

Planning Agreement

Environmental Planning and Assessment Act 1979

Wollondilly Shire Council

and

R & F Ziems Pty Limited ACN 001 747 806

Glynnis Jean Thompson

Neil Leonard Arber

Bertoli Building Pty Limited ABN 68 056 658 836

Zaxmoat Pty Limited ACN 079 492 247

Glynnis Thompson

Neil Arber

Ziems

R. Ziems

Director / Zaxmoat
Secretary
TAA

THIS Deed is dated 15 January 2021

PARTIES:

WOLLONDILLY SHIRE COUNCIL (Council) of 62-64 Menangle Street, Picton NSW 2571

R & F ZIEMS PTY LIMITED ACN 001 747 806 of 330 Princes Highway, Corrimal NSW

GLYNIS JEAN THOMPSON c/- Brock Partners, Suite 605, 22 Market Street, Sydney NSW 2000

NEIL LEONARD ARBER c/- Brock Partners, Suite 605, 22 Market Street, Sydney NSW 2000

BERTOLI BUILDING PTY LIMITED ABN 68 056 658 836 of Suite 605, 22 Market Street, Sydney NSW 2000

ZAXMOAT PTY LIMITED ACN 079 492 247 c/- Brock Partners, Suite 605, 22 Market Street, Sydney NSW 2000

(together the Developer)

INTRODUCTION:

- A** The Developer owns the Land set out in Schedule 3.
- B** The Developer proposes to carry out Development on the Land.
- C** The Land is the subject of a planning proposal within the meaning of s55 of the Act.
- D** The Developer has offered to enter into this Deed with the Council to secure the stabilisation of the Heritage Item and the provision of other Development Contributions in connection with the Instrument Change and development of the lower slopes of part of the Land.
- E** The Developer's carrying out of Development on the Stage 2-4 Land is subject to a redundant part of Abbotsford Road ceasing to be a public road under the *Roads Act 1993*.

Neil Arber

R & F Ziems

Glynis Thompson

R. Zaxmoat

Secretary Zaxmoat P/L

Secretary

TAA

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

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

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

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

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

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

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

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

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

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

Development means any development within the meaning of Act that is made permissible by the taking effect of the Instrument Change and which is envisaged to include subdivision of the Land generally in accordance with the Staging Plan.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, by the Developer, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a party to the Council to secure the enforcement of that party's obligations under this Deed for the purposes of s93F(3)(g) of the Act, as described in Schedule 4.

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

Explanatory Note means the note exhibited with a copy of this Deed when this Deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Final Lot means a lot created in the Development for separate residential occupation and disposition, or a lot of a kind or created for a purpose that is otherwise agreed in writing by the parties, not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Council.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

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

Heritage Item means the heritage item, within the meaning of the LEP, described as '*Abbotsford - house ruins, trees, garden and grounds*,

underground tank, cottage, outbuildings’ which is located on the Heritage Item Lot.

Heritage Item Lot means the lot identified as the ‘Abbotsford Homestead Lot’ on the Staging Plan.

Instrument Change means an environmental planning instrument within the meaning of the Act that amends the LEP to:

- (a) rezone the Land from zone RU2 Rural Landscape to E4 Environmental Living, and
- (b) impose a minimum lot size of 4000sqm on the lower slopes of part of the Land being the land shown as ‘Stage 1’, ‘Stage 2’, ‘Stage 3’ and ‘Stage 4’ on the Staging Plan, and
- (c) impose a minimum lot size of 20ha on the upper slopes and the ridgeline of the Land being the land shown as ‘Stage 5’ of the Staging Plan.

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

Land means the land described in Schedule 3 of this Deed.

Land Dedication Plan means the plan in Schedule 8 of this Deed.

LEP means the *Wollondilly Local Environmental Plan 2011*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Real Property Act means the *Real Property Act 1900* (NSW).

Rectification Notice means a notice in writing:

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

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Roads Act means the *Roads Act 1993* (NSW).

Road Work Credit means the sum of:

- (a) 50% of the costs of construction (as determined by the Council) of the realignment of the part of Abbotsford Road from Equestrian Drive to Fairleys Road marked as such on the Section 94 Offset Plan, and
- (b) 100% of the costs of construction (as determined by the Council) of the realignment of the part of Abbotsford Road from Fairleys Road to the boundary of the part of the Land marked as 'Stage 4' on the Staging Plan marked as such on the Section 94 Offset Plan, and
- (c) 50% of the difference between the market value of the land which is dedicated to the Council for the realignment of Abbotsford Road under this Deed and the market value of the Redundant Road referred to in clause 2 of Schedule 4, as determined by the valuation report prepared by Mr John Graveur and dated 18 May 2016 which was submitted by the Developer to the Council and accepted by the Council.

Section 94 Offset Plan means the plan in Schedule 9.

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

Stabilisation Work means Work to stabilise the Heritage Item in accordance with the document titled 'Schedule of Required Stabilisation Works' dated 17 April 2015 and the specifications prepared by NBRS and Partners dated 19 March 2015 a copy of which is annexed in Schedule 6

Stage 1-5 Development means the part of the Development for which Development Consent is granted involving subdivision of the Stage 1 -5 Land into Final Lots and any associated work.

Stage 1 -5 Land means the part of the Land marked as 'Stage 1', 'Stage 2', 'Stage 3', 'Stage 4' and 'Stage 5' on the Staging Plan, or as otherwise as agreed in writing between the parties.

Stage 1 Land means the part of the Land marked as 'Stage 1' on the Staging Plan', or as otherwise as agreed in writing between the parties.

