

Planning Agreement

Menangle Park (Stages 1, 2A and 2B)

Campbelltown City Council (ABN 31 459 914 087) (**Council**)

Dahua Group Sydney Project 2 Pty Ltd (ACN 606 391 235)
and
Dahua Group Sydney Project 3 Pty Ltd (ACN 606 391 922) (**Developer**)

Table of Contents

Planning Agreement	1
Menangle Park (Stages 1, 2A and 2B)	1
Parties 1	
Background.....	1
Operative provisions	1
1 Agreement	1
2 Definitions	1
2.1 Defined Terms	1
2.2 Interpretation.....	2
3 Application and operation of document.....	2
3.1 Planning Agreement.....	2
3.2 Application	2
3.3 Operation.....	2
3.4 Part-performance of this document.....	2
3.5 Further agreements relating to this document.....	2
4 Application of s7.11, s7.12 and s7.24.....	2
4.1 Application	2
4.2 Consideration of Benefits	3
4.3 Section 7.24.....	3
5 Provision of Development Contributions generally	3
5.1 Developer must make Development Contributions.....	3
5.2 No limit created by Contribution Value	3
5.3 Council's obligation to apply Development Contributions	3
5.4 Alternative method of providing items of Work by paying Monetary Contribution	3
5.5 Alternative method of providing items of Work	4
5.6 Alternative method of providing Monetary Contributions	4
5.7 Rise or Fall - New Contributions Plan	4
5.8 Excess Contributions Credit for Additional Park Lands and Works.....	5
5.9 Application of Excess Contributions Credit.....	5
5.10 Indexation	5
6 The provision of Monetary Contributions	6
6.1 Payment of Monetary Contributions.....	6
6.2 Council to issue invoices and receipts for Monetary Contributions	6
7 Variation of scope or timing for provision of Works	6
7.1 Variation to the scope of a Work.....	6
7.2 Deferral of the timing of Completion of an item of the Works	6
8 Procedures relating to the dedication of Land	7
8.1 Plan of Management	7
8.2 Works to be Completed prior to dedication	7

8.3	Dedication process.....	7
8.4	Remediation of Land to be dedicated to Council.....	8
9	Procedures relating to Works.....	8
9.1	Design and Specification	8
9.2	Standard of construction of Work.....	9
9.3	Access for Works	9
9.4	Protection of people and property	9
10	Provisions with respect to the Completion of the Works.....	10
10.1	Developer must notify.....	10
10.2	Inspection	10
10.3	Council to notify.....	10
10.4	Developer's further notification	10
10.5	Works-as-executed-plan.....	10
10.6	Hand-over of Works	11
11	Procedures relating to the rectification of defects	11
11.1	Definition of Defects Liability Period.....	11
11.2	Council may issue Rectification Notice	11
11.3	Developer must comply with Rectification Notice	11
11.4	If the Developer fails to comply with a Rectification Notice	11
11.5	End of the Defects Liability Period	12
12	Failure to carry out Work	12
12.1	Council may issue notice.....	12
12.2	Developer must comply	12
12.3	If Developer fails to comply.....	12
13	Maintenance and management of Works	13
13.1	Definitions	13
13.2	Developer must maintain.....	14
13.3	Maintenance Compliance Certificate	14
13.4	No further claim against Developer.....	16
13.5	Developer may elect to pay Monetary Contribution	16
14	Council may withhold Subdivision Certificate.....	16
14.1	Final Subdivision Certificate	16
14.2	Council may withhold Subdivision Certificates	16
15	Security for the dedication of land	17
15.1	Council may acquire.....	17
15.2	Agreement to acquire	17
15.3	Additional comfort for Council	17
16	Security for carrying out of Work	17
16.1	Provision of Security.....	17
16.2	Floating Security	17
16.3	Council may call on Security.....	18
16.4	Top up of Security	18

16.5	Release of Primary Security	18
16.6	Release of Defects Security	18
16.7	Indexation of value of Security value	18
17	Registration of this planning agreement.....	18
17.1	Obligation to register	18
17.2	Removal of this document from title of the Land	18
18	Enforcement.....	19
19	Dispute resolution - expert determination	19
19.1	Application of this clause	19
19.2	Selection and engagement of Expert	19
19.3	Expert no longer independent.....	20
19.4	Role of the expert.....	20
19.5	Determination of the expert	21
20	Dispute resolution – mediation	21
20.1	Application	21
20.2	Notice	21
20.3	Procedure	21
21	Assignment, sale of Land, etc	21
22	Position of Council.....	22
22.1	Consent authority	22
22.2	Agreement does not fetter discretion	22
22.3	Severance of provisions	22
22.4	No obligations	22
23	Indemnity & Insurance	22
23.1	Indemnity	22
23.2	Insurance	22
24	Review of this document	23
24.1	Developer to report	23
24.2	Parties to review.....	23
25	Confidentiality	24
25.1	Agreement not confidential	24
25.2	Acknowledgement.....	24
26	Miscellaneous provisions	24
26.1	Notices.....	24
26.2	Approvals and consent.....	25
26.3	Costs	25
26.4	Entire Agreement	25
26.5	Further acts.....	25
26.6	Governing law and jurisdiction.....	25
26.7	Representations and warranties	25
26.8	Severability	25
26.9	Modification.....	26

26.10	Waiver.....	26
26.11	GST	26
Schedule 1 Requirements under the Act		28
Schedule 2 Defined terms and interpretation		29
Part 1 – Defined terms.....		29
Part 2 – Interpretational rules.....		34
Schedule 3 Development Contributions		1
Annexure 1 Development Area Plan		4
Execution page		1

Planning Agreement

Menangle Park (Stages 1, 2A and 2B)

Parties

Council	Name	Campbelltown City Council
	Address	Civic Centre Cnr Queen and Broughton Streets Campbelltown NSW 2560
	ABN	31 459 914 087
Developer	Name	Dahua Group Sydney Project 2 Pty Limited
	Address	Suite 2, Level 20, 201 217 Elizabeth Street, Sydney, NSW 2000
	ACN	606 391 235
	Name	Dahua Group Sydney Project 3 Pty Limited
	Address	Suite 2, Level 20, 201 217 Elizabeth Street, Sydney, NSW 2000
	ACN	606 391 922

Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has applied, or proposes to apply, for the Development Consents with respect to the Development.
- D** The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the carrying out of the Development, on and subject to the terms of this document.

Operative provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

3.2 Application

- (1) This document applies to both the Land and the Development.
- (2) The parties acknowledge that the Development Contributions required to be made under this document are to meet the expected demand for public facilities arising from the Development.

3.3 Operation

- (1) This document operates from the date it is executed by both parties.
- (2) The party who executes this document last is to insert the date that they executed this document on the Execution Page, and provide a copy of the fully executed and dated document to any other person who is a party.

3.4 Part-performance of this document

Council is not to raise any objection, requisition or Claim, or impose any requirements beyond that provided for in this document in relation to any obligation imposed on the Developer under this document that had been performed, whether in whole or in part, on the date this document commenced.

3.5 Further agreements relating to this document

The Developer and Council, at any time and from time to time, may enter into agreements relating to the subject matter of this document that are not inconsistent with this document for the purpose of implementing this document.

4 Application of s7.11, s7.12 and s7.24

4.1 Application

- (1) This document:
 - (a) excludes the application of section 7.11 of the Act to the Development; and
 - (b) excludes the application of section 7.12 of the Act to the Development
- (2) For the avoidance of doubt:
 - (a) sections 7.11 and 7.12 are only excluded in relation to the original subdivision of the Land to create a Final Lot, and the construction of up to one (1) Dwelling on each of those Final Lots; and
 - (b) if any additional Dwellings are constructed on those Final Lots, or if a Final Lot is further subdivided in the future, section 7.11 and 7.12 will not be excluded for such additional Dwellings or further subdivision.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does not apply to the Development Contributions that are to be carried out or provided pursuant to this document, except to the extent necessary to enable any Excess Contributions Credit to be recognised and applied, as contemplated by clause 5.9.

4.3 Section 7.24

This document does not exclude the application of section 7.24 of the Act to the Development.

