

Deed

South Lindfield Urban Release Area

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Port Macquarie-Hastings Council

BaptistCare NSW & ACT

Date: 16 January 2019

South Lindfield Urban Release Area Planning Agreement

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Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales,
2444

Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

Representative: Tim Molloy

Landowner:

Name: BaptistCare NSW & ACT

Address: Level Two, 22 Brookhollow Avenue (PO Box 7626), BAULKHAM HILLS
NSW 2153

Telephone: 02 9023 250

Facsimile: 02 9023 2501

Email: JRutherford@baptistcare.org.au

Representative: Jodie Rutherford

Land:

See definition of *Land* in clause 1.1.

Instrument Change

See definition of *South Lindfield LEP* in clause 1.1

Development:

See definition of *Development* in clause 1.1.

Application of s94, s94A and s94EF of the Act:

See clause 7.

Security:

See clauses 37 and 38.

Registration:

Yes. See clause 42.

Restriction on dealings:

See clause 43.

Dispute Resolution:

Expert determination and mediation. See clauses 40 and 41.

South Lindfield Urban Release Area Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie-Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444

(Council)

and

BaptistCare NSW & ACT ABN 90 000 049 525 of Level Two, 22 Brookhollow Avenue (PO Box 7626), BAULKHAM HILLS NSW 2153

(Landowner)

Background

- A The Landowner is the owner of the Land.
- B The Council has prepared the South Lindfield Planning Proposal.
- C The Land is within the area to which the South Lindfield Planning Proposal applies.
- D The South Lindfield Planning Proposal proposes the making of the South Lindfield LEP, which will permit the Development to be lawfully carried out on the Land under the Act.
- E The Landowner is prepared to make Development Contributions in accordance with this Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Deed the following definitions apply:

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

Administration Levy Contribution means a monetary Development Contribution calculated as follows:

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$$\text{ALC} = 2.2\% \times \text{SC}$$

Where:

ALC is the Administration Levy Contribution, and

SC is the sum of the amounts of all Open Space Contributions and Roads Contributions received by the Council under this Deed, not discounted in accordance with this Deed.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

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

BaptistCare Land means Lot 2 DP533058 and any lot created by a Subdivision of that Lot.

Building has the same meaning as in the Act.

Busways Intersection Contribution means a monetary Development Contribution by the owner of the Busways Land to the Council in an amount equal to the Council's reasonable determination at the time of payment of the likely cost that the Council would have incurred if it had constructed the Busways Intersection Work.

Busways Intersection Work means the construction, to a design and specification approved by the Council of an upgrade to the intersection of John Oxley Drive and Holland Close.

Busways Land means Lot 2 DP 1177586 and any lot created by a Subdivision of that Lot.

Certifying Authority has the same meaning as in the Act.

Compliance Certificate has the same meaning as in the Act.

Complying Development Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Plan has the same meaning as in the Act.

CPI means the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

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Defects Liability Period means the period commencing on the date on which a Work is completed for the purposes of this Deed and ending 12 months after that date.

Development means the development on the Land for urban purposes in accordance with amendments made to *Port Macquarie-Hastings Local Environmental Plan 2011* by the South Lindfield LEP or any other local environmental plan containing provisions consistent with the South Lindfield Planning Proposal, but excluding any development for the purpose of stormwater, sewerage or road works carried out by a Participating Landowner that is not the Landowner.

Development Application means an application under the Act for a Development Consent and includes an application for a Complying Development Certificate.

Development Consent means:

- (a) an approval to carry out a transitional Part 3A project (within the meaning of Schedule 6A of the Act), or
- (b) a consent under Part 4 of the Act to carry out development and includes a Complying Development Certificate, or
- (c) an approval under Part 5.1 of the Act to carry out development that is State significant infrastructure.

Development Contribution means a monetary contribution, the dedication of land free of cost to the Council, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a public purpose within the meaning of s93F(2) of the Act.

Development Servicing Plan - Sewerage Services means the document of the Council titled *Port Macquarie-Hastings Council Development Servicing Plans for Water Supply and Sewerage 2014*, a copy of which is available from the Council, or any document that replaces that document.

Environmental Management Dedication Land means the part of the Environmental Management Land identified as such on the Map or such other land as is agreed in writing between the Parties.

Environmental Management Land means any part of the Land that is situated within Zone E2 Environmental Conservation or Zone E3 Environmental Management under the South Lindfield LEP or any other part of the Land agreed between the Parties to be Environmental Management Land for the purposes of this Deed.

Equivalent Tenement (ET) has the same meaning as in *Council's Development Contribution Assessment Policy July 2007*, a copy of which is available from the Council, or any document that relevantly replaces that document.

Establishment Obligation means the establishment of the Environmental Management Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Vegetation Management Plan approved by the Council, and

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- (ii) otherwise to the satisfaction of the Council.

Establishment Period means the period commencing when the Development is commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Parties agree and ending when the Establishment Obligation is completed to the reasonable satisfaction of the Council.

Final Lot means a lot having an area not exceeding 5,000 square metres to be created in the Development for separate occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being:

- (a) a lot created by a Subdivision of the Land that is to be dedicated or otherwise transferred to the Council, or
- (b) a lot created by a Subdivision of the Land on which is situated a dwelling-house that was in existence on the date of this Deed.

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* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Initial Developer Link Road Intersection Works means the Landowner that carries out the Link Road Intersection Works, being either the owner of the BaptistCare Land or the Lake Innes Residential Land.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Lake Innes Residential Land means Lot 1 DP533058 and any lot created by the Subdivision of that lot.

Land means Lot 2 DP 533058 «Land».

Landowner means the owner of the Land.

Link Pathway means a pedestrian pathway and cycleway generally in the location shown as such on the Map.

Link Road means a road generally in the location shown cross-hatched on the Map.

Link Road Contribution means a payment by the Landowner to the Council in an amount equal to the Council's reasonable determination at the time of payment of the likely cost that the Council would have incurred if it had constructed the Link Road.

Link Road Intersection Land means the land identified as 'Link Road Intersection Land' on the Link Road Intersection Map.

Link Road Intersection Map means the map in Schedule 3.

Link Road Intersection Works means the construction, to a design and specification approved by the Council, of so much of the following that has not already been completed by the Council:

- (a) a roundabout, or other intersection design, at the intersection of Link Road, John Oxley Drive and Holland Close, and
- (b) the section of the Link Road on the Link Road Intersection Land.

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Link Road Intersection Works Cost means an amount determined by the Council as being the likely cost that the Council would have incurred if it had constructed the Link Road Intersection Works (or any part) that the Initial Developer Link Road Intersection Works has completed under clause 12.

