

Area 15
Planning Agreement

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

Port Macquarie-Hastings Council

**Gentlemore Pty Ltd, Haloville Pty Ltd, Somersby Rural
Supplies Land Holdings Pty Ltd and Somersby Rural
Supplies Pty Ltd**

2 march 2012.

Area 15 Planning Agreement

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Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

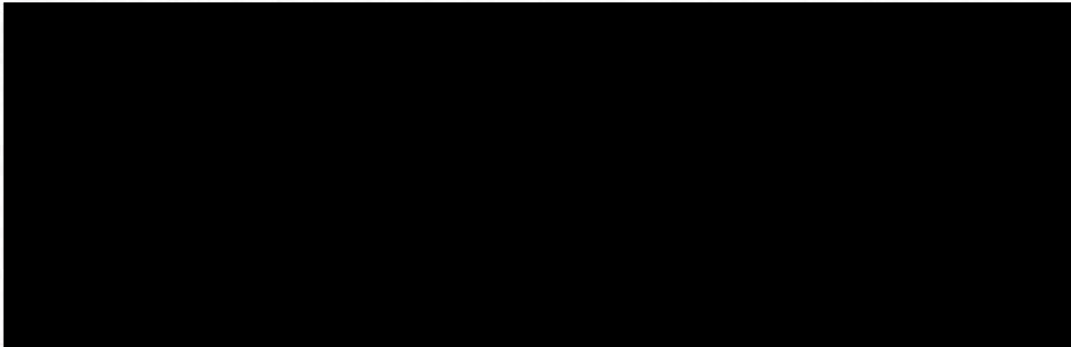
Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444

Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

Representative: Tim Molloy

Landowner:



Land:

See definition of *Land* in clause 1.1.

Instrument Change

See definition of *Area 15 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 27, 48 and 49.

Registration:

This Agreement is to be registered. See clause 53.

Restriction on dealings:

See clause 54.

Dispute Resolution:

Expert determination and mediation. See clauses 51 and 52.

Area 15 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



(Landowner)

Background

- A The Landowner is the owner of the Land.
- B The Area 15 Land is the subject of a resolution of the Council to prepare the Area 15 LEP.
- C The Area 15 LEP will permit urban development within the Area 15 Land.
- D The Landowner is prepared to make Development Contributions in accordance with this Agreement in connection with the carrying out of the Development as permitted by the Area 15 LEP.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement 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:

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

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 Agreement, not discounted in accordance with this Agreement.

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

Alternative Funding means funding obtained by the Council for the ongoing management of Environmental Management Land and Environmental Offset Land dedicated to the Council under this Agreement that does not rely on monetary Development Contributions obtained by the Council under Division 6 of Part 4 of the Act (including under this Agreement).

Area 15 Land means the land to which the Area 15 LEP applies.

Area 15 LEP means *Draft Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No.8)* once made.

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,
 - (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.

Building has the same meaning as in the Act.

Bushfire Management Land means the land identified as '*Managed for bushfire where required*' on Sheet 1 of the Map.

Bushfire Management Works means Work or any other activity to manage bushfire risk on Bushfire Management Land in accordance with a Development Consent.

Chevron Veld Land means Lots 1 and 2 DP 1067370 and Lot 24 DP 1070547.

Compliance 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.

Cook Land means Lot 3 DP 794077.

Crighton Land means Lot 12 DP 1091444.

Crighton Land Landowner means the landowner undertaking the development of the Crighton Land for urban purposes.

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

Development means the future development of the Land for urban purposes that can only be carried out by reason of the Area 15 LEP.

Development Application means an application under the Act for a Development Consent.

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, or
- (c) an approval under Part 5.1 of the Act to carry out 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, the provision of public infrastructure or another public purpose.

Development Servicing Plan - Sewerage Services means the document of the Council titled *Hastings Council Development Servicing Plans for Sewerage Services March 2005*, a copy of which is available from the Council, or any document that replaces that document.

Development Servicing Plan – Water Supply means the document of the Council titled *Port Macquarie-Hastings Water Supply Development Servicing Plans for the Hastings District, Comboyne, Telegraph Point & Long Flat Water Supply Schemes 2006*, a copy of which is available from the Council, or any document that replaces that document.

Environmental Management Land means any part of the Land that is situated within Zone E2 Environmental Conservation or Zone E3 Environmental Management under the Area 15 LEP or any other part of the Land agreed between the Parties to be Environmental Management Land for the purposes of this Agreement before such land is required to be dedicated to the Council under this Agreement.

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

Environmental Offset Land means the land identified as such on Sheet 2 of the Map.

Environmental Offset Land Contribution means \$4,496.00 per hectare of Net Developable Area in the Development indexed quarterly after 30 September 2010 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.

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.

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.

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 Agreement.

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 Landowner Bushfire Management Land means the person who is responsible for carrying out the Bushfire Management Works.

Initial Landowner Lake Ridge Drive Intersection means the person who is responsible for carrying out the Lake Ridge Drive Intersection Work.

Initial Landowner Mountain View Road Intersection Stage 1 means the person who is responsible for carrying out the Mountain View Road Intersection Work Stage 1.

Initial Landowner Mountain View Road Intersection Stage 2 means the person who is responsible for carrying out the Mountain View Road Intersection Work Stage 2.

Initial Landowner Sewerage Services Work means the person who is responsible for carrying out the Sewerage Service Work.

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

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Lake Ridge Drive Intersection means the intersection of Lake Ridge Drive and Ocean Drive.

Lake Ridge Drive Intersection Contribution means the proportion of the Roads Contribution that Council, acting reasonably, determines is attributable to the Lake Ridge Drive Intersection Work.

Lake Ridge Drive Intersection Upgrade Area means the Area 15 Land excluding the Crighton Land.

Lake Ridge Drive Intersection Work means the upgrading of Lake Ridge Drive Intersection to a design and specification approved by Council and generally in accordance with the recommendations contained in the document titled *Area 15 Traffic Study for Port Macquarie Hastings Council*, prepared by RoadNet Pty Ltd and dated August 2009.

Land means Lot 33 DP 754405.

Link Road Part A means the road to be constructed on the Link Road Part A Land.

Link Road Part A Contribution means the component of the Roads Contribution that the Council determines relates to the Link Road Part A Work.

Link Road Part A Land means the land identified as such on Sheet 1 of the Map.

Link Road Part A Work means construction of Link Road Part A.

Link Road Part B means the road to be constructed on the Link Road Part B Land.

Link Road Part B Land means the land identified as such on Sheet 1 of the Map

Link Road Part B Work means construction of Link Road Part B.

