



**UNDER SEPARATE COVER
ATTACHMENTS**

**ORDINARY MEETING
13 AUGUST 2024**

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City Planning

EXHIBITION OF DRAFT PLANNING AGREEMENT AND DRAFT WORKS IN KIND/MATERIAL PUBLIC BENEFIT AGREEMENT POLICIES 2024

Draft Voluntary Planning Agreement Policy 2024 (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 1

Number of Pages: 41

Maitland City Council
Planning Agreements Policy 2024

Date Approved:

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lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

LTL Pty Ltd trading as **Lindsay Taylor Lawyers** • ABN 78 607 889 887

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Part 1 - Introduction**1 Definitions of terms**

affordable housing has the same meaning as in section 1.4(1) of the EPA Act.

Contributions Plan means a contributions plan approved by the Council under section 7.18 of the EPA Act and in force.

Contributions Plan Category means a category of public amenities or public services specified or described in the works schedule in a Contributions Plan.

Council means Maitland City Council.

Dedication of land includes dedication of:

- (a) land in stratum (whether or not within a building),
- (b) lots in a strata plan,
- (c) interests in land such as but not limited to easements and rights of way.

Department means the NSW Department of Planning and Environment.

developer means person who has:

- (a) sought a change to an environmental planning instrument, or
- (b) made or proposes to make a development application (including a person who has made or proposes to make an application to modify a development consent), or
- (c) entered into an agreement with or is otherwise associated with, a person to whom paragraph (a) or (b) applies.

development application has the same meaning as in section 1.4(1) of the EPA Act

development contribution means the provision made by a developer under a planning agreement being a monetary contribution, the dedication of land free of cost, or the provision of any other material public benefit, or any combination of them, to be used for or applied towards a public purpose.

Direction means the *Environmental Planning Assessment (Planning Agreements) Direction 2019* made by the Minister for Planning under section 7.9 of the EPA Act dated 28 February 2019.

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

environmental planning instrument has the same meaning as in the EPA Act.

explanatory note means an explanatory note relating to a planning agreement required by section 205 of the Regulation.

ICAC Audit Tool means the *Development Assessment Internal Audit Tool* published by the Independent Commission Against Corruption dated April 2010 in so far as it applies to planning agreements.

instrument change means the making, amendment or repeal of an environmental planning instrument to which a planning proposal relates.

LEP means *Maitland Local Environmental Plan 2011*.

LGA means local government area.

local infrastructure contribution means a condition of development consent imposed under section 7.11 of the EPA Act requiring the payment of a monetary contribution or the dedication of land free of cost or under section 7.12 requiring the payment of a levy.

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modification application means an application under section 4.55 or 4.56 of the EPA Act to modify a development consent.

Part 6 certificate means a certificate under Part 6 of the EPA Act.

planning agreement - See section 4.

planning proposal has the same meaning as in section 3.33(1) of the EPA Act.

Practice Note means the *Planning Agreements Practice Note - February 2021*, published by the Department of Planning and Environment, a copy of which is available on the NSW Department of Planning and Environment website at www.planning.nsw.gov.au

public includes a section of the public.

public benefit means the benefit enjoyed by the public as a consequence of a development contribution made by a developer under a planning agreement.

public facilities means public infrastructure, facilities, amenities and services.

public purpose has the same meaning as in section 7.4(2) of the EPA Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

surplus value the value of the developer's contribution under a planning agreement for a Contributions Plan Category of facilities less the value of development contributions that are or could have been required to be made under section 7.11 or section 7.12 of the EPA Act for that category in respect of the development the subject of the agreement.

VPA Officer means a Council officer having the function of negotiating a proposed planning agreement on behalf of Council but does not include a person having the function of assessing a planning proposal or a development application or modification application.

Work means the physical result of carrying out a work with respect to land.

2 Purpose

2.1 The purposes of this Policy are:

- 2.1.1 to set out Maitland City Council's policies and procedures relating to the use of planning agreements under section 7.4 of the *Environmental Planning and Assessment Act 1979*, and
- 2.1.2 to meet the requirement of the Practice Note for the Council in relation to such a policy.

3 Scope

- 3.1 This policy applies to any planning agreement that the Council enters into or proposes to enter into that applies to land or development within the Council's local government area.
- 3.2 This policy also applies to any planning agreement that the Council enters into or proposes to enter into jointly with another council or other planning authority that applies to land outside the Council's local government area.

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4 What is a planning agreement?

- 4.1 For the purposes of this Policy, a planning agreement is a voluntary agreement or other arrangement under Subdivision 2 of Division 7.1 of the EPA Act between a planning authority and a developer, being a person who has:
- 4.1.1 sought a change to an environmental planning instrument; or
 - 4.1.2 made or proposes to make a development application or application for a complying development certificate,
- under which the developer is required to dedicate land free of cost, pay a monetary contribution, provide any other material benefit; or provide any combination of the above, to be used for or applied towards a public purpose¹.
- 4.2 Under the EPA Act, a public purpose relating to a planning agreement includes but is not limited to the following:
- 4.2.1 the provision of (or the recoupment of the cost of providing) public amenities or public services,
 - 4.2.2 the provision of (or the recoupment of the cost of providing) affordable housing,
 - 4.2.3 the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
 - 4.2.4 the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
 - 4.2.5 the monitoring of the planning impacts of development,
 - 4.2.6 the conservation or enhancement of the natural environment².
- 4.3 Competitive tendering under section 55(1) of the *Local Government Act 1993* (NSW) is not feasible before the Council enters into a planning agreement and, for this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

5 About this Policy

- 5.1 The Practice Note must be considered by the Council when negotiating or entering into a planning agreement³.
- 5.2 The Practice Note strongly encourages all councils to publish policies and procedures concerning their use of planning agreements, which:
- 5.2.1 provide a generally applicable test for determining the acceptability of a planning agreement,
 - 5.2.2 contain specific measures to protect the public interest and prevent misuse of planning agreements,
 - 5.2.3 have published and accessible rules and procedures,
 - 5.2.4 provide for effective formalised public participation,

¹ See section 7.4(1) of the EPA Act.

² See section 7.4(2) of the EPA Act.

³ See section 203(7) of the Regulation.

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- 5.2.5 extend fairness to all parties affected by a planning agreement, and
- 5.2.6 guarantee regulatory independence of the planning authority.
- 5.3 It is intended that this Policy will be periodically reviewed and, depending on the outcome of any review, may be updated from time to time.
- 5.4 This Policy should be read in conjunction with the Practice Note.

6 Legislative and regulatory framework

- 6.1 Division 7.1 of the EPA Act and Division 7.1 of the Regulation establish a statutory scheme for contributions by developers to local councils in connection with development.
- 6.2 The statutory scheme has compulsory and voluntary elements.
- 6.3 The compulsory element contained in Subdivision 3 of Division 7.1 of the EPA Act and Division 2 of Part 9 of the Regulation provides for consent to be granted to proposed development subject to a condition requiring local infrastructure contribution in the form of a monetary contribution or levy or the dedication of land free of cost.
- 6.4 Subdivision 2 of Division 7.1 of the EPA Act and Division 1 of Part 9 of the Regulation set out the primary legislative framework for planning agreements.
- 6.5 A planning agreement must provide for the following:
 - 6.5.1 the land to which it applies,
 - 6.5.2 the planning proposal or the development (or both) to which it applies,
 - 6.5.3 details of the nature, manner and timing of the provision of public benefits to be made by the developer under the agreement,
 - 6.5.4 whether the agreement excludes (wholly or in part) or does not exclude the application of sections 7.11, 7.12 or 7.24 of the EPA Act to the development to which it applies,
 - 6.5.5 if the application of section 7.11 is not excluded, whether benefits under the agreement are or are not to be taken into consideration in determining a local infrastructure contribution under section 7.11,
 - 6.5.6 a dispute resolution mechanism,
 - 6.5.7 a suitable means of enforcing the agreement in the event of a breach of the agreement by the developer⁴.
- 6.6 There is no need for any connection between the development to which a planning agreement applies and the object of expenditure of any money paid under the agreement⁵.
- 6.7 A planning agreement may, but is not required to, be registered on the title to the land to which it applies⁶.
- 6.8 The Direction applies to planning agreements providing for affordable housing development contributions.
- 6.9 The Practice Note and the ICAC Audit Tool also form part of the regulatory framework covering planning agreements.

⁴ See section 7.4(3) of the EPA Act.

⁵ See section 7.4(4) of the EPA Act.

⁶ See section 7.6 of the EPA Act.

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Part 2 - Council's policies on the use of planning agreements**7 Policy objectives**

- 7.1 The objectives of this Policy are as follows:
- 7.1.1 to meet the requirement of the Practice Note for the Council in relation to such a policy and cover the matters recommended by the Practice Note,
 - 7.1.2 to set out the Council's policies and procedures on its use of planning agreements,
 - 7.1.3 to establish a clear, transparent, ethical, efficient, fair and accountable framework governing the use of planning agreements by the Council,
 - 7.1.4 to promote consistency in the use of planning agreements by Council,
 - 7.1.5 to promote an enhanced and more flexible development contributions system for the Council,
 - 7.1.6 to align the negotiation and use of planning agreements by the Council with applicable standards of public sector probity and good governance,
 - 7.1.7 to align the use of planning agreements by the Council with the Council's corporate planning and strategic planning goals and to promote the attainment of those goals,
 - 7.1.8 in appropriate circumstances, to enable the provision of development contributions above those required to address the direct impact of a particular development on neighbouring land and the wider community.

8 Principles governing the use of planning agreements

- 8.1 The fundamental principles that are intended to safeguard the public interest and the integrity of the planning process in relation to the use of planning agreements are as follows:
- 8.1.1 planning authorities should always consider a development proposal on its merits, not on the basis of a planning agreement⁷,
 - 8.1.2 planning agreements must be underpinned by proper strategic land use and infrastructure planning carried out on a regular basis and must address expected growth and the associated infrastructure demand,
 - 8.1.3 strategic planning should ensure that development is supported by the infrastructure needed to meet the needs of the growing population,
 - 8.1.4 a consent authority cannot refuse to grant development consent on the grounds that a planning agreement has not been entered into in

⁷ However, section 4.15(1)(a)(iia) of the EPA Act requires that the consent authority considers, so far as relevant, 'any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4'; also, section 7.4(9) of the EPA Act provides that '[a] planning agreement cannot impose an obligation on a planning authority to grant development consent, or to exercise any function under this Act in relation to a change to an environmental planning instrument'.

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- relation to the proposed development or that the developer has not offered to enter into such an agreement⁸,
- 8.1.5 planning agreements should not be used as a means of general revenue raising or to overcome revenue shortfalls,
 - 8.1.6 planning agreements must not include public benefits wholly unrelated to the particular development⁹,
 - 8.1.7 value capture should not be the primary purpose of a planning agreement.
- 8.2 Additionally, the following principles will govern the Council's use of planning agreements:
- 8.2.1 planning decisions must not be bought or sold through planning agreements,
 - 8.2.2 the Council will not allow planning agreements to unlawfully or otherwise improperly fetter the exercise of its planning functions under the EPA Act, Regulation or any other Act or law,
 - 8.2.3 the Council will not use planning agreements for any purpose other than a proper planning purpose,
 - 8.2.4 the decision to negotiate a proposed planning agreement, the terms of the planning agreement and the decision whether or not to enter into the planning agreement will be undertaken within Council separately from the consideration of the proposed planning agreement as part of the merit assessment of a development application or a planning proposal,
 - 8.2.5 development that is unacceptable on planning grounds will not be permitted because of the public benefits offered by a developer under a planning agreement that do not make the development acceptable on planning grounds,
 - 8.2.6 in assessing a development application or planning proposal, the Council will not take into consideration planning agreements that are wholly unrelated to the subject matter of the development application or planning proposal, nor will the Council give disproportionate weight to a planning agreement in the assessment process,
 - 8.2.7 the Council will not allow the interests of developers, individuals or interest groups to outweigh the public interest when considering a proposed planning agreement,
 - 8.2.8 the Council will not improperly rely on its position in order to extract unreasonable public benefits from developers under planning agreements.

9 Acceptability test

- 9.1 The test adopted by this Policy that will be applied by Council in determining the acceptability of any planning agreement that is negotiated or entered into by the Council is as follows:

⁸ This requirement is contained in section 7.7(2) of the EPA Act.

⁹ However, section 7.4(4) of the EPA Act provides that '[a] provision of a planning agreement in respect of development is not invalid by reason only that there is no connection between the development and the object of expenditure of any money required to be paid by the provision'.

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- 9.1.1 Do the procedures followed by the Council to negotiate and enter into a planning agreement, and the terms of the planning agreement, as relevant comply with the relevant requirements of:
 - (a) the EPA Act, the Regulation and the Direction?
 - (b) the Audit Tool?
 - (c) this Policy?
- 9.1.2 Is the planning agreement directed towards legitimate planning purposes ascertainable from the statutory planning controls and other adopted planning policies applying to development and the circumstances of the case?
- 9.1.3 Does the planning agreement provide for the delivery of infrastructure or public benefits that are not wholly unrelated to the development?
- 9.1.4 Will the planning agreement produce outcomes that meet the general values and expectations of the public and protect the overall public interest?
- 9.1.5 Does the planning agreement provide for reasonable means of achieving the relevant outcomes and securing the relevant infrastructure and public benefits?
- 9.1.6 Will the planning agreement protect the community against adverse planning decisions?
- 9.1.7 Will the planning agreement be registered on title and, if not, has the developer provided alternative satisfactory security in lieu of registration?
- 9.1.8 Are there any relevant circumstances that may operate to preclude the Council from negotiating or entering into the proposed planning agreement?

10 Probity

- 10.1 To ensure that the planning agreement negotiations are transparent, consistent, efficient, fair, and accountable and to protect the public interest and integrity of the planning process, the Council will:
 - 10.1.1 provide a copy of this policy to any person who seeks to enter into a planning agreement with Council;
 - 10.1.2 publish this Policy on Council's website and promote the general awareness of this Policy;
 - 10.1.3 negotiate planning agreements in accordance with this Policy,
 - 10.1.4 comply with public notification requirements in the EPA Act and Regulation;
 - 10.1.5 ensure appropriate delegations and separation of responsibilities in relation to:
 - (a) the assessment of planning proposals and development applications; and
 - (b) the consideration and negotiation of planning agreements;
 - 10.1.6 ensure that modifications to approved development must be subject to the same scrutiny as the original development application;

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- 10.1.7 ensure that Councillors and Council staff understand their particular role and responsibility, some of which carry the potential for conflicts of interest; and
- 10.1.8 take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its commercial interest in the development, such as appointing an independent person(s) and/or probity advisor where the Council has a commercial stake in development the subject of a planning agreement, including owning land the subject of the agreement that will be developed; and
- 10.1.9 take appropriate steps to ensure that it avoids any other conflicts of interest such as appointing a probity advisor in any other cases where there may be a risk of conflict of interest, or where there is significant public interest;
- 10.1.10 ensure that it will not enter into any contractual arrangement that purports to fetter Council's statutory discretion or guarantee outcomes that are subject to separate regulatory processes; and
- 10.1.11 ensure that all negotiations with a developer and their consultants are sufficiently documented.
- 10.2 These and other probity measures will be implemented by Council¹⁰.

11 Land use planning context

- 11.1 This section addresses how the use of planning agreements aligns with any relevant district and regional strategic plans and policies.
- 11.2 The EPA Act authorises the Minister to review and make the regional strategic plan and district strategic plan prepared by the Department as the relevant strategic planning authority for the Hunter Region and the Lower Hunter and Greater Newcastle City areas, to which the Council's LGA belongs.
- 11.3 The EPA Act relevantly requires the Council's LEP to give effect to its local strategic planning statement¹¹. In this regard, the Council must prepare and make such strategic planning statement to include or identify the planning priorities for the Council's LGA that are consistent with the applicable regional and district strategic plan, and (subject to any such strategic plan) any applicable community strategic plan¹².
- 11.4 The Council's use of planning agreements can align with the regional and district strategic plans, the local strategic planning statement and their supporting documents when planning agreements are used by the Council to implement and achieve the planning priorities and directions outlined in these plans and policy documents.
- 11.5 At a practical level, such alignments are achieved when planning agreements are negotiated between the Council and developer to secure the funding or delivery of local infrastructure and public facilities that are contemplated by these plans and policy documents.
- 11.6 Relevantly, the regional and district strategic plans and the local strategic planning statement that are applicable to the Council's LGA have identified a range of local infrastructure and funding opportunities as relevant to the

¹⁰ See sections 43.6 - 43.13 of this Policy in relation to who will negotiate a planning agreement on behalf of Council and separation of Council's planning assessment and planning agreement negotiation roles.

¹¹ See section 3.33(2)(c) of the EPA Act.

¹² See sections 3.9(1), 3.9(2)(b) and 3.9(3A) of the EPA Act.

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identified planning priorities and directions. These local infrastructure and funding opportunities include but are not limited to:

- 11.6.1 tree-lined streets including road verges, footpaths, trails, public spaces, squares and plazas with a new approach to urban design appropriate for people in all age groups and separated from road traffic, with clear wayfinding, end-of-trip facilities and adequate shade to encourage active living, community interaction and opportunities to integrate nature in neighbourhoods;
- 11.6.2 private and semi-private gardens around apartment buildings including roof gardens, regional parks, urban parks, open space reserves, formal gardens and community gardens;
- 11.6.3 river and creek corridors, safe routes for pedestrians, cyclists and skateboarders along road, rail or light rail corridors to connect people to commercial corridors, public transport stops and community places such as schools, health services, aged care facilities, sporting, cultural and recreational facilities;
- 11.6.4 schools, libraries, health and emergency facilities, community halls, and sports facilities such as ovals, institutional playing fields, aquatic centres, and other major parks;
- 11.6.5 outdoor furniture, covered spaces, bubblers and toilets with sizes and functions matching their neighbourhoods;
- 11.6.6 supply of social and affordable housing with access to relevant facilities, social infrastructure, health care, and public transport, and increased need for accommodation suitable for people with health conditions;
- 11.6.7 enterprises, housing and other land uses that complement the biodiversity, scenic and water quality outcomes of biodiversity corridors;
- 11.6.8 micro-mobility solutions and transport infrastructure such as shared bikes and electric bikes, ride sharing and renewable energy developments, green infrastructure and natural spaces using materials with low embodied emissions and the circular economy;
- 11.6.9 generation, storage, firming and transmission infrastructure needed for clean, cheap and reliable power, and the rollout of electric vehicle charging infrastructure;
- 11.6.10 flood mitigation infrastructure and initiatives, and opportunities to adapt existing settlements at risk of exposure to sea level rise and coastal hazards in accordance with the NSW Coastal Management Framework, and to maintain natural coastal defences against such risks;
- 11.6.11 last mile freight, accessibility, and attractive active and public transport access from adjoining neighbourhoods both within and to centres and main streets, and a diverse range of tourism development;
- 11.6.12 opportunities to promote the diversification and innovation of agricultural activities, and to support activities to value-add and provide additional income streams for farmers;
- 11.6.13 art galleries, public art and heritage buildings, and adaptive reuse of heritage building and places with private investments in protecting the integrity of the city's indigenous and colonial cultural heritage;

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11.6.14 new waste transfer and recycling facility and services to increase waste segregation and recycling which in turn will reduce the amount of waste requiring transportation and landfill disposal;

11.6.15 delivery of new and upgraded essential infrastructure and services such as energy, water, wastewater and telecommunication required to support our growing population.

12 Corporate strategic planning context

- 12.1 This section addresses how the use of planning agreements fits within the context of the broader organisational strategic planning and land use planning policies, goals, and strategies.
- 12.2 The Council is required to develop and implement a set of corporate strategic planning documents for its LGA under the *Local Government Act 1993*¹³, including a community strategic plan¹⁴, a community engagement strategy¹⁵, a resourcing strategy¹⁶, a delivery program¹⁷, and an operational plan¹⁸.
- 12.3 These documents are supported by a number of supporting policies and strategies of the Council. In particular, the Council is required to prepare and make a local strategic planning statement, which includes or identifies the planning priorities for the Council's LGA that are 'consistent with any strategic plan applying to the area and (subject to any such strategic plan) any applicable community strategic plan under section 402 of the Local Government Act¹⁹.
- 12.4 Planning agreements are one means of enabling the Council to fund and deliver some of the projects and infrastructure identified in the Council's corporate strategic planning documents. These documents provide guidance to the Council in relation to the planning priorities and projects that it should pursue via planning agreements.
- 12.5 These planning priorities and projects include the provision of public facilities and infrastructures relating to, but not limited to:
 - 12.5.1 direct, accessible and safe pedestrian paths and cycleways;
 - 12.5.2 open spaces and parks for passive and active recreation;
 - 12.5.3 new and improved community infrastructure such as education facilities/schools, healthcare facilities/hospitals, emergency services, community and sport facilities;
 - 12.5.4 new or redeveloped cultural infrastructure such as community halls, libraries, art galleries, public art and heritage buildings;
 - 12.5.5 diverse and affordable housing to meet the needs of the growing and changing community;
 - 12.5.6 appropriate tree planting and streetscape to provide shades throughout public and open spaces and in private development;

¹³ See Part 2 of Chapter 13 of the Local Government Act 1993.

¹⁴ See section 402 of the Local Government Act 1993.

¹⁵ See section 402A of the Local Government Act 1993.

¹⁶ See section 403 of the Local Government Act 1993.

¹⁷ See section 404 of the Local Government Act 1993.

¹⁸ See section 405 of the Local Government Act 1993.

¹⁹ See section 3.9(2)(b) of the EPA Act.

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- 12.5.7 urban stormwater management infrastructure to capture and treat stormwater before it reaches local waterways;
- 12.5.8 new waste management infrastructure, such as waste transfer and recycling facility, for the reuse, recycling and recovery of waste to improve sustainability in resource use and reduce the environmental impacts of waste;
- 12.5.9 modern transport solution including on demand transport, shuttle bus services, ride sharing, autonomous vehicles;
- 12.5.10 commuter car parking facilities at or near public transport infrastructure;
- 12.5.11 community hub such as integrated and multi-purpose facilities that offers a range of co-located services within a single facility.

13 When will Council consider a planning agreement?

- 13.1 This section addresses the circumstances in which the Council would consider entering into a planning agreement.
- 13.2 This section should be read in conjunction with sections 14-17 of the Policy.

Relationship of planning agreements with development applications and planning proposals

- 13.3 A planning agreement can be entered into in connection with a planning proposal, the grant of development consent (including a complying development certificate), or the modification of a development consent.
- 13.4 Council intends to use planning agreements in connection with all of these, including particularly where the impacts of proposed new development cannot be addressed adequately or at all through local infrastructure contributions, or through affordable housing contributions imposed under section 7.32 of the EPA Act.

Planning proposals

- 13.5 The Council from time to time receives planning proposals from developers seeking to rezone land for a more intense land use or to increase the permissible development density on land under the existing zoning through increases in the permissible building height or floor space ratio of buildings applying to the land.
- 13.6 Such development typically requires the provision of new or additional public facilities including (but not limited to) new or upgraded public parks and open space, new or upgraded public footpaths, and improvements to local roads and traffic management facilities.
- 13.7 The Regulation requires the Contributions Plan to predict the expected types of development in the Council's area and the demand for additional public amenities and public services to meet the expected development in the period covered by the plan²⁰. The local infrastructure contribution rates specified in the plan relate to the development predicted by the plan and the cost of providing new or additional public facilities to meet the demands of that development.

²⁰ See section 212(1) of the Regulation.

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- 13.8 Proposed development the subject of planning proposals seeking to rezone land for a more intense land use or increase the permissible development density on land, and the demand for additional public facilities required to meet such development, are often beyond the predictions and funding outcomes of the Contributions Plan.
- 13.9 The Council will seek to enter into planning agreements with developers in relation to such planning proposals in order to obtain development contributions to meet the demand for public facilities not covered by the Contributions Plan.

Development applications & modification applications: Objections to development standards in the LEP

- 13.10 The Council from time to time receives development applications accompanied by objections under clause 4.6 of the LEP to density development standards in the LEP, such as building height and floor space ratio²¹.
- 13.11 The additional development density proposed by such development applications, and the demand for additional public facilities required to meet such development, are beyond the predictions and funding outcomes of the Contributions Plan.
- 13.12 The Council will seek to enter into planning agreements with developers in relation to such development applications in order to obtain development contributions to meet the demand for public facilities not covered by the Contributions Plan.
- 13.13 The Council's position is that the benefits provided under a planning agreement must not be exchanged for a variation from a development standard under any circumstances. Variations to development standards under Clause 4.6 of the Standard Instrument LEP must be justified on planning grounds.
- 13.14 The use of a planning agreement in connection with the variation of a development standard is not prohibited per se but the Council's position is that the benefit under the agreement should contribute to achieving the planning objective of the development standard.

Other circumstances

- 13.15 Other circumstances in which the Council may seek or agree to enter into a planning agreement with a developer in relation to proposed development include (but are not limited to) the following:
- 13.15.1 where the demand for public facilities is not covered adequately or at all by the Contributions Plan and cannot be addressed through local infrastructure contributions,
- 13.15.2 where the demand for public facilities is outside of the permissible scope of local infrastructure contributions or affordable housing contributions under the EPA Act,

²¹ Clause 4.6(2) of the LEP provides that 'Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument...'. An objection to a development standard under clause 4.6 must demonstrate that '...compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and... that there are sufficient environmental planning grounds to justify contravening the development standard'.

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- 13.15.3 where the Council and a developer agree to the provision of additional or different public benefits than those addressed in the Contributions Plan,
- 13.15.4 where the Council and a developer agree that the developer may deliver one or more works contained in the Contributions Plan works schedule instead paying monetary local infrastructure contributions towards the works pursuant to a development consent,
- 13.15.5 where the planning agreement provides for affordable housing contributions and is entered into in connection with a development application or proposed development application (see immediately below).

Affordable housing contributions

- 13.16 The Council must comply with the Direction when entering into planning agreements to obtain affordable housing contributions in connection with a development application or proposed development application²².
- 13.17 The Direction requires the Council to consider a number of specified matters when negotiating the terms of a proposed planning agreement that includes provision for affordable housing in connection with a development application or proposed development application²³.
- 13.18 In relation to development applications, in addition to the matters specified in the Direction which the Council must consider when negotiating a planning agreement that includes provision for affordable housing, the Council will also consider the following additional matters as relevant to the development to which the planning agreement relates:
 - 13.18.1 whether the development will be likely to reduce the availability of affordable housing within the Council's area,
 - 13.18.2 whether the development will be likely to create a need for affordable housing within the Council's area.
- 13.19 In relation to planning proposals, the Council will consider the matters specified in the Direction and in clause 13.18, so far as relevant, when negotiating a planning agreement that includes provision for affordable housing.

Land use planning & development objectives

- 13.20 This section addresses the land use planning and development objectives that are sought to be promoted or addressed by the use of planning agreements and the role served by planning agreements in Council's development contributions and infrastructure funding systems.

²² See section 5(1) of the Direction.

²³ The matters are: '(a) whether the consent authority for the development application is authorised by a local environmental plan to impose an affordable housing condition on a grant of development consent to the application, (b) whether it is proposed that the planning agreement provide for affordable housing (including by making a monetary contribution for that purpose) instead of local infrastructure contributions that may be imposed under section 7.11 or section 7.12 of the Act, (c) whether the development application includes, or will include, development for the purpose of affordable housing, (d) whether affordable housing (such as a hostel, boarding house or low-rental residential building) on the land subject to the development application will, or has been, demolished, (e) the terms of any affordable housing contribution scheme for dedications or contributions set out in or adopted by a local environmental plan, and (f) having regard to the above matters, whether it is reasonable for the planning agreement to include a contribution of the value proposed by the council for the purpose of affordable housing'.

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- 13.21 Those systems include the provisions of the EPA Act providing for local infrastructure contributions, affordable housing contributions and development contributions through planning agreements, as well as provisions under other Acts²⁴ and arrangements with the other levels of Government for infrastructure funding through grants and the like.
- 13.22 Planning agreements provide flexibility in the Council's development contributions and infrastructure-funding systems under the EPA Act as discussed in the following paragraphs.
- 13.23 Conditions requiring local infrastructure contributions and those requiring affordable housing contributions under section 7.32 of the EPA Act may only be imposed on the grant of development consent. In some circumstances, it is appropriate from a planning perspective to address local infrastructure and affordable housing requirements in connection with proposed new development at the planning proposal stage. Planning agreements enable the Council to do so.
- 13.24 Some demands for public facilities arising from proposed new development are not covered adequately or at all by the Contributions Plan and cannot be addressed through local infrastructure contributions. This may be so, for example, where the demands exceed the predictions in the contributions plan and cannot be adequately funded through the plan or they relate to public facilities not anticipated or covered by the plan. Planning agreements enable the Council to address such demands either in connection with planning proposals or the grant of development consents, as appropriate.
- 13.25 The EPA Act imposes limitations on conditions of development consent requiring local infrastructure contributions. For example, local infrastructure contributions may not be imposed for the recurrent funding of public facilities, and generally cannot be imposed for the conservation or enhancement of the natural environment and the relocation or the replacement or repair of public assets required in connection with proposed new development. Planning agreements enable the Council to obtain development contributions for those and other purposes outside of the permissible scope of local infrastructure contributions either in connection with planning proposals or the grant of development consents, as appropriate.
- 13.26 Planning agreements may be used to obtain development contributions additional to or instead of local infrastructure contributions. The EPA Act requires a planning agreement to provide for whether the application of the local infrastructure contributions provisions of the Act²⁵ are excluded in whole or part in relation to the development to which the agreement applies²⁶.
- 13.27 Examples of where it may be appropriate to exclude the application of the local infrastructure provisions of the EPA Act to proposed development include (but are not limited to):
- 13.27.1 where the Council and a developer enter into a planning agreement to provide different public benefits than those addressed in the Contributions Plan,
- 13.27.2 to enable the developer to deliver one or more works contained in the Contributions Plan works schedule instead of paying monetary local infrastructure contributions towards the works pursuant to a development consent.

²⁴ See for example section 495 of the Local Government Act 1993, which allows a council A council may make a 'special rate' for or towards meeting the cost of any works, services, facilities or activities provided or undertaken, or proposed to be provided or undertaken, by the council within the whole or any part of the council's area.

²⁵ See sections 7.11 and 7.12 of the EPA Act.

²⁶ See section 7.4(3)(d) of the EPA Act.

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14 Types of development planning agreements relate to

- 14.1 Planning agreements will ordinarily relate to development the subject of planning proposals or development applications that will or are likely to require the provision of or increase the demand for public facilities in the Council's area.

15 Planning agreements for different development types

- 15.1 The Council will determine whether it seeks to enter into a planning agreement and the benefits that it may require under the planning agreement on a case by case basis having regard to the public interest. This may result in planning agreements differing for different types of development.

16 Thresholds for use of planning agreements

- 16.1 The base threshold the Council will consider in deciding whether it seeks to enter into a planning agreement is whether development the subject of a planning proposal or development application will or is likely to require the provision of or increase the demand for public facilities in the Council's area.

17 Usual matters covered by planning agreements

- 17.1 This section addresses the matters ordinarily covered by planning agreements entered into by the Council.
- 17.2 The EPA Act sets out matters that must be provided for in all planning agreements²⁷, being:
- 17.2.1 a description of the land to which the agreement applies,
 - 17.2.2 a description of:
 - (a) the change to the environmental planning instrument to which the agreement applies, or
 - (b) the development to which the agreement applies,
 - 17.2.3 the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made,
 - 17.2.4 in the case of development, whether the agreement excludes (wholly or in part) or does not exclude the application of sections 7.11, 7.12 or 7.24 of the EPA Act to the development,
 - 17.2.5 if the agreement does not exclude the application of section 7.11 of the EPA Act to the development, whether benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 7.11,
 - 17.2.6 a mechanism for the resolution of disputes under the agreement,
 - 17.2.7 the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer.

²⁷ See section 7.4(3) of the EPA Act.

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- 17.3 In addition to the above, the Council will require that a planning agreement cover matters contained in the Council's currently publicly available template planning agreement, subject to the requirements for the particular agreement, which may necessitate the deletion of some of those matters or the inclusion of other matters.
- 17.4 The Council's template planning agreement requires the agreement to be registered on the title to the land to which the agreement applies, and the Council will require registration in every case except where all public benefits under the agreement are provided at the time of the execution of the agreement.
- 17.5 The Council will also require that particular planning agreements cover additional matters relevant to the particular planning proposal or proposed development concerned to which they relate.

18 Form of development contributions under planning agreements

- 18.1 This section addresses the form of development contributions the Council will seek under planning agreements.
- 18.2 The form of development contributions to be provided by a developer under a planning agreement can be monetary contributions, the dedication of land free of cost, other material public benefits such as (but not limited to) the carrying out of works, or any combination of the those.
- 18.3 The Council will generally seek monetary development contributions through planning agreements, towards the provision of public facilities and affordable housing but may seek or agree to the dedication of affordable housing units within a proposed development or the dedication of land for the development of affordable housing units, in either case free of cost to the Council, and other material public benefits on a case by case basis based on an assessment of the most efficient and effective means of providing public facilities to meet the demands created by proposed development on a case by case basis.

19 Kinds of public benefits through planning agreements

- 19.1 This section should be read in conjunction with section 18 of this Policy.
- 19.2 This section addresses the kinds of public benefits the Council will seek through planning agreements.
- 19.3 The Council will generally seek development contributions through planning agreements towards the provision of new, additional or upgraded public facilities or the need for affordable housing in connection with proposed development the subject of planning proposals or objections to development standards made under clause 4.6 of the EPA Act accompanying development applications.
- 19.4 The public facilities that will typically be funded through monetary contributions in such cases include (but are not limited to) new or upgraded public parks and open space, new or upgraded libraries and public facilities, new or upgraded public footpaths, and improvements to local roads and traffic management facilities and the provision of affordable housing.

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20 Valuing public benefits

- 20.1 This section addresses the method for determining the value of public benefits provided under a planning agreement.
- 20.2 The EPA Act does not require a planning agreement to set out the dollar value of non-monetary benefits provided by the developer under the agreement.
- 20.3 However, valuing non-monetary benefits is relevant in some circumstances, such as determining the extent of a non-monetary benefit, credits and offsets against local infrastructure contribution or determining the amount of security to be provided by the developer under the agreement.
- 20.4 The Council will decide on a case-by-case basis whether non-monetary benefits provided under a planning agreement are required to be valued.
- 20.5 Where a planning agreement provides for the dedication of land free of cost, the value for the purposes of the agreement will generally be the market value of the land determined in accordance with Division 4 of Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- 20.6 Where land required to be dedicated under a planning agreement is required to be valued, the Council will engage, at the developer's cost, a suitably qualified and experienced valuer independent of the parties to provide a written opinion on the estimated value of the relevant land to the Council.
- 20.7 Where a planning agreement provides for the carrying out of works, the value for the purposes of the agreement will be the estimated design and construction costs of the works agreed to by Council.
- 20.8 Where works to be provided under a planning agreement are required to be valued, the Council will engage, at the developer's cost, a suitably qualified and experienced quantity surveyor independent of the parties to provide a written opinion on the estimated value of the works.
- 20.9 Notwithstanding the above, if the land or works to be valued for the purposes of a planning agreement are included in the works schedule in the Council's contributions plan, the value for the purposes of the agreement will be the dollar value stated in the plan, unless the Council otherwise agrees.

21 When, how and where public benefits are provided

- 21.1 The Council will consider when, how and where public benefits will be provided having regard to the demand for public facilities arising from proposed development the subject of a planning proposal or development application and the public interest.

22 Access to information

- 22.1 The Council must include in its annual report particulars of compliance with and the effect of the planning agreement during the year to which the annual report relates²⁸.

²⁸ See section 7.5(5) of the EPA Act.

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- 22.2 The Council must also keep a register of any planning agreements that apply to land within the Council's area, whether or not the Council is a party to a planning agreement²⁹.
- 22.3 The Council must publish matters regarding planning agreements on the NSW planning portal and the Council's website³⁰.

23 Deciding the parties to a planning agreement

- 23.1 The Council and the developer must always be parties to a planning agreement³¹.
- 23.2 Where a planning agreement requires the dedication of land, the granting of a charge to the Council as security for performance, or the registration of any other instrument on title, the landowner of the land to which the planning agreement applies must also be a party to the agreement in order to bind the landowner to the relevant obligation concerning the land³².

24 Documentation & drafting of planning agreement

- 24.1 The parties to a planning agreement should agree on which party is to draft the agreement to avoid duplication of resources and costs. This also encourages planning authorities to publish and use standard form planning agreements or standard clauses for inclusion in planning agreements in the interests of process efficiency.
- 24.2 The Council has an electronic planning agreement template that is publicly available on the Council's website. The template is revised and updated from time to time.
- 24.3 All planning agreements to which the Council is a party (other than planning agreements to which another planning authority is also a party) must be prepared using the Council's currently publicly available electronic template.
- 24.4 A planning agreement is different to a commercial agreement in that it imposes obligations on a developer to provide public benefits in connection with proposed development and the Council is party to the agreement to receive the benefits on behalf of the public and to protect the public interest.
- 24.5 The provisions of the Council's template are intended to protect the Council and the public interest. The provisions must not be altered by a party to a proposed planning agreement (other than Council) who is using the Council's template without the Council's express agreement.
- 24.6 If a party to a proposed planning agreement wishes to alter the provisions of the template, electronic comments should be inserted in the right-hand margin on the template identifying, explaining and justifying the proposed alterations.
- 24.7 The Council will arrange for the preparation of the planning agreement on its template at the developer's cost.

²⁹ See section 206(1) of the Regulation. The Register must set out: (a) the day on which the agreement was entered into, (b) the names of the parties to the agreement, (c) a description of the development to which the agreement relates, if relevant, (d) the land to which the agreement applies.

³⁰ See section 206(2) of the Regulation. The matters are: (a) the Council's planning agreements register, (b) each relevant planning agreement and its explanatory note, (d) financial records for planning agreements for each financial year.

³¹ See section 7.4(1) of the EPA Act.

³² See section 7.6(3) of the EPA Act; see also section 32 of this Policy.

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- 24.8 A developer who proposes to enter into a planning agreement with Council must pay to the Council an assessment fee in order for the Council to consider the proposal as specified in the Council's fees and charges policy in its operational plan.
- 24.9 Before preparing the planning agreement, the Council will require the developer to provide to the Council a non-refundable security deposit for the Council's estimated costs of preparing, negotiating, finalising and executing the planning agreement.

25 Development feasibility

- 25.1 Changes in property market conditions from time to time may potentially materially adversely affect the feasibility of development to which a planning agreement applies. Where a developer considers this to be the case, the onus is on the developer, at its cost, to submit a detailed written development feasibility analysis to the Council.
- 25.2 The form and content of the feasibility analysis must be satisfactory to the Council. Ordinarily, the Council will require the feasibility analysis to be prepared using a residual land value analysis applying to the development site.
- 25.3 Upon receipt of the feasibility analysis in the circumstances referred to, the Council may engage, at the developer's cost, a suitably qualified and experienced person independent of the parties to review and advise the Council on the feasibility analysis.
- 25.4 Following consideration of a feasibility analysis, the Council may, in its absolute discretion, agree to modify the planning agreement to postpone, reduce or otherwise change the development contributions or security obligations of the developer under the agreement. The Council may require the modified agreement to contain a 'clawback' provision that operates if development feasibility improves at a future time.
- 25.5 The Council may require:
 - 25.5.1 a submitted feasibility analysis to be re-assessed from time to time at the developer's cost,
 - 25.5.2 the developer, at its cost, to submit a revised feasibility analysis from time to time.
- 25.6 If a re-assessed or revised feasibility analysis shows that the feasibility of development to which a planning agreement applies has improved and subject to the terms of the planning agreement, the Council may seek to 'clawback' development contributions or security obligations that have been reduced or postponed under the agreement based on the previous feasibility analysis.

26 Works & Works-in-kind

- 26.1 The Council requires specific provisions to be included in all planning agreements that require the carrying out of works.
- 26.2 Provisions relating to the carrying out of works are contained in the Council's currently publicly available template planning agreement.
- 26.3 The provisions of a particular planning agreement applying to the carrying out of works are subject to the circumstances of each case, which may require

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the deletion or modification of some of the provisions contained in the template or the inclusion of other provisions.

27 Land dedication

- 27.1 In this section, a reference to land includes a reference to a lot or common property in a strata plan or land defined in stratum.
- 27.2 A planning agreement may provide for the dedication of land to Council where the land is required for or in connection with the provision, extension or augmentation of public facilities associated with development the subject of a planning proposal or development application.
- 27.3 Ordinarily, land dedicated to Council under a planning agreement must:
- 27.3.1 serve a planning purpose,
 - 27.3.2 be fit for the purpose for which the land will be dedicated,
 - 27.3.3 unless otherwise agreed by Council, be free of encumbrances,
 - 27.3.4 unless otherwise agreed by Council, be dedicated free of cost to the Council.
- 27.4 The developer will be responsible for preparing all documents and meeting all costs associated with the dedication of land under a planning agreement, including all costs associated with any subdivision of land necessary to facilitate the dedication.
- 27.5 Where the Council acquires land for value under a planning agreement, the value will be the market value of the land determined in accordance with section 56 *Land Acquisition (Just Terms Compensation) Act 1991* by a suitably qualified and experienced valuer who is appointed by Council and is independent of, and at arms-length from, the parties to the planning agreement.
- 27.6 Where Council agrees in a planning agreement to offset part or all of the value of land dedicated to Council under the agreement against section 7.11 contributions or section 7.12 levies under the EPA Act, the value of the land for offsetting purposes will not exceed the agreed contribution value of the land set out in the planning agreement, which value may be less than its market value determined in accordance with section 56 *Land Acquisition (Just Terms Compensation) Act 1991*.
- 27.7 The timing of the dedication of land under a planning agreement will ordinarily be determined by the planning purpose served by the dedication and whether the planning agreement is associated with a planning proposal or a development application.

28 Recurrent funding

- 28.1 The EPA Act provides that the public purposes towards which development contributions may be applied under a planning agreement include the funding of recurrent expenditure relating to the provision of public amenities or public services and affordable housing³³.
- 28.2 There is a distinction between recurrent funding of public facilities that primarily serve the development to which the planning agreement applies or neighbouring development' and public facilities providing 'broader benefits.

³³ See section 7.4(2)(d) of the EPA Act.

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- 28.3 In respect of public facilities that primarily serve the development to which the planning agreement applies or neighbouring development, Council may require development contributions to be provided towards the recurrent costs of those facilities in perpetuity.
- 28.4 In respect of public facilities that provide 'broader benefits', Council will only require development contributions to be provided towards the recurrent costs of those facilities until a public revenue stream is established to support the ongoing costs of the facility.

29 Credits & offsets

- 29.1 Planning agreements may be used to obtain development contributions additional to or instead of local infrastructure contributions. A planning agreement can be entered into to require provision of public benefits that are different to those addressed in the Contributions Plan, or to enable the delivery of one or more works or land items contained the Contributions Plan.
- 29.2 The Council will, on a case by case basis, consider whether contributions under section 7.11 of the EPA Act should be reduced in consideration of the benefits provided under a planning agreement.
- 29.3 Typical circumstances where this may occur include, but are not limited to the following:
 - 29.3.1 where a planning agreement requires the provision of a work or land identified in the works schedule in a Contributions Plan but the demand for the work or the land is spread among a number of future developments and other developers have contributed or will contribute towards a proportion of the cost of the work or land item through s7.11 contributions,
 - 29.3.2 where a planning agreement requires the provision of a work or land which will wholly or partly replace an item in the works schedule in the Contributions Plan,
 - 29.3.3 where a planning agreement requires the provision of a work or land identified in the works schedule in the Contributions Plan and the cost of constructing work, or the value of the land determined in accordance with this Policy, exceeds the amount identified in the Contributions Plan,
 - 29.3.4 where a planning agreement requires the provision of a work that falls within a particular category of contributions in the Contributions Plan (e.g. open space) and the planning agreement applies the value of the work determined in accordance with this Policy as an offset against section 7.11 monetary contributions in another category of contributions in the Contributions Plan (e.g. to offset roads s7.11 contributions).

30 Refunds

- 30.1 There is no legal obligation on the Council to refund to developers monetary contributions paid to the Council under a planning agreement and the Council will not do so under any circumstances.
- 30.2 Where monetary contributions paid under a planning agreement exceed the funds necessary for the public purpose for which they are paid, Council may, in its complete discretion, apply those contributions towards another public purpose having regard to the public interest prevailing at the time.

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31 Timing of provision of benefits by developer

- 31.1 The EPA Act requires a planning agreement to provide for the time or times by which the provision of development contributions are to be made³⁴.
- 31.2 The timing of provision of development contributions may differ from case to case depending on factors that Council will take into consideration in so far as relevant, such as:
 - 31.2.1 whether the planning agreement is associated with a planning proposal or a development application,
 - 31.2.2 the particular development to which the planning agreement relates, including whether the development is staged or otherwise has significant milestones,
 - 31.2.3 the time or times at which the demand or need for public facilities arising from development the subject of a planning agreement arises,
 - 31.2.4 the public purposes and objects of development contributions under the planning agreement (ie., public utility infrastructure, public services, public amenities, environmental protection, or enhancement, affordable housing, etc.),
 - 31.2.5 the manner in which development contributions will be provided under the planning agreement (ie. monetary contributions, land dedication, works, recurrent and instalment payments, etc.),
 - 31.2.6 the nature and extent of security for the developer's performance provided under the planning agreement,
 - 31.2.7 whether the planning agreement will be registered on the title to the land to which the planning agreement applies,
 - 31.2.8 any requirements of public authorities affecting the timing of provision of development contributions,
- 31.3 So far as security for performance is concerned and subject to consideration of the above factors, Council will seek, where appropriate, to tie the provision of development contributions under a planning agreement to the issuing of certificates under Part 6 of the EPA Act relating to the development to which the planning agreement relates.

32 Registration

- 32.1 The EPA Act provides for the registration of a planning agreement on the title to land. The effect of registration is that the planning agreement becomes binding on, and is enforceable against, the owner of the land from time to time (ie. future owners) as if each owner for the time being had entered into the planning agreement³⁵.
- 32.2 Registration is important to inform people of the existence of a planning agreement affecting the land and for the enforcement of a planning agreement.
- 32.3 To ensure that the intention of the parties to register the planning agreement is not defeated, the developer must ordinarily get written agreement to the registration from each person with an estate or interest in the land to which

³⁴ See section 7.4(3)(c) of the EPA Act.

³⁵ See section 7.6 of the EPA Act.

