



Deed

Lot 92 DP 1285477 Wingham Road, Wingham

Planning Agreement

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

Mid-Coast Council

MPT Farms Pty Ltd

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Regulatory Compliance Tables

Table 1 – Provisions of Act

Act Provision	Requirement	Compliance
S.7.4(1)	'Planning Authority'	Council
	'Developer'	Developer
	Person associated with Developer	N/A
	Development Application / Modification Application	See definition of 'Development Application' in clause 1.1
	Development Contributions	See Part 2 and Development Contributions Table at Schedule 2
S.7.4(1), (2)	Public Purpose	See Column 2 of the Development Contributions Table in Schedule 2
S.7.4(3)(a)	Land	See Definition of 'Land' in clause 1.1
S.7.4(3)(b)(i)	Instrument Change	See definition of 'Instrument Change' in clause 1.1
S.7.4(3)(b)(ii)	Development	See definition of 'Development' in clause 1.1
S.7.4(3)(c)	Details of Developer's Provision	See Development Contributions Table in Schedule 2
S.7.4(3)(d)	Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development	See clauses 8.1, 8.3 and 8.4 and Item 1.a, 1.c and 1.d of the VPA Particulars in Schedule 1
S.7.4(3)(e)	Whether benefits under Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11	See clause 8.1 and Item 1.b of the VPA Particulars in Schedule 1
S.7.4(3)(f)	Mechanism for the Resolution of Disputes	See Part 3
S.7.4(3)(g)	Enforcement of the Agreement by a	See Part 4 and Items 3-4 of the VPA Particulars in Schedule 1



Act Provision	Requirement	Compliance
	Suitable Means in the Event of Breach by the Developer	
S.7.4 (10)	Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land	Yes
S.7.5	Public Notice & Public Inspection of Draft Agreement	Yes
S.7.6	Registration	See Part 5
S.6.15(1)(d)	If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued?	Yes, see Item 1 of Schedule 2.

Table 2 – Provisions of Regulation

Regulation Provision	Requirement	Compliance
Environmental Planning and Assessment Regulation 2021		
S.203(1)	Form & Subject-Matter	Yes
S.203(7)	Secretary's Practice Note	Yes
S.204	Public Notice & Public Inspection of Draft Agreement	Yes
S.205	Explanatory Note	See Appendix
Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021		
Ss.21, 34	If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate or subdivision works certificate for the work is issued?	Yes, see Schedule 2

This Deed is dated:

Parties

Council **Mid-Coast Council** ABN 44 961 208 161 of 2 Biripi Way,
Taree, NSW 2430 (**Council**)

Developer **MPT Farms Pty Ltd** ABN 87 535 569 677 of 95 Bight Road,
Wingham, NSW 2429 (**Developer**)

Background

- A The Developer is the registered proprietor of the Land and proposes to carry out Development of the Land.
- B The Developer has sought the Instrument Change.
- C The Developer has offered to enter into a planning agreement with the Council in connection with the Instrument Change and the carrying out of the Development under section 7.4 of the Act, under which the Developer will make the Development Contributions in accordance with the terms of this Deed.
- D The Council has accepted the Developer's Offer.
- E The Parties have agreed to enter into this Deed in connection with the Instrument Change and the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

1.1 In this Deed, unless the context clearly indicates otherwise:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Approval	includes approval, consent, licence, permission or the like.
Authority	means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (v) St George Bank Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim	includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.
Construction Certificate	has the same meaning as in the Act.
Contribution Reduction Value	in relation to an Item specified in the Development Contributions Table in Schedule 2, means the \$ amount specified in Column 4 of that Table corresponding to the Item.
Contributions Plan	means the <i>Greater Taree Section 94 Contributions Plan 2016</i> , as amended or substituted from time to time.
Cost	means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.
Deed	means this Deed and includes any schedules, annexures and appendices to this Deed.
Defect	means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.
Defects Liability Period	means, in relation to the whole or any specified part of the Developer Works, the period specified in Item 2 of the VPA Particulars commencing on the day immediately after the Practical Completion Certificate is issued by the Council.
Defects Liability Security	means the amount of Security specified in Item 2 of the VPA Particulars indexed in accordance with the Indexation Method.
Developer Works	means Works that the Developer is required to provide under this Deed, as set out in Column 1 of the Development Contributions Table in Schedule 2
Developer Works Provisions	means the provisions contained in Schedule 5.
Development	means development of the Land for the additional permitted purposes specified in the Planning Proposal and facilitated by the Instrument Change.
Development Application	means the development application within the meaning of the Act.



Development Consent	means any consent granted by Council in respect of the Development.
Development Contribution	means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them in accordance with Schedule 2.
Development Contributions Table	means the table contained in Schedule 2.
Development Servicing Plan (DSP)	means the MidCoast Development Servicing Plan for Water Supply and Sewerage, dated June 2025, or any subsequent Development Servicing Plan within the meaning of the '2016 Developer Charges Guidelines for Water Supply, Sewerage and Stormwater' issued by the Minister for Lands and Water pursuant to section 306(3)(c) of the WM Act that is adopted by Council and applies to the Land.
Dispute	means a dispute or difference between the Parties under or in relation to this Deed.
ELNO	has the meaning given to that term in the Participation Rules.
Equipment	means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.
Final Completion Certificate	means a certificate in writing issued by the Council to the Developer to effect that, in the reasonable opinion of the Council, the Developer Works to which the certificate relates have been completed by the Developer in accordance with this Deed.
Final Lot	means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land: (a) that is to be dedicated or otherwise transferred to the Council, or (b) on which is situated a dwelling-house that was in existence on the date of this Deed.
General Security	means a Bank Guarantee on terms reasonably satisfactory to the Council in the amount specified in Item 3.a of the VPA Particulars in Schedule 1 indexed in accordance with the method of indexation specified in 3.b of the VPA Particulars.
Greater Taree LEP	means the <i>Greater Taree Local Environmental Plan 2010</i> .
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Indexation Method	means the indexation method contained in the Contributions Plan.

