

Attachments

Monday 20 March 2017

PE1, PE3, GO2 GO3, GO4, & GO5



PE1 Attachments

1. Checklist for Consistency with Planning Agreements Policy
2. Map of Land Subject to Draft Planning Agreement
3. Letter of Offer
4. Draft Planning Agreement and Explanatory Note for exhibition

Monday 20 March 2017

PE1 – Draft Planning Agreement for Macquariedale Rd South Appin

Consistency with Planning Agreements Policy

The following checklist has been prepared to allow for a consideration of the draft Planning Agreement against relevant matters included in Council's Planning Agreements Policy.

Matter for Consideration	Comment
What benefits are proposed under the Agreement (any land to be dedicated should be identified)?	The benefits are summarised in a Table included in this report and are valued at approximately \$9.55 million. This includes the dedication of land to Council of about 2,000 sq. metres to be included into Gordon Lewis Oval.
Does the agreement accompany a DA or Planning proposal?	The Draft Agreement is associated with a Planning proposal to rezone the site to allow development of the site for up to 215 lots.
Does the agreement exclude Council's Sec 94/94A Plan?	Yes.
Is there likely to be significant community interest in the agreement or associated application?	Yes – there were many public submissions made to planning proposal and Draft Planning Agreement when it was exhibited in 2014.
Are any special probity considerations required (e.g. Probity Plan or Probity Advisor)?	No.
Does the agreement comply with the mandatory content requirements (s93f of Act)?	All mandatory requirements are complied with.
Does it comply with Council's strategic objectives for VPAs (cl 4.2)?	<p>The extent of compliance of the Draft Agreement with Council's Strategic objectives for planning agreements is detailed below:</p> <p>1) to generally advance Council's Mission for the Local Government Area as stated in the Wollondilly Community Strategic Plan 2033: "(to) create opportunities in partnership with the Community to enhance the quality of life and the environment, by managing growth and providing sustainable services and facilities.</p> <p>The Draft Agreement complies with this principle as it has been prepared to help provide facilities and services to manage the growth associated with this planning proposal in consultation with the community and in response to community concerns.</p> <p>2) to demonstrate consistency with at least one of the specific objectives of the Wollondilly Strategic Plan that were referred to in clause 1.1(g) of this Policy;</p> <p>The Draft Agreement complies with the following Objectives of the Community Strategic Plan:</p> <p>CO1 - Deliver a range of community programmes, services, facilities and events which strengthen the capacity, well-being and cultural identity of the community.</p> <p>GO5 - Financial Sustainability -Maintain Council in a strong and financially sustainable position.</p> <p>IN1, IN2 and IN3 - relating to the management and</p>

Consistency with Planning Agreements Policy

Matter for Consideration	Comment
	<p>maintaining of the road network and of other recreational facilities.</p> <p>3) to provide an enhanced and more flexible development contributions system for the Council, and</p> <p>4) to supplement or replace, as appropriate, the application of s94 or s94A of the Act to development (refer also to Cls 4.5(d) and 4.5(j)).</p> <p>If adopted, the Planning Agreement will replace the Section 94 contributions system for this development. It will provide more than double the benefits that would usually be provided under Section 94 thereby demonstrating how it will enhance the benefits provided under Section 94;</p> <p>5) to give all stakeholders in development greater involvement in determining the type, standard and location of public facilities and other public benefits,</p> <p>This is achieved by Council considering the developer's proposal for the benefits to be provided through this Agreement;</p> <p>6) to allow the community, through the public participation process under the Act, to agree to the redistribution of the costs and benefits of development in order to realise community preferences for the provision of public benefits,</p> <p>The exhibition of the Draft Agreement will ensure compliance with this principle by providing a forum for the public to express its views on the Draft Agreement.</p> <p>7) to provide or upgrade services and infrastructure to appropriate levels that reflect and balance environmental standards, community expectations and funding priorities,</p> <p>The Draft Agreement identifies the services and infrastructure that the developer and Council thinks will be appropriate. The exhibition will help to determine the community's views about what is being proposed under the Draft Agreement.</p> <p>8) to provide certainty for the community, developers and Council in respect to infrastructure, services and development outcomes.</p> <p>Should it be executed the Agreement will help provide certainty to the community about the infrastructure that the developer will provide to support future rezoning and redevelopment of the site.</p>
<p>Is the agreement for a legitimate planning purpose? (cl 4.3)</p>	<p>The purposes for which Council may negotiate a planning agreement are outlined in Clause 4.3 of the Policy. This Draft Agreement is considered to be consistent with the following matters included in clause 4.3.</p>

Consistency with Planning Agreements Policy

Matter for Consideration	Comment
	<p>b) meet the demands created by the development for new public infrastructure, and services that may be outside those of the current Development Contributions Plan, address a particular deficiency or deficiencies in the existing provision of public facilities in the Council's area;</p> <p>The benefits will meet the demand for new infrastructure such as improved road performance and safety upgrades as well as cycleways, and improved amenity in Gordon Lewis Oval.</p> <p>f) monitor and/or mitigate the planning impacts of development,</p> <p>The proposed works along Appin Rd and Macquariedale Rd in particular will help to mitigate the impacts of the development.</p> <p>g) to secure benefits for the wider community</p> <p>the provision in the Draft Agreement of a "Community Chest Fund" and a "Green Fund" will allow the opportunity for other benefits to be provided to the community.</p>
<p>Is it consistent with Council's principles regarding the use of planning agreements (cl 4.4)?</p>	<p>The Draft Agreement is consistent with Council's principles for the use of Planning Agreements. These principles are below:</p> <ol style="list-style-type: none"> 1) planning decisions shall not be bought or sold through planning agreements, 2) development that is unacceptable on planning grounds will not be permitted because of benefits offered by planning agreements that do not make the development acceptable in planning terms, 3) the Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, the Environmental Planning and Assessment Regulation 2000 (Regulation) or any other Act or law, 4) the Council will not use planning agreements for any purpose other than a proper public purpose (note: a public purpose is defined in Sec 93F2 of the Act), 5) the Council will not actively seek benefits under a planning agreement that are wholly unrelated to the development the subject of that planning agreement, but may consider offers made by a developer, 6) the Council will not allow the interests of individuals or interest groups to outweigh the public interest when considering a proposed planning agreement, 7) the Council will not improperly rely on its statutory position in order to extract unreasonable public benefits from developers under planning agreements,

Consistency with Planning Agreements Policy

Matter for Consideration	Comment
	<p>8) if the Council has a commercial stake in development the subject of a proposed planning agreement, it will take appropriate steps to ensure that it avoids a conflict of interest between its role as a planning authority and its interest in the development, and</p> <p>9) planning agreements should not be used to justify a dispensation with applicable development standards under clause 4.6 of the Wollondilly Local Environmental Plan 2011(Wollondilly LEP).</p>
<p>Does it meet the acceptability test for planning agreements (cl 4.5)?</p>	<p>The acceptability test criteria are as follows:</p> <p>1) Is the proposed planning agreement directed towards a proper or legitimate planning purpose having regard to the statutory planning controls and other adopted planning policies and the circumstances of the case?</p> <p>Yes - it will provide infrastructure to support the rezoning and future development of land in Appin.</p> <p>2) does the proposed planning agreement provide a reasonable means of achieving the relevant purpose?</p> <p>Yes - the planning agreement is the most appropriate means for Council and the community to realise the proposed benefits.</p> <p>3) Can the proposed planning agreement be taken into consideration in the assessment of the relevant application for an instrument change or development application?</p> <p>Any planning proposal and future development application will be assessed on its merits and will not be constrained or influenced by the terms of this draft Planning Agreement.</p> <p>4) Will the planning agreement produce outcomes that meet the general values and expectations of the community and protect the overall public interest? This should be considered (inter alia) particularly with the public interest and impact on community values associated with varying Council's relevant Developer Contributions Plan as per clause 4.2(d) that may apply in order to accept the benefits proposed under the Planning Agreement (refer also Clause 4.5 (j) below)</p> <p>The Planning agreement will provide more than double the amount that Council would otherwise receive under Section 94 of the Act. The exhibition of the Draft Agreement will provide an opportunity for the public to make submissions to Council on this matter and for Council to further consider whether it meets community expectations.</p> <p>5) Does the agreement provide public benefits that are not wholly unrelated to the development?</p> <p>Yes - The benefits are essentially entirely related to future</p>

Consistency with Planning Agreements Policy

Matter for Consideration	Comment
	<p>development in that they will nearly all be realised within the Appin area. However there is a potential that grant funding available under the Community Chest and Green Funds may also be eligible for spending outside Appin however this will be regulated through the approval process for the giving of these grants.</p> <p>6) Does the proposed planning agreement promote the Council's strategic objectives in relation to the use of planning agreements?</p> <p>Yes.</p> <p>7) Does the proposed planning agreement conform to the fundamental principles governing the Council's use of planning agreements?</p> <p>Yes.</p> <p>8) Are there any relevant circumstances that may operate to preclude the Council from entering into the proposed planning agreement?</p> <p>No.</p> <p>9) Is the Agreement consistent with other relevant Council Policies (e.g. the Dedication of Land Policy) and with the Wollondilly Community Strategic Plan 2033?</p> <p>Yes.</p> <p>10) Is it appropriate to forego the benefits that would otherwise be paid under Council's Developer Contributions Plan in exchange for the benefits proposed under the planning agreement? (this applies to those agreements which seek to offset contributions made under Council's relevant Developer Contributions Plan).</p> <p>In view of the amount of benefits proposed (over double the amount of Sec 94 contribution), it is reasonable for the Section 94 benefits to be foregone. However the exhibition of the Draft Agreement will allow this matter to be considered further as the views of the public can be made known through the exhibition process.</p>
Does it comply with other clauses of the Policy?	Yes.
Has a valid Explanatory Note been prepared	Yes - attached to Draft Planning Agreement.
Does the council need to be further involved at this stage	The Draft Planning Agreement is being reported to Council seeking a resolution to exhibit it.
Is the Agreement approved for exhibition	Yes - if agreed to by Council.

Site Identification Map

Map Sheet to be Amended:

- 8400_COM_LZN_011E_020_20110131
- 8400_COM_LZN_011H_020_20110131
- 8400_COM_HOB_011H_020_20110131
- 8400_COM_HOB_011_080_20110204
- 8400_COM_LSZ_011E_020_20110209
- 8400_COM_LSZ_011H_020_20110209
- 8400_COM_LSZ_011H_020_20110131
- 8400_COM_NRB_011_080_20110204

Proposed Zone

- Subject Land
- Road

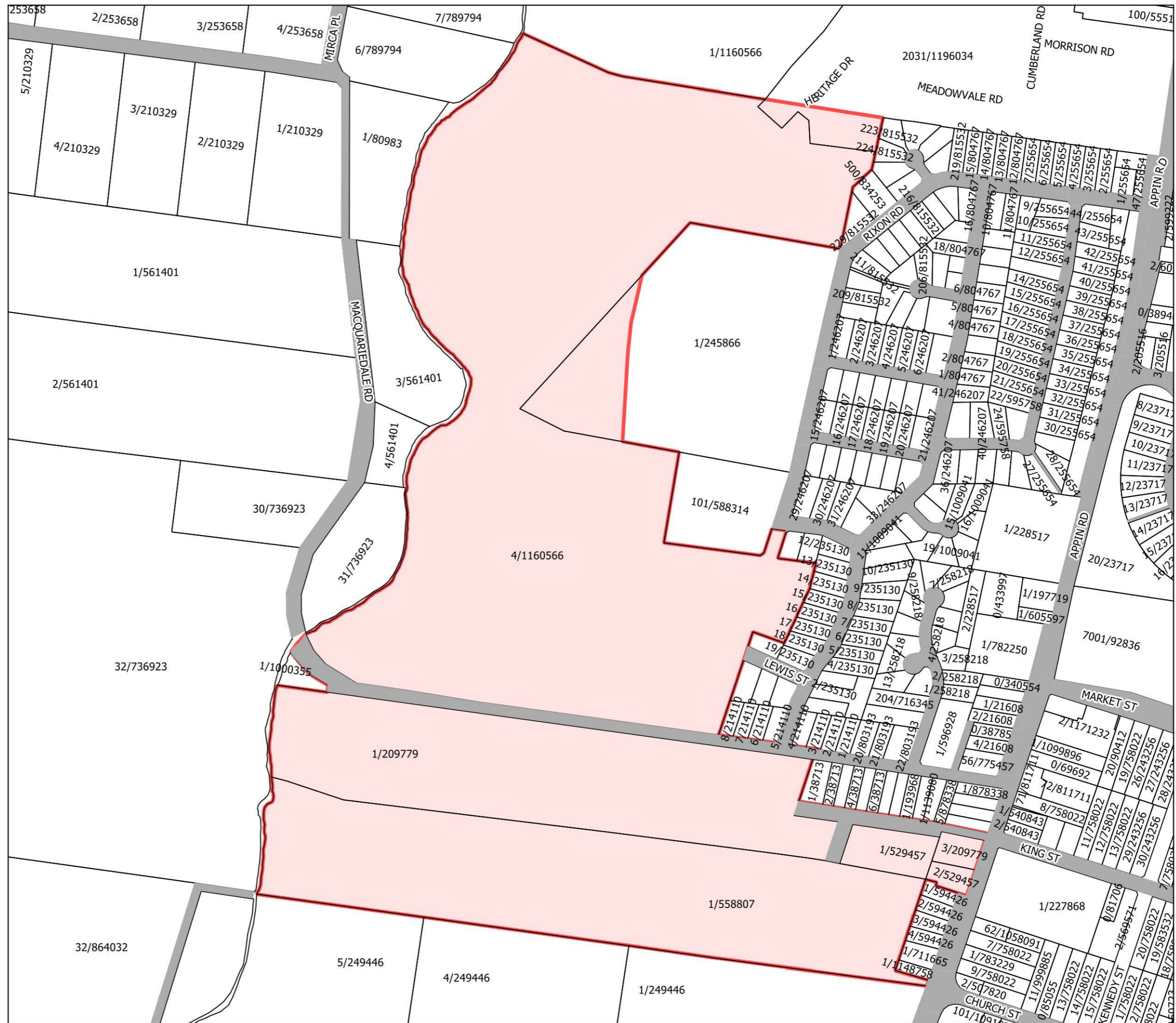
Cadastre

Cadastre base data 01/09/2014 © Land and Property Information (NSW)
Addendum data 22/10/2015 © Wollondilly Shire Council



Projection GDA 1994 MGA Zone 56 Map Produced: 14-02-2017

Visit the website below to view the published map sheets listed above:
<http://www.legislation.nsw.gov.au/mapindex?type=epi&year=2011&no=85>





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1 Farrer Place
Sydney NSW 2000
Australia

Telephone: + 61 2 8273 9600
Direct Line: + 61 2 8273 9627
Facsimile: + 61 2 9252 7400
Email: gerry.beasley@walkercorp.com.au

Attention: Mr Martin Beveridge

Sent via email to: Martin.Beveridge@wollondilly.nsw.gov.au

Dear Mr Beveridge

South Appin (Macquariedale Road): Letter of Offer to Enter into a Planning Agreement

Walker Corporation has lodged a planning proposal to Wollondilly Shire Council (Council) for a rezoning that would result in approximately 215 new dwellings within the village of Appin.

Walker Corporation Pty Ltd and Walker Group Holdings Pty Ltd (Walker) own the land on which the planning proposal is based.

Current lot and DP references are enclosed (Schedule 1).

Walker is offering to enter into a Planning Agreement (Agreement) with Council in order to offset costs to local infrastructure that would arise if the land was rezoned as proposed in the planning submission.

A list of the parties to the Agreement and relevant details are enclosed (Schedule 2).

Details of the timing (stage), nature of the contributions, land dedication and works-in-kind are enclosed (Schedule 3).

The Agreement would exclude the application of section 94, 94A and 94EF to the development.

Walker confirms it is prepared to pay Council's reasonable legal fees and associated costs of preparing and notifying the Agreement.

Walker confirms that security in the form of an unconditional Insurance Bond can be provided at each stage of the development.

This offer is subject to Walker and Council entering into the VPA.

It will, of course, be necessary for a formal document to be prepared in accordance with the offer.

It should be expected that this document will contain reasonable safeguards to protect Walker's interests and those of Council.

Ultimately any agreement will be dependent on the finalisation of this document in a form that is satisfactory to all parties.

Yours faithfully

A handwritten signature in black ink that reads "Gerry Beasley". The signature is written in a cursive style with a period at the end.

Gerry Beasley
Executive Planner
Walker Corporation Pty Limited

SCHEDULE 1

Property Details

- (a) Lot 4 DP 1160566;
- (a) that part of Lot 2030 DP 1175472 that was formerly part of Lot 201 DP 749272;
- (b) Lot 1 DP 209779;
- (c) Lot 1 DP 558807;
- (d) Lot 1 DP 529457;
- (e) Lot 3 DP 209779;
- (f) Lot 2 DP 529457;

SCHEDULE 2

Name: Walker Corporation Pty Ltd (ABN 95001176263)
Address: Level 21 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Fax: (02) 9252 7400
Email: ian.grist@walkercorp.com.au
For the attention of: Ian Grist - Company Secretary

Name: Walker Group Holdings Pty Ltd (ABN 81001215069)
Address: Level 21 Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000
Fax: (02) 9252 7400
Email: ian.grist@walkercorp.com.au
For the attention of: Ian Grist - Company Secretary













SCHEDULE 3

TABLE OF PROPOSED WORKS IN VPA

VPA WORKS	\$
<i>Items 1-3¹</i>	
Cycle way	
Stage 1 640 metres	280,000
Stage 2 640 metres	280,000
Stage 3 330 metres	140,000
TOTAL	700,000
<i>Item 4² (Stage 2)</i>	
Undergrounding power lines in Appin Road and Macquariedale Road	1,400,000
<i>Item 5² (Stage 2)</i>	
Macquariedale Road - includes 240 metres of cycle way plus street trees and some pavement improvements to a value of \$0.25 million	250,000
<i>Item 6² (Stage 2)</i>	
Appin Road - trees, furniture, pedestrian refuge, parking and landscaping to a value of \$0.5 million	500,000
<i>Item 7¹ (Stage 3)</i>	
Gordon Lewis Oval and engineers ground - various works such as netball court improvements, playground, fitness circuit and pathways, drainage and irrigation, and upgraded park furniture to a value of \$1.2 million	1,200,000
<i>Item 8¹ (Stage 1)</i>	
Intersection upgrades on Appin Road - may include traffic signals or roundabouts at either Appin/King and/or Appin/Church, and/or protected right turn bay to Macquariedale Road	2,500,000
<i>Item 9 (on a per lot basis)</i>	
Community Chest - \$11,628 / lot	2,500,000
<i>Item 10 (on a per lot basis)</i>	
Green fund - \$2,326 / lot	500,090
<i>Item 11 (Stage 1)</i>	
Alternate cash contribution IF <i>Item 8</i> does not proceed or costs less than allowed	NA
<i>Item 12¹ (Stage 3)</i>	
Expansion of Gordon Lewis Oval – dedicate 1,932 m ² to Council following clearing of vegetation	NA
TOTAL	9,550,090

1. Refer Indicative Staging plan below
2. Refer Road Work plan below

Legend

-  Existing Residential
-  Conservation
-  Stage 1 Shared Path (40%)
-  Macquariedale Rd Shared Path
-  Watercourse
-  Detention Basin
-  Stage 2 Shared Path (40%)
-  Transfer to Council (1,932m²)
-  Residential - 215 Lots (70% lots 700sqm+)
-  Existing Shared Path
-  Stage 3 Shared Path (20%)
-  Traffic Work



Drawing Title:

SOUTH APPIN INDICATIVE STAGING PLAN (Development & Cycleways)

drawn:	Issue,	date,	amendment.
TP	46	19 12 16	Adjust McQ Rd Shared Path
scale:	1:2500 @ A1		
date:	3rd January 2017		
drawing no:	WSA - CP - 700		



Road work plan



Planning Agreement

Wollondilly Shire Council

Walker Corporation Pty Ltd

DRAFT



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Sydney NSW 2000
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Ref 3184673

wol_wol16027_011.doc version to be submitted to Council at meeting on 20 March 2017 - Draft recommended for exhibition 4985-1#2562

Contents

1. Defined meanings	3
2. Status of this Agreement	3
3. Application of other development contribution provisions	4
4. Development Contributions	5
5. Certification of costs	7
6. Dedicating land as a Development Contribution	9
7. Risk and warranties in relation to the Dedicated Land	11
9. Carrying out of Work	11
10. Variations to Development Contributions	16
11. Conservation or enhancement of the natural environment	16
12. Registration	17
13. Transfer, assignment or novation	18
14. Security for works	19
15. Enforcement in relation to the dedication of land	22
16. Termination	23
17. Breach of obligations	24
18. Dispute resolution	25
19. General provisions	26
20. Definitions and interpretation	31
Schedule 1 – Development Contributions	39
Schedule 2 – Drawings	44
Sheet 5: Gordon Lewis Oval Concept Plan	48
Schedule 3 – Form of unconditional undertaking	51
Annexure A – Draft Deed of Novation	53

Planning Agreement

Dated

Parties

1. **Wollondilly Shire Council** of 62-64 Menangle Street, Picton NSW 2571 (**the Council**)
2. **Walker Corporation Pty Ltd** ACN 001 176 263 of Level 21, Governor Macquarie Tower, 1 Farrer Place Sydney NSW 2000 (**the Developer**)

Background

- A. The Developer has sought the EPI Change by submitting a draft of the Planning Proposal to the Council.
- B. In general terms, the EPI Change envisages the development of the Planning Proposal Area for urban purposes.
- C. If the EPI Change is made and comes into effect, the Developer is prepared to make certain Development Contributions in accordance with this Agreement.
- D. These Development Contributions are to be used for or applied towards a public purpose.

Operative provisions

1. **Defined meanings**

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. **Status of this Agreement**

2.1 **Planning Agreement**

This Agreement is a planning agreement within the meaning of section 93F(1) of the Act.

2.2 **Land**

This Agreement applies to the Land.

2.3 **Change to the environmental planning instrument**

This Agreement applies to the EPI Change.

2.4 Development

This Agreement applies to the Development.

2.5 Effect and obligations

- (a) This Agreement does not take effect unless and until the EPI Change is made and is in effect.
- (b) Despite any other provision of this Agreement, the Developer is under no obligation to make any Development Contribution in accordance with this Agreement unless:
 - (i) a Development Consent has been granted to carry out some or all of the Development;
 - (ii) a Construction Certificate has been issued in relation to that Development Consent; and
 - (iii) the Development has been physically commenced in reliance on the Development Consent; and
 - (iv) the relevant circumstances set out in this Agreement as to when the Development Contribution must be made have arisen.

2.6 Security

The Council is satisfied this Agreement provides the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:

- (a) the ability for a Subdivision Certificate to be withheld by reason of section 109J(c1) of the Act when read in conjunction with clause 4.1(a);
- (b) the provisions of clause 14; and
- (c) the provisions of clause 12, clause 14 and clause 15.

3. Application of other development contribution provisions

3.1 Local infrastructure contributions - general

This Agreement wholly excludes the application of section 94 of the Act to the Development.

3.2 Local infrastructure contributions - fixed levies

This Agreement wholly excludes the application of section 94A of the Act to the Development.

3.3 Special infrastructure contributions

This Agreement does not exclude the application of section 94EF of the Act.

3.4 Continuing application to Final Lots

For avoidance of doubt, this clause 3 does not cease to apply merely because this Agreement is not registered on the title of a Final Lot or because the owner of a Final Lot is not a party to this Agreement.

4. Development Contributions

4.1 Nature, extent and timing

- (a) Despite any other provision of this clause 4, the Developer must make the Development Contribution in Column 2 of the Table at the point in time set out in Column 6 of the Table in accordance with this Agreement.
- (b) In relation to a Work, the reference 'make' in clause 4.1(a) is a reference to the completion of the Work for the purposes of this Agreement.
- (c) Nothing in this Agreement precludes a Developer from electing to make a Development Contribution earlier than it is required to do so.

