Site from RE1 Public Recreation to R1 General Residential, and part of the Site from R2 Low Density Residential to R1 General Residential; ii. amend the minimum lot size controls for parts of the Site currently zoned R1; and iii. apply minimum lot size controls to that part of the Site to be rezoned from RE1 to R1. <p>(b) Proposed subdivision of the Site to facilitate the development of approximately 198 residential lots plus 1 super lot (4,989m²) equating to 206 dwellings and 41,553m² of public open space.</p>
Nature and extent of the provision to be made by the developer, and the times and manner in which the provision is to be made (s7.4(3)(c))	<p>(a) Park Plan Embellishment Works</p> <p>If the Planning Proposal should proceed as proposed, the Developer will embellish the RE1-zoned land (as amended following the Planning Proposal), being the land shaded green in the second attached plan, embellishment works design and inclusions as agreed with Council are outlined within the attached 'Park Plan'.</p> <p>(b) Timing</p> <ul style="list-style-type: none"> i. Developer to commence works on the agreed 'Park Plan' prior to construction of the 105th residential lot or dwelling within the development, with the works to be completed prior to construction of the 155th lot or dwelling. The intended development staging / timing is shown on the attached Lot Staging Plan. ii. Dedication to Council of the embellished RE1 Zoned land is to be prior to the issue of the Subdivision Certificate for the 199th residential lot or dwelling created on the Site, whichever is earlier.

Proposal to negotiate a Voluntary Planning Agreement

	<p>(c) Maintenance</p> <p>The Developer agrees to enter into a 2 year maintenance agreement with Council for the soft landscaping works commencing immediately following the completion of the embellished RE1 Zoned land.</p> <p>(d) Park Embellishment Value</p> <p>The Developer agrees to the total park embellishment value of \$2,000,000, please refer to the attached table for a worked calculation of the section 7.11 contributions liability for the proposed development of the Site (based on an indicative yield), the contributions credits arising from the dedication of RE1-zoned land and how the dedication and embellishment of the proposed open space land will fully offset Council's credit liability, with an additional \$1,000,000 (50 x \$20,000 per lot/dwelling) in embellishment works to be contributed by the Developer at no cost to Council.</p> <p>If the costs of the 'Park Plan' embellishment works exceed the \$2,000,000 value, the Developer shall not seek the difference.</p> <p>If the Planning Proposal does not receive Gateway determination, or receives Gateway determination but is subject to conditions that materially amend the contents of the Planning Proposal, the Developer will dedicate all parts of the Site currently zoned RE1 to Council, as originally set out in the Shiralee DCP, prior to the issue of the Subdivision Certificate for the 157th residential lot created on the Site.</p>
Exclusion of s7.11, s7.12 and s7.24 contributions (s7.1(3)(d))	<p>Sections 7.11 and 7.12 – excluded for the 50 additional lots / dwellings created by the proposed rezoning via the Planning Proposal, comprising of:</p> <p>(a) 40 additional lots / dwellings on land currently zoned RE1 created by re-zoning from RE1 to R1 General Residential; and</p> <p>(b) 10 additional lots / dwellings on land currently zoned R1 General Residential by amending the minimum lot size. The exclusion to this area applies to the first 10 lots / dwellings created in this area only and that all lots over and above the first 10 will attract normal contributions.</p> <p>The exclusion of contributions is only in relation to the first Equivalent Tenement of demand generated by the 50 lots / dwellings, such that any future intensification of a lot (such as a</p>

