



## **Macarthur Gardens North Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Campbelltown City Council  
Landcom**

Date:

## **Macarthur Gardens North Planning Agreement**

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## **Macarthur Gardens North Planning Agreement**

### **Summary Sheet**

#### **Council:**

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

**Address:** Civic Centre 91 Queen Street (cnr Queen and Broughton Streets),  
Campbelltown NSW 2560

**Telephone:** 4645 4000

**Facsimile:** 4645 4111

**Email:** council@campbelltown.nsw.gov.au

**Representative:** General Manager

#### **Landcom:**

**Name:** Landcom (ABN 79 268 260 688)

**Address:** 60 Station Street East, Parramatta New South Wales 2150

**Telephone:** (02) 9841 8600

**Facsimile:** (02) 9841 8688

**Email:** pirwin@landcom.nsw.gov.au

**Representative:** Paul Irwin, Development Director

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See clause 8 and Schedule 2.

**Application of s7.11, s7.12 and s7.24 of the Act:**

See clause 7.

**Enforcement:**

See Part 5.

**Registration:**

See clause 32.

**Restriction on dealings:**

See clause 33.

**Dispute Resolution:**

Expert determination and mediation. See clauses 30 and 31.

## **Macarthur Gardens North Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

**Campbelltown City Council** ABN 31 459 914 087 of Civic Centre, 91 Queen Street (cnr Queen and Broughton Streets), Campbelltown NSW 2560 (**Council**)

and

**Landcom** ABN 79 268 260 688 of Level 14, 60 Station Street East, Parramatta New South Wales 2150 (**Landcom**)

### **Background**

- A Landcom is the owner of the Land and wishes to carry out the Development.
- B The Council granted the Concept Consent on 14 December 2022 subject to conditions requiring certain infrastructure works and the payment of contributions pursuant to s7.11 of the Act.
- C Landcom has agreed to make Development Contributions in connection with the carrying out of the Development on and subject to the terms of this Deed.

### **Operative provisions**

## **Part 1 - Preliminary**

### **1 Definitions & Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Approval** includes approval, consent, licence, permission or the like.

**Assign** means, as the context requires, any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

**Authority** means the Commonwealth or New South Wales government, or any department or agency of the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993* (NSW), or a person or body exercising

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functions under any Act including a commission, panel, court, tribunal and the like.

**Bank Guarantee** means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited.
- (b) Commonwealth Bank of Australia.
- (c) Macquarie Bank.
- (d) National Australia Bank Limited.
- (e) St George Bank Limited.
- (f) Westpac Banking Corporation.
- (g) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from Landcom.

**Certificate of Practical Completion** means a certificate issued by Council or deemed to have been issued under clause 19.

**Claim** against any person means any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense, or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Clearance Certificate** means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953 (Cth)*.

**Concept Consent** means the Development Consent granted by Council to DA 3944/2021/DA-SW on 14 December 2022.

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential;
- (d) is information which may be reasonably considered to be of a confidential nature.

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

**Contribution Value** in relation to each Item means the amount shown in column 4 headed "Contribution Value" of Schedule 2 for that Item as Indexed.

**Council Standards** means any design standards or guidelines or other requirements or policies of the Council relevant to an Item of Works and which are regularly applied to works of the nature of the Item of Works.

**Dedication Land** means the land that is required to be dedicated by Landcom to the Council under this Deed as set out in Part A of **Schedule 2** and generally identified in the plan in **Schedule 1**.

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



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**Defect** means a defect in an Item of Works (other than Vegetation Works) which:

- (a) adversely affects the ordinary use and/or enjoyment of the relevant Works;
- (b) will require maintenance or rectification work to be performed on them at some time in the future as a result of the existence of the defect; and/or
- (c) results in the Item of Works failing to perform according to its specification or intended use as assessed during the Defects Liability Period

**Defects Liability Period** means 12 months from the date of issue of a Practical Completion Certificate for an Item of Works.

**Defects Security** has the meaning ascribed to it in clause 27.2.2

**Detailed Design** means the detailed design, being plans and specifications which are sufficiently advanced so as to be suitable to enable the issue of a Construction Certificate, for an Item of Works approved under clause 13 of this Deed.

**Development** means the development of the Land pursuant to the Concept Consent and any Further Stage Consents so as to create Final Lots, residential buildings or single Dwellings on any Final Lot created by Landcom and for associated purposes including subdivision, community and commercial facilities, parks, open space and infrastructure.

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

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

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

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

**Dwelling** has the same meaning as in the *Campbelltown Local Environmental Plan 2015*.

**ELNO** has the same meaning given to that term in the Participation Rules.

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) arising under, or with respect to, a Bio-Banking Agreement;
- (c) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (d) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

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**Encumber** means to grant an Encumbrance.

**Environment** has the same meaning as set out in the Dictionary to the *Protection of the Environment Operations Act 1997 (NSW)*.

**Equipment** means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of Landcom in connection with the performance of its obligations under this Deed.

**Final Lot** means a lot to be created in the Development (including a strata lot) for separate occupation and disposition, not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council or other Authority; or
- (b) a lot created by a subdivision of the Land which is intended to be further subdivided before it is occupied; and/or
- (c) a lot created for community use, ecological restoration, drainage, ecology, open space or infrastructure, or that will be dedicated or otherwise transferred for public use.

**Foreign Resident Capital Gains Withholding Amount** means the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953 (Cth)*.

**Further Stage Consents** means any Development Consents granted in respect of Development on the Land which are granted consistently with the Concept Consent.

**Hand-Over** and **Handed Over** means the hand-over to the Council of any Works in accordance with this Deed.

**Hard Landscaping Works** means paving, seating, buildings, signage, lighting, playground equipment or other landscaping work other than the Vegetation Works.

**Index** means the quarterly indexing of Development Contributions in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics.

**Insolvency Event** means the happening of any of the following events:

- (a) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (b) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (c) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (d) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (e) A body corporate is or states that it is insolvent.

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- (f) As a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth) (Corporations Act), a body corporate is taken to have failed to comply with a statutory demand;
- (g) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
- (h) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
- (i) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (j) A receiver, manager or receiver and manager is appointed to the Company.
- (k) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (l) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

**Item** means each separately numbered Development Contribution specified in Schedule 2.

**Item of Works** or **Works** means each of the Items in Part B of Schedule 2.

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

**Land** means part Lot 1097 in DP1182558, bounded by Goldsmith Avenue and Main South Rail Line as shown on the plan in Schedule 1 of this Deed, not including the part marked as 'Stormwater Basin 3'.

**Landscape Maintenance Period** means:

- (a) the period of 60 months for any Item of Works on Land subject to management actions under the VMP commencing on the Hand-Over of that Item of Works;
- (b) subject to paragraph (a), the period of 24 months for any Vegetation Works commencing on the Hand-Over of the Item of Works which involves the Vegetation Works; and
- (c) subject to paragraph (a), the period of 12 months in respect of any Hard Landscaping Works commencing on the Hand-Over of the Item of Works which involves the Hard Landscaping Works.

**Landscape Maintenance Plan** means the plan submitted with the Detailed Design in accordance with clauses 13 and 14 and approved by Council under those clauses. The Landscape Maintenance Plan operates during the Landscaping Maintenance Period.

**Landscaping Works** means any Item of Works which involves Vegetation Works or Hard Landscaping Works.

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**Law** means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

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

**Participation Rules** means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

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

**PEXA** means Property Exchange Australia Ltd.

**Planning Legislation** means the Act, the *Local Government Act 1993 (NSW)* and the *Roads Act 1993 (NSW)*.

**Practical Completion** means the stage in the carrying out and completion of an Item of Works when:

- (a) the Works are complete except for minor defects that, :
  - (i) do not prevent the Works from being reasonably capable of being used for their stated purpose; and
  - (ii) the rectification of which will not prejudice the convenient use of the Works;
- (b) any tests which are required by any construction contract for the Works to be carried out and passed before the Works reach Practical Completion have been carried out and passed; and
- (c) documents and other information required under any construction contract for the Works which are essential for the use, operation and maintenance of the Works have been supplied to Landcom.

**Practical Completion Date** means the Date, if any, by which Works are required to be completed under this Deed, as set out in Column 3 of Schedule 2.