5 Provision of Development Contributions generally

5.1 Developer must make Development Contributions

- (1) The Developer must make Development Contributions to Council in accordance with this document, and in particular in accordance with **Schedule 3**.
- (2) **Schedule 3** has effect in relation to Development Contributions to be made by the Developer under this document and in particular the Developer must, subject to the terms of this document:
 - (a) deliver each Item comprising Works or Land for dedication by the corresponding 'due date or development trigger' identified for that Item in Schedule 3; and
 - (b) pay the Monetary Contribution for each Final Lot by the 'due date or development trigger' identified for the Monetary Contribution in Schedule 3.

5.2 No limit created by Contribution Value

- (1) A Contribution Value specified in relation to a Development Contribution other than a Monetary Contribution does not define or limit the extent of the Developer's obligation in that regard.
- (2) Further to paragraph (1), the Developer is not entitled to any payment, credit or off-set to the extent that any costs incurred by it in making a Development Contribution exceed the relevant Contribution Value.
- (3) If the cost incurred by the Developer to properly perform an obligation to carry out Work or dedicate land is less than a Contribution Value specified in relation to the obligation, the Developer is not required to carry out further Work, dedicate further land or pay money to Council to make up the difference between the Contribution Value and the cost incurred by the Developer in performing the obligation.

5.3 Council's obligation to apply Development Contributions

Council will use its best endeavours to apply each Development Contribution made by the Developer under this document towards the public purpose for which it is made.

5.4 Alternative method of providing items of Work by paying Monetary Contribution

- (1) If Council gives its prior written consent (which may be withheld at its discretion), the Developer may satisfy its obligation under this document to provide any or all of the Works by paying to Council the specified Contribution Value for any or all of the Works.
- (2) If the Developer pays a monetary amount under paragraph (1), the relevant amount must be paid to Council by the time that the relevant item of Work was required to have been Completed under this document.
- (3) Council will spend the Monetary Contribution paid by the Developer under this clause 5.4 on services, infrastructure or facilities to be delivered, in order of precedence:
 - (a) on the Land; or

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- (b) at a location outside the boundary of the Land, but within Council's Local Government Area.
 - (4) The Developer must give, or procure, reasonable access to Council to that part of the Land upon which the Works are to be carried out by Council for the purposes of carrying out the works contemplated by this clause 5.4.

5.5 Alternative method of providing items of Work

If Council gives its prior written consent (which may be withheld at its discretion), the Developer may vary or replace any item of Work provided that:

- (1) the Contribution Value of the varied or new item of Work is the same or greater than the Contribution Value of the original item of Work;
- (2) the varied or new item of Work contains the core elements for that item of the Works as identified in the Contributions Plan.
- (3) the varied or new item of Work serves the same, or a similar, public purpose as the original item of Work;
- (4) the varied or new item of Work is provided at the same time as the original item of Work was required to have been provided under this document; and
- (5) the varied or new item of Work complies with the requirements of any relevant Authority.

5.6 Alternative method of providing Monetary Contributions

- (1) If Council gives its prior written consent (which may be withheld at its discretion), the Developer may make any of the Monetary Contributions by the carrying out of works or the provision of services.
- (2) If the Developer carries out works or provides services under paragraph (1):
 - (a) the Contribution Value of the works on services provided must be equal to or greater than the amount of the relevant Monetary Contribution; and
 - (b) the works on services must be Completed no later than the time by which the Monetary Contribution was required to have been made under this document.

5.7 Rise or Fall - New Contributions Plan

- (1) This clause 5.7 applies if a New Contributions Plan is made before the issue of a Subdivision Certificate for the 409th Final Lot within the Development and the New Contributions Plan identifies (either alone, or together with any other contributions plan) a method or rate for determining contributions which, if applied to the Development, would have resulted in an overall contribution value for the Development (**New Contribution Plan Value**) which is different from the Adjusted VPA Contribution Value.
- (2) Effective from the date on which the New Contributions Plan takes effect, the Notional Values assigned to each Item in **Schedule 3** are replaced:
 - (a) in the case of an Item comprising Land for dedication - by the value ascribed to that Item in the New Contributions Plan or, if that Item is not ascribed a value in the New Contributions Plan, by the value of an item which most closely resembles that Item, adjusted proportionately for any difference in land area; and
 - (b) in the case of an Item of Work - by the value ascribed to that Item in the New Contributions Plan or, if that Item is not ascribed a value in the New Contributions Plan, by the value of an item which most closely resembles that Item, adjusted proportionately for any difference in the nature or scale of works (**Adjusted Notional Values**).

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- (3) Either party may refer a dispute as to the Adjusted Notional Values for expert determination pursuant to clause 19.1.

- (4) If the New Contribution Plan Value is more than the Adjusted VPA Contribution Value, then the Monetary Contribution to be payable for any Final Lot for which a Subdivision Certificate has not yet been issued is to be increased by the amount represented by IMC in the following formula:

$$IMC = (\text{New Contribution Plan Value} - \text{Adjusted VPA Contribution Value}) \div 409$$

- (5) If the New Contribution Plan Value is less than the Adjusted VPA Contribution Value, then the Monetary Contribution to be payable for any Final Lot for which a Subdivision Certificate has not yet been issued, is to be reduced by the amount represented by RMC in the following formula:

$$RMC = (\text{Adjusted VPA Contribution Value} - \text{New Contribution Plan Value}) \div 409$$

- (6) Nothing in this clause 5.7 operates so as to require:

- (a) the Developer to make additional Monetary Contributions; or
- (b) the Council to refund Monetary Contributions,

in respect of Final Lots for which a Subdivision Certificate had already been issued before the New Contributions Plan takes effect.

5.8 Excess Contributions Credit for Additional Park Lands and Works

- (1) This clause 5.8 applies if the LEP is amended generally or substantially as proposed by the Menangle Park Planning Proposal.
- (2) Once the Developer has Completed the Additional Park Works, the Developer will be entitled to an Excess Contributions Credit in the indexed amount of the Contribution Value specified in **Schedule 3** for Works Items 1c and 2a.
- (3) Once the Developer has dedicated the Additional Park Lands comprising Items 1d and 2b in **Schedule 3**, the Developer will be entitled to an Excess Contributions Credit in the indexed amount of the Contribution Value specified in **Schedule 3** for Items 1d and 2b.

5.9 Application of Excess Contributions Credit

- (1) An Excess Contributions Credit which has been generated under this document may be applied by the Developer to discharge:
 - (a) any obligation to pay a Monetary Contribution under this document; or
 - (b) any other obligation to pay a monetary contribution to Council at any land within the Menangle Park Urban Release Area.
- (2) Nothing in this clause 5.9, clause 5.7 or clause 5.8 entitles the Developer to a cash refund from the Council for any Development Contributions provided under this document by the Developer.

5.10 Indexation

- (1) The Contribution Value for each Item of Work specified in **Schedule 3** is to be adjusted quarterly in accordance with the 'Works and Construction' formula at clause 2.10 of the Contributions Plan.
- (2) The Contribution Value for each Item comprising Land for dedication specified in **Schedule 3** is to be adjusted quarterly in accordance with the 'Land Acquisition' formula at clause 2.10 of the Contributions Plan.
- (3) Any Excess Contributions Credit which has been generated under this document, and which has not been applied, will be adjusted quarterly in accordance with the 'Land Acquisition' formula at clause 2.10 of the Contributions Plan.

6 The provision of Monetary Contributions

6.1 Payment of Monetary Contributions

A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document:

- (1) in cash or by unendorsed bank cheque; or
- (2) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

6.2 Council to issue invoices and receipts for Monetary Contributions

- (1) Within five (5) Business Days of a request from the Developer identifying the number of Final Lots to be created upon the issue of a Subdivision Certificate, the Council must provide a Tax Invoice to the Developer in the amount of the Monetary Contribution payable for those Final Lots in accordance with Schedule 3.
- (2) The Council is to provide the Developer with a receipt acknowledging payment of a Tax Invoice, within five (5) Business Days of receiving confirmation that the relevant Monetary Contribution has been paid, or that the Developer elects to have Excess Contributions Credits applied in satisfaction of the amount payable under the Tax Invoice.
- (3) In this clause 6.2, **Tax Invoice** has the same meaning given to that term in clause 26.11.