Link Road Intersection Works Offset means an amount equal to the Link Road Intersection Works Cost, less:

- (a) any Busways Intersection Contribution that has been paid to the Initial Developer Link Road Intersection Works under clause 11.5,
- (b) any Link Road Contribution that has been paid to the Initial Developer Link Road Intersection Works under clause 10.3 that the Council reasonably determines is in respect of the Link Road Intersection Land that is not on the Land.

Link Road Intersection Works Offset Balance means an amount (if any) equal to the Link Road Intersection Works Offset less the amount by which the Roads Contributions and Open Space Contribution has been reduced under clause 12.3.1.

Management Obligation means the management of the Environmental Management Land to the satisfaction of the Council in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent, any Vegetation Management Plan approved by the Council.

Management Period means the period commencing immediately at the end of the Establishment Period and ending three years after the Environmental Management Land is dedicated to the Council or such other period or periods as the Parties agree.

Management Work means Work forming part of the Establishment Obligation or the Management Obligation.

Mann Land means Lot 3 DP 533058 and any lot created by a Subdivision of that Lot.

Manufactured Home has the same meaning as in the *Local Government Act 1993*.

Map means the map in Schedule 1.

Moveable Dwelling has the same meaning as in the *Local Government Act 1993*.

Occupation Certificate:

- (a) in relation to development that comprises the erection of a Building - has the same meaning as in the Act,
- (b) in relation to a Manufactured Home - means a certificate issued by the Council under cl.69 of the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*,
- (c) in relation to a Moveable Dwelling - any approval of the Council to occupy and use a Moveable Dwelling that has been installed on land in accordance with an approval granted by the Council under Part A of the Table to s68 of the *Local Government Act*

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1993 and that complies with the *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*.

Open Space Contribution means a monetary Development Contribution towards the cost of open space that the Council determines is the greater of:

- (a) \$5,974.00 per ET in the Development indexed quarterly after 1 February 2016 in accordance with CPI, or
- (b) the amount of any open space monetary Development Contribution applying to the Development authorised by the first relevant amendment to or substitution of the document of the Council titled *Port Macquarie-Hastings Open Space Contributions Plan 2004* indexed in accordance with the amended or substituted plan.

Participating Land means the BaptistCare Land, Busways Land, Mann Land, Priest Land, Ramm Land, and Lake Innes Residential Land.

Participating Landowner means an owner of Participating Land

Party means a party to this Deed, including their successors and assigns.

Priest Land means Lot 5 DP 630393 and any lot created by a Subdivision of that Lot.

Principal Certifying Authority has the same meaning as in the Act.

Ramm Land means Lot 1 DP 369206 and any lot created by a Subdivision of that Lot.

Real Property Act means the *Real Property Act 1900*.

Rectification Notice means a notice in writing issued in the Defects Liability Period that identifies a defect in a Work and requires rectification of the defect during the Defects Liability Period or during such later period specified in the notice as is reasonable in the circumstances.

Registrar-General has the same meaning as in the Real Property Act.

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

Residue Lot means a lot to be created in the Development that is not a Final Lot.

Roads Contribution means a monetary Development Contribution towards the cost of roads that the Council determines is the greater of

- (a) \$9,162.00 per ET in the Development indexed quarterly after 1 February 2016 in accordance with CPI, or
- (b) the amount of any roads monetary Development Contribution applying to the Development authorised by the first relevant amendment to or substitution of the document of the Council titled *Port Macquarie-Hastings Major Roads Contributions Plan 2004* indexed in accordance with the amended or substituted plan.

Security means a Bank Guarantee unless the Council, in its absolute discretion, agrees to another kind of security as a suitable means of enforcing the Landowner's obligations under this Deed.

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Sewerage Services Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Sewerage Services per ET created in the Development.

Sewerage Services Contribution Local means a monetary Development Contribution of \$3,128 per ET created in the Development indexed in accordance with CPI from 1 February 2016.

South Lindfield LEP means a local environmental plan (within the meaning of the Act) which gives effect to the South Lindfield Planning Proposal.

South Lindfield Planning Proposal means a planning proposal within the meaning of s55 of the Act that proposes rezoning of the Land generally in accordance with the zoning shown on the Map.

Stage means a stage in the Development approved by a Development Consent, or otherwise agreed to in writing by the Council for the purposes of this Deed.

Stormwater Catchment means Stormwater Catchment Central, Stormwater Catchment East or Stormwater Catchment South.

Stormwater Catchment Central means the area marked 'Central' on the Stormwater Catchment Map.

Stormwater Catchment East means the area marked 'East' on the Stormwater Catchment Map.

Stormwater Catchment Land Payment means a payment by the Landowner to the Council an amount determined by the Council at the time of payment as being the amount of compensation it would have paid to the owner of the other land if it had acquired an easement for the Stormwater Catchment Work over that land.

Stormwater Catchment Map means the map in Schedule 2.

Stormwater Catchment South means the area marked 'South' on the Stormwater Catchment Map.

Stormwater Catchment Work means Work including but not limited to a pump, pipe, channel, or detention facility that is constructed or used for the purpose of draining stormwater from land within a Stormwater Catchment.

Stormwater Catchment Work Developer means a person other than the Landowner who carries out Stormwater Catchment Work which serves the Development.

Stormwater Catchment Work Payment means a payment by the Landowner to the Council in an amount determined by the Council at the time of payment as being the likely cost that the Council would have incurred if it had carried out Stormwater Catchment Work serving the Development.

Subdivision has the same meaning as in the Act.

Subdivision Certificate has the same meaning as in the Act.

Vegetation Management Plan means a plan that contains provisions relating to the establishment and maintenance of the Environmental Management Land including provision for the staged dedication of the Environmental Management Land as a public reserve in conjunction with the Development.

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Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Landowner under this Deed.

Zone means a zone specified in *Port Macquarie-Hastings Local Environmental Plan 2011*.

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

2 Status, application & effect of this Deed

- 2.1 This Deed is a planning agreement for the purposes of s93F of the Act.
- 2.2 This Deed applies to the Land and the Development.

3 Commencement of this Deed

- 3.1 This Deed commences when it has been executed by all of the Parties and similar agreements between the Council and the owners of all other Participating Land have been entered into.
- 3.2 The Party who executes this Deed last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Deed.

4 Commencement of Development Contributions obligations

- 4.1 The Parties acknowledge that the Development Contributions required to be made by the Landowner under this Deed are consequent upon the increased demand for public amenities and public services and other public benefits caused by the carrying out of the Development.
- 4.2 The Landowner is under no obligation to make the Development Contributions to the Council in accordance with this Deed unless and until both of the following events have occurred:
 - 4.2.1 the South Lindfield LEP has taken effect, and
 - 4.2.2 Development Consent is granted to the Development or any part of it.

