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Canterbury-Bankstown Council

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Mirvac Residential (NSW) Developments Pty Ltd

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Western Sydney University

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# Voluntary Planning Agreement

2 and 2a Bullecourt Avenue, Milperra

WSU Bankstown Campus

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## Date

# Parties

**Canterbury-Bankstown Council** ABN 45 985 891 846 of 66-72 Rickard Road,  
Bankstown NSW 2200 (**Council**)

**Mirvac Residential (NSW) Developments Pty Ltd** ABN 29 609 513 135 of Level 28,  
200 George Street, Sydney NSW 2000 (**Developer**)

**Western Sydney University** ABN 53 014 069 881 of Locked Bag 1797, Penrith NSW  
2651 (**Landowner**)

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## Background

- A The Landowner owns the Land.
  - B The Developer and the Landowner prepared the Planning Proposal seeking the Instrument Change, which includes a rezoning of the Land.
  - C The Developer intends to carry out the Development following the Instrument Change.
  - D The Developer has made an offer to enter into this Agreement with Council for the provision of Development Contributions in connection with the Planning Proposal and the Development.
  - E The combined agreed value of the Development Contributions offset is \$3,462,458.54.
  - F Council has accepted the offer to enter into this Agreement. The Parties wish to formalise that arrangement by entering into this Agreement in accordance with section 7.4 of the Act.
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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

Terms used in this Agreement have the following meanings:

<b>Act</b>	the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Affordable Housing Contribution</b>	means the payment of a Monetary Contribution to Council for affordable housing purposes, as described in <b>Part C</b> of <b>Schedule 2</b> .
<b>Agreed Contribution Value</b>	<p>means the estimated value for each Development Contribution as identified in <b>Column 3</b> of <b>Schedule 2</b>, and to be indexed quarterly as follows:</p> <p>(a) in respect of a Development Contribution comprising the Dedication Land, the Milperra Community Contribution and the Affordable Housing Contribution – indexed in accordance with the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Agreement,</p> <p>(b) in respect of a Development Contribution comprising a Works in Kind or a payment of Monetary Contribution in lieu – indexed in accordance with the Producer Price Index (Output of Construction Industry) published by the Australian Bureau of Statistics on and from the date of this Agreement.</p>
<b>Agreement</b>	this voluntary planning agreement, including any schedules and annexures.
<b>Approval</b>	includes an approval, consent, licence, permission or the like.
<b>Approved Deferred Works</b>	means those Works in Kind that Council approves to defer under <b>clause 7.9</b> .
<b>Authority</b>	means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including but not limited to any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

<b>Bank Guarantee</b>	<p>means an irrevocable and unconditional undertaking without any expiry or end date in favour of Council to pay an amount or amounts of money to Council on demand issued by:</p> <ul style="list-style-type: none"><li>(a) one of the following trading banks:<ul style="list-style-type: none"><li>(i) Australia and New Zealand Banking Group Limited;</li><li>(ii) Commonwealth Bank of Australia;</li><li>(iii) Macquarie Bank Limited;</li><li>(iv) National Australia Bank Limited;</li><li>(v) St George Bank Limited;</li><li>(vi) HSBC Bank Australia Limited;</li><li>(vii) Westpac Banking Corporation, or</li></ul></li><li>(b) any other financial institution approved by Council in its absolute discretion.</li></ul>
<b>Business Day</b>	<p>a day on which banks are open for business generally in Sydney, and which is not a Saturday, Sunday or bank or public holiday in Sydney and specifically excluding 27, 28, 29, 30 and 31 December.</p>
<b>Certificate of Final Completion</b>	<p>means a certificate in writing issued by Council to the Developer to effect that, in the reasonable opinion of Council, the Works in Kind to which the certificate relates have been completed by the Developer in accordance with this Agreement.</p>
<b>Certificate of Practical Completion</b>	<p>means a certificate issued by Council to the Developer to the effect that, in the reasonable opinion of Council, construction of a Works in Kind is complete, except for minor omissions and defects:</p> <ul style="list-style-type: none"><li>(a) which do not prevent the Works in Kind from being reasonably capable of being used for their intended purpose; and</li><li>(b) the rectification of which will not prejudice the convenient use of the Works in Kind.</li></ul>
<b>Claim</b>	<p>includes a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding or right of action.</p>
<b>CLM Act</b>	<p>means the <i>Contaminated Land Management Act 1997</i> (NSW).</p>
<b>Contamination</b>	<p>has the same meaning as in the CLM Act.</p>

<b>Construction Certificate</b>	has the same meaning given to that expression in the Act.
<b>Dedication</b>	means transfer to Council for no cost in accordance with this Agreement. <b>Dedicate</b> has the same meaning.
<b>Dedication Land</b>	means the Local Roads Land, SP2 Infrastructure (Drainage) Land and RE1 Public Recreation Zoned Land.
<b>Defect</b>	has the meaning given to that expression in <b>clause 8.1(a)</b> .
<b>Defects Liability Period</b>	<p>with respect to:</p> <p>(a) an item of the Works in Kind other than one referred to in paragraph (b) below, means 12 months from the date the particular Works in Kind is subject to a Certificate of Practical Completion issued in accordance with <b>clause 7.6(c)(i)</b>.</p> <p>(b) items 4, 5, 6, 10, 11 in Schedule 2, means the period beginning on the date the particular Works in Kind is subject to a Certificate of Practical Completion issued in accordance with clause 7.6(c)(i) and ending on the date the Occupation Certificate for the Dwelling on the 401<sup>st</sup> Residential Lot in the Development is issued, or if less than 401 Residential Lots are approved in the Development, the date the Occupation Certificate for the last Residential Lot in the Development is issued.</p>
<b>Defects Liability Security</b>	means Security in the amount of \$139,056.40, which is equal to 2.5% of the Agreed Contributions Value of the Works in Kind, indexed quarterly in accordance with the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Agreement.
<b>Defects Notice</b>	has the meaning given to that expression in <b>clause 8.1(a)</b> .
<b>Deferred Works</b>	has the meaning given to that expression in <b>clause 7.9(a)</b> .
<b>Deferred Works Security</b>	has the meaning given to that expression in <b>clause 14.4(a)</b> .



<b>Development</b>	the development (within the meaning of the Act) of the Land authorised by a Development Consent and permitted as a consequence of the Instrument Change, which, at the date of this Agreement, is proposed to involve the construction of up to 430 residential dwellings and provision of local open space, a neighbourhood centre and drainage facilities.
<b>Development Consent</b>	has the same meaning given to that expression in the Act and includes any development consents granted by Council in respect of the Development.
<b>Development Contributions</b>	the contributions to be provided by the Landowner and Developer in accordance with <b>clause 5</b> and <b>Schedule 2</b> .
<b>Dwelling</b>	has the same meaning as in the LEP.
<b>Explanatory Note</b>	The explanatory note prepared pursuant to section 205 of the Regulation and attached at <b>Annexure C</b> .
<b>General Security</b>	means Security in the amount of \$576,370.90, which is equal to 2.5% of the Agreed Contributions Value of the Development Contributions, indexed quarterly in accordance with the Consumer Price Index (All Groups Sydney) published by the Australian Bureau of Statistics on and from the date of this Agreement.
<b>Instrument Change</b>	means an amendment to the LEP as a consequence of the Planning Proposal, which is given effect by the publication of a new LEP in the NSW Government Gazette.
<b>Insurance Bond</b>	<p>means an irrevocable and unconditional undertaking:</p> <ul style="list-style-type: none"><li>(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and</li><li>(b) on terms acceptable to Council, in Council's absolute discretion,</li></ul> <p>to pay the face value of that undertaking (being such amount as is required under this Agreement) on demand.</p>
<b>Land</b>	means Lot 105 DP1268911 and Lot 1 DP101147, situated at 2 and 2a Bullecourt Avenue, Milperra and currently known as the Western Sydney University Bankstown Campus, including any land created as a result of the subdivision or consolidation of that land.

<b>LEP</b>	means the Canterbury-Bankstown Local Environmental Plan 2023(NSW).
<b>Local Roads Land</b>	that part of the Land that is proposed to be Dedicated as public road, as indicatively shown marked 'Local Road' on the plan at <b>Annexure A</b> .
<b>Maintain</b>	in relation to a Works in Kind, means keep in a good state of repair and working order to Council's satisfaction, and includes repair of any damage and removal of any graffiti to the works.
<b>Maintenance Period</b>	<p>(a) in relation to a Works in Kind, means the period commencing on the date the Council issues a Certificate of Practical Completion in respect of the work and ending on the date the Occupation Certificate for the Dwelling on the 401<sup>st</sup> Residential Lot in the Development is issued or if less than 401 Residential Lots are approved in the Development, the date the Occupation Certificate for the last Residential Lot in the Development is issued, and</p> <p>(b) in relation to a Works in Kind comprising a drainage or bioretention work means a period of 5 years commencing on the date the Council issues a Certificate of Practical Completion in respect of the work .</p>
<b>Milperra Community Contribution</b>	the payment of a Monetary Contribution to Council for the purpose of the Milperra Community Centre or other community facilities in the Milperra region as described in Part C of Schedule 2
<b>Monetary Contribution</b>	means the payment of an amount to Council, including an amount paid in lieu of carrying out an item of Works in Kind that is equivalent to the Agreed Contribution Amount for that item.
<b>Occupation Certificate</b>	has the same meaning given to that expression in the Act.
<b>RE1 Public Recreation Zoned Land</b>	that part of the Land that is proposed to be Dedicated to Council for public open space, that is proposed to be or that is zoned RE1 Public Recreation under the LEP and as shown marked 'Proposed Public Open Space' on the plan at <b>Annexure A</b> .
<b>Part 6 Certificate</b>	means a certificate under Part 6 of the Act.
<b>Party</b>	a party to this Agreement, including their successors and assigns.

