

**Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue,  
Lot 2309 DP1159612 and part Lot 2310 DP1159612 Arncliffe, NSW  
2205**

**Planning Agreement**

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

**Rockdale City Council**

**and**

**Canberra Estates Consortium No.42 Pty Ltd**

**Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue and  
part Lot 2310 DP1159612 Arncliffe, NSW 2205**

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**Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue and  
part Lot 2310 DP1159612 Arncliffe, NSW 2205**

**Contacts Sheet**

**Council:**

**Name:** Rockdale City Council

**Address:** 2 Bryant Street, ROCKDALE NSW 2216

**Telephone:** (02) 9562 1666

**Facsimile:** (02) 9562 1777

**Email:** [rcc@rockdale.nsw.gov.au](mailto:rcc@rockdale.nsw.gov.au)

**Representative:** Manager Urban and Environmental Strategy

**Developer:**

**Name:** Canberra Estates Consortium No. 42 Pty Ltd

**ACN:** 161 284 251

**Address:** PO Box 178 Mitchell ACT 2911

**Telephone:** (02) 6241 9844

**Facsimile:** (02) 6241 6677

**Email:** [kineson@villagebuilding.com.au](mailto:kineson@villagebuilding.com.au)

**Representative:** Ken Ineson

## **Community Park – 47 - 49 Bonar Street, 8-10 Martin Avenue and part Lot 2310 DP1159612, Arncliffe, NSW 2205**

This Agreement constitutes a planning agreement within the meaning of s93F of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions for the Public Benefit.

### **Parties**

#### **Rockdale City Council**

ABN 66 139 730 052 of 2 Bryan Street, ROCKDALE NSW 2216  
(Council)

and

#### **Canberra Estates Consortium No. 42 Pty Ltd**

ACN 161 284 251 of PO Box 178, MITCHELL ACT 2911  
(Developer)

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### **Background**

- A. The Developer has reached an agreement to purchase or acquire the land identified in **Schedule 2**.
- B. The LEP 2011 zones the majority of the land described as 45-47 Bonar Street (Lot 1 DP 233666 and Lot 2 DP 233666) as RE1 Public Recreation. The Bonar Street Precinct provisions of part 7.2 of the DCP identifies this land for the provision of a Central Square and Community Park. The Central Square also includes part of Lot 2310 DP 1159612, with part of this lot also being zoned as RE1 Public Recreation.
- C. The Contributions Plan identifies the acquisition and embellishment of this Community Park and the embellishment of the Central Square as items for which development contributions will be levied under the plan. It also recognises the possibility of dedication of land by developers in exchange for the transfer of development rights from the area to be dedicated to the remainder of the development site.
- D. Council has previously adopted a strategy to acquire the land for the Community Park by seeking to negotiate planning agreements with affected property owners for the dedication of this land at no cost, in exchange for a higher FSR on the remainder of their sites. This is similar to the transfer of development rights permitted in relation to the Central Square.
- E. The Developer has lodged a Development Application for the Development and has made the Planning Proposal in order to allow additional height and density for the Development Site.
- F. The Developer has offered to enter into a Planning Agreement in accordance with section 93F of the Act in connection with the Planning Proposal that will provide for the embellishment and dedication of the Central Square and Community Park to Council at no cost (area of approximately 2,194 square metres).
- G. The Developer is prepared to make Development Contributions in connection with carrying out of the Development in accordance with this Agreement.

## Operative provisions

### Part 1 - Preliminary

#### 1. Definitions and interpretation

1.1 In this Agreement the following definitions apply:

**Above Ground Construction Certificate** any Construction Certificate for the Development that authorises the erection of any building above ground level.

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

**Agreement** means this Planning Agreement under which the Developer is required to make Development Contributions and includes any schedules, annexures and appendices to this Agreement.

**Approved FSR** means the FSR that is permitted under any Development Consent for the Development.

**Business Day** means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

**Central Square** means the public square proposed to be provided within the Bonar Street Precinct, located adjacent to the proposed to the proposed Community Park and identified in the LEP.

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

**Community Park** means the public park proposed to be provided within the Bonar Street Precinct, as shown zoned Local Open Space (RE1) under the LEP, including that part of the proposed park located within the Land.

**Construction Certificate** means a construction certificate within the meaning of s109C(1)(b) of the Act.

**Contribution Value** means the estimated value of the Development Contribution as shown in Column 3 of **Schedule 3** or as otherwise adjusted to the date of provision in accordance with the Contributions Plan.

**Consultant** has the same meaning as in the Records.

**Contributions Plan** means Rockdale Section 94 Contributions Plan 2004, made by the Council under section 94EA of the Act and approved by the Council on 26 May 2004, and as subsequently amended or replaced.

**Council's Lawyer** means HWL Ebsworth.

**DCP** means Rockdale Development Control Plan 2011 – Special Precincts and includes any development control plan applying to the Land that supersedes Rockdale Development Control Plan 2011.

**Defect** means a defect with respect to any item in Part B of **Schedule 3** which adversely affects the ordinary use and/or enjoyment of the particular item.

**Development** means any residential flat building with basement car parking on the Development Site with an FSR greater than 1.8:1.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, a dedication of land free of cost, the carrying out of Work, or the provision of any other material public benefit, or any combination of them by the Developer, to be used for, or applied towards, the provision of Public Infrastructure or another Public Purpose as set out in **Schedule 3**.

**Development Site** means that part of the Land shown hatched on the map in *Schedule 2 on which the Development is proposed to be carried out and includes those areas that are to be dedicated as new road or road widening (but excluding the area required to be dedicated as road widening pursuant to Item ~~A2~~ of Schedule 3)*. A1

**Final Occupation Certificate** has the same meaning as in the Act.

**First Defects Liability Period**, in relation to an Item of Work is twelve (12) months commencing on the date on which the Developer Hands-Over the Item of Work to the Council under this Agreement.

**FSR** means floor space ratio as defined in the LEP.

**FSR Unit** means a unit of 0.1:1 of the FSR.

**FSR Unit Value** means \$363,000 as indexed in accordance with the Contributions Plan from the date of this Agreement until provided or paid.

**Gross Floor Area** has the same meaning as in the LEP.

**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.

**Hand-Over** means the completion of the construction of an Item of Work in accordance with the requirements of the Council and the delivery or dedication of that Item of Work to the Council in accordance with this Agreement.

**Hand-Over Date**, in relation to an Item of Work, means the date specified in Column 4 of **Schedule 3** opposite the Item of Work specified in Column 1 of that Schedule.