Indicative Developer Works Location Plan	means the plan contained in Schedule 3 showing the indicative location of the Developer Works.
Indicative Developer Works Plan	means the indicative plan for the Developer Works in Schedule 4.
Instrument Change	means the change to the Greater Taree LEP proposed by the Planning Proposal.
Insurances	means the insurances specified in Item 6 of the VPA Particulars and such other insurances required by law in relation to the Developer Works.
Item	means a numbered item appearing in the VPA Particulars or the Development Contributions Table.
Land	means the land legally described as Lot 92 DP 1285477.
Local Government Area	means the Mid-Coast local government area
N/A	means Not Applicable
Occupation Certificate	has the same meaning as in the Act.
Offer	means the Developer's offer to enter into a planning agreement with Council, in the form of a letter dated 27 February 2025
Other Land	means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.
Participation Rules	means the participation rules as determined by the <i>Electronic Conveyancing National Law</i> as set out in the <i>Electronic Conveyancing (Adoption of National Law) Act 2012</i> (NSW).
Party	means a party to this Deed.
PEXA	means Property Exchange Australia Ltd.
Planning Proposal	means Planning Proposal PP-2024-2365 (the number for which may be updated or altered from time to time), being the document within the meaning of s3.33 of the Act proposing amendments to the Greater Taree LEP to: 1. rezone the Land to R1 General Residential, C2 Environmental Conservation, and C4 Environmental Living; 2. amend the minimum lot sizes applying to the Land to 450m² for land zoned R1 General Residential, and 20 hectares for land zoned C2 Environmental Conservation and C4 Environmental Living; 3. limit the maximum height of buildings specified in the Greater Taree LEP for the Land to 8.5m on the Land zoned R1 General Residential with no maximum building height for the Land zoned

C2 Environmental Conservation zone and C4 Environmental Living; and,

4. amend the Urban Release Area Map to include the portion of the Land proposed to be zoned R1 General Residential.

Practical Completion

in relation to the Developer Works or a specified part of the Developer Works occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the part.

Practical Completion Certificate

means a certificate issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works or a specified part of the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature.

Principal Contractor

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

Rectification Notice

means a notice in writing:

- (a) identifying the nature and extent of a Defect or incomplete Work, and
- (b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and
- (c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable having regard to the nature of the Defect or incomplete Work.

Rectify

means rectify, remedy or correct.

Regulation

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

Review Period

means the period specified in Item 9 of the VPA Particulars at Schedule 1.

Sewer Pump Station

means the existing Sewer Pump Station at the land legally known as Lot 1 DP1133826 and Wingham Road, Wingham NSW.

Sewer Pump Works

means the works to decommission the Sewer Pump Station, construct a new sewer pump station on the Land and connect the approximately 240 new and 25 existing lots in the Development to the Sewer Pump Station once relocated, as shown generally in Schedule 6.

Subdivision Certificate

has the same meaning as in the Act.

Subdivision Works Certificate

has the same meaning as in the Act.

Transfer of Ownership Notice

means a notice issued by the Council to the Developer stating that the Developer Works the subject of a Final Completion Certificate vest in the Council on a specified date being not sooner than 14 days after the notice is issued.

VPA Particulars

means the information contained in Schedule 1.

WM Act	<i>Water Management Act 2000 (NSW)</i>
WHS	means work health and safety.
WHS Law	means the <i>Work Health and Safety Act 2011 (NSW)</i> and <i>Work Health and Safety Regulation 2011 (NSW)</i> .
Work	means the physical result of carrying out work in, on, over or under Land.
Works-As-Executed Plan	means detailed plans and specifications of Developer Works carried out by the Developer.

Interpretation

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday or a public holiday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
 - 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
 - 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
 - 1.2.16 Any schedules, appendices and attachments form part of this Deed.

1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

3.1 This Deed commences and has force and effect on and from the date when the Parties have:

- 3.1.1 both executed the same copy of this Deed, or
- 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.1.3 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

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

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 7.2 Clause **Error! Reference source not found.** does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the Land and Environment Court Act 1979) and, in doing so, rely on this Deed as a matter of consideration under section 4.15(1)(a)(iia) of the Act, provided that the validity or reasonableness of, or the need for this Deed is not questioned in those proceedings.

8 Application of s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act to the Development

Section 7.11 of the Act

- 8.1 Item 1.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 8.2 Item 1.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

Section 7.12 of the Act

- 8.3 Item 1.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.

Subdivision 4 of Division 7.1 of the Act

- 8.4 Item 1.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of Subdivision 4 of Division 7.1 of the Act to the Development.

Application of this clause

- 8.5 This clause continues to apply notwithstanding any amendments to the Contributions Plan.

Part 2 – Development Contributions

9 Provision of Development Contributions

Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with the Development Contributions Table at Schedule 2 and any other provision of this Deed requiring the Developer to make Development Contributions.
- 9.2 In the event that Council determines (in its absolute discretion) that it will undertake all or any part of the Developer Works being Item 1 in the Development Contributions Table in Schedule 2, the Developer will not be required to undertake those Developer Works or the part of those Developer Works being undertaken by Council, and the Contributions Reduction Value for those Developer Works will be amended to be the proportion of the Contribution Reduction Value noted in Schedule 2 which reflects the proportion of those Developer Works undertaken by the Developer.

Contribution Reduction Values

- 9.3 The Parties acknowledge and agree that a Contribution Reduction Value:
 - 9.3.1 constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed irrespective of the cost to the Developer of making the Development Contribution, and
 - 9.3.2 does not serve to define the monetary extent of the Developer's obligation to make the Development Contribution to which the Contribution Reduction Value relates.

Application of Development Contributions

- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

10 Application of Developer Works Provisions

- 10.1 The Developer Works Provisions at Schedule 5 apply to and in respect of Developer Works required by this Deed.

11 Cost of Developer Works

Responsibility for Cost of Developer Works

- 11.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works required to be provided under this Deed.