<b>Planning Proposal</b>	means the planning proposal made pursuant to section 3.33 of the Act submitted by the Sydney South Planning Panel to the Department of Planning and Environment on 17 February 2022 and given reference number PP-2021-5837.
<b>Practical Completion</b>	in respect of a Works in Kind, occurs when the Council has issued a Certificate of Practical Completion for the Works in Kind.
<b>Public Domain Work Permit</b>	means an approval issued by Council under the <i>Roads Act 1993</i> and <i>Local Government Act 1993</i> pursuant to which a developer is authorised to carry out works within, on, under or above any land owned by Council (including roads).
<b>Register</b>	the Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW).
<b>Regulation</b>	the <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
<b>Release Land</b>	has the meaning given to that expression in <b>clause 13.2(a)</b> .
<b>Residential Accommodation</b>	has the meaning given to that expression in the <i>Standard Instrument—Principal Local Environmental Plan</i> .
<b>Residential Lot</b>	means a lot that forms part of the Land to be created by registration of a plan of subdivision, strata plan or strata plan of subdivision, and is intended to be developed or used for Residential Accommodation, excluding any Service Lots or Super Lots.
<b>Security</b>	means <ul style="list-style-type: none"><li>(a) a Bank Guarantee; or</li><li>(b) a bond agreed to by Council, including an Insurance Bond.</li></ul>

<b>Service Lot</b>	means a Lot that is created for one or more of the following purposes: <ul style="list-style-type: none"><li>(a) to be dedicated or otherwise transferred to an Authority (including to Council);</li><li>(b) any public utility undertaking within the meaning of the <i>Standard Instrument—Principal Local Environmental Plan</i>;</li><li>(c) open space, recreation, environmental conservation, drainage or riparian land management; or</li><li>(d) a road,</li></ul> but does not include a Super Lot.
<b>Site Audit Report</b>	has the same meaning as in the CLM Act.
<b>Site Audit Statement</b>	has the same meaning as in the CLM Act.
<b>SP2 Infrastructure (Drainage) Land</b>	that part of the Land that is proposed to be Dedicated as drainage reserve, as indicatively shown on the plan at <b>Annexure C</b> .
<b>Strata Certificate</b>	has the same meaning given to that expression in the <i>Strata Schemes Development Act 2015</i> .
<b>Subdivision Certificate</b>	has the same meaning given to that expression in the Act.
<b>Super Lot</b>	means a Lot which, following the registration of a plan of subdivision, is intended for further subdivision (including strata and community title subdivision) for Residential Accommodation, but does not include a Service Lot.
<b>Works in Kind</b>	each of the works to be carried out as specified in <b>Column 2 of Schedule 2</b> .

## 1.2 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;

- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;
- (i) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (j) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (k) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (l) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (m) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced; and
- (n) a reference to a clause, part schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

## 2 Planning agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the ways in which this Agreement addresses those requirements.

### 3 Application of this Agreement

This Agreement applies to the:

- (a) Land;
- (b) Instrument Change; and
- (c) Development.

### 4 Operation of this Agreement

- (a) **Clauses 1, 2, 3, 4, 13, 16, 17, 18, 19 and 21.1** operate and are effective and binding on the Parties on and from the date of this Agreement.
- (b) The Parties agree that the balance of the terms of this Agreement operate and are effective and binding on the Parties on and from the date if the Instrument Change is made.
- (c) Notwithstanding **clause 4(b)**, the Parties agree that the Landowner and Developer are not bound by this Agreement to deliver the Development Contributions unless:
  - (i) the Instrument Change is made;
  - (ii) a Development Consent or Development Consents (as necessary) is or are granted for the Development; and
  - (iii) the Development is physically commenced in accordance with section 4.53 of the Act.

### 5 Contributions to be made under this Agreement

- (a) Subject to this Agreement and in accordance with **Schedule 2**, the Developer and the Landowner (as applicable) are to deliver the Development Contributions, comprising the:
  - (i) Dedication of the Dedication Land;
  - (ii) carrying out, completion and maintenance of the Works in Kind or, in respect of Works in Kind items 7 and 14 or the provision of Monetary Contribution in lieu in accordance with **clause 7.8** and subject to agreement from the Council; and
  - (iii) provision of the Milperra Community Contribution and the Affordable Housing Contribution.
- (b) The Parties acknowledge and agree that the Agreed Contribution Value in respect of a Works in Kind or Dedication Land:
  - (i) constitutes the agreed value of the public benefit of a Development Contribution required to be made under this Deed irrespective of the cost to the Developer of making the Development Contribution, and

- (ii) does not serve to define the monetary extent of the Developer's obligation to make the Development Contribution to which the Agreed Contribution Value relates.

## 6 Dedication of Dedication Land

### 6.1 Delivery of the Dedication Land

The Landowner is to Dedicate the Dedication Land specified in **Part A of Schedule 2**, by the time specified in **Column 4 of Schedule 2**, in accordance with **clause 6.2**, **clause 6.3** and **clause 6.4**.

### 6.2 Dedication process

- (a) The Landowner must take all steps necessary, and may be assisted by the Developer in the taking of such steps, to give effect to the Dedication of the Dedication Land to Council in accordance with the timing specified in **clause 6.1** by:
  - (i) in the case of the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land, either:
    - (A) preparing and registering a deposited plan (or more than one deposited plan) which has the effect of Dedicating the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land to Council as a public reserve or a drainage reserve (as applicable) in accordance with section 49 of the Local Government Act 1993 (NSW); or
    - (B) arranging the electronic conveyance of the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land to Council for \$1.00, including:
      - (1) preparing and registering a deposited plan (or more than one deposited plan) to create the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land as separate parcels;
      - (2) procuring all necessary consents to facilitate the transfer of the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land to Council; and
      - (3) coordinating the electronic conveyance of the RE1 Public Recreation Zoned Land and SP2 Infrastructure (Drainage) Land to Council via Property Exchange Australia Ltd (PEXA) or another applicable electronic lodgement network operator;
  - (ii) in the case of the Local Roads Land, preparing and registering a deposited plan (or more than one deposited plan) which has the effect of Dedicating the Local Roads Land to Council as public road in accordance with section 9 of the *Roads Act 1993*; and

- (iii) taking any other necessary action to give effect to the transfer of the title of the Dedication Land to Council.
- (b) The Dedication Land is taken to be Dedicated to Council for the purposes of this Agreement when the relevant deposited plan or electronic conveyance has been registered.
- (c) To the extent permitted by law, Council must promptly do all things reasonably required by the Landowner to facilitate the registration of a deposited plan or plans to create the Dedication Land, including but not limited to issuing a Subdivision Certificate.
- (d) Subject to the requirements under this **clause 6.2**, Council agrees that it will accept the Dedication Land free of all encumbrances and interests other than any easements or interests approved in writing by Council required by any authority or utility service provider or required under any Development Consent.
- (e) To assist in Council's consideration of any easements or interests referred to in clause 6.2(d), the Developer is provide to Council on request a plan or other document showing the location and terms of any easements and interests.
- (f) The Developer is responsible for paying any costs and expenses, including those incurred by Council, associated with the Dedication of the Dedication Land to Council.

### **6.3 Site Audit Report and Site Audit Statement**

Before Dedicating the Dedication Land to Council, the Developer, at its cost, is to obtain and provide to Council a Site Audit Report and Site Audit Statement stating that the Dedication Land is suitable for the purpose for which the Dedication Land is required to be dedicated under this Agreement without being subject to compliance with an environmental management plan.

### **6.4 Completion of SP2 Infrastructure (Drainage) prior to Dedication**

Before Dedicating the Dedication Land comprising item 3 of Schedule 2 to Council, the Developer is to have obtained a Certificate of Practical Completion in respect of Works in Kind item 10 of Schedule 2.

### **6.5 Indemnity**

The Developer indemnifies and agrees to keep indemnified Council against all Claims made against Council as a result of any Contamination on or emanating from the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred or dedicated to Council or compulsorily acquired by Council pursuant to this Agreement, but only in circumstances where the Council is of the view, acting reasonably, that the Site Audit Report and Site Audit Statement has not been properly prepared in accordance with the applicable industry standards.



## **7 Carrying out and delivery of Works in Kind**

### **7.1 Design of Works in Kind**

- (a) The Developer may not commence construction of a Works in Kind unless the Works in Kind is designed and approved in accordance with this clause.
- (b) The Developer must, promptly after the date of the Development Consent applicable to the relevant Works in Kind, prepare plans and specifications for the Works in Kind having regard to:
  - (i) the relevant Development Consent;
  - (ii) applicable Council standards (except to the extent such standards are varied by the relevant Development Consent); and
  - (iii) applicable Australian standards.
- (c) Before commencing the design of the Works in Kind contribution items 4, 6, 7, 10 and 14, the Developer is to request Council to provide the Developer with Council's design requirements for the works.
- (d) Upon receipt of the Developer's request, Council may:
  - (i) initially request the Developer to provide a written proposal concerning the design of the Works in Kind, including preliminary concept designs, to assist Council in determining and notifying the Developer of its requirements, and subsequently request the Developer to submit the plans and drawings of the Works in Kind to Council for approval; or
  - (ii) request the Developer to submit the plans and drawings of the works to Council for approval.
- (e) The Developer is to prepare:
  - (i) plans and drawings of the Works in Kind in accordance with the Council's design requirements provided to the Developer under clause 7.1(d), and
  - (ii) in respect of Works in Kind items 7 and 14, an estimate of the costs of construction of those items to those plans and drawings prepared and certified by an independent and suitably qualified and registered quantity surveyor, showing that the estimated costs of construction is not less than the Agreed Contribution Value,and submit the plans and drawings and cost estimate to the Council for approval.
- (f) Subject to clause 7.1(g), Council may reasonably require the Developer to make any change to the plans and drawings of the Works in Kind that it reasonably considers necessary or desirable as a precondition to approving the plans and drawings, and the Developer is to make any such change.

- (g) In respect of Works in Kind items 7 and 14, the Developer is not required to make any change requested under clause 7.1(f) if such change will result in an increase in the estimated cost of the relevant Works in Kind exceeding the Agreed Contribution Value for that item, as certified by an independent and suitably qualified and registered quantity surveyor.
- (h) Council is to inform the Developer in writing when it approves the plans and drawings of the Works in Kind.
- (i) The Developer is not to make any application for any Approval relating to the Works in Kind contribution items 4, 6, 7, 10 and 14 unless Council has approved the plans and drawings of the Works in Kind under this clause.
- (j) For the basin design components relating to the Works in Kind contribution items 4 and 10, the Developer agrees to:
  - (i) install gross pollutant traps at the end of each drainage line shown on the plan at **Annexure C**, and ensure that vehicular access to the gross pollutant traps is available in all weather conditions;
  - (ii) when it lodges a Subdivision Works Certificate Application for those items, provide to Council for Council's approval a maintenance plan for the maintenance of the drainage and bioretention basins shown on the plan at **Annexure C** which includes (without limitation) details of the following matters:
    - (A) requirements for works-as-executed plans,
    - (B) life cycle plans and maintenance plans for individual assets including the following details:
      - (1) device model and brand (if applicable),
      - (2) characteristics of the 'upstream' area (e.g. pollution, volume of water) and how the device meets these,
      - (3) simplified diagram of the device functions,
      - (4) useful life,
      - (5) preventative maintenance and frequency,
      - (6) in respect of gross pollutant traps, adherence to the 'Guidelines for the Maintenance of Stormwater Treatment Measures' published by Water NSW,
      - (7) reactive maintenance,
      - (8) data sheets for gross pollutant traps,
      - (9) warranties;
  - (iii) maintain the drainage and bioretention basins shown on the plan at **Annexure C** for a period of 5 years from the Practical Completion of those Works in Kind in accordance with the maintenance plan approved by Council under **clause 7.1(j)(ii)**; and

- (iv) at the completion of the maintenance period referred to in **clause 7.1(j)(iii)**, undertake testing to determine whether there has been an unacceptable reduction in the infiltration capacity of the drainage and bioretention basins.
- (k) The Developer acknowledges and agrees that if an unacceptable reduction in the infiltration capacity of the drainage and bioretention basins is identified under **clause 7.1(j)(iv)**, the Developer must either:
  - (i) undertake work to restore the infiltration capacity of the drainage and bioretention basins, within the approved footprint, to the capacity level as Practical Completion of those Works in Kind; or
  - (ii) Subject to Council's agreement, pay to Council an amount agreed in lieu of carrying out the work identified in **clause 7.1(k)(i)**, to allow Council to carry out the work.
- (l) Prior to the issue of an Occupation Certificate in respect of a Residential Lot, the Developer is to ensure that the Residential Lot is supplied with an appropriate rainwater tank fitted in accordance with the *BASIX Interim Rainwater Harvesting System Guidelines*.

