ATTACHMENTS TO REPORTS –
Item 13.3 – Draft Garden World Voluntary Planning Agreement

ORDINARY COUNCIL MEETING

Wednesday 14 December 2016

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Attachments to Reports

Item

13.3 Draft Garden World Voluntary Planning Agreement

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ATTACHMENTS TO REPORT

Item 13.3

Draft Garden World Voluntary Planning Agreement

Attachment 1

Garden World Draft Voluntary Planning Agreement

ATTACHMENT 1

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planning • environment • local government

Garden World Planning Agreement

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

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Wingecarribee Shire Council

Development Implementation Pty Ltd

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Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd

Garden World Planning Agreement

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Garden World Planning Agreement

Summary Sheet

Council:

Name: Wingecarribee Shire Council

Address: Civic Centre, Elizabeth Street, MOSS VALE, NSW, 2577

Telephone: 02 4868 0854

Facsimile: 02 4869 1203

Email: Susan.Stannard@wsc.nsw.gov.au

Representative: Susan Stannard

Developer:

Name: Development Implementation Pty Ltd

Address: 'Anncoh Moor', 520 Old South Road, MITTAGONG NSW 2576

Telephone: [Insert Details]

Facsimile: [Insert Details]

Email: b.romeo@bigpond.com [**Drafting Note**. Developer to confirm if this still correct]

Representative: Bernard Romeo [**Drafting Note**. Developer to confirm if this still correct]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clauses 8, 9, 11, 14, 15 and Schedule 1.

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Application of s94, s94A and s94EF of the Act:

See clause 7.

Security:

See clause 31 and 32.

Registration:

Yes. See clause 38.

Restriction on dealings:

See clause 39.

Dispute Resolution:

Expert determination and mediation. See clauses 36 and 37.

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Garden World Planning Agreement

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

Parties

Wingecarribee Shire Council ABN 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW 2577 (**Council**)

and

Development Implementation Pty Ltd ACN 000 771 095 of 'Anncoh Moor', 520 Old South Road, MITTAGONG NSW 2576 (**Developer**)

Background

A The Developer is the owner of the Land.

B The Developer has lodged with Council a Development Application relating to the Development.

C The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

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

Alternative Funding means funding obtained by the Council for the ongoing management of the Drainage Management Land dedicated to the Council under this Agreement that does not rely on monetary Development Contributions obtained by the Council under Division 6 of Part 4 of the Act (including under this Agreement).

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

(a) one of the following trading banks:

(i) Australia and New Zealand Banking Group Limited,

(ii) Commonwealth Bank of Australia,

(iii) Macquarie Bank,

(iv) National Australia Bank Limited,

(iv) St George Bank Limited,

(v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

Construction Certificate has the same meaning as in the Act.

Contributions Plan means a contributions plan within the meaning of the Act that is in force.

Contribution Value means:

(a) the amount set out in Column 5 of the Table to Schedule 1 in respect of an Item;

(b) an amount which this Agreement otherwise specifies as the Contribution Value for a Work; or

(c) if this Agreement does not specify a Contribution Value for a Work, the actual costs incurred by the Developer in carrying out the Work, as evidenced by documentation provided to and satisfactory to the Council (acting reasonably), or as otherwise agreed between the Council and the Developer.

Defects Liability Period means the period commencing on the date on which a Work is taken to have been completed under this Agreement and ending 12 months after that date.

Development means development the subject of Development Consent to Development Application LUA11/0767 as amended or varied, being subdivision of the Land into approximately 131 Final Lots.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, the provision of public infrastructure or another public purpose.

Development Servicing Plan - Sewerage Services means the document of the Council titled '*Development Servicing Plan for Wingecarribee Shire Council Sewerage'*, a copy of which is available from the Council, or any document that replaces that document.

Development Servicing Plan – Stormwater means the document of the Council titled '*Wingecarribee Shire Council Stormwater Development Servicing Plan'*, a copy of which is available from the Council, or any document that replaces that document.

Development Servicing Plan – Water Supply means the document of the Council titled '*Development Servicing Plan for Wingecarribee Shire Council*

Water Supply', a copy of which is available from the Council, or any document that replaces that document.

Drainage Management Land means the part of the Land that is marked 'A' and 'B' on the Land Dedication Plan, or any other part of the Land agreed between the Parties to be Drainage Management Land for the purposes of this Agreement before such land is required to be dedicated to the Council under this Agreement.

Drainage Management Plan means a plan relating to the Drainage Management Land prepared and approved in accordance with clause 10 of this Agreement.

Establishment Obligation means establishment of the Drainage Management Land in Stages in accordance with:

(a) the relevant requirements of any Development Consent relating to the Drainage Management Land, and

(b) to the extent not inconsistent with such a Development Consent:

(i) any Drainage Management Plan approved by the Council, and

(ii) otherwise to the reasonable satisfaction of the Council.

Establishment Period in respect of a Stage means the period commencing when the Development is commenced (within the meaning of the Act) or such other period or periods commencing at such other time or times as the Parties agree and ending when the Establishment Obligation is completed to the reasonable satisfaction of the Council in respect of the Stage.

Final Lot means a lot to be created in the Development for separate occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the the Land:

(a) that is to be dedicated or otherwise transferred to the Council, or

(b) on which is situated a dwelling house that was in existence on the date of this Agreement

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Item means the object of a Development Contribution specified in Column 1 of Schedule 1.

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

Land means that part of Lot 117 DP 659149, otherwise known as Braemar Garden World, Old Hume Highway, Braemar NSW 2576 as shown shaded in grey on the plan in Schedule 4

Land Dedication Plan means the plan in Schedule 2.

Lomandra Lane means the public road shown as such on the plans in Schedule 6.

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Management Contribution means a monetary contribution per Final Lot in the Development of an amount determined by dividing $126,955.48 by the number of Final Lots in the Development, indexed quarterly after the date of this Agreement in accordance with the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Management Contribution Refund means an amount calculated as follows:

Refund = $F x (10-YE) /10

Where

F = All Management Contributions paid under this Agreement.

YE = The number of years from the end of the Management Period to the date any Alternative Funding takes effect expressed as a number to two decimal places.

Management Obligation means the management of the Drainage Management Land in accordance with:

(a) the relevant requirements of any Development Consent relating to the Drainage Management Land, and

(b) to the extent not inconsistent with such a Development Consent:

(i) any Drainage Management Plan approved by the Council, and

(ii) otherwise to the satisfaction of the Council.

Management Period means the period commencing immediately at the end of the Establishment Period for a Stage and ending once all subdivision works for the Stage are completed and the final plan of subdivision for the Stage has been registered or such other period or periods as the Parties agree.