**Quantity Surveyor** means a person who:

- (a) is a member of their respective professional organisation and has been for at least five (5) years;
- (b) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (c) is active as a quantity surveyor at the time of his appointment;
- (d) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (e) undertakes to act fairly and promptly in accordance with the requirements of this Deed.

**Rectification Certificate** means a compliance certificate within the meaning of section 6.4(1)(e) of the Act issued by the Council or a certifier to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

**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.

**Registrar General** means the Registrar General within the meaning of the *Real Property Act 1900 (NSW)*.

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**Regulation** means the *Environmental Planning and Assessment Regulation 2021* (NSW).

**Security** means collectively the Works Security and the Defects Security.

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

**Subdivision Works Certificate** has the same meaning as in the Act.

**Superlot Subdivision Plan** means the subdivision plan approved by the Concept Consent, as proposed to be modified, and which is contained in Schedule 3.

**VMP** means the Macarthur Gardens North Masterplan DA VMP prepared by Eco Logical Australia Pty Ltd, dated 9 August 2022 and approved by the Concept Consent.

**VMP Works** means Item B7.

**Vegetation Works** means any Item of Works which involves vegetation planting.

**WHS** means work, health and safety.

**WHS Law** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

**Work** means the physical result of any building, engineering or construction work in, on, over or under land, required to be carried out by Landcom under this Deed.

**Works Security** has the meaning ascribed to it in clause 27.2.1

**Works-As-Executed Plan** means detailed plans and specifications of Works carried out by Landcom.

1.2 In the interpretation of this Deed, 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 Deed;

1.2.2 a reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney;

1.2.3 if the day on which something is to be done under this Deed is not a business day, then it must be done on the next business day;

1.2.4 a reference to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars;

1.2.5 a reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;

1.2.6 a reference to any legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

1.2.7 a reference 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 Deed;

1.2.9 a reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

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- 1.2.10 where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning;
- 1.2.11 the singular includes the plural, and the plural includes the singular;
- 1.2.12 references to the word 'include' or 'including' are to be construed without limitation;
- 1.2.13 a reference to a Party to this Deed includes a reference to the Party's employees, agents and contractors, and the Party's successors and assigns; and
- 1.2.14 any schedules, appendices and attachments form part of this Deed.

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

## **3 Commencement of this Deed**

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have both executed this Deed.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

## **4 Application of this Deed**

- 4.1 This Deed applies to the Land and the Development.

## **5 Warranties**

- 5.1 The Parties warrant to each other that they:
  - 5.1.1 have full capacity to enter into this Deed; and
  - 5.1.2 are able to fully comply with their obligations under this Deed.
- 5.2 Landcom warrants to Council that:
  - 5.2.1 it is legally and beneficially entitled to the Land; and
  - 5.2.2 there is no legal impediment to it entering into this Deed, or performing the obligations imposed under it.

## **6 Further agreements relating to this Deed**

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

## **7 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 7.1 This Deed excludes the application of s7.11 and s7.12 to the Development to the extent of the sum of the Contribution Values.
- 7.2 This Deed does not exclude the application of s7.24 to the Development.

## **8 Provision of Development Contributions**

- 8.1 Landcom must make the Development Contributions set out in Schedule 2 of this Deed and any other provision of this Deed to the Council in accordance with this Deed.
- 8.2 A Contribution Value specified in relation to the Development Contributions in Schedule 2 does not define or limit the extent of Landcom's obligation to provide that Development Contribution.
- 8.3 Further to clause 8.2 but subject to clause 13.8, Landcom is not entitled to any payment, credit or off-set to the extent that any costs incurred by it in delivering any Development Contributions under Schedule 2 exceeds the relevant Contribution Value.
- 8.4 If the cost incurred by Landcom to properly perform an obligation to carry out Work or dedicate land is less than a Contribution Value specified in relation to the obligation, Landcom is not required to carry out further Work or dedicate further land or pay money to the Council to make up the difference between the Contribution Value and the cost incurred by Landcom in performing the obligation.
- 8.5 The Council will use its best endeavours to apply each Development Contribution made by Landcom under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

## **Part 2 – Provisions relating to monetary Development Contributions**

### **9 Payment of monetary Development Contributions**

- 9.1 Not used

## **Part 3 – Provisions relating to dedication of Land**

### **10 Procedures relating to the dedication of Land**

- 10.1 Landcom must dedicate the Dedication Land to Council free of any trusts, estates, interests, covenants and Encumbrances (other than encumbrances which are allowed to remain under clause 10.5.2) in accordance with **Schedule 2**.

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- 10.2 Landcom must meet all costs (including legal and registration costs) associated with the dedication of the Dedication Land in accordance with clause 10.1, including any costs incurred by Council in relation to that dedication.
- 10.3 For the purposes of this Deed, the Dedication Land will be dedicated to Council by Landcom upon Landcom:
- 10.3.1 giving the Council:
- (a) a Clearance Certificate that is valid at the time of dedication of the Dedication Land; or
  - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the Dedication Land; and,
- 10.3.2 ensuring that:
- (a) a deposited plan is registered in the register of plans held with the Registrar General that dedicates the relevant part of the Dedication Land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW); or
  - (b) the Council is given evidence that a transfer of the Dedication Land to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.
- 10.4 Dedication Land is taken to have been dedicated to Council when the matters in clause 10.1 have occurred.
- 10.5 Landcom is to do all things reasonably necessary to enable registration of the deposited plan or instrument of transfer to occur including by delivering to Council:
- 10.5.1 any consent from an interested party in the relevant land that is required by the Registrar General to be provided in order to enable registration of the deposited plan or instrument of transfer to occur; and
- 10.5.2 any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Dedication Land including but not limited to easements and covenants for services and drainage.

## 11 Acquisition of Land

- 11.1 Subject to clause 11.2, if Landcom does not dedicate or transfer to Council any part of the Dedication Land at the time at which it is required to be dedicated under **Schedule 2**, Landcom consents to the Council compulsorily acquiring the land in accordance with the Acquisition Act and on the terms of this clause 11 for compensation on account of that acquisition in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.



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- 11.2 Clause 11.1 constitutes an agreement between the parties with respect to the compulsory acquisition of the Dedication Land for the purposes of s30 of the Just Terms Act.
- 11.3 Landcom must promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 11, including without limitation:
  - 11.3.1 signing any documents or forms;
  - 11.3.2 giving landowner's consent for lodgement of any Development Application;
  - 11.3.3 producing certificates of title to the Registrar-General under the Real Property Act 1900 (NSW); and
  - 11.3.4 paying the Council's costs arising under this clause 11.
- 11.4 If Council:
  - 11.4.1 acquires the Dedication Land in accordance with this clause 11 and
  - 11.4.2 is required to pay any compensation to a third party as a result of that acquisition,then Landcom must pay Council the amount of that compensation:
  - 11.4.3 within ten (10) business days of demand for payment being made by Council; and
  - 11.4.4 prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

## Part 4 – Provisions relating to the carrying out of Work

### 12 Obligation to Carry Out Works

- 12.1 To the extent it has not already done so as at the commencement of this Deed, Landcom, at its cost, must obtain Development Consent, and any other form of consent required by a relevant Authority, for the construction and use of the Works.
- 12.2 Landcom must carry out and complete the Works in accordance with this Deed (in particular **Schedule 2**).
- 12.3 Landcom must carry out and complete the Works in a good and workmanlike manner (complying with current industry practice and Australian standards relating to each aspect of the Works) having regard to the intended purpose of the Works and in accordance with:
  - 12.3.1 any applicable Development Consent; and
  - 12.3.2 all applicable laws, including those relating to occupational health and safety; and

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- 12.3.3 this Deed to the extent that it is not inconsistent with the applicable Development Consent or an applicable law; and
  - 12.3.4 the approved Detailed Design of the Works.
- 12.4 The Council must notify Landcom of any Council Standards applicable to the design and specifications of each Item of Works, within 15 business days of a request by Landcom. All Council Standards must be published by Council and must be required to be complied with in relation to the Work in a manner consistent with all other works similar to the Works.

