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Deed

Jumping Creek

Planning Agreement

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

Peet Jumping Creek Pty Ltd

Queanbeyan-Palerang Regional Council

~~[Insert Date]~~

9 NOVEMBER 2021

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Jumping Creek Planning Agreement

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Jumping Creek Planning Agreement

Summary Sheet

Council:

Name: Queanbeyan-Palerang Regional Council
Address: 256 Crawford St QUEANBEYAN NSW 2620
Telephone: 1300 735 025
Email: council@qprc.nsw.gov.au
Representative: Peter Tegart - Chief Executive Officer

Developer:

Name: Peet Jumping Creek Pty Ltd
Address: Level 3, 64 Allara Street CANBERRA CITY ACT 2600
Telephone: (02) 6230 0800
Email: mitchell.alexander@peet.com.au
Representative: Mitchell Alexander

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 10 and Schedule 1.

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

See clause 8.

Security:

See clause 20 and Part 4.

Registration:

See clause 27.

Restriction on dealings:

See clause 28.

Dispute resolution:

See Part 3.

Jumping Creek Planning Agreement

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

Parties

Queanbeyan-Palerang Regional Council ABN 95 933 070 982 of 256
Crawford St QUEANBEYAN NSW 2620 (**Council**)

and

Peet Jumping Creek Pty Ltd ABN 633 663 760 of Level 3, 64 Allara Street
CANBERRA CITY ACT 2600 (**Developer**)

Background

- A The Developer owns the Land.
- B The Developer has lodged the Development Application.
- C The Developer has offered to make the Development Contributions in connection with the carrying out of the Development in Stages on the terms and conditions set out in 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).

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

- (a) one of the following trading banks:

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

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

CPI means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Contribution Value means the value of an Item specified in Column 4 of Schedule 1.

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 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.

Defects Liability Period means the period of 12 months from the date a Work is certified by the Council as having been completed in accordance with cl.18.2.

Defects Security means the Security provided by the Developer in accordance with cl.20.1.

Development means the development for urban purposes as proposed in the Development Application involving the subdivision of the Land into residential lots in stages, the creation of 1 residual lot and public road dedications and associated infrastructure as detailed in the Development Consent granted to the Development Application.

Development Application means the development application within the meaning of the Act lodged by the Developer in respect of the Land being DA 109/2019.

Development Consent has the same meaning as in the Act.

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

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

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

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

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

GST has the same meaning as in the GST Law.

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

Item means an item specified in Column 1 of Schedule 1.

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

Land means Lot 1 in DP 1249543.

Land Dedication Requirements means the *Jumping Creek LPA Land Dedication Requirements* contained in Schedule 3.

Natural Vegetation Open Space Area means the areas marked as Open Space A, Open Space B, Open Space C and Open Space D on the Staging Plan and which are also shown as 'Natural Vegetation Area – Open Space Area' on the Land Dedication Plan which is Figure 1 in the Land Dedication Requirements.

Party means a party to this Deed.

Recreation and Exotic Vegetation Area means the area described as such on the Land Dedication Plan which is Figure 1 in the Land Dedication Requirements.

Rectify means rectify, remedy or correct.

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

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

Stage means a stage of the Development shown in the Staging Plan or as approved by a Development Consent for the Development Application or as otherwise agreed between the parties.

Staging Plan means the plan in Schedule 2.

Subdivision Certificate has the same meaning as in the Act.

Vegetation Management Plan means the Vegetation Management Plan contained in the Land Dedication Requirements.

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

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of Cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

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

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
 - 3.1.1 both executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.
- 3.3 For the avoidance of doubt, no obligation to make Development Contributions arises until after the grant of Development Consent to the Development Application and otherwise in accordance with this Deed.

4 Application of this Deed

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

5 Warranties

- 5.1 The Parties warrant to each other that they:
 - 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

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

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s7.24 to the Development.

9 Sewer and Water Charges

- 9.1 Council agrees that the payment of the monetary Development Contributions, being Items A1 and A2 in the table in Schedule 1 will satisfy any preconditions to the issue of a certificate of compliance comprising monetary payments for the purposes of s306(2)(a) of the *Water Management Act 2000*.