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- the planning agreement applies and provide this to the Council as a precondition to the execution of the planning agreement.
- 32.4 Registration requires the written consent of all persons having a registered interest in the land. Such persons include the registered proprietor, caveators, mortgagees, chargees, lessees and the like³⁶.
- 32.5 Council requires all planning agreements to be registered on the title. For this reason, the landowner, if different to the developer, will generally be required to be an additional party to the planning agreement³⁷.
- 32.6 The Council will only consider entering into a planning agreement where the landowner is not a party in circumstances where:
- 32.6.1 the only obligation on the landowner is registration of the planning agreement, and
- 32.6.2 the Council has been provided with written consent from the landowner to the registration of the planning agreement on title prior to execution of the planning agreement.
- 32.7 The Council will require the landowner to provide the following documents immediately upon commencement of the planning agreement:
- 32.7.1 an instrument requesting registration of the planning agreement in registrable form identifying the Council as the applicant on the instrument, and
- 32.7.2 the landowner's written consent and the written consent of all persons having a registered interest in the land to the registration of a planning agreement.
- 32.8 This means that the landowner is expected to liaise with relevant interest holders prior to the execution of the planning agreement, and Council will generally not execute a planning agreement unless and until it has been provided with the required documents.
- 32.9 The Council will lodge the planning agreement for registration. The developer or landowner or both under the planning agreement will be required to meet the Council's costs of and incidental to registering the planning agreement.
- 32.10 The landowner will be required to promptly address any requisitions issued by NSW Land Registry Services relating to the registration that is relevant to the landowner and any interest holders.
- 32.11 Provision should be made in a registered planning agreement about when the notation of the planning agreement on the title to land can be removed. Some relevant examples include:
- 32.11.1 the developer has complied with the obligations under the planning agreement in respect of a part of the land and the notation of the planning agreement will be removed from that part of the land.
- 32.11.2 land the subject of the planning agreement is subdivided and titles for new lots are created and the developer has complied with all relevant planning agreement obligations relating to the subdivision.
- 32.11.3 additional valuable security for performance of the planning agreement acceptable to the planning authority is provided by the

³⁶ See section 7.6(1) of the EPA Act; see also Registrar General's Guidelines in relation to requests for registering planning agreements which require the registered proprietor and every lessee, mortgagee, chargee, covenant chargee and caveator to execute the registrable instrument or provide their written consent.

³⁷ See section 32 of this Policy.

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developer in exchange for removal of the registration of the planning agreement from the title to land.

- 32.12 The Council's currently available template planning agreement contains registration clauses reflecting the above.

33 Security for performance

- 33.1 The EPA Act requires a planning agreement to provide for the enforcement of the agreement by a suitable means, such as the provision of a bond or guarantee, in the event of a breach of the agreement by the developer³⁸.
- 33.2 The most suitable means of enforcement may depend on:
- 33.2.1 the circumstances of the planning agreement,
 - 33.2.2 the nature and extent of the developer's obligations under the planning agreement, and
 - 33.2.3 the planning authority's reasonable assessment of the risk and consequences of non-performance.
- 33.3 Security for the enforcement of a planning agreement may be achieved using a number of different means or a combination of them, including:
- 33.3.1 registration of the planning agreement on title,
 - 33.3.2 requiring the provision of development contributions prior to the issuing of Part 6 certificates for the development to which the agreement³⁹,
 - 33.3.3 in the case of a planning proposal, requiring the provision of development contributions prior to or in conjunction with the taking effect of the amendment to the relevant local environmental plan,
 - 33.3.4 bonds or bank guarantees,
 - 33.3.5 granting and registration of a charge over land in the Council's favour,
 - 33.3.6 in the case of an obligation for the developer to dedicate land, a provision in the planning agreement providing for the compulsory acquisition by the Council of the relevant land.
- 33.4 In addition to registration of a planning agreement, the Council will generally require the following security for the following types of development contributions under an agreement:
- 33.4.1 for monetary development contributions, payment to be tied to the issuing of Part 6 certificates, where possible otherwise, the Council will require a bond or bank guarantee on terms acceptable to the Council to be provided for the full value of the contributions, or a charge encumbering land with sufficient value to secure the payment of the monetary contribution to be registered on the title to the land.
 - 33.4.2 for the dedication of land, the inclusion of a provision in the planning agreement allowing the compulsory acquisition of the relevant land for \$1 in the event the land is not dedicated as required under the planning agreement,

³⁸ See section 7.4(3)(g) of the EPA Act.

³⁹ See section 6.15(1)(d) of the EPA Act in relation to subdivision certificates; see also *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, section 21 in relation to construction certificates, section 34(2)(d) in relation to subdivision works certificate, and section 48 in relation to occupation certificates.

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33.4.3 for the carrying out works:

- (a) completion of the works or stages of the works to be tied to the issuing of Part 6 certificates for the development to which the agreement applies, and provision of a bank guarantee in an amount determined by the Council in the circumstances having regard to the construction cost of the work,
- (b) for works that are not tied to the issuing of a Part 6 certificate, or where the developer seeks to defer the timing for completion of a work, provision of a bank guarantee equal to 100% of the estimated construction cost of the work, and
- (c) provision of bank guarantee in an appropriate amount not exceeding 50% of the construction cost of a work to secure the defects liability and maintenance obligations relating to the work under the planning agreement.

33.5 The Council will require security to be provided on and from the date of execution of the planning agreement.

33.6 In addition to the above, if a planning agreement is not registered on title on and from the commencement of the planning agreement, the Council may require the provision, on commencement of the agreement, of a bond or bank guarantee equal to the full value of all of the development contributions to be provided until such time as the planning agreement is registered.

34 Other means of enforcement by Council

- 34.1 The Council will require provisions to be included in all planning agreements relating to the procedure for dealing with a breach of the planning agreement.
- 34.2 Such provisions will allow the Council to issue a notice of breach requiring the developer to rectify the breach within a specified period. If the developer fails to comply with the notice, the Council may take action to remedy the developer's breach including by calling up any security provided under the planning agreement, stepping in to carry out works, or doing any other thing to remedy the breach.
- 34.3 The Council will generally be required to follow such procedures before it may exercise any rights that it may have at law to commence legal proceedings, except where urgent interlocutory relief is sought.
- 34.4 If a dispute resolution mechanism is triggered, the Council will also generally be required to complete the resolution process before it may exercise any rights to commence legal proceedings, except where urgent interlocutory relief is sought.
- 34.5 The Council's currently available template planning agreement contains enforcement clauses reflecting the above.

35 Dispute resolution

- 35.1 The EPA Act requires a planning agreement to provide for a mechanism for the resolution of disputes under the agreement⁴⁰.
- 35.2 Different kinds of dispute resolution mechanisms may suit different disputes, and this should be reflected in a planning agreement.

⁴⁰ See section 7.4(3)(f) of the EPA Act.

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- 35.3 The Council will require planning agreements to make provision for mediation and expert determination. The relevant dispute resolution method to be applied in any case will depend on the nature of the dispute.
- 35.4 Expert determination will ordinarily be applicable in relation to disputes about technical or quantifiable matters such as costs and values, designs and specifications and the like, which lend themselves to resolution by independent experts.
- 35.5 Mediation will apply in all other cases.
- 35.6 The Council's currently available template planning agreement contains dispute resolution clauses reflecting the above.

36 Monitoring & performance reporting by developer

- 36.1 The Council endeavours standardised systems to monitor the implementation of planning agreements in a systematic and transparent way.
- 36.2 One means of enabling the Council to monitor the implementation of a planning agreement is to require the developer to provide a periodic performance report to the Council.
- 36.3 The report is to contain such information as the Council may require in order for Council to determine the progress of the development to which the planning agreement relates and the developer's compliance with the obligations under the planning agreement.
- 36.4 A performance report may typically include:
 - 36.4.1 a summary of the status of all the development contributions under the planning agreement, including a list of all development contributions due to be commenced or completed within the next 12 months,
 - 36.4.2 a list of securities provided to the Council under the planning agreement and a statement about the current value of each such security.
- 36.5 The Council's currently available template planning agreement contains a clause reflecting the above.

37 Review of planning agreement

- 37.1 Planning agreements should contain a mechanism for their periodic review that should involve the participation of all parties.
- 37.2 The Council will require a planning agreement to be reviewed periodically. The Council may also allow a planning agreement to be reviewed where there has been, or will be, an unexpected change in circumstances that materially affects the operation of the planning agreement.
- 37.3 In respect of a planning agreement that is entered into in connection with a planning proposal, a change of circumstance triggering a review of the planning agreement may include the circumstance where a development standard which can be numerically quantified (such as maximum building height or floor space ratio) that is effected by the instrument change pursuant to the planning proposal differs by more than 10% from the numerical

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development standard sought in the planning proposal that has been subject to and as varied by a gateway determination⁴¹.

- 37.4 For the purposes of addressing any matter arising from a review of a planning agreement, the parties will be required to use all reasonable endeavours to agree on and implement appropriate amendments to the planning agreement. However, any failure by a party to agree to take action requested by another party as a consequence of a review is not a dispute for the purposes of the planning agreement and is not a breach of the planning agreement.
- 37.5 The Council's currently available template planning agreement contains a clause reflecting the above.

38 Amendment of planning agreement

- 38.1 This section sets out the Council's policy on the amendment of planning agreements.
- 38.2 Where the developer or another party to a planning agreement (other than Council) requests an amendment to a planning agreement, they must provide a request in writing and supporting justification to the Council.
- 38.3 The Council will consider the request and supporting information in good faith and will liaise with the developer or other party in deciding whether to agree to the amendment.
- 38.4 However, the Council may, in its complete discretion, decide whether or not to agree to the amendment or whether to propose a varied or different amendment to meet the circumstances identified by the developer or other party in requesting the amendment.
- 38.5 Where the Council seeks an amendment to a planning agreement, the developer and any other party to the planning agreement must work co-operatively and in good faith with the Council with a view to achieving the amendment.
- 38.6 The Regulation provides that a planning agreement can be amended by agreement between the parties to the planning agreement.
- 38.7 An amendment to a planning agreement must be documented in a deed of variation to be entered into in a form and on terms acceptable to the Council.
- 38.8 A developer seeking to amend a planning agreement must bear the Council's costs of the modification.

39 Novation & assignment by developer

- 39.1 Unless and until all planning agreement obligations are completed by the developer, the agreement will impose restrictions on:
 - 39.1.1 the sale or transfer the land to which the planning agreement applies,
 - 39.1.2 the assignment of the developer's rights or obligations under the planning agreement, and
 - 39.1.3 novation of the planning agreement.
- 39.2 The Council will not allow any of the above dealings unless it is satisfied that any incoming landowner or developer party will be bound by the provisions of the planning agreement and are capable of performing the obligations under

⁴¹ See section 3.34(3) of the EPA Act, which allows a planning proposal to be varied by a gateway determination.

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the planning agreement, and that there is no existing unremedied breach of the planning agreement.

- 39.3 If any of the above dealings occur in breach of the requirements in the planning agreement, the developer will continue to be liable to perform the obligations under the planning agreement until those requirements have been complied with.
- 39.4 If a planning agreement is registered on the title to the land the Council may agree that the restrictions referred to above do not apply to a sale or transfer of the land on the basis that any new landowner will be bound by the provisions of the planning agreement⁴².
- 39.5 However, unless and until a deed of novation of the planning agreement is entered into in connection with the sale or transfer, the original developer and landowner parties will continue to be bound by the contractual obligations under the planning agreement.
- 39.6 The Council's currently available template planning agreement contains a clause reflecting the above. The Council can also provide a standard form of a deed or novation or deed of assignment to be used for any assignment or novation of a planning agreement.

40 Discharge of developer from planning agreement

- 40.1 Planning agreements should not impose obligations on developers indefinitely but instead should set out the circumstances in which the parties agree to discharge the developer's obligations under the agreement.
- 40.2 The Council will discharge a developer from its obligations under the planning agreement where all the obligations have been completed in accordance with the planning agreement. The discharge will be effected by means of written correspondence to the developer and take effect according to the terms of the correspondence.
- 40.3 Where the developer's obligations under a planning agreement have not been completed, the Council may discharge a developer from its obligations in the following circumstances:
 - 40.3.1 in respect of a planning agreement that is entered into in connection with a planning proposal, where the planning proposal authority has requested the Minister for Planning that the matter not proceed,
 - 40.3.2 in respect of a planning agreement that is entered into in connection with a development application, where the development consent to which the agreement relates has lapsed and the development has not commenced.

41 Costs

- 41.1 This section addresses the Council's policy on payment of costs relating to the preparation, negotiation, execution, monitoring and other administration of planning agreements.
- 41.2 The Council requires a developer party to be responsible for all costs and expenses related to a planning agreement.
- 41.3 This will include (without limitation) Council's costs and expenses of:

⁴² See section 7.6(3) of the EPA Act.

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- 41.3.1 preparing, negotiating, executing, registering and stamping (if required) a planning agreement,
- 41.3.2 an amendment of a planning agreement other than amendment requested by Council or an amendment required because of an error or omission by Council,
- 41.3.3 removing registration of a planning agreement from title,
- 41.3.4 preparing and registering any related instrument on title such as any easements, covenants, restrictions, charges and caveats required or allowed by the planning agreement,
- 41.3.5 any other document related to the specific planning agreement, such as any deed of novation or assignment,
- 41.3.6 enforcing and remedying a breach of the planning agreement, including costs and expenses incurred by the Council in connection with investigating a non-compliance by the developer and enforcing compliance by the Developer with this Deed (including the costs and expenses of preparing and issuing notices for those purposes).

42 Notification on planning certificates

- 42.1 Pursuant to section 10.7(5) of the EPA Act, Council will include a notation about the existence of a planning agreement on a Planning Certificate issued in respect of land to which the planning agreement applies.

Part 3 - Procedures for planning agreements**43 Basic procedures for entering into planning agreement**

- 43.1 This section sets out the indicative steps for entering into planning agreements.
- 43.2 Planning agreements should ordinarily be negotiated before the relevant development application is determined or the instrument change takes effect so that the draft planning agreement is publicly notified alongside the relevant development application and planning proposal.
- 43.3 Wherever possible, planning agreement negotiations should run in parallel with the relevant planning processes. As far as practicable, the Council will seek to ensure that the process for negotiation, assessment and public notification of a planning agreement runs in parallel with the process for public exhibition, assessment and determination of a development application, or the public exhibition of a planning proposal and making of an instrument change.
- 43.4 The Council will implement the procedures set out below which may be varied on a case by case basis.
- 43.5 Indicative flow charts showing the general steps to be followed during a planning agreement negotiation for a planning proposal and a development application or modification application appear in Appendix 2.

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Who will negotiate on behalf of the Council

- 43.6 The Council will nominate the VPA Officer to be the representative of the Council in all negotiations regarding the key commercial terms of any proposed planning agreement.
- 43.7 The VPA Officer will negotiate a planning agreement on behalf of the Council.
- 43.8 The Councillors will not be involved in the negotiation of the planning agreement but a decision on whether the Council will enter into a planning agreement will be made by resolution of the governing body of the Council.

Separation of roles within Council

- 43.9 The Council will ensure that the Council staff responsible for assessing and determining a development application, modification application or planning proposal, to which a planning agreement relates, do not have a role in negotiating or assessing the key commercial terms of the planning agreement.
- 43.10 The VPA Officer will not have any involvement with the assessment of the development application, modification application or planning proposal to which the proposed planning agreement relates.
- 43.11 If any person reporting to the VPA Officer is involved with the draft planning agreement, that person shall be bound by the same provisions of this policy in respect of interaction with Council officers assessing the development application, modification application or planning proposal and conflicts of interest.
- 43.12 The Council will ensure that the VPA Officer does not have any conflict of interest, pecuniary or otherwise, within the meaning of Council's Code of Conduct in respect of the subject matter of the planning agreement or the development application, modification application or planning proposal to which it relates.
- 43.13 If the VPA Officer considers that she or he may have such a conflict, that person must immediately advise the Council in writing and a different VPA Officer, or if necessary an independent third party, must be appointed.

44 Offer & negotiation steps for planning agreements**Commencement**

- 44.1 Before the lodgement of the relevant development application or modification application or request for a planning proposal by the developer, the Council staff and the developer will meet to discuss whether to negotiate a planning agreement.
- 44.2 At this time, the Council's VPA Officer will be responsible for all functions with regard to the proposed planning agreement. The Council's General Manager or their delegate or nominee may also be involved in negotiating the proposed planning agreement, at the General Manager's discretion.
- 44.3 If the developer is not the owner of the relevant land, the landowner should also be a party to any discussion and negotiation.
- 44.4 If the parties decide to negotiate a planning agreement:
 - 44.4.1 the parties will decide whether any independent third parties need to be engaged for the negotiation and assessment for the planning agreement,

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- 44.4.2 the developer will advise the Council of the person that will represent them in the negotiations, and
- 44.4.3 a timetable for negotiations will be agreed between the VPA Officer and developer.

Preliminary negotiation and offer

- 44.5 The VPA Officer and the developer will identify the key commercial issues and the negotiations in relation to those issues will then take place.
- 44.6 The VPA Officer will assess the merits of a proposed planning agreement when negotiating the key commercial terms and consider relevant stakeholders and any relevant Council's policies when negotiating the planning agreement.
- 44.7 If agreement is reached on commercial terms, the developer must give the Council a letter of offer to enter into the planning agreement with the Council⁴³.
- 44.8 The Council requires a letter of offer to specify that it is an irrevocable offer by the developer, pursuant to section 7.7(3) of the EPA Act, to enter into a planning agreement on these terms set out in the document.
- 44.9 A letter of offer should:
 - 44.9.1 be in writing,
 - 44.9.2 be addressed to the Council,
 - 44.9.3 be signed by or on behalf of all parties to the proposed planning agreement other than the Council,
 - 44.9.4 set out the key terms of the planning agreement,
 - 44.9.5 outline in sufficient detail the matters required to be included in a planning agreement as specified in section 7.4 (3) of the EPA Act to allow proper consideration of the offer by the Council.
 - 44.9.6 address in sufficient detail any relevant matters as specified in this Policy to allow proper consideration by the Council.
 - 44.9.7 outline in sufficient detail all other key terms and conditions proposed to be contained in the planning agreement to allow proper consideration by the Council.
- 44.10 The developer may also submit a draft planning agreement with a letter of offer prepared based on the Council's template.

Preparation of draft planning agreement & further negotiations

- 44.11 In preparing the draft planning agreement document, the parties are to negotiate any other relevant terms of the planning agreement.
- 44.12 The VPA Officer will generally consult any relevant public authorities in relation to the planning agreement and consider relevant Council's policies when negotiating the terms of the planning agreement.
- 44.13 When the VPA Officer is satisfied with the terms of the draft planning agreement, the developer is to provide the Council with a further letter of offer that:
 - 44.13.1 is in writing,

⁴³ See section 7.7(3) of the EPA Act.

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- 44.13.2 is addressed to the Council,
 - 44.13.3 is signed by or on behalf of all parties to the proposed planning agreement other than the Council,
 - 44.13.4 expressly provides that it is an offer pursuant to section 7.7(3) of the EPA Act, and
 - 44.13.5 attaches the draft planning agreement and expressly offers to enter into that version of the planning agreement.
- 44.14 If required by the Council, the version of the planning agreement attached to the further letter of offer is to be signed by the developer and any landowner.

Notification

- 44.15 The draft planning agreement and its explanatory note must be publicly notified in accordance with the EPA Act and Regulation⁴⁴.
- 44.16 The draft planning agreement must be reported to the governing body of the Council prior to public notification and will only proceed to public notification if supported by the Council. The Council's VPA Officer will further assess the merits of a draft planning agreement and prepare a report to the Council for public notification.
- 44.17 In addition to the above paragraph, for draft planning agreement which relate to a planning proposal:
- 44.17.1 the draft planning agreement is to be reported to a Council meeting, together with the planning proposal, prior to proceeding to a Gateway Determination under section 3.34 of the Act, and
 - 44.17.2 the draft planning agreement will only proceed to public notification if the Gateway Determination determines that the planning proposal should proceed.
- 44.18 The Council may require re-notification of the draft planning agreement in certain circumstances.
- 44.19 See section 50 below for more detail in relation to the procedure for public notification and re-notification of a draft planning agreement.
- 44.20 If any changes are made to the draft planning agreement, the Council will generally require a further letter of offer from the developer to be provided which attaches the amended draft planning agreement.

Consideration of planning agreement in planning processes

- 44.21 A draft planning agreement and public submissions will be considered by Council in the determination of the related application. The weight given to the draft planning agreement and public submissions is a matter for Council acting reasonably.
- 44.22 For the avoidance of doubt, the VPA Officer's assessment of the merits of the draft planning agreement when negotiating the terms of the VPA is separate to any consideration by the Council's development assessment staff of the planning agreement as required under section 4.15(1)(a)(iia) of the EPA Act in determining a development application.
- 44.23 The fact that the VPA Officer approves the terms of a draft planning agreement will not necessarily mean that the development application or

⁴⁴ See section 7.5(1) of the EPA Act; section 204 of the Regulation.

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planning proposal, to which the proposed planning agreement relates, is acceptable on its merits on planning grounds.

Entering into a planning agreement

- 44.24 A planning agreement can generally be entered into at any time after the planning agreement is publicly notified in accordance with the EPA Act and Regulation. In some cases, the planning agreement may need to be reported to the Council before Council's execution. This may be in connection with the Council's determination of the development application or decision to proceed with the planning proposal.
- 44.25 Where possible, planning agreements should be negotiated with Council before a development application is determined or a gateway determination relating to a planning proposal is made by Council.
- 44.26 Council will typically require the developer to sign the planning agreement, or provide a further letter of offer, before it determines the development application to which the planning agreement relates or prior to Council requesting that the Minister make the instrument change referred to in the planning proposal.
- 44.27 If the Council determines the development application before the planning agreement is signed, then the Council will generally require the planning agreement to be entered into as a deferred commencement condition in the terms of the developer's letter of offer⁴⁵.
- 44.28 In such a case, a deferred condition of consent may be imposed.
- 44.29 Any documents that are required to be provided to Council on commencement of the planning agreement such as instruments and letters of consents to the registration of a planning agreement or any security should be provided to Council before the planning agreement is executed by the Council.
- 44.30 A planning agreement is entered into when it is signed by all of the parties⁴⁶. It must also be submitted on the NSW planning portal. The Council's Planning Agreements Register, which appears on the NSW planning portal, contains links to planning agreements entered into by Council.
- 44.31 The Council will generally require a provision to be included in a planning agreement to the effect that the planning agreement operates as a deed poll in favour of the Council on and from the date of execution by the developer until the date on which this deed is signed by all the parties.

45 Involvement of independent third parties

- 45.1 In some cases, the use of independent third parties during the negotiation of a planning agreement may be appropriate.
- 45.2 The Council will encourage the appointment of an independent person to facilitate or participate in the negotiations of a planning agreement in circumstances where:
- 45.2.1 an independent assessment of a proposed instrument change, development application or modification application is necessary or desirable;

⁴⁵ See section 7.7(3) of the EPA Act.

⁴⁶ See section 203 of the Regulation.

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- 45.2.2 there is a risk of conflict of interests,
- 45.2.3 factual information requires validation in the course of negotiations;
- 45.2.4 sensitive financial or other confidential information must be verified or established in the course of negotiations;
- 45.2.5 facilitation of complex negotiations are required in relation to large projects or where numerous parties or stakeholders are involved; and
- 45.2.6 dispute resolution is required under a planning agreement.
- 45.3 The costs of the independent person will be borne by the developer.

46 Procedure relating to development of Council owned land

- 46.1 This policy is intended to apply as far as practicable to planning proposals relating to Council-owned or controlled land, and to development by or on behalf of the Council on Council owned or controlled land, in the same way as it applies to other land.
- 46.2 In such circumstances, the Council will seek to provide a public benefit in accordance with this policy by one of the following means:
 - 46.2.1 registering a covenant on title under s88D of the *Conveyancing Act 1919*,
 - 46.2.2 entering into a planning agreement via a deed poll and registering the agreement on title, or
 - 46.2.3 making provision in the relevant local environmental plan to require provision of the public benefit in respect of the development of the land.
- 46.3 The Council will generally prefer to register a covenant on title as described above. However, if that is not practicable, the Council will provide for the public benefit by one of the other specified means.

47 Procedure for dispute resolution

- 47.1 See section 35 of this Policy above in relation to Council's policy on dispute resolution under a planning agreement.

48 Costs & charges

- 48.1 See section 41 above in relation to Council's policy on costs related to a planning agreement.
- 48.2 See section 28 above in relation to Council's policy on requiring funding for recurrent costs.

49 Registration and administration**Standard form & documentation of planning agreement**

- 49.1 See section 24 above in relation to Council's policy on documentation and drafting of a planning agreement.

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Monitoring & review of planning agreements

- 49.2 See section 36 above in relation to Council's policy on monitoring and review of a planning agreement.

Security for enforcement

- 49.3 See sections 33 above in relation to Council's policy on security and enforcement of a planning agreement.

Registration

- 49.4 See section 32 above in relation to Council's policy on registration of planning agreements.

Discharge

- 49.5 See section 40 above in relation to Council's policy on discharge of planning agreements.

50 Public participation & notification**Public notification**

- 50.1 The EPA Act requires a proposed planning agreement to be publicly notified and available for public inspection for a minimum of 28 days⁴⁷.
- 50.2 The Regulation requires public notification of the draft planning agreement to occur as part of, and at the same time and in the same way as public exhibition of the planning proposal, development application or modification application unless it is not practicable to do so. In which case, public notification of the planning agreement must occur as soon as practicable.
- 50.3 Where the development application or planning proposal to which a planning agreement relates is required by or under the EPA Act or Regulation to be publicly notified and available for public inspection for a period exceeding 28 days, the Council will publicly notify the planning agreement and make it available for public inspection for that longer period.

Public submissions

- 50.4 Public submissions that are received during the public notification period of a draft planning agreement will be considered by the VPA Officer.
- 50.5 The VPA Officer may negotiate changes to the draft planning agreement having regard to any matters raised following public notification.

Re-notification

- 50.6 A draft planning agreement may be amended by the parties to address any issues arising from submissions that are received or for any other reason.
- 50.7 The EPA Act does not provide for re-notification of a draft planning agreement after it has been notified.

⁴⁷ See section 7.5(1) of the EPA Act.

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- 50.8 A draft planning agreement should be re-notified where changes are made to the draft planning agreement that materially affect:
- 50.8.1 how any of the matters specified in section 7.4 of the EPA Act are dealt with by the planning agreement,
 - 50.8.2 other key terms and conditions of the planning agreement,
 - 50.8.3 the planning authority's interests or the public interest under the planning agreement, or
 - 50.8.4 whether a non-involved member of the community would have made a submission objecting to the change if it had been publicly notified.
- 50.9 The Council will publicly re-notify a draft planning agreement and the associated development application, modification application or planning proposal to which it relates if, in the Council's opinion, a material change as described above has been made to the terms of the agreement.
- 50.10 The amended draft planning agreement may need to be reported to the Council and if so, the VPA Officer will again assess the merits of the amended draft planning agreement before it is reported to the Council and before any re-notification.

51 Explanatory Note

- 51.1 The Regulation requires an explanatory note in relation to a draft planning agreement to be prepared and exhibited with the draft planning agreement⁴⁸.
- 51.2 An explanatory note is to help the broader community to simply and clearly understand what a planning agreement is proposing, how it delivers public benefit, and why it is acceptable and in the public interest. An explanatory note must be prepared in plain English and address the specific matters set out in the Practice Note.
- 51.3 The Council has an explanatory note template that is publicly available on the Council's website. The template is revised and updated from time to time.

⁴⁸ See section 205(2) and (3) of the Regulation.

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Appendix 1 - Practice Note

Refer to the Department of Planning's website: <http://www.planning.nsw.gov.au>

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Appendix 2 – VPA process relating to a planning proposal and development application



City Planning

EXHIBITION OF DRAFT PLANNING AGREEMENT AND DRAFT WORKS IN KIND/MATERIAL PUBLIC BENEFIT AGREEMENT POLICIES 2024

Draft Works in Kind Policy 2024 (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 2

Number of Pages: 18

Maitland City Council

Works-in-Kind / Material Public Benefits Policy 2024

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lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

LTL Pty Ltd trading as **Lindsay Taylor Lawyers** • ABN 78 607 889 887

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Maitland City Council**Works-in-Kind/Material Public Benefits Policy 2024**

Part 1 - Introduction**1 Definitions of terms**

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

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

bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.

contribution credit means the extent to which a monetary section 7.11 contribution for a contributions plan work or more than one contributions plan work is satisfied by the provision of a material public benefit or more than one material public benefit provided under a WKA.

contributions plan means a contributions plan authorising the imposition of monetary section 7.11 contributions approved by the Council under section 7.18 of the EPA Act.

contributions plan work means a work provided for in the works schedule in a contributions plan.

contributions plan works category means a category of public facilities specified in the works schedule in a contributions plan.

contributions plan works cost means the estimated cost attributed to a contributions plan work as specified in the works schedule in a contributions plan.

Council means Maitland City Council.

Council works supervisor means a person appointed by the Council to supervise the carrying out of work under a WKA.

developer means person entitled to act on a development consent.

development application means an application for development consent.

development consent means a consent under Part 4 of the EPA Act to carry out development and includes a complying development certificate (within the meaning of the EPA Act).

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

LEP means *Maitland Local Environmental Plan 2011*.

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LGA means local government area.

material public benefit (MPB) means a work or anything else that benefits the public or a section of the public.

modification application means an application under section 4.55 or 4.56 of the EPA Act to modify a development consent.

monetary section 7.11 contribution means a monetary contribution required by a condition of development consent imposed under section 7.11 of the EPA Act.

Part 6 certificate means a certificate of a kind specified in section 6.4 of the EPA Act.

practical completion certificate means a certificate issued by the Council to a developer to the effect that, in the reasonable opinion of the Council, works required to be provided to the Council under a WIKA are substantially complete and any incomplete part or defect is of a minor nature.

public facilities means public infrastructure, facilities, amenities and services.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

surplus contribution credit means the extent to which the value of specified material public benefits provided under a WIKA exceeds the amount of all monetary section 7.11 contributions or monetary section 7.11 contributions in specified contributions work categories required by a development consent.

WIKI officer means a Council officer having the function of negotiating a proposed WIKI on behalf of Council.

WIKI application fee means the fee determined in accordance with Council's Schedule of Fees and Charges. **Works-in-Kind Agreement (WIKI)** – see clause 3.4.

2 Purpose of Policy

- 2.1 The primary purpose of this Policy is to set out Maitland City Council's policies and procedures relating to the acceptance of MPBs offered by developers in part or full satisfaction of the payment of monetary section 7.11 contributions, and the use of WIKAs by the Council for that purpose.
- 2.2 Other purposes of this Policy are;
 - 2.2.1 to set out the procedures for the making and assessment of applications by developers to the Council to enter into WIKAs, and
 - 2.2.2 to ensure probity, consistency and transparency in the decision-making process relating to WIKAs.

3 Legislative framework for WIKAs

- 3.1 Section 7.11(1) of the EPA Act provides that if a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public facilities within a council's local government area, the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.
- 3.2 Section 7.11(3) of the EPA Act provides that:
 - 3.2.1 if a consent authority has provided public amenities or public services within a council's area in preparation for or to facilitate the carrying out of development in the area, and

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- 3.2.2 development for which development consent is sought will, if carried out, benefit from the provision of those public amenities or public services,
- the consent authority may grant the development consent subject to a condition requiring, among other things, that the developer pay to the Council a monetary section 7.11 contribution.
- 3.3 Section 7.11(5)(b) of the EPA Act enables the consent authority to accept the provision of a material public benefit in part or full satisfaction of the payment by a developer of a monetary section 7.11 contribution.
- 3.4 A WIKA is an agreement between the Council and a developer entered into for the purpose of section 7.11(5)(b) of the EPA Act under which the Council accepts the provision of a material public benefit by the developer in part or full satisfaction of the obligation to pay a monetary section 7.11 contribution.
- 3.5 Competitive tendering under section 55(1) of the *Local Government Act 1993* (NSW) is not feasible before the Council enters into a WIKA because the only possible primary party to the WIKA other than Council is the person having the benefit of a development consent requiring the payment of a monetary section 7.11 contribution which will be wholly or partially offset under the WIKA. For this reason, the Council has resolved that tenders will not be invited before the Council enters into such an agreement.

Part 2 - Council's policies on the use of WIKAs**4 When will Council decide to enter into a WIKA?**

- 4.1 The acceptance of a MPB offered by a developer to satisfy a monetary section 7.11 contribution obligation under a development consent is at the sole and complete discretion of the Council.

MPBs involving contributions plan works

- 4.2 If the MPB offered by a developer is for the provision, in whole or part, of a contribution plan work to which a monetary section 7.11 contribution obligation relates, the Council will consider the following matters in connection with the offer:
- 4.2.1 whether the works are in the same contributions plan work category as the monetary section 7.11 contributions the developer seeks to offset by the provision of the works,
 - 4.2.2 whether the works are of a kind that is suitable to be provided under a WIKA,
 - 4.2.3 whether the works may be provided by the developer in a more timely and efficient manner than the Council,
 - 4.2.4 whether the developer proposes any variation to contributions plan works,
 - 4.2.5 whether the developer proposes to carry out the works to a higher standard than the works specified in the contributions plan,
 - 4.2.6 whether the works will be to a suitable standard for the Council to eventually accept,

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- 4.2.7 the estimated cost of the proposed works and whether that cost is more or less than the contributions plan works costs for the works; and
- 4.2.8 the timeframe within which the works will commence and be completed,
- 4.2.9 whether the works schedule in the Council's contributions plan so far as it relates to the works, remains valid or requires amendment,
- 4.2.10 whether approval of the application would lead to a short-fall in monetary section 7.11 contributions for any works in the works schedule in the contributions plan;
- 4.2.11 the overall effect on the implementation of the contributions plan works schedule of the Council approving the application,
- 4.2.12 whether the applicant proposes terms and conditions of the WIKA that differ to the Council's publicly available template WIKA or this Policy and whether the differences are, in the Council's opinion, justified in the circumstances,
- 4.2.13 whether, on balance, the developer's proposal to enter into the WIKA will be advantageous to the Council and the community,

Other MPBs

- 4.3 If the MPB offered by a developer does not involve works, or does not relate to or is not in accordance with a contribution plan work to which a monetary section 7.11 contribution obligation relates, the Council will consider the following matters in connection with the offer:
 - 4.3.1 whether the benefit offered by the developer addresses the demand for public facilities to which the monetary section 7.11 contribution obligation the developer seeks to offset relates,
 - 4.3.2 the estimated value of the benefit and whether that value is more or less than the contributions plan works costs the developer seeks to offset by providing the benefit; and
 - 4.3.3 the timeframe within which the benefit will be provided,
 - 4.3.4 whether the provision of the benefit would be a suitable and adequate alternative means of addressing the demand for contributions plan works,
 - 4.3.5 whether provision of the benefit would lead to a short-fall in monetary section 7.11 contributions for any contributions plan works;
 - 4.3.6 whether the developer proposes terms and conditions of the WIKA that differ to the Council's publicly available template WIKA or this Policy and whether the differences are, in the Council's opinion, justified in the circumstances,
 - 4.3.7 the effect of accepting the benefit on the Council's ability to deliver contributions plan works and the implication relating to the imposition of monetary section 7.11 contributions in respect of other development,
 - 4.3.8 whether, on balance, the benefit is suitable standard for the Council to accept and the developer's proposal to enter into the WIKA will be advantageous to the Council and the community,

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5 Parties to WIKA

- 5.1 The Council and the developer must be the parties to a WIKA.
- 5.2 Where work the subject of the WIKA is to be carried out on land not owned or controlled by either the Council or the developer, the relevant landowner must also be a party to the WIKA.
- 5.3 The Council will consider on a case by case basis whether any other person associated with the developer or the landowner should be a party to the WIKA.

6 Cost works**Responsibility for cost of work**

- 6.1 The developer will be responsible for meeting all costs of and incidental to works required to be provided to Council under a WIKA unless the WIKA provides for a payment by Council or a third party towards the cost of the works.

Contribution by Council towards cost of works

- 6.2 If the Council agrees to make a payment towards the cost of works under a WIKA, it will not be required to do so until both of the following have occurred:
 - 6.2.1 all of the works in respect of which the Council will make a payment have vested in the Council, and
 - 6.2.2 all land on which such works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

Determining the cost of works

- 6.3 Determining the cost of works under a WIKA is relevant in the following circumstances:
 - 6.3.1 where the WIKA provides for a contribution credit,
 - 6.3.2 where the WIKA provides for a surplus contribution credit,
 - 6.3.3 where the Council or a third party will contribute to the cost of the works.
- 6.4 In such circumstances, the Council may require the developer to engage, at its cost, a suitably qualified and experienced quantity surveyor independent of the parties to provide a written opinion on the estimated cost of the works.

7 Contribution credit

- 7.1 The primary purpose of a WIKA is to apply a contribution credit against monetary section 7.11 contributions payable under a development consent (for the purpose of section 7.11(5)(b) of the EPA Act).
- 7.2 The effect of doing so is to wholly or partly (as the case may be) satisfy the developer's obligation under the development consent to pay the relevant monetary section 7.11 contributions.

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- 7.3 Contribution credits to offset monetary section 7.11 contributions under a WIKA will initially be provided in the same contributions plan works category as the works giving rise to the contribution credits, and may, at Council's discretion, be provided from other contributions plan works categories on a case by case basis.
- 7.4 Unless otherwise agreed by Council, the \$ value of a contribution credit for the provision of contributions plan works by a developer under a WIKA will not exceed the contributions plan works cost for the relevant works.
- 7.5 The provision of a contribution credit by the Council under a WIKA is given in consideration of the developer providing the relevant works and otherwise performing all of its obligations under the WIKA.
- 7.6 Accordingly, a WIKA will ordinarily provide that a contribution credit is not granted and cannot be applied against monetary section 7.11 contributions payable under a development consent until both of the following have occurred:
 - 7.6.1 all of the works to which the contribution credit applies have vested in the Council, and
 - 7.6.2 all land on which such works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

8 Surplus contribution credit

- 8.1 Where the Council agrees to recognise a surplus contributions credit in a WIKA, the WIKA will provide for the way in which the surplus contribution credit will be dealt with.
- 8.2 At the Council's discretion and depending on the circumstances, a WIKA may allow a surplus contribution credit:
 - 8.2.1 to be applied in satisfaction of monetary section 7.11 contributions payable by the developer in respect of other development as specified in the WIKA,
 - 8.2.2 to be assigned by the developer to a third party and used by the third party in accordance with a deed of assignment between the Council, the developer and the third party, or
 - 8.2.3 paid to the developer,or any combination of the above.
- 8.3 Surplus contribution credits referred to in clause 8.2.1 and 8.2.2 will generally be required to be applied in the same contributions plan works categories as those to which the WIKA relates.
- 8.4 Where a WIKA allows for a surplus contribution credit to be paid to the developer, the timing and manner of payment will be at the Council's discretion depending on the circumstances but may typically be as follows:
 - 8.4.1 firstly, payment will be made by Council from available monetary development contributions held by the Council towards the cost of the contributions plan works to which the WIKA relates,
 - 8.4.2 secondly, payment will be made by Council from any available uncommitted funds in the Council's 'Repealed Funds Account', and

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- 8.4.3 thirdly, payment will be made if and only if the Council has accumulated sufficient monetary development contributions towards the contributions plan works to which the WIKA relates to enable it to make the payment.
- 8.5 Generally, a WIKA will provide for the indexation of a surplus contribution credit.

9 Security for performance

- 9.1 Security for the enforcement of a WIKA may be achieved using a number of different means.
- 9.2 The primary forms of security that may be provided for in a WIKA, depending on the circumstances of the case, are as follows:
 - 9.2.1 provision by the developer of a bank guarantee or bond in an appropriate amount to secure the developer's obligation to provide works and rectify defects and, where applicable, to maintain works after completion and transfer to Council,
 - 9.2.2 completion of works obligations under the WIKA before the issuing of a Part 6 certificate in respect of the development to which the WIKA relates,
 - 9.2.3 withholding a contribution credit until all of the works to which the contribution credit applies have vested in the Council and all land on which such works have been carried out has been transferred to the Council,
 - 9.2.4 where the WIKA provides for the Council to contribute towards the cost of works, the Council not being required to do so until all of the works in respect of which the Council will make the contribution have vested in the Council and all land on which such works have been carried out has been transferred to the Council,
- 9.3 The procedures under a WIKA for the provision and use of bank guarantees or bonds provided as security under a WIKA are set out in *Part 3 – Procedures for WIKAs* of this Policy.

10 Dispute resolution

- 10.1 A WIKA will provide for the resolution of disputes between the developer and the Council arising in connection with the WIKA to be the subject of formal dispute resolution procedures.
- 10.2 Ordinarily, the WIKA will provide for disputes that cannot be resolved through initial discussions between the parties' nominated representatives to be referred for mediation by an independent mediator unless the dispute relates to a matter that is appropriately dealt with by a suitably qualified and experienced independent expert via expert determination.
- 10.3 The WIKA will ordinarily provide that the determination of a dispute referred for expert determination is binding on the Parties.
- 10.4 The WIKA will ordinarily provide that the parties cannot exercise their legal rights outside of the WIKA in relation to a dispute until the dispute resolution process under the WIKA has run its course.

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- 10.5 The WIKA will ordinarily require the parties to bear their own costs of participating in a mediation or expert determination process and to share equally the costs of the mediator or expert.

11 Breach by developer & enforcement

- 11.1 A WIKA will provide that where the Council considers that a developer is in breach of its obligations under a WIKA, the Council must give the developer a written notice providing details of the breach and requiring the developer to rectify the breach before the Council may exercise any remedies under the WIKA in relation to the breach.
- 11.2 Where a developer has failed to comply with a notice from the Council to remedy the breach, the Council will ordinarily be entitled to do one or more of the following:
- 11.2.1 call-up any financial security provided under the WIKA,
 - 11.2.2 step-in and perform the developer's obligations under the WIKA either in relation to the breach or more generally,
 - 11.2.3 recover costs incurred in rectifying the breach from the developer in a court of competent jurisdiction, or
 - 11.2.4 terminate the WIKA.
- 11.3 The WIKA will set out the rights and obligations of the parties if the Council terminates the WIKA.

12 Costs

- 12.1 The Council requires the developer under a WIKA to be responsible for all of the Council's costs and expenses related to the WIKA.
- 12.2 This will include (without limitation) Council's costs and expenses of:
- 12.2.1 preparing, negotiating, executing, registering, and stamping (if required), a WIKA,
 - 12.2.2 any variation of the approved design or specification of works under the WIKA requested by the developer,
 - 12.2.3 an amendment of a WIKA other than amendment requested by Council,
 - 12.2.4 preparing and registering any related instrument on title such as any easements, covenants, restrictions, charges and caveats required or allowed by the WIKA,
 - 12.2.5 preparing, negotiating, executing, registering, and stamping (if required), any other related document related to the specific WIKA, such as any deed of novation or assignment,
 - 12.2.6 enforcing and remedying a breach of the WIKA, including costs and expenses incurred by the Council in connection with investigating a non-compliance by the developer and enforcing compliance by the Developer with this Deed (including the costs and expenses of preparing and issuing notices for those purposes).

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13 Indemnity & release by developer

- 13.1 A WIKA will require the developer to release the Council from any claims the developer may have against the Council arising in connection with the performance of the developer's obligations under the WIKA.
- 13.2 A WIKA will require the Developer to indemnify the Council from and against all claims against the Council arising in connection with the performance of the developer's obligations under the WIKA.

Part 3 - Procedures for WIKAs**14 Application to enter into WIKA****Initial discussions**

- 14.1 A proposed WIKA with Council in relation to a development should be discussed with Council officers at the earliest opportunity.
- 14.2 The Council prefers discussions concerning a proposed WIKA to occur in conjunction with pre-lodgement discussions concerning the development application for a proposed development.

Written application

- 14.3 An application to Council to enter into a WIKA must be made in a form approved by Council and be accompanied by payment of the WIKA application fee.
- 14.4 The information provided by the developer should explain and formalise all details of the works and other MPBs that were identified in the developer's initial proposal.
- 14.5 The application should specify whether the form and terms and conditions of the proposed WIKA will differ from the Council's publicly available template WIK and must justify all proposed changes.
- 14.6 The steps involved in the process for entering into a WIKA are outlined below in the *Annexure – WIKA Process*.

Supporting information

- 14.7 A formal written application to enter into a WIKA must be accompanied by the following detailed information:
 - 14.7.1 a copy of all documentation including plans, drawings and specifications for the proposed works (if required by Council);
 - 14.7.2 detailed costings for the work independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or estimated contract costs prepared by a person who can demonstrate equivalent qualifications;
 - 14.7.3 a construction program including commencement and completion dates and relevant milestones; and

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14.7.4 written consent to carry out the work from all landowners affected by the proposal,

14.7.5 a statement relating to each of the matters set out in section 4.2 or section 4.3 (as relevant to the application).

Consideration of written application

14.8 The Council will take into consideration the information contained in the written application and the matters set out in clauses 4.2 and 4.3, as relevant to the application, in deciding whether to approve the application.

14.9 Council may, at the applicant's cost, engage a suitably qualified and experienced person independent of the parties to verify the developer's estimate of the cost of the proposed works under the WIKA.

Determination of written application

14.10 The decision whether to agree to accept a MPB offered by a developer and enter into a WIKA is at the sole discretion of Council.

14.11 After considering the formal written application, supporting information and matters relevant to the application, the Council may:

14.11.1 approve the application unconditionally or subject to conditions and with or without such modifications as the Council considers appropriate, or

14.11.2 refuse the application.

14.12 Where the Council approves an application to enter into a WIKA before the grant of development consent to the development to which the WIKA relates, the Council's approval will not operate and will have no force or effect unless and until the consent is granted and contains a section 7.11 condition as contemplated in the WIKA negotiation between the Council and the developer.

14.13 Council will inform the applicant in writing of its determination of a formal written application to enter into a WIKA.

14.14 A WIKA that is entered into as a result of the Council's determination to approve an application must conform to the Council's determination of the WIKA application.

15 WIKA template

15.1 The Council requires specific provisions to be included in all WIKAs that require the carrying out of works.

15.2 Provisions relating to the carrying out of works are contained in the Council's currently publicly available template WIKA.

15.3 A WIKA must be entered into in the form of, and on the same terms and conditions as contained in, the Council's publicly available template WIKA.

15.4 The provisions of a particular WIKA applying to the carrying out of works are subject to the circumstances of each case, which may require the deletion or modification of some of the provisions contained in the template WIKA or the inclusion of other provisions.

