

# **Googong Urban Development Local Planning Agreement**

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

Queanbeyan City Council ("Council")  
Googong Development Corporation Pty Ltd ("Developer")

November 2011

## Googong Urban Development Local Planning Agreement

### Table of Contents

Summary Sheet.....	5
Parties.....	7
Background.....	7
Operative provisions.....	7
Part 1 - Preliminary .....	7
1    Definitions and Interpretation .....	7
2    Planning Agreement under the Act .....	15
3    Application of this Agreement .....	15
4    Status of Developer’s obligation to make Development Contributions .....	15
5    Ownership of Land .....	16
Part 2 - Development Contributions.....	16
6    Provision of Development Contributions .....	16
7    Offsite Road Work and Offsite Road Contributions.....	18
8    Maintenance of public open space, road verges and other public facilities .....	19
9    Procedures relating to payment of monetary Development Contributions.....	21
10   Procedures relating to the dedication of land.....	21
11   Carrying out of Work.....	22
12   Access to the Land.....	22
13   Protection of people and property.....	23
14   Damage and repairs to Work .....	23
15   Variation of Work.....	23
16   Procedures relating to the completion of Work .....	23
17   Procedures relating to the rectification of defects .....	24
18   Failure to carry out Work .....	24
19   Works-As-Executed-Plan .....	24
20   Application of sections 94, 94A and 94EF of the Act to the Development.....	25
21   Procedures relating to Sewer, Potable Water and Recycled Water Infrastructure.....	25
Part 3 - Recoupment .....	25

**Googong Urban Development Local Planning Agreement**  
**Queanbeyan City Council**  
**Googong Development Corporation Pty Ltd**

---

22	Surplus Development Contributions .....	25
23	Payments to Developer .....	26
<b>Part 4 – Other Provisions .....</b>		<b>27</b>
24	Security for Contribution Obligations.....	27
25	Defects Security .....	30
26	Provision of Guarantee.....	31
27	Recovery of cost of Work carried out by the Council.....	31
28	Registration of this Agreement.....	31
29	Review of this Agreement .....	32
30	Implementation of this Agreement.....	34
31	Dispute resolution .....	34
32	Notices.....	34
33	Approvals and Consent.....	35
34	Assignment and dealings.....	35
35	Entire agreement .....	37
36	Further Acts .....	37
37	Governing Law and Jurisdiction.....	37
38	Joint and individual liability and benefits.....	37
39	No fetter .....	38
40	Representations and warranties .....	38
41	Severability .....	38
42	Modification.....	39
43	Waiver .....	39
44	GST.....	39
45	Effect of Schedulised terms and conditions.....	40
46	New Laws.....	40
47	Confidentiality.....	41
48	Indemnity and Insurance.....	41
49	Explanatory Note Relating to this Agreement .....	42
50	Statement of Compliance .....	42
<b>Schedule 1 - Development Contributions.....</b>		<b>44</b>
<b>Development Contributions on the following pages.Schedule 2- Dispute Resolution .....</b>		<b>44</b>
<b>Schedule 2- Dispute Resolution .....</b>		<b>45</b>
<b>Schedule 3 - Indicative Staging Plan.....</b>		<b>47</b>
<b>Indicative Staging Plan on following page.Schedule 4 - Development.....</b>		<b>47</b>
<b>Schedule 4 - Development .....</b>		<b>48</b>

**Googong Urban Development Local Planning Agreement**  
**Queanbeyan City Council**  
**Googong Development Corporation Pty Ltd**

---

<b>Schedule 5 - Landscape and Open Space Strategy .....</b>	<b>49</b>
<b>Schedule 6 - Equivalent Person Quotients .....</b>	<b>49</b>
<b>Schedule 6 - Equivalent Person Quotients .....</b>	<b>50</b>
<b>Schedule 7 - Per Dwelling Contribution Values by Contribution Category .....</b>	<b>51</b>
<b>Execution.....</b>	<b>52</b>
<b>Appendix 1 - Map .....</b>	<b>53</b>
<b>Appendix 2 – Explanatory Note.....</b>	<b>54</b>

## Googong Urban Development Local Planning Agreement

### Summary Sheet

#### Council:

**Name:** Queanbeyan City Council

**Address:** 257 Crawford St, Queanbeyan, NSW 2620

**Telephone:** (02) 6285 6276

**Facsimile:** (02) 6298 4666

**Email:** [GroupManager.StrategicDevelopment@qcc.nsw.gov.au](mailto:GroupManager.StrategicDevelopment@qcc.nsw.gov.au)

**Representative:** Group Manager, Strategic Development

#### Developer:

**Name:** Googong Development Corporation Pty Ltd

**Address:** Level 3, 64 Allara St, Canberra ACT 2061

**Telephone:** (02) 6230 0800

**Facsimile:** (02) 6230 0811

**Email:** [mark.attiwill@ciclunited.com.au](mailto:mark.attiwill@ciclunited.com.au)

**Representative:** Mark Attiwill, Googong Project Director

#### Land:

See the Map in Appendix 1.

#### Development:

See Schedule 4.

#### Development Contributions:

See Schedule 1.

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

See clause 20.

**Security:**

See clauses 24, 25 and 26.

**Registration:**

See clause 28.

**Restriction on dealings:**

See clause 34.

**Dispute Resolution:**

See clause 31 and Schedule 2.

## Googong Urban Development Local Planning Agreement

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

### Parties

**Queanbeyan City Council** ABN 12 842 195 133 of 257 Crawford St,  
Queanbeyan, NSW 2620 (**Council**)

and

**Googong Development Corporation Pty Ltd** ABN 83104332523 of Level  
3, 64 Allara Street, Canberra ACT 2601 (**Developer**)

### Background

- A The Developer proposes to carry out the Development on the Land.
- B The Developer owns the Developer's Land and has a right to purchase the Option Land.
- C The Developer has made the First Development Application.
- D The Developer intends to lodge further Development Applications relating to the Development.
- E The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

### Operative provisions

## Part 1 - Preliminary

### 1 Definitions and Interpretation

- 1.1 In this Agreement, the following definitions apply:

**Act** means the *Environmental Planning and Assessment Act 1979*.

**Affordable Home Packages** means:

- (a) a contract for sale for a completed Dwelling; or
- (b) two separate contracts for sale of vacant land and a Dwelling on that land,

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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with a price (or in the case of (b), combined price) of not more than \$337,000, indexed in accordance with *Cordell Housing Index Price*.

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

**AD1** is the number of Dwellings in Development Type 1 for which Development Consent has been obtained by the Developer in the Googong Urban Release Area.

**AD2** is the number of Dwellings in Development Type 2 for which Development Consent has been obtained by the Developer in the Googong Urban Release Area.

**AD3** is the number of Dwellings in Development Type 3 for which Development Consent has been obtained by the Developer in the Googong Urban Release Area.

**Area** means the Council's area within the meaning of the *Local Government Act 1993*.

**Authorised Officer** means in the case of any party, a director, secretary or and officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this Agreement.

**Authority** means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier within the meaning of the Act.

**BASIX Criteria** means the minimum criteria which would need to be satisfied in order to obtain a BASIX Certificate within the meaning of the *Environmental Planning & Assessment Regulation 2000*.

**Business Day** means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

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

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

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

but does not include information that the Council reasonably determines it is required to make available for inspection in accordance with s18 of the *Government Information (Public Access) Act 2009*.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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**Consent Authority** means, in relation to a Development Application, the Authority having the function to determine the Development Application.

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

**Contribution Category** means the category listed in Column 2 of Schedule 1 in relation to a Contribution Item.

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

**Contribution Obligation** means in relation to each Contribution Category:

- (a) the Per Dwelling Contribution Value by Contribution Category for that Contribution Category for Development Type 1 x AD1; plus
- (b) the Per Dwelling Contribution Value by Contribution Category for that Contribution Category for Development Type 2 x AD2; plus
- (c) the Per Dwelling Contribution Value by Contribution Category for that Contribution Category for Development Type 3 x AD3.

**Contribution Security** means Security for a Contribution Obligation.

**Contribution Value**, in relation to a Contribution Item, means:

- (a) the amount specified in Column 6 of Schedule 1 corresponding to the Contribution Item, or
- (b) if no amount is specified, the amount agreed between the Parties.

**CPI** means Consumer Price Index (All Groups Index) for Sydney as issued by the Australian Bureau of Statistics.

**Defects Security** means a bank guarantee, bond, or other form of security approved by the Council, on terms reasonably acceptable to the Council.

**Defects Liability Period** means, the period commencing on the date of Practical Completion of a Work or Phase, and ending at a time determined by Council acting reasonably and notified to the Developer in writing at the time of issue of the Compliance Certificate for that Work or Phase.

**Developer's Land** means the land shown in grey on the Map and described as *Googong Development Corporation Pty Limited (GDC)*.

**Development** means any development carried out by the Developer within the Googong Urban Release Area generally in accordance with the documents contained in Schedule 4 of this Agreement, including the development of up to 5,550 Dwellings.

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

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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**Development Consent** has the same meaning as that term has 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, the provision of Public Infrastructure or another public purpose as identified in Column 3 of Schedule 1.

**Development Servicing Plan** means a plan prepared for the purpose of calculating the amount of monetary contributions that should be required towards the cost of water management works to be specified in a notice under s306(2) of the *Water Management Act 2000*.

**Development Type** means Development Type 1, Development Type 2, or Development Type 3.

**Development Type 1** means single Dwellings on Final Lots (including individual lots in a strata plan) equal to or greater than 468m<sup>2</sup>.