Part 2 – Development Contributions

10 Provision of Development Contributions

- 10.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 10.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 10.3 Despite clause 10.2, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

11 Payment of monetary Development Contributions

- 11.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 11.2 The amount of each monetary Development Contribution is to be indexed annually in accordance with increases in the CPI from December 2020 to the date the monetary Development Contribution is made in accordance with the following formula:

Current CPI - Previous CPI x100

Previous CPI

where

Current CPI means the CPI published for the last December quarter before the date on which the monetary Development Contribution is being indexed; and

Previous CPI means the CPI published for the December quarter preceding the Current CPI.

12 Dedication of land

- 12.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 12.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the 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
- 12.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer 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) evidence in writing that the certificate of title has been produced at the office of Land Registry Services for the purposes of registration of the transfer.
- 12.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 12.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of any charge or liability for rates, taxes and charges except as otherwise agreed in writing by the Council.
- 12.4 The Developer will complete environmental remediation works on the land to be dedicated under this Deed as detailed in remedial action plans prepared on behalf of the Developer in respect of that land and the Council acknowledges that an environmental management plan will affect the Land at the time of dedication.

13 Carrying out of Work

- 13.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 13.2 The Developer, at its own Cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

14 Variation to Work

- 14.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 14.2 Without limiting clause 14.1, 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.

- 14.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 14.2.

15 Access to land by Developer

- 15.1 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Deed.
- 15.2 Without limiting clause 15.1, on the dedication of any part of the Land required to be dedicated to Council under this Deed, the Council grants the Developer, its servants, agents and consultants a licence to enter the part of the Land which has been dedicated to Council for the purpose of enabling the Developer to carry out any remaining Work that is required to be carried out on that land or to perform any other obligation imposed on the Developer in respect of that part of the Land by this Deed, and must do everything reasonably necessary to facilitate that access.
- 15.3 After accessing any land owned by the Council in accordance with clause 15.1 or 15.2, the Developer must, as far as is reasonably practicable, return the land to the condition it was in before the Developer entered the land, other than to the extent that the condition of the land has changed as a necessary consequence of the carrying out of Work, and subject to fair wear and tear.

16 Access to land by Council

- 16.1 The Council may enter any land on which Work is being carried out by the Developer in order to inspect, examine or test the Work, or to Rectify any breach by the Developer of its obligations under this Deed relating to the Work.
- 16.2 Where the Developer is carrying out Work on part of any land owned or controlled by the Council, the Developer is not to prevent the Council from entering and occupying any remaining part of that land or any other land owned or controlled by the Council should the Council need to access that land to undertake repairs or any other routine activities.
- 16.3 The Council is to give the Developer prior reasonable notice before it enters land under clause 16.1 or clause 16.2.

17 Council's obligations relating to Work

- 17.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.
- 17.2 The Council becomes liable for Works and the ongoing maintenance of those Works on Council owned land or on land to be dedicated to Council under this Deed on the later of:

- 17.2.1 the date on which the Works are completed for the purposes of this Deed in accordance with clause 18, and
- 17.2.2 the date on which the land on which the Works are located is dedicated to Council.

18 Completion of Work

- 18.1 When the Developer considers that a Work is complete, it must give Council a written notice to that effect.
- 18.2 Within 10 business days of the Developer's notice under clause 18.1, Council must inspect the Work the subject of the notice and, within a further 10 business days after that inspection must provide the Developer with written notice of whether or not it agrees that the Work is complete.
- 18.3 If the Council notifies the Developer that it does not consider that a Work is complete it must set out in its notice under clause 18.2 what it requires the Developer to do to complete the Work or what additional information it requires to determine if it considers the Work to be complete.
- 18.4 The Developer may submit a further notice to the Council under clause 18.1 after carrying out any additional work or providing any further information to the Council.
- 18.5 A Work is complete for the purposes of this Deed when the Council gives the Developer a written notice to that effect under clause 18.2.