Stage 2 – 4 Land means the part of the Land marked as 'Stage 2', 'Stage 3', and 'Stage 4' on the Staging Plan', or as otherwise as agreed in writing between the parties.

Staging Plan means the plan in Schedule 5.

Subdivision Certificate has the same meaning as in the Act.

Superlot Development means the part of the Development for which Development Consent is granted involving the carrying out of any part of the Stabilisation Work and subdivision of Lot 1 in DP 1086066 into lots comprising:

- (a) the Stage 1-5 Land,
- (b) the Heritage Item Lot,
- (c) the land to the east of Abbotsford Road.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Wollondilly Council's Engineering Design and Construction

Specifications means the Council's documents titled '*Design Specification 2016, Subdivision & Engineering Standard*', '*Construction Specification 2016, Subdivision & Engineering Standard*', and '*Standard Drawings 2016, Subdivision & Engineering Standard*', all as amended from time to time, any document that replaces those documents and any other documents adopted by the Council from time to time relating to design and construction standards in respect of roads.

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

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to this Deed or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed.

- (e) **clause headings, the introduction** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **schedules** form part of this Deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, servants, agents, contractors, successors and permitted assigns;
- (i) a reference to a **corporation** includes its servants, agents, contractors, successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them severally and an obligation or warranty in favour of 2 or more persons benefits them severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

- (a) This Deed commences on the date that this Deed is signed by all the parties.

- (b) The Developer is under no obligation to provide the Development Contributions unless and until the Instrument Change commences in accordance with the Act.

2.2 Planning agreement under the Act

This Deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This Deed applies to:

- (a) the Land; and
- (b) the Development, and
- (c) the Instrument Change.

2.4 Further Agreements

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

2.5 Surrender of right of appeal, etc.

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

3 Application of sections 94, 94A and 94EF of the Act

- (a) The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.
- (b) The benefits under this Deed are to be taken into consideration to the extent stated in Schedule 1 when determining a development contribution under s94 of the Act in relation to the Development so described in Schedule 1.

4 DEVELOPMENT CONTRIBUTION

Developer to provide Development Contribution

The Developer is to provide the Development Contributions to the Council in accordance with the provisions of Schedule 4 to this Deed, any other

provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council

5. Enforcement

5.1 Developer to provide security

The Developer is to provide security to the Council for the performance of the Developer's obligations under this Deed in accordance with the terms and procedures set out in Schedule 7.

5.2 Breach of obligations

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - (i) specifying the nature and extent of the breach,
 - (ii) requiring the Developer to:
 - (1) rectify the breach if it reasonably considers it is capable of rectification, or
 - (2) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - (iii) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- (b) If the Developer fails to fully comply with a notice referred to in clause 5.2(a), the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- (c) If the Developer fails to comply with a notice given under clause 5.2(a) relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- (d) Any costs incurred by the Council in remedying a breach in accordance with clause 5.2(b) or clause 5.2(c) may be recovered by the Council by either or a combination of the following means:
 - (i) by calling-up and applying the Security provided by the Developer under this Deed, or

- (ii) as a debt due in a court of competent jurisdiction.
- (e) For the purpose of clause 5.2(d), the Council's costs of remedying a breach the subject of a notice given under clause 5.2(a) include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (f) Nothing in this clause 5.2 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

5.3 Enforcement in a court of competent jurisdiction

- (a) Without limiting any other provision of this Deed, the parties may enforce this Deed in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

6 REGISTRATION

6.1 Registration of Deed

- (a) The parties agree to register this Deed on the title to the Land for the purposes of s93H(1) of the Act.
- (b) On the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - (i) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer and all other persons other than the Council required by the Registrar-General to execute such instrument, and

- (ii) the written consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act if the Land is under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land if the Land is not under the Real Property Act;

to the registration of this Deed on the title to the Land.

- (c) Within 30 Business Days of receiving a copy of this Deed executed by the Council, the Developer at its own expense is to:
 - (i) produce at Land & Property Information the relevant certificates of title for the Land and written consents referred to in clause 6.1(b)(ii); and
 - (ii) lodge this Deed for registration, by the Registrar-General in the relevant folios of the Register for the Land, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.
- (d) Notwithstanding any other clause in this Deed, if the Land comprises part only of a Torrens title lot at the time that this Deed is required to be registered on title, the Developer is to give the Council an instrument that registers this Deed on the title to the whole Torrens title lot which includes the whole of the Land.
- (e) The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

6.2 Evidence of registration

- (a) The Developer is to provide the Council with a copy of the registered Deed and copies of the folios of the Register for the Land within 10 Business Days of registration of this Deed.
- (b) Without limiting any other provision of this Deed, the Developer is to provide the Council with written evidence of registration of this Deed on the folio of the Register for the Land prior to the issuing of the first Subdivision Certificate for the Development.

6.3 Release and discharge of Deed

The Council agrees to do all things reasonably required by the Developer to:

- (a) execute the relevant forms to remove the registration of this Deed; and

(b) release and discharge this Deed,

from the following parts of the Land at the following times:

- (c) if this Deed is registered on the title to any land that is not the Land pursuant to clause 6.1(d), when that land is created as a separate Torrens title lot,
- (d) from the Heritage Item Lot once that lot is created as a separate Torrens title lot and the Developer has completed its obligations under this Deed in relation to the Stabilisation Work to the reasonable satisfaction of the Council,
- (e) from the Stage 1 Land when the realignment of the part of Abbotsford Road from Equestrian Drive to Fairleys Road is completed for the purposes of this Deed,
- (f) from the Stage 2 – 4 Land and the Stage 5 Land when the realignment of the part of Abbotsford Road from Fairleys Road to the boundary between the Land and Lot 6 DP24460 is completed for the purposes of this Deed,
- (g) in relation to any other part of the Land, when the Developer has completed all its obligations under this Deed to the reasonable satisfaction of the Council.

