

Deed

**290-290A North Boambee Road
Planning Agreement**

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

**Coffs Harbour City Council
North Coffs Pty Ltd**

Date:

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Summary Sheet

Council:

Name: Coffs Harbour City Council ABN 79 126 214 487

Address: Corner of Coff and Castle Street, Coffs Harbour NSW 2450

Telephone: (02) 6648 4000

Email: coffs.council@chcc.nsw.gov.au

Representative: Natalia Cowley, General Manager

Developer:

Name: North Coffs Pty Ltd ACN 649 817 103

Address: PO Box 5062, Robina Town Centre QLD 4230

Telephone: 0425 662 362

Email: james.fletcher@clarencproperty.com.au

Representative: Damian Chapelle, Newton Denny Chapelle

Landowner:

Name: North Coffs Pty Ltd

Address: PO Box 5062, Robina Town Centre WLD 4230

Telephone: 0425 662 362

Email: james.fletcher@clarencproperty.com.au

Representative: Damian Chapelle, Newton Denny Chapelle

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9 and Schedule 1.

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

See clause 8.

Security:

See Part 4.

Registration:

See clause 36.

Restriction on dealings:

See clause 37.

Dispute Resolution:

See Part 3.

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

Parties

Coffs Harbour City Council ABN 79 126 214 487 of Corner of Coff and Castle Street, Coffs Harbour NSW 2450 (**Council**)

and

North Coffs Pty Ltd ACN 649 817 103 of PO Box 5062, Robina Town Centre QLD 4230 (**Developer**)

Background

- A On 30 May 2022 the Developer lodged a development application 0987/22DA for the staged subdivision of the Land. The Land comprises of Lot 4 DP 747644 and Lot 1 DP 1169519.
- B The Developer owns the Land.
- C The Developer proposes to dedicate proposed future lots 500, 501, 502, 503, 504 and 505 to the Council as public reserve in connection with the carrying out of the development the subject of any development consent to development application 0987/22DA.
- D The Developer proposes to carry out environmental management of the dedicated lots for five years under a Vegetation Management Plan.
- E The Developer proposes to carry out further ongoing maintenance of the land to be dedicated, or provide monetary contributions to the further ongoing maintenance of the dedicated lots in for a period of 20 years through an independently costed Vegetation Maintenance Program

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

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

Approved Vegetation Management Plan means the Vegetation Management Plan approved by the Council under clause 12 of this Deed.

Approved Vegetation Maintenance Plan means the Vegetation Maintenance Plan approved by the Council under clause 14 of this Deed.

Approved Vegetation Maintenance Costs means the estimated total cost of all maintenance and monitoring actions for a period of 25 years as specified in the Approved Vegetation Maintenance Plan, indexed from the date of the Council's approval of that plan to the date of payment in accordance with Consumer Price Index (Sydney All Groups) published by the Australian Bureau of Statistics.

Authority means 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*, or a person or body exercising 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 in favour of the Council to pay an amount or amounts of money to the Council on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation,
 - (vi) Bank of Queensland, or
- (b) any other financial institution approved by the Council in its absolute discretion.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

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).

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed and in respect of the Park Embellishment Work is the Park Embellishment Value.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

DCP means the *Coffs Harbour Development Control Plan 2015*.

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

Dedication Land means the land shown as proposed future lots 500, 501, 502, 503, 504 and 505 on the Land Dedication Plan.

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Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Development means development within the meaning of the Act of the Land pursuant to a Development Consent granted to the Development Application with reference number 0987/22DA lodged with the Council on 30 May 2022.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

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

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

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

- (a) that is to be dedicated or otherwise transferred to the Council, or
- (b) on which is situated a dwelling-house that was in existence on the date of this Deed.

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

GST has the same meaning as in the GST Law.

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

Item means specified in Column 1 of Schedule 1.

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

Land means Lot 4 DP 747644 and Lot 1 DP 1169519

Land Dedication Plan means the plan in Schedule 2.

Management Period means the period of 5 years commencing on the date the first Subdivision Works Certificate for the Development is issued.

Maintenance Period means the period of 20 years commencing on the date following the end of the Management Period.

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Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

Monitoring and Implementation Report means a written report prepared by a suitably qualified practising ecologist or bushland restoration expert which sets out details of the monitoring actions and implementation of the Approved Vegetation Management Plan or Approved Vegetation Maintenance Plan (as the case may be) that have been carried out.

