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**Marsden Park Industrial Precinct
Planning Agreement
Deed of Variation**

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

**Blacktown City Council
Marsden Park Developments Pty Ltd**

Date:

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Marsden Park Industrial Precinct Planning Agreement

Deed of Variation

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Marsden Park Industrial Precinct Planning Agreement

Deed of Variation

Summary Sheet

Council:

Name: Blacktown City Council

Address: 62 Flushcombe Road, Blacktown NSW 2148 (**Council**)

Facsimile: (02) 9831 1961

Email: council@blacktown.nsw.gov.au

Representative: Dennis Bagnall

Developer:

Name: Marsden Park Developments Pty Ltd

Address: 920 Richmond Road, Marsden Park NSW 2765 (**Developer**)

Facsimile: (02) 9954 1951

Email: owen.walsh@app.com.au

Representative: Owen Walsh, Development Director



Marsden Park Industrial Precinct Planning Agreement

Deed of Variation

Under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown NSW 2148 (**Council**)

and

Marsden Park Developments Pty Ltd ACN 123 238 282 of 920 Richmond Road, Marsden Park NSW 2765 (**Developer**)

Background

- A The Parties are parties to the Planning Agreement.
- B Pursuant to clause 44 of the Planning Agreement, the Parties agree to amend the Planning Agreement in accordance with this Deed.

Operative provisions

1 Definitions & Interpretation

- 1.1 In this Deed the following definitions apply:

Deed means this Deed of Variation and includes any schedules, annexures and appendices to this Deed.

Planning Agreement means the Marsden Park Industrial Precinct Planning Agreement pursuant to s93F of the *Environmental Planning and Assessment Act 1979* entered into between the Parties on 13 October 2011.

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement.



2 Status of this Deed

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.
- 2.2 This Deed is not a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

- 3.1 This Deed takes effect on the date when the Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to the other Party.

4 Warranties

- 4.1 The Parties warrant to each other that they:
 - 4.1.1 have full capacity to enter into this Deed, and
 - 4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.

5 Amendment and confirmation of Planning Agreement

- 5.1 The Parties agree that on and from the date of this Deed, the Planning Agreement is amended as follows:
 - 5.1.1 insert ‘, or has entered into a contract to purchase,’ between the words ‘owns’ and ‘the’ in paragraph A of the Background to the Planning Agreement,
 - 5.1.2 insert the following clause before Part 2 of the Planning Agreement:

"5A Ownership of Land

- 5A.1 *The Developer will ensure that it becomes the registered proprietor of any part of the Land that it does not own, prior to any obligations arising under this Agreement which require works to be carried out on that Land, or which require any part of that Land to be dedicated to Council, unless otherwise agreed with Council."*
 - 5.1.3 omit the plan contained in Schedule 1 of the Planning Agreement, insert instead the plan contained in the Schedule to this Deed.
- 5.2 For the avoidance of doubt, all other provisions in the Planning Agreement except for those referred to in clause 2.1 above are unchanged.



6 Registration of this Deed

- 6.1 Clause 31 of the Planning Agreement applies to this Deed as if it was a provision of this Deed, with references in that clause to *'this Agreement'* being read as *'this Deed'* and reference to *'60 days'* in clause 31.4 being read as *'10 days'*.

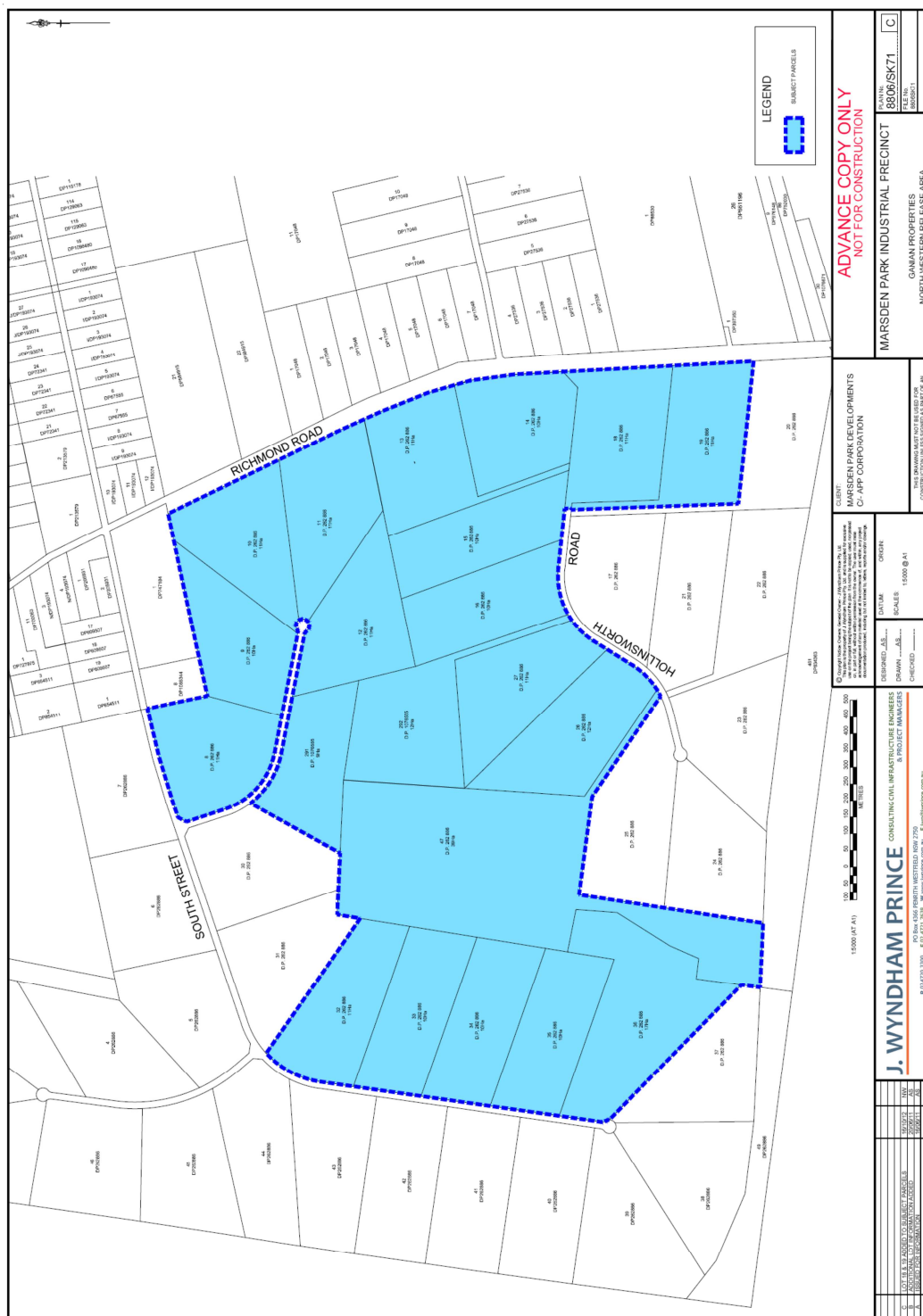
7 Application of provisions of Planning Agreement

