

133 Marys Mount Road Teneriffe Planning Deed

Goulburn Mulwaree Council

Teneriffe Landowner Pty Limited



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Reference: ME:20180995

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133 Marys Mount Road Teneriffe Planning Deed

Date: 2018

Parties:

Goulburn Mulwaree Council ABN 84 049 849 319 of 184-194 Bourke Street, Goulburn NSW 2580 ("Council")

Teneriffe Landowner Pty Limited ACN 652 052 502 of Unit 3, 57 Dacre Street, Mitchell ACT 2911 ("Developer")

Background:

- A. The Developer owns the Land.
- B. The Developer has lodged the Development Application with Council for the Development.
- C. The Developer is prepared to make the Development Contributions in connection with carrying out the Development in accordance with this Deed.

Operative part:

The terms marked in this Deed in *italics* are explained at the end of this Deed, along with some rules of interpretation.

1. Details

Council

Name: Goulburn Mulwaree Council
ABN: 84 049 849 319
Address: 184-194 Bourke Street, Goulburn NSW 2580
Telephone: (02) 4823 4444
Facsimile: (02) 4823 4456
Email: council@goulburn.nsw.gov.au
Representative: Warwick Bennett

Developer

Name: Teneriffe Landowner Pty Ltd
ACN: 625 052 502

Address:	Unit 3, 57 Dacre Street, Mitchell ACT 2911
Telephone:	(02) 6108 4918
Email:	martine@cappello.com.au
Representative:	Martine Cappello
Land:	Is defined in clause 27
Development:	Is defined in clause 27
Development Contributions:	See clause 3 and Schedule 1
Application of sections 7.11, 7.12 and 7.24 of the EPA Act:	See clauses 10.3 and 10.4
Security:	See clause 8.1
Registration:	See clause 9
Restriction on dealings:	See clause 9
Dispute Resolution:	See clause 7

2. General

Status of this Deed

2.1 This Deed is a planning agreement within the meaning of section 7.4 of the Act.

Commencement

2.2 This Deed commences and is effective on and from the date the Parties have:

2.2.1 both executed the same copy of this Deed, or

2.2.2 each executed separate counterparts of this Deed and exchanged the counterparts.

Application of this Deed

2.3 This Deed applies to:

2.3.1 the Land; and

2.3.2 the Development.

3. Development Contributions

Provision of development contributions

- 3.1 The obligation to make Development Contributions only arises in connection with carrying out the Development.
- 3.2 The Developer must make Development Contributions to the Council in accordance with Schedule 1 and this clause 3. For each Stage specified in column 1 of Part C of Schedule 1, the Developer must pay to Council the Monetary Contribution specified in column 2 of Part C of Schedule 1, by the date specified in column 3 of Part C of Schedule 1.
- 3.3 Provided the Developer has obtained the necessary Approvals, nothing prevents the Developer undertaking Site Works for any Stage.
- 3.4 The Monetary Contribution for each Stage is to be calculated according to the following formula:

$$A - B = C$$

Where:

A = the Section 7.11 Contribution for that Stage calculated in accordance with condition 48 of the Development Consent;

B = the lesser amount of:

(a) the direct and reasonable costs incurred by the Developer in carrying out the Site Works for that Stage calculated in accordance with clause 3.10; and

(b) an amount equal to A; and

C = Monetary Contribution payable by the Developer to Council for that Stage.

With the exception that the credit associated with the Site Works for Stage 2A can be applied to the Monetary Contribution payable by the Developer for Stage 2B1.

- 3.5 The Reconciliation Amount must be calculated within 10 Business Days of the final Monetary Contribution having been paid by the Developer to Council in accordance with the following formula:

$$\text{Reconciliation Amount} = C_{\text{actual}} - C_{\text{paid}}$$

Where:

C_{actual} = the Monetary Contribution payable by the Developer to Council for all Stages, calculated as:

$$A_{\text{Total}} - B_{\text{Total}}$$

Where:

A_{Total} = the total Section 7.11 Contribution calculated in accordance with condition 48 of the Development Consent for all Stages;

B_{Total} = the lesser amount of:

- (a) the total of the direct and reasonable costs incurred by the Developer in carrying out the Site Works across all Stages calculated in accordance with clause 3.10; and
- (b) an amount equal to A_{Total} ; and

C_{paid} = the total Monetary Contribution actually paid by the Developer to Council for all Stages.

3.6 If the Reconciliation Amount is:

3.6.1 less than zero, that amount must be paid by the Council to the Developer; and

3.6.2 greater than zero, that amount must be paid by the Developer to Council,

as a lump sum amount within 20 Business Days of its determination under this clause.

Cost of Site Works

3.7 The Developer must at its cost:

3.7.1 engage the Quantity Surveyor; and

3.7.2 provide the Quantity Surveyor with all necessary access, information and documents to enable the Quantity Surveyor to complete each Quantity Surveyor's Assessment.

3.8 For each Stage, the Developer must provide Council with a Quantity Surveyor's Assessment in respect of the Site Work required in that Stage.

3.9 Within 15 Business Days after the Developer provides Council with a Quantity Surveyor's Assessment in respect of Site Work, Council may reject the Quantity Surveyor's Assessment by written notice to the Developer, if Council considers that:

3.9.1 items included within the Quantity Surveyor's Assessment are not directly related to the Site Works; or

3.9.2 there is evidence of fraud or manifest error.

3.10 If Council has not issued a written notice to the Developer under clause 3.9 within 15 Business Days after the Developer provides Council with the Quantity Surveyor's Assessment, the direct and reasonable costs of the Site Work as certified in the Quantity Surveyor's Assessment shall be deemed to be the costs of the Site Work for the purposes of the calculation of the Monetary Contribution in clause 3.4 and 3.5.

3.11 If Council issues a written notice to the Developer under clause 3.9 within 15 Business Days after the Developer provides Council with the Quantity Surveyor's Assessment then the Developer may, either:

3.11.1 provide Council with an amended Quantity Surveyor's Assessment, in which case clauses 3.9, 3.10 and this clause 3.11 will re-apply; or

3.11.2 the Developer may refer the matter to dispute resolution under clause 7.

Monetary contributions

3.12 A Development Contribution comprising a Monetary Contribution is made when the Council receives the full amount:

3.12.1 in cash;

3.12.2 by unendorsed bank cheque; or

3.12.3 by electronic funds transfer of cleared funds into a bank account nominated by the Council.

Dedication of Land

3.13 A Development Contribution comprising the dedication of land or public roads is made when:

3.13.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public reserve or drainage reserve under the *Local Government Act 1993* or a public road under the *Roads Act 1993*; or

3.13.2 the Developer gives the Council:

(a) an instrument in registrable form under the *Real Property Act 1900* signed by the Developer sufficient to transfer title to the land to be dedicated to the Council once that instrument is signed and registered by the Council; and

(b) written consent from any person required to consent to the transfer of land to be dedicated to the Council; and

(c) confirmation that the certificate of title to the land to be dedicated has been produced or will be produced within a reasonable time with the Registrar-General to allow dedication of the land to the Council.

Land Subject to Encumbrances

3.14 The Developer must ensure that land dedicated to the Council under this Deed is free of all Encumbrances (including without limitation any liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.

3.15 If the Developer cannot dedicate land to the Council under this Deed free from all Encumbrances, the Developer may request that Council agree to accept the land subject to those Encumbrances, but the Council may withhold its agreement in its absolute discretion.