Management Work means the Establishment Obligation and the Management Obligation.

Occupation Certificate has the same meaning as in the Act.

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

Pathways means Item 7.

Real Property Act means the *Real Property Act 1900*.

Recreation Pathway Plan means the plan in Schedule 5.

Rectification Notice means a notice in writing that identifies a defect in a Work and requires rectification of the defect within a specified period of time.

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

RMS means the Roads and Maritime Services.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Sewerage Services Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Sewerage Services per Final Lot created in the Development.

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Stage means a stage of the Development shown in the Staging Plan.

Staging Plan means the plan contained in Schedule 3.

Stormwater Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Stormwater per Final Lot created in the Development.

Subdivision Certificate has the same meaning as in the Act.

Water Supply Contribution means a monetary Development Contribution payable under the Development Servicing Plan – Water Supply per Final Lot created in the Development.

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

1.2.5 A reference in this Agreement to a $ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

1.2.12 References to the word 'include' or 'including' are to be construed without limitation.

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1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.

1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

1.2.15 Any schedules, appendices and attachments form part of this Agreement.

1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Status & application of this Agreement

2.1 This Agreement:

2.1.1 is a planning agreement for the purposes of s93F of the Act,

2.1.2 applies to the Development on the Land.

3 Commencement of this Agreement

3.1 This Agreement commences when it has been executed by all of the Parties.

3.2 The Party who executes this Agreement last is to notify the other Party once it has done so and promptly provide it with a copy of the fully executed version of this Agreement.

4 Commencement of Development Contributions obligations

4.1 The Developer is under no obligation to make the Development Contributions to the Council in accordance with this Agreement unless Development Consent is granted to the Development generally in accordance with the Development Application.

5 Further Agreements Relating to this Agreement

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

6 Surrender of right of appeal, etc.

6.1 The Developer is not to commence or maintain or cause to be commenced or maintained any proceedings involving an appeal against, or questioning the validity of:

6.1.1 any Development Consent relating to the Development, or

6.1.2 any approval under s96 of the Act to modify a Development Consent relating to the Development,

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to the extent that the proceedings relate to the existence or content of this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

7.1 This Agreement excludes the application of s94 and s94A of the Act to the Development, and any subsequent development applications for the erection of dwellings on the Final Lots.

7.2 This Agreement does not exclude the application of s94EF of the Act to the Development.

Part 2 – Development Contributions

8 Provision of Development Contributions

8.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the reasonable satisfaction of the Council.

8.2 Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Agreement.

8.3 The Developer is to make such other Development Contributions to the Council as are provided for in this Agreement to the reasonable satisfaction of the Council.

8.4 The 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.

8.5 Despite clause 8.4, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

9 Water Supply, Sewerage Services and Stormwater Contribution

9.1 The Developer is to pay :

9.1.1 the Water Supply Contribution for the Development or each Stage of the Development at the time specified in the Development Servicing Plan – Water Supply for such payment,

9.1.2 the Sewerage Services Contribution for the Development or each Stage of the Development at the time specified in the Development Servicing Plan – Sewerage Services for such payment, and

9.1.3 the Stormwater Contribution for the Development or each Stage of the Development at the time specified in the Development Servicing Plan – Stormwater for such payment

9.2 The payment required by clause 9.1 is in addition to any other Development Contribution that the Developer is required to make under this Agreement or otherwise in relation to the Development.

Part 3 – Provisions relating to Drainage Management Land

10 Approval of Drainage Management Plan

10.1 It is acknowledged by the Parties that any Development Consent granted to the Development will include a condition requiring a plan to be prepared relating to the Drainage Management Land.

10.2 The Developer must prepare and submit to Council for approval a Drainage Management Plan which complies with any condition of the type referred to in clause 10.1, and which, as a minimum contains provisions relating to:

10.2.1 the establishment and management of the Drainage Management Land;

10.2.2 the dedication of the Drainage Management Land as a public reserve; and

10.2.3 the allocation of responsibility for the inspection, monitoring and maintenance of all stormwater management structures, including pits, pipes, gross pollutant traps, bio-retention systems and any other stormwater structures and drainage works on the Drainage Management Land

10.3 The Developer is responsible for obtaining all necessary approvals for the carrying out of the works set out in the approved Drainage Management Plan.

10.4 The Developer is not to establish or maintain the Drainage Management Land except in accordance with:

10.4.1 a Drainage Management Plan that has been approved by the Council, and

10.4.2 the terms of any approval granted by the Council as modified from time to time.

11 Establishment & Management of Drainage Management Land

11.1 The Developer, at its own cost, is to perform:

11.1.1 the Establishment Obligation during the Establishment Period, and

11.1.2 the Management Obligation during the Management Period.

11.2 The Developer is to perform its obligations under clause 11.1 in accordance with:

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11.2.1 this Agreement, and

11.2.2 any further agreement that is entered into by the Parties under clause 5, and

11.2.3 any reasonable requirements and directions notified in writing by the Council to the Developer at any time before the Drainage Management Land Management Work is completed that is not inconsistent with:

(a) this Agreement, or

(b) any agreement referred to in clause 11.2.2, or

(c) any Development Consent relating to the Development.

11.3 The Establishment Obligation and the Management Obligation are not to be varied by the Developer, unless:

11.3.1 the Parties agree in writing to the variation, and

11.3.2 any consent or approval required under the Act or any other law to the variation is first obtained.

12 Failure to Perform Establishment or Management Obligations

12.1 If the Council reasonably considers that the Developer is in breach of the Establishment Obligation or the Management Obligation, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.

12.2 The dispute resolution provisions of this Agreement do not apply to the giving of a notice under clause 13.1.

12.3 A notice given under clause 12.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.

13 Inspection of the Drainage Management Land

13.1 Before the Drainage Management Land is dedicated to the Council in accordance with this Agreement, the Developer is to permit the Council, its officers, employees, agents and contractors to enter that land at any time, for the purposes of establishing compliance with the approved Drainage Management Plan, upon giving 7 days prior notice.

13.2 After the Drainage Management Land is dedicated to the Council in accordance with this Agreement, the Developer is to permit the Council, its officers, employees, agents and contractors to reasonably pass through land owned, occupied or otherwise controlled by the Developer to enable the Council to obtain reasonable access to the Drainage Management Land.

13.3 This clause does not derogate from any other rights the Council has under this Agreement to enter the Drainage Management Land.

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14 Dedication of Drainage Management Land

14.1 The Developer is to dedicate the Drainage Management Land to the Council as a public reserve free of cost to the Council in Stages at the end of the Management Period for the Stage.

14.2 The part of the Drainage Management Land to be dedicated in respect of each Stage, is as shown on the Land Dedication Plan.

