

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Bradcorp Wilton Park Pty Limited
ABN 69 086 388 212

Planning Agreement

Environmental Planning and Assessment Act 1979



TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	6
1.1	Definitions	6
1.2	Interpretation	10
1.3	Benefits under this deed	11
1.4	Compliance with New Laws and new levies	12
1.5	Council and Authority requirements	12
2	OPERATION AND APPLICATION OF THIS DEED	12
2.1	Planning agreement under the Act	12
2.2	Application	13
3	INTERACTION BETWEEN THIS DEED AND THE SDA	13
3.1.	Owner's obligations under State Development Agreement	13
3.2	Community Governance Structure	14
3.3	Continuation of State Development Agreement	14
3.4	Transfer Deed and Education and Works Deed	14
3.5	Covenant Release/Caveat Withdrawal	15
4	APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT	15
5	COMMENCEMENT AND TERM OF THIS DEED	15
5.1	Commencement	15
5.2	Term	15
6	CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS	15
6.1	This deed not confidential	15
6.2	Other information confidential	15
7	DEVELOPMENT OF THE LAND	16
7.1	Acknowledgments by the Minister	16
8	DEVELOPMENT CONTRIBUTIONS	17
8.1	Owner to provide Development Contributions	17
8.2	Determination of Special Infrastructure Contribution	17
8.3	Acknowledgements	18
8.4	Contribution Offset Credits	18
9	INTEREST	19
9.1	Interest for late payment	19
10	ENFORCEMENT	19
10.1	Owner to provide security	19
11	REGISTRATION	20
11.1	Registration of deed	20

11.2	Evidence of registration	20
11.3	Release and discharge of deed	20
11.4	Owner's interest in Land	21
12	DISPUTE RESOLUTION	21
12.1	Not commence	21
12.2	Written notice of dispute	21
12.3	Attempt to resolve	21
12.4	Mediation	21
12.5	Court proceedings	22
12.6	Not use information	22
12.7	No prejudice	22
13	GST	22
13.1	Definitions	22
13.2	Intention of the Parties	22
13.3	Reimbursement	22
13.4	Consideration GST Exclusive	23
13.5	Additional Amounts for GST	23
13.6	Non monetary consideration	23
13.7	Assumptions	23
13.8	No merger	23
14	ASSIGNMENT	23
14.1	Consent	23
14.2	Dealings by the Minister	25
15	CAPACITY	25
15.1	General warranties	25
15.2	Power of attorney	25
16	REPORTING REQUIREMENT	25
17	OTHER MATTERS	27
17.1	Advice that the Land is affected by mining lease, etc	27
18	GENERAL PROVISIONS	27
18.1	Entire deed	27
18.2	Variation	27
18.3	Waiver	27
18.4	Further assurances	28
18.5	Time for doing acts	28
18.6	Governing law and jurisdiction	28
18.7	Severance	28
18.8	Preservation of existing rights	28
18.9	No merger	28
18.10	Counterparts	29
18.11	Relationship of Parties	29
18.12	Good faith	29
18.13	No fetter	29
18.14	Explanatory note	29
18.15	Expenses and stamp duty	29

18.16	Notices	30
SCHEDULE 1		31
SCHEDULE 2		33
SCHEDULE 3		34
SCHEDULE 4		35
SCHEDULE 5		38
ANNEXURE A		41
ANNEXURE B		42
ANNEXURE C		43
ANNEXURE D		44

THIS deed is dated

~~17 August~~ 2 October

2012

PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

BRADCORP WILTON PARK PTY LIMITED (ABN 69 086 388 212) of Level 4, 230 Victoria Road, Gladesville, New South Wales, 2111 (**Owner**)

INTRODUCTION:

- A** The Owner owns the Land and has appointed the Developer to take steps to carry out the Development.
- B** On 14 September 2005, the Owner and the Minister entered into the State Development Agreement.
- C** On 3 June 2010, the Transfer Deed was entered into.
- D** On 3 June 2010, the Education Contribution and Works Deed was entered into.
- E** From 16 September 2005 until the Commencement Date, the State Development Agreement together with the Transfer Deed and the Education Contribution and Works Deed governed the commitments and contributions of the Owner in relation to the Development.
- F** From the Commencement Date, this deed will govern the commitments and contributions of the Owner in relation to the Development.
- G** This deed was formed as a result of negotiations between the Minister and the Developer on behalf of the Owner following a recognition by both the Minister and the Owner that the State Development Agreement needed to be replaced by this deed for the following reasons:
 - (a) contributions required to be provided by the Owner to the Minister under the State Development Agreement needed to be varied to account for changes in government policy following a decision of the Premier of NSW in December 2008 to stimulate the State's housing industry (the **December 2008 Decision**). That decision prompted a change in the Department's planning policies relating to the framework for levying State infrastructure contributions. These policy changes are reflected in the Planning Circular. This deed implements the policy changes set out in the Planning Circular, reflects the agreement reached in relation to other

contributions and provides for a credit and offset system for regional contributions made;

- (b) the State Development Agreement needed to be updated to keep it in line with current practice; and
- (c) the State Development Agreement needed to be updated to recognise completed commitments and contributions.

- H** The Owner proposes to continue to carry out or procure to be carried out the Development on the Land with the assistance of the Developer.
- I** The Owner has made and proposes to make further Development Applications to the Consent Authority in respect of the Land.
- J** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- K** The Owner has offered to enter into this deed with the Minister to secure the Development Contributions in order to enable the Director-General to provide the certification required by the LEP.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each Party appearing in Schedule 2 or any new address notified by any Party to all other Parties as its new Address for Service.

Application means any application for any Approval.

Approval means any approval, consent, certificate, permit, endorsement, licence or condition or requirement issued by or on behalf of any Authority which is required by Law for the Commencement, carrying out or use of the Development.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, acting reasonably,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Commencement Date means the date on which this deed is executed by all of the Parties.

Community Governance Structure means the title, subdivision and management structure currently proposed for the Development as generally described in Annexure D.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other (including the Developer), or acquired by the Parties (including the Developer) in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party (including the Developer) as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may necessarily be considered to be of a confidential nature.

Consent Authority means the Authority having the function to determine an Application.

Contribution Amount means the respective notional value specified in the middle column of the table set out in Schedule 4 headed "Notional Value (at the date of execution) and Manner of Delivery" and attributed to each component of the Development Contributions.

Contribution Offset Credits means credits which accrue to the Owner as provided for in clause 8.4.

December 2008 Decision means the decision of the Premier of New South Wales referred to in paragraph G(a) of the Introduction.

Department means the Department of Planning and Infrastructure.

Developer means Lend Lease Communities (Wilton) Pty Limited (ABN 31 110 022 976) (formerly DLL Wilton Pty Limited).

Development means the development of the Land proposed to be carried out or procured by the Owner in accordance with the LEP, which is known as **Bingara Gorge**.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means the components of works in kind to be provided or payments to be made by the Owner specified in the first column of the table set out in Schedule 4 headed "Development Contribution".

Director-General means the Director-General of the Department from time to time.

Draft Plan of Subdivision means a draft plan of subdivision to create one or more Residential Allotments, Residual Lots or Englobo Lots.

Education Contribution and Works Deed means the Education Contribution and Works Deed dated 3 June 2010 between the Developer, the Minister for Education and Training and the Owner.

Englobo Lot means a lot comprising part of the Land which is created with the intention that it will be packaged for sale to a builder or developer to be further subdivided into two or more Residential Allotments.