7 Variation of scope or timing for provision of Works

7.1 Variation to the scope of a Work

- (1) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (2) For the purposes of determining whether to approve a variation under paragraph (1), Council may consider the content of the Contributions Plan and whether the variation prejudices the provision of public services or public amenities for the Development.
- (3) The scope of an item of Work is not to be varied unless Council and the Developer, acting reasonably, agree in writing to the variation.

7.2 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
 - (a) it is unable to Complete any item of Work by the time specified in **Schedule 3**; or
 - (b) it believes that there is a risk of damage to any item of Work if they are delivered by the time required in **Schedule 3**.

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of Work by providing written notice to Council:

 - (c) identifying the relevant item of Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of Work; and
 - (e) identifying the anticipated or proposed time for Completion of the relevant item of Work.

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- (2) Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral, but only to the extent necessary to ensure that Council holds adequate security based on the then estimated cost to complete the relevant item of the Works).
 - (3) If Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (2) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.
 - (c) The time for completion of the Deferred Works under this document is the revised date for Completion specified by Council under paragraph (2)(b) above.

8 Procedures relating to the dedication of Land

8.1 Plan of Management

- (1) The Developer must:
 - (a) as a Development Contribution, fund and prepare a draft Plan of Management for any part of the Land on which an Open Space Work is to be constructed; and
 - (b) provide the draft Plan of Management to Council for Council's consideration not less than six (6) months prior to the time the Land the subject of the draft Plan of Management is required to be dedicated.
- (2) For the purposes of paragraph (1)(a), Council is to promptly provide the Developer with a template of a Plan of Management if requested by the Developer in writing.

8.2 Works to be Completed prior to dedication

Unless Council gives its prior written consent or unless otherwise set out in this document to the contrary, the Developer must not dedicate any part of the Land in accordance with this document unless:

- (1) if required under this document, a Plan of Management prepared under clause 8.1 has been accepted by Council; and
- (2) any Works required to be carried out on that part of the Land have either been:
 - (a) Completed; or
 - (b) deferred in accordance with clause 7.2 to a date after the date that the relevant Land is required to be dedicated under this document.

8.3 Dedication process

- (1) A Development Contribution comprising the dedication of any part of the Land is made for the purposes of this document when:
 - (a) a deposited plan is registered in the register of plans held with the Registrar General that:

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- (i) dedicates the relevant part of the Land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW), or
 - (ii) creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW), or
 - (b) Council is otherwise registered as the proprietor of the relevant Land.
 - (2) The Developer is to give Council, for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* (NSW) in registrable form relating to the Land to be dedicated under this document. Within 15 Business Days of receiving it from the Developer, Council is to execute it and return it to the Developer.
 - (3) Council agrees that it will accept the dedication of any part of the Land subject to the Permitted Encumbrances.

8.4 Remediation of Land to be dedicated to Council

- (1) All Land to be dedicated to Council under the document must be:
 - (a) remediated to Residential “A” land use criteria as defined in National Environment Protection Measures (NEPMs) as amended in 2013; and
 - (b) free from any on-site containment or capping of contaminated soil.
- (2) The remediation activities needed to achieve the requirements of paragraph (1) must be defined in a Remedial Action Plan including remedial methodology, validation criteria and validation procedures.
- (3) The Remedial Action Plan referred to in paragraph (2) must be prepared, or reviewed and approved, by a consultant engaged by the Developer at its cost who is certified under a contaminated land consultant certification scheme as recognised by the New South Wales Environment Protection Authority.

9 Procedures relating to Works

9.1 Design and Specification

- (1) At any time prior to the receipt of the Detailed Design of a Work under paragraph (2), Council may provide the Developer with a direction to vary that item of Work, subject to any such variation:
 - (a) not unreasonably or substantially increasing the cost and timeframe to Complete the Work;
 - (b) not resulting in a change to the matters identified as core elements for that Work in the Contributions Plan; or
 - (c) not being inconsistent with this document or any Development Consent for the Development;
- (2) Before commencing construction of any item of Work, the Developer must submit to Council for its approval the Detailed Design for the Work.
- (3) If, within thirty (30) days of the date of submission referred to in paragraph (1):
 - (a) Council notifies the Developer in writing of its approval of the Detailed Design, the Developer must carry out and Complete the relevant item of Work in accordance with that Detailed Design;
 - (b) Council fails to notify the Developer in writing that it:
 - (i) approves or does not approve of the Detailed Design; or

- (ii) does not require the Developer to make modifications to be made to that Detailed Design,

Council is taken to have approved the Detailed Design of the item of Work and the Developer may carry out and Complete the Work in accordance with that Detailed Design; or

- (c) Council notifies the Developer in writing that it does not approve of the Detailed Design or requires the Developer to make modifications identified in that notice, the Developer may:
 - (i) amend the Detailed Design and submit to Council the amended Detailed Design, in which case the Developer must submit any such amended Detailed Design to Council under paragraph (1); or
 - (ii) if the Developer does not agree with the modifications requested by Council, refer the matter for expert determination or mediation under this document.
- (4) For the purpose of clarity, paragraph (3) applies to any amended Detailed Design submitted by the Developer.

9.2 Standard of construction of Work

Any Work that the Developer is required to carry out under this document must be carried out in accordance with:

- (1) this document;
- (2) any further agreement entered into under clause 3.5;
- (3) the Detailed Design for the Work approved under clause 9.1;
- (4) the requirements of any approval, consent, permission or licence issued by a relevant Authority;
- (5) any Australian standards and other laws applicable to the Work; and
- (6) in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

9.3 Access for Works

- (1) The Developer must permit Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, to:
 - (i) inspect, examine or test any Work; or
 - (ii) remedy any breach by the Developer in carrying out a Work.
- (2) Where Council, its officers, employees, agents and contractors enter the Land for the purposes outlined within this clause 9.3, Council must abide by all reasonable work, health and safety requirements of the Developer.
- (3) Council may at its absolute discretion and in accordance with Council policies from time to time permit the Developer to enter and occupy any land owned or controlled by Council for the purposes of enabling the Developer to comply with their obligations under clauses 11 and 13 of this document.

9.4 Protection of people and property

The Developer must ensure to the extent reasonably practicable in carrying out any Work that:

- (1) all necessary measures are taken to protect people and property;
- (2) unnecessary interference with the passage of people and vehicles is avoided; and
- (3) nuisances and unreasonable noise and disturbances are prevented.

10 Provisions with respect to the Completion of the Works

10.1 Developer must notify

The Developer must provide a Completion Notice to the Council within ten (10) business days of the Developer believing it has achieved Completion of any item of Work.

10.2 Inspection

The Council must inspect the item of Work set out in a Completion Notice within ten (10) Business Days of the receipt of that Completion Notice.

10.3 Council to notify

- (1) Within the earlier of:
 - (a) ten (10) business days of inspecting the item of Work identified in a Completion Notice; and
 - (b) twenty (20) business days from the receipt of the relevant Completion Notice, Council must provide notice in writing to the Developer that:
 - (c) Council is satisfied that the item of Work has been Completed; or
 - (d) Council is not satisfied that the item of Work has been Completed, in which case the notice must also detail Council's reasons for that decision.
- (2) If Council provides a notice to the Developer under paragraph (1)(c) or does not provide the Developer with notice in accordance with paragraph (1), then the item of Work set out in the Completion Notice will be deemed to have been Completed, and the Development Contribution comprising that item of Work will be recognised as having been provided for the purpose of this document, on the date nominated in the Completion Notice.
- (3) Where Council serves notice on the Developer pursuant to paragraph (1)(d) the Developer must:
 - (a) carry out such works as are required to address the matters set out in the notice within three (3) months from the date it is issued by the Council unless otherwise agreed by the Council; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice. If the Developer serves notice on the Council in accordance with paragraph (a) the expert determination process at clause 19 will apply.

10.4 Developer's further notification

- (1) Where the Developer rectifies the Works in accordance with clause 10.3(3)(a) it must serve upon the Council a new Completion Notice for the item of Work it has rectified (**New Completion Notice**).
- (2) The provisions of clauses 10.1 to 10.4 (inclusive) apply to any New Completion Notice issued by the Developer.

10.5 Works-as-executed-plan

No later than sixty (60) days after an item of Work is Completed in accordance with this document, the Developer must submit to Council:

- (1) a full works-as-executed-plan for the relevant item of Work; and
- (2) the technical or operation manual, specifications and warranties (if any) for any product that forms part of the relevant item of Work.

