

PE1 - Planning Agreement – Cubbitch Barta Reserve in Camden Park

REPORT

This report concerns a Planning Agreement which provides for the dedication to Council of Cubbitch Barta Reserve in the Bridgewater Estate in Camden Park and the payment of a sum of money to Council to construct some community facilities in the Reserve. The Reserve is currently owned and maintained by the development group Stockland Holdings Pty Ltd ('Stocklands').

1.1 BACKGROUND

2003	Council granted development consent for a 12 stage residential development known as Bridgewater Estate, located in the northern section of Wollondilly, in the suburb of Camden Park.
2011 (June)	Stocklands submitted a DA to build some community facilities within Cubbitch Barta Reserve, in accordance with its earlier development consent. Despite significant endeavours the developer and Council were not able to reach agreement with the local community regarding the type of facility to be built in the Reserve.
2011 (December)	<p>Council resolved as follows:</p> <p>(a) <i>That Development Application No 010.2011.00000338.001 for Community Facilities at Lot 1100 DP 1150160, Cubbitch Barta Reserve, Camden Park, be deferred to enable further consultation with Stocklands.</i></p> <p>(b) <i>That Council request that Stocklands provide to Council the agreed value of the community hall (\$600,000) for Council to use in the embellishments and maintenance of facilities within the Bridgewater Estate at Camden Park including within the Cubbitch Barta Reserve or within the precinct and expenditure for any funds to be determined by Council;</i></p> <p>(c) <i>That once the funds have been received, Council advise Stocklands that they no longer need to construct any further facilities within the Cubbitch Barta Reserve prior to handing the land over to Council;</i></p>

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	<p>(d) That Council seek expressions of interest for residents of Camden Park to join a steering committee to oversee the expenditure of the funds from Stocklands</p> <p>(e) That the membership of the steering committee, in addition to 2 Councillors and Manager, Facilities and Recreation meets the following criteria:</p> <ol style="list-style-type: none"> 1. No more than 7 residents of Bridgewater Estate 2. No more than 1 person from any household 3. Must include a mixture of ages, genders and backgrounds 4. Must be residents from in a variety of streets distributed throughout the estate <p>(f) That further report comes to Council within 12 months for the expenditure of funds</p> <p>(g) That in future we encourage developers to construct facilities prior to residents moving into the area. (Council Minute No 295/2011)</p>
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Planning & Economy

This report updates the Council on progress in implementing these resolutions and specifically seeks a resolution to adopt a Planning Agreement that provides for the dedication of Cubbitch Barta Reserve to Council and for the money required under resolution 'B' above to be provided to Council.

1.2 REVIEW OF THE PLANNING AGREEMENT

In order to give effect to the above resolutions, Council and the developer have negotiated a Planning Agreement, as provided for by Section 93F of the *Environmental Planning and Assessment Act*. The main features of the Planning Agreement are as follows:

- It provides for the developer to lodge an application to modify the existing development consent so that they are no longer required to build the community facilities (this DA has already been submitted and is under consideration by Council);
- If Council approves the DA, the developer will transfer the title of the Reserve to Council. When this has occurred, Council will be fully responsible for the maintenance of the Reserve;

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- The developer is to make a monetary payment to Council, which will be used by Council to build community facilities and to carry out maintenance works in the Reserve;
- Council will be responsible for determining what facilities will be constructed in the Reserve after consulting with the community. Council will then proceed to build these facilities.

These requirements are included in the proposed Planning Agreement that is included at Attachment 1 to this report. Should Council agree to the Planning Agreement being executed, parts B to C of the resolution described in Section 1.1 of this report will be implemented.

1.3 MATTERS RELATING TO COUNCIL'S CONSIDERATION OF THE PLANNING AGREEMENT.

The finalisation of this Planning Agreement has been a lengthy process. The following matters are drawn to Council's attention regarding the Agreement.

- **Dedication of the Reserve to Council and maintenance after handover:**
The Agreement provides for the title of the Reserve to be transferred to Council, after which time Council will be fully responsible for maintaining the Reserve. Stocklands has advised that they have a dedicated resource who spends approximately 32 hours per week on maintenance tasks within the Reserve. It may be impractical for Council to continue this level of maintenance, as Council needs to allocate its maintenance staff (and budget) over all its parks and other assets in the local government area. This may generate some concerns amongst local residents, some of whom are known to be concerned about the level maintenance carried out by Stocklands. The maintenance demands of the Reserve will be more fully appreciated once Council takes on ownership, and if warranted, additional resources may be sought through the usual budgetary processes.
- **Payment Amount:**
The payment to Council will be \$744,790, which includes the Sydney "All Groups" Consumer Price Index (cpi) to 31 December 2015. The Agreement provides for the payment amount to be indexed to the date of execution, so no further indexation of the payment will occur unless execution is delayed until after the cpi for the March 2016 quarter is released, which is likely to occur around the end of April. Approximately \$120,000 of the money received under the Agreement is to be used for the maintenance of the stormwater management facilities (ponds and pumps) within the Reserve, with the remainder being available to construct the community facilities.

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It is noted that in accordance with Council Resolution 'F' (refer to section 1.1) a report is required to Council on how the payment amount is to be used before the expenditure of funds.

▪ **Completion of Works in the Reserve:**

As Council will be entirely responsible for the maintenance of the Reserve following its handover, it is important that Council receive the Reserve in good condition. Stocklands have undertaken works within the Reserve, both as part of its routine maintenance over the last ten years or so, and to prepare the Reserve for handover to Council. In preparing the Reserve for handover to Council, it was agreed that Stocklands would complete the following works to Council's satisfaction:

- Tree Management Works - ensuring trees in the Reserve are safe
- Pumps - ensuring the pumps in the ponds are in good working order
- Ponds – cleaning the ponds of weed and other debris
- Tennis courts – repair of net and cleaning of court
- Bridges and Timber structures – repair of damaged timbers and white ant treatment
- Playground – carrying out some recommendations of a Council wide Playground Audit
- Electrical – sealing of an electrical conduit and provision to council of an electrical plan.

At the time of writing of this report, Stocklands has advised that repairs have been completed to most of the above items, these being the tree management works, as well as repairs to the pumps, tennis court, some of the repairs to the playground and the provision of the electrical plan. Repairs to the other items are currently in progress, and are expected to be completed by the end of February 2016 with one of the playground repair items having to be delayed until early March due to a lack of stock. It will be necessary for Council staff to agree that the repairs to these items have been carried out appropriately prior to execution of the Planning Agreement. As this had not been possible at the time of writing of this report, it is being recommended that Council agree to the adoption of the Planning Agreement, but that it not be executed until all the agreed repairs have been completed by Stocklands, signed off by Council staff, and endorsed by Council's Executive.

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- **Deletion of the Release Clause:**
Stocklands have requested that the Draft Planning Agreement not include a Release Clause. In weighing up the request to delete this Clause, the following matters were considered:
 - The most likely situations where Council might wish to invoke the Release Clause would be in the case of faults with the trees or the pumps used to circulate water within the ponds. This risk can be minimised by requiring Stocklands to complete repairs to these items prior to handover. As noted above, repairs to trees in the Reserve have been carried out and these have been approved by Council staff. Repairs to the pumps have also been carried out and all 3 pumps are working effectively, although the repairs have yet to be authorised by Council staff;
 - Other repairs have also been carried out to the bridges and timber structures, as well as to the children's playground within the Reserve. The request to delete the Release Clause assisted in negotiating these repairs with Stocklands, as they were advised that we wanted greater assurances as to the condition of the Reserve. As a result, Council is receiving the Reserve in a higher standard that might otherwise be the case;
 - A Release Clause is generally used as a last resort to pursue a developer to undertake further repairs. Doing so would essentially mean entering into a legal process which could be lengthy and costly. The preferable outcome is to receive the Reserve in as good a condition as could reasonably be ascertained, to minimise the likelihood of having to rely on a Release Clause. The completion of the agreed works by Stocklands should help ensure that this occurs.

In summary, it is considered that in view of the repairs that Stocklands will complete prior to the Agreement being executed, the risk to Council in agreeing the deletion of the Release Clause has been minimised as far as is reasonably possible.

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1.4 COMMUNITY CONSULTATION

To seek the views of the community and meet statutory requirements, the Draft Planning Agreement and accompanying Explanatory Note were exhibited for a period of 30 days between Wednesday 14th October 2015 and Friday 13th November 2015. During this time, documents were available at Council's Administration Centre in Picton, and at Wollondilly Library and on Council's web site.

Two (2) submissions were received from local residents, which are summarised below:

- **Submission No 1:** This submission was from a resident of Camden Park and expressed satisfaction that the matter is being brought to a conclusion, and with the provision in the Agreement for Council to manage the development of community facilities in the Reserve. The submission also included some suggestions for the facilities to be built, including seats for the elderly, soft lighting along walkways and a second children's playground. Concerns were also raised that the Estate is not public transport friendly, and there is a potential for accidents at the main exit from the Estate.
- **Submission No 2:** This submission was also from residents of Camden Park, and advised that they were happy with the Planning Agreement as long as the money received was spent entirely on providing community facilities in the park, and that a consultation process be undertaken with Bridgewater residents to determine the facilities to be built. This submission also suggested some facilities which could be included, such as a basketball court, more seating and cover, outdoor exercise equipment and a small dog off leash area. The submission also expressed concerns about the level of maintenance that had been carried out by the developer.

Both submissions are broadly supportive of the Planning Agreement, and neither raised any issues that would prevent the Planning Agreement from being concluded. As explained in more detail below a process has been decided on to help determine the specific facilities to be built in the Reserve.