4.2 Public purpose of the Development Contributions

- (a) Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 3 of the Table.
- (b) Despite clause 4.2(a), the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the relevant public purpose set out in Column 3 of the Table if:
 - (i) at least five years has elapsed since the Defect Liability Period for the relevant Development Contribution ended; and
 - (ii) the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose.
- (c) This clause 4.2 has effect after the termination of this Agreement.

4.3 Approval of Design of Work

- (a) Prior to commencing the detailed design of a Development Contribution comprising a Work under clause 4.3(d), the Developer must submit a concept design for the Work to Council for Council's approval (**Concept Design**) together with cost estimate for the Work.
- (b) Within 90 days of receiving a Concept Design under clause 4.3(a), the Council is to consider the Concept Design, the Maximum Value in respect of the Work, any other relevant matters and advise the Developer in writing whether it:
 - (i) approves of the Concept Design of the Work, or
 - (ii) disapproves of the Concept Design for the Work as submitted by the Developer and requires any changes to the Concept Design in order to approve of the Work.
- (c) The Developer is to make any change to the Concept Design for the Work required by the Council provided such change does not increase the cost of the Work to an amount greater than the Maximum Value and resubmit it to the Council for the Council's approval.
- (d) Following the Council's approval of the Concept Design, the Parties are to work together in good faith in the preparation of the detailed design for a Work (**Detailed Design**) provided such change does not unreasonably increase the cost of the Work to an amount greater than the Maximum Value and the Developer is to submit the Detailed Design to the Council for its approval.

- (e) The Developer is not to commence carrying out of a Work unless and until the Council has first approved the Detailed Design for the Work in writing. The Council must not unreasonably withhold or delay its approval.
- (f) Any application for a Construction Certificate, Development Consent or other Approval or certificate for a Work is to be accompanied by the approved Detailed Design referred to in clause 4.3(d).
- (g) The Developer is to bear all costs associated with obtaining the Council's approval to the Concept Design and Detailed Design of a Work under this clause.
- (h) The Council may take into consideration the results of any public consultation in approving or disapproving a Concept Design or a Detailed Design under this clause.
- (i) For the avoidance of doubt, where the Council is the consent authority for a Work, nothing in this clause shall fetter the Council's discretion, as consent authority, in determining any Development Application for the Work.
- (j) The Parties may at any time and from time to time, enter into agreements relating to the subject-matter of this clause that are not inconsistent with this clause for the purpose of implementing this clause.
- (k) This clause does not apply to item 8 of the Table.

4.4 Monetary contribution and Maximum Value amounts to be indexed

- (a) The monetary amounts set out in:
 - (i) Column 7 of the Table; and
 - (ii) Column 2 of items 9, 10 and 11 of the Table,
 are to be indexed in accordance with this clause and, despite Schedule 1 and clause 4.3, the relevant monetary amount at a given point in time is the indexed amount.
- (b) The indexed amount of a monetary amount at a given point in time is determined by the following formula:

$$\text{Monetary amount}$$

$$\$V_p = \frac{\$V_{(pa)} \times I(p)}{I(epi)}$$

Where:

$\$V_p$ is the actual monetary amount.

$\$V_{pa}$ is the relevant monetary amount shown in the Table.

$I(p)$ is the last published CPI Index value at the time the actual monetary amount is calculated.

$I(epi)$ is the last published CPI Index value at the time the EPI Change is made and comes into effect.

4.5 Transfer of unused funds to other Development Contribution items

- (a) If the cost of a Work in the Detailed Design is less than the Maximum Value, the Council may require an increase in the Maximum Value of another Work or Works by an amount not exceeding that difference.
- (b) If:
 - (i) the Developer has completed a Development Contribution that is a Work (where applicable, combined with other Development Contributions);
 - (ii) the relevant Defect Liability Period(s) have ended (or the Council has elected to waive its rights to issue a Rectification Notice during the remainder of the relevant Defect Liability Period(s)); and
 - (iii) the cost of providing the Development Contribution(s), as calculated under clause 5, was less than the relevant Maximum Value for the Development Contribution,the Council may ask the Developer to agree to an increase in the Maximum Value of another Development Contribution item or items that is/are a Work by an amount totalling an amount equal to the unused funds.
- (c) The Developer must not unreasonably withhold its agreement when a request is made by the Council under this clause 4.5 in which case the Maximum Value of the item of Work set out in Column 7 of the Table will be taken to be amended accordingly.

5. Certification of costs

5.1 Application of this clause

This clause 5 only applies to Development Contributions for which a Maximum Value applies in Column 7 of the Table and only applies in relation to clause 4.5 and clause 14

5.2 Certification of costs by the Financial Certifier

- (a) The Developer must progressively submit documentation evidencing the incurring of costs in relation to a Development Contribution to the Financial Certifier (**the Progress Statement**).
- (b) For the purposes of clause 5.2(a), the following costs are to be included:
 - (i) the cost of engaging third parties to design and specify the Works required to provide the Development Contribution (including preparation of the drawings, specifications, samples, models, patterns and the like) required for:
 - (A) securing the approval for; or
 - (B) the construction of the works;
 - (ii) the cost of engaging third parties to carry out the Works required to provide the Development Contribution and includes:
 - (A) the provision of materials, labour and construction plant;

- (B) variations which were requested by the Council, and temporary works (including the costs of complying with directions given by the Council under this Agreement);
- (C) the provision of a works-as-executed plan under clause 9.14;
- (iii) any contingency in relation to such costs that a reasonable and prudent person would allow for;

however the following costs are not to be included:

- (iv) the labour costs incurred directly by the Developer in engaging or managing third parties;
 - (v) development application fees and all costs incurred in the determination of any development application; and
 - (vi) the costs of any services provided by professional town planners,
 - (vii) any costs for any remedial or defects rectification work,
 - (viii) any costs incurred as a result of a breach by the Developer of this Agreement,
 - (ix) the costs of the Financial Certifier.
- (c) Each Progress Statement must include details of the costs properly incurred of the Work which the Developer:
- (i) has carried out and completed to the satisfaction of the Council;
 - (ii) is yet to carry out and complete; and
 - (iii) the Development Contribution(s) to which the cost of Work relates,
- and will include details of the costs of variations that have been requested by the Council after the issuing of a Construction Certificate as those costs become known.
- (d) The Developer must give the Financial Certifier other documents:
- (i) that are in its possession; and
 - (ii) related to the costs of engaging third parties,
- which the Financial Certifier reasonably requests, including contract documents, estimates, quotes, invoices and evidence of payment.
- (e) The Financial Certifier must, within 14 days after receiving such a Progress Statement, issue to the Council and the Developer a progress certificate evidencing the Financial Certifier's opinion of the costs incurred by the Developer under the Progress Statement and reasons for any difference from the Progress Statement.
- (f) The Progress Certificate is taken for all purposes to be conclusive proof that the costs have been incurred by the Developer in relation to the Development Contribution. It is final and binding on the parties.
- (g) Despite 5.2(f), the Financial Certifier may re-issue a Progress Certificate to correct an error, misdescription or miscalculation. The re-issued certificate has the same force and effect as (and in lieu of) the certificate it replaces.

- (h) A Progress Certificate is not evidence that any Work has been carried out satisfactorily.
- (i) The Financial Certifier must be an independent person engaged at the cost of the Developer and the terms of engagement of the Financial Certifier:
 - (i) must require the Financial Certifier to exercise its functions under this clause 5.2 reasonably and in good faith;
 - (ii) must not otherwise purport to govern how the Financial Certifier fulfils its functions under this clause 5.2;
 - (iii) may require the Financial Certifier to keep material provided by the Developer to the Financial Certifier under clause 5.2(d) confidential;
 - (iv) must require the Financial Certifier to provide the Council, on request, with information on which the Progress Certificate is based; and
 - (v) may contain such other provisions needed to give efficacy to the engagement.

5.3 Provision of information to the Council

- (a) The Developer must, on request, give the Council written particulars of the Work that has been or (to the extent that it is known at the time) is to be contracted to third parties and the name and address of the each such party.
- (b) The Developer must give the Council other documents:
 - (i) that are in its possession; and
 - (ii) related to the costs of third parties,
 which the Council reasonably requests, including contract documents, estimates, quotes, invoices and evidence of payment.
- (c) The Council must keep material provided by the Developer to the Council under clause 5.3(b) confidential, , except to the extent that it is required to disclose that information pursuant to any law, including without limitation under the *Government Information (Public Access) Act 2009*, even after the termination of this Agreement.

6. Dedicating land as a Development Contribution

6.1 When land is taken to be dedicated

A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) the land is dedicated as a public reserve or drainage reserve and vests in the Council for an estate in fee simple under section 49(1) of the *Local Government Act 1993*; or
- (b) the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

6.2 Ancillary obligations of the parties in relation to the dedication of land

- (a) When the Council has been given an instrument by the Developer under clause 6.1(b), the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Council under this Agreement.
- (c) Despite clause 6.2(b), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation, then:
 - (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,the Council must not withhold its agreement unreasonably; and
 - (iii) in other circumstances, the Council may notify the Developer in writing that it does not agree to accept the land at its absolute discretion.
- (d) If the Council notifies the Developer that it does not agree to accept the land, the Council may elect to compulsorily acquire the land or require the Developer to offer to Council Alternative Dedication Land.
- (e) If the Council elects to compulsorily acquire the land:
 - (i) the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act,
 - (ii) clause 6.2(e)(i) is an agreement for the purposes of section 30 of the Just Terms Act, and
 - (iii) clause 15.3 applies to an acquisition under this clause as if all references to clause 15.1 are references to this clause 6.2(e).
- (f) If the Council elects to require the Developer to offer to Council Alternative Dedication Land, the Developer must within 14 days of the notice, offer to Council Alternative Dedication Land.
- (g) Council must notify the Developer in writing whether Council:
 - (i) accepts the Alternative Dedication Land, or
 - (ii) rejects the Alternative Dedication Land, in which case further Alternative Dedication Land must be offered to the Council until:
 - (A) the Council accepts the land, or

- (B) the Council notifies the Developer that it wishes to compulsorily acquire the original land to be dedicated or the Alternative Dedication Land in which case clause 6.2(e) re-applies.

7. Risk and warranties in relation to the Dedicated Land

7.1 No warranties, etc unless express or required

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedicated Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

7.2 The Developer's warranties in relation to the Dedicated Land

The Developer represents and warrants that it is the owner of the Dedicated Land.

8. Making of a monetary Development Contribution

A monetary Development Contribution is taken to have been made by the Developer when the Council receives the full amount of the contribution payable:

- (a) in cash; or
- (b) upon clearance of an unendorsed bank cheque; or
- (c) by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Council.

9. Carrying out of Work

9.1 Manner of the carrying out of Work

- (a) The Developer is to obtain all necessary Approvals to enable Work to be carried out.
- (b) Without limiting any other provision of this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out and completed in accordance with the approved detailed design of the Work approved under clause 4.3, any relevant Approval and any other applicable law, whether or not the actual costs of completing the Work exceeds the Maximum Value.

9.2 The Council may give reasonable directions

- (a) The Developer, at its own cost, is to comply with any reasonable direction (having regard to the Maximum Value and other relevant factors) given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Agreement.

- (b) Clause 9.2(a) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS. To this end, the Developer must use reasonable endeavours to ensure that nothing in any agreement prevents Council from giving a reasonable direction and must, within 7 days of entering into any agreement with, or receiving a licence or approval from, RMS, provide Council with a copy of the agreement, licence or approval.

9.3 Design, etc may be varied

- (a) The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Agreement.
- (b) Clause 9.3(a) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS. To this end, the Developer must use reasonable endeavours to ensure that nothing in any agreement prevents Council from giving a reasonable direction and must, within 7 days of entering into any agreement with, or receiving a licence or approval from, RMS, provide Council with a copy of the agreement, licence or approval.

9.4 Compliance with Authority, etc requirements

- (a) Without limiting clause 9.3, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- (b) The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under this clause 9.4.
- (c) Clause 9.4(a) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS,

9.5 Council may require submission of variation

- (a) The Council, acting reasonably (having regard to the Maximum Value and other relevant factors), may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.
- (b) The Developer is to comply promptly with a direction referred to in clause 8.5(a) at its own cost.
- (c) This clause 9.4(c) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS. To this end, the Developer must use reasonable endeavours to ensure that nothing in any agreement prevents Council from giving a reasonable direction and must, within 7 days of entering into any agreement with, or receiving a licence or approval from, RMS, provide Council with a copy of the agreement, licence or approval.

9.6 Access to land by Developer

- (a) The Council authorises the Developer to enter, occupy and use any land owned or occupied by the Council that is reasonably necessary for the purpose of performing its obligations under this Agreement.

- (b) The Developer must give the Council prior reasonable notice before it enters land under this clause 8.6.
- (c) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 9.6(a).

9.7 Access to land by Council

- (a) The Council may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- (b) The Council must give the Developer prior reasonable notice before it enters land under this clause 9.7.
- (c) Nothing in this Agreement creates or gives the Council any estate or interest in any part of the land referred to in this clause 9.7.

9.8 Council's obligations relating to Work

- (a) The Council must not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.
- (b) The Council must use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

9.9 Protection of people, property and utilities

- (a) The Developer must, in performing its obligations under this Agreement, as far as is reasonably practicable:
 - (i) take all necessary measures to protect people and property;
 - (ii) avoid, on public roads, unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent private or public nuisances (including noise and disturbances of an unreasonable nature).
- (b) Without limiting clause 9.9(a), the Developer must not obstruct, interfere with, impair or damage any:
 - (i) public road, public footpath, public cycleway or other public thoroughfare; or
 - (ii) any publicly-owned pipe, conduit, drain, watercourse or other such utility or service on any land,

except as authorised in writing by the Council or any relevant Authority.

9.10 Repair of damage

- (a) The Developer is to maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 9.10(a) at its own cost.

9.11 Completion of Work

- (a) The Developer is to give the Council written notice of the date on which it intends to complete the Work required to be carried out under this Agreement.
- (b) The Council is to inspect the Work the subject of the notice referred to in clause 9.11(a) within 14 days of the date specified in the notice for completion of the Work.
- (c) Work required to be carried out by the Developer under this Agreement is completed for the purposes of this Agreement when the Council gives a written notice to the Developer to that effect.
- (d) The Council must not unreasonably withhold the notice referred to in clause 9.11(c).
- (e) If the Council is the owner of the land on which Work the subject of a notice referred to in clause 9.11(c) is issued, the Council assumes responsibility for the Work upon the issuing of the notice.
- (f) If the Council is not the owner of the land on which Work the subject of a notice referred to in clause 9.11(c) is issue, the Council assumes responsibility for the Work if and when it later becomes the owner.
- (g) Before the Council gives the Developer a notice referred to in clause 9.11(c), it may, acting reasonably, give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- (h) The Developer, at its own cost, is to promptly comply with any direction given in accordance with clause 9.11(g).
- (i) This clause 9.11 does not apply to item 8 of the Table.

9.12 Completion of Work — intersection upgrade(s) on Appin Road

Work required to be carried out by the Developer as part of Item 8 of the Table is completed for the purposes of this Agreement when it is completed (subject to any defects liability period) in accordance with the terms of a works authorisation deed (or equivalent) entered into between the Developer and Roads and Maritime Services in consultation with Council.

9.13 Defect rectification

- (a) The Council may, acting reasonably, give the Developer a Rectification Notice during the Defects Liability Period.
- (b) The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 10.1(a).
- (d) This clause 9.4(c) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS. To this end, the Developer use reasonable endeavours to ensure that nothing in any agreement prevents Council from giving a reasonable direction and must, within 7 days of entering into any agreement with, or receiving a licence or approval from, RMS, provide Council with a copy of the agreement, licence or approval.

9.14 Works-as-executed-plan

- (a) No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- (b) The Developer, being the copyright owner in the plan referred to in clause 9.14(a), gives the Council a non-exclusive, irrevocable licence in perpetuity to use the copyright in the plans for the purposes of this Agreement.
- (c) This clause 9.4(c) only applies to item 8 of the Table to the extent that it would not place the Developer in breach of any agreement, licence or approval it has with or from RMS. To this end, the Developer must use reasonable endeavours to ensure that nothing in any agreement prevents Council from giving a reasonable direction and must, within 7 days of entering into any agreement with, or receiving a licence or approval from, RMS, provide Council with a copy of the agreement, licence or approval.

9.15 Equipment removal

When Work on any Council owned or controlled land is completed for the purposes of this Agreement, the Developer, without unreasonable delay, is to:

- (a) remove any Equipment from land and make good any damage or disturbance to the land as a result of that removal; and
- (b) leave the land in a neat and tidy state, clean and free of rubbish.

9.16 Insurance

- (a) Prior to commencing the construction of any Work (required under this Agreement), the Developer must take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If the Developer does not comply with clause 9.16(a), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence the construction of any Work (required under this Agreement) unless it has first provided to the Council satisfactory written evidence of the relevant insurances specified in clause 9.16(a).

9.17 Indemnity

The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Agreement (extending to the performance of the obligation of the Developer by its employees, agents and contractors) except to the extent that, the Claim arises because of the Council's intentional act, negligence or default.

9.18 Increase of Maximum Value

Despite any other provision of this Agreement, on request by any Party, the Parties are to negotiate in good faith to an increase or decrease to a Maximum Value.

9.19 Intersection upgrade(s) on Appin Road

- (a) Despite any other provision of this Agreement, there is no obligation on the Developer to make the contribution required under Item 8 of the Table in circumstances where the Developer, acting reasonably, is unable to reach an agreement with (and obtain the necessary approval of) RMS regarding the nature of — and arrangements for — the works.
- (b) For avoidance of doubt, item 11 will apply in the circumstances set out in clause 9.19(a).

Note: The parties expect that no development consent will be granted for the subdivision of the land for Stage 1 if acceptable access arrangements will not be available.

10. Variations to Development Contributions

10.1 Variation may be requested and agreed to

- (a) The Developer may, in its absolute discretion, request that the Council agree to a variation to the Development Contributions (that is, a change to any of the provisions in Schedule 1).
- (b) The Council may, in its absolute discretion, agree to a variation of the Development Contributions, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

10.2 Effect of variation

Variations to the development contributions under this clause 10 and where consistent with other clauses of this Planning Agreement may be agreed in writing between the Parties, acting reasonably, without the necessity for an amendment to this Agreement

11. Conservation or enhancement of the natural environment

11.1 Application of this clause

This clause 11 does not apply to:

- (a) a Service Lot or a Final Lot that is already in existence at the time a given development application is made; or
- (b) any development application for the subdivision of land that does not propose the creation of any Final Lots.

11.2 Biodiversity certification, biobanking statement, etc

If the EPI Change is made and has effect, the Developer must not Pursue Development Consent in relation to the Designated Land, unless one of the following has taken place:

- (a) the Environment Minister has conferred biodiversity certification under Part 7AA of the Threatened Species Conservation Act on all or the relevant part of the Planning Proposal Site Area;
- (b) the OEH has issued a biobanking statement in respect of the proposed development under Part 7A of the Threatened Species Conservation Act; or
- (c) in the event that either or both of those schemes are replaced or supplemented by some other scheme under NSW legislation, an analogous authority has been given or conferred under that scheme.

11.3 Definitions

In this clause 11:

- (a) **Designated Land** means that part of the Planning Proposal Site Area marked as 'Low Density Residential' on the Land Zoning Map.
- (b) **Newly-Permitted Development** means Development for which Development Consent is only able to be granted because the EPI Change has been made and has come into effect.
- (c) **Pursue Development Consent** means:
 - (i) apply to a consent authority for Development Consent to carry out Newly-Permitted Development under section 78A(1) of the Act; or
 - (ii) consent to the making of a development application under clause 49(1)(b) of the Regulation,

but does not extend to making arrangements for another person to make a development application (in circumstances where clause 49(1) of the Regulation is not satisfied).

Note: It is intended that a development application for Newly-Permitted Development might be made, without landowner's consent (if biodiversity certification has not been conferred or a biobanking statement issued) so as to enable assessment, but not determination, by the consent authority.

12. Registration

12.1 Developer agreement to registration

The Developer agrees to the registration of this Agreement under section 93H of the Act in relation to the Planning Proposal Site Area.

12.2 Registration of this Agreement

- (a) Within 20 Business Days of this Agreement coming into effect:
 - (i) the Developer at its own expense will take all reasonably practicable steps to obtain the agreement of the persons specified in section 93H(1) of the Act whose agreement is necessary for the Registration on Title; and

- (ii) if that agreement is obtained, take all reasonably practicable steps to secure:
 - (A) the execution of any documents; and
 - (B) the production of the relevant certificates of title; and
 - (C) the lodgement and registration of this Agreement, by the Registrar-General in the relevant folio of the Register.
- (b) The Developer must give the Council a copy of the relevant folio of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement.

12.3 Release and discharge of this Agreement

The parties agree to do all things reasonably required by the other party to promptly release and discharge this Agreement with respect to:

- (a) a Final Lot or Service Lot, upon its creation;
- (b) all parts of the Planning Proposal Site Area, upon this Agreement being terminated.

13. Transfer, assignment or novation

13.1 Consent for transfer of Relevant Lots

- (a) The Developer must not transfer the Planning Proposal Site Area or any part of the Planning Proposal Site Area to any person without the consent of the Council.
- (b) This clause 13.1 does not apply to:
 - (i) the dedication of the Dedicated Land to the Council; or
 - (ii) to the conversion of that part of the Planning Proposal Site Area that is not Dedicated Land into common property (within the meaning of the *Strata Schemes Management Act 1996*); or
 - (iii) the transfer of a Service Lot or Final Lot.

13.2 Consent for assignment or novation of this Agreement

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 13.2 does not preclude the transfer of any part of the Planning Proposal Site Area.

13.3 The giving of consent by the Council

- (a) The Council must give its consent under clause 13.1(a) or clause 13.2(a) if:
 - (i) the Developer has, at no cost to the Council, first procured the execution by the person to whom:
 - (A) the land will be transferred; or

- (B) the rights or obligations under this Agreement are to be assigned or novated,

a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and

- (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and

- (iii) the Developer is not in breach of this Agreement.

- (b) The Council, on giving consent under clause 13.3(a) must enter into the deed of novation referred to in clause 13.3(a)(i).

13.4 No requirement for consent when Agreement is registered

- (a) Clause 13.1 and clause 13.2 do not apply in connection with the transfer of the whole or any part of the Planning Proposal Site Area if this Agreement is, at the time of transfer, Registered on Title.

13.5 No requirement for consent when Agreement is registered

- (a) If the whole or any part of the Planning Proposal Site Area is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Planning Proposal Site Area, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (i) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (ii) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (iii) by the Council,

on the basis that:

- (iv) the Effective Date is either:
 - (A) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 93H(3) of the Act; or
 - (B) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

14. Security for works

14.1 Provision of security

- (a) In relation to each Development Contribution for which a security value is set out in Column 5 of the Table, the Developer must provide Security to the Council to a value determined by the following calculation:

$$\mathbf{\$S = (\$SV - \$IC) \times 120\%}$$

Where:

S means the amount of Security to be provided, which shall not be less than 20% of the Maximum Value,

SV means the security value set out in Column 5 in respect of the Development Contribution (as indexed as set out in clause 14.1(e)).

IC is the amount of incurred costs that relate to the relevant Development Contribution, being costs that are the subject of a Progress Certificate.