Local Park means either of the two local parks indentified as such on Sheet 1 of the Map

Local Park Embellishment Work means Work relating to the embellishment of the Local Park to a design and specification approved by Council.

Management Contribution means a monetary contribution of \$14,964.00 per hectare of Net Developable Area indexed quarterly after 30 September 2010 in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics.

Management Contribution Refund means an amount calculated as follows:

$$\text{Refund \$} = F \times \text{YE} \times A / T$$

Where

F = Balance of all Management Contributions paid under this Agreement and any other similar planning agreements that are held by the Council.

YE = 20 – (the period of years between the date which the Management Contribution is paid and the date any Alternative Funding takes effect expressed as a number to two decimal places).

A = Net Developable Area in respect of which the Management Contribution is paid.

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T = The sum of the values of $YE \times A$ under this Agreement and under other similar planning agreements relating to land to which the Area 15 LEP applies in which the definition of *Management Contribution Refund* in this Agreement appears.

Management Obligation means the management 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
 - (ii) otherwise to the satisfaction of 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.

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

Map means the map comprising several sheets in Appendix 1.

Middlemiss Land means Lot 5 DP 24500.

Minister means the Minister for the Environment.

Moses Land means Lot 2 DP 504042.

Mountain View Road Intersection means the intersection of a new road, Mountain View Road and Ocean Drive.

Mountain View Road Intersection Work Stage 1 means the upgrading of Mountain View Road Intersection to a design and specification approved by Council and generally in accordance with recommendations relating to Mountain View Road intersection work stage 1 contained in the document titled *Area 15 Traffic Study for Port Macquarie Hastings Council*, prepared by RoadNet Pty Ltd and dated August 2009.

Mountain View Road Intersection Work Stage 2 means the upgrading of Mountain View Road Intersection to a design and specification approved by Council and generally in accordance with recommendations relating to Mountain View Road intersection work stage 2 contained in the document titled *Area 15 Traffic Study for Port Macquarie Hastings Council*, prepared by RoadNet Pty Ltd and dated August 2009.

Mountain View Road Intersection Work Stage 1 Contribution means the proportion of the Roads Contribution that Council determines is attributable to the Mountain View Road Intersection Work Stage 1.

Mountain View Road Intersection Work Stage 2 Contribution means the proportion of the Roads Contribution that Council determines is attributable to the Mountain View Road Intersection Work Stage 2.

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

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Net Developable Area means the area of the Land remaining after excluding any part of the Land:

- (a) on which residential, business or industrial development is not permissible under the Area 15 LEP, and
- (b) that is, or will be, required to be dedicated to the Council under this Agreement, and
- (c) that the Council agrees to exclude at the request of the Landowner, and
- (d) that is or will be required for arterial road purposes.

New Reservoir means the construction of a new 8 mega litre reservoir by Council to serve the urban development of the Area 15 Land and the Chevron Veld land.

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 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) \$5,702.00 per ET in the Development indexed quarterly after 30 September 2010 in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics, 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.

Open Space Contribution Reduction means such of the costs incurred by the Landowner relating to the Local Park Embellishment Work that the Council reasonably considers it would have incurred if it had undertaken that Work instead of the Landowner together with the value of the land of the Local Park to be dedicated by the Landowner agreed between the Council and the Landowner.

Participating Land means the Cook Land, Crighton Land, Middlemiss Land, Moses Land, SAF Land and the Tate Land.

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

Proposed Residential Land means the land within the Area 15 Land that is proposed to be zoned R1 General Residential under the Area 15 LEP.

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

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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*.

Residential Lot means a residential lot (including a rural residential lot) or other ET.

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) \$10,560.00 per ET in the Development indexed quarterly after 30 September 2010 in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics, 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.

Roads Contribution Reduction means such of the costs incurred by the Landowner relating to the Lake Ridge Drive Intersection Work, the Link Road Part A Work, the Mountain View Road Intersection Work Stage 1 or the Mountain View Road Intersection Work Stage 2 that the Council reasonably considers it would have incurred if it had undertaken that Work instead of the Landowner less any Roads Contributions that have been applied by the Council towards those Works, including any payments made by the Council to the Landowner under clause 9.3.

SAF Land means Lot 33 DP 754405.

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 agreement.

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

Sewerage Services Work Contribution means a monetary Development Contribution calculated as follows:

$$SSWC = C*(L/PL)$$

Where

SSWC is the Sewerage Services Work Contribution

C is the cost, determined by the Council acting reasonably of the Sewerage Services Work

L is the area of the Land that is zoned under the Area 15 LEP to permit the carrying out of development for residential or business purposes.

PL is the combined area of the Participating Land that is zoned under the Area 15 LEP to permit the carrying out of development for residential or business purposes.

Sewerage Services Contribution Reduction means:

- (a) If the Landowner is the Initial Landowner Sewerage Services Work, the greater of:
- (i) such of the costs incurred by the Landowner relating to the Sewerage Services Work that the Council reasonably considers it would have incurred if it had undertaken that Work instead of the Landowner; and
 - (ii) the amount of the cost of the Sewerage Services Work carried out by the Landowner that is included in a development servicing plan approved by the Council,
- less any Sewerage Services Contributions that have been applied by the Council towards the Sewerage Services Work.
- (b) If the Landowner is not the Initial Landowner Sewerage Services Work, the amount of the Sewerage Services Work Contribution.

Sewerage Services Work means the construction of a new sewerage pump station and rising main from the new pump station to the Kew Sewerage Treatment Plant to a design and specification approved by Council and generally in accordance with the document entitled *Area 15 Preliminary Sewer Servicing Strategy April 2009* or any document that replaces that document.

Stage means a stage in the Development.

Subdivision Certificate has the same meaning as in the Act.

Tate Land means Lot 2 DP 594388.

Upgraded Internal Water Supply Mains means water supply reticulation mains of 200mm or more in diameter within the Land that:

- (a) the Council considers to be suitable for the supply of the public water supply to adjoining land;
- (b) are connected to the public water supply; and
- (c) are the subject of an easement or public positive covenant in favour of the Council to its reasonable satisfaction.

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.

Water Supply Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Water Supply per Residential Lot created in the Development.

Water Supply Contribution Reduction means such of the additional costs incurred by the Landowner in carrying out Work relating to the Upgraded Internal Water Supply Mains that exceed the cost that would ordinarily be required for the Development that the Council reasonably considers it would have incurred if it had undertaken that Work instead of the Landowner.