**Inspection and Test Plan** has the same meaning as in the NSW Government Quality Management System Guidelines for Construction June 2005 (amended March 2012) and as subsequently amended and as approved by the Council.

**Item of Work** means an item of the Works as specified in **Schedule 3**.

**Land** means the land specified and described in **Schedule 2** and all other land that may be required to carry out the Works.

**LEP** means Rockdale Local Environmental Plan 2011 and includes any local environmental plan applying to the Land that supersedes Rockdale Local Environmental Plan 2011.

**Location Plan** means the plan which is contained in **Schedule 2**.

**Loss** means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any Item of Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action

**Minister** means the minister administering the Act unless otherwise specified.

**Occupation Certificate** has the same meaning as in the Act.

**Party** means a party to this Agreement, including their successors, agents and assigns.

**Planning Proposal** means the planning proposal (Department Ref: PP\_2015\_ROCKD\_004\_00) to amend the LEP to allow for increased building height and floor space for the Development Site, that was granted a Gateway Determination by a delegate of the Minister for Planning on 25 July 2015 and was publicly exhibited by Council commencing on 27 August 2015.

**Preliminary Design** means the agreed preliminary design of the Works, as included as **Schedule 4**.

**Public Domain Plan** means the Wolli Creek and Bonar Street Precinct Public Domain Plan, as referred to in the DCP, and includes any public domain plan or manual applying to the Land that supersedes the Wolli Creek and Bonar Street Precinct Public Domain Plan.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

**Public Infrastructure** has the same meaning as in the Act.

**Public Purpose** has the same meaning as in the Act.

**Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.

**Rectification Notice** means a notice in writing that identifies a Defect in an Item of Work and requires rectification of the Defect within either the First Defects Liability Period or the Second Defects Liability Period.

**Rectification Security** means a bond or bank guarantee for 10% of the Security Amount.

**Records** means the Rockdale Technical Guide-Works-As-Executed Records.

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

**Second Defects Liability Period** in relation to an Item of Work is twelve (12) months commencing on the date that the First Defects Liability Period ends.

**Security** means a bond or bank guarantee for the Security Amount.

**Security Amount** means the sum of \$1,717,876 as at the date of this agreement adjusted annually in accordance with clause 7.4.

**Service Provider** has the same meaning as in the NSW Government Quality Management System Guidelines, March 2012.

**Stage 2** means that stage of the Development involving the carrying out of development on the parcel of the Land as generally indicated on the plan at Schedule 5 as Stage 2.

**Strata Certificate** has the same meaning as in the Strata Schemes Act.

**Strata Plan** means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

**Strata Schemes Act** means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

**Works** means the works described in Part B of Schedule 3.

**Works-As-Executed Records** means a plan setting out a record of construction completed in accordance with the Rockdale Technical Guide – Works-As-Executed Records.

- 1.2 In the interpretation of this Agreement, 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 Agreement.
  - 1.2.2 A reference to a Business Day means a day other than a Saturday, Sunday or bank or public holiday in Sydney.
  - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next business day.
  - 1.2.4 A reference to time is local time in Sydney,
  - 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
  - 1.2.6 A reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.7 A reference 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.
  - 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
  - 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.

- 1.2.11 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.
- 1.2.12 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.
- 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.
- 1.2.18 A reference in this Agreement to the name and number of a zone under Rockdale LEP 2011 includes a reference to an equivalent zone under any local environmental plan that supersedes LEP.

## **2. Application of this Agreement**

- 2.1 This Agreement applies to:
  - 2.1.1 the Land;
  - 2.1.2 the Planning Proposal; and
  - 2.1.3 the Development.

## **3. Status and operation of this Agreement**

- 3.1 Clauses 28.1, 28.2, 28.3 and 33 of this Agreement operate immediately.
- 3.2 The parties agree that the balance of the terms of this Agreement are effective and binding on the parties if  
  
the amendment to the LEP proposed by the Planning Proposal is made, resulting in the LEP being amended to permit additional height and floor space for the Development Site.
- 3.3 Notwithstanding clause 3.2, the parties agree that the Developer is not bound by this Agreement to provide the Development Contributions (as set out in Schedule 3) unless:
  - 3.3.1 Development Consent is granted to the Development; and
  - 3.3.2 the Development is physically commenced as provided in section 95 of the Act.

#### **4. Further agreements relating to this Agreement**

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.
- 4.2 A further agreement for the purpose of **clause 4.1** may include (but is not limited to) matters pertaining to:
  - 4.2.1 access to the Land;
  - 4.2.2 the rectification of Defects; and
  - 4.2.3 detailed design and specification.

#### **5. Surrender of right of appeal**

- 5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

#### **6. Application of s94, s94A and s94EF of the Act to the Development**

- 6.1 This Agreement excludes the application of sections 94, 94A and 94EF of the Act in respect of the Development to the extent stated in **Schedule 1**.

### **Part 2 – Development Contributions**

#### **7. Provision of Development Contributions**

- 7.1 **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 7.2 The Developer is to make the Development Contributions (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 7.3 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the Public Infrastructure or other Public Purpose for which it is made and otherwise in accordance with this Agreement.
- 7.4 The Contribution Value of the Development Contribution as set out in **Schedule 3** is to be indexed in accordance with the Contributions Plan from the date of the Agreement, until provided or paid.
- 7.5 Despite **clause 7.1**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 7.6 FSR to be sought by Developer

- 7.6.1 Development Application DA-2015/421 (including any modification) must seek a FSR of at least 3.93:1
- 7.6.2 Any other Development Application for the Development must seek Development Consent for the maximum FSR then permitted under the LEP.
- 7.6.3 Nothing in this clause 7.6 prevents DA-2015/421 or any other Development Application for the Development from being subsequently amended to meet any requirement of the Council for improved and approvable design which amendment results in loss of any floor space.
- 7.7 If the Approved FSR is less than 3.60:1:
  - 7.7.1 the Developer must undertake the Works ;
  - 7.7.2 the Contribution Value of the Works (as determined by the quantity surveyor in accordance with clause 11) shall be reduced in accordance with the following formula:  
  