## 13 Detailed Design

- 13.1 This clause 13 applies only to Works for which no Construction Certificate has been issued as at the date of commencement of this Deed.
- 13.2 Once Development Consent has been granted for a Work (other than the VMP Works), and before commencing construction of an item of Works, Landcom must prepare the Detailed Design (in consultation with Council) to be consistent with the Development Consent for the Work (and any relevant Council Standard or policies that are consistent with the Development Consent and which do not result in the need for any modification to the Development Consent), and which must:
  - 13.2.1 have specific regard to the specifications and Contribution Value of that Item of Works in Schedule 2; and
  - 13.2.2 contain a report from a suitably qualified and experienced Quantity Surveyor, or a contractor's contract price for the Work, which estimates the cost to complete the relevant item of Work in accordance with the Detailed Design,and submit the Detailed Design to the Council for approval.
- 13.3 Within 20 business days of receiving the Detailed Design, Council must notify Landcom in writing whether the Detailed Design is approved (in which case Landcom must carry out and complete the item of Works in accordance with that Detailed Design) or not approved, and Council must act reasonably where it seeks to withhold its approval under this clause.
- 13.4 If the Council does not approve the Detailed Design, the notice to Landcom to that effect must detail:
  - 13.4.1 what, if any, changes are required to the Detailed Design to ensure it complies with the Development Consent for the Work; and
  - 13.4.2 what other changes Council requires which are not required to correct an inconsistency between the Detailed Design and the Development Consent for the Work (**Council Variation**).
- 13.5 The Parties acknowledge that:
  - 13.5.1 condition 18 of the Concept Consent allows Council and Landcom to agree to a widening of the shared path along Bow Bowing Creek Reserve from 2.0m to 3.0m,

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- 13.5.2 if Council requests and Landcom agrees to the widening of the shared path referred to in clause 13.5.1, then such a change will be a Council Variation for the purposes of this clause 13.
- 13.6 If a Council Variation is requested, and prior to commencing the relevant Works, Landcom must notify Council in writing of the increased costs Landcom expects to incur as a result of the Council Variation, including all anticipated construction and consultants costs, all costs in gaining consent authority approvals, and an estimate of any delay in the delivery program for the relevant Work as a result of the Council Variation, for Council's consideration.
- 13.7 Within 5 business days of receiving the information required under clause 0, Council must advise Landcom whether it continues to require the Council Variation, or whether it no longer requires the Council Variation.
- 13.8 If Council advises that it does require a Council Variation, Council must bear the additional costs actually incurred by Landcom in providing the Work that is in excess of the greater of the Contribution Value and estimated value of the Works under clause 13.2.2, by providing Council with an itemised tax invoice for those costs, and those costs must be reimbursed to Landcom by no later than 10 business days after Council receives that tax invoice and Hand-Over of the relevant Works, whichever occurs later.
- 13.9 Landcom must amend the Detailed Design in response to:
- 13.9.1 any request by Council pursuant to clause 13.3.1; and
- 13.9.2 a Council Variation which the Council advises it requires under clause 13.7,
- prior to making an application for a Construction Certificate for the relevant the Work, other than if:
- 13.9.3 the change is requested under clause 13.3; and
- 13.9.4 Landcom (acting reasonably) considers the change will cause significant delay to the Works; or
- 13.9.5 it requires a modification of the Development Consent for the relevant the Work or any part of the Development,
- in which case Landcom is not required to amend the Detailed Design to reflect those changes requested by Council.
- 13.10 The amended Detailed Design prepared under clause 13.8 will be the agreed Detailed Design for the relevant the Work.
- 13.11 Council may not request any variations to the Detailed Design other than pursuant to clause 13.3.
- 13.12 Any acceptance by the Council of the Detailed Design under this clause 13 is not to be taken as approval of or to any Construction Certificate for the relevant Work.
- 13.13 If Council fails to provide a response to the Detailed Design within the time required by clause 13.3, Landcom may proceed to seek a Construction Certificate for the Detailed Design notwithstanding the remainder of this clause 13 and the Detailed Design is deemed to have been approved by Council.
- 13.14 When approving the Detailed Design, the Council must also notify Landcom of Council's requirements and formats for any reports, operational, maintenance

or other manuals, specifications, warranties, checklists, forward budgets and any other documents or reports which Council will require in respect of the Work on Hand-Over.

## **14 Landscape Maintenance Plan**

- 14.1 When the Detailed Design of any Landscaping Works (other than the VMP Works) is submitted to Council for approval under clause 13.1:
  - 14.1.1 Landcom must, at its own cost, also submit a proposed Landscape Maintenance Plan no later than 60 business days prior to the commencement of the Landscape Maintenance Period, which has been prepared having regard to the Council Standards; and
  - 14.1.2 the Council must within 30 business days of receipt, notify Landcom whether the Landscape Maintenance Plan is approved or not approved and of any amendments required to the Landscape Maintenance Plan if it is not approved.
- 14.2 The Council can only request reasonable amendments to the Landscape Maintenance Plan if the Council reasonably demonstrates:
  - 14.2.1 the amendments are minor in nature; and
  - 14.2.2 would not alter the Contribution Value of any Item of Works.
- 14.3 Landcom must make any amendment to the Landscape Maintenance Plan requested by Council under clause 14.1 and which complies with clause 1.1.
- 14.4 The amended Landscape Maintenance Plan prepared under clause 14.3. will be the agreed Landscape Maintenance Plan for the relevant Item of Works.
- 14.5 If the Council fails to provide a response to the Landscape Maintenance Plan within the time required by clause 14.1, the Landscape Maintenance Plan is deemed to have been approved by Council.
- 14.6 For the purposes of clause 14.1 Landscape Maintenance Plan must include :
  - 14.6.1 a schedule of inspections of the Vegetation Works and Hard Landscaping Works during the Landscape Maintenance Period to occur at specified stages of the works in the Landscape Maintenance Plan (**Landscaping Inspection Stage**);
  - 14.6.2 the landscape designer's design intent statement indicating the expected established landscape area's visual and physical performance during and at completion of the Landscape Maintenance Period;
  - 14.6.3 a maintenance schedule identifying the frequency of any regular maintenance and upkeep required to effect the landscape designer's design intent statement, and which shall be logged in a maintenance register during the Landscape Maintenance Period; and
  - 14.6.4 any operations and maintenance manuals relating to the Landscaping Works that may be supplied by contractors at the end of the Defects Liability Period.
- 14.7 Subject to clause 25, at the end of the Landscape Maintenance Period, Landcom has no further obligations in respect of the Landscaping Works or maintenance under the Landscape Maintenance Plan.

## **15 Inspections of Works**

- 15.1 Within 20 business days of the approval of the Detailed Design for an Item of Work (other than a Landscaping Work), Council must provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Work (**Inspection Stage**).
- 15.2 5 business days prior to reaching an Inspection Stage as set out in the Inspection Schedule, Landcom must notify the Council of the inspection date (**Inspection Date**).
- 15.3 On the Inspection Date Landcom must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the part of the Land on which the Item of Work is being constructed to inspect the relevant Work.
- 15.4 In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter, and Landcom must permit the Council, its officers, employees, agents and contractors to enter any part of the Land on which the relevant Work is located to inspect, examine or test the progress of the relevant the Work, subject to:
  - 15.4.1 giving reasonable notice to Landcom;
  - 15.4.2 complying with all reasonable directions given by or on behalf of Landcom, including by its contractors carrying out the construction of the Works; and
  - 15.4.3 being accompanied by a Landcom representative or a nominee, or as otherwise agreed.
- 15.5 Landcom must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.
- 15.6 The Council may, acting reasonably, within 5 business days of carrying out an inspection (either under clause 15.3 or 15.4), notify Landcom of any defect or non-compliance in the relevant Work (**Inspection Defect Notice**) and direct Landcom to carry out an action or actions to rectify that defect or non-compliance within a reasonable period of time. Such action may include, but is not limited to:
  - 15.6.1 removal of defective or non-complying material;
  - 15.6.2 demolishing defective or non-complying work;
  - 15.6.3 reconstructing, replacing or correcting any defective or non-complying work; or
  - 15.6.4 refraining from delivering any defective or non-complying material to the site of the relevant Work.
- 15.7 If Landcom is issued an Inspection Defect Notice, and:
  - 15.7.1 does not give the Council an Inspection Defect Dispute Notice referred to in clause 15.9, or
  - 15.7.2 gives the Council an Inspection Defect Dispute Notice referred to in clause 15.9 and the dispute is determined by the expert in favour of the Council,

then Landcom must, at its cost, rectify the defect or non-compliance specified in the Inspection Defect Notice within the time period specified in the Inspection Defect Notice (extended by such time period as from date of the Inspection Defect Dispute Notice to the date of the expert's determination).