- (b) There is no obligation to provide the Security under 14.1(a) prior to the point in time set out in Column 4 of the Table, although the Developer is not precluded from electing to provide Security earlier if it wishes to do so.
- (c) For avoidance of doubt, if the result of the calculation under clause 14.1(a) in respect of a Work is a number less than 20% of the Maximum Value of the Work, the Developer is still obliged to provide Security in the amount of 20% of the Maximum Value.
- (d) All delivered security, other than cash, is transferred in escrow.
- (e) The indexed amount of the Security Value (SV) at a given point in time is determined by the following formula:

$$\mathbf{\$SV_p = \frac{\$SV_{(pa)} \times I(p)}{I(epi)}}$$

Where:

$\$SV_p$ is the security value payable in relation to a Development Contribution.

$\$SV_{pa}$ is the relevant security value shown in Column 5 of the Table .

$I(p)$ is the last published CPI Index value at the time the Security is payable.

$I(epi)$ is the last published CPI Index value at the time the EPI Change is made and comes into effect.

14.2 Security obligation to be recalculated

- (a) When:
 - (i) Security has been provided under clause 14.1;
 - (ii) a further Progress Certificate is issued for those costs that relate to the relevant Development Contribution; and
 - (iii) the further Progress Certificate is given to the Council,

the calculation in clause 14.1 is performed again and the Council's entitlement to Security is reduced to the value set by the new calculation.

- (b) For avoidance of doubt, if the result of the recalculation is a number less than 20% of the Maximum Value of the Work, the Developer is still obliged to provide Security in the amount of 20% of the Maximum Value (subject to clause 14.6).
- (c) The process of recalculation required may, upon the provision of each further Progress Certificate, be repeated until the Council has no entitlement to Security.

14.3 Provision of a single Security

- (a) Where this Agreement requires more than one Security to be provided by the Developer at given point in time, the Developer may provide a single Security in lieu of providing some or all of those Securities.
- (b) The value of the Security provided under clause 14.3(a) must not be less than the sum of the values of the Securities that would have otherwise been provided.

14.4 Substitution of Security

- (a) At any time the Developer providing Security may substitute it with one or more Securities of the same value.
- (b) If the value of the Security provided by the Developer exceeds the Council's entitlement to Security under this Agreement at any time, the Developer providing Security may substitute it with another Security or Securities whose value is in accordance with the Council's entitlement to Security under this Agreement at that time.
- (c) To the extent that another Security is provided, the Council must not deduct, and must promptly release and return, the Security that has been substituted.

14.5 Recourse

- (a) The purpose of this clause 14.5 is to allocate the risk pending determination of any disputed entitlement and therefore, except as provided in clause (g), nothing in this clause 14.5 confers a substantive right on the Council to avoid returning Security (or the value of Security) it is not otherwise entitled to:
 - (i) if the Council's entitlement is disputed by the Developer, once the dispute has been conclusively determined; or
 - (ii) in any case, if the Council's asserted entitlement (together with any costs, expenses or interest on such entitlement) is less than the value of the Security called-up.

For avoidance of doubt, Security required under clause 14.2(b) is Security that Council is entitled to under this clause 14.5(a).

- (b) Any Security provided under this Agreement may only be called-up by the Council where either:
 - (i) the Developer has not made a Development Contribution at the time required under clause 4.1(a); or
 - (ii) more than five years has elapsed since the issue of the first Subdivision Certificate for the creation of the first Final Lot and the Council, acting reasonably, forms the opinion that the Developer has abandoned the Development; or
 - (iii) the Developer gives written notice to the Council that it does not intend to proceed further with the Development; or

- (iv) in the Council's opinion, the Developer has not satisfied any defects liability obligation; or
 - (v) in the Council's opinion, the Developer has otherwise breached this Agreement.
- (c) If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Agreement.
 - (d) If clause 14.5(b)(i) applies, at least 28 days must have elapsed since that Council gave written notice to the Developer of its intention to have recourse.
 - (e) For avoidance of doubt, the Developer is not to be considered as being in breach of this Agreement because clause 14.5(a)(ii) or (iii) applies.
 - (f) The Council may call-up and apply the Security in accordance with this clause to remedy any breach of this Agreement notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
 - (g) If Security is called-up under clause 14.5(b)(ii) or (iii) (and only to the extent that it is called-up under those provisions) the relevant part of the Security becomes a Development Contribution that is made by the Developer to the Council for the relevant public purpose set out in Column 3 of the Table.

14.6 Reduction and release

- (a) The Council's entitlement to Security, in relation to Work required to be carried out by the Developer under this Agreement, ceases 14 days after the Council has notified the Developer in writing that the Developer has complied with all Rectification Notices to the reasonable satisfaction of the Council in relation to the given Work. The Council is not unreasonably withhold or delay the issue of this notice.
- (b) Upon the Council's entitlement to a Security ceasing (under 14.6(a)) the Council must promptly release and return the Security to the Developer.

15. Enforcement in relation to the dedication of land

15.1 Agreement under the Just Terms Act

- (a) Subject to clause 15.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or
 - (ii) at any point after that time,

the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 15.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

15.2 Limitations on that agreement

The Council may only acquire land pursuant to clause 15.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

15.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in clause 15.1, the Council must pay compensation to any person other than the Developer, the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Dedicated Land under clause 15.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 15, including:
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iii) paying the Council's reasonable costs arising under this clause 15.

16. Termination

16.1 Termination of this Agreement

One Party may terminate this Agreement by giving written notice to the Other Party but only when the Developer has completed all of its obligations under this Agreement including completion of rectification of any Defects and remedying any breaches of this Agreement. Even if the Developer has completed rectification of all Defects and has remedied any breaches of this Agreement this Agreement shall not terminate before a period of six years has passed since Council has received a written notice of completion in respect of each Work.

16.2 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under clause 16.1:
 - (i) the parties are released and discharged from their obligations under this Agreement; and
 - (ii) the Council must promptly release and return any Security provided by the Developer under this Agreement.
- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

17. Breach of obligations

17.1 Breach notice

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) If the Developer:
 - (i) does not comply with a Breach Notice relating to the carrying out of Work under this Agreement; and
 - (ii) has no reasonable excuse for its non-compliance,

the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

17.2 Costs of remedying a breach

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 17.1 may be recovered by the Council by either or a combination of the following means:
 - (i) by calling-up and applying the Security provided by the Developer under this Agreement, or
 - (ii) as a debt due in a court of competent jurisdiction,

but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.

- (b) For the purpose of this clause 17.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

- (c) Nothing in this clause 17 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

18. Dispute resolution

18.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document (**Dispute**) that dispute must be referred for determination under this clause 18.

18.2 No legal proceedings

- (a) The parties must not bring or maintain any action on any Dispute until it has been referred and determined as provided in this clause 18.
- (b) Clause 18.2(a) does not prevent:
 - (i) class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded; or
 - (ii) urgent injunctive relief to keep a particular position.

18.3 Notice of disputes

A party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

18.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour, within the following seven-day period, to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

18.5 Assistance to the Expert

- (a) Once the Expert has been appointed (**the Expert**), the parties must:
 - (i) each use their best endeavours to make available to the Expert, all information the Expert requires to settle or determine the Dispute; and
 - (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.

- (b) The parties may give written submissions to the Expert but must provide copies to the other parties at the same time.

18.6 Expert's decision

- (a) The decision of the Expert must:
 - (i) be in writing and give reasons; and
 - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

18.7 Expert's costs

- (a) Each Party is to bear its own costs arising from or in connection with the appointment of the Expert and the expert determination.
- (b) The Parties are to share equally the costs of the President, the Expert, and the expert determination.

18.8 Continual performance

Each party must continue to perform its obligations under this document while any dispute is being determined under this clause 18.

19. General provisions

19.1 Costs

- (a) The Developer is to pay to the Council the Council's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- (b) The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

19.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.
- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST

group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.

- (c) This clause 19.2 is subject to any other specific agreement regarding the payment of GST on supplies.

19.3 Duties

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this document, or any agreement or document executed or effected under this document.

19.4 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

19.5 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses or numbers for notices:

The Council

Wollondilly Shire Council
62-64 Menangle Street, Picton NSW 2571
02 4677 2339

The Developer

Walker Corporation Pty Ltd
Level 21, Governor Macquarie Tower,
1 Farrer Place Sydney NSW 2000
Fax: (02) 9252 7400

- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.
- (d) A notice to the Developer must be given in relation to each of the persons who are identified as the Developer in clause 19.5(b).

19.6 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

19.7 Amendments

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

19.8 Third parties

Subject to clause 13.5, this document confers rights only upon a person expressed to be a party, and not upon any other person.

19.9 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

19.10 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

19.11 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

19.12 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

19.13 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

19.14 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

19.15 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

19.16 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- (d) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.

19.17 Where more than one person is the Developer

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 19.17(a) does not apply to a right that may be exercised by:
 - (i) a Developer; or
 - (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,without any prejudice to the other persons who are a Developer.
- (c) The provisions of clause 19.17(a) and clause 19.17(b) have effect subject to:
 - (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 13.3(a)(i)); and
 - (ii) clause 18.

- (d) This clause 19.17 does not prevent the Council from taking action against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

19.18 Validity of this Agreement

- (a) No party is to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
 - (i) the validity of this Agreement; or
 - (ii) the making of the EPI change; or
 - (iii) the granting or modifying of any Development Consent to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.
- (b) If this Agreement or any part of it becomes unenforceable or invalid as a result of any change to a law, the parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

19.19 Annual reporting

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.
- (b) The report under this clause 19.9 is to be in such a form and to address such matters as reasonably required by the Council from time to time.
- (c) This clause 19.19 has no effect unless the Development has been physically commenced.

19.20 Review of this Agreement

- (a) The parties must review this Agreement every two years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- (b) For the purposes of this clause 19.20, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- (c) For the purposes of addressing any matter arising from a review of this Agreement, the parties must use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- (d) A failure by a party to agree to take action requested by the other Party as a consequence of a review referred to in clause 19.20(a) is not a breach of this Agreement and is not able to be dealt with under clause 18.

20. Definitions and interpretation

20.1 Definitions

In this document unless the context otherwise requires:

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

Agreement or this document means this Deed and includes any schedules, annexures and appendices to this Deed;

Alternative Dedication Land means land having an area reasonably considered by the Council as being appropriate to replace that part of the land to be dedicated the subject of a notice by the Council under clause 6.2(c)(iii).

Appin Road Main Street Concept Plan means the Appin Road Main Street Concept Plan set out in Sheet 4 of Schedule 2;

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

Approved Institution means:

- (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
- (b) a general insurer within the meaning of the *Insurance Act 1973* (Cth); or
- (c) any other financial institution or insurer approved by the Council in its absolute discretion;

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

Construction Certificate has the same meaning as in the Act;

CPI Index means the Consumer Price Index published by the Commonwealth Statistician for ALL GROUPS for Sydney.

Cycleway means a 2.5 metre wide concrete shared path;

Dedicated Land means the land to be, or that is, dedicated under this Agreement;

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

Defects Liability Period means the period of one year commencing on the day immediately after a Work is completed for the purposes of this Agreement;

Development means the development of the Planning Proposal Site Area for urban purposes;

Development Consent has the same meaning as in the Act;

Development Contribution means any of the following:

- (a) a monetary contribution;
- (b) a dedication of land free of cost; or
- (c) the provision of any other material public benefit,

provided for in this Agreement and described in Schedule 1;

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

Environment Minister means the Minister administering the Threatened Species Conservation Act;

EPBC Act Decision means any decision that is (or is like) an approval process decision within the meaning of section 158A of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth);

EPI Change means a change the *Wollondilly Local Environmental Plan 2011* insofar as it applies to the Planning Proposal Site Area, such that:

- (a) the zoning of that land is generally in accordance with Land Zoning Map;
- (a) the zone objectives and permitted uses for that land (in each zone) are generally in accordance with the zone objectives and permitted uses (for the relevant zone type) set out in the *Wollondilly Local Environmental Plan 2011* as at the date of this Agreement;
- (b) the minimum lot size of that land is generally in accordance with the Lot Size Map;
- (c) the maximum height of buildings in the R2 Low Density Residential zone on that land is generally 9 metres; and
- (d) there is a no provision that would prevent:
 - (i) Stage 1 lot yield being generally in accordance with 108 Final Lots;
 - (ii) Stage 2 lot yield being generally in accordance with 67 Final Lots; and
 - (iii) Stage 3 lot yield being generally in accordance with 40 Final Lots.

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

Final Lot means a lot created for separate occupation and disposition which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a Service Lot;

Financial Certifier means:

- (a) a person agreed to between the Parties;

- (b) if that person ceases to be available to perform that function or is not agreed prior to the date of this Agreement, the person nominated by the Developer, and agreed to by the Council (the Council must not unreasonably withhold its agreement); or
- (c) if the Council and the Developer otherwise agree, the person agreed from time to time between the Council and the Developer;

Gordon Lewis Oval Concept Plan means the Gordon Lewis Oval Concept Plan set out in Sheet 5 of Schedule 2;

Gordon Lewis Oval Land means Lot 1 DP 245866;

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

Indicative Staging Plan means drawing no WSA – CP - 700 Issue 47 dated 18 January 2017 and titled 'South Appin Indicative Staging Plan' and prepared by the Developer as set out in Sheet 3 of Schedule 2;

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

Land means:

- (a) the Planning Proposal Site Area;
- (b) the Gordon Lewis Oval Land;
- (c) the Road Land;

Land Zoning Map means the portion of the drawing dated 20 February 2017 titled 'Proposed land zoning' and the associated interpretative information as set out in Sheet 1 of Schedule 2;

Last Subdivision Certificate means:

- (a) when used in relation to the Development as whole:
 - (i) if the Developer has determined that the practical effect of an EPBC Act Decision is that Stage 3 will not proceed (and the Developer has given the Council written notice to that effect), the Subdivision Certificate for the creation of the last of the Final Lots generally depicted in the Indicative Staging Plan (excluding any Final Lots that form part of Stage 3),
 - (ii) otherwise, the Subdivision Certificate for the creation of the last of the Final Lots generally depicted in the Indicative Staging Plan;
- (b) when used in relation to Stage 1, Stage 2 and Stage 3 of the Development, the Subdivision Certificate for the creation of the last of the Final Lots generally depicted for the relevant stage or stages in the Indicative Staging Plan;

Lot Size Map means the portion of the drawing dated 20 February 2017 titled 'Proposed Minimum Lot Size' and the associated interpretative information as set out in Sheet 2 of Schedule 2;

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work;

Maximum Value in relation to a Development Contribution comprising a Work means the amount exclusive of GST set out in Column 7 of the Table corresponding to the Work being the agreed cost for the Work.

Novation Deed means the draft deed in Annexure A;

OEH means any person exercising the functions of the Chief Executive of the Office of Environment and Heritage under Part 7A of the Threatened Species Conservation Act;

Planning Proposal means document described as Planning Proposal: Rezoning Application and titled as Macquariedale Rd, Appin (February 2017) and prepared by the Council;

Planning Proposal Site Area means:

- (a) Lot 1 DP 1218358;
- (b) Part Lot 1 DP 245866 as depicted in pink in the Site Identification Plan;
- (c) Part Lot 2035 DP 1198686 as depicted in pink in the Site Identification Plan;
- (d) Lot 2 DP 1218358;
- (e) Lot 3 DP 1218358; and
- (f) Lot 2 DP 529457;

Progress Certificate means the certificate issued by the Financial Certifier under clause 5.2(e).

Real Property Act means the *Real Property Act 1900*;

Rectification Notice means a notice in writing:

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

Rectify means rectify, remedy or correct;

Registration on Title means the registration of this Agreement under section 93H of the Act in the folio of the Register kept under the Real Property Act in relation to the Planning Proposal Site Area, and **Registered on Title** refers to the state of the Agreement being so registered;

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

Road Land means:

- (a) the portion of the Appin Road and Macquariedale Road road reserves coloured orange identified by label 'extent of work' in Roadwork Plan;
- (b) the portion of the road reserves which are identified as being the locations of 'stage 1 shared path (40%)', 'stage 2 shared path (40%)'; 'stage 3 shared path (20%)'; and the roundabout at the intersection of Church Street and Appin Road;

Note: This includes areas within Sportsground Parade, Rixon Road, Market Street and King Street.

- (c) Lot 3/DP 209779; and
- (d) the portion of the King Street road reserve marked white between Appin Road and the Stage 1 land in the Indicative Staging Plan;

Roadwork Plan means the plan set out in Sheet 6 of Schedule 2;

RMS means Roads and Maritime Services;

Security means:

- (a) cash;
- (b) bonds or inscribed stock or their equivalent issued by the Commonwealth of Australia, or a state or territory government within Australia;
- (c) an:
 - (i) unconditional undertaking that is, in material respects, the same as the form set out in Schedule 3;
 - (ii) another form of unconditional undertaking approved by the Council in its absolute discretion; or
 - (iii) a performance undertaking approved by the Council in its absolute discretion,
given by an Approved Institution; or
- (d) other form of security approved by the Council in its absolute discretion;

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

Site Identification Plan means the plan prepared by the Council on 14 February 2017 as set out in Sheet 7 of Schedule 2;

Stage 1 means the group of Final Lots generally depicted as Stage 1 in the Indicative Staging Plan;

Stage 2 means the group of Final Lots generally depicted as Stage 2 in the Indicative Staging Plan;

Stage 3 means the group of Final Lots generally depicted as Stage 3 in the Indicative Staging Plan;

Standard Instrument means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

Subdivision Certificate has the same meaning as in the Act;

Table means the table set out in Schedule 1;

Threatened Species Conservation Act means *Threatened Species Conservation Act 1995*;

Work means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

20.2 Interpretation

- (a) In this document unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) a reference to a party means a party to this Agreement, including their employees, agents, contractors, successors and assigns and a person bound by the Agreement under section 93H(3) of the Act;
 - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
 - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
 - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
 - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
 - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.

- (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
 - (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
 - (xv) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day;
 - (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
 - (xvii) reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
 - (c) Nothing in this Agreement, including the Indicative Staging Plan, requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

20.3 Stage 3

For the purposes of the Table:

- (a) it is to be taken that there is no Stage 3 if the Developer has determined that the practical effect of an EPBC Act Decision is that Stage 3 will not proceed (and the Developer has given the Council written notice to that effect); and
- (b) in all other circumstances, it is to be taken that there is a Stage 3.

20.4 No joint venture, etc

Unless otherwise stated:

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

20.5 No obligation to grant or modify a Development Consent

- (a) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 20.5(a) does not affect any obligation of the consent authority (under section 79C(1)(a)(iii) of the Act) to take this Agreement into consideration.

20.6 No breach, etc of a Development Consent

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

- (a) be in breach; or
- (b) not fulfil a requirement,

of a Development Consent in force and applying to the Land.

20.7 Explanatory Note

In accordance with clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000* the explanatory note must not be used to assist in construing this Agreement.

Schedule 1 – Development Contributions

(Clause 4, Clause 14 and Clause 20.1)

Table

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Description	Public purpose	When Security is required	Security value	When contribution is required	Maximum Value
Material public benefit - Works						
1. Cycleway 1	Generally the Cycleway identified as 'stage 1 shared path (40%)' on the Indicative Staging Plan.	Transport and traffic	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 1	\$280,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 1.	If there is a Stage 3, \$700,000
2. Cycleway 2	Generally the Cycleway identified as 'stage 2 shared path (40%)' on the Indicative Staging Plan	Transport and traffic	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$280,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 2	If there is no Stage 3, \$560,000
3. Cycleway 3 (but only if there is a Stage 3)	Generally the Cycleway identified as 'stage 3 shared path (20%)' on the Indicative Staging Plan	Transport and traffic	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 3, but only if there is a Stage 3	\$140,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 3, but only if there is a Stage 3	
4. Undergrounding power lines in Appin Road and Macquariedale Road	Replace overhead power lines with underground lines within the Roadworks Land	Open space	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$1,400,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 2	\$1,400,000
5. Macquariedale Road	Construction of pavement improvements, shared pathway and street tree planting within the stretch of Macquariedale	Transport and traffic	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final	\$250,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 2	\$250,000

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Description	Public purpose	When Security is required	Security value	When contribution is required	Maximum Value
	Road within the Roadworks Land		Lot in Stage 2			
6. Appin Road upgrade to Main Street	<p>One or more of the following embellishments (as determined by the Council after consultation with the community) to the Appin Road between Church Street and Market Street:</p> <ul style="list-style-type: none"> • plant mature street trees; • upgrading street furniture; • installing a cobblestone threshold and pedestrian refuge (to improve pedestrian safety); • additional parking on Appin Road, <p>generally as depicted in the Appin Road Main Street Concept Plan.</p>	Transport and traffic	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$500,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 2	\$500,000
7. Gordon Lewis Oval, and 'engineers ground' embellishment (but only if there is a Stage 3)	<p>Top dress and landscape the waste site within the 'engineers ground'</p> <p>One or more of the following embellishments (as determined by the Council after consultation with the community) to the Gordon Lewis Oval Land:</p> <ul style="list-style-type: none"> • children's playground; • barbeque facilities; • picnic tables; 	Open space	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2, but only if there is a Stage 3	\$1,200,000	Immediately prior to the issue of the Last Subdivision Certificate for Stage 2, but only if there is a Stage 3	\$1,200,000

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Description	Public purpose	When Security is required	Security value	When contribution is required	Maximum Value
	<ul style="list-style-type: none"> amenity lighting; fitness circuit; and landscaping, generally as depicted in the Gordon Lewis Oval Concept Plan					
8. Intersection upgrade(s) on Appin Road	Upgrade intersection(s) on Appin Road required by the Development. This may include: <ul style="list-style-type: none"> traffic signals at the intersection of King Street and Appin Road; a protected turning lane on Macquariedale Road; and/or traffic signals or roundabout at the intersection of Appin Road and Church Street 	Transport and traffic	Not applicable Note: It is anticipated that the delivery of these works would be governed by a works authorisation deed with the RMS	Not applicable	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 1	\$2,500,000
Monetary contributions						
9. Community chest	If there is a stage 3, an amount of \$11,628 for each of the first 215 Final Lots developed on the Planning Proposal Site Area If there is no stage 3, an amount of \$11,628 for each of the first 167 Final Lots developed on the Planning Proposal Site Area	Community facilities	Not applicable	Not applicable	Immediately prior to the issue of each Subdivision Certificate for Final Lots referred to in column 2, but only for Final Lots that are to be the subject of relevant Subdivision Certificate	If there is a stage 3, \$2,500,020 If there is no stage 3, \$1,941,876
10. Green fund	If there is a stage 3, an amount	Environmental	Not applicable	Not applicable	Immediately prior to the	If there is a

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Description	Public purpose	When Security is required	Security value	When contribution is required	Maximum Value
	<p>of \$2,326 for each of the first 215 Final Lots developed on the Planning Proposal Site Area</p> <p>If there is no stage 3, an amount of \$2,326 for each of the first 167 Final Lots developed on the Planning Proposal Site Area</p>	works			issue of each Subdivision Certificate for Final Lots referred to in column 2, but only for Final Lots that are to be the subject of relevant Subdivision Certificate	<p>stage 3, \$500,090</p> <p>If there is no stage 3, \$388,442</p>
11. Monetary contribution in lieu of intersection upgrade(s) on Appin Road	<p>If Item 8 is not required to be made because of clause 9.19, an amount of:</p> <ul style="list-style-type: none"> \$23,148; <p>less</p> <ul style="list-style-type: none"> the cost of any alternative access arrangement for Stage 1 (in lieu of the work envisaged under Item 8) divided by 108, <p>for each of the first 108 Final Lots developed with Stage 1</p>	Open space	<p>Not applicable</p> <p>Note: It is anticipated that the delivery of these works would be governed by a works authorisation deed with the RMS</p>	Not applicable	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 1	\$2,499,899
Dedication of Land						
12. Expansion of Gordon Lewis Oval public reserve (but only if there is a stage 3)	Dedication of an area of land of approximately 1,930m ² being generally consistent with the area identified as 'Transfer to Council' in the Indicative Staging Plan including obtain approvals for and undertake clearing of the transfer land prior to dedication	Open space	Not applicable	Not applicable	<p>If dedication is to be effected by the registration of a plan of subdivision under section 49(3) of the <i>Local Government Act 1993</i> — upon the registration of the plan of subdivision creating the first Final Lot in Stage 3.</p> <p>Otherwise — immediately prior to the issue of the Subdivision Certificate for</p>	Not applicable