Proposal to negotiate a Voluntary Planning Agreement

	<p>dual occupancy or multi-dwelling housing etc) does not inherit a contribution exemption.</p> <p>Section 7.24 – not excluded.</p>
Whether benefits under the Agreement are or are not to be taken into consideration in determining a development contribution under s7.11 (s7.4(3)(e))	No.
Mechanisms for resolution of disputes (s7.4(3)(f))	In accordance with Council's VPA Procedure, the VPA will contain a standard dispute resolution clause, providing for the mediation of disputes between the parties before the parties may exercise any other legal rights in relation to the dispute.
Enforcement of the agreement by a suitable means (s7.4(3)(g))	<p>The VPA is to be registered on the title to the land currently zoned RE1 and proposed to be rezoned via the Planning Proposal. Should the Developer on-sell the site to a third party the VPA registered on the RE1 land binds any potential successors in Title to the terms of the VPA and the agreed embellishment works.</p> <p>A bank guarantee in the amount of \$10,000 to cover legal costs associated with enforcement of the VPA.</p>

We look forward to receiving Council's response to the above offer. Please contact Max Newman on _____ if you have any questions or would like to discuss.

Yours faithfully

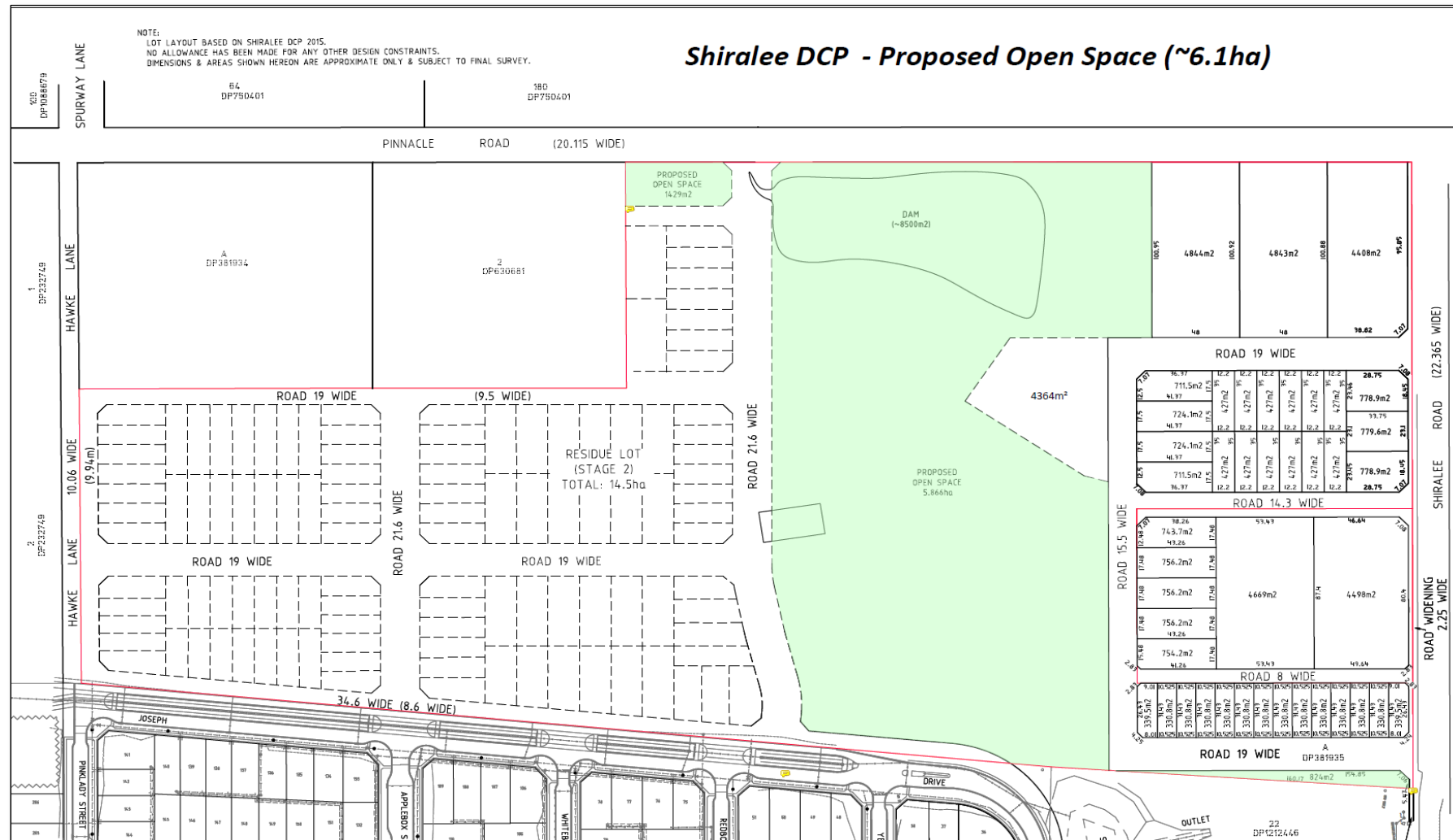
Corrs Chambers Westgarth

Louise Camenzuli

Partner