Copies of both submissions are provided at Attachment 2 to this report.

No changes are proposed to the Planning Agreement following its exhibition.

The public exhibition was held concurrently with consultation associated with development application to modify the consent D115-03. This consent was for drainage, building (community facilities), recreation facility, car parking, landscaping and other works to the reserve area.

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The application to modify consent was lodged by Stocklands to amend condition 1.3:

“The land shall not be dedicated to Council until such time as all buildings, structures and plantings have been completed and the road works to all public road frontages of the open area have been completed to provide satisfactory public access.”

The proposed amendment will effectively delete the requirement for the developer to build the community facilities. One (1) submission was received in support of the proposed modification to the development consent.

The proposed amendment to Condition 1.3 cannot be determined until a resolution of Council has been reached in regard to the proposed changes to the Planning Agreement.

1.5 PLANNING AGREEMENTS POLICY

The Planning Agreement has not been given a detailed consideration against Council's Planning Agreements Policy because it commenced its exhibition prior to the adoption of the Policy. However the Agreement is considered to be generally consistent with the Planning Agreements Policy.

1.6 FINAL COMMENTS ON THE PLANNING AGREEMENT

It is considered that the Agreement is suitable for adoption by Council. After adoption, it can be executed by Council's General Manager, once Council staff have confirmed that Stocklands have completed all the agreed works to a suitable standard and that this has been endorsed by Council's Executive.

1.7 THE FORMATION OF THE STEERING COMMITTEE

The ongoing management of the Reserve has a long history, partly due to a lack of consensus amongst Council, Stocklands and the community about the types of community facilities that should be built in the Reserve. To help provide for community input into the management of the Reserve a Steering committee was established in 2008 but was discontinued after some initial meeting with residents at this time the Reserve was still in Stocklands ownership. In order to manage this issue more effectively, once the Reserve comes into Council ownership, Council resolved at its meeting in 2011 to establish a process for a more efficient means of public participation in determining the facilities that are to be provided.

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In this regard, part 'D' of the resolution requires Council to seek expressions of interest from residents of Camden Park to join a Steering Committee to oversee the funds to be received from Stocklands. Part 'E' defines the make-up of the Steering Committee, and in this regard provides that it shall be comprised of:

- Residents of Camden Park
- Two (2) Councillors
- Council's Manager of Facilities and Recreation (now the Manager Infrastructure Planning)
- No more than 7 residents of Bridgewater Estate, with no more than 1 person from any one household, and including a mix of ages, genders and backgrounds and from a variety of streets within the estate.

These initiatives provide for a transparent consultation process which allows input from a fully representative cross section of the community in determining the facilities to be built.

The formation of the Steering Committee should commence once the Agreement has been executed and Council has received the payment from Stocklands. The Mayor may wish to nominate two Councillors to represent Council on the Steering Committee, including one to Chair the Committee. As provided for by Resolution F from 2011. The recommendations provided by the Steering Committee regarding the expenditure of funds will be submitted to Council for approval within 12 months.

A Terms of Reference should also be prepared to detail the role and function of the Steering Committee as well the selection criteria and process for appointing committee members for the Camden Park and Bridgewater Estate component through an expression of interest process.

FINANCIAL IMPLICATIONS

The injection of funds totalling some \$744,000 to build community facilities and carry out maintenance of the stormwater system in the Reserve will clearly have a positive financial impact to Council. Approximately \$120,000 of the funds received is to be used for the maintenance of the stormwater system.

As noted previously, there will be costs to Council in carrying out regular maintenance of the Reserve, in particular there may be a need for increased ground resources and possibly a site compound. Any additional funding for maintenance will be sought through the normal budgetary processes.

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ATTACHMENTS:

1. Proposed Planning Agreement - version for Execution (TRIM 8255#171)
2. Submissions Received During the Exhibition Process (TRIM 8255#172)

CONCLUSION

It is considered that the Planning Agreement provides a good outcome for Council and the community, and will provide a resolution to a matter that has been outstanding for several years. In particular it will provide for the dedication to Council of an important public reserve so that it can be managed by Council as community land for the benefit of the community. The money to be provided will be used to build new community facilities and carry out maintenance in the Reserve which will facilitate people's enjoyment of the area.

The formation of a Steering Committee will help ensure transparency and community participation in the process for deciding on which facilities to build in the Reserve.

RECOMMENDATIONS

1. That Council adopt the Planning Agreement for Cubbitch Barta Reserve in the form included at Attachment 1 to this report.
2. That the Planning Agreement be executed by the General Manager, but only after Council's Executive has been advised and has endorsed that the Reserve is suitable for handover and that the developer has completed all the agreed outstanding works as outlined in this report.
3. That on receipt of the funds provided for by the Planning Agreement, a Steering Committee be formed as detailed in this report to establish how the funds could be used in the embellishment and maintenance of facilities within the Bridgewater Estate with expenditure of any funds to be determined by Council.
4. That the Mayor appoint two (2) Councillors to represent Council on the Steering Committee and appoint one of the representatives to chair the Committee.
5. That Terms of Reference be prepared to detail the role and function of the Steering Committee as well the selection criteria and process for appointing the local resident committee members through an expression of interest process.

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ATTACHMENT 1 - 8255 – 21 MARCH 2016

HONES LAWYERS

PLANNING AGREEMENT

Wollondilly Shire Council

Council

Stockland Development Pty Limited

Developer

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This Planning Agreement is made on 2015

Parties

Wollondilly Shire Council
of 62-64 Menangle Street, Picton
("Council")

Stockland Development Pty Limited ABN 71 000 064 835
of Level 25, 133 Castlereagh Street, Sydney NSW 2000
("Developer")

Background

- A The Developer owns or has developed land in Council's local government area, at Remembrance Drive, Camden Park (the "Land").
- B The Developer has constructed a 12 stage broadacre residential land subdivision on the Land, known as Camden Park Estate and/or Bridgewater Estate (the "Development").
- C The Development was originally governed by development consent D115-03 determined on 19 May 2003 (the "Consent").
- D In addition to the Consent, Council has granted various other development consents for the Development, involving, amongst other things, the development and construction of residential dwellings (which dwellings are now complete).
- E The parties also entered into a Settlement Agreement dated 29 November 2004 and attached to this deed (the "Settlement Agreement") which documented agreement as to development applications and the payment of contributions pursuant to section 94 of the Act (the "Section 94 Contributions").
- F In 2011 the Developer submitted to Council a development application for proposed community facilities at Lot 1100 in DP 1150160, Cubbitch Barta Reserve (the "Reserve") being Development Application No. 10.2011.338.1 (the "Community Facilities DA").
- G Despite significant endeavours, Stockland and Council have been unable to reach agreement with the Camden Park Estate community as to appropriate community facilities for the Reserve (the "Community Facility").
- H In a Council meeting on 12 December 2011 it was resolved (the "Resolution") that:
 - (i) the Community Facilities DA be deferred; and
 - (ii) in consideration of a payment by Stockland, Council would accept dedication of the Reserve and Stockland would not be responsible for development of any further facilities at the Reserve.

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- I The Developer now proposes that:
- (i) the Consent be modified so that the Reserve Community Works no longer form part of that consent and that those works not be required to be completed prior to dedication of the Reserve as required by condition 1.3 of the Consent;
 - (ii) it dedicate the Reserve to Council with no further works to be completed under the Consent; and
 - (iii) it make the Payment in lieu of carrying out the Reserve Community Works.
- J The parties have agreed to enter into this deed so as to give effect to the proposal in recital "I".

Operative provisions

1. Planning agreement under the Act

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

2. Application of the planning agreement

The planning agreement constituted by this deed applies to:

- (a) the Reserve;
- (b) the Consent; and
- (c) the Modification Application.

3. Operation of this planning agreement

3.1 Subject to clause 3.2, the Parties agree that the terms of this deed will take effect and bind the parties from the Commencement Date and will remain in force and effect until the Reserve is dedicated by the Developer to the Council, upon registration of the appropriate transfer at LPI NSW, receipt of the Payment in cleared funds and approval of the Modification Application.

3.2 The parties agree that if the Developer:

- (a) has not lodged the Modification Application on or before the first anniversary of the Commencement Date; or
- (b) unless an appeal has been instituted in relation to the Modification Application, has not obtained approval of the Modification Application on or before the second anniversary of the Commencement Date; or
- (c) notifies the Council that the circumstance contemplated in paragraphs 1.3(a)(ii), 1.3(b)(i), 1.4(a)(ii) or 1.4(b)(i) of Schedule 4 arises; or

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(d) the Developer withdraws the Modification Application,

then this deed terminates and will be of no further force or effect and Council must, within 10 Business Days of the happening of such an event, return to the Developer:

- (a) the Bank Guarantee;
- (b) the Certificate of Title; and
- (c) the signed Transfer.

4. Definitions and interpretation

4.1. Definitions

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

"Application" means an application for any Development Consent.

"Assignment and Dealing Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 10.

"Authorised Officer" means, in the case of any Party, a director or secretary or an 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 deed.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 6 of the *Building Professionals Act 2005*.

"Bank Guarantee" means a guarantee or an undertaking by a trading bank or another financial institution acceptable to the Council (acting reasonably) whereby that bank or institution unconditionally and irrevocably agrees to pay the Council on written demand a specified sum of money not less than the amount of the Payment or so much thereof as Council may demand from time to time, and must include an expiry date which is not less than 5 years from the issue date.

"Business Day" means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

"Certificate of Title" means the certificate of title issued by LPI NSW in respect of the Reserve.

"Commencement Date" means the date of this deed.

"Consent" means the development consent D115-03 determined on 19 May

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2003 (as modified from time to time).