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 Agreement.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

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- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement 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 Agreement 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 Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement 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 Agreement 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 Agreement.
- 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 Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement 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 Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Status, application & effect of this Agreement

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

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties and similar agreements between the Council and owners of all other Participating Land have been entered into.
- 3.2 The Party who executes this Agreement 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 Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Parties acknowledge that the Development Contributions required to be made by the Developer under this Agreement are consequent upon the increased demand for public facilities 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 Agreement unless both of the following events have occurred:
 - 4.2.1 the Area 15 LEP takes effect,
 - 4.2.2 Development Consent is granted to the Development or any part of it.

5 Further Agreements Relating to this Agreement

- 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 Agreement for the purpose of implementing this Agreement.
- 5.2 Any such agreement is not to be inconsistent with this Agreement.

6 Surrender of right of appeal, etc.

- 6.1 The Landowner is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
 - 6.1.1 the validity of this Agreement, or
 - 6.1.2 the making of the Area 15 LEP, the granting or modification of any Development consent to the Development to the extent that the Area 15 LEP was made or the Development Consent was granted or modified modification having regard to the existence of this Agreement.

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

- 7.1 This Agreement does not exclude the application of s94A of the Act to the Development.
- 7.2 Section 94 of the Act only applies to the Development if:
- 7.2.1 this Agreement does not require a Development Contribution in relation to the Development comprising a monetary payment or the dedication of land in relation to public infrastructure covered by a Contributions Plan relating to the Development,
 - 7.2.2 the amount of a Development Contribution authorised to be imposed under that section is greater than the amount that is required by this Agreement and only to the extent of the difference between those amounts.
- 7.3 This Agreement does not exclude the application of s94EF of the Act to the Development.

Part 2 – Provisions relating to Roads

8 Roads Contribution

- 8.1 The Landowner is to pay the Roads Contribution for the Development or each Stage of the Development at the following times:
- 8.1.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 8.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 8.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 8.2 However, the Landowner is not required to incur the cost of the Roads Contribution to the extent that it is equal to or less than the amount of the Roads Contribution Reduction.

9 Dedication of land and construction of Link Road Part A and B

- 9.1 The Landowner is to dedicate such of the Land that comprises the Link Road Part A Land or the Link Road Part B Land free of cost to the Council, before the release of the first Subdivision Certificate for the Development or at such other time as directed by Council acting reasonably.
- 9.2 The Landowner is to bear the costs relating to the dedication of the Link Road Part A Land to the Council, including:

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- 9.2.1 the costs of any survey, and
 - 9.2.2 any fees payable to the Registrar-General,
if the Landowner constructs the Link Road Part A.
- 9.3 The Landowner is to bear the costs relating to the dedication of the Link Road Part B Land to the Council, including:
 - 9.3.1 the costs of any survey, and
 - 9.3.2 any fees payable to the Registrar-General,
if the Landowner constructs the Link Road Part B.
- 9.4 The Landowner acknowledges that the Council requires the Link Road Part A to be completed before:
 - 9.4.1 the first Subdivision Certificate is issued which creates a Residential Lot in the Development that generates a demand for the Link Road Part A, or
 - 9.4.2 if no Subdivision Certificate is required, the first Occupation Certificate is issued for the Development that generates a demand for Link Road Part A.
- 9.5 Clauses 9.3.1 – 9.3.2 apply if the Landowner constructs any part of the Link Road Part A.
 - 9.5.1 As soon as practicable after the Landowner carries out the Link Road Part A Work, the Council is to refund to the Landowner such of the Link Road Part A Contribution paid to the Council by the Landowner before the Work was carried out that the Council reasonably considers relates to that Work.
 - 9.5.2 As soon as practicable after the Council receives a payment of a Link Road Part A Contribution, it is to make a payment to the Landowner of an amount equivalent to the proportion of the contribution that it reasonably considers relates the Link Road Part A constructed by the Landowner.
- 9.6 The Landowner acknowledges that the Council requires the Link Road Part B to be completed before:
 - 9.6.1 the first Subdivision Certificate is issued which creates a Residential Lot in the Development that generates a demand for Link Road Part B, or
 - 9.6.2 if no Subdivision Certificate is required, the first Occupation Certificate is issued for the Development that generates a demand for Link Road Part B.
- 9.7 To the extent that the Link Road Part B is located within or adjacent to the Proposed Residential Land, the Link Road Part B must be constructed to the approved final design standard for its residential function to the reasonable satisfaction of the Council, subject to the following:
 - 9.7.1 services connections to individual lots within the Proposed Residential Land adjacent to the Link Road Part B (including, without limitation, watermains, electrical and telecommunication cables and sewerage mains) are to be constructed by the owners of those individual lots;
 - 9.7.2 services to be constructed within the Link Road Part B Land that are required for the subdivision of the SAF Land are to be designed to have sufficient capacity to serve future lots to be created within that part of the Tate Land and the Middlemiss Land which is within the Proposed Residential Land on the northern side of the Link Road Part B Land; and

- 9.7.3 stormwater drainage works to be constructed in conjunction with Link Road Part B will include all pipe crossings of the Link Road Part B Land but will not include stormwater quality facilities required to serve future lots to be created within that part of the Tate Land and the Middlemiss Land which is within the Proposed Residential Land on the northern side of the Link Road Part B Land.
- 9.8 Nothing in this clause requires the Landowner to carry out any work on land within Zone E2 Environmental Conservation or Zone E3 Environmental Management under the Area 15 LEP unless required by other provisions of this Agreement.

10 Lake Ridge Drive Intersection Work

- 10.1 The Landowner acknowledges that the Lake Ridge Drive Intersection Work is to be completed before:
 - 10.1.1 the release of the Subdivision Certificate which creates the 380th Residential Lot within the Area 15 Land on the basis that the need for such Work to meet the demands of the Development does not arise until that time based on traffic generation modelling information available to the Council at the time this Agreement is entered into, or
 - 10.1.2 if no Subdivision Certificate is required, the first Occupation Certificate is issued for the Development that generates a demand for Lake Ridge Drive Intersection Work.
- 10.2 The Landowner is the Initial Landowner Lake Ridge Drive Intersection and is to carry out the Lake Ridge Drive Intersection Work if carrying out of any part of the Development will result in the creation of the 380th Residential Lot within the Lake Ridge Drive Intersection Upgrade Area.
- 10.3 Clauses 10.3.1 – 10.3.2 apply if the Landowner is the Initial Landowner Lake Ridge Drive Intersection and has complied with its obligations under clause 10.2.
 - 10.3.1 If the Landowner has already made a Roads Contribution in respect of the Lake Ridge Drive Intersection Work under clause 8.1, the Council is to refund those contributions to the Landowner together with any interest earned on those contributions.
 - 10.3.2 As soon as practicable after the Council receives a payment relating to the Lake Ridge Drive Intersection Contribution, it is to make a payment of an equivalent amount to the Landowner.