19 Defects in Works

- 19.1 The Council may, at any time during the Defects Liability Period, give the Developer a notice to the effect that a Work contains a Defect and needs to be Rectified (**Defects Notice**), and the Defects Notice may specify a time by which the Defect is to be Rectified which must be reasonable having regard to the nature of the Defect.
- 19.2 The Developer must, at its Cost, Rectify any Defect the subject of a Defects Notice in accordance with the terms of the Defects Notice, and to the reasonable satisfaction of the Council and if the Defects Notice does not specify a time for compliance, the Developer must comply with it within a reasonable period of time having regard to the nature of the Defect.
- 19.3 If the Council issues a Defects Notice, the Council may do one or more of the following:
 - 19.3.1 require the Developer to certify that the Rectified Work has been carried out and completed in accordance with the requirements of this Deed and the Development Consent and any relevant Australian Standards, or
 - 19.3.2 within 10 business days of being given notice by the Developer that the Defect has been Rectified inspect the Work to determine if the Defect has been Rectified as required by clause 19.2.
- 19.4 The Council must provide all reasonable assistance to Developer to enable the Defect to be Rectified.

- 19.5 If the Developer does not Rectify a Defect within the period of time noted in the Defect Notice, or within 15 business days of receiving a Defect Notice (or within any longer period the Council allows, and provided that 15 business days or the longer period allowed by Council is reasonable having regard to the nature of the Defect) the Council may do one or more of the following:
- 19.5.1 apply the Defects Security to Rectify that Defect, or
- 19.5.2 require Developer to do all or any of the following:
- (a) assign to the Council its rights under any warranties or rights of action which it has under any contract for the construction of the Work, including allowing access to Council to the land on which it has been constructed,
 - (b) appoint the Council as its attorney to exercise its rights and powers under any contract for the construction of the Work, including any right to conduct proceedings or prosecute any action to enforce the Developer's rights against others under any such contract,
 - (c) execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to Rectify any Defects in accordance with the terms of this Deed and any such contract, or
 - (d) provide any assistance required for the purpose of defending or settling any Claim or the pursuit of any rights of recovery from others under any such contract.

20 Defects Security

- 20.1 Prior to the issue of a Subdivision Certificate before which an Item of Work must be completed, the Developer must lodge a bond with the Council for that Item of Work to the value of:
- 20.1.1 If the value of the Work is \$500,000 or less, five (5) per cent of the value of the Work, or
- 20.1.2 If the value of the Work is more than \$500,000—the sum of \$25,000 plus three (3) per cent of the value of the Work greater than \$500,000.
- 20.2 Clause 20.1 operates as a restriction on the issue of a Subdivision Certificate pursuant to s6.15 of the Act.
- 20.3 If the Developer does not comply with a Defect Notice in accordance with this Deed, the Council may:
- 20.3.1 Rectify the default at the expense of the Developer, and
- 20.3.2 draw down on the Defects Security amount without notice to the Developer to reimburse the Council for the Costs incurred in Rectifying the Developer's default, including to meet the Costs of Rectifying the Defect identified in the Defect Notice.
- 20.4 The Council will return the relevant part of the Defects Security to the Developer:
- 20.4.1 where no Defect Notice has been issued, within 20 business days from the end of the Defects Liability Period for the Work, or

- 20.4.2 where one or more Defect Notices have been given, within 20 business days after the last Defect has been Rectified in accordance with this Deed.

Part 3 – Dispute Resolution

21 Dispute resolution – expert determination

- 21.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 21.1.1 the Parties to the Dispute agree that it can be so determined, or
- 21.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 21.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 21.3 If a notice is given under clause 21.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 21.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 21.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 21.6 Each Party is to bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- 21.7 The Parties are to share equally the Costs of the President, the expert, and the expert determination.