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16 Key procedures & requirements under WIKA**Procedures relating to financial security**

- 16.1 The Developer may be required under a WIKA to deliver to the Council a bank guarantee or bond required as security for works before any construction work commences.
- 16.2 The Council will hold the bank guarantee or bond as security for performance by the developer of its obligations under the WIKA to provide the relevant works to the Council.
- 16.3 The Council will be entitled to access and use the bank guarantee or bond where the developer has been notified of a breach of the WIKA by the Council and has failed to rectify the breach or where the Council terminates the WIKA for a breach by the developer.
- 16.4 The Council will be required to release and return the bank guarantee or bond or any unused part of it to the Developer after all of the works under the WIKA have vested in the Council, and all land on which the works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.
- 16.5 The developer will be permitted to provide the Council with a replacement bank guarantee or bond at any time.
- 16.6 If the Council calls-up the bond or bank guarantee or any portion of it under the WIKA, the developer may be required to provide a further or replacement bond or bank guarantee to ensure that the amount of security held by the Council equals the amount the Council is entitled to hold under the WIKA.

Design & specification of works

- 16.7 The applicant must work cooperatively with relevant Council staff regarding the design and specifications for works the subject of a WIKA.
- 16.8 The Council has standard design and specification requirements for different public works, which the developer must use if required by Council.
- 16.9 The Council may require the developer to change any plans and drawings of the works that it considers necessary or desirable as a precondition to approving the plans and drawings.
- 16.10 The Developer must not make any application for a regulatory approval relating to the works the subject of a WIKA unless the Council has approved the plans, drawings and specifications of the works.

Regulatory approvals for works

- 16.11 It is the responsibility of the applicant to obtain all necessary regulatory approvals for the works.
- 16.12 The Council will not allow works to commence unless all such approvals have been obtained.
- 16.13 Where a regulatory approval for works is inconsistent with the Council's determination of the formal written application to enter into the WIKA or the Council's approved design and specification for the works, the applicant must work co-operatively with the Council to achieve a modification of the relevant approval or the design and specification of the works (whichever is appropriate in the circumstances) before works commence.

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Intellectual property

- 16.14 The intellectual property in the design and specifications for works the subject of a WIKA, as approved by Council, will belong to the Council.
- 16.15 The applicant must take all necessary steps to ensure that all intellectual property rights in the approved design and specification of the works is transferred to Council.

Insurances

- 16.16 The developer must take out and keep current to Council's satisfaction such insurances as Council requires in relation to the works the subject of a WIKA.
- 16.17 The Developer must also provide Council with satisfactory evidence that all subcontractors engaged in relation to the works have necessary and adequate insurances in relation to the works.

Approved persons

- 16.18 All persons engaged by the developer in carrying out works under a WIKA must be approved by Council.
- 16.19 The developer will be responsible for procuring the compliance with the WIKA of all approved persons.

Construction Contract

- 16.20 The developer must enter into a construction contract for the works the subject of a WIKA before commencement of works occurs.

WHS obligations

- 16.21 The Developer will be the principal contractor under Work Health and Safety laws in respect of works the subject of a WIKA until such time that the Developer engages the contractor to under the construction contract or another person to be the principal contractor and authorises them to have management or control of the workplace relating to the works and to discharge the duties of the principal contractor.
- 16.22 The Developer will be required to use its best endeavours to ensure that all persons involved in the works comply with relevant Work Health and Safety laws in respect of the works.

Ownership and risk during construction

- 16.23 The Developer will own, and be responsible for care of, the works the subject of a WIKA, and bear all risk and liability in connection with the works, until the works are transferred to Council under the WIKA.

Notice of commencement

- 16.24 The developer must give the Council not less than 10 days prior notice of its intention to commence works the subject of a WIKA.

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Pre-start meeting

- 16.25 The Developer must organise and conduct a pre-start meeting with Council personnel before starting the construction of the works.

Council works supervisor

- 16.26 The WIKA may provide for the appointment of a Council works supervisor to supervise the carrying out of the works the subject of the WIKA by the developer.
- 16.27 The Council works supervisor will be able to inspect or test the works upon the giving of prior notice to the developer and to make requests and give directions to the developer on Council's behalf in relation to the works.
- 16.28 The developer will be required to promptly comply with all reasonable requests made and directions given by the Council works supervisor in relation to the works.

Variation of works

- 16.29 The developer must not vary works or the cost of works the subject of a WIKA as approved by the Council without the written approval of Council.
- 16.30 The works may be varied at the request of the developer by agreement in writing with Council and the developer must meet all costs incurred by Council in relation to the variation.

Practical completion of works

- 16.31 The developer may make a written request to Council to issue a practical completion certificate for works the subject of a WIKA when the works are substantially complete and any incomplete part or any defect in the works is of a minor nature.
- 16.32 The Council will then inspect the works and will either issue a practical completion certificate or direct the developer as to any aspect of the works that must be completed, rectified or repaired at the developer's cost before the certificate will be issued.

Hand-over of works

- 16.33 At any time after the Council issues a practical completion certificate for works the subject of a WIKA, it may issue a transfer of ownership notice to the Developer relating to the works.
- 16.34 The transfer of ownership notice will specify a date when the works will vest in the Council, which will not be sooner than 14 days after the notice is issued.
- 16.35 The works will vest in the Council on the vesting date stated in the transfer of ownership notice.

Transfer of land

- 16.36 The Developer will be required to dedicate or procure the dedication to the Council of land on which works the subject of WIKA in respect of which a transfer of ownership notice is issued.
- 16.37 The dedication of the land must occur by not later than the vesting date stated in the transfer of ownership notice and at no cost to Council.

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Rectification of defects

- 16.38 The WIKA will generally specify a defects liability period commencing on the transfer of the ownership of works the subject of a WIKA to Council.
- 16.39 The developer will be required, at its cost, to rectify to the Council's satisfaction any defects in the works notified to it by Council during the defects liability period.

Maintenance of works

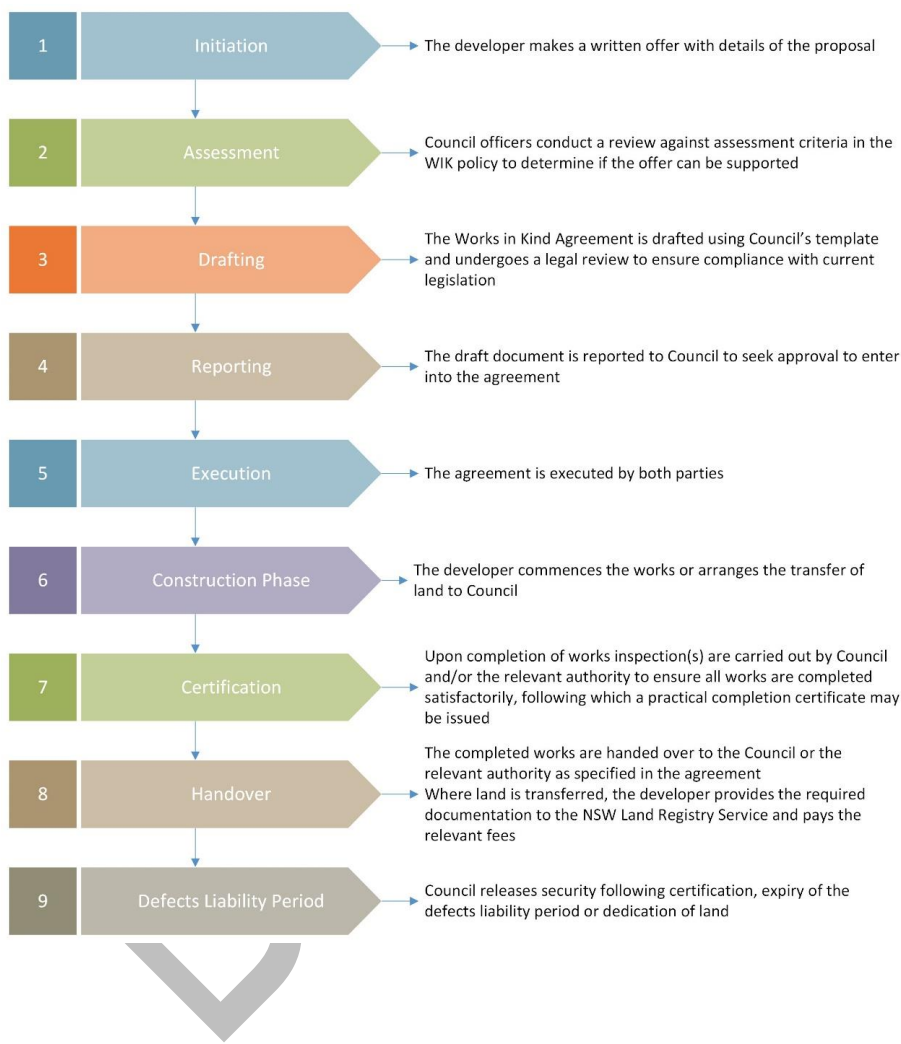
- 16.40 In some cases, the WIKA may require the developer to maintain works during a specified maintenance period following the transfer of the works to Council.
- 16.41 In such cases, the WIKA will set out the specific maintenance obligations of the developer and the developer must, at its cost, maintain the works to the Council's during the maintenance period.

Works-as-executed plan

- 16.42 The WIKA will require the developer to provide the Council with a works-as-executed plan of completed works under the WIKA and to assign or procure the assignment of the copyright in such a plan to the Council.

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Appendix – WIKA process



City Planning

DEVELOPMENT APPLICATION 2023/551 TORRENS TITLE SUBDIVISION TO CREATE THREE HUNDRED AND TWENTY TWO (322) RESIDENTIAL LOTS, THREE (3) STORMWATER BASINS AND THREE (3) PUBLIC RESERVE LOTS, 457 CESSNOCK ROAD AND 65 REDWOOD DRIVE GILLIESTON HEIGHTS

Assessment Report (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 3

Number of Pages: 50



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Version 1: Comprehensive

| | |
|-------------------------|--|
| Application No: | DA/2023/551 |
| Proposal: | Torrens Title Subdivision to create Three Hundred and Twenty-Two (322) Residential Lots, Three (3) Stormwater Basins and Three (3) Public Reserve Lots |
| Address: | 457 Cessnock Road GILLIESTON HEIGHTS NSW 2321, and 65 Redwood Drive GILLIESTON HEIGHTS |
| Lot & DP No: | 1 / 1298659 2/1230739 |
| Property No: | 105734 |
| Applicant: | Walker Gillieston Heights Pty Ltd |
| Owner: | Walker Gillieston Heights Pty Ltd |
| Author: | Kristen Wells |
| Site Inspection: | 31 March 2024 |

INTRODUCTION

The purpose of this report is to provide a detailed discussion and assessment of Development Application No. DA/2023/551 proposing Torrens Title Subdivision to create Three Hundred and Twenty-Two (322) Residential Lots, Three (3) Stormwater Basins and Three (3) Public Reserve Lots. The assessment will provide consideration of the proposal under the *Environmental Planning and Assessment Act 1979*, the *Maitland Local Environmental Plan 2011*, the Maitland Development Control Plan 2011 and any other relevant legislation, guidelines and policies of the Council.

Description of Proposed Development

The proposal relates to land within the south-east Gillieston Heights Urban Release Area (the site – Figure 1) and the development application seeks consent for Torrens title subdivision of this land. The subdivision is commonly known as 'Wallis Creek South'. Specifics of the proposed subdivision are outlined below:

- The creation of three hundred and twenty-two (322) residential allotments with varying lot sizes of 450sqm – 1052sqm;
- The subdivision is to occur over six (6) stages as per the table shown in Figure 3;
- Three (3) lots to be dedicated to Council as drainage reserve;
- Three (3) lots to be dedicated a public reserve land, the details being:
 - Provision of a local park and off leash dog park subject to a Voluntary Planning Agreement with Council. These lots will be dedicated to Council as community land;
 - Dedication of environmental land, comprising the C2 *Environmental Conservation* and C3 *Environmental Management* land to the east and south of the site;
- Full road construction of the following;
 - Upgrading of Cessnock Road and the provision of a signalised intersection;
 - Construction of internal local roads, including through connection to Aspen Drive connecting the subdivision with the Wallis Creek subdivision to the north;
- Associated infrastructure and landscape works including a bulk earthwork and retaining walls, shared pathway, services, stormwater management facilities.



- Removal of existing vegetation on land zoned *R1 General Residential*.
- Acoustic barrier along Cessnock Road.
- Provision of easements.

The capital investment value is estimated at \$29,868,396, which is below the nominated trigger value of \$30 million, which would require the application to be determined as Regionally Significant Development under Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021.

The proposed subdivision layout is shown below:



Figure 1: Proposed subdivision layout (source: Walker Corporation 2024)



Figure 2: Masterplan render of the completed subdivision (source: Walker Corporation 2024)

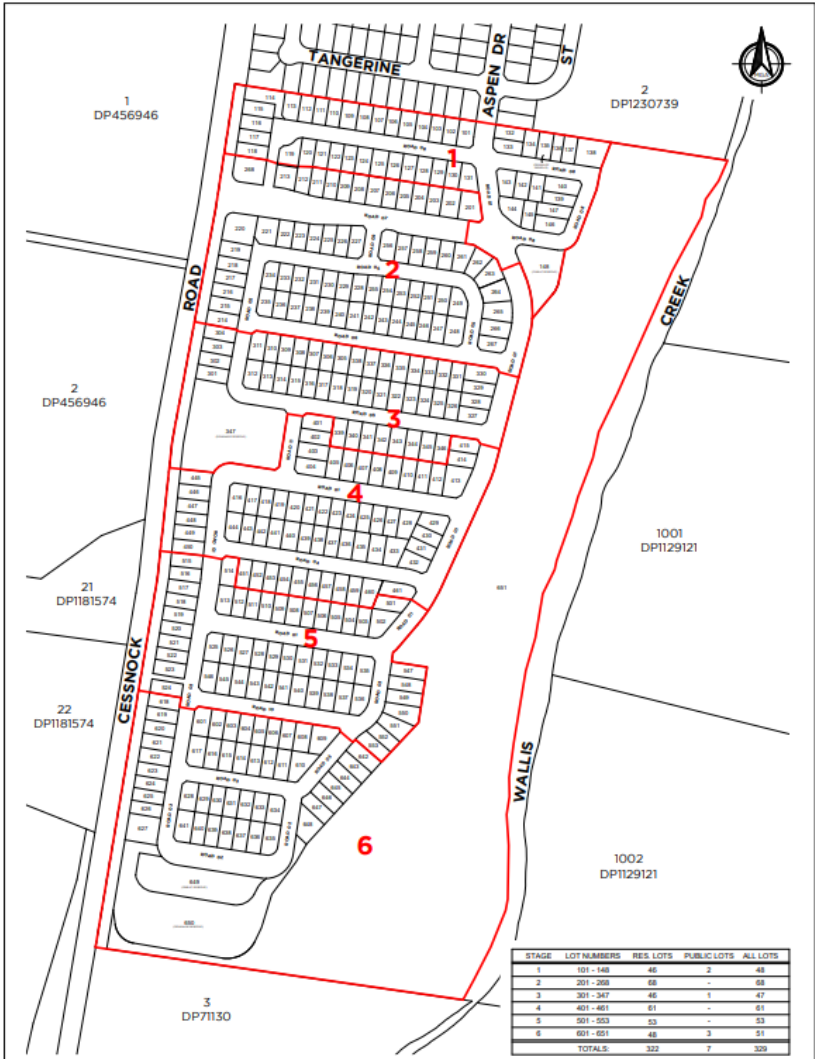


Figure 3: Proposed Staging Plan

Staging Summary

The staging of the subdivision is proposed to occur in accordance with the staging plan above and the following:

- Stage 1 will include a Local Park in addition to the 47 residential allotments, accessed via Aspen Drive. The local park will ensure that the future community will have access to public amenities from the commencement of the subdivision.



- *Stage 2* including access via the signalised intersection on Cessnock Road. Entry features are incorporated into intersection at Cessnock Road. The entry features are positioned on private allotments.
- *Stage 3* will deliver a permanent stormwater basin along with the 46 residential allotments.
- *Stages 4 and 5* will deliver the 64 and 51 residential allotments, respectively.
- *Stage 6* will include the off-leash dog park, a third stormwater basin (Lot 650) and a Hunter Water sewer pump station lot (Lot 650) in addition to the 47 residential allotments.

Description of the Land on which the proposal is to be carried out.

The land on which the development is to be carried out is legally described as Lot 1 DP 1298659. Work is also required on a north-eastern adjoining lot, being Lot 2 DP 1230739. The work involves the creation of an Asset Protection Zone (APZ) for the purpose of bushfire protection. Owners consent for the creation of the APZ has been received and this lot forms part of the subdivision. Unless otherwise specified, reference to 'the site' includes Lot 1 DP 1298659.

The Subdivision Plans and some of the submitted documentation reference a **Five** (5) into Three Hundred and Twenty-Two (322) Lot subdivision. The proposal is now for a **One** (1) into Three Hundred and Twenty-Two (322) Lot subdivision. The change in parent numbers (i.e. 5, reduced to 1) is the result of a lot consolidation, registered in March 2024. The consolidation makes no impact to the consideration of the proposal, noting that the overall land to be subdivided remains the same. Reference is made to the locality plan shown in Figure 4 for land included in this subdivision.

The site is located to the east of Cessnock Road, within the far south-east portion of the Gillieston Heights residential precinct. The site is irregular in shape and has a site area of approximately 44.180 hectares. The land is predominately comprised of managed grassland vegetation, with a heavily vegetated portion of the site sitting to the far east, including Wallis Creek. The site has an undulating topography, with a central hilltop peak, before the land slopes steeply away to the east towards Wallis Creek and at a gentler decline to the west and towards Cessnock Road. The site has been predominantly used for grazing purposes in the past.

Wallis Creek, a 2nd order watercourse is located in the eastern portion of the site and runs north to south towards Testers Hollow. The watercourse is bound by extensive native vegetation. Five farm dams are also positioned over the site.

An existing residential subdivision (Wallis Creek) sits to the north of this site. An access point to this subdivision is available via Aspen Drive. This access point is to be continued into the proposed subdivision, via Road MC01. Cessnock Road comprises the west boundary.

The site is identified within the Maitland Urban Settlement Strategy 2012 (MUSS 2012) for future urban development consistent with the sequencing and release of urban land in Gillieston Heights. A large portion of site has been rezoned in part from RU2 Rural Landscape to R1 General Residential. The Planning Proposal was finalised and gazetted on 30 May 2022. As part of the Planning Proposal a site-specific development control plan was prepared and is included in Chapter F of the Maitland Development Control Plan 2011 (DCP). This development application is a result of the planning proposal and responds to the provisions of the DCP.

Photographs / aerial image of the existing site is provided in the Figures below.



Figure 4: Aerial Image of the subdivision location.



Figure 5: View looking north towards Aspen Drive and the existing Wallis Creek Subdivision.



Figure 6: View from the centre of the site looking west towards Cessnock Road.



Figure 7: View of the site from the lowest point in the east, looking north-west towards the environmental reserve land.



Figure 8: View of the base of the environmental reserve land.



Figure 9: View looking east from the centre of the site. The trees pictured are part of the environmental reserve land.

PREVIOUS DEVELOPMENT HISTORY

Planning proposal PP-2021-1233 for the site was finalised on 30th May 2022. The purpose of the planning proposal was to amend the Maitland LEP 2011 to provide for the development of the subject land for residential purposes. The subject lands are identified within the Maitland Urban Settlement Strategy 2012 (MUSS 2012) for future urban development consistent with the sequencing and release of urban land in Gillieston Heights. This subdivision sits within the eastern precinct of the URA as shown below.

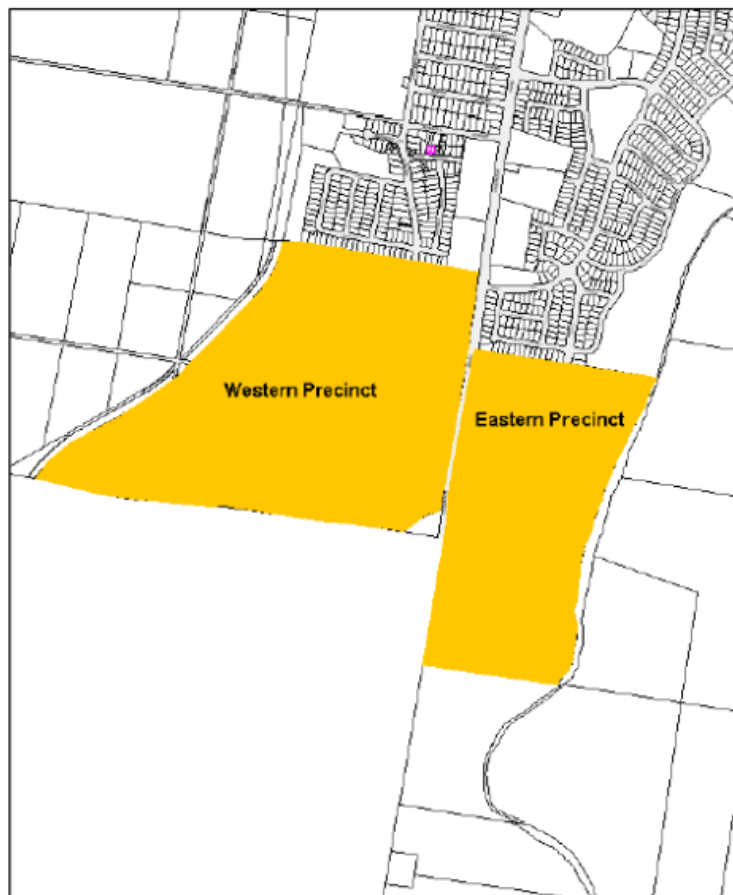


Figure 10: URA mapping

In summary the planning proposal amended the following:

- Zone part of the site from *RU2 Rural Landscape* to *R1 General Residential*, retain portions of the land as *RU2 Rural Landscape*, *C2 Environmental Conservation* and *C3 Environmental Management*.
- Amend the minimum lot size (450m) to reflect the residential zone boundary; and
- Map the land as an urban release area.

The planning proposal retained part of the existing *RU2 Rural Landscape*, *C2 Environmental Conservation* and *C3 Environmental Management* zoned land due to its environmental constraints, including flooding, endangered ecological communities and threatened species. This has informed the proposed subdivision

layout in this development application. The current development application for residential subdivision responds to the LEP amendment.

Site History

The table below provides a consent history and background context that is a relevant consideration in the assessment of the application.

| Previous Consent History | | | | |
|--------------------------|---|------------------------------|---|--|
| DA No. | Description of Development | Date Determined | Decision Approved/Refused | Key Issues |
| 2020/169 | Demolition of Existing Structures and Construction of a Manufactured Housing Estate (126 Dwellings) and Associated Community Buildings and Infrastructure | 23/03/2021 08/12/2021 | Refused by Council Decision overturned by the Land and Environment Court | Consent orders were issued on appeal in the Land and Environment Court on 8 th December 2021. The manufactured home estate was submitted over the northern portion of this subdivision. A condition is to be placed in the notice of determination requiring the <i>surrender</i> of this consent prior to the issue of the Subdivision Works Certificate for this proposal. |
| 2024/176 | Demolition of the five (5) existing dwellings ancillary structures and fencing | 11/04/2024 | Approved | This DA permitted the demolition of existing structures on this site. The subdivision proposal originally sought consent for the demolition of the structures, however the demolition was brought forward under separate DA consent due to the need to expedite the process. The applicant outlined that the structures were at high risk of vandalism and early demolition was pursued to remedy this. It is understood that the demolition consent has been acted upon and the structures have been removed. |
| - | Consolidation of Five (5) Lots into One (1) Lot. | 01/03/2024 | Registered with the Lands Title Office as exempt subdivision. | This proposal was originally submitted over 5 allotments, being: 2/601226, 1/601226, 1/311179, 2/302745, 1/302745, 457, 463, 501, 507 and 527 Cessnock Road Gillieston Heights. |

| | | | | |
|--|--|--|--|--|
| | | | | An amalgamation of the 5 lots into 1 lot was registered on 1 st March 2024. |
|--|--|--|--|--|

PLANNING ASSESSMENT - 4.15(1) matters for consideration

The proposal is categorised as *local development*, under the *Environmental Planning and Assessment Act 1979* (EPA Act). The proposal is also *integrated development* under Section 4.46 of the EPA Act. Referral to the following agencies has been required:

- Section 90, National Parks and Wildlife Act 1974; An Aboriginal Heritage Impact Permit (AHIP).
- Section 138, Roads Act 1993; Connection to a classified road.
- Section 100B, Rural Fires Act 1997; A bushfire safety authority.
- Section 91, Water Management Act 2000; A controlled activity approval.

Contributions

As presented in a separate Council report (titled "*Adoption of proposed Voluntary Planning Agreement – Recreation facilities – Gillieston Heights South – Walker Corporation*", August 13, 2024), the dedication of land, payment of environmental maintenance contributions, as well as construction of recreational facilities have been proposed under a Voluntary Planning Agreement (VPA). It is recommended to endorse the VPA in conjunction with the proposed subdivision. The specific details of the VPA include:

- *Dedication of environmental land to the east (14.9307 hectares) and south (12.3 hectares) of the site;*
- *Contribution towards maintenance of the environmental land;*
- *Provision of a local park;*
- *Provision of an off-leash dog park;*
- *Regular contributions.*

It is intended that the VPA will replace a portion of the requirement for monetary contributions which would ordinarily be levied on the development (with the exception of those which would apply in the City-Wide Road and Traffic category). In lieu of paying the remaining contributions, the applicant will undertake capital works to satisfy the demand for recreation facilities arising as a result of the residential development. It is considered that the dog park, local park and environmental reserves will not only cater for residents of the estate, but those outside the local catchment providing a broader benefit to Council and the community.

The proposal involves the subdivision of land within an identified 'urban release area'. A certificate issued by the Secretary Department of Planning and Environment in accordance with clause 6.1(2) of the Maitland LEP 2011 confirming that the proponent has made the necessary arrangements for contributions towards designated State public infrastructure must be received prior to the Council determining the development application. In this regard, the Secretary's certificate was received by Council on 2nd July 2024 (SVPA2023-51).

Consideration of Threatened Species

Council is required under Section 4.15 of the EP&A Act to make an assessment of whether the proposed development will have a significant impact on any threatened species, populations, or ecological communities, or their habitats. Such threatened species in NSW may be protected under the *NSW Biodiversity Conservation Act 2016* or under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The DA was supported with a Biodiversity Assessment Report, which is assessed in further detail below.

Section 4.15(1)(a)(i) - Provisions of any environmental planning instrument

State Environmental Planning Policies

The following State Environmental Planning Policies (SEPP's) are relevant to the assessment of the proposal:

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3 Koala Habitat Protection 2020

This chapter applies to all lands within Maitland LGA except for lands zoned *RU1 Primary Production*, *RU2 Rural Landscape* or *RU3 Forestry*. As there is no approved Koala Plan of Management (KPoM) the Chapter also applies to the subject land. A Koala Assessment Summary, prepared by AEP was submitted with the application. A Tier 2 Assessment of the site has been conducted noting the presence of Schedule 3 koala preferred tree species present at the site.

To satisfy the Chapter of the Biodiversity and Conservation SEPP, the Koala Assessment Summary confirmed:

- *Koalas have not been historically recorded as being present within 2.5 km of the land in the previous 18 years.*
- *No koalas or signs of koala occupation were recorded as being present during any of the site assessments completed within the proposal site.*
- *Impacts to potential habitat will be limited to the removal of 0.53ha of highly to severely degraded remnant native vegetation and 0.51ha of planted native trees.*

The land subject of the development application is therefore not considered to be core koala habitat and Clause 4.9 of the Biodiversity and Conservation SEPP is satisfied.

Chapter 2 Vegetation in Non-rural areas

Chapter 2 of the SEPP works with the *Biodiversity Conservation Act 2016* (BC Act) and the *Local Land Services Act 2013* (LLS Act) to create a regulatory framework for the clearing of native vegetation in NSW.

The SEPP regulates clearing that is not linked to development requiring consent. Clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process. As the clearing of vegetation is ancillary to the proposed subdivision, Council as the consent authority, has assessed the Biodiversity Development Assessment Report (BDAR) submitted which is further discussed in this report.

State Environmental Planning Policy (Resilience and Hazards) 2021

Part 2.2 Development Controls for Coastal Management Areas

The site is partially mapped as Coastal Environment Area and Coastal Use Area; as such, the Council must consider the likelihood of an adverse impact on the coastal environment. The development has been designed and sited to actively avoid any impacts on the coastal environment. Additionally, the stormwater

management plan includes provisions for water sensitive urban design that results in a development that exceeds Council's water quality targets.

Compliance with this part of the SEPP can be achieved.

Chapter 4 Remediation of Land

Clause 4.6 in this SEPP requires Council to consider whether the land is contaminated before it can issue development consent.

A Preliminary Site Investigation (PSI) prepared by Stantec was reviewed by Council's Senior Contamination Officer. Upon review of the submitted information and following further clarification from the applicant it has been concluded that the site is unlikely to contain contaminants that would render the site unsuitable for the proposed purpose. In forming this decision, it is noted that all structures have been demolished under separate consent (DA 2024/176) and the risk of contamination was assessed at this point.

Further, any unexpected finds will be uncovered during the earthworks phase of the subdivision. With a history of past farming, there is a possibility that minor contaminants may be present in the soil. This can be remediated under the earthworks phase; with the majority of the site being stripped and rolled under geotechnical engineering supervision.

As such, the consent authority can be satisfied that the site can be made suitable for future residential development.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The DA proposes the creation of more than 200 allotments and therefore required referral to TfNSW as traffic generating development in accordance with Section 1.122 / Schedule 3 of SEPP Transport and Infrastructure. It is noted that Cessnock Road (MR195) is a classified State Road. Council is the roads authority for Cessnock Road and all other public roads in the area, in accordance with Section 7 of the *Roads Act 1993*. The proposed development will rely on the Cessnock Road intersection for access.

TfNSW identified that this application includes the construction of new roads, upgrading of Cessnock Road and the provision of a signalised intersection, a shared pathway, services, stormwater management facilities, landscaping works and a local park.

The developer must design and construct the intersection works at no cost to TfNSW. TfNSW outlined that the completion of the intersection will occur prior to the issue of the subdivision certificate for stage 2. Conditions outlining this arrangement have been provided in the notice of determination.

This includes the requirement for the developer to enter into a Works Authorisation Deed (WAD) with TfNSW.

Maitland Local Environmental Plan 2011

The site is zoned part *R1 General Residential*, part *RU2 Rural Landscape*, part *C2 Environmental Conservation*, and *C3 Environmental Management* under the Maitland Local Environmental Plan 2011 (MLEP 2011). The proposed development is defined as Torrens Title Subdivision to create Three Hundred and Twenty-Two (322) Residential Lots, Three (3) Stormwater Basins and Three (3) Public Reserve Lots to be used for future local and district open space which is a type of development permitted with consent in the *R1 General Residential* zone under Clause 2.6 of MLEP.

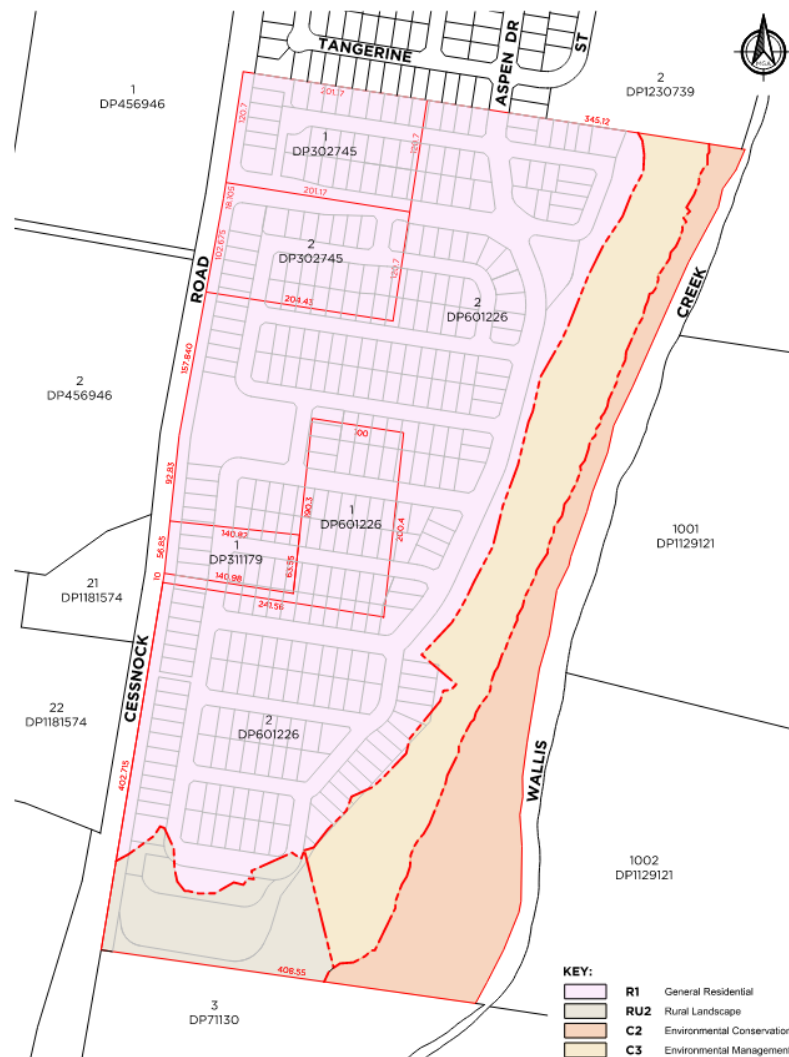


Figure 11: Zoning Overlay

R1 General Residential

The proposed development is consistent with the objectives of the R1 General Residential zone. The proposal facilitates the delivery of additional residential lots within the LGA that will enable residential development to provide for the housing needs of the community. It is anticipated that the development will provide for a variety of housing types, through a variety of lot sizes within the locality. Additionally, the proposed development provides greenspaces to meet the day to day needs of the future residents, including an off-leash dog park, local park and dedicated environmental land.

All residential lots are situated within the R1 General Residential zone.

RU2 Rural Landscape

The proposed development is consistent with the objectives of the zone by maintaining the rural landscape character of the land, while also providing a range of non-agricultural uses in areas where infrastructure is adequate.

Council infrastructure, including the provision of a drainage basin in the southern portion of the site will sit within the RU2 zoned land.

C2 Environmental Conservation

No works in this zone. The zoning objectives continue to be met.

C3 Environmental Management

Some drainage and minor batter works to support residential land is required in this zone. The zoning objectives continue to be met.

The following clauses of the Maitland LEP 2011 are relevant to the assessment of the proposal:

Clause 2.6 – Subdivision – Consent Requirements

This clause permits the subdivision of land, to which the MLEP 2011 applies, with consent.

Clause 4.1 Minimum Subdivision Lot Size

The minimum lot size within the *R1 General Residential* zone is 450m². All proposed residential lots are above the minimum lot size. No residential lots are proposed solely within the *RU2 Rural Landscape* zone, *C2 Environmental Conservation* or *C3 Environmental Management* zones.

Clause 4.2A Minimum Subdivision Lot Sizes for Certain Split Zones

The land contains split zoning, the provision of this clause therefore applies. All proposed lots in residential zoned portions of the site exceed the minimum lot size prescribed for the land. This complies with Clause 4.2C(3)(a)(i) of the Maitland LEP.

The allotments subject to split zoning requirements include Lot 647 comprising the entirety of the *C2 Environmental Conservation* and *C3 Environmental Management* land, as well as portion of *R1 General Residential* zoned land that exceeds the minimum lot size of 450sqm. Additionally, Lot 650 (drainage reserve) and Lot 649 (public reserve – dog park) contains *RU2 Rural Landscape* zoned land, including a portion within the *R1* zone, also exceeding the minimum lot size of 450sqm.

Lot 627 is shown on plans as containing both *RU2 Rural Landscape* and *R1 General Residential* zoned land. In order to comply with this clause, all the *RU2* zoned land must be contained within the residue with remaining *RU2* land. In this case, land dedicated to Council for various infrastructure has been contained in the *RU2* zoned land. The portion of the land in Lot 627 that is *RU2* shall also be contained in the residue *RU2* land, meaning a small portion of the land is to be absorbed into Lot 650. A condition of consent has required this adjustment to be made to the plans prior to the release of the Subdivision Works Certificate. The applicant this agreeable to this change.

Clause 5.10 – Heritage Conservation

There are no European heritage items to consider in relation to the proposed development. Aboriginal archaeology is discussed in section 4.15(1)(b) in this report. Based on the assessment, appropriate conditions of consent have been included and the clause has therefore been satisfied.

Clause 5.21 – Flood Planning

The eastern portion of the subject site is mapped as being located upon the flood planning maps contained within the MLEP 2011. The residential allotments are all to be located above the flood liable land. Minor drainage works are located within the land identified on the MLEP 2011 maps, however this is not likely to have significant adverse impacts on flood behaviour which could result in potential flood affectation of other developments or properties. The subdivision is considered compliant with this clause.

PART 6 – URBAN RELEASE AREAS

The site is located within the Gillieston Heights Urban Release Area (URA). Part 6 of the MLEP 2011 applies and is discussed below.

Clause 6.1 Arrangements for designated State public infrastructure

This clause requires Council to be in receipt of a Satisfactory Arrangement Certificate issued by the NSW Department of Planning and Environment before development consent can be issued. Satisfactory Arrangements Certificate – DA/2023/551– SVPA2023-51. The Certificate has been issued by the Department dated 2 July 2024 and requires the developer to pay a monetary contribution towards State infrastructure prior to the issue of a Subdivision Certificate.

Clause 6.2 Public utility infrastructure

This clause requires Council to be satisfied that necessary public infrastructure is available to the development when required, to service proposed residential lots. The letter of offer was submitted with the application and included the concept design for recreational land environmental land dedication. Design Standards for the recreation land has been informed by the Draft Maitland City Council Community Infrastructure Strategy 2021. A VPA was drafted reflective of the Letter of Offer and in consultation with Council. It was exhibited between 1 March – 29 March 2024 and detailed the following (and also shown in Figure 12 below):

- *Dedication of environmental land to the east (14.9307 hectares) and south (12.3 hectares) of the site;*
- *Contribution towards maintenance of the environmental land;*
- *Provision of a local park;*
- *Provision of an off-leash dog park;*
- *Regular contributions.*

It is intended that the VPA will replace the requirement for monetary contributions which would ordinarily be levied on the development with the exception of those which would apply in the City Wide Road and Traffic category. In lieu of paying the remaining contributions, the applicant will undertake capital works to satisfy the demand for recreation facilities arising as a result of the residential development. It is considered that the park will not only cater for residents of the estate, but those outside the local catchment providing a broader benefit to Council and the community.

The location of the land subject to the VPA is shown below:



Figure 12: VPA components relevant to the subdivision.

In addition to this, Council requested the preparation of a servicing strategy, to ensure adequate arrangements have been made for sewerage and water. This is still under preparation; however Hunter Water have provided confirmation that a compliant level of servicing will be available to the subdivision. A Section 50 compliance certificate can be issued for each stage within the subdivision.

The application was referred to Ausgrid and comments were provided regarding electrical infrastructure. Kiosk substations will be required to provide low voltage power supply to the development.

As such, the proposed subdivision can be connected from all relevant infrastructure and utility services. The consent authority can be satisfied that any public utility infrastructure that is essential for the proposed development is available and adequate arrangements have been made to make that infrastructure available when it is require.

Clause 6.3 – Development control plan

This clause requires a Development Control Plan (DCP) to be in force that addresses the relevant matters for consideration under clause 6.3(3) before development consent can be issued. Chapter F – Gillieston Heights Urban release Area DCP is in force.

Clause 7.1 – Acid Sulfate Soils

The site is identified as containing Class 5 ASS on the Acid Sulfate Soil Map, with proximity to Class 2 and 3 soils. Site works are confined to the portion of the site subject to Class 5 soils, as such, compliance with this clause can be achieved.

Clause 7.2 – Earthworks

Separate development consent is not specifically required under this clause as the proposed earthworks are ancillary to the proposed subdivision and will be considered in this assessment. The matters for consideration outlined in subclause (3) are addressed in the discussion of section 4.15(1)(b) of the EP&A Act in this assessment report.

Subclause (3) requires a consent authority to consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,

Comment: This matter has been addressed in section 4.15(1)(b) in this report respectively and considered to be satisfactory.

(b) the effect of the proposed development on the likely future use or redevelopment of the land,

Comment: The subdivision is necessary to facilitate the future development of the land for residential purposes.

(c) the quality of the fill or the soil to be excavated, or both,

Comment: The submitted and revised Geotechnical Report concludes that the site is suitable for residential development, provided that a suitable maximum particle size can be achieved and the resulting material is well-graded. The geotechnical report confirms the majority of the material that is expected to be excavated is considered suitable for use as bulk earthworks fill. Conditions will be included in the consent to ensure the site appropriately deals with excavated materials and fill.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,

Comment: Earthworks form part of the development of the subdivision and does not, in itself, impact on the existing and likely amenity of adjoining properties.

(e) the source of any fill material and the destination of any excavated material,

Comment: The submitted earthworks plan demonstrates that the site provides for a balanced cut/fill arrangement.

(f) the likelihood of disturbing relics,

Comment: This matter has been addressed elsewhere in this assessment report under Aboriginal archaeology.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Comment: This matter has been addressed elsewhere in this report under Stormwater Management.

Clause 7.4 – Riparian land and watercourses

The watercourse in the east of the site runs from north to south, directing south to Testers Hollow. The watercourse is unlikely to have adverse impact associated with water quality, flows and stability of the banks and this clause is complied with.

Hunter Regional Plan 2036/Greater Newcastle Metropolitan Plan 2036

The development is consistent with the goals and outcomes expressed in both documents as they relate to housing supply. The subdivision of the site within the URA will release land to provide for additional housing opportunities within the Hunter Region.

Section 4.15(1)(a)(ii) - Any draft environmental planning instrument that is or has been placed on public exhibition

There are no draft environmental planning instruments applicable to this proposal.

Section 4.15(1)(a)(iii) - Any development control plan

Maitland Development Control Plan 2011 (DCP)

The following chapters of the Maitland DCP 2011 are relevant to the assessment of the proposal:

Part A – Administration

Part B – Environmental Guidelines

Part C – Design Guidelines

Part F – Urban Release Areas

Part A – Administration

A.4.1 Notification

The application was notified in accordance with Council's Community Participation Plan from 24 July 2032 to 21 August 2023 with eight (8) submissions received. Further discussion in regard to the submissions is provided in section 4.15(1)(d) of this report.

Part B – Environmental Guidelines

B.3 – Hunter River Flood Plan

The subject site is mapped as partially containing flood affected land under the MLEP 2011. The portion of land mapped as flood affected runs from the east and south of the site. The proposed residential portion is not impacted by the flood mapped areas and all lots will be above the flood planning level. It is noted that some of the infrastructure supporting the development (detention basins) are located below the 100-year flood event. This has been adequately discussed under the LEP section of the report.

B.5 - Tree Management

The proposal is supported by a *Streamlined Biodiversity Development Assessment Report* prepared by AEP, which establishes how the proposal has complied with the avoid, minimise and offset hierarchy. After avoiding and actively minimising the impact on the existing vegetation, it is necessary to remove 0.93ha of native vegetation, made up of 0.53ha of planted native vegetation in highly degraded to severely

degraded condition and 0.40ha of remnant native vegetation in poor condition. All retained vegetation on site will be actively protected during the construction and delivery of the residential allotments via conditions of consent. The vegetation on the site does not appear on the significant tree register, nor does it form part of or is within close proximity of a heritage item.

B.7 – Riparian Land and Waterways

The site contains a waterway on the eastern boundary, which is known as Wallis Creek. The development proposes minor alterations to the existing riparian zone, via batters and infrastructure provision.

The proposed stormwater detention areas and infrastructure will ensure that all stormwater is treated prior to entering riparian waterways, whilst ensuring that the location of stormwater devices, including siltation fences does not compromise the connectivity and functioning of riparian vegetation, habitat and waterways.

The development does not propose the removal of any vegetation within the riparian area and it is considered that the development will not compromise the connectivity of riparian vegetation and habitat. The BDAR confirms no endangered aquatic communities, aquatic fauna or marine vegetation listed under the *Fisheries Management Act* or *Environment Protection Biodiversity Conservation Act* occur in or adjacent to the footprint and no significant impacts on riparian vegetation or habitats downstream of the development footprint are anticipated as a result of the proposal.

Additionally, the development was referred to Department of Planning and Environment (Water) as integrated development, with General Terms of Approval being issued for the proposal which will be included as conditions of consent.

Part C – Design Guidelines

C.10 - Subdivision


Environmental considerations under this chapter have been addressed elsewhere in this report and are not reproduced in this section. Specific development controls relating to the site are discussed under Chapter F – Gillieston Heights (URA). General development controls relating to subdivision (where relevant) are discussed below.