Expert means an expert agreed by the Parties or, if they cannot agree, an expert nominated by the president or other chief executive of the professional body which serves or administers experts of the type most closely suited to determine the subject matter of the relevant certification required under this deed after a request by either Party.

Expert Reporting Date means 31 July.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

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

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

Land means the land described in Schedule 3 and shown in Annexure A of this deed.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

LEP means the Wollondilly Local Environment Plan 2011.

Owner Reporting Dates means 31 January and 31 July.

Party means a party to this deed. **Parties** has a corresponding meaning.

Plan of Subdivision means a relevant plan of subdivision for an area of the Land.

Planning Application means:

- (a) a Development Application; or
- (b) any other Application required under the Act,

which seeks approval for the subdivision of the Land.

Planning Circular means Planning Circular PS 08-017 entitled *Review of Infrastructure Contributions* issued by the Department on 23 December 2008.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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

Residential Allotment means a lot comprising part of the Land intended to be developed by construction of:

- (a) a dwelling house or two dwelling houses (whether attached or detached and commonly known as a duplex, dual occupancy dwelling or dwellings) (which for the purposes of this definition shall be deemed to be two separate Residential Allotments); or
- (b) a building or group of buildings containing three or more dwellings (including forms of residential buildings known as apartments, building houses, cluster housing, integrated housing, residential flat buildings, row houses, terrace houses, town houses or villas) (in each case such lot for the purposes of this deed is deemed to constitute a separate Residential Allotment in respect of each such dwelling, apartment, flat, terrace, town house, villa or similar dwelling),

but does not include a Residual Lot.

Residual Lot means any lot contemplated in any Draft Plan of Subdivision which is intended to be set aside for subsequent development as Residential Allotments or Englobo Lots during a later stage of the Development and which the Director-General determines to be a Residual Lot when issuing his Satisfactory Arrangements Certificate in relation to land referred to or contemplated in that Draft Plan of Subdivision.

Satisfactory Arrangements Certificate means a certificate issued by the Director-General that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

Special Infrastructure Contribution means a contribution determined in accordance with s94EE of the Act with respect to the Land.

State Development Agreement means the Wilton Park State Development Agreement dated 14 September 2005 between the Minister and the Owner.

State Government means the government of New South Wales, including its elected and appointed representatives.

Subdivision Certificate has the same meaning as in the Act.

Transfer Deed means the Deed relating to the transfer of the Bingara Gorge School Site dated 3 June 2010 between the Developer, the Minister for Education and the Owner.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the Parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;

- (e) **clause headings, the introduction and the table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a Party is a reference to a right or obligation of that Party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a Party on the basis that the Party or its lawyers were responsible for its drafting.

1.3 **Benefits under this deed**

The Minister agrees to advise the Consent Authority of the Development Contributions to be made by the Owner under this deed prior to the Consent Authority determining a development contribution under sections 94 and 94A of the Act (in relation to the proposed Development).

1.4 Compliance with New Laws and new levies

Without limiting clause 18.13 and subject to clause 8.2, if a Law is changed or a new Law comes into force (both referred to as **New Law**) or if a further levy is imposed by the State Government in relation to the development of the Land, and the Owner is obliged by the New Law or further levy to do something or pay an amount which it is already contractually obliged to do or pay under this deed or which is in addition to its obligation under this deed then, to the extent only that the relevant obligation is required under both the New Law or the further levy and this deed, compliance with the relevant obligation (or part of the obligation) under the New Law or the further levy will be taken to constitute compliance with the relevant obligation under Schedule 4 of this deed or will be given an appropriate credit for the Development Contributions set out in Schedule 4 as determined by the Minister.

1.5 Council and Authority requirements

- (a) If Council or an Authority require the Owner to do something or pay an amount, and an equivalent obligation is owed by the Owner to the Minister under or in connection with this deed, then to the extent of the duplication, compliance with the requirement of the Council or Authority will be taken to be compliance with the relevant obligation under Schedule 4 of this deed, or an appropriate credit will be given for the Development Contributions set out in Schedule 4 as determined by the Minister provided that the Owner may not claim the relevant credit in relation to the duplication until it has complied with paragraph (b), but the Owner may do so retrospectively once it has complied with paragraph (b).
- (b) If the Owner intends to rely upon paragraph (a), then promptly upon the Owner becoming aware of any potential duplication of obligations, the Owner must notify the Minister of the nature and extent of the duplication and consult with the Minister as to what would be an appropriate credit in relation to that duplication for the purposes of Schedule 4.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Planning agreement under the Act

- (a) The State Development Agreement was entered into in connection with the Wollondilly Local Environment Plan 1991 (amendment number 56) gazetted on 16 September 2005 (**2005 LEP Amendment**).

- (b) The 2005 LEP Amendment was, for the purposes of section 93F(3)(b)(i) of the Act, a change to an environmental planning instrument to which the State Development Agreement applied.
- (c) The Wollondilly Local Environment Plan 1991 (which incorporates the 2005 LEP Amendment) was repealed and replaced by the LEP.
- (d) Development Applications have been, and will continue to be, made in relation to the Development.
- (e) This deed replaces the State Development Agreement.
- (f) Accordingly, having regard to paragraphs (a) to (e), this deed is a planning agreement within the meaning of section 93F of the Act between a planning authority and a developer:
 - (i) who sought a change to an environmental planning instrument to which this deed applies; and
 - (ii) who has made, or proposes to make, a Development Application in relation to the Development.

2.2 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3 INTERACTION BETWEEN THIS DEED AND THE SDA

3.1 Owner's obligations under State Development Agreement

- (a) The Minister and Owner agree that all obligations up to the Commencement Date which are imposed on the Owner under the State Development Agreement are either:
 - (i) satisfied under the State Development Agreement;
 - (ii) replaced by the obligations imposed on the Owner in this deed; or
 - (iii) contained within the Transfer Deed or the Education Contribution and Works Deed.

- (b) Accordingly, the Minister acknowledges that the Owner has either:
 - (i) satisfied all of the obligations imposed on the Owner under the State Development Agreement; or
 - (ii) by executing this deed, the Transfer Deed and the Education Contribution and Works Deed, agreed to satisfy all remaining obligations imposed on the Owner under the State Development Agreement.
- (c) Notwithstanding any provision of this deed to the contrary, the levy on sale for the Natural Environment Management Fund specified in item 1 of Schedule 4, applies to the sale of all Residential Allotments and Englobo Lots (excluding any lots transferred to Authorities) including those lots:
 - (i) sold and settled prior to the Commencement Date;
 - (ii) sold prior to the Commencement Date but not yet settled; and
 - (iii) sold and settled after the Commencement Date.

3.2 Community Governance Structure

The Parties agree that:

- (a) the Owner has complied with clause 12.2 and Annexure D to the State Development Agreement;
- (b) the Owner intends to create and appropriately document the Community Governance Structure as part of the Development; and
- (c) as was the case under the State Development Agreement, the Owner is not required to provide a Bank Guarantee or any other form of security in relation to items 1, 2 and 3 of the table in Schedule 4 to this deed.

3.3 Continuation of State Development Agreement

Despite the provisions of clause 3.1, the Minister and the Owner agree that the State Development Agreement applies in relation to the Development between the Commencement Date (as defined in the State Development Agreement) and the Commencement Date (as defined in this deed).

3.4 Transfer Deed and Education and Works Deed

For the avoidance of doubt, the Minister and Owner agree that their obligations, and the obligations of the Developer, in the Transfer Deed and the Education and Works Deed remain until satisfied in accordance with those deeds.

