



**UNDER SEPARATE COVER
ATTACHMENTS**

**ORDINARY MEETING
23 JULY 2024**

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Officers Reports

APPROVAL OF WORKS IN KIND AGREEMENT - FARLEY OFFROAD TRAIL, ROAD & EARTH WORKS - RAVENSFIELD DOWNS PTY LTD & DBH PROPERTY PTY LTD

Draft Works in Kind Agreement (Under Separate Cover)

Meeting Date: 23 July 2024

Attachment No: 1

Number of Pages: 26

Works-in-Kind Deed
Offroad Trail, Road and Earth Works
Rossington Way and Mapplewell Circuit, Farley

Maitland City Council (ABN 11 596 310 805)

and

Ravensfield Downs Pty Ltd (ACN 104 067 398)

and

DBH Property Pty Ltd (ACN 610 861 357)

Dated: [Insert Date]

Works-in-Kind Deed

Offroad Trail, Road and Earth Works, Farley

Maitland City Council / Ravensfield Downs Pty Ltd / DBH Pty Ltd

Works-in-Kind Deed

Offroad Trail, Road and Earth Works, Farley

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Works-in-Kind Deed

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Works-in-Kind Deed

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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 has carried out and completed the Developer Works in connection with the Development.
- B The Developer Works have been handed over to the Council.
- C The Council and the Developer wish to enter into this Agreement to acknowledge the carrying out of the Developer Works by the Developer in part satisfaction of the Monetary Contributions.
- D Section 7.11(5)(b) of the Act authorises the Council and the Developer to enter into this Agreement to make provision for the carrying out of the Developer Works by the Developer in part satisfaction of the Monetary Contributions.

Operative provisions

Part 1 – Preliminary

1 Interpretation

- 1.1 In this Agreement 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 8 of the Reference Schedule as amended 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.

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

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.

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.

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.

Developer means Ravensfield Downs Pty Ltd or DBH Property Pty Ltd as the case may be, as specified in Item 1 of the Reference Schedule.

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

Developer Works Location Plan means the plan in Schedule 2.

Developer Works Agreed Cost means, in respect of an item of the Developer Work, the \$ amount specified in Item 4 of the Reference Schedule corresponding to that item of Developer Work.

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 the Applicable Development Consent.

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

Development Contribution Amount in respect of an Applicable Development Consent, means the \$ amount specified in Item 9 of the Reference Schedule corresponding to that Applicable Development Consent.

Development Contribution Credit Amount in respect of an item of the Developer Works, means the \$ amount specified in Item 10 of the Reference Schedule corresponding to that item of the Developer Works.

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.

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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.

Monetary Contributions means the monetary Development Contributions required to be paid to the Council under condition 2 of the Applicable Development Consents for the public purposes and amounts in accordance with condition 2 of the Applicable Development Consents to the date of this Agreement .

Party means a party to this Deed.

Practical Completion Certificate means a certificate issued by an independent certifier or the Council to the effect that, in the reasonable opinion of the independent certifier or the Council, the Developer Works are substantially complete and any incomplete part or Defect is of a minor nature.

Practical Completion Date means the date when the Practical Completion Certificate was issued for the Developer Works.

Rectify means rectify, remedy or correct.

Reference Schedule means Schedule 1.

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.

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.
 - 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.

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- 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:
 - (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,

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(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 Parties' relationship

5.1 Nothing in this Deed:

5.1.1 makes the Developer a partner, agent or legal representative of the Council,

5.1.2 creates a partnership, agency or trust,

5.1.3 confers on the Developer any authority to bind the Council in any way.

5.2 The rights of the parties do not merge once the Developer Works are completed or this Deed is terminated.

6 Deed not construction contract

6.1 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.

7 Developer Works before execution of Deed

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

8 Not used

Part 2 – Developer Works

9 Not used

10 Not used

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11 Not used

12 Warranties relating to Developer Works

- 12.1 The Developer warrants to the Council that:
 - 12.1.1 it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Developer Works,
 - 12.1.2 the Developer Works are fit for purpose,
 - 12.1.3 only Approved Persons have been engaged in relation to the Developer Works,
 - 12.1.4 the Developer Works have been carried out and completed in a good and workmanlike manner having regard to the intended purpose of the Developer Works.
- 12.2 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.