6.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; and
- (b) is able to fully comply with its obligations under this Deed.

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to this Deed unless it first complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give a written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of a notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Expert determination

- (a) If there is a Dispute as to whether a matter can be determined an appropriately qualified expert, the parties are to obtain a written opinion from the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute of whether the Dispute can be determined by a member of that body.
- (b) If the parties agree under clause 7.3 that a matter can be determined by an appropriately qualified expert, or a Chief Executive Officer referred to in clause 7.4(a) is of the opinion is that the Dispute can be determined by a member of that body, the parties are to refer the Dispute to the President of the NSW Law Society to appoint an expert for expert determination.
- (c) The expert determination is binding on the parties except in the case of fraud or misfeasance by the expert.
- (d) Each party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination
- (e) The parties are to share equally the costs of the Chief Executive Officer, the President, the expert, and the expert determination.

7.5 Mediation

- (a) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 7.4(b) applies.
- (b) If the Dispute is not resolved within 28 Business Days of receipt of notice under clause 7.2, the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.6 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 6 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.7 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 6 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 in any court proceedings in relation to the dispute.

7.8 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

8 GST

8.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties in relation to the Development Contribution.

8.3 Reimbursement

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all process or other sums payable or consideration to be provided under this Deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Council as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Council, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

8.6 No merger

This clause will not merge on completion or termination of this Deed.

9 TRANSFER AND ASSIGNMENT

Developer's right to transfer, assign or novate

- (a) The Developer is not to:
 - (i) sell or transfer the Land (or any part), or
 - (ii) assign the Developer's rights or obligations under this Deed, or novate this Deed,

to any person unless the Council consents to the sale, transfer, assignment or novation, such consent not to be unreasonably withheld.

- (b) Prior to seeking the consent of the Council to a proposed sale or transfer of land or assignment or novation of its rights or obligations under this Deed, the Developer must:
 - (i) satisfy the Council (acting reasonably) that the purchaser, transferee or person to whom the Developer's rights and obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's obligations under this Deed insofar as those obligations relate to the land sold or transferred or have been assigned or novated to the Incoming Party; and
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this Deed as though the Incoming Party was the Developer, and
 - (iii) satisfy the Council that the Developer is not in breach of this Deed.

- (b) The Developer will pay the Council's reasonable legal costs and expenses incurred under this clause 9.

10 CAPACITY

10.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

10.2 Power of Attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 GENERAL PROVISIONS

11.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, undertakings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This Deed must not be varied except by a later written document executed by all parties in accordance with clause 25C and 25D of the Regulation.

11.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right to operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Deed.

11.5 Time for doing acts

(a) If:

- (i) the time for doing any act of thing required to be done; or
- (ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this Deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.10 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

11.13 No fetter

Nothing in this Deed shall be construed as requiring the Council to do anything that would cause it to breach any of the Council's obligations at law and without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Council in exercising any of the Council's statutory functions, powers, authorities or duties.

11.14 Explanatory note

The Explanatory Note in the Appendix must not be used to assist in construing this Deed.

11.15 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail in Australia.
- (b) A Notice is given if:

- (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.
- (c) If a party gives the other party 3 Business Days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other party if it is delivered, posted, faxed or emailed to the latest address or fax number.
 - (d) If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

11.16 Expenses and stamp duty

- (a) The Developer is to pay its own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer is to pay for all costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer is to pay all Taxes assessed on or in respect of this Deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- (d) The Developer is pay the Council's costs and expenses associated with the closure of any part of Abbotsford Road as referred to in clause 2 of Schedule 4 and the transfer of that land (or any part) to the Developer.
- (e) The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.
- (f) The Developer must provide the Council with bank cheques in respect of the Council's costs pursuant to clauses 11.16(a) to (e):
 - (i) where the Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or

- (ii) where the Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Council for payment.

11.17 Approvals and Consent

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

11.18 Joint and Individual Liability and Benefits

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

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purposes of the Deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning Instrument and/or development application – (section 93F(2)):</p> <p>The Developer has:</p> <p>a) Sought a change to an environmental planning instrument.</p> <p>b) Made, or proposes to make, a Development Application.</p> <p>c) Entered into an agreement with, or is otherwise associated with, a person, to whom paragraph a) and b) applies.</p>	<p>a) Yes</p> <p>b) Yes</p> <p>c) N/A</p>
<p>Description of land to which this Deed applies (section 93F(3)(a))</p>	See Schedule 3
<p>Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))</p>	See definition of Instrument Change
<p>The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is not excluded in respect of the Development.
<p>Consideration of benefits under this Deed if section 94 applies – (section 93F(5))</p>	<p>The benefits under this Deed are not to be taken into consideration in respect of the Superlot Development.</p> <p>The benefits under this Deed are to be taken into consideration in determining a development contribution under s94 of the Act in respect of the Stage 1-5 Development but only to the extent of the Road Work Credit and provided that if the Road Work Credit exceeds the amount of development contributions under s94 of the Act in respect of the Stage 1-5 Development, no further credits or refunds are to be provided to the Developer.</p>

Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 7
No obligation to grant, consent or exercise functions – (section 93F(10))	See clause 11.13

