

## **Planning Agreement**

### **Macarthur Grange Golf Club (Lot 3900 DP1170905)**

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

Toscuz Investments Pty Limited (ABN 16 114 547 170) (**Developer**)

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# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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## Planning Agreement Macarthur Grange Golf Club (Lot 3900 DP1170905)

### Parties

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<b>Council</b>	<b>Name</b>	Campbelltown City Council
	<b>Address</b>	Civic Centre Cnr Queen and Broughton Streets Campbelltown NSW 2560
	<b>ABN</b>	31 459 914 087
<b>Developer</b>	<b>Name</b>	Toscuz Investments Pty Limited
	<b>Address</b>	66-70 Koala Way Horsley Park NSW 2175
	<b>ABN</b>	16 114 547 170

### Background

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- A** The Developer owns the Land.
- B** The Land is subject to a planning proposal (PP-2023-2012) (**Planning Proposal**), which received Gateway Determination on 6 December 2023.
- C** The Planning Proposal, once gazetted, will facilitate the Instrument Change.
- D** Following the Instrument Change, the Developer intends to apply for Development Consent to allow it to carry out the Development.
- E** The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the Instrument Change, and in connection with carrying out the Development, on and subject to the terms of this document.

### Operative Provisions

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#### 1 Agreement

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The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

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## 2 Definitions and interpretation

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### 2.1 Defined terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

### 2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

## 3 Application and operation of document

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### 3.1 Planning agreement

This document is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

### 3.2 Application

This document is made in respect of the Instrument Change and applies to:

- (1) the Land;
- (2) the Development; and
- (3) the Instrument Change.

### 3.3 Operation

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Instrument Change takes effect.

### 3.4 Further agreements relating to this document

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

## 4 Application of s7.11, s7.12 and s7.24

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### 4.1 Application of s7.11 and s7.12

This document:

- (1) excludes the application of section 7.11 of the Act to the Development; and

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- (2) excludes the application of section 7.12 of the Act to the Development.

## 4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Development Contributions that are to be carried out or provided pursuant to this document.

## 4.3 Application of Division 7.1, Subdivision 4

This document does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development.

## 5 Provision of Development Contributions generally

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### 5.1 Developer must make Development Contributions

- (1) The Developer must make Development Contributions to Council in accordance with this document, and in particular in accordance with **Schedule 3**.
- (2) **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this document and, in particular, the Developer must, subject to the terms of this document, deliver each Item comprising Works or Dedication Land in accordance with **Schedule 3**.

### 5.2 No limit created by Contribution Value

- (1) A Contribution Value specified in relation to a Development Contribution does not define or limit the extent of the obligation to provide that Development Contribution.
- (2) Further to paragraph (1), the Developer is not entitled to any payment, credit or off-set to the extent that any costs incurred by it in making a Development Contribution exceed the relevant Contribution Value.

### 5.3 Council's obligation to apply Development Contributions

Council will use its best endeavours to apply each Development Contribution made by the Developer under this document towards the public purpose for which it is made.

### 5.4 Indexation

Unless an indexation methodology is specified in **Schedule 3** in relation to a Contribution Value (in which case that indexation methodology will apply to that Contribution Value), each Contribution Value will be increased quarterly (with the calculation to be made as from the date the relevant Development Contribution is required to be provided to Council under this document) in accordance with the following formula:

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

where:

**A** = the indexed amount;

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

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

**D** = the Index most recently published before the commencement date of the Development Consent.

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

## 6 Procedures relating to the dedication of Land

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### 6.1 Works to be Completed prior to dedication

Unless Council gives its prior written consent or unless otherwise set out in this document to the contrary, the Developer must not dedicate or transfer any part of the Dedication Land in accordance with this document unless any Works required to be carried out on that part of the Land have either been:

- (1) Completed; or
- (2) deferred in accordance with clause 8.2 to a date after the date that the relevant Dedication Land is required to be dedicated under this document.

### 6.2 Dedication Land

- (1) The Developer must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.
- (2) The Developer must meet all costs (including legal and registration costs) associated with the dedication of the Dedication Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.

### 6.3 Dedication process

- (1) A Development Contribution comprising the dedication of any Dedication Land is made for the purposes of this document when:
  - (a) a deposited plan is registered in the register of plans held with the Registrar General that:
    - (i) dedicates the relevant part of the Land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW); or
    - (ii) creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW); or
  - (b) Council is otherwise registered as the proprietor of the relevant Land.
- (2) For the purpose of paragraph (1)(b), the Developer will give Council:
  - (a) for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* (NSW) in registrable form relating to the land to be dedicated under this document;
  - (b) any consent required by an interested party in the relevant land; and

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- (c) any document which, when registered, will remove any Encumbrances registered on the title of that land, excluding any Permitted Encumbrances.
- (3) The Developer must ensure that upon dedication or transfer all Encumbrances other than Permitted Encumbrances are removed from the title of any part of the land dedicated to Council under this document.

## 6.4 Remediation of Land to be dedicated to Council

- (1) All land to be dedicated to Council under the document must be:
  - (a) remediated to Residential “A” land use criteria as defined in National Environment Protection (Assessment of Site Contamination) Measure (NEPM) as amended in 2013, unless Council agrees in writing to another measure, standard or guideline (at its absolute discretion) ; and
  - (b) free from any on-site containment or capping of contaminated soil.
- (2) The remediation activities needed to achieve the requirements of paragraph (1) must be defined in a Remedial Action Plan including remedial methodology, validation criteria and validation procedures.
- (3) The Remedial Action Plan referred to in paragraph (2) must be prepared, or reviewed and approved, by a consultant engaged by the Developer at its cost who is certified under a contaminated land consultant certification scheme as recognised by the New South Wales Environment Protection Authority.