11 Mountain View Road Intersection Work Stage 1

- 11.1 The Landowner acknowledges that the Council requires the Mountain View Road Intersection Work Stage 1 to be completed before:
 - 11.1.1 the first Subdivision Certificate is issued in respect of the Development of the Crighton Land, or
 - 11.1.2 if no Subdivision Certificate is required, the first Occupation Certificate is issued for the Development on that land.
- 11.2 The Landowner is the Initial Landowner Mountain View Road Intersection Stage 1 and is to carry out the Mountain View Road Intersection Work Stage 1 if the carrying out of any part of the Development will enable the issuing of a

Subdivision Certificate or Occupation Certificate referred to in clause 11.1 in respect of the urban development of the Crighton Land.

- 11.3 Clauses 11.3.1 – 11.3.2 apply if the Landowner is the Initial Landowner Mountain View Road Intersection Stage 1 and has complied with its obligations under clause 11.2.
- 11.3.1 If the Landowner has already made a Roads Contribution in respect of the Mountain View Road Intersection Work Stage 1 under clause 8.1, the Council is to refund those contributions to the Landowner together with any interest earned on those contributions.
- 11.3.2 As soon as practicable after the Council receives a payment relating to the Mountain View Road Intersection Work Stage 1 Contribution, it is to make a payment of an equivalent amount to the Landowner.

12 Mountain View Road Intersection Work Stage 2

- 12.1 The Landowner acknowledges that the Council requires the Mountain View Road Intersection Work Stage 2 to be completed before:
- 12.1.1 a Subdivision Certificate is issued which creates the 230th Residential Lot within the Crighton Land or the Chevron Veld Land on the basis that the need for such Work to meet the demands of the Development does not arise until that time based on traffic generation modelling information available to the Council at the time this Agreement is entered into, or
- 12.1.2 if no Subdivision Certificate is required, the first Occupation Certificate is issued for the Development that generates a demand for Mountain View Road Intersection Work Stage 2.
- 12.2 The Landowner is the Initial Landowner Mountain View Road Intersection Stage 2 and is to carry out the Mountain View Road Intersection Work Stage 2 if the carrying out of any part of the Development will enable the issuing of a Subdivision Certificate for the creation of the 230th Residential Lot within the Crighton Land or the Chevron Veld Land, provided that the Landowner is not the Initial Landowner Mountain View Road Intersection Stage 1.
- 12.3 Clauses 12.3.1 – 12.3.2 apply if the Landowner is the Initial Landowner Mountain View Road Intersection Stage 2 and has complied with its obligations under clause 12.2.
- 12.3.1 If the Landowner has already made a Roads Contribution in respect of the Mountain View Road Intersection Work Stage 2 under clause 8.1, the Council is to refund those contributions to the Landowner together with any interest earned on those contributions.
- 12.3.2 As soon as practicable after the Council receives a payment relating to the Mountain View Road Intersection Work Stage 2 Contribution, it is to make a payment of an equivalent amount to the Landowner.

Part 3 – Provisions relating to Open Space

13 Open Space Contribution

- 13.1 The Landowner is to pay the Open Space Contribution for the Development or each Stage of the Development at the following times:
 - 13.1.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 13.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 13.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 13.2 However, the Landowner is not required to incur the cost of the Open Space Contribution to the extent that it is equal to or less than the amount of the Open Space Contribution Reduction.

14 Dedication of Local Park and Local Park Embellishment Work

- 14.1 If the Landowner is the owner of the Land comprising the Local Park, the Landowner is to:
 - 14.1.1 dedicate the land comprising the Local Park free of cost to the Council (except for the Open Space Contribution Reduction) in conjunction with the registration of a plan of subdivision of the Land that creates or dedicates a public road adjacent to the Local Park;
 - 14.1.2 complete the Local Park Embellishment Work before the dedication of the Local Park.

Part 4 – Provisions relating to Environmental Management Land

15 Approval of Vegetation Management Plan

- 15.1 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.
- 15.2 The Landowner is not to establish or maintain the Environmental Management Land except in accordance with:

- 15.2.1 a Vegetation Management Plan that has been approved by the Council, and
- 15.2.2 the terms of any approval granted by the Council as modified from time to time.

16 Establishment & Management of Environmental Management Land

- 16.1 The Landowner, at its own cost, is to perform:
 - 16.1.1 the Establishment Obligation during the Establishment Period; and
 - 16.1.2 the Management Obligation during the Management Period.
- 16.2 The Landowner is to perform its obligations under clause 16.1 in accordance with:
 - 16.2.1 this Agreement, and
 - 16.2.2 any further agreement that is entered into by the Parties under clause 5, and
 - 16.2.3 any requirements and directions notified in writing by the Council to the Landowner at any time before the Environmental Management Land Management Work is completed that is not inconsistent with:
 - (a) this Agreement, or
 - (b) any agreement referred to in clause 16.2.2, or
 - (c) any Development Consent relating to the Development.
- 16.3 The Establishment Obligation and the Management Obligation are not to be varied by the Landowner, unless:
 - 16.3.1 the Parties agree in writing to the variation, and
 - 16.3.2 any consent or approval required under the Act or any other law to the variation is first obtained.

17 Failure to Perform Establishment or Management Obligations

- 17.1 Clause 47, 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.

18 Inspection of the Environmental Management Land

- 18.1 Before the Environmental Management Land is dedicated to the Council in accordance with this Agreement, 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.
- 18.2 After the Environmental Management Land is dedicated to the Council in accordance with this Agreement, 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.

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

19 Dedication of Environmental Management Land

- 19.1 The Landowner is to dedicate the Environmental Management Land that is not Bushfire Management 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.