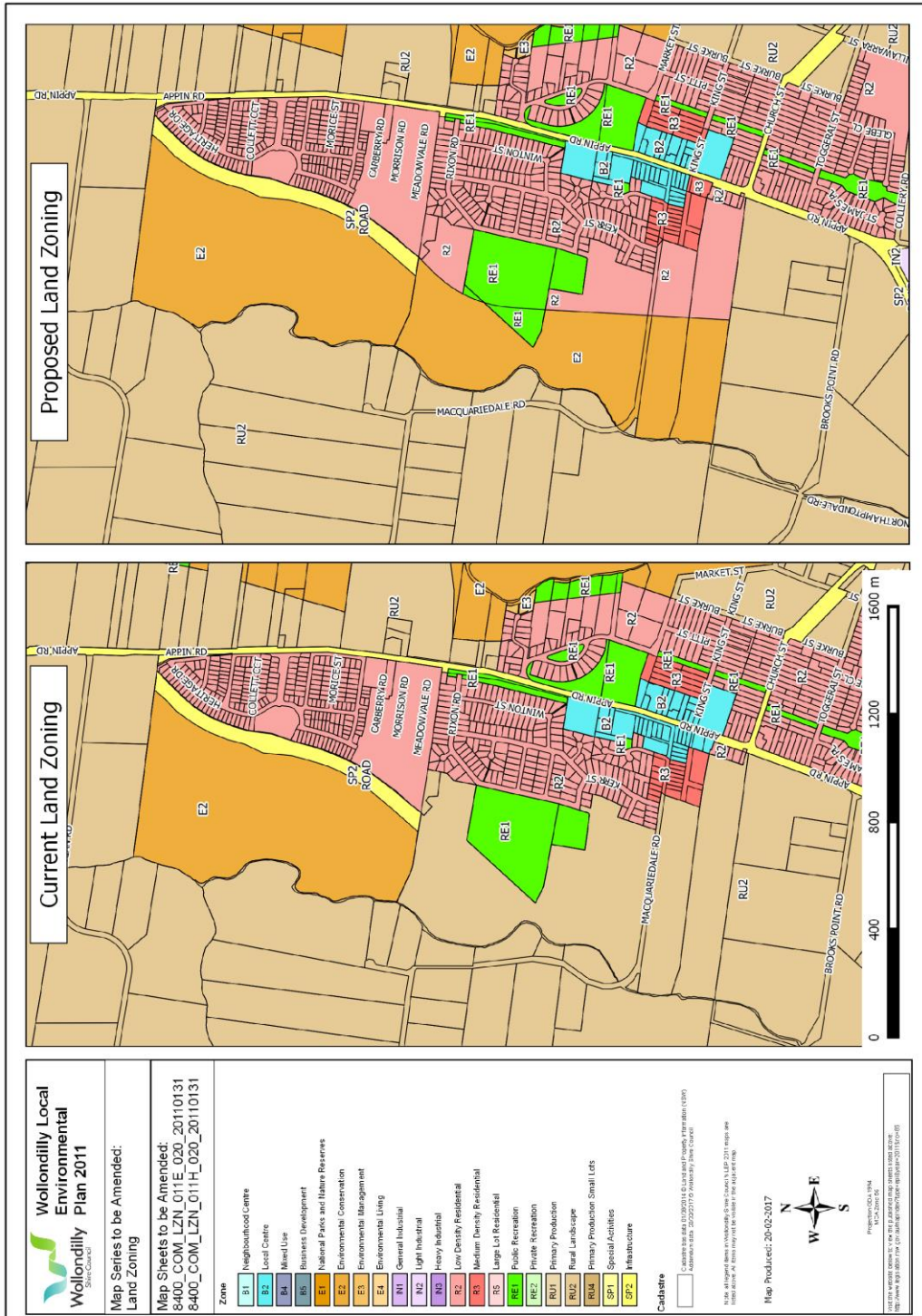
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Item	Description	Public purpose	When Security is required	Security value	When contribution is required	Maximum Value
					the creation of the first Final Lot in Stage 3	

DRAFT

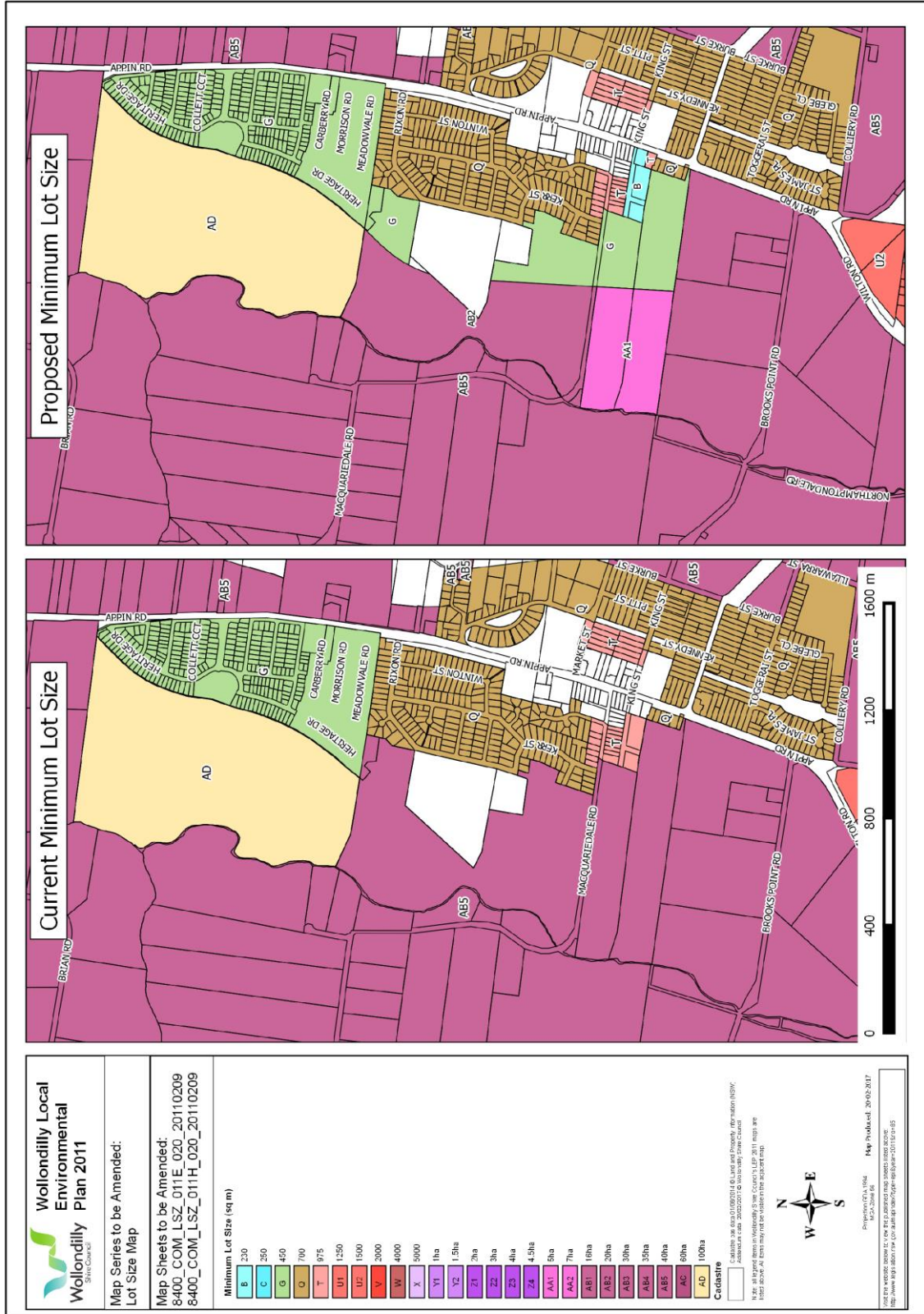
Schedule 2 – Drawings

(Clause 20)

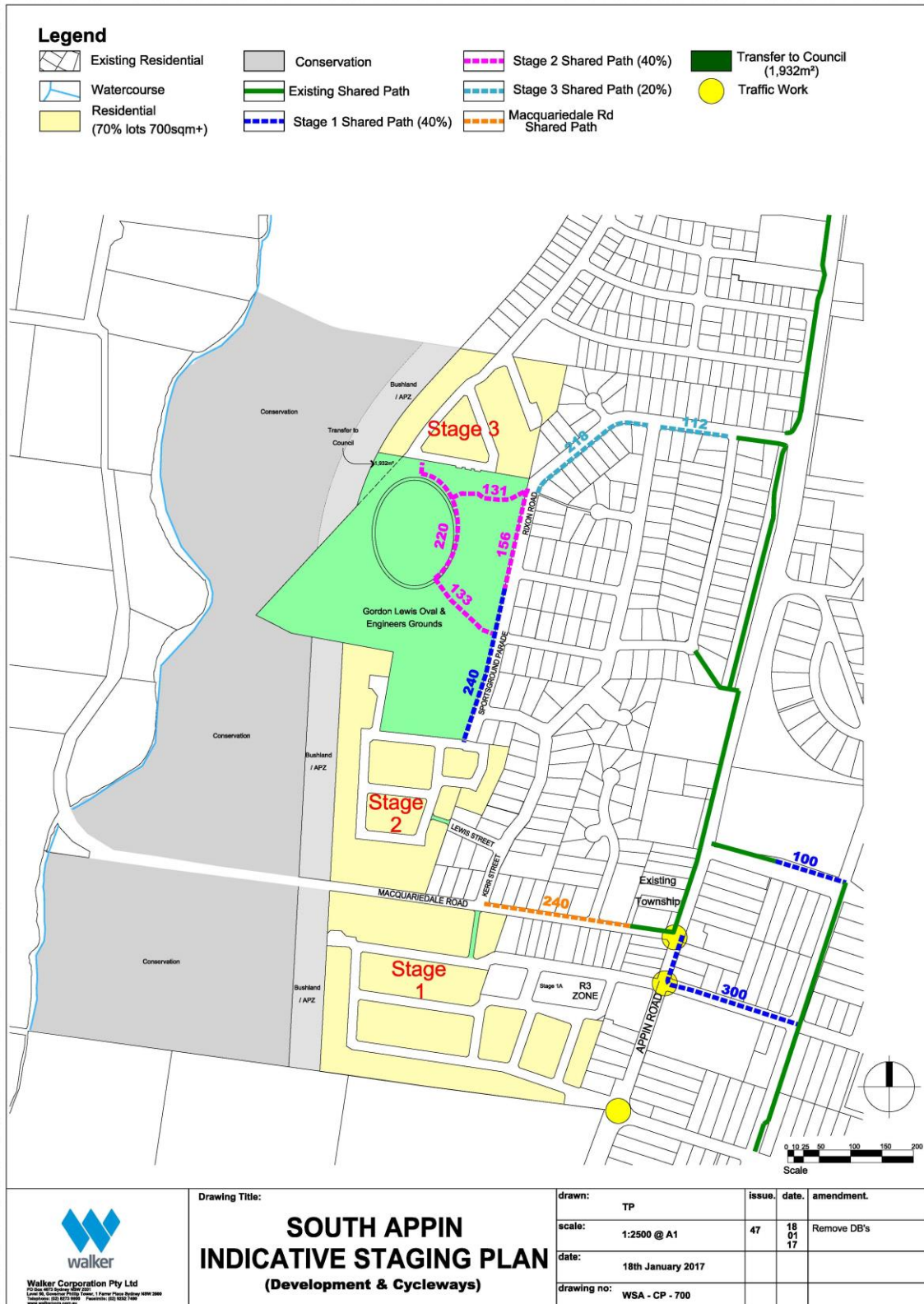
Sheet 1: Land Zoning Map



Sheet 2: Lot Size Map



Sheet 3: Indicative Staging Plan



Sheet 4: Appin Road Main Street Concept Plan



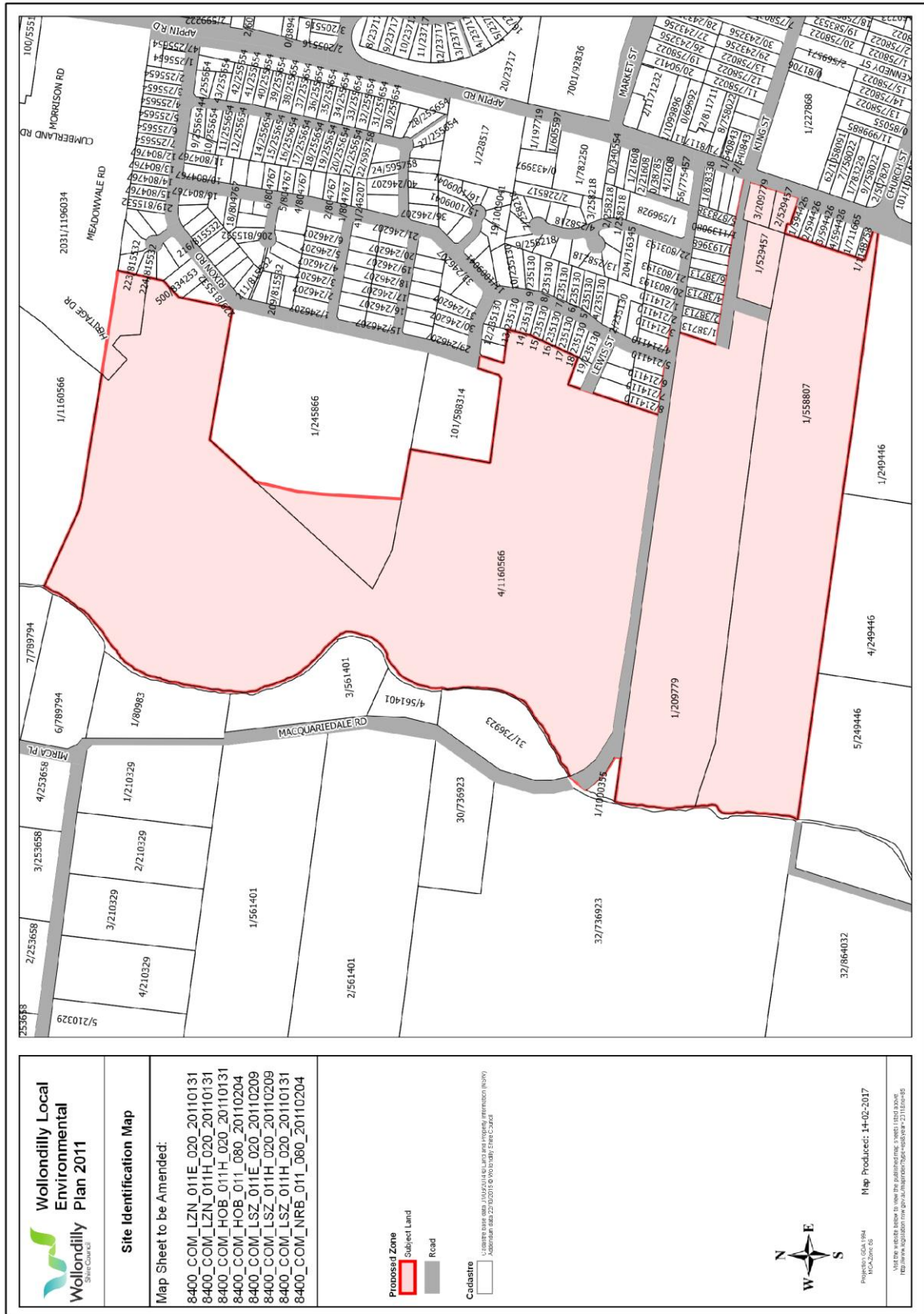
Sheet 5: Gordon Lewis Oval Concept Plan



Sheet 6: Roadwork Plan



Sheet 7: Site Identification Plan



Schedule 3 – Form of unconditional undertaking

(Clause 20.1)

At the request of
ACN ABN (the *Applicant*) and in consideration of
.....
ACN ABN (the *Favouree*) accepting this undertaking
in respect of the *Planning Agreement* for
..... (the *Project*)
.....
ACN ABN (the *Surety*) unconditionally
undertakes to pay on demand any sum or sums which may from time to time be demanded by the
Favouree to a maximum aggregate sum of
..... (\$)

The undertaking is to continue until notification has been received from the *Favouree* that the sum is
no longer required by the *Favouree* or until this undertaking is returned to the *Surety* or until
payment to the *Favouree* by the *Surety* of the whole of the sum or such part as the *Favouree*
may require.

Should the *Surety* be notified in writing, purporting to be signed by
for and on behalf of the *Favouree* that the *Favouree* desires payment to be made of the whole or
any part or parts of the sum, it is unconditionally agreed that the *Surety* will make the payment or
payments to the *Favouree* forthwith without reference to the *Applicant* and notwithstanding any
notice given by the *Applicant* not to pay same.

Provided always that the *Surety* may at any time without being required so to do pay to the
Favouree the sum of
..... (\$)
less any amount or amounts it may previously have paid under this undertaking or such lesser sum
as may be required and specified by the *Favouree* and thereupon the liability of the *Surety* hereunder
shall immediately cease.

Dated at this day of 20.....

Executed as a deed.

Executed on behalf of **Wollondilly Shire Council**
by its General Manager pursuant to delegation
granted by resolution passed at a duly convened
meeting held on _____ in the presence
of:

Witness

Mayor

Print name

Print name

Print address

Executed on behalf of **Walker Corporation Pty
Ltd** ACN 001 176 263 in accordance with s127(1)
of the *Corporations Act 2001* (Cth) by:

Secretary/Director

Director

Print name

Print name

Deed of Novation

Wollondilly Shire Council

[Insert name of existing developer]

[Insert name of new developer]

Deed of Novation

Dated

Parties

1. **Wollondilly Shire Council** of 62-64 Menangle Street, Picton NSW 2571 (**the Council**)
2. **[Insert name of existing developer]** ACN [insert ACN] of [insert address] (**the Existing Developer**)
3. **[Insert name of new developer]** ACN [insert ACN] of [insert address] (**the New Developer**)

Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer **[Insert title reference(s)]** to the New Developer.

[If, as a result of the transfer, the Existing Developer will no longer own any of the Planning Proposal Site Area:]

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions.

[If, as a result of the transfer, the Existing Developer will still own part of the Planning Proposal Site Area:]

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

Operative provisions

1. **Defined meanings**

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Novation

[If, as a result of the transfer, the Existing Developer will no longer own any of the Planning Proposal Site Area:]

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) The Existing Developer remains bound by and must comply with, the provisions of the Agreement in respect of any Liabilities arising or incurred before the Effective Date.

[If, as a result of the transfer, the Existing Developer will still own part of the Planning Proposal Site Area:]

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in clause 20.1 of the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date); and
- (c) The Existing Developer remains bound by and must comply with, the provisions of the Agreement in respect of any Liabilities arising or incurred before the Effective Date.

3. Consent

[If, as a result of the transfer, the Existing Developer will no longer own any of the Planning Proposal Site Area:]

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause 2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

[If, as a result of the transfer, the Existing Developer will still own part of the Planning Proposal Site Area:]

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

4. Release and Indemnity

[If, as a result of the transfer, the Existing Developer will no longer own any of the Planning Proposal Site Area:]

4.1 Release and Discharge (the Council)

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement, other than in respect of Liabilities arising or incurred before the Effective Date

4.2 Release and Discharge (the Existing Developer)

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

4.3 Indemnity

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Planning Proposal Site Area]

5. Representations and Warranties

5.1 Power

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

5.2 Reliance by the Council

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

6. General provisions

6.1 Developer Costs

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.2 The Council's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.4 Duties

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.6 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

[Insert address for notices for each of the parties]

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
- (i) the sender or, if a corporate party, an authorised officer of the sender; or
 - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

6.7 Governing law and jurisdiction

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.8 Amendments

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.9 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.10 Pre-contractual negotiation

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

6.12 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
 - (ii) survives and continues after performance of this Deed,

6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

6.16 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

6.17 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

7. Definitions and interpretation

7.1 Definitions

In this Deed unless the context otherwise requires:

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Agreement means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure **A**.

Deed means this Deed and includes any Annexures to this Deed.

Effective Date means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Liabilities include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Rights and Obligations means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

7.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]

Explanatory Note: Draft Planning Agreement

Wollondilly Shire Council

Walker Corporation Pty Ltd

Prepared in accordance with clause 25E of the
Environmental Planning and Assessment Regulation 2000

23 February 2017



Level 12, 400 George Street
Sydney NSW 2000
Australia

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Ref 3184673

wol_wol16027_012.doc version to be submitted to Council at meeting on 20 March 2017 - recommended for exhibition
4985-1#2563

Contents

1. Summary of objectives, nature and effect	1
2. Assessment of the merits of the proposed agreement	3
3. Preparation of this explanatory note	6

1. Summary of objectives, nature and effect

Clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (**the Regulation**) requires that an explanatory note must be prepared to accompany a planning agreement and must be exhibited with it. The explanatory note must address the requirements of clause 25E(1)(a)-(b) and clause 25E(2)(a)-(g) of the Regulation.

This explanatory note has been prepared to address these requirements.

A draft planning agreement (**the Agreement**) has been prepared. The proposed parties to the Agreement are Wollondilly Shire Council (**the Council**) on one hand, and Walker Corporation Pty Ltd (**the Developer**) on the other.

The Agreement to which this explanatory note relates has been the subject of an offer by the Developer and is being exhibited with an associated planning proposal in order to seek feedback from the community on the offer that has been made by the developer.

1.1 Objectives

The objective of the draft planning agreement is to provide a mechanism by which:

- (a) works can be carried out;
- (b) land can be dedicated;
- (c) monetary contributions can be made; and
- (d) the natural environment can be conserved or enhanced,

to benefit the community.

1.2 Nature

The Agreement will be a voluntary agreement under section 93F of the *Environmental Planning and Assessment Act 1979* (**the Act**).

An agreement of this kind may require a developer to dedicate land free of cost, pay a monetary contribution, or provide any other material public benefit to be used for or applied towards a public purpose.

In this particular case, the Agreement provides for works, land dedication, monetary contributions and a measure for the conservation or preservation of the natural environment.

A summary of these contributions is set out below.

Works

The works can be generally described as:

- (a) a cycleway within Sportsground Parade, Market Street, King Street and (if stage 3 proceeds) Rixon Road;
- (b) the replacement of overhead power lines with underground lines within a portions of Appin Road and the Macquariedale Road;

- (c) construction of pavement improvements, shared pathway and street tree planting within a portion of Macquariedale Road;
- (d) improvements to the public domain within the Appin Road 'main street' (between Church Street and Market Street);
- (e) if stage 3 is able to proceed, embellishment of the Gordon Lewis Oval (including the 'engineers ground'); and
- (f) the upgrade intersection(s) on Appin Road required by the Development.

Land dedication

The purpose of the land dedication is to expand the public reserve containing the Gordon Lewis Oval by the dedication of an area of (currently private) land of approximately 1,930m².

This land dedication is contingent on stage 3 being able to proceed.

Monetary contributions

Monetary contributions would be as follows:

- (a) funding of \$11,628 per lot for a 'community chest' to be used by the Council to support community facilities, up to a maximum of \$2.5 million (if stage 3 is able to proceed) or \$11,628 per lot up to a maximum of \$1.94 million (if stage 3 is unable to proceed); and
- (b) funding of \$2,326 per lot for a 'green fund' to be used by the Council for environmental works, up to a maximum of \$0.5 million (if stage 3 is able to proceed) or \$2,326 per lot or just under \$0.39 million (if stage 3 is unable to proceed).