13 Not used

14 Not used

15 Not used

16 Not used

17 Not used

18 Not used

19 Not Used

20 Not used

21 Not used

22 Not used

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23 Not used

24 Access to information & records

- 24.1 The Council may make a written request to the Developer:
 - 24.1.1 to provide information to the Council concerning the Developer Works,
 - 24.1.2 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.
- 24.2 The Developer is to comply with any such request made by the Council not later than 14 days after the Council makes the request.

25 Not used

26 Practical Completion of Developer Works

- 26.1 The Parties acknowledge that Council has issued a Practical Completion Certificate for the Developer Works and is reasonably satisfied that no aspect of the relevant Developer Works reasonably requires completion, rectification or repair.

27 Ownership of Developer Works

- 27.1 The Parties acknowledge that the Developer Works are vested in the Council.

28 Works-As-Executed Plan

- 28.1 The Parties acknowledge that the Developer has submitted to the Council a full Works-As-Executed-Plan for the Developer Works in a format agreed to by the Council.
- 28.2 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.
- 28.3 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.

29 Not used

30 Development Contributions

- 30.1 This clause applies if Items 9 and 10 of the Reference Schedule specify a Development Contribution Amount payable by the Developer to the Council

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- and a Development Contribution Credit Amount, respectively, in relation to the Developer Works.
- 30.2 The Developer acknowledges the obligation imposed by the Applicable Development Consent to pay to the Council the Development Contribution Amount in relation to the Development.
- 30.3 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 Development Contribution Amount payable by the Developer is to be reduced by the Development Contribution Credit Amount relevant to the Developer Work.

Part 3 – Dispute Resolution

31 Expert determination

- 31.1 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.
- 31.2 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.
- 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 Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 31.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 31.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 31.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

32 Mediation

- 32.1 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.
- 32.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 32.3 If such a notice is given, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 32.4 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.

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- 32.5 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.
- 32.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 32.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

33 Arbitration Excluded

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

Part 4 - Enforcement

34 Not used

35 Breach of obligations

- 35.1 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:
- 35.1.1 specifying the nature and extent of the breach, and
- 35.1.2 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
- 35.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

36 Termination

- 36.1 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 terminate this Deed by written notice to the Developer.

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37 Effect of termination

- 37.1 If the Council terminates this Deed:
 - 37.1.1 the Parties are to immediately stop performing the Deed,
 - 37.1.2 no rights of the Council existing at the date of termination are affected,
 - 37.1.3 the Developer is not entitled to any payment or compensation for damages, losses or Costs arising because of the termination,
 - 37.1.4 the Developer is to pay any Costs the Council incurs, and which are invoiced to the Developer, in rectifying the breach

38 Enforcement in a court of competent jurisdiction

- 38.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 38.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 38.2.1 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
 - 38.2.2 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.

39 Not used

Part 5 – Indemnities & Insurance

40 Risk

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

41 Release

- 41.1 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.

42 Indemnity

- 42.1 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, fraud or wilful misconduct or default.

42.2 This Developer's indemnity covers:

42.2.1 any loss, destruction or damage to any real or personal property because of the Developer Works,

42.2.2 any redress owed by the Council to any person under a contract or on any other legally enforceable basis,

42.2.3 death or injury to any person,

42.2.4 infringement or alleged infringement of any Intellectual Property, including moral rights,

42.2.5 a breach or alleged breach of any duty of confidentiality.

43 Not used

44 Not used

Part 6 – Other Provisions

45 Confidentiality

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

45.1.1 documents, plans and other material clearly identified as confidential, or which should reasonably be considered confidential,

45.1.2 any tender by the Developer relating to the Developer Works.

45.2 In particular, any party receiving confidential information must:

45.2.1 treat the information as it would its own confidential material,

45.2.2 promptly notify the Council if it becomes aware that the law might require the information to be disclosed,

45.2.3 ensure that only authorised persons have access to the information and that it is stored safely and securely.

45.3 The Parties must immediately notify each other if they become aware of a breach of confidentiality relating to the Developer Works or this Deed.

