

# **QUEANBEYAN-PALERANG REGIONAL COUNCIL**

## **Council Meeting Attachment**

**26 APRIL 2018**

ITEM 12.2      PROPOSED SOUTH TRALEE ESSENTIAL INFRASTRUCTURE  
AGREEMENT

ATTACHMENT 1    DEED - SOUTH TRALEE ESSENTIAL INFRASTRUCTURE  
PLANNING AGREEMENT - WATER AND SEWER

## **Deed**

### **South Tralee Essential Infrastructure Planning Agreement**

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

**Queanbeyan-Palerang Regional Council**  
**Canberra Estates Consortium No 4 Pty Limited**  
**Village Building Company Pty Limited**

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**South Tralee Essential Infrastructure Planning Agreement**  
**Queanbeyan-Palerang Regional Council**  
**Canberra Estates Consortium No 4 Pty Limited**  
**Village Building Company Pty Limited**

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**South Tralee Essential Infrastructure Planning Agreement**

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**South Tralee Essential Infrastructure Planning  
Agreement  
Summary Sheet**

**Council:**

**Name:** Queanbeyan-Palerang Regional Council  
**Address:** 257 Crawford Street, Queanbeyan, NSW, 2620  
**Telephone:** 02 6285 6276  
**Facsimile:** Not applicable  
**Email:** [david.carswell@qprc.nsw.gov.au](mailto:david.carswell@qprc.nsw.gov.au)  
**Representative:** David Carswell

**Developer:**

**Name:** Canberra Estates Consortium No. 4 Pty Limited  
**Address:** PO Box 178, Mitchell, ACT, 2911 **Telephone:**  
6241 6844  
**Facsimile:** 6241 6677  
**Email:** [To be inserted by Developer]  
**Representative:** [To be inserted by Developer]

**Landowner:**

**Name:** Village Building Company Pty Limited  
**Address:** PO Box 178, Mitchell, ACT, 2911  
**Telephone:** 6241 6844  
**Facsimile:** 6241 6677  
**Email:** [To be inserted by Landowner]  
**Representative:** [To be inserted by Landowner]

**Land:**

See definition of *Land* in clause 1.1.

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**Development:**

See definition of *Development* in clause 1.1.

**Development Contributions:**

See Clause 9 and Schedule 2.

**Application of s94, s94A and s94EF of the Act:**

See clause 8.

**Security:**

See Part 5.

**Registration:**

See clause 33.

**Restriction on dealings:**

See clause 34.

**Dispute Resolution:**

See Part 4.

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## **South Tralee Essential Services Planning Agreement**

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

### **Parties**

**Queanbeyan-Palerang Regional Council** ABN 12 842 195 133 of 257  
Crawford St, Queanbeyan NSW (**Council**)

and

**Canberra Estates Consortium No 4 Pty Limited** ABN 91 097 260 930  
c/- Maxim Chartered Accountants Level 2, 59 Wentworth Avenue, Kingston ACT  
(**Developer**)

and

**Village Building Co Pty Limited** ABN 91 097 260 930 of 92 Hoskins Street.  
Mitchell ACT (**Landowner**)

### **Background**

- A The Land is zoned for urban development by the *Queanbeyan Local Environment Plan (South Tralee) 2012*.
- B The Council wishes to provide water and sewer services to facilitate the development of the South Jerrabomberra Urban Release Area.
- C The Council has requested the Developer to carry out the Work as part of its development of the area that is the subject of this agreement in order for the Council to provide water and sewer services to the South Jerrabomberra Urban Release Area.
- D The Developer has agreed to carry out the Work in accordance with the Council's request.
- E The Landowner owns the Developer's Land on trust for the Developer.
- F The Developer's Land and the Additional Land are within the South Jerrabomberra Urban Release Area.
- G On 12 December 2014, the Developer and Council entered into the Essential Infrastructure Deed pursuant to which the Developer was, subject to the terms of the Essential Infrastructure Deed, to enter into a planning agreement with the Council under which it would provide water and sewer infrastructure to serve the Development on behalf of Council.
- H Under clause 6.4 of the Essential Infrastructure Deed the Developer also agreed to enter into a voluntary planning agreement to construct Essential Infrastructure for South Jerrabomberra to service development other than the development of land at South Tralee or land controlled or to be owned by the Developer but only if arrangements on reasonable commercial terms exist to reimburse the Developer for any actual additional costs incurred in constructing the spare capacity.
- I The Essential Infrastructure is to be provided in accordance with the Council's

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## South Tralee Essential Infrastructure Planning Agreement

### Queanbeyan-Palerang Regional Council

### Canberra Estates Consortium No 4 Pty Limited

### Village Building Company Pty Limited

specifications as set out in clause 11.3 of this Deed.

- J Parts of the Essential Infrastructure are to be constructed on the Additional Land.
- K The Developer proposes to carry out the Development on the Land.
- L Council is required to undertake an environmental assessment of the impacts of the Essential Infrastructure Works and to this end the Developer in consultation with Council has prepared the REF.
- M Council exhibited the REF for the Essential Infrastructure between 2 September 2016 and 20 September 2016.
- N The Council has accepted the Developer's offer to provide the Development Contributions provided for in this Deed, which will result in the provision of some of the Essential Infrastructure necessary for the development of South Tralee and other areas within the South Jerrabomberra Urban Release Area, subject to the terms of this Deed.

## 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).

**Additional Land** means that part of the Land specified as 'Additional Land' in Schedule 1 which is not owned by the Developer as at the date of this Deed, and which is shown on the Map.

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

**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 Bill Rate** means the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day on which an amount is to be indexed.

**Bills** means a bill of exchange as defined in the Bills of Exchange Act 1909 (Cth), but does not include a cheque.

**Business Day** means any day other than a Saturday, Sunday or public holiday on which banks are open for business generally in Sydney.

**Certifier** means Council or an appropriately qualified person appointed in accordance with this Deed to certify that the Works have achieved Practical Completion, being a person having no current involvement with the project management, design or superintendence of the Works on behalf of the Developer.

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

**Construct means** construct or install in, on, over or under land.

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**Contribution Category** means the category noted in Column 2 of Schedule in respect of a Contribution Item.

**Contribution Item** means an item specified in Column 1 of Schedule 2.

**Contribution Value** means the \$ amount agreed between the Parties as the estimated value of a Development Contribution made under this Deed which is specified in Schedule 2 and includes without limitation the acquisition costs for Land on which Essential Infrastructure is located and the costs of designing, obtaining Approvals, constructing, certifying and delivering the Contribution Items under this Deed.

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

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

**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 and includes a failure to carry out a Work in accordance with any relevant Approval or in accordance with designs and specifications approved by the Council in accordance with clause 11.3.1.

**Defects Liability Period** means in respect of a Work the period of 6 months commencing on the day immediately after Council commissions the Work.

**Deferred Land** means land which is within the South Jerrabomberra Urban Release Area but which is not owned by or subject to any option to purchase by the Developer and is not presently zoned for residential development under the Queanbeyan Local Environmental Plan (South Tralee) 2012

**Developer's Land** means that part of the Land, other than the Additional Land, owned by the Landowner at the date of this Deed or over which the Landowner has an option to purchase or has entered into a contract for sale as specified in Schedule 1 and as shown on the Map.

**Development** means the development for 1250 residential dwelling lots by the Developer of the Land and includes the development identified in DA 395-17 currently before Council for the subdivision for 750 dwellings, construction of roads, commercial and community facilities, open space and recreation areas and associated servicing and infrastructure on the Developer's Land, and any development carried out pursuant to subsequent Development Consents and Approvals which enable subdivision of the Land for dwellings and the construction of roads, commercial and community facilities.

**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 s93F(3)(g) of the Act.

**Development Servicing Plan (DSP)** means a document adopted by resolution of the Council for the purpose of enabling the Council to impose requirements under s.64 of the *Local Government Act 1993* and s306(2) of the *Water Management Act 2000* as a precondition to the granting of certificates of compliance for development.



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

**DSP Contribution Amount** means the \$ amount that is specified in a DSP as to be paid by the Developer prior to the grant of a certificate of compliance for each Final Lot in the Development.

**Total DSP Contribution Amount** means the total Contribution Value of the Essential Infrastructure arising under this Deed.