15 Management Contribution

15.1 The Developer is to pay to the Council that part of the Management Contribution relating to a Stage based on the number of Final Lots in the Stage, before the issuing of the first Subdivision Certificate for that Stage.

15.2 The Management Contribution and any interest earned on its investment is to be held and applied by the Council for a period of 10 years on and from the expiration of the Management Period towards the ongoing environmental management of the Drainage Management Land.

15.3 The Management Contribution payable by the Developer may be reduced by agreement in writing between the Developer and the Council but only if the agreement also provides for an extended Management Period.

15.4 If after the Management Contribution has been paid in respect of any part of the Development, the number of Final Lots in the Development changes, then the Management Contribution payable from that point on will be adjusted so that the total Management Contribution paid for all Final Lots in the Development will be $126,995.48, indexed quarterly after the date of this Agreement in accordance with the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

16 Alternative Funding

16.1 The Council is to use its reasonable endeavours to obtain Alternative Funding as soon as reasonably practicable after this Agreement is entered into.

16.2 The Developer is not to raise any requisition or objection or bring any proceedings or make any claim or demand in respect of anything done or not done by the Council for the purposes of clause 16.1.

16.3 If, at any time after the date of this Agreement, the Council obtains Alternative Funding, the Council is to send a notice to the Developer:

16.3.1 informing the Developer that the Council has obtained the Alternative Funding, and

16.3.2 specifying the amount that may be claimed by the Developer

16.4 If a notice under clause 16.3 is given in a case:

16.4.1 where the Developer has not yet paid the Management Contribution, that contribution is taken for the purposes of this Agreement to have been reduced by the amount specified in the notice,

16.4.2 where the Developer has paid the Management Contribution, the Council is to pay the Management Contribution Refund to the

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Developer if it receives written notice from the Developer requesting payment.

Part 4 – Provisions relating to monetary Development Contributions

17 Procedures relating to payment of monetary Development Contributions

17.1 Monetary Development Contributions payable by the Developer to the Council under this Agreement are to be indexed quarterly in accordance with the indexation provisions of any Contributions Plan in force at the time of the indexation that relates to the subject matter of the relevant monetary Development Contribution.

17.2 A monetary Development Contribution is made for the purposes of this Agreement when the 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 the Council.

17.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council has given to the Developer a tax invoice for the amount of the Development Contribution.

Part 5 - Provisions relating to the dedication of land

18 Procedures relating to the dedication of land

18.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:

18.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

18.1.2 the Council is given an instrument in registrable form under the Real Property Act that is effective to transfer the title to the land to the Council when registered.

18.2 For the purposes of clause 18.1.2:

18.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the Real Property Act relating to the land to be dedicated,

18.2.2 the Council is to execute the instrument of transfer and return it to Developer within 7 days of receiving it from the Developer,

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18.2.3 the Developer is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed,

18.2.4 the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

Part 6 - Provisions relating to the carrying out of Work

19 Approval of design of Pathways

19.1 Council is to approve the design and specifications for the Pathways.

19.2 Prior to commencing any work on the design of the Pathways, the Developer is to request that Council provide the Developer with its requirements for the location, design, materials, specifications, capacity and timing for the provision of the Pathways.

19.3 The Council is to act reasonably when specifying its requirements for any Pathways and in accordance with the Contributions Value referred to at Schedule 1.

19.4 Once the Developer receives Council's requirements for the Pathways under clause 19.2, the Developer is to provide the detailed design for the Pathways to Council for Council's approval.

19.5 The Developer is to make any reasonable change to the detailed design for the Pathways required by the Council and in accordance with the Contributions Value referred to at Schedule 1.

19.6 The Developer is to bear all reasonable costs associated with obtaining the Council's approval to the detailed design of the Pathways under this clause.

20 Carrying out of Work

20.1 Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:

20.1.1 any relevant Development Consent,

20.1.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,

20.1.3 any relevant approvals and specification of the RMS,

20.1.4 any other applicable law, and

20.1.5 otherwise to the reasonable satisfaction of the Council.

20.2 The Developer is to comply with any direction given to it by the Council, acting reasonably, to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Agreement.

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21 Access to the land

21.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land (other than a Final Lot which has been sold) at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.

21.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

22 Protection of people and property

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

22.1.1 all necessary measures are taken to protect people and property, and

22.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

22.1.3 nuisances and unreasonable noise and disturbances are prevented.

23 Damage and repairs to Work

23.1 The Developer, at its own cost, is to repair and make good to the reasonable satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

24 Variation of Work

24.1 A Work is not to be varied by the Developer, unless:

24.1.1 the Parties agree in writing to the variation, and

24.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and

24.1.3 the Developer bears all of the Council's reasonable costs of and incidental to agreeing to and approving the variation.

24.2 For the purposes of clause 24.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

25 Procedures relating to the completion of Work

25.1 Work is completed for the purposes of this Agreement when the Council at the request of the Developer, acting reasonably, gives a certificate to the Developer to that effect.

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25.2 On completion of a Work (other than the Management Obligation) by the Developer, the Developer will provide Council with Security in the amount of 5% of the Contribution Value for the Work.

25.3 The Council may call up the Security provided under clause 25.2 if, acting reasonably, it incurs a cost in carrying out, completing or rectifying a defect in the Work in respect of which the Security was provided.

25.4 The Security provided under clause 25.2, or any balance of that Security not used, will be released and returned to the Developer on the later of the end of the Defects Liability Period for the relevant Work and the date on which the Developer complies with any Rectification Notice in respect of the Work.

26 Procedures relating to the rectification of defects

26.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice if the Council, acting reasonably, considers that there is a defect in the Works.

26.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the reasonable satisfaction of the Council.

26.3 If the Developer breaches clause 26.2, the Council may have the relevant defect rectified to a reasonable standard as contemplated by Schedule 1 and may recover its costs of so doing as a debt due in a court of competent jurisdiction, to the extent that Council's costs are not covered by a Security.

27 Failure to carry out Work

27.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.

27.2 The dispute resolution provisions of this Agreement do not apply to the giving of a notice under clause 27.1.

27.3 A notice given under clause 27.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.

27.4 The Council acting reasonably may carry out and complete the Work the subject of a notice under clause 27.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.

27.5 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 27.4.

27.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Developer with this Agreement that is not met by calling-up a Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.

27.7 For the purpose of clause 27.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:

27.7.1 the reasonable costs of the Councils servants, agents and contractors reasonably incurred for that purpose,

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27.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

27.7.3 all reasonable legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

28 Works-As-Executed-Plan

28.1 No later than 60 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.

Part 7 – Other Provisions

29 Restriction on Development

29.1 The first Subdivision Certificate for the Development cannot be issued until access to the Land approved by Council and RMS is complete and operational.