5 Further Agreements Relating to this Deed

- 5.1 The Parties may, at any time and from time to time, enter into an agreement that provides more detail relating to the subject-matter of this Deed for the purpose of implementing this Deed.
- 5.2 Any such agreement is not to be inconsistent with this Deed.

6 Bar to proceedings

- 6.1 The Landowner is not to commence or maintain, or cause to be commenced or maintained, any proceedings in any court questioning or objecting to:
 - 6.1.1 this Deed, or
 - 6.1.2 the applicability of this Deed to the Development, or
 - 6.1.3 the South Lindfield Planning Proposal or the South Lindfield LEP.

7 Application of s94, s94A and s94EF of the Act to the Development

- 7.1 This Deed does not exclude the application of s94A of the Act to the Development.
- 7.2 Section 94 of the Act does not apply to the Development if, and to the extent to which, this Deed requires a Development Contribution towards specified public amenities and public services.
- 7.3 This Deed does not exclude the application of s94EF of the Act to the Development.

Part 2 – Provisions relating to Roads

8 Roads Contribution

- 8.1 This clause applies to the Landowner if the Landowner is not the owner of the Busways Land.
- 8.2 Subject to clause 12.3, the Landowner is to pay the Roads Contribution for the Development or each Stage of the Development at the following times:
 - 8.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 8.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
 - 8.2.3 in any other case – before the earlier of the issuing of the first Occupation Certificate for, or occupation of, the Development or Stage unless otherwise determined by the Council acting reasonably.

9 Construction & Dedication of Link Road & Link Pathway

- 9.1 Any part of the Link Road or Link Pathway that is required to provide access to the Land from an existing public road, and access to adjoining land, is to be completed to the reasonable satisfaction of the Council before:
 - 9.1.1 the first Subdivision Certificate is issued for the Development or Stage that generates a demand for the Link Road or Link Pathway, or
 - 9.1.2 if no Subdivision Certificate is required – before the first Occupation Certificate is issued for the Development or Stage that generates a demand for the Link Road or Link Pathway.
- 9.2 The Landowner is to permit a Participating Landowner access to the Land at reasonable times for the purposes of constructing the Link Road or Link Pathway on the Land.
- 9.3 The Landowner is to dedicate to the Council free of cost, before the time specified in clause 9.1, such of the Land on which construction of the Link Road or Link Pathway has been completed.

10 Link Road Contribution

- 10.1 This clause applies to the payment of the Link Road Contribution to the Council where a Participating Landowner who is not the Landowner has constructed and completed the Link Road on the Land.
- 10.2 The Landowner is to make the payment to which this clause applies at the following time:
 - 10.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 10.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
 - 10.2.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.
- 10.3 As soon as practicable after receiving from the Landowner the payment of the Link Road Contribution, the Council is pay to the Participating Landowner who has constructed and completed the Link Road on the Land an amount equal to the Link Road Contribution received by the Council.
- 10.4 If the Landowner has paid a Link Road Contribution in respect of the Link Road Intersection Land then the amount of Roads Contributions and Open Space Contribution the Landowner is required to pay under this Deed is to be reduced by the amount of the Link Road Contribution that Council reasonably determines relates to the Link Road Intersection Land.

11 Busways Intersection Work and Busways Intersection Contribution

- 11.1 Clauses 11.1 to 11.4 apply if the Landowner is the owner of the Busways Land.
- 11.2 The Landowner is to carry out and complete the Busways Intersection Work to the reasonable satisfaction of the Council before:
 - 11.2.1 the first Subdivision Certificate is issued for the Development or Stage on the Busways Land, or
 - 11.2.2 if no Subdivision Certificate is required – before the first Occupation Certificate is issued for the Development or Stage on the Busways Land.
- 11.3 Clause 11.2 does not apply if, at the time the Busways Intersection Works is required to be completed under this Deed, the Initial Developer Link Road Intersection Work has commenced carrying out of the Link Road Intersection Works.
- 11.4 If clause 11.2 does not apply, the Landowner is to pay to the Council the Busways Intersection Contribution before:
 - 11.4.1 the first Subdivision Certificate is issued for the Development or Stage on the Busways Land, or

- 11.4.2 if no Subdivision Certificate is required – before the first Occupation Certificate is issued for the Development or Stage on the Busways Land.
- 11.5 As soon as practicable after receiving from the Landowner the payment of the Busways Intersection Contribution, the Council is pay to the Initial Developer Link Road Intersection Work an amount equal to the Busways Intersection Contribution received by the Council.

12 Link Road Intersection Works and Link Road Intersection Works Offset

- 12.1 This clause applies to the Landowner if the Landowner is the Initial Developer Link Road Intersection Works.
- 12.2 The Landowner is to carry out and complete the Link Road Intersection Works, or any part of it that has not been completed under clause 9.1, to the reasonable satisfaction of the Council before:
 - 12.2.1 the first Subdivision Certificate is issued for the Development or Stage that generates a demand for the Link Road Intersection Work, or
 - 12.2.2 if no Subdivision Certificate is required – before the first Occupation Certificate is issued for the Development or Stage that generates a demand for the Link Road Intersection Work.
- 12.3 If the Landowner has carried out and completed the Link Road Intersection Works, or part, that is required to be completed under clause 12.2 then:
 - 12.3.1 the amount of Roads Contributions and Open Space Contribution the Landowner is required to pay under this Deed is to be reduced by the Link Road Intersection Works Offset, and
 - 12.3.2 the Council is to pay the Landowner any Roads Contributions or Open Space Contributions that it has received from Participating Landowners to the extent of the Link Road Intersection Works Offset Balance.

Part 3 – Provision relating to Stormwater Catchment Work

13 Application of this Part

- 13.1 This Part applies to land within a Stormwater Catchment.

14 Stormwater Catchment Work

- 14.1 Stormwater Catchment Work to serve the Development:
 - 14.1.1 is not to be commenced unless the Council has given written approval to the design, specification and staging of the Stormwater Catchment

Work within the relevant Stormwater Catchment or Stormwater Catchments as the case may be, and

14.1.2 is to be completed at no cost to the Council:

- (a) in accordance with the approval referred to in clause 14.1.1, and
- (b) before the first Subdivision Certificate is issued for any part of the Development, or if no Subdivision Certificate is required, before the first Occupation Certificate is issued for the Development.

