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## **Deed**

### **Retford Park Planning Agreement**

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

**Wingecarribee Shire Council**

**James Oswald Fairfax**

Date: 18/08/2015

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## **Retford Park Planning Agreement**

### **Summary Sheet**

#### **Council:**

**Name:** Wingecarribee Shire Council

**Address:** Civic Centre, Elizabeth Street, MOSS VALE, NSW, 2577

**Telephone:** (02) 4868 0888

**Facsimile:** (02) 4869 1203

**Email:** david.matthews@wsc.nsw.gov.au

**Representative:** David Matthews

#### **Developer:**

**Name:** James Oswald Fairfax

**Address:** Suite1, Level 26, 25 Bligh Street, SYDNEY NSW 2000

**Telephone:** (02) 9232 0051

**Facsimile:** (02) 9232 0059

**Email:** arr@bridgestar.com.au

**Representative:** Allen Ralph Robinson

#### **Land:**

See definition of *Land* in clause 1.1.

#### **Development:**

See definition of *Development* in clause 1.1.

#### **Development Contributions:**

See Clause 9 and Schedule 1.

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

See clause 8.



**Security:**

See Part 8.

**Registration:**

See clause 35.

**Restriction on dealings:**

See clause 36.

**Dispute Resolution:**

See Part 7.



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## **Retford Park Planning Agreement**

A handwritten signature in blue ink, appearing to read 'JOF'.

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

### **Parties**

**Wingecarribee Shire Council** ABN 49 546 344 354 of Civic Centre Elizabeth St  
Moss Vale NSW 2577 (**Council**)

and

**James Oswald Fairfax** of Suite 1, Level 26, 25 Bligh Street, SYDNEY NSW 2000  
(**Developer**)

### **Background**

- A The Developer owns the Eastern Land and the Western Land.
- B The Developer intends to carry out the Eastern Land Development and Western Land Development.
- C The Developer is prepared to make Development Contributions in connection with the carrying out of the Eastern Land Development and Western Land Development in accordance with this Deed

### **Operative provisions**

#### **Part 1 - Preliminary**

##### **1 Interpretation**

1.1 In this Deed the following definitions apply:

**Acceptable Development Consent** has the meaning given to that term in clause 4.3.

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

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

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



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

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

**Central Park Concept Plan** means the plan in Schedule 6.

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

**Common Rising Main** means the rising main pipe located in the road reserve to which all dwellings to be constructed on Final Lots in the Eastern Land Development using the LPSS will connect their pump up sewer line.

**Contribution Item** means an item of Development Contribution specified in Column 1 of the Table in Schedule 1.

**Contribution Value** means the \$ amount (excluding GST) specified in Column 5 of the Table in Schedule 1 in relation to a Contribution Item.

**Contributions Plan** means a contributions plan within the meaning of the Act that is in force.

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

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

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

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

**Development** means the Eastern Land Development and the Western Land Development.

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

**Development Consent** has the same meaning as in the Act.

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





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

**Eastern Land** means the land marked as 'Pt 222' with an approximate area of 30.02ha on the Land Plan being the land comprised in the eastern part of Lot 222 in DP1206897 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

**Eastern Land Concept Plan** means the plan in Schedule 4.

**Eastern Land Development** means subdivision of the Eastern Land in Stages into approximately 22 Final Lots.

**Eastern Land Riparian Corridor** means land to which Contribution Item 12 applies.

**Eastern Land Riparian Corridor Contribution** means a monetary Development Contribution in the amount of \$40,000.00.

**Eastern Land Riparian Corridor Plan** means the plan titled 'Eastern Lands – Riparian Corridor Vegetation Management Plan VMP -01 Revision G dated 4 May 2015 as amended and approved by Council from time to time.

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

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

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

**GST** has the same meaning as in the GST Law.

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

**Independent Expert** means an appropriately qualified independent person agreed to between the Parties, or failing agreement, appointed by the President of the Institute of Arbitrators and Mediators Australia.

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

**Land** means the Western Land and the Eastern Land.

**Land Plan** means the plan in Schedule 2.

**LG Act** means the *Local Government Act 1993*.

**Low Pressure Sewer System (LPSS)** means a low pressure sewer system shown on the document titled 'Sewer Concept Plan', drawing number 1326 – SC01 Revision A, prepared by Civil Development Solutions and dated 18 March 2015, a copy of which is in Schedule 9

**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, but does not include the rectification of Defects in accordance with this Deed.

**Old South Road Open Space Plan** means the plan in Schedule 10

**Party** means a party to this Deed.

**Pathway Plan** means the plan in Schedule 5.

**Permitted Encumbrances** means:

- (a) easements, restrictions and covenants for public utility infrastructure, and
- (b) the right of way on terms satisfactory to the Council acting reasonably to be registered on the Land shown shaded brown on the Western Land Concept Plan and located in the area between proposed lots numbered 19 and 20, and
- (c) the right of way on terms satisfactory to the Council acting reasonably to be registered on the Land shown shaded pink on the Eastern Land Concept Plan and located in the area marked as 'Drainage Reserve'.

**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, but not Maintain.

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

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

**Stage** means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

**Subdivision** has the meaning given by s4B of the Act.

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

**Western Land** means the land shown as 'Pt 222' with an approximately area of 26.6ha on the Land Plan being land comprised in the western part of Lot 222 in DP1206897 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land.

**Western Land Concept Plan** means the plan in Schedule 3.

**Western Land Development** means subdivision of the Western Land into approximately 157 Final Lots generally as shown in the Western Land Concept Plan and in Stages generally as shown on the Western Land Staging Plan.

**Western Land Staging Plan** means the plan in Schedule 8.

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

**Work Completion Notice** means a written notice issued by Council that a Work specified in the notice is completed and may be used for its intended purpose except for minor Defects and omissions specified in the notice.

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

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

## **2 Status of this Deed**

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.



### **3 Commencement**

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Developer is under no obligation to provide any Development Contributions in accordance with this Deed unless and until the Deed applies to the Western Land or the Eastern Land in accordance with clause 4.
- 3.3 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

### **4 Application of this Deed**

- 4.1 This Deed applies to the Western Land and to the Western Land Development on and from the date that an Acceptable Development Consent has been granted for the Western Land Development.
- 4.2 Except as provided for in clause 28.1, this Deed applies to the Eastern Land and to the Eastern Land Development on and from the date that an Acceptable Development Consent has been granted for the Eastern Land Development which includes the construction and use of the LPSS to service the Eastern Land Development.
- 4.3 For the purposes of this clause, an '**Acceptable Development Consent**' is granted when:
  - 4.3.1 the Developer provides the Council with a notice in writing stating that the Development Consent for the Western Land Development or the Eastern Land Development (as the case may be) is acceptable, or
  - 4.3.2 building, engineering or construction work has been physically commenced within the meaning of the Act under the Development Consent for the Western Land Development or Eastern Land Development (as the case may be).

### **5 Warranties**

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

### **6 Further agreements**

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

### **7 Surrender of right of appeal, etc.**

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal



or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

- 7.2 For the avoidance of doubt, this clause 7 does not prevent the Developer from commencing appeal proceedings in the class 1 jurisdiction of the Land and Environment Court against a condition of Development Consent to the Development that does not impact on this Deed.

## **8 Application of s94, s94A and s94EF of the Act to the Development**

- 8.1 This Deed excludes the application of s94 and s94A of the Act to the Development.
- 8.2 This Deed does not exclude the application of s94EF to the Development.

## **9 Provision of Development Contributions**

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1 and any other provision of this Deed relating to the making of Development Contributions.
- 9.2 Subject to clause 16.8, a Contribution Value does not serve to define the extent of the Developer's obligation to make the Development Contribution to which the Contribution Value relates.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, the Council may apply a monetary Development Contribution (other than Contribution Item 4) made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

## **Part 2 – Provisions relating to Eastern Land Riparian Corridor**

### **10 Inspection of the Eastern Land Riparian Corridor**

- 10.1 Before the Eastern Land Riparian Corridor is dedicated to the Council in accordance with this Deed, the Developer is to permit the Council to enter that land at any time, for the purposes of establishing compliance with the approved Eastern Land Riparian Corridor Plan, upon giving 5 business days prior notice.
- 10.2 After the Eastern Land Riparian Corridor is dedicated to the Council in accordance with this Deed:



- 
- 10.2.1 the Developer is to permit the Council to reasonably pass through land owned, occupied or otherwise controlled by the Developer to enable the Council to obtain reasonable access to the Eastern Land Riparian Corridor, and
  - 10.2.2 the Council authorises the Developer, upon receiving reasonable prior notice, to enter, occupy and use the Eastern Land Riparian Corridor as reasonably necessary to enable the Developer to properly perform its obligations in respect of that land under a Development Consent for the Eastern Land Development.
  - 10.3 This clause does not derogate from any other rights the Council has under this Deed to enter the Eastern Land Riparian Corridor.