Table 1 Development Control Plan Provisions

| <i>Performance Criteria:</i> | | <i>Comply ?</i> |
|---|--|---------------------|
| EC.1 Flora and Fauna | | |
| <i>Areas of significant habitat must be protected.</i> | <p>A draft Biodiversity Management Plan BMP has been submitted and provides management details about how <i>C2 Environmental Conservation</i> and <i>C3 Environmental Management</i> zoned land will be managed and revegetated (where appropriate) to an appropriate standard.</p> <p>A separate Wildlife Management Plan (WMP) will be prepared to detail how any impacts to native wildlife as a result of the proposal will be managed. The management actions of this WMP will result in beneficial outcomes for native wildlife by protecting native habitat, enhancing its ecological value and restoring habitat connectivity.</p> | Yes |
| <i>Design subdivision layout to avoid significant stands of vegetation. Where the</i> | The proposal will impact stands of vegetation removing vegetation within the <i>R1 General</i> | Yes |

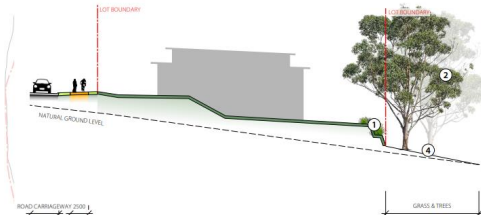
| | | |
|--|---|---|
| <i>subdivision proposal affects significant stands of vegetation, lot layout and lot size must take into account the need to retain the vegetation and the impact of likely future development on the lots, including building envelopes, parking, access and other development requirements such as Asset Protection Zones.</i> | <p>Residential zone. The proposed subdivision layout has been designed and modified to avoid impacts to areas situated in the eastern portion of the site, which has the best quality vegetation and highest biodiversity values.</p> <p>The proposed development is seeking to clear approximately 0.41ha (PCT 1600) and 0.12ha (PCT 1525) of native remnant vegetation, thus, the area clearing threshold for the minimum lot size of 0.25ha is being exceeded and falls within the area clearing limits prescribed in the BAM 2020 under the Streamlined Assessment Module – <i>Small Area as clearing of native vegetation is less than 1ha.</i></p> <p>The site does not contain any species that are listed as a Serious and Irreversible Impact (SAIL) entity.</p> | |
| <i>Retain existing natural drainage lines and watercourses where practicable</i> | The natural drainage line in the east of the site is retained. | Yes |
| <i>Link existing vegetation corridors through open space provision and appropriate planting.</i> | The subdivision retains vegetation within the east of the site as an environmental conservation residue allotment. | Yes |
| EC.2 Heritage and Archaeology | | |
| <i>Preparation of an Archaeological Assessment may be required where there is no previous investigative study</i> | The Aboriginal Cultural Heritage Assessment Report has identified seven previously unknown Aboriginal archaeological sites and one known site within close proximity to the Site. An Aboriginal Cultural Heritage Assessment has been undertaken to consider these sites, and following development consent, an Aboriginal Heritage Impact Permit will be sought. | Yes |
| EC.3 Hazards | | |
| <i>A bushfire threat assessment must form part of all development applications for subdivision where the land is identified as 'bush fire prone land' on Council's map.</i> | A Bushfire Assessment Report has been prepared for the proposed development. | Yes |
| <i>Asset Protection Zones must be contained wholly within the subject site, and may incorporate fire trails, perimeter roads, cleared road verges and fixed building lines.</i> | Asset Protection Zones (APZ) are fully contained within the site, with the exception of an APZ that is required on the north-east adjoining allotment (Lot 2 DP 1230739). Owner's consent has been received for this land. In addition, the land dedicated to Council for environmental conservation will include the APZ (variable width) to the east of the residential allotments. Council's infrastructure team has consented to maintaining this land as an APZ in perpetuity. An access road will need to be constructed along this APZ. | Yes – minor variation worthy of support |
| <i>The subdivision design must provide adequate emergency vehicle access to</i> | Adequate emergency vehicle access has been provided and has been reviewed by Rural Fire | Yes |

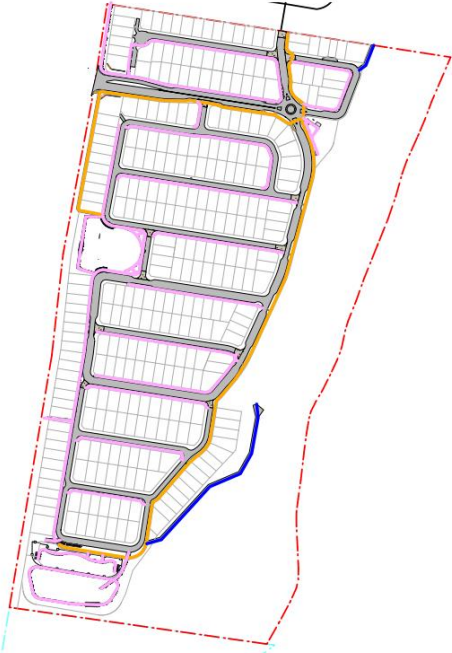
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| <i>those parts of the site fronting a potential bushfires source.</i> | Service. GTAs will be included in the consent conditions. | |
| <i>Contamination The provisions in SEPP55 will be used by Council to determine if and how land must be remediated. Comments will be sought from the Environment Protection Authority.</i> | A review by Council's Senior Contamination Officer has concluded that the site can be made suitable for the future residential development. | Yes |
| <i>Other hazards Development applications for subdivision must include relevant assessment and geotechnical investigation regarding the potential for the presence of salinity and acid sulfate soils to determine if any specific measures are required.</i> | <p>A Geotechnical Report has been prepared and has considered the potential presence of salinity and acid sulfate soils.</p> <p>The recommendations of the geotechnical report will be implemented through conditions of consent. This includes geotechnical inspections and testing to be performed during construction with reference to AS3798.</p> <p>Level 1 inspections and testing requires that geotechnical testing authority is on site whenever fill is being placed and compacted. Testing requirements are outlined in AS3798. At the completion of earthworks, the geotechnical testing authority will issue a Level 1 report that provides an opinion as to whether the earthworks comply with the adopted fill specifications.</p> <p>Council also requires that, at the completion of earthworks, and prior to subdivision certificate, the lots within a residential subdivision are classified to with reference to AS2870 – Residential Slab and Footings Classification.</p> | Yes |
| DC.1 – Lot Size and Dimension | | |
| <i>Performance Criteria:</i> | | |
| <u>General</u> | | |
| <i>Lot boundaries should follow natural features such as water courses and ridges (rather than cut across them) to minimise the potential for soil erosion.</i> | The proposed 322 residential lots are designed appropriately with the detention basin and drainage reserves utilizing the natural contours and existing watercourse. The road network follows the contours of the existing ground level. | Yes |
| <i>Lot boundaries should take account of any requirement for screening or buffering from adjoining land uses.</i> | Mass planting is proposed along the eastern boundary of residential allotments. This includes the perimeter road spanning the majority of the eastern outskirt of the subdivision, as well as the visually sensitive pocket of residential allotments along the south-eastern portion of the subdivision. These areas are shown as item 6 and 12 on the plan below. | Yes |

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| |  <p>The southern extreme of the site comprises a detention basin and off-leash dog park. The openness of these areas assists to reduce any visual impact from the south. Mass planting is also proposed adjacent to the sewer pump station in the south-western corner of this subdivision in order to shield visual impact from approaching vehicles travelling north on Cessnock Road. The northern extent of this subdivision adjoining an existing residential subdivision and no visual barrier between the subdivisions is required.</p> <p>An acoustic barrier (in the form of 1.8m high fence) is recommended along the Cessnock Road frontage, in conjunction with a 2.5m landscape buffer either side of the barrier. This is satisfactory.</p> | |
| <p><i>Lot size and dimensions are to be suitable for the existing or proposed use, including any requirement for building envelopes, ancillary buildings, farm dams, access, parking, landscaping, solar access, provision of services and/or other requirement of any existing Council development consent.</i></p> | <p>The proposed lot sizes achieve the minimum lot size for the R1 General Residential zone and are considered to be suitable for the future use of residential development.</p> | Yes |
| <p><i>Specific Controls:</i></p> | | |
| <p><u>Residential</u></p> <p><i>A suitable building envelope with minimum dimensions of approximately 15 metres by 10 metres shall be provided behind the building line.</i></p> | <p>All lots are capable of accommodating a building envelope of these dimensions.</p> | Yes |
| <p>DC.2 – Solar Access and Energy Efficiency</p> | | |
| <p><i>Performance Criteria:</i></p> | | |

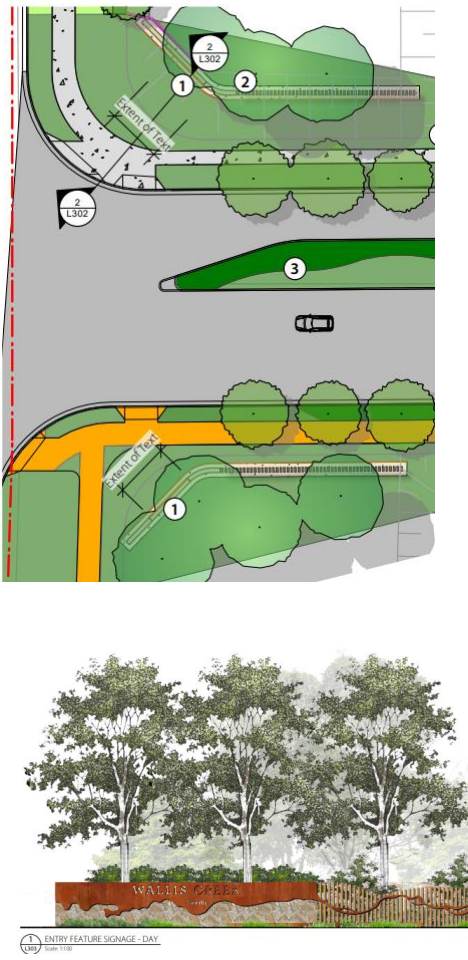
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| <i>80% of new lots are to have 5 star solar access, as defined by an analysis determined from the "Possible Design Solutions – Solar Access" booklet, and the remainder a 3 or 4 star rating.</i> | The majority of the residential lots are within the preferred orientation as presented in Figure 1 in DC.2. | Yes |
| <i>Lot sizes are to reflect reasonable consideration of the impact of topography, aspect and other constraints so as to maximize solar access.</i> | Lot sizes range predominately between 450m ² – 1150m ² , with lot widths exceeding 15m. The site has a slope in various directions which warrants the construction of retaining walls of up to 1.5m height. Nevertheless, lot sizes and configuration have followed the contours of the site to minimize the potential for soil erosion. | Yes |
| <i>Where possible lots should be oriented to provide one axis within 30 degrees east and 20 degrees west of true solar north.</i> | Where possible, the subdivision has been designed to comply with this control, however, the road layout is dictated by topography, contours and drainage design, consistent with the master plan and site specific DCP. | Yes |
| <i>Where a northern orientation of the long axis is not possible, lots should be wider to allow private open space on the northern side of the dwelling.</i> | All residential lots within the proposed subdivision have sufficiently wide frontages to provide for solar access opportunities to the north. | Yes |
| <i>Proposals for street planting or open space planting are to take account of the potential for shading, provision of adequate solar access to dwellings and, if necessary, protection from winter winds.</i> | Street tree planting has been designed with consideration to future driveway locations with trees to be in the centre of each lot. | Yes |
| DC.3 – Drainage, Water Quality & Soil Erosion | | |
| <i>Performance Criteria:</i> | | |
| <i>a) Existing topography and natural drainage lines should be incorporated into drainage designs for larger proposals, and enhanced through provision of additional landscaping, detention areas, artificial wetlands and the like.</i> | Existing drainage lines have been incorporated into the subdivision layout design. As detailed in the stormwater management plan gross pollutant traps (GPTs) will be incorporated at the end of the street networks. GPTs are designed to capture and retain gross pollutants, litter, grit and sediments from stormwater. Bioretention basins allow infiltration of stormwater through suitable vegetation. | Yes |
| <i>b) Drainage from proposed lots should be consistent with the predevelopment stormwater patterns. An analysis of the downstream drainage system, to the receiving area or waters, may be required.</i> | From the results of the the modelling presented in the Stormwater Management Plan, post-development flows for all storm events are estimated to be equal to or less than the existing flows leaving the site. This is achieved through on-site stormwater detention systems. | Yes |
| <i>c) Best management practices should be implemented to control runoff and soil erosion and to trap sediment on the subject land to ensure there is no net impact on down stream water quality. The quality of runoff water from the subject land should be the same or better than the quality of water prior to the subdivision taking place.</i> | Erosion and sedimentation control measures need to be implemented during any construction activities on the proposed subdivision to minimise the risk of erosion to disturbed areas and limit the transport of sediments from the construction site to downstream drainage. A sediment and erosion control plan has been prepared and will be appropriately conditioned. | Yes |

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| <i>d) Where possible, design multiple use drainage and treatment systems incorporating gross pollutant traps, constructed wetlands and detention basins.</i> | <p>Gross Pollutant Traps will be utilised in the development to treat stormwater runoff and reduce pollutant loads being directed towards the downstream stormwater system.</p> <p>Ponds/Sediment Basins will be utilised in the development as the downstream water quality treatment device. The ponds will also act as detention basins to allow post-development flows to be reduced to pre-development flows as stormwater runoff is discharged from the site towards the existing downstream stormwater system.</p> <p>Bioretention basins will be utilised in the development as the downstream water quality treatment device. The bioretention basins will also act as detention basins to allow post-development flows to be reduced to pre-development flows.</p> | Yes |
| <i>e) The subdivision should be designed so as to minimise disturbance of the subject land especially in circumstances where there are topographical constraints.</i> | The proposed development incorporates a significant extent of cut and fill, however it is noted that the earthworks are generally in a balanced state. | Yes |
| <i>f) Adequate provision should be made for implementation of measures during subdivision construction to ensure that the landform is stabilized and erosion controlled.</i> | The Soil and Water Management Plan (SWMP) recommends Erosion and Sedimentation Control Plan is implemented throughout the entire construction period to minimise the quantity of sediments being conveyed to the temporary sediment basin. A concept erosion and sediment control plan has been prepared and will be appropriately conditioned. | Yes |
| <i>Specific Controls:</i> | | |
| <i>Where the drainage impacts of the subdivision proposal cannot be limited to pre-development stormwater levels by retention or other approved methods, drainage easements will be required over all necessary properties and watercourses. In such circumstances, the easement must be the subject of a signed agreement prior to issue of development consent. Such easements shall be created with, or prior to issue of the Subdivision Certificate.</i> | The proposed stormwater system including detention devices to attenuate peak post-development flow rates to pre-development peak flow rates for the critical duration for design storms with annual exceedance probabilities (AEPs) being within acceptable range. | Yes |
| <i>A soil and water management plan (SWMP) should be prepared by a properly qualified practitioner with the aim of minimising erosion and maximising the quality of any water leaving the site. Applicants should refer to Council's Manual of Engineering Standards.</i> | A SWMP has been prepared and is included in the application. Erosion and Sediment control plans have also been prepared and will be appropriately conditioned. | Yes |

| DC.4 – Landscape, Streetscape & Visual Impact | | |
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| <p><i>Existing landscape and streetscape character should be maintained and enhanced through retention of existing vegetation, provision of additional landscaping and selection of other streetscape items including surface treatments and street furniture. Submission of a Landscape Plan will be required for residential and rural residential subdivisions, indicating the location of street trees and any other required landscaping.</i></p> | <p>A landscape plan has been submitted with the application, which demonstrates street tree plantings to soften the proposed subdivision, and to create an emerging character within the subdivision.</p> <p>Tree planting along the rear of lots in the south-east corner of the site has been incorporated into the landscape design. This planting is designed to screen the lots from the visually sensitive view towards the subdivision. A mix of Banksia, Wattle and Melaleuca tree species have been used. An indicative layout of the planting is shown below:</p>  <p>Changes in topography and existing built form reduce visual impacts. While the development will visually result in changes to the locality, it is recognized that the site is zoned R1 and is within an URA and as such, the changes to views are consistent with the emerging character of the locality.</p> | Yes |
| DC.5 – Effluent Disposal | | |
| <i>Specific Controls:</i> | | |
| <p><i>All new residential, industrial and commercial lots are to be connected to a reticulated sewerage system supplied by the Hunter Water Corporation or other approved supplier.</i></p> | <p>The development will require a connection to reticulated sewerage system. Hunter Water notice of formal requirements, including stamped plan has been submitted with the development application. All residential lots will be provided with reticulated sewer connections.</p> | Yes |
| DC.6 – Roads & Access, Pedestrians & Cycleways | | |
| <i>Specific Controls:</i> | | |
| <p><i>Public road access is required to all new lots in Torrens Title subdivision.</i></p> | <p>All proposed lots will have suitable vehicular access to a public road.</p> | Yes |
| <u>Residential Subdivisions</u> | | |
| <p><i>A network of constructed (i.e. not grass) footpaths and cycleways will be required in all residential subdivisions, located, designed and constructed in accordance with Council's Manual of Engineering Standards, and in view of streets wherever possible to allow surveillance.</i></p> | <p>The proposal includes standard residential design consistent with hierarchy established under the design with the site specific DCP.</p> <p>A 2.5m shared pathway is provided internally, connecting the north to the south. Additional 1.5m footpaths are provided throughout the subdivision. A 1.5m footpath is provided north of</p> | Yes |

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| | <p>the signalized intersection on the east side of Cessnock Road. This should be a 2.5m shared pathway, with a condition of consent providing this accordingly.</p>  <p>All internal access roads will be constructed with a minimum 8m pavement and 4.5 m road reserve to provide for footpaths and cycleways (each side) in accordance with Council Manual of Engineering Standards (MOES).</p> | |
| <i>Pedestrian links between residential cul-de-sacs or other road layouts.</i> | <p>The proposed subdivision includes a footpath network to connect the subdivision both internally, and externally to Cessnock Road and Aspen Drive. The footpath network is generally consistent with site specific DCP (Chapter F - URA) which is discussed further in this report. The proposal does not include cul-de-sacs.</p> | Yes |
| <i>Particular attention should be paid to pedestrian links to schools, with regard to their width, lighting (to Australian Standard) and the appropriateness of landscaping and related safety issues.</i> | <p>The proposed road network within the subdivision does not have direct access to schools. However, the subdivision provides connectivity to Cessnock Road where the existing road network can be utilised for this purpose.</p> | Yes |
| <i>The road, footpath and cycleway network should facilitate walking and cycling throughout neighbourhoods and provide links to schools, community facilities and other activity centres.</i> | <p>Complies. The development proposes a footpath and cycleway network within the subdivision, which is connected to external pedestrian networks on Cessnock Road and the subdivision to the north.</p> | Yes |

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| <p>DC.7 Crime Prevention – Safer By Design</p> <p>To ensure that Council <i>does not approve subdivisions that create or exacerbate crime risk or community fear.</i></p> | <p>The development proposes clear sightlines between public and private spaces. The proposed recreation areas are bound by residential lots which aids in promoting passive surveillance.</p> <p>The landscape plans propose street trees at regular intervals to make the proposed development attractive while maintaining site lines. Conditions will be included in the consent to ensure that appropriate lighting, fencing and landscaping is included within the development.</p> | Yes |
| <p>DC.8 Site Filling</p> | <p>A geotechnical report was submitted in support of the application. This report has been peer reviewed by an external geotechnical consultant, who confirms that with conditions of the consent, the proposal can be made suitable for approval.</p> <p>Bulk earthworks and benching will occur over the site, with retaining walls up to 1.5m in height proposed. A preliminary earthworks plan indicates that bulk earthworks will include excavations in the order of up to 7m and fill of up to 7m. Whilst these levels of earthworks exceed the 2m fill limitation stipulated in the DCP, a variation is worthy of support in this instance. The provision relates primarily to the importation of fill brought into a site. In this instance, the applicant has anticipated that material cut from excavations will be used in the areas of fill; maintaining a balanced extent of cut and fill across the site. Noting that no importation of fill is required to create this subdivision, this item can be supported for variation.</p> | No, variation required - the proposal provides for more than 2m fill in portions of the site. |
| <p>DC.9 Reticulated Services (Water/Sewer/Electricity/ Telecommunications)</p> | <p>Evidence of satisfactory arrangements being agreed will be required to be provided to Council prior to issue of subdivision certificate.</p> | Yes |
| <p>IC.1 Entry Features</p> <p><i>Entry features for residential subdivisions shall be limited to a size of 20m2 with a maximum height of 2 metres.</i></p> | <p>The development proposes a feature entry wall at the intersection of Cessnock Road and the proposed Road 03. The entry feature includes some open style timber components designed to emulate the form and path of Wallis Creek. Given the open nature of this component, the setbacks provided and proposed landscaping, the entry feature is considered appropriate and aligned with the objectives of this DCP.</p> <p>The features are situated upon Lots 220 and 268; both are private allotments. It is Council's</p> | Yes |

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| | <p>preference that the entry features are situated on private allotments and not land dedicated to Council. The future owners of these lots will be responsible for the long-term maintenance and up-keep of this public art associated with the entry features through a proposed 88b instrument. A condition of consent has been included.</p>  <p>The image contains two parts. The top part is a site plan showing a road intersection with numbered callouts (1, 2, 3) and labels like 'Extent of Text' and 'L302'. The bottom part is an artistic rendering of a landscape with trees and a sign that reads 'WALLIS CREEK'.</p> | |
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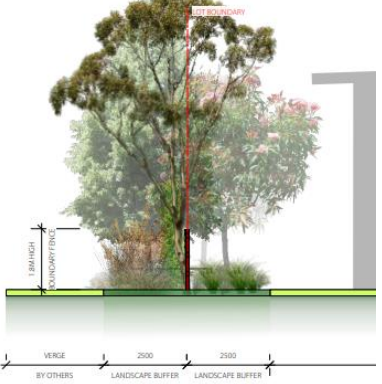
Part F – Urban Release Areas

DCP requirements are detailed in the following table:

| SOUTH GILLIESTON HEIGHTS – EAST PRECINCT PLAN | | |
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| 1.1 Precinct Plan | | Complies |
| Development Controls: | | |
| Any Development Application prepared for subdivision will provide consideration (e.g., interconnecting roads) to the development | The submitted plans are generally in accordance with the overall precinct layout contained within the DCP. The biggest | Yes |

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| <i>of the overall precinct in which the subdivision is located as shown.</i> | variation to this plan is the connection point to Cessnock Road. This has been realigned to a more northern location within the subdivision than is shown in the DCP. The purpose of this repositioning is to line up with the approved intersection location associated with the Loxford subdivision (DA2022/193) on the west side of Cessnock Road. | |
| 1.2 Transport and Movement | | |
| <i>1. Road layout should be consistent with the Figure 21 and Figure 22, where relevant.</i> | The submitted plans are generally in accordance with the street network and road sections contained within the DCP, with the exception of the connection to Cessnock Road as explained above. | No – variation worthy of support. |
| <i>2. Development applications for subdivisions must ensure that road networks are fully constructed to the boundaries of adjoining lots so that they connect to all development areas in a logical hierarchy of street function.</i> | | Yes |
| <i>3. No future lot will have direct access to Cessnock Road (MR195).</i> | No lots have direct access to Cessnock Road. | Yes |
| <i>4. Cycleways are to be provided for generally in accordance with the Precinct Plan and the Maitland Bike Plan 2014.</i> | A network of shared pathways has been provided within the subdivision layout. The pathway designs are generally in accordance with the concept plan included in the site specific DCP previously prepared. | Yes |
| <i>5. Pedestrian paths and cycleways links with other precincts are to be provided at the strategic access points on Cessnock Road.</i> | See above. | |
| 1.3 Overall Landscaping Strategy | | |
| <i>1. Council may require a Visual Impact Assessment to be undertaken to accompany Development Applications for subdivisions and development that are likely to have a visual impact on the area. Such assessments may include proposed ameliorative measures to be incorporated within the development, such as dwelling designs, building materials, colour schemes and landscaping. Such assessments are to have regard to the background reports used in the preparation of the Precinct Plan.</i> | Landscape Plans have been prepared and are submitted with the application. This includes: <ul style="list-style-type: none"> ○ Asset protection zones ○ Plant species and sizes, which includes consideration of street trees ○ Play equipment ○ Utilities and services ○ Public art ○ Entry Statement ○ Soft and hard landscaping ○ Any other embellishment The landscaping plan has been updated in accordance with recommendations from Councils recreation Team to be in accordance with requirements for public spaces. | Yes |

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| 2. The natural character of all ridgelines, knolls and hillsides are to be protected by retaining any vegetation or introducing new landscaping to ensure the visual impact of development is minimised, particularly within and adjacent to the visually sensitive areas. Details are to be provided with the landscaping plans to be submitted with development applications. | The south-eastern portion of the subdivision is identified as a visually prominent area. Vegetation planting has been proposed on then eastern side of residential lots within this area. The planting is designed to enhance the visual presence as looking to the site from eastern adjoining aspects. Open style fencing is required to rear boundaries of these residential allotments as well. | Yes |
| 3. The subdivision design is to provide for lot frontages addressing streets, drainage reserves and open space. Where there is unavoidable, boundary fencing shall be of an open style and of consistent materials and colour. | This item has been met. A condition of consent ensuring that it is enforced has also been applied. | Yes |
| 1.4 Passive and Active Recreation Areas | | |
| No specific requirements. | Notwithstanding this, the proposal incorporates a local park in the north-east section of the subdivision as well as an off-leash dog park in the southern portion of the site. The public recreation areas have been designed in accordance with recommendations from Councils Recreation team. | Yes |
| 1.5 Stormwater and Water Quality Management Controls | | |
| There are no specific requirements as stormwater and water quality management controls are controlled by other provisions of the Maitland Development Control Plan. | The other provisions within the DCP have been considered above. | Yes |
| 1.6 Amelioration of Natural and Environmental Hazards | | |
| Flood free access is to be available to all proposed allotments. | The site contains flood prone land, situated to the east and south portions of the site. This land has not been rezoned R1, and as such, no residential allotments are proposed on land identified as being flood prone. | Yes |
| There are no specific requirements for bushfire. | The Bushfire Assessment Report has been prepared and submitted with the application. The application was referred to RFS who provided general terms of approval on 31 January 2024. | Yes |
| All Development Applications are to demonstrate compliance with State Environmental Planning Policy No.55 – Remediation of Land | A review by Council's Senior Contamination Officer has concluded that the site can be made suitable for the future residential development. | Yes |
| 1.7 Key Development Sites | | |
| Land adjoining Cessnock Road | | |
| 1.A buffer (incorporating 10 metres for road widening and landscaping) shall be established on land adjoining the eastern | N/A. This land sits south of Russell Street. Notwithstanding this, the applicant has nominated the provision of a shared 5.0m | Yes |

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| side of Cessnock Road, north of Russell Street as shown on the Figure21 and Figure 22. | <p>landscape buffer to Cessnock Road, featuring 2.5m on private land and 2.5m on public land. An additional space is allocated for the road verge, further buffering the subdivision form the roadway.</p>  | |
| 2. Details of the landscape buffer is to be provided in a landscape plan with any development application for the site. | The details of the landscape buffer has been provided. | Yes |
| 3. An independent acoustic report shall be submitted with any development application identifying levels of impact and noise attenuating measures for future residential development in accordance with RTA and DECCW requirements. | <p>An Acoustic Assessment accompanies the development application. The subdivision will be in accordance with 'Development near Rail Corridors and Busy Roads – Interim Guideline' and will achieve acceptable internal noise amenity, regarding the external noise exposure levels.</p> <p>An acoustic barrier has been recommended in the acoustic report and will form a condition of consent.</p> | Yes |
| 4. No future lot shall have direct access to Cessnock Road (MR195). | No lot gains direct access from Cessnock Road. | Yes |
| 5. Fencing of allotments along the boundary of Cessnock Road shall be of consistent materials and colour and form an integral part of the landscape plan provided with the development application | A condition of consent will be imposed requiring the provision of an acoustic attenuation barrier to be utilized as the fencing between residential allotments and the Cessnock Road. | Yes |
| 1.8 Residential Densities | | |
| 1. There are no specific requirements as residential densities are already controlled by lot size in the Maitland Local Environmental Plan 2011. | Complies. | Yes |
| 1.9 Neighbourhood Commercial and Retail Uses | | |
| 1. The commercial centre is to be located in generally in accordance with Figure 21 and have easy and direct pedestrian, cyclist and vehicle access to the surrounding | A network of shared pathways will enable access to the commercial precinct that has already been constructed under previous approvals north of this subdivision. | Yes |

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| <i>residential area and good visibility from the main access route.</i> | | |
| <i>2. The street structure adjoining the commercial centre is to be designed to accommodate or facilitate buses and bus stops.</i> | N/A this subdivision is not adjacent to the commercial centre. This has been considered under previous consents within the east Gillieston Heights URA. | Yes |
| <i>3. Commercial development within land zoned for business purposes is not subject to the landscape buffer requirements adjacent to Cessnock Road (MR 195) as shown on the Precinct Plan, except for the 10 metres road widening. Notwithstanding this, such development must include appropriate landscaping as part of the overall design</i> | N/A | N/A |
| <i>4. Development, which is located adjacent to Cessnock Road (MR 195), including land zoned for business purposes, should be appropriately designed so as to provide a high quality architectural appearance with visual interest, particularly by discouraging bulky buildings and blank walls.</i> | N/A | N/A |
| <i>5. The school is to be located on a collector road close to the commercial centre to encourage use of the centre but does not have direct access to Cessnock Road.</i> | N/A | N/A |
| 1.10 Provision of Public Facilities and Services | | |
| <i>1. There are no specific requirements as provision of public facilities and services is already controlled by other provisions in the Maitland Local Environmental Plan 2011 and the Maitland Development Control Plan 2011.</i> | N/A – the provision of public facilities and services has been addressed under previous controls. | Yes |

Section 4.15(1)(a)(iiia) – Any planning agreement that has been entered under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

A Planning Agreement has been entered into between the Minister for Planning and the developer for the payment of a monetary contribution towards State infrastructure, as required under clause 6.1 in the MLEP 2011 when land is subdivided within an urban release area (Planning Agreement SVPA2023-51). Relevant matters for consideration are addressed under discussion in this report relating to clause 6.1 of the MELP 2011.

The obligations for the developer regarding the timing for the payment of the contribution are embedded in the Agreement. Council is required to ensure that the obligations in the Agreement have been complied with before it can issue the related Subdivision Certificate and this requirement is included in the recommended schedule of conditions.

Section 4.15 (1)(a)(iv) - The regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no regulations prescribed under Section 61 of the Environmental Planning and Assessment Regulation 2021 which apply to this proposal.

Section 4.15 (1)(b) - The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The following table identifies and discusses the relevant matters for consideration in relation to environmental, social and economic impacts associated with the proposal.

Table 3 Assessment of Impacts

| Matters for Consideration | Comments |
|-------------------------------|---|
| Aboriginal Archaeology | <p>An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been completed by Niche Environment and Heritage for the site in consultation with Registered Aboriginal Parties and is provided under a separate cover. The ACHAR found that the Site contains seven (7) possible Aboriginal cultural heritage sites. There was also one previously recorded site immediately south of the subject site adjacent to Testers Hollow. These sites were located during a site inspection by Niche and a representative of the Mindaribba Local Aboriginal Land Council (MLALC) in compliance with the requirements of the Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW.</p> <p>The sites consist of three isolated artefacts, one isolated artefact and three Potential Archaeological Deposit (PAD). The entire site holds cultural significance to the local aboriginal community due to elevated landforms, views of the surrounding landscape and access to water.</p> <p>The overall scientific (archaeological), educational, representativeness, rarity and aesthetic value of the site is considered to be low. Isolated artefacts are the most frequent Aboriginal cultural heritage site type located within the Central Lowlands of the Hunter region. The large number of these site types that have been recovered through the environmental impact assessment and Aboriginal Heritage Impact Permit (AHIP) process and the high number of representative Aboriginal objects from similar settings in the Hunter Region means that the current Aboriginal cultural heritage sites discovered in the Site are not rare or unique and do not have high conservation value.</p> <p>The ACHAR determined that the development of the site has the potential to impact four of the identified cultural sites. The other three sites are located within areas proposed to be retained as C2 Environmental Conservation or C3 Environmental Management, where no works are proposed. Part 6 of the National Parks and Wildlife Act 1974 protects all Aboriginal objects and declares Aboriginal places from harm. Harm is defined as destroying, defacing, damaging or moving an object from the land. An AHIP is a legal document that grants permission to harm Aboriginal objects or declared Aboriginal places.</p> <p>A referral to the Department of Premier and Cabinet in accordance with sec.90 of the National Parks & Wildlife Act 1974 was made. General Terms of Approval for this subdivision was received on 10th November 2023.</p> |

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| | <p>As a result of the PADs being identified, the following conditions have been imposed on the notice of determination;</p> <ol style="list-style-type: none"> 1. <i>The persons responsible for the management of onsite works will ensure that all staff, contractors and others involved in construction and maintenance related activities are made aware of the statutory legislation protecting sites and places of significance. Of particular importance is the National Parks and Wildlife Amendment (Aboriginal Objects and Aboriginal Places) Regulation 2010, under the National Parks and Wildlife Act 1974;</i> 2. <i>Works may proceed in the project area (excluding the PAD area) and should any Aboriginal objects be uncovered during works, all work will cease in that location immediately and the Environmental Line contacted; and</i> 3. <i>If the identified PAD will be impacted upon by any future development an archaeological subsurface investigation will be required in accordance with the Code of Practice for Archaeological Investigations of Aboriginal Objects in NSW.</i> |
| Biodiversity | <p>The proposed development is supported by a Streamlined BDAR prepared by AEP, dated June 2023. The Streamlined BDAR did not identify any Serious and Irreversible Impacts (SAII) as a result of the proposed development.</p> <p>No threatened species have been identified on-site, and as such, no Species Credits under the Biodiversity Offset Scheme (BOS) will be incurred.</p> <p>Despite the proposal avoiding the vegetated areas (i.e through the dedication of 3.56 hectares of environmental land), remnant vegetation across the previously cleared farmland is required to enable the provision of roads, lots and services for the subdivision. The SBDAR has identified a need to remove 0.53ha of native vegetation in the following form:</p> <ul style="list-style-type: none"> • 0.53ha of planted native vegetation in highly degraded to severely degraded conditions. • To offset the residual impacts of the proposal on the identified biodiversity values, the proposal seeks to retire a total of: <ul style="list-style-type: none"> ○ 6 x PCT 1600 Ecosystem Credits ○ 2 x PCT 1525 Ecosystem Credit • In addition, the proposal includes a Biodiversity Management Plan that seeks to manage and enhance approximately 3.56ha of remnant vegetation that has been retained adjacent to Wallis Creek. The Biodiversity Management Plan will run for five years, at which point the remnant vegetation should be in a self-sustaining state, with continued management conducted by Council. • Stormwater management within the proposed development promotes ecologically sustainable development through retaining and enhancing the ecological functions. The proposed stormwater provisions ensure that the proposed development would have a no worsening impact on the water quality or quantity discharged post-development. |
| Bushfire | <p>A Bushfire Assessment Report (BAR) was prepared by Bushfire Hazard Solutions, dated 20 December 2023. The site is subject to a low to moderate bushfire threat immediately to the north-east, east and west of the site. The BAR concludes that the hazard identified can be successfully mitigated by applying the requirements of PBP 2019, such as a combination of temporary and permanent Asset Protection Zones (APZs). The report provided key recommendations that have been designed to enable the proposed development to maintain an acceptable level of protection from the residual risk of a bushfire that may occur in the existing vegetation, in accordance with PBP 2019. These recommendations will be accordingly conditioned.</p> |

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| Traffic and Transport | <p>The DA was supported with a traffic impact assessment (TIA). The proposed development will comprise of one main entrance via a four-way intersection with Cessnock Road and the Loxford subdivision (DA2022/193) to the west, as well as a connection to Aspen Drive to the north.</p> <p>All roads have been designed to satisfy the requirements of the Gillieston Heights Urban Release Area plan and Council's Manual of Engineering Standards and are considered to be acceptable. Adequate provisions of shared footpaths and cycleway have been included in the subdivision design. The road network has been designed to allow for connectivity and easy way-finding with connections to Cessnock Road and Aspen Drive. Council's Engineers have assessed the application and found the proposal acceptable and have provided conditions in the schedule.</p> |
| Acoustics | <p>An Acoustic Report was prepared by Spectrum Acoustics, dated 27 April 2023. The report included recommendations for future residential treatments and mitigation measures. The recommendations are generally applicable to the western facades of future dwellings that border Cessnock Road. The report notes that: <i>"Traffic noise has the potential to create some adverse impacts at the closest row of houses to Cessnock Road. The traffic noise is at levels that should be readily controlled using standard building techniques"</i>.</p> <p>Windows with direct line of sight to traffic such as areas on the western façade, sleeping area / bedroom would need to attenuation. A 1.8m high acoustic barrier along Cessnock Road is also recommended.</p> |
| Stormwater Management and Flooding | <p>A number of design iterations have taken place to address stormwater management concerns raised throughout the assessment process. The ultimate design solution has been considered, and while further modification may be necessary as detailed drawings are prepared, the submitted design can be supported subject to conditions of consent.</p> <p>The stormwater management layout comprises three separate catchments, being A, B, and C. Catchment A discharges to the existing floodplain (Wallis Creek) to the south via a proposed onsite detention/water sensitive urban design basin system. Catchment B discharges into an existing roadside swale along Cessnock Road, via an onsite detention / water sensitive urban design basin. This is located within the central / west portion of the site. Catchment C discharges to the north via a concrete headwall and scour protection system. No detention is proposed at this outlet.</p> <p>Water quality for the proposed development will be improved by utilisation of a proposed Gross Pollutant Trap (GPT) and the basins. The applicant's proposed water quality devices and MUSIC model results appear satisfactory. Detail design is to be provided prior to issue of the subdivision works certificate.</p> |
| Utilities | <p>Ausgrid The application was referred to Ausgrid and comments were provided regarding electrical infrastructure. The applicant will be required to liaise with Ausgrid to prepare the connection project design.</p> <p>Water / Sewer Hunter Water has indicated that it is possible to service the proposed development and the plans via the issuing of a Notice of Requirements letter (14th July 2032). The</p> |

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| | <p>proposal is part of Hunter Water's regional area sewer and water upgrade strategy. The developer is currently working with the residential development on the western side of Cessnock Road (Loxford, DA2022/193) to connect to the reticulated sewer system. This connection will likely involve a sewer pump station in the south western corner of the development, which has been provided for within proposed Lot 648. There is likely capacity, subject to Hunter Water Approval within the existing network that services the development to the north to connect Stage 1 via Aspen Drive or Tangerine Street.</p> |
| Earthworks & Geotechnical | <p>A revised Geotechnical Assessment prepared by Stantec dated 28 June 2024 was submitted with the application. The purpose of the geotechnical investigation was to obtain information on subsurface conditions as a basis for recommendations for earthworks procedures, and other geotechnical matters. Additional clarification on the settlement of the proposed fill and suitability of retaining walls was requested and provided by the applicant. The assessment included an external review of the provided information, noting that portions of the earthworks proposed levels of fill exceeding ordinary Council requirements. Concern was raised by Council regarding the depth of cutting and fill proposed at the site and the long-term performance of the fill embankments. Some infrastructure, including roads and residential allotments would be positioned upon areas of significant fill, with Council requiring certainty that the settlement of earthworks would not adversely this land.</p> <p>Bulk earthworks are proposed which will result in excavations generally ranging from 1.0m to 6.0m below existing ground level, with localised areas of cutting in excess of 7.0m. Filling is proposed in the order of 0.5 to 3.0 m above existing ground level to achieve design levels and form residential allotments. It is anticipated filling within low lying areas of site, gulleys and decommissioning existing rural dams will exceed 5.0m.</p> <p>A cut and fill plan is included as part the Concept Engineering Plans, with a copy shown in Figure 12 below. Material collected during the bulk excavations will be re-used as fill where required on the site. The report further concludes that a <i>balanced extent</i> of earthworks is likely to be achieved across the site. The Geotechnical Report outlined earthworks will need to consider excavation through rock, and appropriate methods to break down excavated particles to render them suitable for use in engineered fill.</p> <p>To achieve suitable lots, it will be necessary to provide retaining walls in addition to the site regrading works. However, the Geotechnical Report confirms the majority of the site is considered to have a low risk of slope instability.</p> <p>The report includes the following key recommendation:</p> <ul style="list-style-type: none"> <i>Geotechnical inspections and testing should be performed during construction in accordance with the earthworks standard (AS 3798, 2007 Guidelines of Earthworks for Commercial and Residential Development).</i> <p>As confirmed in the final review by an external geotechnical consultant, the proposed earthworks can be supported subject to conditions. The recommended conditions</p> |

have been reviewed by Councils engineering team, who raise no objection to the proposed works subject to the conditions.



Figure 13: Proposed bulk earthworks identifying fill that would exceed 2m (outlined in red).

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| CPTED | It is not anticipated that the development will result in adverse impacts in regard to safety and crime prevention within the locality. This has been further demonstrated in the DA's compliance with CPTED provisions within the DCP. |
| Social and Economic Impact | The proposal will have a positive social and economic impact, both through the promotion of employment during construction and creation of residential land within the URA. |
| Construction | Carrying out the works proposed will require management of dust, noise, traffic, waste, erosion and sediment, services, water quality and potential dilapidation concerns. A Construction and Environment Management Plan (CEMP) will be submitted as part of the Subdivision Works Certificate documentation detailing the risk assessment, construction and work methods, management measures, and responsibilities of key parties to be implemented during the project's construction phase to minimise construction impacts. |

Section 4.15 (1)(c) - The suitability of the site for the development

The subject site is located within the Gillieston Heights South-Eastern Urban Release Area and zoned for residential purposes. The development application is consistent with the DCP for the site. The site is identified as bushfire prone land and within designated mine subsidence district and these matters have been appropriately addressed. Issues relating to stormwater and drainage have been discussed in this report. Discussions in relation to traffic generation and distributions are provided throughout this report, and the proposed road network is considered to be satisfactory. Geotechnical and contamination issues have been addressed and are considered appropriate. The site is considered suitable for the proposal.

Section 4.15 (1)(d) - Any submissions made in accordance with this Act or the regulations**Public Submissions**

The proposal was placed on public exhibition for a period of 28 days in accordance with the Environmental Planning and Assessment Act 1979 and the Maitland Development Control Plan 2011.