$$(3.60:1 - \text{Approved FSR}) \times \text{FSR Unit Value} \times 10$$
  - 7.7.3 if a reduction under clause 7.7.2 results in a negative Contribution Value for the Works, this negative value will be deducted from the Monetary Contribution in accordance with clause 7.8 and the Contribution Value of the Works will be set at zero ;
  - 7.7.4 within 20 Business Days of Handover of the Works, Council must pay to the Developer, the aggregate amount of any reduction made in accordance with clause 7.7.2 capped at the full Contribution Value of the Works (prior to any deduction under clause 7.7.2); and
  - 7.7.5 the Developer must use any funds paid by Council under clause 7.7.4 for the carrying out of the Works, and it must bear the remainder of the costs of the Works itself.
- 7.8 Where clause 7.7.3 applies, the amount of any Monetary Contribution payable by the Developer under Part C of Schedule 3 will be reduced by the amount by which the reduced Contribution Value under clause 7.7.2 is below zero.
- 7.9 The maximum reduction available under clause 7.7 is the full amount of the Monetary Contribution that would otherwise be payable under Part C of Schedule 3.
- 7.10 The Developer acknowledges and agrees that it will not seek any further compensation from Council beyond the reductions permitted by clauses 7.7 to 7.8.
- 7.11 If the Approved FSR exceeds 3.60:1:
  - 7.11.1 the Developer must pay an additional Monetary Contribution to Council calculated in accordance with the following formula:  
  

$$(\text{Approved FSR} - 3.60:1) \times \text{FSR Unit Value} \times 10; \text{ and}$$
  - 7.11.2 the additional Monetary Contribution must be paid prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development.
- 7.12 Nothing in clauses 7.7 to 7.11 inclusive affect the Developer's obligation to provide the Development Contribution comprised of the dedication of land specified in item A1 of Schedule 3.

## 8. Procedures relating to the dedication of land

- 8.1 The Development Contribution comprising the dedication of land is made for the purposes of this Agreement when an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the unencumbered title to the land to Council is registered.
- 8.2 For the purposes of **clause 8.1** but subject to clause 17:
  - 8.2.1 the Developer is to lodge the instrument of transfer for registration at Land and Property Information (LPI) within 7 days of receiving it from Council duly executed, and
  - 8.2.2 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur as soon as practicable.

## 9. Quality Management System for Design and Specification of an Item of Work

- 9.1 The Developer must engage a Service Provider for design and specification of each Item of Work and must ensure that the design and specification for such Item of Work is in accordance with a Quality Management System, developed by the Service Provider in accordance with AS/NZS ISO 9000:2000, and certified by a third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000.

## 10. Carrying out of an Item of Work

- 10.1 The Developer must produce a detailed design and specification for the Works in accordance with:
  - 10.1.1 The Preliminary Design in **Schedule 4** and the Wolli Creek and Bonar Street Public Domain Park Technical Manual Dated May 2011, except that the playground is deleted and will be constructed elsewhere by Council,
  - 10.1.2 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the Works are approved in accordance with this Agreement, and
  - 10.1.3 the conditions of any development consent granted in relation to an Item of Work,

provided that compliance with clauses 10.1.2 and/or 10.1.3 does not materially increase the cost of the Works above the amount stated in B4 of Schedule 3. Where a material increase in cost would otherwise occur, the parties must work together cooperatively to modify the scope of the Works and the detailed design and specification in order to ensure that the Works can be delivered by the Developer for approximately the cost contemplated by the parties at the time of entering into this agreement, as reflected in Schedule 3.

For the purposes of this clause a "material increase in cost" is an increase of 5% or greater.

- 10.2 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council (as the future owner of the Item of Work and not as a planning authority) has approved the detailed design and specification for the Works.

- 10.3 The Developer must carry out and complete each Item of Work or engage its Service Provider to carry out and complete each Item of Work, to the reasonable satisfaction of the Council, in accordance with:
- 10.3.1 the detailed design and specification approved by the Council,
  - 10.3.2 all applicable laws, including those relating to occupational health and safety,
  - 10.3.3 the conditions of any development consent granted in relation to the carrying out of that Item of Work; and
  - 10.3.4 the conditions of the Development Consent.

## **11. Determination of Value**

- 11.1 For the purpose of this Agreement, the Parties acknowledge that:
- 11.1.1 the Contribution Value specified for item B4 in Column 3 of Schedule 3 is an estimated value only, with the actual value to be determined by a suitably qualified quantity surveyor in accordance with clauses 11.2 to 11.7 inclusive,
  - 11.1.2 the Contribution Value includes all costs associated with the provision of the completed Works, including the costs of design, project management, quantity surveyor costs, the cost of the Consultant required under clause 12.2, construction and material costs, contingency, consultants, the quantity surveyor and any fees and charges incurred by the Developer.
- 11.2 Council will provide a list of three appropriately qualified independent quantity surveyors from which the Developer will nominate one which they have not had any dealings with in the prior three years. All parties will subsequently be required to abide the calculations of this quantity surveyor in accordance with clause 11.7.
- 11.3 When the Developer has prepared and submitted to the Council the design in respect of Items of Work specified in Schedule 3, the Council must, once it has approved the design, engage the quantity surveyor identified in clause 11.2 to determine the Contribution Value for the Item of Work. The parties agree that the Developer will be responsible for the payment of the quantity surveyor's costs.
- 11.4 Upon receipt of the calculations of the Contribution Value from the quantity surveyor, the Council must provide a copy of the calculations to the Developer.
- 11.5 The Developer may, within 30 days of the receipt of the calculations, make a submission to the Council in respect of the calculations.
- 11.6 Upon receipt of any submission from the Developer, the Council must provide a copy of the submission to the quantity surveyor, together with any submission it may make of its own.
- 11.7 The quantity survey must consider any submissions made by the Developer and the Council and must, within 14 days, at his sole discretion:
- 11.7.1 alter or amend the calculations and submit these altered or amended calculations to the Council, or
  - 11.7.2 decline to alter or amend the calculations and advise the Council to that effect.

- 11.8 Where the quantity surveyor determines that the Works cannot be delivered within the contemplated cost for item B4 in Column 3 of Schedule 3, the parties must work together cooperatively to modify the scope of the Works and the detailed design and specification in order to ensure that the Works can be delivered by the Developer for approximately the cost contemplated by the parties at the time of entering into this Agreement, as reflected in Schedule 3.
- 11.9 Where the quantity surveyor determines that the Contribution Value is lower than the value set out for item B4 in Column 3 of Schedule 3, the Developer agrees that it will pay an additional monetary contribution, as set out in item C2 of Schedule 3.