## 7 Procedures relating to Works

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### 7.1 Design and Specification

- (1) Before commencing construction of any Item of Work, the Developer must submit to Council for its approval:
  - (a) the Detailed Design for the Work; and
  - (b) a report from a suitably qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant Item of Work in accordance with the Detailed Design.
- (2) At any time prior to the receipt of the Detailed Design of a Work under paragraph (1), Council may provide the Developer with a direction to vary that Item of Work, subject to any such variation:
  - (a) not unreasonably or substantially increasing the cost and timeframe to Complete the Work;
  - (b) not resulting in a change to the matters identified as core elements for that Work under the DCP; or
  - (c) not being inconsistent with this document or any Development Consent for the Development.
- (3) If, within thirty (30) days of the date of submission referred to in paragraph (1):

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- (a) Council notifies the Developer in writing of its approval of the Detailed Design, the Developer must carry out and Complete the relevant Item of Work in accordance with that Detailed Design;
- (b) Council fails to notify the Developer in writing that it:
  - (i) approves or does not approve of the Detailed Design; or
  - (ii) does not require the Developer to make modifications to be made to that Detailed Design,

Council is taken to have approved the Detailed Design of the Item of Work and the Developer may carry out and Complete the Work in accordance with that Detailed Design; or

- (c) Council notifies the Developer in writing that it does not approve of the Detailed Design or requires the Developer to make modifications identified in that notice, the Developer may:
  - (i) amend the Detailed Design and submit to Council the amended Detailed Design, in which case the Developer must submit any such amended Detailed Design to Council under paragraph (1); or
  - (ii) if the Developer does not agree with the modifications requested by Council, refer the matter for expert determination or mediation under this document.

- (4) For the purpose of clarity, paragraph (2) applies to any amended Detailed Design submitted by the Developer.

## 7.2 Standard of construction of Work

Any Work that the Developer is required to carry out under this document must be carried out in accordance with:

- (1) this document;
- (2) the Detailed Design for the Work approved under clause 7.1;
- (3) the requirements of any approval, consent, permission or licence issued by a relevant Authority;
- (4) any Australian standards and other laws applicable to the Work; and
- (5) in a proper and workmanlike manner.

## 7.3 Access for Works

- (1) The Developer must permit Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, to:
  - (a) inspect, examine or test any Work; or
  - (b) remedy any breach by the Developer in carrying out a Work.

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- (2) Where Council, its officers, employees, agents and contractors enter the Land for the purposes outlined within this clause 7.3, Council must abide by all reasonable work, health and safety requirements of the Developer.
- (3) Council may at its absolute discretion and in accordance with Council policies and any applicable law from time to time permit the Developer to enter and occupy any land owned or controlled by Council for the purposes of enabling the Developer to comply with their obligations under clauses 9 and 10 of this document, provided that, at all times, the Developer complies with Council's reasonable written directions, as well as Council's policies.

## 7.4 No credit or reimbursement

If the Developer's actual cost of carrying out the Works are greater than the Contribution Value for those Works, the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

## 7.5 Protection of people and property

The Developer must ensure to the extent reasonably practicable in carrying out any Work that:

- (1) all necessary measures are taken to protect people and property;
- (2) unnecessary interference with the passage of people and vehicles is avoided; and
- (3) nuisances and unreasonable noise and disturbances are prevented or mitigated to the greatest extent possible.

# 8 Variation of scope or timing for provision of Works

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## 8.1 Variation to the scope of a Work

- (1) The Developer may request that Council approve in writing a variation to the scope of any Item of Work.
- (2) For the purposes of determining whether to approve a variation under paragraph (1), Council may consider the DCP and whether the variation prejudices the provision of public services or public amenities for the Development.
- (3) The scope of an Item of Work is not to be varied unless Council and the Developer, acting reasonably, agree in writing to the variation.

## 8.2 Deferral of the timing of Completion of an Item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
  - (a) it is unable to Complete any Item of Work by the time specified in Part 1 of **Schedule 3**; or
  - (b) it believes that there is a risk of damage to any Item of Work if they are delivered by the time required in Part 1 of **Schedule 3**.

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant Item of Work by providing written notice to Council:

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- (c) identifying the relevant Item of Work that the Developer proposes to defer;
  - (d) specifying the reason for the request to defer the Completion of that Item of Work; and
  - (e) identifying the anticipated or proposed time for Completion of the relevant Item of Work.
- (2) Council, acting reasonably, must give the Developer a written notice within thirty (30) Business Days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
  - (a) whether or not it consents to the deferral of the Deferred Works;
  - (b) the revised date for Completion required by Council; and
  - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, which is to be determined by Council acting reasonably in consultation with the Developer and only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant Item of the Works).
- (3) If Council consents to the deferral of the Deferred Works, then the following applies:
  - (a) The Developer must comply with any conditions required by Council under paragraph (2) above.
  - (b) Provided the Developer satisfies those conditions, the Developer will not be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
  - (c) The time for completion of the Deferred Works under this document is the revised date for Completion specified by Council under paragraph (2)(b) above.

## 9 Provisions with respect to the Completion of the Works

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### 9.1 Developer must notify

The Developer must provide a Completion Notice to Council within ten (10) Business Days of the Developer believing it has achieved Completion of any Item of Work.

### 9.2 Inspection

Council must inspect the Item of Work set out in a Completion Notice within ten (10) Business Days of the receipt of that Completion Notice.

### 9.3 Council to notify

- (1) Within the earlier of:
  - (a) ten (10) Business Days of inspecting the Item of Work identified in a Completion Notice; and
  - (b) twenty (20) Business Days from the receipt of the relevant Completion Notice,

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Council must provide notice in writing to the Developer that:

- (c) Council is satisfied that the Item of Work has been Completed; or
  - (d) Council is not satisfied that the Item of Work has been Completed, in which case the notice must also detail Council's reasons for that decision.
- (2) If Council provides a notice to the Developer under paragraph (1)(c) or does not provide the Developer with notice in accordance with paragraph (1), then the Item of Work set out in the Completion Notice will be deemed to have been Completed, and the Development Contribution comprising that Item of Work will be recognised as having been provided for the purpose of this document, on the date nominated in the Completion Notice.
- (3) Where Council serves notice on the Developer pursuant to paragraph (1)(d) the Developer must:
- (a) carry out such works as are required to address the matters set out in the notice within three (3) months from the date it is issued by the Council unless otherwise agreed by the Council; or
  - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) If the Developer serves notice on the Council in accordance with paragraph (3)(b) the expert determination process at clause 16 will apply.

