



GR1 Attachments

1. Summary of Contributions under the Draft Agreement
2. Council resolution from December 2016
3. Copy of Draft Planning Agreement
4. Site plan with Open Space Areas, OSD Basins
5. Shared pathway and cycleway plan
6. List of matters to Consider for exhibition of Draft Agreement

Monday 19 April 2018

GR1 – Public Exhibition of Draft Planning Agreement – 1-41
Marsh Road, Silverdale

Schedule 1 -Summary of Contributions under Draft Planning Agreement

(Subject to further discussion with the applicant at 22 March 2018)

	Revised Planning Agreement	Comments
Lot Yield	447 lots	
Sec 94 payable if no Agreement	\$8,940,000	\$20,000 per lot Cap applies
Benefits under VPA		
Cash Contribution	\$4,888,850	\$10,937 per lot Incs allocations of \$2,293,316 to <ul style="list-style-type: none"> • Regional Play space (\$850k) • Signs (\$75k) • Bus shelter \$15k • Traffic lights (\$1.316 mill) Remainder to be allocated to categories in existing Section 94 Plan.
Works Value	\$2,200,700 (To be allowed as Sec 94 offset)	Incs embellishment works in open space lands as per schedule in VPA
Land value	\$1,850,450 To be allowed as Sec 94 offset	25,607 sq m land to be dedicated to Council for use as passive open space to be dedicated. Valued as en globo land, av cost is \$72 per sq m Lands also to be dedicated for drainage purposes. No offsets to be given where land has purely a drainage function
Totals		
<ul style="list-style-type: none"> • Offsets • Cash Contribution 	\$4,051,150 \$4,888,850	
Total (Sec 94/VPA) Contribution to be Paid	\$8,940,000	
Maintenance Contributions		Contributions to pay for 35 years of maintenance for the stormwater basins and for the bushland sites within the open space areas to be provided to Council. The amount has been calculated in accordance with the Draft Dedication of Land Policy
a) Maintenance Contribution for Stormwater basins	\$2,629,613	

<p>b) Maintenance Contributions for bushland</p> <p>Total Maintenance Contribution</p>	<p>\$678,166</p> <p>\$3,307,779</p>	
<p>Other Benefits:</p> <p>a) Land Covered by Biobanking Agreement (BBA)</p> <p>b) Money to manage land covered by BBA</p>	<p>1) Land affected is Lot 1301 as shown in attached plan, with area of 4.08 hectares.</p> <p>2) Monetary Contribution agreed to under the BBA is \$314,000 (approx.)</p>	<p>No Sec 94 offset is given for land subject to BBA</p> <p>Amount to be paid has been calculated in preparation of BBA with Council input</p>

Notice of Motion

TRIM 6416-6

NOM 9 Notice of Motion No. 9 submitted by Cr Gould on 15 December 2016 regarding Submission to the Planning Panel regarding the old Lion Park Site

Cr Banasik left the meeting at 8:29pm and returned at 8:31pm.

Cr Hannan and the General Manager left the meeting due to avoid any future Conflict of Interest as they are members of the Sydney Planning Panel. Deputy Mayor, Cr Khan took the Chair. The Executive Director Community Services and Corporate Support took the General Managers position.

304/2016 Resolved on the Motion of Crs Gould and Landow:

1. That Council make a detailed submission to the Sydney South West Planning Panel opposing, in its current form, the development application for the subdivision of the old Lion Park Site (DA 010.2015.00000935.001) at Silverdale and that interested councillors be given the opportunity to provide input in the development of the submission.
2. That the submission emphasise that Council is not opposed to reasonable development of the Lion Park site but has concerns with the specific proposal. Further to this the submission highlight concerns raised by the community including (but not limited to):
 - a. Inappropriate block density and an excessive number of small blocks which are inconsistent with the character of the area.
 - b. Inappropriate site design that is not sympathetic to the existing villages, with the larger blocks being towards Warragamba and the smaller blocks towards Silverdale.
 - c. The impacts the development would have on the roads and infrastructure and the failure of the proposal to fully consider the cumulative impacts of other proposals in the area when assessing these impacts.
 - d. The need for the E2 zone to be extended along the length of Production Avenue to provide a wildlife corridor between the catchment area and the rest of the E2 zone on the site.

WOLLONDILLY SHIRE COUNCIL

Minutes of the Ordinary Meeting of Wollondilly Shire Council held in the Council Chamber, 62-64 Menangle Street, Picton, on Monday 19 December 2016, commencing at 6.30pm

Notice of Motion

- e. **The potential for koalas to be found on the site and ensuring that the appropriate studies have been done to fully assess this.**
 - f. **That in the event of a major leak at Warragamba Chlorination Plant or other natural disaster the increase in population and traffic from the proposal could compromise the timely evacuation of the Warragamba/Silverdale area due to the single road out of the area.**
3. **That Council request that the Sydney South West Planning Panel hold a Public hearing at Warragamba Town Hall on a weekday evening to provide an opportunity for the local community to have input into this proposal.**
 4. **That a suitable staff member and/or councillor address the planning panel at its meeting to express the view of Council.**

On being put to the meeting the motion was declared CARRIED.

Vote: Crs Banasik, Khan, Briggs, Deeth, Lowry, Landow and Gould.

Cr Hannan and the General Manager returned to the meeting at 8:44pm.

Notice of Motion

PLANNING AGREEMENT

under s 93F of the *Environmental Planning and Assessment Act 1979*

Between

WOLLONDILLY SHIRE COUNCIL

And

SIMBA DEVELOPMENTS PTY LTD (ACN
603 799 220)

Property: Lots 1301, 1302, 1303 and 1304 in Deposited
Plan 1236986

1-41 Marsh Road, Silverdale

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PLANNING AGREEMENT

THIS DEED is dated

2018

BETWEEN

WOLLONDILLY SHIRE COUNCIL (ABN 93 723 245 808) of Frank McKay Building, 62-64 Menangle Street, Picton in the State of New South Wales 2571 (**the Council**)

AND

SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220) of 27 Lawson Street, Penrith in the State of New South Wales 2750 (**the Developer**)

RECITALS

- A. The Developer owns Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986, being 1-41 Marsh Road, Silverdale in the State of New South Wales 2752 (**the Land**).
- B. The Developer intends to develop the Land.
- C. The Development will give rise to the need for the provision of public facilities to manage the impacts of the Development within the Council area.
- D. On 23 October 2006 the Council entered into the Former Planning Agreement with ALSP Pty Ltd (ACN 103 007 790) (**ALSP**) under which ALSP offered to carry out works, and make development contributions to the Council if the Instrument Change was gazetted and development consent for the development, as defined in clause 4.1 of the Former Planning Agreement was granted. ALSP further offered to dedicate certain land if the Instrument Change was gazetted.
- E. The land to which the Former Planning Agreement applied included the Land and Lot 2 in Deposited Plan 588912 (**Lot 2**).
- F. On 23 February 2007 the Instrument Change was gazetted in the New South Wales Government Gazette No 189, Folio 11832 and took effect as of that date.
- G. The Former Planning Agreement is registered on the title of the Land and Lot 2.
- H. The Developer has offered to undertake the obligations under this Planning Agreement on the understanding and basis that the Former Planning Agreement dated 23 October 2006 burdening the Land is to be released.
- I. On 8 December 2017, a Plan of Subdivision of Lot 1 in DP 1233499 was registered, being DP 1236986 creating the following lots:

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- Lot 1301,
- Lot 1302,
- Lot 1303, and
- Lot 1304.

J. The Parties have agreed to enter into this Deed to set out their respective obligations.

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OPERATIVE PROVISIONS

PART 1 – PRELIMINARY

1. Interpretation

1.1 In this Deed the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

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 *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Bank Guarantee means a guarantee or an undertaking by a trading bank or another financial institution acceptable to the Council (acting reasonably) whereby that bank or institution unconditionally and irrevocably agrees to pay the Council on written demand a specified sum of money and must include an expiry date without an end date.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or a right of action.

Community Land has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land to be dedicated for community halls, parks, active and passive recreation facilities and other like purposes.

Completion Notice means a written notice issued by an Independent Engineer:

- (a) certifying that the Developer has completed all or part of the Works;
- (b) certifying that the Works the subject of the notice have been completed in accordance with clause 14.4;
- (c) attaching inspection reports from an Independent Engineer confirming the matters in (a) and (b), above; and
- (d) acknowledging that the Independent Engineer recognises that the Council relies upon the certification provided by the engineer.

Consent Authority means Wollondilly Shire Council.

Construction Certificate has the same meaning as in the Act.

Contribution Value in respect of a Development Contribution Item means the \$ amount shown in **Schedule 1** corresponding to that Development Contribution Item.

Contribution Plan has the same meaning as in section 93C of the Act.

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

Council means Wollondilly Shire Council.

Dedication means dedication of land by way of transfer or registration of a deposited plan in accordance with clause 11.

Dedication Land means that part of the Land required to be Dedicated under this Deed described in **Schedule 1** and as indicated in the Land Dedication Plan at **Schedule 2**.

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 for its intended use for a public purpose.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Developer means Simba Developments Pty Ltd (ACN 603 799 220), its successors and/or assigns.

Development means the Subdivision of the Land in Lot 1304 in Deposited Plan 1236986 into 447 residential lots and four (4) Reserves for public recreation and infrastructure drainage purposes, and residue for future residential subdivision as proposed in Development Application DA 935/2015 lodged with the Council on 16 December 2015, any plans amending Development Application DA 935/2015 and the dedication of Lots 1301, 1302 and 1303 in Deposited Plan 1236986 as public reserves and a biobank site.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means any of the following under this Deed:

- (a) a monetary contribution to be made by the Developer pursuant to clause 10,
- (b) the maintenance and Dedication of the Dedication Land without monetary consideration by the Developer pursuant to clauses 11 and 12, and
- (c) the Works to be undertaken by the Developer pursuant to clause 14.

to be used for, or applied towards a public purpose.

Development Contribution Item means an item specified in the first column of the table in **Schedule 1**.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Environmental Land has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land that has been reserved for the purpose of conservation of biodiversity, scenic or indigenous heritage purposes.