10.6 Hand-over of Works

- (1) Subject to anything to the contrary in this document, Council accepts responsibility for an item of Work on the later of:
 - (a) the date when the item of Work is Completed for the purposes of this document; or
 - (b) if the Work is carried out on land which is to be dedicated to Council under this document, the date of dedication of that land.
- (2) The Developer, at its own cost, must repair and make good to the satisfaction of Council (acting reasonably) any loss or damage to a Work from any cause whatsoever which occurs before the Work is Completed for the purposes of this document.

11 Procedures relating to the rectification of defects

11.1 Definition of Defects Liability Period

In this clause 11 the following definitions apply:

- (1) **Building Works** has the same meaning as in the Act.
- (2) **Defects Liability Period** means:
 - (a) for an Open Space Work (other than a Building Work), or any Work in **Schedule 3** specified under "Transport Infrastructure" or "Water Quality and Treatment Basin Work" - twelve (12) months from the date the Work is Completed for the purposes of this document; and
 - (b) for Building Work – twelve (12) months from the date the Work is Completed for the purposes of this document.

11.2 Council may issue Rectification Notice

During the Defects Liability Period, Council may give to the Developer a Rectification Notice.

11.3 Developer must comply with Rectification Notice

The Developer must comply with a Rectification Notice at its own cost, according to the terms of that notice and to the satisfaction of Council, acting reasonably.

11.4 If the Developer fails to comply with a Rectification Notice

- (1) Council may enter upon the Land for the purpose of satisfying a Rectification Notice where the Developer has failed to comply with, the Rectification Notice, but only after giving the Developer not less than ten (10) business days written notice of its intention to do so.
- (2) If Council elects to exercise the step-in rights granted to it under paragraph (1) then:
 - (a) Council may:
 - (i) enter upon any part of the Land to which it requires access in order to satisfy the obligations of the Developer in accordance with the Rectification Notice; and
 - (ii) rectify the relevant Defects in accordance with the Rectification Notice; and
 - (b) the Developer must not impede or interfere with Council in undertaking that work.
- (3) Where Council exercises its step-in rights in accordance with this clause 11.4, all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt immediately due and owing by the Developer.

11.5 End of the Defects Liability Period

- (1) By no later than ten (10) business days prior to the end of the Defects Liability Period:
 - (a) Council will undertake a final inspection of the relevant item of Work; and
 - (b) Council may either:
 - (i) by way of written notice to the Developer, confirm that the item of Work is acceptable to Council, acting reasonably; or
 - (ii) issue a Rectification Notice to the Developer if it identifies any part of the item of Work which is not acceptable to Council, acting reasonably.
- (2) If Council issues a Rectification Notice under paragraph (1)(b)(ii), the Developer must comply with the Rectification Notice at its own cost, according to the terms of that notice and to the satisfaction of Council, acting reasonably (and for the purpose of clarity, clause 11.4 applies with respect to any such Rectification Notice).
- (3) Council may not issue a further Rectification Notice under paragraph (1) for any additional unacceptable parts of the item of Work that were not identified in the Rectification Notice issued under paragraph (1)(b)(ii).
- (4) If Council does not issue a Rectification Notice within ten (10) business days after undertaking a final inspection of the Works under paragraph (1)(a), the Works will be deemed to be acceptable to Council.
- (5) If Council issues a Rectification Notice under paragraph (1), the Defects Liability Period for the item of Work the subject of that Rectification Notice does not end for the purpose of this document until the relevant matters set out in that Rectification Notice have been addressed in accordance with this document.

12 Failure to carry out Work

12.1 Council may issue notice

- (1) If Council considers that the Developer is in breach of any obligation under this document relating to the carrying out of any Work, including Work the subject of a Rectification Notice, Council may give the Developer a notice under this clause 12.
- (2) The notice may require the Developer to:
 - (a) rectify the breach to Council's satisfaction; and
 - (b) immediately cease carrying out further work relating to the Work except to rectify the breach.
- (3) A notice given under paragraph (1) must allow the Developer not less than twenty eight (28) Business Days (or such further period as Council considers reasonable in the circumstances) to rectify the breach.

12.2 Developer must comply

The Developer must comply with any notice issued by Council under clause 12.1

12.3 If Developer fails to comply

- (1) Without limiting any other rights Council has to enforce this document, if the Developer does not comply with a notice given under clause 12.1 then Council may:
 - (a) call upon the Security;
 - (b) carry out and complete the Work the subject of the Developer's breach; and

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- (c) in the event the costs reasonably incurred by Council in carrying out the Works cannot be met by the Security, the Developer must pay the difference to Council within twenty eight (28) days of receiving a written demand for such payment by Council.
 - (2) Clauses 19 and 20 do not prevent a notice being given under clause 12.1, nor do they apply to such a notice or the circumstances relating to the giving of the notice. Any procedure commenced under clause 19 or clause 20 ceases to apply when such a notice is given.
 - (3) For the purposes of paragraph (1), the costs which Council can recover include fees and charges incurred by Council, Council's employees, agents and contractors, and legal costs and expenses.

13 Maintenance and management of Works

13.1 Definitions

- (1) In this clause the following definitions apply:
 - (a) **Hard Landscaping Work** means items such as paving, seating, buildings, signage, lighting, playground equipment, and any other landscaping work that is not a Soft Landscaping Work.
 - (b) **Maintenance Period** means:
 - (i) in respect of Hard Landscaping Work, a period of twelve (12) months commencing on the date the Work is Completed for the purpose of this document;
 - (ii) in respect of Soft Landscaping Work, a period of twelve (12) months commencing on the date the Work is Completed for the purpose of this document; and
 - (iii) in respect of Water Quality and Treatment Basin Work, a period of twelve (12) months commencing on the date the Work is Completed for the purpose of this document.
 - (c) **Maintenance Compliance Certificate** means a written notice issued by Council in accordance with clause 13.3(4)(b)(i) or an Independent Verifier in accordance with clause 13.3(9)(b)(i).
 - (d) **Maintenance Standards** means the maintenance standards and performance criteria of what constitutes fair wear and tear for the Works during the Maintenance Period set out in any Plan of Management or draft Plan of Management relating to the Work or the land on which the Work is or is to be located.
 - (e) **Plan of Management** means a plan of management within the meaning of s36 of the *Local Government Act 1993* (NSW).
 - (f) **Soft Landscaping Work** means any Work comprising the planting of vegetation and associated preparation of planting beds or growing medium, such as shrubs, groundcovers, mulch and grass.
 - (g) **Water Quality and Treatment Basin Work** means any work comprising landscaping of grasses, shrubs and/or trees with an underlying filter media installed as bio-retention basins, wetlands and/or swales.
 - (i) Stage 1 Works means any Water Quality and Treatment Basin Work excluding:
 - (A) the upper 100mm of filter media; and

- (B) any work comprising landscaping of grasses, shrubs and/or trees; but
- (C) including the installation of geotextile fabric to the upper surface of the works.
- (ii) Stage 2 Works means any works comprising landscaping of grasses, shrubs and/or trees with an underlying filter media installed as bio-retention basins, wetlands and/or swales not installed as part of Stage 1 Works including to removal of geotextile fabrics installed as part of Stage 1 works.

13.2 Developer must maintain

Subject to clause 13.5(1) and 13.5(2), the Developer must maintain each Hard Landscaping Work, Soft Landscaping Work and Water Quality and Treatment Basin Work during the Maintenance Period in accordance with:

- (1) any matters set out in clause 9.2;
- (2) any Plan of Management or draft Plan of Management relating to the Work or the land on which the Work is or is to be located; and
- (3) the Maintenance Standards.

13.3 Maintenance Compliance Certificate

- (1) The Developer may seek a Maintenance Compliance Certificate for a Work from either Council or an Independent Verifier.
- (2) If the Developer elects to appoint Council to issue the Maintenance Compliance Certificate:
 - (a) Council is to undertake an inspection of the Work the subject of the Maintenance Period;
 - (i) in respect of Hard Landscaping Work every three (3) months commencing on the date that the Work is completed for the purpose of this document;
 - (ii) in respect of Soft Landscaping Work, every six (6) months commencing on the date that the Work is completed for the purpose of the document; and.
 - (iii) in respect of Water Quality and Treatment Basin Works, every six (6) months commencing on the date that the Work is completed for the purpose of the document.
- (3) After each inspection, Council is to provide written notice to the Developer advising whether the Work has been maintained and managed in accordance with clause 13.2.
- (4) By no later than ten (10) Business Days prior to the end of the Maintenance Period:
 - (a) Council will undertake a final inspection of the Work; and
 - (b) Council may either:
 - (i) by way of written notice to the Developer, confirm that the Work has been maintained by the Developer in accordance with this clause 13; or
 - (ii) issue a notice to the Developer if it identifies any part of the Work which has not been maintained by the Developer in accordance with this clause 13.