Park means proposed Lot 502 of the Dedication Land

Park Embellishment Work means Item C.3 of Schedule 1..

Park Embellishment Value means the amount of \$400,000 indexed from the date of this Deed in accordance with the Consumer Price Index (All groups – Sydney) published by the Australian Bureau of Statistics.

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 Deed.

PEXA means Property Exchange Australia Ltd.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with Consumer Price Index (Sydney All Groups) published by the Australian Bureau of Statistics from the date of this Deed.

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Subdivision Certificate has the same meaning as in the Act.

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

Vegetation Management Plan means vegetation management plan prepared in accordance with clause 12 by an independent and suitably qualified practising ecologist or bushland restoration expert approved by the Council acting reasonably.

Vegetation Maintenance Plan means vegetation maintenance plan prepared in accordance with clause 14 by an independent and suitably qualified practising ecologist or bushland restoration expert approved by the Council acting reasonably.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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- 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 in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed 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 in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed 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 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
 - 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
 - 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
 - 1.2.16 Any schedules, appendices and attachments form part of this Deed.
 - 1.2.17 Notes appearing in this Deed are operative provisions 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

3.1 Subject to clause 3.3, this Deed commences and has force and effect on and from the date when the Parties have:

3.1.1 both executed the same copy of this Deed, or

3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.

3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

3.3 The Parties agree that the Developer's obligations in Part 2 of this Deed take effect on and from the date Development Consent is granted to the Development.

3.4 A Party may, by written notice to the other Party, terminate this Deed but only in the following circumstances:

3.4.1 the Development Consent lapses or is surrendered pursuant to s4.63 of the Act without having been commenced,

3.4.2 the Development Application to the Development is determined by way of refusal of consent and the period for any appeal against the refusal has passed without any appeal proceedings having been commenced,

3.4.3 the Development Application to the Development is determined by way of refusal of consent and in any appeal proceedings against the refusal:

(a) the Court determines to refuse consent and the period for any appeal or other challenge against the Court's determination has passed without any proceedings having been commenced, or

(b) the Court determines to refuse consent and Developer has exhausted all rights of appeal or other challenge it may have against the Court's decision without obtaining Development Consent.

3.5 If this Deed is terminated under clause 3.4, then the Parties are to do such things as are reasonably necessary to remove any notation relation to this Deed from the title to the Land.

4 Application of this Deed

4.1 This Deed applies to the Land and to 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.

6 Further agreements

- 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 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to the Developer's obligations this Deed.
- 7.2 Nothing in this clause 7 is to be taken as removing the Developer's right to appeal under the Act in relation to a Development Application, a Development Consent including any application to modify a Development Consent under section 4.55 or 4.56 of the Act, or an Approval relating to the Development, where the subject-matter of the proceedings does not relate to the Developer's obligations under this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed excludes the application of s7.11 of the Act to the Development but only to the extent of Park Embellishment Value.
- 8.2 Except as provided in clause 8.1 the benefits under the Deed are not to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 8.3 This Deed excludes the application of s7.12 of the Act to the Development.
- 8.4 This Deed does not exclude the application of s7.24 to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.

- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

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

11 Dedication of land

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 11.1.1 the Council is given:
- (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
- 11.1.2 One of the following has occurred:
- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) 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.
- 11.2 The Developer and Council (at the Developer's cost) is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request the Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

12 Preparation of Vegetation Management Plan

- 12.1 Prior to the issuing of the first Subdivision Works Certificate or Construction Certificate (whichever is earlier) for, any part of the Development, the Developer is to:
- 12.1.1 prepare, or procure the preparation of, a Vegetation Management Plan in respect of the Dedication Land (excluding the Park),
 - 12.1.2 provide the Vegetation Management Plan to the Council for approval, and
 - 12.1.3 obtain the Council's approval to the Vegetation Management Plan, in accordance with this clause 12.
- 12.2 The Vegetation Management Plan referred to in clause 12.1 is to:
- 12.2.1 be prepared in accordance with the '*Guideline for Preparing Vegetation Management Plans*' as set out in the DCP for the management of the Dedication Land (excluding the Park) for the Management Period, and
 - 12.2.2 include:
 - (a) an itemised and costed schedule of works in respect of the management actions to be carried out each year, and
 - (b) an estimate of the total costs of all such actions for the whole Management Period,prepared and certified by an independent and suitably qualified and registered quantity surveyor in consultation with the practising ecologist or bushland restoration expert who is preparing the Vegetation Management Plan.
- 12.3 Prior to giving its approval to the Vegetation Management Plan, the Council may give a written direction to the Developer requiring it to vary the Vegetation Management Plan and submit the variation to the Council for approval.
- 12.4 The Developer is to comply promptly with a direction referred to in clause 12.3 at its own cost.
- 12.5 The Council must not unreasonably withhold or delay any approval under this clause 12.