Former Planning Agreement means the planning agreement between the Council and ALSP Pty Ltd (ACN 103 007 790) dated 23 October 2006.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* and any other Act or regulation relating to the imposition or administration of the GST.

Independent Engineer means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia, known as Engineers Australia, or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld) prior to engagement by the Developer.

Infrastructure Land has the same meaning as contained in the Council's *Dedication of Land Policy – PLA0036* being land to be dedicated for roads, pedestrian pathways, drainage and stormwater management and treatment, car parking, emergency management, administration facilities, community services facilities, depots and other like purposes.

Insolvency Event means the happening of any of these events:

- (a) application which is not withdrawn or dismissed within twenty-eight (28) days is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application which is not withdrawn or dismissed within twenty-eight (28) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or

- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or files notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the *Corporations Act 2001*, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act 2001* or action is taken which could result in that event;
- (j) a receiver, manager or receiver and manager is appointed to the Company;
- (k) a body corporate becomes an externally administered body corporate within the meaning of the *Corporations Act 2001*; or
- (l) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change means *Wollondilly Local Environmental Plan 1991 Amendment No. 71*.

Land means the land comprised in Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

Law means:

- a) the common law including principles of equity, and
- b) the requirement of all statutes, rules, ordinances, codes, instruments, regulations, proclamations, by-laws or consent by an Authority,

that presently apply or that may apply in the future.

Maintenance in relation to land the subject of Maintenance Contributions means maintenance *pursuant to Clause 12.4 and the approved Vegetation Management Plan. Maintenance Year 1 to commence on the date of the first transfer of Dedication Land to the Council to a value not less than the following:*

Year 1	\$13,266
Year 2	\$13,266
Year 3	\$15,152
Year 4	\$16,226
Year 5	\$16,266

Maintenance Contributions means the contributions to be made by the Developer towards the maintenance of Environmental Land, Infrastructure (Drainage or Stormwater Management) Land and Community Land as required to be dedicated to the Council pursuant to this Deed.

Party means a party to this Deed.

Rectification Notice means a notice in writing:

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

Rectify means, rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Residential 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.

Stage means a stage of the Development as specified in and approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 1 means the first stage of the Development for 71 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 2 means the second stage of the Development for 50 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 3 means the third stage of the Development for 56 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 4 means the fourth stage of the Development for 31 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 5 means the fifth stage of the Development for 59 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 6 means the sixth stage of the Development for 56 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 7 means the seventh stage of the Development for 69 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 8 means the eighth stage of the Development for 33 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Stage 9 means the ninth stage of the Development for 22 Residential Lots as specified in and approved by the relevant Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Subdivision has the same meaning as in the Act.

Subdivision Certificate has the same meaning as in the Act.

Works means all works set out in the scope of works table at **Schedule 1** to this Deed.

Works Guarantee means a Bank Guarantee for the amount specified in works table at **Schedule 3** to this Deed, to secure the obligations of the Developer in relation to carrying out of the Works.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires.
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) 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.
 - (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of any GST.

- (f) 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.
- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) 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.
- (k) 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.
- (l) Reference to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost to the recipient.
- (p) Any schedules and attachments form part of this Deed.

2. Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of section 93F(1) of the Act.

3. Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to date the Deed and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4. Application of this Deed

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- 4.1 This Deed applies to the Land and to the Development.
- 4.2 The Land may not be developed in a manner materially inconsistent with the Development except insofar as this Deed is revoked or relevantly varied by further agreement between the Parties in accordance with clause 26.

5. Warranties

- 5.1 The Parties warrant to each other that they:
 - (a) have full capacity to enter into this Deed; and
 - (b) are able to fully comply with their obligations under this Deed.

6. Further Agreements

- 6.1 The Parties may, at any time 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 to 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 of tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval (or any part of an Approval) relating to the Development in so far as it requires the Developer to enter into or comply with the provisions of this Deed.

8. Application of s 94, s 94A and s 94EF of the Act to the Development

- 8.1 This Deed excludes the application of section 94 and section 94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of section 94EF of the Act to the Development.
- 8.3 The benefits provided by the Developer under this Deed are excluded from consideration under s94(6) of the Act.

PART 2 – DEVELOPMENT CONTRIBUTIONS

9. Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with **Schedule 1** and any other provision of this Deed relating to the making of Development Contributions.
- 9.2 The Developer is to Dedicate the Dedication Land.

- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made in accordance with this Deed including Schedule 5.
- 9.4 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10. Payment of Monetary Development Contributions

- 10.1 A monetary Development Contribution payable pursuant to clause 9.1, is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 10.2 The Developer must pay any monetary Development Contribution specified in the table at **Schedule 1** of this Deed to the Council prior to the issuing of the Subdivision Certificate for the Stage identified in the third column of the table at Schedule 1 of this Deed relating to that Contribution Item.
- 10.3 The amount payable under clause 10.2 shall be the amount so specified indexed from the date of this Deed:
- a) one year from the date of this Deed and thereafter on an annual basis;
 - b)
- in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician at the time of review.

11. Dedication of Land

- 11.1 The Developer must Dedicate and transfer the Dedication Land, the estimated Contribution Value of which is set out in the table at **Schedule 1** of this Deed, to the Council at no cost to the Council upon the registration of the relevant Subdivision Certificate for the relevant Stage of the Development Consent as identified in the table at **Schedule 1** of this Deed for the carrying out of the Development on the Land.
- 11.2 Land that is required to be Dedicated under this Deed is taken to be Dedicated for the purposes of this Deed when:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) the Council is given:
 - (i) an instrument in registrable form under the *Real Property Act 1900* duly executed by the registered owner as transferor that

- is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (ii) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (iii) a written undertaken from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 11.3 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.4 The Developer is to ensure that land Dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.5 If, having undertaken all reasonable endeavours, the Developer cannot ensure that land to be Dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations, but the Council may, acting reasonably, withhold its agreement.
- 11.6 The Land Dedicated to the Council under this Deed is to include all Works to be completed under this Deed on that Land and any works required to be undertaken on that Land in accordance with any lawful and reasonable Condition of Development Consent but including:
- a. that all trees on the land have been assessed for hazard by a suitably qualified consultant and found to be satisfactory for the purpose for which the land is to be dedicated or have earlier been or suitably isolated from public access; and
 - b. if the land requires remediation to be made suitable for the purpose for which the land is to be dedicated, that the land has been certified as remediated to that standard by an appropriately qualified site auditor.

12. Developer Maintenance of Dedication Land

- 12.1 The Developer agrees to make Maintenance Contributions for Environmental Land and Infrastructure (Drainage or Stormwater Management) Land dedicated to the Council pursuant to this Deed.
- 12.2 The Developer agrees to make Maintenance Contributions for the Community Land dedicated to the Council pursuant to this Deed.
- 12.3 The Developer agrees to make the Maintenance Contributions in accordance with **Schedule 4** to this Deed.
- 12.4 In addition to the Maintenance Contributions, the Developer agrees to carry out the Maintenance of the Infrastructure (Drainage or Stormwater

Management) Land and the Community Land dedicated under this Deed for a period of five (5) years, commencing from the day after the relevant Dedication Land has been transferred to the Council.

- 12.5 In carrying out the Maintenance in accordance with clause 12.4, the Developer must comply with the reasonable directions of the Council and provide a written report on the work carried out after the end of year.
- 12.6 Upon the passing of five (5) years from the date upon which the Developer commenced carrying out the Maintenance of both the Infrastructure (Drainage or Stormwater Management) Land and Community Land in accordance with clause 12.3, the Council shall take over and undertake the maintenance of such land and the Developer shall be released from all further maintenance obligations or contributions relating to such land.
- 12.7 The Council in taking over and undertaking the maintenance of the land in accordance with clause 12.6, shall fund such maintenance from the monetary Maintenance Contribution paid by the Developer in accordance with **Schedule 4** and must do so reasonably.
- 12.8 The Council is to provide to the Developer details of the use of the Maintenance Contributions, as requested by the Developer, but not more than once annually commencing from when the Council takes over maintenance obligations in accordance with clause 12.6.

13. Licence to Undertake Works

- 13.1 Where the Developer:
 - (a) is required to dedicate any of the Dedication Land; and
 - (b) has not completed the works or maintenance that it must perform on the Dedication Land pursuant to this Deed or the conditions of any Development Consent granted prior to its dedication,then the Council must grant a licence over the relevant Dedication Land in accordance with the terms set out in clause 13.2.
- 13.2 The Council grants to the Developer a licence over the relevant Dedication Land in accordance with the following terms:
 - (a) the licence is to be at no cost to the Developer;
 - (b) the permitted use is to be the performance of such works or maintenance on the Land which are to be performed by the Developer in accordance with the conditions of any consent granted to the Development Application or under this Deed;
 - (c) the Developer is to occupy the relevant licensed land at its own risk;
 - (d) the Developer must:

- (i) effect policies of insurance reasonably requested by the Council including without limitation:
 - I. public liability insurance in the amount of \$20,000,000.00, The insurance must cover all Claims in respect of damage to real and personal property and injury to, or death of persons, arising out of or in connection with the operation, use, repair or maintenance of the Land; and
 - II. a policy of insurance for the full amount of its legal liability under the *Workers Compensation Act 1987* in respect of each person employed by it in the activities conducted in and from the Land.
- (ii) Ensure that the policies of insurance referred to in clause 13.2(d)(i):
 - I. are effected with a reputable insurer reasonably approved by the Council;
 - II. (in the case of the public liability insurance policy) include a cross liability clause and note the interest of the Council; and
 - III. are kept in force until such time as the works or maintenance on the Land which is to be performed by the Developer in accordance with the conditions of any consent granted to the Development Application or this Deed have been completed.
- (e) the Developer is to indemnify the Council against any Claim made in respect of personal injury or death or damage to property arising from the Developer's use and occupation of the licensed land; and
- (f) the Developer must, at its own cost, maintain and keep in good and clean condition the licensed land until it has completed all works that it must perform on that land.