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- (5) If Council issues a notice under clause 13(4)(b)(ii) the Developer must comply with that notice at its own cost.
 - (6) Council may not issue a further notice under clause 13.3(4)(b)(ii) for any additional unacceptable parts of the Work that were not identified in the original notice issued under 13.3(4)(b)(ii).
 - (7) If the Developer elects to appoint an Independent Verifier to issue the Maintenance Compliance Certificate:
 - (a) prior to the provision of an Occupation Certificate, the Developer is to give Council written notice of the details of the nominated Independent Verifier;
 - (b) within twenty (20) Business Days' of notice provided in clause 13.3(7)(a) the parties are to agree on the appointment of an Independent Verifier and in the event that the parties cannot agree, then the Independent Verifier to be nominated by the Ecological Consultants Association of NSW for Water Quality and Treatment Basin Works and Australian Institute of Landscape Architects for Hard Landscaping Works and Soft Landscaping Works; and
 - (c) the Independent Verifier is to undertake an inspection of the Work the subject of the Maintenance Period;
 - (i) in respect of Hard Landscaping Work every three (3) months commencing on the date that the Work is completed for the purpose of this document; and
 - (ii) in respect of Soft Landscaping Work, every six (6) months commencing on the date that the Work is completed for the purpose of the document.
 - (iii) in respect of Water Quality and Treatment Basin Works, every six (6) months commencing on the date that the Work is completed for the purpose of the document.
 - (8) After each inspection, the Independent Verifier is to provide written notice to each of the parties advising whether the Work has been maintained and managed in accordance with clause 13.2.
 - (9) By no later than ten (10) Business Days prior to the end of the Maintenance Period:
 - (a) the Independent Verifier will undertake a final inspection of the Work; and
 - (b) the Independent Verifier may either:
 - (i) by way of written notice to the Developer, confirm that the Work has been maintained by the Developer in accordance with this clause 13; or
 - (ii) issue a notice to the Developer if it identifies any part of the Work which has not been maintained by the Developer in accordance with this clause 13.
 - (10) If the Independent Verifier issues a notice under clause 13.3(9)(b)(ii) the Developer must comply with that notice at its own cost.
 - (11) The Independent Verifier may not issue a further notice under clause 13.3(9)(b)(ii) for any additional unacceptable parts of the Work that were not identified in the original notice issued under 13.3(9)(b)(ii).
 - (12) If Council does not agree with the decision of the Independent Verifier referred to in clause 13.3(9)(b)(i), then clause 19 applies.
 - (13) For the purposes of this clause, maintenance includes repairing damage caused by vandalism to the Work (including replacement of plants due to vandalism) but does not include deterioration as a result solely of fair wear and tear.

13.4 No further claim against Developer

If the Developer has complied with its obligations under this clause 13, Council cannot make any Claim (other than a Claim arising from the negligence of the Developer or a breach of this document by the Developer), objection or demand about the state or condition of a Work after the end the Maintenance Period for that Work, other than with respect to defects notified to Council in accordance with clause 10.5.

13.5 Developer may elect to pay Monetary Contribution

- (1) At the request of the Developer and provided that Council agrees, the Developer may satisfy any of its obligations in relation to the maintenance and management of the Works by paying the Notional Value assigned to the respective maintenance and management of the Work as a Monetary Contribution.
- (2) Council agrees that if the Developer performs its obligations under this document in relation to maintenance and management of a Work in accordance with paragraph (1), Council will hold the monetary Development Contribution for the purpose of the maintenance and management of the Work and apply the money towards that purpose.
- (3) The Developer must give, or procure, reasonable access to Council to that part of the Land upon which management and maintenance of the Work are to be carried out by Council in accordance with paragraph (2).
- (4) For the avoidance of doubt, if the Developer pays the Notional Value for the maintenance and management of the Work in lieu of carrying out the maintenance and management pursuant to paragraph (1), the Developer is not required to carry out the maintenance and management of the Work.

14 Council may withhold Subdivision Certificate

14.1 Final Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate that creates a Final Lot in the Development if, at the date of the application, the Developer is not in breach of its obligation to make Development Contributions under this document.
- (2) If an application for a Subdivision Certificate that creates a Final Lot in the Development is made in spite of paragraph (1), Council may withhold the issue of that Subdivision Certificate until the Developer has made all Development Contributions under this document required to be made prior to that Subdivision Certificate being issued.

14.2 Council may withhold Subdivision Certificates

- (1) The Developer acknowledges and agrees that the issue of a Subdivision Certificate may be withheld if, at the relevant time, the Developer is in breach of any obligation to make Development Contributions under this document until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Development Contributions to which the breach relates and any amount required to be paid by the Developer under this document on account of that breach over and above the amount of the Security is paid in full.
- (2) For the purpose of clarity, Council may not withhold the issue of a Subdivision Certificate if the Developer has not met its obligations to maintain and manage Works.

15 Security for the dedication of land

15.1 Council may acquire

If the Developer does not dedicate any part of the Land required to be dedicated under this document by the time by which it is required to be dedicated, the Developer agrees that Council may compulsorily acquire that land:

- (1) for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act; and
- (2) at any time determined by Council.

15.2 Agreement to acquire

The parties acknowledge and agree that clause 15.1 constitutes an agreement for the purpose of section 30 of the Just Terms Act.

15.3 Additional comfort for Council

- (1) If, as a result of an acquisition referred to in clause 15.1, Council is required to pay compensation to any person other than the Developer, the Developer must reimburse Council, as a Development Contribution, for that amount upon a written request being made by Council.
- (2) The Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Land that is required to be dedicated under this document.
- (3) The Developer must promptly do all things necessary, and consent to Council doing all things necessary, to give effect to this clause 15, including without limitation:
 - (a) signing any documents or forms;
 - (b) giving land owner's consent for the lodgement of any Development Application;
 - (c) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and
 - (d) paying Council's costs arising from this clause 15.

16 Security for carrying out of Work

16.1 Provision of Security

Subject to paragraph 16.2, prior to the issue of a Construction Certificate for any stage of the Development where an item of Work must be Completed prior to the issue of a Subdivision Certificate with respect to that stage, Council must be given separate Bank Guarantees:

- (1) for the amount equivalent to the Contribution Value for the relevant item of Works (**Primary Security**); and
- (2) for an amount equivalent to ten (10%) of the Contribution Value for the relevant item of Works (**Defects Security**),

(collectively referred to as the **Security**).

16.2 Floating Security

The Developer may satisfy clause 16.1 by allowing Council to retain any Security previously provided under this document, provided that Council holds Security in an amount no less than the aggregate required to be provided by the Developer under this clause 16 at the relevant time.

16.3 Council may call on Security

If the Developer is indebted to Council under this document, without limiting any other remedies available to it, Council may call on any Security held by Council at that time.

16.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security which Council is entitled to hold at that time under this document.

16.5 Release of Primary Security

Unless:

- (1) Council has made a demand against the Primary Security provided to it;
- (2) if applicable, the Development Contributions on account of which that Security was provided have not been provided;
- (3) at the relevant time the relevant item of Works to which the Primary Security relates has not been Completed; or
- (4) at the relevant time the Developer has not remedied a breach of this document of which it has been given notice by Council,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) Business Days of such a request being made.

16.6 Release of Defects Security

Unless:

- (1) Council has made a demand against the Defects Security provided to it;
- (2) the relevant Defects Liability Period has not expired; or
- (3) at the relevant time the Developer has not remedied a breach of this document of which it has been given notice by Council,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) Business Days of such a request being made.

16.7 Indexation of value of Security value

The Developer must ensure that, on an annual basis from the date of commencement of this document, that the Security then held by Council equals the indexed amount of the Contribution Values for the relevant Works for which Security is required to be held at that time.

