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# Mount Gilead 1 Planning Agreement

Under s 7.4 of the Environmental Planning and Assessment Act 1979

Campbelltown City Council  
Lendlease Communities (Mt Gilead) Pty Limited  
Mount Gilead Pty Limited  
~~Stefan Dzwonnik and Anna Dzwonnik~~

Dated: 8 . 8 . 18

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## DETAILS – Mount Gilead 1 Planning Agreement

Under s 7.4 of the Environmental Planning and Assessment Act 1979 (NSW)

Date: 8.8.18

### Parties

**(1) Campbelltown City Council (Council)**

ABN 31 459 914 087  
Address Civic Centre  
Cnr Queen and Broughton Streets  
CAMPBELLTOWN NSW 2560  
Email council@campbelltown.nsw.gov.au  
Attention General Manager

**(2) Lendlease Communities (Mt Gilead) Pty Limited (Lendlease)**

ABN 88 605 278 331  
Address Level 14, Tower Three  
International Towers Sydney, Exchange Place  
300 Barangaroo Avenue  
BARANGAROO NSW 2000  
Email Mark.Anderson@lendlease.com  
Attention Mark Anderson

**(3) Mount Gilead Pty Limited (Mt Gilead)**

ABN 92 008 499 189  
Address Level 4, Coopers & Lybrand House  
53 Blackall Street  
Barton ACT 2600  
Email [srogers@nexiasydney.com.au](mailto:srogers@nexiasydney.com.au)  
Attention Stephen Rogers

**(4) ~~Stefan Dzwonnik and Anna Dzwonnik~~ (Dzwonnik)**

Address 90 Badgally Road  
Eschol Park NSW 2558  
Email [sandy@cflegal.com.au](mailto:sandy@cflegal.com.au)



## Recitals

- A. The Developer wishes to carry out the Development on the Land.
- B. The Landowners are the owners of the Land as at the date of this Agreement.
- C. The Developer has entered into an agreement, or is otherwise associated with, the person who has sought the Instrument Change to enable the Development to be carried out.
- D. The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the Instrument Change and the carrying out of the Development, in accordance with the terms and conditions of this Agreement.

## Operative Parts

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### 1. Defined terms and interpretation

#### 1.1 Defined terms

The following definitions apply unless the context requires otherwise.

**Accredited Certifier** has the same meaning as in the Act.

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

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**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.

**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 when an item of Work has been completed in accordance with this Agreement.

**Completion Notice** means a notice issued under this Agreement by the Developer to Council specifying an item of the Works that the Developer believes is Complete.

**Contribution Value** means:

- (a) in relation to an item of Work, the amount specified in **Schedule 1** as the "*Notional Value of Works*" for that item of Work as indexed at the time of a development application being lodged for that item in accordance with the Producer Price Index Number 3101 – Road and bridge construction New South Wales published by the Australian Bureau of Statistics; and;
- (b) in relation to an Item (or any part) comprising Land to be dedicated, the amount specified in **Schedule 1** as the "*Notional Value of Land*" for that Land.

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

**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 18.

**Developer** means Lendlease, or any other person undertaking the Development from time to time (which for the purpose of clarity may include one (1) or both of the Landowners).

**Development** the development of the Land:

- so as to create Final Lots;
- so as to construct the first single dwelling on any Final Lot created by the Developer; and
- for associated purposes including subdivision, community and commercial facilities, parks, open space and infrastructure,

which is permissible under both:

- the Campbelltown Local Environmental Plan 2015 as amended by the Instrument Change; and
- any Development Consent under the Act with respect to that development.

For the purpose of clarity, **Development** does not include the construction of any dwelling.

**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 contained in **Schedule 2**.

**Development Consent** means a development consent or project approval within the meaning of the Act.

**Development Contribution** means any of the following, or any combination of them, to be used for, or applied towards, a public purpose:

- a monetary contribution;
- the dedication of land free of cost;
- the carrying out of work; and
- the provision of any other material public benefit.

**Encumbrance** means:

- (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.

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 design and specification under clause 13.

**Encumber** means to grant an Encumbrance.

**Final Lot** means a lot created as part of the Development, not including a strata lot, intended for separate occupation and disposition, not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to Council, the Minister or the RMS;
- (b) a Super Lot;
- (c) for community use, ecological restoration, drainage, open space, or infrastructure, or
- (d) that is to be dedicated or otherwise transferred for public use.

**GST** has the same meaning as the GST law.

**GST law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1991* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Independent Certifier** means the independent Accredited Certifier nominated under clause 17, substantially qualified and experienced to certify the Work and having no current involvement with the project management, design and/or superintendency of the Work on behalf of the Developer.

**Independent Verifier** means the independent verifier nominated under clause 21, substantially qualified and experienced to certify the maintenance of the Work.

**ISDP** means the document titled Mount Gilead Infrastructure Services Delivery Plan prepared by GLN Planning and dated June 2016.

**Instrument Change** means the changes to the Campbelltown Local Environment Plan 2015 as provided for by:

- (a) Amendment No. 2 published on the legislation website on 8 September 2017; and
- (b) Amendment No. 6 published on the legislation website on 10 November 2017

**Item** means each separate Development Contribution specified in Column 1 of **Schedule 1**.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

**Land** means land that is, or was prior to its subdivision, contained in Certificates of Title Folio Identifiers 3/1218887 and 61/752042.

**Landowners** means Mount Gilead Pty Limited, and Stefan Dzwonnik and Anna Dzwonnik, as well as any other person who owns any part of the Land from time to time.

**LRS** means NSW Land Registry Services.

**Maintenance Period** has the meaning ascribed to it in clause 20.1(a)(ii).

**Minister** means the Minister administering the Act.

**Monetary Contribution** means the amount specified as the "*Monetary Contribution*" in Schedule 1.

**Notional Value** means the value identified in **Schedule 1** 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 1, the amount specified in the plan of management..

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

**Open Space Work** means any Work which **Schedule 1** indicates is for the public purpose of 'Open Space Infrastructure'.

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

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

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

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**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 25.

**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 Agreement.

## 1.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.



- (b) A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
- (c) If the day on which something is to be done under this Agreement is not a business day, then it must be done on the next business day.
- (d) A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (e) A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (i) A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- (k) The singular includes the plural, and the plural includes the singular.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to a Party to this Agreement includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns and includes any third party undertaking the Development for or on behalf of, or in conjunction with the Party.
- (n) Any schedules, appendices and attachments form part of this Agreement.

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## **2. Status of this Agreement**

This Agreement is intended by the Parties to be a planning agreement within the meaning of s7.4(1) of the Act.

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## **3. Commencement of this Agreement**

- (a) This Agreement commences on the date on which it has been executed by all Parties.
- (b) The Party who executes this Agreement last is to insert the date that they executed this Agreement on the front page, and provide a copy of the fully executed and dated Agreement to any other person who is a Party.

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## **4. Application of this Agreement**

- (a) This Agreement applies to the Land and to the Development.

- (b) The Parties acknowledge that the Development Contributions required to be made under this Agreement are to meet the expected demand for public facilities arising from the Development.
- (c) The Parties acknowledge and agree that if the Instrument Change is declared by a court to be invalid, the obligations on the Developer under this Agreement do not arise. If registration of this Agreement has occurred prior to the making of a declaration by a court that the Instrument Change is invalid, Council will do all things necessary to remove this Agreement from the title to the Land as quickly as practicable.