- 7.1 Clauses 1.2, 36, 37, 39, 41, 42, 43 and 48 of the Planning Agreement apply to this Deed as if they were provisions of this Deed, with references in those clauses to *'this Agreement'* being read as *'this Deed'*.

8 Explanatory Note

- 8.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 8.2 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 Deed.
-

(Clause 2.1.1)





Execution

Executed as a Deed

Dated:

Council:

Executed on behalf of the Council by its Attorney _____ who states that
he/she has no notice of revocation of the Power of Attorney contained in Book _____ Number
pursuant to which this Deed is executed:

Attorney

Witness

Developer:

Executed by the Developer in accordance with s127 of the Corporations Act 2001 (Cth):

Director

Name:

Director/Company Secretary

Name:



Appendix

(Clause 8)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Deed

Under s25C(3) of the *Environmental Planning and Assessment Regulation 2000*

Parties

Blacktown City Council ABN 18 153 831 768 of 62 Flushcombe Road, Blacktown NSW 2148 (**Council**)

and

Marsden Park Developments Pty Ltd ACN 123 238 282 of 920 Richmond Road, Marsden Park NSW 2765 (**Developer**)

Description of the Land to which the Draft Deed Applies

Land means the land shown edged heavy dotted blue and shaded blue in the Land Identification Map.

Description of Proposed Development/Instrument Change

The Draft Deed relates to any development on the Land made permissible under the Act by the *State Environmental Planning Policy (Sydney Region Growth Centres) Amendment (Marsden Park Industrial Precinct) 2010 (SEPP Amendment)*, being development that was not permissible immediately before the SEPP Amendment took effect.

Summary of Objectives, Nature and Effect of the Draft Deed

Objective of Draft Deed

The objective of the Draft Deed is to amend the Planning Agreement in relation to the Land to which the Planning Agreement applies.

Nature of Draft Deed

The Draft Deed is a deed of variation to the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

Effect of the Draft Deed

The Draft Deed:

- amends the definition of Land to which the Planning Agreement applies, and
- provides that the Developer is to ensure that it becomes the registered proprietor of any part of the Land that it does not own, prior to any obligations arising under this Planning Agreement which relate to that land.

Assessment of the Merits of the Draft Deed

The Planning Purposes Served by the Draft Deed

The Draft Deed provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Deed Promotes the Public Interest

The Draft Deed promotes the objects of the Act as set out in s5(c).

For Planning Authorities:

Development Corporations - How the Draft Deed Promotes its Statutory Responsibilities

N/A

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

N/A

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

The Draft Deed promotes the following elements of the Council's charter:



- *Keep the local community informed about its activities.*

This element is promoted by the public notification of the Draft Deed and advertising of the notification period by the Council, providing a means that allows the wider community to make submissions to the Council.

All Planning Authorities – Whether the Draft Deed Conforms with the Authority’s Capital Works Program

No capital works are proposed in this Draft Deed.

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

The Draft Deed does not specify that certain requirements must be complied with before the issuing of any certificate under Part 4A of the Act.



Marsden Park Industrial Precinct

Planning Agreement

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

Blacktown City Council
Marsden Park Developments Pty Ltd

Dated: 13 October 2011



Marsden Park Industrial Precinct Planning Agreement

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Planning Agreement

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

Parties

Blacktown City Council of 62 Flushcombe Road, Blacktown, NSW 2148
(Council)

Marsden Park Developments Pty Ltd ACN 123 238 282 of 920 Richmond Road, Marsden Park NSW 2765 (Developer)

Background

- A The Developer owns the Land.
- B The SEPP applies to the Land.
- C The Land is within the Marsden Park Industrial Precinct.
- D The SEPP Amendment will make the Development permissible on the Land under the Act.
- E The CP applies to the Land and the Development.
- F The Developer has lodged the Initial Development Application with the Council seeking Development Consent for the First Stage.
- G The Developer proposes to lodge further Development Applications with the Council seeking Development Consent for further stages of the Development.
- H The Developer proposes to provide Development Contributions in relation to the Development which will be applied by the Council towards the satisfaction of a Development Consent Contribution and for which the Developer will be entitled to a Development Contribution Credit.
- I The Developer has therefore offered to enter into this Agreement with the Council to make provision for Development Contributions relating to the Development and consistent with the CP in the event that Development Consent is granted for the Development.

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.

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.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Plan has the same meaning as in the Act.

CP means the document prepared by the Council titled *Draft Contributions Plan No. 21 – Section 94 – Marsden Park Industrial Precinct*, as amended or replaced by the Council after the date of this Agreement, irrespective of whether it has taken effect as a contributions plan under the Act in accordance with clause 31(4) of the Regulation.

CPI means the Consumer Price Index – Sydney – Housing published by the Australian Bureau of Statistics.

Council's Engineering Guide and Specification means the following documents, a copy of which is available from the Council, as amended from time to time:

- (a) the document titled *Blacktown City Council Engineering Guide for Development 2005* dated February 2005,
- (b) the document titled *Blacktown City Council Works Specification Civil 2005* dated February 2005,
- (c) any engineering plans, landscape plans or construction documentation approved by the Council to supplement a document referred to in paragraph (a) or (b), and
- (d) any engineering plans, landscape plans or construction documentation approved by the Council for the Development.