13 Monitoring and reporting on implementation of Approved Vegetation Management Plan

- 13.1 The Developer is to monitor, or procure the monitoring of, the implementation of the Approved Vegetation Management Plan in accordance with the monitoring requirements set out in the Approved Vegetation Management Plan.
- 13.2 Within 30 days after each anniversary of the approval of the Approved Vegetation Management Plan and within 30 days after the completion of all the obligations under the Approved Vegetation Management Plan the Developer is to provide to the Council a Monitoring and Implementation Report .

- 13.3 Clause 13.2 applies until the Developer has provided the Monitoring and Implementation Report after the completion of all of the obligations under the Approved Vegetation Management Plan.

14 Preparation of Vegetation Maintenance Plan

- 14.1 Prior to the issuing of the first Subdivision Certificate which, when registered will create the Dedication Land, or any lot comprising part of the Dedication Land, the Developer is to:
- 14.1.1 prepare, or procure the preparation of, a Vegetation Maintenance Plan in respect of the Dedication Land (excluding the Park),
 - 14.1.2 provide the Vegetation Maintenance Plan to the Council for approval, and
 - 14.1.3 obtain the Council's approval to the Vegetation Maintenance Plan, in accordance with this clause 14.
- 14.2 The Vegetation Maintenance Plan referred to in clause 14.1 is to:
- 14.2.1 set out maintenance actions and monitoring requirements to the satisfaction of the Council for the ongoing maintenance of the Dedication Land (excluding the Park) for the Maintenance Period,
 - 14.2.2 without limiting clause 14.2.1, include:
 - (a) identification and mapping of flora and fauna species,
 - (b) long-term environmental management actions including active regeneration, planting of endemic species, replacement of failed plantings, weed management.
 - 14.2.3 include:
 - (a) an itemised and costed schedule of works in respect of the maintenance and monitoring actions to be carried out each year, and
 - (b) an estimate of the total costs of all such actions for the whole Maintenance Period,

prepared and certified by an independent and suitably qualified and registered quantity surveyor in consultation with the practising ecologist or bushland restoration expert who is preparing the Vegetation Maintenance Plan.
- 14.3 Prior to giving its approval to the Vegetation Maintenance Plan, the Council may give a written direction to the Developer requiring it to vary the Vegetation Maintenance Plan and submit the variation to the Council for approval.
- 14.4 The Developer is to comply promptly with a direction referred to in clause 14.3 at its own cost.
- 14.5 The Council must not unreasonably withhold or delay any approval under this clause 14.

15 Election by Developer

- 15.1 Prior to the issuing of the first Subdivision Certificate which, when registered will create the Dedication Land, or any part of the Dedication Land, the Developer is to give the Council written notice of whether it will:
- 15.1.1 carry out the maintenance and monitoring of the Dedication Land in accordance with the Approved Vegetation Maintenance Plan, or
 - 15.1.2 pay the Council monetary Development Contributions in the amount of the Approved Vegetation Maintenance Costs.
- 15.2 If the Developer gives the Council written notice under clause 15.1.1, then:
- 15.2.1 the Developer is to provide Item C.2. of Schedule 1 and is not to provide Item A.1 of Schedule 1, and
 - 15.2.2 clauses 16 to 26 will apply to the provision of Item C.2.
- 15.3 If the Developer gives the Council written notice under clause 15.1.2, then:
- 15.3.1 the Developer is to provide Item A.1 of Schedule 1 and is not to provide Item C.2 of Schedule 1, and
 - 15.3.2 clause 10 will apply to the provision of Item A.1.
- 15.4 Despite any election made by the Developer under clauses 15.1.1 or 15.1.2, the Developer may, at any time after providing a notice under clause 15.1.1 and prior to completion of all the actions identified in the Approved Vegetation Maintenance Program, give a notice to the Council to the effect that the Developer elects to pay the Council monetary Development Contributions equivalent to the costs of the remaining maintenance and monitoring actions in the Approved Vegetation Maintenance Plan.
- 15.5 The Developer may only give a notice referred to in clause 15.4 if the Developer is not in breach of any of its obligations under the Deed that remains unremedied.
- 15.6 If the Developer gives a notice referred to in clause 15.4 and the Developer is not in breach of any of its obligations under the Deed that is unremedied, then:
- 15.6.1 the Developer is to provide Item A.1 of Schedule 1 to the extent of the indexed costs of the remaining maintenance and monitoring actions as specified in the Approved Vegetation Maintenance Plan,
 - 15.6.2 clause 10 will apply to the provision of Item A.1,
 - 15.6.3 the Developer is not required to provide the remaining part of Item C.2 of Schedule 1 to the extent of the remaining maintenance and monitoring actions specified in the Approved Vegetation Maintenance Plan, and
 - 15.6.4 nothing impacts the continued application of clauses 16 to 25 to the part of Item C.2 that has been carried out by the Developer.