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## **5. Part-performance of this Agreement**

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

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

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

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## **7. Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development**

- (a) This Agreement excludes the application of s 7.11 and s 7.12 of the Act to the Development.
- (b) This Agreement does not exclude the application of s 7.24 of the Act to the Development.
- (c) Section 7.11(6) of the Act does not apply to the Development Contributions that are to be provided under this Agreement.

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## **8. Consultation Group**

### **8.1 Formation**

- (a) On the commencement of this Agreement, the Consultation Group will be formed.
- (b) The Consultation Group is to have four (4) members appointed as follows:
  - (i) two (2) members appointed by Council; and
  - (ii) two (2) members appointed by the Developer.
- (c) Each party is entitled, at any time, to replace a member appointed by it to the Consultation Group by giving notice in writing to the other party.

### **8.2 Role of the Consultation Group**

The Consultation Group is to be a forum to allow Council and the Developer:

- (a) discuss the operation of this Agreement; and
- (b) serve notices in accordance with clause 8.3.

### 8.3 Notices

Unless otherwise agreed between Council and the Developer, any notices provided by the Developer to Council under this Agreement:

- (a) are to be provided in writing at a meeting of the Consultation Group; and
- (b) will be treated as given or made on the date of any such meeting at which any such notice is provided.

### 8.4 Frequency of meetings

The Consultation Group will meet:

- (a) at the frequency determined by it from time to time; or
- (b) no earlier than seven (7) days, and no later than fourteen (14) days, after a written request for that meeting is made by email to any member of the Consultation Group appointed under clause 8.1.

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## 9. Provision of Development Contributions

### 9.1 Obligation of Developer

- (a) The Developer must make Development Contributions to Council in accordance with this Agreement, in particular in accordance with **Schedule 1**, and otherwise to the satisfaction of Council acting reasonably.
- (b) **Schedule 1** has effect in relation to Development Contributions to be made by the Developer under this Agreement such that the Developer must:
  - (i) deliver the Items in Table 2 of Schedule 1 by the Open Space Infrastructure Development Triggers in Table 5 having regard to Table 3 and Table 4.
  - (ii) deliver Items in Table 6, Table 7 and Table 8 of Schedule 1 in accordance with the relevant Development Triggers in column 6 of each of Table 6, Table 7 and Table 8

### 9.2 Monetary Contribution

- (a) In accordance with Schedule 1, the Developer must make payment of the Monetary Contribution to Council for each Final Lot that is created as part of the Development in excess of seventeen hundred (1,700) Final Lots (**Lot Threshold**).
- (b) The parties acknowledge and agree that the value of the Monetary Contribution represents their best estimate of the per lot contribution that will be required to allow Council to meet the need for public services and amenities generated as a result of Lot Threshold being exceeded.
- (c) If the parties form the view that the Lot Threshold will be exceeded and the Monetary Contribution is insufficient or greater than necessary to allow Council to meet the need for public services and amenities generated as a result of Lot Threshold being exceeded, any party may request a review of the Monetary Contribution.

- (d) Despite clause 9.2(c), the Monetary Contribution will not be taken to be varied unless Council and the Developer, acting reasonably, agree in writing to the variation.

### **9.3 No limit created by Contribution Value**

- (a) A Contribution Value specified in relation to a Development Contribution other than a monetary Development Contribution does not define or limit the extent of the Developer's obligation in that regard.
- (b) Further to paragraph (a), the Developer is not entitled to any payment, credit or offset to the extent that any costs incurred by it in making a Development Contribution exceeds the relevant Contribution Value.
- (c) 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 or 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.

### **9.4 Council's obligation to apply Development Contributions**

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

### **9.5 Alternative method of providing items of Work by paying monetary Development Contribution**

- (a) If Council consents, the Developer may satisfy its obligation under this Agreement to provide any or all of the Works by paying to Council the specified Contribution Value for any or all of the Works.
- (b) If the Developer pays a monetary amount under paragraph (a), 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 Agreement.
- (c) Council must spend the monetary Development Contribution paid by the Developer under this clause 9.5 on services, infrastructure or facilities to be delivered, in order of precedence:
  - (i) on the Land; or
  - (ii) at a location outside the boundary of the Land but within Council's Local Government Area.
- (d) The Developer and the Landowner 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 9.5.

### **9.6 Alternative method of providing Items of Work**

- (a) If Council consents, the Developer may vary or replace any item of Works provided that:
  - (i) 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;

- (ii) the varied or new item of Work contains the core elements for that item of the Works as identified in the ISDP;
- (iii) the varied or new item of Work serves the same, or a similar, public purpose as the original item of Work;
- (iv) 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 Agreement; and
- (v) the varied or new item of Work complies with the requirements of any relevant Authority.

#### 9.7 **Alternative method of providing Monetary Contributions**

- (a) If Council consents, the Developer may make any of the Monetary Contributions by the carrying out of works or the provision of services.
- (b) If the Developer carries out works or provides the services under paragraph (a):
  - (i) the Contribution Value of the works provided must be equal to or greater than the amount of the relevant Monetary Contribution; and
  - (ii) the works must be Completed no later than the time by which the Monetary Contribution was required to have been made under this Agreement.

### **10. Variation of scope or timing for provision of Development Contributions**

#### 10.1 **Variation to the scope of a Development Contribution**

- (a) The Developer may request that Council approve in writing a variation to the scope any item of Work.
- (b) For the purposes of determining whether to approve a variation under paragraph (a), Council may consider the content of the ISDP and whether the variation prejudices the provision of public services or public amenities for the Development.
- (c) The scope of a Development Contribution is not to be varied unless Council and the Developer, acting reasonably, agree in writing to the variation.
- (d) Council cannot withhold its consent to a variation of an item of Work if the variation does not result in a change to the matters identified as core elements for that Work in the ISDP.

#### 10.2 **Deferral of the timing of Completion of an item of the Works**

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

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

- (iii) identifying the relevant item of Work that the Developer proposes to defer;
  - (iv) specifying the reason for the request to defer the Completion of that item of the Works; and
  - (v) identifying the anticipated time for Completion of the relevant item of Work.
- (b) The 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 (a) stating:
- (i) whether or not it consents to the deferral of the Deferred Works;
  - (ii) the revised date for Completion required by Council; and
  - (iii) 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).
- (c) If the Council consents to the deferral of the Deferred Works, then the following applies:
- (i) The Developer must comply with any conditions required by Council under paragraph (b) above.
  - (ii) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this Agreement as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this Agreement.
  - (iii) The time for completion of the Deferred Works under this Agreement is the revised date for Completion approved by Council.

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## **11. Payment of monetary Development Contributions**

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

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## **12. Procedures relating to the dedication of Land**

### **12.1 Works to be Completed prior to dedication**

Council may refuse to accept the dedication of any part of the Land required to be dedicated by the Developer in accordance with this Agreement if any Works required to be carried out on that part of the Land under this Agreement have not been Completed at the time of dedication.