15 Stormwater Catchment Work Payments

15.1 This clause applies to the following payments:

15.1.1 the Stormwater Catchment Work Payment to the Council where the Stormwater Catchment Work Developer has carried out and completed Stormwater Catchment Work serving the Development, and

15.1.2 the Stormwater Catchment Land Payment to the Council where the Stormwater Catchment Work serving the Development has been carried out and completed.

15.2 The Landowner is to make payments to which this clause applies at the following times:

15.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,

15.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,

15.2.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.

15.3 The Landowner is not required to make payments to which this clause applies if the Landowner has entered into a legally enforceable agreement on terms satisfactory to the Council with the Stormwater Catchment Work Developer or the owner or owners of other land on which Stormwater Catchment Work serving the Development has been carried out and completed or both to jointly fund the relevant Stormwater Catchment Work.

15.4 As soon as practicable after receiving from the Landowner:

15.4.1 the Stormwater Catchment Work Payment, the Council is to pay to the Stormwater Catchment Work Developer an amount equal to the Stormwater Catchment Work Payment received by the Council, and

15.4.2 the Stormwater Catchment Land Payment, the Council is to pay to the owner or owners of other land on which Stormwater Catchment Work serving the Development has been carried out and completed an amount equal to the Stormwater Catchment Land Payment received by the Council.

Part 4 – Provisions relating to Sewerage Services

16 Sewerage Services Contribution and Sewerage Services Contribution Local

- 16.1 The Landowner is to pay the Sewerage Services Contribution to the Council for the Development or a Stage of the Development at the following times:
 - 16.1.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 16.1.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
 - 16.1.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.
- 16.2 The Landowner is to pay the Sewerage Services Contribution Local to the Council for the Development or a Stage of the Development at the following times:
 - 16.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 16.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
 - 16.2.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.

Part 5 – Provisions relating to Open Space

17 Open Space Contribution

- 17.1 This clause applies to the Landowner if the Landowner is not the owner of the Busways Land.
- 17.2 Subject to clause 12.3, the Landowner is to pay the Open Space Contribution for the Development or a Stage of the Development at the following times:
 - 17.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 17.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
- 17.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.

Part 6 – Provisions relating to Environmental Management Land

18 Application of this Part

- 18.1 Clauses 19 – 23 only apply if the Environmental Management Land is part of the Land.

19 Approval of Vegetation Management Plan

- 19.1 The Landowner is to ensure that any Development Application that seeks Development Consent for the establishment and maintenance of the Environmental Management Land is accompanied by a Vegetation Management Plan prepared at no cost to the Council.
- 19.2 The Landowner is not to establish or maintain the Environmental Management Land except in accordance with:
- 19.2.1 a Vegetation Management Plan that has been approved by the Council, and
- 19.2.2 the terms of any approval granted by the Council as modified from time to time.

20 Establishment & Management of Environmental Management Land

- 20.1 The Landowner is to perform the following at no cost to the Council:
- 20.1.1 the Establishment Obligation during the Establishment Period; and
- 20.1.2 the Management Obligation during the Management Period.
- 20.2 The Landowner is to perform its obligations under clause 20.1 in accordance with:
- 20.2.1 this Deed, and
- 20.2.2 any further agreement that is entered into by the Parties under clause 5, and
- 20.2.3 any requirements and directions notified in writing by the Council to the Landowner at any time before the Management Work is completed that is not inconsistent with:
- (a) this Deed, or
- (b) any agreement referred to in clause 20.2.2, or
- (c) any Development Consent relating to the Development.
- 20.3 The Establishment Obligation and the Management Obligation are not to be varied by the Landowner, unless:
- 20.3.1 the Parties agree in writing to the variation, and

20.3.2 any consent or approval required under the Act or any other law to the variation is first obtained.

20.4 The Landowner is not to construct or allow the construction of, or make a development application or an application for a complying development certificate for, any building or structure on any part of the Land within Zone E2 or E3 without the written approval of the Council.

21 Failure to Perform Establishment or Management Obligations

21.1 Clause 37, with any necessary modifications, applies to a breach of the Establishment Obligation or the Management Obligation by the Landowner in the same way as it applies to a breach of an obligation to carry out Work by the Landowner.

22 Inspection of the Environmental Management Land

22.1 Before the Environmental Management Land is dedicated to the Council in accordance with this Deed, the Landowner is to permit the Council, its officers, employees, agents and contractors to enter that land at any time, for the purposes of establishing compliance with any approved Vegetation Management Plan, upon giving reasonable prior notice.

22.2 After the Environmental Management Land is dedicated to the Council in accordance with this Deed, the Landowner is to permit the Council, its officers, employees, agents and contractors to reasonably pass through land owned, occupied or otherwise controlled by the Landowner to enable the Council to obtain reasonable access to the Environmental Management Land.

22.3 This clause does not derogate from any other rights the Council has under this Deed to enter the Environmental Management Land.

23 Dedication of Environmental Management Dedication Land

23.1 The Landowner is to dedicate the Environmental Management Dedication Land to the Council as a public reserve free of cost to the Council in accordance with the Vegetation Management Plan as approved by the Council.

Part 7 – Administration Levy Contribution

24 Payment of Administration Levy Contribution

24.1 This clause applies to the Landowner if the Landowner is not the owner of the Busways Land.

- 24.2 The Landowner is to pay the Administration Levy Contribution for the Development or each Stage of the Development at the following times:
- 24.2.1 if the Development or Stage involves Subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 24.2.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – before the issuing of the first Construction Certificate for the Development or Stage,
 - 24.2.3 in any other case – before the issuing of the first Occupation Certificate for the Development or Stage unless otherwise determined by the Council acting reasonably.

Part 8 – General Provisions Relating to Development Contributions

25 Provision of Development Contributions

- 25.1 The Landowner is to make Development Contributions to the Council in accordance with this Deed and otherwise to the satisfaction of the Council.
- 25.2 Subject to this Deed, the Council is to apply a Development Contribution made by the Landowner under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 25.3 The Council may apply a Development Contribution other than a monetary Development Contribution made under this Deed towards a public purpose other than the purpose specified in this Deed if the Council considers that the public interest would be better served by applying the Development Contribution towards the other purpose rather than the purpose specified in this Deed.

26 Procedures relating to payment of monetary Development Contributions

- 26.1 A monetary Development Contribution 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.
- 26.2 The Landowner is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 26.3 The Landowner is not required to pay a monetary Development Contribution under this Deed unless the Council, after having received the Landowner's notice under clause 26.2, has given to the Landowner a tax invoice for the amount of the Development Contribution.
- 26.4 The Landowner is not in breach of this Deed if it fails to pay a monetary Development Contribution at the time required by this Deed by reason only of

the Council's failure to give to the Landowner a tax invoice in relation to the amount proposed to be paid by it.

