

# Planning Agreement

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## Land

35 Bonnet Drive Run-O-Waters NSW 2580

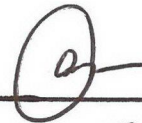
## Parties

**GOULBURN MULWAREE COUNCIL ABN 84 049 849 319**

(Council)

**REDFERN FRESH PTY LTD ACN 167 764 776**

(Developer)



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Aaron Johansson  
Chief Executive Officer  
Goulburn Mulwaree Council  
ABN: 84 049 849 319

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DATED

15 FEBRUARY 2024

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PARTIES

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

**Redfern Fresh Pty Ltd** ACN 167 764 776 of 113 Beatrice Street Balgowlah Heights NSW 2093 (**Developer**)

BACKGROUND

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- A. On 1 September 2021, the Developer made a Development Application (DA/0136/2122) to Council for Development Consent to carry out the Development on the Land.
- B. On 28 April 2022, Council determined the Development Application by way of refusal.
- C. On 9 June 2022 the Developer exercised their right of review under section 8.2 of the *Environmental Planning and Assessment Act 1979* (**Review Application**).
- D. The Review Application was accompanied by an offer by the Developer to enter into a planning agreement with the Council to provide public benefits if Development Consent was granted to the Review Application.
- E. On 18 October 2022, the Review Application was determined by the Council at an Ordinary Meeting and the Council granted Development Consent (reference REV/0010/2122) subject to conditions, including deferred commencement condition (B), which required that a planning agreement be entered into in accordance with the Developer's letter of offer dated 15 September 2022 and as set out in that deferred commencement condition.
- F. The Developer is the registered proprietor of the Land.
- G. The Developer has offered to enter into this Agreement with Council and has agreed to provide the Development Contributions in connection with carrying out the Development subject to and on the terms and conditions set out in this Agreement.

OPERATIVE PROVISIONS

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**1. Definitions**

The following definitions apply unless the context otherwise requires:

**Acceptance of Completion Notice** means a notice issued by the Council to the Developer pursuant to clause 9.2.1.

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

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

**Assign** as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.

**Authority** means (as appropriate) any:

- (a) federal, state or local government;
- (b) department of any federal, state or local government;
- (c) any court or administrative tribunal; or
- (d) statutory corporation or regulatory body.

**Bank Guarantee** means a bank guarantee from an Australian bank that is provided to the Council by the Developer under this Agreement which is:

- (a) in a form acceptable to Council;
- (b) unconditional and irrevocable; and
- (c) without an expiry date.

**Bioretention Basin** means water sensitive urban design infrastructure as shown on the plan attached at Schedule 7, being part of the Works on Dedicated Land and being the range of measures that are designed to avoid or minimise the environmental impacts of urbanisation in terms of the demand for water and the potential pollution threat to natural waterways.

**Business Day** means between 9am and 5pm Sydney time on a day other than a Saturday, Sunday, any other local, state or federal public holiday and any day between 20 December and 10 January inclusive.

**Claim** against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Complete, Completed, Completion** means completed in accordance with the requirements of this Agreement.

**Completion Notice** means a notice issued by the Developer to the Council pursuant to clause 9.1.1.

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

**Construction Certificate** has the same meaning as in Part 6 of the Act.

**Council** means Goulburn Mulwaree Council.

**Date of Completion** means, in relation to each Item of Work, the date on which the works are Completed being the earlier of:

- (a) the date an Item of Work is deemed to have been Completed under clause 9.3; or
- (b) the date of Completion as set out in an Acceptance of Completion Notice.

**Default Event** means any of the following events:

- (a) a Party fails to pay when due any amount payable by it under this Agreement;
- (b) a Party fails to duly observe and perform any of its obligations under the Agreement;
- (c) a Party gives a representation or warranty under the Agreement that is materially incorrect, untrue or misleading;
- (d) a Party commits any other material breach of the Agreement; or
- (e) a Party fails to comply with a material law.

**Defect** means anything in the Item of Works which:

- (a) adversely affects the ordinary use and/or enjoyment of that item; or
- (b) may require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect;

**Defects Liability Period** means, in relation to each Item of Works, the period during which the Developer will be liable for any defects under clause 10, as set out in Item 5 of Schedule 2.

**Designated Land** means that part of the Land identified as Designated Land on the plan attached as Schedule 6.

**Developer** means Redfern Fresh Pty Ltd ACN 167 764 776.

**Development** means the development of the Land by the Developer as described in Item 2 of Schedule 2.

**Development Application** means a development application lodged by the Developer with Council in relation to the Development as described in Item 3 of Schedule 2.

**Development Consent** means a development consent issued under the Act with respect to the Development Application and the Development.

**Development Cost** means in relation to an Item of Works:

- (a) the construction costs of that Item of Works;
- (b) any costs incurred under a building contract in relation to that Item of Works; and
- (c) any costs or expenses payable to an Authority in relation to that Item of Works,

as determined by a Quantity Surveyor in accordance with clause 5.1.

**Drainage Reserve** means the drainage reserve to be constructed by the Developer as shown on the plan attached at Schedule 6, being part of the Works.

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right

of any other person and any other encumbrance or security interest, trust or bill of sale; or

- (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**Final Lot** means a lot created in the Development for separate residential occupation and disposition, not being a lot created by a subdivision of the Land:

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

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

**Insolvency Event** means, in relation to the Developer, any of the following:

- (a) the Developer becomes insolvent;
- (b) the Developer assigns any of its property for the benefit of creditors or any class of them;
- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Developer or the Developer enters into a scheme of arrangement with its creditors or is wound up;
- (d) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (e) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 days after being made;
- (f) any step is taken to do anything listed in the above paragraphs; and
- (g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Item of Works** means an individual item of the Works as set out in Item B of Table 1 in Schedule 4.

**Land** means the land described in Item 1 of Schedule 2.

**Law** means all applicable legislation, regulations, by-laws, common law and other binding order made by any Authority, including any applicable Planning Legislation and Environmental Law as defined at clause 13.1.

**Maintenance Liability Period** means the period of time, as set out in Item 6 of Schedule 2.

**Maintenance Obligations** has the meaning given to that term in clause 11.1 of this Agreement.

**Maintenance Security** means the Bank Guarantee for the maintenance of the Drainage Reserve and Bioretention Basin during the Maintenance Liability Period as set out in Table 2 of Schedule 4.



**Maintenance Security Amount** means the amount of security required for the Maintenance Security under clause 11 as set out in Item 7 of Schedule 2.

**Monetary Contributions** means the monetary contributions set out in Item C in Table 1 Schedule 4.

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

**Planning Legislation** means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW), and associated regulations.

**Public Benefits** means the provision of the Works, the making of the Monetary Contributions and the dedication of the Designated Lands and carrying out of the Maintenance Obligations by the Developer as set out in Table 1 of Schedule 4 and in accordance with this Agreement.

**Quantity Surveyor** means someone selected and appointed by the Council from a list of Quantity Surveyors all of whom must be members of Panels for the NSW Department of Commerce or Local Government Procurement.

**Residential Lot** means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and
- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Security Value** means the value for each Bank Guarantee required under this Agreement as set out in Table 2 of Schedule 4 under the heading Security Value.

**Subdivision Certificate** means a subdivision certificate as defined in section 6.4(d) of the Act.

**Subdivision Works Certificate** means a subdivision works certificate as defined in section 6.4(b) of the Act.

**Works** means the works specified or described in Item B in Table 1 of Schedule 4.

**Works as Executed Plan** means a plan that shows that construction has been completed in accordance with the engineering plans and specifications.

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## 2. Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- 2.1.1 Any reference to **a clause, annexures and schedules** refers to a clause in, or annexure or schedule to this Agreement.
- 2.1.2 Any reference to a **statute** refers to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

- 2.1.3 The singular includes the plural and vice versa.
- 2.1.4 A reference to a **person** includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
- 2.1.5 A reference to **executors, administrators** or **successors** refers to a particular person that includes their executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 2.1.6 **Dollars, Australian dollars, dollars, \$, AUS \$ or A\$** is a reference to the lawful currency of Australia.
- 2.1.7 Where any period of time is calculated from the given day or day of an act or event, it is to be calculated exclusive of that day.
- 2.1.8 A **day** is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- 2.1.9 A **group of persons** or **things** is a reference to any two or more of them jointly and to each of them individually.
- 2.1.10 The words **include, including, for example** or **such as** are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 2.1.11 If an act under this Agreement to be done by a Party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
- 2.1.12 If an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
- 2.1.13 Any time of day referenced in this agreement is a reference to Sydney time.
- 2.1.14 Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Agreement.
- 2.1.15 A reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.
- 2.1.16 A reference to one gender extends and applies to the other.