## 12.2 Dedication

A Development Contribution comprising the dedication of any part of the Land is made for the purposes of this Agreement when:

- (a) a deposited plan is registered in the register of plans held with the Registrar General that:
  - (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) the Council is given:
  - (i) an instrument in registrable form under the *Real Property Act 1900* (NSW) that is effective to transfer the title to the relevant part of the Land to the Council when registered;
  - (ii) the Certificate of Title for the relevant part of the Land; and
  - (iii) any document in a form acceptable to Council, necessary to discharge or release any Encumbrance registered on the title to the relevant part of the Land excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

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## 13. Design and Specification of Work

- (a) Before commencing construction of any item of Work, the Developer is to submit to Council for its approval the detailed design and specification for the Work.
- (b) If, within sixty (60) days of the date of submission referred to in paragraph (a):
  - (i) Council notifies the Developer in writing of its approval of the design and specification, the Developer is to carry out and Complete the item of Work in accordance with that design and specification;
  - (ii) Council fails to notify the Developer in writing that it approves or does not approve of the design and specification or does not require the Developer to make modifications, Council is taken to have approved the design and specification of the item of Work and the Developer may carry out and Complete the Work in accordance with that design and specification; or
  - (iii) Council notifies the Developer in writing that it does not approve of the design and specification or requires the Developer to make modifications, the Developer may:
    - (A) amend the design and specification and submit to Council the amended design and specification, in which case the Developer must submit any such amended detailed design and specification to Council under paragraph (a); or

- (B) if the Developer does not agree with the modifications requested by Council, refer the matter for expert determination or mediation under this Agreement.

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#### **14. Standard of construction of Work**

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

- (a) this Agreement;
- (b) any further agreement entered into under clause 6;
- (c) any reasonable requirements and directions of Council notified in writing to the Developer before the Work is Completed for the purposes of this Agreement, that are not inconsistent with this Agreement or any Development Consent for the Development;
- (d) the requirements of any approval, consent, permission or licence issued by a relevant Authority;
- (e) any Australian standards and other laws applicable to the Work; and
- (f) in a proper and workmanlike manner, complying with current industry practice and standards relating to the Work.

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#### **15. Access for Works**

- (a) The Developer and the Landowner 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.
- (b) Where Council, its officers, employees, agents and contractors enter the Land for the purposes outlined within this clause, Council must abide by all reasonable WHS requirements of the Developer.

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

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

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

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#### **17. Completion of the Works**

##### **17.1 Developer to notify**

The Developer must provide a Completion Notice to the Council within ten (10) Business Days of believing it has completed any item of the Works.

## 17.2 Inspection

The Council must inspect the Works set out in a Completion Notice within ten (10) Business Days of the receipt of the notice given under clause 17.1.

## 17.3 Council to notify

(a) Within the earlier of:

- (i) ten (10) Business Days of inspecting the item of the Works set out in a Completion Notice; and
- (ii) twenty (20) Business Days from the receipt of the relevant Completion Notice,

the Council must provide notice in writing to the Developer that the Works set out in the Completion Notice:

- (iii) have been Completed; or
  - (iv) have not been Completed, in which case the notice must also detail:
    - (A) those aspects of the relevant item which have not been Completed; and
    - (B) the work the Council requires the Developer to carry out in order to rectify those deficiencies.
- (b) If the Council does not provide the Developer with notice in accordance with paragraph (a) the Works set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.
- (c) Where the Council serves notice on the Developer pursuant to paragraph (a)(iv) the Developer must:
- (i) rectify the deficiencies in that item in accordance with that notice within three (3) months from the date it is issued by the Council unless otherwise agreed by the Council; or
  - (ii) 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 this paragraph (c)(ii) the dispute resolution provisions of this Agreement will apply.

## 17.4 Developer's further notification

- (a) Where the Developer rectifies the Works in accordance with clause 17.3(c)(i) it must serve upon the Council a new Completion Notice for the item of the Works it has rectified (**New Completion Notice**).
- (b) The provisions of this clause 17 apply to any New Completion Notice issued by the Developer.

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## 18. Procedures relating to the rectification of defects

### 18.1 Definition of Defects Liability Period

In this clause 18 the following definitions apply:

- (a) **Building Works** has the same meaning as in the Act.
- (b) **Defects Liability Period** means:
  - (i) for an Open Space Work (other than a Building Work), or any Work in **Schedule 1** 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 Agreement; and
  - (ii) for Building Work – twelve (12) months from the date the Work is Completed for the purposes of this Agreement.

**18.2 Council may issue Rectification Notice**

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

**18.3 Developer must comply with Rectification Notice**

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

**18.4 If the Developer fails to comply with a Rectification Notice**

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

**18.5 End of the Defects Liability Period**

- (a) By no later than ten (10) business days prior to the end of the Defects Liability Period:
  - (i) Council will undertake a final inspection of the Work; and
  - (ii) Council may either:

- (A) by way of written notice to the Developer, confirm that the Work is acceptable to Council acting reasonably; or
  - (B) issue a Rectification Notice to the Developer if it identifies any part of the Work which is not acceptable to Council (acting reasonably).
- (b) If Council issues a Rectification Notice under paragraph (a)(ii)(B), the Developer must comply with the Rectification Notice at its own cost according to its terms and to the satisfaction of the Council acting reasonably.
- (c) Council may not issue a further Rectification Notice under clause 18.5 for any additional unacceptable parts of the Work that were not identified in the Rectification Notice issued under paragraph (a)(ii)(B).
- (d) If Council does not issue a Rectification Notice within ten (10) business days after undertaking a final inspection of the Works under paragraph (a)(i), the Works will be deemed to be acceptable to Council.

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## **19. Failure to carry out Work**

### **19.1 Council may issue notice**

- (a) If Council considers that the Developer is in breach of any obligation under this Agreement 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.
- (b) The notice may require the Developer to:
  - (i) rectify the breach to Council's satisfaction; and
  - (ii) immediately cease carrying out further work relating to the Work except to rectify the breach.
- (c) A notice given under clause 19.1(a) must allow the Developer not less than twenty eight (28) days (or such further period as Council considers reasonable in the circumstances) to rectify the breach.

### **19.2 Developer must comply**

The Developer must comply with any notice issued by Council under clause 19.1

### **19.3 If Developer fails to comply**

- (a) Without limiting any other rights Council has to enforce this Agreement, if the Developer does not comply with a notice given under clause 19.1(a) then Council may:
  - (i) call upon the Security referred to in clause 25;
  - (ii) carry out and Complete the Work the subject of the Developer's breach; and
  - (iii) 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.

- (b) Clauses 28 and 29 do not prevent a notice being given under clause 19.1(a), nor do they apply to such a notice or the circumstances relating to the giving of the notice. Any procedure commenced under clause 28 or clause 29 ceases to apply when such a notice is given.
- (c) For the purposes of clause 19.3(a), the costs which Council can recover include fees and charges incurred by Council, Council's employees, agents and contractors, and legal costs and expenses.