## 9.4 Developer's further notification

- (1) Where the Developer rectifies the Works in accordance with clause 9.3(3)(a) it must serve upon the Council a new Completion Notice for the Item of Work it has rectified (**New Completion Notice**).
- (2) The provisions of clauses 9.1 to 9.4 (inclusive) apply to any New Completion Notice issued by the Developer.

## 9.5 Works-as-executed-plan

No later than sixty (60) days after an Item of Work is Completed in accordance with this document, the Developer must submit to Council:

- (1) a full works-as-executed-plan for the relevant Item of Work; and
- (2) the technical or operation manual, specifications and warranties (if any) for any product that forms part of the relevant Item of Work.

## 9.6 Hand-over of Works

- (1) Subject to anything to the contrary in this document, Council accepts responsibility for an Item of Work on the later of:
  - (a) the date when the Item of Work is Completed for the purposes of this document; or
  - (b) if the Work is carried out on Land which is to be dedicated to Council under this document, the date of dedication of that Land.

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- (2) The Developer, at its own cost, must repair and make good to the satisfaction of Council (acting reasonably) any loss or damage to a Work from any cause whatsoever which occurs before the Work is Completed for the purposes of this document.

## 10 Procedures relating to the rectification of defects

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### 10.1 Definition of Defects Liability Period

In this clause 10 the following definitions apply:

- (1) **Building Works** has the same meaning as in the Act.
- (2) **Defects Liability Period** means twelve (12) months from the date the Work is Completed for the purposes of this document.

### 10.2 Council may issue Rectification Notice

- (1) During the Defects Liability Period, Council may give to the Developer a Rectification Notice.
- (2) A Rectification Notice must contain the following information:
  - (a) the nature and extent of the Defect;
  - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (c) the time within which the Defect must be rectified (which must be a reasonable time).

### 10.3 Developer must comply with Rectification Notice

The Developer must comply with a Rectification Notice at its own cost, according to the terms of that notice and to the satisfaction of Council, acting reasonably.

### 10.4 If the Developer fails to comply with a Rectification Notice

- (1) Council may enter upon the Land for the purpose of satisfying a Rectification Notice where the Developer has failed to comply with the Rectification Notice, but only after giving the Developer not less than ten (10) Business Days written notice of its intention to do so.
- (2) If Council elects to exercise the step-in rights granted to it under paragraph (1) then:
  - (a) Council may:
    - (i) enter upon any part of the Land to which it requires access in order to satisfy the obligations of the Developer in accordance with the Rectification Notice; and
    - (ii) rectify the relevant Defects in accordance with the Rectification Notice; and
  - (b) the Developer must not impede or interfere with Council in undertaking that work.

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- (3) Where Council exercises its step-in rights in accordance with this clause 10.4, Council may:
  - (a) call upon the Defects Security provided by the Developer pursuant to clause 13.1 for any reasonable costs in Council completing the relevant Defects in accordance with the Rectification Notice; and
  - (b) in the event that the Defects Security does not cover all of Council's reasonable costs of rectifying the Defects in accordance with the Rectification Notice, Council may recover those additional costs:
    - (i) by calling upon any Security provided by the Developer to Council pursuant to clause 13; or
    - (ii) as a debt due in a court of competent jurisdiction.

## 10.5 End of the Defects Liability Period

- (1) By no later than ten (10) Business Days prior to the end of the Defects Liability Period:
  - (a) Council will undertake a final inspection of the relevant Item of Work; and
  - (b) Council may either:
    - (i) by way of written notice to the Developer, confirm that the Item of Work is acceptable to Council, acting reasonably; or
    - (ii) issue a Rectification Notice to the Developer if it identifies any part of the Item of Work which is not acceptable to Council, acting reasonably.
- (2) If Council issues a Rectification Notice under paragraph (1)(b)(ii), the Developer must comply with the Rectification Notice at its own cost, according to the terms of that Rectification Notice and to the satisfaction of Council, acting reasonably (and for the purpose of clarity, clause 10.4 applies with respect to any such Rectification Notice).
- (3) Council may not issue a further Rectification Notice under paragraph (1) for any additional unacceptable parts of the Item of Work that were not identified in the Rectification Notice issued under paragraph (1)(b)(ii).
- (4) If Council does not issue a Rectification Notice within ten (10) Business Days after undertaking a final inspection of the Works under paragraph (1)(a), the Works will be deemed to be acceptable to Council.
- (5) If Council issues a Rectification Notice under paragraph (1), the Defects Liability Period for the Item of Work the subject of that Rectification Notice does not end for the purpose of this document until the relevant matters set out in that Rectification Notice have been addressed in accordance with this document.

## 11 Council may withhold Subdivision Certificate

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### 11.1 Subdivision Certificate for Final Lots

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate that creates a Final Lot in the Development if, at the date of the application, the Developer is not in breach of its obligation to make Development Contributions under this document.

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- (2) If an application for a Subdivision Certificate that creates a Final Lot in the Development is made in spite of paragraph (1), Council may withhold the issue of that Subdivision Certificate until the Developer has made all Development Contributions under this document required to be made prior to that Subdivision Certificate being issued.

## 11.2 Council may withhold Subdivision Certificates

- (1) The Developer acknowledges and agrees that the issue of a Subdivision Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make Development Contributions under this document until such time as:
  - (a) the breach is rectified; or
  - (b) Council calls upon the Security provided by the Developer in respect of the Development Contributions to which the breach relates and any amount required to be paid by the Developer under this document on account of that breach over and above the amount of the Security is paid in full.
- (2) For the purpose of clarity, Council may not withhold the issue of a Subdivision Certificate if the Developer has not met its obligations to maintain and manage Works after those Works have been Completed.