Table 2- Other matters

REQUIREMENTS UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3(b) of Schedule 4)

SCHEDULE 2

Address for Service (clause 1.1)

Council

Contact: The General Manager

Address: Wollondilly Shire Council
62-64 Menangle Street
PICTON NSW 2571

Facsimile No:

Developer: R & F Ziems Pty Limited ACN 001 747 806

Contact:

Address: 330 Princes Highway
CORRIMAL NSW

Facsimile No:

Developer: Glynnis Jean Thompson

Address: c/- Brock Partners
Suite 605, 22 Market Street
SYDNEY NSW 2000

Facsimile No: (02) 9299 7151

Developer: Neil Leonard Arber

Address: c/- Brock Partners
Suite 605, 22 Market Street
SYDNEY NSW 2000

Facsimile No: (02) 9299 7151

Developer: Bertoli Building Pty Limited ACN 68 056 658 836

Contact: Kevin Rodgers

Address: c/- Brock Partners
Suite 605, 22 Market Street
SYDNEY NSW 2000

Facsimile No: (02) 9299 7151

Developer: Zaxmoat Pty Limited ACN 079 492 247

Contact:

Address: c/- Brock Partners
Suite 605, 22 Market Street
SYDNEY NSW 2000

Facsimile No: (02) 9299 7151

SCHEDULE 3

Land (Clause 1.1)

Land means that part of Lot 1 in DP 1086066 located to the west of Abbotsford Road (as subdivided from time to time) being the area marked as 'Stage 1', 'Stage 2', 'Stage 3', 'Stage 4', 'Stage 5' and 'Abbotsford Homestead Lot' on the Staging Plan

SCHEDULE 4

Development Contributions (clause 4)

1. **Development Contributions**

(a) The Developer is to make the following Development Contributions:

Development Contribution	Public Purpose	Manner & Extent	Timing
(i) Stabilisation Work	Heritage conservation	Carrying out and completion of Work to stabilise the Heritage Item in accordance with the specifications in Schedule 6.	Completion by no later than 9 months after the date the Development Consent is granted to the Superlot Development
(ii) Construction of realignment of Abbotsford Road	Public roads	a) Carrying out and completion of construction of the part of Abbotsford Road from Equestrian Drive to Fairleys Road, as shown on the Section 94 Offset Plan, in accordance with a design and specification determined in accordance with clause 6 of this Schedule	Completion prior to the earlier of: (a) the date that is 9 months after the issuing of the first Construction Certificate for the Stage 1-5 Development, (b) the issuing of the first Subdivision Certificate that creates a Final Lot on the Stage 1 Land, subject to clause 2 of Schedule 7
		b) Carrying out and completion of the construction and realignment of the part of Abbotsford Road from Fairleys Road to the boundary between the Land and Lot 6 DP24460, as shown on the Section 94 Offset Plan, in accordance with a design and specification determined in accordance with clause 6 of this Schedule	Completion prior to the earlier of: (a) the date that is 9 months after the issuing of the first Construction Certificate for the Stage 1-5 Development, (b) the issuing of the first Subdivision Certificate that creates a Final Lot on the Stage 2-4 Land, subject to clause 2 of Schedule 7

<p>(iii) Dedication of land required for realignment of Abbotsford Road generally as shown marked with horizontal lines on the Land Dedication Plan as a public road under the Roads Act</p>	<p>Public roads</p>	<p>Dedication of land required for the realignment of Abbotsford Road as a public road free of cost to the Council</p>	<p>Land to be dedicated as a public road under the Roads Act on completion of the realignment of Abbotsford Road.</p>
<p>(iv) Monetary contribution towards the Council's costs of constructing road works and traffic management facilities identified in the document titled '<i>Picton Traffic Study (2017)</i>' prepared by TDG</p>	<p>Road works and traffic management</p>	<p>Payment of \$5,000 per Final Lot</p>	<p>Before the issuing of the first Subdivision Certificate that creates the Final Lot</p>

2. Restriction on Development

- (a) The parties acknowledge and agree that:
- (i) part of the Development is proposed to be located on land that forms part of Abbotsford Road at the date of this Deed, being the part generally shown with square hatching on the Land Dedication Plan,
 - (ii) on and from the date that Abbotsford Road is realigned under this Deed and the realignment opened as a public road under the Roads Act, the part of Abbotsford Road referred to in clause 2(a)(i) of this Schedule will become redundant as a public road (**'Redundant Road'**),
 - (iii) after the Developer lodges a Development Application for the Superlot Development and this Deed is registered on the title to the Land, the Council intends to apply to the Minister administering the Roads Act to effect the closing of the Redundant Road as a public

road pursuant to the Roads Act once Abbotsford Road is realigned under this Deed and the realignment is opened as a public road, and

- (iv) the Developer is not to carry out any Development on land comprising the Redundant Road unless and until the Redundant Road has been closed as a public road under the Roads Act and any part of the Redundant Road that is necessary for the Development has been transferred to the Developer.
- (b) The Council is to use reasonable endeavours to transfer the Redundant Road to the Developer promptly after the Redundant Road is closed as a public road under the Roads Act, on terms satisfactory to the Council.

3. **Provision of Development Contribution**

The parties agree that the requirement to make a Development Contribution under this Schedule before the issuing of the first Subdivision Certificate for a Stage as specified in the table to clause 1 of this Schedule is a restriction on the issuing of that Subdivision Certificate pursuant to section 109J(1)(c1) of the Act.