Dedication Land means land specified or described in Part A of the Table to Part 1 of Schedule 3.

Dedication Land Location Plan means the plan having the same name in Part 2 of Schedule 3.

Defects Liability Period means the period commencing on the date on which a Work is completed and ending 12 months after that date.

Development means the development specified or described in Schedule 2.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Consent Contribution means a requirement under s94 or s94A of the Act imposed as a condition of Development Consent relating to the Development, indexed according to the relevant Contributions Plan under which the requirement is imposed.

Development Contribution means:

- (a) a monetary contribution,
- (b) the dedication of land free of cost,
- (c) the carrying out of Work, or
- (d) any other material public benefit,

made by the Developer under this Agreement relating to the Development but does not include a Development Consent Contribution.

Development Contribution Credit means the dollar amount by which the sum of Development Contributions that have been made and Development Consent Contributions that have been complied with by the Developer exceeds the amount of Development Consent Contributions.

Development Contributions Schedule means Schedule 3.

First Stage means the part of the Development authorised by the Initial Development Consent.

Future Development Contribution means a Development Contribution to which clause 7 applies.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term 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.

Initial Development Application means the Development Application DA-11-96 lodged by the Developer with the Council on 27 January 2011 for the subdivision of the Land to create 2 residual lots, 1 additional lot, 1 lot for a drainage reserve and a new road.

Initial Development Consent means the Development Consent granted to the Initial Development Application.

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

Land means the land shown edged heavy dotted blue and shaded blue on the Land Identification Map.

Land Identification Map means the map contained in Schedule 1.

Marsden Park Industrial Precinct has the same meaning as in the SEPP Amendment.

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

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

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

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

Rectification Notice means a notice in writing issued in the Defects Liability Period that identifies a defect in a Work and requires rectification of the defect during the Defects Liability Period or during such later period specified in the notice as is reasonable in the circumstances.

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

Security means a Bank Guarantee, bond or other form of security on terms satisfactory to the Council in its absolute discretion.

SEPP means *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

SEPP Amendment means *State Environmental Planning Policy (Sydney Region Growth Centres) Amendment (Marsden Park Industrial Precinct) 2010*.

Stage means a stage in the Development authorised by a Development Consent.

Subdivision Certificate has the same meaning as in the Act.

Subsequent Stage means a Stage other than the First Stage.

The Works means the Work specified or described in Parts B and C of the Table to Schedule 3.

The Works Location Plan means the plan having the same name in Part 2 of Schedule 3.

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, including any Future Development Contributions.

Works Completion means in relation to a Work, the date on which the Work is taken to be completed under clause 20.1 of 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 In the reckoning of time, a reference to a month or year is a reference to a calendar month or calendar year.

1.2.4 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.

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

- 1.2.6 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.
- 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.

2 Status, application & effect of this Agreement

- 2.1 This Agreement is a planning agreement for the purposes of s93F of the Act.
- 2.2 This Agreement applies to the Land and to the Development.

3 Operation and effect of this Agreement

- 3.1 The Developer is under no obligation to make Development Contributions to the Council under this Agreement unless and until:
 - 3.1.1 this Agreement is entered into by the Developer:
 - (a) pursuant to a condition imposed on any Development Consent for the Development under s93I(3) of the Act, or
 - (b) to satisfy a deferred commencement condition imposed on any such consent under s80(3) of the Act, and
 - 3.1.2 the Development is commenced (within the meaning of the Act).
- 3.2 The Developer consents to the imposition of a condition of the kind referred to in clause 3.1.1.

- 3.3 The Party who executes this Agreement last is to notify the other Party in writing immediately after it has executed this Agreement.

4 Further Agreements Relating to this Agreement

- 4.1 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement or arrangement referred to in clause 4.1 is not to be inconsistent with this Agreement.

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

- 5.1 This Agreement does not exclude the application of s94 and s94A of the Act to the Development.
- 5.2 This Agreement does not exclude the application of s94EF of the Act to the Development.
- 5.3 Benefits under this Agreement are to be taken into consideration in determining any development contribution under s94 of the Act.

Part 2 - Development Contributions

6 First Stage Development Contributions

- 6.1 The Developer is to:
- 6.1.1 dedicate the Dedication Land to the Council, and
 - 6.1.2 carry out The Works,
- in connection with the First Stage in accordance with the Development Contributions Schedule.

7 Future Development Contributions

- 7.1 The Developer may make a Development Contribution in connection with a Subsequent Stage only if it:
- 7.1.1 relates to the provision, in whole or part, of a Public Facility that is the subject of the CP,
 - 7.1.2 the Council has given its prior written approval to the making of the Development Contribution,
 - 7.1.3 the Development Contribution is made before the issuing of a Subdivision Certificate for the Stage; and
 - 7.1.4 the Developer has provided Security to the Council, in a form and at a time reasonably required by the Council, in respect of the Development Contribution.

- 7.2 The Developer, at its own cost, is to remove any excavated material that is stockpiled on land on which Work approved by the Council under clause 7.1 is to be carried out if the material would prevent or impede the carrying out of such Work.
- 7.3 The Council may authorise the Developer, at the Developer's cost, to re-locate any Work referred to in clause 7.2 if the Council reasonably considers that it is not practicable for the Developer to remove stockpiled material in accordance with that clause.

8 Value of Development Contributions

- 8.1 Except as otherwise provided by this Agreement, the value of a Development Contribution is to be calculated:
 - 8.1.1 at the time Development Consent is granted to the Stage in connection with which the Development Contribution is made, and
 - 8.1.2 by reference to the cost of the provision of the Public Facility specified in the CP in relation to which the Development Contribution is made, and
 - 8.1.3 so as not to exceed to that cost, and,
 - 8.1.4 in proportion to so much of that cost as will be met by the Development Contribution, and
 - 8.1.5 otherwise in accordance with Appendix G of the CP.
- 8.2 The Parties agree that the value of the Dedication Land, or any part thereof, is to be the unimproved value of the relevant land, and is to be agreed between the Parties and calculated:
 - 8.2.1 at the time Development Consent is granted to the Stage in connection with which that land is to be dedicated,
 - 8.2.2 prior to commencement of any Works on that land, and
 - 8.2.3 by reference to valuation reports for the land obtained by each Party from registered valuers.
- 8.3 A disagreement between the Parties as to the value of the Dedication Land or any part thereof is taken to be a dispute to which clause 28 of this Agreement applies.
- 8.4 The value of:
 - 8.4.1 any land to be dedicated is to be indexed in accordance with CPI between the date the value of the land is determined under this Agreement and the date on which that land is applied by Council under clause 9 to towards the satisfaction of Development Consent Contributions; and
 - 8.4.2 Works is to be indexed in accordance with CPI between the *base date* as referred to in Appendix G of the CP and the date on which that Work is applied by Council under clause 9 to towards the satisfaction of Development Consent Contributions.