## 12 Security for the dedication of land

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### 12.1 Council may acquire

If the Developer does not dedicate any part of the land required to be dedicated (including the Dedication Land) under this document by the time by which it is required to be dedicated, the Developer agrees that Council may compulsorily acquire that land:

- (1) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act; and
- (2) at any time determined by Council.

### 12.2 Agreement to acquire

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

### 12.3 Additional comfort for Council

- (1) If, as a result of an acquisition referred to in clause 12.1, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council for that amount upon a written request being made by Council.
- (2) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Land that is required to be dedicated under this document.
- (3) The Developer must promptly do all things necessary, and consent to Council doing all things necessary, to give effect to this clause 12, including without limitation:
  - (a) signing any documents or forms;

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (b) giving land owner's consent for the lodgement of any Development Application;
- (c) producing certificates of title (or other relevant documents evidencing title) to the Registrar-General under the *Real Property Act 1900* (NSW); and
- (d) paying Council's costs arising from this clause 12.

## 12.4 Developer must not deal with property

- (1) The Developer must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Land to be dedicated to Council without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

## 13 Security for carrying out of Work

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### 13.1 Provision of Security

Subject to paragraph 13.2, prior to the issue of a Construction Certificate for any stage of the Development where an Item of Work must be Completed and prior to the issue of a Subdivision Certificate with respect to that stage, the Developer must provide Council with separate Bank Guarantees:

- (1) for the amount equivalent to the Contribution Value for the relevant Item of Works (**Primary Security**); and
- (2) for an amount equivalent to ten percent (10%) of the Contribution Value for the relevant Item of Works (**Defects Security**),

(collectively referred to as the **Security**).

### 13.2 Floating Security

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

### 13.3 Council may call on Security

If the Developer is indebted to Council under this document, without limiting any other remedies available to it, Council may call on any Security held by Council at that time.

### 13.4 Top up of Security

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

### 13.5 Release of Primary Security

Unless:

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (1) Council has made a demand against the Primary Security provided to it;
- (2) if applicable, the Development Contributions on account of which that Security was provided have not been provided;
- (3) at the relevant time the relevant Item of Works to which the Primary Security relates has not been Completed; or
- (4) at the relevant time the Developer has not remedied a breach of this document of which it has been given notice by Council,

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

## 13.6 Release of Defects Security

Unless:

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

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

## 13.7 Indexation of value of Security value

The Developer must ensure that, on an annual basis from the date of commencement of this document, that the Security then held by Council is calculated in accordance with the indexed amount of the Contribution Values under clause 5.4.

# 14 Registration of this planning agreement

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## 14.1 Obligation to register

- (1) This document must be registered on the title of the Land pursuant to section 7.6 of the Act.
- (2) The Developer must:
  - (a) do all things necessary to register this document on the title of the Land; and
  - (b) pay any reasonable costs incurred by Council in connection with that registration.

## 14.2 Obligations of Developer

- (1) The Developer, at its own expense must, promptly after this document comes into operation, and before the issue of any Construction Certificate or Subdivision Works

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:

- (a) the consent of each person who:
  - (i) has an estate or interest in the Land; or
  - (ii) is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any documents;

to enable the registration of this document in accordance with clause 14.1.

- (2) The Developer, at its own expense, will take all necessary and practical steps to:
  - (a) lodge this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
  - (b) allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

## 14.3 Removal of this document from title of the Land

- (1) After the Developer has satisfied their obligations in accordance with this document, Council will do all things necessary to remove this document from the title to the Land as quickly as practicable.
- (2) From time to time, the Developer, by notice in writing, may request that Council facilitate the removal of this document from the title to any part of the Land.
- (3) This document will be removed from the title to any part of the Land if the Developer gives Council a written notice requesting such removal and:
  - (a) the Developer satisfies Council that the Developer has fulfilled its obligations to make Development Contributions under this document with respect to that part of the Land from which a removal is being sought; and
  - (b) the Developer is not otherwise in default of any of its material obligations under this document.

## 15 Enforcement

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- (1) Any party may enforce this document in any court of competent jurisdiction.
- (2) For the avoidance of doubt, nothing in this document prevents:
  - (a) a party from bringing proceedings in the Court to enforce any aspect of this document or any matter to which this document relates; and/or
  - (b) Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this document or any matter to which this document relates.

## 16 Dispute resolution - expert determination

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### 16.1 Application of this clause

- (1) This clause applies to a dispute under this document about a matter that the parties agree can be determined by an appropriately qualified expert (**Expert Determination Dispute**).
- (2) An Expert Determination Dispute is taken to arise if a party gives the other parties a notice in writing specifying particulars of the dispute and requiring it to be determined by an appropriately qualified expert (**EDD Notice**).
- (3) If the parties disagree over whether a dispute is properly an Expert Determination Dispute, then any party may refer that issue to the Chief Executive Officer (**CEO**) of the professional body that represents persons with the relevant expertise, for a determination of that issue. The CEO's determination is final and binds the parties.

### 16.2 Selection and engagement of Expert

- (1) If an EDD Notice has been given under clause 16.1, the parties must use all reasonable endeavours to agree on a person who is independent of the parties, and is qualified in fields which are relevant to the issues comprising the Expert Determination Dispute, as the expert to determine the issues.
- (2) If the parties have not reached agreement on an expert within ten (10) Business Days of the giving of the relevant EDD Notice, either party may refer the dispute to the President of the NSW Law Society to nominate an expert to determine the dispute.
- (3) The parties must use their best endeavours to finalise the terms of the expert's retainer and appoint the expert as soon as possible and, in any event, within ten (10) Business Days after the expert has been agreed or nominated in accordance with this clause 16, and which must include directions to the expert to undertake the determination of the Expert Determination Dispute in accordance with this clause 16.
- (4) If the expert appointed under paragraph (3) dies or resigns, or the parties agree to replace the expert, then paragraphs (1), (2) and (3) re-apply as if a notice was given under clause 16.1 in respect of the same issues on the day on which all parties became aware that the expert has died or resigned or they agree to replace the expert.