45.4 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.

45.5 The confidentiality obligations contained in this Deed do not apply if a disclosure of confidential information is required:

45.5.1 by law,

45.5.2 by the Listing Rules of the Australian Securities Exchange Limited,

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45.5.3 to enable a Party to perform its obligations, or to make or defend any claim or dispute, under the Works-in-Kind Deed,

45.5.4 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.

46 Ownership of Intellectual Property

46.1 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.

46.2 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.

46.3 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:

46.3.1 using, maintaining and disposing of the Developer Works or support systems,

46.3.2 modifying and developing the Developer Works and support systems, linked works or associated infrastructure,

46.3.3 completing the Developer Works on termination of this Deed,

46.3.4 Rectifying Defects relating to the Developer Works.

46.4 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.

46.5 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.

47 Technical Data

47.1 The Developer is to give the Council any Technical Data that the Council considers reasonably necessary in relation to the Developer Works.

47.2 The Council may provide Technical Data to any person for a purpose relating to the Developer Works.

48 Moral rights

48.1 The Developer is not to enforce any moral rights against the Council relating to the Developer Works.

48.2 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.

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49 Not used

50 Notices

- 50.1 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:
 - 50.1.1 delivered or posted to that Party at its postal address set out in Item 12 or 13 of the Reference Schedule as the case requires,
 - 50.1.2 faxed to that Party at its fax number set out in Item 12 or 13 of the Reference Schedule, or
 - 50.1.3 emailed to that Party at its email address set out in Item 12 or 13 of the Reference Schedule.
- 50.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 50.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 50.3.1 delivered, when it is left at the relevant postal address,
 - 50.3.2 sent by post, 2 business days after it is posted,
 - 50.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 50.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 50.4 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.

51 Approvals and Consent

- 51.1 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.
- 51.2 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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52 Costs

- 52.1 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.
- 52.2 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.

53 Entire Deed

- 53.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 53.2 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.

54 Further Acts

- 54.1 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.

55 Governing Law and Jurisdiction

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

56 No Fetter

- 56.1 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.

57 Illegality

- 57.1 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.
- 57.2 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

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materially change the intended effect of this Deed, but the rest of this Deed is not affected.

- 57.3 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.

58 Amendment

- 58.1 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.

59 Waiver

- 59.1 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.
- 59.2 A waiver by a Party is only effective if it:
- 59.2.1 is in writing,
 - 59.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 59.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 59.2.4 is signed and dated by the Party giving the waiver.
- 59.3 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.
- 59.4 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.
- 59.5 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.

60 GST

- 60.1 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).

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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.

- 60.2 Subject to clause 60.4, 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.
- 60.3 Clause 60.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 60.4 No additional amount shall be payable by the Council under clause 60.2 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.
- 60.5 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:
- 60.5.1 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;
- 60.5.2 that any amounts payable by the Parties in accordance with clause 60.2 (as limited by clause 60.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 60.6 No payment of any amount pursuant to this clause 60, 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.
- 60.7 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.
- 60.8 This clause continues to apply after expiration or termination of this Deed.

[The next page is the Execution page]

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Execution

Executed as a Deed

Dated: [Drafting Note. Insert the date when the Deed has been executed by all of the Parties.]

Executed on behalf of the Council

General Manager

Witness

Name of General Manager

Name of Witness and Address

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

Name/Position

Signature

Name/Position

Signature

Works-in-Kind Deed

Offroad Trail, Road and Earth Works, Farley

Maitland City Council / Ravensfield Downs Pty Ltd / DBH Pty Ltd

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

Name/Position

Signature

Name/Position

Signature

DRAFT

Works-in-Kind Deed

Offroad Trail, Road and Earth Works, Farley

Maitland City Council / Ravensfield Downs Pty Ltd / DBH Pty Ltd

Schedule 1

(Clause 1.1)