## **12. Quality Management System for an Item of Work**

- 12.1 The Developer must engage a Service Provider for implementation/construction of each Item of Work and must implement/construct such Item of Work in accordance with:
- 12.1.1 a *Quality Management System developed by the Service Provider in accordance with AS/NZS ISO 9000:2000 and certified by a third party organisation accredited under a recognised product certification scheme in accordance with AS/NZS ISO 9001:2000, or*
  - 12.1.2 a project specific Quality Management Plan and an Inspection and Test Plan developed by the Service Provider in accordance with the NSW Government Quality Management Guidelines June 2005 (amended March 2012 and as subsequently amended) and approved by the Council.
- 12.2 The Developer must ensure that the carrying out of each Item of Work is supervised in accordance with the Records. A Consultant must be appointed:
- 12.2.1 where the Item of Work is to be constructed by a Service Provider under contract to the Developer, by the Developer, or
  - 12.2.2 where the Item of Work is to be constructed by the Developer, by the Council.

The Developer must notify the Council within 5 business days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Consultant with respect to the Item of Work in accordance with **clause 12.1** and promptly undertake all corrective action with respect to such Item of Work as required by the Council.

## **13. Access to the Land**

- 13.1 The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Item of Work.
- 13.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by Council for the purpose of enabling the Developer to carry out any Item of Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

## **14. Protection of people and property**

- 14.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:

- 14.1.1 all necessary measures are taken to protect people and property, and
- 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 14.1.3 nuisances and unreasonable noise and disturbances are prevented.

## **15. Hand-Over of Works**

- 15.1 The Developer must submit to the Council the Works-as-Executed Records and written notice for an Item of Work not less than 10 business days prior to the date on which it proposes to Hand-Over of the Item of Work.
- 15.2 Council acting reasonably can, within 5 business days of receipt of the notice under clause 15.1,
  - 15.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
  - 15.2.2 determine that the Item of Work has not met the detail design and specification approved by Council under clause 10 and issue an Rectification Notice implemented in accordance with **clause 18**.
- 15.3 On Hand-Over of an Item of Work:
  - 15.3.1 the Developer must ensure that an unencumbered title to each Item of Work passes to Council and must give to Council any document of title to each Item of Work; and
  - 15.3.2 Council accepts ownership, possession and control of that Item of Work; and
  - 15.3.3 Council returns to the Developer the Security less the Rectification Security for that Item of Work (alternatively, if the Developer provide a new bond or bank guarantee for the Rectification Security, Council must release the whole of the Security).

## **16. Failure to Comply with the Hand-Over Date**

- 16.1 If the Developer fails to Hand-Over an Item of Work by the Hand-Over Date the Council may:
  - 16.1.1 if it considers, acting reasonably, that the Item of Work is complete, exercise its rights under **clause 17**; or
  - 16.1.2 if it considers, acting reasonably, that the Item of Work is incomplete, call upon the Security, andcarry out and complete the Item of Work itself.
- 16.2 For the purposes of **clause 16.1.2**:
  - 16.2.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land at any time for the purpose of completing the relevant Item of Work, and

- 16.2.2 any difference between the Security called upon by the Council and the costs incurred by the Council in completing the Item of Work may be recovered by the Council from the Developer as a liquidated debt due and owing in a court of competent jurisdiction;
  - 16.2.3 any remaining Security must be returned to the Developer by the Council as soon as possible, after deduction of the Rectification Security or the provision of a replacement bond or bank guarantee for the Rectification Security..
- 16.3 The Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable an Item of Work to be Handed-Over to the Council in accordance with this Agreement.

## **17. Compulsory Acquisition**

- 17.1 As security for the dedication of the Public Park and Central Square (as identified on the plan at Schedule 2, being part of Lot 1 DP 233666 and Lot 2 DP 233666) in accordance with this Agreement, the Developer agrees to provide the Council's Lawyer with:
  - 17.1.1 the instrument referred to in clause 8.1 executed by the Developer within 1 month from the date of this Agreement, which instrument will be executed by Council and held in escrow by the Council's Lawyer. For the purpose of the dedication, the Council's Lawyer will release the signed instrument to the Developer for registration in accordance with clause 8.2, and
  - 17.1.2 an irrevocable written undertaking by the Developer's Financier to promptly, upon request by Council, partially discharge the registered Mortgage/s affecting the dedicated land and produce the titles at the LPI to permit the Council to obtain registration of the Transfer in accordance with clause 17.2
- 17.2 In the event that the Developer fails to dedicate the Public Park and Central Square to Council prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development:
  - 17.2.1 the instrument held in escrow by the Council's Lawyer under clause 17.1 may be released to the Council and Council may proceed to effect registration of the transfer; and
  - 17.2.2 the Developer must promptly cause the Certificates of Title to be produced at the LPI together with a Discharge of any registered Mortgage over these titles.
- 17.3 The Developer must reimburse the Council, promptly on demand, an amount equivalent to all reasonable legal costs (assessed on a solicitor/client basis) and disbursements incurred by the Council in acquiring the Public Park and Central Square pursuant to this clause.

## **18. Rectification of Defects**

- 18.1 During the First Defects Liability Period and the Second Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 18.2 The Developer must promptly comply with a Rectification Notice at its own cost according to the terms of the Notice.

- 18.3 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the Item of Work the subject of the relevant Rectification Notice.
- 18.4 A Rectification Certificate discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 18.5 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the Defect and may:
  - 18.5.1 In the case of a Rectification Notice issued during the First Defects Liability Period, call upon the Rectification Security to meet its costs in rectifying the defect, and
  - 18.5.2 recover, as a liquidated debt due and owing in a court of competent jurisdiction, any costs incurred by the Council in rectifying the Defect or, in the case of a Defect to which clause 18.5.1 applies, the difference between the amount of the Security called upon and the costs incurred by the Council in rectifying the Defect.
- 18.6 The Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to rectify any Defects in accordance with a Rectification Notice given under this Agreement.
- 18.7 Promptly after the expiration of the First Defects Security Period, Council must return to the Developer any unused portion of the Rectification Security. If any Rectification Notice is outstanding at this time, Council may retain a reasonable amount of the Rectification Security relevant to the Defect in question. In this case, and remaining Rectification Security must be returned promptly to the Developer on the issue of a Rectification Certificate that resolves that outstanding Rectification Notice.

## **19. Damage and repairs to Work**

- 19.1 The Developer, at its own cost, is to repair and make good to the satisfaction of Council any Loss or damage to an Item of Work from any cause whatsoever which occurs prior to the date on which the Item of Work has been Handed-Over to Council under this Agreement.