20 Management Contribution

- 20.1 Subject to clause 20.2, the Landowner is to pay to the Council the Management Contribution relating to the Development or any Stage based on the Net Developable Area of the Land the subject of the Development or Stage and at the following times:
- 20.1.1 if the Development or Stage involves subdivision that will create a Final Lot - before the issuing of the first Subdivision Certificate for the Development or Stage, or
 - 20.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 20.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 20.2 Nothing in this Agreement requires the Landowner to pay to the Council the Management Contribution in respect of the creation of a Residue Lot unless the Council is of the opinion that the lot will not be further subdivided.
- 20.3 The Management Contribution and any interest earned on its investment is to be held and applied by the Council for a period of 17 years on and from the expiration of the Management Period towards the ongoing environmental management of the Environmental Management Land.
- 20.4 The Council is to use its reasonable endeavours to obtain Alternative Funding as soon as reasonably practicable after this Agreement is entered into.
- 20.5 The Landowner is not to raise any requisition or objection in respect of anything done by the Council under clause 20.4.
- 20.6 If, at any time after the date of this Agreement, the Council obtains Alternative Funding, the Council is to send a notice to the Landowner:
- 20.6.1 informing the Landowner that the Council has obtained the Alternative Funding, and
 - 20.6.2 specifying the amount of the Management Contribution Refund that may be claimed by the Landowner, and
 - 20.6.3 in the case where the Landowner has not yet paid the Management Contribution - informing the Landowner that the amount of that

contribution payable to the Council is to be reduced by the amount specified in clause 20.6.2, and

- 20.6.4 in the case where the Landowner has paid the Management Contribution - informing the Landowner that the amount specified in clause 20.6.2 will be paid by the Council to the Landowner if the Council receives within 90 days of the date on the Council's notice a notice from the Landowner claiming the Management Contribution Refund.
- 20.7 If a notice under clause 20.6 is given in a case:
- 20.7.1 where the Landowner has not yet paid the Management Contribution, that contribution is taken for the purposes of this Agreement to have been reduced by the amount specified in clause 20.6.2, and
- 20.7.2 where the Landowner has paid the Management Contribution, the Council is to pay the Management Contribution Refund to the Landowner if it receives the notice from the Landowner referred to in clause 20.6.4.
- 20.8 The Management Contribution payable by the Landowner may be reduced by agreement in writing between the Landowner and the Council but only if the agreement also provides for an extended Management Period.

21 Protection of Osprey Land

- 21.1 In this clause 21:
- Osprey Tree** means the tree in the location shown on Sheet 1 of the Map that is used as an Osprey nesting tree at the date of this Agreement.
- Osprey Tree Buffer** means land that is situated within a radius of 100 metres of the Osprey Tree.
- 21.2 This clause applies only if the Osprey Tree Buffer is part of the Land.
- 21.3 The Landowner is not to make, or cause or permit to be made, or give its consent as owner to the making of, an application under the Act relating to the Development unless it has erected fencing along the outer boundary of the land comprising the Osprey Tree Buffer to the satisfaction of the Council and the Office of Environment and Heritage.
- 21.4 The Landowner is not to carry out any development of any kind on the land comprising the Osprey Tree Buffer except the erection of fencing referred to in clause 21.3 unless the requirements of the certificate issued under s95(2) of the *Threatened Species Conservation Act 1995* on 17 January 2011 (No. 1123801) have been complied with.

22 Acknowledgement of Possible Flood Impacts

- 22.1 The Landowner acknowledges that the future development of the Participating Land for urban purposes made permissible by the Area 15 LEP may increase the possibility of flooding of the Environmental Management Land.
- 22.2 The Landowner is to raise no objection with, or bring, make, continue or sustain any action, claim or demand whatsoever against, the Council relating to any increased possibility of flooding, or any flooding, of the Environmental Management Land.

Part 5 – Provisions relating to Bushfire Management Land

23 Establishment of Bushfire Management Land

- 23.1 The Landowner is not to commence any part of the Development that can only be accessed by a road that is adjacent to Bushfire Management Land unless and until Bushfire Management Works to make the road safe from bushfire have been completed to the satisfaction of the Council.
- 23.2 The Landowner is the Initial Landowner Bushfire Management Land if any part of the Development can only be accessed by a road referred to in clause 23.1, and the Bushfire Management Works referred to in that clause have not been completed.
- 23.3 If the Landowner is the Initial Landowner Bushfire Management Land, the Landowner is to carry out the Bushfire Management Works referred to in clause 23.1 in accordance with any applicable law and otherwise to the satisfaction of the Council.
- 23.4 If the Landowner is not the Initial Landowner Bushfire Management Land, and Bushfire Management Works that are required to be carried out by the Initial Landowner Bushfire Management Land are required to be carried out on the Land, the Landowner is to:
- 23.4.1 provide owner's consent to the lodgement of any Development Application by the Initial Landowner Bushfire Management Land for those Bushfire Management Works, and
 - 23.4.2 allow the Initial Landowner Bushfire Management Land access to the Land in order to carry out the Bushfire Management Works on the Land.
- 23.5 For the avoidance of doubt, this clause does not affect any obligation on the Landowner in clause 16.

24 Dedication of Bushfire Management Land

- 24.1 The Landowner is to dedicate the part of the Land that is Bushfire Management Land free of cost to the Council for the purposes of bushfire management, before the release of the first Subdivision Certificate for the Development or at such other time as notified by Council in writing acting reasonably.
- 24.2 The Landowner, being the Initial Landowner Bushfire Management Land, is to pay the costs relating to the dedication of the Bushfire Management Land, including:
- 24.2.1 the costs of any survey, and
 - 24.2.2 any fees payable to the Registrar-General.

25 Maintenance of Bushfire Management Land

- 25.1 The Parties acknowledge that the Council is to be responsible for the ongoing maintenance of any Bushfire Management Land at the conclusion of the Bushfire Management Works for the Bushfire Management Land.

Part 6 – Provisions Relating to Environmental Offset Land

26 Dedication of Environmental Offset Land

- 26.1 This clause applies only if the Landowner is the Crighton Land Landowner.
- 26.2 The Parties acknowledge that, at the date of this Agreement, the Landowner owns the Environmental Offset Land and has not procured the dedication of that land to the Minister.
- 26.3 The Landowner is to use all reasonable endeavours to dedicate or procure the dedication of the Environmental Offset Land to the Minister by not later than 12 months after the date on which the Area 15 LEP takes effect or such later date as is agreed between the Council and the Landowner in writing.

27 Management of Environmental Offset Land

- 27.1 This clause applies only if the Landowner is the Crighton Land Landowner.
- 27.2 Pending the dedication of the Environmental Offset Land to the Minister, the Landowner is to manage and maintain the land to an environmental standard that is reasonably satisfactory to the Council.
- 27.3 If the Environmental Offset Land is not dedicated to the Minister within three months of the date on which the Area 15 LEP takes effect or the date on which this Agreement commences, whichever occurs first, the Landowner is to provide the Council with Security in an amount that is adequate to properly secure the Landowner's obligation to manage the Environmental Offset Land to the satisfaction of the Council.
- 27.4 The Council and the Landowner may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.
- 27.5 Clauses 48.5 to 48.12 of this Agreement (with any necessary amendments) apply to a Security provided under this clause in the same way as a Security provided under clause 48.