There is provision for a monetary contribution in lieu of intersection upgrade(s) on Appin Road, but only if the Developer, acting reasonably, is unable to reach an agreement with (and obtain the necessary approval of) Roads and Maritime Services regarding the nature of — and arrangements for — those works. The maximum value of such a monetary contribution is set at just under \$2.5 million.

Conservation or preservation of the natural environment

The agreement limits the ability of the Developer, as landowner, to make certain development applications or give landowner's consent to the making of such applications. This requirement will no longer apply once biodiversity certification, a biobanking statement or the like is conferred or issued in relation to the land or development.

1.3 Effect

The measure for the conservation or enhancement of the natural environment applies from when the EPI Change is made and has effect.

This requirement to make contributions will be linked to the carrying out of the Development. (That is, the development of the Planning Proposal Site Area for urban purposes. More information on the possible development of this area is set out in the Planning Proposal: Rezoning Application and titled as Macquariedale Rd, Appin (February 2017) prepared by the Council.

The completion of works would generally be required immediately prior to the issue of the Last Subdivision Certificate for various stages of the Development.

The intersection upgrade(s) on Appin Road must be completed immediately prior to the issue of the subdivision certificate for the creation of the first Final Lot in stage 1.

For the dedication of the land (to expand the Gordon Lewis Oval public reserve), the contribution is tied to the creation of the first Final Lot in stage 3.

The monetary contributions are payable on a per lot basis, before the issue of the subdivision certificates that authorise the creation of the various lots.

The Agreement sets out various Maximum Values for some of the contributions. These are the agreed cost of the work. The Council cannot insist on changes to the concept design for the work that would lead an exceedence of the relevant Maximum Value.

The Maximum Values for works are as follows:

- (a) Cycleway— \$700,000 (if stage 3 proceeds, otherwise \$560,000).
- (b) undergrounding overhead power lines — \$1.4 million;
- (c) Macquariedale Road improvements — \$250,000;
- (d) Appin Road improvements — \$500,000;
- (e) Gordon Lewis Oval embellishments — \$1.2 million; and
- (f) Intersection upgrade(s) on Appin Road — \$2.5 million.

The Agreement provides the enforcement of the Agreement by a suitable means if there is a breach by the Developer.

A planning agreement cannot impose an obligation on a planning authority to grant development consent. A planning agreement cannot breach the provisions of an environmental planning instrument or a development consent applying to the relevant land.

Where it is relevant to a development application, a consent authority is to take into consideration a planning agreement, or any draft planning agreement that a developer has offered to enter into.

2. Assessment of the merits of the proposed agreement

2.1 Impact on the public or any relevant section of the public

The Agreement has a positive impact on the public, and in particular, the residents of the Appin community. This is because the Agreement provides an opportunity to facilitate:

- (a) improvements to the quality of important elements of the public domain;
- (b) active living through a new cycleway;
- (c) an increase in the quality and quantity of local open space enjoyed by the community;
- (d) better community facilities;
- (e) support for environmental works; and
- (f) the conservation or preservation of the natural environment by restricting certain development applications until certain measures have been taken.

There may be some relatively minor impacts on the public in connection with the works required to bring about the improvements to the local open space, improvements to the public domain and the provision of community facilities. However, these impacts will be offset by the longer-term benefits that those works are intended to bring about.

2.2 Promotion of the public interest and the objects of the Act

The Agreement promotes the following objects of the Act:

- (a) Section 5(a)(i):
to encourage: ... the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment ...
- (b) Section 5(a)(iv):
to encourage ... the provision of land for public purposes ...
- (c) Section 5(a)(v):
to encourage ... the provision and co-ordination of community services and facilities ...
- (d) Section 5(a)(vi):
to encourage ... the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats ...
- (e) Section 5(a)(vii):
to encourage ... ecologically sustainable development ...

The Agreement promotes the above objects of the Act, and the public interest, by providing for:

- improvements to the quality of important elements of the public domain;
- active living through a new cycleway;
- an increase in the quality and quantity of local open space enjoyed by the community;
- better community facilities;
- support for environmental works; and
- the conservation or preservation of the natural environment by restricting certain development applications until certain measures have been taken.

2.3 The purposes of the *Local Government Act 1993*

The Council is the planning authority that would be a party to the Agreement. The Council is a public authority constituted under the *Local Government Act 1993*.

The Agreement promotes the following purposes of this Act:

- (a) Section 7(d):

to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government...

The Agreement promotes the above purpose of the Act by ensuring that the public are consulted in relation to the contributions and benefits to be provided under this Agreement.

2.4 The council's Guiding Principles

Section 8 of the *Local Government Act 1993* refers to the objects of the principles for Councils as set out in section 8A, 8B and 8C of that Act.

The Agreement promotes the following principles:

(a) Section 8A (1):

- Councils should provide strong and effective representation, leadership, planning and decision-making
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way

(b) Section 8A (2):

- Councils should consider the long term and cumulative effects of actions on future generations
- Councils should consider the principles of ecologically sustainable development

(c) Section 8A (3):

Councils should actively engage with their local communities, through the use of integrated planning and reporting framework and other measures

The Agreement promotes the above elements of the council's principles in the same way that is set out in section 2.2 above.

2.5 The planning purpose

The planning purpose of the Agreement is to provide an opportunity to facilitate improvements and additions to the public domain, promote active living, improve community facilities, support environmental works and make provision for the conservation or enhancement of the environment.

The Agreement provides a reasonable means of achieving that purpose because there are limits on what the Developer can be required to do as a condition of a development consent. By entering into the Agreement, the Council is able to secure benefits for the community that would not otherwise be available. The Agreement achieves these benefits for the community without the need for public funds to be expended.

2.6 The Council's capital works program

The works proposed under the Agreement have not been identified under the Council's current capital works program. This is because the affected land does not yet exist as a potential development site. However, should the planning proposal proceed, and development of the land occur, the works identified under the Agreement will be required to support the development and to help provide an appropriate level of infrastructure to the incoming community. This Agreement provides a mechanism by which these works can be secured.

2.7 Construction certificate, occupation certificate or subdivision certificate

The Agreement does not specify any requirements that must be complied with before a construction certificate or an occupation certificate is issued.

The Agreement does specify that certain requirements must be complied with before certain subdivision certificates are issued. These requirements are set out in Schedule 1 of the Agreement. The requirements are generally the provision of security and the carrying out of works, the payment of monetary contributions and/or the dedication of land.

3. Preparation of this explanatory note

This explanatory note has been prepared jointly by the parties proposing to enter into the Agreement.

DRAFT



PE3 Attachments

1. Proponents Proposed Land Zoning Plan (including road and drainage reserve locations).
2. Advice from Sydney Water.

Monday 20 March 2017

PE3 – Draft Planning Proposal – Darley Street Residential,
Thirlmere



Indicative Layout Plan - Bridge Street Residential Planning Proposal



Precise Planning

LEGEND

- Road Reserve (existing) 
- Proposed Road (half on each lot) 

- Proposed Road (wholly on one lot) 
- Council Drainage Reserve



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 DETAILS AND PROPORTIONS NOT VALIDATED

WOLLONDILLY SHIRE COUNCIL
TRIM NO. 9362
PROP. No.
21 NOV 2016
AUTH. No.
ASSIGNED TO: N. Aiken

16 November 2016

Our Ref: 158692

Nicole Aiken
Strategic Planner – Growth and Strategic Planning
Wollondilly Shire Council
BO Box 21
Picton NSW 2571

RE: TRIM 9362 – Planning Proposal – Darley Street Residential, Thirlmere

Dear Nicole,

Thank you for notifying Sydney Water of the planning proposal listed above. We have reviewed the application and provide the following comments for your consideration.

Water

- The proposed development is within the Thirlmere supply system (reduced zone).
- The existing system has sufficient capacity to service the proposed development.
- Amplification of water mains along Thirlmere Way are proposed to cater for future growth from existing 100mm, 200mm or parallel 150mm water mains.
- Prior to submitting the Section 73 application, the developer must engage with a consultant to develop servicing options and a scheme plan for Sydney Water's review and approval.

Wastewater

- There is insufficient capacity available at the Picton Water Recycling Plant for the proposed development.
- Sydney Water is in the process of amplifying treatment capacity at the Picton plant to 4.0 ML/day and this treatment capability is expected to be effective from mid-2017.
- Sydney Water is committed to servicing land rezoned within the Picton Tahmoor Thirlmere (PTT) Urban Land precincts. As this proposed development is located outside and to the north of the East Thirlmere PTT area, this site would not have access to the wastewater network in the short-term.
- Sydney Water would not be satisfied that essential wastewater infrastructure is in place for development consent to be granted under Clause 6.2 of the Wollondilly Local Environmental Plan should the rezoning proceed in advance of appropriate servicing options.
- We anticipate that the development and implementation of a long-term effluent management strategy for Picton will take time and depending on the complexity, approvals and infrastructure requirements, a preferred strategy is likely to be operational in the next three to five years. In the interim, Sydney Water is consulting with the Environment Protection Authority on the best approach to manage excess recycled wastewater.
- Sydney Water is also presently investigating the options to manage surplus recycled wastewater due to increased flows to the plant and has formed a community reference group (CRG) to help identify the best ways to use the additional water from future population growth.

Sydney Water E-Planning

Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is urbangrowth@sydneywater.com.au.

Further advice and requirements for this proposal are at attachment 1 (overleaf). If you require any further information, please contact Manwella Hawell of Urban Growth Strategy on 02 8849 4354 or e-mail manwella.hawell@sydneywater.com.au.

Yours sincerely,


Greg Joblin
Manager, Growth Strategy



GO2 Attachment

1. Investments as at 31 January 2017 including reconciliation of invested funds.

Monday 20 March 2017

GO2 – Investment of Funds as at 31 January 2017

INVESTMENTS AS AT 31 January 2017

Reporting Period: 1-Jan-17 to 31-Jan-17

Investment Institution	Rating	Face Value 31-Jan-17	Current Value 31-Jan-17	Percentage Holding	Interest		Maturity
					%p.a.	received / accrued	
CASH ASSETS							
National Australia Bank							
<i>General Account Balance (for information only. Not included in Total Cash Plus Investments)</i>		136,575					
11AM At call							
NAB	AA	3,895,000	3,895,000	7.48%	1.55		At Call
Tem Deposits							
National Australia Bank (Matured)	A-1+					761	10-Jan-17
Suncorp Bank (Matured)	A-1					1,421	18-Jan-17
National Australia Bank (Matured)	A-1+					2,038	25-Jan-17
ME Bank	A-2	2,000,000	2,060,833	3.96%	3.05	5,181	01-Feb-17
ME Bank	A-2	1,000,000	1,029,641	1.98%	3.10	2,633	16-Feb-17
ME Bank	A-2	1,000,000	1,028,892	1.98%	3.12	2,650	28-Feb-17
ME Bank	A-2	1,000,000	1,028,807	1.98%	3.12	2,650	01-Mar-17
ME Bank	A-2	1,000,000	1,004,449	1.93%	2.80	2,378	04-Apr-17
National Australia Bank	A-1+	750,000	763,348	1.47%	2.90	1,847	19-Apr-17
Bank of Queensland	A-1+	1,000,000	1,008,500	1.94%	2.77	2,353	26-Apr-16
Bank of Queensland	A-1+	1,000,000	1,006,856	1.93%	2.75	2,336	02-May-17
Bendigo & Adelaide Bank	A-2	2,000,000	2,041,866	3.92%	3.12	5,011	17-May-17
Bank of Queensland	A-1+	1,000,000	1,012,734	1.95%	2.80	2,378	24-May-17
Bendigo & Adelaide Bank	A-2	1,000,000	1,019,801	1.96%	2.95	2,505	31-May-17
National Australia Bank	A-1+	1,000,000	1,013,962	1.95%	2.85	2,378	05-Jun-16
Bank of Queensland	A-1+	1,000,000	1,011,466	1.94%	2.70	2,293	14-Jun-17
National Australia Bank	A-1+	1,000,000	1,016,397	1.95%	2.85	2,421	05-Jul-17
Suncorp	A-1	1,000,000	1,004,296	1.93%	2.80	2,378	12-Jul-17
National Australia Bank	A-1+	1,000,000	1,013,962	1.95%	2.80	2,378	02-Aug-17
Bendigo & Adelaide Bank	A-2	1,000,000	1,012,366	1.95%	2.95	2,505	29-Aug-17
Westpac Group	AA-	1,000,000	1,012,575	1.95%	3.00	2,548	13-Sep-17
Westpac Group	AA-	500,000	506,575	0.97%	3.00	1,274	27-Sep-17
Westpac Group	AA-	1,000,000	1,012,493	1.95%	3.10	2,548	23-Aug-18
Westpac Group	AA-	1,000,000	1,011,507	1.94%	3.00	2,548	04-Oct-17
Bendigo & Adelaide Bank	A-2	500,000	503,164	0.97%	2.75	1,168	08-Nov-17
Bank of Queensland	A-1+	1,000,000	1,003,759	1.93%	2.80	2,378	13-Dec-17
Bank of Queensland	A-1+	1,000,000	1,003,299	1.93%	2.80	2,378	20-Dec-17
Westpac Group	AA-	1,000,000	1,013,759	1.95%	3.10	2,633	23-Aug-18
Bendigo & Adelaide Bank	A-2	1,000,000	1,013,286	1.95%	3.05	2,590	27-Aug-18
Westpac Group	AA-	1,000,000	1,012,995	1.95%	3.10	2,633	12-Sep-18
Westpac Group	AA-	1,000,000	1,015,430	1.95%	3.20	2,718	09-Aug-19
TOTAL CASH ASSETS		32,645,000	33,082,018	0.64		75,911	
INVESTMENT SECURITIES							
Corporate Bond							
National Australia Bank	AA-	1,000,000	1,029,079	1.98%	6.00	5,054	15-Feb-17
Zero Coupon Bond							
Commonwealth Bank of Australia	AA-	2,000,000	1,952,320	3.75%	7.17	0	22-Jan-18
Floating Rate Notes							
Westpac Banking Corporation	AA-	500,000	503,724	0.97%	3.41	1,446	20-Feb-17
Macquarie Bank	A	1,000,000	1,006,881	1.93%	4.67	3,962	09-Mar-17
CUA Snr FRN	BBB+	500,000	502,941	0.97%	3.40	1,442	01-Apr-19
Westpac Banking Corporation	AA-	1,000,000	1,012,196	1.95%	2.76	2,344	10-May-19
AMP Snr FRN	A+	750,000	755,558	1.45%	2.87	1,828	11-Jun-19
Members Equity Bank Pty Ltd	BBB+	1,000,000	1,001,249	1.92%	3.23	1,343	18-Jul-19
Bendigo Bank Senior FRN	A-	1,000,000	1,001,513	1.92%	2.72	2,306	17-Sep-19
ANZ Snr FRN	AA-	1,000,000	1,007,994	1.94%	2.61	2,217	11-Nov-19
Greater Building Society Snr FRN	BBB+	500,000	499,831	0.96%	3.26	1,384	29-Nov-19
Westpac Banking Corporation	AA-	1,000,000	1,002,961	1.93%	2.68	2,255	22-Jan-20
Bendigo Bank Senior FRN	A-	500,000	502,811	0.97%	2.86	1,212	21-Feb-20
Macquarie Bank	A	1,000,000	1,005,441	1.93%	2.87	2,438	03-Mar-20
CBA Snr FRN	AA-	1,000,000	1,002,441	1.93%	2.68	3,650	17-Jul-20
Bendigo Bank Senior FRN	A-	1,000,000	1,005,856	1.93%	2.86	2,425	18-Aug-20
Suncorp Senior FRN	A+	1,000,000	1,008,856	1.94%	3.03	2,558	20-Oct-20
CBA Snr FRN	AA-	500,000	504,882	0.97%	2.93	1,237	18-Jan-21
Bendigo Bank Senior FRN	A-	500,000	506,268	0.97%	3.24	1,368	20-Apr-21
Westpac Banking Corporation	AA-	1,000,000	1,012,812	1.95%	2.94	2,497	03-Jun-21
Mortgage Backed Securities							
Emerald Reverse Mortgage Series 2007-1 Class B	AA	1,000,000	600,575	1.15%	2.33	1,955	21-Jul-27
Emerald Reverse Mortgage Series 2006-1 Class A	AAA	669,818	532,070	1.02%	2.21	1,254	22-Aug-22
Total-Other Investments		19,419,818	18,958,257	36.43%		41,121	
TOTAL CASH & INVESTMENT SECURITIES		\$52,064,818	\$52,040,274	100.00%	3.51	\$117,031	
Benchmark (90 day Ausbond Bank Bill Index)						1.86	

Summary of Investment Holdings by Investment Type as at 31 January 2017

By Product	Face Value (\$)	Current Value (\$)	Current Yield (%)
Bonds	3,000,000.00	2,981,398.94	6.7795
Cash	3,895,000.00	3,895,000.00	1.5500
Floating Rate Note	14,750,000.00	14,844,213.41	3.0327
Mortgage Backed Security	1,669,818.11	1,132,644.26	2.2799
Term Deposit	28,750,000.00	29,187,017.52	2.9360
	52,064,818.11	52,040,274.13	3.0601



GO3 Attachment

1. Draft Customer Service Charter Policy.

Monday 20 March 2017

GO3 – Adoption of Customer Service Policy Charter

1. POLICY OBJECTIVES

1.1 Customer Service Charter Purpose

This Customer Service Charter details our service and communication commitment to our customers. It is intended to:

- Outline Council's service standards.
- Provide an understanding of what customers can expect from us, and what we ask of our customers.
- Outline how customers can make a complaint if our standards are not met.
- Provide methods of welcoming feedback.

2. BACKGROUND

- 2.1 Council continually strives to improve services and develops better relationships with our customers.

3. APPLICABILITY

- 3.1 This policy applies to all staff.

4. GUIDELINES

4.1 Communication with Council

For communication to be effective, it is important that both employees of Council and members of the community embrace an honest, respectful and fair approach to communicating with each other.

4.2 What You Can Expect From Us

We will:

- Be professional, courteous, respectful and attentive
- Provide information which is consistent, clear and concise, and confirm you have understood this information
- Apply fair, lawful and appropriate procedures when making decisions
- Treat information confidentially and respond within timeframes outlined in this charter
- Provide you with appropriate forums to give feedback on all services and experiences at Council.

4.3 What We Ask Of You

That you:

- Behave in a courteous manner, avoiding the use of abusive language and/or threatening behaviour.
- Provide us with all relevant information, in a clear and concise manner, to enable us to make informed decisions.
- Respect the timeframes outlined in this charter.
- Acknowledge Council makes decisions, which at times might be unfavourable or you may not agree with.
- Provide us with open, honest and constructive feedback on our services.

4.4 Council Service Standards

Visiting Council

We will make every effort to offer your assistance in any of our service areas in timely manner.

Calling Council

We will make every effort to answer your call within 4 rings, call you back within 1 working day of you leaving a message, and provide afterhours services for emergencies.

Writing to Council (letter, email, fax)

We will make every effort to acknowledge your written correspondence within 7 working days of receipt, respond in a clear and concise manner, and notify you if there is a delay

Writing to Council (Facebook, twitter, online feedback tools)

Council cannot guarantee a response to all posts on its social media sites, and will therefore post responses which are considered necessary or appropriate. More information regarding the use of Social media is located here:

Lodging a Request for Service

We will make every effort to acknowledge your request for service within 7 working days, complete or provide you with an update on your request within 14 days, and refer you to alternate service providers when it's not a Council matter or Council is not the owner.

4.5 Complaint Handling

Council is committed to being responsive to all customers who approach us for assistance and/or with a complaint.

4.6 Council follows a complaint management system which is intended to:

- enable Council to respond to issues raised by people making complaints in a timely and cost-effective way
- increase public confidence in our administrative process
- provide information that can be used by Council to deliver quality improvements with Services, staff and complaint handling.

Our Complaint Handling Protocol is available on our website at this [LINK](#) .

4.7 We Value Your Feedback

Feedback enables us to make improvements to the services we provide, and improvements to the experiences you have with Council. Feedback also helps us to identify where customers were happy with the service provided.

Feedback can be provided via all communication methods listed in this Charter.

5. RESPONSIBILITY/ACCOUNTABILITY

5.1 This policy applies to all staff.

6. RELATED POLICIES/PROTOCOLS

- 6.1 Social Media - Adopted Policy - COM0001
- 6.2 Code Of Conduct
- 6.3 Privacy Management Plan – 2014
- 6.4 Service Charter - 839#149

7. RELATED PROCEDURES

- 7.1 Telephone Protocol
- 7.2 Complaint Handling Protocol
- 7.3 Unreasonable Complainant Protocol

8. RELATED LEGISLATION

- 8.1 Environmental Planning and Assessment, 1979
- 8.2 Privacy and Personal Information Protection Act, 1998
- 8.3 The Government Information (Public Access) Act, 2009
- 8.4 Local Government Act, 1993

9. ATTACHMENTS

- 9.1 Nil

10. RESOURCES

- 10.1 Nil

11. IMPLEMENTATION STATEMENT

11.1 To ensure this policy is implemented effectively Council will employ a variety of strategies involving awareness, education and training. These strategies will be aimed at Councillors, staff and council representatives and will involve:

- 11.1.1 Awareness at Team Meetings.
- 11.1.2 Training sessions.
- 11.1.3 Reviews from customer feedback.
- 11.1.4 Presentations to Management and Executive

12. POLICY HISTORY

12.1 Date First Adopted	21 December 2015
12.2 Most Recent Adoption	21 December 2015
12.3 Next Review Date	21 October 2018
12.4 Responsible Officer	Manager Technology, Information & Corporate Strategy

Wollondilly Shire Council
PO Box 21 Picton NSW 2571
62-64 Menangle St Picton NSW 2571
Tel: 02 4677 1100 Fax: 02 4677 2339 DX: 26052 Picton
Email: council@wollondilly.nsw.gov.au
Rural Living www.wollondilly.nsw.gov.au



GO4 Attachments

1. Summary of Changes Table
2. Draft Code of Meeting Practice

Monday 20 March 2017

GO4 – Review of the Code of Meeting Practice

SUMMARY OF CHANGES – CODE OF MEETING PRACTICE

Location	Previous Wording	New Wording	Reasoning
Page 4 – Commencement	Fifth Code	Sixth Code	New Version
Page 6 – Minutes of the Meeting (c)	Passed	Carried	Updated to the same terminology as used in the Minutes Document.
Page 6 – Minutes of the Meeting (k)	Minutes	Closed Minutes	To add further clarity that this point relates to Closed Minutes
Page 7 – Public Access to Agendas and Associated Agenda(1)	<p>...will be furnished</p> <p>Shall</p> <p>Friday</p> <p>These copies are available for viewing at no charge. Copies to be taken away will be available, at no charge, from the customer service centre in reasonable numbers.</p>	<p>Additional Commas</p> <p>...will be available to...</p> <p>...will...</p> <p>...on Council's website...</p> <p>...Monday...</p> <p>Hard copies will be available free of charge from Councils Administration Building in reasonable numbers.</p>	<p>Punctuation</p> <p>Plain English</p> <p>Plain English</p> <p>Reflects current practices</p> <p>Reflects current practices</p> <p>Plain English</p>
Page 7 – Public Access to Agendas and Associated Agenda(2)	...shall....	...will.....	Better reflects the Act which states reasonable access must be allowed