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### **3. Status**

#### **3.1 Planning Agreement**

- 3.1.1 This Agreement is a planning agreement:
- (a) within the meaning set out in section 7.4(1) of the Act; and
  - (b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.
- 3.1.2 Schedule 1 sets out the application of section 7.4 of the Act in this Agreement.

### **3.2 Application**

This Agreement applies to both the Land and the Development.

### **3.3 Operation of Agreement**

This Agreement operates from the date it is executed by both Parties.

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## **4. Application of section 7.11 and section 7.12**

### **4.1 Application**

4.1.1 The application of sections 7.11 and 7.12 of the Act to the Development are excluded to the extent set out in Items 4 and 5 of Schedule 1.

4.1.2 The Public Benefits are to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development to the extent set out in Item 6 of Schedule 1.

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## **5. Satisfaction of Public Benefit condition**

### **5.1 Determination of Development Cost**

5.1.1 Upon Completion of any Item of Works the Developer must within 5 Business Days notify the Council in writing of the Completion of that Item of Works.

5.1.2 Upon receipt of written notification given under clause 5.1.1, the Council shall, at the Developer's cost, appoint a Quantity Surveyor to assess the Development Cost of the relevant Items of Works the subject of the notice given under clause 5.1.1. The Quantity Surveyor shall issue a certificate in favour of both Council and the Developer as to the Development Cost of the relevant Item of Works.

5.1.3 The determination of the Quantity Surveyor as to the Development Cost of an Item of Works is conclusive and binding on the Parties except in the case of manifest error.

5.1.4 The Developer shall, within 15 Business Days of receipt of an invoice in relation to the Quantity Surveyor costs incurred pursuant to an assessment of Development Cost under this clause, pay that invoice as directed by Council.

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## **6. Registration of this Agreement**

### **6.1 Registration**

This Agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

### **6.2 Obligations of the Developer**

6.2.1 The Developer must, within 10 Business Days of execution of this Agreement:

- (a) do all things necessary to allow the registration of this Agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and

(b) pay any costs incurred by Council in undertaking that registration.

6.2.2 The Developer must provide Council with evidence that the Agreement has been registered on the title to the Land within 10 Business Days of registration.

### **6.3 Removal from Title of the Land**

6.3.1 The Council will do all things necessary to allow the Developer to remove the registration of this Agreement from the title of the Land where the Developer has:

- (a) provided all Monetary Contributions;
- (b) Completed the Works; and
- (c) dedicated the Designated Land; or
- (d) the Development Consent is surrendered in accordance with the Planning Legislation and that surrender is accepted by Council and Council is satisfied that there are no breaches of this Agreement.

6.3.2 The Developer must pay any costs incurred by the Council in undertaking that discharge.

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## **7. Provision of Public Benefits**

### **7.1 Designated Land**

7.1.1 The Developer must dedicate the Designated Land to the Council:

- (a) free of any trusts, estates, interests, covenants and Encumbrances;
- (b) by the dates specified in Item A in Table 1 of Schedule 4; and
- (c) at no cost to the Council.

7.1.2 The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with clause 7.1.1, including any costs incurred by the Council in relation to that dedication.

7.1.3 The Council must do all things reasonably necessary to enable the Developer to comply with clause 7.1.1.

7.1.4 The Designated Land is to be dedicated to the Council for use as a stormwater treatment facility.

### **7.2 Works**

The Developer, at its cost, must:

7.2.1 if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;

7.2.2 carry out and complete each Item of Works by the time specified in Item B in Table 1 of Schedule 4; and

- 7.2.3 carry out and complete the Works:
- (a) in accordance with the requirements of, or consents issued, by any relevant Authority;
  - (b) in accordance with the reasonable requirements of the Council and any applicable Development Consent and any design or specification specified or approved by the Council acting reasonably; and
  - (c) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

### 7.3 Protection of People and Property

The Developer is to use all reasonable endeavours in relation to the performance of its obligations under this Agreement to ensure that:

- 7.3.1 all necessary measures are taken to protect people and property;
- 7.3.2 unnecessary interference with the passage of people and vehicles is avoided; and
- 7.3.3 nuisances and unreasonable noise and disturbances are prevented.

### 7.4 Monetary Contributions

The Developer must make the Monetary Contributions to the Council in accordance with Item C in Table 1 of Schedule 4.

### 7.5 Indexation

- 7.5.1 The amount of each Monetary Contribution or Security Value will be indexed in accordance with the following formula:

$$\frac{A = B \times C}{D}$$

where:

**A** = the indexed amount;

**B** = the value of the Monetary Contribution or Security Value as set out in Schedule 4;

**C** = the Index most recently published before the date that the relevant item is provided, completed or paid as the case may be; and

**D** = the Index current as at the date the agreement comes into effect.

If **A** is less than **B** then the amount of the relevant Monetary Contribution or the Security Value will not change.

- 7.5.2 For the purposes of clause 7.5.1:
- (a) each component of the Monetary Contribution or the Security Value is indexed as at the date it is paid; and
  - (b) the Index means the *Consumer Price Index (All Groups) for Sydney* or such other index which replaces it from time to time.

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## 8. Verification of Works

- 8.1.1 The Developer must, prior to commencing any Works and at its own cost, engage an independent third-party consultant (**Consultant**) with proven specialised expertise in the design, inspection and commissioning of water sensitive urban design devices and in particular the devices covered by this Agreement.
- 8.1.2 Within seven (7) days of engaging the Consultant, the Developer must provide Council with the details of the Consultant, including the Consultant's name, and curriculum vitae setting out the Consultant's proven specialised expertise in the design, inspection and commissioning of water sensitive urban design devices.
- 8.1.3 When issuing a Completion Notice in accordance with clause 9.1, the Developer must provide the Council with independent written verification from the Consultant that the relevant Works have been completed:
- i. in accordance with this Agreement and any consents, approvals or permits required by a relevant Authority as specified in clause 7.2;
  - ii. in accordance with the scope and specifications for the Works as set out in Item B in Table 1 of Schedule 4, or as set out in any variation approved in accordance with clause 9.2.3; and
  - iii. in accordance with industry best practice.

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## 9. Completion of Works

### 9.1 Issue of Completion Notice

- 9.1.1 No later than fourteen (14) Business Days after the Completion of an Item of Works the Developer is to submit to Council a full Works as Executed Plan and any supporting documentation relied upon to verify completion including the written verification of the Consultant procured under clause 8 with the completion notice for the Works Completed (**Completion Notice**).
- 9.1.2 The Developer, being the copyright owner in the Works as Executed Plan, assigns the copyright in the Works as Executed Plan to Council free of cost to the Council.
- 9.1.3 If the Developer is not the copyright owner of the Work as Executed Plan, the Developer is to promptly procure the assignment of the copyright of the Works as Executed Plan at the Developers expense.
- 9.1.4 The Council may require, at its absolute discretion, the provision of a Compliance Certificate to accompany the Completion Notice in order to accept the Completion Notice.

### 9.2 Notice of Completion

Council must provide notice in writing to the Developer with fourteen (14) Business Days that the relevant Item of Works, the subject of a Completion Notice:

- 9.2.1 has been Completed (**Acceptance of Completion Notice**); or
- 9.2.2 will need to be inspected, tested or assessed prior to issuing an Acceptance of Completion Notice; or

- 9.2.3 has not been Completed, in which case the notice must also detail:
- (a) those aspects of the Item of Works which have not been Completed; and
  - (b) the work Council requires the Developer to carry out in order to rectify those deficiencies.

### 9.3 Deemed Completion

Not used.

### 9.4 Effect of Council Notice

9.4.1 Where Council serves notice on the Developer pursuant to clause 9.2.2 or 9.2.3, the Developer must:

- (a) rectify the deficiencies in that item in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by the Council); or
- (b) serve a notice on the Council that it disputes the matters set out in the notice.

9.4.2 Where the Developer:

- (a) serves notice on the Council in accordance with clause 9.4.1(b) the dispute resolution provisions of this Agreement apply; or
- (b) rectifies the Works in accordance with clause 9.4.1(a) it must serve upon the Council a new Completion Notice for the Works it has rectified (**New Completion Notice**).

### 9.5 New Completion Notice

- (a) The provisions of clauses 9.1 to 9.5 (inclusive) apply to any New Completion Notice issued by the Developer.
- (b) Without limitation to clause 8, the Consultant must verify that the relevant Works the subject of rectification pursuant to a notice issued by Council under clause 9.2.3 have been completed in accordance with the requirements of that notice.