- 15.8 For the avoidance of doubt, any acceptance by the Council that Landcom has rectified a defect or non-compliance identified in an Inspection Defect Notice does not constitute:

15.8.1 acceptance by the Council that the relevant Item of Work complies with all Approvals and Laws; or

15.8.2 an Approval by the Council in respect of the Work; or

15.8.3 an agreement or acknowledgment by the Council that the relevant Work is complete and may be delivered to the Council in accordance with this Deed.

- 15.9 If Landcom notifies Council that it does not agree that there is a defect or non-compliance as specified in the Inspection Defect Notice (**Inspection Defect Dispute Notice**), then the Inspection Defect Dispute Notice is taken to be a notice for the purposes of clause 30.2 and an expert is to be appointed in accordance with clause 30 to determine whether the Inspection Defect Notice was properly issued.

## **16 Contribution Values**

- 16.1 For the purposes of this Deed, the Parties acknowledge that the Contribution Value in relation to each Item of the Works is the amount specified in Schedule 2 (as Indexed from time to time).

- 16.2 Subject to clause 13.6, if Landcom's actual cost of carrying out an Item of Works in accordance with the Detailed Design, including any costs incurred pursuant to this Deed, determined at the date on which the Works is completed or, in the case of Works, is Handed-Over to the Council, differs from the Contribution Value, then no Party to this Deed shall be entitled to claim credit or reimbursement, as the case may be, for the difference.

## **17 Protection of People, Property and the Environment**

- 17.1 Landcom is to ensure in relation to the carrying out of the Works that:
- 17.1.1 all necessary measures are taken to protect people, property and the Environment;
  - 17.1.2 unnecessary interference with the passage of people and vehicles is avoided;
  - 17.1.3 nuisances and unreasonable noise and disturbances are prevented; and
  - 17.1.4 all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997 (NSW)* are complied with.

## **18 Variation of Works**

- 18.1 Subject to clause 13.4 and 13.7, the Works are not to be varied by Landcom, unless:
- 18.1.1 the Parties agree in writing to the variation;
  - 18.1.2 any Approval required is first obtained; and
  - 18.1.3 Landcom bears all of the Council's costs of, and incidental to agreeing to and approving the variation.
- 18.2 Council may refuse to agree to a variation of an item of Work at its absolute discretion unless the variation is required to be consistent with the Development Consent for the Work in which case the Council may not refuse to agree.
- 18.3 If a variation to a Work does not result in the sum of the Contribution Values of all Development Contributions falling below the sum of the Contribution Values at the date of this Deed, and the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed, then Schedule 2 will be deemed to be amended to include the varied Development Contributions and their Contribution Values.
- 18.4 A variation to the Developments Contributions under clause 19.2 does not require a variation to this Deed.

## **19 Practical Completion of Works**

- 19.1 Landcom is to give the Council not less than 20 business days written notice of the date on which it considers that an Item of Works will reach Practical Completion (identifying the particular item of the Works to which it relates).
- 19.2 The Council may, within 10 business days of the date of receipt of the notice referred to in clause 19.1, carry out an inspection of the Work the subject of the Notice, and will, having regard to the requirements for Practical Completion of the Works, and acting reasonably, and within a further 10 business days from the date of its inspection, either:
- 19.2.1 provide written certification to Landcom that the relevant Work has reached Practical Completion (**Certificate of Practical Completion**); or
  - 19.2.2 notify Landcom of any additional information or work required or matters which must be addressed by Landcom, which must be reasonable in the circumstances, in order to ensure that the Work complies with this Deed, prior to the certification being issued.:
- 19.3 If Council does not issue a notice under clause 19.2 within 20 business days of receipt of a Landcom notice under clause 19.1, Council will be deemed to have accepted that Practical Completion of the Work the subject of the notice has been achieved, and will be deemed to have issued a Certificate of Practical Completion.
- 19.4 If Landcom is required to provide additional information or works or address any matters under clause 19.2.2, Landcom will provide that information to Council or works or address those matters within 10 business days of receiving the notice or within a reasonable period of time, having regard to the nature of the requirement, and make a further request for a Certificate of Practical Completion.

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- 19.5 In the event that Landcom has notified Council that Works are completed, and reasonably considers that a Certificate of Practical Completion should have been issued by Council in respect of a Work, and none has been issued, Landcom may refer the matter for dispute resolution.

## **20 Hand-Over**

- 20.1 Before a Work which is to be Handed-Over to Council is Handed-Over, Landcom will remove from the part of the Land on which the Work being Handed-Over is located:
- 20.1.1 any rubbish or surplus material;
  - 20.1.2 any temporary works; and
  - 20.1.3 any construction plant and equipment, relating to the carrying out of the Work as the case requires; unless that plant or equipment is required by Landcom for the purposes of Defect rectification, in which case it must be removed immediately after the Defect has been rectified.
- 20.2 A Work required to be Handed-Over to Council and which is located on land owned by the Council is taken to be Handed-Over to the Council when a Certificate of Practical Completion is issued by the Council or deemed to be issued by the Council under clause 19.
- 20.3 A Work required to be Handed-Over to Council and which is located on part of the Land, is Handed-Over when the part of the Land on which it is located is dedicated or transferred to Council in accordance with clause 10.
- 20.4 Ownership of a Work is transferred to Council on Hand-Over and nothing in, or done under this Deed gives Landcom, after Hand-Over any right, title or interest in the Work.
- 20.5 On Hand-Over, Landcom must cause the legal title in the Work and all materials and components of the Works to pass to Council free of any charge or other interest.
- 20.6 Landcom, at its own cost, must repair and make good any loss or damage to a Work from any cause whatsoever which occurs before the Work is Handed-Over for the purposes of this Deed, except for damage to the extent caused or contributed to by the Council, its officers, employees, agents and contractors which Landcom has no obligation to repair and make good.

## **21 Works-As-Executed-Plan**

- 21.1 No later than 60 business days after a Certificate of Practical Completion is issued in respect of a Work, Landcom must submit to the Council a full Works-As-Executed-Plan in respect of the Works that are the subject of the notice.
- 21.2 Landcom shall provide with the Work-as-Executed Plan(s) all documents requested by the Council under clause 13.19 which are to be provided at Hand-Over.

## **22 Rectification of Defects for Works**

- 22.1 During the Defects Liability Period for any Works, the Council may give to Landcom a Rectification Notice in relation to the Works specifying:



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- 22.1.1 the Works requiring rectification and the nature of the Defect; and
  - 22.1.2 the action required to be undertaken by Landcom to rectify the Defect in those Works.
- 22.2 If Landcom is issued a Rectification Notice, and:
  - 22.2.1 does not give the Council a Rectification Dispute Notice referred to in clause 22.12, or
  - 22.2.2 gives the Council a Rectification Dispute Notice referred to in clause 22.12 and the dispute is determined by the expert in favour of the Council,

then Landcom must comply with a Rectification Notice at its own cost according to the terms of the Rectification Notice (extended by such time period as from date of the Rectification Notice to the date of the expert's determination), and acting reasonably, provide Council with a date by which the Defect in those Works will be rectified having regard to the nature of the Defect, the Works and the rectification required.
- 22.3 When Landcom considers that rectification is complete, Landcom may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice .
- 22.4 A Rectification Certificate under clause 22.3 discharges Landcom from any further obligation to comply with the relevant Rectification Notice.
- 22.5 If:
  - 22.5.1 Landcom does not give the Council a Rectification Dispute Notice referred to in clause 22.12, or
  - 22.5.2 gives the Council a Rectification Dispute Notice referred to in clause 22.12 and the dispute is determined by the expert in favour of the Council,

and Landcom has not complied with a Rectification Notice by the time Landcom specified for rectification of the Defect (extended by such time period as from date of the Rectification Dispute Notice to the date of the expert's determination), then the Council may do such things as are necessary to rectify the Defect (including entry upon any part of the Land to which it requires access, which Landcom must provide unimpeded and without interference, in order to satisfy the obligations of Landcom in accordance with the Rectification Notice), and recover, as a debt due in a court of competent jurisdiction, the costs incurred by the Council in rectifying the Defect.
- 22.6 Where Council exercises its step-in rights in accordance with paragraph 22.5, all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt immediately due and owing by Landcom.
- 22.7 By no later than twenty (20) Business Days prior to the end of the Defects Liability Period:
  - 22.7.1 Council will undertake a final inspection of the relevant Item of Work; and
  - 22.7.2 Council may either:
    - (a) by way of written notice to Landcom, confirm that the Item of Work is acceptable to Council, acting reasonably; or

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- (b) issue a Rectification Notice to Landcom if it identifies any part of the Item of Work which is not acceptable to Council, acting reasonably.