27 Procedures relating to the dedication of land

- 27.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
 - 27.1.1 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
 - 27.1.2 the Council is given an instrument in registrable form under the *Real Property Act* that is effective to transfer the title to the land to the Council when registered.
- 27.2 For the purposes of clause 27.1.2:
 - 27.2.1 the Landowner is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act* relating to the land to be dedicated, and
 - 27.2.2 the Council is to execute the instrument of transfer and return it to Landowner within 7 days of receiving it from the Landowner, and
 - 27.2.3 the Landowner is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed, and
 - 27.2.4 the Landowner and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

28 Carrying out of Work

- 28.1 Except as otherwise specifically provided by this Deed, any Work that is required to be carried out by the Landowner under this Deed is to be carried out in accordance with:
 - 28.1.1 any relevant design, specification and staging approved by the Council under this Deed,
 - 28.1.2 any relevant Development Consent,
 - 28.1.3 any relevant policies and specifications of the Council existing at the time such a consent is granted,
 - 28.1.4 any other applicable law, and
 - 28.1.5 otherwise to the reasonable satisfaction of the Council.
- 28.2 The Landowner is to comply with any direction given to it by the Council, acting reasonably, to prepare or modify a design or specification relating to a Work that the Landowner is required to carry out under this Deed.

29 Access to the Land

- 29.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Landowner relating to the carrying out of a Work.
- 29.2 The Council is to permit the Landowner to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Landowner to carry out any Work under this Deed that is required to be carried out on such land or to perform any other obligation imposed on the Landowner by or under this Deed.

30 Protection of people and property

- 30.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 30.1.1 all necessary measures are taken to protect people and property, and
 - 30.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 30.1.3 nuisances and unreasonable noise and disturbances are prevented.

31 Damage and repairs to Work

- 31.1 The Landowner, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs before the date on which the Work is completed.

32 Variation of Work

- 32.1 A Work is not to be varied by the Landowner, unless:
 - 32.1.1 the Landowner and the Council agree in writing to the variation, and
 - 32.1.2 any consent or approval that is required to the variation under the Act or any other law is first obtained.
- 32.2 For the purposes of clause 32.1 a variation may relate to any matter in relation to the Work that is dealt with by this Deed.

33 Completion of Work

- 33.1 Work is completed for the purposes of this Deed if the Council, acting reasonably, gives a certificate to the Landowner to that effect or the Landowner gives the Council a Compliance Certificate to that effect.

34 Rectification of defects

- 34.1 During the Defects Liability Period, the Council may give the Landowner a Rectification Notice.
- 34.2 Subject to the resolution of a dispute in accordance with this Deed, the Landowner is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

35 Works-As-Executed-Plan

- 35.1 No later than 60 days after a Work is completed, the Landowner is to submit to the Council a full works-as-executed-plan in respect of the Work.

Part 9 – Other Provisions

36 Indemnity and Insurance

- 36.1 The Landowner indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with a negligent act or omission of the Landowner in carrying out any Work and the performance of any other obligation under this Deed.
- 36.2 The Landowner is to take out and keep current, or is to ensure that its contractors take out and keep current, to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Landowner under this Deed up until the Work is completed:
 - 36.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Landowner's liability in respect of damage to or destruction of the Works,
 - 36.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Landowner and any subcontractor of the Landowner, for liability to any third party,
 - 36.2.3 workers compensation insurance as required by law, and
 - 36.2.4 any other insurance required by law.
- 36.3 If the Landowner fails to comply with clause 36.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid is to be a debt due from the Landowner to the Council and may be recovered by the Council as it deems appropriate including:
 - 36.3.1 by calling upon the Security provided by the Landowner to the Council under this Deed, or

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

- 36.4 The Landowner is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 36.2.

37 Failure to carry out Work

- 37.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Deed relating to a Work, including compliance with a Rectification Notice, the Council may give the Landowner a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 37.2 The dispute resolution provisions of this Deed do not apply to the giving of a notice under clause 37.1.
- 37.3 A notice given under clause 36.1 is to allow the Landowner a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 37.4 The Council may carry out and complete the Work the subject of a notice under clause 37.1 if the Landowner fails to comply with the notice to the Council's reasonable satisfaction.
- 37.5 The Landowner is to do all things reasonably necessary to enable the Council to exercise its rights under clause 37.4.
- 37.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Landowner with this Deed, the Council may recover the cost from the Landowner in a court of competent jurisdiction.
- 37.7 For the purpose of clause 37.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
- 37.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 37.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 37.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's failure to comply with this Deed.

38 Security for Performance

- 38.1 Despite any other provision in this Deed, the Landowner is not to apply for, or cause, suffer or permit the issuing of:
- 38.1.1 if the Development or Stage involves Subdivision – a Subdivision Certificate for the Development or Stage, or
 - 38.1.2 if the Development or Stage involves the erection of a Building but does not involve Subdivision – a Construction Certificate for the Development or Stage, or
 - 38.1.3 in any other case – an Occupation Certificate for the Development or Stage,

unless and until the Development Contributions required to be made under this Deed before any such certificate is issued in respect of the Development or the Stage have been made in accordance with Deed.

- 38.2 The dispute resolution provisions of this Deed do not apply to a matter the subject of this clause.

39 Security for obligation to dedicate land

- 39.1 If the Landowner does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated or at all, the Landowner 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.
- 39.2 Council is to only acquire land pursuant to clause 39.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Deed.
- 39.3 Clause 39.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 39.4 If, as a result of the acquisition referred to in clause 39.1, the Council must pay compensation to any person other than the Landowner, the Landowner must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.
- 39.5 Except as otherwise agreed between the Parties, the Landowner must ensure that the land to be dedicated 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), on both the date that the Landowner is liable to transfer that land to the Council under this Deed, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 39.6 The Landowner 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.
- 39.7 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 38, including without limitation:
- 39.7.1 signing any documents or forms;
 - 39.7.2 giving land owner's consent for lodgement of any Development Application;
 - 39.7.3 producing certificates of title to the Registrar-General under the Real Property Act; and
 - 39.7.4 paying the Council's costs arising under this clause 38.
- 39.8 Notwithstanding clause 39.5, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

40 Enforcement in a court of competent jurisdiction

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

41 Dispute Resolution – expert determination

- 41.1 This clause applies to a dispute under this Deed which relates to a matter that can be determined by an appropriately qualified expert.
- 41.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 41.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 41.4 If a notice is given under clause 41.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 41.5 If the dispute is not resolved within a further 28 days, the dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 41.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 41.7 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

42 Dispute Resolution - mediation

- 42.1 This clause applies to any dispute under this Deed other than a dispute to which clause 41 applies.
- 42.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 42.3 If a notice is given under clause 42.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 42.4 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to select a mediator.