## **Part 3 – Provisions relating to Monetary Development Contributions**

### **11 Payment of monetary Development Contributions**

- 11.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 11.2 A monetary Development Contribution (other than Contribution Item 8) is to be indexed from the date of this Deed to the date of payment in the same way as a monetary contribution is indexed under a Contributions Plan.

### **12 Reduction of monetary Development Contributions**

- 12.1 The amount of monetary Development Contributions payable by the Developer under Contribution Item 7 is to be reduced by the Drainage Reduction Amount.
- 12.2 In this clause 12 '**Drainage Reduction Amount**' means the amount calculated by dividing the Contribution Value of Contribution Item 15 by the number of Final Lots in the Development.

## **Part 4 – Provisions relating to dedication of Land**

### **13 Dedication of land**

- 13.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
  - 13.1.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a



temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the LG Act, or

13.1.2 the Council is given:

- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
- (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.

- 13.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 13.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except for the Permitted Encumbrances and any other encumbrances agreed in writing by the Council.
- 13.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- 13.5 Despite any other provision of this Deed, if the Developer is required to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to comply with clause 13.1.2 not later than 5 business days after the Work is completed for the purposes of this Deed.
- 13.6 Land that is dedicated to the Council under this Deed may be used for emergency egress subject to the Developer obtaining all necessary Approvals for such use.

## **Part 5 – Provisions relating to carrying out of Work**

### **14 Before commencement of Work**

- 14.1 The Developer is to give the Council written notice of the date on which it will commence Work required to be carried out under this Deed or any Stage.
- 14.2 Not later than 5 business days after receiving the Developer's notice under clause 14.1, the Council and the Developer are to jointly inspect the land on which the Work is to be located.
- 14.3 Before the Developer commences the carrying out of a Work, the Developer at its cost is to:
  - 14.3.1 provide to the Council a photographic record of the land on which the Work is to be located, and



- 14.3.2 in respect of Contribution Items 16 and 17 ensure that geotechnical investigations of the land on which the Work is to be located are carried out by an Independent Expert and provided to the Council.
- 14.4 The geotechnical investigation referred to in clause 14.3.2 is to contain the following information:
  - 14.4.1 in situ California Bearing Ratio (**CBR**) or Benkelman Beam Test (**BBT**) (as determined by the Council) results of the existing sub-grade;
  - 14.4.2 recommended pavement thickness design for the intended traffic loading and in-situ CBR or BBT;
  - 14.4.3 existing subsurface drainage conditions; and
  - 14.4.4 recommended subsurface drainage requirements for the proposed pavement.
- 14.5 Clauses 29 and 30 do not apply to the agreement on or appointment of the Independent Expert.

## **15 Carrying out of Work**

- 15.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 15.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed to ensure the Work is in accordance with the Council's adopted standards and policies as at the date Approval is given to the Work.

## **16 Variation to Work**

- 16.1 The scope, design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably.
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Council to approve a variation to a Work to be provided under this Deed.
- 16.3 A request under clause 16.2 is to be accompanied by written reasons and any supporting documents for such a request.
- 16.4 Subject to clause 16.7, the Council will, acting reasonably, approve a variation of a Work requested by the Developer provided that:
  - 16.4.1 the variation does not result in the sum of the Contribution Values of all Development Contributions falling below the sum of the Contribution Values of all Development Contributions as at the date of this Deed, and
  - 16.4.2 the variation Work is to ensure a Work is in accordance with the Council's adopted standards and policies as at the date Approval is given to the Work, and
  - 16.4.3 the Council is satisfied that the variation is in the public interest, and





- 16.4.4 all necessary Approvals are obtained.
- 16.5 If a variation is made to a Work pursuant to clause 16.4, then Schedule 3 is deemed to have been amended to include the Work as varied.
- 16.6 A variation to a Work pursuant to clause 16.4 does not require a variation to this Deed.
- 16.7 The Developer is not to seek or cause, or suffer or permit the seeking of a variation to a Work if the Work has been physically commenced within the meaning of the Act other than changes that may be necessary to accommodate a latent issue in relation to the Land identified following physical commencement of the Works.
- 16.8 If the Council requests a variation to a Work after Approval has been obtained for a Work (except a variation referred to in clause 15.2), then the Council is to pay to the Developer an amount equal to the increase in the costs incurred by the Developer of completing the Work which results from the variation requested by the Council.
- 16.9 Council is to pay the amount referred to in clause 16.8 to the Developer after the Work is complete, and within 20 business days of receipt of:
- 16.9.1 a tax invoice for the amount claimed by the Developer; and
- 16.9.2 documentation which verifies the increase in costs incurred by the Developer as a result of the variation.

## **17 Access to land by Developer**

- 17.1 The Council authorises the Developer, upon receiving reasonable prior notice, to enter, occupy and use land owned or controlled by the Council as necessary to enable the Developer to properly perform its obligations under this Deed.
- 17.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1.

## **18 Access to land by Council**

- 18.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 18.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 18.1.

## **19 Council's obligations relating to Work**

- 19.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

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## **20 Protection of people, property & utilities**

- 20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 20.1.1 all necessary measures are taken to protect people and property,
  - 20.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
  - 20.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 20.2 Without limiting clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## **21 Repair of damage**

- 21.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.
- 21.2 The Developer is to carry out its obligation under clause 21.1 at its own cost and to the satisfaction of the Council.

## **22 Completion of Work**

- 22.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed or any Stage.
- 22.2 Not later than 5 business days after receiving the Developer's notice under clause 22.1, the Council will, and the Developer must permit the Council to, inspect the Work in the presence of a representative of the Developer.
- 22.3 Not later than 5 business days after the inspection referred to in clause 22.2, the Council acting reasonably is to:
- 22.3.1 issue a Work Completion Notice to the Developer if the Council does not consider that a written direction should be given to the Developer under clause 22.3.2, or
  - 22.3.2 give a written direction to the Developer to complete, rectify or repair any specified part of the Work as a pre-condition to the issuing of a Work Completion Notice.
- 22.4 For the avoidance of doubt, the Council may give more than one written direction under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 The Developer, at its cost, is to promptly comply with a direction given to it by the Council under clause 22.3.2.
- 22.6 The Council is to issue a Work Completion Notice to the Developer once the Council is reasonably satisfied that the Developer has complied with any written direction given under clause 22.3.2 and no further written direction will be given.



- 22.7 A Work Completion Notice issued by the Council under this clause 22:
- 22.7.1 is final and binding on the Council and the Developer according to its terms despite any other provision of this Deed,
  - 22.7.2 may identify minor defects or omissions in the Work, which, the Developer, at its cost, is to promptly remedy.
- 22.8 The Council is to do such things as are reasonably necessary to enable the Developer to remedy any minor defect identified in a Work Completion Notice.

### **23 Rectification of defects**

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 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.
- 23.3 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 23.1.

### **24 Works-As-Executed-Plan**

- 24.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan to the Council's satisfaction acting reasonably in respect of the Work.
- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

### **25 Removal of Equipment**

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

## **Part 6 – Other provisions relating to the Development**

### **26 Reclassification of public land**

- 26.1 The Developer's obligation in relation to Contribution Item 19 does not apply unless and until the land on which it is located (**Item 19 Land**) is reclassified as operational land under the LG Act.



- 26.2 The Developer acknowledges that:
- 26.2.1 the decision to reclassify the Item 19 Land is at the discretion of the Council exercising its statutory functions under the LG Act which cannot be fettered,
  - 26.2.2 the reclassification of the Item 19 Land must be by way of a local environmental plan that has effect under the Act,
  - 26.2.3 the local environmental plan may only be made by the Minister administering the Act (or the Minister's delegate).

## **27 Emergency Exit**

- 27.1 The Parties acknowledge that:
- 27.1.1 the Developer proposes to construct the Emergency Exit in the location shown on the Western Land Concept Plan, and
  - 27.1.2 the location and construction of the Emergency Exit to the Western Development as shown on the Western Land Concept Plan is subject to Development Consent.
- 27.2 In this clause 27, '**Emergency Exit**' means the exit marked as '*Emergency Exit (left only)*' on the Western Land Concept Plan.