29.2 The Parties acknowledge and agree that any vehicular access from the Land to the traffic signals at the intersection of Isedale Road and the Hume Highway via Lomandra Lane is temporary only.

29.3 Without limiting clause 29.1, the Developer is not to apply for, or cause, suffer or permit an application to be made for a Subdivision Certificate that creates the 71st Final Lot unless and until:

29.3.1 Isedale Road is completed and connected directly to the boundary of the Land, and

29.3.2 vehicular access from the Land is available across the boundary of the Land directly to Isedale Road.

30 Indemnity and Insurance

30.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer of any Work and the performance by the Developer of any other obligation under this Agreement, but for the negligent or wilful acts or omissions of Council.

30.2 The Developer is to take out and keep current to the reasonable 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 Work is taken to have been completed in accordance with this Agreement:

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30.2.1 contract works insurance, noting the 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,

30.2.2 public liability insurance for at least $20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,

30.2.3 workers compensation insurance as required by law, and

30.2.4 any other insurance required by law.

30.3 If the Developer fails to comply with clause 30.2, the Council may, acting reasonably, effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

30.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or

30.3.2 recovery as a debt due in a court of competent jurisdiction.

30.4 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 30.2.

31 Security for obligation to dedicate land

31.1 If the Developer does not dedicate land required to be dedicated under this Agreement at the time at which it is required to be dedicated or at all, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of $1 without having to follow the pre-acquisition procedure under the Just Terms Act.

31.2 Council is to only acquire land pursuant to clause 31.1 if:

(a) to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement; and

(b) Council has given the Developer 30 days notice of the proposed acquisition of land.

31.3 Clause 31.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

31.4 If, as a result of the acquisition referred to in clause 31.1, the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.

31.5 Except as otherwise agreed between the Parties, the Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council

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compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.

31.6 The Developer indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.

31.7 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 31, including without limitation:

31.7.1 signing any documents or forms,

31.7.2 giving land owner's consent for lodgement of any Development Application,

31.7.3 producing certificates of title to the Registrar-General under the Real Property Act, and

31.7.4 paying the Council's costs arising under this clause 31.

31.8 Notwithstanding clause 31.5, if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may acting reasonably withhold its agreement.

32 Provision of Security for carrying out of Works

32.1 For the purpose of this clause 32, a reference to a "Work" means:

32.1.1 an Item comprising the carrying out of a Work,

32.1.2 the Establishment Obligation, and

32.1.3 the Management Obligation.

32.2 Not less than 14 days before a time specified for provision of a Work, the Developer is to notify the Council in writing whether the Work will be provided by that time.

32.3 If the Developer notifies the Council under clause 32.1 that a Work will not be provided by the time so specified, the Developer is to:

32.3.1 provide the Council with Security equal to 100% of the full value of any uncompleted part of the Work by not later than that time, and

32.3.2 in the same notice, provide the Council with a written estimate of the date on which the Work will be provided.

32.4 The time for provision of the Work under this Agreement will then be taken to be the time notified to the Council under clause 32.3.2.

32.5 If the Developer complies with clause 32.3, then it will not be considered to be in breach of this Agreement as a result of a failure to provide a Work by the required time.

32.6 The Developer's obligation under clause 32.3.1 may be satisfied by the roll-over of an existing Security provided by the Developer to the Council for another purpose if the Council agrees to the roll-over.

32.7 The amount of the Security is to be indexed quarterly in accordance with the Consumer Price Index (All Groups - Sydney) provided by the Australian

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Bureau of Statistics and the Developer must ensure that the Security held by the Council at all times equals the indexed amount.

33 Release & return of Security

33.1 Council is to release and return any Security held under this Agreement if the obligation or obligations that are secured by that Security have been performed to the reasonable satisfaction of the Council.

33.2 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security specified in clause 32.

33.3 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.

34 Call-up of Security

34.1 The Council may call-up the Security if, acting reasonably, it considers that the Developer has breached this Agreement.

34.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Developer's breach including but not limited to:

34.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

34.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

34.2.3 all reasonable legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.

35 Enforcement

35.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.

35.2 For the avoidance of doubt, nothing in this Agreement prevents:

35.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,

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

35.3 If the Council is successful in enforcing the Agreement pursuant to this clause 36, the Developer is to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

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36 Dispute Resolution – expert determination

36.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.

36.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.

36.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.

36.4 If a notice is given under clause 36.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

36.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.

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

36.7 Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

37 Dispute Resolution - mediation

37.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 36 applies.

37.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.

37.3 If a notice is given under clause 37.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

37.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.

37.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

38 Registration of this Agreement

38.1 The Developer agrees that it will procure the registration of this Agreement on the title to the Land.

38.2 The Developer must lodge the following documents with Land and Property Information within 30 days of the date of this Agreement to enable registration, and must provide Council with written evidence of lodgment:

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38.2.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Developer, and

38.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration, and

38.2.3 all other documents required to enable the registration of the Agreement on the title to the Land.

38.3 The Developer must provide Council with written evidence of the registration of the Agreement on the title to the Land within 7 days of the Developer becoming aware that registration has occurred.

38.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:

38.4.1 in so far as the part of the Development Implementation Land concerned is a Final Lot,

38.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any reason whatsoever.

39 Assignment, Sale of Land, etc

39.1 Unless the matters specified in clause 39.2 are satisfied, the Developer is not to do any of the following:

39.1.1 sell or transfer the Land or any part of it to any person, or

39.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.

39.2 The matters required to be satisfied for the purposes of clause 39.1 are as follows:

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

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

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

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

39.3 This clause does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to that land at the time of the sale or transfer.

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40 Notices

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

40.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,

40.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or

40.1.3 emailed to that Party at its email address set out in the Summary Sheet.

40.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

40.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

40.3.1 delivered, when it is left at the relevant address,

40.3.2 sent by post, 2 business days after it is posted,

40.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

40.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

40.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

41 Approvals and Consent

41.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.

42 Costs

42.1 The Developer is to pay to the Council 50% of the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.

42.2 The Developer is to pay all of the Council's reasonable costs in relation to land valuation (if any) in relation to this Agreement.

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43 Entire Agreement

43.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

43.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

44 Further Acts

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

45 Governing Law and Jurisdiction

45.1 This Agreement is governed by the law of New South Wales.

45.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

45.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

46 Joint and Individual Liability and Benefits

46.1 Except as otherwise set out in this Agreement:

46.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

46.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

47 No Fetter

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

48 Representations and Warranties

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

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49 Severability

49.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

49.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

50 Modification

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

51 Waiver

51.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

51.2 A waiver by a Party is only effective if it is in writing.

51.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of 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.