"Control" or "Controlled" means in respect of an entity the possession, directly, or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and/ or policies of that entity, whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

"Costs" includes reasonable costs, charges and expenses, including those incurred in connection with advisers.

"Costs Schedule" means Schedule 11 of this deed.

"Council" means Wollondilly Shire Council.

"Dedication" means the dedication of the Reserve to the Council, at no cost to the Council, and in accordance with s 49 of the LGA, as a Public Reserve.

"Development" means the development subject of the Consent consisting of a 12 stage broadacre residential land subdivision on the Land, known as Camden Park Estate and/or Bridgewater Estate.

"Development Application" has the meaning given to that term in the Act.

"Development Consent" has the meaning given to that term in the Act.

"Development Contribution" means the dedication of the Reserve by the Developer to the Council as a Public Reserve and the making of the Payment.

"Development Contribution Schedule" means Schedule 3 of this deed.

"Development Procedures" means the terms and conditions imposed on the relevant Parties under, and by virtue of, Schedule 4.

"Development Program" means the timetable and milestones for each Development Contribution described in Schedule 5.

"Dispute Resolution Procedures" means the procedures imposed on the relevant Parties under Schedule 8.

"Explanatory Note" means the explanatory note relating to this deed, as required by clause 25E of the Regulation, and attached as Exhibit A to this deed.

"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).

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"Land" means the land located at Remembrance Drive, Camden Park and as described in the Consent.

"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.

"LEP" means *Wollondilly Local Environmental Plan 1991*.

"LGA" means the *Local Government Act 1993*, as amended.

"LPI NSW" means Land and Property Information Service New South Wales.

"Modification Application" means an application made to the Council to modify the Consent so that the Developer may make both the Dedication and the Payment in lieu of carrying out the Reserve Community Works including any necessary amendments to the conditions in the Consent to give effect both to the Dedication and Payment being made in that way as described in item 3 of Schedule 2.

"Modification Consent" means the modified development consent issued in respect of the Modification Application.

"Parent" means any person who Controls the Developer.

"Party" means a party to this deed, including their respective successors and assigns.

"Payment" means the payment of the sum of \$733,847.00 (to be adjusted annually on 31 December by the CPI such adjustment to commence following the date of this Deed) by the Developer to the Council for the Reserve Community Works and maintenance of stormwater pipes and systems, including pumps. For the avoidance of doubt the Payment has been calculated as at 31 March 2015 and will require indexation to the date of execution of this deed.

"Real Property Act" means the *Real Property Act 1900*.

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

"Related Entity" has the meaning "related entity" has in the *Corporations Act 2001* (Cth).

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

"Release and Discharge Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

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"Reserve" means Lot 1100 in DP 1150160, Cubbitch Barta Reserve which as at the date of this deed is subject to the reservations and registered interests which are also set out in item 2 of Schedule 2.

"Reserve Community Works" means the proposed facilities building, basketball court and pathway lighting referred to, or required by, the Consent as amended or varied by the outcome of the consultative process referred to in clause 5(e).

"Review Procedures" means the procedures set out in Schedule 7.

"Security Arrangements" means those security arrangements set out in Schedule 9.

"Transfer" means the transfer (in registrable form but not stamped for stamp duty) of the Reserve from the Developer to the Council.

4.2. General

In this deed unless the contrary intention appears:

- (a) a reference to a document or another instrument includes any variation or replacement of any of them;
- (b) 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;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) 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;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) 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 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;
- (i) "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;

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- (j) if a Party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) 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 power or functions;
- (m) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this deed;
- (n) any capitalised term used, but not defined in this deed, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules and Exhibits form part of this deed.

5. Development Contribution to be made

The Parties agree that:

- (a) The Developer will provide, or procure the provision of, the Development Contribution;
- (b) The Council accepts the dedication of the Reserve subject to the encumbrances and interests noted in Item 2, Schedule 2;
- (c) The Council agrees with the Developer that following the dedication of the Reserve that lot will be used by the Council as a Public Reserve;
- (d) Other than the Dedication of the Reserve and making of the Payment, as contemplated by this deed, the Council will not require:
 - (i) any further dedication of any part of the Land by the Developer; or
 - (ii) any monetary contribution by the Developer to the Council pursuant to s94 or s94A of the Act,in respect of the Consent or the Development.
- (e) Upon execution of this deed, Council must expediently set up an appropriate consultative process with the Camden Park Estate community to decide the final form of the Reserve Community Works; and

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- (f) After completion of the appropriate consultative process referred to in (e) above and subject to approval of the Modification Application, Council must, if required to do so by law, lodge a Development Application in respect of carrying out the Reserve Community Works consistent with the finding of that consultative process and thereafter complete those works at its sole cost and risk.

6. Application of the Development Contribution

The Developer will provide, or procure the provision of, the Development Contribution at the time or times and in accordance with and or in the manner set out in the Development Contribution Schedule, the Development Procedures, and the Development Program.

7. Application of s94, 94A and s94EF of the Act to the Proposed Development

7.1. Exclusion of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act is excluded to the extent stated in Schedule 1.

8. Ownership of Reserve and satisfaction of obligations

8.1. Ownership of the Reserve

The Developer represents and warrants to the Council that the Developer is the owner of the Reserve and will remain the owner of the Reserve until the date on which the Dedication of the Reserve to the Council is effected and will not mortgage, charge or otherwise encumber the Reserve.

8.2. Release and discharge of this deed

The Council agrees that upon the Dedication occurring, which dedication will be effected upon the registration of the Transfer at the LPI NSW, and the making of the Payment, the Developer will have fully satisfied and discharged its obligations under this deed.

9. Review of deed

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review Procedures.

10. Dispute resolution

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

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11. Security and enforcement

11.1. Security

The Developer has agreed to provide security to the Council for performance of the Developer's obligations under this deed on the terms and conditions of the Security Arrangements.

11.2. Enforcement

This deed may be enforced by either Party in any court of competent jurisdiction.

11.3. No prevention to enforcement

For the avoidance of doubt, nothing in this deed prevents:

- (a) 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; and
- (b) 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.

12. Notices

12.1. Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below;

Council

Address: 62 - 64 Menangle Street, PICTON NSW 2571
Telephone: (02) 4677 1100
Fax: (02) 4677 2339
Attention: General Manager

Developer

Address: Stockland Development Pty Limited
Level 25, 133 Castlereagh Street
Sydney NSW 2000

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Telephone: (02) 9035 2000
Fax: (02) 8988 2000
Attention: General Counsel

12.2. Change of address

If a Party gives another Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

12.3. Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted;
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, provided that if the fax transmission is sent on a day that is not a business day, or if an error free transmission report is received by the sender after 5pm on a Business Day, then the transmission will be deemed to have been given or made on the next Business Day.

13. Approvals and Consent

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 the Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14. Assignment and dealings

None of the Parties to this deed may assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case unless stated otherwise in the Assignment and Dealing Terms.

15. Costs

The parties shall pay the costs in respect of the preparation and negotiation of this deed in accordance with the Cost Schedule.

16. Entire agreement

This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or

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done by another Party, or by an Authorised Officer, agent or employee of that Party, before this deed was executed, except as permitted by law.

17. Further Acts

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

18. Governing Law and Jurisdiction

This deed is governed by the law of New South Wales. The Parties submit to the nonexclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19. Joint and individual liability and benefits

Except as otherwise set out in this deed, any agreement, covenant, representation or warranty under this deed 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.

20. No fetter

Nothing in this deed shall be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty, specifically nothing in this deed should be construed as a warranty, representation promise or otherwise that the Modification Consent will be issued. Each of the parties agree and acknowledge that:

- (a) the Council is under a statutory duty to properly consider, on its merits, the Modification Application to be submitted to it by the Developer, or by any person on the Developer's behalf, whether in relation to some or all of the subject of this deed or otherwise, and to otherwise exercise each and all of its statutory responsibilities according to law; and
- (b) the Council cannot fetter in advance the exercise of any of its statutory discretions, whether by way of contract, estoppels or otherwise, in relation to the Modification Application to be lodged with the Council in its capacity as the consent authority under the LEP nor pre-determine any decision in respect of any such application; and
- (c) the Council (in the proper exercise of its statutory function) proposes to refer the Modification Application to external consultants for independent assessment; and
- (d) the Council has not at any time prior to the making of this deed, given any assurance or made any representation or statement to the Developer as to how it will or may exercise any of its statutory functions, discretions and or obligations whether in relation to the Modification Application; and

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- (e) no party to this deed has been induced by another party to enter into this deed on the basis of any such assurance, representation or statement; and
- (f) the Council is entitled to oppose or challenge the Modification Consent and or Modification Application (or other application as the case may be) by way of legal proceedings or otherwise. For the avoidance of doubt the Council may be an active party in any proceedings concerning the Modification Consent and or Modification Application (or other application as the case may be).

21. Representations and warranties

21.1 General

The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any law.

21.2 Specific warranty and representation by the Developer

The Developer further warrants, represents and agrees that:

- (a) the only works that remain to be completed under the Consent are the Reserve Community Works; and
- (b) that the Payment represents a genuine estimate of the actual cost of carrying out and completing the Reserve Community Works taking into account the overpayment by the Developer of certain s94 contributions under the Act in respect of the Consent and or Development (amounting to \$29,607.00).

22. Severability

- (a) If a clause or part of a clause of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this deed, but the rest of the deed is not affected.

23. Modification

No modification of this deed will be of any force or effect unless it is in writing and signed by the Parties as a deed.

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24. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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.

