

Draft 2

Date: 3 December 2012

Planning Agreement

Amplan Pty Ltd (**Amplan**)

Orange City Council (**Council**)

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123
www.minterellison.com

Planning Agreement

Details	4
Agreed terms	6
1. Defined terms & interpretation	6
2. Operation of this Agreement	8
3. Registration on Title	9
4. Assignment and dealing with the land	9
5. Application of Sections 94, 94A and 94EF of the Act	10
6. Completion of the Design & Construction of Intersection Works	10
7. Water Supply Works	13
8. Payment of Sewerage Contribution	14
9. Notices and other communications	16
10. Dispute resolution	16
11. Waiver	17
12. Counterparts	18
13. Entire agreement	18
14. Variation	18
15. Termination by a party	18
16. Severability	18
17. Relationship of the parties	19
18. No fetter	19
19. Costs of this Agreement	19
20. Governing law	19
Schedule 1 – Compliance with section 93F of the Act	20
Signing page	22
APPENDIX A	23
APPENDIX B	24

DRAFT

Details

Date

Parties

Name	Amplan Pty Ltd
Short form name	Amplan
Notice details	Level 4 111 Cecil Street SOUTH MELBOURNE VIC 3205

Name	Orange City Council
Short form name	Council
Notice details	PO Box 35 ORANGE NSW 2800

Background

- A On the 23rd August 2012 Amplan submitted a development application to the Council for the demolition of an existing weatherboard dwelling and garage, and the construction of a new residential aged care facility consisting of 120 beds and site subdivision at 1501-1503 Forest Road Orange, being Lot 142 in DP75040.
- B The Council may be entitled to require the payment of certain contributions and charges on Amplan as part of the development process.
- C The Development is proposed to be located on the outer edge of the Orange urban zone in an area not well serviced with public infrastructure. As a consequence existing infrastructure must be extended and enhanced to serve the subject site. The purpose of this Voluntary Planning Agreement is to identify the Works to be undertaken in conjunction with the Development, but on adjacent public land to service the Development. The Works will serve the Development, but the parties have agreed to a range of design enhancements such that the Works may also serve and benefit the broader community.
- D This Agreement describes who will carry out the Works and how they will be co-funded by the parties. The Works comprise a new traffic light controlled road Intersection on Forest Road to service the subject site as well as the southern access to the Bloomfield Hospital known as The Crescent, and the extension of both sewer and water services to serve the subject site.
- E The Parties agree that by entering into this Agreement, Amplan will discharge any obligations it may have for Section 94 Fees under the Orange Development Contributions Plan 2012, or other

Minter Ellison

contributions or obligations Council may be entitled to levy for local road upgrades, or otherwise enhancing or extending services necessary for the subject Development.

DRAFT

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this document:

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

Agreement means this agreement.

Business Day means:

- (a) for receiving a notice under clause 7, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is received; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in New South Wales, Australia.

Business Hours means from 9.00am to 5.00pm on a Business Day.

Calendar Year means each consecutive period of 12 months beginning on 1 January.

Construction Certificate means a construction certificate as defined in section 4 of the Act.

Council means Orange City Council.

Dealing has the same meaning as defined under section 3 of the *Real Property Act 1900 (NSW)*.

Development means the development authorised by the Development Consent.

Development Application means development application no. DA284/2012(1) submitted to the Council on the 23rd August 2012 for the demolition of an existing weatherboard dwelling and metal double garage, the construction of a new residential aged care facility consisting of 120 beds and site subdivision on the Land.

Development Consent means any development consent granted under Part 4 of the Act to the Development Application and includes any modification application granted under section 96 of the Act.

Explanatory Note means the explanatory note attached as Annexure A and is required under clause 25E of the Regulation.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Intersection Works means the design and construction of a road junction at the intersection of Forest Road, Orange and the access road from Forest Road into the Development, as indicated on the plans attached at Appendix X Folio 1,2 & 3.

Intersection Works Contribution means the monetary contribution to be paid by Amplan to Orange City Council in accordance with clause 6.

Land means the land described as 1501-1503 Forest Road Orange, which is otherwise known as Lot 142 in DP750401.