<p>Page 14 – Order of Business</p>	<p>24. (1) The order of business for meetings of the Council shall be:-</p> <ol style="list-style-type: none"> 1. Opening 2. National Anthem 3. Welcome/Acknowledgement of Country 4. Apologies and Leave of Absence Request 5. Declaration of Pecuniary or Conflict of Interest 6. Confirmation of Previous Minutes 7. Mayoral Minute 8. Reports: <ul style="list-style-type: none"> - Wollondilly Shire and Its Economy - Wollondilly Shire and Its Governance - Wollondilly Shire and Its Environment - Wollondilly Shire and Its Community - Wollondilly Shire and Its Infrastructure 9. Notices of Motion/Rescissions 10. "Closed Meeting" Items 11. Questions for Next Meeting 	<p>24. (1) The order of business for meetings of the Council shall be:</p> <ol style="list-style-type: none"> 1. Opening 2. National Anthem 3. Welcome/ Acknowledgement of Country 4. Webcast Notice 5. Apologies and Leave of Absence Request 6. Declaration of Pecuniary or Conflict of Interest 7. Confirmation of Previous Minutes 8. Items to be Tabled 9. Mayoral Minute 10. Reports: <ul style="list-style-type: none"> - Planning and Economy - Governance - Environment - Community - Infrastructure 11. Notices of Motion/Rescissions 12. "Closed Meeting" Items 13. Questions for Next Meeting 	<p>Added Items to be tabled to account for the 449 Register etc</p> <p>Added Public Notice regarding Webcasting</p> <p>Updated references to reports to reflect current practice and Plain English practices</p> <p>Renumbered the list</p>
<p>Page 16 clause 29(5)</p>	<p>(5) The General Manager may only provide factual information on the motion to assist in the discussion of the motion, if requested by the Councillor.</p>	<p>(5) The General Manager will (where considered necessary) provide factual information on the motion to assist in the discussion of the motion.</p>	<p>Greater clarity regarding discussion of Notice of Motions</p>
<p>Page 19 clause 38(9)</p>	<p>(9) If it is wished to stop any resolution being put into effect, a notice of motion to rescind or alter a resolution should be given to the General Manager by</p>	<p>(9) If it is wished to stop any planning resolution being put into effect, a notice of motion to rescind or alter a planning resolution must be given to the General Manager by 11.00am the day</p>	<p>Greater clarity regarding Rescission Motions</p>

	11.00am the day following the meeting in which the resolution was carried.	following the meeting in which the resolution was carried. In all other matters a motion to rescind will not be accepted if a resolution has been acted upon.	
Starting on page 32 Recording of Meetings of Council or Committee clause (68)	<p>Recording of Meeting of Council or Committee Prohibited</p> <p>68.(1) In accordance with this code Council or Committee meetings, or other components of Council meeting functions will not be taped or film recorded in any medium.</p> <p>This includes but is not limited to:</p> <p><input type="checkbox"/> Tape recording devices <input type="checkbox"/> Video recording devices <input type="checkbox"/> Computer Laptop/Notebook <input type="checkbox"/> Mobile Telephone</p> <p>In this clause, tape recording includes a video camera and any electronic device capable of recording speech, whether a magnetic tape is used to record or not.</p> <p>(2) A person may not use a recording device (see cl. 66(1)) of this code, to record the proceedings of a meeting of the Council or a Committee of the Council without the authority of the Council or Committee.</p> <p>(3) A person may, as provided by s. 10(2) (a) or</p>	<p>RECORDING, WEBCASTING AND RECORDING, WEBCASTING AND PHOTOGRAPHY AT MEETINGS OF COUNCIL</p> <p>68. (1) Council will record and webcast live on Council's website the Ordinary or Extraordinary Meetings of Council held in open session. Confidential meetings of Council will not be recorded or webcast. The purpose of the webcast and recordings is to facilitate community access to meetings.</p> <p>(2) Members of the public are advised, in accordance with Section 18 of the Privacy and Personal Information Protection Act 1998 (PPIPA), that the Ordinary/Extraordinary Meeting is live webcast and is publically available. By attending a Council Meeting personal information may be recorded, publicly broadcast and archived.</p> <p>(3) Speakers addressing the Council do not have absolute privilege in respect of</p>	<p>Added new guidelines regarding the Webcasting of Ordinary Meetings.</p> <p>Clause further amended to provide the opportunity permit recording/ photography by Media or public in special circumstances as approved by the Council.</p>

	<p>(b) of the Act, be expelled from a meeting of a Council or a Committee of a Council for using or having used a recording device.</p> <p>(4) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.</p> <p style="text-align: right;">(cl.273)</p>	<p>opinions expressed or comments made or material presented. Council accepts no responsibility for any defamatory comments in this regard.</p> <p>(4) At the start of each Meeting that will be webcast, the Chairperson must advise the Meeting room that the Meeting will be webcast.</p> <p>(5) The General Manager must ensure that persons in the Meeting room are advised that the Meeting may be webcast by providing notification on signs in the Meeting room, in the Ordinary Meeting Agenda and such other notices as required in relation to sub-clauses 2 and 3.</p> <p>(6) Webcasting is terminated if, at a particular point in a meeting, the Chairperson is of the opinion that continued webcasting may prejudice the meeting or infringe the rights or safety of an individual.</p> <p>(7) Webcast recordings will be made available to the public for viewing on Council's website for at least 8 years. An archive of webcast recordings in Council's electronic record keeping system will also be kept.</p> <p>(8) Written</p>	
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		<p>transcripts of proceedings will not be available.</p> <p>(9) The webcasts and recordings of proceedings are not an official record of the meeting nor do they convey the official Minutes of a Council meeting or the position of Council. Recordings are not to be used except in accordance with this Code.</p> <p>(10) The electronic transmissions (webcasts) and webcast recordings are protected by copyright and owned by Wollondilly Shire Council. No part of the proceedings of a meeting of the Council may be recorded, copied or made available to others without the authority of the Council, however Councillors may use unedited extracts of the webcast recordings for the purposes of engaging with the community and informing them of their actions.</p> <p>(11) Photograph y at Meetings of Council will generally be permitted with the authority of the Council.</p>	
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(12) A person may be, as provided by section 10(2) (a) or (b) of the Act, expelled from a meeting of the Council for using or having used a recording device or taken photographs in contravention of this clause.

(13) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a Police Officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

(14) For the purposes of this clause a recording device includes a video camera, sound recorder, mobile phone, laptop, tablet or any other electronic device which is recording speech

		and/or images without the authority of the Council.	
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CODE OF MEETING PRACTICE

WOLLONDILLY SHIRE COUNCIL

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CODE OF MEETING PRACTICE

INDEX

Part 1 – Preliminary	4
Citation	4
Commencement	4
Definitions	4
Part 2 – Convening of, and Attendance at Council and Committee Meetings	6
Council Meetings	6
Minutes of Meetings	6
Who is Entitled to Attend	7
Public Access to Agendas and Associated Agenda	7
Extraordinary Meetings	8
Notice of Meeting	8
Quorum	8
Quorum is Not Present	8
Presence at Council	9
Declarations of Interest	9
Absence from Council Meeting	10
Attendance of Staff at Council and Council Committee Meetings	10
Absence of the Mayor	11
Part 3 – Conduct of Council Meetings	12
Voting Entitlements	12
Decision of the Council	12
Certain Circumstances do not Invalidate Decisions	12
Chairperson to have Precedence	12
Chairperson’s duty with Respect to Motions	12
Length of Meetings	13
Agenda for Council	13
Order of Business	14
Giving Notice of Business – Ordinary Meetings	14
Questions for Next Meeting	15
Extraordinary Meetings – Agenda	15
Mayoral Minutes	15
Notice of Motion	16
Notice of Motion – Unopposed	16
Notice of Motion – Absence of Mover	17
Recognising a Mover of a Motion	17
Motions to be Seconded	17
Amendments and Subsequent Amendments	17
Motions Put Without Debate	17
Motions of Dissent	18
Motions of Adjournment of a Meeting	18
Rescinding or Altering	18
Recommittal for Discussion	20
Questions may be put to Councillors and Council Employees	20
Addressing Each Other	20
Limitation as to Number of Speeches	20
Voting at Council Meetings	21
Resolutions Passed at Closed Meetings to be Made Public	22
Caretaker Role During Elections	22
Part 4 – Keeping Order at Meetings	22
Questions of Order	22

Acts of Disorder.....	23
How Disorder at a Meeting may be dealt with.....	23
Power to Remove Persons from Meeting after Expulsion Resolution	24
Part 5 – Committees	24
Council may establish Committees.....	24
Functions of Committees.....	25
Notice of Committee Meetings to be Given.....	25
Non-members entitled to attend Committee Meetings	25
Procedure in Committees	26
Minutes of Committee.....	26
Chairperson and Deputy of Committees.....	26
Absence from Committee Meetings.....	27
Reports of Committees.....	27
Disorder in Committee.....	27
Committee May Exclude Certain Persons from its Meetings.....	28
Part 6 –Confidential Matters.....	28
Closed Meeting of Council.....	28
Exclusion of Press and Public	28
Closed Meeting Agenda	29
Disclosure and Misuse of Information.....	29
Part 7 – Workshops	30
Part 8 – Miscellaneous.....	31
Inspection of the Minutes of the Council	31
Access to Records	32
Recording, Webcasting and Photography at Meetings of Council or Committee.....	32
Defamation, Offence and Embarrassment.....	34
Petition	34
Mayoral Actions.....	35
Amendments to this Meetings Code.....	35

PART 1 – PRELIMINARY

CITATION

1. This code has been developed in accordance with The Local Government Act 1993 (as amended from time to time) and Local Government (General) Regulation 2005 and may be cited as the “Code of Meeting Practice” and applies to all meetings of Council and any Committees of Council.

COMMENCEMENT

2. This code will come into force after its formal adoption by Wollondilly Shire Council. It is the sixth code and supersedes the version previously adopted.

DEFINITIONS

3. In this code:-

Amendment

An amendment is a change to the motion before the Council, and takes place while that motion is being debated. An amendment to a motion must be put forward in a motion itself.

The amendment may propose that some words be omitted from the original motion or that some words be added but it must not contradict the original motion. It would be unacceptable that the word “not” be inserted or omitted.

Chairperson

- (a) In relation to a meeting of the Council – means the person presiding at the meeting as provided by s. 369 of the Act, and
- (b) In relation to a meeting of a Committee of the Council – means the person presiding at the meeting as provided by clause 54 of this code.

Committee

In relation to the Council, means a Committee appointed or elected by the Council as set out in Clause 50 of this code.

Councillor

Is an elected member of the Council.

Foreshadowed Amendments

A Councillor may foreshadow an amendment to be moved when anticipating that the current amendment is not successfully carried.

Foreshadowed Motion:

A Councillor may foreshadow a motion when it is desired to have a motion opposite to that proposed in the motion currently before the meeting, or when it is desired to alter a motion more drastically than is possible by amendment.

Laid on the Table

Means a matter is held in abeyance; and can be resumed at any time. This is done by resolution and is less concluding than a resolution that “no action be taken”.

This motion is for disposing of the matter before the chair in such a way that the debate can be resumed if and when the body desires. It is in effect an adjournment.

There can be no discussion, amendments, or right of reply. The motion to take the original motion off the table is similarly not open to discussion or amendment.

Motion

A motion is a proposal to be considered by Council at a meeting. It is a request to do something or to express an opinion about something. A motion formally puts the subject of the motion as an item of business for the Council.

Resolution

A resolution is a motion that has been passed by a majority of Councillors at the meeting.

Record

Means a document (including any written or printed material) or object (including a sound recording, coded storage device, magnetic tape or disk, microfilm, photograph, film, map, plan or model or a painting or other pictorial or graphic work) that is or has been made or received in the course of official duties by a Councillor or an employee of the Council and, in particular, includes the minutes of meetings of the Council or of a Committee of the Council.

Tabled (Tabling of Documents)

Means to introduce a document or material to a meeting for it to be added to the records of the Council and for it to be accessible to the Councillors, press and public.

This is usually done when the document is unusually long or if it is relatively unimportant, or if its nature prevents it from being read – for example, graphs, tables of statistics, photographs. No motion is necessary, persons tendering documents merely saying as they do so that they are tabling such and such document. The tabling should, however, be recorded in the minutes, with appropriate details sufficient to identify the documents concerned.

The Act

This means the Local Government Act 1993 (as amended from time to time).

This “Code of Meeting Practice” is made pursuant to Section 360(2) of the Local Government Act 1993. It incorporates relevant provisions of the Regulations and Act. In the event of any inconsistency between the Code and the Act or Regulations, the Act or Regulations (as the case may be) prevails to the extent of the inconsistency.

Where a clause or subclause contains a reference such as (s.365) at the end of the clause or subclause, this is a reference to the relevant section of the Local Government Act, 1993.

Where a clause or subclause contains a reference such as (cl.233) at the end of the clause or subclause, this is a reference to the relevant clause in the Local Government (General) Regulation 2005.

PART 2 – CONVENING OF, AND ATTENDANCE AT COUNCIL AND COMMITTEE MEETINGS

COUNCIL MEETINGS

4. Council shall meet in accordance with Section 365 of the Local Government Act, 1993 (as amended from time to time) and the adopted Meeting Calendar and as resolved by Council and must be at least 10 times each year, each time in a different month. (s.365)

MINUTES OF MEETINGS

5. (1) The Council must ensure that full and accurate minutes are kept of the proceedings of a meeting of the Council. The following matters must be included in the minutes of Council meetings:
- (a) Details of each motion moved at a Council meeting and of any amendments.
 - (b) The names of the mover and seconder of each motion and amendment and that voting be recorded for every motion of Council.
 - (c) Whether each motion and amendment is carried or lost.
 - (d) The circumstances and reasons relating to the absence of a quorum together with the names of the Councillors present.
 - (e) The dissenting vote of a Councillor, if requested
 - (f) The names of the councillors who voted for a motion in a division and those who voted against it. A division is always required when a motion for a planning decision is put at a meeting of the Council.
 - (g) A report of the proceedings of the Committee of the whole, including any recommendations of the Committee.
 - (h) The grounds for closing part of a meeting to the public.
 - (i) The report of a Council Committee leading to a rescission or alteration motion.
 - (j) The disclosure to a meeting by a Councillor of a pecuniary interest.
 - (k) Closed Minutes must include the details of all motions and amendments; the names of their movers and seconders; and whether the motions and amendments are passed or lost at a closed part of a Council meeting.
- (2) To ensure the integrity of the minutes the minute taker/s, at their discretion, may call a halt to proceedings and request the Chair clarify the contents of resolutions.
- (3) The Minutes must, when they have been confirmed at a subsequent meeting of the Council, be signed by the person presiding at the subsequent meeting. (s.375)
- (4) Every entry in the minutes of the business transacted at a meeting of the Council and purporting to be signed by the person presiding at a subsequent meeting of the Council is, until the contrary is proved, evidence:
- (a) That the business as recorded in the minutes was transacted at the meeting, and
 - (b) That the meeting was duly convened and held. (s.703)

- (5) If a Councillor has a concern regarding the wording of the minutes of any meeting the Councillor should contact the Mayor or Chairperson, General Manager or relevant Senior Officer prior to the meeting at which the minutes are to be adopted.

WHO IS ENTITLED TO ATTEND

6. (1) Except as provided by the Act
- (a) Everyone is entitled to attend a meeting of Council and those of its Committees of which all the members are Councillors.
 - (b) A Council must ensure that all meetings of the Council and of such committees are open to the public.
 - (c) Councillors must sign the attendance/declaration of interest register documentation/when attending a meeting of Council.
 - (d) Council staff must sign the meeting attendance register when attending meetings in Councils Administration Building.
- (2) A person (whether a Councillor or another person) is not entitled to be present at a meeting of the Council or such a Committee if expelled from the meeting.
- (a) By a resolution of the meeting; or
 - (b) By the person presiding at the meeting, if the Council has, by resolution, authorised the person presiding to exercise the power of expulsion.
- (3) A person may be expelled from a meeting only on the grounds specified in, or in the circumstances prescribed by, the regulations.
- (s.10)

PUBLIC ACCESS TO AGENDAS AND ASSOCIATED AGENDA

7. (1) Copies of the agenda, not being a confidential agenda prepared for business of a type determined in accordance with clause 62, which has been prepared to a meeting of the Council or a Committee of the Council will be available to the press and the public at or before the opening of the meeting. Copies of the agenda will also be available at Council libraries, on Council's website and at the customer service centre by 3.00pm on the Monday two weeks prior to the meeting. Hard copies will be made available free of charge from Councils Administration Building in reasonable numbers.
- (2) Subject to subclause (3), the press and the public will, during or at the close of a meeting of the Council or a Committee of the Council be allowed reasonable access to the correspondence and reports tabled at or submitted to the meeting.
- (3) The Council or a Committee of the Council may withhold access to the correspondence and reports referred to in subclause (2):
- (a) Where the correspondence and the reports relate to any matter dealt with at a time when the press and the public were excluded from the meeting of the Committee, or
 - (b) In any case where the Committee so decides on the ground that publicity may prejudice the Council's interests in threatened or pending litigation.
- (4) Annual subscription to the Council and Committee agenda and minutes is available at a charge determined each year in the Council's Business Plan.

- (5) Councils Business Papers are available from Councils Administration Building; Library; Website and upon request in electronic or hardcopy format. Nothing in this code shall be construed as limiting the means of distributing information to any one medium.

EXTRAORDINARY MEETINGS

8. (1) If the Mayor receives a request in writing signed by at least two Councillors, the Mayor must call an extraordinary meeting of the Council to be held as soon as practicable but in any event within 14 days after receipt of the request. (s.366)
- (2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency by the Mayor.

NOTICE OF MEETING

9. (1) The General Manager must send to each Councillor, at least 3 days before each meeting of the Council, a notice specifying the time and place at which and the date on which the meeting is to be held and the business proposed to be transacted at the meeting.
- (2) Notice of less than 3 days may be given of an extraordinary meeting called in an emergency and the reasons for the emergency shall be defined. Emergency meeting advice shall stipulate the venue, date and time.
- (3) Notice of and the Agenda for and the business papers relating to, the meeting may be given to a Councillor in electronic form but only if all Councillors have facilities to access the notice, agenda and business papers in that form. (s.367)
- (4) Proceedings at a meeting of a Council or a Council Committee are not invalidated because of a failure to give notice of the meeting to any Councillor or Committee member. (s.374 Pt b)
- (5) Council must give public notice of the times and places of its meetings and those of its Standing Committee meetings of which all the members are Councillors. (s.9)

QUORUM

10. The quorum for a meeting of the Council is a majority of the Councillors of the Council who hold office for the time being and are not suspended from office. (s.368)

QUORUM IS NOT PRESENT

11. (1) A meeting of the Council must be adjourned if a quorum is not present:
- (a) Within half an hour after the time designated for the holding of the meeting.
- (b) At any time during the meeting.

- (2) In either case, the meeting must be adjourned to a time, date and place fixed:
- (a) By the Chairperson.
 - (b) In his or her absence – by the majority of the Councillors present.
 - (c) Failing that, by the General Manager.
- (3) The General Manager must record in the Council's minutes or records the circumstances relating to the absence of a quorum (including the reasons for the absence of a quorum) at or arising during a meeting of the Council, together with the names of the Councillors present.
- (cl.233)

PRESENCE AT COUNCIL

12. (1) A Councillor cannot participate in a meeting of the Council unless personally present at the meeting and within the physical confines of the room, in which the meeting is being held.
- (cl.235)

DECLARATIONS OF INTEREST

13. (1) A Councillor or a member of a council committee who declares a pecuniary conflict of interest in any matter before the council and who is present at a meeting where the matter is being considered, must:
- (a) Submit to the General Manager a written declaration of Interest prior to the meeting
 - (b) Disclose and identify the nature of the interest to the meeting as soon as practicable
 - (c) Vacate the Council meeting room and not be within visual or hearing range of the debate on the item, for which the interest has been declared, both as a Councillor and a member of the public.
- (2) There are three types of non-pecuniary conflicts of interests. They are 'significant', 'less than significant' and 'political donations'. Council's code of conduct describes the procedures that need to be followed in respect of each type (Clauses 7.13 – 7.26).

A Councillor or a member of a council committee who declares a non-pecuniary conflict of interest in any matter before the council and who is present at a meeting where the matter is being considered, must:

- (a) Submit to the General Manager a written Declaration of Interest prior to the meeting
- (b) Disclose and identify the nature of the interest to the meeting as soon as practicable
- (c) Take part in debate and vote on the item

However, if the Councillor chooses to not take part in the item of conflict, then the Councillor must leave the meeting room.

(s.442)

ABSENCE FROM COUNCIL MEETING

14. (1) A civic office becomes vacant if the holder is absent without prior leave of the Council from 3 consecutive meetings of the Council. (s.234 (d))
- (2) Leave of absence may only be granted by a Council resolution. A Councillor may attend a Council meeting during the period of which the leave has been granted, however, the leave is taken to be rescinded as regards any future Council meeting. The Act requires a Councillor who wishes to attend a Council meeting while on leave to provide the General Manager a minimum of two days notice of the intention to attend and participate in a meeting of Council, however, failure to give such a notice does not prevent a Councillor from attending the meeting or voting at it and any business conducted at the meeting would not be invalidated because of that failure to give notice.
- (3) There is nothing to prevent a Councillor from seeking the leave of the Council for a further period of absence however any further leave of absence will require Council to make another resolution.
- (4) A Councillor, whenever possible, should provide to the Council a proposed date of return when seeking leave for an extended period of time. (s.234)
- (5) The tendering of an apology is a form of courtesy to those attending the meeting from the person tendering the apology that they will not be attending. It aids the efficient conduct of meetings by informing the chairperson as to who will not be attending and avoids delaying the opening of a meeting.

The acceptance of an apology is a positive acknowledgement of the courtesy of the person who tendered it.

It does not amount to a grant of a leave of absence and although recognised as a component of good meeting practice has no recognition in either the Act or the Regulations.

ATTENDANCE OF STAFF AT COUNCIL AND COUNCIL COMMITTEE MEETINGS

15. (1) The General Manager is entitled to attend, but not vote at, a meeting of the Council or a meeting of a Committee of the Council of which all the members are Councillors.
- (2) The General Manager is entitled to attend a meeting of any other Committee of the Council and may, if a member of the Committee, exercise a vote.
- (3) However, the General Manager may be excluded from a meeting of the Council or a Committee while the Council or Committee deals with a matter relating to the standard of performance of the General Manager or the terms of the employment of the General Manager. (s.376)
- (4) Other Council officers may attend Council and Committee meetings as Council and the respective Committees and/or the General Manager shall determine as appropriate from time to time.

- (5) The role of those Council officers attending will be to offer advice and to answer questions within their individual fields of expertise and experience. With the exception of special standing Committees outlined elsewhere, Council staff are not permitted to vote, nor take part in debate (unless specifically invited by the Chairperson of the Committee). It is not appropriate for Council officers to offer opinions not related to their areas of expertise.
 - (6) A member of the staff of a Council is not subject to direction by the Council as to the content of any advice or recommendation made by the member.
 - (7) Subclause (6) above does not prevent a Council from directing a member of the staff to provide advice or a recommendation.
- (s.352)

ABSENCE OF THE MAYOR

16. (1) The Mayor or, at the request of or in the absence of the Mayor, the Deputy Mayor presides at meetings of the Council.
 - (2) If the Mayor and the Deputy Mayor are absent, a Councillor elected to chair the meeting by the Councillors present presides at a meeting of the Council
- (s.369)
- (3) The election, referred to in subclause (2) must be conducted:
 - (a) By the General Manager or, in his absence, an employee of the Council designated by the General Manager to conduct the election, or
 - (b) If neither of them is present at the meeting or there is no General Manager or designated employee – by the person who called the meeting or a person acting on his or her behalf.
 - (4) If, at an election of a Chairperson, 2 or more candidates receive the same number of votes and no other candidate receives a greater number of votes, the Chairperson is to be the candidate whose name is chosen by lot.
 - (5) For the purpose of subclause (3), the person conducting the election must:
 - (a) Arrange for the names of the candidates who have equal numbers of votes to be written on similar slips, and
 - (b) Then fold the slips so as to prevent the names from being seen, mix the slips and draw one of the slips at random.
 - (6) The candidate whose name is on the drawn slip is the candidate who is to be the Chairperson.
- (cl.236)

PART 3 – CONDUCT OF COUNCIL MEETINGS

VOTING ENTITLEMENTS

17. (1) Each Councillor is entitled to one vote.
- (2) A person presiding at a meeting of the Council or any Committee of Council has, in the event of equality of votes, a second or casting vote.
- (s.370)

DECISION OF THE COUNCIL

18. A decision supported by a majority of the votes at a meeting of the Council at which a quorum is present is a decision of the Council.
- (s.371)

CERTAIN CIRCUMSTANCES DO NOT INVALIDATE DECISIONS

19. Proceedings at a meeting of a Council or a Council Committee are not invalidated because of:
- (1) A vacancy in a civic office.
- (2) A failure to give notice of the meeting to any Councillor or Committee member.
- (3) Any defect in the election or appointment of a Councillor or Committee member.
- (4) A failure of a Councillor or a Committee member to disclose a pecuniary or conflict of interest at a Council or Committee meeting in accordance with s. 451 of the Act.
- (5) A failure to comply with the code of meeting practice.
- (s.374)

CHAIRPERSON TO HAVE PRECEDENCE

20. When the Chairperson rises during a meeting of the Council:
- (1) Any Councillor then speaking or seeking to speak, must, if standing, immediately resume his or her seat, and
- (2) Every Councillor present must be silent to enable the Chairperson to be heard without interruption
- (cl.237)

CHAIRPERSON'S DUTY WITH RESPECT TO MOTIONS

21. (1) It is the duty of the Chairperson at a meeting of the Council, to receive and put to the meeting any lawful motion that is brought before the meeting.
- (2) The Chairperson must rule out of order any motion that is unlawful or the implementation of which would be unlawful.