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

43 Registration of this Deed

- 43.1 The Parties agree to register this Deed on the title to the Land.
- 43.2 Upon the commencement of this Deed, the Landowner is to provide the Council with the following documents to enable registration of this Deed:
- 43.2.1 an instrument requesting registration of this Deed on the title to the Land in registrable form duly executed by the Landowner, and
- 43.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 43.3 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:
- 43.3.1 in so far as the part of the Land concerned is a Final Lot,
- 43.3.2 in relation to any other part of the Land, once the Landowner has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any reason whatsoever.

44 Assignment, Sale of Land, etc

- 44.1 Unless the matters specified in clause 44.2 are satisfied, the Landowner is not to do any of the following:
- 44.1.1 sell or transfer the Land to any person, or
- 44.1.2 assign the Landowner's rights or obligations under this Deed, or novate this Deed, to any person.
- 44.2 The matters required to be satisfied for the purposes of clause 44.1 are as follows:
- 44.2.1 the Landowner 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 Landowner's rights or obligations under this Deed are to be assigned or novated, of an agreement in favour of the Council on terms reasonably satisfactory to the Council, and
- 44.2.2 the Council, by notice in writing to the Landowner, has stated that evidence satisfactory to the Council has been produced to show that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under the Deed, and
- 44.2.3 the Landowner is not in breach of this Deed, and
- 44.2.4 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

- 44.3 This clause 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.

45 Review of this Deed

- 45.1 The Parties agree to review this Deed if any party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed and requests a review.
- 45.2 For the purposes of clause 45.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 45.3 For the purposes of addressing any matter arising from a review of this Deed, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 45.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 45.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Deed is not a dispute for the purposes of the dispute resolution provisions of this Deed.

46 Notices

- 46.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 46.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 46.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 46.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 46.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 46.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 46.3.1 delivered, when it is left at the relevant address,
- 46.3.2 sent by post, 2 business days after it is posted,
- 46.3.3 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

- 46.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 46.4 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.

47 Costs

- 47.1 The Landowner is to pay to the Council the Council's costs not exceeding \$3,900 of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 47.2 The Landowner is also to pay to the Council the Council's costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

48 Entire Deed

- 48.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 48.2 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.

49 Further Acts

- 49.1 Each Party is to 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.

50 Governing Law and Jurisdiction

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

51 Joint and Individual Liability and Benefits

- 51.1 Except as otherwise set out in this Deed:

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

52 No Fetter

- 52.1 Nothing in this Deed is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

53 Representations and Warranties

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

54 Severability

- 54.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it is to be read in the latter way.
- 54.2 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.

55 Modification

- 55.1 No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

56 Waiver

- 56.1 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.
- 56.2 A waiver by a Party is only effective if it:
 - 56.2.1 is in writing,
 - 56.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 56.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 56.2.4 is signed and dated by the Party giving the waiver.

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- 56.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 56.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 56.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver given in accordance with this clause is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

57 GST

- 57.1 In this clause:

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

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

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

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

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

- 57.2 Subject to clause 57.4, 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 is to also pay the GST Amount as additional Consideration.
- 57.3 Clause 57.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 57.4 No additional amount is to be payable by the Council under clause 57.2 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.
- 57.5 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:
- 57.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices in respect of those Supplies;

- 57.5.2 that any amounts payable by the Parties in accordance with clause 57.2 (as limited by clause 57.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 57.6 No payment of any amount pursuant to this clause 57, 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.
- 57.7 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, is to exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 57.8 This clause continues to apply after expiration or termination of this Deed.

58 Completion of Landowner's obligations under this Deed

- 58.1 This clause applies when the Landowner has completed all of its obligations under this Deed to the satisfaction of the Council.
- 58.2 The Landowner may make an application to the Council in writing requesting the Council to certify in writing that the Landowner has completed all of its obligations under this Deed to the satisfaction of the Council.
- 58.3 The Council is to issue the certificate referred to in clause 58.2 within 28 days of receiving the Landowner's application referred to in that clause.

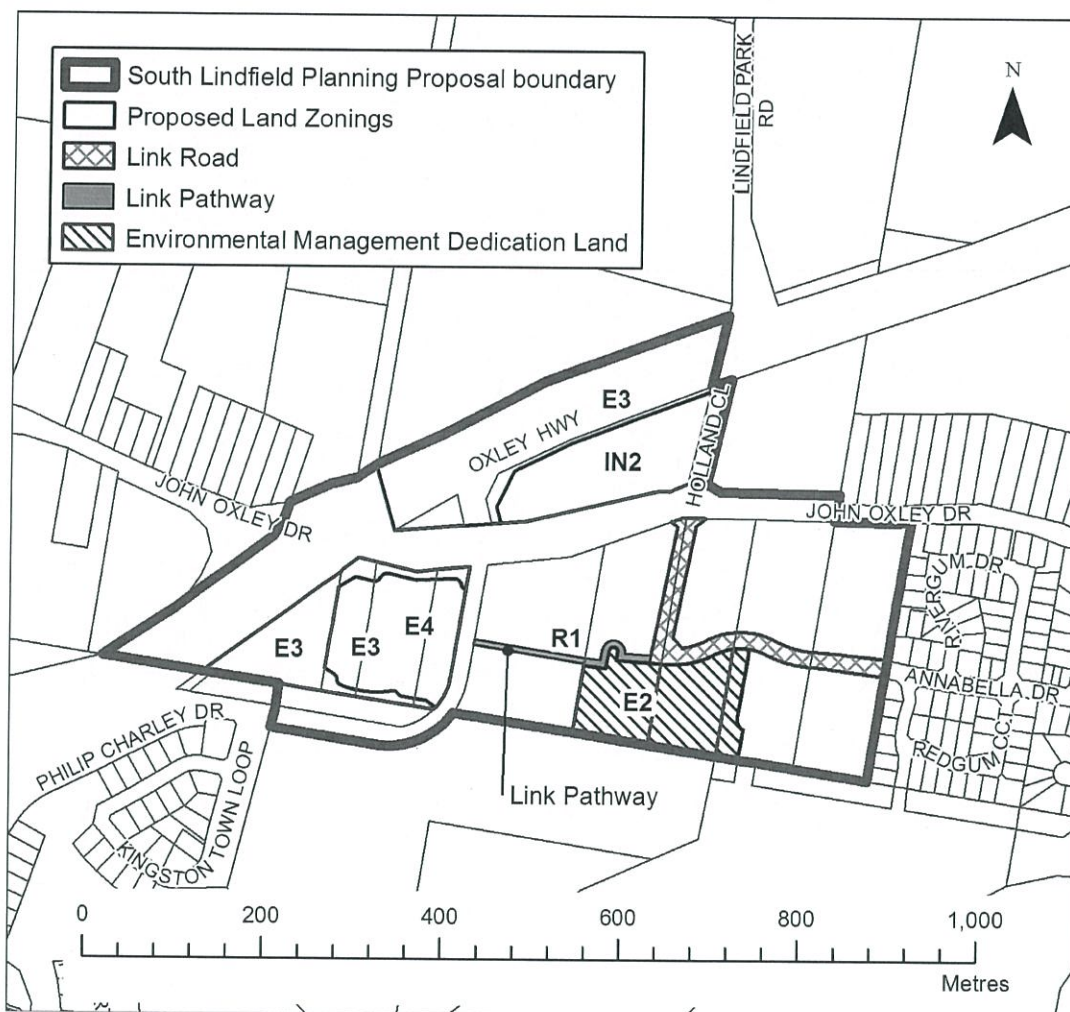
59 Explanatory Note Relating to this Deed