**Development Type 2** means single Dwellings on Final Lots (including individual lots in a strata plan) less than 468m<sup>2</sup>.

**Development Type 3** means:

- (a) residential apartments, or
- (b) secondary dwellings, as defined in the LEP.

**Dwelling** has the same meaning as in the LEP.

**Environmental Planning Instrument** has the same meaning as that term has in the Act.

**Equivalent Person Quotient** means in relation to a Development Type, the number noted in Column 3 of Schedule 6, in relation to that Development Type.

**Equivalent Person** means, at any given time the number of dwellings for each Development Type for which Development Consent has been obtained multiplied by the Equivalent Person Quotient for that Development Type.

**Final Completion** means:

- (a) where the Council has not given the Developer a Rectification Notice under clause 17.1, 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 17.1, 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 which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development.

## Googong Urban Development Local Planning Agreement

Queanbeyan City Council

Googong Development Corporation Pty Ltd

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**First Development Application** means the development application DA41 – 2011 lodged with Council by the Developer on 16 February 2011.

**Future Obligations** means any obligations under or by virtue of this Agreement which at the time of any proposed assignment or novation contemplated by clause 34.1 are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect.

**Googong Common** means the part of the Land shown as such on the Map.

**Googong Urban Release Area** means the area shown on the *Queanbeyan Local Environmental Plan 2009 (Googong) – Urban Release Area Map*.

**GST** has the meaning it has in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Hamlet** means the two hamlets shown on the Indicative Staging Plan.

**Implementation Group** means a body comprised of representatives of the Developer and the Council that has the roles set out in clause 30 (amended from time to time with the agreement of the Parties) that is to be formally established by a further agreement contemplated by clause 30.3.

**Indicative Staging Plan** means the plan contained in Schedule 3 to this Agreement, amended from time to time with the agreement (not unreasonably withheld), in writing, of Council.

**Joint Management Committee** means a body comprised of representatives of the Developer and the Council that has the roles set out in clause 8.4 (amended from time to time with the agreement of the Parties) that is to be formally established by a further agreement contemplated by clause 8.7.

**Land** means the Developer's Land and the Option Land.

**Landscape and Open Space Strategy** means a document generally in the form of the document contained in Schedule 5, as amended by the Developer from time to time, provided that to the extent it relates to community land within the meaning of the *Local Government Act 1993*, the amendments must have been made prior to the adoption of a community land plan of management of the kind referred to in clause 8.2 in respect of that community land .

**Landscape Supervisor** means a suitably qualified person appointed by the Joint Management Committee that reports to that Committee on the following matters:

- (a) the performance and management of contractors in relation to matters the Landscape Works,

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- (b) any recommendations concerning maintenance practices and procedures for public land and facilities in the Googong Urban Release Area,
- (c) such other matters as agreed to by the Parties in accordance with a further arrangement contemplated by clause 8.7.

**Landscaping Works** means the Contribution Items numbered 1.03, 1.04, 1.05, 1.06, 1.07, 1.08, 1.09, 1.10 and 1.11.

**Law** means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority, presently applying or as they may apply in the future.

**LEP** means the *Queanbeyan Local Environmental Plan (Googong) 2009*.

**LPMA** means the Land and Property Management Authority.

**Map** means the map which is Appendix 1 to this Agreement.

**Neighbourhood** means the individual Neighbourhoods as shown on the Indicative Staging Plan, and referred to as *NH 1A, NH 1B, NH 2, NH 3, NH 4, and NH 5*.

**Neighbourhood Centre** means the neighbourhood centre in each Neighbourhood, as shown on the plans in Schedule 4.

**New Law** means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this Agreement.

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

**Offsite Local Roads** means the Work in Contribution Item 5.01 of Schedule 1.

**Offsite Road Work** means any of the individual items of Work listed in Column 4 of Schedule 1 which comprise part of the Offsite Local Roads.

**Offsite Roads Contribution** means a monetary Development Contribution for Offsite Local Roads, paid on a per dwelling basis, which is equal to the Per Dwelling Contribution Value by Contribution Category for the Offsite Local Roads Contribution Category.

**Offsite Roads MOU** means the memorandum of understanding entered into by the Council and Canberra Investment Corporation Limited on 13 June 2008.

**Open Space Land- Encumbered** means land dedicated under this Agreement that is to be made available for recreation (active, passive and visual) but which serves another primary public purpose, including (but not limited to) drainage, environmental protection, road buffer or service easement.

## Googong Urban Development Local Planning Agreement

Queanbeyan City Council

Googong Development Corporation Pty Ltd

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**Open Space Land – Unencumbered** means land dedicated under this Agreement that is to be used exclusively for the primary public purpose of recreation (active, passive and visual).

**Option Land** means the land shown in blue on the Map and described as *Under Option to GDC*.

**Other Developer** means a person other than the Developer who obtains Development Consent to carry out development in the Googong Urban Release Area that will or is likely to require the provision of or increase the demand for Public Infrastructure.

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

**Per Dwelling Contribution Value** means, in relation to a Development Type, the sum of the Contribution Values for all Contribution Items divided by the Projected Total Population multiplied by the Equivalent Person Quotient for that Development Type, as shown in Column 3 of Schedule 6.

**Per Dwelling Contribution Value by Contribution Category** means in relation to each Development Type and Contribution Category, the sum of the Contribution Values for the Contribution Items in that Contribution Category divided by the Projected Total Population multiplied by the Equivalent Person Quotient for that Development Type, as shown in Column 2 of Schedule 7.

**Phase** means a part of a Work that is determined in accordance with clause 11.4.

**Phase Value** means the proportion of the Contribution Value for a Contribution Item corresponding to a Phase that is determined in accordance with clause 11.5.

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

**Projected Total Population** means 15,702 people.

**Public Infrastructure** means any Contribution Item with a \$ value attributed to that Contribution Item in Column 6 of Schedule 1.

**Recoupment Contribution** means a monetary Development Contribution, special rate, or other amount paid to the Council by Other Developers to meet the costs of Public Infrastructure.

**Rectification Notice** means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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**Security** means any combination of cash, a bank guarantee, bond, or other form of security approved by the Council, on terms reasonably acceptable to the Council.

**Stage** means a stage of the Development as indicated in the Indicative Staging Plan and as modified from time to time with the agreement in writing of Council.

**State** means the State of New South Wales.

**State Government** means the government of New South Wales.

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

**Surplus Value** is the amount by which the sum of all Contribution Values exceeds the sum of the Contribution Obligations for all Contribution Categories and all Development Types.

**Town Centre** means the area indicated as the *Town Centre* on the Indicative Staging Plan.

**Up-specification Works** means maintenance works and services in relation to the public open space and other land and public facilities dedicated by the Developer to the Council under this Agreement that are not works or services which Council would ordinarily carry out, as specified in the following documents:

- a) the Landscape and Open Space Strategy; and
- b) any further arrangements between the Parties of the kind contemplated by clauses 8.7 and 8.8.

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

- 1.2 In this Agreement unless the contrary intention appears:
- 1.2.1 a reference to this Agreement or another instrument includes any variation or replacement of any of them,
  - 1.2.2 a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them,
  - 1.2.3 the singular includes the plural and vice versa,
  - 1.2.4 the word "person" includes a firm, a body corporate, an unincorporated association or an authority,
  - 1.2.5 a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns,
  - 1.2.6 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally,
  - 1.2.7 an agreement, representation or warranty on the part of two or more persons binds them jointly and severally,
  - 1.2.8 a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to

## **Googong Urban Development Local Planning Agreement**

### **Queanbeyan City Council**

### **Googong Development Corporation Pty Ltd**

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a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually,

- 1.2.9 “include” or “including” when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind,
- 1.2.10 if a Party is prohibited from doing anything, it is also prohibited from:
  - (a) allowing or causing it to be done; and
  - (b) doing or omitting to do anything which results in it happening,
- 1.2.11 a reference to a statute, ordinance, code or law includes a statute, ordinance, code or law of the Commonwealth of Australia,
- 1.2.12 a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions,
- 1.2.13 no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement,
- 1.2.14 any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act, and
- 1.2.15 the Schedules form part of this Agreement.

## **2 Planning Agreement under the Act**

- 2.1 The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.

## **3 Application of this Agreement**

- 3.1 This Agreement applies to the Land and the Development.

## **4 Status of Developer’s obligation to make Development Contributions**

- 4.1 The Developer is under no obligation to make the Development Contributions to the Council as provided for in this Agreement unless and until both of the following matters have occurred in sequence:
  - 4.1.1 Development Consent is granted to any part of the Development subject to a condition imposed under section 93I(3) of the Act requiring this Agreement to be entered into; and
  - 4.1.2 this Agreement is entered into as required by clause 25C(1) of the Regulation and the Council dates this Agreement the date of its execution of this Agreement under this clause.

- 4.2 Until then, this document, executed only by the Developer, is to be read and construed as containing the Developer's irrevocable offer to enter into this Agreement and to make the Development Contributions once all of the matters specified in clause 4.1 have occurred.
- 4.3 The Council must notify the Developer immediately after the Council executes this Agreement and promptly provide the Developer with the Agreement as executed by the Council.
- 4.4 The Developer's obligation to make Development Contributions only arises at the times specified in this Agreement.
- 4.5 This Agreement will cease to apply in relation to a Stage of the Development, and the Land on which that Stage of the Development is constructed, once the Developer has met all of its obligations in relation to that Stage under this Agreement.