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

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

RMS means the NSW Government agency known as Roads and Maritime Services.

Section 94 Contributions means those contributions which may be lawfully be required by a condition attaching to any Development Consent pursuant to section 94 and 94A of the Act.

Sewerage Contribution means the monetary contribution to be paid in respect of the cost of constructing the Sewerage Works in accordance with clause 8.

Sewerage Works means the sewerage works to be finalised and constructed in accordance with clause 8 which works include the construction of a sewer rising main in Forest Road.

Water Supply Contribution means the monetary contribution to be paid in respect of the cost of constructing the Water Supply Works in accordance with clause 7.1.

Water Supply Works means the water supply works to be finalised and constructed in accordance with clause 7 which works include the construction of a 300mm diameter water main in Forest Road.

Works means the works described in this Agreement including the design and construction of the Intersection Works, the Water Supply Works and The Sewerage Works

1.2 Interpretation

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Eastern Standard, Australia time;
- (g) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (i) a reference to 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;
- (j) a word or expression defined in the Corporations Act has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Operation of this Agreement

2.1 Operation

The Parties agree that this Agreement:

- (a) constitutes a planning agreement within the meaning of section 93F of the Act;
- (b) will, subject to this Agreement, operate in conjunction with any Development Consent, including any subsequent modification of that Consent, approved in relation to the land;
- (c) is effective and binding on the Parties from the date of issue of any Construction Certificate for any part of the Development above ground level; and
- (d) will remain in force and effect until the earlier of:
 - (i) payment of the Intersection Works Contribution, the Water Supply Works Contribution and the Sewerage Works Contribution; or
 - (ii) termination pursuant to clause 15.

2.2 Application

This Agreement applies to:

- (a) the Land;
- (b) the Development;
- (c) the Intersection Works;
- (d) the Sewerage Works; and
- (e) the Water Supply Works

3. Registration on Title

3.1 Land Ownership/ Consent of Mortgagee

Amplan warrants that:

- (a) it is the registered proprietor of the Land; and
- (b) it has obtained the consent of all persons who have an interest in the Land immediately prior to executing this Agreement.

3.2 Registration of Agreement

Amplan agrees it will take all practical steps to procure the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the register for the Land in accordance with Section 93H of the Act.

3.3 Release and discharge of Agreement

Following payment by Amplan of the Intersection Works Contribution, the Water Supply Contribution and the Sewerage Contribution, the Council agrees to do all things reasonably required by Amplan to remove this Agreement from the relevant folios on which this Agreement was registered pursuant to clause 3.2 above.

3.4 Registration of Caveat by Council

- (a) Until such time as registration of this Agreement in the relevant folios of the register in accordance with clause 3.2, occurs, Amplan agrees that the Council may lodge any caveat reasonably necessary to prevent any Dealing with the Land or any part of it in a manner which is inconsistent with this Agreement.
- (b) If the Council lodges a caveat in accordance with this clause, the Council will do all things reasonably required to ensure that the caveat does not prevent or delay the registration of this Agreement. The Council will promptly, following registration of this Agreement, do all things reasonably required to remove the caveat from the title to the Land.

4. Assignment and dealing with the land

- (a) Subject to paragraph (c), Amplan must not register any transfer of the whole or any part of the Land unless the proposed transferee accepts such of the obligations of this Agreement as may be reasonably required by Council.

- (b) For the purpose of giving effect to paragraph (a) the Council, Amplan and any transferee must enter into a novation agreement whereby the transferee agrees to carry out the obligations of Amplan under the Agreement and Amplan is released, from the date of such novation agreement from the obligations contained in this Agreement to the extent that they:
 - (i) are novated to the transferee, and
 - (ii) remain to be performed.
- (c) If any proposed transferee proposes to acquire one or more lots in any community title subdivision which forms part of the Development (whether or not the plan has, at the date of exchange, been registered at Land and Property Information NSW), Amplan may create that interest without requiring that proposed transferee to enter into an Agreement with the Council in accordance with this clause 4 and the interest so created will not be in breach of this Clause.

5. Application of Sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are wholly excluded in respect of the Development.