22.8 If Council issues a Rectification Notice under paragraph 22.7.2(b), and

22.8.1 Landcom does not give the Council a Rectification Dispute Notice referred to in clause 22.12, or

22.8.2 Landcom gives the Council a Rectification Dispute Notice referred to in clause 22.12 and the dispute is determined by the expert in favour of the Council,

then, Landcom must comply with the Rectification Notice at its own cost, according to the terms of that Rectification Notice and (and for the purpose of clarity, clause 22.5 and clause 22.6 applies with respect to any such Rectification Notice).

22.9 Council may not issue a further Rectification Notice under paragraph 22.7 for any additional unacceptable parts of the Item of Work that were not identified in the Rectification Notice issued under paragraph 22.7.2(b).

22.10 If Council does not issue a Rectification Notice within ten (10) Business Days after undertaking a final inspection of the Works under paragraph 22.7.1, the Works will be deemed to be acceptable to Council.

22.11 If Council issues a Rectification Notice under paragraph 22.7, the Defects Liability Period for the Item of Work the subject of that Rectification Notice does not end for the purpose of this Deed until the relevant matters set out in that Rectification Notice have been addressed in accordance with this Deed.

22.12 If Landcom notifies Council that it does not agree that there is a Defect as specified in the Inspection Rectification Notice (**Rectification Dispute Notice**), then the Rectification Dispute Notice is taken to be a notice for the purposes of clause 30.2 and an expert is to be appointed in accordance with clause 30 to determine whether the Rectification Notice was properly issued.

## 23 Cost of Works carried out by the Council

23.1 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Deed include, but are not limited to:

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

23.1.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed, made safe or rectified; and

23.1.3 without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of Landcom's failure to comply with this Deed.

## 24 Insurance

24.1 Landcom is to take out and keep current, or is to procure that any contractor carrying out the Works on behalf of Landcom takes out and keeps current, to

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the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:

- 24.1.1 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 Landcom's liability in respect of damage to or destruction of the Works;
  - 24.1.2 public liability insurance for at least \$10,000,000 for a single occurrence, which covers the Council, Landcom and any subcontractor of Landcom, for liability to any third party;
  - 24.1.3 workers compensation insurance as required by law; and
  - 24.1.4 any other insurance required by law.
- 24.2 If Landcom fails to comply with clause 24.1, 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 Landcom to the Council and may be recovered by the Council as it deems appropriate including:
- 24.2.1 by calling upon the Security provided by Landcom to the Council under this Deed; or
  - 24.2.2 recovery as a debt due in a court of competent jurisdiction.
- 24.3 Landcom is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 24.1.

## 25 Landscape Maintenance Period

- 25.1 During the Landscape Maintenance Period for Landscaping Works (other than the VMP Works), Landcom must maintain the Landscaping Works in accordance with the Landscape Maintenance Plan approved under clauses 13 and 14 (**Maintenance Works**).
- 25.2 Council must carry out inspections of the Maintenance Works during the Landscape Maintenance Period in accordance with the Landscape Maintenance Plan.
- 25.3 5 business days prior to reaching a Landscaping Inspection Stage as set out in the Landscape Maintenance Plan, Landcom must notify the Council of the inspection date (**Landscaping Inspection Date**).
- 25.4 On the Landscaping Inspection Date Landcom must ensure that any employees, contractors, agents or representatives of Council have unimpeded access to and may enter the part of the Land (without any interference by Landcom) on which the Maintenance Works are being carried out to inspect the Maintenance Works, provided that such access and entry is subject to the Council and its employees, contractors, agents or representatives complying with any directions from Landcom or its contractors for the purposes of health and safety.
- 25.5 In addition to carrying out inspections in accordance with the Landscape Maintenance Plan, the Council may enter any part of the Land on which the Landscaping Works is located, and which is not land owned by Council at the time, to inspect the progress of the Maintenance Works, subject to:
  - 25.5.1 giving reasonable notice to Landcom;

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- 25.5.2 complying with all reasonable directions given by or behalf of Landcom, including by contractors carrying out the Landscaping Works; and
  - 25.5.3 being accompanied by Landcom or a nominee, or as otherwise agreed.
- 25.6 The Council may, acting reasonably, within 5 business days of carrying out an inspection (either under clause 25.4 or 25.5), notify Landcom of any non-compliance of the Maintenance Works with the Landscape Maintenance Plan (**Landscaping Inspection Defect Notice**) and direct Landcom to carry out work to rectify that non-compliance within a reasonable period of time.
- 25.7 If Landcom is issued a Landscaping Inspection Defect Notice and
  - 25.7.1 does not give the Council a Landscaping Defect Dispute Notice referred to in clause 25.8, or
  - 25.7.2 gives the Council a Landscaping Defect Dispute Notice referred to in clause 25.8 and the dispute is determined by the expert in favour of the Council,then Landcom must, at its cost, rectify the non-compliance specified in the Landscaping Inspection Defect Notice within the reasonable time period specified in the Landscaping Inspection Defect Notice (extended by such time period as from date of the Rectification Notice to the date of the expert's determination).
- 25.8 If Landcom notifies Council that it does not agree that there is non-compliance of the Maintenance Works as specified in the Landscaping Inspection Defect Notice (**Landscaping Defect Dispute Notice**), then the Landscaping Defect Dispute Notice is taken to be a notice for the purposes of clause 30.2 and an expert is to be appointed in accordance with clause 30 to determine whether the Landscaping Inspection Defect Notice was properly issued.
- 25.9 By no later than twenty (20) Business Days prior to the end of the Landscape Maintenance Period:
  - 25.9.1 Council will undertake a final inspection of the Maintenance Works; and
  - 25.9.2 Council may either:
    - (a) by way of written notice to Landcom, confirm that the Maintenance Works have been carried out in accordance with this clause 25; or
    - (b) issue a notice to Landcom if it identifies any part of the Maintenance Works which has not been carried out in accordance with this clause 25.
- 25.10 If Council issues a notice under paragraph 25.8.2(b), and
  - 25.10.1 Landcom does not give the Council a Landscaping Defect Dispute Notice referred to in clause 25.8, or
  - 25.10.2 Landcom gives the Council a Landscaping Defect Dispute Notice referred to in clause 25.8 and the dispute is determined by the expert in favour of the Council,

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then Landcom must comply with that notice at its own cost.

- 25.11 Council may not issue a further notice under paragraph 25.8.2(b) for any additional unacceptable parts of the Maintenance Work that were not identified in the original notice issued under paragraph 25.8.2(b).
- 25.12 At least 20 business days prior to the end of the Landscape Maintenance Period, Landcom will submit a condition report on the Vegetation Works to be prepared by an independent suitably qualified expert agreed between the Parties as to whether the Landscape Maintenance Plan has been properly implemented and Maintenance Works relating to the Vegetation Works are complete (**Condition Report**).
- 25.13 If the Condition Report identifies any matter requiring rectification, Landcom will rectify that matter within 3 months of the end of the Landscape Maintenance Period, at its cost.
- 25.14 If the Condition Report does not identify any matter requiring rectification, or if Landcom has carried out any rectification required by the Condition Report, subject to clause 25.14, Landcom's obligations in respect of the Vegetation Works and Maintenance Works will cease at the end of the Landscape Maintenance Period.
- 25.15 Landcom must propose 3 independent suitably qualified experts in a written notice to Council at any time prior to the date on which the Condition Report under clause 25.8 is required to be provided, and Council must, acting reasonably, agree to one of those experts acting as the agreed expert and preparing the condition report.
- 25.16 For the avoidance of doubt, if Council is the owner of the land on which the Maintenance Works are being carried out during the Landscape Maintenance Period, Landcom will have no responsibility for any damage caused to any Works, including Vegetation Works, on that land including that which is due to vandalism, any acts by Council or its contracts, employees or agents or severe weather events, and Landcom's obligations in respect of the Works and the Vegetation Works are limited to its obligations under the Landscape Maintenance Plan.
- 25.17 Landcom acknowledges that Council grants to Landcom, its contractors and agents a non-exclusive licence to access land owned by the Council upon which the Maintenance Works will be carried out. .