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## 10. Defects liability

### 10.1 Defects Notice

10.1.1 Where any Item of Works is Complete, but that item contains a Defect, the Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Works but only during the relevant Defects Liability Period.

10.1.2 A Defects Notice must contain the following information:

- (a) the nature and extent of the Defect;

- (b) the work the Council requires the Developer to carry out in order to rectify the Defect; and
- (c) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than fourteen (14) days).

## **10.2 Developer to Rectify Defects**

- 10.2.1 The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in the Defects Notice.
- 10.2.2 The Developer must follow the procedure set out in clause 8 in respect of the Completion of the rectification of any Defect as if a reference in that clause to an Item of Works is a reference to the relevant Defect.

## **10.3 Access to Designated Land**

If the Developer is required to access, use and occupy any part of the Designated Land for the purpose of discharging its obligations under this clause 10 after the relevant Designated Land has been dedicated or transferred to the Council, the Council will grant a fee free licence to the Developer:

- 10.3.1 with respect to so much of the relevant Designated Land; and
- 10.3.2 for such period,

that is reasonably necessary to allow the Developer to properly discharge those obligations.

## **10.4 Inspection**

- 10.4.1 The Council may undertake an audit, inspection or testing of developer work under suspicion of non-compliance of this Agreement or any legislation with or without giving reasonable notice in accordance with the relevant legislative requirements.
- 10.4.2 The Developer is to provide the Council with any assistance that is reasonably required by Council to enable Council to undertake any audit, inspection or test of the Works.

## **10.5 Right of Council to Step-in**

The Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer seven (7) days written notice of its intention to do so.

## **10.6 Consequence of Step-in**

If the Council elects to exercise the step-in rights granted to it under clause 10.5 then:

- 10.6.1 The Council may:
  - (a) enter upon any part of the Land reasonably required to exercise those step-in rights; and
  - (b) rectify the relevant Defects in accordance with the Defects Notice;
- 10.6.2 the Developer must not impede or interfere with the Council in exercising those rights; and



10.6.3 the Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

## **10.7 Costs of Council**

Where the Council exercises its step-in rights under clause 10.6, it may:

10.7.1 call upon the Bank Guarantees provided by the Developer pursuant to clause 17 to meet any costs for which the Developer is liable under clause 10.6; and

10.7.2 recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by the Council in rectifying the Defects.

## **10.8 Council may call on Bank Guarantee**

10.8.1 If the Developer does not comply with the terms of this clause, the Council may issue the Developer with a notice requiring the Developer to rectify the relevant default within twenty (20) Business Days from the date of that notice.

10.8.2 If the Developer fails to comply with a notice issued under clause 10.8.1 above, the Council, without limiting any other avenues available to it, may call on the relevant Bank Guarantee provided pursuant to clause 17 to the extent necessary to reimburse the Council for any costs incurred by it in rectifying the relevant default of the Developer.

## **10.9 Indemnity**

The Developer indemnifies the Council against any Claim to the extent that the Claim arises as a direct result of a breach of this clause 10 by the Developer.

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## **11. Maintenance of Drainage Reserve and Bioretention Basin**

### **11.1 Maintenance Obligations**

11.1.1 The Developer must:

(a) maintain the Drainage Reserve and Bioretention Basin in the manner and extent described in Item D in Table 1 of Schedule 4; and

(b) for the period described in Item D in Table 1 of Schedule 4 (timing),

at no cost to the Council (the **Maintenance Obligations**).

11.1.2 For the avoidance of doubt, the Drainage Reserve and Bioretention Basin must be maintained in accordance with the Maintenance Obligations.

11.1.3 The Developer must keep a written record of maintenance undertaken of the Drainage Reserve and Bioretention Basin and provide a copy to the Council upon request.

### **11.2 Notice requiring Maintenance Obligations to be carried out**

11.2.1 If the Council, acting reasonably, is not satisfied that the Maintenance Obligations have been carried out in accordance with clause 11.1 with respect to the Drainage

Reserve and Bioretention Basin, or additional maintenance is required the Council may, by notice in writing:

- (a) direct the Developer to undertake the required maintenance; and
- (b) specify a time by which the Maintenance Obligation is required.

11.2.2 Upon receipt of a notice from the Council in accordance with clause 11.2.1 (**Notice**), the Developer must:

- (a) carry out the Maintenance Obligation in accordance with the Notice; and
- (b) provide the Council with written confirmation that the Maintenance Obligation has been satisfied, together with any relevant documentation confirming that the Notice has been complied with.

### **11.3 Expiration of Maintenance Liability Period and return of Maintenance Security**

11.3.1 At the expiration of the Maintenance Liability Period, the Developer may provide a notice in writing to Council:

- (a) stating that the Maintenance Liability Period has expired; and
- (b) requesting the return of the Maintenance Security.

11.3.2 Within thirty (30) days of receipt of a notice in accordance with clause 11.2.2, the Council will undertake an inspection of the Drainage Reserve and Bioretention Basin (**Site Inspection**).

11.3.3 If, following the Site Inspection, the Council (acting reasonably):

- (a) is satisfied that the Maintenance Obligations have been carried out in accordance with clause 11.1 as at the date of the Site Inspection, the Council will return the Maintenance Security to the Developer within thirty (30) days; or
- (b) is not satisfied that the Maintenance Obligations have been carried out in accordance with clause 11.1 as at the date of the Site Inspection, the Council may issue the Developer with a Notice in accordance with clause 11.2; and
- (c) will return the Maintenance Security within thirty (30) days of receipt of written confirmation from the Developer in accordance with clause 11.2.2 to Council's satisfaction.

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## **12. Warranties and Indemnities**

### **12.1 Warranties**

The Developer warrants to the Council that:

- 12.1.1 it is able to fully comply with its obligations under this Agreement;
- 12.1.2 it has full capacity to enter into this Agreement; and

12.1.3 there is no legal impediment to it entering into this Agreement, or performing the obligations imposed under it.

## 12.2 Indemnity

Without limiting any other indemnities provided in this Agreement, the Developer indemnifies the Council in respect of any Claim that may arise as a result of the conduct of the Works, but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of the Council.

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## 13. Contamination

### 13.1 Definitions

For the purpose of this clause:

**Contamination** has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

**Contaminated** means subject to Contamination.

**Environment** means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man-made or modified features or structures,
- (f) and includes ecosystems and all elements of the biosphere.

**Environmental Law** means all laws relating to the protection of or prevention of harm to the Environment including but not limited to any law relating to the use of land, planning, environmental assessment, the environmental or historic heritage, water, water catchments, pollution of air, soil, ground water or surface water, noise, soil, chemicals, pesticides, hazardous goods, building regulation, occupation of buildings, public health or safety, occupational health and safety, environmental hazard, any aspect of protection of the environment or the enforcement or administration of any of those laws (whether those laws arise under statute or the common law or pursuant to any permit, licence, approval, notice, decree, order or directive of any governmental agency or otherwise).

### 13.2 Warranty and Indemnity

The Developer warrants that:

- 13.2.1 except as disclosed in Schedule 5 of this Agreement, the Designated Land is not Contaminated; and
- 13.2.2 the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this Agreement.

### **13.3 Contamination caused by Developer**

13.3.1 If Contamination in, on or under the Land or land which is outside the boundary of the Land is caused or contributed to by the Developer or as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, the Developer will, at its own cost and within a reasonable time, remediate the Contamination to a standard suitable for the current and proposed future use of that land.

13.3.2 Where Contamination is caused or contributed to by the Developer as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, and that Contamination is in, on or under any land that is owned or occupied by the Council, or under the management and control of the Council, the Developer indemnifies and must keep indemnified the Council against all liability for and associated with all such Contamination.

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## **14. Determination of this Agreement**

### **14.1 Determination**

This Agreement will determine upon the Developer satisfying all of its obligations under the Agreement.

### **14.2 Effect of Determination**

Upon the determination of this Agreement the Council will do all things necessary to allow the Developer to remove this Agreement from the title of the whole or any part of the Land as quickly as possible.

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## **15. Prohibition on assignment**

15.1 The Developer may not Assign its rights or obligations under this Agreement without the prior written consent of the Council.

15.2 The Developer must not Assign its interest in the Land, other than a single Residential Lot approved pursuant to a Development Consent and created by the registration of a plan of subdivision, unless:

15.2.1 the Council consents to the Assignment; and

15.2.2 the Developer has, at no cost to Council, first procured that the proposed assignee enters into an agreement on terms reasonably satisfactory to the Council under which the assignee agrees to be bound by the terms of this Agreement with respect to the relevant part of the Land being Assigned.

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## **16. Compulsory Acquisition of the Designated Land**

16.1 The Developer consents to the compulsory acquisition of the Designated Land:

16.1.1 in accordance with the Acquisition Act; and

16.1.2 on the terms set out in this clause 16.