A total of eight (8) submissions were received during the exhibition period, raising objection to the proposal. A summary of the issues is provided in the following table:

| Item Number | Submission Comment | Assessment Comment |
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| 1.0 Density and Layout | | |
| 1.1 | <i>The small blocks proposed backing onto the existing houses will only fit a house that will take up majority of the property and all of the noisiest parts of these properties, living, kitchen, family, lounge, backyard will be extremely close.</i> | The masterplan layout has been designed to be consistent with existing subdivision layout within the area. Despite the minimum lot size being 450sqm in this area, the proposal offers variable lot sizes ranging from 450sqm – 1050sqm, with an overall average lot size of 540sqm. All future homes will be subject to assessment in accordance with the Environmental Planning and Assessment Act 1979 at the time the application is lodged. |
| 1.2 | <i>Majority of the small blocks are backing onto or next to existing housing.</i> | The lots in the northern portion of this subdivision are consistent with the existing allotment size in the adjoining Wallis Creek (north) subdivision. All proposed allotments comply with minimum lot sizes as specified in the Maitland Local Environmental Plan 2011. |
| 1.3 | <i>These tiny blocks do not allow for enough vehicles to be parked out the front usually creating congestion with extra cars, boats, trailers, or caravans being parked on roadways causing safety concerns both to drivers and pedestrians.</i> | As per response to 1.1. This item is a matter for consideration at any such time as a DA is lodged on individual sites. |
| 1.4 | <i>In the existing Wallis Creek subdivision, houses were turned to face Aspen Drive instead of Tangerine due to the nature of the sloping landscape. We request that new blocks flow in the same direction as to eliminate extreme noise,</i> | In addition to response item 1.1, lots 133 and 134 have been reorientated to front Aspen Drive to be consistent with the existing adjacent residential houses and address this matter. |

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| | <i>reduce water runoff, and create more privacy.</i> | |
| 1.5 | <i>There are also other concerns such as the inconsistency between the street that has been proposed and Tangerine/Redwood/Hillcrest as the current streets that border the environmental conservation land all share a large walking path with no need to cross any roads for residents walking their families to and from parks and other amenities.</i> | A 2.5m wide shared path has been proposed along the eastern side of Road 01 which connects this subdivision through to the northern adjoining subdivisions, via continued connection to Aspen Drive. This shared path is envisaged to provide pedestrian and cyclist connectivity along the street network adjoining the environmental conservation land (as has occurred with Tangerine St, Redwood Drive and Hillcrest Drive). |
| 1.6 | <i>There is minimal privacy for those proposed dwelling that are significantly lower than existing dwellings and the existing walking part which all contribute as to why this small section of the proposal should be reconsidered.</i> | The proposed earthworks on the northern boundary of this subdivision have been redesigned to lessen the impact of privacy overlooking into adjoining landowners. |
| 2.0 | Stormwater | |
| 2.1 | <i>Blocks at ... were turned to face Aspen Drive instead of their original position facing tangerine street due to the nature of the sloping landscape and the need to be built up to high if the 3x small blocks... are built up to a higher level this creates an extreme amount of water runoff onto ... and also that of those smaller blocks running along the back of the other existing houses.</i> | In addition to response item 1.4, the subdivision design was developed in close consultation with all key consultants including, among others, civil engineering, geotechnical and ecological. Lots 133 and 134 have been reconfigured to address Aspen Drive, while the remaining lots have been designed to be consistent with the geotechnical layout of the site and the need address stormwater disposal. |
| 2.2 | <i>I am concerned about the amount of water that will be directed to the existing natural water causeway as stated on the plan due to the fact that there has already been a landslide in heavy rain on the sloping land and cracking appearing on the road along tangerine street, Gillieston Heights with the council fixing cracks.</i> | This subdivision has been referred to an external geotechnical expert to assess the level of earthworks required and to provide certainty associated with the ability of public and private infrastructure to sit atop the earthworks. |
| 2.3 | <i>The previous masterplan – drawn before walker acquired 457 and 463 Cessnock road, Gillieston Heights included a much larger area for the waterway as it is more suitable for dispersing stormwater than new homes.</i> | The proposal has been extensively reviewed for the ability of stormwater to be disposed from the site. Council engineers are satisfied that the proposed methods for stormwater discharge are acceptable and conditions have been imposed to ensure that pre-development flows will not be exceeded by post-development flows. |
| 3.0 | Earthworks | |
| 3.1 | <i>To develop this area, a huge number of earthworks and retaining would be required – similar to what was required in the adjoining development by Walker.</i> | The development application includes a proposed bulk earthwork, retaining wall and stormwater detention and treatment strategy that, while achieving a cut and fill balance, is required to |

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| | | modify the naturally steep, undulating site to useable residential allotments. |
| 3.2 | <i>My main concern is that just north of this area (approx. 50m) there has already been a landslide behind the large retaining wall that Walker constructed less than 3 years after that retaining was built. This landslide was at the location of the hydro line – which according to the reports was smaller than the one they are now proposing to develop for future houses – and avoiding another issue like this is the main reason why an alternative should be considered.</i> | As per response to 3.1 |
| 3.3 | <i>As opposed to the huge amount of earthworks required in the area due to the extreme slope, this particular parcel could be subdivided with one or two allotments facing Aspen Drive (consistent with the existing streetscape, and all other “view” lots that surround Redwood and Hillcrest Drive) with the remainder of the land being bundled with the environmental conservation land that surround the proposed development with the building platform for a future dwelling away from the watercourse to avoid developing on top of the hydro line. This larger allotment adjoining the waterway/drainage basin would be consistent with what has been previously approved in the previous subdivision.</i> | As per response to 3.1 |
| 4.0 | Environmental | |
| 4.1 | <i>Eagles, 2x large eagles, and 4 x smaller eagles which were born around Christmas 2022, these eagles almost every afternoon soar above this land and continually rest in the small group of trees adjacent and to the left of Aspen Drive, Gillieston Heights, and the large old tree grey tree on the hill. At dusk they land close to this area along the top of the ridge line where we believe their nest is to be.</i> | The development application is accompanied by a Streamlined Biodiversity Development Assessment Report (SBDAR) that assesses ecological matters regarding the development. The proposed development has actively avoided the significant ecological constraints of the site; notably retaining a large portion (3.56 hectares) of environmentally valuable land to the east and south of this site. This protected land may include the possible site of the eagle nest. Notwithstanding this, a clearing survey will be required prior to the commencement of any vegetation on site. This will ensure that if any trees are found to contain habitat for any native species, appropriate steps can be taken to ensure that the |

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| | | <p>removal is conducted in a manner that minimise disturbance to the species.</p> <p>The Streamlined BDAR did not identify any Serious and Irreversible Impacts (SAIL) as a result of the proposed development. No threatened species have been identified on-site, and as such, no Species Credits under the Biodiversity Offset Scheme (BOS) will be incurred.</p> |
| 4.2 | <i>Most of the subdivision looks like a good addition to the area, however the development of the lots at the north eastern corner of the proposed development back directly onto of the existing watercourse is concerning.</i> | As per response to 3.1 |
| 5.0 | Traffic | |
| 5.1 | <i>No infrastructure to support extreme growth. The traffic plan states that there will only be a small percentage increase in traffic with the above development and the proposed new lights but with this development and the developments either approved or currently underway in this area it is looking like there will be up to 3,000 new houses, with most homes these days having at least 2 cars or more that is approximate of around 6,000 cars and one lane in, one lane out scenario and the school 40 zone adding to the already morning congestion on Cessnock Road heading towards the Maitland roundabout with traffic nearly most morning already backing sometimes right up to Saddlers Drive lights the morning commute can sometimes already take 15-20 minutes to each and proceed through Maitland roundabout which is usually an up to 5-minute trip. The additional of a new set of lights will do next to nothing to appease this situation.</i> | A Traffic Impact Assessment accompanies the development proposal for matters such as traffic generated from the site and its impact on the existing surrounding network. The TIA concludes that the proposal is supportable from a transport, traffic and access perspective. |
| 5.2 | <i>Will Maitland city council or developers be considering a better carriageway for traffic such as a 2 lane in each direction carriageway from Gillieston Heights to Maitland?</i> | As per response to 5.1 |
| 5.3 | <i>The proposed development is totally over developed in an area already struggling with access traffic movements around the area including Cessnock Road.</i> | As per response to 5.1 |

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| 5.4 | <i>The original plans for a "village" were rejected and now increase numbers are being applied for?</i> | As per response to 5.1 |
| 5.5 | <i>The infrastructure is not coping currently and this will add to the chaos and dangerous overcrowding on roads</i> | As per response to 5.1 |
| 5.6 | <i>May I suggest the planning department spend several hours in the area and monitor traffic movement especially at peak times. Until roads etc can cope this application must be rejected.</i> | As per response to 5.1 |
| 5.7 | <i>The development will generate significantly more traffic on our local roads, which have been designed to only accommodate the existing approved development. The applicants traffic study does not consider traffic which will be generated by the remaining development that is still being built including homes, the St Nicholas Early education centre which is under construction, and the Catholic primary school and local retail centre that are planned. As a result, we will have to put up with more cars, trucks and construction traffic which our roads were not designed for.</i> | As per response to 5.1 |
| 5.8 | <i>Increased traffic on Cessnock Road. Are there plans for alternative routes?</i> | As per response to 5.1 Options are being explored for an alternative flood free access connection between Gillieston Heights and Clifftleigh/Heddon Greta (Cessnock LGA) via the Loxford subdivision, west of Cessnock Road. |
| 5.9 | <i>Are there plans to have other side streets/lights coming off Cessnock Road to limit traffic through the already-developed estate?</i> | A signalised intersection is required to be installed at Cessnock Road to enable access into this subdivision, prior to the release of stage 2 of this subdivision. |
| 5.10 | <i>An additional entrance/exit via Cessnock Road has not been considered. All traffic would have to go through Saddler Drive creating further congestion in peak periods. Further development was not disclosed beyond Wallis Creek stages.</i> | As per response to 5.1 The subdivision does propose an additional entry/exit on the Cessnock Road. This negates the need for through traffic utilising Saddlers Drive. |
| 6.0 Infrastructure | | |
| 6.1 | <i>Opposition to the new development proposed in Gillieston Heights, until more infrastructure is brought to Gillieston all further development should be put on hold we need more sporting ovals footpaths and the school upgrade would need to be complete</i> | This subdivision provides additional public recreation areas, being the off-leash dog park, local park and environmental recreation reserve. The public spaces are linked via a footpath system, with access to adjoining subdivisions being provided. |

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| | <i>also thoughts of new high school or upgrades to existing.</i> | The upgrade of Gillieston Height public school is currently being investigated; noting that this is a matter for the State government. |
| 6.2 | <i>Council should be asking the rate paying residents what they want in their town example being the skate park proposed to Roy Jordan oval that No residents (old Gillieston) were asked about and all my neighbours that I have spoken to oppose. The people on the other side of the Main Road would love one so put it over there and keep Roy Jordan as a sporting complex like it was intended</i> | This is not a matter relevant to the assessment of this Development Application. |
| 6.3 | <i>While the primary school has been awarded funding, how long will it be before the school is rebuilt to cater for the increasing size of our community?</i> | This matter is currently being investigated by the NSW State Government. |
| 6.4 | <i>Are there plans for more local amenities?</i> | As per item 6.1, a number of public facilities are to be provide dunder this subdivision. |
| 7.0 | Acoustic | |
| 7.1 | <i>Our development includes an acoustic barrier that was provided by Walker and is not fit for purpose and the house sits above the height of the acoustic barrier.</i> | The development application is accompanied by an acoustic report that assesses impacts of Cessnock Road traffic on future dwellings with recommendations for measures to mitigate traffic noise that will be implemented as part of the development. |
| 7.2 | <i>Our concern for this new development is the increase in traffic noise on Cessnock Road. The road is significantly load during most times of the day. If this proposal is to be considered we ask that council makes plans for effective acoustic control measures of this road for the residents who's properties back onto Cessnock Road.</i> | As per response to 6.1 |

Government Agency Submissions

General terms of approval (GTA's) have been provided by the following government agencies on the basis that the development is classified as integrated development under Section 4.46 of the *Environmental Planning and Assessment Act 1979*. A summary of the requirements of each government agency is provided in the following table:

| Government Agency Submissions (GTA's) | | |
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| Responding Agency | Section/Act under which GTA's are provided | Summary of requirements |
| Department of Planning and Environment - Water | S91of the <i>Water Management Act 2000</i> | Controlled activities carried out in, on or under waterfront land are regulated by the <i>Water Management Act 2000</i> . The Department of Planning and Environment |

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| | | <p>- Water (DPE-Water) administers the <i>Water Management Act 2000</i> and is required to assess the impact of any controlled activity. The requirements of the <i>Water Management Act 2000</i> are triggered by the proximity of works to tributaries of Wallis Creek, in the east and south of the site. DPE-Water reviewed the application and provided concurrence on 9th February 2024.</p> <p>The controlled activity approval (which must be sought prior to works occurring on waterfront land) is noted to require replanting within the vegetation riparian zone of Wallis Creek.</p> |
| Rural Fire Services | Rural Fires Act - S.100B | <p>The proposed development is classified as residential subdivision within a bushfire prone area and required referral to the NSW Rural Fire Service (RFS) in accordance with section 100B of the <i>Rural Fires Act 1997</i>.</p> <p>RFS reviewed the documentation, including Bushfire Assessment Report and provided General Terms of Approval on 31 January 2024. These have been included as conditions of consent.</p> |
| Department of Planning and Environment – Heritage NSW | National Parks and Wildlife Act 1974 – Section 90 | <p>General Terms of Approval (GTAs) were issued by the Department of Planning and Environment – Heritage NSW on 10th November 2023. The GTA's note that an Aboriginal Heritage Impact Permit (AHIP) shall be sought prior to the commencement of works for the subdivision.</p> |
| Subsidence Advisory NSW | Coal Mine Subsidence Compensation Act 2017 | <p>The DA was referred to the Subsidence Advisory NSW who provided correspondence confirming that the site is not within a declared mine subsidence district and General Terms of Approval (GTA) are not required.</p> |

Comments with respect to the proposal have been provided by the following government agencies as summarised in the following table:

| Government Agency Submissions (Comments) | | |
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| Responding Agency | Section/Act under which comments are required | Summary of Comments |

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| Transport for New South Wales | SEPP (Transport & Infrastructure) – cl 2.122 traffic generating | <p>Cessnock Road (MR195) is a classified State Road. Council is the roads authority for Cessnock Road and all other public roads in the area, in accordance with Section 7 of the Roads Act 1993. The development proposes to disturb the surface of Cessnock Road to construct the Cessnock Road Intersection and associated collector road. The strategic design of this intersection has been informed by discussions with Transport for NSW.</p> <p>TfNSW is satisfied that the design is in accordance with Austroads Guidelines, Australian Standards and TfNSW Supplements. TfNSW is working with the developer to progress the intersection upgrade under a Works Authorisation Deed (WAD).</p> |
| Ausgrid | SEPP (Infrastructure) - cl 45 | Comments have been provided to the applicant and conditions of consent included accordingly. |

Section 4.15(1)(e) - The public interest

The proposal is unlikely to impact on any Federal, State and Local Government or community interests. The proposal is in the public interest on the basis that:

The subject site is located within an Urban Release Area (URA). The proposal will result in an upgrade to public infrastructure including the proposed intersection with Cessnock Road, as well as creating new public recreation areas within the URA. Impacts to native vegetation are minimised with the creation of an environmental reserve. As such, it is considered that the development is in the public interest.

REFERRALS

The application was referred to the following internal referrals for comment.

Development Engineering

The application was referred to Council's Senior Development Engineer. A number of revisions were requested by the Development Engineer, to ensure the development provided a satisfactory subdivision layout having regard to the road network, drainage systems and earthworks. The current version of the subdivision layout and supporting documentation was reviewed by the Senior Development Engineer who has advised they are satisfactory with draft conditions recommended.

Comment: The recommendations are included in the draft conditions.

Environmental Health

The proposal was referred to Council's Environmental Health Officer to review the acoustic report. The report has been reviewed and the proposed development is supported from an environmental health perspective.

Comment: The recommendations are included in the draft conditions.

Biodiversity

The application was referred to Council's Biodiversity Officer, who confirmed that the Streamlined Biodiversity Assessment report is satisfactory. The dedication of the environmental conservation land is supported.

Comment: The recommendations are included in the draft conditions.

Recreation & Community Planning

The proposal was referred to Council's Recreation & Community Planning team, who confirmed that the location of the local park and off-leash dog park was satisfactory. The initial review required minor design modification (relating to the type of furnishings to be provided). The applicant has made the recommended changes accordingly.

Comment: The recommendations are included in the draft conditions.

Waste Services

The initial waste referral required the following items to be addressed under the subdivision layout:

Due to the Food Organics and Garden Organics bin being introduced in 2025 there will be three bins presented each fortnight per property. For this to work the below is needed:

- 2m bin pad allowance per premises (3x500mm bins / 2x25mm spacing),
- no parking in the cul-de-sac on bin collection day,
- no dual occupancies as the above will not work if any dual occupancies are in this cul-de-sac.

The applicant provided the following comment in response to this: *"(the developer) provided a bin pad location plan, which details that there is sufficient space within the cul-de-sac for a 2m bin pad for each allotment, and in the unlikely event that a dual occupancy or secondary dwelling is constructed, there is sufficient space for an additional bin pad for each allotment fronting the cul-de-sac..."* It was additionally stated that: *"the cul-de-sac has been deemed to be designed to the satisfaction of the Rural Fire Service as per their response dated 31 January 2024. There is (also) limited opportunity to park within the cul-de-sac, regardless of driveway locations. There is (also) ample parking along Road 08, including three spaces provided within the adjacent laneway, which has been amended to Council's satisfaction."*

The bin pad locations are shown in red below. This image shows that parking within the cul-de -sac is limited due to the alignment of the road and the positioning of driveways. The recommended condition will be imposed.

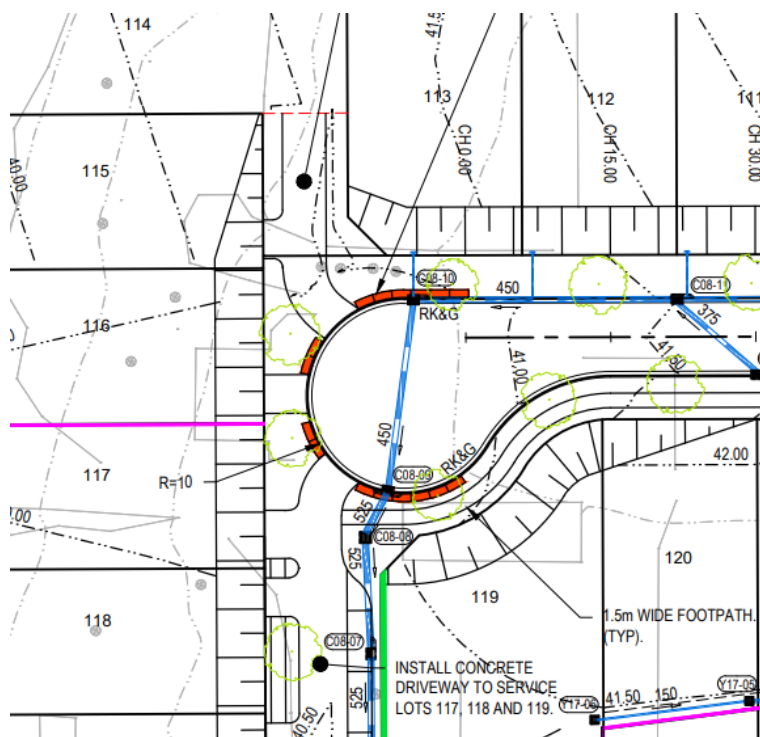


Figure 14: Proposed bin pad location (NW portion of subdivision)

Comment: The recommendations are included in the draft conditions.

Contributions

The proposal was referred to Council's Contributions Officer. The officer has provided a draft condition requiring the applicant to complete their obligations under the agreed VPA.

Comment: The recommendations are included in the draft conditions.

RECOMMENDATION AND DETERMINATION

Consent be granted subject to the conditions provided in the attached schedule.

City Planning

**DEVELOPMENT APPLICATION 2023/551
TORRENS TITLE SUBDIVISION TO CREATE
THREE HUNDRED AND TWENTY TWO (322)
RESIDENTIAL LOTS, THREE (3)
STORMWATER BASINS AND THREE (3)
PUBLIC RESERVE LOTS, 457 CESSNOCK
ROAD AND 65 REDWOOD DRIVE
GILLIESTON HEIGHTS**

**Recommended Conditions of Consent
(Under Separate Cover)**

Meeting Date: 13 August 2024

Attachment No: 4

Number of Pages: 20

Schedule of Conditions DA/2023/551

| 1. | <p>The requirements from the following agencies must be complied with prior to, during, and at the completion of the development.</p> <p>The Requirements are:</p> <ol style="list-style-type: none">1. NSW Department of Planning and Environment – Water (IDAS-2023-10467), Dated 9 February 20242. NSW Rural Fire Service, (DA202071003135-CL55-1), date 31 January 20243. NSW Department of Planning and Environment (Heritage NSW), (DOC23/652847-42), 10 November 2024 <p>A copy of the Requirements is attached to this determination notice.</p> | <p>To ensure the development complies with conditions required by other external agencies.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
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| 2. | <p>The advice from the following agencies must be complied with prior to, during, and at the completion of the development.</p> <p>The advice correspondence is:</p> <p>1.Transport for NSW (NTH23/00356/01), 7 August 2024</p> <p>2. Ausgrid, (1900123026), Date 3 August 2024</p> <p>3. Hunter Water Corporation, (2023-984), 14 July 2024</p> <p>A copy of the correspondence is attached to this determination notice.</p> | <p>To ensure the development complies with conditions required by other external agencies.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. | <p>Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.</p> <table><tr><th>Approved Plan</th><th>Plan Number</th><th>Revision Number</th><th>Date</th></tr><tr><td>Staging Plan</td><td>Project No. 21404</td><td>F</td><td>27.05.2024</td></tr><tr><td>Subdivision Plan</td><td>Sheet 1</td><td>C</td><td>27.05.2024</td></tr><tr><td>Subdivision Plan</td><td>Sheet 2</td><td>C</td><td>27.05.2024</td></tr><tr><td>Subdivision Plan</td><td>Sheet 3</td><td>C</td><td>27.05.2024</td></tr><tr><td>Concept Engineering Plans (Enspire)</td><td>210039</td><td>6</td><td>28.05.2024</td></tr><tr><td>Bushfire Intersection Modification Plans</td><td>Project 210039</td><td>Revision 1</td><td>12/07/2024</td></tr><tr><td>Civil Engineering and Stormwater Report</td><td>Enspire</td><td>Revision 4</td><td>17 May 2024</td></tr></table> <table><tr><th>Approved Document</th><th>Author</th><th>Revision Number</th><th>Date</th></tr><tr><td>Landscape Masterplan</td><td>Terras Landscape Architects</td><td></td><td>5 June 2024</td></tr><tr><td>Report on Geotechnical Investigation</td><td>Stantec</td><td>Version 5</td><td>28 June 2024</td></tr></table> <p>Note: The following amendments must be reflected on amended plans submitted at the Subdivision Works Stage:</p> | Approved Plan | Plan Number | Revision Number | Date | Staging Plan | Project No. 21404 | F | 27.05.2024 | Subdivision Plan | Sheet 1 | C | 27.05.2024 | Subdivision Plan | Sheet 2 | C | 27.05.2024 | Subdivision Plan | Sheet 3 | C | 27.05.2024 | Concept Engineering Plans (Enspire) | 210039 | 6 | 28.05.2024 | Bushfire Intersection Modification Plans | Project 210039 | Revision 1 | 12/07/2024 | Civil Engineering and Stormwater Report | Enspire | Revision 4 | 17 May 2024 | Approved Document | Author | Revision Number | Date | Landscape Masterplan | Terras Landscape Architects | | 5 June 2024 | Report on Geotechnical Investigation | Stantec | Version 5 | 28 June 2024 | |
| Approved Plan | Plan Number | Revision Number | Date | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Staging Plan | Project No. 21404 | F | 27.05.2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Subdivision Plan | Sheet 1 | C | 27.05.2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Subdivision Plan | Sheet 2 | C | 27.05.2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Subdivision Plan | Sheet 3 | C | 27.05.2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Concept Engineering Plans (Enspire) | 210039 | 6 | 28.05.2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Bushfire Intersection Modification Plans | Project 210039 | Revision 1 | 12/07/2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Civil Engineering and Stormwater Report | Enspire | Revision 4 | 17 May 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Approved Document | Author | Revision Number | Date | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Landscape Masterplan | Terras Landscape Architects | | 5 June 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Report on Geotechnical Investigation | Stantec | Version 5 | 28 June 2024 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| | <ul style="list-style-type: none"> Lot 627 is to be amended to ensure that all portions of RU2 zoned land is included in the lot boundary of Lot 650. Additional retaining walls are to be positioned on the eastern boundary of Lot 101. <p>In the event of any inconsistency between the approved plans and documents, the approved plans prevail. In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.</p> | |
| 4. | <p>The subdivision shall be constructed in accordance with the recommendations of the Noise Assessment Report (Ref: 232291R/30040) prepared by Spectrum Acoustics Noise and Vibration Consultants, dated 27 April 2023. The applicant is advised to ensure that the construction materials and methods used, meet the required sound reduction level to achieve this result.</p> <p>Acoustic fences are to be installed on the western facades of the private space areas of lots adjoining Cessnock Road prior to the relevant subdivision certificate. The wall must be solid (minimum 10kg/m²) and to be at least 1.8 metres high with no gaps for the passage of sound.</p> | To ensure the development complies with specific recommendations of a report. |
| 5. | <p>The applicant must surrender the consent relating to DA No. 2020/169 for Demolition of Existing Structures and Construction of a Manufactured Housing Estate (126 Dwellings) and Associated Community Buildings and Infrastructure by submitting an application for 'Surrender of a Consent' to Maitland City Council in accordance with Section 67 or 68 of the Environmental Planning & Assessment Regulation 2021</p> | To ensure current development consent is surrendered where inconsistent with the new consent. |
| 6. | <p>All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces' and AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.</p> | To mitigate amenity impacts as a result of lighting. |
| 7. | <p>The cul-de-sac located at the western end of Road 08 shall include signage requiring the following:</p> <ul style="list-style-type: none"> No parking in the cul-de-sac bulb on collection day. <p>The plans should indicate this prior to the release of the Subdivision Works Certificate.</p> | To ensure waste can be collected. |
| 8. | <p>The voluntary planning agreement entered into between Maitland City Council and Walker Gillieston Heights Pty Limited, applies to the development the subject of this consent. The applicant is to fulfill its obligations under the planning agreement in connection with the carrying out of the development to the extent to which doing so would not breach this consent.</p> | To ensure the VPA is executed. |
| 9. | <p>Prior to the issue of a subdivision works certificate, the development is to be completed in stages in accordance with the approved Staging Plan [Delfs Lascelles, Rev F, 27.05.2024].</p> | To provide staging for construction work. |
| 10. | <p>A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Registered Certifier, prior to the issue of a Subdivision Works Certificate.</p> | To ensure HWC requirements are met. |
| 11. | <p>Removal of vegetation approved under this consent is not to occur until the issue of the Subdivision Works Certificate.</p> <p>No vegetation or natural landscape features other than that authorised for removal, pruning by this Consent must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.</p> | To protect existing vegetation to remain in situ. |

| 12. | <p>The class and number of ecosystem credits in the following table must be retired to offset the residual biodiversity impacts of the development prior to the issue of a Subdivision Works Certificate, and commencement of any clearing works.</p> <p>The requirement to retire credits may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.</p> <table><tr><th>Impact plant community type</th><th>No. of ecosystem credits</th><th>IBRA sub-region</th><th>Plant community type(s) that can be used to offset impacts of development</th></tr><tr><td>PCT 1600 Spotted Gum – Red Ironbark – Narrow-leaved Ironbark – Grey Box shrub-grass open forest of the lower Hunter</td><td>6</td><td>Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo.</td><td>Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions This includes PCT's: 1590, 1592, 1593, 1600, 1602, 3433, 3442, 3443, 3444</td></tr><tr><td>PCT 1525 Sandpaper Fig – Whalebone Tree warm temperate rainforest</td><td>2</td><td>or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site.</td><td>Lower Hunter Valley Dry Rainforest in the Sydney Basin and New South Wales North Coast Bioregions This includes PCT's: 1525, 1541, 1543, 3076, 3083</td></tr></table> <p>Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund detailed in the above table must be provided to the consent authority prior the issue of a Subdivision Works Certificate.</p> | Impact plant community type | No. of ecosystem credits | IBRA sub-region | Plant community type(s) that can be used to offset impacts of development | PCT 1600 Spotted Gum – Red Ironbark – Narrow-leaved Ironbark – Grey Box shrub-grass open forest of the lower Hunter | 6 | Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. | Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions This includes PCT's: 1590, 1592, 1593, 1600, 1602, 3433, 3442, 3443, 3444 | PCT 1525 Sandpaper Fig – Whalebone Tree warm temperate rainforest | 2 | or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site. | Lower Hunter Valley Dry Rainforest in the Sydney Basin and New South Wales North Coast Bioregions This includes PCT's: 1525, 1541, 1543, 3076, 3083 | <p><i>Biodiversity Offset Scheme - Where a Biodiversity Development Assessment Report has been provided & ecosystem credits are required to offset impacts.</i></p> |
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| Impact plant community type | No. of ecosystem credits | IBRA sub-region | Plant community type(s) that can be used to offset impacts of development | | | | | | | | | | | |
| PCT 1600 Spotted Gum – Red Ironbark – Narrow-leaved Ironbark – Grey Box shrub-grass open forest of the lower Hunter | 6 | Hunter, Ellerston, Karuah Manning, Kerrabee, Liverpool Range, Peel, Tomalla, Upper Hunter, Wyong and Yengo. | Lower Hunter Spotted Gum Ironbark Forest in the Sydney Basin and NSW North Coast Bioregions This includes PCT's: 1590, 1592, 1593, 1600, 1602, 3433, 3442, 3443, 3444 | | | | | | | | | | | |
| PCT 1525 Sandpaper Fig – Whalebone Tree warm temperate rainforest | 2 | or Any IBRA subregion that is within 100 kilometres of the outer edge of the impacted site. | Lower Hunter Valley Dry Rainforest in the Sydney Basin and New South Wales North Coast Bioregions This includes PCT's: 1525, 1541, 1543, 3076, 3083 | | | | | | | | | | | |
| 13. | <p>A 5-year Vegetation Management Plan (VMP) must be developed for land to not be impacted by the development within the east of Lot 1 DP1298659. The VMP must be prepared by a qualified restoration ecologist or bush regenerator in consultation with Council. The VMP shall include (but not be limited to) the following minimum detail:</p> <ul style="list-style-type: none">Goals, objectives, and completion criteriaIdentification of management zones in text and on a site plan, including:<ul style="list-style-type: none">identification of management actions and outcomes for each management zoneexisting vegetation condition including existing weed densityDetailed works schedule for a minimum of five (5) years including species list, planting density, timing | <p><i>Biodiversity Offset Scheme - Where a Biodiversity Development Assessment Report has been provided & ecosystem credits are required to offset impacts.</i></p> | | | | | | | | | | | | |

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| | <ul style="list-style-type: none"> Proposed weed management strategies Monitoring and reporting requirements for a period of five years Adaptive management actions to be employed if completion criteria are not met within five years. This shall include continuation of VMP management until actions and outcomes are achieved (or a suitable alternative is approved by Council's Manager Environment and Sustainability). <p>The VMP shall be submitted to and approved by Council's Manager Environment and Sustainability prior to issue of any Subdivision Works Certificate.</p> <p>Annual monitoring reports are to be provided to Council's Manager Environment and Sustainability for a minimum period of five (5) years.</p> | |
| 14. | Implementation of the VMP shall commence immediately upon any construction work commencing and shall be carried out in accordance with the VMP approved schedule of works. | <i>Development Control Plan/NRAR Guidelines – where a VMP is required to rehabilitate sensitive land.</i> |
| 15. | <p>Implementation of the Clearing Strategy (as outlined in the BMP) shall be undertaken by a qualified ecologist and commence prior to clearing of any vegetation or demolition of structures.</p> <p>Removal of trees with habitat features and structures identified during pre-clearance surveys as providing fauna habitat (e.g., microbats) shall be undertaken at a time that minimises impact to fauna.</p> <p>A staged habitat removal process in accordance with 'Guide 4: Clearing of vegetation and removal of bushrock' in <i>Biodiversity Management Guidelines: Protecting and managing biodiversity on Transport for NSW projects</i> (Transport for NSW, 2024) shall be used when identified habitat features are to be removed.</p> <p>Once clearing of habitat features has been completed, a report shall be provided to Council's Manager Environment and Sustainability verifying compliance with the Clearing Strategy prior to commencement of works.</p> | <i>Development Control Plan/Biodiversity Offset Scheme - Where a Biodiversity Management Plan is required.</i> |
| 16. | Annual monitoring statements shall be provided to Council's Manager Environment and Sustainability for a minimum period of five (5) years verifying compliance with the VMP. | <i>Development Control Plan/NRAR Guidelines – where a VMP is required to rehabilitate sensitive land.</i> |
| 17. | Artificial hollows shall be monitored by a qualified ecologist to determine their usage and repairs or replacement (as required). Monitoring shall be carried out on an annual basis for a minimum period of five years following installation and/or as otherwise agreed with Maitland City Council. Annual monitoring statements shall be provided to Council's Manager Environment and Sustainability. | <i>Development Control Plan - where artificial hollows are required to offset hollow-bearing tree removal.</i> |

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| 18. | <p>Prior to issue of a Subdivision Works Certificate (or commencement of any clearing), a Biodiversity Management Plan must be prepared to the satisfaction of Maitland City Council. The Biodiversity Management Plan may form part of a Construction Environmental Management Plan. It shall include (but not be limited to) the following minimum detail:</p> <ul style="list-style-type: none"> • Clearing Strategy developed in accordance with 'Guide 1: Pre-clearing process', 'Guide 4: Clearing of vegetation and removal of bushrock', and 'Guide 9: Fauna handling' in <i>Biodiversity Management Guidelines: Protecting and managing biodiversity on Transport for NSW projects</i> (Transport for NSW, 2024). At minimum, the Clearing Strategy shall include: <ul style="list-style-type: none"> ◦ Proposed pre-clearing and pre-demolition survey actions ◦ Proposed timing of clearing and demolition commencement, and pre-clearing checks ◦ Proposed vegetation clearing methodology ◦ Monitoring and reporting requirements • Artificial Hollow Plan, including: <ul style="list-style-type: none"> ◦ The size, type and quantity of natural tree hollows to be removed ◦ Target species and the design of artificial hollows ◦ Map showing location of existing natural hollows and location of proposed artificial ◦ Monitoring and reporting requirements • Dam Dewatering Strategy, including: <ul style="list-style-type: none"> ◦ Dewatering process ◦ Protection of aquatic fauna and proposed fauna relocation measures • Protection of Retained Trees Plan - trees that have been identified for retention shall be protected by the establishment of a protection zone (in accordance with Australian Standard AS4970-<i>Protection of trees in development sites</i>) prior to the commencement of any site works. A minimum 1.8m high barrier must be installed around the perimeter of the stated Tree Protection Zone prior to commencement of works. The protection zone shall be maintained for the duration of works. No excavation or construction shall be carried out within the stated <i>Structural Root Zone</i> distances from the base of the trunk surface. • Appropriate weed control measures, including: <ul style="list-style-type: none"> ◦ Weed management priorities and objectives. ◦ Location of weed-infested areas. ◦ Measures to prevent the spread of weeds. ◦ Procedures for onsite weed treatment (e.g. composting) and reuse, and/or offsite weed disposal. ◦ Communication strategies to improve contractor awareness of weeds and weed management. • Machinery, plant and equipment hygiene protocol <p>The BMP shall be submitted to and approved by Council's Manager Environment and Sustainability prior to the issue of any Subdivision Works Certificate.</p> | <p><i>Biodiversity Offset Scheme - Where a Biodiversity Management Plan is required.</i></p> |
| 19. | <p>Prior to commencement of works, artificial hollows shall be installed in accordance with the Artificial Hollow Plan (as outlined in the BMP) at a ratio of 2:1 per hollow removed from site. At least 50% shall be salvaged hollows, except where large hollows are being replaced. All artificial hollows shall be installed at least two weeks prior to vegetation clearing (except where salvaged hollows from site are being used) and shall be maintained as needed for five years.</p> <p>Artificial hollows should be installed:</p> <ul style="list-style-type: none"> • <i>As close as possible to the location of the removed hollow-bearing tree.</i> | <p>Development Control Plan – where vegetation clearing 18.requires removal of hollow-bearing tree.</p> |

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| | <ul style="list-style-type: none"> • <i>With an orientation that considers the target species' needs.</i> • <i>To avoid trees with existing hollows as the presence of other hollow-dependent fauna may act as a deterrent or may compete for the nest boxes.</i> • <i>With an attachment method which is appropriate for each artificial hollow type and allows for tree growth.</i> • <i>Of a type and design to suit the target species in accordance with the Artificial Hollow Plan. If nest boxes are to be used, they should be constructed of a durable material (i.e., marine ply or equivalent), minimum thickness of 19mm.</i> • <i>Salvaged hollows are to be capped on either end and an entrance hole created if required.</i> <p>Artificial hollow location and evidence of installation shall be provided to the Manager Environment and Sustainability prior to commencement of clearing works. Where salvaged hollows are to be installed, evidence of installation and location may be provided to the Manager Environment and Sustainability within two weeks after clearing works, unless otherwise agreed by the Manager Environment and Sustainability.</p> | |
| 20. | <p>The following matters must be addressed and shown within plans prior to the Subdivision Works certificate:</p> <ul style="list-style-type: none"> • <i>No recreational features (exercise equipment, seating etc) are permitted within the land identified as drainage basins.</i> • <i>All fencing is to be in accordance with the 'fencing strategy' listed in the Landscape Masterplan, 5 June 2024, Terras Landscape Architects. All fencing as shown in this strategy is to be constructed prior to the release of the Subdivision certificate for the relevant stage corresponding with the lot where the fencing is to be erected.</i> | <i>To ensure a detailed landscape plan is provided in accordance with Council's Manual of Engineering Standards</i> |
| 21. | <p>The future landowners of Lots 268 & 220 are responsible for the long-term maintenance and up-keep of the public art associated with the entry features. A restriction on the title of each affected lot, under Section 88B of the Conveyancing Act 1919, shall be created to give effect to the provision. This shall be created prior to the relevant subdivision certificate.</p> | <i>To ensure a detailed landscape plan is provided in accordance with Council's Manual of Engineering Standards</i> |
| 22. | <p>Before the commencement of any building works, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works.</p> <p>No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development.</p> | <i>Ensuring proper waste management and preventing environmental pollution during the construction process.</i> |
| 23. | <p>If the work:</p> <p><i>i) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or</i></p> <p><i>ii) involves the enclosure of a public place</i></p> <p>The responsible person must gain a separate S138 approval from Council for the hoarding or fencing within the road reserve, fees apply.</p> <p>If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.</p> <p>The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place. Any such hoarding, fence or awning is to be removed when the work has been completed.</p> | <i>To ensure public assets and traffic are appropriately managed during construction.</i> |

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| 24. | All excavations and backfilling must be executed safely, in accordance with appropriate professional standards and be properly guarded and protected to prevent them from being dangerous to life or property. | <i>To ensure excavations and backfilling is executed safely.</i> |
| 25. | <p>Unless otherwise approved by Council in writing, all general building work shall be carried out between the hours of:</p> <p>a. 7.00am to 6.00pm Monday to Friday</p> <p>b. 7.00am to 5.00pm Saturday</p> <p>Any work performed on Sunday/s or Public Holidays that may cause offensive noise, as defined under the Protection of the Environment Operations Act, is prohibited. Minor works (such as hand sanding, painting, digging and the like) is permitted between the hours of 9.00am to 5.00pm. Power operated tools are not permitted to be used.</p> | <i>To ensure approved building activity does not disrupt the amenity of the surrounding area.</i> |
| 26. | Suitable and adequate measures are to be applied to restrict public access to the site and building works, materials and equipment. | <i>To ensure public access to the building site is restricted.</i> |
| 27. | Prior to, or during construction, identification of any potential archaeological deposit likely to contain Aboriginal artefacts, shall cause construction works to cease. Application shall be made by a suitably qualified Archaeologist to the National Parks and Wildlife Service (NPWS) for an excavation permit for Aboriginal relics. A copy of such a permit, shall be submitted to Council upon receipt. | <i>To ensure works cease and a permit is obtained should any archaeological deposits are uncovered during works.</i> |
| 28. | While work is being carried out, no building materials, refuse or spoil is to be deposited on or be allowed to remain on Council's footpath. | <i>To ensure no building materials, refuse or spoil restricts use of Council's footpath.</i> |
| 29. | <p>While work is being carried out, temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.</p> <p>The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.</p> | <i>To ensure adequate sanitary facilities during construction.</i> |
| 30. | The site shall be managed at all times during construction phase so as to prevent the generation of dust from the land disturbance activities (e.g., by water spray, dust suppression, surface sealants, soil binders, wind barriers and/or dust retardants). Those are required in addition to the use of water cart during operation hours. | <i>To ensure adequate controls with respect to dust pollution during works.</i> |
| 31. | Should any additional contamination or hazardous materials be encountered during any stage of the remediation process, all remediation works in the vicinity of the findings must cease and compliance with the contingency recommendations in the approved RAP must be adopted. | <i>To ensure a RAP is adopted in the event of unexpected finds during works.</i> |
| 32. | <p>Where there is a need to remove any identified materials from the site that contain fill/rubbish/asbestos, the waste material must be assessed and classified in accordance with the NSW Environmental Protection Agency Waste Classification Guidelines (2008).</p> <p>Once assessed, the materials must be disposed to a licensed waste facility suitable for that particular classification of waste. Copies of tipping dockets must be retained and supplied to Council upon request.</p> | <i>To ensure waste is disposed of appropriately.</i> |
| 33. | All work must not give rise to offensive noise, dust, odour or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary. | <i>To ensure the works are undertaken per the provisions of the POEO Act 1997.</i> |

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| 34. | <p>A Construction Noise Management Plan must be prepared and submitted to Council for approval prior to the release of the Subdivision Works Certificate. The report must include the following:</p> <ul style="list-style-type: none"> a) Noise mitigation measures. b) Noise and/or vibration monitoring. c) Use of respite periods. d) Complaints handling. e) Community liaison and consultation. | <p><i>To ensure the works are undertaken in accordance with the approved Construction Noise Management Plan</i></p> |
| 35. | <p>Filling material, shall be limited to the following:</p> <ul style="list-style-type: none"> a) virgin excavated natural material (VENM); b) excavated natural material (ENM) certified as such in accordance with Protection of the Environment Operations (Waste) Regulations 2014. c) material subject to a Waste exemption under Clauses 91 and 92 Protection of the Environment Operations (Waste) Regulations 2014 and recognised by the NSW Environment Protection Authority as being 'fit for purpose' with respect to the development subject of this application. <p>Note: Under no circumstances shall contaminated fill material including but not limited to putrescible wastes, (such as timber, paper, green waste, food etc), oil products (including petrol, bitumen, asphaltic concrete etc), plastic, and the like, be deposited on the land unless expressly authorised by this development consent.</p> | <p><i>To limit the type of fill material being deposited on site.</i></p> |
| 36. | <p>While subdivision work is being carried out, the principal certifier must be satisfied all soil removed from or imported to the site is managed in accordance with the following requirements:</p> <ul style="list-style-type: none"> (a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier. (b) All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 or a material identified as being subject to a resource recovery exemption by the NSW EPA. | <p><i>To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants</i></p> |
| 37. | <p>Fill material shall not obstruct any local watercourse, flow path or drain, that is within or that enters the site, without provision for conveyance, within the site, of stormwater flows through or around the proposed fill area, including adequate protection against erosion.</p> | <p><i>Protection of the downstream drainage and environment.</i></p> |

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| 38. | <p>Any retaining walls within the development shall comply with the following:</p> <ul style="list-style-type: none"> a) Any retaining walls for lot benching shall be provided on the common boundary of private lots, and b) Located within the uphill lot with the face of the wall on the boundary. An easement minimum 0.9m wide within the downhill lot, to prevent excavation and for access for maintenance shall be created, and c) Engineering certification is required for walls equal to or higher than 1.0m, and d) All side boundary retaining walls shall be tapered to 0.0m in height towards the front boundary and terminate 0.5m adjoining the public road reserve with a maximum of 1m within the first 5m from the boundary perpendicular to the public road reserve, and e) Cut retaining walls (walls adjacent to the neighbouring properties and/or roads) up to 0.6m in height require a minimum of 0.6m clearance from the exposed face of wall to the common boundary. Cut retaining walls exceed 0.6m in height are to be offset by the zone of influence at 1:1 slope from the exposed face of wall to the boundary or a minimum of 1m whichever is greater. | To ensure compliance with Council's requirements |
| 39. | All retaining walls within 1m of a boundary and/or exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer and have a minimum design surcharge load of 5kPa. | To ensure any retaining walls within proximity to common boundaries are certified. |
| 40. | Before the commencement of any site or building work, the principal certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan, (as approved by the principal certifier) are in place until the site is rectified (at least 70% ground cover achieved over any bare ground on site). | To ensure runoff and site debris do not impact local stormwater systems and waterways |
| 41. | <p>Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:</p> <ul style="list-style-type: none"> a) diverting uncontaminated run-off around cleared or disturbed areas, and b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and c) preventing the tracking of sediment by vehicles onto roads, and d) stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot. <p>Run-off and erosion control measures must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties, and roads.</p> | To ensure appropriate runoff and erosion controls. |
| 42. | <p>For sites with the disturbed area more than 2,500m², a suitably qualified professional in Erosion and Sediment Control shall provide to Council a monthly audit certifying that the implemented control measures are suitable.</p> <p>(Note: Additional report will be required following any reasonable rainfall event). The report shall include the recommendation(s) from the qualified professional, and details of works carried out by the contractor to action and/or install the recommendation(s).</p> | For ongoing management of soil erosion and the discharge of sediment over the land. |
| 43. | <p>During construction:</p> <ul style="list-style-type: none"> a) all vehicles entering or leaving the site must have their loads covered, and b) all vehicles, before leaving the site, must be cleaned of dirt, sand, and other materials, to avoid tracking these materials onto public roads. | To minimise potential emissions and spillage of material from the transportation. |

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| 44. | Prior to commencement of works and for sites with the disturbed area more than 2,500m ² , a suitably qualified professional in Erosion and Sediment Control is to attend a prestart meeting with the PCA and provide the PCA with a schedule of reporting and schedule of inspections to be carried out by the qualified professional. | <i>To ensure appropriate erosion and sediment controls have been planned.</i> |
| 45. | Soil and Water Management Plan (SWMP) in accordance with Managing Urban Stormwater Soils and Construction, also known as the Blue Book, must be developed by a suitably qualified professional in Erosion and Sediment Control, a copy of which shall be submitted to and approved by Council for sites with the disturbed area more than 2,500m ² . | <i>To prevent soil erosion and the discharge of sediment over the land.</i> |
| 46. | During works and prior to the issue of the Subdivision Certificate, soil erosion and sediment control measures shall be installed, monitored, maintained throughout the course of construction, and modified as necessary until the disturbed areas have been revegetated and the soil stabilised. Bulk earthworks shall not have more than three (3) hectares of earthworks exposed, un-stabilised to wind and rain at any point in time. Progressively rehabilitate and stabilise the disturbed areas after 30 days of starting the earthworks. | <i>To ensure legal stormwater connection is in accordance with Council's Manual of Engineering Standards and the approved plan(s).</i> |
| 47. | A restriction on the title of affected lots under Section 88B of the Conveyancing Act, shall give effect to the floor level of dwellings being constructed at the adopted Flood Planning Level (FPL) or 500mm above the 1% Annual Exceedance Probability (AEP) flood event, or at a level otherwise approved by Council. | <i>To ensure appropriate restrictions are applied to the subject site.</i> |
| 48. | A restriction on the title of each affected lot, under Section 88B of the Conveyancing Act, shall be created to give effect to the provision that any fencing erected within a watercourse, to the limit of the 1% Annual Exceedance Probability (AEP) flood level, shall be of post and wire/rail construction. | <i>To ensure appropriate restrictions are applied to the subject site.</i> |
| 49. | Prior to issue of the Subdivision Certificate, a surveyor shall provide staked markers representing the nominated flood level (RL 10.5m AHD) over affected lots, together with a reference benchmark with a reduced level for each lot. | <i>To ensure flood affected allotments are nominated and surveyed.</i> |
| 50. | Before the commencement of any site works, an all-weather vehicle access is to be provided at the site entrance for the delivery of materials and use by trades people. No materials, waste or the like are to be stored on the all-weather access at any time. | <i>To ensure safe and unobstructed access for construction vehicles and personnel during the building process.</i> |
| 51. | All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held. | <i>Construction management.</i> |
| 52. | Waste materials (including excavation, demolition, and construction waste materials) must be managed on the site and then disposed of at a waste management facility. | <i>Construction waste management.</i> |
| 53. | Before the issue of a subdivision certificate, the applicant must ensure any public infrastructure damaged as a result of the carrying out of subdivision works (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) is fully repaired to the written satisfaction of Council, and at no cost to Council. Note: If the council is not satisfied, the whole or part of the bond submitted will be used to cover the rectification work. | <i>To ensure any damage to public infrastructure is rectified.</i> |
| 54. | While work is being carried out, the applicant must pay any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits). | <i>To ensure payment of approved changes to public infrastructure.</i> |

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| 55. | Any necessary alterations to public utility installations being at the developer's expense and to the requirements of both Council and the relevant authority. | <i>To ensure compliance with the requirements of relevant authorities.</i> |
| 56. | If the work requires alteration to, or the relocation of, utility services on, or adjacent to, the lot on which the work is carried out, the work is not complete until all such works are carried out. | <i>To ensure essential services.</i> |
| 57. | At the completion of the works, the work site must be left clear of waste and debris. | <i>To ensure construction site is cleared of waste and debris upon completion.</i> |
| 58. | <p>Before the issue of a subdivision works certificate, a suitably qualified engineer must prepare a dilapidation report detailing: <i>the structural condition of adjoining buildings, structures or works, and public land/roads, to the satisfaction of the Principal Certifier.</i></p> <p>If the engineer is denied access to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the certifier's satisfaction that all reasonable steps were taken to obtain access to the adjoining properties. The road haulage route shall be agreed with the PCA for each construction phase prior to undertaking the dilapidation report.</p> | <i>To establish and document the structural condition of adjoining properties and public land for comparison as building work progresses and is completed</i> |
| 59. | <p>Before the issue of a subdivision certificate, a suitably qualified engineer must prepare a post-construction dilapidation report, to the satisfaction of the principal certifier, detailing whether:</p> <p>(a) <i>after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings, adjoining public lands or roads; and</i></p> <p>(b) <i>where there has been structural damage to any adjoining buildings, adjoining public lands and/or roads that it is a result of the subdivision works approved under this development consent. Before the issue of a subdivision certificate, a copy of the post-construction dilapidation report is to be provided to Council and to the relevant adjoining property owner(s).</i></p> <p>Any rectification works identified by either the engineer, or the principal certifier shall be rectified within the required process, and to the satisfaction of the principal certifier.</p> | <i>To identify damage to adjoining properties resulting from building work on the development site</i> |
| 60. | Documentary evidence from Council's Subdivision and Development Engineering Section, confirming that satisfactory completion of civil works has been achieved for the Roads Act Approval associated with this Development Consent, shall be submitted to the relevant certifier. | <i>For compliance of the approved civil works within the existing public road reserve</i> |
| 61. | <p>Prior to commencement of works within an existing public road reserve:</p> <p>a) <i>an engineering design, in accordance with Council's Manual of Engineering Standards, shall be submitted to Council for approval,</i></p> <p>b) <i>consent under the Roads Act for the approved works, shall be issued by Council</i></p> <p>c) <i>all relevant Council fees shall be paid</i></p> <p>d) <i>A Traffic Management Plan and/or Traffic Guidance Scheme in accordance with the Transport for New South Wales publication "Traffic control at Worksites" shall be submitted to Council.</i></p> | <i>To ensure appropriate approval(s) has been obtained prior to commencement of works.</i> |