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

Schedule 1

(Clause 1.1)

Map

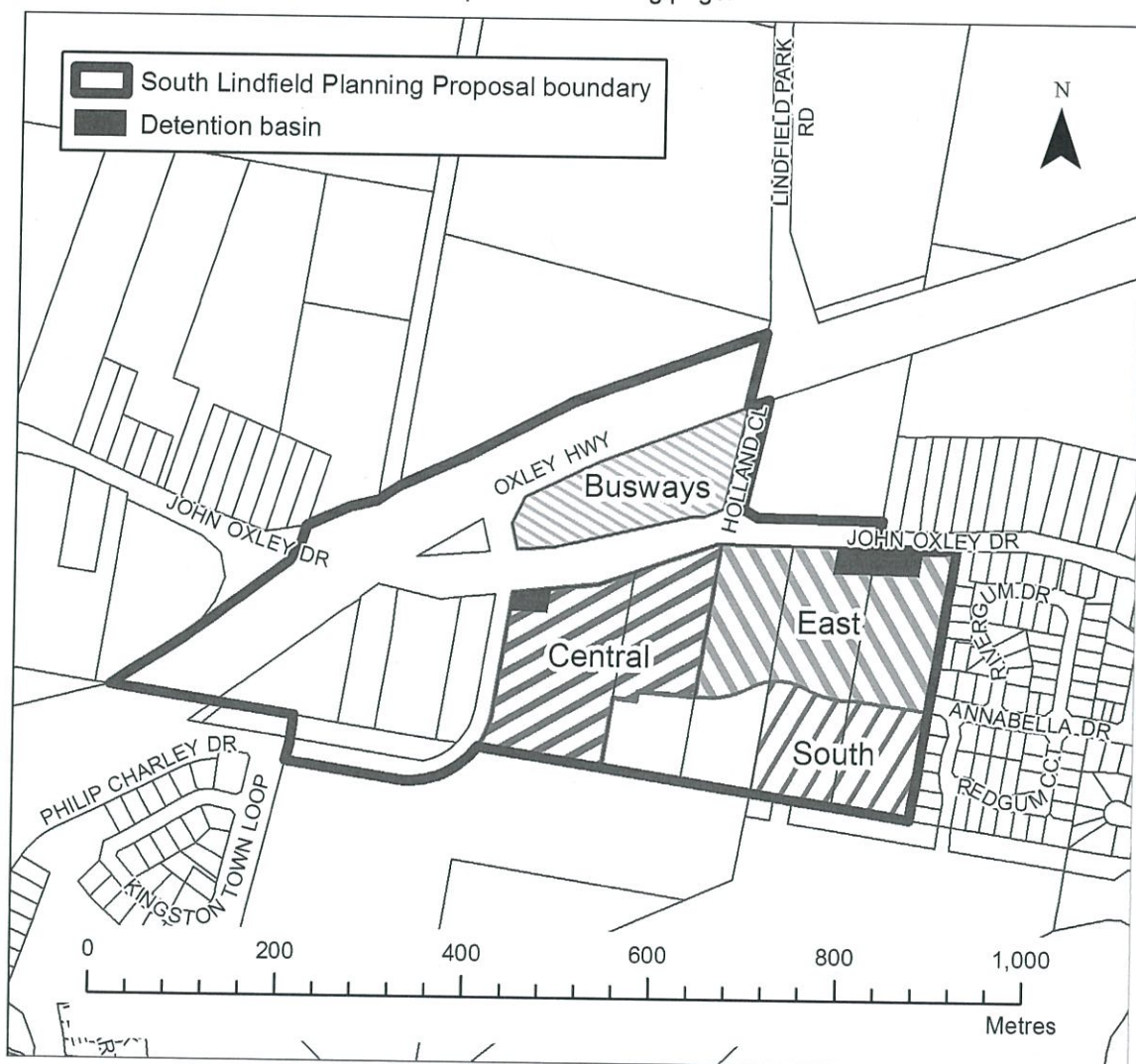


Schedule 2

(Clause 1.1)