25. GST

25.1. Consideration does not include GST

Any consideration expressed in this deed is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

25.2. GST payable

If any supply under or in connection with this deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("GST Amount").

The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and
- (b) payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

The supplier of a taxable supply made under or in connection with this deed must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

25.3. Reimbursement

Despite any other provision of this deed, any amount payable under or in connection with this deed, which is calculated by reference to a cost, expense or amount paid or incurred by a Party, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

25.4. Defined GST terms

Words and expressions used in this clause 25 have the meaning given to them in the GST Act.

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26. Effect of Scheduled terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules as if those terms and conditions were expressly set out in full in the operative parts of this deed.

27. Confidentiality

The Parties agree that the terms of this deed are not confidential and this deed may be treated as a public deed and exhibited or reported without restriction by any Party.

28. Release

- (a) Upon the making of this deed, Council releases the Developer from any claim, action, suit or demand in relation to:
 - (i) the making of development contributions for the provision of community facilities with respect to the Reserve, except with respect to the enforcement of this deed;
 - (ii) the carrying out of the Reserve Community Works;
 - (iii) works carried out on the Reserve by the Developer before the date of this deed.
- (b) The Council's releases contained in this clause are given for the Developer, its successors and assigns.
- (c) This deed may be pleaded by the Developer as an absolute bar and estoppel to any claim in respect of which a release contained in this deed operates.
- (d) This release does not operate to preclude action being taken by the Council concerning works carried out by (or on behalf of) the Developer on the Land before the date of this Deed but excluding any works carried out on the Reserve.

29. Explanatory Note

As noted in Schedule 12, the Explanatory Note must not be used to assist in construing this deed.

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Schedule 1 – Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures to ensure that the planning agreement complies with the Act.

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application - (Section 93F(1))</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) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes, the Modification Application.</p> <p>(c) Not applicable</p>
<p>Description of land to which this deed applies - (Section 93F(3)(a))</p>	<p>The whole of the Reserve.</p>
<p>Description of change to the environmental planning instrument to which this deed applies - (Section 93F(3)(b)(i))</p>	<p>Not applicable.</p>
<p>Description of the development to which this deed applies - (Section 93F(3)(b)(ii))</p>	<p>The development referred to in the Consent, coupled with the Modification Application</p>
<p>Description of the nature and extent of the provision to be made by the developer under the agreement, the time or times by which the provision is to be made and the manner by which the provision is to be made. (Section 93F(3)(c))</p>	<p>See Schedules 3, 4 & 5</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act to the Consent is wholly excluded.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act to the Consent is wholly excluded.</p>
<p>Applicability of section 94EF of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act to the Consent is not excluded.</p>
<p>Consideration of benefits if under this deed section 94 applies - (Section</p>	<p>Not applicable.</p>

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93F(3)(e))	
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 10 and Schedule 8.
Enforcement of this deed – (Section 93F(3)(g))	See clause 11 and Schedule 9.
No obligation to grant consent or exercise functions – (Section 93F(9))	See clauses 13 & 20.

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Schedule 2 – Reserve

1. Title

The whole of the land comprised in Lot 1100 DP 1150160

2. Encumbrances and Interests

The Land is subject to:

- (a) the reservations and conditions in the Crown Grant;
- (b) the land excludes minerals and is subject to rights to mine created by dealing H567823;
- (c) Easement to drain water 2 metre(s) wide appurtenant to the part(s) shown so benefitted in the title diagram affected the part(s) so burdened in plan with 9191080;
- (d) Easement to drain water 2 metre(s) wide appurtenant to the part(s) shown so benefitted in the title diagram affected the part(s) so burdened in plan with 9191080;
- (e) Easement to drain water 1.5 metre(s) wide appurtenant to the land above described created by DP1045588;
- (f) Easement to drain water 1.5 metre(s) wide appurtenant to the land above described created by DP1049115;
- (g) Easement for water supply purposes 3.0 metre(s) wide affecting the part(s) so burdened in the title diagram created by DP1062133;
- (h) Restriction(s) on the use of land referred to and numbered 921) in the s.88B instrument created by DP1062133;
- (i) Easement to drain water 1.5 metre(s) wide appurtenant to the part(s) shown so benefitted in the title diagram;
- (j) Easement for underground cables 1.0 metre(s) wide affecting the part(s) shown so burdened in the title diagram;
- (k) Easement for support 1.0 metre(s) wide appurtenant to the land above described; and
- (l) Easement for water supply purposes 2.5 metre(s) wide affecting the part(s) shown so burdened in the title diagram.

3. Modification Application

The modification of the Consent by way of:

- (a) Deletion of the Reserve Community Works so that those works no longer form part of the Consent and the deletion of condition 1.3 that required those works to be completed prior to dedication of the Reserve; and
- (b) Any other modification of the Consent reasonably required so as to give effect to the parties intention under this deed.

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Schedule 3 – Development Contribution Schedule

1. Development Contributions

The Developer undertakes to make the following Development Contribution:

Column 1	Column 2
Development Contribution	Intended use
Dedication to the Council, at no cost to the Council, of the Reserve.	Open space recreation pursuant to the provisions of Clauses 2.2 and 2.3 of the LEP and the RE1 zone.
Making of the Payment.	Funding for the carrying out of the Reserve Community Works by Council.

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Schedule 4 – Development Procedures

- 1.1 The Developer (or some other person on the Developer's behalf) shall lodge the Modification Application in respect of the Consent on or before the first anniversary of the Commencement Date.
- 1.2 The Council must, if it is the consent authority, determine the Modification Application in accordance with the Act and in accordance with its obligations as Local Government authority, paying specific regard to clauses 13 and 20 of this deed.
- 1.3 Within 14 Business Days of the determination of the Modification Application, the Developer must provide written notice to the Council stating that:
 - (a) if the Modification Consent is granted:
 - (i) it accepts the Modification Consent and the conditions imposed and does not intend to appeal the Modification Consent; or
 - (ii) the conditions imposed are irreparably and unacceptably inconsistent with this deed but that it does not intend to appeal; or
 - (iii) it does not accept the Modification Consent and the conditions imposed and intends to appeal the Modification Consent to the Land and Environment Court.
 - (b) if the Modification Application is refused, either:
 - (i) it accepts the refusal of the Modification Application; or
 - (ii) it does not accept the refusal of the Modification Application and intends to appeal the determination of the Modification Application to the Land and Environment Court.
- 1.4 Within 14 Business Days of the determination of an appeal under paragraph 1.3(a)(iii) or 1.3(b)(ii), the Developer must provide written notice to the Council stating that:
 - (a) if the Modification Application is approved:
 - (i) it accepts the Court's decision and does not intend to appeal; or
 - (ii) it accepts the Court's decision and does not intend to appeal but that the conditions are irreparably and unacceptably inconsistent with this deed; or
 - (iii) it does not accept the Court's decision and intends to appeal the decision or the consent authority lodges an appeal against that decision.
 - (b) if the Modification Application is refused, that either:
 - (i) it accepts the refusal of the Modification Application and clause 3 will apply; or
 - (ii) it does not accept the refusal of the Modification Application and intends to appeal the determination of the Modification Application under section 56A of the *Land and Environment Court Act 1993* or to a higher Court, as the case may be.

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- 1.5 The provisions of clause 1.4 will apply to any subsequent appeal commenced by either the Developer or consent authority, as the case may be.
- 1.6 Clause 3.2 of this Deed will apply on the provision of written notice under paragraph 1.3(a)(ii), 1.3(b)(i), 1.4(a)(ii) or 1.4(b)(i).
- 1.7 On receipt of the written notice contemplated in paragraph 1.3(a)(i) or 1.4(a)(i):
 - (a) the Developer must provide to the Council a transfer in registrable form (but not stamped for stamp duty) in respect of the Reserve and the Certificate of Title for the Reserve;
 - (b) the Council must take all steps necessary to then procure the registration of that transfer, effecting the Dedication of the Reserve as a Public Reserve within 14 Business Days of receipt of that notice; and
 - (c) the Developer must make the Payment to the Council within 14 Business Days of the date of providing that written notice.
- 1.8 Should the Developer fail to provide the notice required under either clause 1.3 or 1.4, then the Modification Consent shall be deemed to be on terms acceptable to the Developer and in which case clause 1.7 above shall apply at the expiration of the requisite notice giving period.
- 1.9 Upon execution of this deed, Council must expediently set up an appropriate consultative process with the Camden Park Estate community to decide the final form of the Reserve Community Works.
- 1.10 After completion of the appropriate consultative process referred to above and subject to approval of the Modification Application, the Dedication of the Reserve to the Council as a Public Reserve and the making of the Payment, Council must, if required to do so by law, lodge a development application in respect of carrying out the Reserve Community Works consistent with the finding of that consultative process and thereafter complete those works at its sole cost and risk.
- 1.11 Upon execution of this deed, the Developer must, unless already done, also withdraw the current undetermined development application, namely, DA - 010.2011.00000338.001 for a community facility - shelter and amenities, civil works and landscaping.