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| 62. | <p>Prior to the issue of the Subdivision Certificate the following works shall be provided within the existing road reserve(s):</p> <ul style="list-style-type: none"> a) A shared pedestrian/cycle path minimum 2.5m wide (including night time lighting), along the Cessnock Road frontage of the site from Basin B to the existing Shared path north of Council's basin in Lot 1160 DP1256955 on Cessnock Road and provide connection to Saddlers Drive shared path. b) All redundant driveway crossings, driveways and/or damaged kerb and gutter are to be removed and reinstated. | To ensure the existing road is upgrade to adequate standards due to impacts of the development. |
| 63. | An easement over lot 114 shall be created giving effect to a Right of Access in favour of each benefiting lot. | To ensure appropriate restrictions are applied to the subject site. |
| 64. | The driveway within the access corridor of proposed lot 114 and 220 shall be constructed along the full length of the corridor as a concrete slab 3m wide minimum to "commercial" standard in accordance with Council's Development Control Plan and Council's Manual of Engineering Standards. | To ensure compliance of subdivision works. |
| 65. | <p>Prior to the issue of the Subdivision Certificate public bus facilities shall be provided generally at 400m spacings and providing maximum 400m walking distances from surroundings lots. The applicant is to consult with Transport for NSW, the bus service providers, and Maitland City Council with regard to location(s) and corporate recommendations arising from the consultation.</p> <p>The works shall include:</p> <ul style="list-style-type: none"> a) Bus stops (concrete slabs) located generally in accordance with concept engineering plans by Enspire (Project 210039), being opposite lot 501 and adjacent to park near roundabout, placed on the departure side of intersections and refuges, b) concrete centreline refuge and concrete blisters in the parking lanes, c) connecting footpaths, pram ramps, line marking, signage and associated works, d) street lighting on each vehicle approach side. | To ensure satisfactory bus facilities is provided for the existing and/or planned transport route. |
| 66. | Detailed design plans for bus stops and associated infrastructure prepared in accordance with Council's Manual of Engineering Standards are to be submitted to Council as the Roads Authority for approval. Details demonstrating compliance must be provided to the PCA. | To ensure compliance with Council's Manual of Engineering Standards |
| 67. | Prior to issue of the Subdivision Certificate, an Asset Protection Zone (APZ) shall be created in accordance with the requirements of the Rural Fire Service. | To ensure the development implements bushfire mitigation requirements. |
| 68. | Prior to issue of the Subdivision Certificate for Stage 1, certification from a suitably qualified geotechnical engineer shall be provided confirming that any contamination at the decommissioned farm dam site has been removed. | To ensure appropriate removal and disposal of contaminated material(s). |
| 69. | A suitably qualified geotechnical engineer shall supervise the decommissioning of the existing farm dam to ensure any contamination is identified and actioned appropriately. Where contamination is found during the decommissioning, an action plan is to be provided to, and approved by Council, prior to undertaking the decontamination works. | To ensure appropriate removal and disposal of contaminated material(s). |
| 70. | <p>Prior to issue of the Subdivision Works Certificate for Stage 2, engineering plans detailing the Signalised intersection at Cessnock Road shall be submitted to and approved by Transport for NSW. A copy of the approved engineering plans shall be provided to Council and the Certifying Authority.</p> <p>The plans shall be designed in accordance with the requirements of Transport for NSW and to include (but not limit to):</p> | To ensure compliance with Transport for NSW requirements. |

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| | <ul style="list-style-type: none"> a) A three-way traffic signal controlled intersection for all approved movements; b) Provision for on-road cyclists (where required by Transport of NSW); c) Bus Stop facilities on both Northbound and Southbound departure sides of the intersection, including connecting footpaths; d) Signal phasing, turning movements, lane width/limits, tapers and pavement marking as required by Transport of NSW. e) Streetlighting to the requirement of Transport for NSW. | |
| 71. | <p>Prior to commencement of works within the Cessnock Road, road reserve:</p> <ul style="list-style-type: none"> a) an engineering design for road infrastructure required by this consent, including any additional works arising from design warrants, shall be submitted to Transport for New South Wales for approval, b) consent for the approved works, under the Roads Act, shall be issued, c) all relevant fees/monies/bonds required by Transport for New South Wales shall be paid, d) any "agreements/deeds" required by Transport for New South Wales shall be in place, e) an approved traffic management plan in accordance with Transport for New South Wales requirements shall be approved. | To ensure appropriate approval(s) has been obtained prior to commencement of works. |
| 72. | <p>Prior to issue of the Subdivision Certificate for Stage 2, the Signalised intersection on Cessnock Road shall be constructed and operational in accordance with the requirements of Transport for NSW. Confirmation of works shall include:</p> <ul style="list-style-type: none"> a) Confirmation from Transport for NSW that the construction works have been completed. b) Work-as-executed drawings, utilities plans, electronic files are provided to Council. | To ensure adequate delivery of public infrastructures. |
| 73. | Prior to the issue of a Subdivision Works Certificate, engineering plans in accordance with Council's Manual of Engineering Standards detailing the new public roads and any necessary adjustments due to road widening as proposed for dedication shall be submitted to and approved by Council. | To ensure compliance with Council's Manual of Engineering Standards. |
| 74. | The new public roads and/or road widening proposed to be dedicated at no cost to Council shall be dedicated to the public. | To ensure roads are dedicated to Council. |
| 75. | Prior to the release of the Subdivision Certificate for the relevant stage, a restriction on the title under Section 88B of the Conveyancing Act 1919 shall be created, restricting the built development on Lots 221-227, and Lots 256-267, to approved design guidelines. The design guidelines shall be submitted to and approved by Council. The guidelines shall include, but not be limited to, fencing, building location, private open space location, streetscape requirements, pedestrian access, preferred garage location and any other relevant criteria. | To ensure appropriate restrictions are applied to the subject site. |
| 76. | The developer must acknowledge all existing easements and/or restrictions on the use of the land on the final plan of subdivision. | To ensure all existing easements and restrictions are acknowledged where applicable. |
| 77. | Prior to issue of the Subdivision Works Certificate for the road, drainage, public landscaping and civil works an engineering design shall be prepared by a suitably qualified and practising engineer, in accordance with Council's Manual of Engineering Standards (MOES), and this consent. | To ensure compliance with Council's Manual of Engineering Standards. |
| 78. | Prior to the issue of the relevant Subdivision Works Certificate or Roads Act Approval, all (traffic) Regulatory line marking, and signage shall be approved by Council's Local Traffic Committee. The plans should generally be in accordance with the concept Signage and Linemarking plans by Enspire (Project 210039, Rev 7, dated 12/07/24) Note: Please allow three months from | Technical review from Local Traffic Committee prior to the installation of linemarking and signages. |

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| | <p>lodgement for the LTC process. All recommendations of the committee shall be incorporated into approvals and works. The works to be approved include:</p> <ul style="list-style-type: none"> a) <i>"Four-way" cross intersections shall identify priority requirements.</i> b) <i>All regulatory line marking and regulatory signage.</i> c) <i>Roundabouts and signalised intersections.</i> | |
| 79. | <p>Prior to the issue of the Subdivision Works Certificate for road construction, a detailed "landscape plan", in accordance with Council's tree planting guidelines and Manual of Engineering Standards shall be submitted to Council for approval. The plan shall:</p> <ul style="list-style-type: none"> a) <i>Be generally in accordance with the approved plan as referenced in condition 1 and designed by a suitably accredited landscape architect.</i> b) <i>Include native tree, shrub and groundcover plantings to North-eastern drainage reserve.</i> c) <i>Exclude plantings within the median, which is to be constructed with a concrete infill.</i> d) <i>Exclude trees and shrubs within basin fill embankments.</i> e) <i>Exclude feature road pavements, unless agreed to by Maitland City Council.</i> f) <i>Be of a design and construction standard that minimises ongoing maintenance costs to Council and is maintainable by the Council 72 inch wide ride-on machinery.</i> g) <i>Have street trees from Council's approved species list with a minimum pot size of 45 Litres (desirably minimum height of 1.5m at time of planning) include details of the height and spread at maturity (of the approved species).</i> <p>Landscaping of any existing or proposed public land shall include:</p> <ul style="list-style-type: none"> h) <i>A minimum 3.0m wide couch turfed strip provided along adjoining private property boundaries for boundary maintenance purposes with maximum slope of 5H:1V.</i> i) <i>how construction details in accordance with Manual of Engineering Standards of any fencing/bollards/barriers/lighting items approved in the landscape concept plan.</i> j) <i>Landscaping of basins and water quality systems, such as native grasses instead of turf that minimises ongoing maintenance.</i> k) <i>A robust and resilient design that can withstand the potential flooding impacts within the drainage reserve/corridors.</i> | <p><i>To ensure a detailed landscape plan is provided in accordance with Council's Manual of Engineering Standards</i></p> |
| 80. | <p>Prior to the issue of the Subdivision Certificate the subdivision construction shall be carried out in the numerically consecutive stages as shown on the approved plan by <i>Enspire</i> (Project 210039).</p> <p>Specific works shall be completed by the following thresholds:</p> <ul style="list-style-type: none"> a) <i>Roundabout completed by release of Stage 1.</i> b) <i>Construction and dedication of local park on lot 148 by release of Stage 1.</i> c) <i>Completion and dedication of drainage reserve on lot 136 with Stage 1.</i> d) <i>Installation of 'No Stopping Signage' within the cul-de-sac bulb by release of Stage 1 to provide temporary bushfire protection until the stage is surrounded by next stages.</i> e) <i>Removal of 'No Stopping Signage' within the cul-de-sac bulb by release of Stage 2.</i> f) <i>Signalised Intersection on Cessnock Road to be constructed and operational by the release of Stage 2.</i> g) <i>Construction and completion of shared path along Cessnock Road by release of Stage 3.</i> h) <i>Completion and dedication of drainage reserve 'Basin B' on lot 347 with Stage 4.</i> | <p><i>To ensure infrastructure is provided at the appropriate time.</i></p> |

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| | <ul style="list-style-type: none"> i) Completion and dedication of drainage reserve 'Basin A' on lot 650 with Stage 6. j) Construction and dedication of 'Dog park' on lot 649 by release of Stage 6. | |
| 81. | <p>Prior to the issue of the Subdivision Certificate the following subdivision works within the private property shall be provided in accordance with Council's Manual of Engineering Standards:</p> <ul style="list-style-type: none"> a) Internal roads, drainage and pathways. b) Drainage basins c) Parks d) Ancillary roadside furniture and safety devices including fencing, signage, guideposts, chevrons, directional arrows and guard rail. e) "Battle-axe" lots shall construct a concrete driveway to industrial concrete thickness requirements within the lot "handle". f) Accessway for Lots 117, 118 and 268 to be constructed to industrial concrete thickness requirements and include footpath, street trees, drainage and parking bays within the 12m wide corridor (4.5m verge, 4m access, 2.5m parking, 1m separation to boundary). g) Bin pads around the Cul-de-sac. h) Minimum 4m wide all-weather access behind lots 547-553 and 642-648, linking to the public road, in accordance with Council and NSW RFS requirements. | To ensure adequate delivery of public infrastructures. |
| 82. | <p>Prior to issue of the Subdivision Certificate, the detention/water quality systems shall be dedicated to Council at Stage 4 for Basin B and Stage 6 for Basin A (unless otherwise agreed by Council). Until dedication of the basins the following requirements include:</p> <ul style="list-style-type: none"> a) An easement to drain water shall be placed over the drainage corridor/system benefiting Council and any adjoining upstream lots. b) A positive covenant shall be placed over the detention/water quality system requiring the lot owner to maintain the detention and water quality system until the basin is dedicated as drainage reserve. c) A positive covenant shall require the lot owner to hold \$10 million public liability for the drainage and detention system until it is dedicated as drainage reserve. d) The authority to release vary or modify the easements/covenants above shall be nominated as 'the lots burdened and benefited only with the written consent of Maitland City Council'. e) Prior to the dedication of the drainage reserve to Council as proposed to be dedicated, the lot owner shall request a handover inspection and undertake any works to provide an 'as new system' to the satisfaction of the PCA (council). | To ensure creation of necessary easement(s) and covenant(s) under Section 88B of the Conveyancing Act. |
| 83. | <p>Prior to the issue of the Subdivision Certificate the applicant shall provide to the Council:</p> <ul style="list-style-type: none"> a) A copy of a 'landscape maintenance agreement' with a qualified landscape contractor to secure maintenance of the landscape plantings for a period of not less than 2 years in accordance with the approved landscape plan; or b) Provide a landscape maintenance bond to the Council for the maintenance of the landscape plantings for a period of not less than 2 years in accordance with the approved landscape plan. <p>Note: The applicant shall provide three quotations from qualified landscape consultants for the landscape maintenance work and the amount of the bond is to be determined having regard to these quotations.</p> | To ensure landscaping is maintained for at least two (2) years following planting. |

| 84. | <p>A restriction and/or covenant on the title of affected lots (generally Section 88b) under the Conveyancing Act, shall be created to give effect to:</p> <ul style="list-style-type: none"> a) A right of access shall be provided over all temporary turning heads. b) The prohibition of vehicular access across the common boundary with Cessnock Road. c) The prohibition of vehicular access across the common boundary with Road 01 and Road 07 for Lots 220-227 and Lots 256 to 268. d) The prohibition of vehicular access across the common boundary of Lots 119 and 213 with the access lane to the West. e) Where public water quality or stormwater detention systems are not dedicated at the time of commissioning, a positive covenant shall be created, burdening the lot, to maintain the system in accordance with the maintenance management plan until the land is dedicated as drainage reserve. f) Retaining walls on common boundaries shall have a minimum 900mm easement to prevent excavation and for maintenance access shall be provided on the downhill lot. g) Asset Protection Zones in accordance with NSW Rural Fire Service requirements. | To ensure appropriate restrictions are applied to the subject site. | | | | | | | | | | | | | | | |
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| 85. | Easements to drain water, in accordance with Council's Manual of Engineering Standards, under Section 88B of the Conveyancing Act, shall be created over pipes, overland flow paths, final discharge structures, stormwater control devices, and stormwater dispersal areas where public stormwater is not located within public land. | To ensure appropriate restrictions are applied to the subject site. | | | | | | | | | | | | | | | |
| 86. | Prior to the issue of a subdivision works certificate for each stage, the development is to be completed in numerical stages in accordance with the approved Staging Plan by Enspire, Project No. 210039, Revision 6 dated 21/06/24. | To provide staging for construction work. | | | | | | | | | | | | | | | |
| 87. | <p>Prior to the issue of the Subdivision Works Certificate the following road hierarchy shall apply to all roads, (including widths, pavement design and the like) in accordance with council's Manual of Engineering Standards:</p> <p>Where a Geotechnical engineer determines high expansive soils with a $\geq 2.5\%$ swell (10-day soak) or poor CBR ($< 2\%$) are present within 1 metre below the design subgrade, a capping layer of homogeneous select material shall be added to the pavement design and construction plans.</p> <p>The swell, pavement design and the select material specification shall be considered and justified against Austroads Guide to Pavement Technology (AGPT) Part 2, 4I, 8 and the RMS Supplement to AGPT2, including a 10-day soak. The adjusted pavement design shall be based on the CBR of the selected subgrade material at 'in-service moisture and density conditions' to stop premature pavement distress and to achieve the design life of the pavement. Note: A minimum, but not limited to, 300mm select material shall be added to the minimum pavement thickness for either swell and/or poor CBR.</p> <table border="1"> <thead> <tr> <th>Road Type</th><th>Description</th><th>Comments</th></tr> </thead> <tbody> <tr> <td>Local Secondary (ESA 2 x 10⁵)</td><td>Road 04, 06, 08, 10</td><td>Footpath as per concept engineering plans</td></tr> <tr> <td>Collector Secondary (ESA 1 x 10⁶)</td><td>Road 02, 03, 05, 09, 11</td><td>Footpath as per concept engineering plans</td></tr> <tr> <td>Public Bus Route (ESA 5 x 10⁶)</td><td>Road 01</td><td>Footpath as per concept engineering plans</td></tr> <tr> <td>Distributor Primary (ESA 1 x 10⁷)</td><td>Road 07</td><td>Concrete median, 2.5m shared path on South side, 1.5m path on North side</td></tr> </tbody> </table> <p>Note: where other conditions of consent require larger criteria (such as</p> | Road Type | Description | Comments | Local Secondary (ESA 2 x 10 ⁵) | Road 04, 06, 08, 10 | Footpath as per concept engineering plans | Collector Secondary (ESA 1 x 10 ⁶) | Road 02, 03, 05, 09, 11 | Footpath as per concept engineering plans | Public Bus Route (ESA 5 x 10 ⁶) | Road 01 | Footpath as per concept engineering plans | Distributor Primary (ESA 1 x 10 ⁷) | Road 07 | Concrete median, 2.5m shared path on South side, 1.5m path on North side | To ensure satisfactory road parameters according to the lot catchment, the lot size and the potential ultimate lot yield. |
| Road Type | Description | Comments | | | | | | | | | | | | | | | |
| Local Secondary (ESA 2 x 10 ⁵) | Road 04, 06, 08, 10 | Footpath as per concept engineering plans | | | | | | | | | | | | | | | |
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| Distributor Primary (ESA 1 x 10 ⁷) | Road 07 | Concrete median, 2.5m shared path on South side, 1.5m path on North side | | | | | | | | | | | | | | | |

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| | shared paths and verge) the larger provision takes precedence. | |
| 88. | Prior to issue of a Subdivision Works Certificate, any major utilities facilities (water, sewer, electrical, telecommunication items larger than individual lot scale provisions) shall be located wholly within private lots and clearly shown on the construction drawings. Offsets from items such as road reserves, footpaths or retaining walls shall be shown demonstrating no impacts/encroachment into those adjoining items clear-zone requirements. | <i>To ensure sufficient clearances to Council's infrastructures and assets.</i> |
| 89. | <p>Prior to issue of a Subdivision Works Certificate the following works shall be carried out including specific drainage requirements for the following:</p> <ul style="list-style-type: none"> a) <i>Provision of 1%AEP (Q100) flow depths, freeboard, and velocity depth ratios shown on the construction drawings at relevant locations for overland flowpaths on road and drainage corridors.</i> b) <i>The existing dams shall be decommissioned. A geotechnical report and civil engineers design shall be provided for the new basin walls including any required clay core or equivalent.</i> c) <i>Interallotment drainage to internal lots as required.</i> | <i>To ensure appropriate stormwater management that minimise adverse impacts to the downstream properties and environments.</i> |
| 90. | The applicant must maintain a register of deliveries which includes date, time, truck registration number, quantity of fill, origin of fill and type of fill delivered. This register must be made available to Council officers on request and be provided to the Council at the completion of the development. | <i>To ensure a delivery register is maintained for delivery of earthwork (fill) material.</i> |
| 91. | <p>Prior to issue of the Subdivision Certificate, a report prepared by the Geotechnical Inspection and Testing Authority (GITA) shall be submitted to Council that:</p> <ul style="list-style-type: none"> • <i>classifies each lot in accordance with Australian Standards AS 2870, and</i> • <i>certifies and verifies that all earthworks and filling have been completed in accordance with the requirements of this consent, Council's Manual of Engineering Standards and AS 3798-2007 (or as revised) employing "level 1" inspection and testing, and</i> • <i>contains a plan showing the location, depth and classification of all filling in relation to the proposed new lot boundaries.</i> | <i>To ensure appropriate lot classification for the intended use.</i> |
| 92. | <p>All earthworks shall be undertaken in accordance with AS3798-2007 (or as revised) and Maitland City Council's Manual of Engineering Standards. A Geotechnical Inspection and Testing Authority (GITA) shall be engaged to undertake inspection and testing of all fill areas. Filling inspection and testing shall be undertaken as 'Lot' testing under "Level 1" Supervision in accordance with AS 3798-2007 (or as revised). Compaction testing frequency to be undertaken in accordance with Table 8.1 of AS3798-2007 based on the nominated lot size.</p> <p>Fill shall be placed in layers not greater than specified by Council or the GITA and shall be compacted to achieve a minimum 98% standard compaction at Optimum Moisture Content (+ or - 2%) in accordance with Dry density ratio as per AS1289.5.4.1 or HILF density ratio as per AS1289.5.7.1.</p> | <i>To ensure earthworks are in accordance with standards.</i> |
| 93. | <p>Prior to the issue of a Subdivision Works Certificate for subdivision works, a Bulk Earthworks Management Plan (BEMP) is required to be submitted to and approved by Council. The BEMP must include a report from a suitably qualified engineer that examines and determines:</p> <ul style="list-style-type: none"> a) <i>the extent of bulk earthworks require for the construction of each stage</i> b) <i>how stockpiles will be managed during construction</i> c) <i>where stockpiles will be located for each stage and what requirements are necessary to manage the locations</i> d) <i>stock pile dimensions and stabilisation measures</i> e) <i>site haulage routes and movement for each stage</i> f) <i>how fill will be managed in the floodway during construction</i> | <i>To prevent damage to the site and the public road and to minimise impacts on the surrounding properties and environment.</i> |

| | | |
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| | <i>g) any specific requirements relating to the management of Acid Sulfate Soils</i> | |
| 94. | <p>Prior to issue of the Subdivision Works Certificate, all recommendations contained in the <i>Geotechnical Report No. 304100964, Version 5</i> prepared by <i>Stantec</i> dated 28/06/2024 shall be incorporated into the engineering design for the subdivision. All works proposed to be undertaken shall embody the relevant recommendations of the Geotechnical Report.</p> <p>All engineering plans shall be endorsed by a suitably qualified Geotechnical Engineer. The endorsement shall state that the proposed works are in accordance with the recommendations of the aforementioned Geotechnical Report.</p> | <i>To ensure compliance earthworks comply with relevant standards.</i> |
| 95. | Prior to issue of the Subdivision Works Certificate for earthworks or road construction, application (together with a plan) shall be made, and submitted to Council, for road names. The suggested names shall offer options, which shall be supported with reasons (historical or otherwise) for the chosen names. | <i>To ensure compliance with the NSW road naming requirements.</i> |
| 96. | Prior to the issue of the Subdivision Certificate kerb and gutter and road construction with an asphaltic concrete wearing surface of all proposed roads, together with all necessary stormwater drainage and infrastructure facilities, shall be provided in accordance with Council's Manual of Engineering Standards. | <i>To ensure compliance with Council's Manual of Engineering Standards</i> |
| 97. | Prior to the issue of a Subdivision Certificate temporary turning heads, relevant signage and markers for all terminating roads shall be provided where a continuous road loop does not exist. Turning heads shall be 16.0m minimum radius for firefighting and heavy vehicles at the end of each road. | <i>To ensure adequate turning area for manoeuvres of heavy vehicles.</i> |
| 98. | Prior to issue of the Subdivision Certificate a Maintenance Management Plan for the stormwater detention/retention systems shall be prepared by a suitably qualified and experienced person, shall be submitted to, and accepted as satisfactory by Council. | <i>To ensure adequate maintenance of stormwater devices.</i> |
| 99. | Prior to the issue of the Subdivision Certificate all landscaping shall be undertaken in accordance with the approved landscape plan(s). | <i>To ensure landscaping works are undertaken per the approved plans.</i> |
| 100. | Underground water, sewerage, telecommunications, and electrical power services shall be reticulated for each lot in accordance with the service provider's requirements. | <i>To ensure essential services are provided to each allotment.</i> |
| 101. | Documentary evidence from the suppliers of electrical power, and communications (and including gas if applicable), confirming that satisfactory arrangements have been made for the installation of infrastructure services, shall be submitted to Council. | <i>To ensure essential services are provided to each allotment.</i> |
| 102. | The land containing the new stormwater basins and associated overland flow paths proposed to be dedicated shall be dedicated to Council as drainage reserve, at no cost to Council. | <i>To ensure drainage reserves are dedicated to Council.</i> |
| 103. | <p>Street and pathway lighting design by a suitably qualified consultant shall be provided in accordance with Council's requirements and the power supply authority. Additional lightning is required at the following locations:</p> <ul style="list-style-type: none"> a) Major road intersections b) Pedestrian crossings/refuges c) Bus stops d) Pedestrian/Cycle path linkages not associated with roads e) Parks | <i>To ensure appropriate lighting level in public areas.</i> |

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| 104. | The authority empowered to release, vary, or modify inter-allotment drainage easements shall be nominated as "the lots burdened and benefitted, only with the consent of Maitland City Council". | <i>To ensure appropriate restrictions are applied to the subject site.</i> |
| 105. | The authority empowered to release, vary, or modify restrictions and covenants on the use of the land required by this consent, shall be nominated as "Maitland City Council". | <i>To ensure appropriate restrictions are applied to the subject site.</i> |
| 106. | <p>The development must be amended as follows:</p> <ul style="list-style-type: none"> a) Minimum 8m between kerb blisters/extensions and/or 4m between ped refuge & kerb on Road 01. b) Minimum inner kerb return radius of 15m around sharp bends. c) Feature road pavements to be removed (unless agreed to by Council) Amend road reserve and carriageway widths as per 'Bushfire intersection Modification' plans by Enspire, Project 210039 (SK0068-0071), Sheets 1-4, Revision 1, dated 12/07/24. d) Roundabout splitter islands shall have pedestrian cut outs, min. 2.5m wide, 2m deep and be approx. 6m behind holding line. Amended plans or documentation demonstrating compliance must be provided to the Certifying Authority and Council prior to the issue of a subdivision works certificate. | <i>To ensure the development complies with Council's controls and guidelines.</i> |
| 107. | <p>Before the issue of a subdivision works certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:</p> <ul style="list-style-type: none"> • location and materials for protective fencing and hoardings to the perimeter on the site • provisions for public safety • pedestrian and vehicular site access points and construction activity zones • details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site • protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable) • details of any bulk earthworks to be carried out • location of site storage areas and sheds • equipment used to carry out all works • a garbage container with a tight-fitting lid • dust, noise and vibration control measures • location of temporary toilets. • Date, hours and duration of construction works • Temporary parking arrangement • Proposed Road closure / Road works <p>The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.</p> | <i>To require details of measures that will protect the public, and the surrounding environment, during site works and construction</i> |
| 108. | All construction traffic management procedures and systems identified in the approved Construction Traffic Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems. | <i>To ensure safety and to minimise the effect to pedestrians, other road users.</i> |
| 109. | Conduits for domestic water, sewerage, communication, and gas connections are to be provided under all roads. A layout showing the locations of the conduits is to be submitted as soon as the water and gas mains designs are available and prior to the issue of the Subdivision Works Certificate. | <i>To ensure essential services.</i> |

| | | |
|------|--|--------------------------------------|
| 110. | <p>The applicant shall provide documentary evidence from Energy Australia that satisfactory arrangements have been made for:-</p> <ul style="list-style-type: none">i. The provision of easements in favour of Energy Australia over private land for existing and proposed power lines and where the development requires the relocation of power lines or other assets of Energy Australia.ii. The provision of a grid based (underground/overhead) electricity supply to each of the resultant lots of the subdivision.iii. The provision of a satisfactory street lighting system to all roads, cycleways and pathways within the subdivision to Council's requirements.iv. Where applicable an appropriate standard of street lighting to Council's requirements is to be provided to all traffic facilities and intersections within the subdivision and where the subdivision street system adjoins surrounding road networks. | <p>To ensure essential services.</p> |
|------|--|--------------------------------------|

City Planning

APPROVAL OF DEED OF VARIATION TO WORKS IN KIND AGREEMENT - SHARED PATHWAY THORNTON NORTH - ALLAM PROPERTY GROUP & THORNTON WATERS

Draft Deed of Variation (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 1

Number of Pages: 48



Deed of Variation

Construction of Shared Path/Linear Linkages off Raymond Terrace Road, Chisholm

WIK Agreement

Maitland City Council
Allam Development No. 1 Pty Ltd
Thornton Waters Pty Ltd

Date: 24 July 2024

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lindsaytaylorlawyers
Level 18, Suite 1, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

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Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement



Maitland City Council
Allam Development No. 1 Pty Ltd
Thornton Waters Pty Ltd

Deed of Variation
Construction of Shared Path/Linear Linkages off
Raymond Terrace Road, Chisholm WIK Agreement

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**Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement**



Maitland City Council

Allam Development No. 1 Pty Ltd

Thornton Waters Pty Ltd

**Deed of Variation to Construction of Shared
Path/Linear Linkages off Raymond Terrace Road,
Chisholm WIK Agreement**

Parties

Maitland City Council ABN 11 596 310 805 of PO Box 220 Maitland NSW
(Council)

and

Allam Development No. 1 Pty Ltd ACN 617 513 005 of Office 37, Level 3,
11-13 Brookhollow Avenue, Norwest NSW 2153

and

Thornton Waters Pty Ltd ACN 606 351 400 of Office 37, Level 3, 11-13
Brookhollow Avenue, Norwest NSW 2153.

(together the '**Developer**')

Background

- A The Parties are Parties to the WIK Agreement.
- B Pursuant to clause 57 of the Planning Agreement, the Parties agree to amend the Planning Agreement to take into account a change in the alignment of the shared pathway.

Operative provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

WIK Agreement means the agreement titled '*Construction of Shared Path/Linear Linkages off Raymond Terrace Road, Chisholm WIK Agreement*' pursuant to s7.11(5)(b) of the *Environmental Planning and Assessment Act 1979* entered into between the Parties on **[Insert date]**.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the WIK Agreement.

**Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement****Maitland City Council****Allam Development No. 1 Pty Ltd****Thornton Waters Pty Ltd**

- 1.3 Clauses 1.2, 52-56 and 59 of the WIK Agreement apply as if they form part of this Deed with any necessary changes.

2 Status of this Deed

- 2.1 This Deed is an amendment to the WIK Agreement within the meaning of clause 57 of the WIK Agreement.

3 Commencement

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

4 Warranties

- 4.1 The Parties warrant to each other that they:
4.1.1 have full capacity to enter into this Deed, and
4.1.2 are able to fully comply with their obligations under this Deed.

5 Amendment to WIK Agreement

- 5.1 On and from the date this Deed takes effect the WIK Agreement is amended in accordance with the marking-up shown on the copy of the WIK Agreement contained in the Schedule.

6 Costs

- 6.1 The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
6.2 This clause continues to apply after expiration or termination of this Deed.

**Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement**



Maitland City Council

Allam Development No. 1 Pty Ltd

Thornton Waters Pty Ltd

Schedule

(Clause 5)

Amended WIK Agreement

[Drafting Note. Insert amended WIK agreement.]

DRAFT

Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement



Maitland City Council
Allam Development No. 1 Pty Ltd
Thornton Waters Pty Ltd

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of Allam Development No. 1 Pty Ltd in
accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

**Deed of Variation to Construction of Shared Path/Linear Linkages
off Raymond Terrace Road, Chisholm WIK Agreement**



Maitland City Council

Allam Development No. 1 Pty Ltd

Thornton Waters Pty Ltd

Executed on behalf of Thornton Waters Pty Ltd in accordance with
s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Works-in-Kind Deed

Construction of Shared Path/Linear Linkages

Off Raymond Terrace Road, Chisholm

Maitland City Council

Allam Development No. 1 Pty Ltd

Thornton Waters Pty Ltd

Dated:

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Works-in-Kind Deed
Construction of Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

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Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

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Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

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Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Works-in-Kind Deed
Construction of Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Parties

Maitland City Council ABN 11 596 310 805 of PO Box 220 Maitland NSW ('**Council**')
and
The person or persons named in Item 1 of the Reference Schedule
('**Developer**')

Background

- A The Developer proposes to carry out the Developer Works in connection with the Development.
- B The Developer Works if carried out in accordance with this Deed will partly satisfy Development Contributions payable by the Developer to the Council in connection with the Development.
- C The Developer Works will become the property of the Council when completed.
- D The Parties have agreed to enter into this Deed to set out their rights and obligations in relation to the Developer Works.

Operative provisions

Part 1 – Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Applicable Contributions Plan means the Development Contributions Plan specified in Item 7 of the Reference Schedule as amended or substituted by resolution of the Council from time to time.

Applicable Development Consents means the Development Consents for the Development specified in Item 3 of the Reference Schedule.

Approved Person means a person reasonably approved by the Council to undertake design, construction, supervision, inspection, testing or certification

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

of the Developer Works because of the suitability of their qualifications, skills and experience in the Council's reasonable opinion.

Approval includes approval, authorisation, consent, licence, permission or the like.

Assignment Deed means the form of Deed contained in Schedule 2.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the LG Act, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Background Intellectual Property means Intellectual Property that:

- (a) relates to the Developer Works,
- (b) exists at the date of this Deed or is later created but not as a result of performing this Deed,
- (c) does not belong to a third party.

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

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

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

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

Council Contribution Amount means the amount specified in Item 10 of the Reference Schedule.

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

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of the Developer Works.

Defects Liability Period means, in relation to an Item of the Developer Works, the period specified in Item 6 of the Reference Schedule commencing on the day immediately after a Practical Completion Certificate is given for the Item of Developer Works.

Development Consent has the same meaning as in the Act.

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

Developer Works means the Works specified or described in Item 3 of the Reference Schedule, including design, construction, supervision, testing and certification.

Developer Works Completion Date means the date specified in Item 4 of the Reference Schedule.

Developer Works Security means a Bank Guarantee, or a bond or other form of security on terms reasonably satisfactory to the Council in the amount specified in Item 5(a) of the Reference Schedule indexed in accordance with the indexation method specified in Item 5(b) of the Reference Schedule from the date of this Deed.

Development means the Development specified or described in Item 2 of the Reference Schedule.

Development Contribution means a monetary contribution under s7.11 of the Act, or a levy under s7.12 of the Act, payable to the Council pursuant to a condition of an Applicable Development Consent.

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

Development Contribution Amount means the \$ amount specified in Item 8 of the Reference Schedule.

Development Contribution Credit Amount means the \$ amount specified in Item 9 of the Reference Schedule.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Force Majeure Event means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take.

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.

Intellectual Property means all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world.

Item means a numbered item and the corresponding text in the Reference Schedule.

Item of Developer Works means Item 1, Item 2 and Item 3 of the Developer Works referred to in Item 3 of the Reference Schedule.

Other Land means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed.

Party means a party to this Deed.

Practical Completion Certificate means a certificate issued by Council to the effect that, in the reasonable opinion of the Council, the Developer Works

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

are substantially complete and any incomplete part or Defect is of a minor nature.

Practical Completion Date means the date when the Council issues a Practical Completion Certificate for the Developer Works.

Principal Contractor means the person defined as the Principal Contractor under the *Work Health and Safety Act 2011* (NSW) or *Work Health and Safety Regulation 2011* (NSW) or an equivalent under Commonwealth work health and safety laws.

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct.

Reference Schedule means Schedule 1.

Stage means a stage of the Development approved by the Applicable Development Consents and shown on the drawings titled 'DA-210' in respect of the Development Consent granted to DA/16/2890 and DA-113 in respect of the Development Consent granted to DA 19-652, or as otherwise agreed in writing between the Parties.

Technical Data means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results.

Third Party Intellectual Property means Intellectual Property relating to the Developer Works that is owned by a person other than the Council or the Developer.

Transfer of Ownership Notice means a notice to the effect that the Developer Works are now vested in the Council.

WHS means work health and safety.

WHS Law means the *Work Health and Safety Act 2011* (NSW) and *Work Health and Safety Regulation 2011* (NSW).

Works-As-Executed Plan means detailed plans and specifications of the Developer Works at the Practical Completion Date.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.14 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.15 Any schedules, appendices and attachments form part of this Deed.
- 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

2 Commencement

- 2.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 2.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

3 General warranties

- 3.1 Each party represents and warrants that:
 - 3.1.1 it has full legal capacity and power to:
 - (a) own its property and carry on its business,
 - (b) enter into this Deed and carry out the transactions it covers,
 - 3.1.2 it holds each authorisation necessary to:

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

- (a) properly execute this document and carry out the transactions,
 - (b) make this document legal, valid, binding and admissible in evidence,
 - (c) properly carry on its business,
 - (d) and it is complying with any conditions of those authorisations,
- 3.1.3 it is not entering into this Deed as a trustee of any trust or settlement.
- 3.1.4 it has the full power to enter into and perform its obligations under this Deed and that, when executed, this Deed will constitute legal, valid and binding obligations according to its terms.

4 Power of attorney

- 4.1 Each person who executes this document under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so.

5 Application of this Deed to Developer Parties

- 5.1 This Deed applies to each Party named as Developer in Item 1 of the Reference Schedule only in so far as the Party is responsible for carrying out Developer Works specified in that Item in relation to that Party.
- 5.2 A Party named as Developer in Item 1 of the Reference Schedule incurs no liability under this Deed in relation to anything done or not done by the other Party named as Developer in that Item in respect of Developer Works for which the other Party is responsible under this Deed.

6 Relationship

- 6.1 Nothing in this Deed:
- 6.1.1 makes the Developer a partner, agent or legal representative of the Council,
 - 6.1.2 creates a partnership, agency or trust,
 - 6.1.3 confers on the Developer any authority to bind the Council in any way.
- 6.2 The rights of the parties do not merge once the Developer Works are completed or this Deed is terminated.

7 Deed not construction contract

- 7.1 This Deed is not a construction contract or arrangement as defined in the *Building and Construction Industry Security of Payments Act 1999* (NSW), between the Council and the Developer.

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8 Developer Works before execution of Deed

- 8.1 This Deed applies to any Developer Works that occur before the Deed itself is executed.

9 Developer to procure compliance

- 9.1 The Developer is to provide every Approved Person engaged in relation to the Developer Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

Part 2 – Developer Works**10 Approved persons**

- 10.1 The Developer is to design, construct, supervise, and test the Developer Works (other than any Developer Works carried out prior to the date of this Deed) using Approved Persons.
- 10.2 The Developer is to supply to the Council, and keep current, a list of all Approved Persons who are engaged from time to time in relation to the Developer Works.
- 10.3 The Council may, in its reasonable discretion, notify the Developer that an Approved Person whose name appears on the list submitted by the Developer to the Council is not to be engaged in relation to the Developer Works, and the Developer must promptly take such action as is necessary to ensure that the Approved Person does not continue to be engaged in relation to the Developer Works.

11 Principal Contractor

- 11.1 The Developer is to notify the Council of the details of the Principal Contractor for the Developer Works before any construction of the Developer Works (other than any Developer Works carried out prior to the date of this Deed) occurs.

12 General obligations relating to Developer works

- 12.1 The Developer is to carry out the Developer Works by the Developer Works Completion Date.
- 12.2 The Developer is to carry out and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:
- 12.2.1 the location, design, specifications, materials, and finishes for the Developer Works approved by the Council,
- 12.2.2 any Approval,

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- 12.2.3 the lawful requirements of any Authority, and
- 12.2.4 all applicable laws.
- 12.3 The Developer is to give the Council not less than 5 business days' written notice of its intention to commence construction of an Item of the Developer Works (other than the Item of Developer Works completed before the date of this Deed).
- 12.4 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed is supplied or made available.

13 Warranties relating to Developer Works

- 13.1 The Developer warrants to the Council that:
 - 13.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 13.1.2 it accepts that, if any aspect of the Developer Works do not comply with this Deed, the Council is entitled to require the Developer to cease the Developer Works and immediately pursue its legal and equitable rights and remedies relating to the non-compliance,
 - 13.1.3 the Developer Works, when completed, are to be fit for purpose,
 - 13.1.4 only Approved Persons are to be engaged in relation to the Developer Works.
- 13.2 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

14 Ownership & Care of Developer Works

- 14.1 The Developer owns, and is responsible for care of, an Item of Developer Works, and bears all risk and liability in connection with an Item of Developer Works, until the Item of Developer Works vests in Council pursuant to clause 25.

15 Work Health & Safety

- 15.1 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that the Developer engages a person to construct the Developer Works, or engages another person conducting a business, or undertaking, to be the Principal Contractor for the Developer Works, and authorises the person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.
- 15.2 If the Developer at any time terminates the engagement of the person engaged to construct the Developer Works or to otherwise be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed to construct the

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Developer Works or to otherwise be the Principal Contractor for the Developer Works.

- 15.3 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
- 15.3.1 following published government and industry WHS guidelines,
 - 15.3.2 providing WHS induction training,
 - 15.3.3 keeping and regularly updating WHS records,
 - 15.3.4 preparing and maintaining an WHS management plan,
 - 15.3.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 15.3.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 15.3.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 15.3.8 identifying hazards and assessing risks using due diligence,
 - 15.3.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 15.3.10 reviewing risk assessments and controlling measures,
 - 15.3.11 providing information to employers and contractors about WHS,
 - 15.3.12 documenting site-specific safety procedures.
- 15.4 The Developer is to use its best endeavours to ensure that:
- 15.4.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law,
 - 15.4.2 the Council can access and use the Developer Works without breaching WHS Law.
- 15.5 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

16 Accidents & dangerous occurrences

- 16.1 The Developer is to notify WorkCover, and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.
- 16.2 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 16.3 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.

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- 16.4 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 16.5 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 16.6 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

17 Variations to approved Developer Works

- 17.1 The Developer Works Completion Date, and the location, design, specifications, materials, and finishes of the Developer Works, may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 17.2 The Council is not to unreasonably delay, or withhold its Approval, to any written request made by the Developer to vary, at the Developer's Cost, the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works.
- 17.3 The Council may reasonably require the Developer, at the Council's Cost, to vary the Developer Works Completion Date, or the location, design, specifications, materials or finishes of the Developer Works.
- 17.4 The Developer is to promptly comply with any such requirement of the Council.

18 Protection of people, property & utilities

- 18.1 The Developer is to use all reasonable endeavours to ensure that, in carrying out the Developer Works:
 - 18.1.1 all necessary measures are taken to protect people and property,
 - 18.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 18.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 18.2 The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the Developer Works unless authorised in writing by the Council or any relevant Authority.

19 Damage to assets & property

- 19.1 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works.
- 19.2 If an audit, inspection or test of the Developer Works shows that:

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- 19.2.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or
 - 19.2.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,
- the Council may require the Developer to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.
- 19.3 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

20 Entry onto Land

- 20.1 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and carry out the Developer Works on Other Land.
- 20.2 The Developer is not to commence the Developer Works on Other Land until it has obtained the written consent of each owner and any tenant of the Other Land to enter, occupy, and carry out the Developer Works.
- 20.3 Upon receiving reasonable prior notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use specified Council owned or controlled land at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Developer Works.
- 20.4 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being carried out.
- 20.5 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being carried out.

21 Audit, inspection, testing of Developer Works

- 21.1 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 21.2 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
- 21.3 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
 - 21.3.1 take the action in the manner, and within the time, the Council reasonably requires, and
 - 21.3.2 provide evidence to the Council that the action has been taken.
- 21.4 If an audit, inspection or test shows that the Developer Works have not been carried out in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.

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- 21.5 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

22 Access to information & records

- 22.1 The Council may make a written request to the Developer:
- 22.1.1 to provide information to the Council concerning the Developer Works,
 - 22.1.2 to allow the Council to inspect the Developer's records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 22.2 The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.

23 Easements, covenants etc. relating to Developer Works

- 23.1 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
- 23.2 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

24 Practical Completion of Developer Works

- 24.1 The Developer is to use all reasonable endeavours to obtain a Practical Completion Certificate for an Item of Developer Works by not later than the Developer Works Completion Date for that Item of Developer Works.
- 24.2 The Developer is to make a written request to the Council to issue a Practical Completion Certificate for an Item of Developer Works by not later than 28 days before the Developer Works Completion Date for that Item of Developer Works.
- 24.3 The Council is to inspect the Item of Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 24.4 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, rectify or repair any specified part of the Item of Developer Works within a period specified in the direction in order to bring the Item of Developer Works into conformity with any Approval.
- 24.5 The Developer is to promptly comply with any such direction given by the Council.
- 24.6 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Item of Developer Works.

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- 24.7 The Council is to promptly issue a Practical Completion Certificate for the Item of Developer Works when it is reasonably satisfied that no aspect of the Item of Developer Works reasonably requires completion, rectification or repair.
- 24.8 This clause 24 does not apply to an Item of Developer Works which has been completed before the date of this Deed.

25 Transfer of Ownership Notice and Vesting of Works

- 25.1 The Council is to give the Developer a Transfer of Ownership Notice for an Item of Developer Works (other than any Developer Works carried out prior to the date of this Deed) immediately after the Council issues the Practical Completion Certificate for the Item of Developer Works.
- 25.2 An Item of Developer Works vests in the Council on the date stated in the Transfer of Ownership Notice for that Item of Developer Works.

26 Transfer of land on which Developer Works Constructed

- 26.1 Unless otherwise specified in this Deed or agreed in writing between the Parties:
- 26.1.1 the Developer is to do all things necessary to dedicate or procure the dedication to the Council of the land on which an Item of Developer Works the subject of a Transfer of Ownership Notice are constructed,
- 26.1.2 the dedication is to occur by not later than the vesting date stated in the Transfer of Ownership Notice,
- 26.1.3 the dedication is to be free of cost to the Council.

27 Works-As-Executed Plan

- 27.1 No later than 14 days after the issue of a Practical Completion Certificate for an Item of Developer Works, the Developer is to submit to the Council a full Works-As-Executed-Plan for the Item of Developer Works (other than any Developer Works carried out prior to the date of this Deed) in a format agreed to by the Council.
- 27.2 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 27.3 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

28 Rectification of defects

- 28.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

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- 28.2 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
 - 28.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

29 Development Contributions and Council Contributions

- 29.1 This clause applies if Items 8 and 9 of the Reference Schedule specify a Development Contribution Amount payable by the Developer to the Council and a Development Contribution Credit Amount, respectively, in relation to an Item of Developer Works.
- 29.2 The Developer acknowledges the obligation imposed by the Applicable Development Consents to pay to the Council the Development Contribution Amounts in relation to the Development.
- 29.3 Pursuant to s7.11(5)(b) of the Act, in consideration of the Developer carrying out an Item of Developer Works and otherwise performing all of its obligations under this Deed, the Development Contribution Amount payable by the Developer under a particular Applicable Development Consent in respect of an Item of Developer Works is to be reduced by the Development Contribution Credit Amount for that Item of Developer Works.

29.4 If Item 10 of the Reference Schedule specifies a Council Contribution Amount for an Item of Developer Works, the Council is to

29.4.1 pay part of that amount as identified in Item 10 of the Reference Schedule to the Developer at the time noted in Item 10 of the Reference Schedule, and

29.3.129.4.2 hold and apply part of that amount as identified in Item 10 of the Reference Schedule as Development Works Security in accordance with clause 33.

Part 3 – Dispute Resolution**30 Expert determination**

- 30.1 This clause applies to a Dispute between the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert.
- 30.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 30.3 If such a notice is given, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 30.4 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.
- 30.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

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- 30.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 30.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

31 Mediation

- 31.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute that is subject to expert determination in accordance with this Deed.
- 31.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 31.3 If such a notice is given, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 31.4 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 NSW Law Society to select a mediator.
- 31.5 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.
- 31.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 31.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

32 Arbitration Excluded

- 32.1 The arbitration of any Dispute between the Parties arising under, or in connection with, this Deed is expressly excluded.