- (3) Any motion, amendment or other matter that the Chairperson has ruled out of order is taken to have been rejected.
- (cl.238)

LENGTH OF MEETINGS

22. (1) The length of the Council, or a Committee of Council, shall not exceed 4 hours unless Council resolves to extend the time for the meeting by a decision of Council, that the items considered are deemed urgent and warrant consideration at the current meeting.
- (2) In the case of a Council or Committee of Council being particularly lengthy, the Chairperson shall call an adjournment for a rest period of Ten (10) Minutes for the benefit of Councillors and Council staff at approximately 2 hourly increments.

AGENDA FOR COUNCIL

23. (1) The General Manager must ensure that the agenda prepared for a meeting of the Council states:
- (a) All matters to be dealt with arising out of the proceedings of former meetings of the Council.
 - (b) If the Mayor is the Chairperson - any matter or topic that the Chairperson proposes, at the time when the agenda is prepared, to put to the meeting.
 - (c) Any business of which due notice has been given.
- (2) The General Manager must not include in the agenda for a meeting of the Council any business of which due notice has been given if, in the opinion of the General Manager, the business is (or the implementation of the business would be) unlawful. The General Manager must report (without giving details of the item of business) any such exclusion to the next meeting of the Council.
- (3) The General Manager must cause an agenda to be delivered to Councillors not later than three days prior to the meeting.
- (s.367)
- (4) If, in the opinion of the General Manager, business to be transacted at a meeting of the Council or a Committee of the Council is a kind of business referred to in s. 10A(2) of the Act, the business may be included in a confidential agenda. All other business to be transacted at the meeting must be included in an open agenda.
- (5) If a confidential agenda is prepared for a kind of business referred to in section 10A(2) of the Act, the business must be referred to in the open agenda prepared for the same meeting.
- (6) Nothing in this clause limits the powers of the Chairperson under Clause 28 of this code.

- (7) A Council and each Committee of which all the members are Councillors must have available for the public at its offices at each meeting copies (for inspection or taking away by any person) of the agenda for the meeting. This requirement does not apply to an agenda for the matter that, in the opinion of the General Manager, is likely to be considered when the meeting is closed to the public, or to any correspondence or reports in an agenda that, in the opinion of the General Manager, are likely to be the subject of a resolution that they be treated as confidential.
- (8) Once the agenda for a meeting has been sent to Councillors an item of business on the agenda should not be removed from the agenda prior to the meeting. If it is proposed that an item of business which is on the agenda not be dealt with at the meeting, Council should resolve to defer that business to another meeting or resolve not to consider the matter, as the case may be.

ORDER OF BUSINESS

24. (1) The order of business for meetings of the Council shall be:
 1. Opening
 2. National Anthem
 3. Welcome/Acknowledgement of Country
 4. Webcast Notice
 5. Apologies and Leave of Absence Request
 6. Declaration of Pecuniary or Conflict of Interest
 7. Confirmation of Previous Minutes
 8. Items to be Tabled
 9. Mayoral Minute
 10. Reports:
 - Planning and Economy
 - Governance
 - Environment
 - Community
 - Infrastructure
 9. Notices of Motion/Rescissions
 10. "Closed Meeting" Items
 11. Questions for Next Meeting
- (2) The order of business fixed under subclause (1) may be altered or suspended if a motion to that effect is carried. Such a motion can be moved without notice.
- (3) Notwithstanding clause 43 of this code only the mover of a motion to alter the order of business referred to in subclause (2) may speak on the motion before it is put.
(cl.239)

GIVING NOTICE OF BUSINESS – ORDINARY MEETINGS

25. (1) Council must not transact business at a meeting of the Council:
 - (a) Unless a Councillor has given notice of the business in writing within such time before the meeting in accordance with this code.
 - (b) Unless notice of the business has been sent to the Councillors in accordance with Section 367 of the Act.

- (2) Subclause (1) does not apply to the consideration of business at a meeting if the business:
- (a) Is already before, or directly relates to a matter that is already before, the Council.
 - (b) Is the election of a Chairperson to preside at the meeting as provided by clause 16 of this code.
 - (c) Is a matter or topic put to the meeting by the Chairperson in accordance with clause 30 of this code.
 - (d) Is a motion for the adoption of recommendations of a Committee of the Council.
- (3) Despite clause 43, only the mover of a motion referred to in subclause (2) can speak to the motion before it is put.
- (cl.241)

QUESTIONS FOR NEXT MEETING

26. (1) Council must not transact business at a meeting of the Council:
- (a) unless a Councillor has given notice of the business in writing within such time before the meeting in accordance with this code, and
 - (b) unless notice of the business has been sent to the Councillors in accordance with section 367 of the Act.
- (2) A Councillor wishing to raise 'Questions for Next Meeting' at a Council meeting must supply to the General Manager a written copy of the Business to be discussed at least three (3) days prior to the meeting.
- (3) The General Manager must send to each Councillor, at least three (3) days before each meeting of Council a notice specifying any 'Questions for Next Meeting' to be raised at each meeting of Council.
- (Reg. Clause 241)
- (4) The questions will be placed on the next meeting agenda unless:
- (a) an answer is given straight away, if it makes sense to do so
 - (b) they do not require research or further investigation.
- (5) 'Questions for Next Meeting' are not open for debate until they are placed on the following Council meeting agenda.

EXTRAORDINARY MEETINGS – AGENDA

27. (1) The General Manager must ensure that the agenda for an extraordinary meeting of the Council deals only with the matters stated in the notice of the meeting.
- (cl.242)

MAYORAL MINUTES

28. (1) If the Mayor is the Chairperson at a meeting of the Council, the Chairperson is, by minute signed by the Chairperson, entitled to put to the meeting, without notice, any matter or topic that is within the jurisdiction of the Council or of which the Council has official knowledge.

- (2) Such a minute, when put to the meeting, takes precedence over all business on the Council's agenda for the meeting. The Chairperson (but only if the Chairperson is the Mayor) may move the adoption of the minute without the motion being seconded.
- (3) A recommendation made in a minute of the Chairperson (being the Mayor) or in a report made by a Council employee, so far as adopted by the Council, is a resolution of Council.
(cl.243)
- (4) The Mayoral minute will not introduce, without notice, matters that are routine, not urgent, or need research or consideration by Councillors before coming to a decision.

NOTICE OF MOTION

29. (1) Any Councillor may give notice of any motion for consideration by the Council or a Committee of Council by providing the proposed motion in writing to the General Manager by noon on the Friday or the third (3rd) calendar day prior to the Council Meeting.
- (2) Any changes to a Notice of Motion submitted in accordance with this code must be submitted by 12 noon on the day of the Meeting to the General Manager by the Councillor who submitted the original Notice of Motion to Council.
- (3) Any changes to a Notice of Motion by a Councillor other than the submitting Councillor must be raised during the discussion of the Notice of Motion at the Council Meeting.
- (4) The provision of confidential issues as defined in Section 10A (2) of the Act applies to Notices of Motion.
- (5) The General Manager will (where considered necessary) provide factual information on the motion to assist in the discussion of the motion.
- (6) A Notice of Motion must be submitted by the Councillor to noticeofmotion@wollondilly.nsw.gov.au in accordance with part (1) of this clause.
- (7) A councillor may speak to a Notice of Motion for not longer than five (5) minutes at any one time.

NOTICE OF MOTION – UNOPPOSED

30. The Chairperson may call over the Notices of Motion on the agenda, in the order in which they appear thereon, and if objection is not taken to a motion being taken as a formal motion may, without discussion, put the motion to the vote.

NOTICE OF MOTION – ABSENCE OF MOVER

31. In the absence of a Councillor who has placed a notice of motion on the agenda for a meeting of the Council:
- (1) Any other Councillor may move the motion at the meeting.
 - (2) The Chairperson may defer the motion until the next meeting of the Council at which the motion can be considered.
- (cl.245)

RECOGNISING A MOVER OF A MOTION

32. A mover, by rising or by raising a hand, or by speaking, must attempt to get the attention of the chairperson. The Chairperson then must recognise the mover who first caught their attention.

MOTIONS TO BE SECONDED

33. A motion or an amendment cannot be debated unless or until it has been seconded. This clause is subject to clauses 25(2) and 42(5).
- (cl.246)

AMENDMENTS AND SUBSEQUENT AMENDMENTS

34. (1) An amendment may be moved after a motion has been seconded but must be prior to the main motion being put to a vote.
- (2) If an amendment has been rejected, a further amendment can be moved to the motion to which the rejected amendment was moved, and so on, but no more than once motion and one proposed amendment can be before the Council at any one time.
- (cl.246) and (cl.247)
- (3) If during discussions one motion and one amendment are already before the Council, any further amendments can only be “foreshadowed” and cannot be considered by the Council until the amendment before the Council has been determined.
- (4) It is permissible to debate a motion and an amendment concurrently.
- (5) The right of reply to any amendment is the mover of the original motion. The right of reply must be related to the current amendment before the Council.

MOTIONS PUT WITHOUT DEBATE

35. Provided there is no objection from any Councillor present, any motion may be put to the vote without discussion or debate.

MOTIONS OF DISSENT

36. (1) A Councillor can, without notice, move to dissent from the ruling of the Chairperson on a point of order. If that happens, the Chairperson must suspend the business before the meeting until a decision is made on the motion of dissent.
- (2) If a motion of dissent is carried, the Chairperson must proceed with the suspended business as though the ruling dissented from had not been given. If, as a result of the ruling, any motion or business has been discharged as out of order, the Chairperson must restore the motion or business to the agenda and proceed with it in due course.
- (3) Despite clause 42, only the mover of a motion of dissent and the Chairperson can speak on the motion before it is put. The mover of the motion does not have a right of reply.
- (cl.248)

MOTIONS OF ADJOURNMENT OF A MEETING

37. (1) Debate shall not be permitted on any motion of adjournment of a meeting of the Council.
- (2) If a motion of adjournment is lost, the business of the meeting shall proceed, and it shall not be in order for any Councillor to again move a motion of adjournment within half an hour of the previous motion of adjournment being lost.
- (3) A motion of adjournment may specify the time, date and place of the adjourned meeting; however, if a motion of adjournment is carried but does not specify the time, date and place of the adjourned meeting, the Chairperson shall make a determination with respect to whichever of these has not been specified.
- (4) The chairperson may adjourn a meeting at any time, based on issues at hand and operation of meeting at the time.
- (5) An adjourned meeting is a continuation of the earlier part of the same meeting, not a new meeting and the Agenda and Business Papers already issued would be the proper documents from which to work.

RESCINDING OR ALTERING

38. (1) A resolution passed by a Council may not be altered or rescinded except by a motion to that effect of which notice has been duly given in accordance with the Council's code of meeting practice.
- (2) If notice of motion to rescind a resolution is given at the meeting at which the resolution is carried:
- (a) The resolution must not be carried into effect until the motion of rescission has been dealt with, or is withdrawn by notice given in accordance with Council's code of meeting practice.
- (b) The rescission may be dealt with at an extraordinary meeting where the motion is on the agenda.

- (3) If a motion has been negated by a Council, a motion having the same effect must not be considered unless notice of it has been duly given in accordance with the Council's code of meeting practice.
- (4) A notice of motion to alter or rescind a resolution, and a notice of motion which has the same effect as a motion which has been negated by the Council, must be signed by 3 Councillors if less than 3 months has elapsed since the resolution was passed, or the motion was negated, as the case may be.
- (5) If a motion to alter or rescind a resolution has been negated, or if a motion which has the same effect as a previously negated motion, is negated, no similar motion may be brought forward within 3 months. This subs. may not be evaded by substituting a motion differently worded, but in principle the same.
- (6) A motion to which the section applies may be moved on the report of a Committee of the Council and any such report must be recorded in the minutes.
- (7) The provisions of this s. concerning negated motions do not apply to motions of adjournment.

(s.372)
- (8) Generally speaking, the Chairperson should not accept a motion that is inconsistent with a resolution previously adopted. The existing resolution should first be formally rescinded. If however, an inconsistent resolution is passed, the original resolution becomes void to the extent of the inconsistency. This is called rescission by implication or rescission by inference.
- (9) If it is wished to stop any planning resolution being put into effect, a notice of motion to rescind or alter a planning resolution must be given to the General Manager by 11.00am the day following the meeting in which the resolution was carried. In all other matters a motion to rescind will not be accepted if a resolution has been acted upon.
- (10) In the case of a motion of alteration, the stay of action provided by subclause 8 above, if it is carried, applies only to the extent that the resolution of Council would be affected by the motion of alteration.
- (11) The General Manager shall advise Councillors of a motion to rescind or alter a resolution within 24 hours of receipt of such a motion or as soon as practicable.
- (12) A notice of motion to alter or rescind a resolution may be withdrawn by notice in writing to the General Manager signed by the same three Councillors who signed the original notice of motion in accordance with subclause (4) above. The withdrawal of the notice of motion to alter or rescind a resolution shall take effect at the time and date of official receipt by the General Manager of the written notice of withdrawal.
- (13) A notice of motion to alter or rescind a resolution shall be accompanied in the agenda by the wording of the adopted resolution which it is intended to alter or rescind.

RECOMMITTAL FOR DISCUSSION

39. (1) If one or more Councillors have second thoughts about a resolution passed earlier in the meeting it may be desired to recommit the matter for further attention. Dependent upon the circumstances and the intent this may be achieved by either:
- (a) A motion of recommitment for discussion purposes only.
 - (b) A motion of rescission either during or after the meeting.
- (2) If, after discussion, the original resolution is no longer supported then a Rescission Motion is necessary to either, remove, replace or alter it; which may be raised in accordance with Clause 38 of this Code.

QUESTIONS MAY BE PUT TO COUNCILLORS AND COUNCIL EMPLOYEES

40. (1) A Councillor:
- (a) May, through the Chairperson, put a question to another Councillor.
 - (b) May, through the General Manager, put a question to a Council employee.
- (2) However, a Councillor or Council employee to whom a question is put is entitled to be given reasonable notice of the question and, in particular, sufficient notice to enable reference to be made to other persons or to documents.
- (3) The Councillor must put every such question directly, succinctly and without argument.
- (4) The Chairperson must not permit discussion on any reply or refusal to reply to a question put to a Councillor or Council employee under this clause.
- (cl.249)

ADDRESSING EACH OTHER

41. (1) During Council meetings Councillors and staff shall at all times address other Councillors and staff by their official designation, as Mayor, Chairperson or Councillor, as the case may be; and with the exception of the Chairperson, or any Councillor prevented by physical infirmity, may stand when speaking. Staff are not required to stand.
- (2) During Committee meetings a less formal method of address is appropriate and there is no need to rise to speak.

LIMITATION AS TO NUMBER OF SPEECHES

42. (1) A Councillor who, during a debate at a meeting of the Council, moves an original motion has the right of general reply, to all observations that are made by another Councillor during the debate in relation to the motion and to any amendment to it, as well as the right to speak on any such amendment. A right of reply is limited to three (3) minutes duration.
- (2) A Councillor other than the mover of an original motion has the right to speak once on the motion and once on each amendment to it.

- (3) A Councillor must not, without the consent of the Council, speak more than once on a motion or an amendment, or for longer than five (5) minutes at any one time. However, the Chairperson may permit a Councillor who claims to have been misrepresented or misunderstood to speak more than once on a motion or an amendment and for longer than five minutes on that motion or amendment to enable the Councillor to make a statement limited to explaining the misrepresentation or misunderstanding.
- (4) Despite subclauses (1) and (2), any Councillor may move that a motion or an amendment be now put:
 - (a) If the mover of the motion or amendment has spoken in favour of it and no Councillor expresses an intention to speak against it.
 - (b) If at least 2 Councillors have spoken in favour of the motion or amendment and at least 2 Councillors have spoken against it.
- (5) The Chairperson must immediately put to the vote, without debate, a motion moved under subclause (4) a seconder is not required for such a motion.
- (6) If a motion that the original motion or an amendment be now put is passed, the Chairperson must, without further debate, put the original motion or amendment to the vote immediately after the mover of the original motion has exercised his or her right of reply under subclause (1).
- (7) If a motion that the original motion or an amendment be now put is rejected, the Chairperson must allow the debate on the original motion or the amendment to be resumed.

(cl.250)

VOTING AT COUNCIL MEETINGS

43. (1) A Councillor who is present at a meeting of the Council but who fails to vote on a motion put to the meeting is taken to have voted against the motion.
- This subclause does not apply to a Councillor who does not vote because he or she has a pecuniary interest in the subject-matter of the motion.
- (2) If a Councillor who has voted against a motion put at the Council meeting so requests, the General Manager must ensure that the Councillor's dissenting vote is recorded in the Council's minutes.
 - (3) The decision of the Chairperson as to the result of a vote is final, unless the decision is immediately challenged and not fewer than two Councillors rise and call a division.
 - (4) When a division on a motion is called, the Chairperson must ensure that the division takes place immediately. The General Manager must ensure that the names of those who vote for the motion and those who vote against it are respectively recorded in the Council's minutes.

- (5) Voting at a Council meeting, including voting in an election at such a meeting is to be by open means (such as on the voices or by show of hands). However, the Council may resolve that the voting in any election by Councillors for Mayor or Deputy Mayor is to be by secret ballot.
 - (6) Councillors will raise their hands to indicate their voting intent on each item, and their votes will be recorded in the minutes.
- (cl.251)

RESOLUTIONS PASSED AT CLOSED MEETINGS TO BE MADE PUBLIC

44. If a Council passes a resolution during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must make the resolution public as soon as practicable after the meeting or part of the meeting has ended.
- (cl.253)

CARETAKER ROLE DURING ELECTIONS

45. (1) The Act does not impose limits on the decisions a council can make before an ordinary election is held, however, like Commonwealth and State Governments, councils are expected to assume a “caretaker” role during election periods to ensure that major decisions are not made which limit the actions of an incoming council.
- (2) Although the decisions of a council do not lapse after an election is held, there will be some opportunities for the new council to review earlier decisions.

PART 4 – KEEPING ORDER AT MEETINGS

QUESTIONS OF ORDER

46. (1) The Chairperson, without the intervention of any other Councillor, may call any Councillor to order whenever, in the opinion of the Chairperson, it is necessary to do so.
- (2) A Councillor who claims that another Councillor has committed an act of disorder, or is out of order, may call the attention of the Chairperson to the matter.
- (3) The Chairperson must rule on a question of order immediately after it is raised but, before doing so, may invite the opinion of the Council.
- (4) The Chairperson’s ruling must be obeyed unless a motion dissenting from the ruling is passed.
- (cl.255)
- (5) The Chairperson may reject any motion, amendment or other matter which is, in the opinion of the Chairperson, out of order.
- (6) The chamber is called to order when the Chairperson rises to their feet - the proceedings of the meeting at hand must cease until resumed by order of the Chairperson.

ACTS OF DISORDER

47. (1) Councillors must act honestly and exercise a reasonable degree of care and diligence in carrying out of their functions. (s.439)
- (2) A Councillor commits an act of disorder if the Councillor, at a meeting of the Council or a Committee of the Council:
- (a) Contravenes the Local Government Act or any regulation in force under the Local Government Act.
 - (b) Assaults or threatens to assault another Councillor or person present at the meeting.
 - (c) Moves or attempts to move a motion or an amendment that has an unlawful purpose or an amendment that has an unlawful purpose or that deals with a matter that is outside the jurisdiction of the Council or Committee or addresses or attempts to address the Council or Committee, on such a motion, amendment or matter.
 - (d) Insults or makes personal reflections on or imputes improper motives to any other Councillor, or any other person.
 - (e) Says or does anything that is inconsistent with maintaining order at the meeting or is likely to bring the Council or Committee into contempt.
 - (f) Makes personal attacks upon staff at meetings. Complaints about a member of staff must be addressed in writing to the General Manager.
- (3) The Chairperson may require a Councillor:
- (a) To apologise without reservation for an act of disorder referred to in subclause (2) (a) or (b).
 - (b) To withdraw a motion or an amendment referred to in subclause (2) (c) and, where appropriate, to apologise without reservation.
 - (c) To retract and apologise for an act of disorder referred to in subclause (2) (d) or (e).
- (4) A Councillor may, as provided by s. 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for having failed to comply with a requirement under subclause (2). The expulsion of a Councillor from the meeting for that reason does not prevent any other action from being taken against the Councillor for the act or disorder concerned. (cl.256 (3) and s.10 (2))
- (5) Breaches of Council's Code of Conduct during a meeting of Council or Council Committee are deemed to be acts of disorder under the provisions of this Code.

HOW DISORDER AT A MEETING MAY BE DEALT WITH

48. (1) If disorder occurs at a meeting of the Council, the Chairperson may adjourn the meeting for a period of not more than 15 minutes and leave the chair. The Council, on reassembling, must, on a question put from the chair, decide without debate whether the business is to be proceeded with or not. This subclause applies to disorder arising from the conduct of members of the public as well as disorder arising from the conduct of Councillors.

- (2) A member of the public may, as provided by s. 10(2) (a) or (b) of the Act, be expelled from a meeting of a Council for engaging in or having engaged in disorderly conduct at the meeting.
(cl.257)
- (3) Public members who insult or make personal reflections or impute improper motives to Council or Councillors, or do or say anything that is inconsistent with maintaining order will be deemed acts of disorder, or any other behaviour deemed disorderly by the Council.

POWER TO REMOVE PERSONS FROM MEETING AFTER EXPULSION RESOLUTION

49. If a Councillor or a member of the public fails to leave the place where a meeting of a Council is being held:
- (1) Immediately after the Council has passed a resolution expelling the Councillor or member from the meeting.
 - (2) Where the Council has authorised the person presiding at the meeting to exercise the power of expulsion, immediately after being directed by the person presiding to leave the meeting.
 - (3) A police officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the Councillor or member from that place and, if necessary, restrain the Councillor or member from re-entering that place.
(cl.258)

PART 5 – COMMITTEES

COUNCIL MAY ESTABLISH COMMITTEES

50. (1) A Council may, by resolution, establish such Committees as it considers necessary.
- (2) A Committee is to consist of the Mayor and such other Councillors as are elected by the Councillors or appointed by the Council.
- (3) The quorum for a meeting of a Committee is to be:
- (a) Such number of members as the Council decides.
 - (b) If the Council has not decided a number – a majority of the members of the Advisory Committee.
(cl.260)
- (4) A Committee may appoint sub-Committees or Advisory Groups which report direct to it rather than direct to Council.
- (5) The Council may appoint sunset Committees from time to time to deal with one-off specific issues which have a limited lifespan.