- 16.2 The Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed a Default Event with respect to the dedication of that land under this Agreement.
- 16.3 If the Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
- 16.3.1 the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
- 16.3.2 the Council must complete that acquisition within twelve (12) months of the relevant Default Event.
- 16.4 The Parties agree that the provisions of this clause 16 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.
- 

## **17. Security**

### **17.1 Delivery to Council of Bank Guarantee**

The Developer must deliver to Council one or more Bank Guarantees:

- 17.1.1 in the amount(s) equal to the sum of the Security Value; and
- 17.1.2 by the time specified in Table 2 of Schedule 4.

### **17.2 Council may call on Bank Guarantee**

17.2.1 The Council may make an appropriation from the Bank Guarantee (and the proceeds of the Bank 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 Works, the costs of rectifying any default by the Developer under this Agreement, ensuring due and proper performance of the Developer's obligations under this Agreement if:

- (a) an Insolvency Event occurs in respect of the Developer;
- (b) the Developer fails to deliver, or comply with its obligations under this Agreement in relation to the delivery of the Works (including with respect to the rectification of Defects), and such failure has not been rectified to the reasonable satisfaction of the Council within fourteen (14) days of receipt of written notice requiring performance of its obligations; or
- (c) the Developer fails to provide the Public Benefits in accordance with this Agreement.

17.2.2 Within ten (10) days of the Council making an appropriation from the Guarantee, the Council must notify the Developer of that appropriation.

### **17.3 Top Up of Bank Guarantee**

Within fourteen (14) days of being requested to do so by the Council the Developer must ensure that the amount secured by any Bank Guarantee is returned to the relevant level set out in clause 17.1.

## 17.4 Security during Defects Liability Period

- 17.4.1 Upon the Completion of an Item of Works and the commencement of the Defects Liability Period, the Council must return any Bank Guarantees held by it with respect to the relevant Item of Works.
- 17.4.2 In exchange, the Developer must provide the Council with one (1) or more Bank Guarantees in a form acceptable to the Council for an amount equal to twenty per cent (20%) of the sum of the Security Value for that Item of Works.

## 17.5 Return of Bank Guarantee

Council must return the:

- 17.5.1 Maintenance Security in accordance with clause 11.3; and
- 17.5.2 any remaining Bank Guarantees to the Developer within thirty (30) days from the expiration of the Defects Liability Period for the last Item of Works that is Completed.

## 17.6 Return of Bank Guarantee if Land sold or Agreement assigned

If the Developer sells or transfers the Land or Assigns its rights and obligation under this Agreement or novates this Agreement in accordance with clause 14, the Council must release and return the Bank Guarantee to the Developer within ten (10) Business Days of the date the purchaser, transferee, assignee or novate provide Council with a replacement Bank Guarantee following such as sale, transfer, assignment or novation in the full amount of the Bank Guarantee that the Council is entitled to hold under this Agreement.

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## 18. Dispute Resolution

### 18.1 Notice of Dispute

- 18.1.1 If a dispute between the Parties arises in connection with this Agreement or its subject matter (**Dispute**), then either Party (**First Party**) must give to the other (**Second Party**) a notice which:
- (a) is in writing;
  - (b) adequately identifies and provides details of the Dispute;
  - (c) stipulates what the First Party believes will resolve the Dispute; and
  - (d) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- 18.1.2 The Second Party must, within seven (7) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the Parties being together, the **Representatives**).

### 18.2 Conduct Pending Resolution

The Parties must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate Party indemnifies the other Party against costs, damages and all

losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying Party.

### **18.3 Further Steps Required before Proceedings**

Subject to clause 18.12 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 18.5 or determination by an expert under clause 18.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within seven (7) Business Days of the date a notice under clause 18.1 is served.

### **18.4 Disputes for Mediation or Expert Determination**

If the Representatives have not been able to resolve the Dispute, then the Parties must agree within seven (7) Business Days to either refer the matter to mediation under clause 18.5 or expert resolution under clause 18.6.

### **18.5 Disputes for Mediation**

18.5.1 If the Parties agree in accordance with clause 18.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the Parties and, if the Parties cannot agree within seven (7) Business Days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.

18.5.2 If the mediation referred to in clause 18.5.1 has not resulted in settlement of the Dispute and has been terminated, the Parties may agree to have the matter determined by expert determination under clause 18.6.

### **18.6 Choice of Expert**

18.6.1 If the Dispute is to be determined by expert determination, this clause 18.6 applies.

18.6.2 The Dispute must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within seven (7) Business Days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.

18.6.3 If the Parties fail to agree as to the relevant field within seven (7) Business Days after the date that the matter is required to be determined by expert determination, either Party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the Parties.

18.6.4 The expert appointed to determine a Dispute:

- (a) must have a technical understanding of the issues in dispute;
- (b) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information

indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

- 18.6.5 The Parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

## 18.7 Directions to Expert

- 18.7.1 In reaching a determination in respect of a dispute under clause 18.6, the independent expert must give effect to the intent of the Parties entering into this Agreement and the purposes of this Agreement.

- 18.7.2 The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) not accept verbal submissions unless both Parties are present;
- (c) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
- (d) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
- (e) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (f) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party fourteen (14) Business Days to make further submissions;
- (g) issue a final certificate stating the expert's determination (together with written reasons); and
- (h) act with expedition with a view to issuing the final certificate as soon as practicable.

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

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

## 18.8 Expert May Convene Meetings

- 18.8.1 The expert must hold a meeting with all of the Parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- 18.8.2 The Parties agree that a meeting under clause 18.8.1 is not a hearing and is not an arbitration.



## 18.9 **Other Courses of Action**

If:

18.9.1 the Parties cannot agree in accordance with clause 18.3 to refer the matter to mediation or determination by an expert; or

18.9.2 the mediation referred to in clause 18.5 has not resulted in settlement of the dispute, the mediation has been terminated and the Parties have not agreed to refer the matter to expert determination within seven (7) Business Days after termination of the mediation,

then either Party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

## 18.10 **Final Determination of Expert**

The Parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

## 18.11 **Costs**

If any independent expert does not award costs, each Party must contribute equally to the expert's costs in making the determination.

## 18.12 **Remedies Available under the Act**

This clause 18 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

## 18.13 **Urgent Relief**

This clause 18 does not prevent a Party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

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## 19. **Position of Council**

### 19.1 **Consent Authority**

The Parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

### 19.2 **Agreement does not Fetter Discretion**

This Agreement is not intended to operate to fetter:

19.2.1 the power of the Council to make any Law; or

19.2.2 the exercise by the Council of any statutory power or discretion (**Discretion**).

### 19.3 **Severance of Provisions**

19.3.1 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of

this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 19 is substantially satisfied;
- (b) in the event that clause 19.3.1(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties on relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

19.3.2 Where the Law permits the Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if the Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

#### 19.4 **No Obligations**

Nothing in this Agreement will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

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### 20. **Confidentiality**

#### 20.1 **Agreement not Confidential**

The terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

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### 21. **GST**

#### 21.1 **Definitions**

In this clause:

**Taxable Supply, GST, Tax Invoice** and **Input Tax Credit** have the same meaning given to them in GST Law.

#### 21.2 **Non-monetary Supplies**

21.2.1 The Parties agree that any non-monetary supplies made by one Party to the other pursuant to this Agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.

21.2.2 In the event that one Party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the Parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:

- (a) The Party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive market value and will disclose the amount of GST included in the GST inclusive market value.

- (b) The recipient of the Taxable Supply will pay to the other Party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.

21.2.3 In the event that both Parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one Party to the other will be off-set against each other and any net difference will be paid by the Party with the greater obligation.

### 21.3 **Supply Expressed in Terms of Money**

If any Party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other Party under this Agreement and the supply was not expressed to include GST, then:

- 21.3.1 the recipient of the supply must pay an amount equal to the GST on that supply to the other Party;
- 21.3.2 the Party making the supply will issue a Tax Invoice to the other Party; and
- 21.3.3 the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

### 21.4 **Expenses and Costs Incurred**

If any expenses or costs incurred by one Party are required to be reimbursed by the other Party under this Agreement, then the amount of the reimbursement will be calculated as follows:

- 21.4.1 The amount of the cost or expense incurred by the Party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that Party is entitled to claim.
- 21.4.2 This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the Party liable to make the reimbursement.
- 21.4.3 The Party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

### 21.5 **Survival of Clause**

This clause 21 continues to apply after the expiration or termination of this Agreement.

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## 22. **Access to Land**

### 22.1 **Application of Clause**

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this Agreement (**Necessary Access**).