Part 3 – Dispute Resolution

12 Dispute Resolution – mediation

Application of clause

- 12.1 This clause 12 applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 13 applies.

When Dispute arises

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

Meeting between Parties

- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

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

Exercise of legal rights

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

Costs

- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

13 Dispute resolution – expert determination

Application of clause

- 13.1 This clause 13 applies to a Dispute arising in connection with this Deed if:
- 13.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or



- 13.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

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

Meeting between Parties

- 13.3 If a notice is given under clause 13.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

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

Expert determination binding

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

Costs of Parties

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

Costs of Expert

- 13.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

Part 4 - Enforcement

14 General Security

Application of this clause

- 14.1 This clause 14 applies if Item 3.a of the VPA Particulars at Schedule 1 specified an amount of General Security.

Composition of General Security

- 14.2 For the avoidance of doubt, the General Security includes the Defects Liability Security.

Provision of General Security

- 14.3 Within 10 business days of this Deed being executed, the Developer is to provide the General Security to the Council on execution of this Deed.

Purpose of General Security

- 14.4 The Council is to hold the General Security as security for the Developer performing its obligations under this Deed relating to the Developer Works and other material public benefits (other than the payment of monetary Development Contributions and the dedication of any dedication land).

Indexation of General Security

- 14.5 The Developer is to ensure that the amount of the General Security provided to the Council at any time is indexed in accordance with Item 3.b of the VPA Particulars.



Call-up of General Security

- 14.6 Subject to clause 15.2, if the Developer breaches any of its obligations under this Deed relating to the purpose for which the General Security is required to be provided, the Council may call-up the General Security, or the Defects Liability Security, as appropriate, and apply it to remedy the Developer's breach and the Council's costs specified in clause 15.5 of so doing.
- 14.7 However, the Council is not to call up the General Security or the Defects Liability Security unless:
- 14.7.1 it has given the Developer not less than 30 days' notice of its intention to do so (and the issue of a breach notice under clause 15.1 is taken to be notice that the security will be called on at the end of the period for rectification specified in the notice, if the breach is not rectified by that time) and particulars of why it intends to do so, and
 - 14.7.2 the Developer has not rectified the non-compliance to a reasonable standard before that period has expired.
- 14.8 For the avoidance of doubt, Council may not call up the General Security or the Defects Liability Security until the later of the end of the period for rectification of a breach in a notice under clause 15.1, and the notice period referred to in clause 14.7.1 have expired.

Release & return of General Security

- 14.9 Subject to clause 14.10, the Council is to release and return the General Security or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for the Developer Works unless the Parties have entered into a written agreement providing for the progressive release of the General Security at times or upon the occurrence of events specified in the agreement.
- 14.10 The amount of the General Security released and returned by the Council under clause 14.8 must not exceed the amount of the General Security minus the percentages of that amount allocated to the Defects Liability Security.
- 14.11 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 28 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Defects Liability Security relates.

Replacement General Security

- 14.12 The Developer may provide the Council with a replacement General Security at any time.
- 14.13 On receipt of a replacement General Security, the Council is to release and return the replaced the General Security to the Developer.
- 14.14 If the Council calls-up the General Security or any portion of it, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement General Security to ensure that the amount of General Security held by the Council equals the amount the Council is entitled to hold under this Deed.

15 Breach of obligations

Notice of breach

- 15.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 15.1.1 specifying the nature and extent of the breach,
 - 15.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,



- 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

Notice of breach pre-requisite to exercise of rights

- 15.2 The Council may not exercise its rights under clause 14.6 unless it has first given the Developer a notice under clause 15.1 and the Developer has failed to comply with the Notice.

Step-in right relating to Developer Works

- 15.3 If the Developer fails to comply with a notice given under clause 15.1 relating to the provision of Developer Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

Recovery of costs by Council as debt due

- 15.4 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 15.5 For the purpose of clause 15.4, the Council's costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
- 15.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 15.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 15.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 15.6 Nothing in this clause 15 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

16 Enforcement in a court of competent jurisdiction

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

Part 5 – Registration & Restriction on Dealings

17 Registration of this Deed

Application of clause

- 17.1 This clause 17 applies if Item 5 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

17.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:

- 17.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
- 17.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.

17.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

17.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:

- 17.4.1 in so far as the part of the Land concerned is a Final Lot,
- 17.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

18 Restriction on dealings

Restriction

18.1 The Developer is not to:

- 18.1.1 sell or transfer the Land, other than a Final Lot, or
- 18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed, to any person unless:
 - 18.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 18.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, not to be unreasonably withheld, and
- 18.1.5 the Developer is not in breach of this Deed, and
- 18.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

18.2 Subject to clause 18.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.

Exclusion from restriction

18.3 Clause 18.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

19 Risk

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

20 Release

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

21 Indemnity

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

22 Insurance

Requirement for Developer insurances

22.1 The Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.

Failure to comply with requirement

22.2 If the Developer fails to comply with clause 22.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

22.2.1 by calling upon the General Security provided by the Developer to the Council under this Deed, or

22.2.2 recovery as a debt due in a court of competent jurisdiction.

22.3 The Developer is not to commence to provide any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 22.1.

Part 7 – Sewer Pump Works

23 Design of the Sewer Pump Works

23.1 The Developer may not commence any part of the Sewer Pump Works unless the Sewer Pump Works are designed by the Developer, the design is approved by the Council, and the Council agrees to the cost of the approved works.