52 GST

52.1 In this clause:

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

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

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

52.2 Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

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52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

52.4 No additional amount shall be payable by the Council under clause 52.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

52.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

52.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

52.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

52.6 No payment of any amount pursuant to this clause 52, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

52.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

52.8 This clause continues to apply after expiration or termination of this Agreement.

53 Explanatory Note Relating to this Agreement

53.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

53.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.

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Schedule 1

(Clause 8)

Development Contributions

Column 1 Item	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing	Column 5 Contribution Value
Monetary Contributions				
1. Contributions Plan - Administration	Administration costs	$60.00 per Final Lot	Prior to the issuing of the Subdivision Certificate for a Final Lot in the Development	$60,260.00 (based on 131 Final Lots)
2. Resource Recovery Centre	Resource Recover Centre upgrade	$241.00 per Final Lot	Prior to the issuing of the Subdivision Certificate for a Final Lot in the Development	$31,571.00 (based on 131 Final Lots)
3. Central Library	Central Library upgrade	$406.00 per Final Lot	Prior to the issuing of the Subdivision Certificate for a Final Lot in the Development	$53,186.00 (based on 131 Final Lots)

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4. Roads and Traffic	Roads and Traffic Contribution	$3,174.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot in the Development	$415,794.00 (based on 131 Final Lots)
5. Refurbishment of Mittagong Oval – Basketball/Tennis Court Precinct pursuant to Council's Sports & Recreation Capital Program Sports Facilities	Open Space	$181,763.00 (based on 131 Final Lots)	Prior to the issue of the first Subdivision Certificate for the Development	$181,763.00
Land Dedication				
6. Land for recreation pathways	Shared use pathway	The land on which Item 7 is to be located	On the registration of a plan of subdivision for a Stage which contains land for recreation pathways	N/A
Carrying out of Works				

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7. Recreation Pathway being additional footpath width to accommodate shared use pathway	Shared use pathways	Provision of additional 1.3m wide pathway to Council's standard 1.2m footpath width to create a 2.5m shared pathway, and footbridge, in the locations shown on and in accordance with a plan prepared by the Developer at its cost and submitted to and approved by the Council, a preliminary version of which is included in Schedule 5.	That part of any recreation pathway that is located in a Stage is to be completed prior to the issuing of the first Subdivision Certificate that creates a Final Lot for the Stage.	$95,040.00

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Schedule 2

(Clause 1.1)

Land Dedication Plan

Land Dedication Plan on the next page.

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Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd

LAND DEDICATION PLAN

Schedule 3

(Clause 1.1)

Staging Plan

Staging Plan on the next page.

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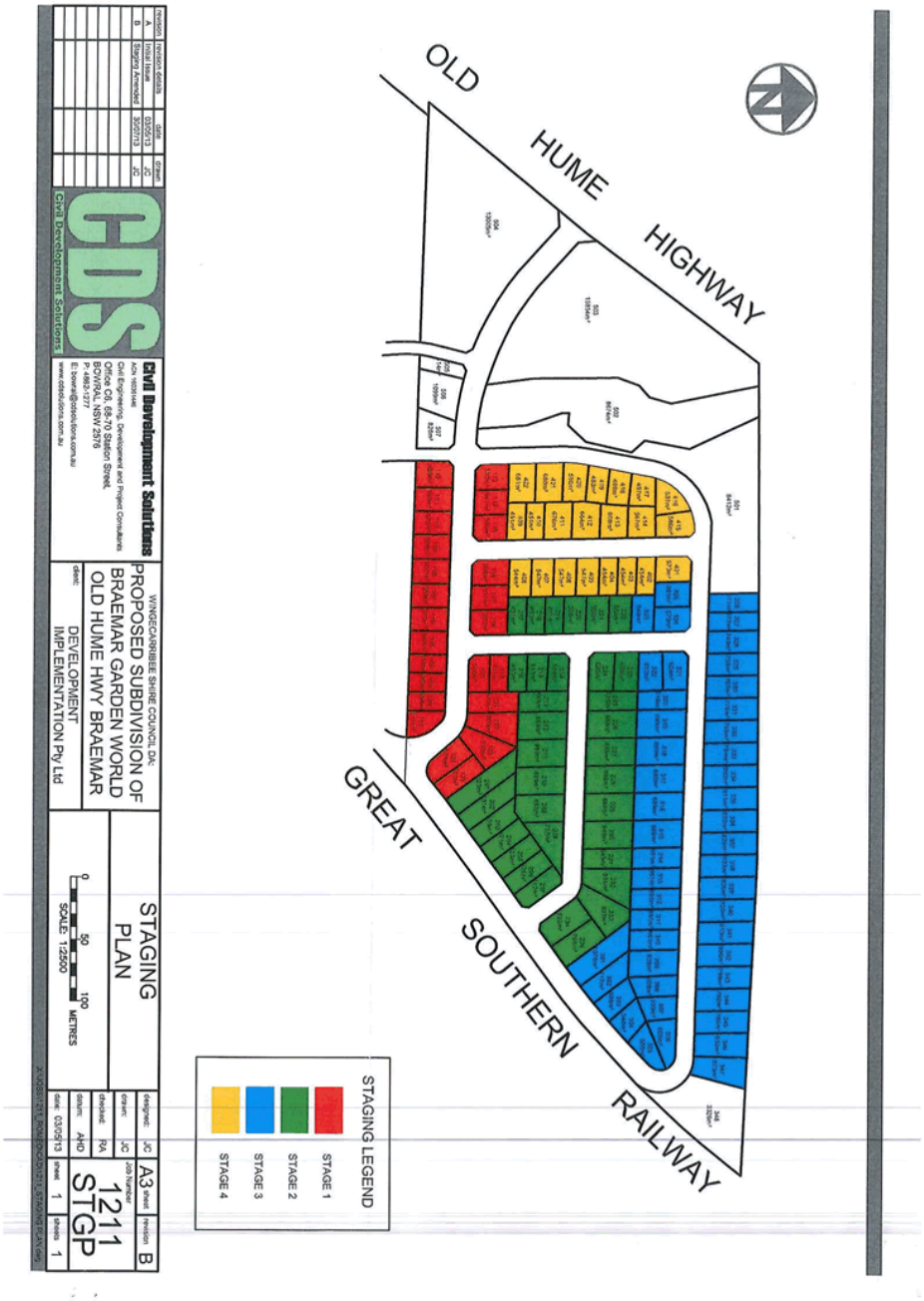
Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd



Schedule 4

(Clause 1.1)

Land

Plan showing Land on the next page.