### 22.2 **Terms of Licence**

The terms of Schedule 3 apply to any Necessary Access.

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## **23. Legal Costs**

The Developer shall bear its own costs and those of the Council in relation to the preparation, negotiation, execution and registration of this Agreement and any document related to this Agreement.

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## **24. Administrative Provisions**

### **24.1 Notices**

24.1.1 Any notice, consent or other communication under this Agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) delivered to that person's address;
- (b) sent by pre-paid mail to that person's address; or
- (c) sent by email to that person's email address.

24.1.2 A notice given to a person in accordance with this clause is treated as having been given and received:

- (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
- (b) if sent by pre-paid mail, on the third Business Day after posting; and
- (c) if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.

24.1.3 For the purpose of this clause the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

### **24.2 Entire Agreement**

This Agreement is the entire agreement of the Parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Agreement.

### **24.3 Waiver**

24.3.1 The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

24.3.2 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

24.3.3 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given and is not to be taken as an implied waiver of any other obligation or breach in any other circumstance or instance.

#### 24.4 Counterparts

This Agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

#### 24.5 Unenforceability

Any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

#### 24.6 Power of Attorney

Each attorney who executes this Agreement on behalf of a Party declares that the attorney has no notice of:

24.6.1 the revocation or suspension of the power of attorney by the grantor; or

24.6.2 the death of the grantor.

#### 24.7 Governing Law

The law in force in the State of New South Wales governs this Agreement. The Parties:

24.7.1 submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this Agreement; and

24.7.2 may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

#### 24.8 Review Requirements

24.8.1 The Parties agree to review during the event that either Party believes that a change in circumstance has or will occur that will affect the operation and carrying out of this Agreement.

24.8.2 Review of this Agreement is required if any Legislation is introduced or changed to the affect that it would limit, stop, substantially change or otherwise hinder the operation or implementation of this agreement in the opinion of either Party.

24.8.3 The Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement should reasonable and necessary amendments be identified.

24.8.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to Legislation, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

#### 24.9 Further Agreements

This Agreement does not restrict further agreements between the Parties that are not inconsistent with this Agreement.

## 24.10 Variations

- 24.10.1 The design or specification of Works may be varied by agreement in writing between the Parties without the need to amend this Agreement.
- 24.10.2 The Developer may, by written notice to Council, propose any variation to design or specifications of any Works (**Works Variation Notice**).
- 24.10.3 The Council must, within fourteen (14) days of receipt of a Works Variation Notice respond in writing, by either:
- (a) agreeing to any or all variations proposed in the Works Variation Notice; or
  - (b) proposing an alternate variation to any or all variations proposed in the Works Variation Notice (**Alternate Variation**); or
  - (c) refusing any or all variations proposed in the Works Variation Notice if that variation(s) would, in the Council's opinion, adversely affect the public benefit being provided under this Agreement.
- 24.10.4 The Developer must within seven (7) days after receiving a notice in accordance with clause 24.10.3(b), notify the Council in writing whether the Alternate Variation can be effected, and, if it can be effected, the Developer's estimate of the:
- (a) effect on the progress of the Development (including the Date of Completion); and
  - (b) cost (including all warranties and time-related costs, if any) of the Alternate Variation.
- 24.10.5 The Council must within seven (7) days of receipt of a written notice under clause 24.10.4, in writing either accept or reject the Alternate Variation.
- 24.10.6 The Council may, by written notice to the Developer, reasonably require the Developer to vary the design or specification of the Works, in which case the Developer must comply with that requirement unless the Alternate Variation:
- (a) materially affects the Development;
  - (b) materially reduces the financial return or profitability of the Development; or
  - (c) will result in increased cost or delay in the Works undertaken by the Developer.
- 24.10.7 For the avoidance of doubt, the Developer must also ensure that all necessary approvals are in place under the Planning Legislation for any variation to the Works in accordance with this clause 24.10.

## 24.11 Surrender of Right of Appeal

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

24.12 **Notations under section 10.7(5) of the Act**

The Council may, at its absolute discretion, make a notation on a planning certificate issued under section 10.7(5) of the Act detailing the application or affect the planning agreement has on the Land.

**Signing Page**

**Executed** by the parties as a deed:

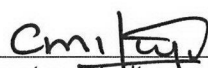
**Executed by REDFERN FRESH PTY LTD (ACN 167 )**  
**764 776)** in accordance with s 127(1) of the  
**Corporations Act 2001:**

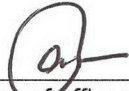


.....  
Signature of Director  
.....  
**VASILIOS KARATZAS**  
.....  
Print full name

.....  
Signature of Director (or Company Secretary)  
.....  
**SOPHOC LIS KARATZAS**  
.....  
Print full name

**Signed, sealed and delivered for**  
**GOULBURN MULWAREE COUNCIL**  
**(ABN 84 049 849 319)** by its duly  
authorised officer, in the presence of:

  
.....  
Signature of witness

  
.....  
Signature of officer

**CHRIS HARWOOD**  
.....  
Name

**AARON JOHANSON**  
.....  
Name of officer

**184 BOURKE ST GOULBURN**  
.....  
Address of witness **NSW 2580**

**CHIEF EXECUTIVE OFFICER**  
.....  
Position of officer



## Schedule 1 Requirements under section 7.4 of the Act

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
1.	<p><b>Planning instrument and/or Development Application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	<p>The land to which the Agreement applies is the Land, as set out in Item 1 of Schedule 2.</p>
3.	<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	<p>N/A</p>
4.	<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	<p>The application of section 7.11 of the Act <b>is not</b> excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections section 7.11 <b>will</b> be required to be paid.</p>
5.	<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	<p>The application of sections 7.12 of the Act <b>is not</b> is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections section 7.12 <b>will not</b> be required to be paid.</p>
6.	<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	<p>The Public Benefits <b>are not</b> to be taken into consideration in determining a development contribution under section 7.11 of the Act.</p>
7.	<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	<p>Refer to clause 18 of the Agreement.</p>
8.	<p><b>Enforcement of this agreement – (Section 7.4(3)(g))</b></p>	<p>Refer to clauses 6 and 18 of the Agreement.</p>

*Bu S.R. A*

ITEM	REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
9.	<b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b>	Refer to clause 19.4 of the Agreement.

*Rac*

*S.K.*

## Schedule 2 Contract details

ITEM		DESCRIPTION
1.	Land	Lot 23 in DP1053904 35 Bonnett Drive Run O Waters NSW 2580
2.	Development	The subdivision of land to create an eight (8) Lot Torrens title subdivision and one drainage reserve.
3.	Development Application	DA/0136/2122 as approved by REV/0010/2122
4.	Instrument Change	N/A
5.	Defects Liability Period (clause 10.1)	24 months from the relevant Date of Completion
6.	Maintenance Liability Period (clause 11)	Two (2) years, from the issue of the first Subdivision Certificate that creates a Final Lot.
7.	Maintenance Security Amount (clause 11)	\$5,000

*BK*

*S.K.*

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## Schedule 3 Terms of Licence

### 1. Definitions

For the purposes of this Schedule 3:

- 1.1.1 the **Land** is the land being accessed under the Licence;
- 1.1.2 the **Licence** means the licence of the Land to which this Schedule applies;
- 1.1.3 the **Licensee** is the Party accessing the Land; and
- 1.1.4 the **Licensor** is the owner of the Land.

### 2. Licence

#### 2.1 Personal Rights

- 2.1.1 The Licence is personal to the Licensee.
- 2.1.2 The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- 2.1.3 The Licensor may refuse the granting of consent under clause 2.1.2 without reason and at its absolute discretion.

#### 2.2 Leasehold Interest

This deed does not grant to the Licensee a leasehold interest in the Land. The Parties agree that:

- 2.2.1 the Licence does not confer exclusive possession of the Land on the Licensee;
- 2.2.2 the Licensee may not exclude the Licensor, its officers, employees and invitees from:
  - (a) entry onto the Land; and/or
  - (b) the performance of any works on the Land;

provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee;

- 2.2.3 the Licensee does not have any right to quiet enjoyment of the Land; and
- 2.2.4 the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

### 3. Compliance with authorities

#### 3.1 No Warranty as to Suitability for Use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

*Bu* *S.K.*

### 3.2 Compliance with the Terms of the Consents

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

### 3.3 Compliance with Directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

### 3.4 Obtaining Further Consents

3.4.1 If the Licensee requires further consents to conduct activities on the Land it must:

- (a) make such applications itself; and
- (b) bear all costs incurred by it in relation to obtaining the relevant consent.