3.5 Covenant Release/Caveat Withdrawal

Promptly after receipt by the Minister of the appropriate documents prepared by the Owner, the Minister must use best endeavours to promptly sign and return to the Owner:

- (a) a release of the public positive covenant contemplated in clause 3.6(a) of the State Development Agreement; and
- (b) a withdrawal of the caveat contemplated in clause 3.6(b) of the State Development Agreement,

and provide all reasonable assistance to the Owner to procure registration of those documents on the Register.

4 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

5 COMMENCEMENT AND TERM OF THIS DEED

5.1 Commencement

This deed commences on the Commencement Date.

5.2 Term

This deed will remain in force until it is terminated or revoked by operation of Law.

6 CONFIDENTIALITY AND PUBLIC ANNOUNCEMENTS

6.1 This deed not confidential

The terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any Party.

6.2 Other information confidential

- (a) The Parties acknowledge that:
 - (i) Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and

- (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- (b) Subject to paragraphs (c) and (d), each Party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party (including the Developer) who supplied the Confidential Information; and
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.
- (c) A Party (including the Developer) may disclose Confidential Information in the following circumstances:
 - (i) in order to comply with the Law or any listing rule; or
 - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

7 DEVELOPMENT OF THE LAND

7.1 Acknowledgments by the Minister

The Minister acknowledges that:

- (a) the Owner has engaged the Developer to assist it to develop the Land, and that it has or may enter into a development agreement or similar document to govern the arrangements between the Owner and the Developer;
- (b) the Owner and the Developer may develop the Land in the manner contemplated by the LEP and the Approvals obtained in relation to Development and those parties intend to sell or otherwise dispose of developed lots;

- (c) the developed lots will have a range of proposed purposes, including a golf course and associated facilities, retail use and commercial use;
- (d) the Owner will use the Land as security to fund the Development and to secure its obligations to the Developer; and
- (e) the Developer may act as the Owner's agent in relation to any rights or obligations in this deed.

8 DEVELOPMENT CONTRIBUTIONS

8.1 Owner to provide Development Contributions

The Owner undertakes to provide (or procure the provision) to the Minister or the Minister's nominee, the Development Contributions in accordance with the provisions of Schedule 4 to this deed.

8.2 Determination of Special Infrastructure Contribution

- (a) This clause will apply where:
 - (i) the Minister determines a Special Infrastructure Contribution; and
 - (ii) upon the date of determination of the Special Infrastructure Contribution, there are Development Contributions remaining to be provided by the Owner (in whole or in part).
- (b) If the determination of a Special Infrastructure Contribution specifies a rate or method of calculation for a contribution amount (**Special Infrastructure Contribution Amount**), that if applied to this deed would result in a Special Infrastructure Contribution Amount that is less than the Contribution Amount, having regard to the rate and method of calculation of a Contribution Amount, then:
 - (i) the Special Infrastructure Contribution Amount will be deemed to be the Contribution Amount for the purposes of this deed;
 - (ii) the Minister will not be required to refund any part of the Contribution Amount provided by the Owner to the extent that such amounts exceed the Special Infrastructure Contribution; and

- (iii) the Owner will be entitled to a credit to be offset against the aggregate balance of the Contribution Amount remaining to be provided by the Owner (in whole or in part) as at the date of the determination for an amount equal to the difference between:
 - (A) the aggregate balance of the Contribution Amount remaining to be provided by the Owner (in whole or in part) as at the date of the determination of the Special Infrastructure Contribution; and
 - (B) the Special Infrastructure Contribution Amount.

8.3 Acknowledgements

The Owner acknowledges and agrees that the Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose and has no obligation to repay the Development Contributions; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

8.4 Contribution Offset Credits

The Parties acknowledge and agree that:

- (a) by virtue of the operation of the December 2008 Decision in relation to the Development, the Owner has accrued credits relating to the Development Contributions provided before the Commencement Date equal to \$485,976.
- (b) by virtue of the operation of the December 2008 Decision in relation to the Development, the Owner will continue to accrue credits relating to Development Contributions to be provided under this deed at the rate of 50% of the value of the contribution between 23 December 2008 and 30 June 2012 or such higher proportion or later date as notified by the Minister from time to time; and 25% of the contribution on or after 1 July 2012 or such other higher proportion or later date as notified by the Minister from time to time, so that:
 - (i) up to 80% of the total value of the Development Contribution accrues progressively as a credit as the contribution is completed; and

- (ii) the remaining 20% will accrue upon practical completion of the Development Contribution;
- (c) the Owner may accrue further credits by the operation of other provisions of this deed;
- (d) the Owner may apply all accrued credits towards either:
 - (i) designated State public infrastructure within the Wilton Urban Release Area within the meaning of the LEP; or
 - (ii) where State Government policy changes, commitments and contributions of the Owner or the Developer in relation to other developments; and
- (e) the credits referred to within this clause 8.4 exist solely for the benefit of the Developer to the extent that the Owner holds the credits on behalf of the Developer, for the sole benefit of the Developer.

9 INTEREST

9.1 Interest for late payment

- (a) If the Owner fails to pay a Contribution Amount due to the Minister on the due date for payment, the Owner must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

10 ENFORCEMENT

10.1 Owner to provide security

The Owner has agreed to provide (or procure the Developer to provide) security to the Minister for the performance of the Owner's obligations under this deed by providing the Bank Guarantees to the Minister in accordance with the terms and procedures set out in **Schedule 5**.

11 REGISTRATION

11.1 Registration of deed

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Owner at its own expense will take all practical steps and otherwise do anything to procure:

- (a) the consent of each person who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed or an estate or interest in the Land; and
- (b) the execution of any documents; and
- (c) the production of the relevant certificates of title; and
- (d) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

11.2 Evidence of registration

The Owner will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

11.3 Release and discharge of deed

If the Owner or the Developer has provided a Bank Guarantee in accordance with Schedule 5 of this deed and the Owner is not otherwise in default under this deed (as determined by the Director-General (acting reasonably) and notified to the Owner in writing), when the Owner applies for a Subdivision Certificate in relation to any part of the Land, the Minister must (at the Owner's cost) promptly:

- (a) provide a release and discharge (in immediately registrable form) of this deed in respect of that part of the Land; and
- (b) do all things necessary to enable the extinguishment of this deed from the title of that part of the Land,

and the Minister agrees to use best endeavours to procure the outcomes referred to in paragraph (a) and (b) above as soon as practicable after the relevant request.

11.4 Owner's interest in Land

The Owner represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 11.1 of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 11.1(a) to assist, cooperate and to otherwise do all things necessary for the Owner to comply with its obligations under clause 11.

12 DISPUTE RESOLUTION

12.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 12.

12.2 Written notice of dispute

A Party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other Party specifying the nature of the dispute.

12.3 Attempt to resolve

On receipt of notice under clause 12.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

12.4 Mediation

If the Parties do not agree within 21 Business Days of receipt of notice under clause 12.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of

NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

12.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 12.2 then any Party which has complied with the provisions of this clause 12 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

12.6 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 12 is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under this clause 12 for any purpose other than in an attempt to settle the dispute.

12.7 No prejudice

This clause 12 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

13 GST

13.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

13.2 Intention of the Parties

The Parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the Parties.

13.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to

which any entity is entitled for the acquisition to which the cost, expense or amount relates.

13.4 Consideration GST Exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 13.

13.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a Party under or in connection with this deed (the **GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Owner will ensure that:

- (a) the Owner makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Owner provides a Tax Invoice to the Minister.