28 Making of development applications

- 28.1 The Landowner is not to make, or cause or permit to be made, or to give its consent as owner to the making of, an application under the Act relating to the Development unless the Environmental Offset Land has been first dedicated to the Minister.
- 28.2 Clause 28.1 does not apply:
 - 28.2.1 to an application for consent or approval under the Act to subdivide the Land for the purpose only of facilitating the dedication of the Environmental Offset Land to the Minister, or
 - 28.2.2 if the Council and the Landowner agree in writing to the contrary.

29 Environmental Offset Land Contribution

- 29.1 This clause does not apply if the Landowner is the Crighton Land Landowner.
- 29.2 The Landowner is to pay the Environmental Offset Land Contribution for the Development or each Stage of the Development at the following times:
 - 29.2.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 29.2.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage.
 - 29.2.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably..
- 29.3 Immediately upon receipt of a payment referred to in clause 29.1, the Council is to pay the Environmental Offset Land Contribution to the landowner who dedicated or procured the dedication of the Environmental Offset Land to the Minister.

Part 7 – Provisions relating to Water Supply

30 Restriction on Development before construction of New Reservoir

- 30.1 The Landowner acknowledges that the Council will use its reasonable endeavours to construct the New Reservoir and upgrade the water supply mains in Ocean Drive to facilitate the Development and the urban development of the remainder of the Area 15 Land and the Chevron Veld Land utilising contributions made in accordance with the Development Servicing Plan – Water Supply.
- 30.2 The Landowner is not to carry out any part of the Development that will result in the creation of the 800th ET in the Area 15 Land and the Chevron Veld Land unless the Council has notified the Landowner in writing that the New Reservoir has been completed or arrangements satisfactory to the Council, acting reasonably, have been made for the provision of water supply to the Land.
- 30.3 The Council is under no obligation to supply water to the Development until the Water Supply Contribution for the Development has been paid as required by this Agreement or as a precondition to granting a certificate of compliance for the Development or any Stage under s306 of the *Water Management Act 2000*.

31 Water Supply Contribution

- 31.1 The Landowner is to pay the Water Supply Contribution for the Development or each Stage of the Development at the following times:
 - 31.1.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,

- 31.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
- 31.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 31.2 However, the Landowner is not required to incur the cost of the Water Supply Contribution to the extent that it is equal to or less than the amount of the Water Supply Contribution Reduction.

Part 8 – Provisions relating to Sewerage Services

32 Sewerage Services Contribution and Sewerage Services Work Contribution

- 32.1 If the construction of the Sewerage Services Work has commenced, and the Landowner is not the Initial Landowner Sewerage Services Work, the Landowner is to pay the Sewerage Services Work Contribution to the Council at the following times:
 - 32.1.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 32.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 32.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 32.2 The Landowner is to pay the Sewerage Services Contribution for the Development or each Stage of the Development at the following times:
 - 32.2.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 32.2.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 32.2.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.
- 32.3 The Landowner is not required to incur the cost of the Sewerage Services Contribution to the extent that it is equal to or less than the amount of the Sewerage Services Contribution Reduction.

33 Construction of Sewerage Services Work

- 33.1 The Landowner acknowledges that the Development cannot be carried out unless the Sewerage Services Work is available to serve the Development or arrangements satisfactory to the Council have been made relating to the provision of the Sewerage Services Work to serve the Development.
- 33.2 The Landowner is the Initial Landowner Sewerage Services Work and is to construct the Sewerage Services Work if the Landowner commences any part of the Development and the construction of the Sewerage Services Work has not been commenced.
- 33.3 The Landowner is not to occupy or use the Development unless the Sewerage Services Work has been completed to the satisfaction of the Council.
- 33.4 Before the Initial Landowner Sewerage Services Work commences the construction of the Sewerage Services Work, the Council may notify the Initial Landowner Sewerage Services Work in writing that the Council requires the Sewerage Services Work to be amended and designed to serve other land in addition to the Area 15 Land. If so:
 - 33.4.1 the Sewerage Service Work is varied in accordance with the notice; and
 - 33.4.2 the Council is to pay to the Initial Landowner Sewerage Services Work the additional cost of the design and construction of the varied Work in times and the manner agreed.
- 33.5 If the Landowner is the Initial Landowner Sewerage Services Work and has complied with its obligation under clause 33.2 as varied if at all under clause 33.4, then as soon as practicable after the Council receives a payment relating to the Sewerage Services Work Contribution, it is to make a payment of an equivalent amount to the Initial Landowner Sewerage Services Work.

Part 9 – Administration Levy Contribution

34 Payment of Administration Levy Contribution

- 34.1 The Landowner is to pay the Administration Levy Contribution for the Development or each Stage of the Development at the following times:
 - 34.1.1 if the Development or Stage involves subdivision – before the issuing of the first Subdivision Certificate for the Development or Stage,
 - 34.1.2 if the Development or Stage involves the erection of a Building – before the issuing of the first Construction Certificate for the Development or Stage,
 - 34.1.3 in any other case – before the issuing of the first Occupation Certificate for the Stage unless otherwise determined by the Council acting reasonably.

Part 10 – General Provisions Relating to Development Contributions

35 Provision of Development Contributions

- 35.1 The Landowner is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council.
- 35.2 Subject to this Agreement, the Council is to apply a Development Contribution made by the Landowner under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 35.3 The Council may apply a Development Contribution other than a monetary Development Contribution made under this Agreement towards a public purpose other than the purpose specified in this Agreement 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 Agreement.

36 Procedures relating to payment of monetary Development Contributions

- 36.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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.
- 36.2 The Landowner is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 36.3 The Landowner is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Landowner's notice under clause 36.2, has given to the Landowner a tax invoice for the amount of the Development Contribution.
- 36.4 The Landowner is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement 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.

37 Procedures relating to the dedication of land

- 37.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - 37.1.1 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

- 37.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 37.2 For the purposes of clause 37.1.2:
 - 37.2.1 the Landowner is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
 - 37.2.2 the Council is to execute the instrument of transfer and return it to Landowner within 7 days of receiving it from the Landowner, and
 - 37.2.3 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
 - 37.2.4 the Landowner and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

38 Carrying out of Work

- 38.1 Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by the Landowner under this Agreement is to be carried out in accordance with:
 - 38.1.1 any relevant Development Consent,
 - 38.1.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,
 - 38.1.3 any other applicable law, and
 - 38.1.4 otherwise to the reasonable satisfaction of the Council.
- 38.2 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 Agreement.

39 Access to the Land

- 39.1 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.
- 39.2 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 Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Landowner by or under this Agreement.

40 Protection of people and property

- 40.1 The Landowner is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 40.1.1 all necessary measures are taken to protect people and property, and

40.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

40.1.3 nuisances and unreasonable noise and disturbances are prevented.

41 Damage and repairs to Work

41.1 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.