14. Works to be Provided

- 14.1 The Developer is to commence the Works specified in the Table to **Schedule 1**, in accordance with this clause, prior to the issue of the Subdivision Certificate for the relevant Stage of the Development Consent as identified in the table at **Schedule 1** of this Deed for the carrying out of the Development on the Land.
- 14.2 The estimated Contribution Value of the Works specified in the Table to **Schedule 1** of this Deed shall be the amount so specified in the Table indexed from the date of this Deed:
 - a) one year from the date of this Deed and thereafter on an annual basis;

- b) in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician at the time of the annual review; and
 - c) the annual review is to continue up until the date on which the Work is completed for the purposes of this Deed.
- 14.3 A Development Contribution Item comprising the carrying out of the Works specified in the Table to **Schedule 1** is made for the purposes of this Deed when the Council accepts the hand-over of the Work in accordance with clause 15.
- 14.4 The Developer must construct and complete the Works in accordance with the following and in the event of any inconsistency in the following order of priority:
- (a) in accordance with all relevant Development Consents;
 - (b) in accordance with Australian Standards applicable to works of the same nature as each aspect of the Works; and
 - (c) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.
- 14.5 The parties agree that the indicative embellishment works set out in Appendix 6 comprise an indicative suite of works for the Works set out in Schedule 1 of this Deed, as prepared by the Developer
- 14.6 The actual Works to be carried out must meet the requirements of Schedule 1 on the basis of a Contribution Value of not less than that specified in Column 4 of Schedule 1 as indexed and specified in a landscape plan (that includes final quantities).
- 14.7 The landscape plan required to be submitted as per clause 14.6 is to be submitted by the Developer to Council prior to the issuing of the Subdivision Certificate for that stage of the Development to which the landscape plan relates and is to be submitted for approval, such approval not to be unreasonably withheld.. The landscape plan is considered to be deemed approved if it is not determined by Council within 21 days of receiving it.
- 14.8 The landscape plan submitted for approval shall be accompanied by an independent quantity surveyor's report attesting to the Contribution Value of the works proposed.

15. Completion of the Works

- 15.1 When the Developer considers that the Work specified in the Table at **Schedule 1** is complete, the Developer may give to the Council a Completion Notice relating to that Work.
- 15.2 The Council is to inspect the Work the subject of the Completion Notice referred to in clause 15.1 within 14 days.

- 15.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 15.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 15.1 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 15.5 A notice referred to in clause 15.3, is to be a written direction and may specify that the Developer complete, rectify or repair any Defect of the Work to the reasonable satisfaction of the Council.
- 15.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 15.5.
- 15.7 If satisfactory completion of the Works required to be undertaken by the Developer as identified in the table at **Schedule 1** of this Deed is delayed due to circumstances beyond the control of the Developer, the Council may in its absolute discretion agree to retain the Works Guarantee as security for the completion of the Works in the amounts specified at **Schedule 3** and if so this Deed does not restrict the issuing of a Subdivision Certificate for the relevant Stage.

16. Rectification of Defects

- 16.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 16.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 16.1.

PART 3 – DISPUTE RESOLUTION

17. Dispute Resolution – Expert Determination

- 17.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - (a) the Parties to the Dispute agree that it can be so determined, or
 - (b) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying the particulars of the Dispute.

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- 17.3 If a notice is given under clause 17.2, the Parties are to meet within ten (10) Business Days of the notice in an attempt to resolve the Dispute in good faith.
- 17.4 If the Dispute is not resolved within a further twenty (20) Business Days then the Dispute is to be referred to the President of the New South Wales Law Society to appoint an expert for expert determination.
- 17.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 17.7 The Parties are to share equally in the costs of the President, the expert and the expert determination.

18. Dispute Resolution – Mediation

- 18.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 17 applies.
- 18.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 18.3 If a notice is given under clause 18.2, the Parties are to meet within ten (10) Business Days of the notice in an attempt to resolve the Dispute in good faith.
- 18.4 If the Dispute is not resolved within a further twenty (20) Business Days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the New South Wales Law Society published from time to time and are to request the President of the New South Wales Law Society to select a mediator.
- 18.5 If the Dispute is not resolved by mediation within a further twenty (20) 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.
- 18.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 18.7 The Parties are to share equally the costs of the President, the mediator and the mediation.

PART 4 – ENFORCEMENT

19. Security for Performance of Works

- 19.1 The Developer acknowledge that the Council requires, and the Developer has agreed to provide, security in the form of Bank Guarantees for due performance of the Works required under this Deed for the scope of Works due to be completed as described in the table at **Schedule 1** of this Deed in the relevant stage of the Development.

20. Works Guarantee

- 20.1 The Works Guarantee must name "Wollondilly Shire Council" as the relevant beneficiary.
- 20.2 The Developer agrees to provide the Council with the Works Guarantee prior to the issue of the Construction Certificate for each Stage in the development in relation to which Works are to be undertaken by the Developer as specified in the Table to Schedule 3.
- 20.3 The amount of the Works Guarantee to be provided pursuant to clause 20.2 shall be indexed from the date of this Deed in accordance with movements in the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.
- 20.4 If requested by the Council the Developer is to promptly ensure that the Works Guarantee provided to the Council is supplemented so that it is maintained at no less than the current indexed value as calculated under clause 20.3.
- 20.5 The Developer may at any time provide the Council with a replacement Works Guarantee.
- 20.6 On receipt of a replacement, the Council is to release and return the Works Guarantee that has been replaced to the Developer.
- 20.7 If the Council calls-up the Works Guarantee, or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Works Guarantee to ensure that the amount of Works Guarantee held by the Council equals the amount it is entitled to hold under this Deed.

21. Works Guarantee is no limitation

- 21.1 The provision of the Works Guarantee does not:
 - (a) relieve the Developer from any of the obligations on its part under any other provision of this Deed; and
 - (b) limit the right of the Council to recover from the Developer in full all money payable to the Council under this deed, including without limitation, interest on any such amounts or damages or losses incurred by the Council.

22. Release of the Works Guarantee

- 22.1 Subject to clauses 22.2 and 22.3, the Works Guarantee is to be released to the Developer upon the completion and the expiry of any Defects Liability Period in respect of the Developer's obligations under this Deed to which the Guarantee relates.
- 22.2 Where the Developer is in default of its obligations with respect to the Works the Council may at its absolute discretion upon giving the Developer fifteen (15) days notice in writing perform the Works itself and convert the Works

Guarantee into money and use that money towards the cost of rectifying the default.

- 22.3 If the Council exercises its rights under clause 22.2 and the funds realised from the conversion of the Works Guarantee into money is not sufficient to discharge the reasonable costs incurred by the Council in performing or rectifying the Works (calculated under clause 23) then any deficiency remaining may be recovered by the Council from the Developer as a debt due and payable.

23. Breach of Obligations

- 23.1 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:
- (a) specifying the nature and extent of the breach,
 - (b) requiring the Developer to rectify the breach,
 - (c) specifying the period within which the breach is to be rectified, being a period that is reasonable in the circumstances.
- 23.2 If the Developer fails to fully comply with a notice referred to in clause 23.1, the Council may, without further notice to the Developer, remedy the Developer's breach.
- 23.3 Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 23.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 23.4 For the purpose of clause 23.3, the Council's costs of remedying a breach the subject of a notice given under clause 23.1 include, but are not limited to:
- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 23.5 Nothing in this clause 23 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.

24. Compulsory Acquisition of Dedication Land

- 24.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, and subject to 24.7 and 24.8, the Developer consents to the Council compulsorily acquiring the

land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

- 24.2 The Council is to only acquire land pursuant to clause 24.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 24.3 Clause 24.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 24.4 If, as a result of the acquisition referred to in clause 24.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 19.
- 24.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 24.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 24, including without limitation:
- (a) signing any documents or forms,
 - (b) giving land owner's consent for lodgement of any Development Application,
 - (c) producing certificates of title to the Registrar-General under the Real Property Act 1900, and
 - (d) paying the Council's costs arising under this clause 24.
- 24.7 Prior to the Council exercising its right to compulsorily acquire the Dedication Land from the Developer pursuant to this clause 24, the Council must provide written notice of not less than twenty-one (21) days to the Developer.
- 24.8 Should the Developer fail to rectify the breach of this Deed within the period specified in then written notice issued pursuant to clause 24.7, the Council shall be entitled to exercise their rights under clause 24.1 of this Deed.

25. Enforcement in a Court of Competent Jurisdiction

- 25.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 25.2 For the avoidance of doubt, nothing in this Deed prevents:

- (a) 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;
- (b) in addition, the Council from exercising any function under the Act of any other act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

26. Variation

26.1 A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

27. Termination

27.1 This Deed terminates on the earlier of the following:

- (a) the Parties agree in writing to terminate the operation of this Deed at any time;
- (b) at the election of the other Party, if an Insolvency Event affects a Party;
- (c) the Council, acting reasonably, serves a notice on the Developer terminating this Deed where the Developer has failed to comply with a notice issued in accordance with clause 23.1; or
- (d) provision by the Developer of all of the Development Contributions to the Council in accordance with the terms of this Deed and the expiry of every Defects Liability Period.
- (e) it is terminated by operation of Law; or
- (f) if it is otherwise terminated in accordance with the terms of this Deed.

27.2 Upon termination of this Deed:

- (a) all future rights and obligations of the parties under this Deed are discharged; and
- (b) all pre-existing rights and obligations of the parties under this Deed continue to subsist.

PART 5 – REGISTRATION & RESTRICTION ON DEALINGS

28. Registration of this Deed

28.1 The Parties agree to register this Deed for the purposes of section 93H(1) of the Act.

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- 28.2 On execution, the Developer is to deliver to the Council in registrable form:
- (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer as owner of the Land, and
 - (b) the written irrevocable consent of each person referred to in section 93H(1) of the Act to the registration.
- 28.3 On the provision by the Developer of the instrument in clause 27.2, the Council is to promptly provide to the Developer a request duly executed by the Council for the removal of the notation of the Former Planning Agreement from the title of the Land.
- 28.4 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:
- (a) in so far as the part of the Land concerned is a Residential Lot in the subdivision,
 - (b) 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 and the Council has no continuing pre-existing rights or obligations protected by such continuing registration.