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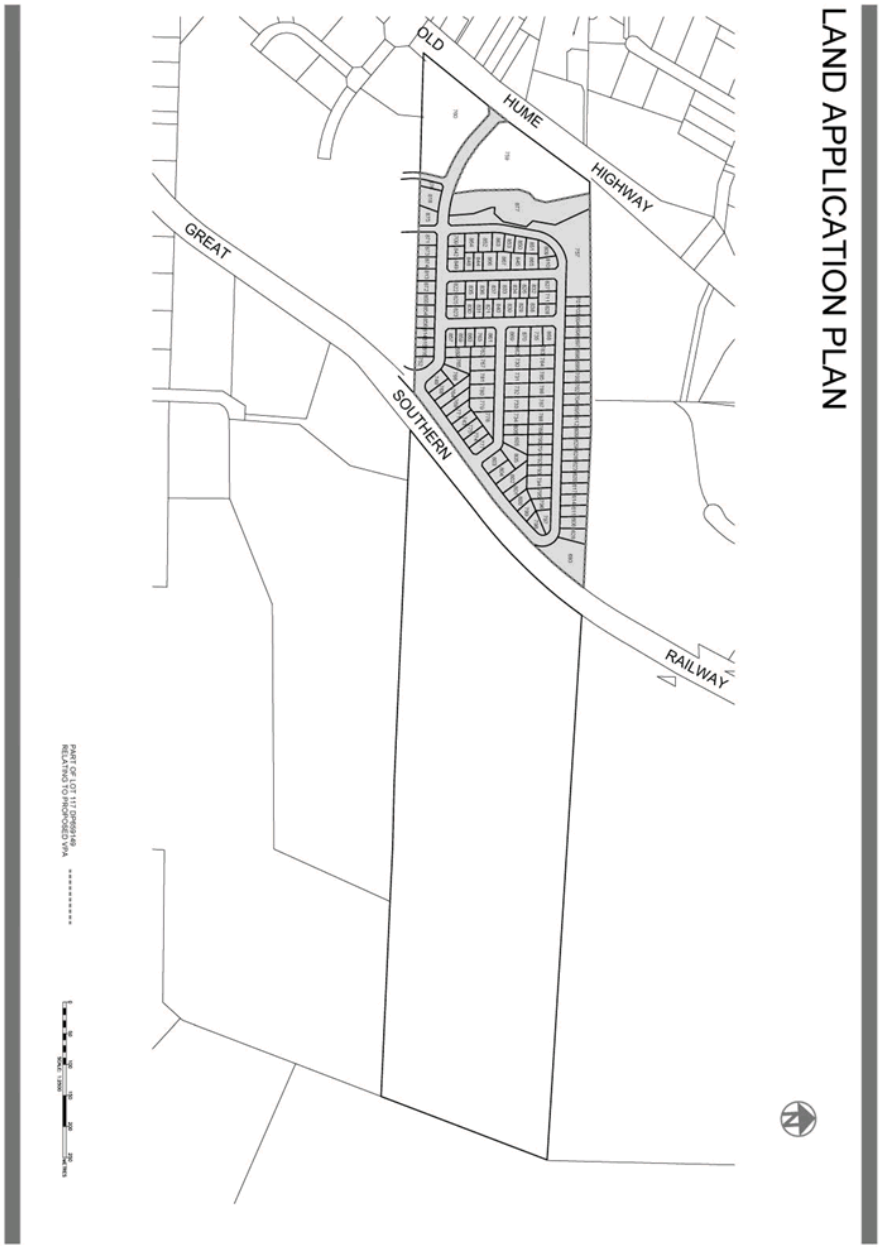
Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd



Schedule 5

(Clause 1.1)

Recreation Pathway Plan

Recreation Pathway Plan on the next page.

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Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd

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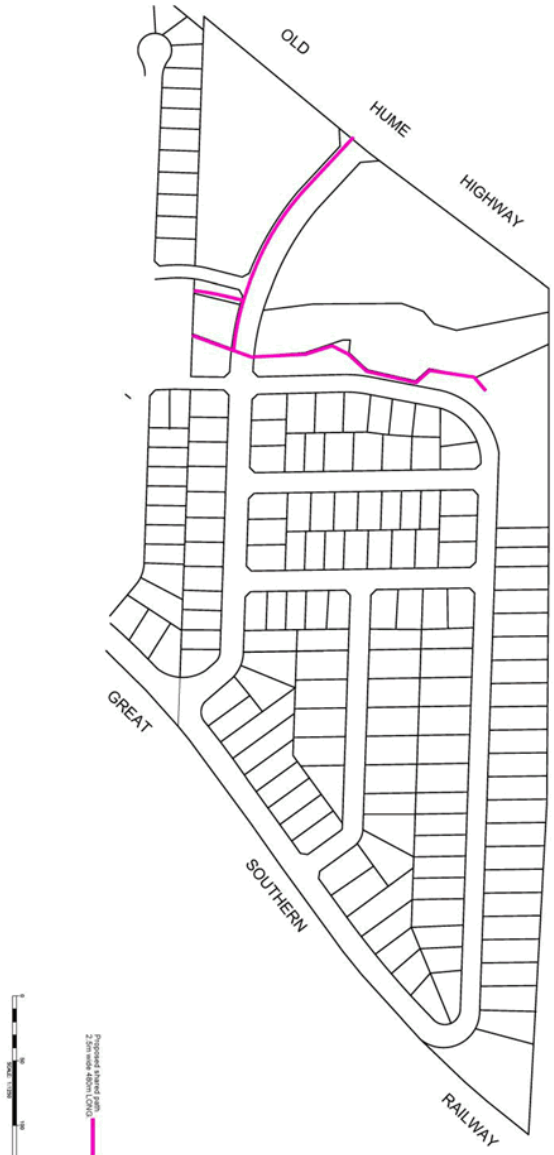
Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd

RECREATION PATHWAY PLAN



Schedule 6

(Clause 1.1)

Lomandra Lane

Plans showing Lomandra Lane appear on the following pages.