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Schedule 5 – Development Program

- 1.1 The Developer shall effect the Development Contribution by:
- (a) the provision of written notice to Council in accordance with paragraphs 1.3(a)(i) or 1.4(a)(i) of Schedule 4 whereby the Council will effect the Dedication of the Reserve to the Council as a Public Reserve by registration of the Transfer and Certificate of Title for the Reserve within 14 Business Days of receipt of that notice;
 - (b) the making of the Payment within 14 Business Days following the provision of written notice to Council in accordance with paragraphs 1.3(a)(i) or 1.4(a)(i) of Schedule 4; and
 - (c) Providing the Certificate of Title to the Reserve to the Council so as to facilitate registration of the Transfer.
- 1.2 In the event that the deeming provisions referred to in clause 1.8 of Schedule 4 apply:
- (a) the Council will effect the Dedication of the Reserve to the Council as a Public Reserve by registration of the Transfer and Certificate of Title for the Reserve within 14 Business Days of the expiry of the requisite notice giving period referred to in clause 1.8 of Schedule 4; and
 - (b) the making of the Payment within 14 Business Days following the expiry of the requisite notice giving period referred to in clause 1.8. of Schedule 4
- 1.3 The Council will, following the Dedication of the Reserve to the Council as a Public Reserve, the making of the Payment, successful outcome of the consultation process with the Bridgewater community and the approval of the Reserve Community Works (if so required by law) complete the Reserve Community Works at its cost.
- 1.4 Council agrees to carry out the Reserve Community Works at its sole risk and cost.

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Schedule 6 – Release and Discharge Terms

The Council agrees:

- (a) that upon the registration of a transfer and the Certificate of Title by the Council at the LPI NSW consistent with this deed, and providing for the Dedication of the Reserve to the Council, at no cost to the Council, coupled with the making of the Payment, the Developer would have fully satisfied and discharged its obligations under this deed; and
- (b) if so requested by the Developer, to provide to the Developer (or to any other person authorised to act on her behalf) a letter within 30 Business Days of receipt of such a request, prepared on the Council's letterhead, confirming the Council's assessment that the Developer has fully discharged its obligations under this deed; and
- (c) Clause (a) has effect whether or not the Council gives the letter to the Developer under clause (b).

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Schedule 7 – Review Procedures

The Parties may agree to review this deed.

Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.

Any agreed amendment of this deed will:

- (a) be evidenced in writing; and
- (b) accurately record the agreement of the parties.

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Schedule 8 – Dispute Resolution

1. Notice of Dispute

If a dispute between any of the Parties arises in connection with this deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

Any dispute between the Parties arising in connection with this deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, the Developer or any one Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

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5. Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 8 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this deed.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and

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- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

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12. Other courses of action

If the mediation referred to in paragraph 2 or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

13. Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

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:

- (d) 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
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material 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.

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Schedule 9 – Security Arrangements

- 1.1 Upon execution of this deed the Developer must provide to the Council:
- (a) a Bank Guarantee for the same amount as the Payment, such Bank Guarantee not to have an expiry date that is less than 5 years from the issue date;
 - (b) a signed transfer in registrable form at the LPI NSW (but not stamped for stamp duty) in respect of the Reserve; and
 - (c) the Certificate of Title in respect of the Reserve.
- 1.2 The Council will hold the Bank Guarantee, the Transfer and the Certificate of Title, referred to at 1.1(a), (b) and (c) above respectively pending approval of the Modification Application.
- 1.3 In the event this deed is terminated in accordance with clause 3.2 or otherwise, the Council must return the Bank Guarantee, the Transfer and the Certificate of Title to the Developer in accordance with clause 3.2.
- 1.4 Upon receipt of the Payment in cleared funds the Council shall return the Bank Guarantee to the Developer within 10 Business Days of the making of the Payment. Should the Payment not be made within 14 Business Days from the date required under Schedule 4, the Council must:
- (a) provide the Developer with a written notice advising of the breach; and
 - (b) if the Developer has not rectified the breach within 14 Business Days of receipt of the notice contemplated in paragraph 1.4(a) above, is entitled without objection from, the Developer, to call upon the Bank Guarantee.

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Schedule 10 – Assignment and Dealing Terms

1.1 Developer's right to sell the Reserve

The Developer must not sell, transfer or dispose of the whole or any part of the Reserve otherwise than in circumstances where paragraph 1.2 applies, unless before it sells, transfers or disposes of any such part of the Reserve to another person ("Transferee"):

- (a) it satisfies the Council acting reasonably that the proposed Transferee is no less financial than the Developer and is respectable and financially capable of complying with such of the Developer's obligations under this deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Council acting reasonably shall ("Required Obligations"); and
- (b) the rights of the Council under this deed are not diminished or fettered in any way; and
- (c) the Transferee signs a deed in form and substance acceptable to the Council acting reasonably and containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
- (d) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (e) the Developer and the Transferee pay the Council's reasonable Costs in relation to that assignment.

1.2 Developer's Right to Sell the Land

Subject to clause 1.1, the Developer is entitled to sell, transfer or dispose of the whole or any part of the Land without any restriction.

1.3 Release

If the Developer sells, transfers or disposes of the whole or any part of the Reserve and fully satisfies the requirements of paragraph 1.1 of this Schedule 10, the Developer will be released from its obligations under this deed with respect to the Reserve (or any part of it) being sold, transferred or disposed of.

1.4 Council's and Corporation's right to assign

The Council may not assign its rights under this deed without the Developer's prior consent, such consent not to be unreasonably withheld.

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1.5 No change in control

A person may only become or cease to be a Parent of the Developer with the Council's consent provided that before that event occurs:

- (a) the Developer satisfies the Council acting reasonably that the Developer, as Controlled by the new Parent ("**New Parent**"), will have the capability, experience and expertise to satisfy the Developer's obligations under this deed ("**Required Obligations**");
- (b) the New Parent signs a deed in form and substance acceptable to the Council containing provisions under which:
 - (i) the New Parent agrees to comply with the terms of this deed as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the Reserve being sold, transferred or disposed of; and
 - (ii) the New Parent acknowledges and agrees that the rights of the Council under this deed are not diminished or fettered in any way;
- (c) any default by the Developer has been remedied by the Developer or waived by the Council; and
- (d) the Developer and the New Parent pay the Council's reasonable Costs in relation to that consent.

For the avoidance of doubt a change in effective Control of the Developer constitutes an assignment under this Deed and shall require the consent of the Council.

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Schedule 11 – Costs

In relation to the preparation and negotiation of this deed the Developer will pay half of the Council's reasonable costs and its own costs with that payment being made in the following manner:

- (a) the Council is to pay its lawyers invoice(s) in respect of the preparation and negotiation of this deed; and
- (b) thereafter invoice the Developer for half of that cost which the Developer must pay within 14 days from the date of the Councils invoice.

The Developer is to pay all costs in respect of the stamping of the Transfer but for the avoidance of doubt, the Council is to arrange for the stamping of the transfer.

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Schedule 12– Explanatory Note

The Explanatory Note relating to this deed must not be used to assist in construing this deed.

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Execution Page

Executed as a Deed.

The seal of Wollondilly Shire Council)
Has been affixed by authority of the)
Mayor and General Manager)

Mayor – Councillor Simon Landow

General Manager – Luke Johnson

Name of Witness

Executed by Stockland)
Development Pty Limited ABN 71)
000 064 835 by its attorney pursuant)
to power of attorney registered Book)
No. Who states that no)
notice of revocation of the power of)
attorney has been received in the)
presence of:

Witness

Attorney

Name of Witness (print)

Name of Attorney (print)

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EXPLANATORY NOTE

Planning Agreement

Between

Wollondilly Shire Council

&

Stockland Development Pty Limited

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Exhibit A - Explanatory Note

**Planning Agreement – Dedication of land and carrying out of community works at
Cubbith Barta Reserve**

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (the “**Planning Agreement**”), under Section 93F of the *Environmental Planning and Assessment Act 1979* (the “**EPA Act**”), for the modification of an existing development consent (the “**Consent**”) involving the following:

- (a) the deletion of certain works from the Consent including the construction of a community facility, basket ball courts and pathway lighting and as may be amended following community consultation (known as the “**Reserve Community Works**”);
- (b) the dedication of land to the Council as a public reserve;
- (c) the payment to the Council of the cost of the works proposed to be deleted from the Consent; and
- (d) the carrying out of the deleted works (or such works as are agreed to be carried out following community consultation) by the Council,

(all known as the “**Proposed Development**”).

This explanatory note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

1. Parties to the Planning Agreement

Stockland Development Pty Limited (the “**Developer**”) has made an offer to Wollondilly Shire Council (the “**Council**”) to enter into a Planning Agreement, for the dedication of land zoned RE1, being Lot 1100 in DP 1150160, and the payment of the sum \$733,847 (indexed as at 31 March 2015) (the “**Payment**”) in consideration of the Council taking over the obligation of carrying out the Reserve Community Works.

2. Description of the Subject Land

The land to which this Planning Agreement applies is described as follows:

Lot 1100 in DP 1150160 being known as the Cubbith Barta Reserve (the “**Reserve**”) and the Land subject of the Development.

3. Description of Proposed Change to Environmental Planning Instrument

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There is no change proposed to the *Wollondilly Local Environmental Plan*.

4. Summary of Objectives, Nature and Effect of this Planning Agreement

The objective of the Planning Agreement is to ensure that the Reserve Community Works are carried out in a way to the satisfaction of the Camden Park Estate community, which community surrounds the Reserve and so as to ensure that that area remains under the care and control of Council such that the Reserve is maintained, the natural environment is protected and public access to the Reserve is preserved for future generations.

5. Assessment of the Merits of this Planning Agreement

The Planning Purposes Served by this Planning Agreement

In accordance with Section 93F(2) of the EPA Act 1979, this Planning Agreement promotes the following public purpose;

- *the provision of (or the recoupment of the cost of providing) public amenities or public services*

The parties have assessed this Planning Agreement and state that the provisions of this Planning Agreement, in particular the Proposed Development, provide a reasonable means of achieving the public purposes set out above by reason that the Reserve will remain under the care and control of the Council which will ensure that the Reserve Community Works are carried out in accordance with, and to the satisfaction, the requirement of the Camden Park Estate community which surrounds the Reserve.