## Part 5 –Enforcement and Disputes

### 26 Breach of Obligations

- 26.1 If the Council reasonably considers that Landcom is in breach of any obligation under this Deed relating to the carrying out of any Work, including Work the subject of a Rectification Notice, the Council may give Landcom a notice under this clause (**Breach Notice**):
  - 26.1.1 specifying the nature and extent of the breach;
  - 26.1.2 requiring Landcom to:
    - (a) rectify the breach if Council considers it is reasonably capable of rectification; or

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- (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification (also stating the amount of compensation Council requires Landcom to pay in order to rectify the breach).
- 26.2 The Breach Notice must allow Landcom not less than 20 business days (or such further period as is reasonable in the circumstances) to rectify the breach.
- 26.3 Where Landcom is subject to an Insolvency Event or fails to comply with a Breach Notice, Council may, in addition to any rights at Law:
  - 26.3.1 exercise any of its step in rights so as to carry out any work specified in the relevant Breach Notice; and/or
  - 26.3.2 call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by Landcom.

## 27 Security

- 27.1 This clause 27 only applies where Landcom is not the developer under this Deed and another person (within the meaning of s7.4(1) of the Act) is developer (**Developer**).
- 27.2 The Developer must deliver to Council separate Bank Guarantees or other forms of security to the satisfaction of the Council:
  - 27.2.1 prior to the issue of a Construction Certificate in respect of the Development, for an amount equivalent to one hundred percent (100%) of the Contribution Value for the Works (**Works Security**); and
  - 27.2.2 prior to the Completion of an Item of Works, for an amount equivalent to ten percent (10%) of the Contribution Value for that item of Works (**Defects Security**),(collectively referred to as the **Security**).
- 27.3 The Developer may satisfy its obligations (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this Deed.
- 27.4 The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Deed. On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.
- 27.5 If the Developer breaches this Deed then Council, without limiting any other remedies available to it, may call on any Security provided by the Developer. If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 27.6 If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this Deed.
- 27.7 Unless:

27.7.1 Council has made or intends to make a demand against any Security provided by the Developer;

27.7.2 the Development Contribution on account of which that Security was provided has not been made; or

27.7.3 the Developer is in breach of this Deed at the relevant time,

Council, upon a written request being made by the Developer, must return the Works Security within ten (10) business days of such a request being made.

27.8 Unless:

27.8.1 Council has made or intends to make a demand against any Security provided by the Developer;

27.8.2 the relevant Defects Liability Period has not expired; or

27.8.3 the Developer is in breach of this Deed at the relevant time,

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

## **28 Council may withhold certificates**

28.1 **(Construction Certificates)** Landcom may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, Landcom is not in breach of an obligation to make a Development Contribution under this Deed that is required to be made before that Construction Certificate can be issued. Any such Construction Certificate must not be issued until such time as the breach is rectified or Council calls upon the Security provided by Landcom in respect of the Development Contribution to which the breach relates.

28.2 **(Subdivision Certificates)** Landcom may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, Landcom is not in breach of an obligation to make a Development Contribution under this Deed that is required to be made before that Subdivision Certificate can be issued. Any such Subdivision Certificate must not be issued until such time as the breach is rectified or Council calls upon the Security provided by Landcom in respect of the Development Contribution to which the breach relates.

28.3 **(Subdivision Works Certificates)** Landcom may only make, or cause, suffer or permit the making of, an application for a Subdivision Works Certificate in respect of the Development if, at the date of the application, Landcom is not in breach of an obligation to make a Development Contribution under this Deed that is required to be made before that Subdivision Works Certificate can be issued. Any such Subdivision Works Certificate must not be issued until such time as the breach is rectified or Council calls upon the Security provided by Landcom in respect of the Development Contribution to which the breach relates.

28.4 **(Occupation Certificates)** Landcom may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, Landcom is not in breach of an obligation to make a Development Contribution under this Deed that is required to be made before that Occupation Certificate can be issued. Any such

Occupation Certificate must not be issued until such time as the breach is rectified or Council calls upon the Security provided by Landcom in respect of the Development Contribution to which the breach relates.

## **29 Enforcement (Disputes)**

- 29.1 Subject to clause 29.2 and clause 29.3, the Parties may enforce this Deed in any court of competent jurisdiction.
- 29.2 If a dispute or lack of certainty between the parties arises in connection with this Deed or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
- 29.2.1 is in writing;
  - 29.2.2 adequately identifies and provides details of the Dispute;
  - 29.2.3 stipulates what the First Party believes will resolve the Dispute; and
  - 29.2.4 designates its representative (**Representative**) to negotiate the Dispute,
- (**Dispute Notice**) and the Second Party must, within ten (10) Business Days of service of the Dispute Notice, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).
- 29.3 If the Representatives are unable to resolve the Dispute by negotiation within twenty (20) Business Days of the Dispute Notice, the Dispute must be referred to mediation under clause 31 or determination by an expert under clause 30.
- 29.4 For the avoidance of doubt, nothing in this Deed:
- 29.4.1 prevents a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates;
  - 29.4.2 operates to limit the availability of remedies to Council under the Act; and
  - 29.4.3 prevent the Council from exercising any function under the Act or any other Act or Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **30 Dispute resolution – expert determination**

- 30.1 This clause applies to a dispute under this Deed if:
- 30.1.1 the Parties agree that the dispute can be appropriately determined by expert determination; or
  - 30.1.2 the Chief Executive Officer (or equivalent) of the professional body that represents persons who appear to have the relevant expertise to determine the dispute gives a written opinion at the joint request of the Parties that the Dispute can be determined by a member of that body.



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- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute and requiring it to be determined by an appropriately qualified expert.
- 30.3 The expert appointed to determine a Dispute:
  - 30.3.1 must have a technical understanding of the issues in dispute;
  - 30.3.2 must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
  - 30.3.3 must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- 30.4 The parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination (including their obligation of confidentiality in respect of all information disclosed during the expert determination) and the fees payable to the expert.
- 30.5 In reaching a determination in respect of a Dispute, the independent expert must give effect to the intent of the Parties entering into this Deed and the purposes of this Deed.
- 30.6 The expert must:
  - 30.6.1 act as an expert and not as an arbitrator;
  - 30.6.2 proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
  - 30.6.3 not accept verbal submissions unless both parties are present;
  - 30.6.4 on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
  - 30.6.5 take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - 30.6.6 not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - 30.6.7 issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
  - 30.6.8 issue a final certificate stating the expert's determination (together with written reasons); and
  - 30.6.9 act with expedition with a view to issuing the final certificate as soon as practicable.
  - 30.6.10 The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
  - (b) a description of the Dispute; and
  - (c) any other documents, records or information which the expert requests.
- 30.7 The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination and the parties must indemnify the expert for the cost of those advisers or consultants. However, the parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.
- 30.8 The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion. The parties agree that this meeting is not a hearing and is not an arbitration.
- 30.9 The expert determination binds the Parties, except in the case of the expert's fraud or misfeasance.
- 30.10 If the expert does not award costs, each Party must contribute equally to the costs arising from or in connection with the appointment of the expert and the expert determination.

### **31 Dispute resolution - mediation**

- 31.1 This clause applies to any dispute under this Deed other than a dispute to which clause 30 applies.
- 31.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 31.3 The Parties are then to meet within 10 business days of the notice to try to resolve the dispute.
- 31.4 If the dispute is not resolved within a further 20 business 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.
- 31.5 If the dispute is not resolved by mediation within a further 20 business days, or any longer period that may be needed to complete any mediation process which has been started, then the Parties may exercise their legal rights in relation to the dispute, including by taking legal proceedings in a court of competent jurisdiction in New South Wales.
- 31.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 31.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **32 Registration of this Deed**

- 32.1 The Parties agree to register this Deed on the title to the Land under s7.6 of the Act.
- 32.2 Landcom, at its own cost, must within 20 business days of the date of this Deed, and before the issue of any Construction Certificate (other than any Construction Certificate already issued as at the date of this Deed) or Subdivision Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
  - 32.2.1 an instrument in registrable form requesting registration of this Deed on the title to the Land duly executed by the registered proprietor of the Land; and
  - 32.2.2 the written irrevocable consent of each person who has an estate or interest in the Land or is seized or possessed of an estate or interest in the Land.
- 32.3 Landcom, at its own cost, is to do such other things as are reasonably necessary to enable lodgement and registration of this Deed to occur electronically through PEXA or another ELNO.
- 32.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 32.4.1 when this Deed is terminated or otherwise comes to an end for any other reason; or
  - 32.4.2 in so far as the part of the Land concerned is a Final Lot, or
  - 32.4.3 once Landcom has completed its obligations under this Deed.