42 Variation of Work

42.1 A Work is not to be varied by the Landowner, unless:

42.1.1 the Landowner and the Council agree in writing to the variation, and

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

42.2 For the purposes of clause 42.1 a variation may relate to any matter in relation to the Work that is dealt with by this Agreement.

43 Completion of Work

43.1 Work is completed for the purposes of this Agreement 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.

44 Rectification of defects

44.1 During the Defects Liability Period, the Council may give the Landowner a Rectification Notice.

44.2 Subject to the resolution of a dispute in accordance with this Agreement, the Landowner is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

45 Works-As-Executed-Plan

45.1 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 11 – Other Provisions

46 Indemnity and Insurance

- 46.1 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 Agreement.
- 46.2 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 Agreement up until the Work is completed:
- 46.2.1 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,
 - 46.2.2 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,
 - 46.2.3 workers compensation insurance as required by law, and
 - 46.2.4 any other insurance required by law.
- 46.3 If the Landowner fails to comply with clause 46.2, 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:
- 46.3.1 by calling upon the Security provided by the Landowner to the Council under this Agreement, or
 - 46.3.2 recovery as a debt due in a court of competent jurisdiction.
- 46.4 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 46.2.

47 Failure to carry out Work

- 47.1 If the Council reasonably considers that the Landowner is in breach of any obligation under this Agreement 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.
- 47.2 The dispute resolution provisions of this Agreement do not apply to the giving of a notice under clause 47.1.

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- 47.3 A notice given under clause 47.1 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.
- 47.4 The Council may carry out and complete the Work the subject of a notice under clause 47.1 if the Landowner fails to comply with the notice to the Council's reasonable satisfaction.
- 47.5 The Landowner is to do all things reasonably necessary to enable the Council to exercise its rights under clause 47.4.
- 47.6 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 Agreement that is not met by calling-up the Security, the Council may recover the cost from the Landowner in a court of competent jurisdiction.
- 47.7 For the purpose of clause 47.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
 - 47.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 47.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 47.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's failure to comply with this Agreement.

48 Security for Performance

- 48.1 In this clause 48, a reference to "Work" is a reference to:
 - 48.1.1 the Sewerage Services Work;
 - 48.1.2 the Lake Ridge Drive Intersection Work;
 - 48.1.3 the Mountain View Road Intersection Work Stage 1;
 - 48.1.4 the Mountain View Road Intersection Work Stage 2;
 - 48.1.5 the Management Obligation in relation to the Environmental Management Land; and
 - 48.1.6 the Establishment Obligation to the extent that it is not complete at the time the Environmental Management Land is required to be dedicated to the Council under this Agreement.
- 48.2 The Landowner is not to carry out any Work unless, before the commencement of the Work, the Landowner provides the Council with Security that is adequate to secure the performance of the Landowner's obligations relating to the Work:
 - 48.2.1 in accordance with an agreement between the Council and the Landowner relating to the provision of Security, or
 - 48.2.2 failing such agreement, on such terms and conditions required by the Council acting reasonably.
- 48.3 Despite clause 48.2:
 - 48.3.1 the Security for the Sewerage Services Work referred to in that clause is to be provided to the Council before any part of the Development that relies on the Sewerage Services Work is commenced (within the meaning of the Act),

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- 48.3.2 the Security for the Management Obligation in relation to the Environmental Management Land referred to in that clause is to be provided to the Council before the dedication of the Environmental Management Land.
- 48.4 For the purposes of clause 48.2 and 48.3, the Parties are to have regard to any policy or practice of the Council, current at the time, relating to the provision of security to the Council for the construction of public infrastructure by Landowners.
- 48.5 The Council is to release and return the Security held under this clause or any unused part of it to the Landowner within 14 days of compliance by the Landowner with its Development Contribution obligations under this Agreement to the reasonable satisfaction of the Council.
- 48.6 The Landowner may at any time provide the Council with a replacement Security.
- 48.7 On receipt of a replacement Security, the Council is to release and return to the Landowner, as directed, the Security it holds that has been replaced.
- 48.8 The Council may call-up the Security if it considers, acting reasonably, that the Landowner has not complied with its Development Contributions obligations under this Agreement.
- 48.9 However, the Council is not to call-up the Security unless it has given the Landowner not less than 30 days notice of its intention to do so and the Landowner has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 48.10 If the Council calls-up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 48.10.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 48.10.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 48.10.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Landowner's non-compliance.
- 48.11 If the Council calls-up the Security, it may, by notice in writing to the Landowner, require the Landowner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement.
- 48.12 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.

49 Security for obligation to dedicate land

- 49.1 If the Landowner does not dedicate land required to be dedicated under this Agreement 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.
- 49.2 Council is to only acquire land pursuant to clause 49.1 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 Agreement.

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- 49.3 Clause 49.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 49.4 If, as a result of the acquisition referred to in clause 49.1, 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.
- 49.5 Except as otherwise agreed between the Parties, the Landowner must ensure that the land to be dedicated under this Agreement 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 Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 49.6 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.
- 49.7 The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 49, including without limitation:
- 49.7.1 signing any documents or forms;
 - 49.7.2 giving land owner's consent for lodgement of any Development Application;
 - 49.7.3 producing certificates of title to the Registrar-General under the Real Property Act; and
 - 49.7.4 paying the Council's costs arising under this clause 49.
- 49.8 Notwithstanding clause 49.5, 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.

50 Enforcement in a court of competent jurisdiction

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

51 Dispute Resolution – expert determination

- 51.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.

- 51.2 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.
- 51.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 51.4 If a notice is given under clause 51.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 51.5 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.
- 51.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 51.7 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

52 Dispute Resolution - mediation

- 52.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 51 applies.
- 52.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 52.3 If a notice is given under clause 52.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 52.4 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.
- 52.5 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.

53 Registration of this Agreement

- 53.1 The Parties agree to register this Agreement subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.
- 53.2 The Landowner is to use its reasonable endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement.
- 53.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Parties are to do such things as are reasonably necessary to enable registration to occur.
- 53.4 Subject to this clause, within 60 days of the Area 15 LEP taking effect, the Landowner is to provide the Council with the following documents to enable registration of this Agreement:
 - 53.4.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Landowner, and
 - 53.4.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 53.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:
 - 53.5.1 in so far as the part of the Land concerned is a Final Lot,
 - 53.5.2 in relation to any other part of the Land, once the Landowner has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any reason whatsoever.