How this Planning Agreement Promotes the Objects of the Environmental Planning and Assessment Act 1979

In accordance with the EPA Act 1979, this Planning Agreement and the Proposed Development promotes its intent to encourage;

- (ii) *the promotion and co-ordination of the orderly and economic use and development of the Land; and*
- (v) *the provision and co-ordination of community services and facilities; and*

The Planning Agreement achieves these Objects by requiring the Developer to make the Payment and the dedication of the Reserve which will enable the Reserve to be controlled by the Council and the carrying out of the Reserve Community Works (following appropriate community consultation).

By providing the dedication of land the Planning Agreement will result in:

- promotion of the social and economic welfare of the community and a better environment;

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- promotion and co-ordination of the orderly and economic use and development of the Land; and
- provision and co-ordination of community services and facilities (being public open space areas and a community hall/building); and

How this Planning Agreement Promotes the Public Interest

This Planning Agreement's intent is to promote the Public Interest through the acquisition of land for public purposes at no cost to the Council. This in turn promotes further Public Interest by ensuring that the scarce and valuable resources of the Council are maintained and preserved for the betterment and enjoyment of the community at large.

How this Planning Agreement Promotes one or more of the elements of Council's Charter under section 8 of the *Local Government Act 1993*

This Planning Agreement promotes the following elements of the Council's Charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development

This Planning Agreement promotes the above elements of the Council's Charter by providing recreation space to members of the public in accordance with a plan of management (to be adopted by the Council for that purpose) and by ensuring proper and appropriate community consultation for the construction of community facilities.

The Impact of this Planning Agreement on the Public or any Section of the Public

The growing population of the Wollondilly Shire requires public recreation space. This Planning Agreement provides the Council with land which will be dedicated at no cost to Council for use for open space purposes, as well as funds with which council will after consultation with the community, undertake embellishment works to improve the open space values of the land. Whilst it is likely that the land will be used mainly by residents of the Bridgewater estate community, it will also be available for use by other residents of the Wollondilly LGA.

Identify whether the Planning Agreement conforms with Council's capital works program (if any)" CI 25E(2)(f)

Council's Capital Works Program for 2013-14 includes \$450,000 to provide for the construction of amenities within Bridgewater park, and which is to be funded from

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developer contributions. However the works have not been completed yet because the scope and type of facilities to be built have not been resolved with the community. The Planning Agreement is considered to be consistent with the Capital Works program because it will provide funding in excess of the amount identified in the Works Program to allow the amenities to be built in this location, subject to a consultation process with the residents to resolve the specific amenities that will be built.

State whether the agreement, amendment or revocation specifies that certain requirements of the agreement must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued C1 25E(2)(g)

The Agreement does not include a provision that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.

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Exhibit B

Exhibit to VPA between Wollondilly Shire Council and Stockland Development Pty Ltd



Stockland Development Pty Limited

Wollondilly Shire Council

Settlement Agreement

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Date *29th NOVEMBER 2004*

Parties

Stockland Development Pty Limited ABN 71 000 064 835 of Level 16, 157 Liverpool Street, Sydney NSW 2000 (**Stockland**)

Wollondilly Shire Council of 62-64 Menangle Street, Picton NSW 2571 (**Council**)

Background

- A Stockland owns or has developed land in Council's local government area, at Remembrance Drive, Camden Park (**Land**).
- B Stockland is constructing a 12 stage broadacre residential land subdivision on the Land, known as Camden Park Estate and/or Bridgewater Estate (**Development**).
- C Council granted development consent to each of stages 1, 2, 3, 4, 5 and 6 of the Development (**Early Stages**). Condition 5 of each of the development consents for the Early Stages (except for stage 5, which consists of open space) requires the payment of contributions to the Council pursuant to section 94 (**Section 94 Contributions**) of the *Environmental Planning and Assessment Act 1979 (EPA Act)* and the Wollondilly Contributions Plan 2000 (**Contributions Plan**). Although Stockland disputed the reasonableness of the amount of the contributions imposed, Stockland has paid the full amount of contributions imposed for the Early Stages.
- D Council also granted consent to stages 7, 8 and 9 of the Development (**Later Stages**). Stockland lodged applications under section 96 of the EPA Act seeking modification of condition 5 of the development consents for the Later Stages (**Section 96 Applications**).
- E Stockland filed class 1 proceedings numbered 10999, 11000 and 11001 of 2004 in the Land and Environment Court of NSW (**Proceedings**), appealing the deemed refusal of the Section 96 Applications by Council.
- F Stockland has lodged with the Council development applications for stages 10 and 11 (**Final Stages**) and will shortly lodge a development application with the Council for stage 12 of the Development (**Stage 12**). If the Council approves the development applications for the Final Stages and Stage 12 and imposes conditions requiring payment of Section 94 Contributions under the Contributions Plan, Stockland may file appeals under section 97 of the EPA Act.
- G The Council has considered the submissions made by Stockland in respect of the likely demand for public facilities and public amenities arising from the Later Stages and is prepared to agree to Consent Orders being entered in the Proceedings to amend condition 5 of each of the consents for the Later Stages,

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and the conditions imposing Section 94 Contributions for the Final Stages and Stage 12 to reflect the contributions per lot stated in **Appendix A**.

Agreed terms

1 Interpretation

1.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) "includes" means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Sydney;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;

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- (x) this document includes all schedules and annexures to it; and
- (xi) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this document;
- (g) if the date on or by which any act must be done under this document is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.2 Headings

Headings do not affect the interpretation of this document.

2 Section 94 Contributions

- (a) The parties agree that having regard to the increase in demand for public amenities and public services as a result of the Development, the Section 94 Contributions for the Later Stages and the Final Stages, indexed to 27 October 2004, as set out in **Appendix A**, are reasonable contributions to be levied.
- (b) Subject to **clause 5**, Stockland is willing to settle the Proceedings on the basis of Council's acceptance of the Section 94 Contributions specified in **Appendix A** in full and final satisfaction of Stockland's liability to pay any Section 94 Contributions for the Later Stages and the Final Stages and Stage 12, if approved.

3 Consent orders

3.1 Progress making of orders

Stockland and the Council agree to not oppose the making of consent orders in the terms shown in **Appendix B (Consent Orders)** and to do all things reasonably necessary to procure the making of Consent Orders by the Land and Environment Court, as expeditiously as possible and to give effect to the Consent Orders.

3.2 Costs

The parties agree to each bear their own cost of the Proceedings and procuring the Consent Orders in accordance with **clause 3.1**.

4 Final Development Applications

4.1 Final Stages Appeals

If:

- (a) Council grants development consent to Stockland's development applications for the Final Stages or any of them;

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- (b) the development consents for the Final Stages (or any of them) require the payment of Section 94 Contributions other than in accordance with **Appendix A**; and
- (c) Stockland commences class 1 appeals in the Land and Environment Court of NSW in relation to the amount of the Section 94 Contributions imposed in respect of the Final Stages (or any of them) or for the Council's refusal to modify any of the development consent conditions imposing Section 94 Contributions for the Final Stages (or any of them) under section 96 of the EPA Act (**Final Stages Appeals**), then the Council will consent to and do all things reasonably necessary to:
 - (d) effect the joinder of the Final Stages Appeals with the Proceedings, if the Proceedings have not been disposed of; and
 - (e) make and progress an application for Consent Orders for the Final Stages Appeals and the Proceedings in accordance with **clauses 3.1** and **3.2**.

If Stockland commences the Final Stage Appeals, Stockland is willing to settle those proceedings on the basis of the Council's acceptance of the Section 94 Contributions specified in **Appendix A** in full and final satisfaction of Stockland's liability to pay any Section 94 Contributions for the Final Stages.

4.2 Separate proceedings

If the Final Stages Appeals (or any of them) cannot be joined with the Proceedings, for any reason, then the parties agree they will each do all things reasonably necessary to procure the making of Consent Orders in respect of the Final Stages Appeals separately from the Consent Orders shown in Part 1 of **Appendix B** for the Proceedings, in accordance with **clause 3**.

4.3 Costs

The parties agree to each bear their own costs of the Final Stages Appeals, the joinder in **clause 4.1(d)** and of procuring the Consent Orders in accordance with **clause 4.1(e)** and **clause 4.2**.

5 Failure to obtain Consent Orders

If the Land and Environment Court declines to make the Consent Orders for the Proceedings, the Final Stages Appeals or any of them, then the Council acknowledges that nothing in this Agreement operates to prevent Stockland from exercising rights of appeal available to it under the EPA Act, the *Land and Environment Court Act 1979* and the *Supreme Court Act 1970* or otherwise.

6 Bank Guarantees

6.1 Acceptance by Council

After both parties sign this Agreement, the Council agrees to accept from Stockland bank guarantees, in lieu of payment of money, in respect of all or

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part of the Section 94 Contributions imposed in consent condition 5 of the development consents for stages 7, 8 and 9 of the Development.

6.2 Circumstances in which the Bank Guarantees can be drawn

If Stockland has delivered bank guarantees to the Council under **clause 6.1** and if in respect of a stage of the Development the subject of Land and Environment Court proceedings, Stockland has not paid the Section 94 Contributions stated in **Appendix A** within 10 days from the date that the:

- (a) Land and Environment Court makes the Consent Orders;
- (b) Land and Environment Court makes orders different from the Consent Orders in respect of the payment of Section 94 Contributions; or
- (c) respective Land and Environment Court proceedings are discontinued,

then the Council may call on the bank guarantees provided to the Council under **clause 6.1**.