4. Site Work

General Obligations regarding Site Work

- 4.1 The Developer must complete each Site Work in a proper and workmanlike manner having regard to the intended purpose of the Work and in accordance with:
- 4.1.1 the location, design, specifications, material and finishes for the Work approved by the Council;
 - 4.1.2 any necessary Approval;
 - 4.1.3 the lawful requirements of any Authority; and
 - 4.1.4 all applicable Laws.

Costs of Site Work

- 4.2 The Developer is responsible for meeting all Costs of and incidental to each Site Work in accordance with this Deed.

Ownership and Care of Site Work

- 4.3 The Developer owns, and is responsible for care of, a Site Work, and bears all risk and liability in connection with the Site Work until the Site Work vests in the Council.
- 4.4 The Site Work vests in the Council on and from the date the land on which the Site Work is located is dedicated to Council in accordance with clause 3.13.

Variation to Site Work

- 4.5 The design or specification of a Site Work may be varied by Deed in writing between the Parties, without requiring an amendment to this Deed.
- 4.6 Council must not unreasonably delay its approval to any written request made by the Developer to vary, at the Developer's Cost, the design or specification of a Site Work.
- 4.7 If the variation results in a decrease in the value of the Site Work the change in value will be adjusted proportionately in the Monetary Contribution payable by the Developer.
- 4.8 Council may reasonably require the Developer, at the Council's Cost, to vary the design or specification of a Site Work, in which case the Developer must comply with that requirement unless the proposed variation:
- 4.8.1 materially affects the Development;
 - 4.8.2 reduces the financial return or profitability of the Development; or
 - 4.8.3 results in increased cost or delay in the Site Work undertaken by the Developer.
- 4.9 The Parties acknowledge that any variation contemplated in this clause may require prior public consultation.

Construction Commencement and Completion

- 4.10 The Developer must notify Council of the construction of a Site Work at least 5 Business Days before that construction commences.
- 4.11 The Developer must notify Council of the date it expects to complete a Site Work.
- 4.12 Council will inspect the Site Work the subject of the notice in clause 4.11 within 7 Business Days of the date specified in the notice of the expected completion date of the work.

Protection of People, Property and Utilities

- 4.13 The Developer must use all reasonable endeavours in performing its obligations under this Deed to ensure that:
 - 4.13.1 all necessary measures are taken to protect people and property,
 - 4.13.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 4.13.3 nuisances and unreasonable noise and disturbances are prevented.
- 4.14 Without limiting clause 4.13, the Developer must not 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 except as authorised in writing by the Council or any relevant Authority.

Access to Land

- 4.15 The Developer must obtain all necessary rights to lawfully enter, occupy, and carry out a Site Work on Other Land.
- 4.16 Subject to the Developer obtaining all necessary Approvals to lawfully enter, occupy and use specified Council owned or controlled land, if the Developer gives the Council reasonable prior notice, Council must allow the Developer, to enter, occupy, and use that specified land at any reasonable time and on reasonable conditions if the occupation or use of the land by the Developer is necessary for a Site Work.
- 4.17 If the Council gives the Developer reasonable prior notice the Developer must provide Council with safe and unhindered access at any reasonable time to any land on which the Developer is carrying out a Site Work.
- 4.18 Prior to accessing the land on which the Developer is carrying out a Site Work, the Council must comply with the Developer's reasonable requirements including:
 - 4.18.1 any site induction procedures;
 - 4.18.2 any requirements of any Authority;
 - 4.18.3 any requirements of any Law;
 - 4.18.4 the requirements of any Principal Contractor; and
 - 4.18.5 giving the Developer the names of those entering the land and their roles.

- 4.19 When accessing the land on which Site Works are being carried out Council must:
- 4.19.1 avoid interfering with or delaying the Developer's activities;
 - 4.19.2 follow all reasonable and lawful directions of the Developer and comply with the Developer's site safety plan.
- 4.20 The Developer reserves the right to exclude any person from the land on which the Site Work is being carried out where the Developer has identified that person to Council for any reason including without limitation where that person poses a safety risk or refuses to comply with the Developer's reasonable requirements.
- 4.21 The Council must not unreasonably delay or hinder the Developer in the performance of its obligations under this Deed. To the extent the Developer is unreasonably delayed or unreasonably hindered by Council in the performance of its obligations under this Deed, the Developer is entitled to an extension of time.
- 4.22 Nothing in this Deed entitles the Developer to refuse access to a Council officer exercising a power or function under any Law.

Audit Inspection and Testing of Site Works

- 4.23 Council may undertake an audit, inspection or test of a Site Work at any reasonable time for any purpose related to this Deed upon giving reasonable prior notice to the Developer. Clauses 4.17 to 4.21 apply to Council in exercising this right.
- 4.24 The Developer must provide Council with any assistance that the Council reasonably requires to enable the Council to undertake any audit, inspection or test of the Site Work.
- 4.25 If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Site Work, the Developer is to:
- 4.25.1 take the action in the manner, and within the time, Council reasonably requires, and
 - 4.25.2 provide evidence to Council that the action has been taken.

5. Work Health and Safety

- 5.1 A word or expression in this clause 5 that is:
- 5.1.1 used or defined in any applicable WHS Laws; and
 - 5.1.2 is not otherwise defined in this clause 5 or elsewhere in this Deed,
- has the meaning given to it under the applicable WHS Law.
- 5.2 The Developer proposes to engage the Principal Contractor who, once engaged, will have management and control of the workplace relating to the Site Work.
- 5.3 If the Developer at any time terminates the engagement of the person engaged to construct the Site Work or to otherwise be the Principal Contractor for the Site Work, the Developer becomes the Principal Contractor until such time as a new

person is appointed to construct the Site Work or to otherwise be the Principal Contractor for the Site Work.

- 5.4 The Developer must ensure that the carrying out of the Site Work and the work conducted by the Principal Contractor under this Deed comply with all applicable WHS Laws.
- 5.5 Without limiting the Developer's obligations under this clause 5, the Principal Contractor must, in carrying out the Site Work:
- 5.5.1 identify all reasonably foreseeable hazards that could give rise to a risk to health and safety in relation to carrying out the Site Work;
 - 5.5.2 ensure that risk assessments are conducted for risks to health and safety to the Developer or its contractors and to any other person in relation to carrying out the Site Work;
 - 5.5.3 ensure that control measures are in place to eliminate, prevent or minimise those risks (as applicable) to the extent reasonably practicable;
 - 5.5.4 consult, cooperate and coordinate activities with all other persons who have a health and safety duty in relation to carrying out the Site Work, so far as is reasonably practicable; and
 - 5.5.5 develop, implement and maintain a health and safety system describing how the Principal Contractor will comply with WHS Laws. This system must include appropriate health and safety management and site safety plans, hazard and risk assessments, and risk controls.
- 5.6 The Developer must use its reasonable endeavours to ensure that:
- 5.6.1 the Council can audit, inspect and test a Site Work without breaching WHS Law,
 - 5.6.2 the Council can access and use a Site Work without breaching WHS Law.

6. Practical Completion and Transfer of Ownership

Practical Completion

- 6.1 Prior to commencement of any Site Work, the Developer must provide evidence to the Council that:
- 6.1.1 the Independent Certifier has been appointed for the purpose of certifying Practical Completion of Site Work; and
 - 6.1.2 the Quantity Surveyor has been appointed for the purpose of providing the Quantity Surveyor's Assessment for that Site Work.
- 6.2 The Developer must obtain a Practical Completion Certificate for a Site Work by not later than the Site Work Completion Date.
- 6.3 The Developer must give the Council not less than 10 Business Days prior written notice of its intention to request the Independent Certifier to issue a Practical Completion Certificate for a Site Work.