## **7.2 Carrying out of Works in Kind**

- (a) The Developer must:
  - (i) carry out the Works in Kind:
    - (A) in a good and workmanlike manner; and
    - (B) in accordance with the plans and drawings prepared and approved by Council under **clause 7.1**; and
  - (ii) bring the Works in Kind to Practical Completion by the time specified in **Column 4 of Schedule 2**.
- (b) The Developer is to ensure that anything necessary for the proper performance of its obligations under this Agreement relating to the provision of the Works in Kind is supplied or made available for that purpose.
- (c) The Developer is to use all reasonable endeavours to ensure that, in providing the Works in Kind:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (d) The Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on

any land in connection with the Works in Kind unless authorised in writing by Council or any relevant Authority.

- (e) The Developer warrants to Council that:
  - (i) it has obtained all Approvals and has complied with all laws and applicable industry standards in relation to the Works in Kind;
  - (ii) it accepts that, if any aspect of the Works in Kind do not comply with this Agreement, Council is entitled to require the Developer to cease the Works in Kind and to pursue its rights and remedies relating to the non-compliance under this Agreement and, subject to this Agreement, at law or in equity; and
  - (iii) the Works in Kind, when completed, are to be fit for purpose.
- (f) The Developer is to procure in favour of Council from the appropriate person engaged in relation to the Works in Kind, any warranty reasonably required by Council relating to the design, construction, supervision, inspection, testing or certification of the Works in Kind.

### **7.3 Damage to assets & property**

- (a) The Developer must immediately notify Council in writing of any loss or damage that occurs in respect of a Council asset of which it becomes aware while carrying out the Works in Kind.
- (b) The Developer must replace or fix any Council asset the Developer loses or damages while carrying out the Works in Kind in accordance with any requirements of Council.
- (c) If an audit, inspection or test of the Works in Kind shows that:
  - (i) the Works in Kind do not conform to the location, design, specifications, materials or finishes approved by Council under this Agreement; or
  - (ii) damage has occurred to a Council asset or the property of another person in connection with the Works in Kind,

Council may give the Developer a notice in writing requiring it to take corrective action to bring the Works in Kind into conformity or repair the damage, as the case requires.
- (d) Without limiting any other remedies available to Council under this Agreement, if the Developer does not comply with Council's requirements under subclause (c), Council may take the action required of the Developer and recover Council's costs of so doing from the Developer.

### **7.4 Entry onto land**

- (a) The Developer is responsible for obtaining all necessary rights to lawfully enter and occupy land, and provide the Works in Kind.

- (b) Upon receiving not less than 15 Business Days prior written notice from the Developer, and subject to the requirements of any laws including the *Crown Land Management Act 2016*, Council is to allow the Developer, to enter, occupy, and use Council owned or controlled land specified in the notice at any reasonable time if the occupation or use of the land by the Developer is reasonably necessary for the Works in Kind.
- (c) Council is not required to allow the Developer to enter, occupy and use any Council owned land that is used for public purposes unless and until the Developer has paid any applicable fee or rent, as approved by Council, for that purpose.
- (d) Upon receiving not less than 15 Business Days prior notice from Council, the Developer is to provide Council with safe and unhindered access at any reasonable time to any land on which the Works in Kind are being, or have been, provided.
- (e) Council must comply with the Developer's reasonable safety requirements while on any land on which the Works in Kind are being provided.

## **7.5 Audit, inspection and testing of Works in Kind**

- (a) Council may undertake an audit, inspection or test of the Works in Kind at any reasonable time for any purpose related to this Agreement upon giving not less than 15 Business Days prior notice to the Developer.
- (b) The Developer is to provide Council with any assistance that is reasonably required by Council to enable Council to undertake any audit, inspection or test of the Works in Kind.
- (c) If an audit, inspection or test reasonably shows that particular action must be taken in relation to the Works in Kind, the Developer is to:
  - (i) take the action in the manner, and within the time, the Council reasonably requires, and
  - (ii) provide evidence to the Council that the action has been taken.
- (d) If an audit, inspection or test shows that the Works in Kind have not been provided in accordance with this Agreement, the Developer is to pay any Costs incurred by the Council in connection with the audit, inspection or test.
- (e) If the Council reasonably decides that a further and more detailed audit, inspection or test of the Works in Kind is required, the Council may determine an approved fee in that regard and the Developer is to pay to the Council the fee so approved.

## **7.6 Completion of Works in Kind**

- (a) When the Developer is of the reasonable opinion that any item of the Works in Kind is substantially complete, the Developer must notify Council in writing requesting Council to inspect the Works in Kind.

- (b) Council must inspect the relevant Works in Kind promptly following, and within 15 Business Days of Council receiving, the notice under **clause 7.6(a)**.
- (c) Council must, within 15 Business Days of completing its inspection of the Works in Kind (and in any event, no later than 20 Business Days after receipt of the notice under **clause 7.6(a)**), provide the Developer with:
  - (i) a Certificate of Practical Completion; or
  - (ii) a written notice specifying that it is of the opinion that the Works in Kind has not been completed to the extent to enable the issuing of a Certificate of Practical Completion, in which case it must set out all the matters that Council reasonably considers must be completed in order for a Certificate of Practical Completion to be issued.
- (d) If the Council does not provide the Developer with a notice under **clause 7.6(c)** within the specified timeframe, the Developer can send a further notice to the Council and if the Council does not respond within a further 5 Business Days, then the Works in Kind the subject of the Developer's notice under **clause 7.6(a)** will be deemed to have been the subject of a Certificate of Practical Completion on the date nominated in the Developer's notice.
- (e) The Developer:
  - (i) must correct any defects or finalise any incomplete work specified by Council under **clause 7.6(c)(ii)**, within the agreed time as reasonably nominated by the Developer, or if no time is nominated and agreed, within 10 Business Days after the Developer receives the notice issued under **clause 7.6(c)(ii)** from Council. Once complete, the provisions of **clauses 7.6(a)– 7.6(c)** will apply; or
  - (ii) if it does not agree with the matters set out in Council's notice issued under **clause 7.6(c)(ii)**, must notify Council that a dispute has arisen and **clause 16** of this Agreement will apply.
- (f) Within 21 days after the issuing of a Certificate of Practical Completion, the Developer is to rectify any minor omissions or defects in the Works in Kind which did not prevent the issuing of the Certificate of Practical Completion and thereby complete the Works in Kind.

## **7.7 Works-As-Executed Plan**

- (a) No later than 21 days after Practical Completion of all of a Works in Kind, the Developer is to submit to Council a full Works-As-Executed-Plan for the Works in Kind in a format agreed to by Council.
- (b) 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 Council.

- (c) 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 to Council free of cost to Council.

## **7.8 Alternative method of delivering Works in Kind**

- (a) In respect of items 7 and 14 in **Schedule 2**, subject to obtaining Council's prior written agreement to accept Monetary Contributions in lieu of those items the Developer may decide, at any time prior to the issue of a Construction Certificate and/or Public Domain Work Permit (whichever is applicable) to pay to Council a Monetary Contribution in the amount of the Agreed Contribution Value of the item, in lieu of carrying out that item.
- (b) In respect of item 12 in **Schedule 2**, if, after having consulted with the Council and Ausgrid, the Council is satisfied that the Developer is unable to obtain Ausgrid approval for the undergrounding of the powerlines, then in lieu of carrying out that item the Developer is to pay to Council a Monetary Contribution in the amount of the Agreed Contribution Value of the item and the Council may apply that Monetary Contribution towards undergrounding of power lines in Milperra.
- (c) If the Developer decides to pay a Monetary Contribution in lieu of carrying out Works in Kind in accordance with **clause 7.8(a)**, or is required to pay a Monetary Contribution in accordance with **clause 7.8(b)**, the Developer must:
  - (i) give Council not less than 15 Business Days written notice of its intention to pay a Monetary Contribution; and
  - (ii) transfer funds in the amount of the Monetary Contribution to Council by the time that the relevant item of Works in Kind was required to have been completed under this Agreement, provided Council has provided the Developer with sufficient details necessary to arrange the transfer of funds.
- (d) A Monetary Contribution is made for the purposes of this Agreement when cleared funds are deposited and credited by means of electronic funds transfer into a bank account nominated by Council.
- (e) If a tax invoice is required by law to be provided to the Developer by Council, the Developer is not required to pay the Monetary Contribution identified in its notice issued in accordance with **clause 7.8(c)(i)** until Council has given the Developer a tax invoice for the amount of the relevant Monetary Contribution.
- (f) If the Developer decides or is required to pay, and pays, a Monetary Contribution in lieu of carrying out Works in Kind in accordance with this clause, the Developer will not be considered to be in breach of this Agreement as a result of a failure to achieve Practical Completion of the Works in Kind by the time for Practical Completion of those Works in Kind as specified in **Column 4 of Schedule 2**.