**DSP Surplus Credit Amount** means the amount by which the total Contribution Value of Development Contributions required to be made by the Developer under this Deed exceeds the DSP Contribution Amount.

**Easement** means an easement registered on the title of the land in favour of Council which provides for Council to enjoy access to the Essential Infrastructure for the purposes of carrying out maintenance, alterations, repairs and replacement of the Essential Infrastructure and for related purposes.

**Essential Infrastructure** means water and sewer infrastructure to serve the Development, and development on areas other than the Land within South Jerrabomberra, as identified in Column 4 of Schedule 2 and with a \$ value attributed to it in Column 6 of Schedule 2.

**Essential Infrastructure Deed** means the Deed entitled 'Essential Infrastructure Deed' and dated 12 December 2014.

**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 Development.

**Final Completion** means:

- (a) where the Council has not given the Developer a Rectification Notice under clause 20.3, the date on which the Defects Liability Period for that Work or Phase ends, or
- (b) where the Council has given the Developer a Rectification Notice under clause 20.3, the date on which the Council, acting reasonably, gives the Developer a written notice stating that the Defect has been rectified to the Council's reasonable satisfaction.

**Final Lot** means a lot created in the Development for separate residential or commercial 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.

**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.

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

**Land** means the Developer's Land and the Additional Land as set out in Schedule 1 of this Deed.

**Lot** means an existing lot within the meaning of the *Conveyancing Act 1919* and includes a strata lot under the *Strata Schemes Development Act 2015*

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and a community development lot under the *Community Land Development Act 1989*.

**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.

**Map** means the map of the Land contained in Schedule 1.

**Other Developers** means persons other than the Developer who carry out or who obtain Development Consent to carry out development within the South Jerrabomberra Urban Release Area.

**Party** means a party to this Deed.

**Phase** means a separable part of a Work that is determined in accordance with clause 18.1.

**Phase Value** means the proportion of the Contribution Value for a Contribution Item corresponding to a Phase that is determined in accordance with clause 18.2.

**Practical Completion** in relation to a Work or Phase, Stage or a Work means the date on which the **Certifier**, acting reasonably, gives the Developer a certificate to the effect that that Work or Phase is complete under clause 19.3.

**Practical Completion Certificate** means a certificate issued by the **Certifier** to the effect that, in the reasonable opinion of the **Certifier**, the Works are substantially complete and any incomplete part or Defect is of a minor nature.

**Recoupment Contributions** means monetary Development Contributions, special rates, or other amounts paid to the Council by Other Developers to meet the costs of Essential Infrastructure which is provided by the Developer under this Deed.

**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.

**REF** means the Review of Environmental Factors prepared by the Developer in consultation with Council for the Essential Infrastructure and placed on exhibition between 2 September 2016 and 20 September 2016.

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

**Related Body Corporate** has the same meaning as in s50 of the *Corporations Act 2001 (Cth)*.

**Security** means Security for a Work provided pursuant to clause 29 and shall be in the form of an insurance bond, or other form of security approved by the Council, on terms reasonably acceptable to Council.

**South Jerrabomberra Urban Release Area** means the area shown on the Structure Plan within the area bounded by the 'Structure Plan Boundaries'.

**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.

**Structure Plan** means the plan contained in Schedule 4.

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

**Surplus Value** means the amount in Column 7 of Schedule 2

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corresponding to a Contribution Item,) and includes without limitation the acquisition costs and the amount payable for the acquisition of the Additional Land.

**Total Surplus Value** means the sum of all Surplus Values.

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

- 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 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.
  - 1.2.3 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
  - 1.2.4 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
  - 1.2.5 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.
  - 1.2.6 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
  - 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
  - 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
  - 1.2.9 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.
  - 1.2.10 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.
  - 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
  - 1.2.12 A reference to this Deed includes the agreement recorded in this Deed.
  - 1.2.13 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
  - 1.2.14 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
  - 1.2.15 Any schedules, appendices and attachments form part of this Deed.
  - 1.2.16 Notes appearing in this Deed are operative provisions of this Deed.

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**2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

**3 Commencement**

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

**4 Application of this Deed**

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

**5 Warranties and Ownership of Land**

- 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 subject to the provisions of 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 Subject to the terms of this deed, 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 this Deed.
- 7.2 For the avoidance of doubt, nothing in this Deed prevents the Developer from appealing the determination of an application for the Development under Division 8 of Part 4 of the Act

**8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 Subject to clause 8.2, s94 and s94A of the Act do not apply to development in the form of the Contribution Items which are provided under this Deed.
- 8.2 This Deed does not exclude the application of s94EF of the Act to the Development.

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## **Part 2 – Development Contributions**

### **9 Provision of Development Contributions**

- 9.1 The Developer must carry out and deliver the Works on behalf of Council at the time or times and in the manner set out in the operative provisions of this Deed and Schedule 2.
- 9.2 Upon presentation of a statement to Council showing the actual costs to the Developer of carrying out the Works, the amounts specified in Schedule 2 as the Contribution Value and Surplus Value of the Works **are taken to be amended** to reflect the actual costs of the Works.
- 9.3 The Contribution Value and Surplus Value of the Works, shall be increased annually between the date of this Deed and the date on which the Development Contribution is made at the Bank Bill Rate plus a margin of 1.5% per annum.
- 9.4 For the avoidance of doubt, if the actual cost of delivering a Work which forms part of a Contribution Item is less than the Contribution Value for that Contribution Item, the Developer has no obligation to deliver any additional work to a value equal to the difference between the cost of the Contribution Item and the Contribution Value for that Contribution Item.
- 9.5 If the Developer or the Council obtain funding from any external source for any Contribution Item (**Alternative Funding**) then the Developer or the Council (as appropriate) must give notice of that fact to the other Party within 7 days of obtaining the Alternative Funding. Alternative Funding specifically excludes:
- 9.4.1 funds from external sources (or any other sources) which have already been identified in Schedule 2 as at the date of this Deed; and
- 9.4.2 funds which have been obtained from Other Developers as "Recoupment Contributions".
- 9.5 If:
- 9.5.1 the Council obtains Alternative Funding; and
- 9.5.2 the Council has given a notice under clause 9.4,
- then the Parties must meet within 30 days of the date of the notice.
- 9.6 The purpose of the meeting referred to in clause 9.5 is to determine whether, in light of the Alternative Funding, the relevant Contribution Item is to be provided by the Council or the Developer. If the Parties agree that:
- 9.6.1 the Council will provide the relevant Contribution Item, then the Developer has no further obligation under this Deed to provide that Contribution Item; or
- 9.6.2 the Developer will remain liable to provide the relevant Contribution Item then, the Council will remit the Alternative Funding to the Developer in a manner and time determined by the Parties acting reasonably subject to any condition imposed by the external source when providing the Alternative Funding.
- 9.7 If clause 9.6.2 applies the Parties agree that:
- 9.7.1 the Council is only obliged to pay the Developer an amount up to the actual costs incurred by the Developer in providing the Contribution Item; and

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- 9.7.2 the Council is not required to pay any amount over and above the value of the Alternative Funding under this clause.
- 9.8 If:
- 9.8.1 the Developer obtains Alternative Funding; or
- 9.8.2 the Council remits Alternative Funding to the Developer pursuant to clause 9.7.2;
- then the Surplus Value will be reduced by the amount of the Alternative Funding applied to the Contribution Item.

## **10 Dedication of land**

- 10.1 If the Developer is to Construct Works on land that it not owned by Council then upon completion of Construction in accordance with clause 19, the Developer must either:
- 10.1.1 dedicate the land to Council at no costs to Council, or
- 10.1.2 register an Easement on the land.
- 10.2 The Landowner and Developer agree that a Development Contribution comprising the dedication of land is not made for the purposes of this Deed until:
- 10.2.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 10.2.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Landowner as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
- (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 10.3 The Developer must do all things reasonably necessary to enable registration of the instrument of transfer or s88B instrument to occur.
- 10.4 The Developer must 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.
- 10.5 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 that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 10.6 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer must comply with clause 10.2.2 not later than 7 days after Practical Completion of the Work.