3.4.2 The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

## 4. Limitation of the Licensor's liability

### 4.1 Insurances

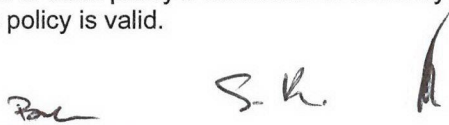
4.1.1 The Licensee must effect and keep current and in force the following policies of insurance:

- (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
  - (i) personal injury or death of any person; and
  - (ii) loss or damage to property;
- (b) Workers compensation insurance under the *Workers Compensation Act 1987* covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
- (c) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and
- (d) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.

4.1.2 The policies referred to in clauses 4.1.1(a), 4.1.1(c) and 4.1.1(d) must note the interest of the Licensor as principal.

### 4.2 Inspection of Insurance

4.2.1 The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.



4.2.2 The licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

**4.3 Cancellation of Insurance**

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

**4.4 Risk**

The Licensee uses and occupies the Land at its own risk.

**4.5 Indemnity**

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Land.

Bu S.K. K

## Schedule 4 Public Benefits

### 1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide each Public Benefit identified in the Table 1 in accordance with this Schedule 4 and this Agreement.

Contribution	Public Purpose	Manner & Extent	Timing	Contribution Credit /	Value of Works
<b>A. Dedication of Land</b>					
Dedication of Designated Land  470.4m <sup>2</sup>  as shown on the Designated Land Plan	Stormwater infrastructure and Drainage Reserve	Dedication of the Land for the purpose of ongoing stormwater infrastructure management and water quality.	Land to be dedicated to Council upon registration of the Subdivision Certificate that will create a Final Lot in the Development	\$0.00  Developer works	\$0
<b>B. Carrying out of Works</b>					
Construction of the Drainage Reserve, and Bioretention Basin  as shown on the plan attached at Schedule 7	Stormwater quality and management	The construction of the Drainage Reserve and Bioretention Basin in accordance with the Development Consent, the referenced plans, Water NSW requirements and the Subdivision Works Certificate	Prior to the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$0.00  Developer works	\$12,500.00
Landscaping and fencing	Landscaping and fencing	The provision of landscaping and fencing of the Drainage Reserve.	Prior to the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$0.00  Developer works	Included in the value above
<b>C. Monetary Contribution</b>					
Monetary Contribution	Maintenance of the Drainage Reserve and Bioretention Basin	Ongoing maintenance (30 years) of the of the Drainage Reserve and stormwater treatment and management devices	To be paid prior to the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$41,834.06  At 15 September 2022	N/A
Monetary Contribution	Stormwater drainage	Capitalisation and first renewal of the Bioretention Basin (30 years)	To be paid prior to the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$26,093.52  At 15 September 2022	N/A

*SW*

*S.K.*

*K*

Monetary Contribution	Public Benefit	Goulburn Waterworks Plan of Management	To be paid prior to the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$15,000 At 15 September 2022	N/A
<b>D. Maintenance Obligations</b>					
Maintenance of the Drainage Reserve and the Bioretention Basin  Lot 9 470.4m <sup>2</sup>	Ongoing regular maintenance works	Mowing, weeding, replacement of dead or damaged flora and the removal of litter and other foreign debris  Minimum Service level Drainage Reserve and Bioretention Basin – 12 visits per annum	Two (2) years from the issuance of the first Subdivision Certificate that will create a Final Lot in the Development	\$0.00 Developer works	\$5,000

## 2. SECURITY

Table 2

Security Value			
Security	Purpose	Timing	Value
Security contribution	For maintenance of Drainage Reserve and Bioretention Basin during the Maintenance Liability Period	To be paid prior to the issuance of the first Subdivision Certificate that will create a Final	\$5,000 At 15 September 2022 To be indexed at time of payment
Security contribution	For non-performance in relation to carrying out the works to construct the Drainage Reserve and the Bioretention Basin	To be paid prior to the issuance of the first Subdivision Works Certificate	\$12,500 At 15 September 2022 To be indexed at time of payment

*Pan*      *S.K.*      *[Signature]*



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## Schedule 5 Disclosures

No disclosures made by the Developer for the purposes of clause 13.2

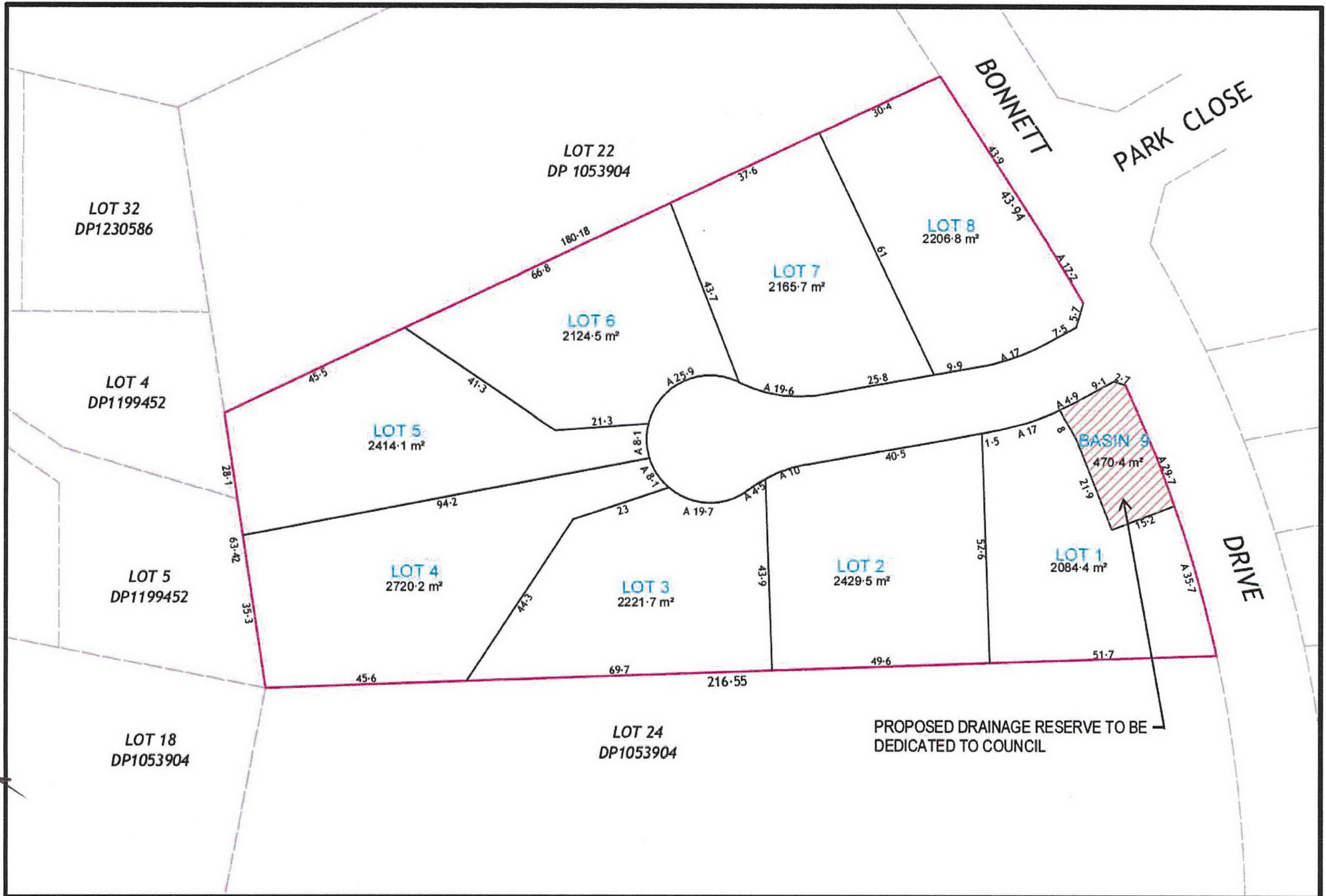
*Par*      *S.R.*      *[Signature]*

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## Schedule 6 Designated Land