### 16.3 Expert no longer independent

If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially:

- (1) the expert must inform the parties immediately;
- (2) the appointment of the expert will terminate unless the parties agree otherwise; and
- (3) if they agree to replace the expert, the parties must promptly do all things necessary to do so.

### 16.4 Role of the expert

- (1) The parties acknowledge and agree that the expert should, and they will use their best endeavours to ensure that expert will:

## Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (a) issue his or her determination with respect to the Expert Determination Dispute as soon as possible;
- (b) treat all information provided to him or her in relation to the Expert Determination Dispute as confidential;
- (c) act as an expert and not as an arbitrator;
- (d) act independently of the parties, and act fairly and impartially as between the parties;
- (e) give each party a reasonable opportunity of presenting its case by way of written submissions (which must be provided in full to the other parties) and countering any arguments of any opposing party by way of written submissions in reply;
- (f) proceed in any matter he or she thinks fit;
- (g) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
- (h) conduct any investigation which he or she considers necessary to resolve the dispute;
- (i) examine such documents, and interview such persons, as he or she may require; and
- (j) make such directions for the conduct of the expert determination as he or she considers necessary.

### 16.5 Determination of the expert

- (1) The parties acknowledge and agree that the determination of the expert binds the parties, except in the case of the expert's fraud or misfeasance.
- (2) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:
  - (a) the party which noticed the relevant matter must notify the other parties in writing promptly,
  - (b) the parties must use their best endeavours to ensure that the expert corrects the determination within ten (10) Business Days after they receive notice; or
  - (c) if the expert does not correct the determination within that time, the parties may agree to appoint a substitute expert.
- (3) Each party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination and must pay one-third of the expert's costs and any incidental costs of facilitating the expert determination.

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## 17 Dispute resolution – mediation

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### 17.1 Application

This clause applies to any dispute under this document other than a dispute to which clause 16 applies (**Mediation Dispute**).

### 17.2 Notice

A Mediation Dispute is taken to arise if one party gives the other parties a notice in writing specifying particulars of the dispute (**MD Notice**).

### 17.3 Procedure

- (1) The parties must meet within fourteen (14) days of the service of an MD Notice to try to resolve the Mediation Dispute.
- (2) If the Mediation Dispute is not resolved within a further twenty eight (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.
- (3) If the Mediation Dispute is not resolved by mediation within a further twenty eight (28) days, or any longer period that may be needed to complete any mediation process which has been started, then the parties may exercise their legal rights in relation to the matter the subject of the Mediation Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

## 18 Breach of this document

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### 18.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
  - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
  - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than twenty eight (28) business days.

### 18.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (2) becomes subject to an Insolvency Event.

## 18.3 Consequences of Events of default

- (1) Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:
- (a) exercise its step in rights so as to carry out any work specified in the relevant Breach Notice;
  - (b) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer; or
  - (c) compulsorily acquire the whole or any part of the Dedication Land in the event of a failure to dedicate that Land or any part of it in accordance with the terms of this document.

## 19 Termination, Rescission or Determination

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### 19.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this document where the Developer has failed to comply with a notice issued in accordance with clause 18.1.
- (3) Any Development Consent in connection with the Development lapses.

### 19.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

### 19.3 Determination

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

## 20 Assignment

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### 20.1 Restriction on Assignment

Other than in accordance with this clause 20 the Developer may not:

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

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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## 20.2 Procedure for Assignment

- (1) If the Developer:
  - (a) wishes to Assign any part of the Land; and/or
  - (b) wishes to Assign its rights or obligations under this document, or novate this document, to any person,then the Developer must:
  - (c) provide a written request to Council for the consent of Council to the relevant Assignment or novation;
  - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment or novation is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned or novated to it;
  - (e) obtain written consent of Council to the relevant Assignment or novation; and
  - (f) at no cost to Council, procure:
    - (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
    - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

## 21 Position of Council

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### 21.1 Consent authority

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

### 21.2 Agreement does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,  
(Discretion).

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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## 21.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied; and
  - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to that extent this document is not to be taken to be inconsistent with the Law.

## 21.4 No obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Land, the Development or the Instrument Change.

## 22 Insurance

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### 22.1 Insurance

- (1) The Developer must take out and keep current to the satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this document, up until the time that the Work is taken to have been Completed in accordance with this document:
  - (a) contract works insurance, noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - (b) public liability insurance for at least \$20,000,000.00 for a single occurrence which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - (c) workers compensation insurance as required by law, and
  - (d) any other insurance required by law.
- (2) If the Developer fails to comply with clause 22.1(1), Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to Council and may be recovered by Council as it deems appropriate, including:
  - (a) by calling upon any Security provided by the Developer to Council pursuant to clause 13; or
  - (b) recovery as a debt due in a court of competent jurisdiction.

## Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (3) The Developer must not commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in clause 22.1(1).
- (4) Council acknowledges and agrees that the insurances required to be taken out and kept current by the Developer in accordance with this clause 22.1 may be novated to the third party.

### 23 GST

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- (1) In this clause 23 the following definitions apply:
  - (a) Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
  - (b) **GST Amount** means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.
  - (c) **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.
  - (d) **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.
  - (e) **Taxable Supply** has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- (2) Subject to paragraph (4), if GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (3) Paragraph (2) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this document to be GST inclusive.
- (4) No additional amount is payable by Council under paragraph (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.
- (5) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this document 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* (Cth), the parties agree:
  - (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies; and
  - (b) that any amounts payable by the parties in accordance with this document (as limited by paragraph (2) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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- (6) No payment of any amount under this clause 23, 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 the recipient with a Tax Invoice or Adjustment Note as the case may be.
- (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.
- (8) This clause continues to apply after expiration or termination of this document.