23.2 The Developer must submit to Council:



- 23.2.1 a scope of works, plans, and drawings concerning the design of the Sewer Pump Works, including an outline of the Sewer Pump Works generally consistent with the Indicative Sewer Pump Works Plan in Schedule 6; and,
- 23.2.2 a schedule of the costs associated with the construction of the Sewer Pump Works (**Sewer Pump Costs**).
- 23.3 The Council may reasonably require the Developer to make changes to the plans and drawings of the Sewer Pump Works that it reasonably considers necessary as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 23.4 The Council is to inform the Developer in writing (within 40 business days of receiving the design of the Sewer Pump Works) when it approves the plans and drawings of the Sewer Pump Works.
- 23.5 The Developer is not to make any application for any Approval relating to the Sewer Pump Works unless the Council has first approved the plans and drawings of the Sewer Pump Works in accordance with this Deed.
- 23.6 Once the plans and drawings for the Sewer Pump Works are agreed by Council, the Developer must provide an amended schedule of the Sewer Pump Costs, if there has been any change to the plans and drawings submitted under clause 23.2.
- 23.7 The Council is to inform the Developer if the Sewer Pump Costs are agreed by Council.
- 23.8 On approval by Council of the plans and drawings for the Sewer Pump Works, and agreement by Council to the Sewer Pump Costs, the Sewer Pump Works become Developer Works for the purposes of this Deed, and the provisions of this Deed regarding Developer Works apply to the Sewer Pump Works other than any provisions which are contrary to any clauses in this Part 7.

24 Timing of the Sewer Pump Works

- 24.1 The scope of works to be submitted by the Developer to Council under clause 23.2 must include timelines and dates by which the Developer must complete the Sewer Pump Works and the times by which any works in connection with the Sewer Pump Works which are required to be carried out by Council will be required.
- 24.2 The Developer must use all reasonable endeavours to ensure that the whole of the Sewer Pump Works are completed in accordance with the timelines and dates in the scope of works approved by Council.

25 Variations to approved Sewer Pump Works

- 25.1 Notwithstanding anything to the contrary in the Developer Works Provisions in Schedule 5, if Council directs the Developer to vary the design of the Sewer Pump Works, then if the variation is requested after Council's approval of the design of the Sewer Pump works under clause 23 then:
 - 25.1.1 , if the variation is reasonably considered by Council to be required to ensure that the Sewer Pump Works can be safely constructed and effectively operated, then the cost of complying with Council's direction and varying the Sewer Pump Works shall be borne by the Developer; and
 - 25.1.2 otherwise the costs of complying with Council's direction and varying the Sewer Pump Works shall be borne by Council

26 Responsibility for Cost of Sewer Pump Works

- 26.1 The Developer is responsible for meeting all Costs of and incidental to the Sewer Pump Works.

27 Offset of Sewer and Water Charges

- 27.1 Council agrees that any charges payable by the Developer under section 64 of the *Local Government Act 1993* and section 306 of the WM Act may be reduced by the \$ amount specified in the Sewer Pump Costs in relation to those parts of the Sewer Pump Works comprising the decommissioning of the Sewer Pump Station and the connection of the new sewer pump station to existing dwellings, not being dwellings constructed as part of the Development.
- 27.2 The Parties agree that any charges payable by the Developer under section 64 of the *Local Government Act 1993* and section 306 of the WM Act may not be reduced by the \$ amount specified in the Sewer Pump Costs in relation to the Sewer Pump Works, or any part of the Sewer Pump Works not referred to in clause 27.1.
- 27.3 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty regarding the issuing of a certificate of compliance for the purposes of the *Local Government Act 1993* and the WM Act.

Part 8 - Other Provisions

28 Annual report by Developer

Requirement for Developer to provide report

- 28.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed commences a report ('**Annual Performance Report**') detailing the performance of its obligations under this Deed in the previous 12 month period ('**Reporting Period**').
- 28.2 This obligation ceases once all the Developer's obligations in respect of the Developer Works and the Sewer Pump Works under this Deed have been completed.

Form and content of report

- 28.3 The Annual Performance Report is to be in such a form and to address such matters as is reasonably required by the Council from time to time but must at a minimum detail the following:
- 28.3.1 all Development Contributions made by the Developer pursuant to this Deed during the Reporting Period and the dates on which the contributions were made,
 - 28.3.2 all Development Contributions due to be made by the Developer pursuant to this Deed in the next 12 month period,
 - 28.3.3 all Developers Works that had been commenced prior to the Reporting Period or were commenced during the Reporting Period but were not completed in that period,
 - 28.3.4 all Developers Works due to be commenced or completed within the next 12 month period,
 - 28.3.5 all securities (such as the General Security and/or Defects Liability Security) provided by the Developer to the Council under this Deed and held by the Council during the Reporting Period and the current value of each such security.

Strict requirement

- 28.4 The Developer acknowledges and agrees that the provision of the Annual Performance Report each year in accordance with this clause 28 is a strict requirement of this Deed.

29 Review of Deed

Obligation to review Deed

- 29.1 The Parties agree to review this Deed by the end of each Review Period, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

Review triggers

- 29.2 For the purposes of clause 29.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

Duty of Parties

- 29.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 29.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

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

No Dispute

- 29.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 29.1 (but not 29.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

30 Notices

- 30.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 30.1.1 delivered or posted to that Party at its address set out in Item 7 or 8 of the VPA Particulars, or
 - 30.1.2 emailed to that Party at its email address set out in Item 7 or 8 of the VPA Particulars.
- 30.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 30.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 30.3.1 delivered, when it is left at the relevant address,
 - 30.3.2 sent by post, 2 business days after it is posted, or
 - 30.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 30.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.



31 Approvals and Consent

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

32 Cost

Enforcement costs

- 32.1 The Council may serve a notice in writing on the Developer ('**Enforcement Cost Notice**') requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 32.1.1 investigating a non-compliance by the Developer with this Deed, and
 - 32.1.2 enforcing compliance by the Developer with this Deed.
- 32.2 For the avoidance of doubt, the costs and expenses referred to in clause 32.1 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 32.3 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.
- 32.4 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 32.5 Part 3 of this Deed does not apply anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause **Error! Reference source not found..**

33 Entire Deed

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

34 Further Acts

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

35 Governing Law and Jurisdiction

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

36 Joint and Individual Liability and Benefits

36.1 Except as otherwise set out in this Deed:

- 36.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 36.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

37 No Fetter

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

38 Illegality

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

39 Severability

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

40 Amendment

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

41 Waiver

- 41.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 41.2 A waiver by a Party is only effective if it:
 - 41.2.1 is in writing,
 - 41.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 41.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 41.2.4 is signed and dated by the Party giving the waiver.
- 41.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.