22 Dispute Resolution - mediation

- 22.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 21 applies.
- 22.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 22.3 If a notice is given under clause 22.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 22.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 22.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has

been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- 22.6 Each Party is to bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 22.7 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

23 Security for performance of obligations

- 23.1 Notwithstanding any other provision of this Deed, if the Developer wishes to obtain a Subdivision Certificate which can only be issued if any Work is first completed under this Deed, and the Developer is not in a position to complete that Work by the time it wishes to apply for the Subdivision Certificate then the Developer may:
- 23.1.1 issue a notice to the Council setting out:
- (a) the Subdivision Certificate for which it wishes to apply,
 - (b) the Work or part of the Work which will not be complete before the application for the Subdivision Certificate is made,
 - (c) the Developer's estimate of the revised date for completion of the Work, and
 - (d) the Developer's calculation of the value of the uncompleted part of the Work determined by reference to the Contribution Value for the Work, which cannot exceed the Contribution Value for that Work (**Incomplete CV**), and
- 23.1.2 provide the Council with Security in an amount being 100% of the Incomplete CV of the Work.
- 23.2 On receipt of a notice under clause 23.1.1, the Council must within 10 business days notify the Developer in writing if it does not agree with the Incomplete CV set out in the notice.
- 23.3 If Council issues a notice under clause 23.2, the Parties must meet in an attempt to agree on the Incomplete CV and if no agreement is reached within 10 business days from the Council's notice under clause 23.2, the Parties are to refer the determination of the extent of the incomplete Work and the calculation of the Incomplete CV for that Work to a suitably qualified independent expert who has been agreed upon and appointed jointly by the Parties, or if the Parties cannot agree on an expert, to a suitably qualified independent expert appointed by the President of the NSW Law Society.
- 23.4 The determination of the independent expert appointed under clause 23.3 is final and binding on the Parties, and if the Incomplete CV determined by the expert is different to the value of the Security provided by the Developer under clause 23.1.2 the Developer must replace it with a Security for 100% of the Incomplete CV determined by the expert whereupon the Council must immediately return the original Security provided by the Developer.

- 23.5 If the Developer complies with clause 23.1 and 23.4 in respect of a Work then:
- 23.5.1 the Council will not withhold the issue of the Subdivision Certificate the subject of the written notice from the Developer as a result of the relevant Work being incomplete,
 - 23.5.2 the Developer will not be considered to be in breach of this Deed as a result of a failure to complete all or part of the Work before the issue of the relevant Subdivision Certificate, and
 - 23.5.3 this Deed will be deemed to have been amended such that the time for completion of the Work is the time noted in the Developer's notice under clause 23.1.1.
- 23.6 If the Work (or part of the Work) is not completed by the revised date for completion of the Work (or part of the Work) then the Council may call on the Security provided under this clause to meet any of its reasonable Costs incurred under this Deed in respect of the failure to complete the Work (or part of the Work) by the revised date for completion.
- 23.7 The Costs of any independent expert appointed under clause 23.3 are to be borne jointly by the Developer and Council.

24 Acquisition of land required to be dedicated

- 24.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 24.2 The Council is to only acquire land pursuant to clause 24.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 24.3 Clause 24.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 24.4 If, as a result of the acquisition referred to in clause 24.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.
- 24.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 24.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 24, including without limitation:
- 24.6.1 signing any documents or forms,
 - 24.6.2 giving land owner's consent for lodgement of any development application,
 - 24.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and

24.6.4 paying the Council's Costs arising under this clause 24.

25 Breach of obligations

- 25.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 25.1.1 specifying the nature and extent of the breach,
 - 25.1.2 requiring the Developer to:
 - (a) Rectify the breach if it reasonably considers it is capable of Rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of Rectifying the breach if it reasonably considers the breach is not capable of Rectification,
 - 25.1.3 specifying the period within which the breach is to be Rectified or compensation paid, being a period that is reasonable in the circumstances.
- 25.2 If the Developer fails to comply with a notice given under clause 25.1 relating to the carrying out of Work under this Deed, the Council may step-in and Rectify 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.
- 25.3 Any Costs incurred by the Council in Rectifying a breach in accordance with clause 25.2 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 25.4 For the purpose of clause 25.3, the Council's Costs of Rectifying a breach the subject of a notice given under clause 25.1 include, but are not limited to:
- 25.4.1 the Costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 25.4.2 all fees and charges necessarily or reasonably incurred by the Council in Rectifying the breach, and
 - 25.4.3 all legal Costs and expenses reasonably incurred by the Council, by reason of the breach.
- 25.5 Nothing in this clause 25 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

26 Enforcement in a court of competent jurisdiction

- 26.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 26.2 For the avoidance of doubt, nothing in this Deed prevents:
- 26.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or

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

Part 5 – Registration & Restriction on Dealings

27 Registration of this Deed

- 27.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 27.2 Not later than 3 months after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 27.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
- 27.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 27.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 27.4 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:
- 27.4.1 in so far as the part of the Land concerned is a Final Lot,
- 27.4.2 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.