## **5 Ownership of Land**

- 5.1 The Developer warrants that it has legally enforceable rights to purchase the Option Land on terms which enable it to comply with the provisions of clause 5.2.
- 5.2 The Developer will ensure that it becomes the registered proprietor of the Option Land, or any part thereof, prior to any obligations arising under this Agreement which require works to be carried out on the Option Land, or which require any part of the Option Land to be dedicated to Council, unless otherwise agreed with Council.
- 5.3 Within 14 days of the Developer exercising any option to purchase the Option Land, the Developer must notify the Council in writing of:
  - 5.3.1 the date that the option was exercised; and
  - 5.3.2 the date on which it will become the registered proprietor of the Option Land.

## **Part 2 - Development Contributions**

### **6 Provision of Development Contributions**

- 6.1 The Developer will for the purpose of providing amenities or services to the public at its risk and expense carry out and deliver the Development Contributions in accordance with this Agreement.
- 6.2 The Developer will carry out and deliver the Development Contributions at the time or times and in the manner set out in the operative provisions of this Agreement and Schedule 1.
- 6.3 Schedule 1 has effect in relation to Development Contributions to be made by the Developer under this Agreement.
- 6.4 The Developer is to make such other Development Contributions to the Council as are provided for in this Agreement to the reasonable satisfaction of the Council.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 6.5 The Council is, within a reasonable time, having regard to the stage of completion of the Development, to apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 6.6 The Contribution Value of each Development Contribution is to be indexed annually between 30 June 2011 and the date on which the Development Contribution is made, in accordance with the following formula:

$$\frac{\text{Current CPI} - \text{Previous CPI} \times 100}{\text{Previous CPI}}$$

#### Previous CPI.

where:

**Current CPI** means the CPI published for the June quarter before the date on which the Contribution Value is being indexed; and

**Previous CPI** means the CPI published for the June quarter preceding the Current CPI.

- 6.7 For the avoidance of doubt, if the actual cost of delivering 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.
- 6.8 If, at any time after the date of this Agreement, the Developer, CIC Australia or Council obtains funding from any external source for any Contribution Item that is not a Recoupment Contribution (**Alternative Funding**), it must notify the Parties within 7 days of obtaining the Alternative Funding.
- 6.9 If the Council obtains the Alternative Funding, then the Parties must meet within 30 days of the provision of the notice under clause 6.8 to determine whether:
- 6.9.1 the Council will provide the relevant Contribution Item, in which case the Developer has no further obligation under this Agreement to provide the Contribution Item; or
- 6.9.2 the Developer will remain liable to provide the relevant Contribution Item under this Agreement, in which case, the Council will remit the Alternative Funding to the Developer, in a manner and time determined by the Parties acting reasonably, provided that the Council will have no obligation to pay the Developer an amount which exceeds the actual costs incurred by the Developer in providing the Contribution Item, and the Contribution Value of that Contribution Item will be reduced by the amount of Alternative Funding provided to the Developer, but only for the purposes of calculating the Surplus Value.
- 6.10 If the Developer obtains Alternative Funding then the Contribution Value of the Contribution Item for which Alternative Funding is obtained is to be reduced by the amount of the Alternative Funding, but only for the purposes of calculating the Surplus Value.
- 6.11 If the Alternative Funding is obtained in respect of a Contribution Item which involves the payment of monetary Development Contributions by the Developer (**Monetary Contribution Item**), then clauses 6.9 and 6.10 do not apply, and the Alternative Funding is to be applied:

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 6.11.1 if obtained by the Developer, to make the monetary Development Contributions the Developer is required to pay in respect of that Monetary Contribution Item; and
- 6.11.2 if obtained by the Council, to meet Council's costs of providing the works or facilities to which that Monetary Contribution Item relates.
- 6.12 If the costs of providing the works and facilities to which a Monetary Contribution Item relates are to be met partly by the Council (**Council's Proportion**) and partly through the monetary Development Contributions to be made by the Developer (**Developer's Proportion**), then the monetary Development Contributions payable by the Developer in respect of that Monetary Contribution Item will be reduced by the amount of the Alternative Funding that Council receives and applies pursuant to clause 6.11.2, but only if, and to the extent that that Alternative Funding exceeds Council's Proportion of the costs of providing the works and facilities.
- 6.13 The Contribution Value of a Monetary Contribution Item will be reduced by the amount of Alternative Funding received by the Developer, or the amount by which the Developer's monetary Development Contributions are reduced pursuant to clause 6.12, for the purposes only of calculating the Surplus Value.
- 6.14 For the avoidance of doubt, Alternative Funding does not include any funding for Contribution Items, from whatever source, which is referred to in Schedule 1.

## 7 Offsite Road Work and Offsite Road Contributions

- 7.1 In the event that the Council does not complete any Offsite Road Work by the time specified in Column 5 of Schedule 1 (**Outstanding Offsite Road Work**), the Developer may withhold the payment of any further Offsite Roads Contributions which relate to that Outstanding Offsite Road Work until such time as Council calls tenders for that Outstanding Offsite Road Work, at which time, the Developer must pay the Council the Offsite Roads Contributions which have been withheld pursuant to this clause relating to that Outstanding Offsite Road Work for which tenders have been called.
- 7.2 For the purpose of clause 7.1, the Council must provide the Developer with 14 days prior written notice of the calling of tenders for any particular Offsite Road Work.
- 7.3 If the Developer exercises its right to withhold Offsite Roads Contributions in accordance with clause 7.1:
  - 7.3.1 the Developer will not be considered to be in breach of an obligation to make Offsite Roads Contributions in respect of the Outstanding Offsite Road Work by the time specified in Column 5 of Schedule 1;
  - 7.3.2 the issue of any Subdivision Certificates will not be delayed as a result of the failure to make the Offsite Roads Contributions in respect of the Outstanding Offsite Road Work by the time specified in Column 5 of Schedule 1;
  - 7.3.3 the time for making the Offsite Roads Contributions in respect of the Outstanding Offsite Road Work contained in Column 5 of

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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Schedule 1 will be deemed to have been modified to be the date on which tenders are called for the Outstanding Offsite Road Work; and

- 7.3.4 the time for completion of the Outstanding Offsite Road Work contained in Column 5 of Schedule 1 will be deemed to have been modified to be a date determined by Council in consultation with the Developer, being a date after the calling of tenders for that Outstanding Offsite Road Work..
- 7.4 A disagreement between the Parties regarding the most economical manner in which to deliver the Offsite Road Works is a dispute to which clause 31 of this Agreement applies, which must be referred for expert determination.
- 7.5 Council is to use the best cost estimate available to it to calculate the actual cost of delivering the Offsite Local Roads.
- 7.6 The Council is to notify the Developer of its calculation in clause 7.5 and provide the Developer with all supporting documentation relating to its calculation.
- 7.7 Within 14 days of being provided with the documentation in clause 7.6, the Developer is to either:
- 7.7.1 accept the calculated amounts as notified by Council under clause 7.6, in which case those amounts are to be used to adjust the Contribution Value for Offsite Local Roads and Per Dwelling Contribution Value by Contribution Category for Offsite Local Roads, or
- 7.7.2 reject the calculated amounts notified and request an independent reviewer to calculate the actual cost of delivering the Offsite Local Roads.
- 7.8 If the Developer requests an independent review under clause 7.7.2, the cost calculated by the independent reviewer is to be used to adjust the Contribution Value for Offsite Local Roads and Per Dwelling Contribution Value by Contribution Category for Offsite Local Roads.
- 7.9 If, following a variation pursuant to clauses 7.7 or 7.8, the Contribution Value for Offsite Local Roads increases, then the increased Contribution Value only applies in respect of Offsite Roads Contributions to be made by the Developer from the date of the increase in the Contribution Value onwards, and in that respect, the Per Dwelling Contribution Value by Contribution Category for Offsite Local Roads will be recalculated at that point in time, with reference to the increased Contribution Value.
- 7.10 Notwithstanding any other provision of this Agreement, the making of payments by or on behalf of CIC Australia or the Developer under the Offsite Roads MOU will be considered to be the making of monetary Development Contributions comprising the Offsite Roads Contributions.
- 7.11 In addition to any other obligations under this Agreement, the Developer agrees to bear the costs of protecting, relocating or preserving services impacted by the delivery of the duplication of Old Cooma Road.

## **8 Maintenance of public open space, road verges and other public facilities**

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 8.1 The Parties acknowledge and agree that the arrangements provided for in this clause 8 constitute the provision of a material public benefit within the meaning of s93F(1) of the Act by the Developer to the Council.
- 8.2 The Council, to the extent permitted by law, is to have regard to the Landscape and Open Space Strategy and any further arrangements between the Parties of the kind contemplated by clauses 8.7 and 8.8 when adopting a community land plan of management (**POM**) in relation to community land, within the meaning of the *Local Government Act 1993*, within the Googong Urban Release Area.
- 8.3 If the Council adopts a POM which is consistent with the Landscape and Open Space Strategy and any further arrangements between the Parties of the kind contemplated by clauses 8.7 and 8.8, then the Developer agrees to fund the Up-specification Works.
- 8.4 Within 12 months of execution of this Agreement by the Developer, the Parties agree to form the Joint Management Committee, which is to have the following functions:
- 8.4.1 assisting the Council in the preparation of a draft POM,
  - 8.4.2 considering and making recommendations to the Council in relation to appropriate amendments to the draft POM in response to public submissions,
  - 8.4.3 considering and making recommendations to the Council in relation to possible future amendments to an adopted POM,
  - 8.4.4 considering and making recommendations to the Council in relation to any tenders for the provision of the Up-specification Works, including the preparation of draft tender specifications and performance standards in relation to Up-specification Works
  - 8.4.5 the appointment of the Landscape Supervisor; and
  - 8.4.6 any other functions agreed between the Parties from time to time.
- 8.5 If the Council does not adopt a POM which is consistent with the Landscape and Open Space Strategy and any further arrangements between the Parties of the kind contemplated by clauses 8.7 and 8.8, then the Joint Management Committee will be disbanded within 14 days of the adoption of the POM.
- 8.6 For the avoidance of doubt, the Parties agree that:
- 8.6.1 the adoption of any recommendation of the Joint Management Committee or otherwise is at the discretion of the Council in accordance with its functions under the *Local Government Act 1993*, including in relation to the selection of tenders under s377 of that Act, and
  - 8.6.2 the Joint Management Committee will not be involved in the preparation of tender documents and will not make recommendations to the Council concerning tenders that do not relate to Up-specification Works.
- 8.7 The Parties, acting reasonably, agree to enter into such further, more detailed arrangements as are reasonably necessary in relation to the matters addressed by this clause 8 and that those further arrangements will not be inconsistent with this Agreement.