Reference Schedule

| 1 Developer | <p>a) The Developer under this Deed in respect of Items 1, 2 & 3 of Developer Works and Applicable Development Consent DA 14-724, specified in Item 3 of this Reference Schedule is:</p> <p>Ravensfield Downs Pty Ltd ABN 95 104 067 398, Address 1 Harley Drive Thornton 2322 PO Box 3042 Thornton 2322</p> <p>b) The Developer under this Deed in respect of Item 4 of Developer Work and Applicable Development Consent DA 16-2140, specified in Item 3 of this Reference Schedule is:</p> <p>DBH Property Pty Ltd ABN 83 452 818 332, Address 1 Harley Drive Thornton 2322 PO Box 3042 Thornton 2322</p> | | | | | | | | | | | | | | | | |
|--|--|---|--------------------------------|----------|------------|--------|-----------|--------------------|-----|--------|-----------|--------------------|-----|--------|-----------|---|-----|
| 2 Development | <p>Development the subject of the Applicable Development Consents being:</p> <p>a) Applicable Development Consent DA 14-724 - 354 Lot Residential Subdivision at 179 Wollombi Road, Farley NSW 2320</p> <p>b) Applicable Development Consent DA 16-2140 - 26 Lot Residential Subdivision at 26 Owlpen Lane, Farley NSW 2320</p> | | | | | | | | | | | | | | | | |
| 3 Developer Works and Applicable Development Consent | <p>Item 1: The construction of half width road adjacent to the local park in the location shown on the Developer Works Location Plan, being part of the works specified in item F3 of the Work Schedules to the Applicable Contributions Plan; and</p> <p>Item 2: Earthworks on the local park land in the location shown on the Developer Works Location Plan, being part of the works specified in item F3 of the Works Schedules to the Applicable Contributions Plan; and</p> <p>Items 3 & 4: Part construction of Off-road Trail in the location shown on the Developer Works Location Plan being part of the works specified in item F20 of the Work Schedules to the Applicable Contributions Plan</p> <table border="1" data-bbox="587 1563 1203 1968"><thead><tr><th>Item of Developer Work</th><th>Applicable Development Consent</th><th>Lot & DP</th><th>Length (m)</th></tr></thead><tbody><tr><td>Item 1</td><td>DA 14-724</td><td>Lot 239 DP 1270567</td><td>N/A</td></tr><tr><td>Item 2</td><td>DA 14-724</td><td>Lot 239 DP 1270567</td><td>N/A</td></tr><tr><td>Item 3</td><td>DA 14-724</td><td>Road Reserve Adjacent to; Lot 238 DP 1270567</td><td>869</td></tr></tbody></table> | Item of Developer Work | Applicable Development Consent | Lot & DP | Length (m) | Item 1 | DA 14-724 | Lot 239 DP 1270567 | N/A | Item 2 | DA 14-724 | Lot 239 DP 1270567 | N/A | Item 3 | DA 14-724 | Road Reserve Adjacent to; Lot 238 DP 1270567 | 869 |
| Item of Developer Work | Applicable Development Consent | Lot & DP | Length (m) | | | | | | | | | | | | | | |
| Item 1 | DA 14-724 | Lot 239 DP 1270567 | N/A | | | | | | | | | | | | | | |
| Item 2 | DA 14-724 | Lot 239 DP 1270567 | N/A | | | | | | | | | | | | | | |
| Item 3 | DA 14-724 | Road Reserve Adjacent to; Lot 238 DP 1270567 | 869 | | | | | | | | | | | | | | |