9 Settlement of Section 94 contributions, section 94A levies

- 9.1 The Council is to apply the Development Contributions provided by the Developer in accordance with this Agreement towards any obligation to meet a Development Consent Contribution referred to or imposed by a Development Consent for the Development.
- 9.2 To the extent permitted by law, the Council is to apply any Development Contribution Credit existing at the time a Development Consent Contribution is required to be complied with, towards the satisfaction of the Development Consent Contribution.
- 9.3 If a Development Contribution Credit is unavailable or insufficient to meet a Development Consent Contribution referred to in clause 9.2, the Developer may provide the Council with Security equal to the value of the contribution or shortfall on such terms and conditions as the Parties agree in writing.

10 Development Contributions Credit

- 10.1 If any Development Contribution Credit exists at the completion of the Development and the Developer is not in breach of this Agreement, the Developer may notify the Council in writing that:
 - 10.1.1 it wishes to apply the Development Contributions Credit towards the satisfaction of an obligation of the Developer to make s94 contributions or pay s94A levies in relation to land or development in the Marsden Park Industrial Precinct other than the Land or the Development, or
 - 10.1.2 it requires the Council to pay to it the amount of the Development Contribution Credit.
- 10.2 The Council is only required to pay the amount of the Development Contribution Credit to the Developer to the extent of any available monies held by it in an account under the CP in relation to the Marsden Park Industrial Precinct and any monies subsequently paid to it under s94 or s94A of the Act under the CP by other developers in the Marsden Park Industrial Precinct.

11 Development Contributions generally

- 11.1 A Development Contribution is to be made by the Developer:
 - 11.1.1 in accordance with this Agreement and any applicable law, and
 - 11.1.2 otherwise to the reasonable satisfaction of the Council.
- 11.2 Clause 11.1 applies in addition to any particular requirement imposed on the Developer by this Agreement relating to the making of a Development Contributions for a Stage.
- 11.3 Subject to s93E of the Act, the Council is to apply a Development Contribution made by the Developer under this Agreement:
 - 11.3.1 towards the Public Purpose for which is made,

- 11.3.2 at the location, in the manner and to the standards required by or under this Agreement or the CP, and
- 11.3.3 otherwise in the manner that best meets the demands for Public Facilities created by the Development.

Part 3 – Other Provisions

12 Procedures relating to monetary Development Contributions

- 12.1 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.
- 12.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 12.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 12.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 12.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

13 Procedures relating to the dedication of land

- 13.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
 - 13.1.1 a deposited plan is registered in the register of plans held at the Land and Property Management Authority 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
 - 13.1.2 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.
- 13.2 For the purposes of clause 13.1.2:
 - 13.2.1 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,
 - 13.2.2 the Council is to execute the instrument of transfer and return it to Developer within 7 days of receiving it from the Developer,

- 13.2.3 the Developer is to lodge the instrument of transfer for registration at the Land and Property Management Authority within 7 days of receiving it from the Council duly executed,
- 13.2.4 the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

14 Access to the Dedication Land or other land

- 14.1 The Developer is to take such steps as are necessary to enable the Council, its servants, agents and contractors to enter the Dedication Land before it is dedicated to the Council or any other land owned, occupied or otherwise controlled by the Developer at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works or to remedy any breach of this Agreement by the Developer relating to the carrying out of any of the Works.
- 14.2 The Council is to take such steps as are necessary to enable the Developer to enter and occupy any land owned, occupied or otherwise controlled by the Council, including the Dedication Land after its dedication to Council, for the purpose of enabling the Developer to carry out any of the Works that are required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

15 Carrying out of Work

- 15.1 A Development Contribution comprising the carrying out of Work is made for the purposes of this Agreement on Works Completion.
- 15.2 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:
 - 15.2.1 any relevant Development Consent,
 - 15.2.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,
 - 15.2.3 any other applicable law, and
 - 15.2.4 otherwise to the reasonable satisfaction of the Council.
- 15.3 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.

16 Variation of Work

- 16.1 A Work is not to be varied by the Developer, unless:
 - 16.1.1 the Parties agree in writing to the variation, and
 - 16.1.2 any consent or approval required under the Act or any other law to the variation is first obtained.
- 16.2 For the purposes of clause 16.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

- 16.3 Council may direct the Developer, in writing, to:
 - 16.3.1 vary a Work, or
 - 16.3.2 carry out additional works which the Council considers are necessary in order for The Works to operate effectively.
- 16.4 Council is liable to pay to the Developer:
 - 16.4.1 an amount equal to the increase in the costs of completing a Work, which results from a variation directed by the Council under clause 16.3.1, but only if the variation is directed by the Council after a Construction Certificate has been issued for the Work, or
 - 16.4.2 the costs of carrying out any additional works directed to be carried out under clause 16.3.2.
- 16.5 Council shall pay the amounts referred to in clause 16.4 to the Developer after the Work or additional works are complete, and within 28 days of receipt of:
 - 16.5.1 a tax invoice for the amount claimed by the Developer, and
 - 16.5.2 documentation which demonstrates to Council's reasonable satisfaction the increase in costs as a result of the variation directed by the Council, or the costs of any additional works directed by the Council.

17 Protection of people and property

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 17.1.1 all necessary measures are taken to protect people and property, and
 - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 The Developer is to pay any compensation that may become payable to the owner of any land forming land on which Work is carried out that results from the demolition, removal or re-siting of any structure on that land.