6. Completion of the Design & Construction of Intersection Works

6.1 Scope Of the Intersection Works

- (a) The Parties agree that the Intersection Works will generally be designed and constructed in accordance with the requirements and design standards set down by RMS and comprise the following elements and have the following design and operational parameters:
 - (i) a new four way road intersection on Forest Road to provide access to the Southern Bloomfield Hospital access road and the proposed access road as shown in the aforementioned Appendix A Folio 1 to the Development;
 - (ii) traffic lights to facilitate:
 - (A) left and right turn movements from Forest Road into the Development and the Department of Health's Bloomfield site;
 - (B) left and right turn movements out of the Development and the Department of Health's Bloomfield site;
 - (C) a minimum 3 way pedestrian crossing, with crossing points on Forest Road north of the cross intersections and across each of the access roads;
 - (iii) all realignment and associated services works, and;
 - (iv) intersection lighting.
- (b) The Intersection Works are to be located and aligned with the internal roads shown in Appendix A Folio 2 to serve the internal road network for the Development.

6.2 Amplan Design Works To Be Taken Over by Council

- (a) The Parties agree that the design documents included at Appendix A Folio 2 represent Amplan's requirements in respect of the Intersection Works, and that they reflect inputs from the Council and RMS and are consistent with the design and operational parameters identified at clause 6.1.
- (b) As soon as reasonably practicable after the commencement of this Agreement, the Council will engage the engineers and designers which have prepared the documents at Appendix A, being:
 - (i) Geolyse Pty Ltd – Civil Engineers; and
 - (ii) Transport & Traffic Pty Ltd – Traffic Light Design.
- (c) The Council will engage Geolyse Pty Ltd to the limit of the current agreement and Transport & Traffic Pty Ltd and if necessary provide updated instructions to complete the design of the Intersection Works generally in accordance with Appendix A and in accordance with clause 6.1 and 6.3.
- (d) The Council will consult with Amplan and the NSW Department of Health to the final design and configuration of the Intersection Works to ensure that design and configuration meet the requirements of the NSW Department of Health and Amplan.
- (e) Upon completion of the design of the Intersection Works, the Council must obtain all relevant Approvals in respect of the Intersection Works.

6.3 Integration with Development

- (a) The Council must use all reasonable endeavours to ensure that the Intersection Works appropriately integrate with the actual or proposed Development, including but not limited to, ensuring that the footpaths, paving, kerb and gutter of the Intersection Works appropriately align with the actual or proposed footpaths, paving, kerb and gutters comprising part of, or constructed or proposed to be constructed in association with the Development.
- (b) If the Council completes the Intersection Works before Amplan completes all of the building works on the Land required by the Development Consent, then Amplan shall use all reasonable endeavours to ensure that the Development appropriately integrates with the Intersection Works, including but not limited to, ensuring that the footpaths, paving, kerb and gutter of the Development appropriately align with the footpaths, paving, kerb and gutters.
- (c) If the fulfilment of clauses 6.3 (a) or (b) requires or would be assisted by the conduct of a Party, that Party must use all reasonable efforts to assist the other Party to fulfil that requirement.

6.4 Council To Construct The Intersection Works

- (a) Following the completion of the design of the Intersection Works, the Council will construct the Intersection Works in accordance with the design of the Intersection Works finalised in accordance with this clause 6. .

- (b) The Council must complete the Intersection Works by 30 June 2014.

6.5 Temporary Access To Development Site

- (a) During the construction of the Intersection Works the Council must allow and provide for Amplan to obtain reasonable access to the Land including for the purpose of undertaking the Development.
- (b) The parties have agreed the location of any temporary access to the Land as required by clause 6.5(a) will be at the existing house access road along the southern boundary of the Land.

6.6 Payment of Intersection Works Contribution

- (a) The Parties have agreed that the Intersection Works Contribution will be calculated as follows:
 - (i) 75% of the Council's actual costs of designing and constructing the Intersection Works; or
 - (ii) \$800,250.00whichever is the lesser, as a contribution to the Council's costs of designing and constructing the Intersection Works in accordance with this clause 6.