28 Restriction on dealings

- 28.1 The Developer is not to:
- 28.1.1 sell or transfer the Land, other than a Final Lot, or
- 28.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 28.1.3 the Developer has, at no Cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 28.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 28.1.5 the Developer is not in breach of this Deed, and

- 28.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 28.2 Subject to clause 28.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 28.1.
- 28.3 Clause 28.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Other Provisions

29 Review of Deed

- 29.1 The Parties agree to review this Deed every 5 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.
- 29.2 For the purposes of clause 29.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 29.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 29.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 29.4 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.
- 29.5 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 29.1 (but not 29.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

30 Notices

- 30.1 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:
 - 30.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 30.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 30.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 30.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

- 30.3.1 delivered, when it is left at the relevant address,
- 30.3.2 sent by post, 2 business days after it is posted, or
- 30.3.3 sent by email and the sender does not receive a delivery failure message from the sender's email service provider within a period of 24 hours of the email being sent.
- 30.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

31 Approvals and Consent

- 31.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 31.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

32 Costs

- 32.1 Each Party is to pay its own Costs of preparing, negotiating, executing and stamping this Deed and any document related to this Deed.

33 Entire Deed

- 33.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 33.2 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.

34 Further Acts

- 34.1 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.

35 Governing Law and Jurisdiction

- 35.1 This Deed is governed by the law of New South Wales.
- 35.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

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

36 Joint and Individual Liability and Benefits

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

37 No Fetter

- 37.1 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.

38 Illegality

- 38.1 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.

39 Severability

- 39.1 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.
- 39.2 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.

40 Amendment

- 40.1 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 25C of the Regulation.

41 Waiver

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

- 41.2 A waiver by a Party is only effective if it:
- 41.2.1 is in writing,
 - 41.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 41.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 41.2.4 is signed and dated by the Party giving the waiver.
- 41.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 41.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 41.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

42 GST

- 42.1 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.
- 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.
- 42.2 Subject to clause 42.4, 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.
- 42.3 Clause 42.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 42.4 No additional amount shall be payable by the Council under clause 42.2 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.
- 42.5 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:

- 42.5.1 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;
- 42.5.2 that any amounts payable by the Parties in accordance with clause 42.2 (as limited by clause 42.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 42.6 No payment of any amount pursuant to this clause 42, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 42.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a Cost 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 or other liability.
- 42.8 This clause continues to apply after expiration or termination of this Deed.

43 Explanatory Note

- 43.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 43.2 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.



Schedule 1

(Clause 10)

Development Contributions

(see next page)



Column 1	Column 2	Column 3	Column 4	Column 5
Item /Contribution	Public Purpose	Manner & Extent	Timing	Contribution Value
A. Monetary Contributions				
1. Water Services contribution	Water	\$4,438.63 per Final Lot	Prior to the issue of each Subdivision Certificate in respect of Final Lots for the number of Final Lots created by the subdivision to which the Subdivision Certificate relates	Not applicable
2. Sewer services contribution	Sewer	\$1,513.00 per Final Lot	Prior to the issue of each Subdivision Certificate in respect of Final Lots for the number of Final Lots created by the subdivision to which the Subdivision Certificate relates	Not applicable
3. Public Service and Amenities Contribution	Off-site roads, Community Services and Administration	\$14,899.45 per Final Lot	Prior to the issue of each Subdivision Certificate in respect of Final Lots for the number of Final Lots created by the subdivision to which the Subdivision Certificate relates	Not applicable