## 20. Maintenance and management of Works

### 20.1 Definitions

- (a) In this clause:
  - (i) **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.
  - (ii) **Maintenance Period** means:
    - (A) 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 Agreement;
    - (B) 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 Agreement; and
    - (C) 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 Agreement.
  - (iii) **Maintenance Compliance Certificate** means a written notice issued by Council in accordance with clause 20.3(d)(ii)(A) or an Independent Verifier in accordance with clause 20.3(i)(ii)(A).
  - (iv) **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.
  - (v) **Plan of Management** means a plan of management within the meaning of s36 of the *Local Government Act 1993* (NSW).
  - (vi) **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.
  - (vii) **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.
    - (A) Stage 1 Works means any water quality and treatment basin works excluding:
      - (I) The upper 100mm of filter media



(II) Any work comprising landscaping of grasses, shrubs and/or trees

(III) But including the installation of geotextile fabric to the upper surface of the works.

(B) 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.

## **20.2 Developer must maintain**

Subject to clause 20.6(a) and 20.6(b), 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:

- (a) any matters set out in clause 14;
- (b) 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
- (c) the Maintenance Standards.

## **20.3 Maintenance Compliance Certificate**

- (a) The Developer may seek a Maintenance Compliance Certificate for a Work from either Council or an Independent Verifier.
- (b) If the Developer elects to appoint Council to issue the Maintenance Compliance Certificate:
  - (i) Council is to undertake an inspection of the Work the subject of the Maintenance Period;
    - (A) in respect of Hard Landscaping Work every three (3) months commencing on the date that the Work is completed for the purpose of this Agreement;
    - (B) in respect of Soft Landscaping Work, every six (6) months commencing on the date that the Work is completed for the purpose of the Agreement; and
    - (C) 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 Agreement.
- (c) 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 20.2.
- (d) By no later than ten (10) Business Days prior to the end of the Maintenance Period:
  - (i) Council will undertake a final inspection of the Work; and
  - (ii) Council may either:

- (A) by way of written notice to the Developer, confirm that the Work has been maintained by the Developer in accordance with this clause 20; or
  - (B) 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 20.
- (e) If Council issues a notice under clause 20(d)(ii)(B) the Developer must comply with that notice at its own cost.
- (f) Council may not issue a further notice under clause 20.3(d)(ii)(B) for any additional unacceptable parts of the Work that were not identified in the original notice issued under 20.3(d)(ii)(B).
- (g) If the Developer elects to appoint an Independent Verifier to issue the Maintenance Compliance Certificate:
  - (i) Prior to the provision of an Occupation Certificate, the Developer is to give Council written notice of the details of the nominated Independent Verifier;
  - (ii) Within 20 Business Days' of notice provided in clause 20.3(g)(i) 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
  - (iii) The Independent Verifier is to undertake an inspection of the Work the subject of the Maintenance Period;
    - (A) in respect of Hard Landscaping Work every three (3) months commencing on the date that the Work is completed for the purpose of this Agreement; and
    - (B) in respect of Soft Landscaping Work, every six (6) months commencing on the date that the Work is completed for the purpose of the Agreement.
    - (C) 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 Agreement.
- (h) 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 20.2.
- (i) By no later than ten (10) Business Days prior to the end of the Maintenance Period:
  - (i) the Independent Verifier will undertake a final inspection of the Work; and
  - (ii) the Independent Verifier may either:

- (A) by way of written notice to the Developer, confirm that the Work has been maintained by the Developer in accordance with this clause 20; or
  - (B) 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 20.
- (j) If the Independent Verifier issues a notice under clause 20.3(i)(ii)(B) the Developer must comply with that notice at its own cost.
- (k) The Independent Verifier may not issue a further notice under clause 20.3(i)(ii)(B) for any additional unacceptable parts of the Work that were not identified in the original notice issued under 20.3(i)(ii)(B).
- (l) If Council does not agree with the decision of the Independent Verifier referred to in clause 20.3(i)(ii)(A), then clause 28 applies.
- (m) 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.

#### **20.4 Plan of Management**

- (a) The Developer must:
  - (i) 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
  - (ii) 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.
- (b) For the purposes of clause 20.4(a)(i), Council is to promptly provide the Developer with a template of a Plan of Management if requested by the Developer in writing.

#### **20.5 No further claim against Developer**

If the Developer has complied with its obligations under this clause, Council cannot make any Claim (other than a Claim arising from the negligence of the Developer or a breach of this Agreement 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 19.1.

#### **20.6 Developer may elect to pay Monetary Contribution**

- (a) 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 Development Contribution.
- (b) Council agrees that if the Developer performs its obligations under this Agreement in relation to maintenance and management of a Work in accordance with clause 20.6(a), Council must hold the monetary Development Contribution for the purpose of the maintenance and management of the Work and apply the money towards that purpose.

- (c) 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 clause 20.6(a).
- (d) 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 clause 20.6(a), the Developer is not required to carry out the maintenance and management of the Work.

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## **21. Works-as-executed-plan**

No later than sixty (60) days after an Item comprising a Work is Completed in accordance with this Agreement, the Developer must submit to Council:

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

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## **22. Hand-over of Works**

- (a) Subject to anything to the contrary in this Agreement, Council accepts responsibility for a Work on the later of:
  - (i) the date when the Work is Completed for the purposes of this Agreement; or
  - (ii) if the Work is carried out on land which is to be dedicated to Council under this Agreement, the date of dedication of that land.
- (b) The Developer, at its own cost, is to repair and make good to the satisfaction of the 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 Agreement.

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## **23. Council may withhold Subdivision Certificate**

- (a) 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 Agreement.
- (b) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make Development Contributions under this Agreement until such time as:
  - (i) the breach is rectified; or
  - (ii) Council calls upon the Security provided by the Developer in respect of the Development Contributions to which the breach relates.
- (c) Council may not withhold the issue of a Subdivision Certificate if the Developer has not met its obligations to maintain and manage works.

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## **24. Security for the Dedication of Land**

### **24.1 Council may acquire**

If the Developer does not dedicate the land required to be dedicated under this Agreement, or any part thereof, at the time at which it is required to be dedicated, the Landowner consents to Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures under the Just Terms Act.

#### 24.2 Agreement to acquire

Clause 24.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.

#### 24.3 Additional comfort for Council

- (a) If, as a result of an acquisition referred to in clause 24.1, Council is required to pay compensation to any person other than the Developer or the Landowner, the Developer is to reimburse the Council for that amount upon a written request being made by Council.
- (b) 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 Agreement.
- (c) The Developer and the Landowner must promptly do all things necessary, and consent to the Council doing all things necessary, to give effect to this clause 24, including without limitation:
  - (i) signing any documents or forms;
  - (ii) giving land owner's consent for the lodgement of any Development Application;
  - (iii) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW); and
  - (iv) paying Council's costs arising from this clause 24.

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### 25. Security for carrying out of Work

#### 25.1 Provision of Security

Subject to paragraph 25.2, 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 irrevocable and unconditional undertakings:

- (a) for the amount equivalent to the Contribution Value for the relevant item of Works (**Primary Security**); and
- (b) 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**).

#### 25.2 Floating Security

The Developer may satisfy clause 25.1 by allowing Council to retain any Security previously provided under this Agreement, provided that Council holds Security in an amount no less than the aggregate required to be provided by the Developer under clause 25.1 at the relevant time.

### **25.3 Council may call on Security**

If the Developer is indebted to Council under this Agreement, without limiting any other remedies available to it, may call on any Security provided to it.