6.3 Interest

After 30 days from lodgement with Council of the bank guarantees stated in **clause 6.1**, Council is entitled to interest on the amount of the Section 94 Contributions for which the Council holds bank guarantees, calculated at the rate of 6% per annum from the thirty first day from lodgement of the bank guarantee to the date of the payment of the Section 94 Contributions in accordance with **clause 7**, payable by Stockland at the date of payment of the Section 94 Contributions.

6.4 Refund of over payment

If the Council calls on any bank guarantee provided by Stockland under this Agreement, Council must within 10 days of calling on the bank guarantee pay to Stockland the difference between:

- (a) the amount referable to the stages of the Development for which the bank guarantee was provided to Council as stated in **Appendix A**, plus any interest to which the Council is entitled under **clause 6.3**; and
- (b) the amount of Section 94 Contributions imposed by the Council in the development consent for the stages for which the called-on bank guarantee was provided by Stockland.

7 Payment

The parties agree that if the Land and Environment Court makes the Consent Orders, Stockland will pay to the Council the Section 94 Contributions in respect of the Later Stages in accordance with those Consent Orders. If the Land and Environment Court makes the Consent Orders in respect of the Final Stages Appeals, Stockland will pay the Section 94 Contributions in respect of the Final Stages in accordance with the Consent Orders, except as otherwise provided in **clause 6**.

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8 Early Development Consents

If the Land and Environment Court makes the Consent Orders for the Later Stages and the Final Stages, then Stockland agrees that it will not seek a refund from the Council of any of the Section 94 Contributions paid to the Council in respect of the Early Stages, through legal proceedings or any other means, unless the amenities for which the Section 94 Contributions were collected are not provided by the Council in accordance with the Contributions Plan or under the EPA Act.

9 Release

9.1 Release

- (a) Upon the making of the Consent Orders by the Land and Environment Court, the parties release each other from any other claim, action, suit or demand in relation to the Proceedings and the reasonableness of the Section 94 Contributions imposed by the Council in respect of the Later Stages. In respect of the Final Stages Appeals upon the making of the Consent Orders in respect of the Final Stages Appeals, the parties release each other from any claim in relation to the Final Stages Appeals and the reasonableness of the Section 94 Contributions in respect of the Final Stages which the parties have, or may have had but for the terms of this Agreement, except with respect to enforcement of this Agreement.
- (b) The Council's releases contained in **clause 9.1** are given for Stockland, its successors and assigns.

9.2 Pleading the Agreement

This Agreement may be pleaded by Stockland and the Council as an absolute bar and estoppel to any claim in respect of which a release contained in this Agreement operates.

9.3 Acknowledgement

The parties acknowledge that:

- (a) facts may later come to their attention which, if known, would give rise to additional claims related to the subject matter of the releases;
- (b) nothing in this Agreement will operate to:
 - (i) release, compromise or bar either party from making a claim against a third party, subject to **clause 9.3(b)(iv)**;
 - (ii) prevent the Council from taking action in respect of Stockland's failure to pay the Section 94 Contributions payable under this Agreement;
 - (iii) prevent Stockland from taking action to recover contributions paid but not expended in accordance with the Contributions Plan and the EPA Act or where the stage the subject of the consent

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condition imposing Section 94 Contributions does not proceed and the consent is surrendered;

- (iv) entitle the Council to make a claim or impose or collect Section 94 Contributions from any assign or successor of Stockland in respect of the development consents for the Later Stages, the Final Stages or Stage 12 for any residential development carried out on a lot subdivided pursuant to the consent;
- (v) disentitle Stockland to the benefit of credits for Section 94 Contributions, which may become available but are not yet able to be calculated in respect of the Final Stages or Stage 12.

10 Notices

10.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

10.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current address for notices;
- (c) sent to the party's current address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for notices.

10.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

Stockland

Address: C/- Corrs Chambers Westgarth
Governor Phillip Tower, 1 Farrer Place
Sydney NSW 2000

Fax: (02) 9210 6611

Attention: Christine Covington/Rachel Daniel

Council

Address: C/- Marsdens Law Group
49 Dumaresq Street
Campbelltown NSW 2560

Fax: (02) 2646 4826

Attention: Adam Seton

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- (b) Each party may change its particulars for delivery of notices by notice to each other party.

10.4 Communications by post

Subject to **clause 10.6**, a communication is given if posted:

- (a) within Australia to an Australian address, three Business Days after posting; or
- (b) in any other case, ten Business Days after posting.

10.5 Communications by fax

Subject to **clause 10.6**, a communication is given if sent by fax, when the sender's fax machine produces a report that the fax was sent in full to the addressee. That report is conclusive evidence that the addressee received the fax in full at the time indicated on that report.

10.6 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

10.7 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this **clause 10** or in accordance with any applicable law.

11 General

11.1 Legal costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

11.2 Amendment

This document may only be varied or replaced by a document executed by the parties.

11.3 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

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- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

11.4 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

11.5 Consents

Except as expressly stated otherwise in this document, a party may conditionally or unconditionally give or withhold any consent to be given under this document and is not obliged to give its reasons for doing so.

11.6 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

11.7 Governing law and jurisdiction

- (a) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11.8 Liability

An obligation of two or more persons binds them separately and together.

11.9 Counterparts

This document may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

11.10 Entire understanding

- (a) This document contains the entire understanding between the parties as to the subject matter of this document.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this document and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this document; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

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11.11 Relationship of parties

This document is not intended to create a partnership, joint venture or agency relationship between the parties.

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Planning & Economy

Executed for and on behalf of
Stockland Development Pty Limited
ACN 000 064 835 by its duly authorised
attorney under Power of Attorney registered
in Book 4243 No 200 who declares that he
has no notice of revocation of the said
Power of Attorney in the presence of:

Executed as an Agreement.

**Executed by Stockland Development
Pty Limited** by its duly appointed
officer in the presence of:)
)

Witness 

Name of Witness (print) PETER ANDERSON


.....
Nicholas Antony Duncan

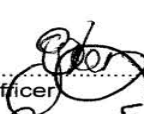
.....
Officer

.....
Name of Officer (print)

**Executed by Wollondilly Shire
Council** by its duly appointed officer in
the presence of:)
)

Witness 

Name of Witness (print) KEN SULLIVAN


.....
Officer

.....
Name of Officer (print) Greg Fisher

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Appendix A – Agreed amount of reasonable Section 94 Contributions

#	Item	Agreed amount of reasonable contributions per lot indexed to 27/10/2004
1	Community Facilities	\$258.00
2	Recreational Facilities	\$706.00
3	Bushfire Mitigation	\$145.00
4	Library Facilities	\$272.00
5	Tree Planting	\$NIL
6	Animal Management	\$71.00
7	Roads and Traffic	\$2,700
8	Section 94 Management	\$208.00
	TOTAL per lot	\$4,360

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Appendix B – Consent Orders

PART I

Orders relating to the Proceedings (Later Stages).

In respect of proceedings 10999 of 2004 (Development Consent I1430-03 for stage 8):

The Court orders by Consent that:

- 1 The Appeal under Section 96(6) of the Environmental Planning and Assessment Act 1979 is upheld.
- 2 Condition 5.1 of the "Notice to Applicant of Determination of Application Integrated Development Consent I1430-03" for the subdivision of Lot 100 DP 1045588 and Lot 2 DP 1051245 Remembrance Driveway Camden Park (stage 8) as issued by the Respondent and bearing the determination dated 10 March 2004 is deleted and replaced with the following:

"5.1 Pursuant to Section 94 of the Environmental Planning and Assessment 1979 a monetary contribution of \$248,520 being \$4,360 per lot for each of the additional 57 lots is to be paid prior to release by Council of the linen plan of subdivision. The contribution per lot comprises the following components:

<i>Purpose</i>	<i>Per Lot</i>	<i>Total</i>
<i>Community Facilities</i>	<i>\$258</i>	<i>\$14,706</i>
<i>Recreation Facilities</i>	<i>\$706</i>	<i>\$40,242</i>
<i>Bushfire Mitigation</i>	<i>\$145</i>	<i>\$8,265</i>
<i>Library Facilities</i>	<i>\$272</i>	<i>\$15,504</i>
<i>Animal Management</i>	<i>\$71</i>	<i>\$4,047</i>
<i>Tree Planting</i>	<i>\$0</i>	<i>\$0</i>
<i>Roads and Traffic</i>	<i>\$2,700</i>	<i>\$153,900</i>
<i>Section 94 Management</i>	<i>\$208</i>	<i>\$11,856</i>
<i>Total</i>	<i>\$4,360</i>	<i>\$248,520</i>

If the total monetary contribution above has not been paid by 31 December 2004 the amount payable thereafter shall be adjusted in accordance with the following formula:

*Amount of Contribution is C x I(1)/I(2) where:
C is the total Contribution as set out above;
I(1) is the IPD current at the time of payment; and
I(2) is the IPD current as at 31 December 2004.*

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In respect of proceedings 11000 of 2004 (Development Consent I1431-03 for stage 9):

The Court orders by Consent that:

- 1 The Appeal under Section 96(6) of the Environmental Planning and Assessment Act 1979 is upheld.
- 2 Condition 5.1 of the "Notice to Applicant of Determination of Application Integrated Development Consent I1431-03" for the subdivision of Lot 100 DP 1045588, Lot 2 DP 1051245 and Lots 3 and 4 DP 1034630 Remembrance Driveway Camden Park (stage 9) as issued by the Respondent and bearing the determination date 10 March 2004 is deleted and replaced with the following:

"5.1 Pursuant to Section 94 of the Environmental Planning and Assessment 1979 a monetary contribution of \$331,360 being \$4,360 per lot for each of the additional 76 lots is to be paid prior to release by Council of the linen plan of subdivision. The contribution per lot comprises the following components:

<i>Purpose</i>	<i>Per Lot</i>	<i>Total</i>
<i>Community Facilities</i>	<i>\$258</i>	<i>\$19,608</i>
<i>Recreation Facilities</i>	<i>\$706</i>	<i>\$53,656</i>
<i>Bushfire Mitigation</i>	<i>\$145</i>	<i>\$11,020</i>
<i>Library Facilities</i>	<i>\$272</i>	<i>\$20,672</i>
<i>Animal Management</i>	<i>\$71</i>	<i>\$5,396</i>
<i>Tree Planting</i>	<i>\$0</i>	<i>\$0</i>
<i>Roads and Traffic</i>	<i>\$2,700</i>	<i>\$205,200</i>
<i>Section 94 Management</i>	<i>\$208</i>	<i>\$15,808</i>
<i>Total</i>	<i>\$4,360</i>	<i>\$331,360</i>

If the total monetary contribution above has not been paid by 31 December 2004 the amount payable thereafter shall be adjusted in accordance with the following formula:

*Amount of Contribution is $C \times I(1)/I(2)$ where:
 C is the total Contribution as set out above;
 I(1) is the IPD current at the time of payment; and
 I(2) is the IPD current as at 31 December 2004.*

IPD is the Implicit Price Deflator for Engineering Construction and Private Sector Capital Expenditure issued by the Australian Bureau of Statistics."