B. Dedication of Land				
1. Land as public reserve	Open Space	Dedication of the Natural Vegetation Open Space Area and Recreation and Exotic Vegetation Area	Prior to or on registration of the plan of subdivision for Stage 3B.	Not applicable
C. Carrying out of Work				
1. Embellishment Work	Open Space and Recreation	<p>Embellishment of the Recreation and Exotic Vegetation Area to a maximum value of \$500,000 in a manner and to an extent generally consistent with that described in the Land Dedication Requirements at <i>Annexure A – Jumping Creek Public Recreation Space</i> or as otherwise agreed with the Council</p> <p>The public recreation area will include features such as playgrounds, gardens and shelters</p>	To be progressively completed with adjoining Stage and all work to be completed prior to the issue of a Subdivision Certificate for Stage 3A	\$500,000

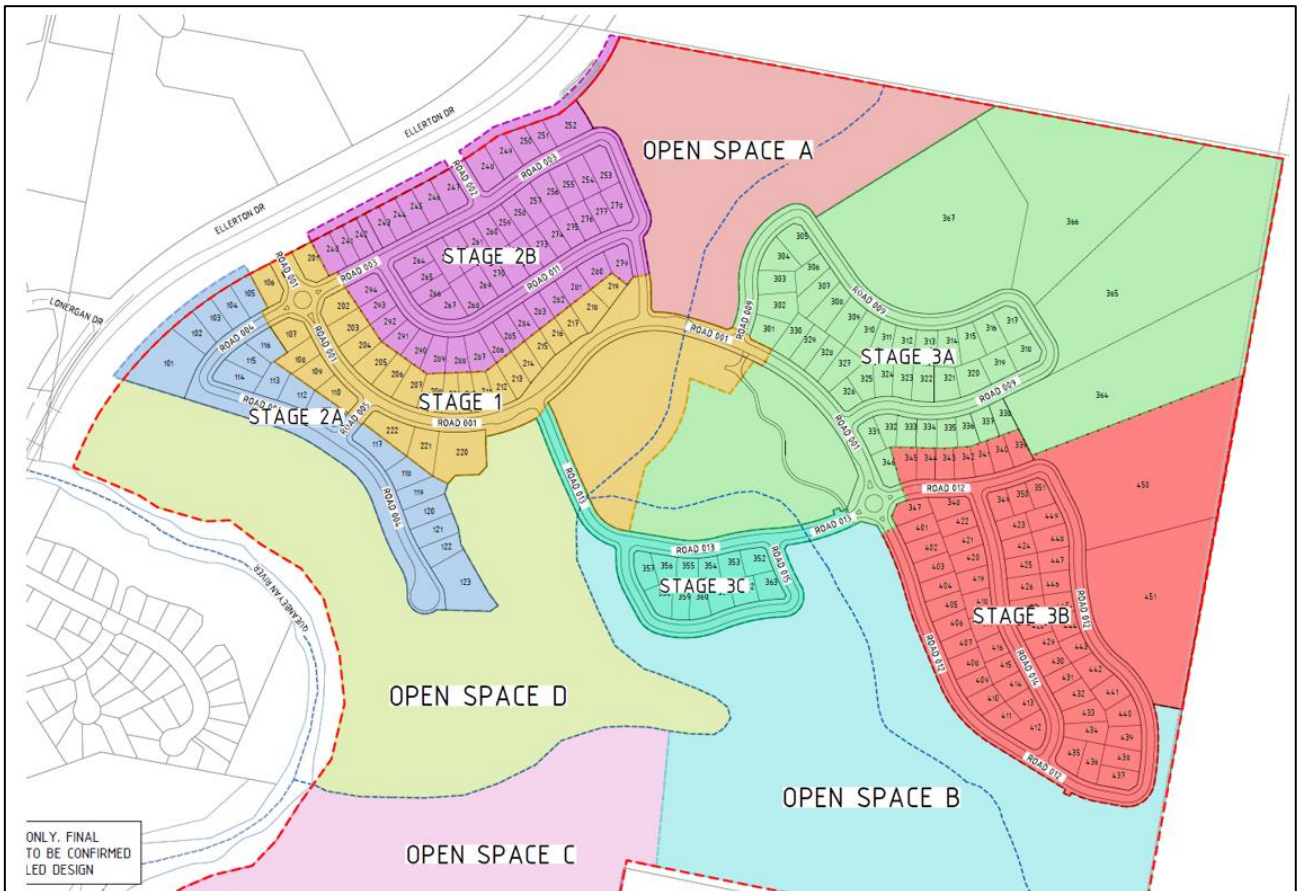


<p>2. Environmental Improvement Works</p>	<p>Open Space and Recreation</p>	<p>Works within the Natural Vegetation Open Space Area are to be undertaken generally consistent with the annexures to the Land Dedication Requirements, including:</p> <ol style="list-style-type: none"> 1. <i>Annexure B – Vegetation Management Plan;</i> 2. <i>Annexure E – Erosion Control Plan; and</i> 3. <i>Annexure F – Trail Management Plan.</i> 	<p>To be progressively completed with adjoining Stage and all work to be completed prior to the issue of a Subdivision Certificate for Stage 3B.</p>	<p>\$200,000 for each Open Space Area</p>
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Schedule 2

(Clause 1)

Staging Plan





Schedule 3

(Clause 1)

Land Dedication Requirements



Execution

Executed as a Deed

Dated: 9th November 2021

Executed on behalf of the Council



Chief Executive Officer



Witness



Mayor



Witness

Executed on behalf of the Developer by its duly authorised attorney under power of attorney dated 29 April 2021 Registered Book 4786 No. 473 and by executing this document the attorney states that it has received no notice of revocation of the power of attorney

_____**Malcolm Leslie**_____

Name of Attorney



_____**Mitchell Alexander**_____

Witness



Appendix

(Clause 43)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Queanbeyan-Palerang Regional Council ABN 95 933 070 982 of 256
Crawford St QUEANBEYAN NSW 2620 (**Council**)

and

Peet Jumping Creek Pty Ltd ABN 633 663 760 of Level 3, 64 Allara Street
CANBERRA CITY ACT 2600 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 1 DP 1249543

Description of Proposed Development