54 Assignment, Sale of Land, etc

- 54.1 Unless the matters specified in clause 54.2 are satisfied, the Landowner is not to do any of the following:
 - 54.1.1 if the Landowner is the owner of the Land, to transfer the Land to any person, or
 - 54.1.2 assign or novate to any person the Landowner's rights or obligations under this Agreement.
- 54.2 The matters required to be satisfied for the purposes of clause 54.1 are as follows:
 - 54.2.1 the Landowner has, at no cost to the Council, first procured the execution by the person to whom the Landowner's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms reasonably satisfactory to the Council, and
 - 54.2.2 the Council, by notice in writing to the Landowner, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and
 - 54.2.3 the Landowner is not in breach of this Agreement, and
 - 54.2.4 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

- 54.3 This clause does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

55 Review of this Agreement

- 55.1 The Parties agree to review this Agreement if any party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement and requests a review.
- 55.2 For the purposes of clause 55.1, 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.
- 55.3 For the purposes of addressing any matter arising from a review of this Agreement, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 55.4 If this Agreement 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 Agreement is entered into.
- 55.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Agreement is not a dispute for the purposes of the dispute resolution provisions of this Agreement.

56 Notices

- 56.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 56.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 56.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 56.2 If a Party gives the other Party 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 to the latest address or fax number.
- 56.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 56.3.1 delivered, when it is left at the relevant address,
- 56.3.2 sent by post, 2 business days after it is posted, or
- 56.3.3 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.
- 56.4 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.

57 Costs

- 57.1 The Landowner is to pay to the Council the Council's costs not exceeding \$3,500.00 of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- 57.2 The Landowner is also to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

58 Entire Agreement

- 58.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 58.2 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 Agreement was executed, except as permitted by law.

59 Further Acts

- 59.1 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 Agreement and all transactions incidental to it.

60 Governing Law and Jurisdiction

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

61 Joint and Individual Liability and Benefits

- 61.1 Except as otherwise set out in this Agreement:
 - 61.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
 - 61.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

62 No Fetter

- 62.1 Nothing in this Agreement 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.

63 Representations and Warranties

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

64 Severability

- 64.1 If a clause or part of a clause of this Agreement 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.
- 64.2 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 Agreement, but the rest of this Agreement is not affected.

65 Modification

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

66 Waiver

- 66.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 66.2 A waiver by a Party is only effective if it is in writing and only in relation to the particular obligation or breach in respect of which it is given.

67 GST

- 67.1 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.

- 67.2 Subject to clause 67.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply is to also pay the GST Amount as additional Consideration.
- 67.3 Clause 67.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 67.4 No additional amount is to be payable by the Council under clause 67.2 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.
- 67.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:
- 67.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices in respect of those Supplies;
- 67.5.2 that any amounts payable by the Parties in accordance with clause 67.2 (as limited by clause 67.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 67.6 No payment of any amount pursuant to this clause 67, 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.
- 67.7 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.
- 67.8 This clause continues to apply after expiration or termination of this Agreement.

68 Completion of Landowner's obligations under this Agreement

- 68.1 This clause applies when the Landowner has completed all of its obligations under this Agreement to the satisfaction of the Council.
- 68.2 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 Agreement to the satisfaction of the Council.
- 68.3 The Council is to issue the certificate referred to in clause 68.2 within 28 days of receiving the Landowner's application referred to in that clause.

69 Explanatory Note Relating to this Agreement

- 69.1 Appendix 2 contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 69.2 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.

Execution

Executed as an Agreement

Dated:

2 MARCH 2012

Executed by the Council:

[Redacted Signature]

General Manager

[Redacted Signature]

Witness/Name/Position:

Executed by the Landowner in accordance with s127 of the
Corporations Act 2001 (Cth):

[Redacted Signature]

Director/Name: Gentlemore Pty Ltd

[Redacted Signature]

Director/Name: Haloville Pty Ltd

[Redacted Signature]

Director/Name: Somersby Rural Supplies Land
Holdings Pty Ltd

[Redacted Signature]

Director/Name: Somersby Rural Supplies Pty Ltd

[Redacted Signature]

Company Secretary/Name: Gentlemore Pty Ltd

[Redacted Signature]

Company Secretary/Name: Haloville Pty Ltd

[Redacted Signature]

Company Secretary/Name: Somersby Rural
Supplies Land Holdings Pty Ltd

[Redacted Signature]

Company Secretary/Name: Somersby Rural
Supplies Pty Ltd

Appendix 1
(Clause 1.1)

Map - Sheet 1



Appendix 2

(Clause 69)

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**)

Description of the Land to which the Draft Planning Agreement Applies

Land means part of the Area 15 Land being Lot 33 DP 754405

The Area 15 Land is 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 Area 15 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 Area 15 LEP,
- the provision of infrastructure to meet the Development that will be made permissible by the Area 15 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 being the Cook Land, Crighton Land, Middlemiss Land, Moses Land, SAF Land and the Tate 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 Area 15 Land:
 - Environmental Management Land,
 - Environmental Offset Land,
 - Local Park, and
 - Link Road Parts A and B.
- makes provision for the Landowner to carry out of the following works in conjunction with the urban development of the Area 15 Land in certain circumstances:

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- Sewerage Services Work,
- Local Park Embellishment Work,
- Lake Ridge Drive Intersection Work,
- Link Road Part A Work,
- Link Road Part B Work,
- Mountain View Road Intersection Work Stage 1,
- Mountain View Road Intersection Work Stage 2,
- Establishment of the Environmental Management Land, and
- Management of the Environmental Management Land for three years after the land is dedicated to the Council or such other period or periods as the Parties agree.
- makes provision for the dedication of the following land of the Landowner (as applicable) in conjunction with the carrying out of the Development:
 - Environmental Management Land,
 - Environmental Offset Land, and
 - Local Park.
- makes provision for the following additional monetary contributions to be made in conjunction with the carrying out of the Development:
 - towards management of any Environmental Management Land, Environmental Offset Land or other environmental land within the Area 15 Land by the Council for a period of 17 years after the end of the Management Period subject to a refund arrangement in the event that Council obtains certain alternative funding for that ongoing management,
 - for water supply works.
 - for administration of Development Contributions, and
 - towards the dedication of land and works which the Landowner does not dedicate or carry out itself.
- prevents the carrying out of any part of the Development that will result in the creation of the 800th ET in the Area 15 Land and the Chevron Veld Land unless the Council has notified the Landowner in writing that the New Reservoir has been completed, or other satisfactory arrangements have been made.
- 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,
- provides for the Landowner to provide a security in the amount agreed to by the Council before carrying out certain Works and makes provision for the Council to call-up the

Security in certain circumstances including if the Landowner is in breach of the 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,
- 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 Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that public facilities provided by the Landowner under the Agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community, and
- providing a means that allows the wider 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.