- 41.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 41.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

42 GST

- 42.1 In this clause:

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

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

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

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

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

- 42.2 Subject to clause 42.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 42.3 Clause 42.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 42.4 No additional amount shall be payable by the Council under clause 42.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 42.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 42.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 42.5.2 that any amounts payable by the Parties in accordance with clause 42.2 (as limited by clause 42.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 42.6 No payment of any amount pursuant to this clause 2, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 42.7 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.
- 42.8 This clause continues to apply after expiration or termination of this Deed.

43 Explanatory Note

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

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Schedule 1: VPA Particulars

(Clause 1.1)

Item	Details
1. Application of the following provisions of the Act to the Development: a. Section 7.11 b. Consideration of benefits c. Section 7.12 d. Subdivision 4 of Division 7.1	Excluded to the extent of the Contribution Reduction Value Not to be considered. Not excluded. Not excluded.
2. Defects Liability Period	Two (2) years.
3. General Security: a. General Security b. Indexation of General Security	\$234,000.00 Yes, as per Indexation Method
4. Defects Liability Security	5 % of General Security
5. Registration of this Deed	Yes
6. Insurances a. Contract Works Insurance b. Public Liability c. Professional Indemnity Insurance d. Workers Compensation Insurance e. Other insurance	For the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works. For at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party. N/A As required by law. As required by law.



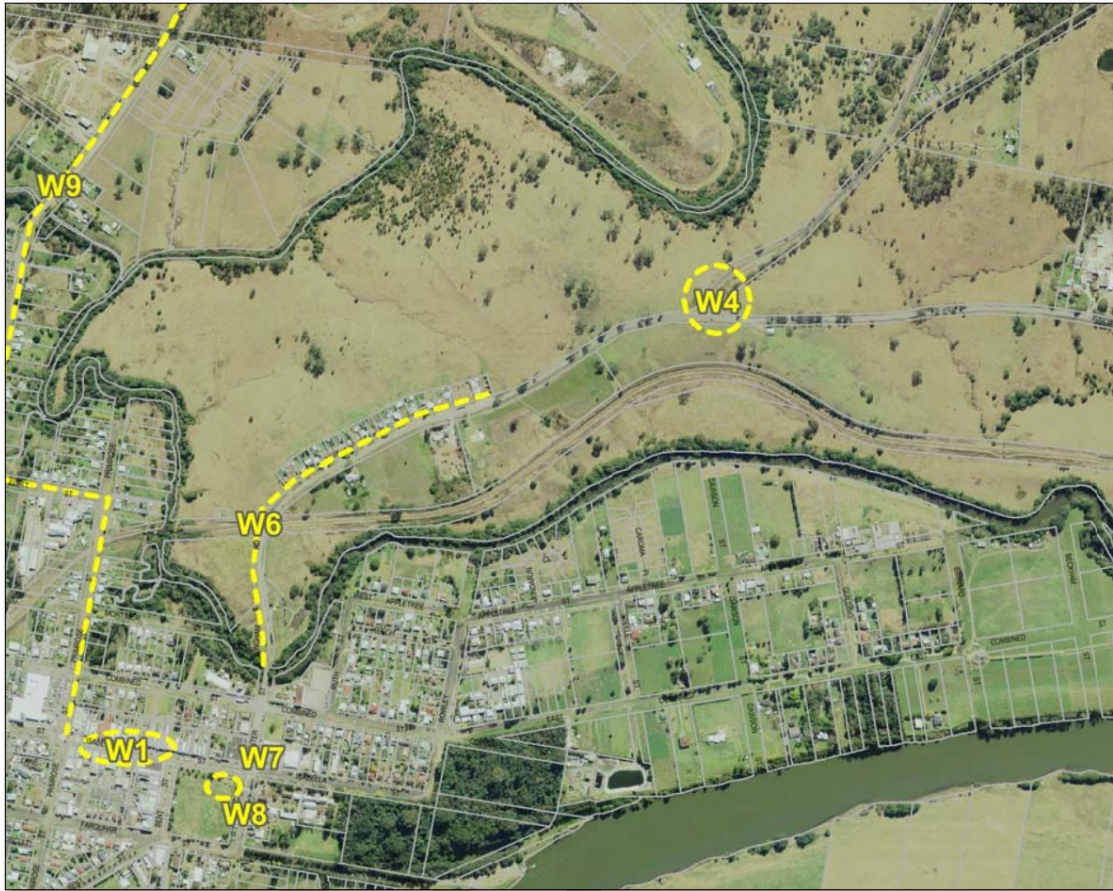
7. Council Contact for Notices	Postal Address: 2 Biripi Way, Taree, NSW 2430 Email: council@midcoast.nsw.gov.au Telephone: 7955 7777 Representative: Hamish Taylor
8. Developer Contact for Notices	Postal Address: PO Box 358, Kiama NSW 2533 Email: Tim.Colless@hampstead.com.au Telephone: 0403 234 066 Representative: Tim Colless
9. Review Period	Each period of five (5) years commencing on the commencement of this Deed, with the obligation ending when the Developer has met all of its obligations to provide the Developer Works and Sewer Pump Works under this Deed.