- 8.8 Without limiting clause 8.7, the Parties agree to enter into further, more detailed arrangements specifying the nature and extent of the Up-specification Works.
- 8.9 Notwithstanding any other provision of this Agreement, the Developer is to maintain the Pink Tailed Worm Lizard Conservation Area as described in the '*Pink Tailed Worm Lizard Impact Assessment Report*' dated January 2011 (**PTWL Report**) referred to in Column 5 of the table to Schedule 1 in relation to Contribution Item 1.11, in accordance with the PTWL Report, until the issue of the Subdivision Certificate for the creation of the Final Lot which will accommodate the 15,702th Equivalent Person in the Development.
- 8.10 For the avoidance of doubt, the Developer's obligation under clause 8.9 is not an Up-specification Work.

## **9 Procedures relating to payment of monetary Development Contributions**

- 9.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement 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, as the case may be.
- 9.2 The Developer is to give the Council not less than 2 Business Days written notice of its intention to pay a monetary Development Contribution.
- 9.3 The Developer is not required to pay a monetary Development Contribution under this Agreement until the Council, after having received the Developer's notice under clause 9.2, has given to the Developer a tax invoice for the amount of that Development Contribution.
- 9.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

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

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement upon registration of a dealing which vests the land in the Council.
- 10.2 For the purposes of clause 10.1, but without limiting the means by which the transfer may be effected under clause 10.1:
- 10.2.1 the Developer may give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
- 10.2.2 if so, the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer,

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 10.2.3 if so, the Developer is to lodge the instrument of transfer for registration at the Department of Lands within 7 days of receiving it from the Council duly executed,
- 10.2.4 if so, the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 If this Agreement requires the Developer to dedicate land on which the Developer is also required to carry out a Work under this Agreement, then, not later than 7 days after the Work is taken to have been completed in accordance with this Agreement, the Developer is to provide to the Council or lodge with the LPMA all documents necessary to enable the transfer of the land to Council..
- 10.4 Clause 10.3 does not affect any obligation under this Agreement which requires the dedication of land prior to the completion of any Work on that land.

## 11 Carrying out of Work

- 11.1 Subject to clause 6.9, the Developer is to carry out and deliver the Work at the time and in the manner set out in Schedule 1.
- 11.2 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any relevant Development Consent and any other applicable law.
- 11.3 The Landscaping Works are to be carried out in accordance with the Landscape and Open Space Strategy.
- 11.4 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.
- 11.5 The Parties agree that the Phase Value is to be determined by:
  - 11.5.1 the agreement in writing of the Parties; or
  - 11.5.2 failing agreement, the amount determined by a suitably qualified quantity surveyor appointed by the Parties.
- 11.6 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.
- 11.7 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.

## 12 Access to the Land

- 12.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- 12.2 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 under this Agreement that is required to

be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

- 12.3 If the Developer is required to carry out Work under this Agreement on land that is not owned or controlled by the Council or Developer, the Developer is to first obtain all consents necessary for the Developer to enter onto that land and carry out the required Work.

### **13 Protection of people and property**

- 13.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 13.1.1 all necessary measures are taken to protect people and property,
  - 13.1.2 unnecessary interference with the passage of people and vehicles is avoided,
  - 13.1.3 nuisances and unreasonable noise and disturbances are prevented, and
  - 13.1.4 the Developer complies with all laws including all conditions of any applicable Development Consent, environmental laws and occupational health and safety laws.

### **14 Damage and repairs to Work**

- 14.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

### **15 Variation of Work**

- 15.1 A Work is not to be varied by the Developer, unless:
- 15.1.1 the Parties agree in writing to the variation, and
  - 15.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
  - 15.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 15.2 For the purposes of clause 15.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

### **16 Procedures relating to the completion of Work**

- 16.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement, and the Work is taken to have been completed for the purposes of this Agreement, on Practical Completion of the Work.
- 16.2 On Practical Completion of a Work or Phase, the Council accepts responsibility for the Work, other than responsibility for complying with a

Rectification Notice, and responsibility for funding the Up-specification Works in accordance with clause 8.3 of this Agreement, which remains with the Developer.

## **17 Procedures relating to the rectification of defects**

- 17.1 During the Defects Liability Period, the Council, acting reasonably, may give to the Developer a Rectification Notice.
- 17.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 17.3 If the Developer breaches clause 17.2, the Council may have the relevant defect rectified and may recover its costs of so doing by:
  - 17.3.1 calling upon the Defects Security, or
  - 17.3.2 as a debt due in a court of competent jurisdiction.

## **18 Failure to carry out Work**

- 18.1 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, the Council may elect to give the Developer a notice requiring:
  - 18.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
  - 18.1.2 the breach to be rectified to the Council's satisfaction.
- 18.2 A notice given under clause 18.1 is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 18.3 Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 18.1:
  - 18.3.1 call upon a Contribution Security referred to in clause 24, and
  - 18.3.2 carry out and complete the Work the subject of the Developer's breach.
- 18.4 Clause 31 and Schedule 2 do not prevent a notice being given under clause 18.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under Schedule 2 ceases to apply when such a notice is given.

## **19 Works-As-Executed-Plan**

- 19.1 No later than 60 days after Practical Completion of a Work, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work the subject of the notice.
- 19.2 The works-as-executed-plan submitted to the Council is to meet the Council's reasonable requirements which must be notified to the Developer prior to the expiration of the Defects Liability Period for the Work.

## **20 Application of sections 94, 94A and 94EF of the Act to the Development**

- 20.1 Subject to clause 20.2, sections 94 and 94A of the Act do not apply to the Development.
- 20.2 This Agreement does not prevent Council from imposing conditions on development consents for commercial development in the Town Centre pursuant to s94 of the Act requiring monetary contributions for the purposes of car parking.
- 20.3 Section 94EF of the Act applies to the Development.
- 20.4 For the avoidance of doubt:
  - 20.4.1 if the Option Land is not developed by the Developer, that land is not covered by this Agreement, and sections 94 and 94A of the Act continue to apply to that land,
  - 20.4.2 if the Developer does not exercise its option to purchase the Option Land within the time required under the relevant option deed, to the effect that the Developer no longer has a legally enforceable right to purchase the Option Land, then that land is not covered by this Agreement, and sections 94 and 94A of the Act continue to apply to that land, and
  - 20.4.3 sections 94 and 94A of the Act continue to apply to any development, other than the Development, within the Googong Urban Release Area whether carried out by the Developer or any other person.

## **21 Procedures relating to Sewer, Potable Water and Recycled Water Infrastructure**

- 21.1 Subject to clause 6.9, the parties acknowledge that the Developer is to build and dedicate to Council the Work being Contribution Item 7.02.
- 21.2 The Council will ensure that residential user charges for recycled water within the Googong Urban Release Area will be lower than residential user charges for potable water in the Area.

## **Part 3 - Recoupment**

### **22 Surplus Development Contributions**

- 22.1 The Council acknowledges that the Developer is providing Development Contributions under this Agreement that:
  - 22.1.1 exceed the demand for Public Infrastructure created by the Development, and
  - 22.1.2 meet the demand, or part of the demand, for Public Infrastructure created by development in the Googong Urban Release Area which is to be carried out by Other Developers.