## **33 Assignment, sale of Land, etc**

- 33.1 Landcom is not to:
  - 33.1.1 Assign the Land or any part of it, to any person; or
  - 33.1.2 assign its rights or obligations under this Deed, or novate this Deed, to any person,unless:
  - 33.1.3 Landcom has:
    - (a) provided Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) has the financial capacity to perform the obligations under this Deed that are to be Assigned to it;
    - (b) at no cost to the Council, procured the execution by the Assignee and the Council, of an agreement in favour of the Council to the effect that the Assignee is bound as if a party to this Deed and the provision of all Security to Council by the Assignee that is required to be provided by the Assignee under

## Macarthur Gardens North Planning Agreement

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#### Landcom

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clause 27 of this Deed at the same time as, or prior to, entering into that agreement; and

(c) Landcom is not in breach of this Deed.

33.2 Clause 33 does not apply during any period that this Deed is registered on the title to the Land.

## Part 6 - Other provisions

### 34 Indemnity

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

34.2 Landcom:

34.2.1 warrants that, as far as it is aware, and other than as expressly disclosed to Council, the Dedication Land is not contaminated (as that term is defined in section 5 of the *Contaminated Land Management Act 1997* (NSW) prior to the date the Dedication Land is dedicated to the Council; and

34.2.2 indemnifies and must keep indemnified Council against all liability for and associated with a breach of the warranty referred to in clause 34.2.2 and only in respect of any contamination that existed prior to the date the Dedication Land is dedicated to the Council.

### 35 Insurance

35.1 Landcom warrants, and Council acknowledges, that Landcom has insurance cover against any liability arising from a breach by Landcom of its obligations under this Deed.

35.2 Landcom must provide Council with any reasonable evidence required by Council from time to time to confirm the currency of any insurance cover under clause 35.1 upon request by Council, including (but not limited to) certificates of currency for the insurances under clause 24.1.

35.3 Landcom will immediately notify Council:

35.3.1 each time a relevant insurer gives Landcom a notice of cancellation or any other material notice in respect of any of Landcom's insurance policies; and

35.3.2 where Landcom becomes aware of any actual or potential Claims made in connection with the Development or the Land by any third party.

## **36 Termination of Deed**

- 36.1 This Deed terminates in the following events:
  - 36.1.1 The parties agree in writing to terminate the operation of this Deed at any time.
- 36.2 Upon termination of this Deed:
  - 36.2.1 all future rights and obligations of the parties are discharged; and
  - 36.2.2 all pre-existing rights and obligations of the parties continue to subsist.
- 36.3 This Deed will determine:
  - 36.3.1 when Landcom has satisfied all of its obligations under this Deed including its obligations to rectify Defects under the Works Provisions; or
  - 36.3.2 at the end of the Defects Liability Period for the last of the Works for which a Practical Completion Certificate is issued, whichever occurs later.

## **37 Review of this Deed**

- 37.1 The Parties are to review this Deed every 3 years, and otherwise if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 37.2 For the purposes of clause 37.1, the relevant changes include 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.
- 37.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 37.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 37.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, clause 49 applies.
- 37.5 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 37.1 is not a dispute for the purposes of clauses 30 and 31, and is not a breach of this Deed.

## **38 Position of Council**

- 38.1 The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.
- 38.2 This Deed is not intended to operate to fetter, in any unlawful manner:
  - 38.2.1 the power of Council to make any Law; or
  - 38.2.2 the exercise by Council of any statutory power or discretion, **(Discretion)**.
- 38.3 No provision of this Deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of

## **Macarthur Gardens North Planning Agreement**

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this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 38.3.1 they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 38 is substantially satisfied; and
  - 38.3.2 in the event that paragraph 38.3.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect; and
  - 38.3.3 to endeavour to satisfy the common objectives of the parties on relation to the provision of this Deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- 38.4 Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this Deed contracted out of a provision or exercised a Discretion under this Deed, then to the extent of this Deed is not to be taken to be inconsistent with the Law.
- 38.5 Nothing in this Deed will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to any Development Consent, the Land or the Development in a certain manner.

## **39 Confidentiality**

- 39.1 The terms of this Deed are not confidential and the Parties acknowledge that this Deed is as a public document and exhibited or reported without restriction by any party.
- 39.2 The Parties acknowledge that:
- 39.2.1 Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Deed; and
  - 39.2.2 the Parties may disclose to each other further confidential information in connection with the subject matter of this Deed.
  - 39.2.3 subject to clauses 39.3 and 39.4, each Party agrees:
    - (a) not to disclose any Confidential Information received before or after the making of this Deed to any person without the prior written consent of the Party who supplied the Confidential Information; or
    - (b) to take all reasonable steps to ensure all Confidential Information received before or after the making of this Deed is kept confidential and protected against unauthorised use and access.
- 39.3 A Party may disclose Confidential Information in the following circumstances:
- 39.3.1 in order to comply with the Law, or the requirements of any Authority; or
  - 39.3.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.

- 39.4 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

## **40 Notices**

- 40.1 A notice, consent, information, application or request (**Notification**) that must or may be given or made to a Party under this Deed 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; or
  - 40.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 40.2 A Party may change its address or email address by giving the other Party 3 business days' notice of the change, in which case the new address or email address is treated as the address or number in the Summary Sheet.
- 40.3 A Notification is to be treated as given or made if it is:
- 40.3.1 delivered, when it is left at the relevant address; or
  - 40.3.2 sent by post, 2 business days after it is posted; or
  - 40.3.3 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 a Notification is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **41 Approvals and consent**

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

## **42 Obligation to act in good faith**

- 42.1 The parties must at all times:
- 42.1.1 cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this Deed;
  - 42.1.2 not unreasonably delay any action, approval, direction, determination or decision which is required of them;

42.1.3 make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this Deed; and

42.1.4 be just and faithful in their activities and dealings with the other parties.

## **43 Costs**

43.1 The Parties are each to pay their own costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed.

## **44 Entire Deed**

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

44.2 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 Deed was executed, except as permitted by law.

## **45 Counterparts**

This Deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this Deed may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this Deed.

## **46 Further acts**

46.1 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 Deed and all transactions incidental to it.

## **47 Governing law and jurisdiction**

47.1 This Deed is governed by the law of New South Wales.

47.2 The Parties submit to the exclusive jurisdiction of its courts and are not to object to the exercise of jurisdiction by those courts on any basis.

## **48 Joint and individual liability and benefits**

48.1 Except as otherwise set out in this Deed:

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



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

## **49 Severability**

- 49.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 49.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **50 Modification**

- 50.1 No modification or variation of this Deed has any effect unless it is in writing and signed by the Parties.

## **51 Waiver**

- 51.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Deed.
- 51.2 A waiver by a Party is effective only if it is in writing.
- 51.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

## **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 for the Taxable Supply.

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

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

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

- 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 Deed, the Party providing the

## Macarthur Gardens North Planning Agreement

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- Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 52.3 Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 52.4 No additional amount is 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 Deed 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 before issuing Tax Invoices for 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 for 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 under 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 the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 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 Notwithstanding anything in this clause 52, prices or other sums payable or Consideration to be provided under or in accordance with this Deed are exclusive of GST, unless otherwise expressly stated as inclusive of GST.
- 52.9 This clause continues to apply after expiration or termination of this Deed.

## 53 Explanatory Note

- 53.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 53.2 Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

**Schedule 1**

(Clause 1.1)

**Land**

Draft



1:4,000@ A3



## LEGEND

- Macarthur Gardens North
- Basin 3
- High Density Residential with Ground Floor Retail / Commercial Activation

- High Density Residential
- Active Public Open Space
- Passive Public Open Space

- Creek
- Utility





**DISCLAIMER:**

This plan is conceptual and is for discussion purposes only and is subject to further detail study, Council approval, engineering input, and survey. Cadastral boundaries, areas and dimensions are approximate only. Written figured dimensions shall take preference to scaled dimensions.