- 6.4 Following receipt of the notice given under clause 6.3, the Developer must give the Council access to inspect the Site Works. Access must be provided before the Developer Requests that the Independent Certifier issue a Practical Completion Certificate for a Site Work.
- 6.5 If the Council, acting reasonably, identifies a Defect in any Site Work, or if any Site Work is not completed to the standard required by clause 4.1, the Council may, by written notice to the Developer and the Independent Certifier, require that any Defect be cured or the Site Work be completed, repaired or replaced to meet the standard required by clause 4.1.
- 6.6 If the Council issues a written notice under clause 6.5 the Developer must not request a Practical Completion Certificate, and the Independent Certifier must not issue a Practical Completion Certificate, until the Developer has completed, rectified, repaired or replaced the Site Work to the reasonable satisfaction of the Council.
- 6.7 As a precondition to issuing a Practical Completion Certificate, the Independent Certifier may require the Developer to rectify or repair any specified part of the Site Work to bring the Site Work into conformity with the Approval for the Site Work given by the Council under this Deed and the other requirements of this Deed.
- 6.8 The Developer must promptly comply with any such requirement of the Independent Certifier.
- 6.9 The Developer must give Council a copy of a Practical Completion Certificate for the Site Work immediately after it is issued by the Independent Certifier.

Works-As-Executed-Plan

- 6.10 No later than 14 Business Days after Practical Completion of a Site Work, the Developer must submit to the Council a full Works-As-Executed-Plan for the Site Work.
- 6.11 The Developer, being the copyright owner in the Works-As-Executed-Plan, assigns the copyright in the Works-As-Executed Plan to the Council free of Cost to the Council.
- 6.12 If the Developer is not the copyright owner of the Work-As-Executed-Plan, the Developer must promptly procure the assignment of the copyright of the Works-As-Executed-Plan to the Council free of Cost to the Council.

Rectification of Defects

- 6.13 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 6.14 The Developer, at its own cost, must comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 6.15 The Council must do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice given by the Council.
- 6.16 If the Developer, after three months following the receipt of a Rectification Notice, has failed to rectify the Defect, Council may:

- 6.16.1 rectify the Defect itself;
 - 6.16.2 make a claim on the Guarantee in accordance with clause 8.2 for the reasonable costs of the Council in rectifying the Defect; and
 - 6.16.3 to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the Council.
- 6.17 If Council requires access to the land to rectify any Defect, the Developer grants Council and its contractors a licence for such period as is necessary for Council and its contractors to access the land to carry out, or procure the carrying out, of the rectification works.
- 6.18 Until the expiry of the Defects Liability Period for a Stage, the Council may retain from the Guarantee provided in respect of that Stage, an amount equal to 20% of the Guarantee Amount for that Stage as security for the Developer's performance of its obligations under clauses 6.13 and 6.14. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause.

Removal of Equipment

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

7. Dispute Resolution

Agreed procedure

- 7.1 Subject to clause 7.14, if there is a dispute in relation to this Deed, the Parties must comply with this clause 7 to seek to resolve the dispute before initiating legal proceedings. If a Party does not comply with this clause 7 in relation to a dispute, the other Party does not have to comply with this clause in relation to the dispute.

Notice

- 7.2 If a Party believes a dispute has arisen in relation to this Deed that Party must give written notice to the other Party, adequately identifying and providing details of the dispute.

Escalation

- 7.3 On receipt of a dispute notice under clause 7.2, the Parties must use their best efforts to resolve the dispute without delay, including by escalating the dispute according to the following steps:
- 7.3.1 the Parties agree first to negotiate through their respective Representatives in good faith and to use best efforts to resolve the dispute;

- 7.3.2 if the dispute is not resolved within 10 Business Days of referral under clause 7.3.1 (or such longer period as agreed by the Parties in writing) and the Parties agree that the dispute can be determined by an appropriately qualified expert, the dispute is to be referred to:
- (a) if the Parties agree on the professional body that represents persons who appear to have the relevant expertise to determine the dispute, that professional body for expert determination; or
 - (b) If the Parties cannot agree on the professional body under clause 7.3.2(a), the President of the NSW Law Society to appoint an expert for expert determination,
- 7.3.3 if the Parties do not agree that the dispute can be determined by an appropriately qualified expert the Parties must attempt to resolve the dispute through confidential mediation of the dispute to be administered on a without prejudice basis by a mediator appointed by the Australian Commercial Disputes Centre Limited (ACDC), or by such other mediator as is mutually agreed. Such mediation must be conducted in accordance with the ACDC's mediation rules (or such other applicable rules) and take place at a mutually agreed location and clause 8.8 applies.

Authority to resolve

- 7.4 Each party must be represented at all meetings held pursuant to clause 7.3 by a person with authority to resolve the dispute.

Expert determination

- 7.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 7.6 Each Party must bear its own Costs arising from or in connection with the appointment of the expert and the expert determination.
- 7.7 The Parties must share equally the costs of the professional body, the expert, the President of the NSW Law Society and the expert determination.

Mediation

- 7.8 If a dispute between the Parties is to be resolved through mediation, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 7.9 If the dispute is not resolved by mediation within 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 7.10 Each Party must bear its own Costs arising from or in connection with the appointment of a mediator and the mediation.
- 7.11 The Parties are to share equally the Costs of the President, the mediator, and the mediation.

Confidentiality and costs

7.12 Any information or documents disclosed by a Party under this clause 7 must be kept confidential and may only be used to attempt to resolve the dispute.

7.13 Each Party must pay its own Costs of complying with this clause 7.

Exclusions

7.14 This dispute resolution procedure does not prevent a Party from applying to a court for urgent interlocutory relief or any relief to protect Intellectual Property Rights or Confidential Information.

8. Enforcement

Security for Performance

8.1 The Developer must not apply for, or cause, suffer or permit an application to be made for the first Subdivision Certificate:

8.1.1 that creates a Final Lot in Stage 2A unless the plan of subdivision to which the application relates contains the words 'public reserve' or 'drainage reserve' marked on the Stage 2A Reserve and the Stage 2A Monetary Contribution has been paid to the Council;

8.1.2 that creates a Final Lot in Stage 2B1 unless the Stage 2B1 Monetary Contribution has been paid to the Council;

8.1.3 that creates a Final Lot in Stage 2B2 unless the Stage 2B2 Monetary Contribution has been paid to the Council;

8.1.4 that creates a Final Lot in Stage 2C1 unless the plan of subdivision to which the application relates contains the words 'public reserve' or 'drainage reserve' marked on the Stage 2B1 Reserve and the Stage 2C1 Reserve and the Stage 2C1 Monetary Contribution has been paid to the Council; and

8.1.5 that creates a Final Lot in Stage 2D1 unless the Stage 2D1 Monetary Contribution has been paid to the Council;

8.1.6 that creates a Final Lot in Stage 2D2 unless the Stage 2D2 Monetary Contribution has been paid to the Council.

Provision of Guarantee

8.2 The Developer must deliver a Guarantee for the Guarantee Amount in respect of a Stage to the Council within 30 days of the commencement of work for that Stage. For example, the Developer must deliver a Guarantee for the Guarantee Amount for Stage 2A within 30 days of commencement of work for Stage 2A. Nothing in this clause requires the Developer to provide a Guarantee in respect of a Stage prior to commencement of work for a Stage in the Development.