- 22.2 The Council, to the extent permitted by law, is to give consideration to making a contributions plan pursuant to section 94EA of the Act under which the Council collects Recoupment Contributions and, if it determines that it will make such a contributions plan, it must use its best endeavours to do so expeditiously.
- 22.3 The Council, to the extent permitted by law, is also to give consideration to making a Development Servicing Plan 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.
- 22.4 The Council, to the extent permitted by law, is also 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 Payments to Developer

- 23.1 Each time a Recoupment Contribution is paid to the Council, the Council is to deposit an amount equal to the amount of that contribution, plus any interest earned by Council on that contribution into the Council's trust fund referred to in s411 of the *Local Government Act 1993* in an account styled *GDC Recoupment Contributions – Googong Development (Recoupment Trust Fund)*.
- 23.2 Within 14 days of the Council providing its consent, pursuant to clause 24.3.2, to a notice issued by the Developer pursuant to clause 24.3.1, if the Developer has provided Contribution Items with a combined Contribution Value and Phase Value (**Item Value**) in excess of the Contribution Obligation at the date of the notice, then Council will pay the Recoupment Contributions held in the Recoupment Trust Fund to the Developer.
- 23.3 The Council is not obliged to pay Recoupment Contributions to the Developer pursuant to clause 23.2 which would result in the amount paid to the Developer, when added to the Contribution Obligation at the date of the notice referred to in clause 23.2, exceeding the Item Value at the date of that notice.
- 23.4 Once the sum of the payments made to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) equals the Surplus Value, the Council has no further obligation to make any payments under this clause.
- 23.5 For the purposes of s94(3) and s94A(3) of the Act, the Parties agree that immediately prior to the imposition of a condition pursuant to s94 or s94A of the Act on a Development Consent granted to an Other Developer requiring the payment of a Recoupment Contribution, the Council incurs a liability to pay the Developer an amount equal to the Recoupment Contribution.
- 23.6 The Parties further 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 the payment of a Recoupment Contribution, the Council incurs a liability to pay the Developer an amount equal to the Recoupment Contribution.
- 23.7 The Parties further agree that immediately prior to the imposition of any other requirement to pay a Recoupment Contribution on an Other

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- Developer, the Council incurs a liability to pay the Developer an amount equal to the Recoupment Contribution.
- 23.8 For the avoidance of doubt, nothing in this Agreement imposes any obligation on the Council to make any payments to the Developer over and above the Recoupment Contributions actually received by the Council from Other Developers.
- 23.9 The Council acknowledges that the Developer intends to fund Stage 1 of the Old Cooma Road Works, which form part of the Offsite Local Roads, in advance of the time by which contributions towards the Offsite Local Roads are required under this Agreement, in order to facilitate the early completion of those works by Council.
- 23.10 The Council must ensure that Offsite Roads Contributions are only used for the purpose for which they are provided by the Developer under this Agreement.
- 23.11 Within 60 days of the end of the Defects Liability Period for an Offsite Road Work, the Council must notify the Developer of the cost to the Council of the construction of that Offsite Road Work.
- 23.12 If the Developer's share of the actual cost of the construction of an Offsite Road Work is less than the Developer's share of the estimated cost for that Offsite Road Work as noted in Column 4 of Schedule 1, then:
- 23.12.1 the Offsite Roads Contributions which the Developer is required to pay are reduced by the difference between those two amounts (**Cost Difference**); and
- 23.12.2 if the Developer has already provided Offsite Roads Contributions in an amount greater than the actual cost of the construction of all Offsite Road Works which have been completed, then within 60 days of the end of the Defects Liability Period for the Offsite Road Work, Council will refund to the Developer an amount equal to the Cost Difference.
- 23.13 At the end of all of the Defects Liability Periods for the Offsite Local Roads, Council is to refund to the Developer any unapplied balance of the Offsite Roads Contributions held by Council including any interest earned, within 28 days of demand by the Developer.

## Part 4 – Other Provisions

### 24 Security for Contribution Obligations

- 24.1 Subject to this clause 24, the Developer is to pay Contribution Security to the Council for each Contribution Category in an amount equal to the \$ amount of the Contribution Obligation.
- 24.2 The amount payable under clause 24.1 is to be reduced according to the following formula:

$$CS = CO - CV$$

Where

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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**CS** = Contribution Security

**CO** = Contribution Obligation

**CV** = the sum of:

(a) the Contribution Value of all Contribution Items made in accordance with this Agreement, and

(b) the Phase Value of all Phases that have been completed in relation to Contribution Items which have not yet been completed to date in the Contribution Category to which the Contribution Obligation relates.

24.3 Not later than 1 February and 1 August in each year following the making of the first payment of Contribution Security to the Council, the following is to occur:

24.3.1 the Developer is to prepare a notice specifying a \$ amount of:

- (a) the Contribution Value of all Contribution Items made in accordance with this Agreement at the date of the notice (grouped in Contribution Categories),
- (b) the Phase Value of all Phases that have been completed in relation to Contribution Items which have not yet been completed at the date of the notice (again grouped in Contribution Categories),
- (c) the Contribution Obligation at the date of the notice, and
- (d) the Contribution Security held by the Council at the date of the notice.

24.3.2 Within 14 days of receiving a notice under clause 24.3.1, the Council is to notify the Developer of whether it consents (with such consent not to be unreasonably withheld) to the amounts specified in the Developer's notice.

24.3.3 Once the Parties have agreed on the \$ amounts relating to the matters required to be included in a notice under clause 24.3.1, the Parties are to promptly ensure the Council holds the correct amount of Contribution Security in accordance with clauses 24.1 and 24.2.

24.3.4 For the avoidance of doubt, the action required by the Parties pursuant to clause 24.3.3, may involve either the payment of a further amount of Contribution Security to the Council or the refund by the Council of an amount of Contribution Security, which in either case is to occur within 30 days of the Parties reaching agreement under clause 24.3.3.

24.4 Subject to clause 24.3, the amount of a Contribution Security that may be held by the Council for a Contribution Obligation at any time is not to exceed the amount determined in accordance with the formula in clause 24.2.

24.5 Contribution Security paid to the Council under clause 24.1 is, if in the form of cash, to be deposited into the Council's trust fund referred to in

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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s411 of the *Local Government Act 1993* in an account styled *GDC Security – Googong Development*, and the Contribution Security may only be used in accordance with this Agreement.

- 24.6 The Council is to provide the Developer with a copy of all transaction documents and bank statements relating to the account in which Contribution Security is held as soon as practicable after the Council receives such documents.
- 24.7 The Council may call-up a Contribution Security only if:
- 24.7.1 the Developer has breached its obligations under this Agreement relating to the making of Development Contributions in the Contribution Category to which the Contribution Security applies (other than an obligation to which the Defects Security relates), and
  - 24.7.2 the Council has served on the Developer notice in writing of the breach, and
  - 24.7.3 the Developer has failed to remedy the breach within a reasonable period after receipt of the notice having regard to the nature of the breach being a period of not less than 28 days in any circumstances.
- 24.8 If the Council calls-up a Contribution Security, it may use it in satisfaction of the following costs:
- 24.8.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 24.8.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
  - 24.8.3 without limiting clause 24.8.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 24.9 If the Council calls on a Contribution Security in accordance with this Agreement, the Council may, by notice in writing served on the Developer, require the Developer to provide a further or replacement Contribution Security in an amount that, when added to any unused portion of the existing Contribution Security, does not exceed the amount of the Contribution Security the Council is entitled to hold under clause 24.1.
- 24.10 Any interest earned on the Contribution Security is to be held by the Council in the account referred to in clause 24.5.
- 24.11 If the Contributions Security for a Contributions Obligation 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 Contribution Security could have been applied in accordance with this clause 24.
- 24.12 On the completion of the Contributions Obligations, the Council must promptly refund to the Developer on request the balance of the Contributions Security and any interest earned on that Security.
- 24.13 The first payment of Contribution Security is to be made prior to the issue of the first Subdivision Certificate which creates any residential lots in the Development.

- 24.14 The Developer must not apply for a Subdivision Certificate in relation to the creation of any residential lots in the Development unless the Developer has first provided sufficient Contributions Security for all Contribution Categories in accordance with this clause 24.

## **25 Defects Security**

- 25.1 Upon commencement of the Defects Liability Period for a Work, the Council may give the Developer a notice requiring the Developer to provide a Defects Security in relation to that Work in an amount of:
- 25.1.1 five (5) per cent of the value of the Work, if the value of the Work is less than \$500,000.00; or
- 25.1.2 \$25,000.00 plus three (3) per cent of the value of the Work if the value of the Work is more than \$500,000.00.
- 25.2 Within 14 days of receiving a notice from the Council that is in accordance with clause 25.1, the Developer is to give the Council a Defects Security in the amount specified in that notice.
- 25.3 The Council is to return a Defects Security or any remaining part of it to the Developer within 28 days of Final Completion of the Work to which that Defects Security relates.
- 25.4 At any time following the provision of a Defects Security, the Developer may provide the Council with a replacement Defects Security in the amount specified by the Council in accordance with clause 25.1.
- 25.5 On receipt of a replacement Defects Security, the Council is to release and return to the Developer as directed, the Defects Security it holds which has been replaced.
- 25.6 The Council may call-up a Defects Security only if:
- 25.6.1 the Developer has breached a Rectification Notice that relates to the Work to which the Defects Security relates, and
- 25.6.2 the Council has served on the Developer notice in writing of the breach, and
- 25.6.3 the Developer has failed to remedy the breach within a reasonable period after receipt of the notice having regard to the nature of the breach being a period of not less than 28 days in any circumstances.
- 25.7 If the Council calls-up a Defects Security, it may use it in satisfaction of the following costs:
- 25.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 25.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

- 25.7.3 without limiting clause 25.7.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 25.8 If the Council calls on a Defects Security in accordance with this Agreement, the Council may, by notice in writing served on the Developer, require the Developer to provide a further or replacement Defects Security in an amount that, when added to any unused portion of the existing Defects Security, does not exceed the amount of the Defects Security the Council is entitled to hold under clause 25.1.
- 25.9 Any interest earned on the Defects Security is to be held by the Council in the Council's trust fund referred to in s411 of the *Local Government Act 1993* in an account styled *GDC Security – Googong Development*.

## 26 Provision of Guarantee

- 26.1 Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Council with a deed of guarantee between the Council, the Developer, and the Developer's parent company which, at the date of this Agreement is CIC Australia (**Parent Company**), in terms reasonably satisfactory to the Council, under which the Parent Company undertakes to meet the obligations of the Developer under this Agreement.