## **20. Variation of Work**

- 20.1 An Item of Work is not to be varied by the Developer, unless:
  - 20.1.1 the Parties agree in writing to the variation, and
  - 20.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
  - 20.1.3 the Developer bears all of Council's costs of and incidental to agreeing to and approving the variation under this Agreement.
- 20.2 For the purposes of **clause 20.1**, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

## Part 3 – Other Provisions

### 21. Indemnity and insurance

- 21.1 This clause applies until the expiration of the First Defects Liability Period and the Second Defects Liability Periods only.
- 21.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.
- 21.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
  - 21.3.1 contract works insurance; noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - 21.3.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 21.3.3 workers compensation insurance as required by law, and
  - 21.3.4 any other insurance required by law.
- 21.4 If the Developer fails to comply with **clause 21.3**, 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 liquidated debt due from the Developer to Council and payable within 30 days after providing an invoice and which may be recovered as a liquidated debt due in a court of competent jurisdiction.
- 21.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in **clause 21.3**.

### 22. Provision of Security

- 22.1 The Parties agree that the obligation to carry out the Works will be secured by provision of the Security by the Developer to Council prior to the issue of the Above Ground Construction Certificate.
- 22.2 The Parties agree that Council may in its absolute discretion impose conditions of Development Consent on the Development under section 80A of the Act specifying that:
  - 22.2.1 the Works required by Item B1 of **Schedule 3** are to be completed to the satisfaction of Council prior to the issue of any Above Ground Construction Certificate in relation to Stage 2 of the Development, and
  - 22.2.2 the Works required by Items B2, B3, and B4 are to be completed to the reasonable satisfaction of Council prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development,

- 22.3 The Parties agree in respect of the Items of Works identified in **Schedule 3** that, where Council is the certifying authority, it may withhold the issue of the relevant Construction Certificate or Occupation Certificate (as appropriate) until such time as the identified Item of Work is completed.

## **23. Release & return of Security**

- 23.1 Subject to clause 18.7, the Council is to release the Security to the Developer as soon as practical following Hand-Over, but may retain the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Security) until the end of the First Defects Liability Period.

## **24. Recovery of cost of rectification carried out by Council**

- 24.1 If Council incurs a cost in rectifying a Defect in an Item of Work, it may draw on the Rectification Security in accordance with **clause 22** or alternatively, this cost shall be a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.
- 24.2 For the purpose of **clause 24.1**, Council's costs of rectifying a Defect in an Item of Work includes, but is not limited to:
- 24.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,
  - 24.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and
  - 24.2.3 without limiting **clause 24.2.2**, all legal costs (assessed on a solicitor/client basis) and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

## **25. Enforcement in a court of competent jurisdiction**

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

## **26. Dispute resolution – expert determination**

- 26.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 26.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with

the relevant expertise for determination, which is to be final and binding on the Parties.

- 26.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 26.4 If a notice is given under **clause 26.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 26.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 26.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.
- 26.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 26.8 This clause survives the completion or termination of this Agreement.

## **27. Dispute resolution – mediation**

- 27.1 This clause applies to any dispute under this Agreement other than a dispute to which **clause 26.5** applies.
- 27.2 Such a dispute is taken to arise if on party gives another Party a notice in Writing specifying particulars of the dispute.
- 27.3 If a notice is given under **clause 27.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 27.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 27.5 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.
- 27.6 This clause survives the completion or termination of this Agreement.

## **28. Registration of this Agreement**

- 28.1 The Parties agree that this Agreement is to be registered for the purposes of section 93H of the Act
- 28.2 The Developer must lodge this Agreement for registration on the Register pertaining to the Land no later than 28 days after the date of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land;
- 28.3 The Council must promptly do all things reasonably required by the Developer and provide all necessary consents in order to enable the Developer to comply with its obligations under clause 28.2.

- 28.4 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.

28.5 **Release and discharge of deed by Council**

The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement with respect to any part of the Land (such that this Agreement is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon the earlier of:

- 28.5.1 the issuing of a Strata Certificate in respect of any Strata Plan, provided that the Developer is otherwise in compliance with this Agreement to the reasonable satisfaction of the Council at that time,
- 28.5.2 the issuing of a Final Occupation Certificate for Stage 2 of the Development, or
- 28.5.3 the Developer having provided all of the Development Contributions in accordance with this Agreement.

28.6 **Registration of Strata Plans**

- 28.6.1 This Agreement will not remain or be newly registered by the Registrar-General under section 93H in relation to any newly created strata lot, subject to the Developer being in compliance with this Agreement to the reasonable satisfaction of the Council at that time.
- 28.6.2 For each Strata Plan lodged with the office of the Registrar-General, where that Strata Plan is intended to create a strata lot(s), the Council must do all things reasonably required by the Developer to ensure that this Agreement is not registered by the Registrar-General under section 93H of the Act in relation to any such lot.
- 28.6.3 If through error or other reason this Agreement is registered on the title to any strata lot, each party must do such things as are reasonably necessary, within 5 Business Days after being requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that lot

**29. Assignment and transfer**

- 29.1 Unless the matters specified in **clause 29.2** are satisfied, the Developer is not to do any of the following:
  - 29.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
  - 29.1.2 assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 29.2 The matters required to be satisfied for the purposes of **clause 29.1** are as follows:
  - 29.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and

29.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,

29.2.3 the Developer is not in breach of this Agreement, and

29.2.4 Council otherwise consents to the transfer, assignment or novation in writing.

29.3 Any purported dealing in breach of this clause 29.2 is of no effect.

29.4 Notwithstanding **clause 29.1** the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot in a proposed Strata Plan, without compliance with **clause 29.2**.

### 30. Review of this Agreement

30.1 The Developer is to provide to Council by not later than each anniversary of the date on which this Agreement is entered into, a written report detailing the performance of its obligations under this Agreement.

30.2 The report referred to in **clause 30.1** is to be in such a form and to address such matters as may be notified by Council to the Developer from time to time.

30.3 The Parties agree to review this Agreement every 2 years, 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 Agreement.

30.4 For the purposes of **clause 30.3**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.

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

30.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

30.7 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 30.3** is not a dispute for the purposes of **clauses 26** and **27** and is not a breach of this Agreement.

### 31. Notices

31.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

31.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,

31.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.

- 31.2 If a Party gives the other Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 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.
- 31.3.3 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.
- 28.4 If any notice, consent, 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 Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement 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.