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*Be*      *S.K*      *A*



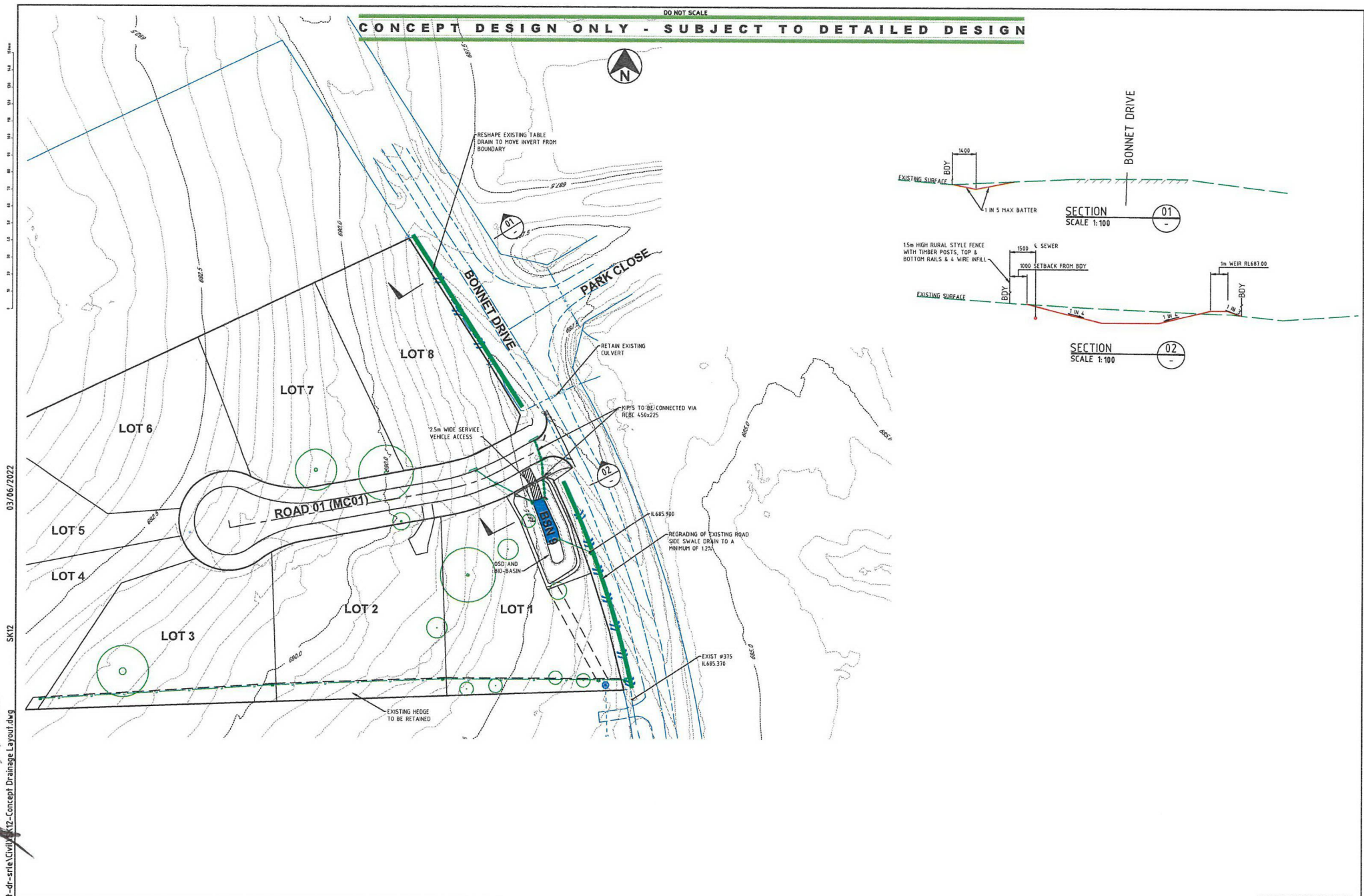
T02003-SK101/A: PLAN SHOWING LAND TO BE DEDICATED TO GOULBURN MULWAREE COUNCIL AS PART OF PLANNING AGREEMENT REV/0010/2122 - 35 BONNETT DRIVE, GOULBURN

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**Schedule 7      Plans**

Comprises two pages

DO NOT SCALE  
**CONCEPT DESIGN ONLY - SUBJECT TO DETAILED DESIGN**



03/06/2022

SK12

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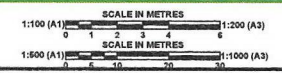
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DRAWING PRACTICE TO AS 1100

No.	DESIGN	DATE	AMENDMENT	APP
3	CES	25.05.22	PLANS AMENDED TO COUNCIL COMMENTS	G.T.
2	CES	26.04.22	COUNCIL COMMENTS	G.T.

**ISSUED FOR APPROVAL**



DRAWN	DESIGNED	DATE
SWC		
DATE	VERIFIED	DATE
AUG'21		
SCALE	APPROVED	DATE

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**S.R.L.E.**  
 SOUTHERN REGION LAND ENGINEERING

Telephone (02) 4833 6677  
 mobile 0417 335 410  
 167 Bourke Street, Goulburn NSW 2660  
 P.O. Box 111, Thredbo NSW 2696

PRJ. Title: **35 BONNET DRIVE**  
 PROPOSED URBAN SUBDIVISION  
 BONNET DRIVE  
 GOULBURN, NSW  
 FOR  
 GOULBURN PROPERTY TRUST

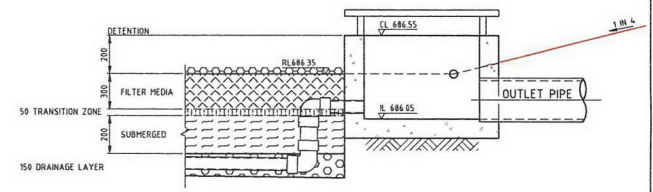
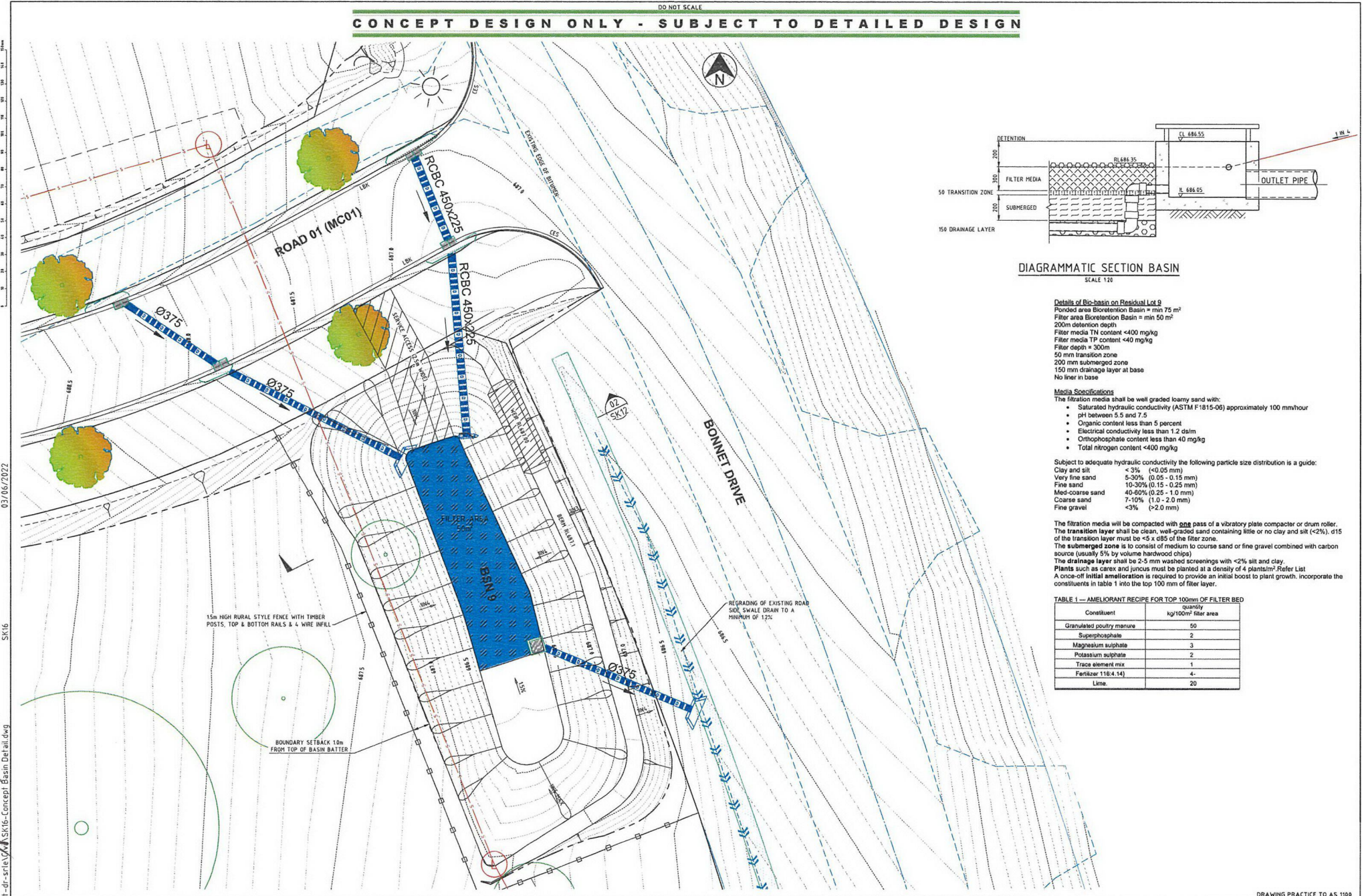
DRG. Title: **CONCEPT DRAINAGE LAYOUT**