## 27 Recovery of cost of Work carried out by the Council

- 27.1 The Council may recover from the Developer in a court of competent jurisdiction any cost incurred by the Council during the Defects Liability Period in carrying out, completing, or rectifying a defect in, a Work that is not met by the Defects Security required under clause 25.
- 27.2 Prior to the commencement of recovery proceedings of the kind contemplated by clause 27.1, the Parties agree to engage in non-binding mediation of the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time.
- 27.3 For the purpose of clause 27.1, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
- 27.3.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 27.3.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 27.3.3 without limiting clause 27.3.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

## 28 Registration of this Agreement

- 28.1 The Developer agrees that it will procure the registration of this Agreement under the *Real Property Act 1900 (RP Act)* in the relevant folios of the register for the Developer's Land, other than a Final Lot in accordance with section 93H of the Act.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 28.2 The Developer, at its own expense, will promptly after this Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
- 28.2.1 the consent of each person who:
- (a) has an estate or interest in the Developer's Land registered under the RP Act; or
  - (b) is seized or possessed of an estate or interest in the Developer's Land;
- 28.2.2 the execution of any documents; and
- 28.2.3 the production of the relevant duplicate certificates of title, to enable the registration of this Agreement in accordance with clause 28.1, as soon as practicable.
- 28.3 The Developer, at its own expense, will take all practical steps and otherwise do anything that the Council reasonably requires, as soon as reasonably practicable:
- 28.3.1 to procure the lodgement of this Agreement with the Registrar General as soon as reasonably practicable after this Agreement comes into operation but in any event not later than 60 Business Days after that date; and
- 28.3.2 to procure the registration of this Agreement by the Registrar General, either in the relevant folios of the register for the Developer's Land or in the General Register of Deeds if the Agreement relates to land not under the RP Act.
- 28.4 The Parties agree that if any plan of subdivision to create Final Lots is lodged with the LPMA, the LPMA will be directed not to register this Agreement against the folio identifier of the Final Lots being created by that plan.
- 28.5 Once the Developer has met all of its obligations under this Agreement, the registration of this Agreement against the folio identifier of the Land, or any part of the Land, can be removed, and the Council must do everything reasonably necessary to permit the Developer to have the recording of this Agreement against the folio identifier of the Land or part of the Land removed.
- 28.6 At any time, the Developer may request that the Council remove the registration of this Agreement from the title to any part of the Developer's Land that is not a Final Lot, provided that the Council holds the Contributions Security required under clause 24.

## 29 Review of this Agreement

- 29.1 This Agreement may be reviewed or modified by the agreement of the Parties using their best endeavours and acting in good faith.
- 29.2 The Parties agree to review this Agreement on the first anniversary of the date on which this Agreement is entered into and every three years after that anniversary, 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 Agreement.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 29.3 On each review, other than the review on the first anniversary, the Parties will review the Projected Total Population and dwelling occupancy rates of the Googong Urban Release Area.
- 29.4 For the purposes of clause 29.2, the relevant changes include (but are not limited to):
- 29.4.1 any material change to the Development or Indicative Staging Plan,
  - 29.4.2 any change to the LEP that materially affects the Development or part of the Development,
  - 29.4.3 any change to Council's *Residential and Economic Strategy 2031* that materially affects the Development or part of the Development,
  - 29.4.4 any change to or the making of any Environmental Planning Instrument that materially affects the Development or part of the Development,
  - 29.4.5 any change to a law that restricts or prohibits or enables the Council or any other Authority to restrict or prohibit any aspect of the Development,
  - 29.4.6 if the Developer is, despite all reasonable efforts to do so, unable to obtain all consents necessary for the Developer to enter onto land and carry out Work as required by clause 12.3,
  - 29.4.7 the actual cost of delivering a Contribution Item varies from the Contribution Value for that Item by more than 7.5 per cent,
  - 29.4.8 the exhibition of a draft contributions plan, within the meaning of the Act, relating to land in the Council's area; and
  - 29.4.9 the exhibition of a draft voluntary planning agreement, within the meaning of the Act, between Council and an Other Developer relating to land in the Council's area.
- 29.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 29.2, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 29.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 29.7 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 29.2 is not a dispute for the purposes of clause 31 and is not a breach of this Agreement.
- 29.8 Council acknowledges that the Development Contributions to be provided by the Developer under this Agreement may exceed the demand for public infrastructure generated by 5550 Dwellings. If more than 5550 Dwellings are permitted in the Googong Urban Release Area, the Parties will negotiate in good faith for the adjustment of the Development Contributions to be provided under this Agreement accordingly.
- 29.9 In the event that the Total Projected Population reduces by more than 20% for any reason, the parties must meet, and negotiate in good faith to agree upon a reduction in the Development Contributions provided under this Agreement.

### **30 Implementation of this Agreement**

- 30.1 Within 6 months of execution of this Agreement by the Developer, the Parties agree to form the Implementation Group, which is to have the following functions:
  - 30.1.1 Monitor and manage the Developer's compliance with its obligations under this Agreement, including in relation to the provision of Contribution Security and Contribution Items;
  - 30.1.2 Monitor and manage the Council's compliance with its obligations under this Agreement, including the making of payments to the Developer under clause 23;
  - 30.1.3 Manage, on request by the parties, the delivery of Contribution Items; and
  - 30.1.4 any other functions agreed between the Parties from time to time.
- 30.2 The Implementation Group is to meet twice annually within 14 days of receipt of the notice referred to in clause 24.3.1, and at other times as agreed by the parties.
- 30.3 The Parties, acting reasonably, agree to enter into such further, more detailed arrangements as are reasonably necessary in relation to the functions, and operation of the Implementation Group and those further arrangements will not be inconsistent with this Agreement.

### **31 Dispute resolution**

- 31.1 If a dispute between any of the Parties arises in connection with this Agreement or its subject matter, then the process and procedures set out in Schedule 2 will apply.

### **32 Notices**

- 32.1 Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Summary Sheet to this Agreement or, if the recipient has notified otherwise, then marked for attention in the way last notified.
- 32.2 They must be:
  - 32.2.1 left at the address set out or referred to in the Summary Sheet to this Agreement;
  - 32.2.2 sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Summary Sheet to this Agreement;
  - 32.2.3 sent by fax to the fax number set out or referred to in the Summary Sheet to this Agreement;
  - 32.2.4 sent by email to the email address set out or referred to in the Summary Sheet to this Agreement; or
  - 32.2.5 given in any other way permitted by Law.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 32.3 However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.
- 32.4 They take effect from the time they are received unless a later time is specified.
- 32.5 If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).
- 32.6 If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

## 33 Approvals and Consent

- 33.1 The Parties acknowledge that this Agreement does not impose any obligation on a Consent Authority to:
  - 33.1.1 grant Development Consent; or
  - 33.1.2 exercise any function under the Act in relation to a change in an environmental planning instrument.

## 34 Assignment and dealings

- 34.1 The Developer may not sell, transfer, assign or novate or similarly deal with (referred to in this clause as “**Dealing**”) its right, title or interest in the Land (if any) other than a Final Lot, or its rights or obligations under this Agreement, or allow any interest in them to arise or be varied, in each case, without the Council’s consent (which shall not be unreasonably withheld).
- 34.2 The Council shall not withhold its consent under clause 34.1 if:
  - 34.2.1 the Developer is not in breach of this Agreement, or if the Developer is in breach of the Agreement, the Developer can demonstrate to Council’s reasonable satisfaction that it is taking action to remedy the breach, and
  - 34.2.2 the Council is satisfied, based on evidence procured by the Developer, and any other considerations the Council considers relevant, that the proposed transferee, assignee or novatee has the financial capacity and experience necessary to meet the Developer’s obligations under this Agreement.
- 34.3 The Developer must give the Council no less than 40 Business Days notice in writing of the proposed Dealing and the Council must advise the Developer within 20 Business Days whether it will consent to the Dealing, subject to clause 34.4.
- 34.4 Prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer must:
  - 34.4.1 procure that the transferee, assignee or novatee executes and delivers to the Council prior to any such Dealing taking effect, a deed in favour of the Council in form and substance acceptable to the Council (acting reasonably) whereby, subject to clauses 34.5 and 34.6:

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- (a) the transferee, assignee or novatee becomes contractually bound with the Council to perform all of the Developer's obligations under this Agreement (including obligations which may have arisen before the transfer, assignment or novation takes effect), or on such other terms as agreed by the Parties;
  - (b) the transferee, assignee or novatee has the benefit of all the Developer's rights under this Agreement, or on such other terms as agreed by the Parties; and
  - (c) the Developer is released from its Future Obligations under this Agreement.
- 34.5 The Parties agree that a transferee, assignee or novatee in a Dealing under this clause of part only of the Land, shall be contractually bound with the Council under clause 34.4.1(a) only in relation to those Future Obligations that relate to that part of the Land in which the transferee, assignee or novatee receives a right, title or interest from the Developer, and the Developer shall remain liable for the remainder of the Future Obligations.
- 34.6 If the Developer, in its absolute discretion, provides the Council with a deed of guarantee or an agreement between the Developer and the transferee, assignee or novatee in terms reasonably satisfactory to the Council, under which the Developer undertakes to meet the Future Obligations of the transferee, assignee or novatee (determined in accordance with clause 34.2), the Parties agree that the transferee, assignee or novatee is not liable under this Agreement to the extent of the Developer's guarantee.
- 34.7 If another Authority takes over the functions of the Council under this Agreement, or if the Council determines that it is desirable for this to happen, then the Council may assign or novate or otherwise deal with its rights and obligations under this Agreement to give effect to this change, and the Developer agrees to enter into such documentation, at the cost of the Council, as may be necessary to confer on the new Authority the rights and obligations of the Council under this Agreement.
- 34.8 Normally any such action would take place by a statutory novation or delegation. However, this clause applies to the extent that it is necessary.
- 34.9 Without limiting clause 39, the Council must not otherwise deal with its rights and obligations under this Agreement.
- 34.10 For the purposes of, but without limiting clause 34.1, an assignment by the Developer of its rights or obligations under this Agreement will be deemed to have occurred where there has been a Change of Control, except that clauses 34.4 to 34.6 will not apply to that assignment .
- 34.11 For the purposes of clause 34.10:

**Change of Control** means where a person who did not (directly or indirectly) effectively Control the Developer at the date of this Agreement, either alone or together with others, acquires Control of the Developer.