Part 4 - Enforcement**33 Developer Works Security**

- 33.1 The Developer ~~agrees that the Council may withhold part of the Council Contribution Amount and hold it as is to deliver the Developer Works Security to the Council before any construction of the Developer Works (other than an item of Developer Works which is completed before the date of this Deed) commences.~~ The Developer agrees to deliver the Developer Works Security to the Council before any construction of the Developer Works commences.
- 33.2 The Council may keep the Developer Works Security as security for the Developer performing its obligations under this Deed.

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- 33.3 The Council may access the Developer Works Security as a consequence of any breach of this Deed by the Developer, or on termination of this Deed.
- 33.4 The Council is to release and return the Developer Works Security, or, if the Developer Works Security has been accessed, the unused part of it, to the Developer once all of the Developer Works have vested in Council if, at that time, the Developer is not in breach of this Deed.

34 Breach of obligations

- 34.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 34.1.1 specifying the nature and extent of the breach, and
 - 34.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, and
 - 34.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 34.2 If the Developer fails to fully comply with a notice referred to in clause 34.1, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity,:
 - 34.2.1 call up the Developer Works Security and apply it to remedy the Developer's breach; and
 - 34.2.2 step in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 34.3 Any costs incurred by Council in remedying a breach of this Deed by the Developer may be recovered by the Council by either or a combination of the following means:
 - 34.3.1 by calling-up and applying the Developer Works Security, or
 - 34.3.2 as a debt due in a court of competent jurisdiction.
- 34.4 For the purpose of clause 34.3, the Council's costs of remedying a breach of this Deed by the Developer include, but are not limited to:
 - 34.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 34.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 34.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 34.5 Nothing in this clause 34 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

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35 Termination

- 35.1 If the Council reasonably considers that the Developer has failed to fully comply with a written notice given under this Deed in relation to a breach of the Developer's obligations, the Council may, without further notice to the Developer:
 - 35.1.1 terminate this Deed by written notice to the Developer, and
 - 35.1.2 take the Developer Works out of the hands of the Developer, and
 - 35.1.3 access and use the Developer Works Security.

36 Effect of termination

- 36.1 If the Council terminates this Deed:
 - 36.1.1 the Parties are to immediately stop performing the Deed,
 - 36.1.2 no rights of the Council existing at the date of termination are affected,
 - 36.1.3 the Developer is not entitled to any payment or compensation for damages, losses or Costs arising because of the termination,
 - 36.1.4 the Developer is to pay any Costs the Council incurs, and which are invoiced to the Developer, in completing the Developer Works that exceed the amount of any Developer Works Security
 - 36.1.5 the Council may complete the Developer Works by such means as it considers reasonably appropriate,
 - 36.1.6 without paying compensation, take possession of any of the Developer's documents, information or records as it reasonably needs to complete the Developer Works,
 - 36.1.7 without paying compensation, take possession of any land the Developer owns or controls as it reasonably needs to complete the Developer Works.

37 Enforcement in a court of competent jurisdiction

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

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38 Restriction on dealings

- 38.1 The Developer is not to assign the Developer's rights or obligations under this Deed, or novate this Deed to any person unless:
 - 38.1.1 the Developer is not in breach of this Deed,
 - 38.1.2 the Council has notified the Developer that the Council reasonably considers that the proposed assignee or novatee is reasonably capable of performing the Developer's obligations under this Deed, and
 - 38.1.3 the Developer and the assignee or novatee execute the Assignment Deed with the Council, at no cost to Council.

Part 5 – Indemnities & Insurance**39 Risk**

- 39.1 The Developer performs this Deed at its own risk and at its own Cost unless otherwise expressly provided in this Deed.

40 Release

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

41 Indemnity

- 41.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence, fraud or wilful misconduct or default.
- 41.2 This Developer's indemnity covers:
 - 41.2.1 any loss, destruction or damage to any real or personal property because of the Developer Works,
 - 41.2.2 any redress owed by the Council to any person under a contract or on any other legally enforceable basis,
 - 41.2.3 death or injury to any person,
 - 41.2.4 infringement or alleged infringement of any Intellectual Property, including moral rights,
 - 41.2.5 a breach or alleged breach of any duty of confidentiality.

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42 Developer's Insurances

- 42.1 Until the Council gives the Developer a Transfer of Ownership Notice relating to all of the Developer Works, the Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Developer Works:
- 42.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Developer Works (including but not limited to the Cost of demolition and removal of debris, consultants' fees and Authorities' fees), to cover the Developer's liability in respect of damage to, or destruction of, the Works,
 - 42.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 42.1.3 workers compensation insurance as required by law, and
 - 42.1.4 any other insurance required by law.
- 42.2 If the Developer fails to comply with its obligations relating to insurances under this Deed, 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 shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including but not limited to by recovery as a debt due in a court of competent jurisdiction.
- 42.3 The Developer is not to commence construction of the Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances required under this Deed.

43 Subcontractors' insurances

- 43.1 Before construction of the Developer Works commences (other than the Item of Developer Works carried out before the date of this Deed), the Developer must ensure that the Council is provided with evidence satisfactory to the Council that all subcontractors engaged in relation to the Developer Works, are:
- 43.1.1 covered by the insurances the Developer is required to take out and maintain in relation to the Developer Works, or
 - 43.1.2 have effected and maintain insurance policies that are the same types and for the same amounts and periods as the Developer's insurances.

Part 6 – Other Provisions**44 Confidentiality**

- 44.1 Each party must keep confidential and must not publicly announce or disclose information about:

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- 44.1.1 documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential,
- 44.1.2 any tender by the Developer relating to the Developer Works.
- 44.1.3 In particular, any party receiving confidential information must:
- 44.1.4 treat the information as it would its own confidential material,
- 44.1.5 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,
- 44.1.6 ensure that only authorised persons have access to the information and that it is stored safely and securely.
- 44.2 The Parties must immediately notify each other if they become aware of a breach of confidentiality relating to the Developer Works or this Deed.
- 44.3 The confidentiality obligations contained in this Deed survive the completion of the Developer Works or the termination of this Deed, whichever occurs first, by 5 years, unless otherwise agreed in writing between the Parties.
- 44.4 The confidentiality obligations contained in this Deed do not apply if a disclosure of confidential information is required:
 - 44.4.1 by law,
 - 44.4.2 by the Listing Rules of the Australian Securities Exchange Limited,
 - 44.4.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under the Works-in-Kind Deed,
 - 44.4.4 under this Deed,but only if, before the Party discloses any confidential information, it notifies the other Party in writing of the information it proposes to disclose and explains why it proposes to do so.

45 Ownership of Intellectual Property

- 45.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
- 45.2 The Council owns all Intellectual Property relating to the Developer Works that does not belong to a person other than the Council or the Developer.
- 45.3 The Developer grants to the Council a royalty-free, irrevocable, worldwide, perpetual, non-exclusive licence for all Background Intellectual Property it owns, including the right to sub-licence it for the purpose of:
 - 45.3.1 using, maintaining and disposing of the Developer Works or support systems,
 - 45.3.2 modifying and developing the Developer Works and support systems, linked works or associated infrastructure,
 - 45.3.3 completing the Developer Works on termination of this Deed,
 - 45.3.4 Rectifying Defects relating to the Developer Works.
- 45.4 The Developer is to use its best endeavours to ensure that the Council is granted a licence on the same terms from each subcontractor engaged in relation to the Developer Works.

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

- 45.5 The Developer is to use its best endeavours to ensure that the Council is granted a licence to use all Third Party Intellectual Property on the best commercial terms reasonably available.

46 Technical Data

- 46.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.
- 46.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works.

47 Moral rights

- 47.1 The Developer is not to enforce any moral rights against the Council relating to the Developer Works.
- 47.2 The Developer is to use its best endeavours to ensure that no other person enforces any moral rights against the Council relating to the Developer Works.

48 Force Majeure

- 48.1 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 48.1.1 full details of the event,
 - 48.1.2 an estimate of its duration,
 - 48.1.3 the obligations under this Deed it affects and how much it will affect them,
 - 48.1.4 the steps either taken or planned to manage its effects.
- 48.2 A Party's obligations under this Deed are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- 48.3 A party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

49 Notices

- 49.1 Any notice, consent, information, application or request that is to, or may, be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 49.1.1 delivered or posted to that Party at its postal address set out in Item 11 or 12 of the Reference Schedule as the case requires,
 - 49.1.2 emailed to that Party at its email address set out in Item 11 or 12 of the Reference Schedule.
- 49.2 If a Party gives the other Party 3 business days' notice of a change of its address, or email, any notice, consent, information, application or request is

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

only given or made by that other Party if it is delivered, posted, or emailed to the latest address or fax number.

- 49.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 49.3.1 delivered, when it is left at the relevant postal address,
 - 49.3.2 sent by post, 2 business days after it is posted,
 - 49.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 49.4 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.

50 Approvals and Consent

- 50.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an Approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 50.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

51 Costs

- 51.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed, within 7 days of a written demand by the Council for such payment.
- 51.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

52 Entire Deed

- 52.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 52.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

53 Further Acts

- 53.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

54 Governing Law and Jurisdiction

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

55 No Fetter

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

56 Illegality

- 56.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 56.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed unless to do so would materially change the intended effect of this Deed, but the rest of this Deed is not affected.
- 56.3 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

57 Amendment

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

58 Waiver

- 58.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 58.2 A waiver by a Party is only effective if it:
 - 58.2.1 is in writing,
 - 58.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 58.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 58.2.4 is signed and dated by the Party giving the waiver.

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

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

59 GST

- 59.1 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.
- 59.2 Subject to clause 59.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 59.3 Clause 59.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 59.4 No additional amount shall be payable by the Council under clause 59.2 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.
- 59.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 59.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 59.5.2 that any amounts payable by the Parties in accordance with clause 59.2 (as limited by clause 59.4) to each other in respect of those

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

Supplies will be set off against each other to the extent that they are equivalent in amount.

- 59.6 No payment of any amount pursuant to this clause 59, 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.
- 59.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 59.8 This clause continues to apply after expiration or termination of this Deed.

[The next page is the Execution page]

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Name of General Manager

Name of Witness and Address

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

Name/Position

Signature

Witness:

Name/Position

Signature

Thornton Waters Pty Ltd

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Name/Position

Signature

Witness:

Signature

Name/Position

Allam Development No. 1 Pty Ltd

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Schedule 1

(Clause 1.1)

Reference Schedule

| 1 Developer | <p>(a) The Developer under this Deed in respect of Items of Developer Work 1 & 2 specified in Item 3 of this Reference Schedule is:</p> <p>Thornton Waters Pty Ltd ACN 606 351 400 of Office 37, Level 3, 11-13 Brookhollow Avenue, Norwest NSW 2153</p> <p>(b) The Developer under this Deed in respect of Item of Developer Work 3 specified in Item 3 of this Reference Schedule is:</p> <p>Allam Development No. 1 Pty Ltd ACN 617 513 005 of Office 37, Level 3, 11-13 Brookhollow Avenue, Norwest NSW 2153</p> | | | | | | | | | | | | | | | | | | | | |
|--|---|--------------------------|--------------------------------------|----------|------------|--------|--|--------------------------|--------------------|--------|---|------------------|-----|--------|--|------------------|-----|--|--|--|--------------------------------------|
| 2 Development | <p>Development the subject of the Applicable Development Consents being:</p> <p>233 Lot Residential Subdivision at 59 McFarlanes Road Chisholm</p> <p>43 Lot Residential Subdivision at 651 Raymond Terrace Road Chisholm</p> <p>132 Lot Residential Subdivision at 581 Raymond Terrace Road Chisholm</p> | | | | | | | | | | | | | | | | | | | | |
| 3 Developer Works and Applicable Development Consent | <p>Construction of shared path/linear linkages – Raymond Terrace Road, Chisholm, New South Wales being part of works specified in item TN30 of the Work Schedules contained in the Applicable Contributions Plan and as shown on drawings DA 16/2890 - 190205(3B) - CENG - 101 G approved 18/7/2023; DA 19/652 - 150101(37)-DA-113 as amended by condition 42 of the Development Consent granted to DA 19/652;</p> <table><tr><th>Item of Developer Work</th><th>Applicable Development Consent</th><th>Lot & DP</th><th>Length (m)</th></tr><tr><td>Item 1</td><td>Development Consent granted to DA 16/432</td><td>Part Lot 3156 DP 1267803</td><td>268418</td></tr><tr><td>Item 2</td><td>Development Consent granted to DA 16/2890</td><td>Lot 1 DP 1288624</td><td>384</td></tr><tr><td>Item 3</td><td>Development Consent granted to DA 19/652</td><td>Lot 2 DP 1284512</td><td>342</td></tr><tr><td colspan="3"></td><td>Total 9941,144</td></tr></table> | Item of Developer Work | Applicable Development Consent | Lot & DP | Length (m) | Item 1 | Development Consent granted to DA 16/432 | Part Lot 3156 DP 1267803 | 268 418 | Item 2 | Development Consent granted to DA 16/2890 | Lot 1 DP 1288624 | 384 | Item 3 | Development Consent granted to DA 19/652 | Lot 2 DP 1284512 | 342 | | | | Total 994 1,144 |
| Item of Developer Work | Applicable Development Consent | Lot & DP | Length (m) | | | | | | | | | | | | | | | | | | |
| Item 1 | Development Consent granted to DA 16/432 | Part Lot 3156 DP 1267803 | 268 418 | | | | | | | | | | | | | | | | | | |
| Item 2 | Development Consent granted to DA 16/2890 | Lot 1 DP 1288624 | 384 | | | | | | | | | | | | | | | | | | |
| Item 3 | Development Consent granted to DA 19/652 | Lot 2 DP 1284512 | 342 | | | | | | | | | | | | | | | | | | |
| | | | Total 994 1,144 | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | |

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

| | | | |
|--|--|---|--|
| 4 Developer Works Completion Date | Item of Developer Work | Developer Works Completion Date | |
| | Item 1 | Works have been completed | |
| | Item 2 | Before the issuing of a Subdivision Certificate for Stage 3B of the part of the Development authorised by the Development Consent granted to DA/16/2890 on Lot 1 in DP1288624 | |
| | Item 3 | Before the issuing of a Subdivision Certificate for Stage 4B of the part of the Development authorised by the Development Consent granted to DA/19/652 on Lot 2 in DP1284512 | |
| 5 (a) Developer Works Security | \$30,000 | | |
| (b) Indexation Method | N/A | | |
| 6 Defects Liability Period | 6 months | | |
| 7 Applicable Contributions Plan | Thornton North Section 94 Contributions Plan 2008, Version 3, adopted by the Council on 12 April 2016. | | |
| 8 Development Contribution Amount | The amounts specified in Condition 2 of the Applicable Development Consents (other than the Development Consent to DA16/432) being the amounts payable in the Thornton North Recreation & Open Space category: | | |
| | Item of Developer Works | Applicable Development Consent | Development Contribution Amount |
| | Item 2 | Development Consent to DA2016/2890 | \$233,791.00 |
| | Item 3 | Development Consent to DA2019/652 | \$706,810.00 |
| 9 Development Contribution Credit Amount | Item of Developer Works | Applicable Development Consent | Development Contribution Amount |
| | Item 2 | Development Consent to DA2016/2890 | \$86,727 <u>\$88,623.52</u> |
| | Item 3 | Development Consent to DA2019/652 | \$77,241 <u>\$78,930.32</u> |
| | | | |

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

| | | | |
|----------------------------------|---|---------------------------------|---|
| 10 Council Contribution Amount | Item of Developer Works | Council Contribution Amount | Timing |
| | Item 1 | \$60,628 \$96,470.39 | <u>\$66,470.39 to be paid within 14 days after the date of this Deed</u> <u>\$30,000 to be held by Council as Developer Works Security and may be called up, applied and returned in accordance with clause 33</u> |
| 11 Council Contact for Notices | Postal Address: PO Box 220 Maitland NSW <div></div> | | |
| 12 Developer Contact for Notices | Postal Address 7/335 Hillsborough Road, Warners Bay NSW 2282 <div></div> <div></div> | | |

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Schedule 2

(Clause 1.1)

Assignment Deed

[The next page and following pages contain the Assignment Deed]

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Assignment Deed

Construction of Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Maitland City Council

Allam Development No. 1 Pty Ltd

Thornton Waters Pty Ltd

[Insert Name of Assignee]

[Insert Date]

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Assignment Deed
Construction of Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Parties

Maitland City Council ABN 11 596 310 805 of PO Box 220 Maitland NSW ('Council') and
Thornton Waters Pty Ltd ABN 62 606 351 400 of 27 Lawson Street, Penrith NSW
2750 [Insert Details] ('**Assigning Party**')
and
[**Insert Name**] [Insert Details] ('**Incoming Party**')

Background

- A The Council and the Assigning Party are parties to the Works-in-Kind Deed.
- B The Assigning Party wishes to assign its rights and obligations under the Works-in-Kind Deed to the Incoming Party.
- C The Incoming Party is willing to receive an assignment of the Assigning Party's rights and obligations under the Works-in-Kind Deed.
- D The Council consents to the assignment of the Assigning Party's rights and obligations to the Incoming Party.
- E The Parties have agreed to enter into this Deed to give effect to these arrangements.

Operative provisions

1 Definitions and Interpretation

1.1 In this Deed, the following definitions apply:

Assignment means the assignment of all the Assigning Party's rights and obligations [Drafting Note. Alternatively, specify particular rights and obligations if not all of them are to be assigned] under the Works-in-Kind Deed to the Incoming Party in accordance with this Deed.

Claim includes a claim, demand, remedy, suit, injury, damage, Loss, liability, action, proceeding, right of action, of any kind including contingent claims.

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

Works-in-Kind Deed means the Deed between the Council and the Developer dated [Drafting Note. Insert date].

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Effective Date means [Drafting Note. Insert date].

Loss means any loss (including loss of profit and loss of expected profit), cost, charge, expense, outgoing, payment, fee, diminution in value or deficiency of any kind or character which the indemnified party suffers or incurs or is liable of including:

- (a) all interest and other amounts payable by third parties; and
- (b) all legal costs (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of any claim or action.

Party means a party to this Deed.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Works-in-Kind Deed. [Drafting Note. Delete if inapplicable]
- 1.3 Clauses 1.2, [Drafting Note. Insert clause numbers for any Works-in-Kind Deed provisions which apply to this Deed] of the Works-in-Kind Deed apply as if they form part of this Deed with any necessary changes.

2 Assignment

- 2.1 With effect on and from the Effective Date:
 - 2.1.1 the Assigning Party assigns to the Incoming Party absolutely all of the Assigning Party's rights and obligations under the Works-in-Kind Deed [Drafting Note. Specify particular rights and obligations if not all of them are to be assigned], and
 - 2.1.2 the Incoming Party accepts the Assignment, and
 - 2.1.3 the Incoming Party undertakes to comply with the provisions of the Works-in-Kind Deed that are binding upon the Incoming Party as a consequence of the Assignment.

3 Effect of Assignment

- 3.1 The Incoming Party is bound by the rights and obligations assigned to it by the Assigning Party on and from the Effective Date.

4 Indemnities

- 4.1 The Assigning Party indemnifies the Incoming Party against all Claims which the Incoming Party suffers or incurs in relation to the Works-in-Kind Deed which arise or relate to acts or omissions of the Assigning Party occurring before the Effective Date [Drafting Note: This clause will need to change if not all rights and obligations are assigned].
- 4.2 The Incoming Party indemnifies the Assigning Party against all Claims which the Incoming Party suffers or incurs in relation to the Works-in-Kind Deed which arise or relate to acts or omissions of the Incoming Party occurring on or after the Effective Date.

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

5 Release

- 5.1 On and from the Effective Date, the Council and the Assigning Party release each other in relation to their respective obligations under the Works-in-Kind Deed and all Claims that the parties may have or have had against each other under or in respect of the Works-in-Kind Deed except in relation to any breaches by the Assigning Party prior to the Assignment of the Works-in-Kind Deed. **[Drafting Note:** This clause will need to be modified if not all rights and obligations are assigned and the Assigning Party retain obligations under the Works-in-Kind Deed].

6 Affirmation of the Works-in-Kind Deed

- 6.1 The Works-in-Kind Deed is to be read and construed subject to this Deed, and in all other respects the provisions of the Works-in-Kind Deed are ratified and confirmed, and, subject to the Assignment contained in this Deed, the Works-in-Kind Deed will continue in full force and effect.

7 Address for notices

- 7.1 On and from the Effective Date, all notices and communications which are to be given or made by the Council to the Incoming Party under the Works-in-Kind Deed are to be given or made to the following:

Incoming Party: [Insert details]

Postal Address: [Insert details]

Fax: [Insert details]

Email: [Insert details]

Contact Person: [Insert details]

8 Warranties

- 8.1 Each Party represents and warrants that at the time of execution of this Deed, and at the Effective Date:
- 8.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed;
 - 8.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed;
 - 8.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
 - 8.1.4 its unconditional execution and delivery of, and compliance with its obligations under, this Deed do not contravene:
 - (a) any law or directive from a government entity;
 - (b) its constituent documents;
 - (c) any agreement or instrument to which it is a party; or

Works-in-Kind Deed**Shared Path/Linear Linkages****Off Raymond Terrace Road, Chisholm**

(d) any obligation of it to any other person.

- 8.2 The warranties and representations in clause 8.1 survive the execution of this Deed and the Assignment/Novation. **[Drafting Note:** Delete whichever is applicable]

9 Costs

- 9.1 The Assigning Party and the Incoming Party are to:
- 9.1.1 bear their own costs, and
 - 9.1.2 each reimburse 50% of the Council's reasonable costs, of preparing, negotiating and executing this Deed.

10 Stamp duty

- 10.1 The Incoming Party is to pay all stamp, transaction, registration, financial institution, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by this Deed.

11 Governing law

- 11.1 This Deed is governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

12 Counterparts

- 12.1 This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

13 GST

- 13.1 Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount is to be paid, and the supplier is to provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

Works-in-Kind Deed
Shared Path/Linear Linkages
Off Raymond Terrace Road, Chisholm

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Name of General Manager

Name of Witness and Address

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

Name/Position

Name/Position

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

Name/Position

Name/Position

City Planning

ADOPTION OF PROPOSED VOLUNTARY PLANNING AGREEMENT - RECREATION FACILITIES - GILLIESTON HEIGHTS SOUTH - WALKER CORPORATION

Voluntary Planning Agreement (Under Separate Cover)

Meeting Date: 13 August 2024

Attachment No: 1

Number of Pages: 68



Deed

**Walker Gillieston Heights South
Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Maitland City Council
Walker Gillieston Heights Pty Limited**

Date:

© Lindsay Taylor Lawyers

lindsaytaylorlawyers
Level 18, Suite 1, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au

LTL Pty Limited trading as **Lindsay Taylor Lawyers** • ABN 78 607 889 887

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Walker Gillieston Heights South Planning Agreement
Maitland City Council
Walker Gillieston Heights Pty Limited



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Walker Gillieston Heights South Planning Agreement
Maitland City Council
Walker Gillieston Heights Pty Limited



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Regulatory Compliance Tables

Table 1 – Provisions of Act

| Act Provision | Requirement | Compliance |
|-----------------|---|---|
| S.7.4(1) | 'Planning Authority' | Maitland City Council |
| | 'Developer' | Walker Gillieston Heights Pty Limited |
| | Development Application / Modification Application | See definitions of 'Development Application' and 'Modification Application' in clause 1.1 and Item 4.a and 4.b of the VPA Particulars |
| | Development Contributions | See Part 2 and Development Contributions Table |
| S.7.4(1), (2) | Public Purpose | See Column 2 of the Development Contributions Table |
| S.7.4(3)(a) | Land | See Definition of 'Land' in clause 1.1 and Item 1 of the VPA Particulars |
| S.7.4(3)(b)(i) | Instrument Change | See definition of 'Instrument Change' in clause 1.1 and Item 3 of the VPA Particulars |
| S.7.4(3)(b)(ii) | Development | See definition of 'Development' in clause 1.1 and Item 2 of the VPA Particulars |
| S.7.4(3)(c) | Details of Developer's Provision | See Development Contributions Table |
| S.7.4(3)(d) | Whether s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act Apply to the Development | See clauses 8.1, 8.3 and 8.3 and Item 7.a, 7.c and 7.d VPA Particulars |
| S.7.4(3)(e) | Whether benefits under Deed are or are not to be taken into consideration in determining a Development Contribution under s7.11 | See clause 8.2 and Item 7.b of the VPA Particulars |

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| S.7.4(3)(f) | Mechanism for the Resolution of Disputes | See Part 3 |
| S.7.4(3)(g) | Enforcement of the Agreement by a Suitable Means in the Event of Breach by the Developer | See Part 4 and Items 16–20 of the VPA Particulars |
| S.7.4 (10) | Conformity of Agreement with Act, Environmental Planning Instruments, & Development Consents Applying to the Land | Yes |
| S.7.5 | Public Notice & Public Inspection of Draft Agreement | Yes |
| S.7.6 | Registration | See Part 5 |
| S.6.15(1)(d) | If the Development involves the subdivision of land, does this Agreement impose requirements that are required to be complied with before a subdivision certificate is issued? | Yes |

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Table 2 – Provisions of Regulation

| Regulation Provision | Requirement | Compliance |
|--|---|--|
| Environmental Planning and Assessment Regulation 2021 | | |
| S.203(1) | Form & Subject-Matter | Yes |
| S.203(7) | Secretary's Practice Note | Yes |
| S.204 | Public Notice & Public Inspection of Draft Agreement | Yes |
| S.205 | Explanatory Note | See Appendix |
| Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 | | |
| Ss.21, 34 | If the Development involves building work or subdivision work, does the Agreement specify requirements that are required to be complied with before a construction certificate for the work is issued? | Yes, see: <ul style="list-style-type: none"> • clauses 18.3 and 18.4, |

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Parties

- Council** **Maitland City Council** ABN 11 596 310 805 of 285-287 High Street, Maitland NSW 2320
- Developer** **Walker Gillieston Heights Pty Limited** ABN 30 077 152
848 of Governor Macquarie Tower, Level 21 1 Farrer Place, Sydney NSW 2000

Background

- A The Developer owns the Land.
- B The Developer has lodged DA 2023/551 with the Council seeking consent under the Act to carry out the Development involving the residential subdivision of the Land to create 322 residential lots, two public open space lots, three drainage reserve lots, and one service lot over six stages.
- C The Development will create demands for the provision of different kinds of local public infrastructure by the Council.
- D The Developer has offered to provide Development Contributions and other material public benefits to the Council comprising monetary contributions, the dedication of land free of cost and developer works towards the provision of such infrastructure in connection with the Development as set out in this Deed.
- E The Parties wish to enter into this Deed to give effect to the offer made by the Developer.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

Definitions

- 1.1 In this Deed, the words and phrases appearing in Column 1 of the following table have the meaning set out in Column 2 of that table corresponding to those words or phrases except in so far as the context or subject-matter otherwise indicates or requires:

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Table

| Column 1 | Column 2 |
|---|---|
| Word or phrase | Meaning |
| Act | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW). |
| Additional Environmental Land | means the part of the Land identified as 'Additional Environmental Land' in the Dedication Land Plan situated on, and adjoining, the Southern side of the Development and generally comprising of grassland, with an area that is in accordance with the Applicable Development Consent but excluding any part of that Land which is required to be dedicated to a State government authority pursuant to a planning agreement between the Developer and the Minister for Planning. |
| Applicable Contributions Plan | means the contributions plan (within the meaning of the Act) specified in Item 6.a) of the VPA Particulars as amended or substituted from time to time. |
| Applicable DSP | means the DSP specified in Item 6.b of the VPA Particulars as amended or substituted from time to time. |
| Applicable Development Consent | means the development consent specified or described in Item 5 of the VPA Particulars or granted in respect of the Development. |
| Approval | includes approval, consent, licence, permission or the like issued, granted or given by an Authority. |
| APZ (Asset Protection Zone) Land | means the part of the Local Park Land and the part of the Environmental Land identified as 'APZ Land' in the Dedication Land Plan, being land situated on the Eastern side of the Development. |
| Authority | means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the <i>Local Government Act 1993</i> (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like. |

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| Bank Guarantee | <p>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:</p> <ul style="list-style-type: none"> (a) one of the following trading banks: <ul style="list-style-type: none"> (i) Australia and New Zealand Banking Group Limited, (ii) Commonwealth Bank of Australia, (iii) Macquarie Bank Limited, (iv) National Australia Bank Limited, (v) St George Bank Limited, (vi) Westpac Banking Corporation, or (b) any other financial institution approved by the Council in its absolute discretion. |
| Bond | <p>means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency.</p> |
| Certified Environmental Practitioner | <p>means a qualified environmental practitioner certified under the <i>Certified Environmental Practitioner (CEnvP) Scheme</i> with a site contamination specialist certification.</p> |
| Charge | <p>means the charge referred to in clause 19.</p> |
| Charge Land | <p>means the land specified or described in Item 16 of the VPA Particulars.</p> |
| Claim | <p>includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.</p> |
| Clearance Certificate | <p>means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the <i>Taxation Administration Act 1953</i> (Cth).</p> |
| CLM Act | <p>means the <i>Contaminated Land Management Act 1997</i> (NSW).</p> |

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| Construction Certificate | has the same meaning as in the Act. |
| Construction Contract | means a contract or arrangement entered into between the Developer as principal and another person under which the other person undertakes to provide Work required by this Deed, or to supply related goods and services, for the Developer. |
| Contamination | has the same meaning as in the CLM Act. |
| Contractor | means the contractor under the Construction Contract. |
| Contribution Value | in relation to an Item specified in the Development Contributions Table means the \$ amount specified in Column 4 of that Table corresponding to the Item. |
| Cost | means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature. |
| Council Developer Works Contribution Amount | means the \$ amount or amounts specified in Item 9 of the VPA Particulars in relation to all or specified Developer Works. |
| Council Land Dedication Contribution Amount | means the \$ amount specified in Item 8 of the VPA Particulars in relation to all or specified Dedication Land. |
| CPI | means the 'Consumer Price Index – Sydney All Groups' published by the Australian Bureau of Statistics. |
| Dedication Land | means land that is required to be dedicated to the Council free of cost under this Deed irrespective of whether the dedication gives rise to or is otherwise taken into consideration in determining the Development Contribution Surplus Credit. |
| Dedication Land Plan | means the plan contained in Schedule 3 showing the location of the Dedication Land. |
| Deed | means this Deed and includes any schedules, annexures and appendices to this Deed. |
| Defect | means anything that adversely affects, or is likely to adversely affect, the appearance, structural |

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| | integrity, functionality or use or enjoyment of a Work or any part of a Work. |
| Defects Liability Period | means, in relation to the whole or any specified part of the Developer Works, the period specified in Item 14 of the VPA Particulars commencing on the day immediately after a Practical Completion Certificate is issued by the Council. |
| Defects Liability Security | means the \$ amount of Security specified in Item 18 of the VPA Particulars indexed in accordance with the Indexation Method. |
| Developer Works | means the Local Park Land Developer Works, the Dog Offleash Area Developer Works that the Developer is required to provide under this Deed. |
| Developer Works Agreed Cost | means the \$ amount specified in Item 9 of the Particulars. |
| Developer Works Location Plan | means the plan contained in Schedule 4 showing the location of the Developer Works. |
| Developer Works Plans & Drawings | means the detailed plans and drawings for the Developer Works approved by the Council referred to in Schedule 5. |
| Developer Works Provisions | means the provisions contained in Schedule 6. |
| Development | means the development specified or described in Item 2 of the VPA Particulars. |
| Development Application | means the development application within the meaning of the Act specified or described in Item 4.a of the VPA Particulars. |
| Development Contribution | means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them. |
| Development Contribution Credit | means the \$ amount specified in Item 11 of the VPA Particulars |
| Development Contribution Surplus Credit | means the \$ amount specified in Item 12 of the VPA Particulars. |

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| Development Contributions Table | means the table contained in Schedule 2. |
| Development Servicing Plan (DSP) | means a 'DSP document' within the meaning of the '2016 Developer Charges Guidelines for Water Supply, Sewerage and Stormwater' issued by the Minister for Lands and Water pursuant to section 306(3)(c) of the <i>Water Management Act 2000</i> (NSW). |
| Dispute | means a dispute or difference of opinion between the Parties under or in relation to this Deed. |
| Dog Offleash Area Land | means the part of the Land identified as 'Dog Offleash Area' in the Dedication Land Plan located at the southern end of the Development on proposed Lot 649 in the Development. |
| Dog Offleash Area Land Developer Works | means the Developer Works on the Dog Offleash Area Land specified in Item C.2. of Schedule 2. |
| ELNO | has the meaning given to that term in the Participation Rules. |
| Environmental Land | means the part of the Land identified as 'Environmental Land' in the Dedication Land Plan situated on the Eastern side of the Development and generally comprising native trees and bushland. |
| Environmental Land Maintenance Contribution | means the monetary contribution specified in Item A.1. of Schedule 2. |
| Equipment | means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed. |
| Final Completion Certificate | means a certificate in writing issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works to which the certificate relates have been completed by the Developer in accordance with this Deed. |
| Final Lot | means a lot created in the Development for separate residential occupation and disposition, which is not intended to be further subdivided for |

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| | the purpose of the Development, or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land: |
| | (a) that is to be dedicated or otherwise transferred to the Council, or |
| | (b) on which is situated a dwelling-house that was in existence on the date of this Deed. |
| Force Majeure Event | means an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take. |
| Foreign Resident Capital Gains Withholding Amount | mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the <i>Taxation Administration Act 1953 (Cth)</i> . |
| General Security | means a Bank Guarantee or a Bond or other form of security on terms reasonably satisfactory to the Council in the amount specified in Item 17.a of the VPA Particulars indexed in accordance with the method of indexation specified in 17.b of the VPA Particulars. |
| GST | has the same meaning as in the GST Law. |
| GST Law | has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999 (Cth)</i> and any other Act or regulation relating to the imposition or administration of the GST. |
| Instrument Change | means the change to the environmental planning instrument specified or described in Item 3 of the VPA Particulars. |
| Insurances | means the insurances specified in Item 21 of the VPA Particulars and such other insurances required by law in relation to the Developer Works. |
| Item | means a numbered item appearing in the VPA Particulars or the Development Contributions Table. |
| Just Terms Act | means the <i>Land Acquisition (Just Terms Compensation) Act 1991 (NSW)</i> . |

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| Land | means the land specified or described in Item 1 of the VPA Particulars. |
| Local Park Land | means the part of the Land identified as such in the Dedication Land Plan located on proposed Lot 149 in the Development having an area of approximately of 2,436sqm. |
| Local Park Land Developer Works | means the Developer Works on the Local Park Land specified in Item C.1. of Schedule 2. |
| Maintain | in relation to Developer Works, means keep in a good state of repair and working order, and includes repair of any damage to the Works. |
| Maintenance Period | in relation to Developer Works means the period specified in Item 14 of the VPA Particulars commencing on the date the Council issues a Transfer of Ownership Notice. |
| Maintenance Security | means the \$ amount of Security specified in Item 19 of the VPA Particulars indexed in accordance with the Indexation Method. |
| Modification Application | means the application to modify the Applicable Development Consent specified or described in Item 4.b of the VPA Particulars. |
| N/A | means Not Applicable. |
| Occupation Certificate | has the same meaning as in the Act. |
| Other Land | means land owned or occupied by a person other than the Developer or the Council to which entry and access is needed by the Developer to perform this Deed. |
| Participation Rules | means the participation rules as determined by the <i>Electronic Conveyancing National Law</i> as set out in the <i>Electronic Conveyancing (Adoption of National Law) Act 2012</i> (NSW). |
| Party | means a party to this Deed. |
| PEXA | means Property Exchange Australia Limited. |
| Practical Completion | in relation to the Developer Works or a specified part of the Developer Works occurs when the Council has issued a Practical Completion Certificate for the Developer Works or the part. |

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| Practical Completion Certificate | means a certificate issued by the Council to the Developer to the effect that, in the reasonable opinion of the Council, the Developer Works or a specified part of the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature. |
| Practical Completion Date | means: <ul style="list-style-type: none"> (a) the date, time or event specified in Item 13 of the VPA Particulars in relation to all of the Developer Works, or (b) the dates, times or events specified in Item 13 of the VPA Particulars in relation to the Developer Works in a particular Stage or particular Developer Works. |
| Principal Contractor | means the Person defined in as the Principal Contractor under the <i>Work Health and Safety Act 2011</i> (NSW) or <i>Work Health and Safety Regulation 2011</i> (NSW) or an equivalent under Commonwealth work health and safety laws. |
| Rectification Notice | means a notice in writing: <ul style="list-style-type: none"> (a) identifying the nature and extent of a Defect or incomplete Work, and (b) specifying the works or actions that are required to Rectify the Defect or incomplete Work, and (c) specifying the date by which or the period within which the Defect or incomplete Work is to be rectified, which date or period must not be unreasonable having regard to the nature of the Defect or incomplete Work. |
| Rectify | means rectify, remedy or correct. |
| Regulation | means the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW). |
| Review Period | means the period specified in Item 24 of the VPA Particulars. |
| Section 7.11 Contribution | means a monetary contribution payable to the Council under s7.11 of the Act pursuant to the Applicable Development Consent. |
| Site Audit | means a review by a suitably qualified environmental practitioner of the actual or possible contamination of Dedication Land that is conducted |

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| | for the purpose of determining whether the Dedication Land is suitable for the purpose for which it is required to be dedicated under this Deed. |
| Site Validation Report | a report prepared by a suitably qualified environmental practitioner and endorsed by a Certified Environmental Practitioner containing a critical review of the information collected in relation to a Site Audit of the Dedication Land and which concludes that the Dedication Land is suitable for the purposes for which it is required to be dedicated under this Deed and clearly sets out the reasons for that conclusion. |
| Stage | means a stage of the Development approved by the Applicable Development Consent or otherwise approved in writing by the Council for the purposes of this Deed. |
| Subdivision Certificate | h as the same meaning as in the Act. |
| Subdivision Works Certificate | has the same meaning as in the Act. |
| Technical Data | means all technical know-how and information in material form, including manuals, designs, standards, specifications, reports, models, plans, drawings, calculations, software, source code and test results. |
| Transfer of Ownership Notice | means a notice issued by the Council to the Developer stating that Developer Works the subject of a Practical Completion Certificate vest in the Council on a specified date being not sooner than 14 days after the notice is issued. |
| VPA Particulars | means the information contained in Schedule 1. |
| WHS | means work health and safety. |
| WHS Law | means the <i>Work Health and Safety Act 2011</i> (NSW) and <i>Work Health and Safety Regulation 2011</i> (NSW). |
| Work | means the physical result of carrying out work in, on, over or under land. |
| Works-As-Executed Plan | means detailed plans and specifications of Developer Works carried out by the Developer. |

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Interpretation

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

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- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.
- 1.2.18 Nothing in this Deed requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.
- 4.2 The Developer acknowledges and agrees that the Applicable Development Consent may be granted subject to a condition requiring this VPA to be complied with in connection with the carrying out of the Development and the Developer is not to object to, or seek a review of, of or appeal against the imposition of such a condition.

5 Warranties

General warranty

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

- 6.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

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7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 7.2 Nothing in this clause 7 is to be taken as abrogating or removing the Developer's right to appeal under the Act in relation to a Development Consent in respect of the Development including any application to modify a development Consent under s4.55 or s4.56 of the Act, or an Approval relating to the Development where the subject matter of the proceedings does not relate to the Developer's obligations under this Deed.

8 Application of s7.11, s7.12 and Subdivision 4 of Division 7.1 of the Act to the Development

Section 7.11 of the Act

- 8.1 Item 7.a of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.
- 8.2 If Item 7.a of the VPA Particulars states that this Deed does not wholly exclude the application of section 7.11 of the Act to the Development, Item 7.b of the VPA Particulars states whether the benefits provided by the Developer under this Deed are to be taken into consideration when determining a Development Contribution under section 7.11 relating to the Development.

Section 7.12 of the Act

- 8.3 Item 7.c of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of section 7.11 of the Act to the Development.

Subdivision 4 of Division 7.1 of the Act

- 8.4 Item 7.d of the VPA Particulars states whether this Deed excludes (wholly or in part) the application of Subdivision 4 of Division 7.1 of the Act to the Development.

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Part 2 – Development Contributions

9 Provision of Development Contributions

Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with the Development Contributions Table and any other provision of this Deed requiring the Developer to make Development Contributions.

Effect of modification of Applicable Development Consent

- 9.2 If:
- 9.2.1 Part A of the Development Contributions Table specifies that monetary Development Contributions are payable in respect of the Development per dwelling or per Final Lot or for a specified number of dwellings or Final Lots, and
 - 9.2.2 after this Deed is entered into the Applicable Development Consent is modified under the Act to allow for additional dwellings or Final Lots (or both),
- the Developer is to pay monetary Development Contributions to the Council for the additional dwellings or Final Lots (or both) not later than 14 days after the Applicable Development Consent has been modified or such later time as may be agreed in writing between the Parties.

Contribution Values

- 9.3 The Parties acknowledge and agree that a Contribution Value:
- 9.3.1 constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed irrespective of the cost to the Developer of making the Development Contribution, and
 - 9.3.2 does not serve to define the monetary extent of the Developer's obligation to make the Development Contribution to which the Contribution Value relates.

Application of Development Contributions

- 9.4 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

Flexibility in application of Development Contributions

- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Deed (other than the Environmental Land Maintenance Contribution) towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public

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interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

- 10.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

11 Dedication of land

When dedication of land made

- 11.1 A Development Contribution comprising Dedication Land is dedicated for the purposes of this Deed when:
- 11.1.1 the Council is given:
- (a) a Clearance Certificate that is valid at the time of dedication of the Dedication Land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land, and
- 11.1.2 One of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
 - (b) the Council is given evidence that a transfer of the Dedication Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

Developer to facilitate dedication

- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

Dedicated Land to be free of encumbrances

- 11.3 The Developer is to ensure that Dedication Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Parties .
- 11.4 For the avoidance of doubt, clause 11.3 does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation that are of a type which the Developer could not prevent from

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affecting the Dedication Land and in respect of which no action can be taken by the Developer of that land.

Request by Developer

11.5 If, having used all reasonable endeavours, the Developer cannot ensure that Dedication Land is free from all encumbrances and affectations (other than those referred to in clause 11.4), then:

11.5.1 the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, and

11.5.2 if the encumbrance or affectation:

- (a) does not, in Council's reasonable opinion, prevent or adversely impact the future use of the land for the public purpose for which it is to be dedicated under this Deed, and
 - (b) is not a charge arising as a result of unpaid taxes or charges, and
 - (c) does not impose any financial obligation on the Council,
- the Council must not withhold its agreement unreasonably to accept the land subject to the encumbrance or affectation, and

11.5.3 the Council may otherwise withhold its agreement to the encumbrance or affectation in its absolute discretion.

Site Validation Report

11.6 Before dedicating the Dedication Land to the Council, the Developer, at its cost, is to obtain and provide to the Council a Site Validation Report stating that the Dedication Land is suitable for the purpose for which the Dedication Land is required to be dedicated under this Deed without being subject to compliance with an environmental management plan.

Indemnity

11.7 The Developer indemnifies and agrees to keep indemnified the Council against all Claims made against the Council as a result of any Contamination on or emanating from the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Deed.

Responsibility for Cost of Land Dedication

11.8 The Developer is responsible for meeting all Costs of and incidental to the dedication of the Dedication Land to the Council unless one of both of the following applies:

11.8.1 Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount towards the Cost of all or specified Dedication Land, or

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- 11.8.2 this Deed otherwise expressly provides for a Dedication Land Cost to be met that is not required to be met by the Developer.

Contribution by Council towards Cost of Dedication Land

- 11.9 If Item 8 of the VPA Particulars specifies a Council Land Dedication Contribution Amount, the Council is to pay that amount to the Developer in accordance with any requirements specified in that Item or otherwise in accordance with a written agreement entered into between the Council and the Developer.

Caveat by Council

- 11.10 The Developer acknowledges that the Council has an equitable estate or interest in the Dedication Land entitling the Council, pursuant to section 74F of the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.
- 11.11 The Council is to do such things as are reasonable necessary to promptly:
- 11.11.1 provide caveator's consent (in a form acceptable to the NSW Land Registry Services) where reasonably requested by the Developer, provided the matter requiring the consent does not affect the Council's estate or interest in respect of the relevant part of the Land under this Deed, and
- 11.11.2 remove any caveat from the title to a part of the Land once this Deed has been registered on that part of the Land.

12 Application of Developer Works Provisions

Application of Developer Works Provisions

- 12.1 The Developer Works Provisions apply to and in respect of Developer Works required by this Deed.

13 Cost of Developer Works

Responsibility for Cost of Developer Works

- 13.1 The Developer is responsible for meeting all Costs of and incidental to the Developer Works required to be provided under this Deed unless one of both of the following applies:
- 13.1.1 Item 10 of the VPA Particulars specifies a Council Developer Works Contribution Amount towards the Cost of all or specified Developer Works, or
- 13.1.2 this Deed otherwise expressly provides for a Developer Works Cost that is not required to be met by the Developer.

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Contribution by Council towards Cost of Developer Works

- 13.2 If Item 10 of the VPA Particulars specifies a Council Developer Works Contribution Amount, the Council is to pay that amount to the Developer in relation to the Developer Works within 14 days after both of the following have occurred:
- 13.2.1 all of the Developer Works have vested in the Council, and
 - 13.2.2 all land on which the Developer Works have been carried out that is not owned, occupied or otherwise controlled by the Council has been transferred to the Council.

14 Development Contribution Credit

Application of clause

- 14.1 This clause 14 applies if a Development Contribution Credit is specified in Item 11 of the VPA Particulars.

Application of Development Contribution Credit

- 14.2 Pursuant to s7.11(5)(b) of the Act, in consideration of the Developer carrying out the Developer Works and otherwise performing all of its obligations under this Deed, the Section 7.11 Contribution payable by the Developer is to be reduced by the Development Contribution Credit.

15 Development Contribution Surplus Credit

Application of Developer Contribution Surplus Credit

- 15.1 If a Development Contribution Surplus Credit is specified in Item 12 of the VPA Particulars:
- 15.1.1 the Council is to apply the Development Contribution Surplus Credit, towards the satisfaction of any monetary contributions the Developer is required to pay to the Council under s7.11 of the Act in relation to any development (other than the Development) for which development consent is granted under the Act after this Deed commences, and
 - 15.1.2 the Developer may assign the Development Contribution Surplus Credit or any part of it to any person if the Developer:
 - (a) obtains the written consent of the Council, which may not be unreasonably withheld, and
 - (b) enters into a deed with the Council and the transferee of the Monetary Contribution Surplus Credit on terms reasonably satisfactory to the Council.

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Indexation of Developer Contribution Surplus Credit

- 15.2 The Development Contribution Surplus Credit is to be indexed from the date of this Deed until the date it is applied in accordance with clause 15.1 in accordance with the indexation method contained in the Applicable Contributions Plan.