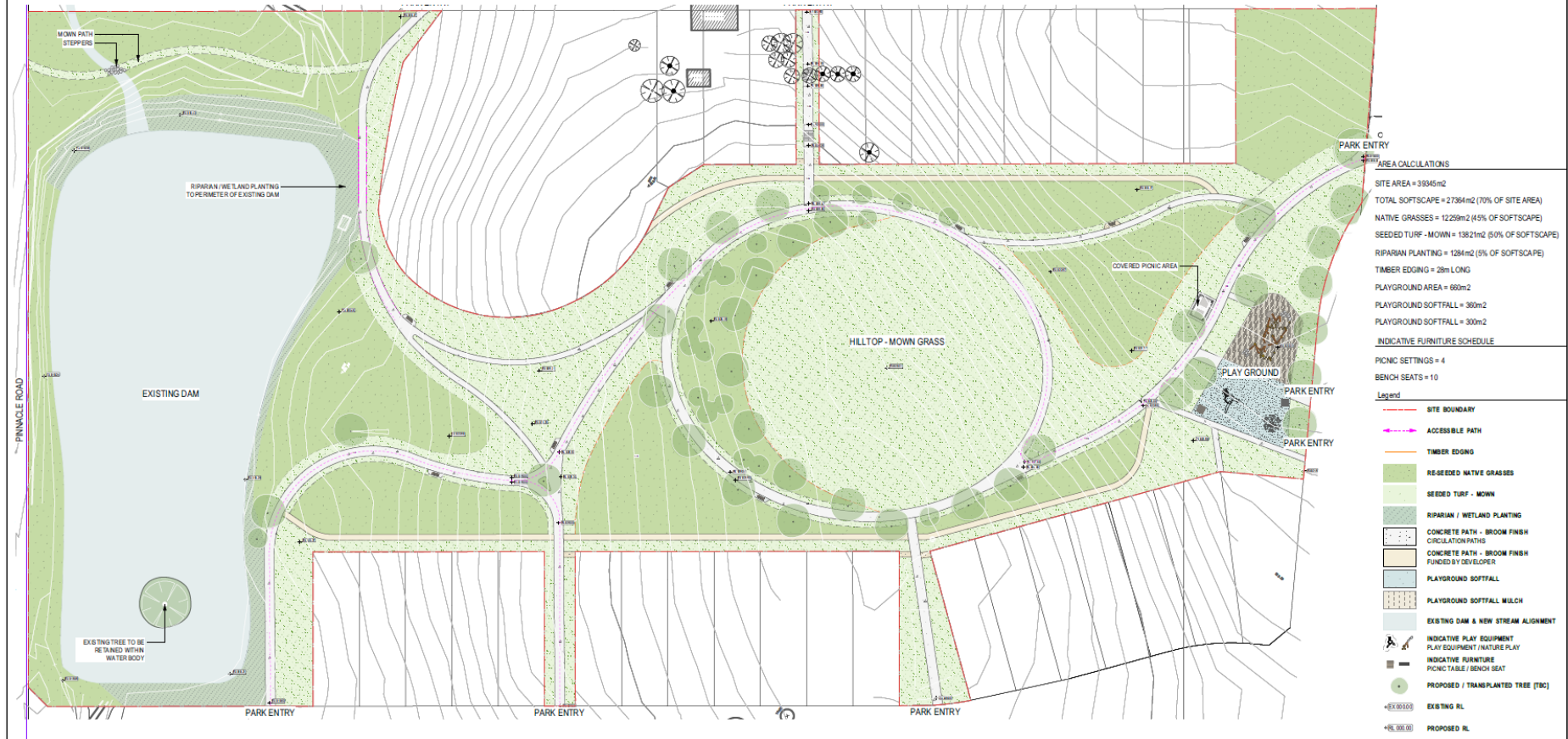
attachments

3441-6441-3975v12





Park Embellishment Works - 'Park Plan'





VPA / Re-zoning Contributions

S7.11 Contributions per the Shiralee Master Plan (development as per existing zoning)					Comments / Notes
Contribution Item	Rate	Lots		Contributions Payable	<p>The VPA will not exclude s7.11 contributions payable in connection with the development as per the current zoning of the Site. The Developer agrees to pay these contributions, or offset the contributions through works-in-kind (to be further discussed with Council, separate to the VPA negotiations).</p>
Open Space & Recreation	\$ 792.01	157	additional lots	\$ 124,345.57	
Community and Cultural Roads & Traffic Management	\$ 229.68	157	additional lots	\$ 36,059.76	
Local Area Facilities	\$ 1,045.43	157	additional lots	\$ 164,132.51	
Plan Preparation & Admin	\$ 17,760.90	157	additional lots	\$ 2,788,461.30	
	\$ 171.98	157	additional lots	\$ 27,000.86	
	\$ 20,000.00			\$ 3,140,00.00	
Less Credits (4 existing lots)				\$ 80,000.00	
				\$ 3,060,000.00	
S7.11 Contributions Credits					<p>The Developer agrees to forfeit any s7.11 contribution credits payable for the dedication of the RE1-zoned land.</p> <p>Therefore, conversely to claiming contribution credits for the 60,913m² of RE1-zoned land, the resulting 41,553m² of RE1-zoned land will be dedicated to Council at nil cost.</p>