4. **Payment of monetary Development Contributions**

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

5. **Dedication of Land**

- (a) A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road under section 9 of the *Roads Act 1993*.
- (b) The Developer is to do all things reasonably necessary to enable registration of the deposited plan to occur.
- (c) The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- (d) If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- (e) Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 5(a) of this Schedule not later than 7 days after the Work is completed for the purposes of this Deed.

6. Approval of design of Works

- (a) Council must approve the design and specifications for each Work unless otherwise agreed in writing by the Council in relation to any particular Work.
- (b) In respect of a Work for the purpose of public roads, the Developer must design and construct the Work in accordance with the Wollondilly Council's Engineering Design and Construction Specifications in so far as they relate to rural sealed standards and any written requirements from the Council's engineers.
- (c) Without limiting clause 6(b), prior to commencing design of a Work, the Developer must request that the Council provide the Developer with its requirements for the location, design, materials and specifications for the provision of the Work.
- (d) When requesting Council's requirements under clause 6(b) the Developer may provide a proposal, including preliminary concept designs to assist Council in preparing its requirements.
- (e) Once the Developer receives the Council's requirements for the Work under clause 6(d) of this Schedule, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- (f) The initial design for the Work is to include or be accompanied by such information as is required for the making of a Development Application for the Work including a detailed maintenance regime for the Work and detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- (g) The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Developer.
- (h) The Developer will make any change to the initial design for the Work required by the Council.
- (i) The Developer is not to lodge any Development Application for a Work unless the Council has first approved the initial design for the Work and provided its written certification that the Development Application is consistent with the approved initial design of the Work.
- (j) The Council is to provide the written certification referred to in clause 6(i) within 14 days of being provided with a copy of the proposed Development Application by the Developer, unless the Council forms the view that the proposed Development Application is not consistent with the approved initial design of the Work.
- (k) A Development Application for a Work is to be accompanied by the written certification referred to in clause 6(i) when lodged with the Council, as the consent authority.
- (l) The Developer is to bear all Costs associated with obtaining the Council's approval to the initial design of a Work under this clause.

- (m) Following Development Consent being issued for a Work, the Developer shall work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- (n) The Developer is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- (o) The Council is to provide the written certification referred to in clause 6(n) within 14 days of being provided with a copy of the application for a Construction Certificate by the Landowner, unless the Council forms the view that the application is not consistent with the approved detailed design of the Work.
- (p) Council's written certification specified in clause 6(n) shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.
- (q) An application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 6(n) when lodged with the Certifying Authority.
- (r) For the avoidance of doubt, nothing in the clause operates to fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.

7. Carrying out of Work

- (a) Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, the Wollondilly Council's Engineering Design and Construction Specifications, any written requirements from the Council's engineers, any relevant Approval and any other applicable law.
- (b) The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

8. Variation to Work

- (a) The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the parties, acting reasonably, without the necessity for an amendment to this Deed.
- (b) Without limiting clause 8(a) of this Schedule, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements

of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

- (c) The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 8(b) of this Schedule.
- (d) The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- (e) The Developer is to comply promptly with a direction referred to in clause 8(d) of this Schedule at its own cost.

9. Access to land by Council

- (a) The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- (b) The Council is to give the Developer prior reasonable notice before it enters land under clause 9(a) of this Schedule.

10. Protection of people property and utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - (i) all necessary measures are taken to protect people and property,
 - (ii) unnecessary interference with the passage of people and vehicles is avoided, and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 10(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

11. Repair of damage

- (a) The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 11(a) of this Schedule at its own cost and to the satisfaction of the Council.

12. Completion of Work

- (a) The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.

- (b) The Council is to inspect the Work the subject of the notice referred to in clause 12(a) of this Schedule within 14 days of the date specified in the notice for completion of the Work.
- (c) Work required to be carried out by the Developer under this Deed, or a Stage, is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- (d) If the Council is the owner of the land on which Work the subject of a notice referred to in clause 12(c) of this Schedule is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- (e) Before the Council gives the Developer a notice referred to in clause 12(c) of this Schedule, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- (f) The Developer, at its own cost, is to promptly comply with a direction referred to in clause 12(d) of this Schedule.

13. Rectification of defects

- (a) The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 13(a) of this Schedule.

14. Works-As-Executed Plan

- (a) No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- (b) The Developer, being the copyright owner in the plan referred to in clause 14(a) of this Schedule, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

15. Removal of Equipment

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

16. **Risk**

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

17. **Release**

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

18. **Indemnity**

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

19. **Insurance**

(a) The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:

- (i) 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,
- (ii) 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,
- (iii) workers compensation insurance as required by law, and
- (iv) any other insurance required by law.