In respect of proceedings 11001 of 2004 (Development Consent I1429-03 for stage 7):

The court orders by Consent that:

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- 1 The Appeal under Section 96(6) of the Environmental Planning and Assessment Act 1979 is upheld.
- 2 Condition 5.1 of the "Notice to Applicant of Determination of Application Integrated Development Consent I1429-03" for the subdivision of Lot 100 DP 1045588, Lot 2 DP 1051245 and Lots 3 and 4 DP 1034630 Remembrance Driveway Camden Park (stage 7) as issued by the Respondent and bearing the determination date 10 March 2004 is deleted and replaced with the following:

"5.1 Pursuant to Section 94 of the Environmental Planning and Assessment 1979 a monetary contribution of \$305,200 being \$4,360 per lot for each of the additional 70 lots is to be paid prior to release by Council of the linen plan of subdivision. The contribution per lot comprises the following components:

<i>Purpose</i>	<i>Per Lot</i>	<i>Total</i>
<i>Community Facilities</i>	<i>\$258</i>	<i>\$18,060</i>
<i>Recreation Facilities</i>	<i>\$706</i>	<i>\$49,420</i>
<i>Bushfire Mitigation</i>	<i>\$145</i>	<i>\$10,150</i>
<i>Library Facilities</i>	<i>\$272</i>	<i>\$19,040</i>
<i>Animal Management</i>	<i>\$71</i>	<i>\$4,970</i>
<i>Tree Planting</i>	<i>\$0</i>	<i>\$0</i>
<i>Roads and Traffic</i>	<i>\$2,700</i>	<i>\$189,000</i>
<i>Section 94 Management</i>	<i>\$208</i>	<i>\$14,560</i>
<i>Total</i>	<i>\$4,360</i>	<i>\$305,200</i>

If the total monetary contribution above has not been paid by 31 December 2004 the amount payable thereafter shall be adjusted in accordance with the following formula:

*Amount of Contribution is $C \times I(1)/I(2)$ where:
C is the total Contribution as set out above;
I(1) is the IPD current at the time of payment; and
I(2) is the IPD current as at 31 December 2004.*

IPD is the Implicit Price Deflator for Engineering Construction and Private Sector Capital Expenditure issued by the Australian Bureau of Statistics."

PART II

Orders relating to the Final Stages Appeals (Final Stages).

In respect of the proceedings relating to stage 10 of the Development:

The Court orders by Consent that:

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- 1 The Appeal is upheld.
- 2 Condition 5.1 of the "Notice to Applicant of Determination of Application Integrated Development Consent 1022-04" for the subdivision of Lot 400 DP 1062133 and Lot 456 DP 1062133 Remembrance Driveway Camden Park (stage 10) as issued by the Respondent and bearing the determination date 26 November 2004 is deleted and replaced with the following:

"5.1 Pursuant to Section 94 of the Environmental Planning and Assessment 1979 a monetary contribution of \$274,680 being \$4,360 per lot for each of the additional 63 lots is to be paid prior to release by Council of the linen plan of subdivision. The contribution per lot comprises the following components:

<i>Purpose</i>	<i>Per Lot</i>	<i>Total</i>
<i>Community Facilities</i>	<i>\$258</i>	<i>\$16,254</i>
<i>Recreation Facilities</i>	<i>\$706</i>	<i>\$44,478</i>
<i>Bushfire Mitigation</i>	<i>\$145</i>	<i>\$9,135</i>
<i>Library Facilities</i>	<i>\$272</i>	<i>\$17,136</i>
<i>Animal Management</i>	<i>\$71</i>	<i>\$4,473</i>
<i>Tree Planting</i>	<i>\$0</i>	<i>\$0</i>
<i>Roads and Traffic</i>	<i>\$2,700</i>	<i>\$170,100</i>
<i>Section 94 Management</i>	<i>\$208</i>	<i>\$13,104</i>
<i>Total</i>	<i>\$4,360</i>	<i>\$274,680</i>

If the total monetary contribution above has not been paid by 31 December 2004 the amount payable thereafter shall be adjusted in accordance with the following formula:

*Amount of Contribution is $C \times L(1)/L(2)$ where:
C is the total Contribution as set out above;
L(1) is the IPD current at the time of payment; and
L(2) is the IPD current as at 31 December 2004.*

In respect of the proceedings relating to stage 11 of the Development:

The Court orders by Consent that:

- 1 The Appeal is upheld.
- 2 Condition 5.1 of the "Notice to Applicant of Determination of Application Integrated Development Consent 1023-04" for the subdivision of Lot 1064 in stage 10 (current title in Lot 400 DP 1062133 and Lot 456 DP 1062133) Remembrance Driveway Camden Park (stage 11) as issued by the Respondent and bearing the determination date 26 November 2004 is deleted and replaced with the following:

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5.1 Pursuant to Section 94 of the Environmental Planning and Assessment 1979 a monetary contribution of \$279,040 being \$4,360 per lot for each of the additional 64 lots is to be paid prior to release by Council of the linen plan of subdivision. The contribution per lot comprises the following components:

Purpose	Per Lot	Total
Community Facilities	\$258	\$16,512
Recreation Facilities	\$706	\$45,184
Bushfire Mitigation	\$145	\$9,280
Library Facilities	\$272	\$17,408
Animal Management	\$71	\$4,544
Tree Planting	\$0	\$0
Roads and Traffic	\$2,700	\$172,800
Section 94 Management	\$208	\$13,312
Total	\$4,360	\$279,040

If the total monetary contribution above has not been paid by 31 December 2004 the amount payable thereafter shall be adjusted in accordance with the following formula:

Amount of Contribution is $C \times I(1)/I(2)$ where:
 C is the total Contribution as set out above;
 L(1) is the IPD current at the time of payment; and
 L(2) is the IPD current as at 31 December 2004.

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ATTACHMENT 2 - 8255 – 21 MARCH 2016

From:
Sent: Thu, 5 Nov 2015 14:08:40 +1100
To: "Council External Incoming" <council@wollondilly.nsw.gov.au>
Subject: Public Exhibition of Draft Planning Agreement - Cubbitch Barta Reserve in Bridgewater Estate, Camden Park.

Re:TRIM 8255.

Public Exhibition of Draft Planning Agreement - Cubbitch Barta Reserve in Bridgewater Estate, Camden Park.

As a resident of Camden Park (Bridgewater Estate) I have read the above mentioned exhibition and I am very happy this can come to a conclusion.

The reserve could certainly do with some upgrade of community facilities and I am certain Wollondilly Council will be the best organisation to facilitate this.

Personally I would like to see some seats near the paths for the elderly, soft lighting along walkways, and a second children's playground near the tennis court.

Also as a matter of concern, I feel the estate has not lived up to the objective of being a public transport friendly estate. (see Wollondilly control Plan 2012 Vol 6)There is now only one Bus Stop in the estate and that is at the main exit,(there is no widening of the carriageway at this point) often traffic can't get past the School bus and there is high volume of children and mums crossing the roads. I trust this could be looked at before there is a tragedy.

I would like to take the opportunity thank the council for being Fit for the Future.

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From: -----
Sent: Tue, 10 Nov 2015 10:22:01 +1100
To: "Council External Incoming" <council@wollondilly.nsw.gov.au>
Subject: Submission re file no. 010.2003.00054721.002

The General Manager, Wollondilly Shire Council. Submission re file no. 010.2003.00054721.002, reference no. TRIM 8255.

We as residents in Bridgewater are happy to agree with the draft planning agreement providing that the money handed over to the council from Stocklands (\$689,477) be spent completely on providing community facilities for the park known as Cubbitch Barta Reserve. A thorough consultation should be undertaken with the residents of Bridgewater to determine the facilities to be built.

Some suggestions we would like to be considered are: a basket ball court
provided more seating around the park some with cover

an adult outdoor exercise equipment run
a small off leash dog area.

We are under the impression that Stockland is still handling the maintenance of the park but for the past month we have noticed that not much has been done. The lakes are full of algae and many reeds, the gardens look neglected, a bridge needs repair as the wooden planks have rotted, and the system which circulates the water from one lake to another has not been working. This leaves a sad looking park and the bird life is suffering from the state of the water.

Yours sincerely