18 Protection of public utilities & services

- 18.1 Except as authorised in writing by the Council, the Developer is not to obstruct or damage any road, footpath, drain or watercourse or other public utility or service on or near land on which Work is or is to be carried out and is to remove immediately and at its own cost any such obstruction and make good any damage caused as a consequence of the obstruction.

19 Damage and repairs to Work

- 19.1 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 before Works Completion.

20 Completion of Work

- 20.1 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 or the Developer gives the Council a Compliance Certificate to that effect.
- 20.2 The Council is to respond to any request made by the Developer to provide a certificate referred to in clause 20.1 within 10 business days.

21 Rectification of defects

- 21.1 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.
- 21.2 Subject to the resolution of a dispute in accordance with this Agreement, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

22 Works-As-Executed-Plan

- 22.1 No later than 60 days after Works Completion, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work prepared in accordance with the Council's Engineering Guide and Specification.

23 Reporting on Work

- 23.1 The Developer is to submit to the Council monthly written reports on the progress of the carrying out of The Works and other Work authorised or required to be carried out under this Agreement from the date of commencement of carrying out of the Work to the date the Work is completed under this Agreement.

24 Security relating to the carrying out of Work

- 24.1 Before the commencement of the First Stage, the Developer is to provide the Council with Security in an amount equal to the agreed total value of The Works calculated in accordance with clause 8.
- 24.2 Before the commencement of a Subsequent Stage, the Developer is to provide the Council with Security in an amount equal to the value, determined in accordance with clause 8 (or as otherwise agreed between the Parties) of any Future Development Contribution relating to the Stage.
- 24.3 The amount of a Security is to be indexed annually in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 24.4 The Developer is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.

- 24.5 The Council and the Developer may agree to roll-over any unused Security or unused part of a Security for a different purpose under this Agreement than the purpose for which the Security was originally given.
- 24.6 The Developer may at any time provide the Council with a replacement Security and, in such case, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.
- 24.7 The Council is to release and return a Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations to which the Security relates.
- 24.8 The Council may call-up a Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions obligations under this Agreement to which the Security relates, subject to the requirements of clause 24.9.
- 24.9 However, the Council is not to call-up a Security unless it has given the Developer not less than 30 days notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.
- 24.10 If the Council calls-up a Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:
- 24.10.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 24.10.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 24.10.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.
- 24.11 If the Council calls-up a Security, it may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under this Agreement relating to the relevant Development Contribution obligation.
- 24.12 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.

25 Failure to carry out Work

- 25.1 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.
- 25.2 The dispute resolution provisions of this Agreement do not apply to the giving of a notice under clause 25.1.
- 25.3 A notice given under clause 25.1 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.

- 25.4 The Council may carry out and complete the Work the subject of a notice under clause 25.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.
- 25.5 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 25.4.
- 25.6 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 the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 25.7 For the purpose of clause 25.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
 - 25.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 25.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 25.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

26 Indemnity and Insurance

- 26.1 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 a negligent act or omission of the Developer in carrying out any Work and the performance of any other obligation under this Agreement, except to the extent any losses, damages, costs, charges, expenses, actions, claims and demands are caused or contributed to by the Council's negligent act or omission.
- 26.2 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 Work is taken to have been completed in accordance with clause 20 of this Agreement:
 - 26.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of a Work (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 Work,
 - 26.2.2 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,
 - 26.2.3 workers compensation insurance as required by law, and
 - 26.2.4 any other insurance required by law.
- 26.3 If the Developer fails to comply with clause 26.2, the 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 the Council as it deems appropriate including:

- 26.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
- 26.3.2 recovery as a debt due in a court of competent jurisdiction.
- 26.4 Prior to commencing the carrying out of any Work and whenever requested in writing by the Council, the Developer is to provide to the Council satisfactory written evidence of all of the insurances specified in clause 26.2.

27 Compulsory Acquisition

- 27.1 In the event that the Developer does not dedicate the Dedication Land, or any part thereof, at the time at which it is required to be dedicated under this Agreement, the Developer consents to the Council compulsorily acquiring that land, for compensation in the amount of \$1, without having to follow the pre-acquisition procedures under the Just Terms Act.
- 27.2 Clause 27.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 27.3 If, as a result of the acquisition referred to in clause 27.1, 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 for that purpose.
- 27.4 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 Developer is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 27.5 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 Dedication Land.
- 27.6 The Developer will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 27, including without limitation:
 - 27.6.1 signing any documents or forms,
 - 27.6.2 giving land owner's consent for lodgment of any Development Application with respect to the Dedication Land,
 - 27.6.3 producing certificates of title to the Registrar-General under the Real Property Act, and
 - 27.6.4 paying the Council's costs arising from clause 27.
- 27.7 Notwithstanding clause 27.4, 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, and:
 - 27.7.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the land for the public purpose for which it is to be dedicated under this

Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges, and

27.7.2 in all other cases, Council may withhold its agreement in its absolute discretion.

27.8 For the avoidance of doubt, clauses 8, 9, 10 and 11 of this Agreement will apply in the event that the Council compulsorily acquires the whole or any part of the Dedication Land in accordance with this clause 27.

28 Enforcement in a court of competent jurisdiction

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

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

28.2.1 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,

28.2.2 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.

29 Dispute Resolution – expert determination

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

29.2 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.

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

29.4 If a notice is given under clause 29.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

29.5 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.

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

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

30 Dispute Resolution - mediation

30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 applies.

- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 30.4 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.
- 30.5 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.

31 Registration of this Agreement

- 31.1 The Parties agree to register this Agreement subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.
- 31.2 The Developer is to use its reasonable endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement.
- 31.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Parties are to do such things as are reasonably necessary to enable registration to occur.
- 31.4 Subject to this clause, within 60 days of commencement of this Agreement, the Developer is to provide the Council with the following documents to enable registration of this Agreement:
 - 31.4.1 an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Developer, and
 - 31.4.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 31.5 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:
 - 31.5.1 in so far as the part of the Land concerned is a lot created in the Development that the Council reasonably considers is intended for separate occupation and disposition,
 - 31.5.2 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 with respect to that part of the Land or this Agreement is terminated or otherwise comes to an end for any reason whatsoever.