16 Monitoring and reporting on implementation of Approved Vegetation Maintenance Plan

- 16.1 The Developer is to monitor, or procure the monitoring of, the implementation of the Approved Vegetation Maintenance Plan in accordance with the

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monitoring requirements set out in the Approved Vegetation Maintenance Plan.

- 16.2 Within 30 days after each anniversary of the approval of the Approved Vegetation Maintenance Plan and within 30 days after the completion of all the obligations under the Approved Vegetation Management Plan the Developer is to provide to the Council a Monitoring and Implementation Report.
- 16.3 Clause 16.2 applies until the Developer has provided the Monitoring and Implementation Report after the completion of all of the obligations under the Approved Vegetation Management Plan.

17 Design of Park Embellishment Work

- 17.1 The Developer may not commence construction of the Park Embellishment Work unless the design and specifications for that work have been approved by Council in accordance with this clause 17.
- 17.2 Before commencing the design of Park Embellishment Work, the Developer is to request the Council to provide the Developer with the Council's design requirements for the Work.
- 17.3 The Developer is to prepare:
- 17.3.1 plans and drawings of the Park Embellishment Work in accordance with the Council's design requirements provided to the Developer under clause 17.2, and
 - 17.3.2 an estimate of the costs of construction of the Park Embellishment Work to those plans and drawings prepared and certified by an independent and suitably qualified and registered quantity surveyor, showing that the estimated costs of construction is not less than the Park Embellishment Value,
- and submit the plans and drawings and cost estimate to the Council for approval.
- 17.4 The Council may reasonably require the Developer to make any change to the plans and drawings of the Park Embellishment Work that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change, provided the estimated costs of construction does not exceed the amount referred to in clause 17.3.2.
- 17.5 The Council is to inform the Developer in writing when it approves the plans and drawings and cost estimate of the Park Embellishment Works, such approval not to be unreasonably withheld or delayed.
- 17.6 The Developer is not to make any application for a Subdivision Works Certificate or a Construction Certificate (whichever is earlier) for the Park Embellishment Works unless the Council has approved the plans and drawings of the Developer Works under this Deed.

18 Carrying out of Work

- 18.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in

accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.

- 18.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

19 Variation to Work

- 19.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed
- 19.2 Without limiting clause 19.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 19.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 19.2.
- 19.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- 19.5 The Developer is to comply promptly with a direction referred to in clause 19.4 at its own cost.

20 Access to land by Developer

- 20.1 The Council authorises the Developer to enter, occupy and use the Dedication Land, after it is dedicated to the Council, for the purpose of performing its obligations under this Deed.
- 20.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other City owned or controlled land in order to enable the Developer to properly perform its obligations under this Deed.
- 20.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 20.1 or 20.2.

21 Access to land by the Council

- 21.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 21.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 21.1 and in the case of entering the land to remedy a breach the Council has given a notice under clause 34.1 and entry is in accordance with clause 34.3.

22 Protection of people, property & utilities

- 22.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 22.1.1 all necessary measures are taken to protect people and property,
 - 22.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 22.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 22.2 Without limiting clause 22.2, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

23 Repair of damage

- 23.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 23.2 The Developer is to carry out its obligation under clause 23.1 at its own cost and to the satisfaction of the Council.

24 Completion of Work

- 24.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 24.2 The Council is to inspect the Work the subject of the notice referred to in clause 24.1 within 14 days of the date specified in the notice for completion of the Work.
- 24.3 Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 24.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 24.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 24.5 Before the Council gives the Developer a notice referred to in clause 24.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 24.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 24.5.

25 Rectification of defects

- 25.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

- 25.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 25.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 25.1.