6.7 Payment of Monetary Contribution By Amplan

- (a) Amplan must pay to the Council the Intersection Works Contribution calculated in accordance with clause 6.6(a) over 3 progress payments to be made during the design and construction of the Intersection Works as per the following:
 - (i) \$100,000 at issue of any construction certificate;
 - (ii) \$350,000 at 30 June 2013
 - (iii) \$350,250 at the completion of the intersection works - subject to a reconciliation of all actual costs associated with the intersection works.
- (b) For the avoidance of doubt, nothing in this Agreement is construed as implying Amplan's contribution to the cost of designing or contributing the Intersection Works should exceed the maximum figure in 6.6(a)

6.8 Failure to Complete the Intersection By the Due date

- (a) If the Intersection Works:
 - (i) have not been substantially commenced by the 30th May 2014; or
 - (ii) have not been completed by 30 June 2014,then
 - (iii) having regard to Amplan's desire to provide acceptable and appropriate vehicular access to the Development in a timely fashion to facilitate the development and operation of the Development the existing and temporary site access located at the southern boundary of the site and referred to in Clause 6.5 above will remain open until such time as the new Intersection Works are completed. In this event the

costs of any necessary temporary works to facilitate this access to allow it to be used as a formal access will be deducted from any monies payable by Amplan pursuant to clause 6.7;

- (iv) Council will not object to the opening & operation of the facility on this basis of the arrangements described in clause 6.8(a)(iii); and
- (v) subject to clause 6.8(a)(iii), unless the Council constructs and completes the Intersection Works by 31 August 2014, the Council must by 6 September 2014 repay any monies paid by Amplan in accordance with clause 6.7.

6.9 Amplan To Dedicate Land

Within 28 days of the later to occur of:

- (a) completion by the Council of the Intersection Works; and
- (b) issue of any Construction Certificate in respect of any part of the Development above ground level

Amplan will dedicate a part of the Land not exceeding 10m measured from the existing road alignment, perpendicular to Forest Road and along the centre line of the new access road and the width of the road and pedestrian footpaths. The dedication is shown on the preliminary subdivision plan at Appendix A Folio 4.

7. Water Supply Works

7.1 Payment of Water Supply Works Contribution

- (a) Amplan must pay to the Council a Water Supply Contribution of **[\$86,605.00]** towards Council's costs of undertaking the Water Supply Works in accordance with this clause 7.
- (b) Amplan must pay the contribution for the construction of the Water main to the Council as follows:
 - (i) \$43,000 at 30 June 2013; and
 - (ii) \$43,605 within 14 days of the Council completing the water main which forms part of the Water Supply Works .

7.2 Finalisation of design of Water Supply Works and Construction of Water Supply Works

- (a) The Water Supply Works must be undertaken by the Council generally in accordance with the drawing prepared by Abel & Brown attached as Appendix B.
- (b) As soon as reasonably practical after receipt of the draft plans of the Water Supply Works prepared in accordance with sub-clause 7.2(a) the Council must forward those plans to Amplan for approval.

- (c) As soon as reasonably practical after receipt of draft plans of the Water Supply Works in accordance with sub-clause 7.2(b) Amplan must advise the Council of any required amendments to the draft plans.
- (d) As soon as reasonably practical after receipt of any required amendments to the draft plans in accordance with sub-clause 7.2(c), the Council must finalise the plans for the Water Supply Works and must:
 - (i) provide a copy of the final plans to Amplan; and
 - (ii) construct the Water Supply Works in accordance with the final plans.
- (e) If the Council does not substantially commence the construction of the Water Supply Works in accordance with this clause 7 on or before 30 May 2014 then Amplan:
 - (i) shall have the right, at its absolute discretion, to complete the Water Supply Works to suit its own requirements; and
 - (ii) may require the Council by notice in writing to pay to Amplan an amount equal to the costs of Amplan completing the Water Supply Works within 14 days of Amplan sending any such notice on to the Council.
- (f) The Council must use all reasonable endeavours to ensure that the Water Supply Works appropriately integrate with the actual or proposed subject Development, including but not limited to, ensuring that services are located so they connect to internal pipework at appropriate locations.
- (g) If the fulfilment of sub clause (f) requires or would be assisted by the conduct of a Party, that Party must use all reasonable efforts to assist the other Party to fulfil that requirement.
- (h) The Council must complete the Water Supply Works by 30 June 2014.
- (i) If the Council does not achieve final completion of the Water Supply Works in accordance with this clause 7 on or before the 30th June 2014 then:
 - (i) Amplan shall have the right, in its absolute discretion, to complete the Water Supply Works; and
 - (ii) Amplan may require the Council by notice in writing to pay Amplan an amount equal to Amplan's costs of completing the Water Supply Works within 14 days of Amplan serving any such notice on the Council.