## 24 General provisions

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### 24.1 Notices

- (1) A notice, consent, information, application or request (**Notification**) that must or may be given or made to:
  - (a) any other party under this document, must only be given or made if it is in writing and sent in one of the following ways:
  - (b) delivered or posted to that party at its address set out in this document; or
  - (c) emailed to that party at its email address set out in this document.
- (2) A party may change its address or email address by giving the other party three (3) Business Days' notice of the change, in which case the new address or email address is treated as the address or number in this document.
- (3) A Notification is to be treated as given or made under paragraph (1)(a) if it is:
  - (a) delivered, when it is left at the relevant address;
  - (b) sent by post, seven (7) Business Days after it is posted; or
  - (c) sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of twenty-four (24) hours of the email being sent.
- (4) If a Notification 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.
- (5) For the purposes of this clause, the notice details of each party are:

**Campbelltown City Council**

Address: Civic Centre, 91 Queen Street, Campbelltown NSW 2560

Attention: General Manager, Campbelltown City Council

Email: [council@campbelltown.nsw.gov.au](mailto:council@campbelltown.nsw.gov.au)

**Developer**

Address: 18 Raby Rd, Kearns NSW 2558

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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Attention: Frank Carioti

Email: [frank@brenex.com.au](mailto:frank@brenex.com.au)

## **24.2 Obligation to act in good faith**

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

## **24.3 Costs**

The Developer must pay Council's reasonable costs and disbursements for the negotiation, preparation and execution of this document.

## **24.4 Entire agreement**

- (1) This document contains everything to which the parties have agreed in relation to the matters it deals with.
- (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 document was executed, except as permitted by law.

## **24.5 Counterparts**

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

## **24.6 Further acts**

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 document and all transactions incidental to it.

## **24.7 Governing law and jurisdiction**

- (1) This document is governed by the Law of New South Wales.
- (2) The parties submit to the non-exclusive jurisdiction of its courts, and are not to object to the exercise of jurisdiction by those courts on any basis.

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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## **24.8 Representations and warranties**

The parties represent and warrant that they have power to enter into this document and to comply with their obligations under the document, and that entry into this document will not result in the breach of any law.

## **24.9 Severability**

- (1) If a clause or part of a clause 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.
- (2) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this document, but the rest of this document is not affected.

## **24.10 Variation**

No variation of this document has any effect unless it is in writing and signed by the parties and otherwise in accordance with the Act.

## **24.11 Waiver**

- (1) A party does not waive any of the other party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this document.
  - (2) A waiver by a party is effective only if it is in writing.
  - (3) A written waiver by a party is effective only in relation to the particular obligation or breach for which it is given. 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.
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# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

## Schedule 1 Requirements under the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: <ul style="list-style-type: none"> <li>(1) sought a change to an environmental planning instrument.</li> <li>(2) made, or proposes to make, a Development Application.</li> <li>(3) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(1) Yes.</li> <li>(2) Yes.</li> <li>(3) Not Applicable.</li> </ul>
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>	See the definition for ' <i>Land</i> ' in <b>Schedule 2</b> .
<b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	See the definition for ' <i>Instrument Change</i> ' in <b>Schedule 2</b> .
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	Does not apply to the Development.
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	Does not apply to the Development.
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	Refer to clause 4 of the Planning Agreement.
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clauses 16 and 17.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 12, 13 and 15.
<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	See clause 21.

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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## Schedule 2 Defined terms and interpretation

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### Part 1 – Defined terms

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The following definitions apply unless the context requires otherwise.

<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Approval</b>	includes approval, consent, licence, permission or the like.
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ul style="list-style-type: none"><li>(1) federal, state or local government;</li><li>(2) department of any federal, state or local government;</li><li>(3) any court or administrative tribunal; or</li><li>(4) statutory corporation or regulatory body.</li></ul>
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ul style="list-style-type: none"><li>(1) Australia and New Zealand Banking Group Limited.</li><li>(2) Commonwealth Bank of Australia.</li><li>(3) ING Bank (Australia) Limited.</li><li>(3) Macquarie Bank.</li><li>(4) National Australia Bank Limited.</li><li>(5) St George Bank Limited.</li><li>(6) Westpac Banking Corporation.</li><li>(7) Any other financial institution approved by Council, in its absolute discretion, in response to a request from the Developer.</li></ul>
<b>Business Day</b>	means a day other than: <ul style="list-style-type: none"><li>(1) a Saturday, Sunday or public holiday in the state of New South Wales; or</li><li>(2) 27, 28, 29, 30 or 31 December in any year.</li></ul>
<b>Claim</b>	means, against any person, any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense, or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>CLEP</b>	means <i>Campbelltown Local Environmental Plan 2015</i> .

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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<b>Complete, Completed or Completion</b>	means the point in time at which an Item of Work is fit for use and occupation, and is capable of being used and occupied for its intended purposes, except for minor omissions and minor defects which the Developer has reasonable grounds for not rectifying before public use and occupation of the Item of Work, and which will not prejudice the convenient and safe use of the Item of Work.
<b>Completion Notice</b>	means a notice issued under this document by the Developer to Council specifying an Item of Work that the Developer believes is Complete.
<b>Construction Certificate</b>	has the same meaning as in the Act.
<b>Contribution Value</b>	means: <ol style="list-style-type: none"><li>(1) in relation to an Item of Work, the amount specified in Column 5 of Part 2 of <b>Schedule 3</b> as the “<i>Contribution Value</i>” for that Item of Work; and</li><li>(2) in relation to an Item of Dedication Land, the amount specified in Column 5 of Part 1 of <b>Schedule 3</b> as the “<i>Contribution Value</i>” for that Item of Dedication Land.</li></ol>
<b>Court</b>	means the Land and Environment Court of New South Wales.
<b>DCP</b>	means the <i>Campbelltown (Sustainable City) Development Control Plan 2015</i> (as amended from time to time).
<b>Dedication Land</b>	means the land identified in Part 2 of <b>Schedule 3</b> and described in the plan that is attached as <b>Annexure 1</b> .
<b>Defect</b>	means a material defect that adversely affects the structural integrity, functionality or use or enjoyment of a Work or part of a Work.
<b>Defects Liability Period</b>	has the meaning ascribed to it in clause 10.1.
<b>Detailed Design</b>	means plans and specifications which are sufficiently advanced so as to be suitable to enable the issue of a Construction Certificate for the relevant Work.
<b>Development</b>	means the future development of the Land subject to the Instrument Change and in accordance with the Development Consent, including: <ol style="list-style-type: none"><li>(1) the construction of approximately fifty-three (53) Environmental Living lots;</li><li>(2) a ridgetop open space system with walking and cycling trails;</li><li>(3) two (2) ‘lookout/pocket’ parks;</li><li>(4) supporting infrastructure and facilities; and</li><li>(5) dedication of approximately 59 hectares of environmental conservation and open space land.</li></ol>
<b>Development Application</b>	has the same meaning as in the Act.