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**11 Carrying out of Work**

- 11.1 The Developer is to notify the Council of its intention to commence construction of the Works not less than 21 days before that construction commences.
- 11.2 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer at its cost under this Deed is to be carried out for and on behalf of Council and:
  - 11.2.1 in a good and workmanlike manner,
  - 11.2.2 in accordance with any relevant Approval and any other applicable law,
  - 11.2.3 to the extent not inconsistent with any such Approval or applicable law,
  - 11.2.4 by appropriately qualified contractors.
- 11.3 The Developer is to Construct the Works, generally in accordance with:
  - 11.3.1 designs and specifications approved by the Council including but not limited to:
    - (a) Queanbeyan City Council South Jerrabomberra Development Design Specification D11 – Water Reticulation (Version 1 – October 2014),
    - (b) Queanbeyan City Council Development Construction Specification C401 – Water Reticulation (Version 3.3 – October 2014),
    - (c) Queanbeyan City Council South Jerrabomberra Development Design Specification D12 – Sewerage System (Version 1 – August 2014),
    - (d) Queanbeyan City Council South Jerrabomberra Development Construction Specification C402 – Sewerage System (Version 4.1 – August 2014),
    - (e) Queanbeyan City Council South Jerrabomberra Servicing Master Plan,
    - (f) South Jerrabomberra Development Construction Specification CQS – Quality System Requirements (Version 1 – August 2014).
    - (g) The construction plans prepared in accordance with documents referred to in clause 11.3.1 (a) – (f) and approved by Council (such approval not to be unreasonably withheld or delayed).
  - 11.3.2 In this regard, the Parties acknowledge that the plans, specifications and other documents which have been exhibited as part of the REF were prepared in consultation with Council and in accordance with the documents set out in 11.3.1 (a) - (f). These plans and documents were accepted by Council prior to exhibition. However these plans do not constitute an approval to construct works.
- 11.4 The Developer is to transfer ownership of the Works, free of all encumbrances to Council when the Works are completed in accordance with clause 19 of this Deed.



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## **12 Variation to Work**

- 12.1 Despite clauses 39 and 50:
- 12.1.1 the design or specification of a Work that is required to be carried out and delivered by the Developer under this Deed, or,
  - 12.1.2 the Contribution Value or Surplus Value of a Contribution Item specified in Schedule 2,
- may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 12.2 Without limiting clause 12.1, 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.
- 12.3 For clarity, any approval given by the Council under this clause to vary a design or specification does not authorise the doing of any Work that is not in accordance with the relevant Approval. The Developer is responsible for obtaining any Approvals that are required in order to complete the Work in accordance with the varied design or specification.
- 12.4 If a variation is made to a design, specification, Contribution Value or Surplus Value of a Contribution Item pursuant to this clause then this Deed will be deemed to be amended to include the design, specification, Contribution Value or Surplus Value as varied.
- 12.5 The Parties agree that if a Development Consent for the Development is granted, Schedule 3 will be adjusted to reflect the number of dwellings to be constructed upon the issue of a Subdivision Certificate and the Surplus Value will be reviewed accordingly. Clause 12.4 shall apply to an amendment of Schedule 3 under this Deed.

## **13 Access to land by Developer**

- 13.1 The Developer must obtain written approval from Council to enter, occupy and use any Council owned or controlled land before the commencement of any Work on that land, such approval not to be unreasonably withheld.
- 13.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 13.1.

## **14 Access to land by Council**

- 14.1 The Council may enter any land on which Work has been or 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.
- 14.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 14.1.

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**15 Parties' obligations relating to obligations under this Deed**

- 15.1 The Parties are not to unreasonably delay, hinder or otherwise interfere with the performance by the other Party of its obligations under this Deed.
- 15.2 The Council is not to unreasonably delay, or withhold its approval to any request made under this Deed.
- 15.3 For each stage of the Essential Infrastructure requiring the approval of the Council under Part 5 of the Act, the Parties shall meet prior to the lodgment of the plans relating to that item to agree on a mutually acceptable period of time for its assessment.
- 15.4 If Council is required to act under this Deed (other than give an approval) and no time period for acting is specified, Council must act within a reasonable time after the obligation arises.

**16 Protection of people, property & utilities**

- 16.1 The Developer must ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
  - 16.1.1 all necessary measures are taken to protect people and property,
  - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 16.2 Without limiting clause 16.1, the Developer must not 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.

**17 Repair of damage**

- 17.1 The Developer must Maintain any Work required to be carried out by the Developer under this Deed until Practical Completion of the Work or such later time as agreed between the Parties.
- 17.2 The Developer must carry out its obligation under clause 17.1 at its own cost and to the satisfaction of the Council.

**18 Determination of Phase and Phase Value**

- 18.1 The Parties may, by agreement in writing, determine part of a Work to be a Phase at any time prior to the commencement of physical works relating to that Work.
- 18.2 The Parties agree that the Phase Value is to be determined by:
  - 18.2.1 the agreement in writing of the Parties, or
  - 18.2.2 failing agreement, the amount determined by a suitably qualified

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quantity surveyor appointed by the Parties.

- 18.3 The Parties agree and acknowledge that any determination of value made by that quantity surveyor is relevant only for the purposes of determining the Phase Value, and does not affect the Contribution Value of a particular Work.
- 18.4 When the Developer considers that a Phase is complete, the Developer must provide the Council with verification of the completion of the Phase from a suitably qualified quantity surveyor.

**19 Completion of Work**

- 19.1 Within 3 months of the issue of the Approval to carry out the Works, the Developer is to provide the Council with the names of three certifiers who it proposes could be retained as an independent Certifier for the purpose of certifying Practical Completion of the Works or Phase or Stage of the Works if the Council does not comply with clause 19.4.
- 19.2 Within 14 days of receipt of the names of the proposed independent Certifiers, Council is to advise the Developer of the name of its preferred independent Certifier.
- 19.3 The Developer is to give the Council written notice of the date on which it will complete a Work, Phase or Stage required to be carried out under this Deed.
- 19.4 The Council is to inspect the Work, Phase or Stage the subject of the notice referred to in clause 19.3 within 14 days of the date specified in the notice for completion of the Work.
- 19.5 If the Council does not inspect the Work, Phase or Stage the subject of the notice referred to in clause 19.3 within the time required by clause 19.4
- 19.5.1 the Developer may retain the person approved by the Council under clause 19.2 as an independent Certifier;
- 19.5.2 The Developer is to arrange for the independent Certifier to inspect the Phase, Stage or Works in the presence of a representative of the Council and the Developer; and
- 19.5.3 the Developer is to give the Council a copy of a Practical Completion Certificate for the Works, Phase or Stage immediately after it is issued by the independent Certifier.
- 19.6 The Parties agree that a Work or Phase required to be carried out by the Developer under this Deed, or a Stage, shall be considered completed for the purposes of this Deed when the Council or the duly authorised independent Certifier, acting reasonably, is satisfied that the Work or Phase meets any specifications and conditions set out in this Deed and of any Approval and:
- 19.3.1 for works for which an occupation certificate is required under s. 109 of the Act, an occupation certificate is issued in accordance with the Act; and
- 19.3.2 for other works, the Council or independent Certifier gives a Practical Completion Certificate to the Developer stating that the Work, Phase or Stage is completed for the purpose of this Deed.
- For clarity, a Work, Phase or Stage is not taken to be complete until a certificate under this clause 19.6 is issued.
- 19.7 If the Council is the owner of the land on which the Work, Phase or Stage in respect of which a certificate referred to in clause 19.6 is issued then the

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Council shall assume responsibility for the Work upon the issuing of the Practical Completion Certificate.

- 19.8 If the Council is not the owner of the land on which the Work, Phase or Stage in respect of which a certificate referred to in clause 19.6 is issued at the time the notice is issued then it assumes that responsibility when it later becomes the owner of that land or an Easement is registered on the land.
- 19.9 Before the Council (or any certifier) gives the Developer a Practical Completion Certificate referred to in clause 19.6, 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 or certifier.
- 19.10 The Developer must, at its own cost, promptly comply with a direction referred to in clause 19.9. The Council or certifier may then:
- 19.7.1 if it is satisfied that the relevant Work, Phase or Stage is complete, give a certificate under clause 19.6 to that effect; or
- 19.11 19.7.2 if it is still not satisfied that the relevant Work, Phase or Stage is complete, issue such further notices under clause 19.9 as necessary.
- 19.12 The Council is to do such things as are reasonably necessary to enable the Developer to remedy any minor defect in the Works, Phase or Stage identified in the Practical Completion Certificate.
- 19.13 |

## **20 Defects Liability and Rectification of Defects**

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 The Developer is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 20.3 The Council is to do such things as are reasonably necessary and within the Council's control to enable the Developer to comply with a Rectification Notice that has been given to it under clause 20.1, provided that nothing in this clause requires the Council to expend money.