## **28 Sewerage infrastructure to Development**

- 28.1 This clause applies on and from the date of this Deed.
- 28.2 Any design of the LPSS to serve the Development is to:
- 28.2.1 be carried out by a suitably qualified person approved by the Council,
  - 28.2.2 be submitted as part of the Development Application for the Eastern Land Development or, if agreed to by the Council in writing, as part of a sewer connection approval process, and
  - 28.2.3 is to incorporate a Common Rising Main to be maintained by Council after it is handed over to the Council.
- 28.3 The LPSS is to be carried out and completed in accordance with a design or specification specified or approved by the Council.
- 28.4 On completion of the LPSS, the Developer is to register on the title to each Final Lot a public positive covenant on terms to the satisfaction of the Council in respect of the obligation on the owner of the Final Lot to operate, maintain and renew the LPSS (other than the Common Rising Main) in perpetuity.

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## **Part 7 – Dispute Resolution**

### **29 Dispute resolution – expert determination**

- 29.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 29.1.1 the Parties to the Dispute agree that it can be so determined, or
  - 29.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 29.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 29.3 If a notice is given under clause 29.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 29.4 If the Dispute is not resolved within a further 20 business days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 29.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 29.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 29.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

### **30 Dispute Resolution - mediation**

- 30.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 29 applies.
- 30.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 10 business days of the notice in an attempt to resolve the Dispute.
- 30.4 If the Dispute is not resolved within a further 20 business days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 30.5 If the Dispute is not resolved by mediation within a further 20 business days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 30.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.



- 30.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

## **Part 8 - Enforcement**

### **31 Security**

- 31.1 If the Developer wishes to obtain a Subdivision Certificate before a Work that is required to be completed before the issuing of that Subdivision Certificate is completed for the purposes of this Deed, then:
- 31.1.1 the Developer is to provide written notice to the Council to that effect,
  - 31.1.2 the Developer is to provide the Council with Security in an amount calculated in accordance with clause 31.2 before the date on which the Work is required to be completed under this Deed,
  - 31.1.3 the Developer is to provide to the Council, for approval, a revised completion date for the Work, and
  - 31.1.4 the time for completion of the Work under this Deed is the revised completion date approved or agreed to by the Council under this clause 31.1.
- 31.2 The amount of Security to be provided under clause 31.1.2 is 110% of the cost to the Council of carrying out:
- 31.2.1 works to complete the Work, and
  - 31.2.2 works to Rectify any Defect in the part of the Work that has been carried out by the Developer,
- as determined by the Council, or if the Developer disagrees with the cost determined by the Council, as determined by a suitably qualified quantity surveyor independent of the Parties appointed by the Chief Executive Officer of the NSW Chapter of the Australian Institute of Quantity Surveyors.
- 31.3 If the Developer complies with clause 31.1 in relation to a Work, then it is not in breach of this Deed as a result of a failure to complete the Work by the time for completion of the Work specified in Schedule 1.
- 31.4 The Council, in its absolute discretion and despite clause 17, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.
- 31.5 The Council may call-up and apply the Security in accordance with clause 33 to remedy any breach of this Deed notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity.
- 31.6 The Council is to release and return the Security or any unused part of it to the Developer within 10 business days of completion of the obligation to which the Security relates.
- 31.7 The Developer may at any time provide the Council with a replacement Security.



- 31.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 31.9 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 Deed.
- 31.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value.

## **32 Acquisition of land required to be dedicated**

- 32.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 32.2 The Council is to only acquire land pursuant to clause 32.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 32.3 Clause 32.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 32.4 If, as a result of the acquisition referred to in clause 32.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 31.
- 32.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 32.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 32, including without limitation:
  - 32.6.1 signing any documents or forms,
  - 32.6.2 giving land owner's consent for lodgement of any Development Application,
  - 32.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
  - 32.6.4 paying the Council's costs arising under this clause 32.

## **33 Breach of obligations**

- 33.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
  - 33.1.1 specifying the nature and extent of the breach,
  - 33.1.2 requiring the Developer to:



- (a) rectify the breach if it reasonably considers it is capable of rectification, or
  - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
- 33.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 33.2 Subject to clause 33.3 if the Council reasonably considers that the Developer has failed to fully comply with a notice referred to in clause 33.1, the Council may, by giving 2 business days' notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 33.3 For the purposes of clause 33.2, the Council is not required to give notice before calling up Security if the Council reasonably considers that there is an emergency as a result of the Developer's breach.
- 33.4 If the Council reasonably considers that the Developer has failed to comply with a notice given under clause 33.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 33.5 Any costs incurred by the Council in remedying a breach in accordance with clause 33.2 or clause 33.4 may be recovered by the Council by either or a combination of the following means:
  - 33.5.1 by calling-up and applying the Security provided by the Developer under this Deed, or
  - 33.5.2 as a debt due in a court of competent jurisdiction.
- 33.6 For the purpose of clause 33.5, the Council's costs of remedying a breach the subject of a notice given under clause 33.1 include, but are not limited to:
  - 33.6.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
  - 33.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - 33.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 33.7 Nothing in this clause 33 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## **34 Enforcement in a court of competent jurisdiction**

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



- 34.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates, or
- 34.2.3 a Party from seeking urgent injunctive or urgent declaratory relief to enforce any aspect of this Deed or any matter to which this Deed relates.

## **Part 9 – Registration & Restriction on Dealings**

### **35 Registration of this Deed**

- 35.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 35.2 Upon execution of this Deed, the Developer is to provide to the Council the written irrevocable consent of each person referred to in s93H(1) of the Act to the registration of this Deed.
- 35.3 The Developer is not to commence any part of the Development unless and until this Deed is registered on the title to the Land.
- 35.4 Not later than 10 business days after the granting of Development Consent to the Western Land Development or the Eastern Land Development, whichever is earlier, the Developer is to deliver to the Council in registrable form an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer.
- 35.5 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 35.6 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
  - 35.6.1 in so far as the part of the Land concerned is a Final Lot,
  - 35.6.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

### **36 Restriction on dealings**

- 36.1 The Developer is not to:
  - 36.1.1 sell or transfer the Land, other than a Final Lot, or
  - 36.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 36.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and

- 36.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 36.1.5 the Developer is not in breach of this Deed, and
- 36.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 36.2 Clause 36.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

## **Part 10 – Indemnities & Insurance**

### **37 Risk**

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

### **38 Release**

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

### **39 Indemnity**

- 39.1 The Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council in connection with the performance of the Developer's obligations under this Deed arising out of any wilful or negligent act or omission or breach of this Deed by the Developer (or any person engaged by the Developer, including any contractor) except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 39.2 To the extent possible, the Council is to use its reasonable endeavours to mitigate its loss or damage the subject of any Claim referred to in clause 39.1.
- 39.3 The Council is to notify the Developer in writing when it receives a Claim referred to in clause 39.1.

### **40 Insurance**

- 40.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
  - 40.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of



- demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 40.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
  - 40.1.3 workers compensation insurance as required by law, and
  - 40.1.4 any other insurance required by law.
- 40.2 If the Developer fails to comply with clause 40.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 40.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
  - 40.2.2 recovery as a debt due in a court of competent jurisdiction.
- 40.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 40.1.

## **Part 11 – Other Provisions**

### **41 Annual report by Developer**

- 41.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 41.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

### **42 Review of Deed**

- 42.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 42.2 For the purposes of clause 42.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 42.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 42.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 42.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an



enforceable agreement of the same or similar effect to this Deed is entered into.

- 42.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 42.1 (but not 42.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

### **43 Termination of Deed**

- 43.1 This Deed terminates on the date that the Council gives the Developer a notice in writing that all obligations under this Deed have been completed in accordance with the requirements of this Deed.
- 43.2 The Developer may request in writing that the Council provide it with a notice referred to in clause 43.1.
- 43.3 Subject to clause 43.4, on receipt of the request referred to in clause 43.2, the Council is to provide the Developer with the requested notice promptly and without delay.
- 43.4 The Council is not required to provide the Developer with the requested notice if the Council is not satisfied that the Developer has completed its obligations in accordance with the requirements of this Deed.

### **44 Notices**

- 44.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 44.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
  - 44.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
  - 44.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 44.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 44.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 44.3.1 delivered, when it is left at the relevant address,
  - 44.3.2 sent by post, 2 business days after it is posted,
  - 44.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 44.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 44.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a



business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **45 Costs**

- 45.1 The Developer acknowledges that as at the date of this Deed, the Council's costs are approximately \$43,380.50.
- 45.2 The Developer is to pay to the Council 50% of the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 5 business days of a written demand by the Council for such payment.
- 45.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 5 business days of a written demand by the Council for such payment.

## **46 Entire Deed**

- 46.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 46.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

## **47 Further Acts**

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

## **48 Governing Law and Jurisdiction**

- 48.1 This Deed is governed by the law of New South Wales.
- 48.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 48.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **49 No Fetter**

- 49.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.



## **50 Severability**

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

## **51 Amendment**

- 51.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

## **52 Waiver**

- 52.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 52.2 A waiver by a Party is only effective if it is in writing.
- 52.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

## **53 GST**

- 53.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 53.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.