8. Payment of Sewerage Contribution

8.1 Payment of Sewerage Contribution

- (a) Amplan must pay to the Council a contribution of **[\$86,480]** towards the Council's costs of undertaking the Sewerage Works in accordance with this clause 8.
- (b) Amplan must pay the contribution for the construction of the sewer rising main to the Council as follows:

- (i) \$43,240 at 30 June 2013; and
- (ii) \$43,240 within 14 days of the Council completing the sewer rising main.

8.2 Finalisation of Sewerage Works Design and Construction Works of Sewerage Works

- (a) The Council must cause draft plans of the Sewerage Works to be prepared generally in accordance with the drawing prepared by Abel & Brown attached as Appendix B.
- (b) As soon as reasonably practical after receipt of draft plans of the Sewerage Works, prepared in accordance with sub-clause 8.2(a), the Council must forward those draft plans to Amplan for approval.
- (c) As soon as reasonably practical after receipt of the draft plans of the Sewerage Works in accordance with sub-clause 8.2(b) Amplan must advise the Council of any required amendments to the draft plans.
- (d) As soon as reasonably practical after receipt of any required amendments to the draft plans in accordance with sub-clause 8.2(c), the Council must finalise plans for the Sewerage Works and must:
 - (i) provide a copy of the final plans to Amplan; and
 - (ii) construct the Sewerage Works in accordance with the final plans.
- (e) If the Council has not substantially commenced the construction of the Sewerage Works in accordance with this clause 8 on or before 30 May 2014 then:
 - (i) Amplan shall have the right, in its absolute discretion, to complete the Sewerage Works; and
 - (ii) Amplan may require the Council by notice in writing to pay to Amplan an amount equal to the costs of Amplan constructing the Sewerage Works within 14 days of Amplan serving any such notice on the Council.
- (f) The Council shall use all reasonable endeavours to ensure that the Sewerage Works appropriately integrate with the actual or proposed subject Development, including but not limited to, ensuring that services are located so they connect to internal pipework at appropriate locations.
- (g) If the fulfilment of sub-clause (f) requires or would be assisted by the conduct of a Party, that Party must use all reasonable efforts to assist the other Party to fulfil that requirement.
- (h) The Council must complete the Sewerage Works by 30 June 2014.
- (i) If the Council does not achieve final completion of the Sewerage Works in accordance with this clause 8 on or before the 30th June 2014 then:
 - (i) Amplan shall have the right, at its absolute discretion, to complete the Sewerage Works; and

- (ii) if Amplan undertakes the Sewerage Works in accordance with clause 8.2(i)(i) the Council must pay to Amplan an amount equal to the costs of Amplan completing the Sewerage Works within 14 days of Amplan providing a notice to the Council requiring payment.

9. Notices and other communications

9.1 Service of notices

A notice, demand, consent, approval or communication under this Agreement (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered, sent by prepaid post or transmitted by facsimile or electronic mail (email) to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, at 9.00am on the second Business Day after the date of posting if sent within Australia or on the seventh Business Day after the date of posting if sent to or from a place outside Australia;
- (c) if sent by facsimile, when the sender's facsimile system generates a report confirming the sender's date, time and successful transmission of the number of pages of the entire Notice to the recipient's facsimile number;
- (d) if sent by email, when the sender's email system generates a report indicating the sender's date, time and transmission to the recipient's email address,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Where a party to this agreement comprises more than one person, a Notice given in accordance with clause 9.1 to any one of those persons is sufficient Notice to the party.

10. Dispute resolution

10.1 No arbitration or court proceedings

If a dispute arises out of a Transaction Document (**Dispute**), a party must comply with this clause 10 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

10.2 Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

10.3 Parties to resolve Dispute

During the 14 days after a notice is given under clause 10.2(or longer period if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

10.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within seven days after a request under clause 10.3, the Law Society of NSW will appoint a mediator.