### **25.4 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 Agreement.

### **25.5 Release of Primary Security**

Unless:

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

### **25.6 Release of Defects Security**

Unless:

- (a) Council has made a demand against the Defects Security provided to it;
- (b) the relevant Defects Liability Period has not expired; or
- (c) at the relevant time the Developer has not remedied a breach of this Agreement that it has been given notice of 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.

### **25.7 Indexation of value of Security value**

The Developer must ensure that, on an annual basis from the date of commencement of this Agreement, 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.

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## **26. Registration of this planning agreement**

### **26.1 Obligation to register**

- (a) The Parties agree that this Agreement will be registered on the title of the Land pursuant to section 93H of the Act.



- (b) The Landowners must:
  - (i) do all things necessary to allow the registration of this Agreement to occur under paragraph (a) against the title to the Land they respectively own; and
  - (ii) pay any reasonable costs incurred by the Council in undertaking that registration.

## 26.2 Partial discharge of agreement

- (a) For the avoidance of doubt the Parties agree that this Agreement 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 the Developer has complied with its obligations under this Agreement with respect to that part of the Land to which such notice relates.
- (b) Further to paragraph (a) the Parties agree that this Agreement is to be removed from the title to a Super Lot if the Developer gives Council a written notice requesting such removal and:
  - (i) the Developer has provided Security under this Agreement with respect to any:
    - (A) 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
    - (B) Monetary Contribution determined by Council, acting reasonably, that will be required to be paid upon any subdivision of that Super Lot, or
  - (ii) the Developer has complied with its obligations under this Agreement with respect to that part of the Land to which such notice relates .
- (c) Upon receipt of a notice under this clause, Council will do all things necessary to remove this Agreement 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 Agreement with respect to that part of the Land to which such request relates.

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## 27. Enforcement in court

- (a) The Parties may enforce this Agreement in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and/or
  - (ii) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

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## **28. Dispute resolution - expert determination**

- (a) This clause applies to a dispute under this Agreement about a matter that can be determined by an appropriately qualified expert (**Expert Determination Dispute**).
- (b) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute and requiring it to be determined by an appropriately qualified expert.
- (c) Within fourteen (14) days of the notice, the Parties are to meet to try to resolve the dispute.
- (d) If within a further twenty eight (28) days the dispute is not resolved, the dispute must be referred to the President of the NSW Law Society to appoint an expert to determine the dispute.
- (e) The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.
- (f) Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (g) 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.

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## **29. Dispute resolution - mediation**

- (a) This clause applies to any dispute under this Agreement other than a dispute to which clause 28 applies.
- (b) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (c) The Parties are then to meet within fourteen (14) days of the notice to try to resolve the dispute.
- (d) If the 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.
- (e) If the 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 dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.

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## **30. Determination of this Agreement**

### **30.1 Determination**

This Agreement will determine upon each of the Developer satisfying all of their obligations imposed on them under this Agreement in full.

### 30.2 Agreement not to apply to Final Lots

- (a) The Parties acknowledge and agree that:
  - (i) the Developer intends to develop Final Lots, and associated infrastructure and facilities, on the Land;
  - (ii) it is the present intention of the Developer to develop the Land into one thousand seven hundred (1,700) Final Lots;
  - (iii) there will be further development on the Land after the creation of Final Lots by the Developer (for example, the construction of dwellings); and
  - (iv) multiple dwellings may be created on Final Lots created by the Developer as part of the Development (including the further subdivision of those Final Lots if permissible in the future).
- (b) It is the intention of the Parties that this Agreement only apply to the Development of the Land:
  - (i) by the Developer so as to create Final Lots, and associated infrastructure and facilities; and
  - (ii) by the Developer, or any third party (if applicable), so as to construct the first single dwelling on a Final Lot,
- (c) On account of the matters referred to above, the parties agree that this Agreement no longer applies to any Final Lot upon:
  - (i) Council issuing a Subdivision Certificate to the Developer for a plan which, when registered, will create that Final Lot; and
  - (ii) upon the issue of an Occupation Certificate for the first single dwelling in respect of that Final Lot.
- (d) For the purpose of clarity, the Parties acknowledge and agree that the provisions of clause 7 cease to apply to any Final Lot with respect to which this Agreement ceases to apply under paragraph (c).

### 30.3 Consequences

Upon the determination of this Agreement the Council will do all things necessary to allow the Developer to remove this agreement from the title of the whole or any part of the Land as quickly as possible.

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## 31. Assignment, sale of Land, etc

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

or a Landowner proposes to sell or transfer the Land, or to whom the Developer's rights or obligations under this Agreement 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 Agreement.

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## **32. Position of the Council**

### **32.1 Consent authority**

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

### **32.2 Agreement does not fetter discretion**

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

- (a) the power of the Council to make any Law; or
- (b) the exercise by Council of any statutory power or discretion, (**Discretion**).

### **32.3 Severance of provisions**

- (a) No provision of this agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 32 is substantially satisfied; and
  - (ii) in the event that clause 32.3(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 agreement has full force and effect.
- (b) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to that extent this agreement is not to be taken to be inconsistent with the Law.

### **32.4 No obligations**

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

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## **33. Indemnity**

Each Party indemnifies each 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 Agreement except if, and to the extent that, the Claim arises because of the another Party's negligence or default.

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**34. Insurance**

- (a) The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement, up until the time that the Work is taken to have been Completed in accordance with this Agreement:
  - (i) contract works insurance, noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
  - (ii) 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,
  - (iii) workers compensation insurance as required by law, and
  - (iv) any other insurance required by law.
- (b) If the Developer fails to comply with clause 34(a), Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by Council as it deems appropriate, including:
  - (i) by calling upon any Security provided by the Developer to Council pursuant to clause 25; or
  - (ii) recovery as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 34(a).
- (d) Council acknowledges and agrees that the insurances required to be taken out and kept current by the Developer in accordance with this clause 34 may be novated to the Third Party.

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**35. Review of this Agreement**

- (a) The Developer must provide Council with a report every three years detailing the performance of its obligations under this Agreement.
- (b) The report is to be:
  - (i) given no later than every three (3) years from the date on which this Agreement is entered into; and
  - (ii) in the form and addressing the matters the Council notifies to the Developer from time to time.
- (c) The Parties are to review this Agreement 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 Agreement.

- (d) For the purposes of clause 35(c), 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.
- (e) For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 35(c), the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (f) If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- (g) A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 35(c) is not a dispute for the purposes of clauses 28 and 29, and is not a breach of this Agreement.

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### **36. Confidentiality**

- (a) The terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.
- (b) The Parties acknowledge that:
  - (i) confidential information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement;
  - (ii) the Parties may disclose to each other further confidential information in connection with the subject matter of this Agreement, and
  - (iii) subject to clauses 36(c) and 36(d), each Party agrees:
    - (A) not to disclose any confidential information received before or after the making of this Agreement to any person without the prior written consent of the Party who supplied the confidential information; or
    - (B) to take all reasonable steps to ensure all confidential information received before or after the making of this Agreement is kept confidential and protected against unauthorised use and access.
- (c) A Party may disclose confidential information in the following circumstances:
  - (i) in order to comply with the law, or the requirements of any Authority; or
  - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.