26 Removal of Equipment

- 26.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 26.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - 26.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

27 Dispute resolution – expert determination

- 27.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 27.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 27.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 27.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 27.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 27.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

28 Dispute Resolution - mediation

- 28.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 27 applies.

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- 28.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 28.3 If a notice is given under clause 28.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 28.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 28.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 28.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

29 Security for performance of obligations

- 29.1 The Developer is to provide Security to the Council in the amount of 150% of the sum of the cost of all of the works set out in the Approved Vegetation Management Plan and the Park Embellishment Value, in relation to the performance of its obligations under this Deed.
- 29.2 The Developer is to provide the Security to the Council before the issuing of the first Subdivision Works Certificate for the Development or any Construction Certificate for the Works (whichever is earlier) unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 29.3 If a condition of Development Consent for the Development requires the Developer to provide security for the works described in the Approved Vegetation Management Plan (**Consent Security**), then:
- 29.3.1 while the Council holds the Consent Security, the amount of Security to be provided under this Deed is to be reduced by the amount of the Consent Security that Council holds, and
- 29.3.2 the Developer agrees that Council may call-up and apply the Consent Security in accordance with this Deed as if the Consent Security is the Security provided under this Deed.
- 29.4 The Council, in its absolute discretion and despite clause 20, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the

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Developer has not provided the Security to the Council in accordance with this Deed.

- 29.5 The Council may call-up and apply the Security in accordance with clause 34 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 29.6 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the Developer's obligations under this Deed.
- 29.7 The Developer may at any time provide the Council with a replacement Security.
- 29.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 29.9 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

30 Not used

31 Not used

32 Not used

33 Acquisition of land required to be dedicated

- 33.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the preacquisition procedure under the Just Terms Act.
- 33.2 The Council is to only acquire land pursuant to clause 33.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 33.3 Clause 33.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 33.4 If, as a result of the acquisition referred to in clause 33.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 29.
- 33.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

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- 33.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 33, including without limitation:
- 33.6.1 signing any documents or forms,
 - 33.6.2 giving land owner's consent for lodgement of any Development Application,
 - 33.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 33.6.4 paying the Council's costs arising under this clause 33.

34 Breach of obligations

- 34.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 34.1.1 specifying the nature and extent of the breach,
 - 34.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (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,
 - 34.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 34.2 If the Developer fails to fully comply with a notice referred to in clause 34.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 34.3 If the Developer fails to comply with a notice given under clause 34.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 34.4 Any costs incurred by the Council in remedying a breach in accordance with clause 34.2 or clause 34.3 may be recovered by the Council by either or a combination of the following means:
- 34.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 34.4.2 as a debt due in a court of competent jurisdiction.
- 34.5 For the purpose of clause 34.4, the Council's costs of remedying a breach the subject of a notice given under clause 34.1 include, but are not limited to:
- 34.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 34.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and

34.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

34.6 Subject to Council giving a notice under clause 34.1, the Council may exercise any rights it may have at law or in equity in relation to a breach of this Deed by the Developer that has been notified to the Developer, including but not limited to seeking relief in an appropriate court.

35 Enforcement in a court of competent jurisdiction

35.1 Subject to clause 34.6, the Parties may enforce this Deed in any court of competent jurisdiction.

35.2 For the avoidance of doubt, nothing in this Deed (other than clause 34.6) prevents:

35.2.1 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, or

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

Part 5 – Registration & Restriction on Dealings

36 Registration of this Deed

36.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.

36.2 Upon commencement of this Deed, the Developer is to deliver to the Council in registrable form:

36.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and

36.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.

36.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

36.4 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:

36.4.1 in so far as the part of the Land concerned is a Final Lot,

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

37 Restriction on dealings

37.1 The Developer is not to:

- 37.1.1 sell or transfer the Land, other than a Final Lot, or
- 37.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
to any person unless:
 - 37.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 37.1.4 the Developer has provided Council with written evidence that the purchaser, transferee, assignee or novatee's is reasonably capable of performing its obligations under this Deed and Council has given written notice to the Developer stating that it is satisfied with such evidence, such notice not to be unreasonably withheld or delayed, and
 - 37.1.5 the Developer is not in breach of this Deed, and
 - 37.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 37.2 Subject to clause 37.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 37.1.
- 37.3 Clause 37.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

38 Risk

- 38.1 The Developer performs this Deed at its own risk and its own cost.