### **20.4 Add Defects Security**

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

- 21.1 No later than 60 days after the completion of the Defects Liability Period, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Works in the format specified by the Council at the time that the Council grants any Approval for the relevant Work.
- 21.2 The Developer, being the copyright owner in the plan referred to in clause 21.1, gives the Council a non-exclusive, irrevocable, royalty free licence to use the copyright in the plans for the purposes of this Deed and in the exercise of its powers and performance of its statutory duties and functions.
- 21.3 The Developer indemnifies and will keep the Council indemnified from and against all Claims made against the Council and against any costs (including legal costs on a solicitor and own client basis), losses or damages suffered or incurred by the Council arising out of or in connection with the Council's use of the copyright in the plans for the purposes of this Deed or in the exercise of

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its powers or performance of its statutory duties and functions.

## **22 Removal of Equipment**

- 22.1 On Practical Completion of any Work on any Council owned or controlled land, the Developer, without delay, must:
- 22.1.1 remove any Equipment from the Land and make good any damage or disturbance to the land as a result of that removal, and
  - 22.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

## **Part 3 - Recoupment**

### **23 Surplus Development Contributions**

- 23.1 The Council acknowledges that the Developer is providing Development Contributions under this Deed that:
- 23.1.1 exceed the demand for Essential Infrastructure created by the Development, and
  - 23.1.2 meet the demand, or part of the demand, for Essential Infrastructure created by development on the Deferred Land.
- 23.2 The Council, to the extent permitted by law:
- 23.2.1 agrees to give consideration to making a DSP under which the Council collects Recoupment Contributions and, if it determines that it will make such a plan, it must use its best endeavours to do so, or
  - 23.2.2 agrees to give consideration to making an amendment to any local environmental plan which applies to the land within the South Jerrabomberra Urban Release Area requiring satisfactory arrangements to be entered into for the provision of infrastructure prior to development occurring on the land by Other Developers and, if it determines that such a plan should proceed, it must use its best endeavours to progress it with the Minister
- 23.3 The Parties agree that immediately prior to the imposition of a pre-condition to the issuing of a certificate of compliance pursuant to s306 of the *Water Management Act 2000* in relation to a Development Consent granted to an Other Developer requiring payment of a Recoupment Contribution, the Council incurs a liability to pay the Developer an amount equal to the Recoupment Contribution.
- 23.4 The Parties further agree that immediately prior to the imposition of any other requirement to pay a Recoupment Contribution on an Other Developer, the Council incurs a liability to pay the Developer an amount equal to the Recoupment Contribution.
- 23.5 The Council, to the extent permitted by law, agrees to give consideration to making other applications or taking other steps to collect Recoupment Contributions and to use its reasonable endeavours from time to time to do so.
- 23.6 The Council, to the extent permitted by law, is also to give consideration to including in any DSP made pursuant to clause 23.2 provisions which separately identify:



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- 23.6.1 any Recoupment Contributions payable under the plan, and
- 23.6.2 any contributions which relate to the provision of public amenities or public services by anyone other than the Developer.
- 23.7 The Parties agree that if Council does not collect Recoupment Contributions from Other Developers within 5 years it will pay the Developer an amount equivalent to the Surplus Value within 36 months of registration of the certificate of subdivision for the 1250<sup>th</sup> residential lot.

## **24 Offsets against DSP Charges**

- 24.1 If Council adopts a DSP, the Council agrees that in consideration of the provision of the Development Contributions by the Developer under this Deed:
  - 24.1.1 Council will not require the Developer to pay the DSP Contribution Amount in respect of the Development, and
  - 24.1.2 the Surplus Value will be reduced by the DSP Contribution Amount which could have been required, but were not required pursuant to this clause.
- 24.2 Despite anything in this Agreement to the contrary, the Developer may, with the written consent of the Council, which may not be unreasonably withheld, and subject to entering into a deed of assignment, assign the DSP Surplus Credit Amount to any person.
- 24.3 Any part of the DSP Surplus Credit Amount attributable to any Deferred Land which, at the end of 36 months from the date of registration of the certificate of subdivision for the 1250<sup>th</sup> residential lot for the Development, the Developer using reasonable endeavours has not used or assigned must be repaid to the Developer by the Council within 30 days.

## **25 Payments to Developer**

- 25.1 The Parties acknowledge that either clause 23 or 24 or a combination of the two may apply under this Deed provided the total of the Recoupment Contributions and the DSP Surplus Credit Amount does not exceed the Contribution Value less the DSP Contribution Amount that would have otherwise been payable under the DSP Plan.
- 25.2 Within 30 days of a Recoupment Contribution being paid to the Council, the Council is to deposit an amount equal to the Recoupment Contribution, plus any interest earned by Council on the Recoupment Contribution into a secure account in the Council's reserve titled *CEC4 Recoupment Contributions – South Tralee Development Essential Infrastructure (Recoupment Trust Fund)*.
- 25.3 Not later than 1 February and 1 August in each year, the Developer is to prepare a notice specifying a \$ amount of:
  - 25.3.1 the Contribution Value of all Contribution Items that have reached Practical Completion at the date of the notice, and
  - 25.3.2 the Phase Value of all Phases that have reached Practical Completion in relation to Contribution Items which have not yet been completed at the date of the notice,
- 25.4 Within 14 days of receiving a notice under clause 25.3, the Council is to notify the Developer of whether it agrees (with such agreement not to be unreasonably withheld) to the amounts specified in the Developer's notice.

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- 25.5 If Council has agreed under clause 25.3 with the amount specified in the notice pursuant to clause 25.2, then within 14 days of the notice under clause 25.3, the Council will pay any Recoupment Contributions held in the Recoupment Trust Fund to the Developer.
- 25.6 For clarity clause 25.4 does not require the Council to pay the Developer any amount which exceeds the Recoupment Contributions the Council has actually received from Other Developers at the time those payments are made. If the sum of the Recoupment Contributions made by the Council to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) is not less than the Total Surplus Value as at the date 36 months from the date of registration of the 1250th residential lot in the Development then the Council shall have no further obligation to make any payments under this clause.
- 25.7 If the sum of the Recoupment Contributions made to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) is less than the Total Surplus Value as at the date 36 months from the date of registration of the 1250th residential lot in the Development, the Council must pay to the Developer the difference between:
- 25.7.1 the sum of the payments made under this clause, and
- 25.7.2 the component of the Total Surplus Value that, in the reasonable opinion of the Council, can reasonably be expected to be recovered by the Council for the works provided by the Developer having regard to the then existing provisions of any DSP or other restriction on the amount likely to be recovered by the Council for the works provided by the Developer.
- 25.8 The Council must pay the amount payable under clause 25.7 to the Developer within 60 days of the end of 36 months from the date of registration of the 1250th residential lot in the Development.
- 25.9 If, at any time, Council proposes to make a DSP and the contributions proposed in the DSP to be payable by Other Developers would exceed any limit or restriction which limits the Council's ability to lawfully recover development servicing charges then:
- 25.9.1 Council must use reasonable endeavours to seek to have the limit or restriction changed so that contributions payable under the development servicing plan would not exceed or be contrary to that limit or restriction, or otherwise have the limit not apply to the development by Other Developers; and
- 25.9.2 a review of this Deed is taken to be triggered under clause 40.

**26 Limit of Council's obligations to pay Recoupment Contributions**

- 26.1 For clarity, the Council's liability to the Developer in relation to Recoupment Contributions is limited to:
- 26.1.1 Up until the date 36 months from the date of registration of the 1250th residential lot in the Development, the amount of any Recoupment Contributions actually received by the Council from Other Developers; and
- 26.1.2 On and from the date 36 months from the date of registration of the 1250th residential lot in the Development, any additional amount payable by the Council in accordance with clause 25.7.

and nothing in this Deed is to be taken to impose any obligation or liability on the Council to pay the Developer any amount which exceeds those amounts.