Part 3 – Dispute Resolution

16 Dispute Resolution – mediation

Application of clause

- 16.1 This clause 16 applies to any Dispute arising in connection with this Deed other than a dispute to which clause 17 applies.

When Dispute arises

- 16.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Meditation of Dispute

- 16.4 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 to select a mediator.

Exercise of legal rights

- 16.5 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.

Costs

- 16.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 16.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

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17 Dispute resolution – expert determination

Application of clause

- 17.1 This clause 17 applies to a Dispute arising in connection with this Deed if:
- 17.1.1 the Parties agree that the Dispute can be appropriately determined by Expert Determination, or
 - 17.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.

When Dispute arises

- 17.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

Meeting between Parties

- 17.3 If a notice is given under clause 17.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.

Expert determination

- 17.4 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.

Expert determination binding

- 17.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

Costs of Parties

- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

Costs of Expert

- 17.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

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Part 4 - Enforcement

18 General Security

Application of this clause

- 18.1 This clause 18 applies if Item 17.a of the VPA Particulars specified an amount of General Security.

Composition of General Security

- 18.2 For the avoidance of doubt, the General Security includes the Defects Liability Security and the Maintenance Security.

Provision of General Security

- 18.3 The Developer is to provide the General Security to the Council:
- 18.3.1 before the Developer obtains a Construction Certificate for any part of the Development or before the Developer commences any part of the Developer Works, whichever occurs first, or
 - 18.3.2 at such other time agreed in writing by the Council.

Apportionment of General Security

- 18.4 If agreed in writing by the Council, the General Security may be apportioned to different Stages or different Developer Works, in which case the Developer is to provide the portion of the General Security relating to a particular Stage or particular Developer Works to the Council before the Developer obtains a Construction Certificate for the particular Stage or the Developer commences the particular Developer Works.

Purpose of General Security

- 18.5 The Council is to hold the General Security as security for the Developer performing its obligations under this Deed relating to the Developer Works and other material public benefits (other than the payment of monetary Development Contributions and the dedication of Dedication Land).

Indexation of General Security

- 18.6 The Developer is to ensure that the amount of the General Security provided to the Council at any time is indexed in accordance with Item 17.b of the Particulars.

Call-up of General Security

- 18.7 Subject to clause 21.2, if the Developer breaches any its obligations under this Deed relating to the purpose for which the General Security is required to be provided, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Deed, under any Act

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or otherwise at law or in equity, call-up the General Security, the Defects Liability Security or the Maintenance Security, as appropriate, and apply it to remedy the Developer's breach and the Council's costs specified in clause 21.5 of so doing.

Release & return of General Security

- 18.8 Subject to clause 18.10, the Council is to release and return the General Security or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for the Developer Works unless the Parties have entered into a written agreement providing for the progressive release of the General Security at times or upon the occurrence of events specified in the agreement.
- 18.9 Despite clause 18.8 but subject to clause 18.10, if the Developer has provided the Council with a portion of the General Security relating to a particular Stage or particular Developer Works, the Council is to release and return the portion or any unused part of it to the Developer within 14 days of issuing a Practical Completion Certificate for all of the Developer Works in the particular Stage or the particular Developer Works.
- 18.10 The amount of the General Security released and returned by the Council under clause 18.8 or 18.9 must not exceed the amount of the General Security minus the percentages of that amount allocated to the Defects Liability Security and the Maintenance Security.
- 18.11 The Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 28 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Defects Liability Security relates.
- 18.12 The Council is to release and return the Maintenance Security, or any remaining part, to the Developer within 28 days after the end of the Maintenance Period if, at that time, the Developer is not in breach of an obligation under this Deed to which the Maintenance Security relates.

Replacement General Security

- 18.13 The Developer may provide the Council with a replacement General Security at any time.
- 18.14 On receipt of a replacement General Security, the Council is to release and return the replaced the General Security to the Developer.
- 18.15 If the Council calls-up the General Security or any portion of it, the Council may give the Developer a written notice requiring the Developer to provide a further or replacement General Security to ensure that the amount of General Security held by the Council equals the amount the Council is entitled to hold under this Deed.

Restriction on entering Council land

- 18.16 Despite any other provision of this Deed, the Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the

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Development if the Developer has not provided the General Security to the Council in accordance with this Deed.

19 Charge on Dedication Land

Application of this clause

- 19.1 This clause applies if Item 16 of the VPA Particulars specifies land for the purposes of the definition of 'Charge Land' in clause 1.1 of this Deed.

Grant of charge

- 19.2 On the date of execution of this Deed, the Developer grants to the Council a fixed and specific charge over the Developer's right, title and interest in the Charge Land, to secure:
- 19.2.1 the performance of the Developer's obligation to make monetary Development Contributions under this Deed, and
 - 19.2.2 any damages that may be payable to the Council, or any costs which may be incurred by the Council in the event of a breach of this Deed by the Developer relating to making monetary Development Contributions.

Exercise of rights under Charge

- 19.3 Subject to clause 21.2, the Council may exercise its rights under the Charge if the Developer does not make monetary contributions in accordance with this Deed.

Registration

- 19.4 Upon the execution of this Deed, the Developer is to give to the Council an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the registered proprietor of the Charge Land that is effective to register the Charge on the title to the Charge Land.
- 19.5 If the Charge Land does not form the whole of a lot in a deposited plan at the time that the instrument referred to in clause 19.4 is required to be given:
- 19.5.1 the Developer is to give the Council an instrument that charges the whole of the lot containing the Charge Land, and
 - 19.5.2 a reference in this Deed to the Charge Land is taken to be a reference to the whole of that lot.
- 19.6 The Developer is to do all other things necessary, including executing all other documents, to enable lodgement and registration of the Charge to occur electronically through PEXA or another ELNO.

Caveat and discharge

- 19.7 The Developer acknowledges that the Council has an equitable estate or interest in the Charge Land entitling the Council, pursuant to section 74F of

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the *Real Property Act 1900* (NSW), to lodge with the Registrar-General a caveat prohibiting the recording of any dealing affecting the Council's estate or interest in that land.

19.8 The Developer agrees that:

19.8.1 the Council may lodge a caveat on the title of the Charge Land,

19.8.2 the Council is to release the caveat from any part of the Charge Land once that part is contained in a separate lot to the remainder of the Charge Land, and

19.8.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 19.9.

19.9 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Deed to make Development Contributions in respect of the creation of the lot.

19.10 For the purposes of clause 19.2, the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.

Subdivision of charge land not precluded

19.11 Nothing in this Deed prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

Priority

19.12 The Developer is not to create any mortgage or charge over the Charge Land or grant any other interest in the Charge Land ranking in priority equal with or ahead of the Charge created under this Deed without the prior written approval of the Council.

20 Acquisition of Dedication Land

Compulsory acquisition of Dedication Land

20.1 Subject to clause 20.2 and 21.2, if the Developer does not dedicate the Dedication Land at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

20.2 The Council is to only acquire land pursuant to clause 20.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.

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Pre-acquisition agreement

- 20.3 Clause 20.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

Re-imburement of Council for third party compensation

- 20.4 If, as a result of the acquisition referred to in clause 20.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on the General Security.

Indemnity

- 20.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Dedication Land except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 20.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 20, including without limitation:
- 20.6.1 signing any documents or forms,
 - 20.6.2 giving land owner's consent for lodgement of any Development Application,
 - 20.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - 20.6.4 paying the Council's costs arising under this clause 20.

21 Breach of obligations

Notice of breach

- 21.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 21.1.1 specifying the nature and extent of the breach,
 - 21.1.2 requiring the Developer to:
 - (a) Rectify the breach if the Council reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 21.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

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Notice of breach pre-requisite to exercise of rights

- 21.2 The Council may not exercise its rights under clause 18.7, 19.3 or 20.1 unless it has first given the Developer a notice under clause 21.1 and the Developer has failed to comply with the Notice.

Step-in right relating to Developer Works

- 21.3 If the Developer fails to comply with a notice given under clause 21.1 relating to the provision of Developer Works, the Council may, notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

Recovery of costs by Council as debt due

- 21.4 Despite any other provision of this Deed, any costs incurred by the Council in remedying a breach of this Deed may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 21.5 For the purpose of clause 21.4, the Council's costs of remedying a breach the subject of a notice given under clause 21.1 include, but are not limited to:
- 21.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 21.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 21.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

Exercise of Council's rights at law or in equity

- 21.6 Nothing in this clause 21 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

22 Enforcement in a court of competent jurisdiction

- 22.1 Except in the case of any urgent interlocutory injunctions, the Parties must not bring or maintain any action in any Dispute until they have attempted to resolve the Dispute in accordance with clauses 16 and 17.
- 22.2 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 22.3 For the avoidance of doubt, nothing in this Deed prevents:
- 22.3.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

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- 22.3.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

23 Registration of this Deed

Application of clause

- 23.1 This clause 23 applies if Item 20 of the VPA Particulars states that this Deed is to be registered for the purposes of s7.6(1) of the Act.

Documents for registration

- 23.2 Upon the commencement of this Deed, the Developer is to deliver to the Council:
- 23.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land, and
 - 23.2.2 the written irrevocable consent of the registered proprietor and each person referred to in s7.6(1) of the Act to that registration.
- 23.3 The Developer is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.

Removing notation from title

- 23.4 The Parties are to do such things as are reasonably necessary to promptly remove any notation relating to this Deed (including any caveat under clause 11.10) from the title to a part of the Land:
- 23.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 23.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

24 Restriction on dealings

Restriction

- 24.1 The Developer is not to:
- 24.1.1 sell or transfer the Land, other than a Final Lot, or

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24.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless:

24.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

24.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and

24.1.5 the Developer is not in breach of this Deed, and

24.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Continued performance of obligations by Developer

24.2 Subject to clause 24.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 24.1.

Exclusion from restriction

24.3 Clause 24.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

25 Risk

25.1 The Developer performs this Deed at its own risk and its own cost.

26 Release

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

27 Indemnity

27.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in

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connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

28 Insurance

Requirement for Developer insurances

- 28.1 The Developer is to take out and keep current to the satisfaction of the Council the Insurances in relation to the Developer Works until the Developer Works are completed in accordance with this Deed.

Failure to comply with requirement

- 28.2 If the Developer fails to comply with clause 28.1, 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 shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 28.2.1 by calling upon the General Security provided by the Developer to the Council under this Deed, or
- 28.2.2 recovery as a debt due in a court of competent jurisdiction.
- 28.3 The Developer is not to commence to provide any Developer Works unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 28.1.

Part 7 – Other Provisions

29 Annual report by Developer

Requirement for Developer to provide report

- 29.1 The Developer is to provide to the Council by not later than each anniversary of the date on which a Development Consent is granted for the Development a report ('**Annual Performance Report**') detailing the performance of its obligations under this Deed in the previous 12 month period ('**Reporting Period**').

Form and content of report

- 29.2 The Annual Performance Report is to be in such a form and to address such matters as is reasonably required by the Council from time to time but must at a minimum detail the following:
- 29.2.1 all Approved Persons during the Reporting Period and any changes to Approved Persons during that period,

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- 29.2.2 all Development Contributions made by the Developer pursuant to this Deed during the Reporting Period and the dates on which the contributions were made,
- 29.2.3 all Development Contributions due to be made by the Developer pursuant to this Deed in the next 12 month period,
- 29.2.4 all Developers Works that had been commenced prior to the Reporting Period or were commenced during the Reporting Period but were not completed in that period,
- 29.2.5 all Developers Works due to be commenced or completed within the next 12 month period,
- 29.2.6 all Securities provided by the Developer to the Council under this Deed and held by the Council during the Reporting Period and the current value of each such Security.

Strict requirement

- 29.3 The Developer acknowledges and agrees that the provision of the Annual Performance Report each year in accordance with this clause 29 is a strict requirement of this Deed.

30 Review of Deed

Obligation to review Deed

- 30.1 The Parties agree to review this Deed by the end of each Review Period, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

Review triggers

- 30.2 For the purposes of clause 30.1, 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.

Duty of Parties

- 30.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 30.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

Where change of law occurs

- 30.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

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No Dispute

- 30.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 30.1 (but not 30.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

31 Notices

- 31.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 31.1.1 delivered or posted to that Party at its address set out in Item 22 or 23 of the VPA Particulars, or
 - 31.1.2 emailed to that Party at its email address set out in Item 22 or 23 of the VPA Particulars.
- 31.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 31.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 31.3.1 delivered, when it is left at the relevant address,
 - 31.3.2 sent by post, 2 business days after it is posted, or
 - 31.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 31.4 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.

32 Approvals and Consent

- 32.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 32.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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33 Costs of this Deed

Costs of Deed

- 33.1 The Developer is to pay to the Council the Council's costs not exceeding the amount specified in Item 25 of the VPA Particulars in relation to preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

Enforcement costs

- 33.2 The Council may serve a notice in writing on the Developer ('**Enforcement Cost Notice**') requiring the Developer to pay all or any reasonable costs and expenses incurred by the Council in connection with:
- 33.2.1 investigating a non-compliance by the Developer with this Deed, and
- 33.2.2 enforcing compliance by the Developer with this Deed.
- 33.3 For the avoidance of doubt, the costs and expenses referred to in clause 33.2 may include the costs or expenses incurred by the Council relating to the preparation or serving of the Enforcement Cost Notice.
- 33.4 An Enforcement Cost Notice is to specify the amount required to be paid to the Council by the Developer and the date by which the amount is to be paid.
- 33.5 The Council may recover any unpaid costs and expenses specified in an Enforcement Cost Notice as a debt in a court of competent jurisdiction.

No dispute

- 33.6 Part 3 of this Deed does not apply anything done by the Council and any requirement imposed on the Developer by the Council in accordance with this clause 33.

34 Entire Deed

- 34.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

35 Further Acts

- 35.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

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36 Governing Law and Jurisdiction

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

37 Joint and Individual Liability and Benefits

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

38 No Fetter

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

39 Illegality

- 39.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

40 Severability

- 40.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 40.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

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41 Amendment

- 41.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203 of the Regulation.

42 Waiver

- 42.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 42.2 A waiver by a Party is only effective if it:
- 42.2.1 is in writing,
 - 42.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 42.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 42.2.4 is signed and dated by the Party giving the waiver.
- 42.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 42.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 42.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

43 GST

- 43.1 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

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- chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 43.2 Subject to clause 43.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 43.3 Clause 43.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 43.4 No additional amount shall be payable by the Council under clause 43.2 unless, and only to the extent that, Council is entitled to an Input Tax Credit (in accordance with the GST Law), for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 43.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 43.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 43.5.2 that any amounts payable by the Parties in accordance with clause 43.2 (as limited by clause 43.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 43.6 No payment of any amount pursuant to this clause 43, 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.
- 43.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 43.8 This clause continues to apply after expiration or termination of this Deed.

44 Explanatory Note

- 44.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 44.2 Pursuant to section 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

45 Termination of Deed

- 45.1 This Deed terminates if:
- 45.1.1 no part of the Development has been carried out; and

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- 45.1.2 either:
- (a) the Developer notifies the Council in writing that it no longer proposes to carry out the Development; or
 - (b) the Developer notifies the Council in writing that it considers that there is no reasonable prospect that the necessary Approvals will be obtained for the carrying out of the Development within a timeframe acceptable to the Developer, and
- 45.1.3 all development consents, within the meaning of the Act, that have been granted in respect of the Development (if any) have been surrendered in accordance with 4.63 of the Act and the surrender has taken effect; and
- 45.1.4 all Development Applications in respect of the Development that have not yet been determined (if any) have been withdrawn in accordance with s40 of the Regulation and the withdrawal has taken effect.
- 45.2 If this Deed is terminated under clause 45.1:
- 45.2.1 the Parties are released and discharged from their obligations under this Deed;
 - 45.2.2 the Council must promptly release and return any Security provided by the Developer under this Deed; and
 - 45.2.3 Council must do all things reasonably required to have the Registrar General remove this Deed from the relevant folios of the Register upon which it is still registered.
- 45.3 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.

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Schedule 1: VPA Particulars

(Clause 1.1)

| Item | Details |
|---|--|
| 1. Land | Lot 1 DP 1298659, 457 Cessnock Road, Gillieston Heights NSW 2321 Lot 3 in DP 71130, 527 Cessnock Road, Gillieston Heights NSW |
| 2. Development | Residential subdivision of the Land to create 322 residential lots, two public open space lots, three drainage reserve lots, and one service lot over six stages as more particularly described in the Development Application. |
| 3. Instrument Change | N/A |
| 4. Application: a. Development Application b. Modification Application | DA2023/551 as may be modified or substituted prior to determination under the Act. N/A |
| 5. Applicable Development Consent | Any consent granted under the Act to the Development Application as modified from time to time. |
| 6. Applicable Plan: a. Applicable Contributions Plan b. Applicable DSP | <i>Maitland City Wide Section 94 Contributions Plan 2016</i> as amended, substituted or replaced after the commencement of this Deed. N/A |
| 7. Application of the following provisions of the Act to the Development: a. Section 7.11 b. Consideration of benefits | Excluded except to the extent that the Applicable Contributions plan authorises the imposition of a condition on the grant of consent to the Development requiring monetary section 7.11 contributions for City Wide Road & Traffic Facilities and Plan Management & Administration. Not to be considered |

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| | |
|--|---|
| c. Section 7.12 | Excluded |
| d. Subdivision 4 of Division 7.1 | Not excluded |
| 8. Council Land Dedication Contribution Amount | N/A |
| 9. Developer Works Agreed Cost | \$850,016 |
| 10. Council Developer Works Contribution Amount | N/A |
| 11. Development Contribution Credit | N/A |
| 12. Development Contribution Surplus Credit | N/A |
| 13. Practical Completion Date | Prior to issuing of a Subdivision Certificate authorising the creation of a Final lot in the Stage in which the particular Developer Works are carried out |
| 14. Defects Liability Period | 12 months |
| 15. Maintenance Period | 12 months |
| 16. Charge Land | N/A |
| 17. General Security: | |
| a. General Security | \$2,087,825 |
| b. Indexation of General Security | Indexed according to the <i>Producer Price Index (Output of the Construction Industries, Building Construction New South Wales)</i> published by the Australian Bureau of Statistics |
| 18. Defects Liability Security | 10% of General Security retained as the Defects Liability Security less the amount of any Security (being Security equivalent to Defects Liability Security) that is required under a Development Consent to be provided by the Developer to the Council for the relevant Developer Work. |
| 19. Maintenance Security | 10% of General Security |
| 20. Registration of this Deed | Yes |
| 21. Insurances | |

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| | |
|--|--|
| a. Contract Works Insurance | 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 Developer's liability in respect of damage to or destruction of the Works. |
| b. Public Liability | For at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party. |
| c. Professional Indemnity Insurance | \$10,000,000 to be taken out by the Developer's contractors if the relevant services include services of an advisory nature. |
| d. Workers Compensation Insurance | As required by law. |
| e. Other insurance | As required by law. |
| 22. Council Contact for Notices | Postal Address: [REDACTED] Email: [REDACTED] Telephone: [REDACTED] Representative: [REDACTED] |
| 23. Developer Contact for Notices | Postal Address: [REDACTED] Email: [REDACTED] Telephone: [REDACTED] Representative: [REDACTED] |
| 24. Review Period | Each period of one (1) year commencing on the date when a Development Consent is granted for the Development. |
| 25. Costs of Deed | \$20,000 |

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Schedule 2: Development Contributions Table

| COLUMN 1 Item No / Details | COLUMN 2 Public Purpose | COLUMN 3 Timing | COLUMN 4 Contribution Value \$ |
|--|--|--|-----------------------------------|
| A. Monetary Contributions | | | |
| 1. <u>Environmental Land Maintenance Contribution</u> being a monetary contribution in the amount of \$465,269 towards the Council's costs of maintaining the Environmental Land following the dedication of that land by the Developer to the Council under this Deed indexed in accordance with the CPI in the same manner as the City Wide Road & Traffic Contribution | Environmental management and protection, including bushfire management | Payable before the issuing of the first Subdivision Certificate for Stage 6 of the Development or as otherwise agreed in writing between the parties. | |
| 2. <u>City Wide Road & Traffic Contribution</u> being a monetary contribution for 'City Wide Road & Traffic Facilities' specified in the Applicable Contributions Plan in the amount of \$3,958 per Final lot in each Stage of the Development indexed from the date of this Deed in the manner provided for in the | City Wide Road & Traffic Facilities | The amount for a Final Lot in a Stage is payable before the issuing of a Subdivision Certificate authorising the creation of that Final Lot in the Stage | |

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| Applicable Contributions Plan | | | |
|--|--|--|-----------|
| 3. <u>City Wide Plan Administration Contribution</u> being a monetary contribution for 'Plan Management & Administration' specified in the Applicable Contributions Plan in the amount of \$299 per Final lot in each Stage of the Development indexed from the date of this Deed in the manner provided for in the Applicable Contributions Plan | Management and Administration of the Applicable Contributions Plan | The amount for a Final Lot in a Stage is payable before the issuing of a Subdivision Certificate authorising the creation of that Final Lot in the Stage | |
| B. Dedication Land | | | |
| 1. <u>Local Park Land</u> (including part of the APZ Land) | Public recreation and bushfire management | After the issuing of a Practical Completion Certificate for the Developer works specified in Item C.1. of this Table and prior to the issuing of the first Subdivision Certificate for Stage 3 of the Development or as otherwise agreed to in writing between the Parties | \$584,386 |
| 2. <u>Dog Offleash Area Land</u> | Public recreation | After the issuing of a Practical Completion Certificate for the Developer works specified in Item C.2. of this Table and prior to the issuing of the first Subdivision Certificate for Stage 6 of the Development or as otherwise agreed to in writing between the Parties | \$531,260 |

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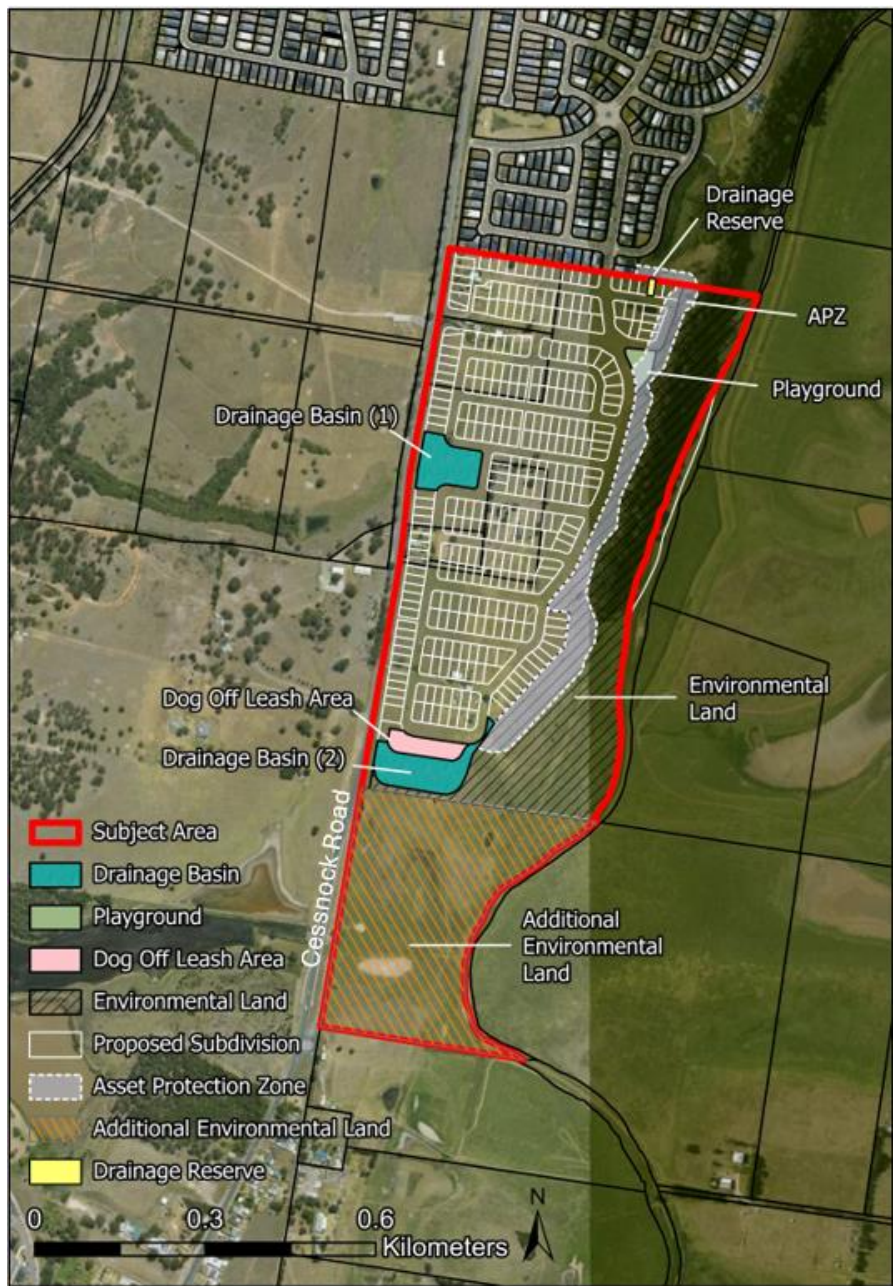


| | | | |
|--|---|--|-----------|
| 3. <u>Environmental Land</u> (including part of the APZ Land) | Environmental management and protection including bushfire management | Prior to the issuing of the first Subdivision Certificate for Stage 6 of the Development or as otherwise agreed to in writing between the Parties | |
| 4. <u>Additional Environmental Land</u> | Environmental management and protection including bushfire management | Prior to the issuing of the first Subdivision Certificate for Stage 6 of the Development, or at such time as agreed in writing between the Parties. | \$122,163 |
| C. Developer Works | | | |
| 1. <u>Local Park Land Developer Works</u> comprising soft-fall flooring, a picnic shelter, a play space and seating in the location shown on the Developer Works Location Plan and carried out in accordance with the Developer Works Plans and Drawings and in accordance with this Deed | Public recreation | The Developer Works for the Local Park must be the subject of a Practical Completion Certificate prior to the dedication of the land comprising the Local Park to the Council. | \$531,260 |
| 2. <u>Dog Offleash Area Land Developer Works</u> comprising parking, green space, perimeter fencing, seating, and path in the location shown on the Developer Works Location Plan and carried out in accordance with the Developer Works Plans and Drawings and in accordance with this Deed | Public recreation | The Developer Works for the Dog Offleash Area must be the subject of a Practical Completion Certificate prior to the dedication of the land comprising the Dog Offleash Area to the Council. | \$318,756 |

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Schedule 3: Dedication Land Plan



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Schedule 4: Developer Works Location Plan



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Schedule 5: Developer Works Plans and Drawings

[Drafting Note. Insert Developer Works plans and drawings relating to the Local Park and Dog Offleash Area. If there are no plans and drawings at the time of execution of this Deed, clauses 28-35 of Schedule 6 apply and the relevant plans and drawings are added to this schedule later.]

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Schedule 6: Developer Works Provisions

Deed not Construction Contract

- 1 The Parties acknowledge and agree that this Deed is not a Construction Contract between the Council and the Developer.

Developer Works before execution of Deed

- 2 This Deed applies to any Developer Works that occurred before the Deed was executed.

Approved persons

- 3 Not used.
4 Not used.
5 Not used.

Developer to procure compliance

- 6 The Developer is to provide every person engaged by it in relation to the Developer Works with a copy of this Deed executed by both Parties and procure their compliance with the relevant requirements of this Deed.

Requirement for Construction Contract

- 7 The Developer must enter into a Construction Contract with its Contractor for the construction of the Developer Works before any construction work occurs.
8 The Developer must provide the Council with a copy of the Construction Contract upon receipt of a written request by the Council.
9 The Developer must obtain the approval of the Council to any change to the Contractor, which approval the Council may not unreasonably withhold.

General obligations relating to Developer Works

- 10 The Developer is to provide the Developer Works:
10.1 in the location or locations shown on the Developer Works Location Plan,
10.2 in accordance with the Developer Works Plans and Drawings,
10.3 by the Practical Completion Date, and
10.4 otherwise in accordance with this Deed.
11 The Developer is to provide and complete the Developer Works in a good and workmanlike manner having regard to the intended purpose of the Developer Works and in accordance with:
11.1 all applicable laws,

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- 11.2 any Approval required by any law relating to the provision of the Developer Works, and
- 11.3 the lawful requirements of any Authority.
- 12 The Developer is to ensure that anything necessary for the proper performance of its obligations under this Deed relating to the provision of the Developer Works is supplied or made available for that purpose.

Warranties relating to Developer Works

- 13 The Developer warrants to the Council that:
 - 13.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 13.2 it accepts that, if any aspect of the Developer Works do not comply this Deed, the Council is entitled to require the Developer to cease the Developer Works and to pursue its rights and remedies relating to the non-compliance under this Deed and, subject to this Deed, at law or in equity,
 - 13.3 the Developer Works, when completed, are to be fit for purpose,
 - 13.4 Not used.
- 14 The Developer is to procure in favour of the Council from the appropriate Approved Person engaged in relation to the Developer Works, any warranty reasonably required by the Council relating to the design, construction, supervision, inspection, testing or certification of the Developer Works.

Ownership & care of Developer Works

- 15 The Developer owns, and is responsible for care of the Developer Works, and bears all risk and liability in connection with the Developer Works, until the Council gives the Developer a Transfer of Ownership Notice in relation to the Developer Works.

Work health & safety

- 16 The Developer acknowledges that it is the Principal Contractor under WHS Law for the Developer Works unless and until such time that:
 - 16.1 the Developer engages the Contractor to construct the Developer Works, or
 - 16.2 engages another person to be the Principal Contractor for the Developer Works,and authorises the person to have management or control of the workplace relating to the Developer Works and to discharge the duties of a Principal Contractor under WHS Law.
- 17 For the purpose of the Developer's compliance with its obligations under clause 16, the Council:
 - 17.1 acknowledges that the Developer (or the Contractor, where appropriate) is the person with management and control of the relevant works area for the purpose of Part 2 of the *Work Health and Safety Act 2011* (NSW); and

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- 17.2 authorises the Developer (or the Contractor, where appropriate) to exercise authority of the Council necessary to enable the Developer to discharge its obligations under clause 16.
- 18 If the Developer at any time terminates the engagement of the Contractor, or terminates its authority for the Contractor or other person referred to in clause 16 to be the Principal Contractor for the Developer Works, the Developer becomes the Principal Contractor until such time as a new person is appointed as Contractor or to otherwise be the Principal Contractor for the Developer Works.
- 19 The Developer is to use its best endeavours to ensure that all persons involved in the Developer Works comply with relevant WHS Law and procedures, including but not limited to:
- 19.1 following published government and industry WHS guidelines,
 - 19.2 providing WHS induction training,
 - 19.3 keeping and regularly updating WHS records,
 - 19.4 preparing and maintaining an WHS management plan,
 - 19.5 preparing a Project Safety Plan that details safety strategies, including how persons must act to comply with WHS Law,
 - 19.6 providing safe work method statements for all tasks and ensuring they are complied with,
 - 19.7 directing staff to take corrective action or stop work if they are not complying with the method statements or WHS Law,
 - 19.8 identifying hazards and assessing risks using due diligence,
 - 19.9 eliminating or controlling risks in line with WorkCover requirements using due diligence,
 - 19.10 reviewing risk assessments and controlling measures,
 - 19.11 providing information to employers and contractors about WHS,
 - 19.12 documenting site-specific safety procedures.
- 20 The Developer is to use its best endeavours to ensure that:
- 20.1 the Council can audit, inspect and test the Developer Works without breaching WHS Law, and
 - 20.2 the Council can access and use the Developer Works without breaching WHS Law.
- 21 The Developer is to promptly inform the Council of any incident occurring in relation to the Developer Works where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

Accidents & dangerous occurrences

- 22 The Developer is to notify WorkCover and the Council, as soon as it becomes aware of any serious accident or dangerous occurrence relating to the Developer Works.

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- 23 Within a further 7 days, the Developer must formally notify or procure the notification of WorkCover of the accident or occurrence in accordance with the WHS Law, using any prescribed form.
- 24 The Developer must give to the Council a copy of all information and documents that have been provided to WorkCover relating to the accident or occurrence.
- 25 The Developer must also give to the Council, if requested by the Council, a written report relating to the accident or occurrence in the form specified by the Council.
- 26 The Developer must cooperate with WorkCover and the Council if the accident or occurrence is investigated by Work Cover or the Council.
- 27 The Developer must immediately give the Council a copy of any improvement or prohibition notices that WorkCover issues in relation to the Developer Works.

Design of Developer Works

- 28 Clauses 28 - 35 apply if and to the extent that Schedule 5 does not contain Developer Works Plans and Drawings for the Developer Works or any part.
- 29 The Developer may not commence construction of the Developer Works unless the Developer Works are designed and approved in accordance with this Deed.
- 30 Before commencing the design of the Developer Works, the Developer is to request the Council to provide the Developer with the Council's design requirements for the works.
- 31 Upon receipt of the Developer's request, the Council may:
- 31.1 initially request the Developer to provide a written proposal concerning the design of the Developer Works, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Developer Works to the Council for approval, or
- 31.2 request the Developer to submit the plans and drawings of the works to the Council for approval.
- 32 The Council may reasonably require the Developer to make any change to the plans and drawings of the Developer Works that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.
- 33 The Council is to inform the Developer in writing when it approves the plans and drawings of the Developer Works.
- 34 The Parties are to ensure that the reference to the plans and drawings approved by the Council under are included in Schedule 5 without delay after that approval is given.
- 35 The Developer is not to make any application for any Approval relating to the Developer Works unless the Council approved the plans and drawings of the Developer Works under this Deed.

Variations to approved Developer Works & Costs

- 36 The Developer Works may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.

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- 37 The Party seeking the variation is to make a written request to the other Party accompanied by such information and supporting documents as is reasonably necessary to enable the other Party to properly consider the request.
- 38 The Party to whom the request is made is not to unreasonably delay, or withhold its Approval to, the request.
- 39 The Party who seeks the variation of the Developer Works must meet the costs of the variation, unless the other Party otherwise agrees.

Developer's obligations before construction commencement

- 40 Not less than 10 business days before the Developer commences construction of any of the Developer Works specified in Part C of Schedule 2 of this Deed, the Developer is to give the Council written notice of its intention to do so accompanied by:
- 40.1 a copy of all approved plans and drawings for the Developer Works so specified in electronic and paper format, and
- 40.2 a list of all contractors and their contact details.
- 41 The Developer is to organise and conduct a pre-start meeting with Council personnel before starting the construction of a Developer Work specified in Part C of Schedule 2 of this Deed.

Protection of people, property & utilities

- 42 The Developer is to use all reasonable endeavours to ensure that, in providing the Developer Works:
- 42.1 all necessary measures are taken to protect people and property,
- 42.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 42.3 nuisances and unreasonable noise and disturbances are prevented.
- 43 The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land in connection with the Developer Works unless authorised in writing by an Approval, the Council or any relevant Authority.

Damage to assets & property

- 44 The Developer must immediately notify the Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while performing the Developer Works.
- 45 The Developer must replace or fix any Council asset the Developer loses or damages while performing the Developer Works in accordance with any reasonable requirements of the Council.
- 46 If an audit, inspection or test of the Developer Works shows that:
- 46.1 the Developer Works do not conform to the location, design, specifications, materials or finishes approved by the Council under this Deed, or

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46.2 damage has occurred to a Council asset or the property of another person in connection with the Developer Works,

the Council may give the Developer a notice in writing requiring it to take corrective action to bring the Developer Works into conformity or repair the damage, as the case requires.

- 47 Without limiting any other remedies available to the Council under this Deed, if the Developer does not comply with the Council's requirements under clause 46, the Council may take the action required of the Developer and recover the Council's costs of so doing from the Developer.

Entry onto Land

- 48 The Developer is responsible for obtaining all necessary rights to lawfully enter, occupy, and provide the Developer Works on Other Land.
- 49 Upon receiving reasonable prior written notice from the Developer, the Council is to allow the Developer, to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Developer Works.
- 50 The Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by the Council, for that purpose,
- 51 Upon receiving reasonable prior notice from the Council, the Developer is to provide the Council with safe and unhindered access at any reasonable time to any land on which the Developer Works are being, or have been, provided, in order to audit or inspect the Developer Works or to remedy any breach by the Developer of its obligations under (and in accordance with) this Deed in relation to the Developer Works.
- 52 The Council must comply with the Developer's reasonable safety requirements while on any land on which the Developer Works are being provided.

Audit, inspection, testing of Developer Works

- 53 The Council may undertake an audit, inspection or test of the Developer Works at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer.
- 54 The Developer is to provide the Council with any assistance that is reasonably required by the Council to enable the Council to undertake any audit, inspection or test of the Developer Works.
- 55 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Developer Works, the Developer is to:
- 55.1 take the action in the manner, and within the time, the Council reasonably requires, and
- 55.2 provide evidence to the Council that the action has been taken.
- 56 If an audit, inspection or test shows that the Developer Works have not been provided in accordance with this Deed, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.

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- 57 If the Council reasonably decides that a further and more detailed audit, inspection or test of the Developer Works is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

Access to information & records

- 58 The Council may make a written request to the Developer:
- 58.1 to provide information to the Council concerning the Developer Works,
 - 58.2 to allow the Council to inspect the Developer's records concerning the Developer Works, including by giving the Council access to premises owned, occupied or controlled by the Developer for that purpose.
- 59 The Developer is to comply with any such request made by the Council not later than 15 business days after the Council makes the request.

Practical Completion of Developer Works

- 60 The Developer is to use all reasonable endeavours to ensure that the whole of the Developer Works is the subject of one or more Practical Completion Certificates by not later than the Practical Completion Date.
- 61 The Developer may make a written request ('**Developer's Request**') to the Council to issue a Practical Completion Certificate for the Developer Works or any part of the Developer Works by not later than the Practical Completion Date or such later date agreed in writing between the Parties.
- 62 The Developer's Request is to be accompanied by the following information:
- 62.1 a Works-as-Executed Plan of the Developer's Works to which the Developer's Request relates, and
 - 62.2 all technical data relating to those Works, including but not limited to, geotechnical testing, structural certificates, CCTV footage and material certifications.
- 63 Upon receipt of the Developer's Request, the Council is to inspect the relevant Developer Works in the presence of a representative of the Developer at a time reasonably agreed between the Parties that is not later than 14 days after the Council receives the request.
- 64 As a precondition to issuing a Practical Completion Certificate, the Council may direct the Developer in writing to complete, Rectify or repair any specified part of the Developer Works the subject of the Developer's Request within a period specified in the direction in order to bring the Developer Works into conformity with this Deed or any Approval.
- 65 The Developer is to promptly comply with any such direction given by the Council.
- 66 The Council may undertake more than one inspection and issue more than one direction to the Developer in order to be satisfied that a Practical Completion Certificate may be issued for the Developer Works the subject of the Developer's Request.
- 67 The Council is to promptly issue a Practical Completion Certificate for the Developer Works the subject of the Developer's Request when it is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

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Maintenance of Developer Works

- 68 The Developer is to Maintain the Developer Works during the Maintenance Period.
- 69 The Council is to permit the Developer to enter any land owned or controlled by the Council to enable the Developer to Maintain the Developer Works during the Maintenance Period.

Rectification of Defects

- 70 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 71 The Developer is to comply with a Rectification Notice according to the terms of the Rectification Notice and to the reasonable satisfaction of the Council.
- 72 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.

Copyright in Works-As-Executed Plan

- 73 The Developer, being the copyright owner in the Works-As-Executed Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 74 If the Developer is not the copyright owner of the Work-As-Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works-As-Executed Plan to the Council free of cost to the Council.

Transfer of Ownership of Developer Works

- 75 At any time after the Council issues a Practical Completion Certificate for Developer Works to the Developer, the Council may issue a Transfer of Ownership Notice to the Developer for those Developer Works.
- 76 The Developer Works the subject of a Transfer of Ownership Notice vest in the Council on the vesting date stated in the Transfer of Ownership Notice.

Transfer of land on which Developer Works Constructed

- 77 Unless otherwise specified in this Deed or agreed in writing between the Parties:
- 77.1 the Developer is to do all things necessary to dedicate or procure the dedication to the Council of the land on which Developer Works the subject of a Transfer of Ownership Notice are constructed,
- 77.2 the dedication is to occur by not later than the vesting date stated in the Transfer of Ownership Notice,
- 77.3 the dedication is to be free of cost to the Council.
- 78 Land on which Developer Works the subject of a Transfer of Ownership Notice are constructed that is required to be dedicated to the Council is Dedication Land for the purposes of this Deed.

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Easements, covenants, etc.

- 78.1 The Developer must create, or procure the creation of, any easement or covenant or any other instrument benefitting the Council that is reasonably required by the Council in relation to the Developer Works.
- 78.2 The Developer is to ensure that any such easement, covenant or other instrument is registered on the title to the relevant land before the vesting date specified in a Transfer of Ownership Notice for such Works.
- 78.3 The Costs required to be incurred by the Developer in doing so include, unless otherwise agreed in writing between the Parties, the payment of compensation to any person.

Removal of structures & Equipment

- 79 When providing the Developer Works on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 79.1 remove from the land any structure not comprising or required in connection with the completed Developer Works and make good any damage or disturbance to the land as a result of that removal,
 - 79.2 remove from the land any Equipment and make good any damage or disturbance to the land as a result of that removal, and
 - 79.3 leave the land in a neat and tidy state, clean and free of rubbish.

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Execution

Executed as a Deed

Dated:

Executed by the COUNCIL by the General Manager pursuant to a delegation granted by the governing body under section 377(1) of the *Local Government Act 1993* at a duly convened meeting held on **[Insert]**:

General Manager

Witness

Witness Name

Executed by Walker Gillieston Heights Pty Limited in accordance with s127(1) of the *Corporations Act 2001* (Cth):

Director

Director / Secretary

Name

Name

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Appendix: Explanatory Note

(Clause 44)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Council

Maitland City Council ABN 11 596 310 805 of 285-287
High Street, Maitland NSW 2320

Developer

Walker Gillieston Heights Pty Limited ABN 30
077 152 848 of Governor Macquarie Tower, Level 21 1 Farrer
Place, Sydney NSW 2000

Description of the Land to which the Draft Planning Agreement Applies

The land to which the Planning Agreement applies is shown on the Land Dedication Plan and is described as:

Lot 1 DP 1298659, 457 Cessnock Road, Gillieston Heights NSW 2312

Lot 3 DP 71130, 527 Cessnock Road, Gillieston Heights NSW 2312

Description of Proposed Development/Instrument Change

The development application to which the Planning Agreement relates is DA 2023/551 for the subdivision of five existing lots into 322 residential allotments, associated infrastructure, and public open space. The proposal includes the following more specifically; demolition of existing dwellings and ancillary structures, removal of vegetation, construction of retaining walls and associated earthworks, two stormwater basins and associated drainage works, one drainage easement, one playground, one dog off leash area, footpaths, roads, landscaping, fencing, and servicing.

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Description of Development Contributions

The development contributions to be provided under the Planning Agreement are described in the table below:

| Facility | Land Area (ha) | Land Cost | Emb Cost | Total Contribution |
|--|----------------|--------------------|------------------|--------------------|
| Local Park | 0.2436 | \$584,386 | \$531,260 | \$1,115,646 |
| Dog Offleash Area including Environmental Land and APZ | 14.9307 | \$531,260 | \$318,756 | \$850,016 |
| Additional Environmental Land | 12.3000 | \$122,163 | | \$122,163 |
| Contribution towards Maintenance of Environmental Land | | | | \$465,269 |
| City Wide Road & Traffic Facilities Contribution | | | | \$1,274,476 |
| Administration Contribution | | | | \$96,139 |
| Total | 27.4743 | \$1,237,809 | \$850,016 | \$3,923,709 |

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

Objectives of Draft Planning Agreement

The Planning Agreement will require the dedication of land, provision of works and payment of development contributions providing recreation and open space land and facilities for the residents of Gillieston Heights and the wider community. The Planning Agreement will result in the preservation of land with high environmental/ecological value, providing community access to one of the last remaining dry rainforest areas in the Maitland LGA.

Nature of Draft Planning Agreement

This Draft Planning Agreement is an agreement between the two parties which creates reciprocal obligations on each party with the intent of achieving the objectives of the agreement in providing community benefit.

Effect of the Draft Planning Agreement

To legally bind both parties to the performance of their respective obligations conferred under this Agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

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In line with Council's adopted Local Housing Strategy and Environmental Sustainability Strategy, this Agreement serves to protect the important ecological values of the site. Utilising and providing services and infrastructure close to the existing community in the form of a family-friendly community that will deliver greater housing choice.

How the Draft Planning Agreement Promotes the Public Interest

The Planning Agreement makes provision for the dedication of land and provision of capital works which will benefit the local and wider community. It supports the orderly and economic use of the subject site taking into consideration the community's interests and residential amenity in keeping with the character of surrounding Development.

Assessment of the positive or negative impact of the Draft Planning Agreement on the public or relevant section of the public

The positive outcomes for the public include the provision of two open space and recreation facilities in the form of a local playground and dog off leash area. The public will also have access to environmental land and the last remaining dry rainforest in the LGA. There are no negative impacts anticipated as a result of the implantation of the Planning Agreement.

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

The provision of land and works proposed by the Planning Agreement are outside the scope of Council's current Capital Works Program. However, the works have been necessitated by the development and their cost will be borne by the Developer at a nil net cost to Council. The provision of the works aligns with Council's strategic objectives for Gillieston Heights and are considered to generally conform with the intent of Council's Capital Works Program.

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

The Developer must provide Council with General Security to the amount specified in Schedule 1 Item 17(a) in the form of either bank guarantee or insurance bond before the issuing of a construction certificate for any of the works associated with the relevant DA 2023/551.

The Developer must pay the Environmental Land Maintenance Contribution as specified in Schedule 2 Item 1 of the Agreement prior to the issuing of the first subdivision certificate for Stage 6 of the Development or as otherwise agreed in writing between the Parties.

The Developer must pay the applicable City Wide Road & Traffic Contribution as specified in Schedule 2 Item 2 of the Agreement prior to the issuing of the subdivision certificate for each stage of the development.

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The Developer must pay the applicable City-Wide Administration Contribution as specified in Schedule 2 Item 2 of the Agreement prior to the issuing of the subdivision certificate for each stage of the development.

The Developer must dedicate the Local Park Land prior to the issuing of the first Subdivision Certificate for Stage 3 of the Development or as otherwise agreed in writing between the Parties.

The Developer must dedicate the Dog Offleash Area Land and Environmental Land prior to the issuing of the first Subdivision Certificate for Stage 6 of the Development or as otherwise agreed in writing by the Parties.

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