17 Registration of this planning agreement

17.1 Obligation to register

- (1) This document must be registered on the title of the Land pursuant to section 7.6 of the Act.
- (2) The Developer must:
 - (a) do all things necessary to allow the registration of this document to occur under paragraph (1) on the title of the Land; and
 - (b) pay any reasonable costs incurred by Council in undertaking that registration.

17.2 Removal of this document from title of the Land

- (1) After the Developer has satisfied its obligations in accordance with this document, Council will do all things necessary to remove this document from the title to the Land as quickly as practicable.

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- (2) From time to time, the Developer, by notice in writing, may request that Council facilitate the removal of this document from the title to any part of the Land.
 - (3) This document is to be removed from the title to any part of the Land if the Developer gives Council a written notice requesting such removal and:
 - (a) the Developer satisfies Council that the Developer has fulfilled its Development Contribution obligations under this document with respect to that part of the Land from which a removal is being sought; and
 - (b) the Developer is not otherwise in default of any of its material obligations under this document.
 - (4) Without limiting paragraph (3), this document will be removed from the title to a Super Lot if the Developer gives Council a written notice requesting such removal and:
 - (a) the Developer has provided Security under this document with respect to any:
 - (i) items of Work required to be provided prior to the release of any Subdivision Certificate for the creation of Final Lots from that Super Lot; and
 - (ii) Monetary Contribution determined by Council, acting reasonably, that will be required to be paid upon any subdivision of that Super Lot, or
 - (b) the Developer has complied with its obligations under this document with respect to that part of the Land to which such notice relates.
 - (5) Upon receipt of a notice under this clause 17.2, Council will do all things necessary to remove this document from the title to the Land specified in the notice as quickly as practicable if the party giving the notice has complied with its obligations under this clause 17.2.

18 Enforcement

- (1) Either party may enforce this document in any court of competent jurisdiction.
- (2) For the avoidance of doubt, nothing in this document prevents:
 - (a) a party from bringing proceedings in the Court to enforce any aspect of this document or any matter to which this document relates; and/or
 - (b) Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this document or any matter to which this document relates.

19 Dispute resolution - expert determination

19.1 Application of this clause

- (1) This clause applies to a dispute under this document about a matter that can be determined by an appropriately qualified expert (**Expert Determination Dispute**).
- (2) An Expert Determination Dispute is taken to arise if a party gives the other party a notice in writing specifying particulars of the dispute and requiring it to be determined by an appropriately qualified expert (**EDD Notice**).
- (3) If the parties disagree over whether a dispute is properly an Expert Determination Dispute, then either party may refer that issue to the Chief Executive Officer (**CEO**) of the professional body that represents persons with the relevant expertise, for a determination of that issue. The CEO's determination is final and binds the parties.

19.2 Selection and engagement of Expert

- (1) If an EDD Notice has been given under clause 19.1, the parties must use all reasonable endeavours to agree on a person who is independent of the parties,

and is qualified in fields which are relevant to the issues comprising the Expert Determination Dispute, as the expert to determine the issues.

- (2) If the parties have not reached agreement on an expert within ten (10) business days of the giving of the relevant EDD Notice, either party may refer the dispute to the President of the NSW Law Society to nominate an expert to determine the dispute.
- (3) The parties must use their best endeavours to finalise the terms of the expert's retainer and appoint the expert as soon as possible and, in any event, within ten (10) Business Days after the expert has been agreed or nominated in accordance with this clause 19, and which must include directions to the expert to undertake the determination of the Expert Determination Dispute in accordance with this clause 19.
- (4) If the expert appointed under paragraph (3) dies or resigns, or the parties agree to replace the expert, then paragraphs (1), (2) and (3) re-apply as if a notice was given under clause 19.1 in respect of the same issues on the day on which all parties became aware that the expert has died or resigned or they agree to replace the expert.

19.3 Expert no longer independent

If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially:

- (1) the expert must inform the parties immediately;
- (2) the appointment of the expert will terminate unless the parties agree otherwise; and
- (3) if they agree to replace the expert, the parties must promptly do all things necessary to do so.

19.4 Role of the expert

- (1) The parties acknowledge and agree that the expert should, and they will use their best endeavours to ensure that expert will:
 - (a) issue his or her determination with respect to the Expert Determination Dispute as soon as possible;
 - (b) treat all information provided to him or her in relation to the Expert Determination Dispute as confidential;
 - (c) act as an expert and not as an arbitrator;
 - (d) act independently of the parties, and act fairly and impartially as between the parties;
 - (e) give each party a reasonable opportunity of presenting its case by way of written submissions (which must be provided in full to the other party) and countering any arguments of any opposing party by way of written submissions in reply;
 - (f) proceed in any matter he or she thinks fit;
 - (g) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
 - (h) conduct any investigation which he or she considers necessary to resolve the dispute;
 - (i) examine such documents, and interview such persons, as he or she may require; and

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- (j) make such directions for the conduct of the expert determination as he or she considers necessary.

19.5 Determination of the expert

- (1) The parties acknowledge and agree that the determination of the expert binds the parties, except in the case of the expert's fraud or misfeasance.
- (2) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:
 - (a) the party which noticed the relevant matter must notify the other party in writing promptly,
 - (b) the parties must use their best endeavours to ensure that the expert corrects the determination within ten (10) business days after they receive notice; or
 - (c) if the expert does not correct the determination within that time, the parties may agree to appoint a substitute expert.
- (3) Each party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination and must pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

20 Dispute resolution – mediation

20.1 Application

This clause applies to any dispute under this document other than a dispute to which clause 19 applies (**Mediation Dispute**).

20.2 Notice

A Mediation Dispute is taken to arise if one party gives the other party a notice in writing specifying particulars of the dispute (**MD Notice**).

20.3 Procedure

- (1) The parties must meet within fourteen (14) days of the service of an MD Notice to try to resolve the Mediation Dispute.
- (2) If the Mediation Dispute is not resolved within a further twenty eight (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.
- (3) If the Mediation Dispute is not resolved by mediation within a further twenty eight (28) days, or any longer period that may be needed to complete any mediation process which has been started, then the parties may exercise their legal rights in relation to the matter the subject of the Mediation Dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

21 Assignment, sale of Land, etc

- (1) Unless the precondition specified in paragraph (2) is satisfied, the Developer must not:
 - (a) transfer the Land or any part of it, other than a Final Lot, to any person other than Council, the Minister or RMS; or
 - (b) assign its rights or obligations under this document, or novate this document, to any person.
- (2) The precondition to be satisfied under paragraph (1) is that the Developer has, at no cost to Council, procured the execution by the person to whom the Developer proposes to assign the Land, or to whom the Developer's rights or obligations

under this document are to be assigned or novated (**Third Party**), of an agreement in favour of Council to the effect that the Third Party is bound as if a party to this document.

22 Position of Council

22.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Legislation.

22.2 Agreement does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

22.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 22 is substantially satisfied; and
 - (b) in the event that paragraph (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to that extent this document is not to be taken to be inconsistent with the Law.

22.4 No obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Land or the Development.

23 Indemnity & Insurance

23.1 Indemnity

Each party indemnifies the other party from and against all Claims that may be sustained, suffered, recovered or made against each other party arising in connection with the performance of that party's obligations under this document except if, and to the extent that, the Claim arises because of the another party's negligence or default.

23.2 Insurance

- (1) The Developer must take out and keep current to the satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this document, up until the time that the Work is taken to have been Completed in accordance with this document:
 - (a) contract works insurance, noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal

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- of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- (b) public liability insurance for at least \$20,000,000.00 for a single occurrence which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - (c) workers compensation insurance as required by law, and
 - (d) any other insurance required by law.
- (2) If the Developer fails to comply with clause 23.2(1), Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to Council and may be recovered by Council as it deems appropriate, including:
- (a) by calling upon any Security provided by the Developer to Council pursuant to clause 16; or
 - (b) recovery as a debt due in a court of competent jurisdiction.
- (3) The Developer must not commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in clause 23.2(1).
- (4) Council acknowledges and agrees that the insurances required to be taken out and kept current by the Developer in accordance with this clause 23.2 may be novated to the Third Party.