29. Restriction of Dealings

- 29.1 The Developer must not:
- (a) sell or transfer the Land, other than a Residential Lot in the subdivision, or
 - (b) assign the Developer's rights or obligations under this Deed, or novate this Deed to any person unless:
 - (i) 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
 - (ii) the Council (acting promptly) has given notice to the stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - (iii) the Developer is not in breach of this Deed, and
 - (iv) the Council otherwise consents to the transfer, assignment, or novation, such consent not to be unreasonably withheld.
- 29.2 Clause 28.1 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

30. Risk

- 30.1 Subject to the provisions of this Deed, the Developer and the Council perform this Deed at their own risk and their own cost.

31. Release

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

32. Indemnity

- 32.1 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 negligent performance or default 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.

PART 7 – OTHER PROVISIONS

33. Notices

- 33.1 Any notice, consent, information, application or request that must 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:
- (a) delivered or posted to that Party at its address set out below,
 - (b) faxed to that Party at its fax number set out below, or
 - (c) emailed to that Party at its email address set out below

Council

Attention: General Manager
Address: 62-64 Menangle Street
 PICTON NSW 2571
Mail: PO Box 21
 PICTON NSW 2571
Fax: (02) 4677 2339
Email: council@wollondilly.nsw.gov.au

Developer

Attention: General Manager
Address: 27 Lawson Street
PENRITH NSW 2750
Mail: PO Box 332
PENRITH NSW 2751
Fax: (02) 4721 1811
Email: corporate@allam.com.au

- 33.2 If a Party gives the other Party three (3) business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed or emailed to the latest address or fax number.
- 33.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) if delivered, when it is left at the relevant address;
 - (b) if it is sent by post, two (2) business days after it is posted;
 - (c) if sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - (d) if sent by email and the sender does not receive a delivery failure message from the sender's internet service provider with a period of twenty-four (24) hours of the email being sent.
- 33.4 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.

34. Approvals and Consent

- 34.1 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.
- 34.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions, unless the party's obligation is to act reasonably.

35. Costs

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- 35.1 The Developer is to pay to the Council the Council's reasonable legal costs of preparing, negotiating, executing, stamping and registering this Deed, and any document related to this Deed within thirty (30) days of a written demand by the Council for such payment provided that the Council provides the Developer with a tax invoice.
- 35.2 The Developer is also to pay to the Council the Council's reasonable costs for enforcing this Deed within thirty (30) days of a written demand by the Council for such payment, provided that the Council provides the Developer with a tax invoice.

36. Entire Deed

- 36.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 36.2 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.

37. Further Acts

- 37.1 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. Each party must act promptly and reasonably.

38. Governing Law and Jurisdiction

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

39. Joint and Individual Liability

- 39.1 Except as otherwise set out in this Deed:
- (a) any agreement, covenant, representation or warranty under this Deed by two (2) or more persons binds them jointly and each of them individually, and
 - (b) any benefit in favour of two (2) of more persons is for the benefit of them jointly and each of them individually.

40. No Fetter

- 40.1 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.

41. Illegality

- 41.1 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.

42. Severability

- 42.1 If a clause or part 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.
- 42.2 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.

43. Amendment

- 43.1 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 clause 25D of the Regulation.

44. Waiver

- 44.1 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.
- 44.2 A waiver by a Party is only effective if it is in writing and may be conditional. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

45. GST

- 45.1 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 the relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

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

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.

- 45.2 Subject to clause 44.4, 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.
- 45.3 Clause 44.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 45.4 No additional amount shall be payable by the Council under clause 44.2 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.
- 45.5 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:
- (a) 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;
 - (b) that any amounts payable by the Parties in accordance with clause 44.2 (as limited by clause 44.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 45.6 No payment of any amount pursuant to this clause 44, 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.
- 45.7 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.
- 45.8 This clause continues to apply after expiration or termination of this Deed.

46. Explanatory Note

- 46.1 The Appendix contains the Explanatory Note Relating to this Deed required by clause 25E of the Regulation.
- 46.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

EXECUTION PAGE

Executed as a Deed:

WOLLONDILLY SHIRE COUNCIL)
)
)
)
)
)
)
)

General Manager (by Delegation)

Name (PRINT)

Witness

Name (PRINT)

EXECUTED for and on behalf **SIMBA**)
DEVELOPMENTS PTY LTD (ACN 603)
799 220) in accordance with section 127)
of the *Corporations Act* 2001 in the)
presence of:)

Signature

Signature

Name (PRINT)

Name (PRINT)

Capacity

Capacity

SCHEDULE 1 – DEVELOPMENT CONTRIBUTIONS

ITEM/ CONTRIBUTION	SCOPE	TIMING	CONTRIBUTION VALUE
MONETARY CONTRIBUTIONS subject to indexation under clause 10.3			
Stage 1 – Monetary Contributions	The Developer is to pay to the Council \$1,420,000 .00 for Stage 1 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 1 of the Development.	\$1,420,000.00
Stage 2 – Monetary Contributions	The Developer is to pay to the Council \$1,000,000.00for Stage 2 of the Development	Before the issuing of the first Subdivision Certificate for Stage 2 of the Development.	\$1,000,000.00
Stage 3 – Monetary Contributions	The Developer is to pay to the Council \$NIL for Stage 3 of the Development	Not applicable.	\$0.00
Stage 4 – Monetary Contributions	The Developer is to pay to the Council \$ NIL for Stage 4 of the Development.	Not applicable	\$0.00
Stage 5 – Monetary Contributions	The Developer is to pay \$171,252.00 for Stage 5 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 5 of the Development	\$171,252.00
Stage 6 – Monetary Contributions	The Developer is to pay to the Council \$625,740.00 for Stage 6 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 6 of the Development.	\$625,740.00
Stage 7 – Monetary Contributions	The Developer is to pay to the Council \$819,858.00 for Stage 7 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 7 of the Development.	\$819,858.00
Stage 8 – Monetary Contributions	The Developer is to pay to the Council \$427,500.00 for Stage 8 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 8 of the Development.	\$427,500.00
Stage 9 – Monetary Contributions	The Developer is to pay to the Council \$424,500.00 for Stage 9 of the Development.	Before the issuing of the first Subdivision Certificate for Stage 9 of the Development.	\$424,500.00
Total Monetary Contributions			\$4,888,850.00

DEDICATION OF LAND			
	DESCRIPTION	TIMING	ESTIMATE OF CONTRIBUTION VALUE
Dedication of Land – Managed Reserve	The Developer is required to dedicate Managed Reserve land of approximately 12,574 m ² being Proposed Lot 1002 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 3 of the Development.	\$1,131,660.00
Dedication of Land – Managed Reserve- Drainage Infrastructure	The Developer is required to dedicate Managed Reserve and drainage land totalling 6,449 m ² being Lot 1302 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 3 of the Development.	\$58,125.00
Dedication of Land – Shale Sandstone Transitional Forest	The Developer is required to dedicate the Shale Sandstone Transitional Forest totalling 40,770 m ² being Lot 1301 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 6 of the Development.	No land value attributed.
Dedication of Land – Drainage Reserve	The Developer is required to dedicate Drainage Reserve Land totalling approximately 3,608 m ² being Proposed Lot 1003 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 5 of the Development.	\$107,910.00
Dedication of Land – Drainage Reserve	The Developer is required to dedicate Drainage Land totalling 1,312 m ² being Lot 1303 in Deposited Plan 1236986 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 7 of the Development.	\$16,485.00
Dedication of Land – Managed Reserve – Parkland	The Developer is required to dedicate Land totalling approximately 4,851m ² being Proposed Lot 1001 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Upon registration of the first Subdivision Certificate for Stage 7 of the Development.	\$ 436,590.00
Dedication of Land – Managed Reserves for Drainage	The Developer is required to dedicate Land totalling approximately 1,567 m ² being	Upon registration of the first Subdivision	\$99,680.00

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Infrastructure	Proposed Lot 1004 to the Council as indicated on the Land Dedication Plan at Schedule 2.	Certificate for Stage 6 of the Development.	
Total Land Value			\$1,850,450.00

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WORKS			
WORKS CONTRIBUTION VALUE subject to indexation under clause 14.2			
	DESCRIPTION	TIMING	ESTIMATED CONTRIBUTION VALUE
Boardwalk & associated Landscaping Managed Reserve- on Lot 1302	The Developer is required to install the boardwalk and associated landscaping on Lot 1302 in Deposited Plan 1236986 as approved by Council.	Before the issuing of the first Subdivision Certificate for Stage 3 of the Development.	\$810,124.00
Managed Reserve - Local Parkland on Lot 1002	Embellishment of the local parkland on proposed Lot 1002 as approved by Council.	Before the issuing of the first Subdivision Certificate for Stage 3 of the Development.	\$358,467.00
On-site Cycleway – Stage 4	Supply and install 400 metres of 2.5 metres wide cycleway to Council's Engineering Specification D9; within the road reserve between Stage 4 and Site boundary.	Before the issuing of the first Subdivision Certificate for Stage 4 of the Development.	\$200,000.00
On-site Cycleway – Stage 6	Supply and install a 685 metres long 2.5 metre wide cycle path within the road reserve between Stage 6 and the E2 zone boundary.	Before the issuing of a Subdivision Certificate for Stage 6 of the Development.	\$341,000.00
Managed Reserves – Open Space on Lot 1303.	Landscape embellishment of Lot 1303 in Deposited Plan 1236986 as approved by Council.	Before the issuing of a Subdivision Certificate for Stage 7 of the Development.	\$24,621.00
Managed Reserves - Open Space on Lot 1003.	Landscape embellishment of Lot 1303 in Deposited Plan 1236986 as approved by Council.	Before the issuing of a Subdivision Certificate for Stage 5 of the Development.	\$82,462.00
Managed Reserves Passive Open Space on Lot 1001	Embellishment of managed reserve on proposed Lot 1001 as passive open space as approved by Council.	Before the issuing of a Subdivision Certificate for Stage 7 of the Development	\$82,446.00
On-site Cycleway –	Supply and install 465 metres of	Before the issuing	\$232,500.00

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Stage 8	2.5 metres wide cycle path, to Council's Engineering Specification D9; within the road reserve between Stage 8 and Site boundary.	of a Subdivision Certificate for Stage 8 of the Development.	
Managed Reserves Passive Open Space on Lot 1004.	Embellishment of managed reserve on proposed Lot 1004 as passive open space as approved by Council.	Before the issuing of a Subdivision Certificate for Stage 6 of the Development.	\$53,580.00
On-site Cycleway - Stage 9	Supply and install 31 metres of 2.5 metres wide cycle path, to Council's Engineering Specification D9; within the road reserve between Stage 4 and Site boundary.	Before the issuing of a Subdivision Certificate for Stage 9 of the Development.	\$15,500.00
Total Works Value			\$2,200,700.00

Landscape Embellishment Works scope as indicated on Landscape Concept Plan revision E prepared by SitePlus on 22 June 2017. Final Works scope and location of playground equipment and park furniture are to be subject to Landscape Master Plan approval by Wollondilly Shire Council.