## **33. Costs**

- 33.1 The Developer is required to pay to Council the Council's reasonable legal costs (assessed on a solicitor/client basis) and out of pocket disbursements of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.
- 33.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 33.3 The Developer is also required to pay to Council the Council's reasonable legal costs (assessed on a solicitor/client basis) and out of pocket disbursements of enforcing this Agreement within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

## **34. Entire Agreement**

- 34.1 This Agreement 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 Agreement 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 Agreement and all transactions incidental to it.

### **36. Governing law and jurisdiction**

- 36.1 This Agreement is governed by the law of New South Wales.
- 36.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 36.3 Each party waives any right 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 Agreement:
  - 37.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
  - 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 Agreement 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. Representations and warranties**

- 39.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

### **40. Severability**

- 40.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it 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 Agreement, but the rest of this Agreement is not affected.

### **41. Modification**

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

## **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 Agreement, 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 is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 42.3 It 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.

## **43. Rights cumulative**

- 43.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

## **44. Duty**

- 44.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.
- 44.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

## **45. Effect of Schedules**

- 45.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

## **46. Relationship of the Parties**

- 46.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

## **47. GST**

- 47.1 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 on GST on that Supply.

- 47.2 Subject to **clause 47.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 **Clause 47.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 47.4 No additional amount shall be payable by Council under **clause 47.2** unless, and only to the extent that, 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.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 47.6 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;
- 47.7 that any amounts payable by each Party in accordance with **clause 47.2** (as limited by **clause 47.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.8 No payment of any amount pursuant to this **clause 47**, 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.
- 47.9 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.
- 47.10 This clause continues to apply after expiration or termination of this Agreement.

#### **48. Explanatory Note relating to this Agreement**

- 48.1 The **Schedule 1 of Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 48.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Schedule 1 of the Appendix** is not to be used to assist in construing this Planning Agreement.

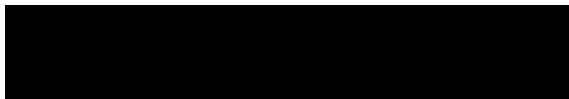
Execution

Executed as an Agreement at Rockdale

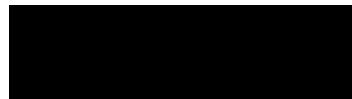
date: 10 JUNE 2016

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Executed on behalf of Council:



General Manager (sign)



Witness (sign)

MEREDITH WALLACE

Name of General Manager (print)

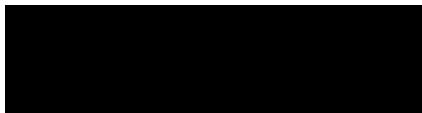
ERIKA PAWLEY

Witness – Name/Position (print)

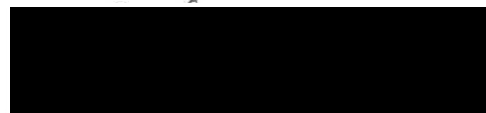
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Executed on behalf of the Developer under s 127 of the *Corporations Act 2001*:

Canberra Estates Consortium No. 42 Pty Ltd  
ACN 161 284 251



Director (sign)



Director/Secretary (sign)

ROBERT WINNELL

Name of Director (print)

KENNETH RICHARD INESON

Name of Director/Secretary (print)

## Schedule 1

(Clause 6)

### Section 93F Requirements

| Provision of the Act                                                                                                                  | This Agreement                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| Under section 93F(1), the Developer has:                                                                                              |                                                                        |
| (a) sought a change to an environmental planning instrument                                                                           | Yes                                                                    |
| (b) made, or proposes to make, a Development Application.                                                                             | (b) yes                                                                |
| (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies                   | (c) no                                                                 |
| <b>Description of the land to which this Agreement applies</b><br>– Section 93F(3)(a))                                                | The whole of the Land described in <b>Schedule 2</b> to this agreement |
| <b>Description of the change to the environmental planning instrument to which this Agreement applies</b> –<br>(Section 93F(3)(b)(i)) | No                                                                     |
| <b>The scope, timing and manner of delivery of Development Contributions required by this Agreement</b><br>– (Section 93F(3)(c))      | See <b>Schedule 3</b> to this Agreement                                |
|                                                                                                                                       |                                                                        |
|                                                                                                                                       |                                                                        |
| <b>Applicability of Sections 94 and 94A of the Act</b> –<br>(Sections 93F(3)(d) and 93F(5A))                                          | Excluded                                                               |
| <b>Applicability of Section 94EF of the Act</b> –<br>(Section 93F(3)(d))                                                              | Not excluded                                                           |

|                                                                                               |                                     |
|-----------------------------------------------------------------------------------------------|-------------------------------------|
| <b>Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),</b> | n/a                                 |
|                                                                                               |                                     |
| <b>Dispute Resolution – (Section 93F(3)(f))</b>                                               | <b>See clauses 26 &amp; 27</b>      |
| <b>Security &amp; Enforcement of this Agreement – (Section 93F(3)(g))</b>                     | <b>See clauses 22, 23, &amp; 25</b> |
| <b>Registration of the Agreement – (Section 93H)</b>                                          | <b>Yes, see clause 28</b>           |
| <b>Restriction on dealings</b>                                                                | <b>See clause 29</b>                |
| <b>No obligation to grant consent or exercise functions – (Section 93F(9))</b>                | <b>See clause 38</b>                |