8.3 Council may make an appropriation from the Guarantee (and the proceeds of the Guarantee, including any interest earned in respect of such proceeds) at any time, without prior notice to the Developer, in such amount as the Council, acting reasonably, thinks appropriate for the provision of the Site Works, the Costs of

rectifying any default by the Developer under this Deed, ensuring due and proper performance of the Developer's obligations under this Deed or the payment of the Monetary Contribution if:

- 8.3.1 an Insolvency Event occurs in respect of the Developer;
 - 8.3.2 the Developer fails to deliver, or comply with its obligations under this Deed in relation to, Site Works (including with respect to the rectification of Defects); or
 - 8.3.3 the Developer fails to make the Development Contributions in accordance with this Deed.
- 8.4 The Developer is not entitled to, and must not seek, an injunction against either the Council or the issuer of the Guarantee (if applicable) preventing a demand or payment under the Guarantee (whether the demand extends to the whole of the Guarantee or part thereof) or the use to which the proceeds of such a demand can be put.
- 8.5 Within 10 Business Days of Council making an appropriation from the Guarantee, Council must notify the Developer of that appropriation.
- 8.6 For each Stage, subject to Council receiving a new Guarantee from the Developer in an amount equal to 20% of the Guarantee Amount for that Stage to cover the Defects Liability Period (as contemplated in clause 6.18), Council must return the existing Guarantee to the Developer within 5 Business Days of the last to occur of the following in the Stage for which the Guarantee was provided:
- 8.6.1 Practical Completion of the Site Works;
 - 8.6.2 the Development Contributions being made to Council; and
 - 8.6.3 the Works-As-Executed-Plan being provided to Council,
- after first deducting any amounts owing to Council by the Developer under this Deed.

Breach of obligations

- 8.7 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:
- 8.7.1 specifying the nature and extent of the breach,
 - 8.7.2 requiring the Developer to:
 - (a) rectify the breach if it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not capable of rectification,
 - 8.7.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- 8.8 Without limiting or affecting any other rights that Council may have under this Deed or at law, if the Developer fails to comply with a notice given under clause 8.7, Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer for that purpose.
- 8.9 The Council may recover any costs incurred by the Council in remedying a breach in accordance with clause 8.8 as a debt due in a court of competent jurisdiction.

Enforcement in a court of competent jurisdiction

- 8.10 The Parties may enforce this Deed in any court of competent jurisdiction.
- 8.11 For the avoidance of doubt nothing else in this Deed prevents:
- 8.11.1 a Party from bringing proceedings in the Land and Environment Court (or other Court) to enforce any aspect of this Deed or any matter to which this Deed relates; or
 - 8.11.2 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.

9. Registration and Restriction on Dealings

Registration of this Deed

- 9.1 The Parties agree to register this Deed for the purposes of section 7.6(1) of the Act.
- 9.2 Not later than 14 Business Days after the commencement of this Deed, the Developer must deliver to the Council in registrable form:
- 9.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 9.2.2 the written irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration.
- 9.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 9.4 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:
- 9.4.1 in so far as the part of the Land concerned is a Final Lot, upon the application for a Subdivision Certificate that creates the Final Lot,
 - 9.4.2 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.

Restriction on dealings

- 9.5 The Developer must not:

- 9.5.1 sell or transfer the Land, other than a Final Lot, or
- 9.5.2 assign the Developer's rights or obligations under this Deed, or novate this Deed;

to any person unless the Developer has, at no cost to 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 of accession in favour of Council.

- 9.6 Subject to clause 9.7, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 9.2.
- 9.7 Clause 9.5 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.

10. Warranties

General

- 10.1 The Parties warrant to each other that they:
 - 10.1.1 have full capacity to enter into this Deed; and
 - 10.1.2 are able to fully comply with their obligations under this Deed.

Trustee Warranties

- 10.2 If a Party enters into this Deed as trustee of any trust, then it warrants to the others that:
 - 10.2.1 the trust is created validly and is in existence;
 - 10.2.2 it is the sole trustee of the trust and has been appointed validly;
 - 10.2.3 it has full and free power to enter into this Deed and to perform all the obligations imposed by this Deed;
 - 10.2.4 it is entitled to be indemnified from the assets of the trust for obligations incurred as trustee of the trust and incurred under this Deed; and
 - 10.2.5 it has obtained any consent or approval required for it to enter into this Deed.

Further Deeds

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

Application of sections 7.11, 7.12 and 7.24 of the Act to the Development

- 10.3 This Deed excludes the application of section 7.12 of the Act to the Development.
- 10.4 This Deed does not exclude the application of sections 7.11 and 7.24 of the Act to the Development.

11. Indemnities and Insurance

Risk

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

Release

11.2 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 negligent act or omission, wilful misconduct, fraud or default.

Indemnity

11.3 Without limiting or affecting any other right of Council or obligation of the Developer under this Deed, the Developer indemnifies the Council from and against all Claims that may be sustained, suffered, recovered or made against the Council arising in connection with the performance of the Developer's obligations under this Deed except that the obligation of the Developer to indemnify Council under this clause shall be reduced to the extent that the Claim arises because of the Council's negligent act or omission, wilful misconduct, fraud or default.

Developer's Insurances

11.4 Until a Site Work vests in the Council, the Developer is to take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the Site Work:

11.4.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Site Work, to cover the Developer's liability in respect of damage to, or destruction of, the Work;

11.4.2 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;

11.4.3 workers compensation insurance as required by law; and

11.4.4 any other insurance required by law.

11.5 If the Developer fails to comply with its obligations relating to insurances under this Deed, 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 to the Council as it deems appropriate.

11.6 The Developer is not to commence construction of a Site Work unless it has first provided to the Council satisfactory written evidence of all of the insurances required under this Deed.

12. Confidential information

Confidentiality

- 12.1 Each party (recipient):
- 12.1.1 must keep confidential any confidential information of another party (discloser) disclosed to the recipient by the discloser, or of which the recipient becomes aware, at any time up to completion, except information which is public knowledge otherwise than as a result of a breach of confidentiality by the recipient or any of its permitted disclosees; and
 - 12.1.2 may disclose confidential information in respect of which the recipient has an obligation of confidentiality under clause 12.1.1 only to those recipient's officers or employees or financial, legal or other adviser who:
 - (a) have a need to know for the purposes of this Deed or the transactions contemplated by it; and
 - (b) undertake to the recipient (and where required by the disclosing party, to the disclosing party also) a corresponding obligation of confidentiality to that undertaken by the recipient under this clause 12.

Announcements

- 12.2 A party must not make or authorise a press release or public announcement relating to the negotiations of the Parties or the subject matter or provisions of this Deed unless:
- 12.2.1 it is required to be made by law and before it is made that party has notified the other Parties and given them a reasonable opportunity to comment on the contents of and requirement for it; or
 - 12.2.2 it has the prior written approval of the Parties.

13. Intellectual Property

Ownership of Intellectual Property

- 13.1 Nothing in this Deed affects the ownership of Background Intellectual Property or Third Party Intellectual Property unless expressly provided to the contrary in this Deed.
- 13.2 The Developer grants to the Council a royalty-free, irrevocable, perpetual, non-exclusive license to use all Intellectual Property it owns in the designs and specifications of a Site Work as may be necessary for the purpose of:
- 13.2.1 using, maintaining and disposing of a Site Work;
 - 13.2.2 modifying and developing the Site Work;
 - 13.2.3 completing the Site Work on termination of this Deed;
 - 13.2.4 rectifying Defects relating to the Site Work.

- 13.3 The Developer must use reasonable endeavours to ensure that the Council is granted a licence as may be necessary to use copyright in the designs and specifications of a Site Work on the same terms as that given to the Developer from each subcontractor engaged in relation to the Site Work.
- 13.4 The Developer must otherwise use its reasonable endeavours to ensure that the Council is granted a licence as may be necessary to use all Third Party Intellectual Property in the designs and specifications of a Site Work on the best commercial terms reasonably available.