## 7.9 Deferral of Works in Kind

- (a) Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time that it is unable to deliver an item or items of Works in Kind (**Deferred Works**) by the time specified in **Column 4** of **Schedule 2**, then the Developer may seek Council's approval to defer the relevant Works in Kind by providing written notice to Council:
  - (i) identifying the relevant Works in Kind that the Developer proposes to defer;
  - (ii) identifying the anticipated time for completion of the relevant Works in Kind; and
  - (iii) if the Developer seeks to reduce the Deferred Works Security from the default amount equal to the Agreed Contribution Value of the relevant Works in Kind, the Developer must provide reasons for that request including any evidence of the cost of achieving completion of the Deferred Works to support the reduction in the Deferred Works Security.
- (b) Within 15 Business Days of the Developer providing the notice under **clause 7.9(a)**, Council must give the Developer a written notice stating whether or not it consents to the deferral of the Deferred Works, the revised date for completion and any reduction in the Deferred Works Security. In determining whether it consents to the deferral of the Deferred Works, the revised date for completion and any reduction in the Deferred Works Security, Council must act reasonably however **clause 16** does not apply to any such determination.
- (c) If Council consents to the deferral of the Deferred Works and receives from the Developer the Deferred Works Security in the amount identified in Council's notice provided under **clause 7.9(b)**, then:
  - (i) the time for completion of the Approved Deferred Works under this Agreement will be taken to be the revised date for completion approved by Council;
  - (ii) the Developer will not be considered to be in breach of this Agreement as a result of a failure to achieve Practical Completion of the Approved Deferred Works by the time for Practical Completion of those Works in Kind as specified in **Column 4** of **Schedule 2**; and
  - (iii) if applicable, any relevant Subdivision Certificate or Strata Certificate may be issued notwithstanding that the time for Practical Completion of the Approved Deferred Works was required prior to the issue of a Subdivision Certificate or Strata Certificate in **Column 4** of **Schedule 2**.
- (d) If the Approved Deferred Works do not achieve Practical Completion by the revised completion date, then:



- (i) Council may call on the Deferred Works Security in accordance with **clause 11.2**; and
  - (ii) no further Part 6 Certificates or Strata Certificates may be issued for the Development until the Approved Deferred Works achieve Practical Completion.
- (e) The Developer may request a further deferral of Approved Deferred Works by following the procedures in this **clause 7.9**.

## **7.10 Maintenance of Works in Kind after Practical Completion**

- (a) In respect of the following items of Works in Kind:

- (i) Open Space Embellishment (item 4 in Schedule 2),
- (ii) Local Roads (item 5 in Schedule 2),
- (iii) Shared Cycleway (item 6 in Schedule 2),
- (iv) SP2 Infrastructure (Drainage) (item 10 in Schedule 2),
- (v) Local Road Footpaths (item 11 in Schedule 2)

the Developer is to Maintain the works during the Maintenance Period to the Council's satisfaction and in accordance with any requirements notified by the Council to the Developer in a Certificate of Practical Completion, and in respect of a Works in Kind comprising a drainage or bioretention work, in accordance with the maintenance plan approved by Council under **clause 7.1(j)(ii)**.

# **8 Defects Liability**

## **8.1 Defects Notice**

- (a) Where a Certificate of Practical Completion has been issued for all or any part of the Works in Kind pursuant to **clause 7.6(c)(i)**, but the relevant part of the Works in Kind is incomplete, has minor omissions or defects (which did not prevent the issuing of a Certificate of Practical Completion) or contains any other defect, being a defect which:
- (i) adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or the ordinary use and/or enjoyment of the relevant part of the Works in Kind; or
  - (ii) will require maintenance or rectification works to be performed on the Works in Kind as a result of the existence of the defect,
- (**Defect**), Council may issue a defects notice (**Defects Notice**) to the Developer concerning that part of the Works in Kind, but only within the Defects Liability Period.
- (b) A Defects Notice must contain the following information:
- (i) the nature and extent of the Defect, omission or incomplete work;

- (ii) the specific details of the work Council requires the Developer to carry out in order to rectify the Defect, omission or incomplete work; and
- (iii) the time within which the Defect, omission or incomplete work must be rectified (which must be a reasonable time having regard to the nature of the Defect, omission or incomplete work).

## 8.2 Developer to rectify Defects

- (a) The Developer must:
  - (i) procure the performance of the work required to rectify the Defects, omission or incomplete work contained within a Defects Notice after receipt of the Defects Notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the Defects Notice.
- (b) The Developer must follow the procedure set out in **clauses 7.6(a)–7.6(d)** in respect of the satisfaction of the Defects Notice except that:
  - (i) all references to '*is substantially complete*' is to be a reference to '*has been rectified in accordance with the Defects Notice*'; and
  - (ii) all references to '*Certificate of Practical Completion*' is a reference to '*Certificate of Final Completion*'.
- (c) Where the Developer serves notice on Council in accordance with **clause 8.2(a)(ii)**, **clause 16** of this Agreement will apply.
- (d) Council takes possession and ownership of the Works in Kind at 4:00pm on the later of:
  - (i) the end of the Defects Liability Period for the Works in Kind; or
  - (ii) the date Council issues a Certificate of Final Completion in accordance with this clause.

## 9 Affordable Housing Contribution

- (a) The Developer is to pay to Council the Affordable Housing Contribution specified in **Column 3** of item 15 **Schedule 2**, before the timing specified in **Column 4** of item 15 in **Schedule 2**.
- (b) The amount of the Affordable Housing Contribution is to be indexed from the date of this Deed until the date of payment in accordance with the following formula:

$$A = B \times C/D$$

where:

**A** = the indexed amount of the Affordable Housing Contribution, which shall not be less than the amount of Affordable Housing Contribution as at the date of this Agreement;

**B** = the amount of Affordable Housing Contribution as at the date of this Agreement;

**C** = the Index most recently published before the date of payment; and

**D** = the Index most recently published before the commencement date of this Agreement.

Index means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics, or any replacement index published from time to time.

- (c) The Affordable Housing Contribution is made for the purposes of this Agreement when Council receives the full amount of the contribution payable under this Agreement by unendorsed bank cheque or deposit by means of an electronic funds transfer of cleared funds into a bank account nominated by Council.

## 10 Milperra Community Centre Contribution

- (a) The Developer is to pay to Council the Milperra Community Centre Contribution a specified in **Column 3** of item 16 in **Schedule 2**, before the timing specified in **Column 4** of item 16 in **Schedule 2**.

- (b) The amount of the Milperra Community Contribution is to be indexed from the date of this Deed until the date of payment in accordance with the following formula:

$$\mathbf{A = B \times C/D}$$

where:

**A** = the indexed amount of the Milperra Community Contribution, which shall not be less than the amount of Milperra Community Contribution as at the date of this Agreement;

**B** = the amount of Milperra Community Contribution as at the date of this Agreement;

**C** = the Index most recently published before the date of payment; and

**D** = the Index most recently published before the commencement date of this Agreement.

Index means the Consumer Price Index (All Groups - Sydney) as published by the Australian Bureau of Statistics, or any replacement index published from time to time.

- (c) The Milperra Community Centre Contribution is made for the purposes of this Agreement when the Council receives the full amount of the

contribution payable under this Agreement by unendorsed bank cheque or by deposit by means of an electronic funds transfer of cleared funds into a bank account nominated by the Council.

## 11 Breach of obligations

### 11.1 Notice of breach

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice to the Developer:
  - (i) specifying the nature and extent of the breach,
  - (ii) requiring the Developer to:
    - (A) rectify the breach if it reasonably considers it is capable of rectification, or
    - (B) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
  - (iii) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

### 11.2 Failure to comply with notice of breach

- (a) If the Developer fails to fully comply with a notice referred to in **clause 11.1**, the Council may, without further notice to the Developer and notwithstanding any other remedy it may have under this Agreement, under any Act or otherwise at law or in equity, call-up the General Security, the Defects Liability Security or the Deferred Works Security, as appropriate, and apply it to remedy the Developer's breach.
- (b) If the Developer fails to comply with a notice given under **clause 11.1** relating to the provision or rectification of Works in Kind under this Agreement, the Council may also step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any equipment on such land for that purpose.

### 11.3 Recovery of costs by Council

- (a) Any costs incurred by the Council in remedying a breach in accordance with **clause 11.2(a)** or **clause 11.2(b)** may be recovered by the Council by either or a combination of the following means:
  - (i) by calling-up and applying the General Security, the Defects Liability Security or the Deferred Works Security, as appropriate, provided by the Developer under this Agreement, or
  - (ii) as a debt due in a court of competent jurisdiction.

- (b) For the purpose of **clause 11.3(a)**, the Council's costs of remedying a breach the subject of a notice given under **clause 11** include, but are not limited to:
  - (i) the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
  - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
  - (iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

#### **11.4 Exercise of Council's rights at law or in equity**

- (a) Nothing in this **clause 11** prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

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

- (a) Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Agreement prevents:
  - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates, or
  - (ii) a party exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

### **12 Application of s7.11, s7.12 and s7.24 of the Act to the Developer and benefits under this Agreement**

- (a) This Agreement does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act to the Land and the Development.
- (b) Certain benefits under this Agreement are to be taken into consideration under section 7.11(6) of the Act to the extent stated in **clause 12(c)**.
- (c) Council accepts the provision of certain Works in Kind identified in **Schedule 2** as a material public benefit and agrees that these will be offset against contributions required to be made under sections 7.11 of the Act in connection with the development of the Land but only up to the amounts and for the public purposes specified in **Column 5 of Schedule 2**.

## 13 Registration of this Agreement

### 13.1 Registration

- (a) The Landowner represents and warrants that it is the registered proprietor of the Land.
- (b) The Landowner agrees that it will procure the registration of this Agreement in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.
- (c) On the date of this Agreement, the Landowner must deliver to Council:
  - (i) the written irrevocable consent of each person who:
    - (A) has an estate or interest in the Land; or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (ii) an instrument in registrable form requesting registration of this Agreement on the title to the Land duly executed by the registered proprietor of the Land.
- (d) The Developer is to do such things as are necessary to enable the lodgement and registration of this Agreement to occur electronically through PEXA or another applicable electronic lodgement network operator in accordance with **clause 13.1(b)**.

### 13.2 Release and discharge of Agreement

- (a) Council agrees to provide the Landowner and Developer with a release and discharge of this Agreement with respect to a lot or lots forming part of the relevant Land or any lot created or to be created on subdivision of the Land (or part of the Land) (**Release Land**):
  - (i) on satisfaction by the Landowner or Developer (as applicable) of the obligation to provide the Dedication Land, Monetary Contributions, and Affordable Housing Contributions relevant to that Release Land; and
  - (ii) on:
    - (A) satisfaction by the Developer of the obligation to complete a Works in Kind relevant to that Release Land and provision of the Defects Liability Security for that Works in Kind; or
    - (B) where Council has consented to the deferral of a Works in Kind under **clause 7.9** relevant to that Release Land, the Developer has provided any Deferred Works Security required to be provided with respect to the Approved Deferred Works.
- (b) Council agrees to do all things reasonably required by the Landowner or Developer to, following a request to release this Agreement from the Release Land:

- (i) release and discharge this Agreement with respect to the Release Land; and
- (ii) execute the relevant documents to enable the Landowner or Developer to remove the notation of this Agreement from the relevant folio(s) of the Register in respect of the Release Land, as soon as practicable after receiving a request from the Landowner or Developer to do so,

upon Council being satisfied that:

- (iii) the Landowner and Developer have satisfied all of their obligations under this Agreement in respect of the Release Land; and
- (iv) the Landowner and Developer are not otherwise in default of their obligations under this Agreement.