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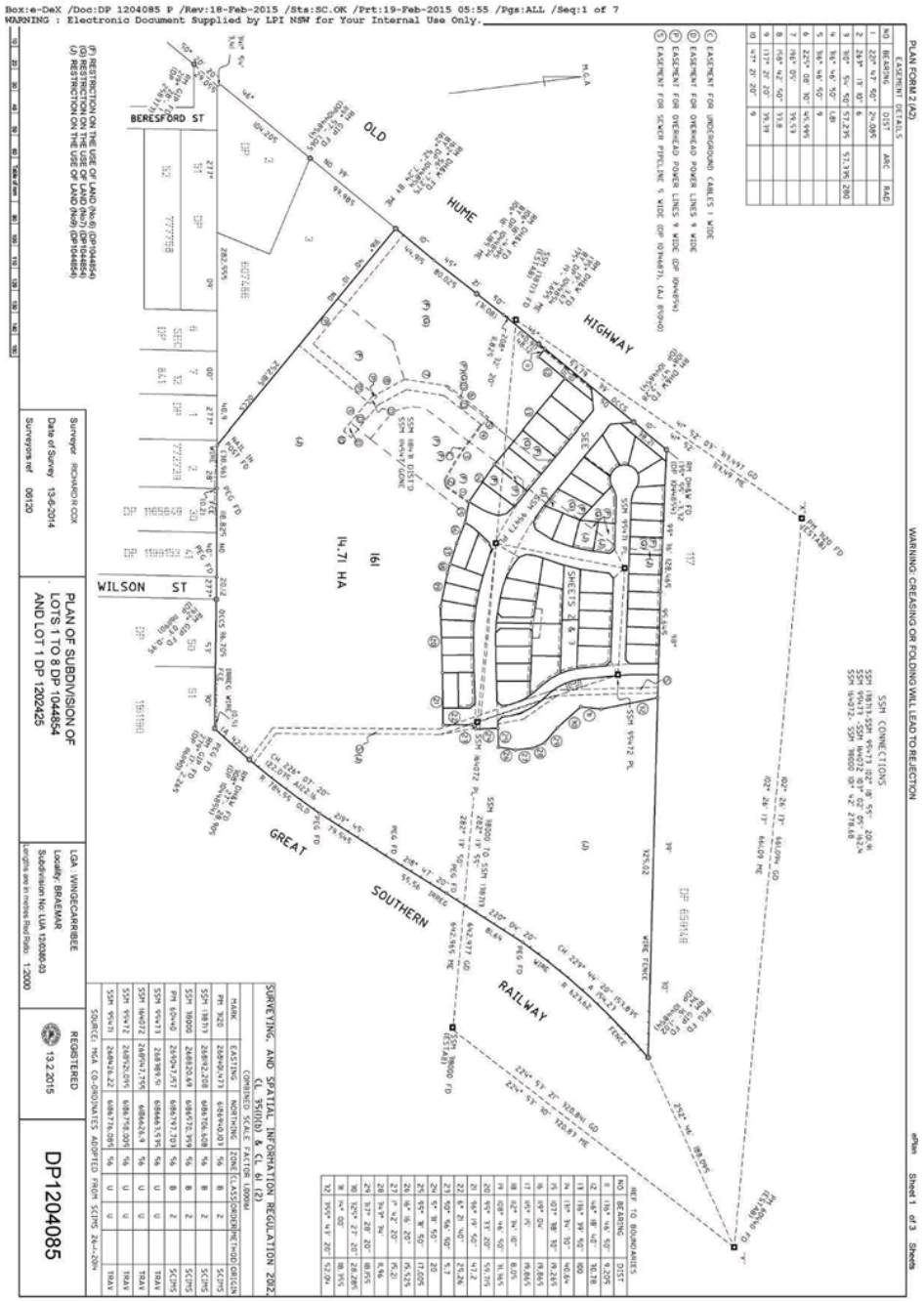
Garden World Planning Agreement