Force Majeure

- 13.5 If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:
- 13.5.1 full details of the event;
 - 13.5.2 an estimate of its duration;
 - 13.5.3 the obligations under this Deed it affects and how much it will affect those obligations; and
 - 13.5.4 the steps either taken or planned to manage its effects.
- 13.6 A Party's obligations under this Deed are suspended if that Party is prevented from complying with those obligations as a result of the Force Majeure Event for as long as the Party is prevented from complying with those obligations because of the Force Majeure Event.
- 13.7 A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

14. Annual review of the Deed

- 14.1 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.
- 14.2 For the purposes of clause 14.1, 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.
- 14.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 14.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 14.4 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 Deed of the same or similar effect to this Deed is entered into.
- 14.5 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 14.1 is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

15. Default and termination

Default

- 15.1 A party will be in default if:
- 15.1.1 they enter into a scheme or make any arrangement for the benefit of its creditors;
 - 15.1.2 an order is made to wind up the party;
 - 15.1.3 a liquidator, administrator, official manager or similar person is appointed in respect of the party;
 - 15.1.4 a mortgagee enters into possession of all or a substantial part of the assets of the party;
 - 15.1.5 they are deemed under any relevant law to be unable to pay their debts as and when they fall due;
 - 15.1.6 they have a trustee in bankruptcy appointed;
 - 15.1.7 a receiver, receiver and manager or agent of a mortgagee is appointed to all or a substantial part of the assets of the party; or
 - 15.1.8 they breach a term of this Deed.

Termination

- 15.2 A party may terminate this Deed immediately by serving notice on the other Party if:
- 15.2.1 another party breaches this Deed, (such breach being capable of rectification) and they have failed to rectify that breach within 10 Business Days of receiving notice to do so from any other party who is not in default; or
 - 15.2.2 another party breaches this Deed and such breach cannot be rectified.

After termination

- 15.3 If the Deed is terminated by either party the Developer must pay the outstanding Monetary Contributions as required by clause 48 of the Development Consent. The Developer's obligation to pay the outstanding Monetary Contributions will be adjusted by the direct and reasonable costs properly incurred by the Developer in carrying out any Site Works that have achieved Practical Completion prior to termination, which costs must be determined by the Quantity Surveyor.
- 15.4 On the termination of this Deed for any reason, each party must stop, and must cause its permitted discloses to stop, using Confidential Information of another party and, at the other party's option:
- 15.4.1 return to the other party;
 - 15.4.2 destroy and certify in writing to the other party the destruction of: or

15.4.3 destroy and permit a representative of the other party to witness the destruction of,

all Confidential Information in its possession or control.

Accrued rights

15.5 Termination of this Deed does not affect any accrued rights or remedies of a party.

Remedy

15.6 Each party acknowledges that:

15.6.1 the other Parties may suffer financial and other loss and damage if it breaches this Deed;

15.6.2 monetary damages may be an insufficient remedy; and

15.6.3 a party may seek injunctive or interlocutory relief to prevent a breach of this Deed and compel specific performance of any other party's obligations, in addition to any other remedy available.

16. Costs

16.1 The Developer will bear its own costs in relation to the preparation, negotiation, execution and registration of this Deed and any document related to this Deed.

16.2 The Developer will bear the costs incurred by Council in relation to the preparation, negotiation, execution and registration of this Deed and any document related to this Deed up to and not exceeding \$10,000 excluding GST.

17. GST

Interpretation

17.1 In this clause 17, a word or expression defined in the GST Law has the meaning given to it in the GST Law.

Prices GST exclusive

17.2 Unless stated otherwise all amounts in each Deed are exclusive of GST.

GST gross up

17.3 If a party (**Supplier**) makes a supply under or in relation to this Deed in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

Reimbursements

17.4 If a party must reimburse or indemnify another party for a Loss, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the Loss and then increased in accordance with clause 17.3.

Exclusion of GST from calculations

- 17.5 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

Tax Invoice

- 17.6 A Party need not make a payment for a taxable supply made under or in relation to this Deed until it receives a Tax Invoice for the supply to which the payment relates.

18. Explanatory Note

- 18.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 18.2 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.

19. Survival

- 19.1 Clauses 2, 5, 7, 10, 11, 12, 13, 15, 20, 21, 22, 23, 24, 25, 26 and 27 do not merge on completion and survive termination.

20. Notices

- 20.1 A notice must be:
- 20.1.1 in writing;
 - 20.1.2 signed by the party serving it; and
 - 20.1.3 served on the other Parties at their address or contact details set out in this Deed or as later notified.
- 20.2 Notices may be served by:
- 20.2.1 facsimile or any other electronic transmission;
 - 20.2.2 pre-paid mail; or
 - 20.2.3 personal delivery.
- 20.3 A notice will be taken to have been received:
- 20.3.1 if sent by facsimile or other electronic transmission, on the date shown on the transmission receipt;
 - 20.3.2 if sent by mail, on the third business day after posting; or
 - 20.3.3 if delivered personally, on the business day it is delivered.

A notice must be served between 9am and 5pm on a business day or it will be taken to have been received on the following business day.

21. Waiver and amendment

- 21.1 A party's delay or failure to enforce a provision of this Deed is not a waiver of that right.
- 21.2 A waiver must be in writing and served in accordance with clause 20.
- 21.3 An amendment to this Deed must be in writing and signed by the Parties.

22. Severability

- 22.1 If any part of this Deed is or becomes invalid, illegal or unenforceable, that part will be excised from this Deed and will not affect the validity of the remaining clauses.

23. Counterparts

- 23.1 This Deed may be executed in any number of counterparts and all of those counterparts taken together shall constitute one and the same document.

24. Independent advice

- 24.1 Each party has had the opportunity to seek independent legal advice and financial advice before signing this Deed.

25. Applicable law

- 25.1 This Deed is governed by the laws of New South Wales and the Parties agree to submit to the non-exclusive jurisdiction of the courts of that State.

26. Entire Deed

- 26.1 Except as specifically provided, this Deed is the entire Deed between the Parties with respect to its subject matter and supersedes all previous communications, representations, and arrangements between the Parties.

27. Definitions & interpretation

- 27.1 Unless otherwise indicated these terms mean:

Act	the <i>Environmental Planning and Assessment Act 1979</i> (NSW);
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Deed	this Deed and includes any schedules, annexures and appendices to this Deed;
Approval	includes approval, consent, license, permission or the like;
Authority	the Commonwealth or New South Wales government, any public or other authority and includes, a council or county council constituted under the <i>Local Government Act 1993</i> , or a person or body exercising functions under any Act including a commission, panel, court, or tribunal
Background Intellectual Property	Intellectual Property that: <ul style="list-style-type: none"> (a) relates to a Site Work; (b) exists at the date of this Deed or is later created but not as a result of performing this Deed, does not belong to a third party,
Business Day	any day on which banks are open for trading in New South Wales;
Claim	any action, claim, suit, demand, proceedings, damages including any statutory procedure for the recovery of money;
Confidential Information	includes: <ul style="list-style-type: none"> (a) any information relating to any person, which is protected by laws relating to privacy; (b) financial information or internal management information; (c) marketing information including customer and supplier details and marketing plans; (d) trade secrets, know-how, plans, strategic plans or business operations or systems; and (e) information which is capable of protection at law or equity as confidential information;
Cost	a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature;
Council	Goulburn Mulwaree Council ABN 84 049 849 319 of 184-194 Bourke Street, Goulburn, NSW;
Defect	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, or that prevents a Work or any part of a Work from complying with the terms of this Deed;
Defects Liability Period	in respect of the Site Works within a Stage, means the period of 24 months commencing on the date of Practical