24 Review of this document

24.1 Developer to report

- (1) The Developer must provide Council with a report every three (3) years detailing the performance of the Developer's obligations under this document.
- (2) The report is to be:
 - (a) given no later than every three (3) years from the date on which this document is entered into; and
 - (b) in the form and addressing the matters Council notifies to the Developer from time to time.

24.2 Parties to review

- (1) The parties are to review this document every three (3) years, and otherwise if either party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this document.
- (2) For the purposes of paragraph (1), the relevant changes include 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.
- (3) For the purposes of addressing any matter arising from a review of this document referred to in paragraph (1), the parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this document.
- (4) If this document 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 document is entered into.
- (5) A party's failure to agree to take action requested by the other party as a consequence of a review referred to in paragraph (1) is not a dispute for the purposes of clauses 19 and 20, and is not a breach of this document.

25 Confidentiality

25.1 Agreement not confidential

The parties acknowledge and agree that the terms of this document are not confidential and this document may be treated as a public document and exhibited or reported without restriction by any party.

25.2 Acknowledgement

- (1) The parties acknowledge that:
 - (a) confidential information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document;
 - (b) the parties may disclose to each other further confidential information in connection with the subject matter of this document, and
 - (c) subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any confidential information received before or after the making of this document to any person without the prior written consent of the party who supplied the confidential information; or
 - (ii) to take all reasonable steps to ensure all confidential information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose confidential information in the following circumstances:
 - (a) in order to comply with the law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

26 Miscellaneous provisions

26.1 Notices

- (1) A notice, consent, information, application or request (**Notification**) that must or may be given or made to:
 - (a) any other party under this document, must only be given or made if it is in writing and sent in one of the following ways:
 - (b) delivered or posted to that party at its address set out in this document; or
 - (c) emailed to that party at its email address set out in this document.
- (2) A party may change its address or email address by giving the other party three (3) business days' notice of the change, in which case the new address or email address is treated as the address or number in this document.
- (3) A Notification is to be treated as given or made under paragraph (1)(a) if it is:
 - (a) delivered, when it is left at the relevant address;
 - (b) sent by post, two (2) business days after it is posted; or
 - (c) sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of twenty-four (24) hours of the email being sent.

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- (4) If a Notification 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.

26.2 Approvals and consent

- (1) In this clause 26.2, a reference to an approval or consent does not include a reference to a Development Consent.
- (2) Except as otherwise set out in this document, and subject to any statutory obligations,
 - (a) each party must act in good faith towards each other party; and
 - (b) a party must act reasonably and in a timely way in giving or withholding an approval or consent to be given under this document.
- (3) A party must give its reasons for giving or withholding consent or for giving consent subject to conditions.

26.3 Costs

The Developer is to pay Council's reasonable costs of preparing, negotiating, executing and stamping this document and any document related to this document.

26.4 Entire Agreement

- (1) This document contains everything to which the parties have agreed in relation to the matters it deals with.
- (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 document was executed, except as permitted by law.

26.5 Further acts

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 document and all transactions incidental to it.

26.6 Governing law and jurisdiction

- (1) This document is governed by the Law of New South Wales.
- (2) The parties submit to the non-exclusive jurisdiction of its courts, and are not to object to the exercise of jurisdiction by those courts on any basis.

26.7 Representations and warranties

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

26.8 Severability

- (1) If a clause or part of a clause 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.
- (2) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this document, but the rest of this document is not affected.

26.9 Modification

No modification of this document has any effect unless it is in writing and signed by the parties and otherwise in accordance with the Act.

26.10 Waiver

- (1) A party does not waive any of the other party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this document.
- (2) A waiver by a party is effective only if it is in writing.
- (3) A written waiver by a party is effective only in relation to the particular obligation or breach for which it is given. 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.

26.11 GST

- (1) In this clause 26.11 the following definitions apply:

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 for the Taxable Supply.

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.

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 for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- (2) Subject to paragraph (4), if GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (3) Paragraph (2) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this document to be GST inclusive.
- (4) No additional amount is payable by Council under paragraph (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.
- (5) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this document 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* (Cth), the parties agree:
 - (a) to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies; and
 - (b) that any amounts payable by the parties in accordance with clause (as limited by paragraph (2) (as limited by clause 47(d)) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.

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- (6) No payment of any amount under this clause 26.11, 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 the recipient with a Tax Invoice or Adjustment Note as the case may be.
 - (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.
 - (8) This clause continues to apply after expiration or termination of this document.
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Schedule 1

Requirements under the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: (1) sought a change to an environmental planning instrument. (2) made, or proposes to make, a Development Application. (3) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(1) No (2) Yes (3) Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	Refer to the definition of 'Land' in Schedule 2
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Does not apply to the Development
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Does not apply to the Development
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Refer to clause 4.2 of the Planning Agreement.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clauses 19 and 20.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 18.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 22.

Schedule 2

Defined terms and interpretation

Part 1 – Defined terms

The following definitions apply unless the context requires otherwise.

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Additional Park Lands	<p>means:</p> <ol style="list-style-type: none">(1) that area of land to be dedicated as local park as part of Contribution Item 1d in Schedule 3 having an area of approximately 6,870 square metres; and(2) that area of land to be dedicated as part of Contribution Item 2b in Schedule 3 having an area of approximately 3,834 square metres, <p>which areas are in addition to the 5,000 square metres of park land referred to in Contribution Item 1a and contemplated by the Contributions Plan.</p>
Additional Park Works	means the Works to be carried out as part of Contribution Items 1c and 2a in Schedule 3 .
Adjusted Notional Values	has the meaning given to that expression in clause 5.7 of this document, being those values which, pursuant to clause 5.7, replace the Notional Values assigned to each Item in Schedule 3 .
Adjusted VPA Contribution Value	means the total value of the Development Contributions, applying the Adjusted Notional Values in place of the corresponding Notional Values in Schedule 3 , and disregarding the Additional Park Lands and Additional Park Works.
Approval	includes approval, consent, licence, permission or the like.
Authority	means the Commonwealth of Australia, the State of New South Wales, or any department or agency of the Commonwealth of Australia or the State of New South Wales, any public authority within the meaning of the Act, and any court or tribunal.
Bank Guarantee	<p>means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:</p> <ol style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) Macquarie Bank.(4) National Australia Bank Limited.(5) St George Bank Limited.(6) Westpac Banking Corporation.(7) Any other financial institution approved by Council, in its absolute discretion, in response to a request from the Developer.

Building Work	has the same meaning as in the Act.
Claim	against any person means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense, or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete	means the point in time at which an item of Work is fit for use and occupation, and is capable of being used and occupied for its intended purposes, except for minor omissions and minor defects which the Developer has reasonable grounds for not rectifying before public use and occupation of the item of Work, and which will not prejudice the convenient and safe use of the item of Work.
Completion Notice	means a notice issued under this document by the Developer to Council specifying an item of Work that the Developer believes is Complete.
Construction Certificate	has the same meaning as in the Act.
Contributions Plan	means the Menangle Park Contributions Plan 2020.
Contribution Value	means: <ul style="list-style-type: none"> (1) in relation to an item of Work, the amount specified in Schedule 3 as the “<i>Notional Value of Works</i>” for that item of Work; and (2) in relation to an Item (or any part) comprising Land to be dedicated, the amount specified in Schedule 3 as the “<i>Notional Value of Land</i>” for that Land.
Court	means the Land and Environment Court of New South Wales.
Defect	means a material defect that adversely affects the structural integrity, functionality or use or enjoyment of a Work or part of a Work.
Defects Liability Period	has the meaning ascribed to it in clause 11.1.
Detailed Design	means plans and specifications which are sufficiently advanced so as to be suitable to enable the issue of a Construction Certificate for the relevant Work.
Development	the development of the Land: <ul style="list-style-type: none"> (1) so as to create Final Lots; (2) so as to construct the first single Dwelling on any Final Lot created by the Developer; and (3) for associated purposes including subdivision, community and commercial facilities, parks, open space and infrastructure, generally as contemplated by the Stage 1 Development Application, the Stage 2A Development Application, the Stage 2B Development