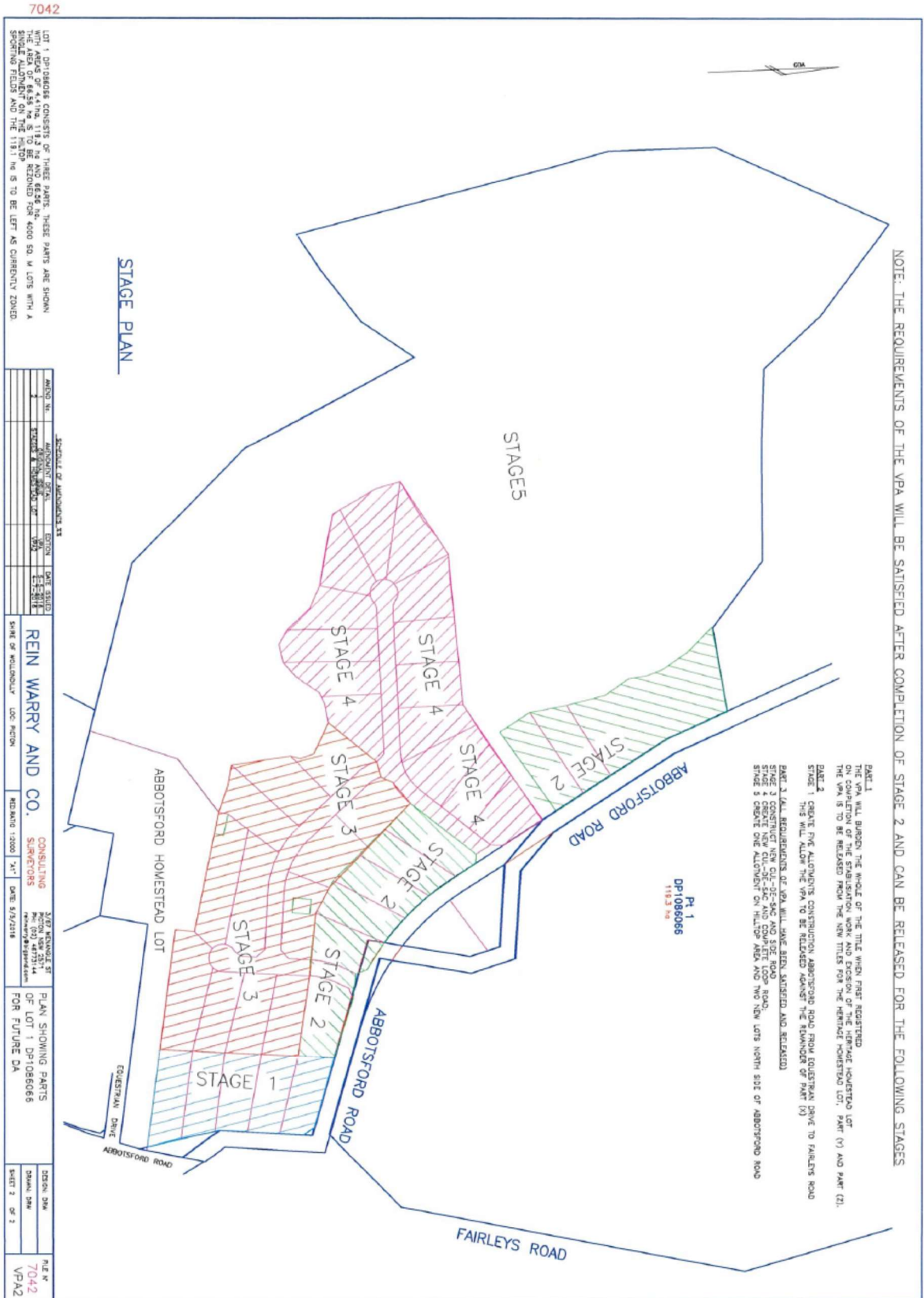
(b) If the Developer fails to comply with clause 19(a) of this Schedule, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

- (i) by calling upon the Security provided by the Developer to the Council under this Deed, or
- (ii) recovery as a debt due in a court of competent jurisdiction.

(c) 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 19(a) of this Schedule.

SCHEDULE 5

Staging Plan



SCHEDULE 6
Stabilisation Work (clause 1.1)

See the following pages.

SCHEDULE 7
Security terms (clause 5)

1. Bank Guarantee for Stabilisation Work

- (a) Upon lodgement of a Development Application for the Superlot Development, the Developer is to provide Security to the Council in the form of a Bank Guarantee for a face value equivalent to the sum of 120% of the estimated cost to complete the Stabilisation Work as determined by the Council acting reasonably (**Stabilisation Work Security Amount**) to secure the carrying out of the Stabilisation Work.
- (c) Upon the completion of the Stabilisation Work in accordance with this Deed, the Developer is to provide Security to the Council in the form of a Bank Guarantee for a face value equivalent to the sum of 5% of the Stabilisation Work Security Amount (**Stabilisation Work Defects Security Amount**) to secure the Developer's obligations during the Defects Liability Period for the Stabilisation Work.

2. Bank Guarantee for Road Realignment Work

- (a) If the Developer forms the view at any time, that it is unable to complete the realignment of Abbotsford Road by the time specified in the table to clause 1 of Schedule 4, then the Developer must provide:
 - (i) written notice to the Council to that effect and,
 - (ii) Security to the Council in the form of a Bank Guarantee for a face value equivalent to the sum of 120% of the estimated cost to construct the realignment of Abbotsford Road as determined by the Council acting reasonably (**Road Realignment Security Amount**) to secure the carrying out of the realignment of Abbotsford Road.
- (b) If the Developer complies with clause 2(a) of this Schedule, then:
 - (i) the Developer will not be considered to be in breach of this Deed as a result of a failure to complete all or part of the realignment of Abbotsford Road by the time specified in the table to clause 1 of Schedule 4, and
 - (ii) the time for completion of the realignment of Abbotsford Road will be taken to be the date that is 3 months after the date of provision of the Security.
- (c) Upon the completion of the realignment of Abbotsford Road for the purposes of this Deed, the Developer is to provide Security to the Council in the form of a Bank Guarantee for a face value equivalent to the sum of 5% of the Road Realignment Security Amount (**Road Realignment Defects Security Amount**) to secure the Developer's obligations during the Defects Liability Period for the road realignment.