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**Part 4– 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, being
- 27.1.1 a dispute about whether any Works have been constructed generally in accordance with designs and specifications approved by the Council under clause 11.2 or 11.3 of this Deed; or
- 27.1.2 a different dispute, if the Parties to the Dispute both agree that it can be so determined.
- 27.2 However this clause does not prevent a Party from seeking injunctive relief or relief that, in the circumstances, is urgently required.
- 27.3 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 under clause 27.1.1 or the other Party agrees to it being resolved by expert determination pursuant to clause 27.1.2.
- 27.4 If a notice is given under clause 27.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.5 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.
- 27.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 27.7 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 27.8 The Parties are to share equally the costs of the President, the expert, and the expert determination.

**Part 5 - Enforcement**

**28 Acquisition of land required for Work**

- 28.1 The Landowner will use its reasonable endeavours to become the registered proprietor of the Additional Land, or any part thereof, prior to any obligations arising under this Deed which require the Developer to carry out works on the Additional Land, or which require any part of the Additional Land to be dedicated to Council, unless otherwise agreed with Council.
- 28.2 If within 4 months of the date of this Deed (or such other time as may be agreed between the Parties):
- 28.2.1 the Landowner acquires all or part of the Additional Land,
- 28.2.2 the Landowner (having made reasonable endeavours to do so), has been unable to acquire all or part of the Additional Land.
- the Developer must notify the Council in writing of the date on which the Landowner will become the registered proprietor of that Additional Land or that it has been unable to acquire the Additional Land as the case may be.

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- 28.3 A notice under clause 28.2 must be accompanied by Security (separate to the Security referred to in clause 30 in an amount equal to the amount identified by a registered valuer as being the market value of the land the subject of the notice plus 2.5 per cent of that amount, being a reasonable allowance for the Council's costs of and incidental to the purchase of the land.
- 28.4 .Within 21 days of receipt of a notice referred to in clause 28.2 and the Security referred to in clause 28.3, Council must place on the agenda for the next Council meeting a report seeking:
- 28.4.1 a resolution from Council on whether it should acquire the Additional Land on which the Works will be carried out and exercise its powers of acquisition under the Just Terms Act to acquire the Additional Land, and
- 28.4.2 if the Council resolves to acquire that land, the consent of the Minister to the giving of a proposed-acquisition notice to the owners of so much of the Additional Land which has not been acquired by the Landowner.
- 28.5 In accordance with any resolution of Council, Council must within 14 days of such resolution, seek the Minister's approval to give the proposed acquisition notice to the owners of the Additional Land to be acquired.
- 28.6 Subject to this Deed, Council must give the proposed acquisition notice to the owners of the Additional Land to be acquired within 21 days of receipt of the Minister's approval to give such a notice.
- 28.7 Within 14 days of receipt of a written notice from the Council, the Developer is to pay to the Council:
- 28.7.1 the Council's costs, as specified in the notice, of and incidental to an acquisition of the Additional Land, and
- 28.7.2 the amount of any compensation paid by the Council in relation to the acquisition.
- 28.8 The Council may call on the Security referred to in clause 28.3 if the Developer is in breach of clause 28.7.
- 28.9 The Council is to return the Security referred to in clause 28.3 to the Developer if and when the Developer complies with clause 28.7.
- 28.10 The Council may recover in any court of competent jurisdiction the difference between its costs of and incidental to the acquisition referred to in clause 28.7 together with the amount of any compensation paid by the Council in relation to that acquisition and the amount of the Security referred to in clause 28.3 as called upon under clause 28.7.
- 28.11 Despite clauses 28.1 and 28.2, not later than 12 months before the Contribution Item is due to be completed, the Developer must notify the Council in writing if the Landowner is not and will not be the owner of all of the land on which the Work comprising that Contribution Item will be carried out.

## **29 Acquisition of land required to be dedicated**

- 29.1 This clause 29 operates in addition to the Council's rights to seek specific performance of the Deed.
- 29.2 If the Landowner does not dedicate land to the Council or grant an Easement to Council in accordance with, and at the time specified, in this Deed the Landowner agrees for the purpose of the Just Terms Act, that the Council may compulsorily acquire that land or an Easement for \$1 and also without

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having to follow the pre-acquisition procedure under the Just Terms Act (in which case the Council may proceed to issue any Subdivision Certificate to which dedication of the relevant land was a precondition). Council may exercise its rights by serving written notice and delivering a transfer or a registrable s88B Instrument and the Landowner must execute and return the transfer within 14 days.

- 29.3 The Council is only to acquire land pursuant to clause 29.2 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.
- 29.4 Clause 29.2 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 29.5 If, as a result of the acquisition referred to in clause 29.2, 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 28.
- 29.6 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 29.7 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 29, including without limitation:
  - 29.7.1 signing any documents or forms,
  - 29.7.2 giving land owner's consent for lodgement of any Development Application,
  - 29.7.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 29.7.4 paying the Council's costs (including legal, survey and valuation costs and registration fees) arising under this clause 29.

## 30 Security

- 30.1 The Developer must pay Security to the Council as specified under this clause.
- 30.2 Immediately prior to the issue of the first Subdivision Certificate which creates any residential Lots in the Development, if a Practical Completion Certificate has not been issued for the Works, the Developer is to pay the Security in an amount equivalent to the cost to complete those parts of the Works which are outstanding. If a Certificate of Practical Completion has been issued for the Works prior to the issue of the first Subdivision Certificate which creates any residential Lots in the Development, the Developer is not required to provide Security.
- 30.3 The Council may agree in writing to apportion the Security to different Stages or Phases, in which case the Developer is to provide the portion of the Security relating to the particular Stage to the Council.
- 30.4 For the purposes of clause 30.2 the cost to complete the works is to be determined by an independent quantity surveyor being a person who is not otherwise engaged in the carrying out of the Works on behalf of the Developer.



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- 30.5 Security paid to the Council under clause 30.2 is, if in the form of cash, to be deposited into a secure account in the Council's reserve titled CEC4 *South Tralee Contributions Security*, and the Security may only be used in accordance with this Deed.
- 30.6 The Council is to provide the Developer with a copy of all transaction documents and bank statements relating to the account in which Security is held as soon as practicable after the Council receives such documents.
- 30.7 In addition to the circumstances otherwise stated in this deed, the Council may call-up a Security if:
- 30.7.1 the Developer has breached its obligations under this Deed relating to the making of Development Contributions to which the Security applies (other than an obligation to which the Defects Security relates), and
- 30.7.2 the Council has served on the Developer notice in writing of the breach, and
- 30.7.3 the Developer has failed to remedy the breach within a reasonable period after receipt of the notice having regard to this nature of the breach, being a period of not less than 28 days in any circumstances but not more than 60 days unless the Developer demonstrates to the Council's satisfaction that it is not practicable to complete the necessary work in that timeframe.
- 30.8 If the Council calls-up a Security, it may use it in satisfaction of the following costs:
- 30.8.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 30.8.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 30.8.3 all legal costs and expenses reasonably incurred by the Council by reason of the Developer's breach.
- 30.9 If the Council calls on a Security in accordance with this Deed, the Council may, by notice in writing served on the Developer, require the Developer to provide further or replacement Security in an amount that, when added to any unused portion of the existing Security, does not exceed the amount of the Security the Council is entitled to hold under clause 29.2 and 29.5.
- 30.10 Any interest earned on the Security is to be held by the Council in the account referred to in clause 29.5.
- 30.11 If the Security is exhausted as a result of the Council calling-up a security, the Council may apply any interest in satisfaction of any further costs to which the Security could have been applied in accordance with this clause 29.
- 30.12 Promptly and no later than 7 days after the date on which the Defects Liability Period for a Work or a Phase of a Work ends, the Council must refund to the Developer the balance of the Security for that Work or the Phase of the Work and any interest earned on that Security.