- 53.3 Clause 53.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 53.4 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
  - 53.4.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
  - 53.4.2 that any amounts payable by the Parties in accordance with clause 53.2 to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 53.5 No payment of any amount pursuant to this clause 53, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 53.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 53.7 This clause continues to apply after expiration or termination of this Deed.

## **54 Explanatory Note**

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



**Schedule 1**

(Clause 9)

**Development Contributions**

Column 1	Column 2	Column 3	Column 4	Column 5
Contribution Item	Public Purpose	Manner & Extent	Timing	Contribution Value

**A. Monetary Contributions**

1. Resource Recovery Centre	Resource recovery centre	\$237.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$237.00 per Final Lot
2. Administration	Administration costs of Council's s94 Contributions Plan, embellishment of David Wood Playing Fields	\$453.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$453.00 per Final Lot

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**Retford Park Planning Agreement  
Wingecarribee Shire Council  
James Oswald Fairfax**



3. Central Library	Central library, embellishment of David Wood Playing Fields	\$400.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$400.00 per Final Lot
4. Monetary contributions for David Wood Playing Fields	Embellishment of David Wood Playing Fields, playground improvement and extension of car park	\$200,000.00	Prior to the issuing of a Subdivision Certificate that creates the first Final Lot in Stage 1 of the Western Land Development	\$200,000.00
5. Water development servicing charge	Implementing Council's Water Development Servicing Plan	\$6,380.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$6,380.00 per Final Lot
6. Sewer development servicing charge	Implementing Council's Sewer Development Servicing Plan	\$8,120.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$8,120.00 per Final Lot
7. Stormwater development servicing charge	Implementing Council's Stormwater Development Servicing Plan	\$3,357.00 per Final Lot	Prior to the issuing of a Subdivision Certificate for a Final Lot	\$3,357.00 per Final Lot
8. Eastern Land Riparian Corridor Contribution	Management of the Eastern Land Riparian Corridor	\$40,000.00	On or before the date that is 2 years following the dedication to the Council of the Eastern Land Riparian Corridor as required by this Deed	\$40,000.00

**Retford Park Planning Agreement  
Wingecarribee Shire Council  
James Oswald Fairfax**



9. Mansfield Road Upgrade Contribution	Upgrade of Mansfield Road	<p>\$60,000.00 for the purposes of upgrading Mansfield Road pursuant to the Parties' acknowledgement that:</p> <ul style="list-style-type: none"> <li>a. at the date of this Deed, Mansfield Road is in a condition that may require work to be carried out on it to ensure that it is in accordance with the Council's adopted standards and policies, and</li> <li>b. the Council releases the Developer from any obligation to carry out work on Mansfield Road except works to repair any damage caused by the Developer's negligence or default.</li> </ul>	On the granting of the first Acceptable Development Consent for the Western Land Development or the Eastern Land Development	\$60,000.00
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**B. Dedication of Land**

10. Central Park	Open space	Dedication to the Council of approximately 4,906m <sup>2</sup> of land identified as 'Park' on the Western Land Concept Plan free of cost to the Council	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development	Total for Contribution Items 10 and 11 \$770,000.00
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**Retford Park Planning Agreement  
Wingecarribee Shire Council  
James Oswald Fairfax**



		Dedication to the Council of:	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development	Total for Contribution Items 10 and 11 \$770,000.00
11. Reserve and drainage land fronting Old South Road	Open space and stormwater management	<ul style="list-style-type: none"> <li>a strip of the Western Land approximately 15m wide along the frontage to Old South Road,</li> <li>land for a park on the south western corner of the Western Land fronting Old South Road,</li> <li>land for drainage purposes fronting Old South Road,</li> </ul> <p>being approximately 13,504m<sup>2</sup> of land identified as 'Drainage' on the Western Land Concept Plan free of cost to the Council (<b>Drainage Land</b>). The Developer must carry out replanting and embellishment works to the Drainage Land generally in accordance with the Old South Road Open Space Plan prior to dedication of the Drainage Land to Council.</p>		
12. Riparian corridor on the Eastern Land	Open space and stormwater management	Dedication to the Council of approximately 37,110m <sup>2</sup> of land identified as 'Drainage Reserve' on the Eastern Land Concept Plan free of cost to the Council	Prior to the issuing of the Subdivision Certificate that creates the last Final Lot in Stage 2 of the Eastern Land Development (Stage 2 being proposed lots 201 to 212 generally as shown on the Eastern Land Concept Plan)	\$500,000.00



**C. Carrying out of Work**

<p>13. Offsite shared pathway (Western Land) Pathways and cycleways</p>	<p>Construction and completion of 2.5m wide shared pathway and cycleway for a length of approximately 395 metres in the locations marked with a red line on Pathway Plan to applicable industry standards.</p>	<p>Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 2 of the Western Land Development</p>	<p>\$98,750.00</p>
<p>14. Onsite shared pathway (Western Land) Pathways and cycleways</p>	<p>Construction and completion of an additional 1.2m wide shared pathway and cycleway to Council's standard footpath width for a length of approximately 290 metres in the locations marked with a purple line on the Pathway Plan to applicable industry standards.</p>	<p>Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development</p>	<p>\$29,000.00</p>
<p>15. Old South Road – drainage Works Stormwater drainage</p>	<p>Construction and completion of a new culvert under Old South Road including replacing the existing pipe crossing under Old South Road with a new 3600 x 600 box culvert as shown on Sheet 1 of Schedule 7, being drawing number 1326 – CD01 Issue B dated 11/8/14 Sheet 1 of 3 prepared by Civil Development Solutions, to applicable Council's engineering and Australian standards.</p>	<p>Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development</p>	<p>\$150,000.00</p>

**Retford Park Planning Agreement  
Wingecarribee Shire Council  
James Oswald Fairfax**



16. Old South Road – realignment of bend over new culvert	Roads and traffic	Construction and completion of road realignment of Old South Road in the location shown on Sheet 2 of Schedule 7, being drawing number 1326 – CD01 Issue B dated 11/8/14 Sheet 2 of 3 prepared by Civil Development Solutions, to Council's engineering and Australian standards.	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development	\$180,000.00
17. Old South Road – shoulder widening	Roads and traffic	Construction and completion of road widening of Old South Road including providing a 2m pavement widening along the western side of Old South Road as shown on Sheet 3 of Schedule 7, being Drawing Number 1326-CD01 Issue B dated 11/8/14 Sheet 3 of 3 prepared by Civil Development Solutions to Council's engineering and Australian standards.	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development	\$140,000.00
18. Central Park – embellishment works	Open space	Construction and completion of embellishment works on the land identified as 'Park' on the Western Land Concept Plan generally in accordance with the Central Park Concept Plan that includes but is not limited to landscaping, park furniture and a heritage interpretation rotunda, to applicable industry standards.	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 4 of the Western Land Development	\$640,700.00

**Retford Park Planning Agreement  
 Wingecarribee Shire Council  
 James Oswald Fairfax**



19. Boardman Road landscaping	Embellishment works	Landscaping of the entrance road from Boardman Road and public land adjacent to the entrance road in accordance with the Western Land Concept Plan to applicable industry standards.	Prior to the issuing of the Subdivision Certificate that creates the first Final Lot in Stage 1 of the Western Land Development	\$224,000.00
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**Schedule 2**