SCHEDULE 2 – LAND DEDICATION PLAN

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E2 ZONED LOTS			
COLOUR	No	AREA (m ²)	TYPE
1301	41	4106	ENVIRONMENTAL CONSERVATION
1302	6	6113	DRAINAGE RESERVE
1303	1	1312	DRAINAGE RESERVE

E2 ZONED INFRASTRUCTURE				
COLOUR	I.D.	AREA (m ²)	LENGTH (m)	TYPE
(A)	80	30	25	CYCLEWAY (2.5m WIDE)
(B)	408	125	125	CYCLEWAY (2.5m WIDE)
(C)	789	150	150	CYCLEWAY (2.5m WIDE)

R2 ZONED LOTS			
COLOUR	No	AREA (m ²)	TYPE
901	13	13727	RESIDUAL LOT
1001	4	481	MANAGED RESERVE
1002	13	13574	MANAGED RESERVE
1003	3	3008	MANAGED RESERVE
1004	1	1867	MANAGED RESERVE

R2 ZONED INFRASTRUCTURE				
COLOUR	I.D.	AREA (m ²)	LENGTH (m)	TYPE
(D)	10363	843	112	MANAGED APZ (12.5m WIDE)
(E)	2581	868	112	CYCLEWAY (2.5m WIDE)
(F)	493	54	112	CYCLEWAY (2.5m WIDE)

NOTE: SHEET REVISED TO LETTER FROM WOLLONDILLY SHIRE COUNCIL DATED 18th JANUARY 2016

NOTE: ALL LOTS SUBJECT TO SURVEY, COUNCIL APPROVAL AND ENGINEERING DESIGN APPROVALS

No. 1 Description S REVISD MANAGED RESERVES 2 REVISD ROAD NO.7 & 9 RESERVE WIDTHS 3 REVISD TO COUNCIL LETTER DATED 18/07/16 13 REVISD TO COUNCIL ENGINEERING COMMENTS 14 REVISD LOT NUMBERING 16 REVISD PROPERTY DESCRIPTION	DRN APP DATE A.C V.M 25/05/16 A.C V.M 01/07/16 D.N V.M 06/07/16 A.C V.M 16/08/16 A.C V.M 30/08/16 A.C V.M 31/10/17		HEAD OFFICE 50 WARRADALE ROAD WARRADALE SA 5114 PH (08) 8523 1200 FX (08) 8523 1201 E info@siteplus.com.au	GARDNER 10 WARRADALE ROAD WARRADALE SA 5114 PH (08) 8523 1200 FX (08) 8523 1201 E info@siteplus.com.au	Design: A.C Drawn: A.C Checked: V.M Approved: [Signature]	Client: SIMBA DEVELOPMENTS Local Authority: WOLLONDILLY	Project No: 15137.DA.P13 Sheet: 13a of 17 Title: 1:1250@A1 Date: 28/07/16 Rev: 16
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SCHEDULE 3 – WORKS GUARANTEE

WORKS	AMOUNT OF BANK GUARANTEE	WHEN IS IT PAYABLE
Boardwalk and associated Landscaping Managed Reserve- Drainage Infrastructure on Lot 1302	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Subdivision Certificate for Stage 3 of the Development.
Managed Reserve - Local Parkland on Lot 1002	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Subdivision Certificate for Stage 3 of the Development.
On-site Cycleway – Stage 4	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 4 of the Development.
On-site Cycleway – Stage 6	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Subdivision Certificate for Stage 6 of the Development.
Managed Reserves - Open Space on Lot 1303.	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 7 of the Development.
Managed Reserves - Open Space on Lot 1003.	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 5 of the Development.
Managed Reserves Passive Open Space on Lot 1001	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 7 of the Development
On-site Cycleway – Stage 8	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 8 of the Development.
Managed Reserves Passive Open Space on Lot 1004.	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 6 of the Development.
On-site Cycleway – Stage 9	Estimated Contribution Value of Work in Schedule 1 multiplied by 120%.	Before the issuing of the first Construction Certificate for Stage 9 of the Development.

SCHEDULE 4 – MAINTENANCE CONTRIBUTIONS

1. THE MAINTENANCE CONTRIBUTIONS

RELEVANT DEDICATION LAND	AMOUNT	WHEN IS IT PAYABLE
ENVIRONMENTAL LAND		
Dedication of Lot 1301 as a future reserve for conserving threatened species of Land Shale Sandstone Transitional Forest (Biobank Site).	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$314,017.00 paid to the Biodiversity Stewardship Trust Fund. ..	Prior to the transfer of the title to the relevant Dedication Land to the Council.
INFRASTRUCTURE (DRAINAGE AND STORMWATER MANAGEMENT) LAND		
Dedication of Drainage Reserve – Lot 1302	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$549,699.00.	The Maintenance Contribution is to be paid by the Developer prior to the transfer of the title to the relevant Dedication Land to the Council.
Dedication of Drainage Reserve – Lot 1003	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$955,344.00.	
Dedication of Drainage Reserve – Lot 1303	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$458,347.00.	
Dedication of Drainage Reserve – Lot 1004	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$666,223.00.	
INFRASTRUCTURE MAINTENANCE		\$2,629,613
COMMUNITY LAND		
Dedication of Managed Reserve – Park -Lot 1001	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance – being \$92,995.00	The Maintenance Contribution is to be paid by the Developer prior to the transfer of the title to the relevant Dedication Land to the Council.
Dedication of Managed Reserve –Park - Lot 1002	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least	

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	thirty (30) years of maintenance—being \$175,609.00	
Dedication of Managed Reserve –Park - Lot 1003	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance—being \$41,192.00	
Dedication of Managed Reserve –Park - Lot 1004	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance—being \$23,885.00	
Dedication of Managed Reserve –Park - Lot 1302	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance—being \$74,286.00	
Dedication of Managed Reserve –Park - Lot 1303	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance—being \$21,064.00	
Dedication of Road Reserve with Cycleway [adjacent to Water NSW]	A Maintenance Contribution calculated to be a present value amount sufficient to provide at least thirty (30) years of maintenance—being \$249,135.00	
COMMUNITY LAND MAINTENANCE		\$678,166

SCHEDULE 5 – PURPOSE FOR MONETARY DEVELOPMENT CONTRIBUTIONS

WORKS/LAND	DESCRIPTION	ESTIMATED COST
Regional All Abilities Childrens' Playground	Regional Playground designed to meet the needs of all abilities design by Touched for Olivia Foundation to be constructed by Council in Warragamba.	\$850,000.00
Welcome to Wollondilly Shire sign	Welcome to Wollondilly Shire sign to be installed by Council on Silverdale Road and the corner of Bents Basin Road, Wallacia	\$45,000
Silverdale Suburb sign	Silverdale Suburb sign to be installed by Council at a location to be determined.	\$30,000
Bus Shelter	Bus shelter to be replaced on Marsh Road, Silverdale to Council's new accessible design.	\$15,000

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Traffic Lights	Traffic lights to be installed by Council or RMS at roundabout on the corner of Silverdale Road and Farnsworth Avenue, Silverdale.	\$1,353,316
Section 94 Works/Land	For the purpose for which, and in proportion to, the s94 contributions rates which would have applied to the Development, but for this planning agreement, under the applicable Contribution Plan as at the date of this Deed.	Balance of monetary contributions payable under this Deed.

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SCHEDULE 6 – OVERALL WORKS BUDGET FOR LANDSCAPE EMBELLISHMENT AND CYCLEWAYS

		revised 3 Oct 2017				
Simba Developments VPA		Costing Guide				
Managed Reserves	Recreation Areas	Indicative Embellishment Works	Quantity or Area	Rate per m2	Estimate of Costs	
	m ²		Unit			
Lot 1001	4,851	Weed control, establishment planting		4,851	\$ 5	\$ 24,255.00
		Feature Planting		4,851	\$ 10	\$ 48,510.00
		Seating		2	\$ 2,500	\$ 5,000.00
Design, Tender & Project Management						\$ 4,680.80
	4,851					\$ 82,446
Part Lot 1002	4,939	Weed control, establishment planting		4,939	\$ 3	\$ 12,841.40
Playground		Installation of playground - play equipment sited in and around existing trees with assistance of arborist to ensure native canopy, mid-storey and shrub layer is not impacted. Costed at 1 playground providing the following:	item		\$ 1	\$ 70,000.00
		a. slide				
		b. swing				
		c. climbing frame				
		Shaping of playground - 100m ² allowance per item of play equipment	m ²	300	\$ 70	\$ 21,000.00
	Softfall in playground area - 100m ² allowance per item of play equipment	m ²	300	\$ 200	\$ 60,000.00	
Signage		Installation of interpretive / information signage	item	2	\$ 5,000	\$ 10,000.00
Bicycle Racks		Bike station for 5 bikes	item	1	\$ 2,000	\$ 2,000.00
Seating		Supply and Install Seating (non timber incl civils)		4	\$ 2,500	\$ 10,000.00
Design, Tender & Project Management						\$ 29,734.62
SubTotal				0.4		\$ 208,142
SSTF (Managed Bush Parkland)	7385	Weed control, establishment planting		7385	\$ 5	\$ 36,925.00
		Planting of native endemic species and mulching		3000	\$ 30	\$ 90,000
		Interpretative Signage		4	\$ 5,000	\$ 20,000.00
Design, Tender & Project Management						\$ 3,400.00
Sub Total Lot 1002						\$ 150,325
Total Lot 1002	12,324					\$ 358,467
	2,096 m ²	Weed control, establishment planting	m ²	2096	\$ 5.00	\$ 10,480.00
		Bollards requested by WSC	item	200	\$ 300.00	\$ 60,000.00
Design, Tender & Project Management						\$ 11,981.60
Part Lot 1003						\$ 82,461.60
	1238m ²	Weed control, establishment planting	m ²	1238	\$ 5.00	\$ 6,190
		Bollards requested by WSC	item	100	\$ 300.00	\$ 30,000
		Installation of Interpretive / information signage	item	1	\$ 10,000.00	\$ 10,000
Design, Tender & Project Management						\$ 7,390.40
Part Lot 1004						\$ 53,580