## Schedule 2

(Clause 9)

### Development Contributions

<b>COLUMN 1</b> <b>Item No /</b> <b>Details</b>	<b>COLUMN 2</b> <b>Public</b> <b>Purpose</b>	<b>COLUMN 3</b> <b>Timing</b>	<b>COLUMN 4</b> <b>Contribution Value \$</b>
<b>A. Dedication Land</b>			
1.Dedication to Council of land for Item B1	Public open space	On completion of Item B1	\$10,750,000 for Items A1, A2, A4, A5 and A6
2. Dedication to Council of land for Item B2	Public open space	On completion of Item B2	See above
3. Lead in road to Gilchrist Oval	Roads	On registration of the Superlot Subdivision Plan	\$1,564,749
4. Dedication to Council of land for Item B4	Public open space	On completion of Item B4	See above
5. Dedication to Council of land for Item B5	Public open space	On completion of Item B5	See above
6. Dedication to Council of land described as 'VMP Area' in the VMP	Public open space	On completion of Item B4	See above
7. Land for local roads approved by the Concept Consent	Roads	On registration of the Superlot Subdivision Plan	Not Applicable
<b>B. Works</b>			

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1. Central Park Main as described in the Concept Consent and subject to clause 13	Public open space	Prior to the issue of the first Subdivision Certificate for Stage 1 of the Development	\$4,211,693 for Items B1 and B5
2. Fitness Park as described in the Concept Consent and subject to clause 13	Public open space	Prior to the issue of the first Subdivision Certificate for Stage 1 of the Development	\$1,696,386
3. Lead in road to Gilchrist Oval as described in the Concept Consent and subject to clause 13	Roads	Prior to the issue of the first Subdivision Certificate for Stage 1 of the Development	NA
4. Station Arrival Plaza as described in the Concept Consent and subject to clause 13	Public open space	Works to commence on or before the grant of a Further Stage Consent for development on proposed Lot 17 on the Superlot Subdivision Plan	\$6,990,665
5. Central Park South as described in the Concept Consent and subject to clause 13	Public open space	Works to commence on or before the grant of a Further Stage Consent for development on proposed Lot 17 on the Superlot Subdivision Plan	See above
6. Trail works within Bow Bowling Creek reserve as described in the Concept Consent and subject to clause 13	Public open space	Works to commence on or before the grant of a Further Stage Consent for development on proposed Lot 17 on the Superlot Subdivision Plan	\$807,157
7. Vegetation Management within Bow Bowling Creek reserve, in accordance with the VMP approved by the Concept Consent	Public open space	Works to commence on or before the grant of a Further Stage Consent for development on proposed Lot 17 on the Superlot Subdivision Plan	\$1,600,000
		<b>TOTAL</b>	<b>\$27,620,650</b>

Draft



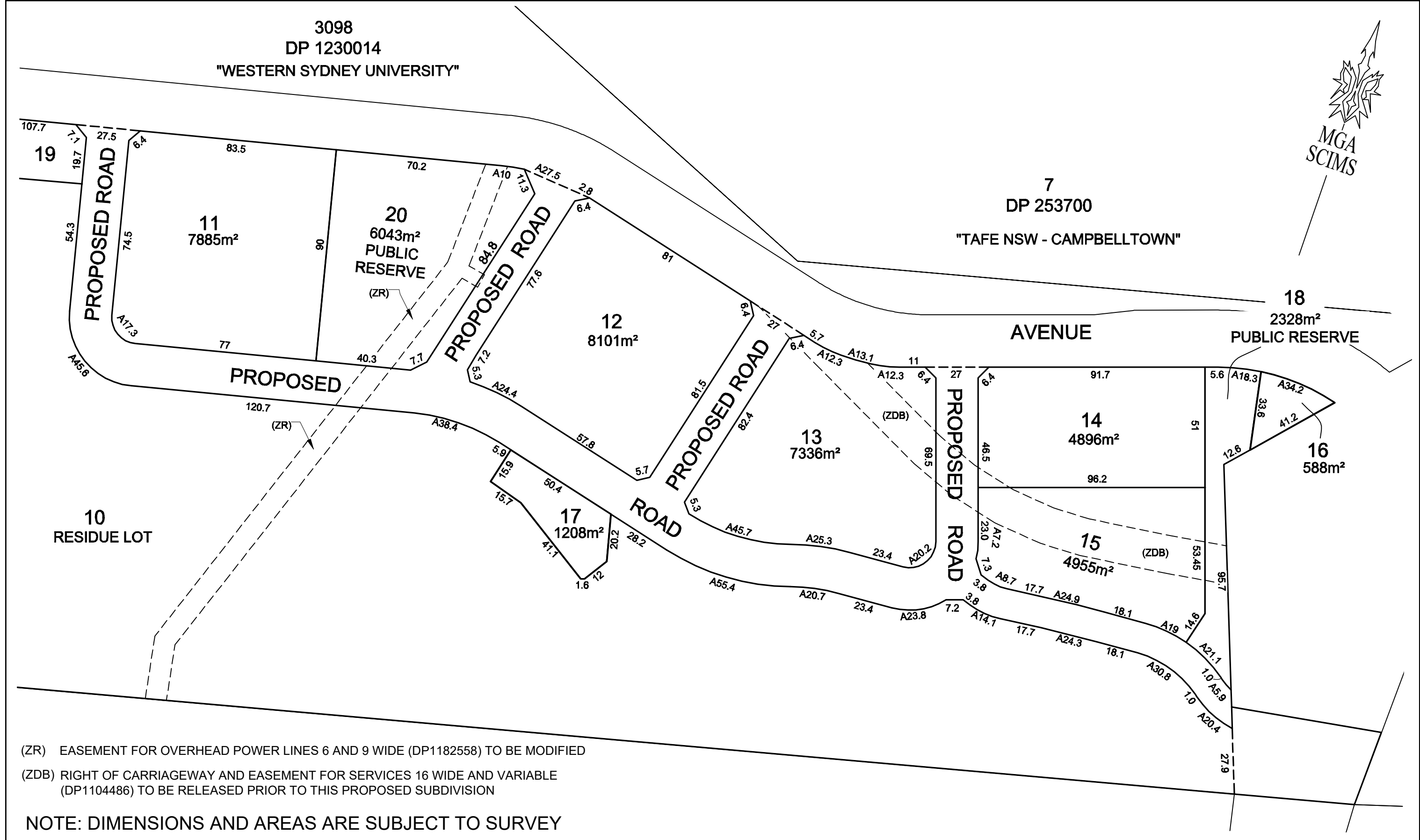
**Schedule 3**

(Clause 1.1)

**Superlot Subdivision Plan**

Draft





(ZR) EASEMENT FOR OVERHEAD POWER LINES 6 AND 9 WIDE (DP1182558) TO BE MODIFIED  
(ZDB) RIGHT OF CARRIAGEWAY AND EASEMENT FOR SERVICES 16 WIDE AND VARIABLE (DP1104486) TO BE RELEASED PRIOR TO THIS PROPOSED SUBDIVISION

NOTE: DIMENSIONS AND AREAS ARE SUBJECT TO SURVEY

Issue	Date	Description
C	07-11-2023	SPLIT LOT 14 AND CREATE PUBLIC RESERVES
B	02-12-2021	REPLACE TERRACES WITH SUPERLOTS
A	18-08-2020	ORIGINAL ISSUE
SURVEY INFORMATION		Orientation:MGA Date of survey : N/A Datum Origin
Coordinate	MGA	SCIMS
Level	A.H.D.	N/A

BW

Beveridge Williams

Development and Infrastructure Consultants

Client : LANDCOM				
Project : LOT1097 IN DP1182558 MACARTHUR GARDENS NORTH - SUPERLOTS				
PLAN OF PROPOSED SUBDIVISION				
Locality :CAMPBELLTOWN		Ratio (A3):1:1500	Sheet 2 of 2	Ref:15038(SUPER)PS
L.G.A. : CAMPBELLTOWN				

## **Execution**

### **Executed as a Deed**

**Dated:**

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**Executed on behalf of the Council** by its General Manager pursuant to delegation from Council.

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**General Manager**

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**Witness/Name/Position**

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**Executed on behalf of Landcom** by its duly authorised delegate and I have no notice of revocation of such delegation

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**Signature of Delegate**

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**Signature of Witness**

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**Name of Delegate**

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**Name of Witness**