- (6) Local Management Committees which may comprise of Councillors, residents and representatives of user groups, may be appointed to have the care, control and management of specific facilities and Council may delegate its authority to the Committee, to act on its behalf in certain matters.
 - (7) Pursuant to sub-clause 6, a committee can exercise a council's regulatory functions under Chapter 7 of the Act only if all of its members are either Councillors or council employees. A Committee with members of the public on it cannot exercise a regulatory function under Chapter 7 of the Act.
- (s.379(1))

FUNCTIONS OF COMMITTEES

51. (1) Council must specify the functions of each of its Committees when the Committee is established, but may from time to time amend those functions.

(cl.261)
- (2) Committees which undertake a role/function of Council shall comply with the provisions of the Act, Regulations and this Code of Meeting Practice.

NOTICE OF COMMITTEE MEETINGS TO BE GIVEN

52. (1) The General Manager of the Council must send to each Councillor, at least three days before each meeting of the Committee, a notice specifying:
 - (a) The time and place at which and the date on which the meeting is to be held, and
 - (b) The business proposed to be transacted at the meeting.
- (2) However, notice of less than three days may be given of a Committee meeting called in an emergency.

(cl.262)
- (3) When Committee meetings are held in succession, there will be a 5 minute period between the closing of one meeting and the opening of the next meeting.

NON-MEMBERS ENTITLED TO ATTEND COMMITTEE MEETINGS

53. (1) A Councillor who is not a member of a Committee of the Council is entitled to attend and speak at, a meeting of the Committee.
- (2) However, the Councillor is not entitled:
 - (a) To give notice of business for inclusion in the agenda for the meeting.
 - (b) To move or second a motion at the meeting.
 - (c) To vote at the meeting.

(cl.263)

PROCEDURE IN COMMITTEES

54. (1) Subject to Sub-clause (3) each Committee of the Council may regulate its own procedure.
- (2) Without limiting sub-clause (1), a committee of a council may decide that, whenever the voting on a motion put to a meeting of the committee is equal, the chairperson of the committee is to have a casting vote as well as an original vote.
- (3) Voting at a Committee meeting is to be by open means (such as by voice or by show of hands) (cl.265)
- (4) In the absence of specific procedures for any Committee being adopted, the general provisions of this code apply to meetings of any Committee.

MINUTES OF COMMITTEE

55. (1) Each Committee of a Council must ensure that full and accurate minutes of the proceedings of its meetings are kept. In particular, a committee must ensure that the following matters are recorded in the committee's minutes:
- (a) Details of each motion moved at a meeting and of any amendments moved to it
 - (b) The names of the mover and seconder of the motion or amendment
 - (c) Whether the motion or amendment is passed or lost
 - (d) The names of the Councillors who voted for a motion for a planning decision and those who voted against it. Such voting must be conducted by way of a division.
 - (e) The grounds for closing part of a committee meeting to the public
 - (f) The disclosure to a committee meeting by a councillor of a pecuniary interest
- (2) As soon as the minutes of an earlier meeting of a Committee of the Council have been confirmed at a later meeting of the Committee, the person presiding at the later meeting must sign the minutes of the earlier meeting. (cl.266)

CHAIRPERSON AND DEPUTY OF COMMITTEES

56. (1) The Chairperson of each Committee of the Council must be:
- (a) The Mayor, or
 - (b) If the Mayor does not wish to be the Chairperson of a Committee – a member of the Committee elected by the Council, or
 - (c) If the Council does not elect such a member – a member of the Committee elected by the Committee.
- (2) Council may elect a member of a Committee of the Council as Deputy Chairperson of the Committee. If the Council does not elect a Deputy Chairperson of such a Committee, the Committee may elect a Deputy Chairperson.
- (3) If neither the Chairperson nor the Deputy Chairperson of a Committee of the Council is able or willing to preside at a meeting of the Committee, the Committee must elect a member of the Committee to be acting Chairperson of the Committee.

- (4) The Chairperson is to preside at a meeting of a Committee of the Council. If the Chairperson is unable or unwilling to preside, the Deputy Chairperson (if any) is to preside at the meeting, but if neither the Chairperson nor the Deputy Chairperson is able or willing to preside, the acting Chairperson is to preside at the meeting. (cl.267)
- (5) The Mayor by virtue of holding that office is a member of each Committee of the Council.

ABSENCE FROM COMMITTEE MEETINGS

57. (1) A member ceases to be a member of a Committee if the member (other than the Mayor):
- (a) Has been absent from three consecutive meetings of the Committee without having given reasons acceptable to the Committee for the member's absences, or
 - (b) Has been absent from at least half of the meetings of the Committee held during the immediately preceding year ended 30 June without having given to the Committee acceptable reasons for the member's absences.
- (2) Subclause (1) does not apply if all the members of the Council are members of the Committee. (cl.268)

REPORTS OF COMMITTEES

58. (1) If in a report of a Committee of the Council distinct recommendations are made, the decision of the Council may be made separately on each recommendation.
- (2) The recommendations of a Committee of the Council are, so far as adopted by the Council, resolutions of the Council.
 - (3) The recommendation shown in the agenda should be the same as the one decided by the Committee.
 - (4) If a Committee of a Council makes a recommendation, during a meeting, or a part of a meeting, that is closed to the public, the Chairperson must:
 - (a) Make the recommendation public as soon as practicable after the meeting or part of the meeting has ended, and
 - (b) Report the recommendation to the next meeting of the Council.
- (cl.269)

DISORDER IN COMMITTEE

59. The provisions of the Act and of this Regulation and Code relating to the maintenance of order in Council meetings apply to meetings of any Committee of the Council in the same way as they apply to meetings of the Council. (cl.270)

COMMITTEE MAY EXCLUDE CERTAIN PERSONS FROM ITS MEETINGS

60. (1) If a meeting or part of a meeting of a Committee of a Council is closed to the public in accordance with s. 10A(2) of the Act, any person who is not a Councillor may be excluded from the meeting as provided by s. 10(2)(a) or (b) of the Act.
- (2) If any such person, after being notified of a resolution or direction excluding him or her from the meeting, fails to leave the place where the meeting is being held, a police officer, or any persons authorised for the purpose by the Council, Committee or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.
- (cl.271)

PART 6 –CONFIDENTIAL MATTERS**CLOSED MEETING OF COUNCIL**

61. (1) The Council, during a Council meeting, may resolve into “Closed Meeting of Council” closing the meeting to the public only for the receipt or discussion of, and recommendation resolutions upon, any of the matters listed in Section 10A(2) of the Act.
- (2) All provisions of this Code relating to meetings of the Council, so far as they are applicable, extend to and govern the proceedings of the Council when in a Closed Meeting of Council or a Committee Meeting.
- (3) The General Manager, or in the absence of the General Manager, an employee of the Council designated by the General Manager, is responsible for reporting to the Council the business and any resolutions arising from the “Closed Meeting of Council”.
- (4) The Council must ensure that a report of the proceedings (including any resolutions of the Closed Meeting of Council) is recorded in the Council’s Minutes.
- (5) Resolutions made at a closed part of a Council meeting must be made public by the Chairperson of the meeting as soon as practical after the closed part of the meeting has ended.
- (6) Even if the item is listed in a confidential business paper the Council could disagree with this assessment and discuss the matter in an open part of the meeting.
- (7) Council may allow members of the public the opportunity to make a statement as to why part of a meeting should be closed.
- (s10A (4)) (cl.252)

EXCLUSION OF PRESS AND PUBLIC

62. (1) A Council or Committee of the Council of which all the members are Councillors, may close to the public so much of its meeting as comprises:
- (a) The discussion of any of the matters listed in subclause (2).
- (b) The receipt or discussion of any of the information so listed.

- (2) The matters and information are the following:
- (a) Personnel matters concerning particular individuals.
 - (b) The personal hardship of any resident or ratepayer.
 - (c) Information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.
 - (d) Commercial information of a confidential nature that would, if disclosed
 - (i) Prejudice the commercial position of the person who supplied it, or
 - (ii) Confer a commercial advantage on a competitor of the Council, or
 - (iii) Reveal a trade secret.
 - (e) Information that would, if disclosed, prejudice the maintenance of law.
 - (f) Matters affecting the security of the Council, Councillors, Council staff or Council property.
 - (g) Advice concerning litigation or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
- (s.10A)

CLOSED MEETING AGENDA

63. (1) If, in the opinion of the General Manager, business to be transacted at a meeting of the Council or of a Committee of the Council is a kind of business referred to in s. 10A(2) of the Act, the business may be included in a confidential agenda. All other business to be transacted at the meeting must be included in an ordinary agenda.
- (2) If a confidential agenda is prepared for a kind of business referred to in s. 10A (2) of the Act, the business must be referred to in the ordinary agenda prepared for the same meeting.
- (3) A representation at a Council meeting by a member of the public as to whether a part of the meeting should be closed to the public can only be made for a fixed period immediately after the motion to close the part of the meeting is moved and seconded.
- (4) That period is as fixed by the Council's code of meeting practice or as fixed by resolution of the council. Different periods can be fixed according to the different types of matters to be discussed or received and discussed at closed parts of meetings.
- (cl.252)
- (5) Nothing in this clause limits the powers of the Chairperson under clause 21 of this code.

DISCLOSURE AND MISUSE OF INFORMATION

64. (1) A person must not disclose any information obtained in connection with the administration or execution of the Act unless that disclosure is made:
- (a) With the consent of the person from whom the information was obtained
 - (b) In connection with the administration or execution of the Act.
 - (c) For the purpose of any legal proceedings arising out of the Act or of any report of any such proceedings.
 - (d) In accordance with a requirement imposed under the *Government Information (Public Access) Act 2009*.
 - (e) With other lawful excuse.

- (2) In particular, if a meeting or part of a meeting of a Council or a Committee of a Council is closed to the public in accordance with s. 10A (1) of the Act, a person must not, without the authority of the Council or the Committee, disclose (otherwise than to the Council or a Councillor of the Council) information with respect to the discussion at, or the business of, the meeting.
- (3) Subsection (2) does not apply to:
- (a) The report of a Committee of a Council after it has been presented to the Council.
 - (b) Disclosure made in any of the circumstances referred to in subs. 1(a)-(e).
 - (c) Disclosure made in circumstances prescribed by the regulations
 - (d) Any agenda, resolution or recommendation of a meeting that a person is entitled to inspect in accordance with the *Government Information (Public Access) Regulation 2009*.
- (4) A person acting in the administration or execution of the Act must not use, either directly or indirectly, information acquired by the person in that capacity, being information that is not generally known but if generally known might reasonably be expected to affect materially the market value or price of any land, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse of de facto partner or a relative of the person.
- (5) A person acting in the administration or execution of the Act, and being in a position to do so, must not, for the purpose of gaining either directly or indirectly an advantage for the person, the person's spouse or de facto partner or a relative of the person, influence:
- (a) The determination of an application for an approval
 - (b) The giving of an order

(s.664)

PART 7 – WORKSHOPS

65. (1) A council can hold a workshop (sometimes called a briefing session) under its general powers as a body politic. Workshops are informal gatherings and can provide useful background information to councillors on issues. A workshop may involve Councillors, council staff and invited participants.
- (2) Workshops should not be used for detailed or advanced discussions where agreement is reached and/or a (de-facto) decision is made. Any detailed discussion or exchange of views on an issue, and any policy decision from the options, should be left to the open forum of a formal council or committee meeting. Workshops are merely a means which enable councillors to bring an informed mind to the appropriate decision-making forum.
- (3) Workshops must be chaired by the General Manager, Executive Director/ Director or a senior council officer.
- (4) Workshops are for information and training purposes only. Workshop briefing papers will contain no recommendations, and no agreement will be sought from the Councillors or other workshop participants in the course of the workshop.

- (5) Meeting attendance books must be signed by Councillors and other workshop participants.
- (6) Any document produced in relation to a workshop is a document of the council. These documents could be inspected and copied in accordance with the Government Information (Public Access) Act 2009 (GIPAA). The provisions of 664(1) and 664(2) of the Act apply to workshops, but as they cannot be closed under section 10A of the Act, the confidentiality provisions of sections 664(1)(a) and 664(1)(b) do not apply.

PART 8 – MISCELLANEOUS

INSPECTION OF THE MINUTES OF THE COUNCIL

66. (1) Everyone is entitled to inspect the current version of the following documents free of charge:
- Agendas for Council and Committee meetings (but not including “agendas” for matters considered when a meeting is closed to the public).
- Minutes of Council and Committee meetings, but restricted (in the case of any meeting or part of a meeting that is closed to the public).
- (2) The documents may be inspected at the office of the Council; during ordinary office hours.
 - (3) The Council must have copies of the documents available for taking away by anyone who asks for a copy.
 - (4) An inspection of the minutes of the Council or Committee of the Council is to be carried out under the supervision of the General Manager or a staff member of the Council designated by the General Manager to supervise inspections of those minutes.
 - (5) The General Manager must ensure that the minutes of the Council and any minutes of a Committee of the Council are kept secure and in safe custody and that no unauthorised person is allowed to interfere with them.
(cl.272)
 - (6) A Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports tabled at, or submitted to, the meeting.
 - (7) Subclause (4) does not apply if the correspondence or reports:
 - (a) Relate to a matter that was received or discussed; or
 - (b) Were tabled at, or submitted to, the meeting, when the meeting was closed to the public.

- (8) Subclause (4) does not apply if the Council or Committee resolved at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in s. 10 A(2) of the Local Government Act, are to be treated as confidential.

(s.11)

ACCESS TO RECORDS

67. (1) The General Manager may allow or refuse to allow any Councillor to inspect any record of the Council that the Councillor requests to see.
- (2) If the General Manager refuses to allow a Councillor to inspect any such record, the Councillor may, at a meeting of the Council, move for the production of the document. However, the Councillor must give notice of intention to move the motion.
- (3) If the Council passes a motion for the production of a Council record, the Council must ensure that the record:
- (a) Is produced immediately and laid on the table for inspection by the Councillors, and
 - (b) Is made available for inspection by any Councillor on reasonable notice to the General Manager during the Council's ordinary office hours on any day that is within one month after the passing of the motion.
- (4) A Council and a Committee of which all the members are Councillors must, during or at the close of a meeting, or during the business day following the meeting, give reasonable access to any person to inspect correspondence and reports tabled at, or submitted to, the meeting.
- (5) This section does not apply if the correspondence or reports that:
- (a) Relate to a matter that was received or discussed.
 - (b) Were tabled at, or submitted to, the meeting.
- when the meeting was closed to the public.
- (6) This section does not apply if the Council or Committee resolves at the meeting, when open to the public, that the correspondence or reports, because they relate to a matter specified in section 10A (2), are to be treated as confidential.
- (7) Where a meeting resolves under subclause 6 that correspondence or reports are to be treated as confidential, the meeting shall also resolve the period during which the correspondence or reports shall remain subject to subclause 5. This resolution shall be an authority of the Council or a Committee.

RECORDING, WEBCASTING AND PHOTOGRAPHY AT MEETINGS OF COUNCIL

68. (1) Council will record and webcast live on Council's website the Ordinary or Extraordinary Meetings of Council held in open session. Confidential meetings of Council will not be recorded or webcast. The purpose of the webcast and recordings is to facilitate community access to meetings.

- (2) Members of the public are advised, in accordance with Section 18 of the Privacy and Personal Information Protection Act 1998 (PPIPA), that the Ordinary/Extraordinary Meeting is live webcast and is publically available. By attending a Council Meeting personal information may be recorded, publicly broadcast and archived.
- (3) Speakers addressing the Council do not have absolute privilege in respect of opinions expressed or comments made or material presented. Council accepts no responsibility for any defamatory comments in this regard.
- (4) At the start of each Meeting that will be webcast, the Chairperson must advise the Meeting room that the Meeting will be webcast.
- (5) The General Manager must ensure that persons in the Meeting room are advised that the Meeting may be webcast by providing notification on signs in the Meeting room, in the Ordinary Meeting Agenda and such other notices as required in relation to sub-clauses 2 and 3.
- (6) Webcasting is terminated if, at a particular point in a meeting, the Chairperson is of the opinion that continued webcasting may prejudice the meeting or infringe the rights or safety of an individual.
- (7) Webcast recordings will be made available to the public for viewing on Council's website for at least 8 years. An archive of webcast recordings in Council's electronic record keeping system will also be kept.
- (8) Written transcripts of proceedings will not be available.
- (9) The webcasts and recordings of proceedings are not an official record of the meeting nor do they convey the official Minutes of a Council meeting or the position of Council. Recordings are not to be used except in accordance with this Code.
- (10) The electronic transmissions (webcasts) and webcast recordings are protected by copyright and owned by Wollondilly Shire Council. No part of the proceedings of a meeting of the Council may be recorded, copied or made available to others without the authority of the Council however councillors may use unedited extracts of the webcast recordings for the purposes of engaging with the community and informing them of their actions.
- (11) Photography at Meetings of Council will generally be permitted with the authority of the Council.
- (12) A person may be, as provided by section 10(2) (a) or (b) of the Act, expelled from a meeting of the Council for using or having used a recording device or taken photographs in contravention of this clause.
- (13) If any such person, after being notified of a resolution or direction expelling him or her from the meeting, fails to leave the place where the meeting is being held, a Police Officer, or any person authorised for the purpose by the Council or person presiding, may, by using only such force as is necessary, remove the first-mentioned person from that place and, if necessary, restrain that person from re-entering that place.

- (14) For the purposes of this clause a recording device includes a video camera, sound recorder, mobile phone, laptop, tablet or any other electronic device which is recording speech and/or images without the authority of the Council.
- (cl.273)

DEFAMATION, OFFENCE AND EMBARRASSMENT

69. The NSW Ombudsman publication *Better Service and Communication for Council's* provides information about defamation. It states:

“A statement may be defamatory of a person if it is likely to cause an ordinary reasonable member of the community to think less of a person or to shun or avoid the person”

Councillors, staff and members of the public can seek legal compensation, apology etc if they are defamed.

- (1) Councillors acting within their official capacity at meetings of Council or Council Committees have a defence of ‘qualified privilege’ to actions in defamation. This recognises that Councillors may need to speak freely and publicly in carrying out their duties however qualified privilege needs to be treated with great caution. It only covers statements made at a Council or Committee meeting whilst carrying out the duties and on business relevant to the Council. Statements also need to be made with good intentions, not malice.
- (2) A statement made outside a Council or Committee meeting will not be protected by qualified privilege, but may be protected under the *Defamation Act 1974*. Councillors should be guided by their own legal advice on defamation issues.
- (3) The chairperson of a Council meeting is responsible for making sure that the council carries out its meeting in line with its Meeting Code and any relevant legislation. This may be done by:
 - (a) Maintaining order at meetings.
 - (b) Requiring a Councillor to apologise for insults, personal comments, or implying improper motives with respect to another Councillor.
 - (c) Calling a Councillor to order whenever they believe it is necessary to do so.
 - (d) Ask a Councillor to take back a statement and apologise.
- (4) A Councillor who refuses to comply with cl 3 may be expelled from the meeting for an act of disorder (see 46 (4)) of this Code. This does not prevent legal action from being taken against a Councillor by council or by another Councillor; a member of council staff or a member of the public under the *Defamation Act 1974* or the common law.

(cl.256 (3) & s.10 (2))

PETITION

70. A Councillor may present a petition to the Council. The Chairperson must not permit discussion or debate on the petition.

MAYORAL ACTIONS

71. When necessary the Mayor may exercise the policy-making functions of the Council between meetings. It is not necessary for the Council to formalise this, but good practice for the Mayor to report their actions to the next Council meeting. (s.226)

AMENDMENTS TO THIS MEETINGS CODE

72. (1) A Council may amend a code adopted in accordance with the Act by means only of a code so adopted. (s.363)
- (2) Before adopting an amendment to this Meetings Code, Council must prepare a draft amendment.
- (3) The Council must give public notice of the draft amendment after it is prepared.
- (4) The period of public exhibition must not be less than 28 days.
- (5) The public notice must also specify a period of not less than 42 days after the date on which the draft amendment is placed on public exhibition during which submissions may be made to the Council.
- (6) With the exception of the provisions of subclause 7, Council must publicly exhibit the draft amendment in accordance with its notice.
- (7) Notwithstanding subclauses 4 and 5, if Council is of the opinion that an amendment is not substantial, it may adopt the amendment following public notice and without public exhibition.
- (8) This Code is to be reviewed annually and addressed quarterly against legislative changes to the Act and the Regulations.



GO5 Attachment

1. Council Policy Register

Monday 20 March 2017

GO5 – Revocation of Local Policy

CURRENT POLICY REGISTER

Department	TRIM No.	Policy No.	Policy Name
Community Outcomes	2440#502	GOV0019	Advertising
Compliance	2440#503	PLA0031	Applications under the Liquor Act
Environment	2440#584	ENV0012	Bin Contamination
Finance	2440#594	GOV0061	Borrowing
Environment	2440#585	ENV0011	Clean Up Collection
Infrastructure Planning	2440#13	PLA0023	Commercial Use of Public Footpaths & Roadside Verges
Compliance	2440#501	PLA0032	Compliance
Governance	2440#586	GOV0070	Conflict of Interests
Infrastructure Planning	2440#516	PLA0022	Contributions to Kerb, Gutter & Footpaths
Governance	2440#517	ASS0009	Corporate Property
Community Outcomes	2440#529	GOV0050	Corporate Sponsorship
Employee Relations	2440#518	GOV0059	Corruption Prevention & Fraud Control (Review every 2 years)
Land Use Planning	2440#19	PLA0002	Council and Delegated Determination of Development Applications
Governance	2440#578	GOV0068	Councillor Access to Information and Interaction with Staff
Governance	2440#591	GOV0001	Councillor Fees, Expenses & Facilities (Review required annually)
Governance	2440#577	GOV0067	Customer Service
Finance	2440#554	GOV0025	Debt Recovery
Land Use Planning	2440#492	PLA0036	Dedication of Land
Environment	2440#35	GOV0046	Exemption from Payment of Garbage Rates
Finance	2440#580	GOV0069	Farmland Rating
Infrastructure Planning	2440#37	PLA0026	Fences on Road Reservations - Road Reconstruction
Community Outcomes	2440#588	GOV0008	Flying of the Australian National & Aboriginal Flags
Governance	2440#590	GOV0051	Gifts & Benefits
Finance	2440#555	GOV0063	Hardship
Land Use Planning	2440#43	PLA0028	Hoardings

Governance	2440#587	GOV0071	Interaction with Lobbyists, Developers & Submitters
Governance	2440#597	GOV0004	Internal Reporting - (Review annually)
Finance	2440#593	GOV0024	Investment
Works	2440#61	PLA0012	Nature Strips
Compliance	2440#589	PLA0033	On-site Sewage Management System and Greywater Re-use
Finance	2440#595	GOV0060	Overdraft
Infrastructure Planning	2440#542	ASS0012	Parking
Land Use Planning	2440#574	PLA0037	Planning Agreements
Governance	2440#544	GOV0057	Probity - Dealings with Council Owned Land
Governance	2440#573	GOV0066	Property Address
Facilities & Recreation	2440#551	ASS0011	Reduction or Waiver of Council Fees & Charges
Finance	2440#552	GOV0064	Refund of Waste Charges
Infrastructure Planning	2440#80	PLA0009	Requirements for Works Affecting Watercourses
Infrastructure Planning	2440#86	PLA0025	Road Closures
Community Outcomes	2440#579	COM0001	Social Media
Infrastructure Planning	2440#564	ASS0008	Strategic Asset Management
Infrastructure Planning	2440#100	PLA0030	Street Signs - Commercial, Directional & Business Directional
Facilities & Recreation	2440#105	ASS0007	Upgrading a Council Hall
Facilities & Recreation	2440#246	ASS0010	Use of Public Open Space by Commercial Fitness Groups & Personal Trainers