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| | | | Lot 289 DP 1281662 Wickersley Street road reserve between Lochdon Drive and Royston Circuit, Farley | | | | | | | | | | | | | | | | | |
|-------------------------|---|--|---|------------|--|-------------------------|---------------------------------|------------------------------|-----------------|--------|-----------------|--------|-----------------|----------|-----------------|--------|--------------|--------|---------|--------------|
| | Item 4 | DA 16-2140 | Lot 2 DP 301517 | 117 | | | | | | | | | | | | | | | | |
| | Total | | | 986 | | | | | | | | | | | | | | | | |
| 4 | Developer Works Agreed Cost | <table border="1"> <thead> <tr> <th>Item of Developer Works</th> <th>Applicable Development Consent</th> <th>Developer Works Agreed Costs</th> </tr> </thead> <tbody> <tr> <td>Item 1</td> <td>14-724</td> <td>\$284,047.00</td> </tr> <tr> <td>Item 2</td> <td>14-724</td> <td>\$76,606</td> </tr> <tr> <td>Item 3</td> <td>14-724</td> <td>\$816,779.00</td> </tr> <tr> <td>Item 4</td> <td>16-2140</td> <td>\$117,583.00</td> </tr> </tbody> </table> | | | | Item of Developer Works | Applicable Development Consent | Developer Works Agreed Costs | Item 1 | 14-724 | \$284,047.00 | Item 2 | 14-724 | \$76,606 | Item 3 | 14-724 | \$816,779.00 | Item 4 | 16-2140 | \$117,583.00 |
| Item of Developer Works | Applicable Development Consent | Developer Works Agreed Costs | | | | | | | | | | | | | | | | | | |
| Item 1 | 14-724 | \$284,047.00 | | | | | | | | | | | | | | | | | | |
| Item 2 | 14-724 | \$76,606 | | | | | | | | | | | | | | | | | | |
| Item 3 | 14-724 | \$816,779.00 | | | | | | | | | | | | | | | | | | |
| Item 4 | 16-2140 | \$117,583.00 | | | | | | | | | | | | | | | | | | |
| 5 | Developer Works Completion Date | <table border="1"> <thead> <tr> <th>Item of Developer Work</th> <th>Developer Works Completion Date</th> </tr> </thead> <tbody> <tr> <td>Item 1</td> <td>Works Completed</td> </tr> <tr> <td>Item 2</td> <td>Works Completed</td> </tr> <tr> <td>Item 3</td> <td>Works Completed</td> </tr> <tr> <td>Item 4</td> <td>Works Completed</td> </tr> </tbody> </table> | | | | Item of Developer Work | Developer Works Completion Date | Item 1 | Works Completed | Item 2 | Works Completed | Item 3 | Works Completed | Item 4 | Works Completed | | | | | |
| Item of Developer Work | Developer Works Completion Date | | | | | | | | | | | | | | | | | | | |
| Item 1 | Works Completed | | | | | | | | | | | | | | | | | | | |
| Item 2 | Works Completed | | | | | | | | | | | | | | | | | | | |
| Item 3 | Works Completed | | | | | | | | | | | | | | | | | | | |
| Item 4 | Works Completed | | | | | | | | | | | | | | | | | | | |
| 6 | (a) Developer Works Security (b) Indexation Method | N/A | | | | | | | | | | | | | | | | | | |
| 7 | Defects Liability Period | N/A | | | | | | | | | | | | | | | | | | |
| 8 | Applicable Contributions Plan | Farley Section 94 Contributions Plan 2015 | | | | | | | | | | | | | | | | | | |
| 9 | Development Contribution Amount | a) In respect of Applicable Development Consent DA 14- 724, \$2,052,733.00 being the balance of the Development Contributions payable under DA 14- 724 b) In respect of Applicable Development Consent DA 16-2140, \$210,000.00 being the balance of the Development Contributions payable under DA 16-2140 | | | | | | | | | | | | | | | | | | |

Works-in-Kind Deed**Offroad Trail, Road and Earth Works, Farley****Maitland City Council / Ravensfield Downs Pty Ltd / DBH Pty Ltd**

| | | | |
|--|---|---------------------------------------|---|
| 10 Development Contribution Credit Amount | Item of Developer Works | Applicable Development Consent | Development Contribution Credit Amount |
| | Item 1 | 14-724 | \$284,047.00 |
| | Item 2 | 14-724 | \$76,606 |
| | Item 3 | 14-724 | \$816,779.00 |
| | Item 4 | 16-2140 | \$117,583.00 |
| 11 Council Developer Works Contribution Amount | N/A | | |
| 12 Council Contact for Notices | Postal Address: PO Box 220 Maitland NSW Telephone: (02) 4939 1048 Email: isaac.milajew@maitland.nsw.gov.au Representative: Isaac Milajew | | |
| 13 Developer Contact for Notices | Postal Address: PO Box 3042 Thornton NSW 2322 Telephone: (02) 4966 4966 Facsimile: (02) 4966 3644 Email: DebG@hunterland.com.au Representative: Deb Gordon | | |

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Schedule 2

Developer Works Location Plan