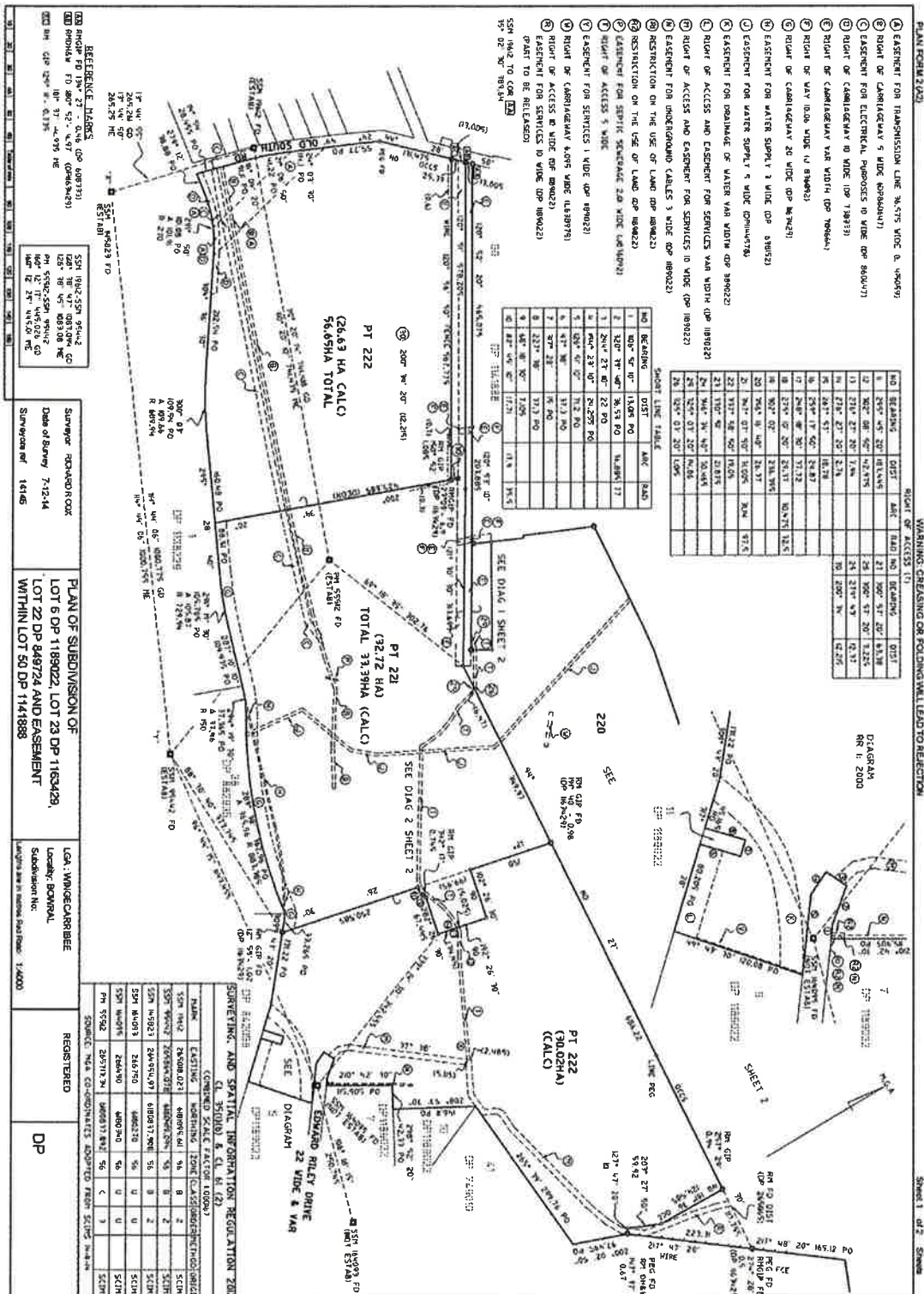
(Clause 1.1)

**Land Plan**

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Plan on next two (2) pages

**Retford Park Planning Agreement**  
**Wingecarribee Shire Council**  
**James Oswald Fairfax**









**Schedule 3**

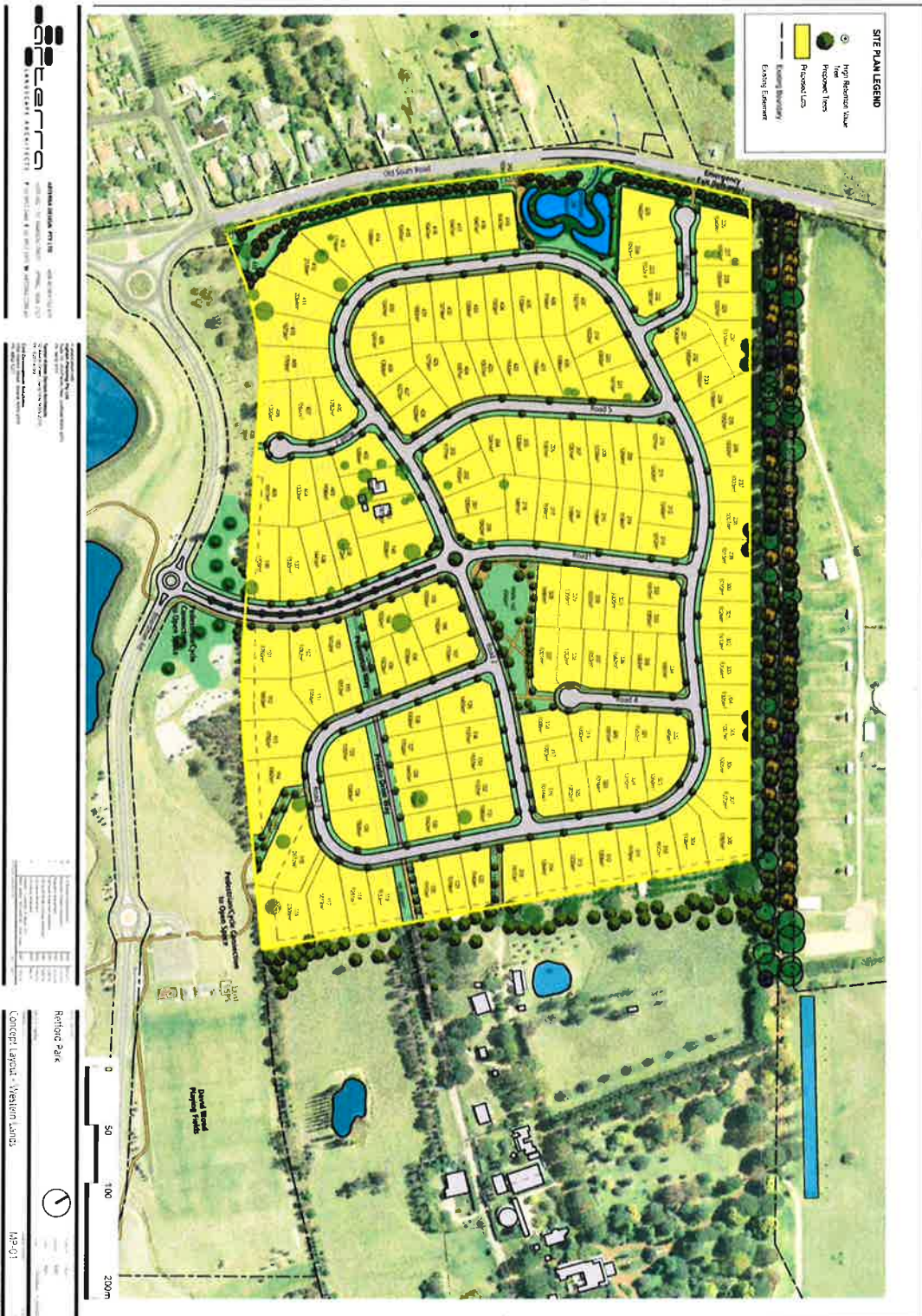
(Clause 1.1)

**Western Land Concept Plan**

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**Retford Park Planning Agreement**  
**Wingecarribee Shire Council**  
**James Oswald Fairfax**



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**Schedule 4**

(Clause 1.1)