**Control** includes:

- 34.11.1 the ability to exercise or control the exercise of the right to vote in respect of more than 50% of the voting shares or other form of voting equity in a corporation;

## **Googong Urban Development Local Planning Agreement**

### **Queanbeyan City Council**

### **Googong Development Corporation Pty Ltd**

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34.11.2 the ability to dispose, or exercise control over the disposal of more than 50% of the shares or other form of equity in a corporation;

34.11.3 the ability to appoint or remove all or a majority of the directors of a corporation;

34.11.4 the ability to exercise, or control the exercise of the casting of a majority of the votes cast at the meetings of the board of directors of a corporation; or

34.11.5 any other means, direct, or indirect, of dominating the decision making and financial and operating policies of a corporation.

## **35 Entire agreement**

35.1 This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings, and negotiations on that subject matter.

## **36 Further Acts**

36.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

36.2 Without limiting clause 36.1, the Developer agrees for the purpose of determining Equivalent Persons in Column 5 of Schedule 1 to identify the following information on any plan of subdivision that will create residential lots in the Development:

36.2.1 Development Type 1 lots,

36.2.2 Development Type 2 lots, and

36.2.3 Development Type 3 lots, including how many individual apartments intended to be constructed on each lot.

## **37 Governing Law and Jurisdiction**

37.1 This Agreement is governed by the law of New South Wales.

37.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

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

## **38 Joint and individual liability and benefits**

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

### **39 No fetter**

- 39.1 This Agreement is not intended to operate to fetter, in any unlawful manner:
- 39.1.1 the sovereignty of the Parliament of the State to make any Law;
  - 39.1.2 the power of the Executive Government of the State to make any statutory rule; or
  - 39.1.3 the exercise of any statutory power or discretion of any minister of the State or any Authority.
- (all referred to in this clause as “**Discretion**”).
- 39.2 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:
- 39.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
  - 39.2.2 in the event that clause 39.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
  - 39.2.3 to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

### **40 Representations and warranties**

- 40.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will no result in the breach of any Law.

### **41 Severability**

- 41.1 The Parties acknowledge that under and by virtue of section 93F(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any Development Contribution required to be made by that provision.
- 41.2 The Parties acknowledge that under and by virtue of section 93F(10) of the Act, any provision of this Agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
- 41.2.1 any provision of the Act;
  - 41.2.2 the provisions of an environmental planning instrument; or
  - 41.2.3 a Development Consent applying to the relevant land.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 41.3 The Parties agree that to the extent permitted by Law, this Agreement prevails to the extent it is inconsistent with any Law.
- 41.4 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 41.5 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## 42 Modification

- 42.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties.
- 42.2 The Council acknowledges that the Developer may require the approval of its financier prior to agreeing to any modification of this Agreement.

## 43 Waiver

- 43.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- 43.2 A waiver by a Party is only effective if it is in writing and signed by the Parties.
- 43.3 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.
- 43.4 The Council acknowledges that the Developer may require the approval of its financier prior to agreeing to any waiver under this Agreement.

## 44 GST

- 44.1 In this clause:
  - 44.1.1 words and expressions which are not defined in this Agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
  - 44.1.2 GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.
- 44.2 Without limiting the operation of this clause 44, the Parties intend that:
  - 44.2.1 Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this Agreement;
  - 44.2.2 no tax invoices will be exchanged between the Parties; and
  - 44.2.3 no additional amounts will be payable on account of GST.
- 44.3 Unless expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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- 44.4 If GST is payable on any supply made under this document, the recipient (**Recipient**) will pay to the supplier (**Supplier**) an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- 44.5 The Recipient will pay the GST Amount in addition to and at the same time that the consideration for the supply is to be provided under this document.
- 44.6 The Supplier must deliver a tax invoice or an adjustment note to the Recipient before the Supplier is entitled to payment of a GST Amount. The Recipient can withhold payment of the amount until the Supplier provides a tax invoice or adjustment note as appropriate.
- 44.7 If an adjustment event arises in respect of a taxable supply made by a Supplier under this document, the GST Amount payable by the Recipient will be recalculated to reflect the adjustment event and a payment will be made by the Recipient to the Supplier or by the Supplier to the Recipient as the case requires.
- 44.8 Where a Party is required under this document to pay or reimburse an expense or outgoing of another Party, the amount to be paid or reimbursed by the first Party will be the sum of:
- 44.8.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other Party, or to which the representative member for a GST group of which the other Party is a member, is entitled; and
- 44.8.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.
- 44.9 To the extent that the consideration provided for the Supplier's taxable supply to which clause 44.4 applies is a taxable supply made by the Recipient (**Recipient Supply**) the GST Amount that would be otherwise payable by the Recipient to the Supplier in accordance with clause 44.4 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- 44.10 The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 44.4 (or the time at which such GST Amount would have been payable in accordance with clause 44.5 but for the operation of clause 44.9).

## 45 Effect of Scheduled terms and conditions

- 45.1 Subject to any amendments made pursuant to a provision in this Agreement, the Parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

## 46 New Laws

- 46.1 If the Developer is obliged by a New Law to do something or pay an amount which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with the New

## Googong Urban Development Local Planning Agreement

### Queanbeyan City Council

### Googong Development Corporation Pty Ltd

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Law will constitute compliance with the relevant obligation under this Agreement.

## 47 Confidentiality

- 47.1 The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.
- 47.2 The Parties agree, and must procure that any mediator or expert appointed under Schedule 2 agrees as a condition of their appointment:
- 47.2.1 Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement; and
- 47.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Agreement; and
- 47.2.3 subject to clause 47.2.4 below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- 47.2.4 a Party may disclose Confidential Information in the following circumstance:
- (a) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause; or
  - (b) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
  - (c) for a purpose necessary in connection with an expert determination or mediation.
- 47.3 The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- 47.3.1 views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- 47.3.2 admissions or concessions made by a Party during the expert determination or mediation in relation to the dispute; and
- 47.3.3 information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

## 48 Indemnity and Insurance

- 48.1 For the period between the commencement of a Work and Practical Completion of that Work, the Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever

which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Developer in relation to that Work.

- 48.2 The Developer is to take out and keep current, or is to ensure that its contractors that are responsible for carrying out the Work take out and keep current, to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until Practical Completion of the Work:
- 48.2.1 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,
- 48.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 48.2.3 workers compensation insurance as required by law, and
- 48.2.4 any other insurance required by law.
- 48.3 If the Developer fails to comply with clause 48.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 48.3.1 by calling upon a Contribution Security provided by the Developer to the Council under this Agreement, or
- 48.3.2 recovery as a debt due in a court of competent jurisdiction.
- 48.4 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 48.2.

## **49 Explanatory Note Relating to this Agreement**

- 49.1 Appendix 2 to this Agreement contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 49.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.

## **50 Statement of Compliance**

- 50.1 At the time of submitting a Development Application the Developer is to submit to the Council a notice setting out as at the date of the notice:
- 50.1.1 the Development Contributions due to be made under this Agreement; and
- 50.1.2 the Development Contributions that the Developer has made under this Agreement.
- 50.2 Notwithstanding clause 50.1 the Developer may, at any other time but not more than four times in a calendar year, submit to the Council a notice

**Googong Urban Development Local Planning Agreement**

**Queanbeyan City Council**

**Googong Development Corporation Pty Ltd**

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setting out as at the date of the notice, the matters referred to in clauses 50.1.1 and 50.1.2,

- 50.3 Within 14 days of receiving a notice under clauses 50.1 or 50.2, the Council is to notify the Developer whether it agrees with the amounts specified in the Developer's notice.

**Schedule 1 - Development Contributions**

(Clause 6)

Development Contributions on the following pages.

## **Schedule 2- Dispute Resolution**

(Clause 31)

### **1 Dispute Resolution – expert determination**

- 1.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 1.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 1.3 The Chief Executive Officer may appoint an appropriately qualified expert to determine the dispute.
- 1.4 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 1.5 If a notice is given under clause 1.4 of this Schedule, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 1.6 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 1.7 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 1.8 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

### **2 Dispute Resolution – commercial matters**

- 2.1 This clause applies to a dispute under this Agreement which relates to a matter of a commercial nature.
- 2.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 2.3 If a notice is given under clause 2.2 of this Schedule, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 2.4 The Parties must arbitrate the dispute in accordance with the rules and procedures of the Law Society of New South Wales published from time to time.
- 2.5 If the dispute is not resolved by arbitration within a further 28 days, or such longer period as may be necessary to allow any 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.

### **3 Dispute Resolution – other matters**

- 3.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 1 or 2 of this Schedule applies.
- 3.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 3.3 If a notice is given under clause 3.2 of this Schedule, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 3.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 3.5 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.

**Schedule 3 - Indicative Staging Plan**

(Clause 1.1)

Indicative Staging Plan on following page.