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### **37. Notices**

- (a) A notice, consent, information, application or request (**Notification**) that must or may be given or made to:
  - (i) Council under this Agreement, must only be given or made in accordance with clause 8.3; or
  - (ii) any other Party under this Agreement, must only be given or made if it is in writing and sent in one of the following ways:
    - (A) delivered or posted to that Party at its address set out in the Summary Sheet; or
    - (B) emailed to that Party at its email address set out in the Summary Sheet.
- (b) 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 the Summary Sheet.
- (c) A Notification is to be treated as given or made under paragraph (a)(ii) if it is:
  - (i) delivered, when it is left at the relevant address;
  - (ii) sent by post, two (2) business days after it is posted;or
  - (iii) 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.
- (d) 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.

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### **38. Approvals and consent**

- (a) In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- (b) Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- (c) A Party must give its reasons for giving or withholding consent or for giving consent subject to conditions.

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### **39. Costs**

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

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**40. Entire Agreement**

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

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**41. 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 Agreement and all transactions incidental to it.

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**42. Governing law and jurisdiction**

- (a) This Agreement is governed by the law of New South Wales.
- (b) 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.

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**43. Representations and warranties**

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

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**44. Severability**

- (a) 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.
- (b) 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 Agreement, but the rest of this Agreement is not affected.

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**45. Modification**

No modification of this Agreement has any effect unless it is in writing and signed by the Parties.

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**46. Waiver**

- (a) 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 Agreement.
- (b) A waiver by a Party is effective only if it is in writing.
- (c) 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.

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## 47. GST

- (a) In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable 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.

- (b) Subject to clause 47(d), if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (c) Clause 47(b) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- (d) No additional amount is payable by Council under clause 47(b) 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.
- (e) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the A New Tax System (Goods and Services Tax) Act 1999, the Parties agree:
- (i) to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies; and
  - (ii) that any amounts payable by the Parties in accordance with clause (as limited by clause 47(d)) (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.
- (f) No payment of any amount under this clause 47, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.
- (g) 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.

(h) This clause continues to apply after expiration or termination of this Agreement.

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## **Schedule 1– Development Contributions (Clause 1.1)**



MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE

SCHEDULE 1 –VPA MONETARY CONTRIBUTIONS, LAND DEDICATIONS, WORKS, COSTS & TIMING

TABLE 1 - MONETARY CONTRIBUTIONS

ITEM	PROPOSED SCOPE OF WORKS	DEVELOPMENT TRIGGER TYPE	MONETARY CONTRIBUTION	DEVELOPMENT TRIGGER
MC	Payment of a monetary contribution for local infrastructure, including both land and works, for development in excess of 1,700 Final Lots	Lot Development	\$50,000 Per Final Lot	Prior to the issue of a Subdivision Certificate creating any additional Final Lot in excess of 1,700

TABLE 2 - OPEN SPACE INFRASTRUCTURE

ITEM	PROPOSED SCOPE OF WORKS	OPEN SPACE HIERARCHY	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND
OS1	Facilities comprising elements from the following:	Environmental EL	Landscape works \$1,180,841	Park land \$1,050,990
	• Passive Open Space – 7.01ha of land			
	• Revegetation works to 3.52ha as per OEH Biobanking Agreement			
	• Landscaping and planting to remainder (excluding drainage facilities)			
OS2	• Post and cable fencing			
	Facilities comprising elements from the following:	Passive Recreation PR	Landscape works \$1,272,901	Park land \$1,256,835
	• Passive and Active Open Space – 8.38ha of land			
	• Revegetation works to 4.29ha as per OEH Biobanking Agreement			
OS3	• Landscaping and planting to remainder (excluding drainage facilities)			
	• Post and cable fencing			
	• Associated seating, pathways, signage and feature boulders			
	Facilities comprising elements from the following:	Active Recreation AR 1	Landscape works \$7,197,525	Park land \$3,337,070
OS3	• Passive and Active Open Space and Recreation – 2.90ha of land		Public art \$50,000	
	• 1 x Turf playing field including – Picket fence, irrigation & lighting			
	• 1 x Synthetic Cricket Pitch			
	• 1 x Amenities Building (see CF2 for details)			
OS3	• 1 x Picnic / BBQ shelter			



MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE

ITEM	PROPOSED SCOPE OF WORKS	OPEN SPACE HIERARCHY	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND
	<ul style="list-style-type: none"> <li>1 x Play area</li> </ul>			
	<ul style="list-style-type: none"> <li>Public artwork</li> </ul>			
	<ul style="list-style-type: none"> <li>Parking for up to 62 spaces (including on street parking)</li> </ul>			
	<ul style="list-style-type: none"> <li>Associated seating, exercise equipment, waste bins, water refill stations, pathways, signage, structures and landscaping (excluding drainage facilities)</li> </ul>			
OS4 and OS7	Facilities comprising elements from the following:	Environmental EL	Landscape works \$739,746	OS4 Park land \$2,126,005
	<ul style="list-style-type: none"> <li>Passive Open Space – 3.51ha of land</li> </ul>			OS7 Park land \$1,913,140
	<ul style="list-style-type: none"> <li>Bushland revegetation and associated pathway and signage</li> </ul>			
	<ul style="list-style-type: none"> <li>Post and cable fencing</li> </ul>			
OS5	Facilities comprising elements from the following:	Passive Recreation PR	Landscape works \$267,718	Park land \$249,090
	<ul style="list-style-type: none"> <li>Passive and Active Open Space and Recreation – 0.217ha of land</li> </ul>			
	<ul style="list-style-type: none"> <li>Informal kick around area</li> </ul>			
	<ul style="list-style-type: none"> <li>Landscaping and tree planting (excluding drainage infrastructure)</li> </ul>			
	<ul style="list-style-type: none"> <li>Associated pathway, bench seating and signage</li> </ul>			
	Facilities comprising elements from the following:	Passive Recreation PR	Landscape works \$230,514	Park land \$214,475
	<ul style="list-style-type: none"> <li>Active Open Space and Recreation – 0.19ha of land</li> </ul>			
	<ul style="list-style-type: none"> <li>Half road frontage – 0.07ha of land</li> </ul>			
OS6	<ul style="list-style-type: none"> <li>Landscaping and tree planting</li> </ul>			
	<ul style="list-style-type: none"> <li>Associated pathway</li> </ul>			
	Facilities comprising elements from the following:	Passive Recreation PR	Landscape works \$205,300	Park land \$191,015
	<ul style="list-style-type: none"> <li>Passive Open Space – 0.17ha of land</li> </ul>			
OS8	<ul style="list-style-type: none"> <li>Bushland revegetation and associated pathway and signage</li> </ul>			
	<ul style="list-style-type: none"> <li>Post and cable fencing</li> </ul>			



MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE

ITEM	PROPOSED SCOPE OF WORKS	OPEN SPACE HIERARCHY	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND
	<ul style="list-style-type: none"> <li>Associated pathway, bench seating and signage</li> </ul>			
	Facilities comprising elements from the following:	Active Recreation AR2	Landscape works \$3,960,688	Park land \$3,685,060
	<ul style="list-style-type: none"> <li>Active Open Space and Recreation – 3.20ha of land</li> </ul>			
OS9	<ul style="list-style-type: none"> <li>Bushland revegetation</li> <li>Post and cable fencing</li> <li>Associated pathway and bench seating</li> </ul>			
	Facilities comprising elements from the following:	Active Recreation AR2	Landscape works \$726,274	Park land \$88,140
	<ul style="list-style-type: none"> <li>Passive and Active Open Space and Recreation – 0.588ha of land</li> <li>Bushland revegetation and landscaping</li> </ul>			
OS10	<ul style="list-style-type: none"> <li>Informal kick around area</li> <li>1 x Play area</li> <li>Post and cable fencing</li> <li>Associated seating, exercise equipment, waste bins, water refill stations, pathways, signage, structures and feature boulders</li> </ul>			

TABLE 3

OPEN SPACE REFERENCE	OPEN SPACE HIERARCHY
OS1	EL
OS2	PR
OS3	AR 1
OS4	EL
OS5	PR
OS6	PR
OS7	EL
OS8	PR
OS9	AR 2
OS10	AR 2

TABLE 4

OPEN SPACE HIERARCHY	CODE
ENVIRONMENT LANDS	EL
PASSIVE RECREATION	PR
ACTIVE RECREATION -DISTRICT LEVEL	AR2
ACTIVE RECREATION - LOCAL LEVEL	AR1

TABLE 5

FINAL LOT	OPEN SPACE INFRASTRUCTURE DEVELOPMENT TRIGGERS
300	Completion of 1 x EL or 1 x PR
600	Completion of 1 x EL or 1 x AR2
900	Completion of 1 x EL or 1 x AR2 or 1 x PR
1,200	Completion of 1 x AR1
1,500	Completion of 1 x EL or 1 x AR2 or 2 x PR
1,700	Completion of 1 x EL or 1 x AR2 or 2 x PR

**Note:** Each item of Open Space Infrastructure above is to be Completed prior to the date that is 12 months after the issue of a Subdivision Certificate creating the particular Final Lot number as specified in this table.



**MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE**

**TABLE 6 - COMMUNITY INFRASTRUCTURE**

ITEM	PROPOSED SCOPE OF WORKS	DEVELOPMENT TRIGGER TYPE	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND	DEVELOPMENT TRIGGER
CH1	Facilities comprising elements from the following:	Lot Development	Community Building works	\$1,301,755	Community Facility land \$237,935
	<ul style="list-style-type: none"> <li>Community Facility Land – 0.2069ha of land</li> </ul>				
	<ul style="list-style-type: none"> <li>Multi-purpose space building with footprint of 500m<sup>2</sup> with service provision to flood kiosk area. To provided in close proximity to CH2 for shared amenities.</li> </ul>				
	<ul style="list-style-type: none"> <li>Parking for up to 38 spaces (including on street parking)</li> </ul>				
CF2	Facilities comprising elements from the following:	Lot Development	Amenities Building works	\$712,925	Land included in OSS
	<ul style="list-style-type: none"> <li>Amenities building with footprint of 206m<sup>2</sup> including:</li> </ul>				No later than 12 months after registration of the 1,200m <sup>2</sup> Final Lot
	<ul style="list-style-type: none"> <li>2 x team change rooms</li> </ul>				
	<ul style="list-style-type: none"> <li>1 x referee change room</li> </ul>				
	<ul style="list-style-type: none"> <li>Male and female amenities, showers and toilets with disabled access</li> </ul>				
	<ul style="list-style-type: none"> <li>Storage</li> </ul>				
	<ul style="list-style-type: none"> <li>Covered pathway between amenities building and community facility</li> </ul>				

**TABLE 7 - TRANSPORT INFRASTRUCTURE**

ITEM	PROPOSED SCOPE OF WORKS	DEVELOPMENT TRIGGER TYPE	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND	DEVELOPMENT TRIGGER
TM1	Construction of Collector Road for a minimum of 765m with footprint of approximately 1,530m <sup>2</sup> , up to two roundabouts if required, in accordance with Council Standards	Lot Development	Collector Road works \$3,877,083	Collector Road Land \$1,763,065	No later than 12 months after registration of the 1,500m <sup>2</sup> Final Lot
TM4	Construction of Collector Road for a minimum of 503m with footprint of approximately 1,011m <sup>2</sup> , up to one roundabout if required, in accordance with Council Standards	Lot Development	Collector Road works \$2,474,942	Collector Road Land \$1,148,160	No later than 12 months after registration of the 300m <sup>2</sup> Final Lot
TM6	Construction of Collector Road for a minimum of 440m with footprint of approximately 0,889m <sup>2</sup> , up to one roundabout if required, in accordance with Council Standards	Lot Development	Collector Road works \$2,192,796	Collector Road Land \$907,810	No later than 12 months after registration of the 900m <sup>2</sup> Final Lot



MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE

TABLE 8 - WATER QUALITY AND TREATMENT BASIN WORK

ITEM	PROPOSED SCOPE OF WORKS	DEVELOPMENT TRIGGER TYPE	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND	DEVELOPMENT TRIGGER
CATCHMENT 1A	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with a footprint of 19,089m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p>	Development within Drainage Catchment	Drainage works - \$3,539,101	Land included in OS2  Drainage Land (D11) \$84,135	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 1A</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 1A</p>
CATCHMENT 2A	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Nil</li> </ul>				
CATCHMENT 3A	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with a footprint of 4,334m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p>	Development within Drainage Catchment	Drainage works \$803,524	Land included in OS1	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 3A</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 3A</p>
CATCHMENT 3B	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Water quality swale(s) and detention(s) with a footprint of 3,286m<sup>2</sup></li> </ul> <p>Water quality and quantity facilities comprising elements from the following:</p>	Development within Drainage Catchment	Drainage works - \$672,631	Land included in OS1	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 3B</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 3B</p>
CATCHMENT 4A	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with a footprint of 2,773m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p>	Development within Drainage Catchment	Drainage works \$515,041	Drainage land - \$41,760	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 4A</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 4A</p>
CATCHMENT 5A	Water quality and quantity facilities comprising elements from the following:				



# MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE

ITEM	PROPOSED SCOPE OF WORKS	DEVELOPMENT TRIGGER TYPE	NOTIONAL VALUE OF WORKS	NOTIONAL VALUE OF LAND	DEVELOPMENT TRIGGER
	<ul style="list-style-type: none"> <li>Nil</li> </ul>				
CATCHMENT 5B	<p>Water quality and quantity facilities comprising elements from the following:</p> <ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with footprint of 13,727m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p>	Development within Drainage Catchment	Drainage works \$3,286,586	Drainage land \$205,905	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 5B</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 5B</p>
CATCHMENT 6A	<ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with a footprint of 2,807m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p> <p>Assumes 45% of D9 delivered for Catchment 6A.</p>	Development within Drainage Catchment	Drainage works - \$519,435	Drainage land \$42,025	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 6B</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 6B</p>
CATCHMENT 6B	<ul style="list-style-type: none"> <li>Water quality swale(s) and detention basin(s) with a footprint of 3,395m<sup>2</sup></li> </ul> <p>To meet the objectives of the Water Cycle strategy and constructed in accordance with detailed design provided at DA.</p> <p>Assumes 55% of D9 delivered for Catchment 6B</p>	Development within Drainage Catchment	Drainage works \$1,844,971	Drainage land \$149,270	<p>Stage 1 Works No later than 12 months after registration of the 1st<sup>st</sup> Final Lot within Drainage Catchment 6B</p> <p>Stage 2 Works No later than 12 months after completion of 80% of dwellings within Drainage Catchment 6B</p>