13.6 Non monetary consideration

Clause 13.5 applies to non-monetary consideration.

13.7 Assumptions

The Owner acknowledges and agrees that in calculating any amounts payable under clause 13.5 the Owner will assume the Minister is not entitled to any input tax credit.

13.8 No merger

This clause will not merge on completion or termination of this deed.

14 ASSIGNMENT

14.1 Consent

- (a) This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except, subject to **clause 14.1(c)**, in the case of the Owner:
 - (i) to a related body corporate (within the meaning of section 50 of the *Corporations Act 2001*), providing that the Owner:

- (A) must notify the Minister of the name of the assignee as soon as practicable prior to the assignment occurring; and
 - (B) must guarantee the obligations of that related body corporate under or in connection with the deed referred to in paragraph (iii) below and provide to the Minister a duly executed deed (on terms reasonably acceptable to the Minister) which documents that guarantee; or
- (ii) to any other person, with the prior consent of the Minister, which must not be unreasonably withheld if he is reasonably satisfied that the assignee has sufficient assets, resources and expertise to perform all of the Owner's obligations under this deed,
- and, in either case prior to any such assignment:
- (iii) the Owner delivers to the Minister a deed signed by the assignee which contains provisions under which the assignee agrees to comply with all of the obligations of the Owner under this deed as if it were joined as a party to this deed in the place of the Owner (as the case may be), including obligations which arose before the assignment;
 - (iv) any default by the Owner under any provision of this deed (as determined by the Minister (acting reasonably) and notified to the Owner in writing) has been remedied by the Owner or waived by the Minister on such conditions as the Minister may determine in his absolute discretion in relation to that waiver;
 - (v) the Owner pays the Minister's reasonable costs in relation to that assignment; and
 - (vi) the Minister is satisfied acting reasonably, having regard to all evidence and other supporting material provided by the Owner, that the proposed assignee has obtained, whether by way of assignment by the Owner, or otherwise, the same rights in relation to the development of the Land (or the relevant part of the Land) as the Owner had prior to that assignment, in order to enable that assignee to fulfil all obligations to be performed by that assignee under or by virtue of this deed.
- (b) If the Owner satisfies the requirements of paragraph (a), the Owner will be fully released from its obligations under this deed (subject to any guarantee obligations referred to or contemplated by paragraph (a)(i)(B) above).
- (c) The Owner must not assign the rights or benefits of this deed to any person until the date this deed is registered on title to all those parts of the Land on which this Planning Agreement is to be registered pursuant to **clause 11.1**.

14.2 Dealings by the Minister

- (a) If another Authority takes over the functions of the Minister under this deed, or if the Minister determines that it is desirable for this to happen, then the Minister may assign or novate or otherwise deal with its rights and obligations under this deed to give effect to this change, and the Owner agrees to enter into such documentation, at the cost of the Minister, as may be necessary to confer on the new Authority the rights and obligations of the Minister under this deed.
- (b) Normally any such action would take place by a statutory novation or delegation. However, this clause applies to the extent that it is necessary.
- (c) Without restricting clause 18.13 ("No fetter"), the Minister must not otherwise deal with its rights and obligations under this deed.

15 CAPACITY

15.1 General warranties

Each Party warrants to each other Party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

15.2 Power of attorney

If an attorney executes this deed on behalf of any Party, the attorney declares that it has no notice of the revocation of that power of attorney.

16 REPORTING REQUIREMENT

- (a) Each year, on or before the Owner Reporting Dates, the Owner must deliver to the Director-General a report which must include those matters set out in paragraphs (c) and (d), as applicable.
- (b) Each year, on or before the Expert Reporting Date, the Owner must deliver to the Director-General a report prepared by an Expert which must include those matters set out in paragraphs (c) and (d) and (e), as applicable.
- (c) If the Owner has not provided a Development Contribution during the period since the last Owner Reporting Date or Expert Reporting Date, the relevant report must include:

- (i) a description of the status of the Development;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iii) certification of the performance of relevant stages or elements of the Development Contributions;
 - (iv) an estimated date for when the Owner expects to lodge the next Planning Application; and
 - (v) an account of the Contribution Offset Credits which have accrued in accordance with clause 8.4 during the period since the last reporting date.
- (d) If the Owner has provided one or more Development Contributions under this deed, the relevant report must include:
- (i) details of all Development Consents granted in relation to the Development;
 - (ii) a schedule that details all Development Contributions provided under this deed as at the date of the report;
 - (iii) certification of the performance of relevant stages or elements of the Development Contributions;
 - (iv) an estimated date for when the Owner expects to lodge the next Planning Application; and
 - (v) an account of the Contribution Offset Credits which have accrued in accordance with clause 8.4 during the period since the last reporting date.
- (e) Whether or not the Owner has provided one or more Development Contributions under this deed, the report prepared by the Expert must also include verification by the Expert:
- (i) that the Sewage Treatment Plant system referred to in item 4 of the table to Schedule 4 has the necessary licence(s) and the capacity to service the extent of the Development currently implemented and expected in the next 12 months; and
 - (ii) as to whether the Sewage Treatment Plant system requires additional (modular) augmentation to service the expected demand in the next 12 months; and
 - (iii) when the expert is due to report again.

- (f) Upon the Director-General's request, the Owner must deliver to the Director-General all documents and other information which, in the reasonable opinion of the Director-General are necessary for the Director-General to assess the status of the Development.
- (g) Upon the Director-General's request the Owner must provide a further report prepared by either the Owner or an Expert (as requested by the Director-General) which must include those matters set out in paragraphs (c), (d) and (e), as applicable (the ***Requested Report***).
- (h) The Requested Report referred to in paragraph (g) must be provided within 60 days of the Director-General's request. The Minister agrees that the Owner is only required to provide one Requested Report within each financial year.

17 OTHER MATTERS

17.1 Advice that the Land is affected by mining lease, etc

The Owner must implement appropriate measures to procure that all prospective purchasers for any part of the Land are notified of the potential for coal mining, associated surface gas drainage and potential subsidence from coal mining on or near the Land.

18 GENERAL PROVISIONS

18.1 Entire deed

This deed constitutes the entire agreement between the Parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the Parties, whether orally or in writing.

18.2 Variation

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

18.3 Waiver

A right created by this deed cannot be waived except in writing signed by the Party entitled to that right. Delay by a Party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a Party of a right operate as a subsequent waiver of the same right or of any other right of that Party.

18.4 Further assurances

Each Party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

18.5 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

18.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

18.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

18.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a Party before the expiration or termination date.

18.9 No merger

Any right or obligation of any Party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

18.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

18.11 Relationship of Parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or to pledge any other Party's credit.

18.12 Good faith

Each Party must act in good faith towards all other Parties and use its best endeavours to comply with the spirit and intention of this deed.

18.13 No fetter

Nothing in this deed shall be construed as requiring either the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

18.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

18.15 Expenses and stamp duty

- (a) The Owner must pay its own and the Minister's reasonable legal costs and disbursements (up to a maximum amount of \$15,000 excluding GST) in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Owner must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Owner must pay all stamp duty assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (together with registration fees, if applicable).