10.5 Role of mediator

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the Party agrees in writing.

10.6 Confidentiality

Any information or documents disclosed by a party under this clause:

- (a) must be kept confidential; and
- (b) may only be used to attempt to resolve the Dispute.

10.7 Costs

Each Party to a Dispute must pay its own costs of complying with this clause 10. The Parties to the Dispute must equally pay the costs of any mediator.

10.8 Termination of process

A party to a Dispute may terminate the dispute resolution process by giving notice to each other after it has complied with clauses 10.1 to 10.3. Clauses 10.6 and 10.7 survive termination of the dispute resolution process.

10.9 Breach of this clause

If a party to a Dispute breaches clauses 10.1 to 10.8, the other parties to the Dispute do not have to comply with those clauses in relation to the Dispute.

11. Waiver

11.1 Failure to perform

The failure of a Party at any time to require performance of any obligation under this Agreement is not a waiver of that party's right:

- (a) to claim damages for breach of that obligation; and
- (b) at any other time to require performance of that or any other obligation under this Agreement

unless written notice to that effect is given in accordance with clause 11.2

11.2 Waiver

Waiver of any provision of or right under this Agreement:

- (a) must be in writing signed by the Party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

12. Counterparts

This Agreement may be executed in any number of counterparts.

13. Entire agreement

This Agreement including its schedules and appendices:

- (a) constitutes the entire agreement between the Parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the Parties and any prior condition, warranty, indemnity or representation imposed, given or made by a Party.

14. Variation

This Agreement must not be varied except by a later document executed by all Parties.

15. Termination by a party

15.1 Termination

A Party may terminate this Agreement with immediate effect by giving notice to the other party if that other Party breaches any provision of this Agreement and fails to remedy the breach within 14 days after receiving notice requiring it to do so;

15.2 Accrued rights and remedies

Termination of this Agreement under this clause does not affect any accrued rights or remedies of either Party.

16. Severability

16.1 Construction

The parties agree that a construction of this Agreement that results in all provisions being enforceable is to be preferred to a construction that does not so result.

16.2 Severance

If, despite the application of clause 2.1, a provision of this Agreement is illegal or unenforceable:

- (a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or those words are severed; and
- (b) in any other case, the whole provision is severed,

and the remainder of this Agreement continues in force.

17. Relationship of the parties

Unless otherwise stated, nothing in this Agreement creates a joint venture, partnership or relationship of principal and agent or employee and employer between the parties.

18. No fetter

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

19. Costs of this Agreement

Each Party is to bear its own costs of preparing and executing this Agreement.

20. Governing law

This Agreement is governed by the law applicable in New South Wales.

Schedule 1 – Compliance with section 93F of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

REQUIREMENT UNDER THE ACT	THIS AGREEMENT
Planning instrument and/or development application – (section 93F(1)) The Land Owner has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a development or project application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this Agreement applies – (section 93F(3)(a))	See clause 2.2
Description of change to the environmental planning instrument to which this Agreement applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this Agreement – (section 93F(3)(c))	See clause 6, 7 and 8
Applicability of section 94 of the Act – (section 93F(3)(d))	Excluded. See clause 5
Consideration of benefits under this Agreement if section 94 applies – (section 93F(3)(e))	N/A
Mechanism for Dispute Resolution - (Section 93F(3)(f))	See clause 10
Enforcement of this Agreement – (section 93F(3)(g))	See clauses 6, 7 and 8
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 18

DRAFT

Signing page

EXECUTED as an agreement.

Signed for Amplan by an authorised officer
in the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

Signed for the Council by an authorised
officer in the presence of

Signature of officer



Signature of witness



Name of officer (print)

Name of witness (print)

Office held

APPENDIX A

Folio 1 Development Site Location Plan

Folio 2 Development Site Layout

Folio 3 Preliminary Junction Design

Folio 4 Preliminary Subdivision plan showing land to be dedicated to public road owner

DRAFT

APPENDIX B

Folio 1 Abel & Brown Drawing 28 Showing Water & Sewer extension works

DRAFT