Development of the Land for urban purposes generally in accordance with the Staging Plan, involving the subdivision of the Land into 218 residential lots, 1 residual lot and public road dedications; design and construction of a proposed internal road network; provision of utility infrastructure such as stormwater drainage, sewerage, telecommunications and water; grading of the Land for final residential lots, landscape shaping, boundary interfaces and roadway levels; construction of pedestrian/cycleway and fire trails; construction of bio-retention basin, sedimentation basins and wetlands; and associated vegetation removal, street tree planting, landscaping, lighting and embellishments, as proposed in the Development Application.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to provide for the public amenities and services necessary to service the proposed residential subdivision of the Land.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement within the meaning of the Act which is proposed in connection with the development of the Land.

Effect of the Draft Planning Agreement

The effect of the Draft Planning Agreement is to:

- Provide for the dedication of land for a public reserve and rehabilitation and embellishment works on that public reserve,
- Provide for the payment of monetary contributions in respect of water and sewer infrastructure and other public amenities and services,
- Provide for appropriate enforcement mechanisms, and
- Provide for the registration of the planning agreement on the title to the Land.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The planning purposes of the Draft Planning Agreement are to secure the provision of infrastructure and public amenities and services for the proposed development in the absence of applicable contributions plans, and to provide for the dedication of a large public reserve.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act, in particular, the objects contained in s1.3 paragraphs (a), (c) and (d).

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 guiding principles in s8A of the Local Government Act 1993

The Draft Planning Agreement promotes the guiding principles in s8A of the *Local Government Act 1993* by:

- enabling the Council to carry out its functions in a way that provides the best possible value for residents and ratepayers,
- enabling the Council to manage lands and other assets so that current and future local community needs can be met in an affordable way, and
- providing a framework for the Council to work with others to secure appropriate services for local community needs.

These elements of the guiding principles in s8A of the *Local Government Act 1993* are promoted by the collection of monetary development contributions and the dedication of land for:

- the construction of water supply works and sewer supply works,
- the construction of road works,
- the embellishment of land to be dedicated for recreational uses, and
- the rehabilitation of land proposed to be dedicated for environmental conservation.

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

N/A

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 contributions to be made before the issuing of Subdivision Certificates