- (d) The Owner must provide the Minister with bank cheques in respect of the Minister's costs pursuant to paragraphs (a) and (b).
 - (i) where the Minister has provided the Owner with written notice (in the form of a tax invoice) of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Owner with prior written notice (in the form of a tax invoice) of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

18.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending Party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.1)

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

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Owner has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<p style="text-align: center;">Yes</p> <p style="text-align: center;">Yes</p> <p style="text-align: center;">Yes</p>
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	See clause 2.1
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	Yes
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 12
Enforcement of this deed – (section 93F(3)(g))	See clause 10
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 18.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 11)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 1.1(c) of Schedule 4)

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: Director-General

Address: Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Owner

Contact: Company Secretary

Address: Bradcorp Wilton Park Pty Limited
Level 4
230 Victoria Road
GLADESVILLE NSW 2111

Facsimile No: (02) 8877 0077

With a copy to:

Contact: Company Secretary

Address: Lend Lease Communities (Wilton) Pty Limited
Level 4
30 The Bond
30 Hickson Road
MILLERS POINT NSW 2000

Facsimile No: (02) 9383 8138

SCHEDULE 3**Land (clause 1.1)****1 Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
5	270536	5/270536
8	270536	8/270536
9	270536	9/270536
10	270536	10/270536
11	270536	11/270536
14	270536	14/270536
15	270536	15/270536
16	270536	16/270536
17	270536	17/270536
33	280014	33/280014
24	280028	24/280028
168	280010	168/280010

SCHEDULE 4**Development Contributions (clause 5)****2 Development Contributions**

The Owner undertakes to provide the Development Contributions in the manner set out in the table below:

Development Contribution	Notional Value (at date of execution) and Manner of Delivery	Timing
1. Developer levy on sales for Natural Environment Management Fund		
Owner must contribute 1% of revenue net of GST from all sales of Residential Allotments and Englobo Lots (excluding any lots transferred to Authorities) with those contributions to be held in the Environmental Fund (being an account in the name of the legal entity responsible for the EPR Lands in Annexure B).	\$5,336,214 (security not applicable)	Payment of funds quarterly.
2. EPR Lands		
Progressive creation and transfer by the Owner of land identified as EPR Lands in Annexure B to the legal entity responsible for those lands.	\$17,500,000 (security not applicable)	<p>The relevant percentage of EPR Lands must have been transferred to the legal entity responsible for the EPR Lands in the Community Governance Structure in accordance with the following stages:</p> <ul style="list-style-type: none"> • 10% of EPR Lands created prior to registration of Draft Plan of Subdivision for 251 Residential Allotments; • 30% of EPR Lands created prior to registration of Draft Plan of Subdivision for 451 Residential Allotments; • 60% of EPR Lands created prior to registration of Draft Plan of Subdivision for 801 Residential Allotments; • 100% of EPR Lands created prior to registration of Draft Plan of Subdivision for 1001 Residential Allotments.

<p>3. Community association Environmental Fund</p> <p>Operation of an annual community levy to a maximum of \$250,000 on registration of the Draft Plan of Subdivision for the 1,165th Residential Allotment.</p> <p>Community Governance Structure must oblige members of the community association to contribute to Environmental Fund to the legal entity established under item 1 above.</p>	<p>\$3,108,291 (security not applicable)</p>	<p>On registration of the Draft Plan of Subdivision for the 1,165th Residential Allotment.</p>
<p>4. STP System</p> <p>The Owner must, at its own expense and risk, provide an STP system within the Bingara Gorge project located at the site within the Land identified as "Sewer Treatment Plant" on the plan annexed as Annexure C with sufficient capacity to treat and dispose of all waste water from the Development.</p>	<p>\$5,625,000 (works in kind)</p>	<p>In each 31 July the STP system must have the necessary licences(s) and the necessary capacity to service the extent of the Development currently implemented and the extent of Development expected in the next 12 months.</p>
<p>5. Sound Barriers to F5 Hume Highway and Picton Road</p> <p>The Owner must, at its own expense and risk, provide sound amelioration measures to the F5 Hume Highway and Picton Road at the locations and according to all specifications reasonably required by the Relevant Agency in order to adequately ameliorate the impact of sound from the F5 Hume Highway and Picton Road to Residential Allotments.</p> <p>The Owner must confirm the sound amelioration measures required by the Relevant Agency.</p> <p>Subsequent to confirmation from the Relevant Agency, the Owner must construct the sound amelioration measures to the F5 Hume Highway and Picton Road at the locations (shown as "Sound Barrier to F5 (Hume Highway)" and "Sound Barrier to Picton Road" on the plan annexed as Annexure C) and according to all specifications reasonably required by the Relevant Agency.</p>	<p>\$3,790,000 (works in kind)</p>	<p>The sound amelioration measures must have been completed prior to registration of the Draft Plan of Subdivision for any Residential Allotment situated within 200 metres of either the F5 Hume Highway or Picton Road (as applicable) in accordance with all design specifications and other reasonable requirements of the Relevant Agency.</p>

<p>6. Internal Spine Road</p> <p>The Owner must, at its own expense and risk, construct an internal spine road according to all design, specification and other reasonable requirements of the Relevant Agency, being a carriageway with an 11 metre width (shown as "Spine Road (Future)" on the plan annexed as Annexure C) and adequately connected to Picton Road and to the F5 Bridge (shown as "Highway Bridge Crossing" on the plan annexed as Annexure C) and to dedicate (or otherwise transfer) that Internal Spine Road to the Relevant Agency.</p>	<p>\$427,000 (works in kind)</p>	<ul style="list-style-type: none"> • The Owner must confirm to the Minister in writing the timeline for the staged delivery and have completed the scope and design of the Internal Spine Road in accordance with the requirements of the Relevant Agency prior to the registration of the 451st Residential Allotment. • The Owner must have completed the Internal Spine Road (on a staged basis) by the times determined by the Owner and the Relevant Agency and in accordance with all design specifications and other reasonable requirements of the Relevant Agency. • The Owner must have dedicated the completed Internal Spine Road to the Relevant Agency.

SCHEDULE 5

Security terms (clause 10)

1 Owner to provide Bank Guarantees

- (a) In order to secure the performance by the Owner of items 4, 5 and 6 of the table in Schedule 4, the Owner has agreed to provide security in the form of Bank Guarantees.
- (b) The Bank Guarantees must:
 - (i) name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) The Parties agree that the requirement to secure the Owner's obligations with the Bank Guarantee under this Schedule 5 is:
 - (i) a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act; and
 - (ii) a pre-condition to the issue of a Satisfactory Arrangements Certificate.

2 Bank Guarantees

- (a) Upon execution of this deed, the Owner must provide security to the Minister in the form of a Bank Guarantee for a face value equivalent to \$2,500,000.
- (b) Subject to receipt by the Minister of a certificate from the Expert in accordance with paragraph (c), from 1 July 2016 the Owner may replace the security referred to in paragraph (a) with a Bank Guarantee for a face value equivalent to \$1,000,000.
- (c) If the Owner wishes to replace the Bank Guarantee referred to in paragraph (a) with the Bank Guarantee referred to in paragraph (b), it must provide to the Minister a certificate from the Expert which confirms that the notional value of the Owner's remaining obligations under items 4, 5 and 6 of the table in Schedule 4 for each remaining year of the Development is less than \$1,000,000.
- (d) From the date of execution of this deed until the date that the Owner has provided the Development Contributions in full, the Minister will be entitled to retain the relevant Bank Guarantee.

3 Claims under Bank Guarantees

- (a) The Minister may call upon a Bank Guarantee where the Owner fails to perform (within the time frame set out in the table in Schedule 4) its obligations under items 4, 5 or 6 of the table in Schedule 4 and retain and

apply such monies towards the costs and expenses incurred by the Minister in rectifying any such default by the Owner.