		Completion of the Site Work;
Development		development the subject of Development Consent to Development Application, and in accordance with the Staging Plan and Landscape Masterplan as modified from time to time;
Development Application		DA/0183/1718 lodged with Council on 21 November 2017;
Development Consent		MOD/0023/1819 determined on 26 October 2018;
Development Contribution		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 section 7.4(3)(g) of the Act;
Dispute		a dispute or difference between the Parties under or in relation to this Deed;
Drainage Line		the part of the land marked as "2 Drainage Line with Native Tree and Shrub Plantings" on the Landscape Masterplan on drawing no. LMP5-E;
Encumbrance		includes mortgage, charge, lien, restriction against transfer, encumbrance and other third party interest and includes <i>Security Interests</i> ;
Equipment		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		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,
Force Majeure Event		an earthquake, cyclone, fire, riot or serious civil commotion, sabotage, act of a public enemy, act of God (excluding storms), war, revolution, radioactive contamination or flood, the effects of which cannot be prevented by taking those steps a prudent and competent person would take;
Guarantee		means for each Stage, either:
	(A)	an irrevocable unconditional bank guarantee for the

Guarantee Amount which must:

- (a) be denominated in Australian dollars;
 - (b) be an unconditional undertaking;
 - (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Best's);
 - (d) be issued on behalf of the Developer;
 - (e) have no expiry or end date;
 - (f) state the beneficiary as the Council;
 - (g) be irrevocable;
 - (h) state the Guarantee Amount;
 - (i) state the purpose of the security as required in accordance with this document; and
 - (j) be on such other terms as are reasonably required by Council; or
- (B) such other performance bond for the Guarantee Amount that is acceptable to Council in its absolute discretion;

Guarantee Amount	means for each Stage, the total amount of the Section 7.11 Contribution that would be payable at that date for that Stage;
GST	has the same meaning as in the GST Law;
GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST;
Independent	a suitably qualified and experienced independent certifier

Certifier appointed by Deed between the Parties;

Insolvency Event means:

(a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;

(b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property

(c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;

(d) an application being made to a court for an order for its winding up;

(e) an order being made, or the person passing a resolution, for its winding up;

(f) the person:

(i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or

(ii) being unable to pay its debts or otherwise insolvent;

(g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;

(h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or

(i) any analogous event under the Laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party;

Intellectual Property

all copyright (including moral rights), patents, trademarks, designs, confidential information, circuit layouts, data and any other rights from intellectual activity in the industrial, scientific, literary and artistic fields recognised in domestic law anywhere in the world;

Land	land comprised in Lot 2 in DP1186483 and any lot created by the subdivision of that lot;
Law	any applicable statute, regulation, by-law, ordinance or subordinate legislation enforce from time to time in Australia, whether made by a State, Territory, the Commonwealth or a local government and includes the common law and rules of equity, applicable from time to time;
Landscape Handover and Maintenance Protocol	the protocol set out in Schedule 5;
Landscape Masterplan	the plan in Schedule 3;
Landscape Specifications	the specifications in Schedule 4;
Linear Park	the part of the land marked as "5 Linear Park" on the Landscape Masterplan on drawing no. LMP5-E;
Maintenance	maintenance of the Site Work — Hard Landscaping and the Site Work — Soft Landscaping in accordance with the Landscape Handover and Maintenance Protocol;
Maintenance Period in relation to a Site Work	a period of 2 years commencing on the day immediately after the Practical Completion Date of the Site Work;
Monetary Contribution	the amount payable by the Developer to the Council in accordance with Part C of Schedule 1 and clause 3;
Other Land	land owned or occupied by a person other than the Developer or the Council;
Party	a party to this Deed;
Picnic Area	the part of the land marked as "4a Picnic Area" on the Landscape Masterplan on the drawing no. LMP5-E;
Practical Completion,	in relation to a Site Work, occurs when: <ul style="list-style-type: none"> (a) the Independent Certifier has issued a Practical Completion Certificate for the Site Work; and (b) the Developer has provided Council with a Quantity Surveyor's Assessment in respect of that Site Work, and Council has not issued a written notice to the Developer under clause 3.9 within 15 Business Days after receiving that assessment.

Practical Completion Certificate	a certificate issued by an Independent Certifier to the effect that, in the reasonable opinion of the Independent Certifier, the Site Work is substantially complete and any incomplete part or Defect is of a minor nature;
Practical Completion Date	the date when Practical Completion of a Site Work occurs;
Principal Contractor	the person defined in as the Principal Contractor under the WHS Law or an equivalent under Commonwealth work health and safety laws;
Quantity Surveyor	a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs, who has been approved by Council in writing to the Developer for the purposes of this Deed, and engaged by the Developer at the Developer's cost;
Quantity Surveyor's Assessment	for each Site Work, a written report prepared by the Quantity Surveyor that assesses and identifies the direct and reasonable cost of completing that Site Work;
Recreation Space 1	the part of the land marked as "(4b) Recreation Space 1" on the Landscape Masterplan on the drawing no. LMP5-E;
Recreation Space 2	the part of the land marked as "(4c) Recreation Space 2" on the Landscape Masterplan on the drawing no. LMP5-E;
Rectification Notice	a written notice: <ul style="list-style-type: none"> (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	rectify, remedy or correct;
Regulation	the <i>Environmental Planning and Assessment Regulation 2000 (NSW)</i> ;
Representative	has the meaning in the Details;

Section 7.11 Contribution	Means the contributions payable in respect of the Development under the Goulburn Mulwaree Section 94 Development Contribution Plan 2009 as required by condition 48 of the Development Consent. For the avoidance of doubt the contributions payable during the financial year 2018/19 are \$5,430 per Final Lot, however the actual contribution payable will be indexed in accordance with the contributions payable at the date of payment of a Monetary Contribution;
Section 64 Contributions Plan	the document titled "Goulburn Mulwaree Council City-wide Infrastructure Contributions Plan 2014" adopted by the Council on 3 June 2014, or any document that replaces that document;
Security Interest	has the meaning given that term in the <i>Personal Property Securities Act 2009 (Cth)</i> ;
Site Work	a Work specified or described in Part B of Schedule 1, including design, construction, supervision, testing and certification;
Site Work Completion Date	the date specified in Column 4 of Schedule 1 in respect of a Site Work;
Site Work – Hard Landscaping	seating nodes, bench seats, shade structures, fitness equipment, picnic equipment, signage, playground, boardwalk, concrete footpaths as set out in the Landscape Masterplan within the Picnic Area, Recreation Space 1 and Recreation Space 2;
Site Work – Soft Landscaping	trees, plants, grass, garden beds, as set out in the Landscape Masterplan within the Picnic Area, Recreation Space 1, Recreation Space 2 and the Linear Park;
Stage	a stage of the Development as shown on the Staging Plan;
Stage 1	the stage of the Development marked as Stage 1 on the Staging Plan;
Stage 2A	the stage of the Development marked as Stage 2A on the Staging Plan;
Stage 2A Reserve	the area in Stage 2A marked "i" on drawing number LMP9-A in the Landscape Masterplan;
Stage 2B1	the stage of the Development marked as Stage 2B1 on the Staging Plan;
Stage 2B2	the stage of the Development marked as Stage 2B2 on the Staging Plan;
Stage 2B1 Reserve	the area in Stage 2B1 marked "ii" on drawing number LMP9-A in the Landscape Masterplan;