39 Release

- 39.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

40 Indemnity

- 40.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

41 Insurance

- 41.1 The Developer is to, or is to procure its contractors to, take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 41.1.1 contract works insurance (except that in respect of Items C.1 and C.2, such insurance is only required for works carried out on land owned by the Council), noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 41.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 41.1.3 workers compensation insurance as required by law, and
 - 41.1.4 any other insurance required by law.
- 41.2 If the Developer fails to comply with clause 41.1, 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 the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 41.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 41.2.2 recovery as a debt due in a court of competent jurisdiction.
- 41.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 41.1.

Part 7 – Other Provisions

42 Not used

43 Review of Deed

- 43.1 The Parties agree to review this Deed every three (3) years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 43.2 For the purposes of clause 43.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

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- 43.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 43.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 43.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 43.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 43.1 (but not 43.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

44 Notices

- 44.1 Any notice, consent, information, application or request that is to 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:
- 44.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 44.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 44.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 44.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 44.3.1 delivered, when it is left at the relevant address,
- 44.3.2 sent by post, 2 business days after it is posted, or
- 44.3.3 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.
- 44.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

45 Approvals and Consent

- 45.1 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.
- 45.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

46 Costs

- 46.1 The Developer is to pay to the Council the Council's Costs related to preparing, negotiating, executing, stamping, registering and removal of registration of this Deed, and any document related to this Deed within 21 days of a written demand by the Council for such payment.
- 46.2 The Developer is also to pay to the Council the Council's reasonable Costs of enforcing this Deed within 7 days of a written demand by the Council for such payment, except for any Costs of Court proceedings where Council is unsuccessful in such proceedings.

47 Entire Deed

- 47.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 47.2 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.

48 Further Acts

- 48.1 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.

49 Governing Law and Jurisdiction

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

50 Joint and Individual Liability and Benefits

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

51 No Fetter

- 51.1 Nothing in this Deed shall be construed as requiring City to do anything that would cause it to be in breach of any of its obligations at law, and without

limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

52 Illegality

- 52.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

53 Severability

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

54 Amendment

- 54.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with section 203(5) of the Regulation.

55 Waiver

- 55.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 55.2 A waiver by a Party is only effective if it:
- 55.2.1 is in writing,
 - 55.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 55.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 55.2.4 is signed and dated by the Party giving the waiver.
- 55.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 55.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

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- 55.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

56 GST

- 56.1 In this clause:

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

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

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

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

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

- 56.2 Subject to clause 56.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 56.3 Clause 56.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 56.4 No additional amount shall be payable by the Council under clause 56.2 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.
- 56.5 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:
- 56.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 56.5.2 that any amounts payable by the Parties in accordance with clause 56.2 (as limited by clause 56.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 56.6 No payment of any amount pursuant to this clause 56, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

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- 56.7 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.
- 56.8 This clause continues to apply after expiration or termination of this Deed.

57 Explanatory Note

- 57.1 The Appendix contains the Explanatory Note relating to this Deed required by section 205 of the Regulation.
- 57.2 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 Planning Deed.

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Schedule 1

(Clause 9)

Development Contributions

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Column 1	Column 2	Column 3	Column 4
Item/ Contribution	Public Purpose	Manner & Extent	Timing

A. Monetary Contributions

1. Maintenance of Dedication Land	Public Reserve	Developer to pay to the Council an amount equal to the Approved Vegetation Maintenance Costs.	Prior to the issuing of: <ul style="list-style-type: none">the first Subdivision Certificate which, when registered will create the Dedication Land, or any part of the Dedication Land, orthe first Subdivision Certificate which when registered will create the first Final Lot adjacent to any part of the Dedication Land whichever is earlier.
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B. Dedication of Land

1. Dedication Land	Public Reserve	Developer to dedicate to Council free of cost to the Council the Dedication Land	Upon the registration of: <ul style="list-style-type: none">the relevant plan of subdivision that creates the lot being dedicated to the Council, orthe relevant plan of subdivision that creates the first Final Lot adjacent to the lot being dedicated to the Council whichever is earlier.
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C. Carrying out of Work

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1. Management of Dedication Land (excluding the Park),	Environmental management	Developer to carry out and complete all actions on the Dedication Land that the Approved Vegetation Management Plan identifies.	In accordance with the timing in the Approved Vegetation Management Plan.
2. Maintenance of Dedication Land (excluding the Park),	Public Reserve	Developer to carry out and complete all actions on the Dedication Land that the Approved Vegetation Maintenance Program identifies.	In accordance with the timing in the Approved Vegetation Maintenance Program.
3. Park Embellishment Work	Public recreation	Developer to carry out and complete embellishment of the Park in accordance with the design and specification approved by the Council under clause 17.	Prior to the issuing of the Subdivision Certificate: <ul style="list-style-type: none">• for the plan of subdivision that creates proposed lot 502, or• for the plan of subdivision that creates the first Final Lot adjacent to the Park, whichever is earlier.