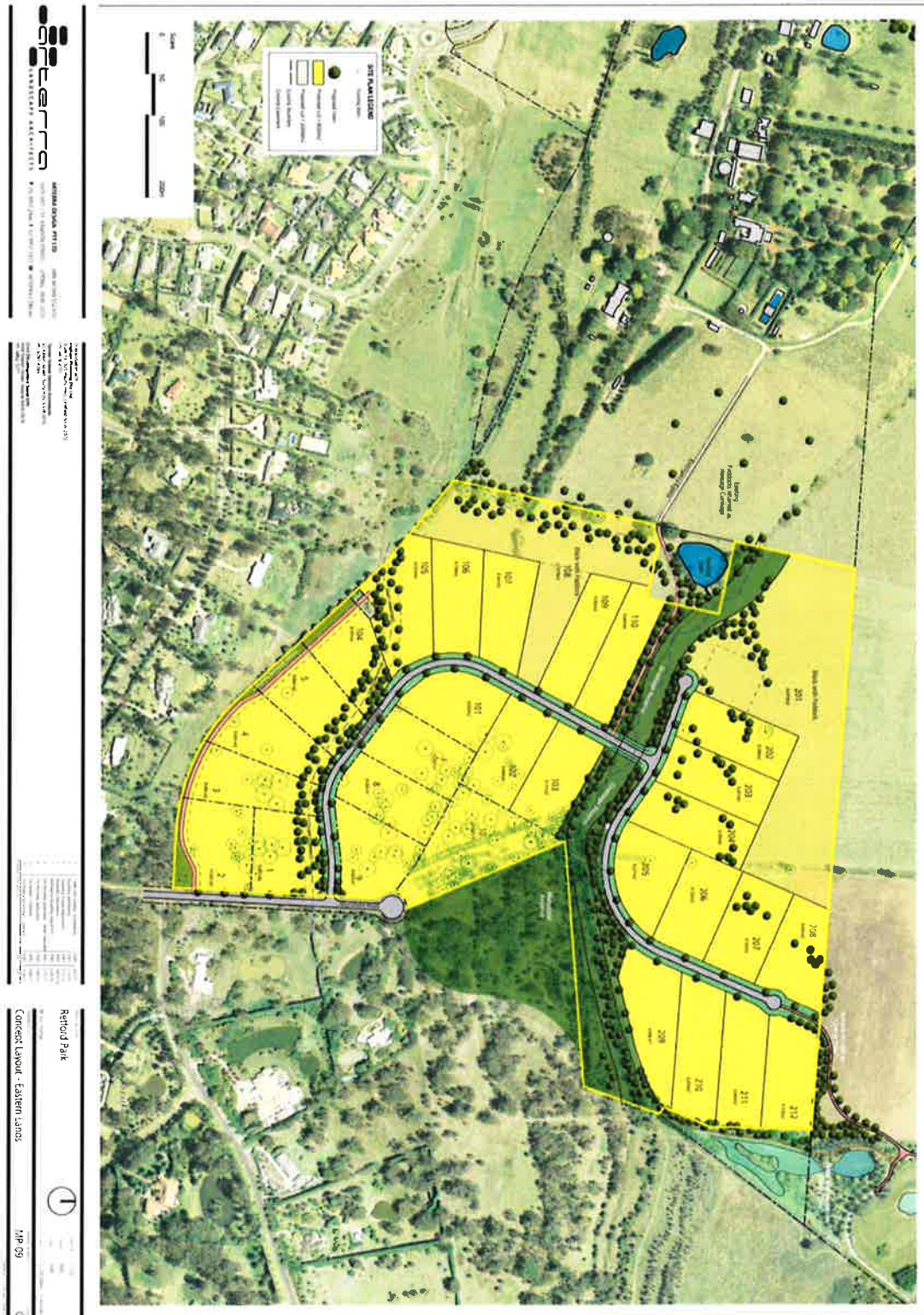
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**Eastern Land Concept Plan**

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**Schedule 5**

(Clause 1.1)

**Pathway Plan**

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**Schedule 6**

(Clause 1.1)

**Central Park Concept Plan**

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**Schedule 7**

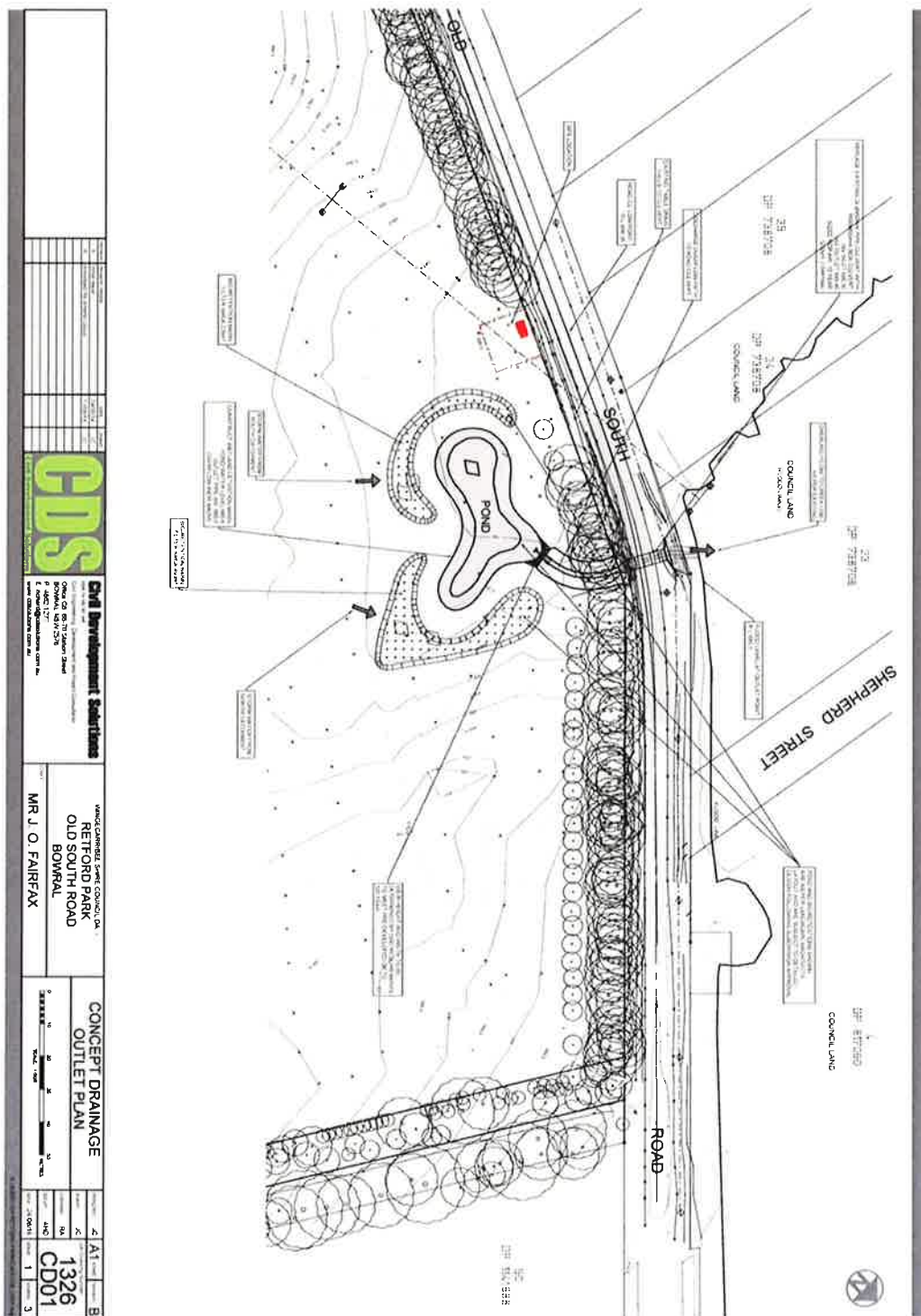
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**Plans for Old South Road Works**

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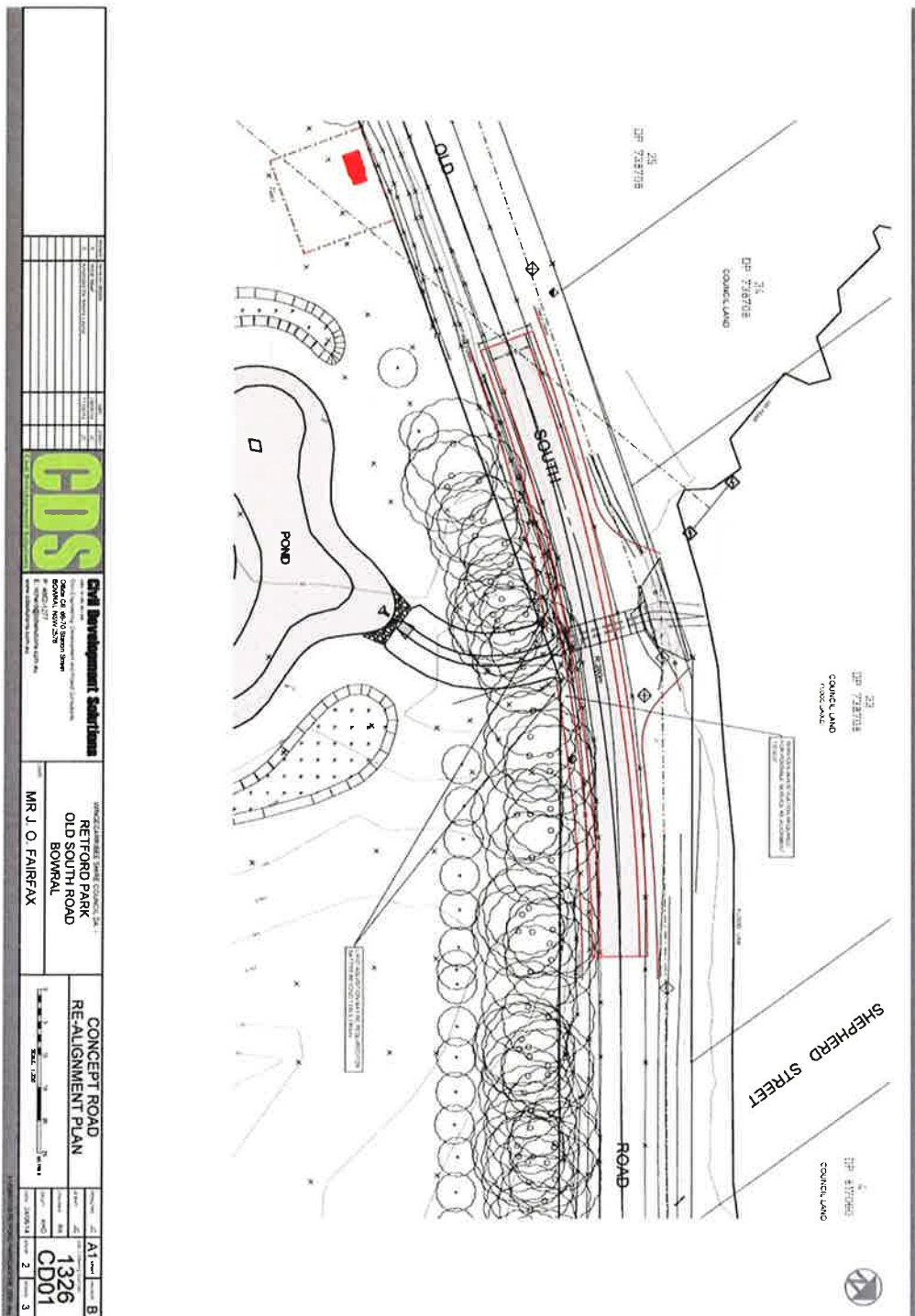
Sheet 1