DRG. No. T02003 - SK12

Rev. IFA 3

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DO NOT SCALE  
**CONCEPT DESIGN ONLY - SUBJECT TO DETAILED DESIGN**



**DIAGRAMMATIC SECTION BASIN**  
 SCALE 1:20

**Details of Bio-basin on Residual Lot 9**  
 Ponded area Bio-retention Basin = min 75 m<sup>2</sup>  
 Filter area Bio-retention Basin = min 50 m<sup>2</sup>  
 200m detention depth  
 Filter media TN content <400 mg/kg  
 Filter media TP content <40 mg/kg  
 Filter depth = 300mm  
 50 mm transition zone  
 200 mm submerged zone  
 150 mm drainage layer at base  
 No liner in base

**Media Specifications**

- The filtration media shall be well graded loamy sand with:
- Saturated hydraulic conductivity (ASTM F1815-06) approximately 100 mm/hour
  - pH between 5.5 and 7.5
  - Organic content less than 5 percent
  - Electrical conductivity less than 1.2 dS/m
  - Orthophosphate content less than 40 mg/kg
  - Total nitrogen content <400 mg/kg

Subject to adequate hydraulic conductivity the following particle size distribution is a guide:

Clay and silt	< 3% (<0.05 mm)
Very fine sand	5-30% (0.05 - 0.15 mm)
Fine sand	10-30% (0.15 - 0.25 mm)
Med-coarse sand	40-60% (0.25 - 1.0 mm)
Coarse sand	7-10% (1.0 - 2.0 mm)
Fine gravel	<3% (>2.0 mm)

The filtration media will be compacted with **one** pass of a vibratory plate compactor or drum roller.  
 The transition layer shall be clean, well-graded sand containing little or no clay and silt (<2%), d15 of the transition layer must be <5 x d85 of the filter zone.  
 The submerged zone is to consist of medium to coarse sand or fine gravel combined with carbon source (usually 5% by volume hardwood chips)  
 The drainage layer shall be 2-5 mm washed screenings with <2% silt and clay.  
 Plants such as cress and juncus must be planted at a density of 4 plants/m<sup>2</sup>. Refer List A once-off initial amelioration is required to provide an initial boost to plant growth, incorporate the constituents in table 1 into the top 100 mm of filter layer.

**TABLE 1 — AMELIORANT RECIPE FOR TOP 100mm OF FILTER BED**

Constituent	quantity kg/100m <sup>2</sup> filter area
Granulated poultry manure	50
Superphosphate	2
Magnesium sulphate	3
Potassium sulphate	2
Trace element mix	1
Fertilizer 116:4:14	4
Lime	20

03/06/2022  
 SK16  
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DATE AUG21	VERIFIED	DATE
SCALE	APPROVED	DATE
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**S.R.L.E.**  
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 FOR  
 GOULBURN PROPERTY TRUST

DRG Title: **CONCEPT BASIN DETAIL**  
 DRG No: T02003 - SK16  
 IFA 3

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## Appendix A Explanatory Note

**Planning Agreement**  
**Explanatory Note**  
**Address – Lot 23 DP1053904**

**1. Introduction**

---

This Explanatory Note has been prepared jointly between the Parties in accordance with clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft planning agreement (**Planning Agreement**) between the Parties under s7.4 of the *Environmental Planning & Assessment Act 1979* (NSW) (**EPA Act**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

**2 Parties to the Planning Agreement**

---

The Parties to the Planning Agreement are:

- (1) Goulburn Mulwaree Council (ABN 84 049 849 319) (**Council**).
- (2) Redfern Fresh Pty Ltd and ACN 167 764 776 (**Developer**).

**3 Description of the Subject Land**

---

The land to which the Planning Agreement relates, and to which the Planning Agreement will be registered, is set out in the table below (**Land**).

Folio Identifier	Location
Lot 23 DP1053904	35 Bonnett Drive Run O Waters NSW 2580

**4 Summary of objects, nature and effect of the Planning Agreement**

---

The **objective** of the Planning Agreement is to satisfy the condition in the development consent issued under the EPA Act with respect to Review of DA/0136/2122 as set out in the Notice of Determination dated 18 October 2022 (**Development**), by providing development contributions to the public consisting of public works, the payment of monetary contributions, and the dedication of land to Council for Drainage Reserve as outlined in the plan attached at **Schedule 4** of the Planning Agreement.

The **intent** of the Planning Agreement is to facilitate the provision of the development contributions provided by the Developer as described in the table below, all of which will be delivered prior to the issue of the first subdivision certificate in relation to the Development (**Contributions**).



Contribution	Specifications	Contribution Credit/Value
Dedication of land as shown on the Designated Land Plan	Dedication of land for the purposes of ongoing stormwater infrastructure management and water quality	N/A
Construction of the Drainage Reserve and Bioretention Basin as shown on the plan attached at Schedule 6	The construction of the Drainage Reserve and Bioretention Basin in accordance with the Development Consent, the referenced plans, Water NSW requirements and the Subdivision Works Certificate	\$ 12,500  (at 15 September 2022)
Monetary Contribution - Maintenance of the Drainage Reserve and Bioretention Basin	Ongoing maintenance (30 years) of Drainage Reserve and the Bioretention Basin	\$ 41,834.06  (at 15 September 2022)
Monetary Contribution – Stormwater drainage	Capitalisation and first renewal of the Bioretention Basin (30 years)	\$ 26,093.52  (at 15 September 2022)
Monetary Contribution – Public Benefit	Monetary contribution for the Goulburn Waterworks Plan of Management	\$ 15,000  (at 15 September 2022)

As security for the Developer's obligations to pay the Contributions, the Planning Agreement will be registered on the title of the Land and the Developer will provide Council with bank guarantees to ensure completion of the works and maintenance obligations.

The **nature** of the Planning Agreement is a contractual relationship between the Council and the Developer for providing the Contributions.

The **effect** of the Planning Agreement is that the Developer will provide the Contributions in the manner provided for by the Planning Agreement (as applicable).

## 5 Assessment of the merits of the Planning Agreement

### 5.1 The planning purposes served by the Planning Agreement

In accordance with section 7.4 of the EPA Act, the Planning Agreement promotes the following public purpose:

- (1) Provision of infrastructure to accommodate and meet the demands of future developments and to mitigate the potential impacts of the Development on existing infrastructure;

- (2) Enables the subject land to be developed in a timely and efficient manner to promote economic development and employment opportunities;
- (3) Provides for the dedication of land for Drainage Reserve; and

## **5.2 How the Planning Agreement promotes the public interest**

In accordance with the objects of the EPA Act, the Planning Agreement promotes the public interest in the following manner:

- (1) By providing certainty as to provision of the Contributions;
- (2) The proper management, development and conservation of land;
- (3) The promotion and co-ordination of the orderly and economic use and development of land; and
- (4) The Planning Agreement will provide an opportunity for involvement and participation by members of the community in development assessment, and are invited to make comment on the Planning Agreement.

## **5.3 The impact of the Planning Agreement**

The overall impacts of the Planning Agreement are positive as it will:

- (1) Enable the land to be developed, therefore, increasing the availability of suitable residential land in (Insert location) for future housing needs;
- (2) Enable the land to be developed, which in turn will upgrade the local road network in the vicinity of the development; and
- (3) Enhance the natural environment through the construction and long-term maintenance of the Drainage Reserve and stormwater treatment and management devices.

## **5.4 How the Planning Agreement promotes Council's guiding principles**

The Planning Agreement promotes Council's guiding principles under section 8A of the *Local Government Act 1993* (NSW) to enable Councils to manage lands and other assets so that current and future local community needs can be met in an affordable way.

## **6 Identification of whether the Planning Agreement conforms with the Council's capital works program**

---

The works are not dissimilar to Council's capital works program, therefore, the Planning Agreement conforms with Council's capital works program

## **7 Requirements of the Planning Agreement**

---

The following requirements of the Agreement must be complied with before:

- (1) A Subdivision Works Certificate is issued: Payment of security value.
- (2) A Subdivision Certificate is issued: Completion of Developer's Works, dedication of the designated land and payment of monetary contributions.