## 14 Security and enforcement

### 14.1 Compulsory Acquisition

- (a) If the Landowner does not procure the Dedication of the Dedication Land in accordance with **clause 6**, the Landowner agrees that Council may compulsorily acquire all or part of the Dedication Land that has not been Dedicated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.00 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) The Parties acknowledge and agree that:
  - (i) **clause 14.1(a)** is an agreement between the Developer and Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition are agreed.
- (c) If, as a result of the acquisition referred to in **clause 14.1(a)**, Council is required to pay compensation to any person other than the Landowner or Developer, the Landowner and Developer are to reimburse Council that amount, upon a written request being made by Council, or Council can call on the General Security.
- (d) The Landowner and Developer indemnifies and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Dedication Land except if, and to the extent that, the Claim arises because of Council's negligence or default.
- (e) The Landowner and Developer are to promptly do all things necessary, and consents to Council doing all things necessary, to give effect to this **clause 14.1**, including without limitation:

- (i) signing any documents or forms,
- (ii) giving land owner's consent for lodgement of any Development Application, and
- (iii) paying Council's costs arising under this **clause 14.1**.

## **14.2 General Security**

- (a) The Developer is to provide the General Security to Council:
  - (i) before the Developer obtains a Construction Certificate for any part of the Development or before the Developer commences any part of the Works in Kind, whichever occurs first; or
  - (ii) at such other time agreed in writing by Council.
- (b) Council is to hold the General Security as security for the Developer performing its obligations under this Agreement other than an obligation to which the Defects Liability Security or the Deferred Works Security applies.
- (c) Despite any other provision of this Agreement, Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the General Security to Council in accordance with this Agreement.
- (d) Council is to release and return the General Security or any unused part of it to the Developer within 14 days of all of the following having occurred:
  - (i) all Monetary Contributions and Affordable Housing Contribution have been paid to Council;
  - (ii) all Dedication Land has been Dedicated to Council; and
  - (iii) all Works in Kind have reached Practical Completion and the Developer has provided the Defects Liability Security to Council for the Works in Kind.
- (e) The Developer may provide Council with a replacement General Security at any time.
- (f) On receipt of a replacement General Security, Council is to release and return the replaced General Security to the Developer.
- (g) If Council calls-up the General Security or any portion of it, Council may give the Developer a written notice requiring the Developer to provide a further or replacement General Security to ensure that the amount of General Security held by Council equals the amount Council is entitled to hold under this Agreement.
- (h) The Developer is to ensure that the General Security provided to Council is at all times maintained to the full current indexed value.



### 14.3 Defects Liability Security

- (a) The Developer is to deliver the Defects Liability Security to Council before the commencement of the Defects Liability Period to secure the Developer's obligations in relation to the Defects Liability Period for Works in Kind.
- (b) Council is to release and return the Defects Liability Security, or any remaining part, to the Developer within 30 days after the end of the Defects Liability Period if, at that time, the Developer is not in breach of an obligation under this Agreement to which the Defects Liability Security relates.

### 14.4 Deferred Works Security

- (a) In the event that the Developer and Council agree to defer any Works in Kind under **clause 7.9**, the Developer must deliver to Council a Bank Guarantee for the amount equivalent to the Agreed Contribution Value of the relevant Works in Kind, or any lesser amount specified in Council's notice provided under **clause 7.9(b) (Deferred Works Security)**.
- (b) The Developer may replace the Deferred Works Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Agreement. On receipt of a replacement Deferred Works Security, Council must immediately release the Deferred Works Security being replaced and return it to the Developer.
- (c) Council must release the Deferred Works Security or the relevant part of the Deferred Works Security to the Developer within 20 Business Days of:
  - (i) it issuing, or being deemed to have issued, a Certificate of Practical Completion for the relevant part of the Approved Deferred Works in accordance with clause 7.3; or
  - (ii) the Developer satisfying any of its obligations under this Agreement by paying a Monetary Contribution to Council in accordance with **clause 7.8** in respect of Approved Deferred Works.

## 15 Indemnities and Insurance

### 15.1 Risk

The Landowner and Developer performs this Agreement at their own risk and their own cost.

### 15.2 Release

The Landowner and Developer release Council from any Claim they may have against Council arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of Council's negligence or default.

### 15.3 Indemnity

The Landowner and Developer indemnify Council from and against all Claims that may be sustained, suffered, recovered or made against Council arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of Council's negligence or default.

### 15.4 Insurance

- (a) The Developer is to take out and keep current to the satisfaction of Council the following insurances in relation to the Works in Kind until the Works in Kind are completed in accordance with this Agreement:
  - (i) contract works insurance for the full replacement value of the Works in Kind (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works in Kind;
  - (ii) public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers Council, the Developer, the Landowner and any subcontractor of the Developer, for liability to any third party; and
  - (iii) workers compensation insurance as required by law.
- (b) If the Developer fails to comply with **clause 15.4(a)**, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to Council and may be recovered by Council as it deems appropriate including:
  - (i) by calling upon the General Security provided by the Developer to Council under this Agreement, but not before giving reasonable prior notice of Council's intention to do so; or
  - (ii) recovery as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence any Works in Kind unless it has first provided to Council satisfactory written evidence of all of the insurances specified in **clause 15.4(a)**.

## 16 Dispute Resolution

### 16.1 Dispute

If any dispute arises out of this Agreement, then the Parties must resolve that dispute in accordance with this **clause 16** and a Party to the Agreement must not commence any court or arbitration proceedings, except where a Party seeks urgent interlocutory relief. Any referral or undertaking of the dispute resolution process as set out in this **clause 16** does not suspend any other obligations of the Parties' under this Agreement.

## 16.2 Expert determination

- (a) This **clause 16.2** applies to a dispute between any of the Parties to this Agreement concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:
  - (i) the Parties to the dispute agree that it can be so determined; or
  - (ii) the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the dispute gives a written opinion that the Dispute can be determined by a member of that body.
- (b) A dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (c) If a notice is given under **clause 16.2(b)**, the Parties are to meet within 10 Business Days of the notice in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within a further 20 Business Days, the dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- (e) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- (f) Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (g) The Parties are to share equally the costs of the President, the expert, and the expert determination.

## 16.3 Mediation

- (a) This **clause 16.3** applies to any dispute arising in connection with this Agreement other than a dispute to which **clause 16.2** applies.
- (b) Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (c) If a notice is given under **clause 16.3(b)**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within a further 20 Business Days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- (e) If the dispute is not resolved by mediation within a further 20 Business Days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

- (f) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- (g) The Parties are to share equally the costs of the President, the mediator, and the mediation.

#### **16.4 Court proceedings**

If the dispute is not resolved within 80 Business Days after notice is given under **clause 16.2(b)** or **16.3(b)** then any Party which has complied with the provisions of this **clause 16** may in writing terminate any dispute resolution process undertaken under this **clause 16** and may then commence court proceedings in relation to the dispute.

#### **16.5 Not use information**

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 16** is to attempt to settle the dispute. No Party may use information or documents obtained through any dispute resolution process undertaken under this **clause 16** for any purpose other than in an attempt to settle the dispute.

#### **16.6 No prejudice**

This **clause 16** does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

### **17 Notices**

#### **17.1 Delivery**

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) emailed to that Party at its email address set out below.

##### **Council**

Attention:	Matthew Stewart – Chief Executive Officer
Address:	Canterbury-Bankstown Council PO Box 8 Bankstown NSW 1885
Phone Number:	9707 9524
Email Address:	matthew.stewart@cbc.city.nsw.gov.au

**Developer**

Attention: Theo Zotos  
Address: Level 28, 200 George Street, Sydney NSW 2000  
Phone Number: (02) 9080 8062  
Email Address: theo.zotos@mirvac.com

**Landowner**

Attention: Bill Parasiris  
Address: Western Sydney University  
Locked Bag 1797  
Penrith NSW 2651  
Phone Number: (02) 4570 1859  
Email Address: B.Parasiris@westernsydney.edu.au

**17.2 Change of Details**

If a Party gives the other Party 10 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or electronically sent to the latest address or email address.

**17.3 Giving of Notice**

Subject to **clause 17.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; or
- (b) if it is sent by registered post, seven Business Days after it is posted; or
- (c) if it is sent by email, as soon as the email has been sent to the correct email address and the recipient has received the email without error.

**17.4 Delivery outside of business hours**

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

**18 Approvals and consent**

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any

conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 19 Assignment and dealings

- (a) The Landowner or Developer may not sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any) or rights or obligations under the terms of this Agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Landowner or Developer (as applicable):
  - (i) at no cost to Council, first procures the execution by that person of a deed of novation or assignment with Council in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement;
  - (ii) Council has given written notice to the Developer or the Landowner (as the case may be) stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement; and
  - (iii) satisfies Council that it is not in material breach of this Agreement.
- (b) The Landowner and Developer acknowledge and agree that notwithstanding any breach by it of **clause 19(a)**, they remain liable to fully perform their obligations under this Agreement unless and until they have complied with their obligations under **clause 19(a)** or Council gives the Landowner or Developer (as the case may be) a written release from compliance with that clause in its absolute discretion.

## 20 Termination of this Agreement

This Agreement terminates when all obligations under the Agreement have been satisfied.

## 21 General

### 21.1 Legal Costs

- (a) The Developer agrees to pay Council's costs associated with reviewing, preparing, negotiating, amending, executing, stamping, registration and removal of registration of this Agreement and any document related to this Agreement within 5 business days of a written demand by Council for such payment.
- (b) The Developer is also to pay to Council Council's reasonable costs and disbursements arising from the ongoing administration and of enforcing

this Agreement (including remedying any breach or default by the Developer or Landowner of their obligations under this Agreement) within 7 days of a written demand by Council for such payment.

## **21.2 Entire Agreement**

This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

## **21.3 Further Acts**

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

## **21.4 Governing law and jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

## **21.5 No Fetter**

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

## **21.6 Representations and warranties**

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

## **21.7 Severability**

- (a) The Parties acknowledge that under and by virtue of Section 7.4(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- (b) The Parties agree that to the extent permitted by law, this Agreement prevails to the extent of its inconsistency with any law.
- (c) If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (d) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **21.8 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement and is in accordance with the provisions of the Act.

## **21.9 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation or exercise of a right of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation, right or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, right or breach or as an implied waiver of that obligation, right or breach in relation to any other occasion.
- (d) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

## **21.10 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between Council and the Developer.

## **21.11 Further Steps**

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

## **21.12 Explanatory Note**

Pursuant to section 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to interpret this Agreement.