3. Claims under the Bank Guarantee

- (a) The Council may call upon a Bank Guarantee in accordance with clause 5.2 of the Deed where:
- (i) the Developer is in breach of any obligation under this Deed; or
 - (ii) the Developer has failed to provide one or more Bank Guarantees to ensure that at all times the value of the Security held by the Council is for a face value equivalent to the Security Amount, or
 - (iii) without limiting any other provision, in respect of the Road Realignment Security Amount the Council has provided the Developer with a written notice that it intends to compulsorily acquire the land required for the realignment of Abbotsford Road and carry out the work itself,

and retain and apply such monies towards the costs and expenses incurred by the Council in rectifying any default by the Developer under this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.

- (c) If:
- (i) the Council calls upon a Bank Guarantee; and
 - (ii) applies all or part of such monies towards the costs and expenses incurred by the Council in rectifying any default by the Developer under this Deed;

then the Developer must provide to the Council a replacement Bank Guarantee to ensure that at all times until the date that the Developer has provided the Development Contribution in full, the Council is in possession of a Bank Guarantee for a face value equivalent to the sum of the Stabilisation Work Security Amount and Road Realignment Security Amount.

4. Release of Bank Guarantee

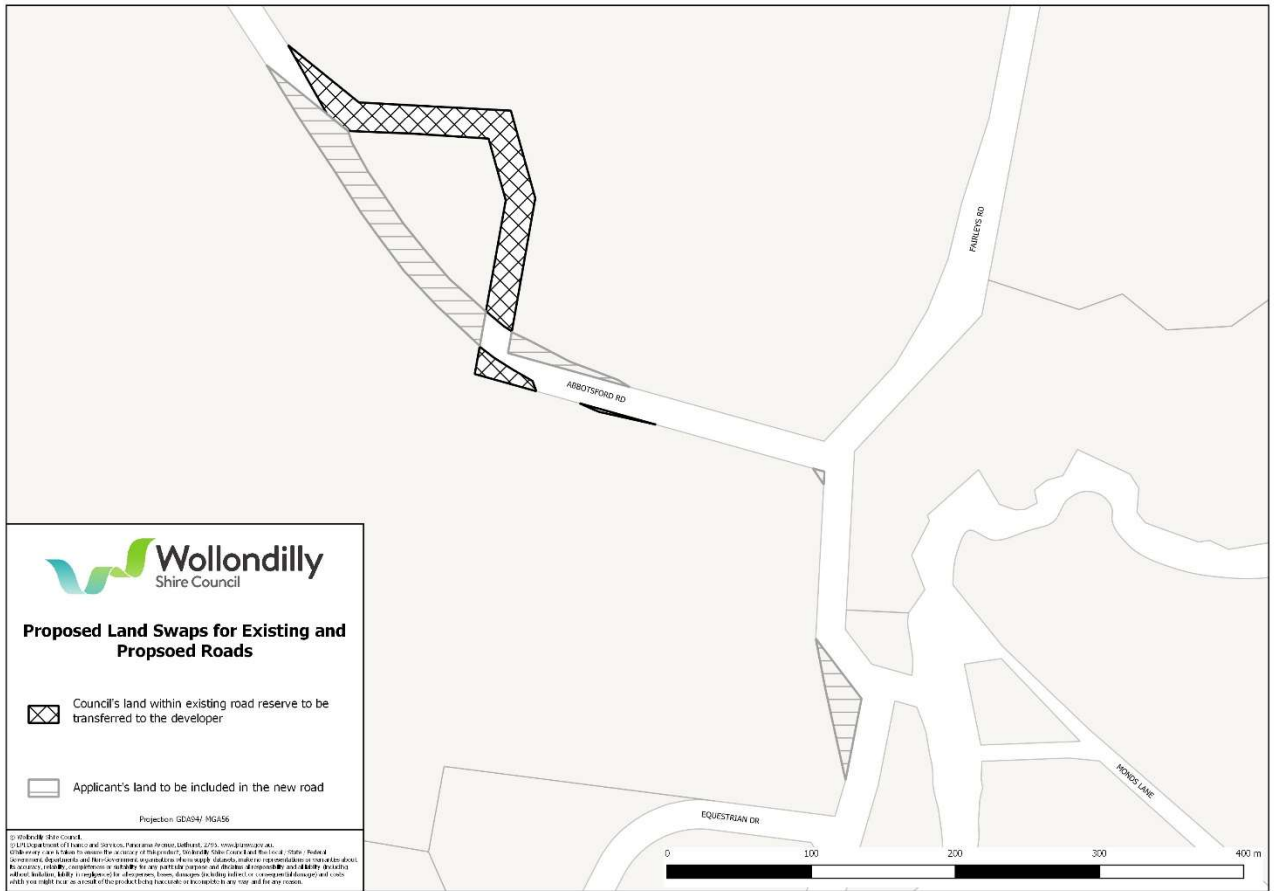
- (a) The Council is entitled to retain a Bank Guarantee from the date the Bank Guarantee is provided to the date the Council is required to release the Bank Guarantee in accordance with this clause 4 of this Schedule 7.
- (b) If:
- (i) the Developer has satisfied all of its obligations under this Deed secured by a Bank Guarantee; and
 - (ii) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 7,