Part Lot 1302

Design, Tender & Project Management

Part Lot 1302

Part Lot 1303

Design, Tender & Project Management

Part Lot 1303

Cycleway and Shared paths

Concrete cycleway 2.5 m wide engineering specification D9

Total Open Space embellishment

APPENDIX – EXPLANATORY NOTE

Explanatory Note pursuant to Clause 25E of the *Environmental Planning and Assessment Regulation 2000*

DRAFT PLANNING AGREEMENT

Under section 93F of the *Environmental Planning and Assessment Act 1979*.

PARTIES

WOLLONDILLY SHIRE COUNCIL (ABN 93 723 245 808) of Frank McKay Building, 62-64 Menangle Street, Picton in the State of New South Wales 2571 (**the Council**)

SIMBA DEVELOPMENTS PTY LTD (ACN 603 799 220) of 27 Lawson Street, Penrith in the State of New South Wales 2750 (**the Developer**)

DESCRIPTION OF THE LAND TO WHICH THE DRAFT PLANNING AGREEMENT APPLIES

The land comprised in Lots 1301, 1302, 1303 and 1304 in Deposited Plan 1236986 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that Land.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The Subdivision of Lot 1304 into 447 residential lots, dedication of Lots 1301, 1302 and 1303 for a public reserve with environmental values, managed reserves, drainage reserves and proposed Asset Protection Zone and cycleways as approved by a Development Consent.

SUMMARY OF OBJECTIONS, NATURE AND EFFECT OF THE DRAFT PLANNING AGREEMENT

Objectives of the Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the provision of public facilities and suitable funding for the provision of public facilities to meet the Development.

Nature of the Draft Planning Agreement

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The Draft Planning Agreement is a planning agreement under section 93F of the *Environmental Planning and Assessment Act 1979 (the Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined under clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in section 93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- (a) relates to the carrying out by the Developer of the development of the Land
- (b) excludes application of section 94 and section 94A of the Act to the Development
- (c) requires monetary Development Contributions
- (d) requires dedication of land by the Developer
- (e) requires works to be undertaken by the Developer for the provision of public facilities
- (f) is to be registered on the title to the Land
- (g) provides for the removal of an existing planning agreement from the title to the Land
- (h) imposes restrictions on the Parties transferring the Land or part of the Land if the Deed is not registered on title or assigning an interest under the agreement
- (i) provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation.
- (j) Provides that the agreement is governed by the law of New South Wales, and
- (k) Provides that the *A New Tax System (Goods and Services Tax) Act 1999* applies to the Agreement.

ASSESSMENT OF THE MERITS OF THE DRAFT PLANNING AGREEMENT

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- (a) promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- (b) provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development, and
- (c) provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

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The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in section 5(a)(ii),(iv),(v) and 5(c) of the Act.

For Planning Authorities

Development Corporations – How the Draft Planning Agreement Promotes its Statutory Responsibilities

Not applicable

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

Not applicable

Councils- How the Draft Planning Agreement Promotes the Element of the Council's Charter (now Guiding Principles)

The Draft Planning agreement promotes the elements of the Council's charter (now Guiding Principles) by:

- (a) providing land and funds and undertaking works to enable the Council to provide adequate, equitable and appropriate services and facilities for the community,

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

The Planning Agreement conforms with the Council's Capital Works Program.

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

This Draft Planning Agreement contains requirements that must be complied with before subdivision certificates and construction certificates are issued.

LAND DEDICATION PLAN- STAGES FOR DEDICATION



LEGEND

- PROPERTY BOUNDARY
- PRELIMINARY TEMPORARY AVZ / BUSHFIRE MANAGEMENT BOUNDARY
- BOUNDARY
- PRELIMINARY INNER AVZ / BUSHFIRE SETBACK
- ZONING BOUNDARY PER COUNCIL APPROVED PLAN



E2 ZONED LOTS

COLOUR	No.	AREA (m ²)	TYPE
	1301	41,406	ENVIRONMENTAL CONSERVATION
	1302	6,253	DRAINAGE RESERVE
	1303	1,332	DRAINAGE RESERVE

E2 ZONED INFRASTRUCTURE

COLOUR	I.D.	AREA (m ²)	LENGTH (m)	TYPE
	(A)	190	35	CYCLEWAY (2.5m WIDE)
	(B)	4,068	728	CYCLEWAY (2.5m WIDE)
	(C)	760	150	CYCLEWAY (2.5m WIDE)

R2 ZONED LOTS

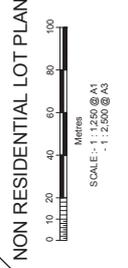
COLOUR	No.	AREA (m ²)	TYPE
	901	13,372	RESIDUAL LOT
	1001	4,853	MANAGED RESERVE
	1002	12,574	MANAGED RESERVE
	1003	3,808	MANAGED RESERVE
	1004	1,267	MANAGED RESERVE

R2 ZONED INFRASTRUCTURE

COLOUR	I.D.	AREA (m ²)	LENGTH (m)	TYPE
	(D)	10,063	943	MANAGED AVZ (12.5m WIDE)
	(E)	2,391	885	CYCLEWAY (2.5m WIDE)
	(F)	483	64	CYCLEWAY (6.0m WIDE)

NOTE: SHEET REVISED TO LETTER FROM WOLLINDILLY SHIRE COUNCIL DATED 18th JANUARY 2016.

NOTE: ALL LOTS SUBJECT TO SURVEY, COUNCIL APPROVAL AND ENGINEERING DESIGN APPROVALS



PROPOSED SUBDIVISION, DRAINAGE & ANCILLARY WORKS
LOTS 1301-1304 DP. 12369886
MANAGED RESERVES PLAN

WOLLINDILLY
APPROVAL

SIMBA DEVELOPMENTS
A/C V/M
Checked

design management
Approved

planning engineering landscape
Approved

DATE 29/07/16
APP V/M 16/08/16
V/M 30/08/16
V/M 12/07/17

DESCRIPTION

No	DRN	APP	DATE
T1	A/C V/M	29/07/16	
T2	A/C V/M	16/08/16	
T3	A/C V/M	30/08/16	
T4	A/C V/M	12/07/17	
T5	A/C V/M	12/07/17	
T6	A/C V/M	31/10/17	



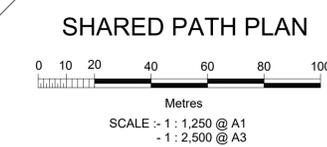
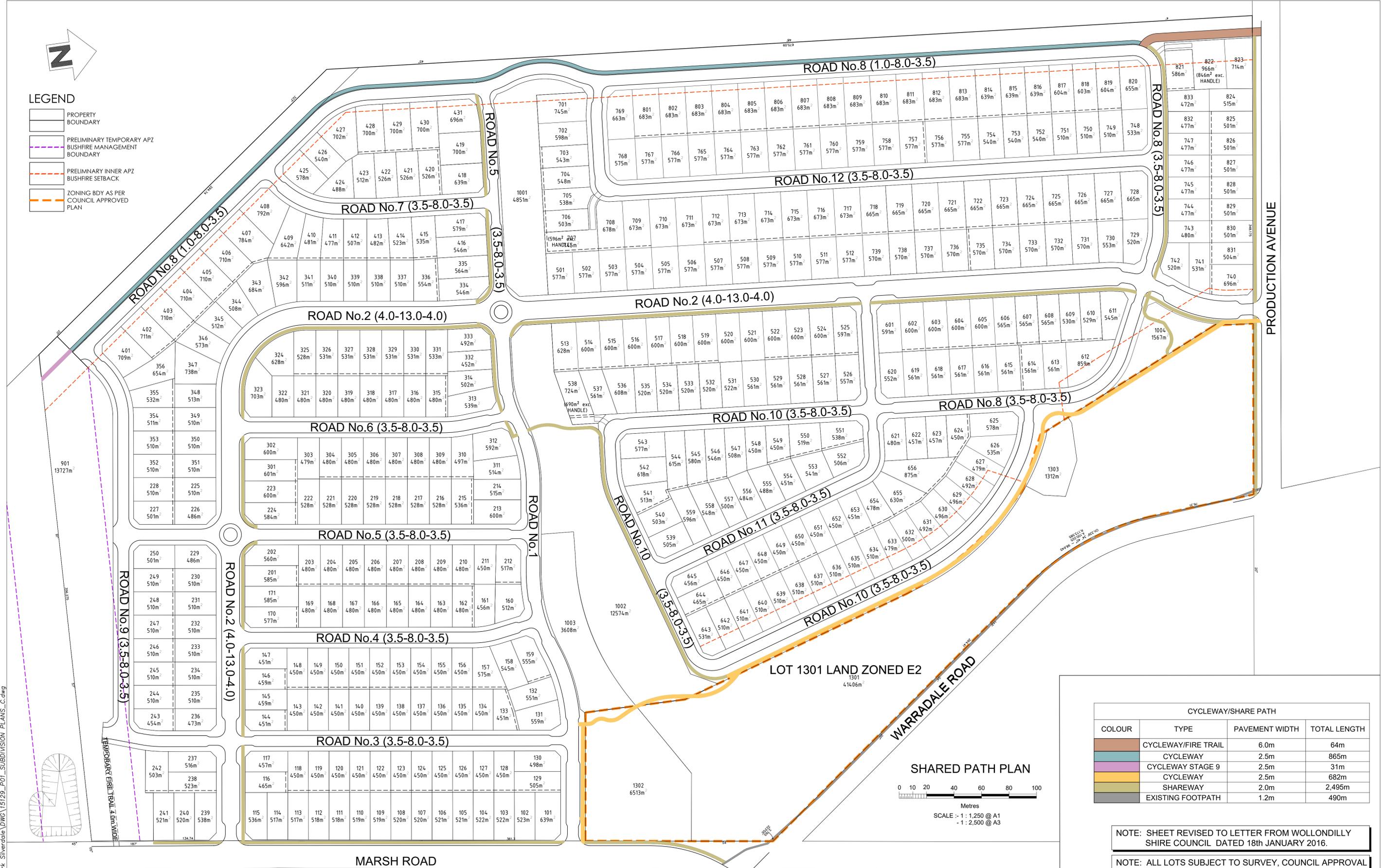
137 New St
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Ph: 03 9402 2020
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E: info@siteplus.com.au