## Schedule 2

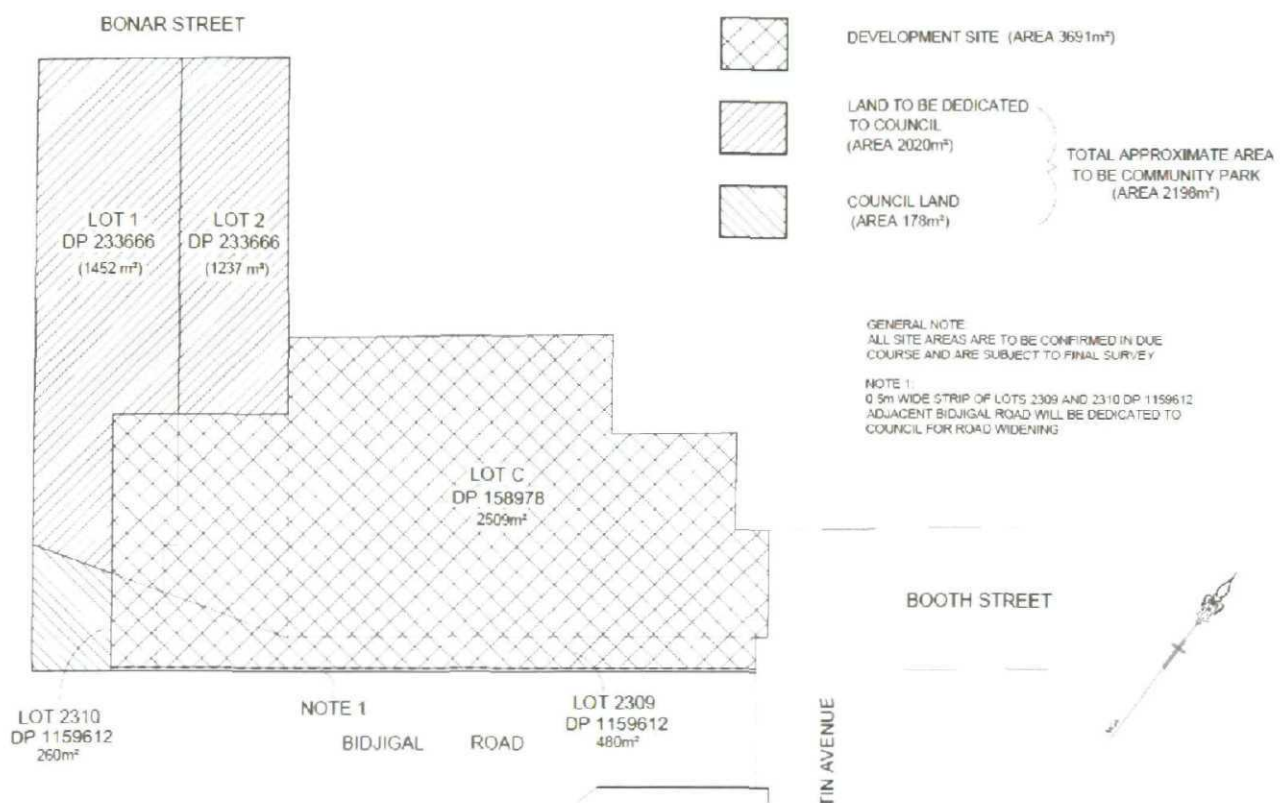
(Clause 1)

### The Land

#### DEVELOPMENT SITE:

47 Bonar Street (Lot 1, DP 233666), 49 Bonar Street (Lot 2, DP233666), 8 Martin Avenue (Lot 2309, DP 1159612), 10 Martin Avenue (Lot C, DP 158978) and 9 Bidjigal Road (part Lot 2310, DP 1159612 being the part which is zoned R4 High Density Residential).

The Developer has entered into an agreement to purchase or acquire these lands.



## Schedule 3

(Clause 7)

### Development Contributions

#### Part A: Land Dedications

| Column 1 | Column 2                                                                                                                                                                                                                            | Column 3                                                                                                                                                       | Column 4                                                                                    |
|----------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| Item     | Public Benefit                                                                                                                                                                                                                      | Contribution Value <sup>(1)</sup>                                                                                                                              | Timing                                                                                      |
| <b>A</b> | <b>Community Park and Central Square— land dedication</b>                                                                                                                                                                           |                                                                                                                                                                |                                                                                             |
| A1       | Dedicate for public open space that part of the Land zoned RE1 Open Space Reservation under Rockdale LEP 2011 and <del>coloured green on the map in Schedule 2,</del> including all associated survey, subdivision and legal costs. | \$ 5,830,000<br><br><i>Referred to in Note 1 indicated as "Land to be dedicated to Council" and dedicated for pool widening etc area Referred to in Note 1</i> | Prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development. |

#### Part B: Works

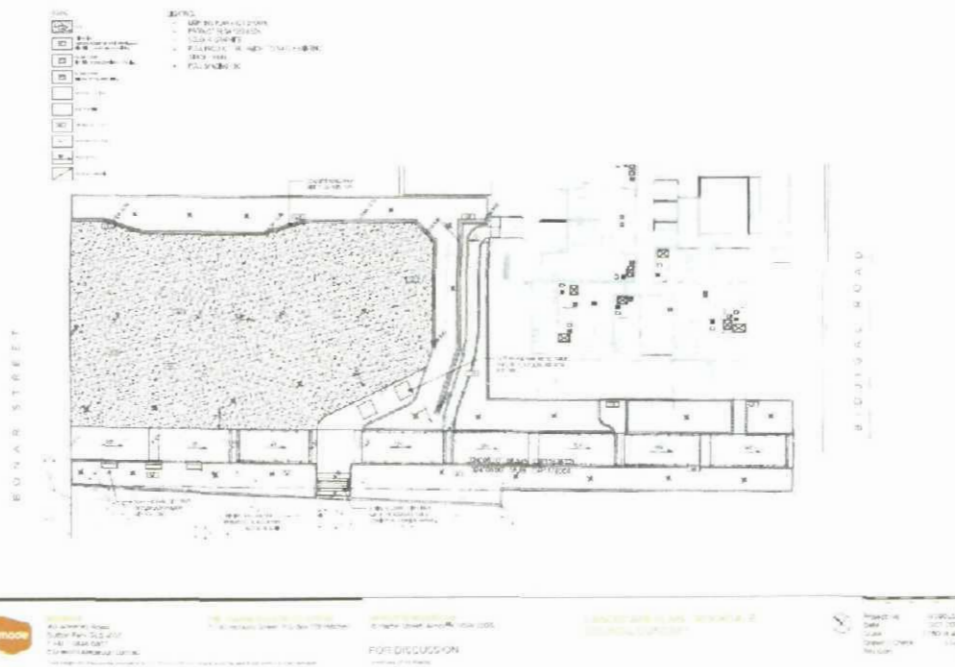
| Column 1 | Column 2                                                                                                                                                                                                                                             | Column 3                          | Column 4                                                                                    |
|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------------------|
| Item     | Public Benefit                                                                                                                                                                                                                                       | Contribution Value <sup>(1)</sup> | Timing                                                                                      |
| <b>B</b> | <b>Community Park and Central Square— Embellishment</b>                                                                                                                                                                                              |                                   |                                                                                             |
| B1       | Prepare detailed design <sup>(2)</sup> for the Community Park and the Central Square for the approval of Council, in accordance with the Preliminary Design and the Wolli Creek and Bonar Street Public Domain Park Technical Manual Dated May 2011. | Included in Item B4               | Prior to the issue of any Construction Certificate in relation to the Development.          |
| B2       | Demolish all buildings on the land referred to in item A1.                                                                                                                                                                                           | Included in Item A1               | Prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development. |