## **21.13 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

## **21.14 Rights cumulative**

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



## 21.15 Electronic execution

- (a) Each Party:
  - (i) consents to this Agreement being signed by electronic signature by the methods set out in **clause 21.15(c)**;
  - (ii) agrees that those methods validly identify the person signing and indicates that person's intention to sign this Agreement;
  - (iii) agrees that those methods are reliable as appropriate for the purpose of signing this Agreement; and
  - (iv) agrees that electronic signing of this Agreement by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- (b) If this Agreement is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of **clause 21.15(a)**, the methods are:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature onto the Agreement; or
  - (ii) insertion of the person's name onto the Agreement; or
  - (iii) use of a stylus or touch finger or a touch screen to sign the Agreement,  
  
provided that in each of the above cases, words to the effect of '*Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]*' are also included on the Agreement; or
  - (iv) use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the Agreement; or
  - (v) as otherwise agreed in writing between the Parties.

# Schedule 1

## Section 7.4 Requirements

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of this Agreement complying with the Act.

**Table 1 – Requirements under section 7.4 of the Act**

Requirement under the Act	This Agreement
<b>Planning instrument and/or development application – (section 7.4(1))</b> The Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
(b) made, or proposes to make, a Development Application.	(b) Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
<b>Description of land to which this Agreement applies – (section 7.4(3)(a))</b>	The Land as defined in <b>clause 1.1</b> .
<b>Description of development to which this Agreement applies – (section 7.4(3)(b))</b>	The Development as defined in <b>clause 1.1</b> .
<b>The scope, timing and manner of delivery of contributions required by this Agreement – (section 7.4(3)(c))</b>	See <b>Schedule 2</b> .
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Land and the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act is not excluded in respect of the Development.

Requirement under the Act	This Agreement
<b>Consideration of benefits under this Agreement if section 7.11 applies –</b> (section 7.4(3)(e))	See <b>clause 12(b)</b> .
<b>Mechanism for dispute resolution –</b> (section 7.4(3)(f))	See <b>clause 16</b> .
<b>Enforcement of this Agreement –</b> (section 7.4(3)(g))	See <b>clause 13</b> .
<b>No obligation to grant consent or exercise functions –</b> (section 7.4(10))	See <b>clauses 18 and 21.5</b> .

## Development Contributions

Column 1 Item No.	Column 2 Development Contribution	Column 3 Agreed Contribution Method	Column 4 Timing	Column 5 Contribution Offset
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<b>on Annexure A)</b>				
<b>1.</b>	<b>RE1 Public Recreation Zoned Land</b>  Dedication of approximately 14,441m <sup>2</sup> of the Land to Council for public open space, specifically:  i. circa 4,643m <sup>2</sup> of land marked ‘Northern Open Space’ on the plan at <b>Annexure A</b> ;  ii. circa 5,076m <sup>2</sup> of land marked ‘Central Open Space’ on the plan at <b>Annexure A</b> ; and	\$3,700,000	Prior to the release of any Subdivision Certificate or Strata Certificate for a plan that when registered would create the 301 <sup>st</sup> Residential Lot.	Nil
		\$4,570,000	Prior to the release of any Subdivision Certificate or Strata Certificate for a plan that when registered would create the 201 <sup>st</sup>	\$1,635,287.54  Open space and recreational facilities

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	iii. circa 4,722m <sup>2</sup> of land marked 'Southern Open Space' on the plan at <b>Annexure A</b> .	\$3,300,000	Residential Lot. Prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create the 401 <sup>st</sup> Residential Lot, or if less than 401 Residential Lots are approved in the Development, prior to the release of the Subdivision Certificate or Strata Certificate for the plan that when registered would create the last Residential Lot in the Development.	Nil
<b>2.</b>	<b>Local Roads</b>  i. Dedication of approximately 14,088m <sup>2</sup> of the Land to Council, being an area with a length of approximately 770m and width of 18m, as	Not applicable	Prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	<p>shown on the plan and noted as "Local Road" at <b>Annexure A.</b></p> <p>ii. Dedication of approximately 33,110m<sup>2</sup> of the Land to Council, being an area with a length of approximately 1,925m and general width of 17.2m, as shown on the plan and noted as "Local Road-Minor" at <b>Annexure A.</b></p>	Not applicable	<p>would create a Residential Lot that directly fronts that road.</p> <p>Prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create a Residential Lot that directly fronts that road.</p>	Nil
3.	<p><b>SP2 Infrastructure (Drainage)</b></p> <p>Dedication of approximately 668m<sup>2</sup> of SP2 Infrastructure (Drainage) land to Council</p>	\$230,000	<p>Prior to the release of the Subdivision Certificate or Strata Certificate for a plan that when registered would create the 401st Residential Lot for the Development, or if less than 401 Residential Lots are approved in the Development, prior to the release of the</p>	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
			Subdivision Certificate or Strata Certificate for the plan that when registered would create the last Residential Lot in the Development.	

**Part B – Works in Kind**

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
4.	<b>Open Space Embellishment</b>  Embellishment of the RE1 Public Recreation Zoned Land, comprising the following works: (a) pathways (in all); (b) children's playground equipment, in the	\$1,542,495	Practical Completion of embellishment of the part of the RE1 Public Recreation Zoned Land shown as 'Northern Open Space' and 'Southern Open Space' in Annexure A must be reached prior to the Dedication of the relevant portion of the Dedication Land and issue of the first Occupation Certificate	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	<p>Central Open Space only;</p> <p>(c) outdoor fitness equipment, in the Central Open Space or Southern Open Space only;</p> <p>(d) sheltered picnic tables, in the Central Open Space only;</p> <p>(e) seating (in all);</p> <p>(f) landscaping and turf (in all); and</p> <p>(g) kick around play, in the Southern Open Space only.</p> <p>Where applicable, works shall be designed generally in accordance with the indicative bioretention and basin plans provided in</p>		<p>for the first dwelling fronting the relevant part of the RE1 Public Recreation Zoned Land.</p> <p>Practical Completion of embellishment of the part of the RE1 Public Recreation Zoned Land shown as the 'Central Open Space' in Annexure A must be reached prior to the earlier of the issue of an Occupation Certificate for the:</p> <p>a) 50<sup>th</sup> Dwelling in the Development; or</p> <p>b) the first Dwelling fronting the Central Open Space Land.</p> <p>Maintenance, testing and any restoration work of drainage and bioretention basins to be carried out in accordance with timing specified in clauses 7.1(j)(iii), 7.1(j)(iv) and 7.1(k).</p>	



Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	<b>Annexure C.</b>			
<b>5.</b>	<b>Local Roads</b> Construction of all proposed "Local Roads" (collector roads) as shown on the plan at <b>Annexure A</b> , in accordance with all relevant Council and road engineering standards (unless otherwise agreed between Council and the Developer).	\$1,963,100	Practical Completion must be reached prior to the Dedication of the relevant portion of the Dedication Land and in any event prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create a Residential Lot that directly fronts that road.	Nil
<b>6.</b>	<b>Shared Cycleway</b> Construction of a shared cycleway along the roads marked "Local Roads" on the plan at <b>Annexure A</b> .	\$235,350	Practical Completion must be reached prior to the release of an Occupation Certificate for any dwelling fronting the cycleway.	\$235,350 Roads and traffic
<b>7.</b>	<b>Milperra Reserve Embellishment</b> Upgrades to Milperra Reserve (being 121-121A Ashford Avenue, Milperra (Lots 1 – 3 DP91953) of a standard that is consistent	\$1,041,921	Prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create the 401 <sup>st</sup> Residential Lot, or if less than 401 Residential Lots are approved	\$1,041,921 Open space and recreational facilities

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	<p>with the 'Neighbourhood Sportsground' category as outlined in Council's <i>Generic Plan of Management for Community Land and Crown Land</i>, specifically consisting of the following:</p> <ul style="list-style-type: none"> <li>(a) new lawn/turf and irrigation to expand the footprint of the existing playing area to allow for more sporting codes such as soccer/rugby etc (currently set up for hockey);</li> <li>(b) basic seating around the periphery of the playing area;</li> <li>(c) rubbish bins;</li> <li>(d) lighting;</li> <li>(e) shaded seating (under trees);</li> </ul>		<p>in the Development, prior to the release of the Subdivision Certificate or Strata Certificate for the plan that when registered would create the last Residential Lot in the Development.</p>	

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	(f) upgrade to amenities (toilets etc); (g) drinking fountains; (h) some areas of shade trees on the periphery of the playing fields; and (i) landscaping treatments, including paths to better integrate Milperra Reserve with the Land.			
8.	<b>Remnant Vegetation Works</b> Works as required under the ecological assessment to be undertaken by or on behalf of the Developer in respect of that part of the Land zoned C2 Environmental	N/A	Prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create the 401 <sup>st</sup> Residential Lot, or if less than 401 Residential Lots are approved in the Development, prior to the release of the Subdivision	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	Conservation including, where appropriate, replanting and signage works. Full details of any works on the Land zoned C2 Environmental Conservation is to be included as part of a development application lodged in respect of the Development.		Certificate or Strata Certificate for the plan that when registered would create the last Residential Lot in the Development.	
<b>9.</b>	<b>Not used</b>	N/A	N/A	N/A
<b>10.</b>	<b>SP2 Infrastructure (Drainage)</b> Embellishment of the SP2 Infrastructure (Drainage) Land and carrying out of the works and maintenance specified in clauses 7.1(j) and 7.1(k).	\$154,000	Practical Completion must be reached prior to the Dedication of the relevant portion of the Dedication Land and in any event prior to the release of the Subdivision Certificate or Strata Certificate for a plan that when registered would create the 401 <sup>st</sup> Residential Lot for the Development, or if less than 401 Residential Lots are approved in the Development, prior to the release of the Subdivision Certificate or	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
			<p>Strata Certificate for the plan that when registered would create the last Residential Lot in the Development.</p> <p>Maintenance, testing and any restoration work to be carried out in accordance with timing specified in clauses 7.1(j)(iii), 7.1(j)(iv) and 7.1(k).</p>	
11.	<p><b>Local Roads – Footpaths</b></p> <p>Provide new footpaths along bus routes, on one side of road.</p> <p>Refer to Local Roads – Footpaths, as indicatively shown on the plan at <b>Annexure A</b>.</p>	\$94,140	Practical Completion must be reached prior to the release of an Occupation Certificate for any Dwelling fronting the relevant footpath.	Nil
12.	<p><b>Undergrounding of Powerlines</b></p> <p>Undergrounding of approximately 545 metres of powerlines along Ashford Avenue subject to obtaining any required Ausgrid</p>	\$597,655,	Practical Completion must be reached prior to the release of an Occupation Certificate for the final Dwelling along Ashford Avenue.	Nil