- (b) Prior to calling upon a Bank Guarantee, the Minister must give the Owner not less than 10 Business Days written notice.
- (c) If :
 - (i) the Minister calls upon a Bank Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any such default by the Owner; and
 - (iii) has notified the Owner of the call upon the Bank Guarantee in accordance with paragraph (b),

then the Owner must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that the Owner has performed its obligations under items 4, 5 or 6 of the table in Schedule 4 in full, the Minister is in possession of a Bank Guarantee for the relevant face value referred to in clause 2 of this Schedule 5.

4 Release of Bank Guarantees

If:


- (a) the Owner has performed its obligations under items 4, 5 or 6 of the table in Schedule 4; and
- (b) the whole of the monies secured by the Bank Guarantees provided by the Owner have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return to the Owner the Bank Guarantee provided by the Owner (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be).

EXECUTED as a deed

Signed sealed and delivered for and on behalf of the **Minister for Planning and Infrastructure** in the presence of:


Signature of Witness


Signature of the Minister for Planning and Infrastructure (delegate)

FELICITY NO
Name of Witness in full

IAN REYNOLDS
Minister for Planning and Infrastructure (delegate)

Signed sealed and delivered by
Bradcorp Wilton Park Pty Limited
ACN 086 388 212 in accordance with
section 127 of the Corporations Act:

)
)
)




Signature of Director

GRAEME J KELLY
Name of Director


Signature of Director/Secretary

MARK E MINOGUE
Name of Director/Secretary

ANNEXURE A

Plan of Land

Title:

**ANNEXURE A:
PLAN OF LAND**

Legend:



Land to which the VPA applies

Project:



Prepared by::



Lend Lease

Issue: Issue A

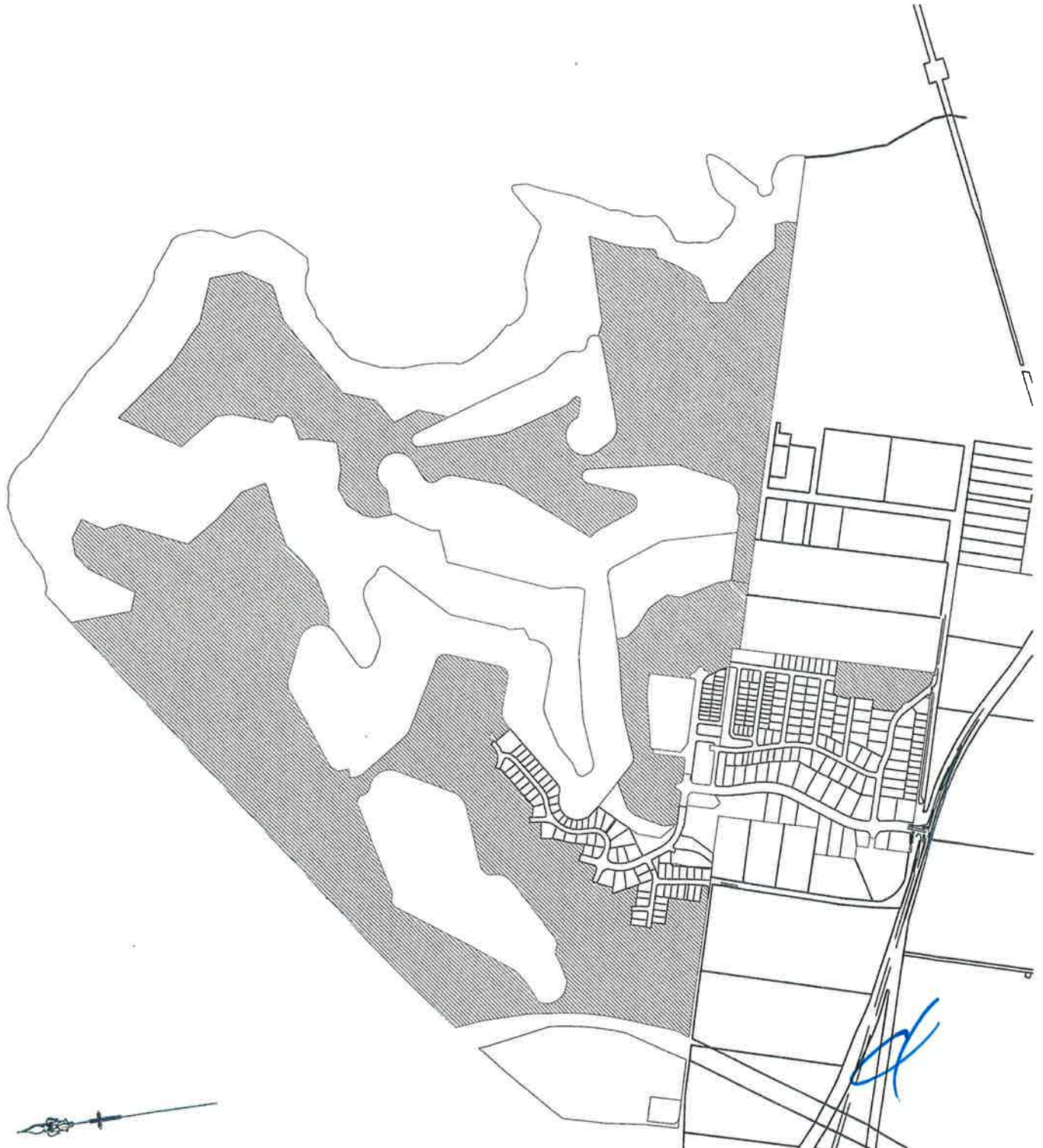
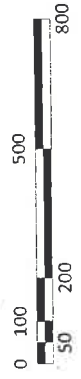
DWG by: NAH

Checked by: RB

Date: 22.06.12

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Scale: 12,000 @ A3



ANNEXURE B
Plan of EPR Land

LEGEND



COMMUNITY LAND TO BE DEDICATED FOR ENVIRONMENTAL PROTECTION AND COMMUNITY RECREATION UNDER THE CARE AND MANAGEMENT OF THE ENVIRONMENTAL TRUST (LOT 1 IN D.P. 270536)



GOLF COURSE LAND (LOTS 205, 206, 207 AND 208 IN D.P. 1104390)



ENVIRONMENTALLY SIGNIFICANT LAND BOUNDARY



Bingara GORGE
WILTON

COMMUNITY,
ENVIRONMENTAL
PROTECTION AND
RECREATION LAND



Lend Lease

PREPARED BY:

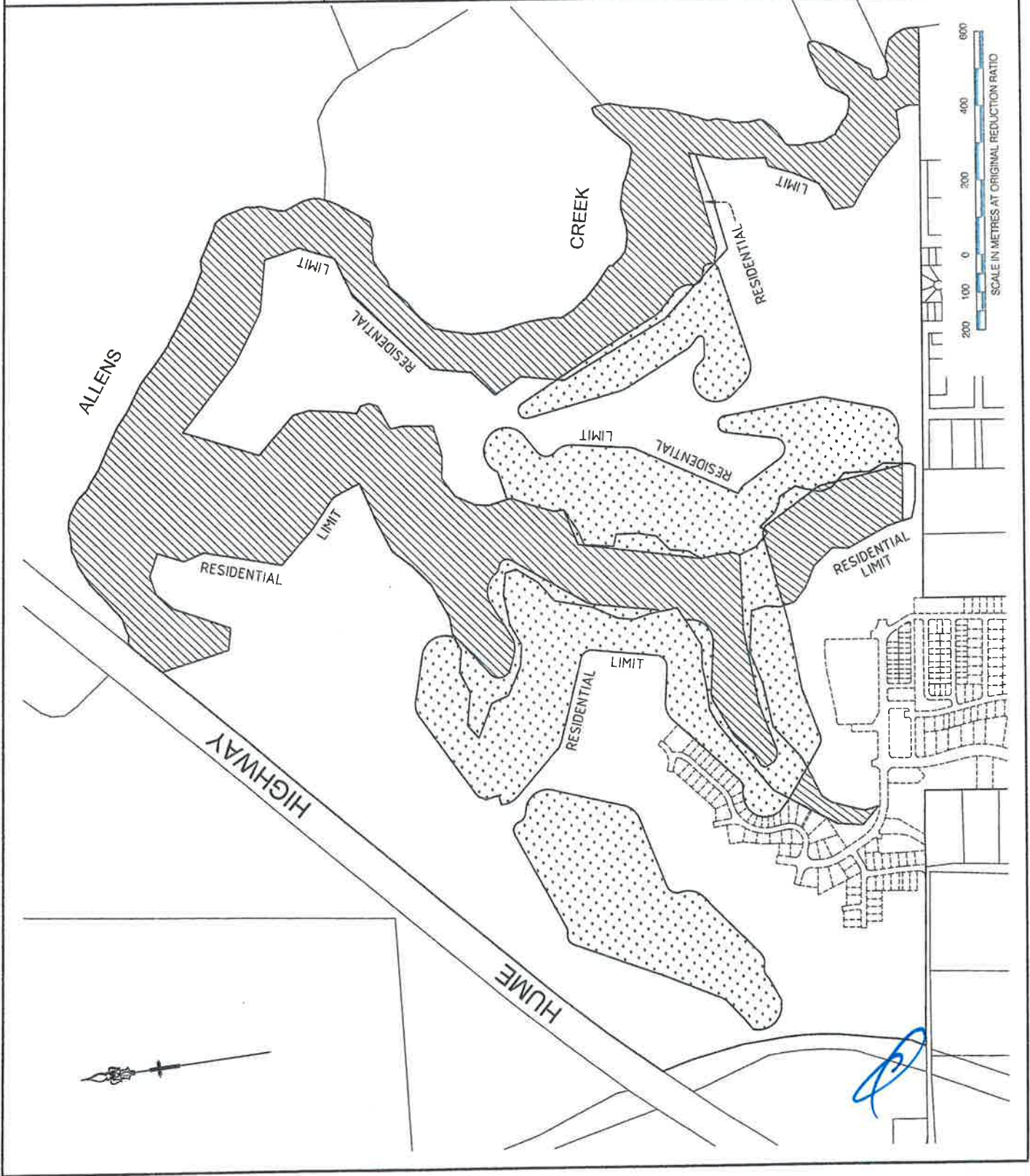


insites.com.au

REF: D367SW_P296a

SCALE: 1:10,000

DATE: 21/05/2012



ANNEXURE C

Plan of STP, Sound Barriers and Spine Road

Title:

ANNEXURE C: PLAN OF STP, SOUND BARRIERS AND SPINE ROAD.

Legend:

- Sound Barrier to F5 (Hume Highway)
- Sound Barrier to Picton Road
- Spine Road (Constructed)
- Spine Road (Future)
- Sewer Treatment Plant

Project:



Prepared by::



Lend Lease

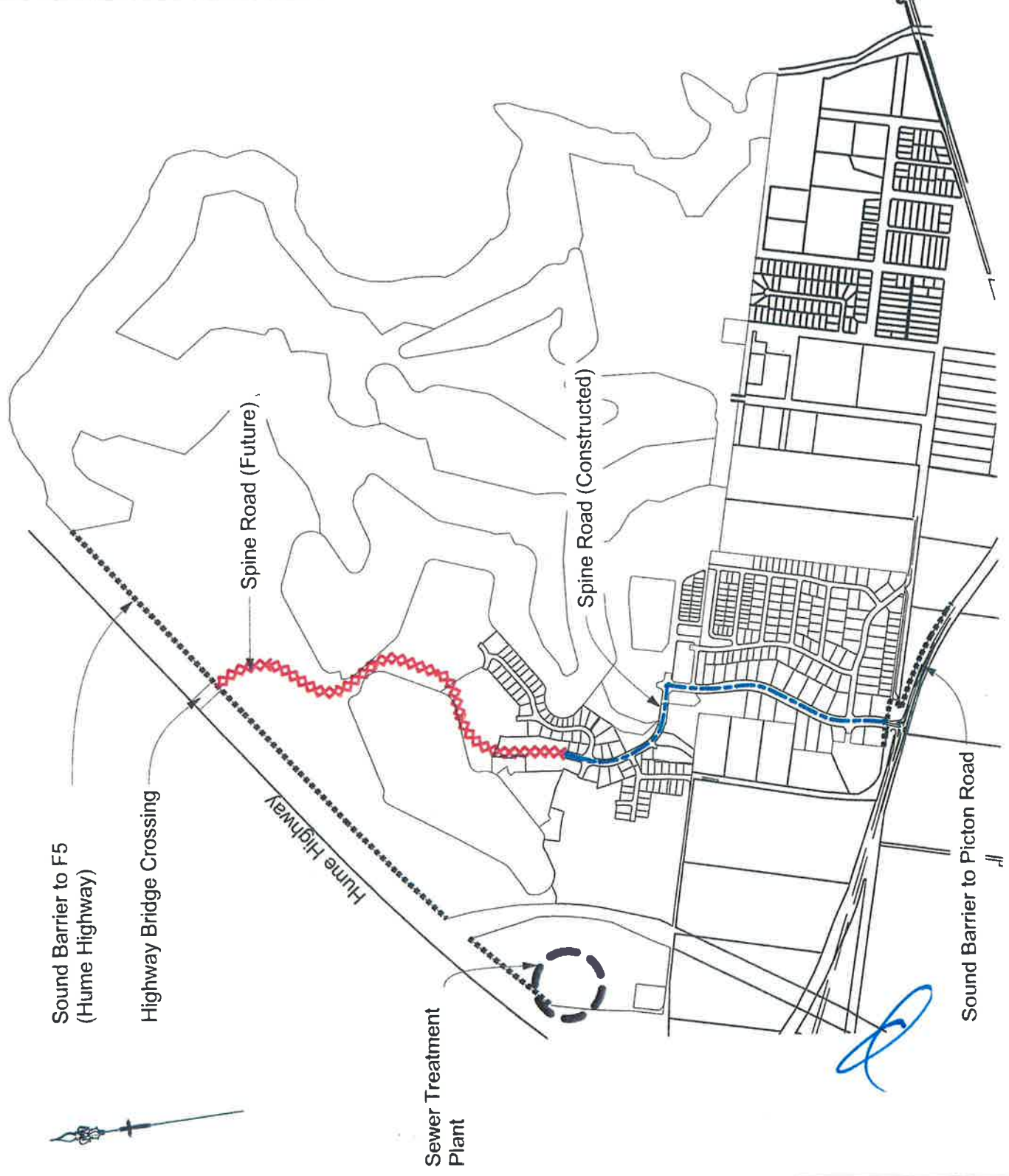
Issue: Issue A

DWG by: NAH Checked by: RB

Date: 22.06.12

Scale: 1:12,000 @ A3

Scale: 12,000 @ A3



ANNEXURE D

Community Governance Structure

1 Proposed Community Governance Structure

The Owner currently intends to create a Community Governance Structure based on the following:

- (a) the residential lot owners at Bingara Gorge may each be members of a subsidiary scheme that forms a part of a larger community scheme, currently registered at the LPI as Community Scheme DP270536 or any other scheme to be created under the *Community Land Development Act 1989 (NSW)* (**Residential Community Scheme**);
- (b) the retail lot owners at Bingara Gorge may not be members of the Residential Community Scheme. Retail lots will be severed from the Residential Community Scheme;
- (c) the employment land at Bingara Gorge does not form a part of the Residential Community Scheme and it is intended that this will remain the case;
- (d) the operator of the recycled water treatment plant may contract directly and separately with each lot owner at Bingara Gorge to provide sewerage and recycled water services to that lot;
- (e) the Owner will form the environmental trust as set out in clause 2 of this Annexure D; and
- (f) Bingara Gorge may not be governed by an "umbrella" entity linking the Residential Community Scheme with the other land uses at Bingara Gorge. Instead each lot owner (through its own governance body, if applicable, eg a community association) may decide, on its own accord, who its service providers will be and this may result in some of these lot owners forming an informal body that works collectively to procure bulk services to their respective lands.

2 Environmental

The Community Governance Structure must provide for all those relevant Development Contributions which are to be delivered under that structure, including:

- (a) the establishment of an entity responsible for:
 - (i) the management of community owned Community Environmental Protection and Recreation Lands as shown in the plan in Annexure B on a sound commercial and environmental basis;

- (ii) the provision of recreation, leisure and education opportunities and pathway networks to meet the needs and desires of the Bingara Gorge community (being the community created from the Development); and
- (iii) the promotion of environmental awareness within the community;
- (b) the ability for the relevant entity created to employ staff, own assets and enter into contracts for the purposes of carrying out its activities;
- (c) the ability for the relevant entity to derive an income from the use of the Community Environmental Protection and Recreation Lands, grants, sponsorships, partnerships and services which the entity may provide, investment of seed funds, community levies and other sources;
- (d) the provision of a secure source of funding on a recurrent basis in the form of levies from the Bingara Gorge community;
- (e) the creation of a flexible arrangement for determining the amount of contributions in the form of levies applied to various community schemes created;
- (f) the provision of a mechanism to receive seed funding from the Owner in the form of a 1% levy on the sale of Residential Allotments and Englobo Lots;
- (g) the creation of a structure which prevents the seed funding provided by the Owner from being called upon to meet any potential liabilities of community associations which may be established on the Land;
- (h) the provision of further land to be added to the relevant entity in the future;
- (i) the creation of controlled public access rights to the Community Environmental Protection and Recreation Lands where controlled access may include restrictions to use and access to certain areas or at certain times in accordance with a plan of management so as to protect the bushland and activities of the environmental management entity; and
- (j) the creation of membership categories of the relevant entity other than members of the community schemes created on the Land.

Draft Planning Agreement

Minister for Planning and Infrastructure and Bradcorp Wilton Park Pty Limited Explanatory Note

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement (the "**Planning Agreement**") prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the "**Act**").

This Explanatory Note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

Parties to the Planning Agreement

The parties to the Planning Agreement are Bradcorp Wilton Park Pty Limited ABN 69 086 388 212 (the "**Owner**") and the Minister for Planning and Infrastructure ABN 38 755 709 681 (the "**Minister**").

Description of the Subject Land

The Planning Agreement applies to those parts of the land the details for which are set out in Schedule 3 and shown in the plan forming Annexure A of the Planning Agreement (the "**Land**"). The site is referred to as Bingara Gorge and is located approximately 80km south-west of the City of Sydney and 35km west of Wollongong. The Bingara Gorge site covers approximately 450 hectares but the remaining residential developable land over which the Planning Agreement is to be registered totals approximately 175 hectares. The remainder of the site is primarily made up of community owned environmental protection and recreation ("**EPR**") lands, an 18 hole golf course and land upon which commercial, employment and community facilities are to operate (the "**Development**").

Description of the Change to the Environmental Planning Instrument and the Proposed Development

It is proposed that a Planning Agreement be entered into to replace an earlier State Development Agreement entered into on 14 September 2005 (the "**SDA**"). The SDA was entered into in connection with the Wollondilly Local Environment Plan 1991 (amendment number 56) gazetted on 16 September 2005 (the "**2005 LEP Amendment**"). The 2005 LEP Amendment was, for the purposes of section 93F(3)(b)(i) of the Act, a change to an environmental planning instrument.

The Wollondilly Local Environment Plan 1991 (which incorporates the 2005 LEP Amendment) was repealed and replaced by the Wollondilly Local Environment Plan 2011, which is the environmental planning instrument which the Planning Agreement is entered into in connection with.

Since the commencement of the development in 2005, development applications have been made in relation to the development. Development applications will continue to be made for the life of the development.

Summary of Objectives, Nature and Effect of the Planning Agreement

The SDA provided that the Owner will make various Development Contributions towards State Infrastructure. Many of the Development Contributions set out within the SDA have now been provided by the Owner. The Planning Agreement provides that the remaining Development Contributions be provided by the Owner, comprising the following:

- a Sewage Treatment Plant to service the Development;
- a dedication of approximately 117 hectares of land as environmental protection and recreation lands for community ownership;
- the construction of sound barriers protecting residential lots bordering the F5 Hume Highway and Picton Road;
- the construction of an internal spine road through the Development; and
- the creation of a Natural Environmental Management Fund and Community Association Environment Fund for the EPR lands.

The Planning Agreement contains a schedule (being Schedule 4) setting out the timing for delivery of the Owner's Development Contributions.

The objective of the Planning Agreement is to facilitate the delivery of the Owner's Development Contributions and to make provision for infrastructure to meet certain demands created by the Development.

The nature of the Planning Agreement is a contractual relationship between the Minister and the Owner for the provision of Development Contributions to support the Development and how they will be provided.

The effect of the Planning Agreement is that the Owner will contribute the Development Contributions in the manner provided for by the document.

Assessment of Merits and Impact of Planning Agreement

The Planning Agreement satisfies the objective of making provision for infrastructure to meet certain demands created by the Development. Arising from the Planning Agreement, the public will gain the benefit of the Development Contributions. The Community Governance Structure (detailed in Annexure B to the Planning Agreement) will provide for the dedication of the environmentally protected lands and the establishment and funding of the Natural Environmental Management Fund and the Community Association Environment Fund.

The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purposes:

- the provision of transport or other infrastructure relating to land;
- the provision of public amenities or public services; and
- the conservation or enhancement of the natural environment.

The Minister and the Owner have assessed the Planning Agreement and hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by committing the Owner to make contributions towards State infrastructure.

How the Planning Agreement manages the issuing of subdivision certificates

The Planning Agreement specifies that certain requirements of the Planning Agreement must be complied with before a subdivision certificate may be issued.

Whether the Planning Agreement conforms with any capital works program

The Minister does not have a capital works program in place.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the following objects of the Act:

- the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment;
- the promotion and co-ordination of the orderly and economic use and development of land;
- the provision of land for public purposes; and
- ecologically sustainable development.

The Planning Agreement promotes the objects of the Act set out above by requiring the Owner to provide the items set out in this Explanatory Note under the heading "*Summary of Objectives, Nature and Effect of the Planning Agreement*".

This purpose represents an important public benefit, and the Owner's offer to contribute towards this purpose will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

The Minister has formed the opinion that the substance of the VPA is secured by suitable means.

Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.