**31 Breach of obligations**

- 31.1 If either Party reasonably considers that the other Party is in breach of any obligation under this Deed, it may give a written notice to the other Party:
- 31.1.1 specifying the nature and extent of the breach,



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**Village Building Company Pty Limited**

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- 31.1.2 requiring the other Party to:
- (a) rectify the breach if it reasonably considers it is capable of rectification, or
  - (b) pay compensation to the reasonable satisfaction of the other Party in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 31.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1, the Council may, without further notice to the Developer and in accordance with the terms of this Deed, call-up the Security provided by the Developer under this Deed, as applicable, and apply it to remedy the Developer's breach.
- 31.3 If the Developer fails to comply with a notice given under clause 31.1 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.
- 31.4 Any costs incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
- 31.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
  - 31.4.2 as a debt due in a Court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- 31.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 31.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 31.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach, including in relation to any demand or attempt to enforce this Deed or negotiate terms of resolution.
- 31.6 Any costs incurred by the Developer or Landowner in remedying a breach under this Deed may be recovered by the Developer as a debt due in a Court of competent jurisdiction.
- 31.7 Nothing in this clause 31 prevents a Party from exercising any rights it may have at law or in equity in relation to a breach of this Deed by a Party, including but not limited to seeking relief in an appropriate Court.

**Landowner guarantee**

**32 Enforcement**

- 32.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 27 applies.
- 32.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

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- 32.3 If a notice is given under clause 32.1, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 32.4 If the Dispute is not resolved by the process in clause 32.3, the Parties:
- 32.4.1 may, by agreement, 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, or
- 32.4.2 may enforce this Deed in any court of competent jurisdiction.
- 32.5 For the avoidance of doubt, nothing in this Deed prevents:
- 32.5.1 a Party from seeking injunctive relief or relief that, in the circumstances, is urgently required, or
- 32.5.2 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.

### **33 Landowner's Guarantee**

- 33.1 Upon the execution of this Deed by all of the Parties, the Developer is to provide the Council with a deed of guarantee between the Council, the Developer, and the Landowner in terms reasonably satisfactory to the Council, under which the Landowner undertakes to meet the obligations of the Developer under this Agreement.

## **Part 6 – Registration & Restriction on Dealings**

### **34 Registration of this Deed**

- 34.1 The Parties agree to register this Deed on the Land for the purposes of s93H(1) of the Act.
- 34.2 Not later than 10 days after the commencement of this Deed, or the acquisition by the Developer of the Additional Land in respect of that land, the Developer is to deliver to the Council in registrable form:
- 34.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Landowner, and
- 34.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 34.3 The Developer and Landowner are to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 34.4 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:
- 34.4.1 in so far as the part of the Land concerned is a Final Lot,
- 34.4.2 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.

### **35 Restriction on dealings**

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- 35.1 The Developer and Landowner must not:
- 35.1.1 sell or transfer the Land, other than a Final Lot, or
  - 35.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
    - 35.1.3 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 the same terms as this Deed or otherwise on terms reasonably satisfactory to the Council, and
    - 35.1.4 the Developer has, at no cost to the Council, first procured the execution of a Deed of Guarantee by a Related Body Corporate to the person to whom the Land or part is to be sold or transferred with demonstrated financial capacity to give the protection contemplated by the deed; and
    - 35.1.5 the Developer and Landowner are not in breach of this Deed, and
    - 35.1.6 the Council consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 35.2 Clause 35.1 does not apply in relation to the sale or transfer of the Land if the Land is sold or transferred to a Related Body Corporate of the Developer or the Landowner provided that the conditions in clauses 35.3.1 - 35.3.5 are met.
- 35.3 Notwithstanding clause 35.1, Council consents to the:
- 35.3.1 sale or transfer the Land, other than a Final Lot, or
  - 35.3.2 assignment of the Developer's and Landowners rights or obligations under this Deed, or novation of this Deed, to a person as a consequence of the restructure of the share capital of the Developer or a decision to wind the Developer up and transfer assets to another corporate entity provided that:
    - 35.3.3 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 the same terms as this Deed, and
    - 35.3.4 the Developer has, at no cost to the Council, first procured the execution of a Deed of Guarantee by a related body corporate to the person to whom the Land or part is to be sold or transferred with demonstrated financial capacity to give the protection contemplated by the deed; and
    - 35.3.5 the Developer and Landowner are not in breach of this Deed;.

## **Part 7 – Indemnities & Insurance**

### **36 Risk**

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

### **37 Release**

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- 37.1 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.
- 37.2 The Council releases the Developer and the Landowner from any Claim it may have against the Developer and the Landowner arising in connection with the performance of the Council's obligations under this Deed except if, and to the extent that, the Claim arises because of the Developer's negligence or default.

## 38 Indemnity

- 38.1 Subject to clause 37.2, the Developer indemnifies the Council from and against all Claims that may be made against the Council but only to the extent that the Claims arise in connection with any breach of this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 38.2 The Developer is only required to indemnify Council pursuant to clause 37.1 where:
- 38.2.1 a Court has delivered a judgment and made orders against Council in relation to the Claim, or
  - 38.2.2 liability arises from a matter which has been the subject of an expert determination under clause 27 and is consistent with that determination; or
  - 38.2.3 Council has reached a negotiated settlement of any Claim and the Developer has, prior to settlement of any Claim provided its written approval to the settlement.
- 38.3 The Developer's liability in respect of any indemnity given under clause 37.1 shall be reduced proportionally to the extent that any unlawful, negligent or deliberately wrongful act or omission of the Council, its contractors, employees or agents contributed to any loss.

## 39 Insurance

- 39.1 The Developer must 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 Practical Completion of the Work:
- 39.1.1 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 the Developer's liability in respect of damage to or destruction of the Works,
  - 39.1.2 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,
  - 39.1.3 workers compensation insurance as required by law, and
  - 39.1.4 Any other insurance required by law.
  - 39.1.5 Pollution liability Insurance.
- 39.2 If the Developer fails to comply with clause 39.1, 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:
- 39.2.1 by calling upon the Security provided by the Developer to the Council

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under this Deed, or

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

- 39.3 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 39.1.

## **Part 8 – Other Provisions**

### **40 Review of Deed**

- 40.1 The Parties agree to review this Deed every three 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.
- 40.2 For the purposes of clause 40.1, the relevant changes include (but are not limited to):
- 40.2.1 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, circumstances arising which mean that the expected ultimate development yield for development within the South Jerrabomberra Urban Release Area (other than the Developer's Land), will vary by 2.5% or more from the current expected yield of 1500 dwellings,
  - 40.2.2 circumstances arising which mean that the expected ultimate development yield for development within the Developer's Land will vary by 2.5% or more from the current expected yield of 1250 dwellings,
  - 40.2.3 where the actual cost of delivering a Contribution Item exceeds the Contribution Value corresponding to that Contribution Item by more than 5%.
- 40.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 40.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 40.4 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.
- 40.5 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 40.1 (but not 40.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **41 Notices**

- 41.1 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:
- 41.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 41.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 41.1.3 emailed to that Party at its email address set out in the Summary

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Sheet.

- 41.2 If a Party gives the other Party 3 Business Days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 41.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 41.3.1 delivered, when it is left at the relevant address,
- 41.3.2 sent by post, 2 Business Days after it is posted,
- 41.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
- 41.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 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.

**42 Approvals and Consent**

- 42.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, the Council may give or withhold an approval or consent to be given under this Deed in its absolute discretion and subject to any conditions determined by the Party.
- 42.2 The Council is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

**43 Costs**

- 43.1 The Parties agree to bear 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 Further Acts**

- 45.1 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.



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**46 Governing Law and Jurisdiction**

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

**47 Joint and Individual Liability and Benefits**

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

**48 No Fetter**

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

**49 Illegality**

- 49.1 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.

**50 Severability**

- 50.1 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.
- 50.2 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.

**51 Amendment**

- 51.1 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 clause 25D of the Regulation.

**52 Waiver**

- 52.1 The fact that a Party fails to do, or delays in doing, something the Party is

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entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

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

## 53 GST

- 53.1 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.

- 53.2 Subject to clause 53.4, 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.
- 53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 53.4 No additional amount shall be payable by the Council under clause 53.2 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.
- 53.5 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:
- 53.5.1 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
- 53.5.2 that any amounts payable by the Parties in accordance with clause 53.2 (as limited by clause 53.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 53.6 No payment of any amount pursuant to this clause 53, 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



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Invoice or Adjustment Note as the case may be to the recipient.

- 53.7 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.
- 53.8 This clause continues to apply after expiration or termination of this Deed.