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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<b>Development Consent</b>	means a development consent or project approval within the meaning of the Act with respect to the Development.
<b>Development Contribution(s)</b>	<p>means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:</p> <ol style="list-style-type: none"><li>(1) a monetary contribution;</li><li>(2) the dedication of land free of cost;</li><li>(3) the carrying out of work; and</li><li>(4) the provision of any other material public benefit.</li></ol>
<b>Encumbrance</b>	<p>means:</p> <ol style="list-style-type: none"><li>(1) an interest or power reserved in or over an interest in any asset;</li><li>(2) an interest or power created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement restriction on the use of land or positive covenant, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or</li><li>(3) an interest or power by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li></ol> <p>However, the parties agree that Encumbrance does not include a Biobanking agreement or similar instrument relating to the conservation of biodiversity or as otherwise agreed between the parties during approval of the Detailed Design under clause 7.</p> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>Final Lot</b>	<p>means a lot created as part of the Development intended for separate occupation and disposition, not being:</p> <ol style="list-style-type: none"><li>(1) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to Council, the Minister for Planning and Public Spaces or Transport for NSW;</li><li>(2) a Super Lot; and/or</li><li>(3) a lot created:<ol style="list-style-type: none"><li>(a) for community use, ecological restoration, drainage, ecology, open space or infrastructure;</li><li>(b) that is to be dedicated or otherwise transferred for public use.</li></ol></li></ol>
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Index</b>	means the Consumer Price Index (All Groups Index) for Sydney as provided by the Australian Bureau of Statistics.

## Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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### Insolvency Event

means the happening of any of the following events:

- (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.

Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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<b>Instrument Change</b>	<p>means the amendments to the CLEP contemplated in the Planning Proposal to facilitate the Development, which includes:</p> <ol style="list-style-type: none"><li>(1) rezoning the Land from C3 Environmental Management to a range of zones including C2 Environmental Conservation, C3 Environmental Management, C4 Environmental Living and RE1 Public Recreation;</li><li>(2) amending the minimum subdivision lot size for any lot resulting from a subdivision of the Land for a community title scheme (not including association property) under the <i>Community Land Development Act 2021</i> (NSW) to an area of not less than 5,000 square metres and a density that does not exceed 2.5 dwellings per hectare, by introducing a new subclause to that effect in clause 4.1AA of the CLEP; and</li><li>(3) permitting that part of the Land that fronts Raby Road (existing clubhouse precinct) to support a future function centre, restaurant and café, by introducing a new clause to that effect in 'Schedule 1 – Additional Permitted Uses' of the CLEP.</li></ol>
<b>Item</b>	<p>means each separate Development Contribution specified in <b>Schedule 3</b>.</p>
<b>Just Terms Act</b>	<p>means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).</p>
<b>Land</b>	<p>means Lot 3900 DP1170905, known as Macarthur Grange Golf Club, Varroville.</p>
<b>Law</b>	<p>means all legislation, regulations, by-laws, common law and other binding order made by any Authority.</p>
<b>Legislation</b>	<p>means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).</p>
<b>Occupation Certificate</b>	<p>has the same meaning as in the Act.</p>
<b>Permitted Encumbrances</b>	<p>means any encumbrance agreed by Council which would not, in Council's opinion, impede the intended use of all or any part of the Dedication Land including but not limited to easements and covenants for services and drainage.</p>
<b>Quantity Surveyor</b>	<p>means a person who:</p> <ol style="list-style-type: none"><li>(1) is a member of their respective professional organisation and has been for at least five (5) years;</li><li>(2) practises as a quantity surveyor for works of the same nature as the relevant Works;</li><li>(3) is active as a quantity surveyor at the time of his appointment;</li><li>(4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and</li></ol>

# Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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	(5) undertakes to act fairly and promptly in accordance with the requirements of this document.
<b>Rectification Notice</b>	means a notice in writing that identifies a Defect in Work and requires rectification of the Defect within a specified period of time.
<b>Registrar General</b>	means the Registrar General within the meaning of the <i>Real Property Act 1900</i> (NSW).
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW)
<b>Remedial Action Plan</b>	means a report of the kind specified under the <i>Consultants reporting on contaminated land: Contaminated land guidelines</i> (NSW Environment Protection Authority, 2020).
<b>Security</b>	means a Bank Guarantee or other form of security to the satisfaction of Council provided in accordance with clause 13.
<b>Subdivision Certificate</b>	has the same meaning as in the Act.
<b>Subdivision Works Certificate</b>	has the same meaning as in the Act.
<b>Super Lot</b>	means a lot that forms part of the Development which, following the registration of a plan of subdivision, is intended for further subdivision to create Final Lots.
<b>Tax Invoice</b>	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Work</b>	means the works specified or described as “works” in Part 2 of <b>Schedule 3</b> .

## Part 2 – Interpretational rules

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.

## Planning Agreement – Macarthur Grange Golf Club (Lot 3900 DP1170905)

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<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
<b>meaning not limited</b>	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>agreement, document or instrument</b>	a reference to any agreement, document or instrument includes the same as varied, modified, supplemented, novated or replaced from time to time.
<b>gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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### Schedule 3 Development Contributions

The following contributions are provided in accordance with the stages of the Development.