## **Schedule 4 - Development**

(Clause 1.1)

Please see the following pages.

**Schedule 5 - Landscape and Open Space Strategy**

(Clause 1.1)

Landscape and Open Space Strategy on the following page.

## Schedule 6 - Equivalent Person Quotients

(Clause 1.1)

Column 1	Column 2	Column 3	Column 4
Development Type	Planned number of Dwellings of Development Type	Equivalent Person Quotient	Planned number of Equivalent Persons per Development Type
Development Type 1	2608.5	3.19 per Dwelling	8321
Development Type 2	2442	2.6359 per Dwelling	6437
Development Type 3	499.5	1.89 per Dwelling	944

### Schedule 7 - Per Dwelling Contribution Values by Contribution Category

(Clause 1.1)

Column 1	Column 2			Column 3
Contribution Category	Per Dwelling Contribution Value by Contribution Category			Total
	Development Type 1	Development Type 2	Development Type 3	
Open Space and Recreation	\$11,786	\$9,613	\$6,961	\$57,828,590
On-site community facilities and services	\$6,837	\$5,577	\$4,038	\$33,548,639
Off-site community facilities	\$161	\$132	\$95	\$791,603
On-site local roads	\$11,903	\$9,709	\$7,031	\$58,407,422
Off-site local roads	\$10,882	\$8,876	\$6,427	\$53,394,849
Drainage and stormwater management	\$2,073	\$1,691	\$1,224	\$10,171,216
Sewer, potable water and recycled water infrastructure	\$18,152	\$14,806	\$10,721	\$89,068,517
Administration	\$ 28	\$23	\$17	\$138,819
Ecological Offsets	\$379	\$309	\$224	\$1,861,818
Totals	\$62,202	\$50,734	\$36,738	\$305,211,474

Note: Per Dwelling Contribution Values indexed to 30 June 2011 in accordance with CPI



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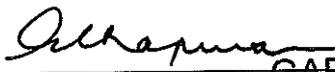
## Execution

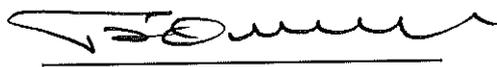
Executed as an Agreement

Dated: 12 January 2012

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### Executed on behalf of the Council

  
Name/Position GARY CHAPMAN  
GENERAL MANAGER  
QUEANBEYAN CITY COUNCIL

  
Name/Position TIMOTHY OVERALL.  
MAYOR  
QUEANBEYAN CITY COUNCIL.

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

  
Name/Position Anthony Noel Carey  
Director

  
Name/Position Colin John Alexander  
Director

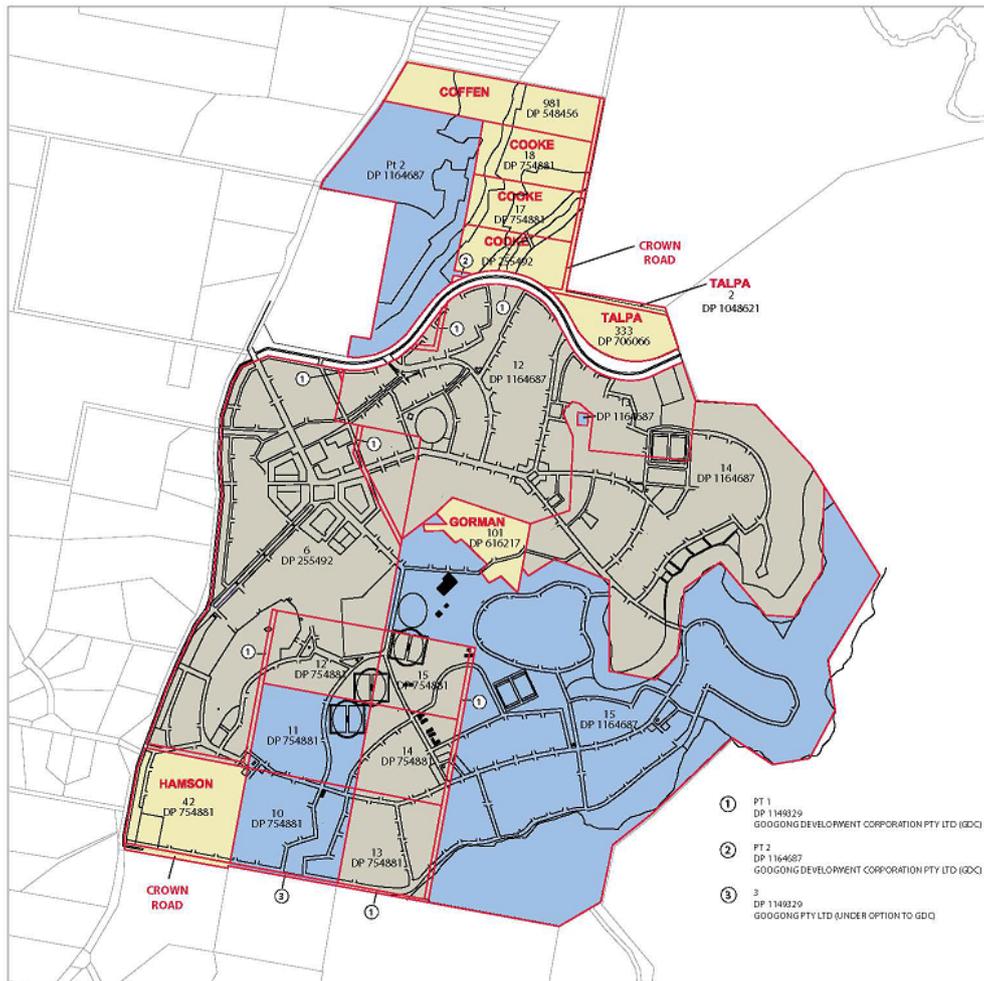
## Appendix 1 - Map

(Clause 1.1)

Note: This map is correct at the time of execution of the Agreement.

### GOOGONG TOWNSHIP

#### LAND OWNERSHIP



LEGEND	
	TITLE BOUNDARIES
	GOOGONG DEVELOPMENT CORPORATION PTY LTD (GDC)
	GOOGONG PTY LTD (UNDER OPTION TO GDC)
	OTHER LAND OWNERS
	SUBJECT SITE



- ① PT 1  
DP 1148329  
GOOGONG DEVELOPMENT CORPORATION PTY LTD (GDC)
- ② PT 2  
DP 1164687  
GOOGONG DEVELOPMENT CORPORATION PTY LTD (GDC)
- ③ 3  
DP 1148329  
GOOGONG PTY LTD (UNDER OPTION TO GDC)

## **Appendix 2 – Explanatory Note**

(Clause 49)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

### **Draft Planning Agreement**

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

#### **Parties**

**Queanbeyan City Council** of 257 Crawford St, QUEANBEYAN NSW 2620  
(**Council**)

**Googong Development Corporation Pty Ltd** ABN 83 104 332 523 of  
Level 3, 64 Allara Street, CANBERRA ACT 2601 (**Developer**)

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

The land shown on the map in Appendix 1 of the Agreement.

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

As described in Schedule 4 of the Agreement.

#### **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, the dedication of land, and the provision of other material public benefits for the provision of infrastructure, facilities and services to meet the Development on the Land.

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

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*.

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

The Draft Planning Agreement contains provisions including for the following matters:

- The dedication of land for the purposes of:
  - Open space
  - An indoor sports and aquatic centre
  - Drainage and stormwater
  - Local roads
  - Sewage treatment plant and associated facilities
  - Water supply infrastructure and associated facilities
- The carrying out of works for the purposes of:
  - Local roads
  - Local bus infrastructure
  - Embellishment of local open space and recreation
  - Local community facilities
  - A multipurpose centre
  - A local aquatic centre
  - Drainage and stormwater management facilities
  - Sewage treatment plant and associated facilities
  - Water supply infrastructure and associated facilities
- The provision of the following material public benefits:
  - Maintenance of local open space
  - Maintenance of community facilities
  - Provision of affordable house and land packages
  - Water saving initiatives
  - Energy saving initiatives
  - The employment of a community development worker
- The payment of monetary contributions for the purposes of Offsite Roads
- The payment by the Council to the Developer of Recoupment Contributions received by Council from other developers for infrastructure provided by the Developer under the Agreement
- The payment by the Council to the Developer of unapplied monetary Offsite Roads Contributions
- The provision by the Developer of security for its development contribution obligations
- Review of the agreement in certain circumstances

- Dispute resolution procedures
- Restrictions on the Developer's right to sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land other than a Final Lot, or its rights or obligations under the Agreement, without the Council's consent.

## **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 infrastructure:

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

The draft planning agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- provide for the carrying out of works for public purposes,
- provide for the provision of material public benefits,
- enable the subject land to be developed in a timely and efficient manner to promote economic development and employment opportunities, and
- provide for the dedication of land for public purposes.

### **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 by:

As a NSW council, Queanbeyan must observe the Council charter laid down in the *Local Government Act 1993*. In the development of this Draft Planning

## **Googong Urban Development Local Planning Agreement**

**Queanbeyan City Council**

**Googong Development Corporation Pty Ltd**

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Agreement, the principles of the charter have been promoted and the Council has exercised its responsibility for community leadership, equity and social justice.

The Draft Planning Agreement is the consequence of the mutual efforts of Queanbeyan City Council and Googong Development Corporation Pt Ltd and 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 at Googong.

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 Draft Planning Agreement provides a framework for the development of community assets and the transition of ownership and ongoing management of these services for the Googong Area.

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