**54 Explanatory Note**

- 54.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 54.2 Pursuant to clause 25E(7) 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 1.1)

**Land**

Property	Ownership
Lot 1 DP 102340	Landowner
Lots 1-7 DP1007339	Landowner
Lots 4-6 DP 130629	Landowner
Lot 181 DP 754912	Landowner
Lot 226 DP 66541	Landowner
Lot 1 DP 1039904	Landowner
Lots 1-5 DP 224095	Landowner
Lot 1 DP 651918	Landowner
Lots 1-2 DP 1006051	Landowner
Lots 1-3 DP 1140653	Landowner
Lot 1 DP1207489	Landowner
Lot 1 DP 213249	Landowner
Lot 1 in DP 313299	Landowner
Lot 1 in DP323002	Landowner
Lot 1 In DP 333433	Landowner
Lot 3 and 6 in DP239080	Landowner
Lot 5 and 6 in 719108	Additional Land owned by Robin Pty Limited
Lot 1 in DP1137426	Additional Land owned by Joyce Larcombe
Lot 1, 2, 4 and 5 in DP 239080	Additional Land owned by Joyce Larcombe
Lot 1 in DP 541268	Additional Land owned by Joyce Larcombe
Lot 758 in DP15463	Additional Land owned by Joyce Larcombe
DP15463	Additional Land owned by Joyce Larcombe
DP15471	Additional Land owned by Joyce Larcombe
DP15472	Additional Land owned by Joyce Larcombe

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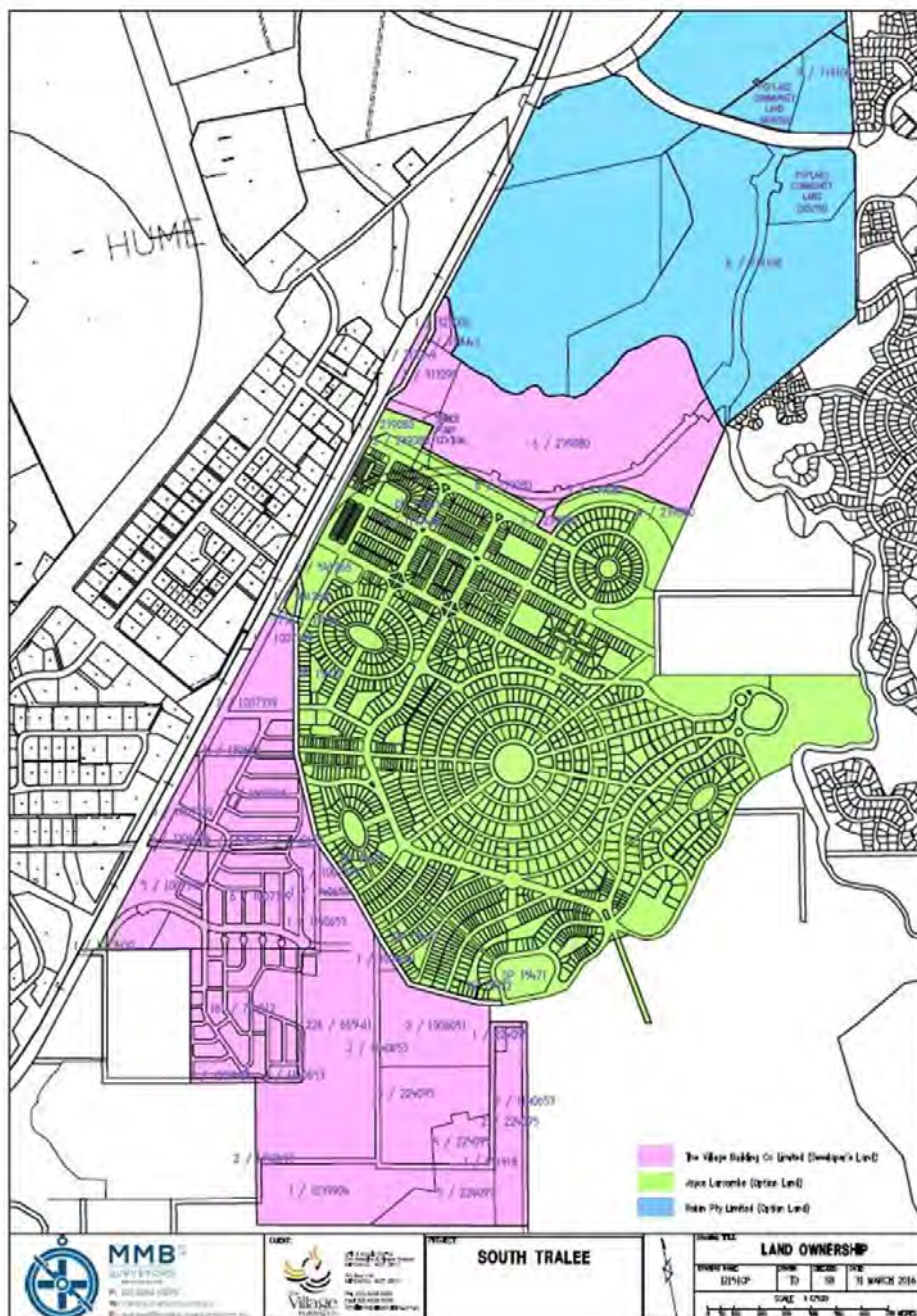
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Land owned by John Bernard Forrest and Anne Patricia Forrest but subject to option or contract for sale to the Landowner

Lot 3 DP 1001136	Land owned by John Bernard Forrest
Lot 176 DP754912	Land owned by Anne Patricia Forrest
Lot 148 DP754912	Land Anne Patricia Forrest

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**Schedule 1 (Continued)**



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**Schedule 2**

(Clause 9)

**Development Contributions**

(see table on following page)



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**Development Contributions**

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Category	Public Purpose	Manner and Extent	Timing	Contribution Value (Ex GST)	Surplus Value (Ex GST) determined by reference to Schedule 3 (as adjusted from time to time)
Land for Sewer and Potable Water Infrastructure	Sewer and Potable Water Infrastructure	Provide sewage and potable water infrastructure sites to meet the demands of South Jerrabomberra	Subject to detailed design and final survey, The Developer is to dedicate 2.48 hectares of land on which the Works set out in this Schedule will be carried out. For details of the land value estimates refer to Schedule 5.	To be dedicated progressively in accordance with the timing set out for Works in this Schedule.	\$87,600.00	\$12,702.00
Sewer and Potable Water Infrastructure	Sewer and Potable Water Infrastructure	Provide sewage infrastructure to meet the demands of the Development and part of South Jerrabomberra	The Developer is to complete and dedicate the Works generally specified in the Potable Water Concept Plan at Schedule 6 and the Sewer Concept Plan at Schedule 7 but subject to detailed design and final survey that meet the water supply and sewage treatment needs of South Tralee, including the following:	To be provided in phases with each phase to be constructed prior to the issue of a Subdivision Certificate for the creation of lots that would generate the demand that exceeds the capacity of the previous phase.	\$14,200,000.00	\$2,059,000.00
			A sewer pump station. A sewer rising main. A gravity sewer main. Trunk water mains. Two water reservoirs.			

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Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Contribution Category	Public Purpose	Manner and Extent	Timing	Contribution Value (Ex GST)	Surplus Value (Ex GST) determined by reference to Schedule 3 (as adjusted from time to time)
			A booster pump station.  Facilities as indicated within plan C13085.1-R525, 2626/B1, 2626/B2 and C13085.1-R530 considered within the assessment of the REF application for South Tralee.			
Sum of Contribution Values for Sewer and Potable Water Infrastructure Contribution Category is:					\$14,287,600.00	\$2,071,702.00

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**Schedule 3**

**Indicative Equivalent Dwelling Quotients based upon Staged Consent**

Development	Type of Residential Development			Total Dwellings	Total Equivalent Dwellings	% of Infrastructure
	Type 1 - Lots>468sq.	Type 2 - Lots<468sq.m	Apartments			
South Jerrabomberra Employment Lands (20 years of growth)					168	9%
South Tralee <sup>1</sup>	250	500	00	750	815	435.5%
Forrest / Morrison <sup>2</sup>	400	100	0	500	603	33%
Tralee Station (Sandra Walsh) <sup>3</sup>	100	150	0	250	276	14.5%
<b>TOTAL</b>	<b>750</b>	<b>750</b>	<b>0</b>	<b>1500</b>	<b>1862</b>	
Equivalent Person Quotient / Dwelling (per South Tralee Strategic Social Plan)	3.4	2.7	1.8			
Equivalent Dwelling Quotient	1.25925926	1.00000000	0.66666667			

<sup>1</sup> Refer to Schedule 9.