#### Part 1 – Dedication Land

Column 1 Item	Column 2 Nature and extent of Contribution Item	Column 3 Public Purpose	Column 4 Timing	Column 5 Contribution Value (\$)
1	Regional Open Space linkage  Land identified as ' <i>Regional Open Space Linkage</i> ' being the proposed RE1 – Public Recreation Land and having an area of approximately 19.2ha, inclusive of the two (2) Local Lookout Parks	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$6,080,000.00
2	Eastern Ridgeline Linkage  Land identified as ' <i>Eastern Ridgeline Linkage</i> ' being the proposed C2 – Environmental Conservation Land and having an area of approximately 6.4ha	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$1,280,000.00
3	Hilltop Conservation Reserve  Land identified as ' <i>Hilltop Conservation Reserve</i> ' being the proposed C2 – Environmental Conservation Land and having an area of approximately 33.7ha	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$5,055,000.00
<b>Total Dedication Land Contribution Value</b>				<b>\$12,415,000.00</b>

## Part 2 – Works

Column 1 Item	Column 2 Nature and extent of Contribution Item	Column 3 Public Purpose	Column 4 Timing	Column 5 Contribution Value (\$)
1	Western Ridgeline Open Space Work identified as ' <i>Western Ridgeline Open Space</i> '	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$1,297,579.00
2	Lookout Park No.1 Work identified as ' <i>Lookout Park No.1</i> '	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$540,639.00
3	Lookout Park No.2 Work identified as ' <i>Lookout Park No.2</i> '	Public Open Space	Prior to the issue of the first Subdivision Certificate for the Development	\$235,415.00
<b>Total Works Contribution Value</b>				<b>\$2,073,633.00</b>

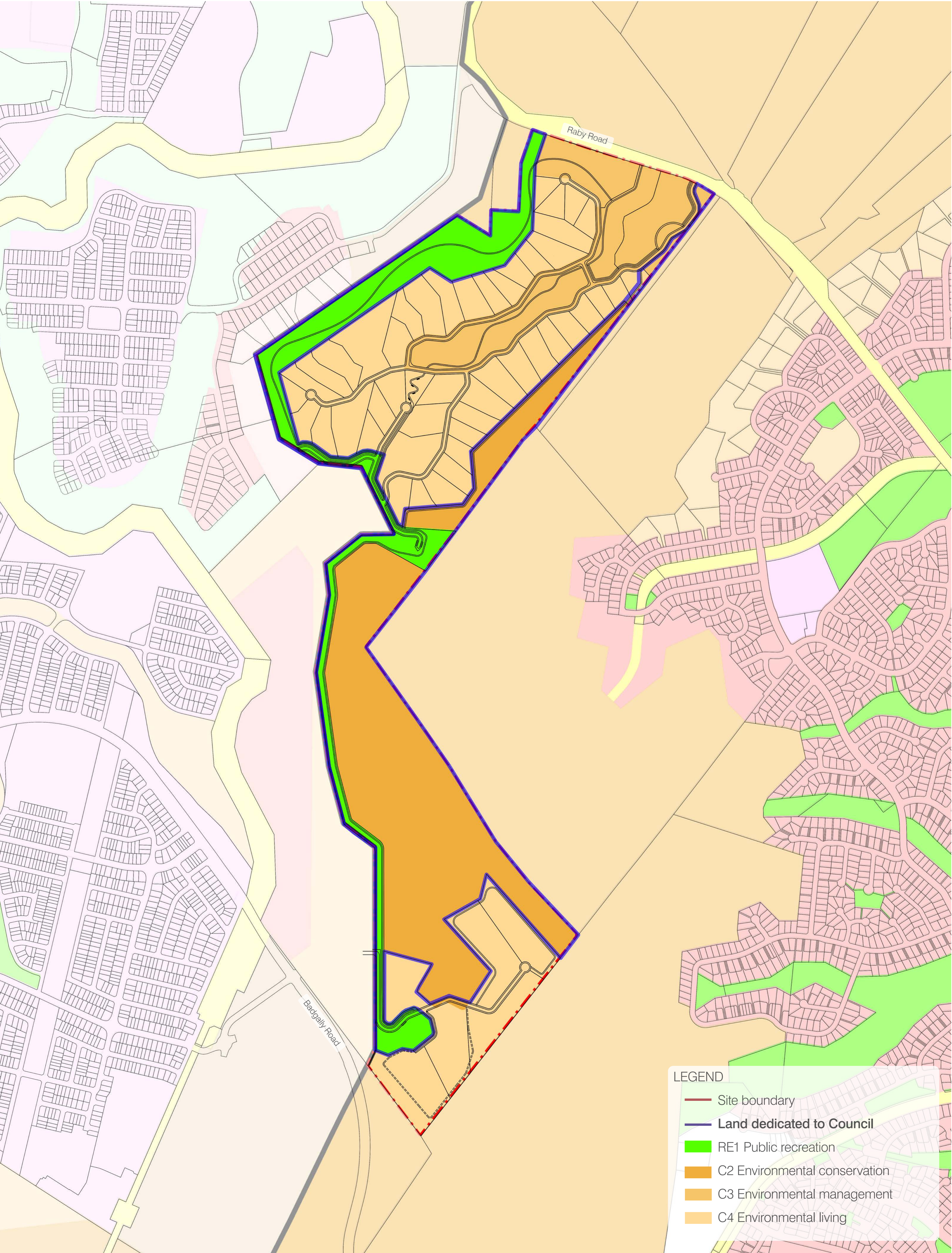
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## **Annexure 1: Land Dedication Plan**

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# Macarthur Grange

## Land Dedication Plan



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## Execution page

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### Executed as a deed

Dated:

**Executed by Toscu Investments Pty Limited (ABN 16 114 547 170)** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

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Director/Secretary (Signature)

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Director (Signature)

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Name of Director/Secretary (Print Name)

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Name of Director (Print name)

**Signed, sealed and delivered by Campbelltown City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

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General Manager (Signature)

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Mayor (Signature)

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Name of General Manager (Print Name)

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Name of Mayor (Print Name)

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