Schedule 2: Development Contributions Table

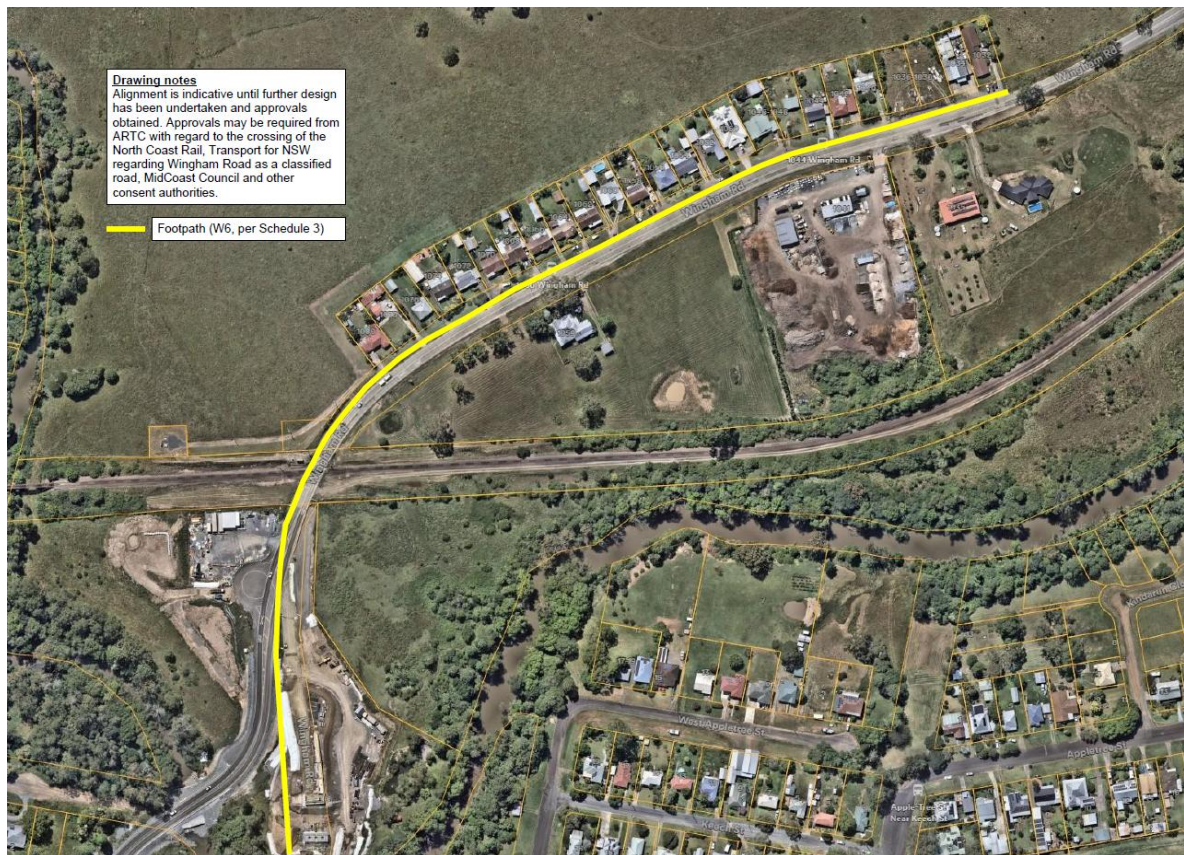
COLUMN 1 Item No / Details	COLUMN 2 Public Purpose	COLUMN 3 Timing	COLUMN 4 Contribution Reduction Value \$
1. Construction of the Wingham Road footpath, identified as item W6 in the Contributions Plan, on the Council road reserve along the frontage of 1032 Wingham Road and along the frontage of adjoining land up to Cedar Party Creek bridge (Footpath): The Footpath is to be 760m long and 2m wide, in addition to a crossing of the rail corridor, to be constructed in accordance with this Deed.	Public infrastructure and footpath	Prior to the issue of the issue of the first Subdivision Certificate for Final Lots, or prior to the issue of the first Occupation Certificate in respect of the Development, whichever is earlier.	\$234,000.00 indexed in accordance with the Indexation Method, subject to clause 9.2

Schedule 3: Indicative Developer Works Location Plan

The location of the Developer Works (footpath only) is indicated as W6 on the following plan:



Schedule 4: Indicative Developer Works Plan



Schedule 5: Developer Works Provisions

Developer Works before execution of Deed

- 1 This Deed applies to any Developer Works that occurred before the Deed was executed, as well as to Developer Works to be carried out after the date of this Deed.
- 2 The Developer Works or any part of the works required under this Deed will be taken to have been completed for the purposes of this Deed when a Practical Completion Certificate has been issued for the works.

General obligations relating to Developer Works

- 3 Unless otherwise agreed by the parties, the Developer is to provide the Developer Works:
 - 3.1 in the location or locations shown on the Indicative Developer Works Location Plan,
 - 3.2 in accordance with the Indicative Developer Works Plan, and
 - 3.3 by the time specified in Schedule 2, and
 - 3.4 otherwise in accordance with this Deed.
- 4 The Developer is to provide and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:
 - 4.1 all applicable laws,
 - 4.2 any Approval required by any law relating to the provision of the Developer Works, and
 - 4.3 the lawful requirements of any Authority.
- 5 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Developer Works is supplied or made available for that purpose.

Warranties relating to Developer Works

- 6 The Developer warrants to the Council that:
 - 6.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 6.2 it accepts that, if any aspect of the Developer Works do not comply this Deed, the Council is entitled to require the Developer to cease the Developer Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 6.3 the Developer Works, when completed, are to be fit for purpose.
- 7 The Developer is to procure in favour of the Council from any person engaged in relation to the Developer Works, any warranty reasonably required by the Council for the purposes of this Deed relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

Ownership & care of Developer Works

- 8 The Developer owns, and is responsible for care of the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Council gives the Developer a Transfer of Ownership Notice in relation to the Developer Works.