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Sheet 2

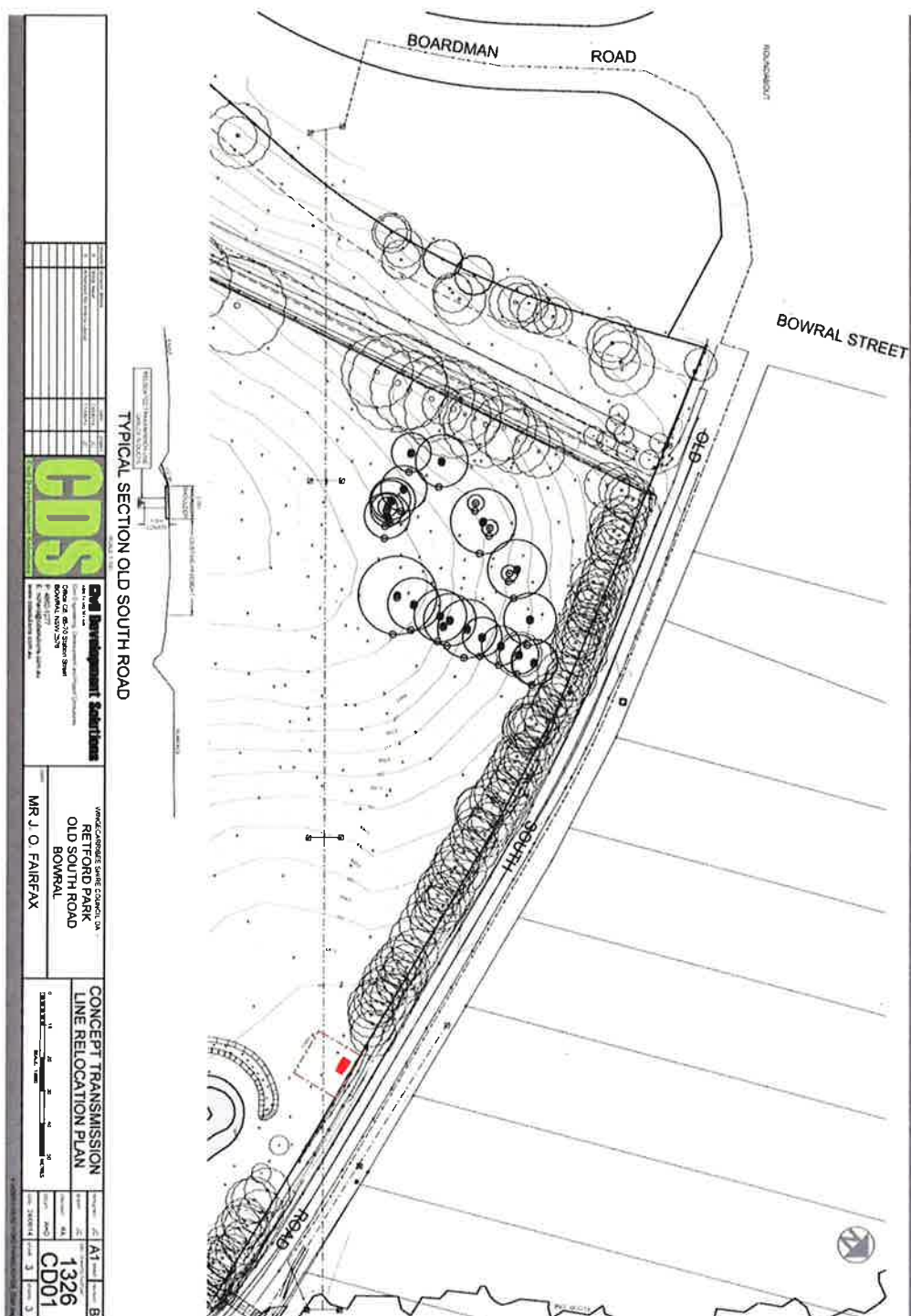


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		<b>Civil Development Solutions</b> 10/11 Park St, Bowral NSW 6024 2771 www.gds.com.au		PROJECT: RETFORD PARK CLIENT: WINGECARRIBEE SHIRE COUNCIL, NSW DRAWING: CONCEPT ROAD REALIGNMENT PLAN DRAWING NO: CD01 DRAWN BY: MR J O FAIRFAX		SCALE: 1:200 DATE: 13/06/14		SHEET NO: 2 OF 3	
1	2	3	4	5	6	7	8	9	10



Sheet 3



*JOF*

		<b>CDL Development Solutions</b> 100/102 Old South Road BOWRAL NSW 2576 Phone: (02) 6323 3333 Fax: (02) 6323 3334 Email: info@cdl.com.au		WINGECARRIBEE SHIRE COUNCIL RETFORD PARK OLD SOUTH ROAD BOWRAL		MR J. O. FAIRFAX	
CONCEPT TRANSMISSION LINE RELOCATION PLAN		Scale: 1:1000 Date: 11/01/2014		Project No: AT-1 Drawing No: B Revision: 1326 Issue: CD01		Date: 11/01/2014	