	Rate	Area		Contribution Credits	
	30 / m ²	60,913		\$ 1,827,390.00	

25 May 2023
Orange City Council
Proposal to negotiate a Voluntary Planning Agreement

Rezoning Contributions (RE1 to R1 - land shaded orange)					Comments / Notes	
Contribution Item	Rate	Lots		Park Embellishment	S7.11 contributions payable for the rezoned lots or dwellings (\$800,000) would be redirected to and wholly offset by the embellishment of the RE1-zoned land.	
S7.11 Contribution	\$ 20,000.00	40	additional lots/dwellings	\$ 800,000.00		
				\$ 800,000.00		
Rezoning Contributions (Change Minimum Lot Size - land shaded blue)					S7.11 contributions payable for the additional lots created by the change to the minimum lot size control (\$200,000) would be redirected to and wholly offset by the embellishment of the RE1-zoned land.	
Contribution Item	Rate	Lots		Park Embellishment		
S7.11 Contribution	\$ 20,000.00	10	additional lots/dwellings	\$ 200,000.00		
				\$ 200,000.00		
Park Embellishment Value via Planning Proposal					\$ 1,000,000.00	Park Embellishment value generated by the Planning Proposal (\$7.11 liability of the additional lots created).
Additional Park Embellishment (minimum voluntary commitment by Developer)					\$ 1,000,000.00	Developer commits to further embellishment works equal to (or more) than the value generated by the VPA, at no cost to Council.
TOTAL PARK EMBELLISHMENT VALUE					\$ 2,000,000.00	