Work health & safety

- 9 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that:
 - 9.1 the Developer engages the contractors to construct the Developer Works, or
 - 9.2 engages another person to be the Principal Contractor for the Developer Works,



- and authorises the person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.
- 10 For the purpose of the Developer's compliance with its obligations under clause 9, the Council:
- 10.1 acknowledges that the Developer (or its contractors, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and
- 10.2 authorises the Developer (or its contractors, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations under clause 9.
- 11 If the Developer at any time terminates the engagement of its contractors, or terminates its authority for its contractors or other person referred to in clause 9 to be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as its contractors or to otherwise be the Principal Contractor for the Developer Works.
- 12 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
- 12.1 following published government and industry WHS guidelines,
- 12.2 providing WHS induction training,
- 12.3 keeping and regularly updating WHS records,
- 12.4 preparing and maintaining an WHS management plan,
- 12.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
- 12.6 providing safe work method statements for all tasks and ensuring they are complied with,
- 12.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
- 12.8 identifying hazards and assessing risks using due diligence,
- 12.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
- 12.10 reviewing risk assessments and controlling measures,
- 12.11 providing information to employers and contractors about WHS,
- 12.12 documenting site-specific safety procedures.
- 13 The Developer is to use its best endeavours to ensure that:
- 13.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law, and
- 13.2 the Council can access and use the Developer Works without breaching WHS Law.
- 14 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

Accidents & dangerous occurrences

- 15 The Developer is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.
- 16 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.



- 17 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 18 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 19 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 20 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

Design of Developer Works

- 21 Clauses 21 - 28 apply as Schedule 4 does not contain detailed Developer Works plans and drawings, but do not apply to the Sewer Pump Works
- 22 The Developer may not commence construction of the Developer Works unless the Developer Works are designed and approved in accordance with this Deed.
- 23 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.
- 24 Upon receipt of the Developer's request, the Council may:
 - 24.1 initially request the Developer to provide a written proposal concerning the design of the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Developer Works to the Council for approval, or
 - 24.2 request the Developer to submit the plans and drawings of the works to the Council for approval.
- 25 The Council may reasonably require the Developer to make any change to the plans and drawings of the Developer Works that it reasonably considers necessary as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 26 The Council is to inform the Developer in writing when it approves the plans and drawings of the Developer Works.
- 27 The Parties are to ensure that reference to the plans and drawings approved by the Council under clauses 23 to 26 are included in Schedule 4 without delay after that approval is given.
- 28 The Developer is not to make any application for any Approval relating to the Developer Works unless the Council approved the plans and drawings of the Developer Works under this Deed.

Variations to approved Developer Works & Costs

- 29 The Developer Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 30 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 31 The Party to whom the request is made is not to unreasonably delay, or withhold its Approval to, the request.
- 32 The Party who seeks the variation of the Developer Works must meet the costs of the variation, unless the other Party otherwise agrees.

Developer's obligations before construction commencement

- 33 Not less than 10 business days before the Developer commences construction of any of the Developer Works, the Developer is to give the Council written notice of its intention to do so accompanied by a copy of all approved plans and drawings for the Developer Works so specified in electronic and paper format.



- 34 The Developer is to organise and conduct a pre-start meeting with Council personnel before starting the construction of a Developer Work.

Protection of people, property & utilities

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

Damage to assets & property

- 37 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Developer Works.
- 38 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works in accordance with any reasonable requirements of the Council.
- 39 If an audit, inspection or test of the Developer Works shows that:
- 39.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
- 39.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,
- the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.
- 40 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clauses 39-45, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

Entry onto Land

- 41 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and provide the Developer Works on Other Land.
- 42 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer and any person engaged in relation to the Developer Works, to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer and any person engaged in relation to the Developer Works is reasonably necessary for the Developer Works.
- 43 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 44 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being, or have been, provided.
- 45 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being provided.

Audit, inspection, testing of Developer Works

- 46 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 47 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
- 48 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
- 48.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 48.2 provide evidence to the Council that the action has been taken.
- 49 If an audit, inspection or test shows that the Developer Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- 50 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

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

Practical Completion of Developer Works

- 53 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Practical Completion Certificates by not later than the date for completion under Schedule 2, or determined in accordance with Part 7 of this Deed.
- 54 The Developer may make a written request ('**Developer's Request**') to the Council to issue a Practical Completion Certificate for the Developer Works or any part of the Developer Works by not later than the Practical Completion Date or such later date agreed in writing between the Parties.
- 55 The Developer's Request is to be accompanied by the following information:
- 55.1 a Works-as-Executed Plan of the Developer's Works to which the Developer's Request relates, and
- 55.2 all technical data relating to those Works, including but not limited to, geotechnical testing, structural certificates, CCTV footage and material certifications.
- 56 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 57 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, Rectify or repair any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.
- 58 The Developer is to promptly comply with any such direction given by the Council.
- 59 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.



- 60 The Council is to promptly issue a Practical Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

Rectification of Defects

- 61 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 62 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 63 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

Final Completion of Developer Works

- 64 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Final Completion Certificates at the end of Defects Liability Period.
- 65 The Developer may make a written request ('**Developer's Request**') to the Council to issue a Final Completion Certificate for the Developer Works or any part of the Developer Works at the end of Defects Liability Period.
- 66 The Developer's Request is to be accompanied by a full Works-As-Executed-Plan for the Developer Works for which the Final Completion Certificate is sought in a format agreed to by the Council.
- 67 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 68 As a precondition to issuing a Final Completion Certificate, the Council may direct the Developer in writing to complete, Rectify, or repair any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.
- 69 The Developer is to promptly comply with any such direction given by the Council.
- 70 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Final Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.
- 71 The Council is to promptly issue a Final Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

Copyright in Works-As-Executed Plan

- 72 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 73 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Transfer of Ownership of Developer Works

- 74 At any time after the Council issues a Final Completion Certificate for Developer Works to the Developer, the Council may issue a Transfer of Ownership Notice to the Developer for those Developer Works.
- 75 The Developer Works the subject of a Transfer of Ownership Notice vest in the Council on the vesting date stated in the Transfer of Ownership Notice.

Removal of structures & Equipment

- 76 When providing the Developer Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:

- 76.1 remove from the land any structure not comprising or required in connection with the completed Developer Works and make good any damage or disturbance to the land as a result of that removal,
- 76.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
- 76.3 leave the land in a neat and tidy state, clean and free of rubbish.