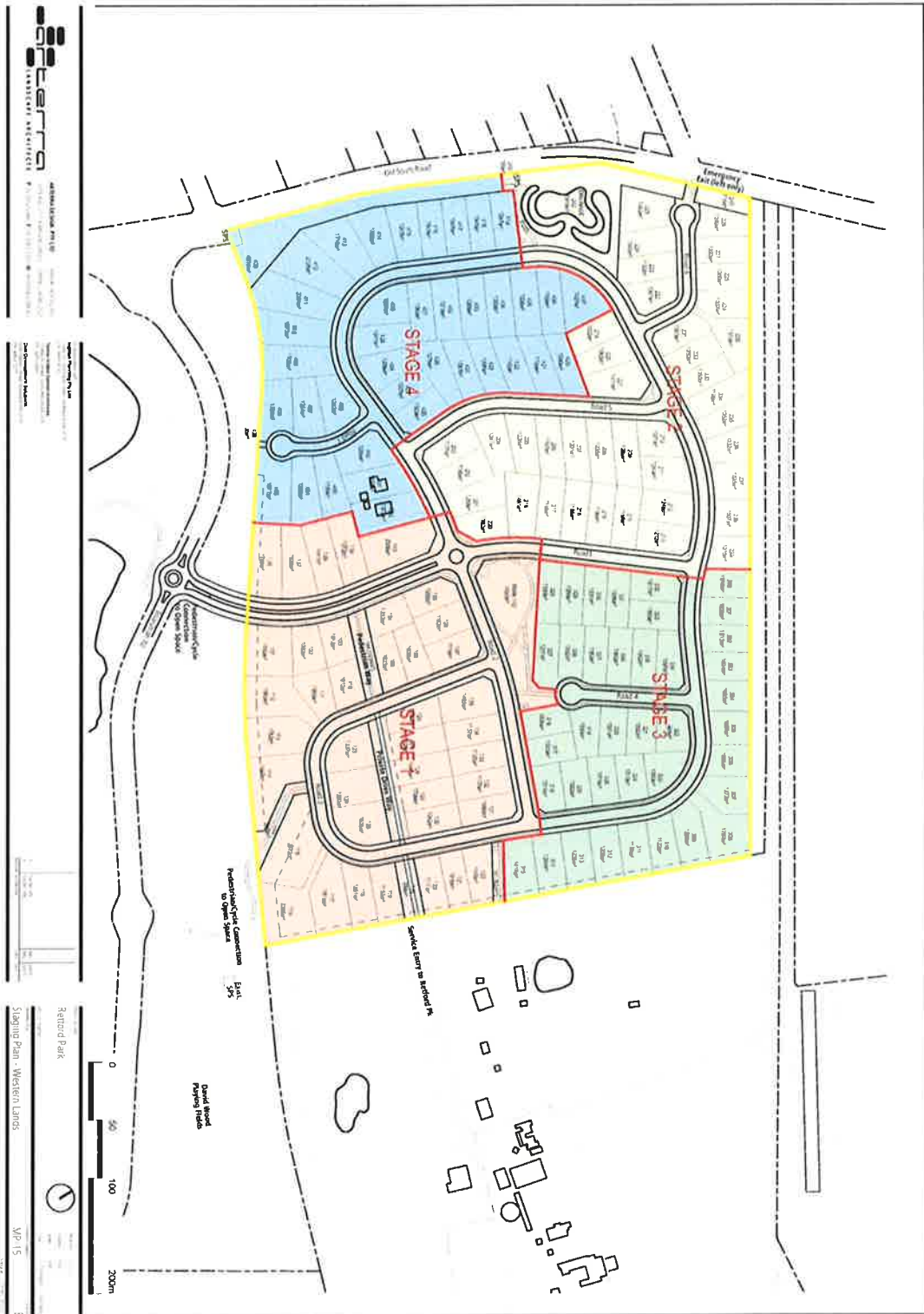


**Schedule 8**

(Clause 1.1)

**Western Land Staging Plan**

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*201*



**Schedule 9**

(Clause 1.1)

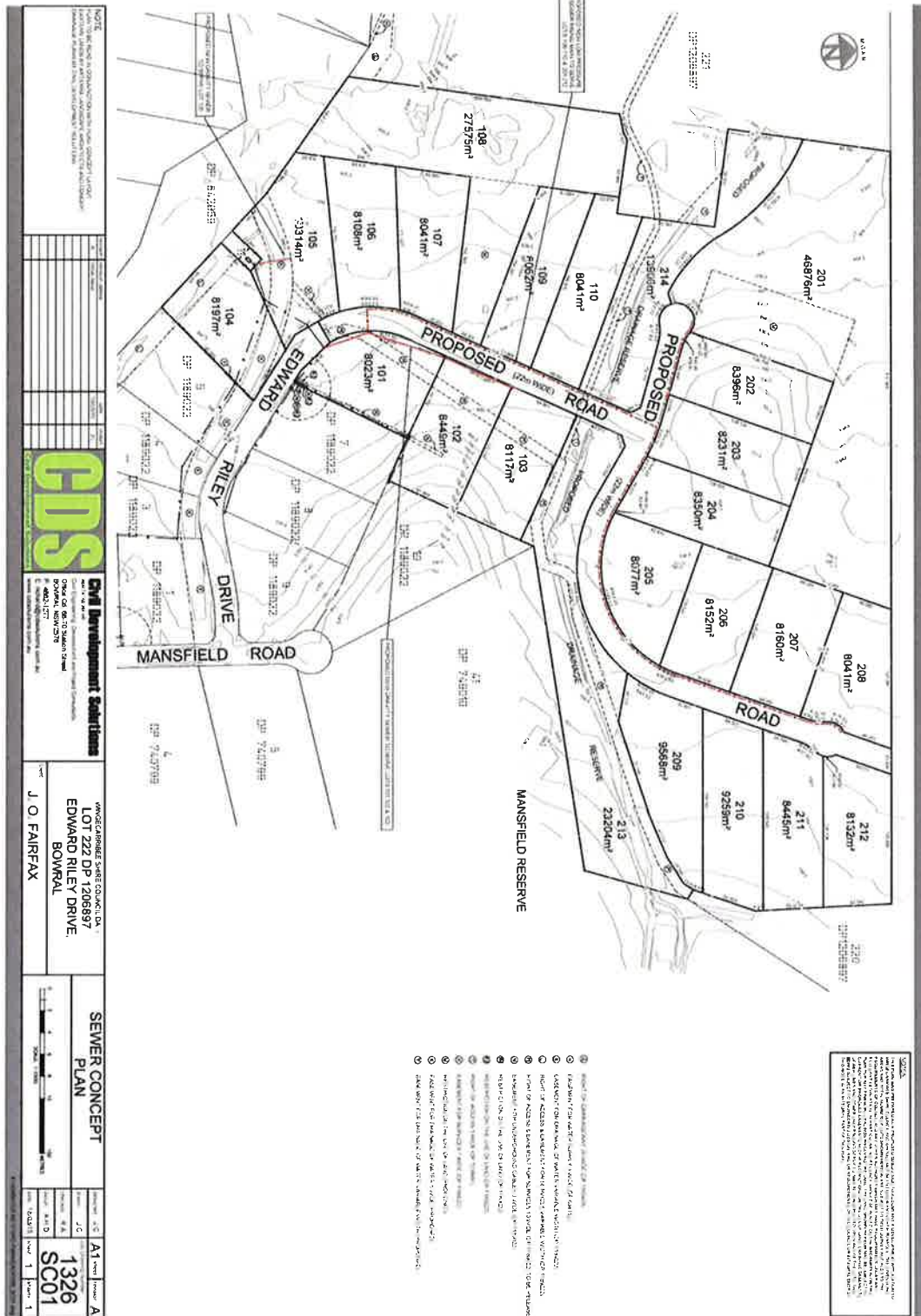
**Low Pressure Sewer System**

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**Retford Park Planning Agreement**  
**Wingecarribee Shire Council**  
**James Oswald Fairfax**





**Schedule 10**

(Clause 1.1)

**Old South Road Open Space Plan**

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**Execution**

**Executed as a Deed**

**Dated:** 18/08/2015

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**Executed on behalf of the Council**

  
\_\_\_\_\_

**General Manager**

  
\_\_\_\_\_

**Witness**

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**Executed by the Developer**

x   
\_\_\_\_\_

**James Oswald Fairfax**

x   
\_\_\_\_\_

**Witness x km**



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## **Appendix**

(Clause 54)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

## **Explanatory Note**

### **Draft Planning Agreement**

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

### **Parties**

**Wingecarribee Shire Council** 49 546 344 354 of Civic Centre, Elizabeth Street, Moss Vale, NSW 2577 (Council)

**James Oswald Fairfax** of Suite1, Level 26, 25 Bligh Street, SYDNEY NSW 2000 (Developer)

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

The land marked as:

- Pt 222' with an approximate area of 30.02ha on the Land Plan being the land comprised in the eastern part of Lot 222 in DP1206897 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land (Eastern Land), and
- 'Pt 222' with an approximately area of 26.6ha on the Land Plan being land comprised in the western part of Lot 222 in DP1206897 as at the date of this Deed and any part of that land comprised in a lot created by Subdivision of that land (Western Land).

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## **Description of Proposed Development**

Subdivision of the Eastern Land into approximately 22 Final Lots and Subdivision of the Western Land into approximately 157 Final Lots.

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

### **Objectives of Draft Planning Agreement**

The objective of the Draft Planning Agreement is to secure funding, land and the carrying out of work including the establishment, dedication and management of a riparian corridor in conjunction with the development on the Land.

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

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

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

The Draft Planning Agreement:

- relates to the carrying out of the Development on the Eastern Land and the Western Land by the Developer,
- imposes obligations on the Developer to make Development Contributions only if Development Consent is granted to the carrying out of the Development or any Stage,
- excludes the application of s94, excludes the application of 94A, and does not exclude the application of s94EF of the Act,
- makes provision for the Developer to carry out establishment and management of the Eastern Land Riparian Corridor, pathways and cycleways, embellishment of parks, roads and other works,
- makes provision for the dedication of the certain land in conjunction with the carrying out of Development,
- makes provision for monetary contributions towards public purposes,
- allows some of the monetary contributions required to be paid to be offset by the agreed values of works to be provided under the agreement,
- requires the Council to apply Development Contributions made under the agreement towards the specified purpose for which they were made,
- is to be registered on the title to the Land,



- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purposes Served by the Draft Planning Agreement**

The Draft Planning Agreement:

- provides and co-ordinates community services and facilities in connection with the Development,
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

### **How the Draft Planning Agreement Promotes the Public Interest**

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii),(iv),(vi),(vii) and 5(c) of the Act.

### **For Planning Authorities:**

#### ***Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities***

N/A

#### ***Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted***

N/A

#### ***Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter***

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing a means to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development, and
- providing a means for the private funding of management of a riparian corridor for the benefit of the Development and the wider community, and



- 
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

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

The Draft Planning Agreement does not conform with the Council’s Capital Works Program.

***All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued***

Yes. This Draft Planning Agreement does contain requirements that must be complied with before subdivision certificates are issued.