15137 DA.P13
Sheet 13 of 16
Scale 1:1250 @ A1
Date 31/10/17



LEGEND

- PROPERTY BOUNDARY
- PRELIMINARY TEMPORARY APZ BUSHFIRE MANAGEMENT BOUNDARY
- PRELIMINARY INNER APZ BUSHFIRE SETBACK
- ZONING BDY AS PER COUNCIL APPROVED PLAN



CYCLEWAY/SHARE PATH			
COLOUR	TYPE	PAVEMENT WIDTH	TOTAL LENGTH
	CYCLEWAY/FIRE TRAIL	6.0m	64m
	CYCLEWAY	2.5m	865m
	CYCLEWAY STAGE 9	2.5m	31m
	CYCLEWAY	2.5m	682m
	SHAREWAY	2.0m	2,495m
	EXISTING FOOTPATH	1.2m	490m

NOTE: SHEET REVISED TO LETTER FROM WOLLONDILLY SHIRE COUNCIL DATED 18th JANUARY 2016.

NOTE: ALL LOTS SUBJECT TO SURVEY, COUNCIL APPROVAL AND ENGINEERING DESIGN APPROVALS

T:\Projects\15129_Lion_Park_Silverdale\DWG\15129_P01_SUBDIVISION PLANS_C.dwg

No.	DESCRIPTION	DRN	APP	DATE
T1	REVISED ROAD NO.7 & 9 RESERVE WIDTHS	A.C	V.M	01/07/16
T2	REVISED TO COUNCIL LETTER DATED 18/07/16	D.N	V.M	29/07/16
T3	REVISED TO COUNCIL ENGINEERING COMMENTS	A.V	V.M	16/08/16
T4	REVISED LOT NUMBERING	A.C	V.M	30/08/16
T5	REVISED BIO-BASIN NO.1 AND SOUTHERN OSD	A.C	v.m	12/07/17

siteplus

Site Plus Pty Ltd ABN 73 104 315 095

planning engineering landscape design management

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CAMDEN
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Camden NSW 2570
T 61 2 4655 9877
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Height Datum	A.H.D	Client Title	SIMBA DEVELOPMENTS
Drawn	A.C	Dwg Status	APPROVAL
Designed	V.M	Local Authority	WOLLONDILLY
Checked			
Approved			

Dwg Title	PROPOSED SUBDIVISION LOT 1 DP588912 MARSH ROAD SILVERDALE SHARED PATH PLAN	Ref & Dwg No	15137.DA.P15
		Sheet No	15 of 16
		Scale	1:1250 @ A1
		Date	29/07/16
		Rev	T5
			A1

Attachment 6: Checklist of Matters for Consideration to Exhibit Draft Planning Agreement (1-41 Marsh Rd Silverdale)

Matter for Consideration	Comment
What benefits are proposed under the Agreement (any land to be dedicated should be identified)?	<p>Benefits are summarized in the Table in Attachment 1 and include:</p> <ul style="list-style-type: none"> • Dedication of Land as shown on Plan in Attachment 4. • Embellishment works in open space land; • Stormwater management infrastructure ; • Money to maintain this infrastructure and bushland • \$4,888,850 as a combination of cash contribution and to fund off site works as per the Table in Attachment 1
Does the agreement accompany a DA or Planning proposal?	A DA for the development of 425 residential lots for which the Sydney South West Planning Panel is the consent authority.
Does the agreement exclude Council's Sec 94/94A Plan?	Yes
Is there likely to be significant community interest in the agreement or associated application?	A high level of community interest is anticipated;
Are any special probity considerations required (eg Probity Plan or Probity Advisor)	None
Does the agreement comply with the mandatory content requirements (s93f of Act)?	Yes
Does it comply with Council's strategic objectives for VPAs (cl 4.2)?	<p>Yes – in particular the following:</p> <ol style="list-style-type: none"> 1) It is supplementing and replacing Councils developer contributions system (4.2 (d); and 2) To provide or upgrade services/infrastructure to appropriate levels --- (4.2(g) and 3) Provide certainty for the Council, the community and developers (4.2(h))

<p>Is the agreement for a legitimate planning purpose? (cl 4.3)</p>	<p>Yes specifically</p> <p>4.3(b) meets the demand for new public infrastructure and services that may be outside the current Contributions Plan</p> <p>4.3 (c) address a deficiency in the existing provision of public facilities, and</p> <p>4.3(d) achieve recurrent funding in respect of public facilities</p>
<p>Is it consistent with Council's principles regarding the use of planning agreements (cl 4.4)?</p>	<p>Yes – in particular item 4.4(b) as the merits of the DA will be assessed by the Planning Panel (not Council) so Council cannot permit this development in exchange for the benefits being offered under the Agreement.</p>
<p>Does it meet the acceptability test for planning agreements (cl 4.5)?</p>	<p>Yes – in particular</p> <p>4.5 (e) the benefits provided by the Agreement are related to the development though they will also be available for use by other members of the community</p> <p>4.5 (h) – there are no circumstances to preclude Council entering the Planning Agreement</p> <p>4.5 (i) – It is consistent with the Dedication of Land Policy</p>
<p>Does it comply with other clauses of Councils Policy (cl 4.7)?</p>	<p>Yes</p>
<p>Has a valid Explanatory Note been prepared</p>	<p>Yes</p>
<p>Does the Council need to be further involved at this stage</p>	<p>A resolution from Council to exhibit the Draft Planning Agreement is being requested;</p>
<p>Is the Agreement approved for exhibition</p>	



Attention: Chris Stewart
Wollondilly Shire Council
PO Box 21
PICTON NSW 2571

23rd March 2018

Dear Chris

**RE: Draft Planning Agreement Lots 1301,1302,1303 and 1304 DP 1236986 ,
1- 41 Marsh Road Silverdale**

Thank you for meeting with Simba Developments on 21 March 2018. As requested, we provide the following information to assist you in preparing for the Councillor Workshop.

VPA Works - Revised Schedule 5

Simba agrees to amend the Schedule 5 table to include \$2,595,534 to be allocated for local upgrading works in Warragamba and Silverdale as outlined in the Council's Capital Works Program.

(Revised Schedule 5 is attached)

It is noted that the VPA provides for both the Contributions and Works to be indexed, which maintains the value of the VPA Offer over the 7 – 8 year life of the project. [*1]

Summary of VPA Offer	Total Value	Value per Lot [Yield 447 lots]
VPA	\$8,940,000	\$20,000
Cash, Works and Land Dedication		
VPA Maintenance Contributions		
• Infrastructure Maintenance	\$2,269,613	\$7,399.95
• Community Land Maintenance	<u>\$ 678,166</u>	
[excludes Biobank Trust Fund of \$314,017]	\$3,307,779	
Total VPA Schedule Value	\$12,247,779	\$27,399.95
VPA also includes Maintenance of all Reserves for first Five (5) Years [*2]	\$501,089	\$1,395.68
• Infrastructure Maintenance	<u>\$122,782</u>	
• Community Land Maintenance	\$623,871	
Total VPA Offer Value	\$12,871,650	\$28,795.63
<small>Note * 1: Current 594 Contributions are capped. VPA agreement allows for indexing of cash contributions and works amounts. *2: Simba Developments is covering the costs of landscape establishment, bush regeneration works and maintenance for the first five years.</small>		

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Road and Drainage Works provided within the Development proposal

Simba has not yet reviewed the Draft Conditions of Consent, but we note the following Works are included in the Engineering Plans submitted for Council approval:

- Marsh Road – half road construction for the full length of the subdivision frontage, including relevant kerb and gutter and drainage works, and a shared pathway linking to the Warradale Road path. Production Avenue - half road construction for the full length of the subdivision frontage, including relevant kerb and gutter and drainage works, and a shared pathway linking to the Warragamba Reserve.
- Intersection of Marsh and Warradale Roads – road alignment pavement works and line marking as recommended by Traffic Solution Reports.
- Trunk Drainage and Water Quality Biobasins are provided at full developer costs and funds for their long -term maintenance is provided in the VPA.
- In addition no offset are being claimed for works fronting recreational lands, within the road reserve which supplement lands being dedicated to council for open space purposes, nor for the Biobanking land. This is in addition to the figures stated below.

Development Works	Estimated Works Value	Value per Lot [Yield 447 lots]
Marsh Road – half road construction	\$998,684.50	\$2,234.19
Production Avenue - half road construction	\$754,052.50	\$1,686.91
Intersection of Marsh and Warradale Roads	\$13,160.00	\$29.44
Trunk Drainage and Water Quality Biobasins	\$2,330,624.00	\$5,513.92
Total External Road Works and Trunk Drainage Value	\$4,096,521.00	\$9,164.47

Note: A break –up of the above cost have been also included and are attached.