32 Assignment, sale of the Land, etc

- 32.1 Unless the matters specified in clause 32.2 are satisfied, the Developer is not to do any of the following:

- 32.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
 - 32.1.2 assign or novate to any person the Developer's rights or obligations under this Agreement.
- 32.2 The matters required to be satisfied for the purposes of clause 32.1 are as follows:
 - 32.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
 - 32.2.2 the Council, by notice in writing to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and
 - 32.2.3 the Developer is not in breach of this Agreement.
- 32.3 Clauses 32.1 and 32.2 do not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

33 Review of this Agreement

- 33.1 The Parties agree to review this Agreement if any Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement and requests a review.
- 33.2 For the purposes of clause 33.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 33.3 For the purposes of addressing any matter arising from a review of this Agreement, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 33.4 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.
- 33.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Agreement is not a dispute for the purposes of the dispute resolution provisions of this Agreement.

34 Notices

- 34.1 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:
 - 34.1.1 delivered or posted to that Party at its address set out in Schedule 4,
 - 34.1.2 faxed to that Party at its fax number set out in Schedule 4.

- 34.2 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.
- 34.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 34.3.1 delivered, when it is left at the relevant address,
 - 34.3.2 sent by post, 2 business days after it is posted,
 - 34.3.3 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.
- 34.4 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.

35 Approvals and Consent

- 35.1 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.
- 35.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

36 Entire Agreement

- 36.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 36.2 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.

37 Further Acts

- 37.1 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.

38 Notations on section 149(2) Planning Certificates

- 38.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

39 Governing Law and Jurisdiction

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

40 Joint and Individual Liability and Benefits

- 40.1 Except as otherwise set out in this Agreement:
 - 40.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
 - 40.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

41 No Fetter

- 41.1 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.

42 Representations and Warranties

- 42.1 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.

43 Severability

- 43.1 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.
- 43.2 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.

44 Modification

- 44.1 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.

45 Waiver

- 45.1 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.
- 45.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 45.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

46 GST

- 46.1 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.
- 46.2 Subject to clause 46.4, 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.
- 46.3 Clause 46.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 46.4 No additional amount shall be payable by the Council under clause 46.2 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.
- 46.5 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:
 - 46.5.1 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;
 - 46.5.2 that any amounts payable by the Parties in accordance with clause 46.2 (as limited by clause 46.4) to each other in respect of those

Supplies will be set off against each other to the extent that they are equivalent in amount.

- 46.6 No payment of any amount pursuant to this clause 46, 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.
- 46.7 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.
- 46.8 This clause continues to apply after expiration or termination of this Agreement.

47 Explanatory Note Relating to this Agreement

- 47.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 47.2 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.

48 Costs

- 48.1 The Developer agrees to pay the Council's reasonable legal costs of and incidental to the preparation, negotiation and execution of this Agreement.

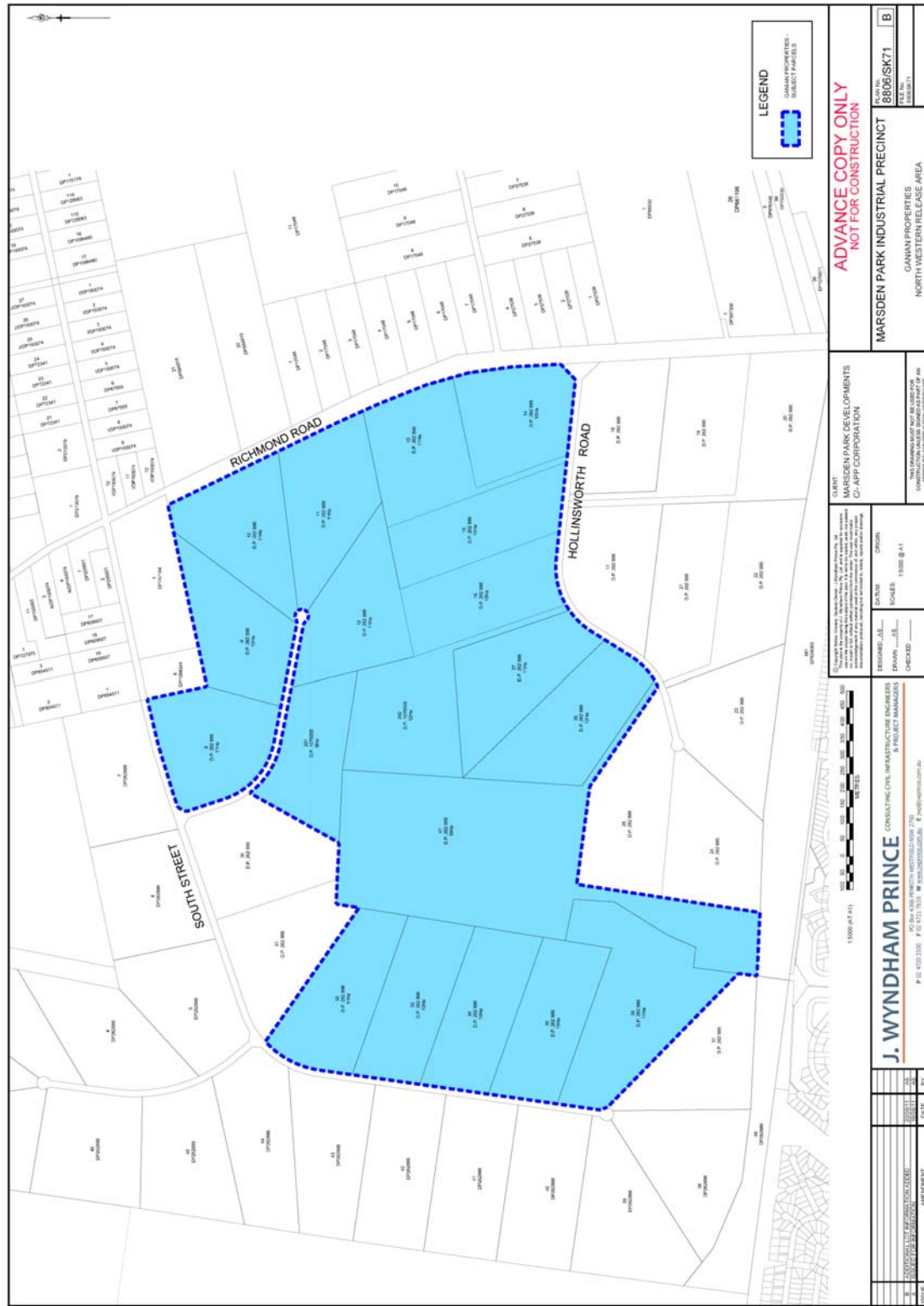
Schedule 1

(Clause 1.1)

Land Identification Map

Land Identification Map on the following page.