Column 1 Item No. (shown on Annexure A)	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	approvals  Refer to Undergrounding of Powerlines, as indicatively shown on the plan at <b>Annexure A.</b>			
<b>13.</b>	<b>Ashford Avenue – Footpath</b>  Construction of a 1.2m wide footpath and landscaping along approximately 545 metres of the eastern side of Ashford Avenue.  Refer to Footpath, as indicatively shown on the plan at <b>Annexure A.</b>	\$98,100	Practical Completion must be reached prior to the release of an Occupation Certificate for any Dwelling fronting the footpath.	\$98,100
<b>14.</b>	<b>Cycleway</b>  Construction of circa 110m of cycleway connections to Panania Station to promote the use active and public transport for future residents and the broader Milperra community.	\$59,400	Practical Completion must be reached prior to the release of the Subdivision Certificate or Strata Certificate for a plan that when registered would create the 201 <sup>st</sup> Residential Lot for the Development.	\$59,400  Roads and transport

**Part C – Monetary Contributions**

<b>Column 1 Item No.</b>	<b>Column 2 Development Contribution</b>	<b>Column 3 Agreed Contribution Value</b>	<b>Column 4 Timing</b>	<b>Column 5 Contribution Offset</b>
<b>15.</b>	<b>Affordable Housing Contribution</b>  Payment of a monetary contribution for the provision of affordable housing in appropriate locations within the Canterbury-Bankstown Local Government Area.	\$5,300,180	<p>The amount of \$12,326 per Dwelling is to be paid prior to the release of a Subdivision Certificate or Strata Certificate for a plan that when registered would create the relevant Residential Lot for that Dwelling.</p> <p>In the event less than 430 Dwellings permitted or approved in the Development, the balance of the Affordable Housing Contribution is to be paid within 15 Business Days of the release of the Subdivision Certificate or Strata Certificate for the plan that when registered would create the Residential Lot for the last Dwelling in the Development and in any event, prior to the issuing of the Occupation Certificate for the last Dwelling in the Development.</p>	Nil
<b>16.</b>	<b>Milperra Community</b>	\$392,400	Prior to the release of any Subdivision Certificate or	\$392,400

Column 1 Item No.	Column 2 Development Contribution	Column 3 Agreed Contribution Value	Column 4 Timing	Column 5 Contribution Offset
	<b>Contribution</b> Payment of a monetary contribution for repair and renovation to the Milperra Community Centre (128 Ashford Ave, Milperra) or other community facilities in the Milperra region.		Strata Certificate for a plan that when registered would create the 201 <sup>st</sup> Residential Lot.	



## Execution

**Executed** as an agreement.

**Executed by Canterbury-Bankstown  
Council** by its duly appointed officer in  
the presence of: )  
)  
)

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

**Executed by Mirvac Residential (NSW)  
Developments Pty Ltd** pursuant to )  
section 127 of the *Corporations Act 2001*: )

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

**Executed by Western Sydney  
University** pursuant to section 127 of the )  
*Corporations Act 2001*: )

.....  
Company Secretary/Director

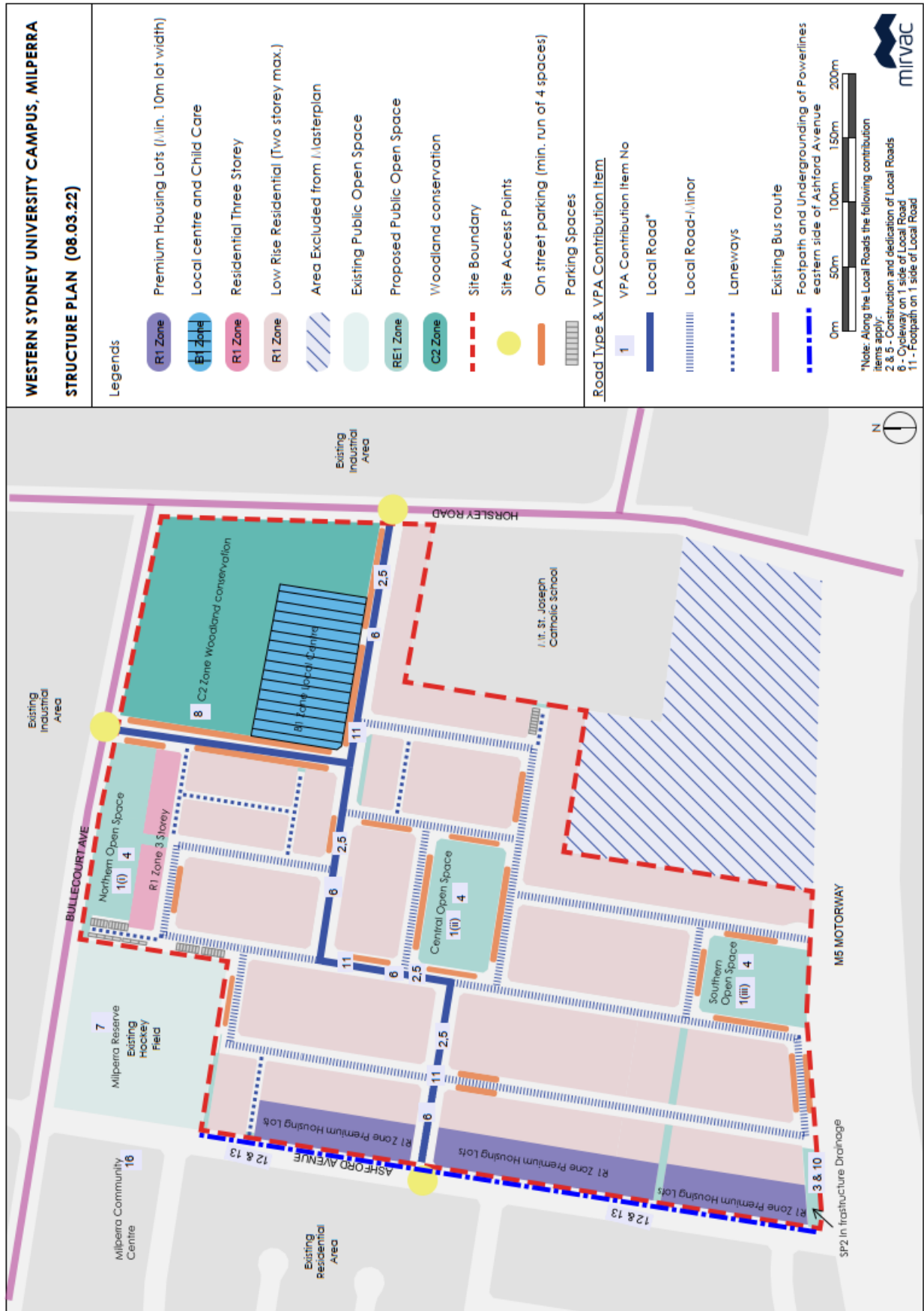
.....  
Director

.....  
Name of Company Secretary/Director  
(print)

.....  
Name of Director (print)

# Annexure A

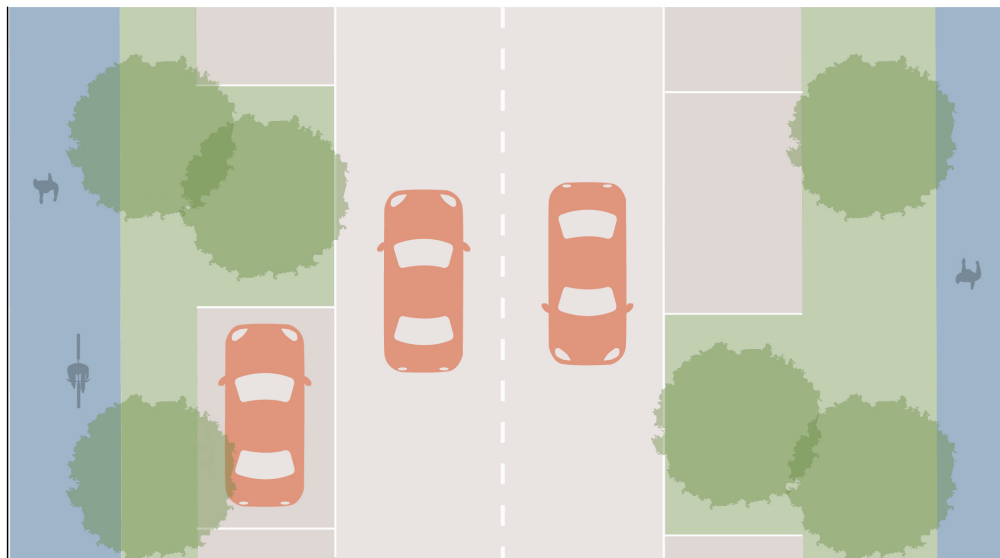
## Dedication Land and locations of Works in Kind