Biodiversity Credits

In order to facilitate the development we have committed to expend over \$6 Million to obtain Biodiversity Credits. To achieve the biodiversity outcomes, we have supported local landowners to seeking recognition for Land Snail credits within an existing Biobank in Mowbray Park. We also worked with a local farmer to engage environmental consultants to define and register a vegetated portion of their farm to create a new Biobank site.

State Infrastructure Contribution:

Simba Developments has also entered a State VPA with the Minister for Planning which commits to paying \$9,264 contribution per lot for State infrastructure works, totalling \$ 4,141,008 and indexed from May 2017. We are keen to work with the Council to ensure these funds are expended locally and in a reasonable timeframe.

Simba Developments is therefore making the following contributions to the local community for both local and State infrastructure totalling a sum of \$27,109,179. This results to a total contribution of \$60,646 per lot.

Local and State Infrastructure	Total Value	Value per lot [474 Lots]
VPA	\$ 12,247,779	\$27,399.95
<ul style="list-style-type: none"> • Works, Land and Cash Contributions • Maintenance – Years 6-35 		
Maintenance Years 0-5	\$623,871	\$ 1,395.68
State Infrastructure Contribution:	\$4,141,008	\$ 9,264
Biobanking Credits	\$6,000,000	\$13,422.82
Development Works benefitting the local road network	\$4,096,521	\$9,164.47
Combined Value of Local , State Infrastructure and Biodiversity benefits.	\$ 27,109,179	\$60,646.93



Affordability

We emphasise that most of our enquiry to purchase within this project are coming from the local residents that are already part of the Silverdale –Warragamba Community. This enquiry is seeking affordable housing options within this area.

We look forward to working collaboratively with your team on this exciting project. Please contact either myself or Carmen Osborne on 4732 2422 if any addition information is required for the Councillors Workshop being held on Monday 26th March-18.

Yours faithfully

A handwritten signature in blue ink, appearing to be "Ron Lamari", is written over the "Yours faithfully" text.

Ron Lamari

Development Manager

Cost Estimate

Job Name: LION PARK, SILVERDALE - External Works and Trunk Drainage

SitePlus Project No: 15129

15129 Lion Park, Silverdale

Note. Although due care has been taken in the preparation of this bill it is meant as a guide only, and no responsibility will be held for discrepancies that may occur during either tendering or construction.

Any items shall be priced and extended by the Contractor and the prices as extended shall, on addition, equal the lump sum. Any adjustments made to the quantities shall be clearly indicated in the tender documents.

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
MARSH ROAD					
1	GENERAL				
1.1	Provision for traffic control during construction	1	item	\$150,000.00	\$ 150,000.00
1.2	Provide Geotechnical services including				
	i) Pavement design	1	item	\$13,000.00	\$ 13,000.00
	ii) All pavement testing	1	item	\$15,000.00	\$ 15,000.00
	iii) All stripping inspections	1	item	\$15,000.00	\$ 15,000.00
2	CLEARING				
2.1	Clearing and grubbing of site including removal and disposal of rubbish, trees, fences, pipes, concrete, etc on the road reserve including existing pavement	1	item	\$75,000.00	\$ 75,000.00
3	TOPSOIL				
3.1	Excavate to a minimum 200mm and Stockpile Top soil from toolspace (batter areas)	1,440	sqm	\$1.00	\$ 1,440.00
3.2	Spread and compact topsoil from stockpile to a minimum 150mm compacted thickness on formed pathways, berms and batters.	960	sqm	\$4.50	\$ 4,320.00
4	EARTHWORKS				
4.1	Cut to fill	159	cum	\$7.50	\$ 1,192.50
4.2	Cut to stockpile	4,008	cum	\$10.00	\$ 40,080.00
5	ROADS				
5.1.1	Trim and compact to profile to Council Standards				
	i) Pavement Subgrade	3,264	sqm	\$5.00	\$ 16,320.00
	ii) Road Verge, Berms and Batters	2,880	sqm	\$2.00	\$ 5,760.00
5.1.2	Supply, place and compact road pavement to Council standards consisting of:				
	i) 370mm compacted thickness of compacted sand stone sub-base course	3,264	sqm	\$57.00	\$ 186,048.00
	ii) 150mm compacted thickness of DGB20 base course	2,904	sqm	\$20.00	\$ 58,080.00
5.1.3	Surfacing of road pavements with:				
	i) AC10 asphaltic concrete base course, including temporary seal, 40mm compacted thickness	2,904	sqm	\$36.00	\$ 104,544.00
5.1.4	Construct Kerb and Gutter	480	lin.m	\$77.00	\$ 36,960.00
5.1.5	Construct 1.5m wide concrete pathway	464	lin.m	\$160.00	\$ 74,240.00
5.1.6	Construct Pram Ramp	5	each	\$680.00	\$ 3,400.00
5	MINOR DRAINAGE				
5.1	Supply, bed, lay, joint and backfill RC pipes 900mm dia	383	lin.m	\$449.00	\$ 171,967.00
5.3	Construct drainage structures including trench KIP with 2.4m Lintel	7	each	\$2,848.00	\$ 19,936.00
5.5	Additional approved granular material in trenches under pavements	33	cum	\$59.00	\$ 1,947.00
5.1	Supply and lay subsoil drains 100 dia. PVC as	89	lin.m	\$50.00	\$ 4,450.00
TOTAL MARSH ROAD					\$ 998,684.50

ITEM	DESCRIPTION	QTY	UNIT	RATE	AMOUNT
PRODUCTION AVENUE					
6	GENERAL				
6.1	Provision for traffic control during construction	1	item	\$75,000.00	\$ 75,000.00
6.2	Provide Geotechnical services including				
	i) Pavement design	1	item	\$11,000.00	\$ 11,000.00
	ii) All pavement testing	1	item	\$12,000.00	\$ 12,000.00
	iii) All stripping inspections	1	item	\$12,000.00	\$ 12,000.00
7	CLEARING				
7.1	Clearing and grubbing of site including removal and disposal of rubbish, trees, fences, pipes, concrete, etc on the road reserve including existing pavement	1	item	\$35,000.00	\$ 35,000.00
8	TOPSOIL				
8.1	Excavate to a minimum 200mm and Stockpile Top soil from toolspace (batter areas)	1,188	sqm	\$1.00	\$ 1,188.00
8.2	Spread and compact topsoil from stockpile to a minimum 150mm compacted thickness on formed pathways, berms and batters.	594	sqm	\$4.50	\$ 2,673.00
9	EARTHWORKS				
9.1	Cut to fill	785	cum	\$7.50	\$ 5,887.50
9.2	Cut to stockpile	506	cum	\$10.00	\$ 5,060.00
9.3	Excavate trenches in all classes of material for pipelines and pits. Cart to stockpile	172	cum	\$30.00	\$ 5,160.00
10	ROADS				
10.1.1	Trim and compact to profile to Council Standards				
	i) Pavement Subgrade	3,264	sqm	\$5.00	\$ 16,320.00
	ii) Road Verge, Berms and Batters	2,880	sqm	\$2.00	\$ 5,760.00
10.1.2	Supply, place and compact road pavement to Council standards consisting of:				
	i) 370mm compacted thickness of compacted sand stone sub-base course	3,264	sqm	\$57.00	\$ 186,048.00
	ii) 150mm compacted thickness of DGB20 base course	2,574	sqm	\$20.00	\$ 51,480.00
10.1.3	Surfacing of road pavements with:				
	i) AC10 asphaltic concrete base course, including temporary seal, 40mm compacted thickness	2,574	sqm	\$36.00	\$ 92,664.00
10.1.4	Construct Kerb and Gutter	396	lin.m	\$77.00	\$ 30,492.00
10.1.5	Construct 1.5m wide concrete pathway	414	lin.m	\$160.00	\$ 66,240.00
10.1.6	Construct Pram Ramp	3	each	\$680.00	\$ 2,040.00
11	MINOR DRAINAGE				
11.1	Supply, bed, lay, joint and backfill RC pipes 600mm dia	303	lin.m	\$375.00	\$ 113,625.00
11.2	Construct drainage structures including trench KIP with 2.4m Lintel	5	each	\$2,848.00	\$ 14,240.00
11.3	Additional approved granular material in trenches under pavements	25	cum	\$59.00	\$ 1,475.00
11.4	Supply and lay subsoil drains 100 dia. PVC as	174	lin.m	\$50.00	\$ 8,700.00
TOTAL PRODUCTION AVENUE					\$ 754,052.50

SCHEDULE 5 – PURPOSE FOR MONETARY DEVELOPMENT CONTRIBUTIONS
21 March 2018

WORKS/LAND	DESCRIPTION	ESTIMATED COST
Regional All Abilities Childrens' Playground	Regional Playground designed to meet the needs of all abilities design by Touched for Olivia Foundation to be constructed by Council in Warragamba.	\$850,000.00
Welcome to Wollondilly Shire sign	Welcome to Wollondilly Shire sign to be installed by Council on Silverdale Road and the corner of Bents Basin Road, Wallacia	\$45,000
Silverdale Suburb sign	Silverdale Suburb sign to be installed by Council at a location to be determined.	\$30,000
Bus Shelter	Bus shelter to be replaced on Marsh Road, Silverdale to Council's new accessible design.	\$15,000
Local Road Upgrade Works	Works as outlined in current Council Capital Works Program for road upgrade works in Silverdale and Warragamba.	\$2,595,534
Traffic Lights	Traffic lights to be installed by Council or RMS at roundabout on the corner of Silverdale Road and Farnsworth Avenue, Silverdale.	\$1,353,316
Total Value Monetary Contributions		\$4,888,850
Section 94 Works/Land	For the purpose for which, and in proportion to, the s94 contributions rates which would have applied to the Development, but for this planning agreement, under the applicable Contribution Plan as at the date of this Deed.	Balance of monetary contributions payable under this Deed.