Schedule 2

(Clause 1.1)

Land Dedication Plan

See the following pages

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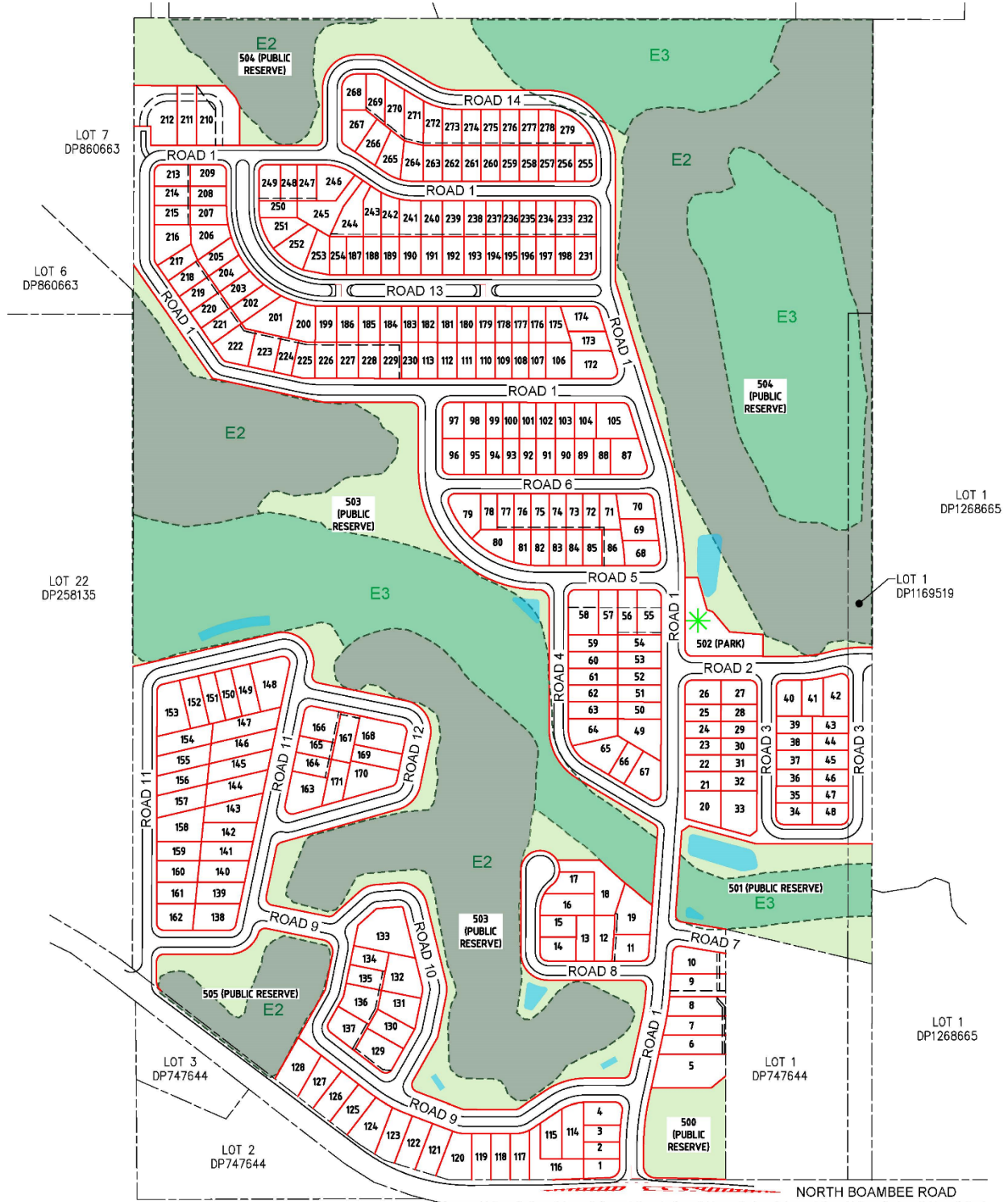


de Groot & Benson Consulting PLANNERS & SURVEYORS		CLARENCE PROPERTY 290-290A NORTH BOAMBEE ROAD NORTH BOAMBEE VALLEY		Project No: 21157 Date: 11/01/2024
ASSESSOR Name: [Name] Title: [Title]	CLIENT Name: [Name] Title: [Title]	DATE OF PLAN Date: [Date]	DATE OF PLAN Date: [Date]	PROJECT NO. No: [Number]
PLAN NO. No: [Number]	PLAN NO. No: [Number]	PLAN NO. No: [Number]	PLAN NO. No: [Number]	PLAN NO. No: [Number]