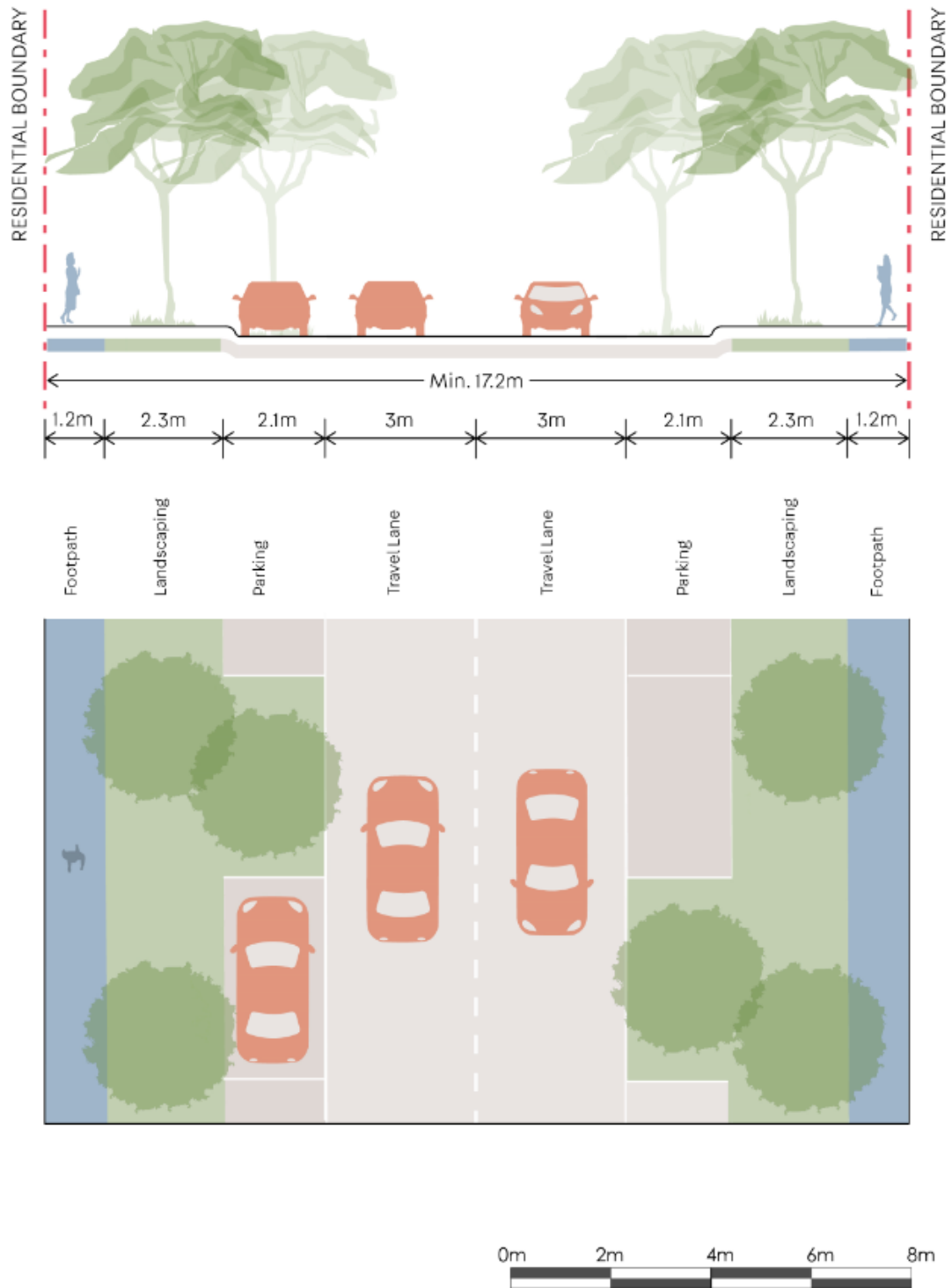
# Annexure B

## Road Reserve Design Requirements

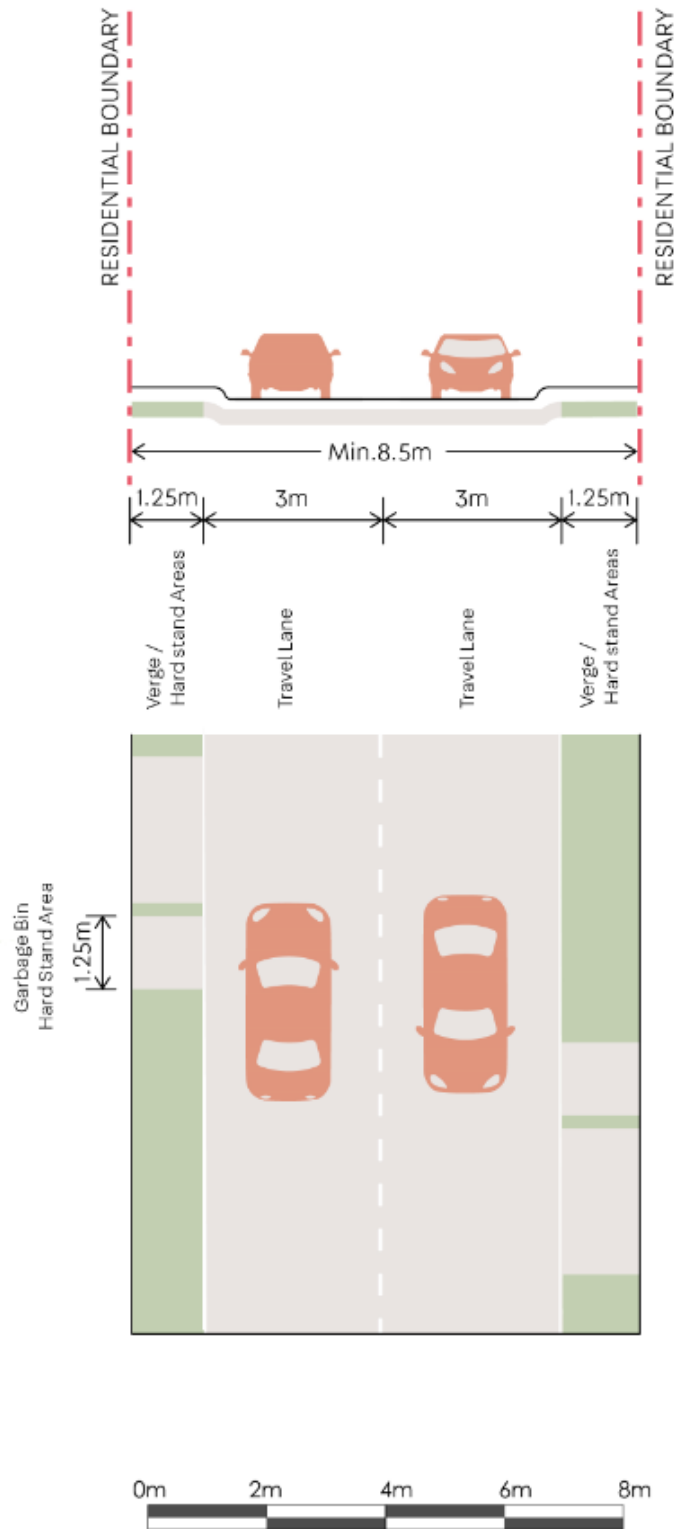
## Local Road Cross-section



## Minor Local Road Cross-section



## Laneway Cross-section

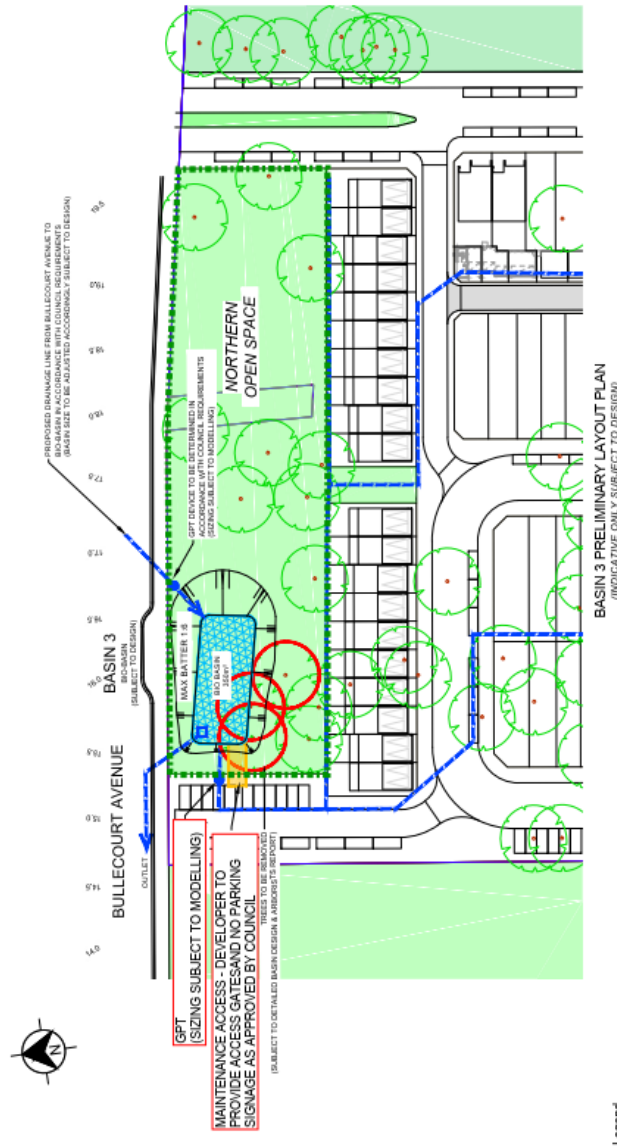


## Annexure C

### Bioretention and Drainage Basins Plans







Basin 3 located in Northern Open Space (refer to Annexure A plan)

Bio Basin in Northern Open Space  
 Area (approximate) 350 sqm  
 Length (approximate) 28.6m  
 Width (approximate) 12.5m



# Annexure D

## Explanatory Note

Section 205 of the *Environmental Planning and Assessment Regulation 2021*

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

#### **Objectives of the Planning Agreement**

The objective of the Planning Agreement is to provide for the delivery of public benefits in connection with the Development by requiring the Developer and the Landowner (as applicable) to:

- dedicate the Dedication Land to the Council for public purposes including roads, drainage and public recreation;
- deliver infrastructure, facilities and services including roads, embellishment of open space and provision of cycleways as Works in Kind; and
- provide for the payment of Monetary Contributions of \$5,300,180 and \$392,400 (to be indexed in accordance with the CPI) by the Developer to be applied towards the provision of affordable housing in appropriate locations within the Canterbury-Bankstown local government area and the repair and renovation of the Milperra Community Centre (or other community facilities in the Milperra region), respectively.

#### **Nature of the Planning Agreement**

The Planning Agreement is a planning agreement under section 7.4(1) of the Act. The Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Planning Agreement) are made by the Developer for various public purposes (as defined in section 7.4(2) of the Act).

The details, staging and timing of these Development Contributions are set out in Schedule 2 of the Planning Agreement.

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

The Planning Agreement:

- is in connection with an amendment to the LEP relating to the Planning Proposal prepared by the Developer and Landowner and submitted by the Sydney South Planning Panel to the Department of Planning and Environment on 17 February 2022 (Planning Portal Ref: PP-2021-5837);
- relates to the carrying out of the Development (as defined in clause 1.1 of the Planning Agreement) on the Land by the Developer;

- does not exclude the application of sections 7.11, 7.12 and 7.24 of the Act to the Land and the Development;
- is to be registered on the title to the Land;
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning, or novating an interest under the agreement; and
- provides for the delivery of Development Contributions by the Developer and the Landowner (as applicable) comprising the:
  - dedication of the Dedication Land;
  - carrying out, completion and maintenance of Works in Kind; and
  - provision of Monetary Contributions.

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

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

The Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the land to which it applies;
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development; and
- provides for additional monetary contributions by the Developer to the Council to be used for public purposes, in addition to other development contributions under section 7.11 or section 7.12 and section 7.24 of the Act required for the proposed Development on the land to which it applies.

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

The Planning Agreement sets out arrangements for the delivery of infrastructure, facilities and services to meet the needs of the Development.

The Planning Agreement promotes the public interest by promoting the objects of the Act as set out in section 1.3 of the Act and through the provision of the public benefits outlined above.

## **For Planning Authorities**

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

N/A

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

N/A

### **Councils – How the Planning Agreement Promotes the Principles for Local Government Contained in Chapter 3 of the *Local Government Act 1993***

The Planning Agreement promotes the principles for local government by:

- demonstrating that the Council is acting fairly, ethically and without bias in the interests of the local community;
- keeping the local and wider community informed about Council activities; and
- ensuring the provision of adequate, equitable and appropriate services and facilities for the community and ensuring that those services and facilities are managed efficiently and effectively.

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

Yes. The proposed contributions are consistent with the community infrastructure identified in the Council's Planning Agreements Policy and aligns with Council's Capital Works Program.

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

Yes. Certain Development Contributions are required to be delivered prior to the issuing of an Occupation Certificate for a relevant stage of the Development.