then the Council will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer

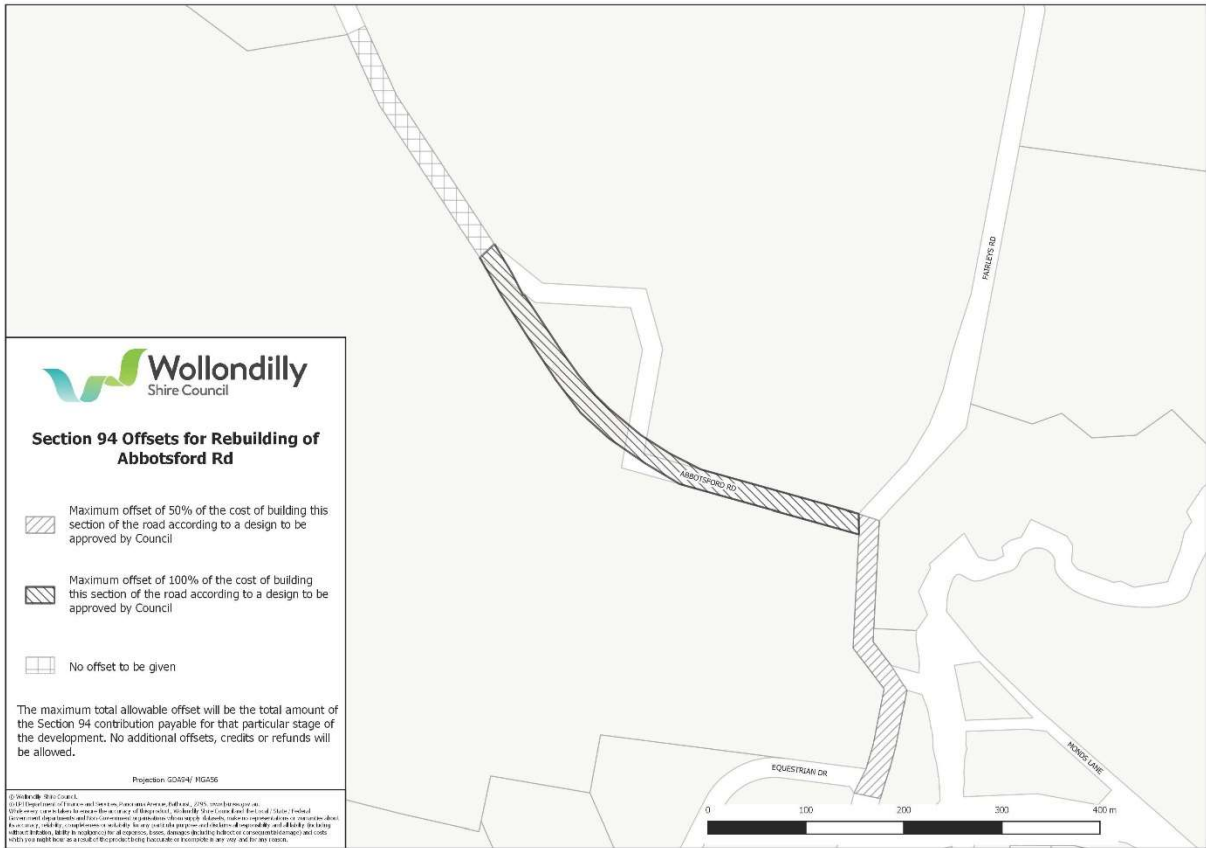
5. Acquisition of land required to be dedicated

- (a) The Developer consents to the Council compulsorily acquiring land required to be dedicated under this Deed for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act if:
- (i) the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, or
 - (ii) the Council has given the Developer written notice that it requires the land in order to carry out and complete the realignment of Abbotsford Road.
- (b) The Council is to only acquire land pursuant to clause 5(a)(i) of this Schedule if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- (c) Clause 5(a) of this Schedule constitutes an agreement for the purposes of s30 of the Just Terms Act.
- (d) If, as a result of the acquisition referred to in clause 5(a) of this Schedule, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under this Deed.
- (e) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- (f) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause, including without limitation:
- (i) signing any documents or forms,
 - (ii) giving land owner's consent for lodgement of any Development Application,
 - (iii) producing certificates of title to the Registrar-General under the Real Property Act, and
 - (iv) paying the Council's costs arising under this clause.

SCHEDULE 8 Land Dedication Plan (clause 1.1)



SCHEDULE 9 Section 94 Offsets Plan (clause 1.1)



Execution

Executed as a Deed

Dated: 15 January 2021

Executed on behalf of the Council

Signed by Wollondilly Shire Council (ABN 93 723 245 808) by the General Manager pursuant to delegation granted by resolution on 18 June 2018.

Toni Averay

General Manager

[Signature]

Witness

Executed on behalf of R & F Ziems Pty Limited in accordance with s127(1) of the Corporations Act (Cth) 2001

DANIEL ZIEMS [Signature] DIRECTOR.

Name/Position

Robert Ziems [Signature] DIRECTOR.

Name/Position

Executed by Glynis Jean Thompson

Glynis Thompson.

Glynis Jean Thompson

[Signature]

Witness

Executed by Neil Leonard Arber

Neil Arber.

Neil Leonard Arber

Arber

Witness

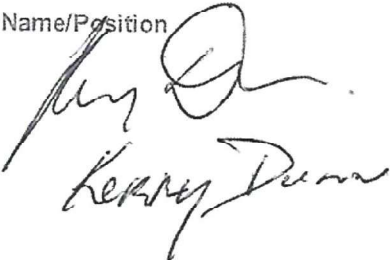
Executed on behalf of Bertoli Building Pty Limited in accordance with s127(1) of the Corporations Act (Cth) 2001


Name/Position KEVIN RODGER (SOLE DIRECTOR/SECRETARY)

Name/Position

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


Name/Position J. O. SECRETARY

JILL DUNN
Name/Position Jill Dunn Director

Kerry Dunn