Marsden Park Industrial Precinct Planning Agreement
Blacktown City Council
Marsden Park Developments Pty Limited



Schedule 2

(Clause 1.1)

The Development

Any development on the Land made permissible under the Act by the SEPP Amendment, being development that was not permissible immediately before the SEPP Amendment took effect.

Without limiting the above, this includes the following:

Mixed use business and residential estate, located within the Marsden Park Industrial Precinct.



Schedule 3

(Clause 6)

Development Contributions Schedule

Part 1

Table

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Scope of obligation under this Agreement
Part A – Dedication Land				
B2.2	Land for detention basin.	Detention of stormwater.	After Works Completion of item B2.2 in Part B of this Table and no later than the issue of the first Subdivision Certificate for the Land.	Dedication of land free of cost to Council, being Lot 102, as shown in the Dedication Land Location Plan.
B2.4	Land for channel (including dedication of culvert works land at developer's cost).	Stormwater management.	Registration of easement to occur immediately after Works Completion of item B2.4 in Part B of this Table and before the issue of the first Subdivision Certificate for the Land. The dedication of land to occur on a date agreed between the Parties.	The Developer is to register an easement, on terms reasonably satisfactory to Council, over the land required for the channel and culvert in favour of the Council until such time as that land is dedicated to the Council. Dedication of channel land free of cost to Council as shown in the Dedication Land Location Plan.



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Scope of obligation under this Agreement
				Culvert Land dedicated free of cost to Council as shown in the Dedication Land Location Plan.
R2	Land for (part) Hollingsworth Road (Townson Road Extension).	Public road.	After Works Completion of item R2 in Part C of this Table and no later than the issue of the first Subdivision Certificate for the Land.	Dedication of land free of cost to Council as shown shaded in pink in the Dedication Land Location Plan. Land is to be dedicated for a road reserve width as shown on the map titled <i>State Environmental Planning Policy (Sydney Region Growth Centres) 2006 - North West Growth Centre Land Reservation Acquisition Map - sheet LRA_005</i> , a copy of which is available for inspection at the office of the Council or the Department of Planning and Infrastructure during ordinary business hours.
Part B – Stormwater Works				
B2.2	Detention basin.	Detention of stormwater.	Before the release of the first Subdivision	Construction of one stormwater detention basin as



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Scope of obligation under this Agreement
			Certificate for the Land or as otherwise agreed between the Parties in writing.	shown in The Works Location Plan in accordance with Council's Engineering Guide and Specification.
B2.3	Bio-retention area.	Water sensitive urban design treatment of stormwater.	Before the release of the first Subdivision Certificate for the Land or as otherwise agreed between the Parties in writing.	Construction of bio-retention area as shown in The Works Location Plan in accordance with Council's Engineering Guide and Specification.
B2.4	26.5m wide landscaped open channel.	Stormwater management.	Before the release of the first Subdivision Certificate for the Land or as otherwise agreed between the Parties in writing.	Construction of landscaped open channel as shown in The Works Location Plan in accordance with Council's Engineering Guide and Specification.
B2.5	Gross pollutant trap at inlet to channel.	Water sensitive urban design treatment of stormwater.	Before the release of the first Subdivision Certificate for the Land or as otherwise agreed between the Parties in writing.	Construction of gross pollutant trap as shown in The Works Location Plan in accordance with Council's Engineering Guide and Specification.



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Scope of obligation under this Agreement
B2.6	Trunk drainage stormwater system.	Stormwater management.	Before the release of the first Subdivision Certificate for the Land or as otherwise agreed between the Parties in writing.	Construction of trunk drainage stormwater system as shown in The Works Location Plan in accordance with Council's Engineering Guide and Specification.
Part C – Road Works				
R2	Provision of (part) Hollingsworth Road (sub-arterial road).	Public road.	Before the release of the first Subdivision Certificate for the Land or as otherwise agreed between the Parties in writing.	<p>Construction of part of Hollingsworth Road as shown in The Works Location Plan (being a part extension of Townson Road West).</p> <p>The Work is to include:</p> <ul style="list-style-type: none"> ▪ 2 x 7m wide carriageways separated by a 4.5m wide median ▪ a shared path (footpath and cycleway) on one side ▪ a footpath on the other side. <p>Construction is to be to sub-arterial standard to cater for industrial traffic in accordance with Council's</p>



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Scope of obligation under this Agreement
				Engineering Guide and Specification.