Stage 2C1	the stage of the Development marked as Stage 2C1 on the Staging Plan;
Stage 2C2	The stage of the Development marked as Stage 2C2 on the Staging Plan;
Stage 2C1 Reserve	the area in Stage 2C1 marked "iii" and "iv" on drawing number LMP9-A in the Landscape Masterplan;
Stage 2D1	the stage of the Development marked as Stage 2D1 on the Staging Plan;
Stage 2D2	The stage of the Development marked as Stage 2D2 on the Staging Plan;
Stage 2A Monetary Contribution	the Monetary Contribution payable in respect of Stage 2A of the Development;
Stage 2B1 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2B1 of the Development;
Stage 2B2 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2B2 of the Development;
Stage 2C1 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2C1 of the Development;
Stage 2C2 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2C2 of the Development;
Stage 2D1 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2D1 of the Development;
Stage 2D2 Monetary Contribution	the Monetary Contribution payable in respect of Stage 2D2 of the Development;
Staging Plan	the plan in Schedule 2;
Subdivision Certificate	has the same meaning as in the Act;
Third Party Intellectual Property	Intellectual Property relating to the Site Works that is owned by a person other than the Council or the Developer;
WHS Act	the <i>Work Health and Safety Act 2011 (Cth)</i> and any corresponding WHS Law within the meaning of section 4 of the WHS Act;

WHS Law	the WHS Act and WHS Regulations;
WHS Regulations	the regulations made under the WHS Act;
Work	the physical result of any building, engineering or construction work in, on, over or under land;
Work Cover	Work Cover Authority of New South Wales or such other Authority that may replace it from time to time; and
Works-As-Executed-Plan	the Works-As-Executed-Plan to be provided to the Council pursuant to clause 6.10.

Unless otherwise indicated the following rules of interpretation apply:

- 27.1.2 headings are inserted for convenience only and do not affect interpretation;
- 27.1.3 words importing the singular include the plural and conversely;
- 27.1.4 a word importing a gender includes the other gender;
- 27.1.5 a reference to a person includes an individual, partnership, a body corporate, a joint venture, an association (whether incorporated or not), a government and a government authority or agency;
- 27.1.6 a reference to a party is to a party to this Deed, and includes its successors, transferees and permitted assigns;
- 27.1.7 a reference to a schedule or clause is to a schedule to, or clause of, this Deed;
- 27.1.8 a reference to law or legislation includes any statutory amendments or replacement and any subordinate or delegated legislation;
- 27.1.9 a reference to a right or obligation of any 2 or more persons confers that right or imposes that obligation jointly and severally;
- 27.1.10 'include' and other forms of the word are not words of limitation;
- 27.1.11 a reference to \$ or 'dollars' means Australian dollars and a reference to payment means payment in Australian dollars.

Signing Page

Dated:

Executed as a Deed

Executed by Teneriffe Landowner Pty Limited ACN 625 052 502 under section 127 of the Corporations Act by:



Signature of Director/Sole Director & Secretary (Please delete as applicable)

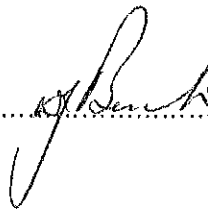
Signature of Director/Secretary (Please delete as applicable)

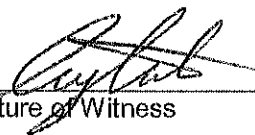
Martine Cappello

Name of Director/Sole Director & Secretary (Please print)

Name of Director/Secretary* (Please print)

Signed for and on behalf of **Goulburn Mulwaree Council ABN 84 049 849 319** under delegated authority by the General Manager
.....*Warwick Bennett*.....but not so as to incur any personal liability in the presence of:

)
)
)
)
.....



Signature of Witness

Amy Croker

Name of witness

184 Bourke St Goulburn NSW 2580

Address of witness

Schedule 1 – Development Contributions

<i>Contribution</i>	<i>Public Purpose</i>	<i>Manner & Extent</i>	<i>Timing</i>
A. Dedication of Land			
Dedication of Stage 2A Reserve	Public open space	Dedication free of costs to Council	Upon registration of the first plan of subdivision that creates a Final Lot in Stage 2A
Dedication of Stage 2B1 Reserve	Public open space	Dedication free of costs to Council	Upon registration of the first plan of subdivision that creates a Final Lot in Stage 2A
Dedication of Stage 2C1 Reserve	Public open space	Dedication free of costs to Council	Upon registration of the first plan of subdivision that creates a Final Lot in Stage 2C1
B. Carrying out of Work			
Establishment of Stage 2A Reserve	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Upon registration of the first plan of subdivision that creates a Final Lot in Stage 2A
Establishment of Picnic Area	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2A
Establishment of Recreation Space 1	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2A
Establishment of Drainage Line	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2C1

Establishment of Recreation Space 2	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2C1
Establishment of Linear Park	Public open space	Generally in accordance with the Landscape Masterplan and Landscape Specifications	Practical Completion prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2C1
C. Monetary Contribution			
Contribution	Amount		Timing
Stage 1 Monetary Contribution	\$0		Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 1
Stage 2A Monetary Contribution	To be calculated in accordance with clause 3.		Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2A
Stage 2B1 Monetary Contribution	To be calculated in accordance with clause 3.		Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2B1
Stage 2B2 Monetary Contribution	To be calculated in accordance with clause 3		Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2B2
Stage 2C1 Monetary Contribution	To be calculated in accordance with clause 3.		Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2C1

<p>Stage 2C2 Monetary Contribution</p>	<p>To be calculated in accordance with clause 3</p>	<p>Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2C2</p>
<p>Stage 2D1 Monetary Contribution</p> <p>Note: the amount of s.7.11 Contributions is reduced by the cost of Site Works (see clause 3)</p>	<p>To be calculated in accordance with clause 3.</p>	<p>Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2D1</p>
<p>Stage 2D2 Monetary Contribution</p> <p>Note: the amount of s.7.11 Contributions is reduced by the cost of Site Works (see clause 3)</p>	<p>To be calculated in accordance with clause 3.</p>	<p>Prior to the issuing of the first Subdivision Certificate that creates a Final Lot in Stage 2D2</p>

Schedule 2 – Staging Plan

ST01 Revision B dated 8th April 2019

Schedule 3 – Landscape Masterplan

LMP-5

Schedule 4 – Landscape Specifications

LMP3, VR1, VR2, VPA DETAIL

Schedule 5 – Landscape Handover and Maintenance Protocol

Landscape Handover and Maintenance Protocol

1. On Practical Completion of a Site Work, Council is to attend an on-site meeting to inspect both Site Work — Hard Landscaping and Site Work — Soft Landscaping.
2. At or prior to the Practical Completion Date for a Site Work the Developer's contractor will provide a maintenance plan for the Site Work — Hard Landscaping and Site Work — Soft Landscaping.
3. Subject to being satisfied, acting reasonably, that the Site Work is consistent with the approved plans and specifications, Council shall issue a certificate of conditional acceptance, subject to the maintenance of the Site Work by the Developer's contractor in accordance with the maintenance plan for a period of 52 weeks from the Practical Completion Date for the Site Work.
4. In respect of the Site Work — Hard Landscaping the maintenance plan will address:
 - inspection and repair of cracks and / or undermining to the footpaths within the open space;
 - a maintenance schedule for the playground, to ensure that upon completion of the Maintenance Period it will be in a good state of repair, well maintained, and meets a fit for purpose standard as generally prescribed in:
 - AS4685 (2014): Playground equipment and surfacing;
 - AS4422 (2016): Playground surfacing — Specifications, requirement and test method; and
 - AS/WS 4486.1: Playgrounds and playground equipment;
 - a maintenance schedule for the boardwalk, to *ensure* that upon completion of the Maintenance Period it will be in a good state of repair, well maintained, and meets a fit for purpose standard as generally prescribed in:
 - AS2156.1 Walking Tracks Part 1; and
 - AS2156.2 Walking Tracks Part 2; and
 - a maintenance schedule for the seat, shade structures and picnic area facilities , to ensure that upon completion of the Maintenance Period they will be in a good state of repair, well maintained, and meet a fit for purpose standard.
5. In respect of *the* Site Work — Soft Landscaping the maintenance plan will address:
 - mowing of open space grass areas (excluding residential verges);
 - over sowing of patchy grass areas;
 - watering of all new trees,
 - replacement of dead or diseased trees, shrubs & groundcovers;
 - weed control and spraying of grass areas and garden beds;