In Table 8:

Stage 1 Works means any water quality and treatment basin works excluding:

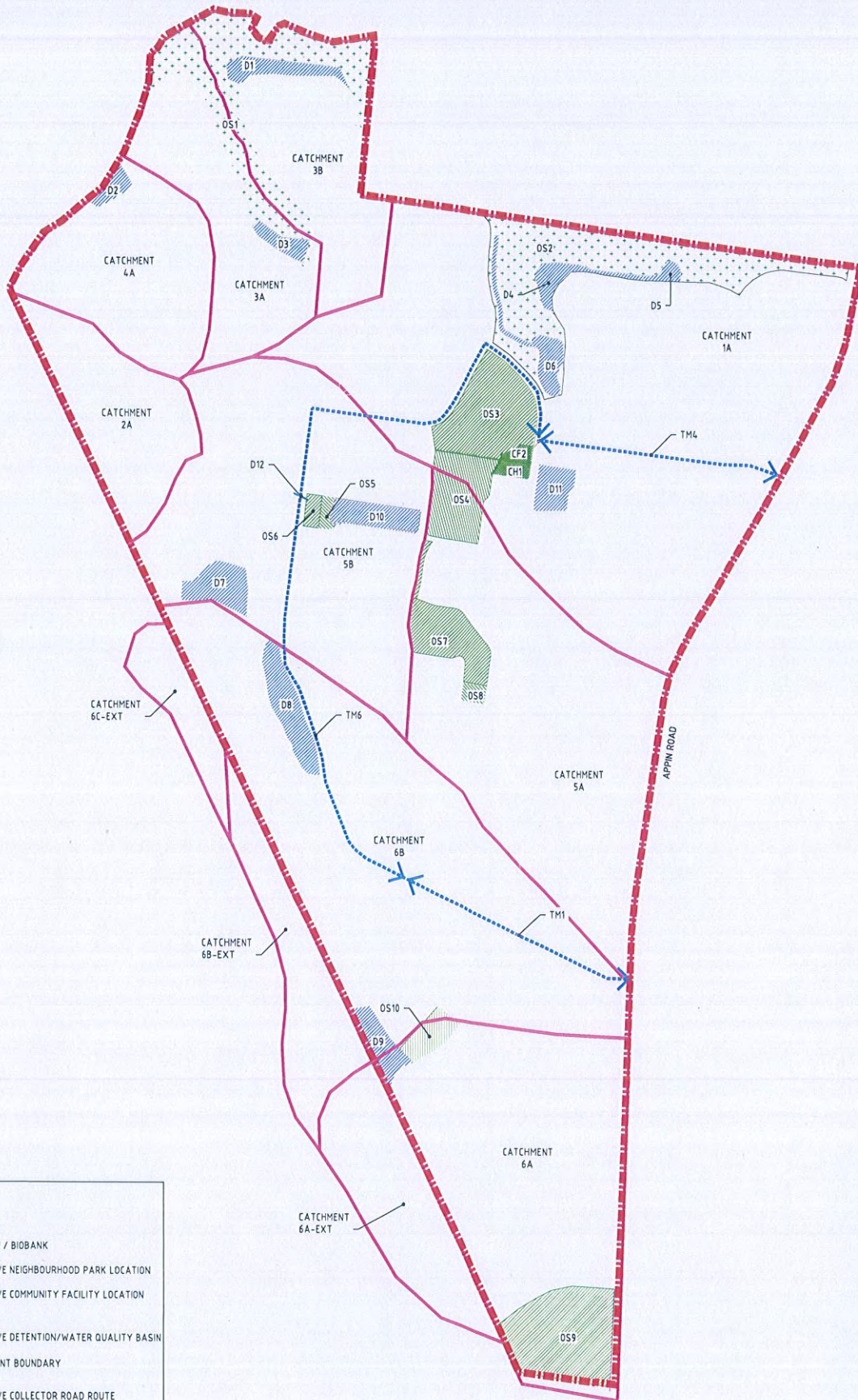
- The upper 100mm of filter media

**MOUNT GILEAD 1 – MDP LANDS VPA SCHEDULE**

- b. Any work comprising landscaping of grasses, shrubs and/or trees
- c. But including the installation of geotextile fabric to the upper surface of the works.

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.





### LEGEND

- OPEN SPACE
- RIPIARIAN / BIDBANK
- INDICATIVE NEIGHBOURHOOD PARK LOCATION
- INDICATIVE COMMUNITY FACILITY LOCATION
- DRAINAGE
- INDICATIVE DETENTION/WATER QUALITY BASIN
- CATCHMENT BOUNDARY
- ROADS
- INDICATIVE COLLECTOR ROAD ROUTE
- LAND TO WHICH THIS PLANNING AGREEMENT APPLIES

0 100 200 300 400m  
SCALE 1:4000  
@A1

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FOR INFORMATION ONLY  
NOT TO BE USED FOR CONSTRUCTION PURPOSES

### MT GILEAD Development Area Plan

DATUM	Date	Scale	Size	Revision
	15/02/2018	1:4000	A1	
Drawing Number	89914069-003-SK008(8)			08

## **Schedule 2 – Development Area Plan (Clause 1.1)**



## Executed as a deed

Signed, sealed and delivered on behalf of )  
the Council by its General Manager and Mayor )  
by the affixing of the Common Seal of Council )  
in accordance with resolution dated

Signature removed

Signature of General Manager

LINDY DEITZ

Name of General Manager  
(BLOCK LETTERS)

Signature of Mayor removed

Name of Mayor (BLOCK LETTERS)

Signed, sealed and delivered by Lendlease )  
Communities (Mount Gilead) Pty Limited )  
~~ABN~~ in accordance with Section 127 of the )  
Corporations Act 2001 (Cth)

Signature removed

Signature of authorised person

Company Secretary

Office held

Susan Ann Westlake

Name of authorised person  
(BLOCK LETTERS)

Signed, sealed and delivered by Mount )  
Gilead Pty Limited in accordance with )  
Section 127 of the Corporations Act 2001 )  
(Cth)

Signature removed

Signature of authorised person

STEVEN JOHN ROGERS

Office held

DIRECTOR

Name of authorised person  
(BLOCK LETTERS)

Signature removed

Signature of authorised person

Director

Office held

MATTHEW JAMES WALLACE

Name of authorised person  
(BLOCK LETTERS)

Signature removed

Signature of authorised person

DIRECTOR

Office held

LEE MACARTHUR - ONSLOW

Name of authorised person  
(BLOCK LETTERS)

signed, sealed and delivered by Stefan )  
Dzwonnik and Anna Dzwonnik in the )  
presence of the witnesses signing below )

Signature removed



Signature removed

Signature of authorised person

ALEXANDER HERBERT RENDEL

Office held

SOLICITOR

Name of authorised person  
(BLOCK LETTERS)

20/125 FERN STREET  
GERRINGONG NSW 2534

Signature of authorised person

ANNA DZWONNIK

Office held

LANDOWNER

Name of authorised person  
(BLOCK LETTERS)