Part 2

Supporting Plans

Dedication Land Location Plan

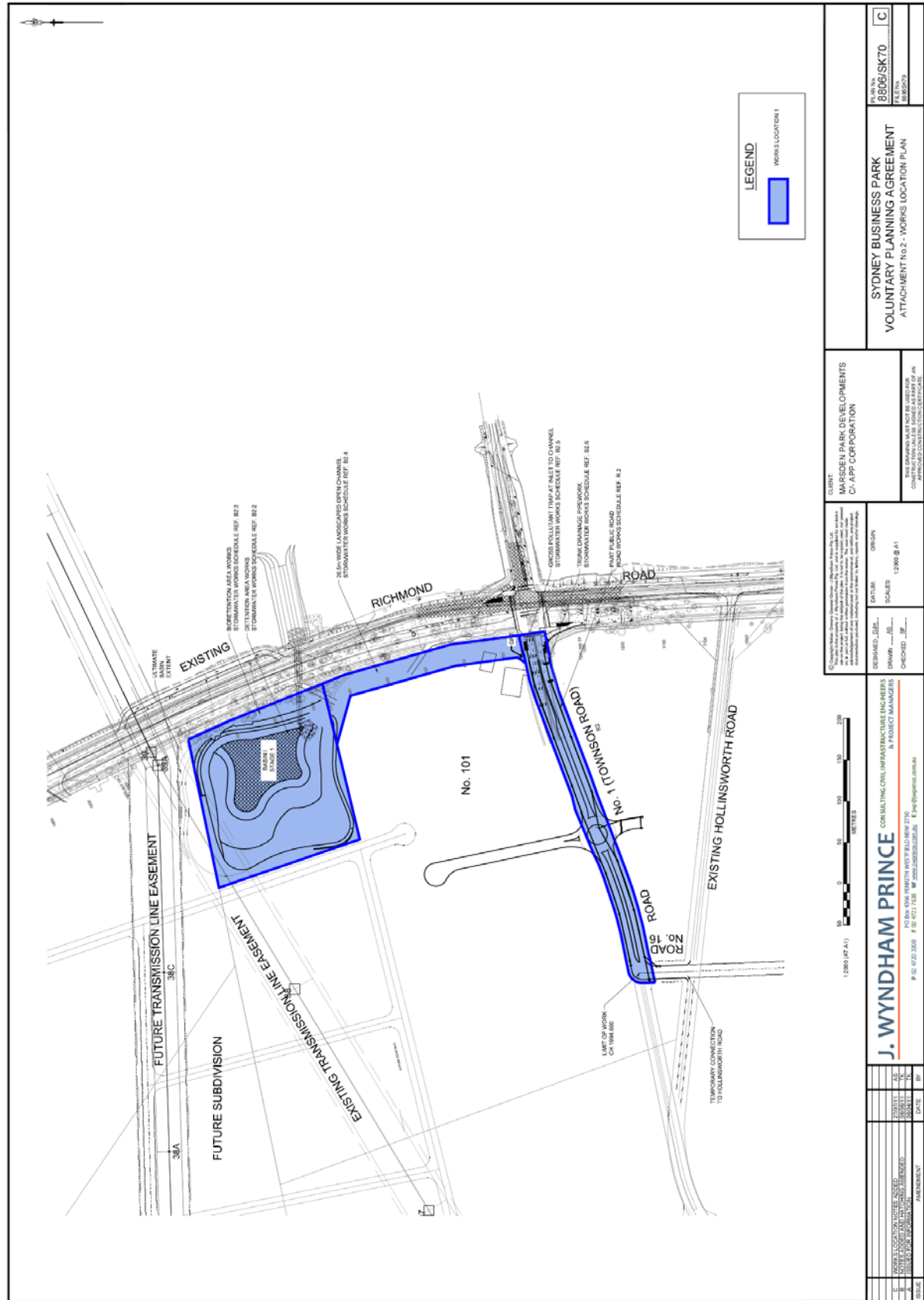
The Dedication Land Location Plan is on the next page.





The Works Location Plan

The Works Location Plan is on the next page.





Schedule 4

(Clause 34)

Contact for Notices

Developer

Attention: Owen Walsh, Development Director
Address: 920 Richmond Road, Marsden Park NSW 2765
Fax Number: (02) 9954 1951
Email: owen.walsh@app.com.au

Council

Attention: Ron Moore – General Manager
Address: 62 Flushcombe Road, Blacktown NSW 2148
Fax Number: 9831 1961
Email: council@blacktown.nsw.gov.au



Execution

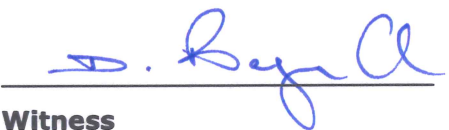
Executed as an Agreement

Dated: 13 October 2011

Executed on behalf of the Council by its Attorney **WAYNE TREVOR ROGERS** who states that he/~~she~~ has no notice of revocation of the Power of Attorney contained in Book **4603** Number **454** pursuant to which this Agreement is executed:

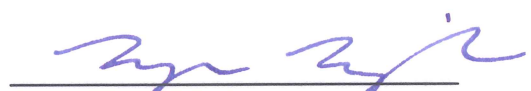



Attorney



Witness

Executed by the Developer in accordance with s.127 of the Corporations Act 2001 (Cth.) in the presence of:


Name **Bryan Keith Singh**
Position: **DIRECTOR**
Name **William Walter Wearn**
Position: **Director**

Appendix

(Clause 47)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales 2148
(Council)

Marsden Park Developments Pty Ltd of 920 Richmond Road, Marsden Park NSW
2765 (Developer)

Description of Subject Land

The land shown edged heavy dotted blue and marked blue on the Land Identification Map.

Description of Proposed Change to Environmental Planning Instrument/Development Application

The Development Application relates to development on the Land made permissible under the Act by the SEPP Amendment, being development that was not permissible immediately before the SEPP Amendment took effect.

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

The draft planning agreement is an agreement between the Council and the Developer under which the Developer agrees to make Development Contributions to the Council to meet the increased demand for local public infrastructure that will be or are likely to arise from the carrying out of the Development. The Development Contributions may be made by the Developer in accordance with clause 6 and Schedule 3 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 for the provision of local infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The draft planning agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject land to be developed in a timely and efficient manner to promote residential housing development, and
- provide for the dedication of land and roads for public purposes.

How the Draft Planning Agreement Promotes the Public Interest and One or More Objects of the Environmental Planning and Assessment Act 1979

In general, the draft planning agreement, by making provision for the Developer to make development contributions towards the cost of public amenities and public services to meet the demand created by the Development, enabling the dedication of land and by enabling the subject land to be developed in a timely and efficient manner promotes the following objects of the *Environmental Planning and Assessment Act 1979* as contained in s5 of that Act:

- promotes and co-ordinates the orderly and economic use and development of the land,
- achieves the provision of land for public purposes,
- achieves the provision and co-ordination of community services and facilities, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment.

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 following two elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

- *To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.*
- *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.*

These elements of the Council's Charter are promoted through the provision or improvement of various public facilities the need for which is created by the Development including public roads, a public pedestrian/cycleway network, detention basins, embellishment of local parks, and trunk drainage.

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

All Capital Works are as a consequence of the Development and are to be funded or provided by the Developer. As such, the draft planning agreement conforms with 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

The Draft Planning Agreement specifies that Works must be completed before the issue of first Subdivision Certificate for the Land.