	Application, the Hilltop and Linear Park Development Application and any Development Consent for those Development Applications.
Development Application	has the same meaning as in the Act.
Development Area	means the area described as ‘Land to which this VPA Applies’ as shown on the Development Area Plan.
Development Area Plan	means the plan attached as Annexure 1 .
Development Consent	means a development consent or project approval within the meaning of the Act with respect to the Development.
Development Contribution	<p>means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:</p> <ol style="list-style-type: none"> (1) a monetary contribution; (2) the dedication of land free of cost; (3) the carrying out of work; and (4) the provision of any other material public benefit.
Dwelling	means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land.
Encumbrance	<p>means:</p> <ol style="list-style-type: none"> (1) an interest or power reserved in or over an interest in any asset; (2) an interest or power created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement restriction on the use of land or positive covenant, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (3) an interest or power by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. <p>However, the parties agree that Encumbrance does not include a Biobanking agreement or similar instrument relating to the conservation of biodiversity or as otherwise agreed between the parties during approval of the Detailed Design under clause 9.</p>
Excess Contributions Credit	means a credit in recognition for the surplus Development Contributions which have been provided by the Developer under this document.
Final Lot	means a lot created as part of the Development, not including a strata lot, intended for separate occupation and disposition, not being:

	<ul style="list-style-type: none"> (1) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to Council, the Minister or the RMS; (2) a Super Lot; <ul style="list-style-type: none"> (a) for community use, ecological restoration, drainage, open space, or infrastructure; (b) that is to be dedicated or otherwise transferred for public use.
GST law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Hilltop and Linear Park Development Application	means the Development Application with reference number 2393/2018/DA-CW.
Independent Verifier	means the independent verifier nominated under clause 21, substantially qualified and experienced to certify the maintenance of the Work.
Item	means each separate Development Contribution specified in Column 1 of Schedule 3 .
Just Terms Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Land	<p>means land that is, or was prior to its subdivision, contained in Certificates of Title Folio Identifiers:</p> <ul style="list-style-type: none"> (1) Lot 1 in DP 598067; (2) Lot 1002 DP 1234642; (3) Lot 1 in DP 1091474; (4) Lot 31 in DP 1101983; (5) Lot 32 in DP 1101983; (6) Lot 1001 in DP 1219028; (7) Lot 641 in DP 600334; and (8) Lot 2 in DP 554242.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
LEP	means the Campbelltown Local Environmental Plan 2015.
Maintenance Period	has the meaning ascribed to it in clause 13.1(1)(b).
Menangle Park Planning Proposal	means the planning proposal with that name dated November 2018.

Menangle Park Urban Release Area	means that area of land identified as the 'Menangle Park Urban Release Area' by the LEP.
Minister	means the Minister administering the Act.
Monetary Contribution	means the amount specified as the " <i>Monetary Contribution</i> " in Schedule 3 or otherwise required to be paid by the Developer under this document.
New Contribution Plan Value	has the meaning given to that expression in clause 5.7 of this document.
New Contributions Plan	means a contributions plan that is made after the date of the Contributions Plan under Part 7, Division 7.1, Subdivision 3 of the Act, or an amendment to or replacement of the Contributions Plan, which applies to any part of the Menangle Park Urban Release Area.
Notional Value	means the value identified in Schedule 3 or if a plan of management has been prepared which assigns a value to the maintenance and management of a Work to be prepared for each item in Schedule 3 , the amount specified in the plan of management.
Occupation Certificate	has the same meaning as in the Act.
Permitted Encumbrances	means any encumbrance agreed by Council as a Permitted Encumbrance.
Rectification Notice	means a notice in writing that identifies a Defect in Work and requires rectification of the Defect within a specified period of time.
Registrar General	means the Registrar General within the meaning of the <i>Real Property Act 1900</i> (NSW).
Remedial Action Plan	means the report specified under the <i>NSW Guidelines for Consultants Reporting on Contaminated Sites 2011</i> .
RMS	means Road and Maritime Services.
Security	means a Bank Guarantee provided by a financial institution acceptable to Council or other form of security to the satisfaction of Council provided in accordance with clause 16.
Stage 1 Development Application	means the Development Application with reference number 3885/2017/DA-SW.
Stage 2A Development Application	means the Development Application with reference number 292/2018/DA-SW.
Stage 2B Development Application	means the Development Application with reference number 681/2018/DA-SW.
Subdivision Certificate	has the same meaning as in the Act.

Super Lot	means a lot that forms part of the Development which, following the registration of a plan of subdivision, is intended for further subdivision to create Final Lots.
Tax	means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.
Work	means the physical result of any building, engineering or construction work in, on, over or under land, required to be carried out by the Developer under this document.

Part 2 – Interpretational rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word “person” includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
Agreement, document or instrument	a reference to any agreement, document or instrument includes the same as varied, modified, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3

Development Contributions

Completion of Works and dedication of Land

Item	Nature and extent of Contribution Item	Reference in Contributions Plan	Due date or development trigger	Notional Value of Land	Notional Value of Works	Item type
1a	Construction of a local park of approximately 5,000 square metres adjacent to the southern entry road	O1.4(a), Table B	16 months following the Subdivision Certificate for the 255 th Final Lot	NA	\$531,306	Contribution Plan
1b	Dedication of the land comprising Item 1a	As above	No later than 12 months after the Completion of Item 1a	\$642,818	NA	Contribution Plan
1c	Construction of a local park of approximately 6,870 square metres adjacent to the southern entry road and Item 1a	NA	16 months following the Subdivision Certificate for the 255 th Final Lot	NA	\$729,959	Planning Proposal
1d	Dedication of the land comprising Item 1c	As above	No later than 12 months after the Completion of Item 1c	\$1,870,056	NA	Planning Proposal
2a	Construction of a linear park of approximately 3,834 square metres and shared cycle and pathway adjacent to Menangle Road and the Hume Motorway	NA	16 months following the Subdivision Certificate for the 255 th Final Lot	NA	\$408,141	Planning Proposal
2b	Dedication of the land comprising Item 2a	NA	No later than 12 months after the Completion of Item 2a	\$1,043,638	NA	Planning Proposal

3a	Construction of bioretention facilities on 3,956 square metres of land, being land adjacent to the north east of Stage 1 lots and above the 1 in 100 year flood line	D1.6 and D1.16, Table D; Map references 15 and 21 in Figure 5	Prior to the release of the Subdivision Certificate for any Final Lot	NA	\$923,000	Contributions Plan
3b	Dedication of the land comprising Item 3a	As above	No later than 12 months after the Completion of Item 3a	\$414,485	NA	Contribution Plan
3c	Dedication of approximately 4,900 square metres of land in the vicinity of Item 3a, being land below the 1 in 100 year flood line	Figure 6	No later than 24 months after the Completion of Item 3a	\$178,935	NA	Contribution Plan
3d	Dedication of approximately 4,829 square metres of land in the vicinity of Item 2a, being above the 1 in 100 year flood line	Map reference 17 in Figure 4 (part only)	No later than 24 months after the Completion of Item 3a	\$505,952	NA	Contribution Plan
4	Construction of a roundabout at the intersection of Menangle and Cummins Road in accordance with RMS design requirements	Map reference 4 in Figure 7	Prior to the release of the Subdivision Certificate for any Final Lot	NA	\$2,468,819	Contribution Plan

Monetary Contributions

Item	Nature and extent of contribution	Development trigger type	Monetary Contribution	Due date or development trigger
5	Payment of a monetary contribution for public amenities and public services listed in the Menangle Park Contributions Plan	Creation of Final Lots	\$18,851.21 per Final Lot up to a maximum of \$7,710,145 for 409 Final Lots	Prior to the issue of a Subdivision Certificate for a Final Lot

Annexure 1
Development Area Plan

Execution page

Executed as a deed.

Dated: 4 February 2021

Executed by Campbelltown City Council by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated

General Manager (Signature)

Mayor (Signature)

Name of General Manager (Print Name)

Name of Mayor (Print Name)

Executed by Dahua Group Sydney Project 2 Pty Ltd (ACN 606 391 235) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Electronic Signature of _____, affixed
by _____ on 17 December 2020

Electronic Signature of _____, affixed by
on 17 December 2020

Executed by Dahua Group Sydney Project 3 Pty Ltd (ACN 606 391 922) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/ Secretary (Print Name)

Name of Director (Print Name)

Electronic Signature of _____, affixed
by _____ on 17 December 2020

Electronic Signature of _____, affixed by
on 17 December 2020