|                                      |                                                                                                                                                       |                                                                                                                    |                                                                                             |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| B3                                   | Remediate any contamination on the land referred to in Item A1 so that it is suitable for use as public open space to the satisfaction of Council.    | Included in Item A1                                                                                                | Prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development. |
| B4                                   | Construct the portion of the Community Park and Central Square within the Land in accordance with the Council approved design referred to in Item B1. | \$ 1,717,876                                                                                                       | Prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development. |
| <b>Part C: Monetary Contribution</b> |                                                                                                                                                       |                                                                                                                    |                                                                                             |
| C1                                   | Pay to Council a monetary contribution toward the construction of a playground on adjoining land                                                      | \$200,000                                                                                                          | Prior to the issue of the Above Ground Construction Certificate.                            |
| C2                                   | Only payable where clause 11.9 applies                                                                                                                | \$1,717,876 less the Contribution Value of B4 as determined by the quantity surveyor in accordance with clause 11. | Prior to the issue of any Occupation Certificate in relation to Stage 2 of the Development  |

Note <sup>(1)</sup> the Contribution Values for the 2014/15 financial year. Where the Public Benefit is provided after 30 June 2015, the Contribution Value will be adjusted to the date of provision in accordance with the formula in Contributions Plan

Note <sup>(2)</sup> the design for the proposed development works in the Community Park and the Central Square (item B1) are to respond to the objectives of the DCP while being sustainable, both environmentally and financially. The design is to give particular consideration and attention to the principle of minimising the ongoing maintenance costs.

#### Schedule 4



## Schedule 5



## Appendix

(Clause 49)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## Explanatory Note

### Proposed Planning Agreement

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

#### 1. Parties

**Rockdale City Council** ABN 66 139 730 052 of 2 Bryant Street, ROCKDALE NSW 2216  
(Council)

and

**Canberra Estates Consortium No.42 Pty Ltd** ACN 161 284 251 of PO Box 178 Mitchell,  
ACT 2911

(Developer)

#### 2. Description of the Land to which the proposed Planning Agreement applies

2.1 47 - 49 Bonar Street, 8-10 Martin Avenue, Lot 2309 DP115962 and part Lot 2310 DP 1159612, as described in **Schedule 2** to the Agreement.

2.2 This Developer is the owner of the Land.

#### 3. Description of proposed Development

3.1 The proposed erection on the Land of a residential flat building with basement car parking having a Floor space Ratio of at least 3.93:1 (being a Gross Floor Area of 12,493 square metres), calculated over the balance of the Land not required to be dedicated for public open space or public road under the agreement (land area 3,177 square metres).

3.2 In conjunction with this Development, the design, construction and dedication of land (2,194 square metres) for the first stage of the proposed Community Park and the widening of Bonar Street adjacent to the park.

#### 4. Summary of objectives, nature and effect of the proposed Planning Agreement

##### 4.1 Objectives of proposed Planning Agreement

4.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and the carrying out of Work, as outlined below; and
- achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible

through the outright purchase of the land or the use of section 94 development contributions alone.

#### **4.2 Nature and effect of proposed Planning Agreement**

4.2.1 Subject to clause 3.1 of the Agreement, the proposed Planning Agreement will not come into effect until the proposed instrument Change comes into force.

4.2.2 The proposed Planning Agreement will require the Developer to dedicate approximately 2,194 square metres of their Land to Council free of cost for the following public purposes (as described in Part A of **Schedule 3** to the Agreement):

- public open space for a proposed community Park; and

4.2.3 The proposed Planning Agreement will also require the Developer to carry out the following Work for a public purpose (as described in Part B of **Schedule 3** to the Agreement):

- Prepare a detailed design for the whole of the proposed Community Park and a proposed Public Square;
- Demolish all buildings on the land that is to be dedicated to Council and remediate any contamination on that land;
- Construct the portion of the community Park within the Developer's Land; and
- Design and construct the widening of Bonar Street around the perimeter of the community Park.

4.2.4 The estimated value of the land to be dedicated and Work to be provided under the proposed Planning Agreement is \$7,747,876.

#### **5. Assessment of the merits of the proposed Planning Agreement**

##### **5.1 The impact of the proposed Agreement on the public or any relevant section of the public**

5.1.1 The proposed Planning Agreement impacts on the public by promoting the public interests as outlined in **paragraph 5.2.1**.

##### **5.2 How the proposed Planning Agreement promotes the public interest and one or more objects of the Environmental Planning and Assessment Act 1979**

5.2.1 The proposed Planning Agreement promotes the public interest by securing the provision of Development Contributions, including the dedication of land free of cost and the carrying out of Work, for the purposes of improving community facilities, infrastructure and services and, in general, for the purposes of improving and promoting the community's quality of life.

5.2.2 The proposed Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979 by;

- encouraging the development and conservation of natural and urban resources for the purpose of promoting the social and economic welfare of the community and a better environment

- encouraging the promotion and co-ordination of the orderly and economic use and development of land;
- encouraging the provision of land for public purposes;
- encouraging the provision and co-ordination of community services and facilities; and
- encouraging ecologically sustainable development and the protection of the environment.

### **5.3 For Planning Authorities:**

#### **5.3.1 Development corporations – How the proposed Planning Agreement promotes its statutory responsibilities**

N/A

#### **5.3.2 Other public authorities – How the proposed Planning Agreement promotes the objects (if any) of the Act under which it is constituted**

The proposed Planning Agreement promotes the Principles of the Local Government Act 1993 by:

- allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area through the provision of the new community park and road widening
- allowing Council to implement the principles of ecologically sustainable development through provision of the Community Park and the remediation of any contamination on the Land.

#### **5.3.3 Councils – How the proposed Planning Agreement promotes the elements of the Council's Charter**

The proposed Planning Agreement promotes the elements of the Council's Charter by:

- providing appropriate services and facilities for the community in the form of a new Community park and road widening.
- providing for the needs of children by providing the Community Park with appropriate facilities.
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of the new Community Park, the enhancement of the existing road network and the remediation of any contamination on the Land.

#### **5.3.4 All planning authorities – Whether the proposed Planning Agreement confirms with the authority's capital works program**

The proposed Planning Agreement confirms with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.