290-290A North Boambee Road Planning Agreement

Coffs Harbour City Council

North Coffs Pty Ltd



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

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

Name/Position

Name/Position

Appendix

(Clause 57)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Draft Planning Agreement

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

Parties

Coffs Harbour City Council ABN 79 126 214 487 of Corner of Coff and Castle Street,
Coffs Harbour NSW 2450 (**Council**)

North Coffs Pty Ltd ACN 649 817 103 of PO Box 5062, Robina Town Centre QLD 4230
(**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 4 DP 747644 and Lot 1 DP 1169519

290-290A North Boambee Road, North Boambee Valley

Description of Proposed Development

The proposed development is a staged subdivision to create 279 residential lots and 6 public reserves. The development includes the associated roads, infrastructure services, vegetation removal and earthworks.

Description of Development Contributions

This planning agreement requires the Developer to:

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- dedicate proposed future lots 500,501,502,503,504 and 505 as public reserve as identified on the land dedication plan,
- prepare a Vegetation Management Plan which sets out management action on the public reserves for 5 years and provide it to the Council for approval,
- prepare an independently costed Vegetation Maintenance Program for the maintenance of the public reserve for 20 years and provide it to the Council for approval,
- the Developer may choose to pay a monetary contribution to the Council as per the approved costs in the Vegetation Maintenance Program or carry out those works itself,
- design and carry out embellishment works for a park on proposed future lot 502.

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

Objectives, Nature and Effect of Draft Planning Agreement

The objective of the Draft Planning Agreement is to require the Developer to:

- dedicate lands to the Council for public reserves
- prepare for the Council's approval a Vegetation Management Plan for the dedicated lands and require the Developer to carry out the actions identified in the approved Vegetation Management Plan for five years
- prepare for the Council's approval a Vegetation Maintenance Program for the maintenance of dedicated lands for 20 years to ensure the Council is not burdened by the cost of maintaining the land, and either carry out the actions identified in that approved plan, or pay monetary contributions to the Council for the estimated costs of carrying out those actions,
- design and carry out embellishment works for a park on proposed future lot 502.

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

The Lands being dedicated to the Council are zoned as C2 – Environmental Conservation and C3 – Environmental Management. The objectives of these zones are to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. The dedication of this land to the Council for public reserves secures the land for environmental purposes and allows for public access to the Lands for the wider community.

The dedication of the proposed future lots as public reserves supports the Council's My Coffs Community Strategic Plan objectives of:

- undertaking development that is environmentally, socially and economically responsible
- protecting the diversity of our natural environment.

The Vegetation Management Plan ensures that the dedicated lands are managed and protected for 5 years during the subdivision works and thereby improving the ecological condition of the land during construction and into the future.

The Vegetation Maintenance Program ensures that the Developer is responsible for either carrying out the ongoing maintenance of, or the ongoing costs of maintaining the lands after 5 year management period.

The requirement for the Developer to carry out embellishment works for a park promotes the provision of assets for the social welfare of the community.

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

The Draft Planning Agreement is not consistent with the Council's Capital Works Program.

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Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Prior to the issuing of a Subdivision Works Certificate associated with any works approved in the development on the Land the Developer is to:

- obtain the Council's approval on a Vegetation Management Plan
- provide the Council with security for carrying out of works in the Vegetation Management Plan.

Prior to the first Subdivision Certificate that creates a lot to be dedicated to the Council the Developer is to:

- obtain the Council's approval on a Vegetation Maintenance Plan for the dedicated land
- notify the Council whether the Developer will carry out maintenance of the dedicated land themselves or make a monetary contribution to the Council.

Prior to the Subdivision Certificate for the plan of subdivision that creates proposed lot 502, or the first plan of subdivision that creates the first Final Lot adjacent to proposed lot 502, the Developer is to complete the embellishment of the park.

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