Wingecarribee Shire Council

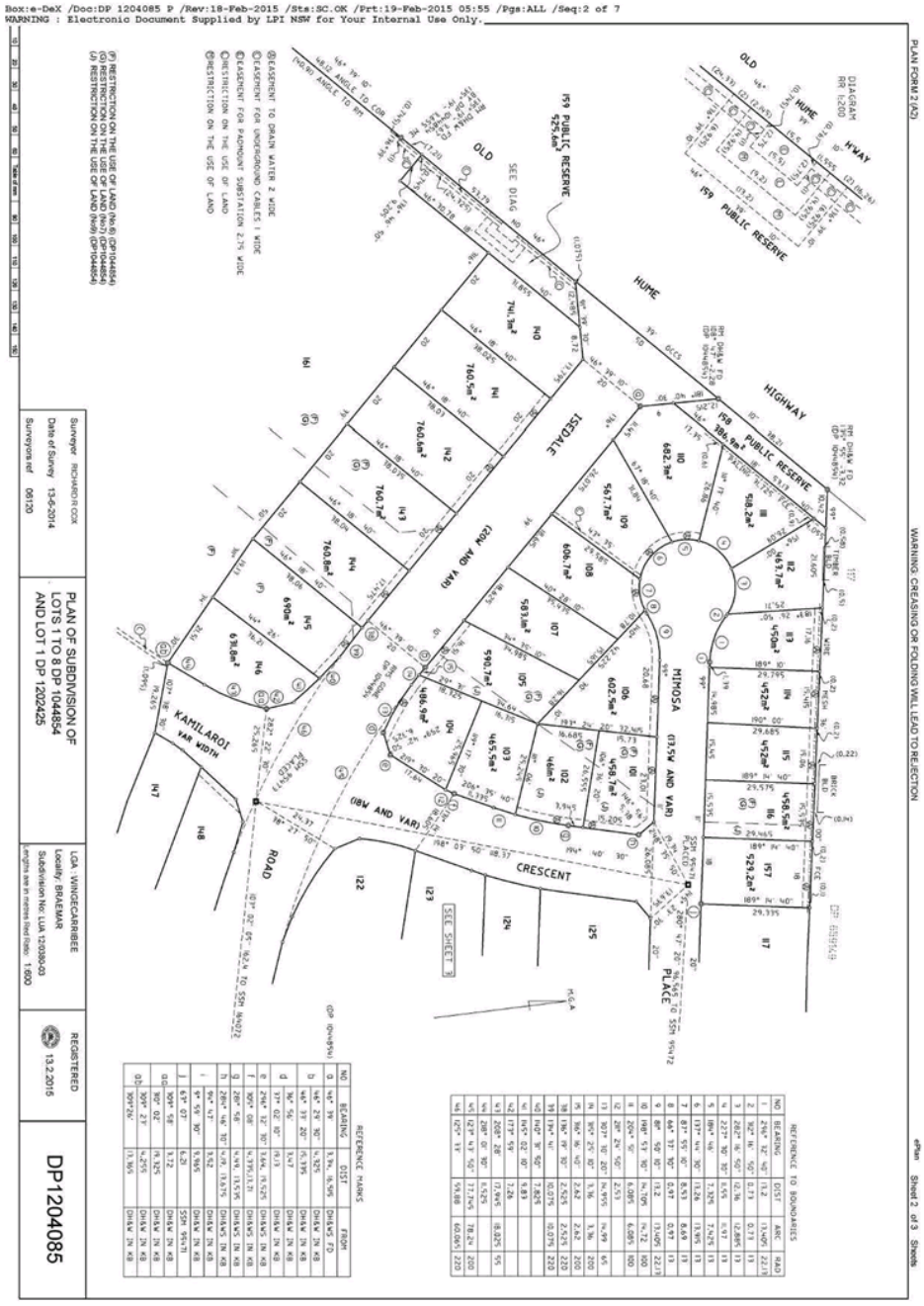
Development Implementation Pty Ltd



Garden World Planning Agreement

Wingecarribee Shire Council

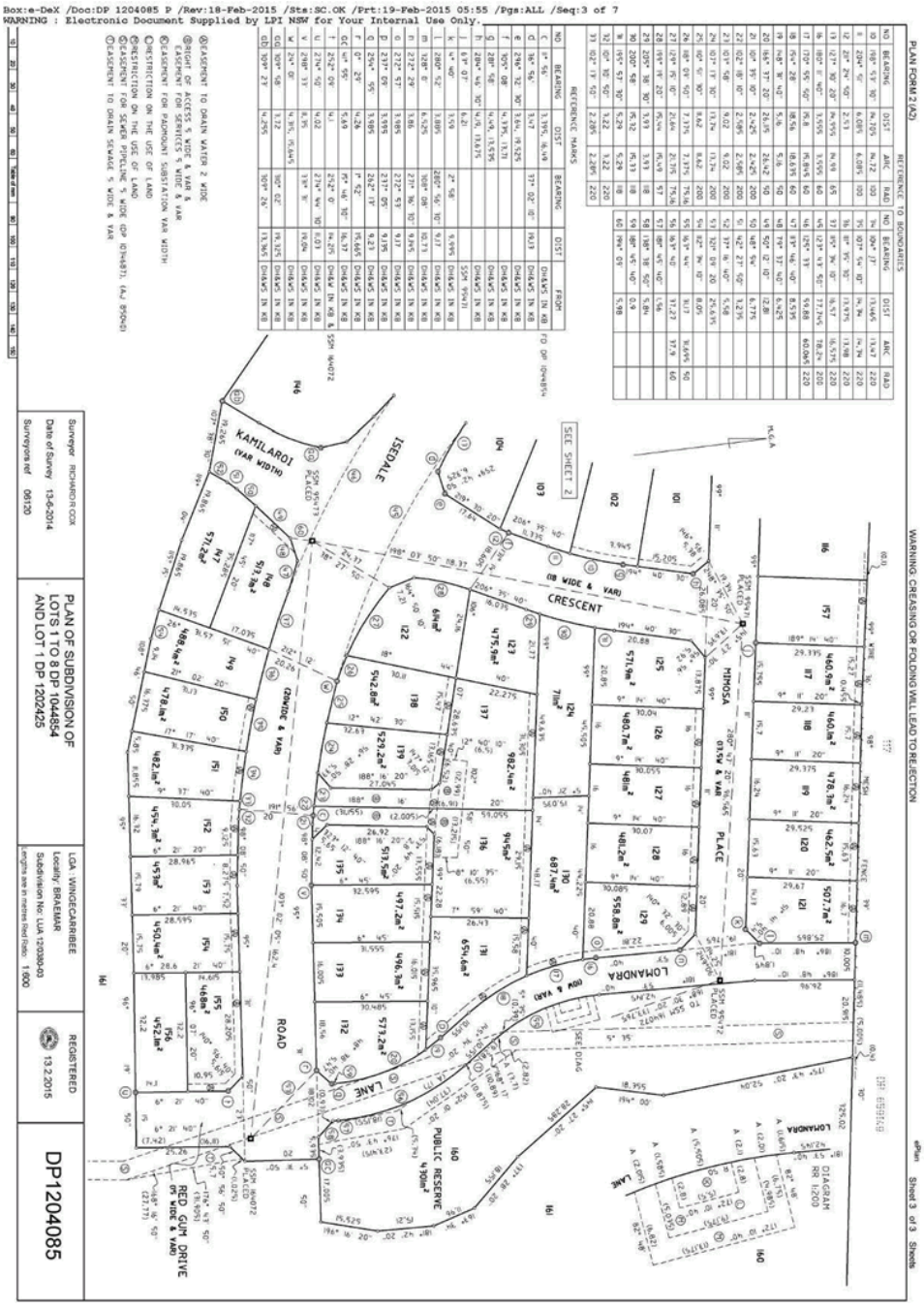
Development Implementation Pty Ltd



Garden World Planning Agreement

Wingecarribee Shire Council

Development Implementation Pty Ltd



Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

_____

General Manager

_____

Witness/Name/Position

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

_____

Name/Position

_____

Name/Position

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Garden World Planning Agreement

Wingecarribee Shire Council

Development Implementation Pty Ltd

Appendix

(Clause 53)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

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Draft Planning Agreement

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

Parties

Wingecarribee Shire Council ABN 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW 2577 (**Council**)

Development Implementation Pty Ltd ACN 000 771 095 of 'Anncoh Moor', 520 Old South Road, MITTAGONG NSW 2576 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Part Lot 117 DP659149, otherwise known as Braemar Garden World, Old Hume Highway BRAEMAR NSW 2576, as shown shaded in grey on the plan in Schedule 4.

Description of Proposed Development

Development the subject of Development Consent to Development Application LUA11/0767 as amended or varied, being subdivision of the Land into approximately 131 Final Lots.

Garden World Planning Agreement
Wingecarribee Shire Council
Development Implementation Pty Ltd

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to secure funding, land and the carrying out of work including the establishment, dedication and management of drainage management land in conjunction with the development on the Land.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979* (**Act**). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out of the Development on the Land by the Developer,
- imposes obligations on the Developer to make Development Contributions only if Development Consent is granted to the carrying out of the Development or any Stage,
- excludes the application of s94, excludes the application of 94A, and does not exclude the application of s94EF of the Act.
- makes provision for the Developer to carry out:
    - establishment of the Drainage Management Land, and
    - management of the Drainage Management Land for the Management Period.
- makes provision for the dedication of the certain land in conjunction with the carrying out of Development,
- makes provision for monetary contributions towards management of Drainage Management Land and other public purposes,
- requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they were made,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,

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- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- provides and co-ordinates community services and facilities in connection with the Development,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii),(iv),(vi),(vii) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing a means to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development, and
- providing a means for the private funding of management of drainage management land for the benefit of the Development and the wider community, and

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- providing a means that allows the wider community to make submissions to the Council in relation to the Agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

The Draft Planning Agreement does not conform with the Council's capital works program.

All Planning Authorities - Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing a construction certificate, subdivision certificate or occupation certificate

Yes. This Draft Planning agreement does contain requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

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