<sup>2</sup> Refer to Schedule 9.

<sup>3</sup> Refer to Schedule 9.

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**Schedule 4**  
**Structure Plan**

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**Schedule 5**  
**Surplus Values**

Land Values (per Ha)	Description
\$86,000	RE2 - Private Recreation: \$86,000/Ha
\$360,000	R1 - General Residential: \$360,000/Ha for lands required for the development of South Tralee
\$900,000	R1 - General Residential: \$900,000/Ha for lands that would otherwise have been developed for housing
\$590,000	B1 - Neighbourhood Centre: \$590,000/Ha for lands required for the development of South Tralee
\$1,475,000	B1 - Neighbourhood Centre: \$1,475,000/Ha for lands that would otherwise have been developed as the Neighbourhood Centre
\$590,000	B4 - Mixed Use: \$590,000/Ha for lands required for the development of South Tralee
\$1,475,000	B4 - Mixed Use: \$1,475,000/Ha for lands that would otherwise have been developed as Mixed Use
\$50,000	Rural 1(a): \$50,000/Ha
\$20,000	E2 - Environmental Conservation: \$20,000/Ha
\$20,000	Environmental Protection 7(b): \$20,000/Ha
\$225,000	Additional Development Area 1 (as permitted under Schedule 1 of the South Tralee LEP): \$225,000/Ha for lands required for the development of South Tralee
\$645,000	Additional Development Area 1 (as permitted under Schedule 1 of the South Tralee LEP): \$645,000/Ha for lands that would otherwise have been developed as Additional Development.

Item	Manner and Extent	Rate/Ha	Area (Ha)	Contribution Value (\$) Ex GST	Surplus Value (\$) Ex GST
Potable Water	Land for trunk water facilities as indicated within plan C13085-D220 considered within Council's assessment of the approved Urban Concept DA 263-2013. Both water reservoirs sites are essential to service the entire South Jerrabomberra residential South Tralee is only 21% of Equivalent Dwellings:			\$41,100.00	\$5,959.50
	The low level reservoir site to house the; low level reservoir, booster pump station, access, parking and trunk valves. 0.33ha of Rural 1(a) land	\$50,000.00	0.33	\$16,500.00	\$2,392.50
	The high level reservoir site to house; the initial high level reservoir, a future high level reservoir, access, parking and trunk valves. 1.23ha of E2 land.	\$20,000.00	1.23	\$24,600.00	\$3,567.00



**South Tralee Essential Infrastructure Planning Agreement**  
**Queanbeyan City Council**  
**Canberra Estates Consortium No 4 Pty Limited**  
**Village Building Company Pty Limited**

Sewer	Land for a sewer pump station on North Tralee as indicated within plans C13085-D190 to D192 considered within Council's assessment of the approved Urban Concept DA 263-2013. The sewer pump station site is essential to service not only South Tralee but also the future developments of; North Tralee, Environa, Forrest/Morrison and Walsh. South Tralee is only 21% of the total expected equivalent tenements to be serviced by the ultimate sewer pump station.			\$46,500.00	\$ 6,742.50
	The site is to house; access track, trunk gravity carrier, rising mains, future rising main, wet well, parking, future wet well, emergency storage, future emergency storage, dosing facilities, valves, outlet and vents.  Rural 1(a) Area = 0.93Ha	\$50,000.00	0.93	\$46,500.00	\$ 6,742.50.00
<b>Totals</b>			<b>2.45</b>	<b>\$175,200.00</b>	<b>\$ 25,404.00</b>

**South Tralee Essential Infrastructure Planning Agreement**  
**Queanbeyan City Council**  
**Canberra Estates Consortium No 4 Pty Limited**  
**Village Building Company Pty Limited**

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**Schedule 6**  
**Potable Water Concept Plan**

(see separate document)

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**South Tralee Essential Infrastructure Planning Agreement**  
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**Village Building Company Pty Limited**

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**Schedule 7**  
**Sewer Concept Plan**

(see separate document)

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**Schedule 8**  
**Engineering Costings**

(see separate document)

**Schedule 9**  
**Property Names Map**

## 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**

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

\_\_\_\_\_  
**Name/Position**

\_\_\_\_\_  
**Name/Position**

## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Essential Infrastructure Planning Agreement**

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

#### **Parties**

**Queanbeyan-Palerang Regional Council** ABN 12 842 195 133 of 257 Crawford St, Queanbeyan New South Wales (**Council**)

**Canberra Estate Consortium No 4 Pty Limited** ABN 91 097 930 c/- Maxim Chartered Accountants Level 2, 59 Wentworth Avenue, Kingston ACT (**Developer**)

**Village Building Co Pty Limited** ABN 91 097 260 930 of 92 Hoskins Street, Mitchell ACT (**Landowner**)

#### **Description of the Land to which the Draft Planning Agreement Applies**

The Land to which the draft planning agreement relates is both land owned by the Landowner and which the Landowner propose to acquire and other land on which sewer and potable water supply works are to be constructed by the Developer on behalf of Council, as set out in Schedule 1 of the draft planning agreement.

#### **Description of Proposed Development**

The proposed development is the development of the Land by the Developer in including subdivision for not more than 1,250 dwellings, construction of roads, commercial and community facilities, open space and recreation areas and associated servicing and infrastructure.



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

### **Objectives of Draft Planning Agreement**

The objective of the draft planning agreement is to provide for the carrying out of works, for the provision of sewer and potable water supply infrastructure, facilities and services ('**Essential Infrastructure**') to meet the demands of the Development and other development within the South Jerrabomberra Urban Release Area (**URA**).

### **Nature of Draft Planning Agreement**

The draft planning agreement is a planning agreement under s93F of the *Environmental Planning & Assessment Act 1979*.

### **Effect of the Draft Planning Agreement**

The draft planning agreement contains provisions under which:

- The Developer dedicates land and carries out works for the Essential Infrastructure,
- The Council will use its best endeavours to recoup money from other developers in order to reimburse the Developer for the costs of the Essential Infrastructure provided under the planning agreement which relate to demands created by development other than the Development,
- If Council cannot recoup money from other developers to reimburse the Developer for the costs of the Essential Infrastructure provided to service development of other developer's by 2025, Council will reimburse the Developer for the costs of providing that Essential Infrastructure to the other developer's development,
- The Developer provides security for the making of development contributions and defects security in respect of rectification of defects in any works,
- The planning agreement is required to be registered on title to the land,
- There are procedures specified for dispute resolution, and
- The Developer and Landowner are restricted from assigning or transferring the land or their rights and obligations under the planning agreement without agreement from the Council.

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The draft planning agreement provides for the provision of Essential Infrastructure on behalf of Council to meet the demands of the Development and other development within the URA, and provides for the carrying out of works for public purposes to enable the subject land to be developed in a timely and efficient manner.

### **How the Draft Planning Agreement Promotes the Public Interest**

The draft planning agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(i)(ii)(iv)(v)(vii) and (viii) of the Act.

**For Planning Authorities:**

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

N/A

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

N/A

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

The Draft Planning Agreement promotes the elements of the Council's charter in s8 of the *Local Government Act 1993* as:

- In the preparation of the planning agreement the Council has exercised its responsibility for community leadership, equity and social justice,
- The draft planning agreement demonstrates a commitment to consultation, long term strategic planning, the provision of adequate services and facilities and in planning the services and facilities to be provided in respect of the URA,
- The Council is the long term custodian and trustee of public assets and has the responsibility to provide equitable and appropriate services and facilities for the community and to ensure appropriate ongoing management. In this regard, the planning agreement provides a framework for the development of community assets and the transition of ownership and ongoing management of these services for the URA.

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

Council is of the view the planning agreement is not inconsistent with Council's capital works program.

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

The draft planning agreement requires various obligations to be from time to time and met before the issuing of and subdivision certificates.