- formative pruning of all trees (including adjustment or replacement of stakes and removal of stakes/ties when tree is self-supporting);
 - mulch top ups to gardens to maintain a minimum 100mm depth.
6. From the Practical Completion Date of a Site Work, the Developer's contractor will maintain the Site Work — Hard Landscaping and the Site Work — Soft Landscaping in accordance with the maintenance plan for a period of 52 weeks.
 7. During the Maintenance Period Council will attend quarterly inspections to view the status of the landscape, and provide written commentary as to any remedial works that it reasonably considers are required to meet the requirements of the maintenance plan.
 8. Within 4 weeks prior to the completion of the 52-week Maintenance Period, the Council is to attend an on-site meeting to inspect the Site Work — Hard Landscaping and the Site Work Soft Landscaping.
 9. For Council to accept handover of the Site Work — Hard Landscaping and the Site Work — Soft Landscaping it will need to be satisfied, acting reasonably, that:
 - o all Site Work Hard Landscaping are free of material defects, are in a good state of repair and fit for purpose, including, but not limited to:
 - that all concrete pathways are to be free of structural cracks and/or undermining;
 - that the playground is free of material defects, in a good state of repair and well maintained, and meets a fit for purpose standard as generally prescribed in:
 - AS4685 (2014): Playground equipment and surfacing;
 - AS4422 (2016): Playground surfacing — Specifications, requirement and test method; and
 - AS/NZS 4486.1: Playgrounds and playground equipment;
 - that the boardwalk is free of material defects, in a good state of repair and well maintained, and meets a fit for purpose standard as generally prescribed in:
 - AS2156.1 Walking Tracks Part 1; and
 - AS2156.2 Walking Tracks Part 2; and
 - that the seats shade structures and picnic area facilities are free of material defects, in a good state of repair and well maintained, and meet a fit for purpose standard; and
 - o Site Work — soft Landscaping meets the following specifications:
 - dryland grass has healthy growth and at least 85% coverage across the site;
 - all dead or diseased trees and dead or diseased shrub & groundcover bed plantings have been replaced and all plants are established,

firm in the ground, and showing a dominant leader consistent with the age and the prevailing growing conditions over the Maintenance Period;

- all garden beds are mulched with a minimum 100mm cover required; and
- weeds in (grassed and shrub bed areas) have been controlled as per the maintenance plan.

10. Upon Council being satisfied, acting reasonably, that the assets are presented as noted above, the Council will issue a certificate of acceptance.
11. All Site Work — Hard Landscaping and the Site Work — Soft Landscaping will transfer from the Developer and become the property and responsibility of the Council on and from the date the land on which the relevant work is located is dedicated to the Council.

Appendix

(Clause 51)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Deed

Under section 7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Goulburn Mulwaree Council ABN 84 049 849 319 of 181-194 Bourke Street, Goulburn NSW 2580 (**Council**)

and

Teneriffe Landowner Pty Ltd ACN 625 052 502 of Unit 3, 57 Dacre Street, Mitchell, ACT 2911

Description of the Land to which the Draft Planning Deed Applies

Lot 2 in DP1186483 known as 133 Marys Mount Road, Goulburn and any lot created by the subdivision of that lot.

Description of Proposed Development

Development the subject of Development Consent to Development Application DA/0183/1718 lodged with the Council on 21 November 2017. The Development comprises the staged subdivision of the Land to create 393 residential lots and two public reserves.

Summary of Objectives, Nature and Effect of the Draft Planning Deed

Objectives of Draft Planning Deed

To provide additional land for drainage reserves and public open space to Council.

To facilitate superior urban design and other public benefits.

Nature of Draft Planning Deed

The Draft Planning Deed is a planning Deed under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Deed is a voluntary Deed under which Development Contributions (as defined in clause 3 of the Draft Planning Deed) are made by the Developer for various public purposes (as defined in section 7.4(3) of the Act).

Effect of the Draft Planning Deed

The Draft Planning Deed:

- relates to the carrying out of the Development (as defined in clause 26 of the Draft Planning Deed) on the Land by the Developer;
- excludes the application of sections 7.11 and 7.12 of the Act to the Development;
- makes provision for the carrying out of embellishment works to drainage and open space land;
- makes provision for the dedication of land for drainage and open space purposes;
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects and maintenance of those Works;
- 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 Draft Planning Deed;
- has the effect of prohibiting the issuing of certain Subdivision Certificates unless and until Development Contributions are provided in accordance with the Draft Planning Deed;
- provides for the provision of works as executed plans in respect of Works carried out by the Developer;
- provides two dispute resolution methods for a dispute under the Draft Planning Deed, being expert determination and mediation;
- provides that the Draft Planning Deed 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 Deed.

Assessment of the Merits of the Draft Planning Deed

The Planning Purposes Served by the Draft Planning Deed

The Draft Planning Deed:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies;
- provides land for public purposes in connection with the Development;
- provides and co-ordinates community services and facilities in connection with the Development; and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Deed Promotes the Public Interest

The Draft Planning Deed promotes the public interest by providing for works to be carried out for drainage, street frontage, landscaping reserves and public open space at the Developer's cost and for the land on which those works are carried out to be dedicated to Council at no cost. It also promotes the objects of the Act as set out in sections 1.3(a) – (c), (g) and (j) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Deed Promotes its Statutory Responsibilities

N/A

Other Public Authorities — How the Draft Planning Deed Promotes the Objects Of any) of the Act under which it is Constituted

N/A

Councils — How the Draft Planning Deed Promotes the Elements of the Council's Charter

Under Section 8A of the *Local Government Act 1993*, the following guiding principles apply to the exercise of functions by councils and are relevant to the Draft Planning Deed:

- Councils should plan strategically, using the integrated warning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should work with others to secure appropriate services for local community needs.

The Draft Planning Deed promotes the elements of the Council's Charter by implementing the following Strategies in the Council's Delivery and Operational Plan:

- (1) To investigate options for expanded community recreation facilities
 - (a) Additional public spaces; and
 - (b) NRM protection enhancement;
- (2) The management of financial, economic, engineering and other practices applied to physical assets with the objective of providing the required level of service in the most cost effective manner;
- (3) To facilitate good urban design principles and local community amenity through design best practices.
- (4) To care for and protect our waterways and catchments;
- (5) To protect local heritage, public places and amenity including protection of significant architecture, indigenous heritage and the natural environment;
- (6) To develop culture and leisure facilities/activities;

All Planning Authorities — Whether the Draft Planning Deed conforms with the Authority's Capital Works Program

The Site Work set out in the Deed is consistent with Council's 2017/18 Capital Works Program. Ongoing maintenance of the embellishments and land to be dedicated to Council can be accommodated in Council's Delivery Plan and the relevant Operational Plans.

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

Yes. In accordance with clause 8, the application for certain Subdivision Certificates must contain certain information in the plan of subdivision. Further, in accordance with Schedule 1, certain Subdivision Certificates will not be issued until certain works are carried out.