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Schedule 6: Indicative Sewer Pump Works Plan

Colliers

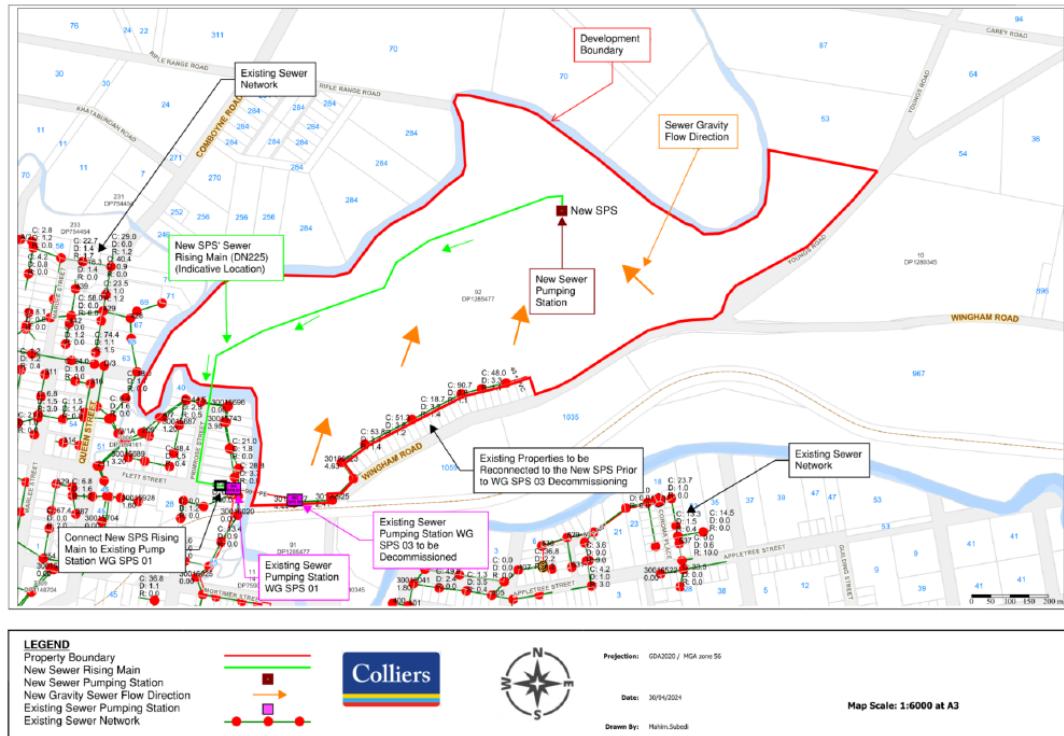


Figure 4 – Sewer Servicing Strategy
 24-0193: Cedar Creek Water & Sewer Servicing Strategy
 Revision 05 | September 2024



Execution

Executed as a Deed

Dated:

Executed by the COUNCIL pursuant to a resolution passed at a duly convened meeting held on
[Drafting Note. Insert Date]:

General Manager

Witness

Name

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

Director

Director / Secretary

Name

Name

Appendix: Explanatory Note

(Clause 43)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Draft Planning Agreement

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

Parties

Council **Mid-Coast Council** ABN 44 961 208 161 of 2 Biripi Way,
Taree, NSW 2430 (**Council**)

Developer **MPT Farms Pty Ltd** ABN 87 535 569 677 of 95 Bight Road,
Wingham NSW 2429 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 92 DP 1285477.

Description of Proposed Development/Instrument Change

The Planning Proposal seeks to make the following amendments to the Greater Taree LEP:

- Amend the Land Zoning Map from the RU1 Primary Production zone to:
 - R1 General Residential
 - C2 Environmental Conservation
 - C4 Environmental Living
 - SP2 Infrastructure
- Amend the Lot Size Map from the 40ha minimum lot size to:
 - 450 m² (for land to be zoned R1)
 - 20ha (for land to be zoned C2)
 - 20ha (for land to be zoned C4)
- Amend the Height of Buildings Map from no maximum building height to a 8.5m maximum building height for the portion of the site proposed for the R1 General Residential zone. No maximum building height is proposed for C2 Environmental Conservation and C4 Environmental Living zoned land.

Amend the Urban Release Area Map to include the portion of the site proposed for the R1 General Residential zone.

Description of Development Contributions

The Developer proposes to carry out the Developer Works to construct public infrastructure, being the Wingham Road footpath at 1032 Wingham Road to Cedar Party Creek bridge, and to design and construct new sewerage works including decommissioning of an existing sewer pump station, and construction of a new sewer pump station, with the scope of works to be determined with Council.

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of this Planning Agreement is to provide public infrastructure for existing and future residents within the Mid-Coast Local Government Area.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under 7.4 of the EPA Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4 of the Act).

Effect of the Draft Planning Agreement

The Planning Agreement:

- requires the Developer to undertake the Developer Works for a public purpose;
- relates to the Planning Proposal and the carrying out of future Development on the Land by the Developer as a consequence of the Instrument Change;
- does not exclude the application of section, 7.12 or Division 7.1, Subdivision 4 of the Act to the Development, but excludes the application, in part of s7.11 to the extent of the value of the footpath works;
- is to be registered on the title to the Land;
- imposes restrictions on the Developer transferring the Land or part of the Land, or assigning an interest under the Planning Agreement;
- provides a dispute resolution method where a dispute arises under the agreement, being mediation and expert determination; and,
- provides that the agreement is governed by the law of New South Wales.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies; and,
- enables the delivery of public infrastructure.

The Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to design and construct public infrastructure for public purposes.

How the Draft Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by:

- promoting the objects of the Act set out in sections 1.3(a), (c), (d), (e) and (j);
- acting as an example of Council working with the Developer to secure appropriate amenities and infrastructure for local community needs; and,
- enabling the provision of infrastructure for the benefit of the public.

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

The Planning Agreement has a positive impact as a result of the public benefits to be provided under the Planning Agreement, with no negative impact on the public or any section of the public as far as the Council is aware.

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

The Planning Agreement is not inconsistent with the Council's Capital Works Program.

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



Yes, footpath works to be completed before issue of a subdivision certificate or occupation certificate (whichever occurs first) for a residential lot intended to accommodate a dwelling.

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