Stormwater Catchment Map

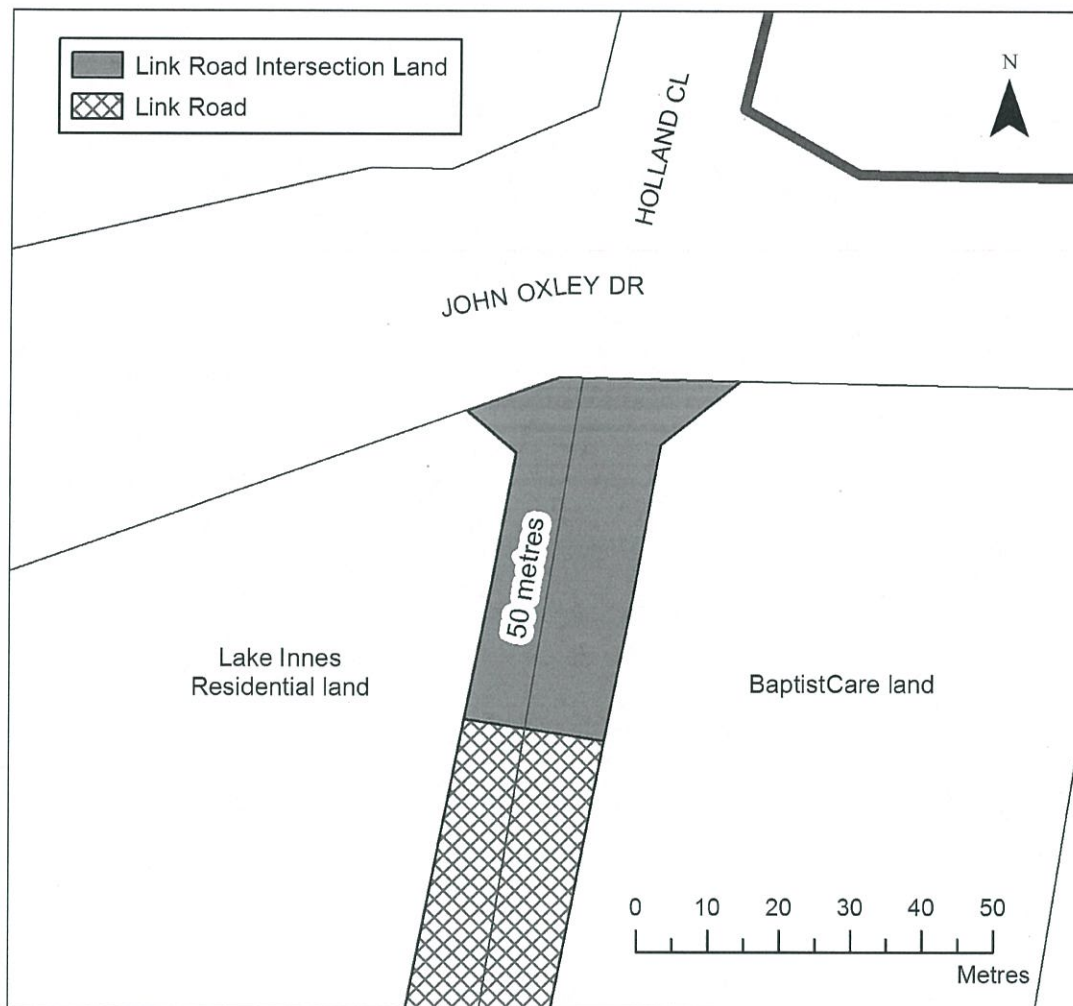
See map on the following page.



Schedule 3

(Clause 1.1)

Link Road Intersection Map



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Execution

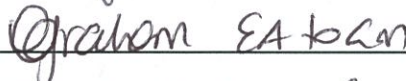
Executed as a Deed

Dated: 16 January 2019

Executed by the Council:



General Manager



Graham Eaton

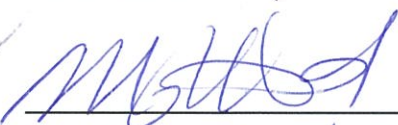
Witness/Name/Position: Candia Graham

Executed on behalf of the Landowner in accordance with s127(1) of the
Corporations Act (Cth) 2001



J. A. Carpenter

Name/Position JUDITH CARPENTER, DIRECTOR



Merghan Heard

Name/Position Merghan Heard, Company Secretary

Appendix

(Clause 59)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie-Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

BaptistCare NSW & ACT ABN 90 000 049 525 of Level Two, 22 Brookhollow Avenue (PO Box 7626), BAULKHAM HILLS NSW 2153 (**Landowner**)

Description of the Land to which the Draft Planning Agreement Applies

Land means part of the Land being Lot 2 DP 533058.

The Land is part of the land the subject of a resolution of the Council to prepare a draft local environmental plan to permit urban development on parts of that land. That local environmental plan once made is referred to in the planning agreement as the South Lindfield LEP.

Description of Proposed Development

The future development of the Land for urban purposes.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure funding, land and the carrying out of work for:

- the establishment, dedication and management of environmental lands in conjunction with the urban development that will be made permissible by the South Lindfield LEP,
- the provision of infrastructure to meet the Development that will be made permissible by the South Lindfield LEP,
- administration costs.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Landowner for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development (as defined in clause 1.1 of the Draft Planning Agreement) on the Land by the Landowner,
- imposes obligations on the Landowner to make Development Contributions only if:
 - Development Consent is granted to the carrying out of the Development or any Stage, and
 - the owners of certain other participating land (other than the Land) also enter into a planning agreement in materially the same terms as the Planning Agreement.
- partly excludes the application of s94 of the Act to the Development,
- does not exclude the application of s94A of the Act to the Development,
- does not exclude the application of s94EF of the Act to the Development,
- makes provision for the dedication of the following land in conjunction with the urban development of the South Lindfield Land:
 - Environmental Management Land,
 - Link Road and Link Pathway
- makes provision for the Landowner to carry out of the following works in conjunction with the urban development of the Land in certain circumstances:
 - Stormwater Works,
 - Link Road and Link Pathway,

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- Link Road Intersection Works,
 - Establishment of the Environmental Management Land, and
 - Management of the Environmental Management Land for 3 years after the land is dedicated to the Council or such other period or periods as the Parties agree.
- makes provision for the following additional monetary contributions to be made in conjunction with the carrying out of the Development:
 - for road works.
 - for administration of Development Contributions, and
 - towards the dedication of land and works which the Landowner does not dedicate or carry out itself.
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement except if the council considers that the public interest would be better served by applying those to another purpose,
- imposes obligations on the Landowner in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- prohibits the Landowner from apply for, or causing suffering or permitting the issuing of a certificate under Part 4A of the Act unless and until Development Contributions are provided in accordance with the Draft Planning Agreement,
- provides for the provision of works as executed plans in respect of Works carried out by the Landowner,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) 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:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development,

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- provides for the protection of the environment and ecologically sustainable development, and
- 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

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(vii) and 5(c) of the Act.

For Planning Authorities:

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

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the principles for local government

The Draft Planning Agreement promotes the principles for local government by:

- managing lands and other assets so that current and future local community needs can be met in an affordable way
- working with landowners to secure appropriate services and facilities for the local community,
- actively engaging the local community by providing a means that allows the community to make submissions to the Council in relation to the Agreement.

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

The Draft Planning Agreement requires that specified Works to be carried out by the Landowner for the purposes of providing sewerage services and roads.

These Works are not included in the Council's relevant current capital works program. However, the Council's management plan identifies these types of Works in the relevant capital works program.

Accordingly, the provision of these Works under the Agreement is consistent and conforms with the capital works envisioned by the Council's management plan.

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

The Draft Planning Agreement specifies that certain obligations under the Agreement must be complied with before the issuing of Subdivision Certificates, Construction Certificates and Occupation Certificates.