

lindsaytaylorlawyers

planning • environment • local government

Gregory Hills Planning Agreement Third Deed of Variation

Under cl25(C) of the *Environmental Planning and Assessment Regulation 2000*

**Camden Council
Dart West Developments Pty Limited
Trustees of the Marist Brothers**

Date: 2 SEPTEMBER 2016

© Lindsay Taylor Lawyers

lindsaytaylorlawyers
Level 9, Suite 3, 420 George Street, Sydney NSW 2000, Australia
T 02 8235 9700 • F 02 8235 9799 • W www.lindsaytaylorlawyers.com.au • E mail@lindsaytaylorlawyers.com.au
ABN 29 682 671 304

Liability limited by a scheme approved under Professional Standards Legislation



Gregory Hills Planning Agreement Third Deed of Variation

Table of Contents

Summary Sheet.....	3
Parties	4
Background	4
Operative provisions	4
1 Interpretation.....	4
2 Status of this Deed	5
3 Commencement	5
4 Warranties	5
5 Amendment to Planning Agreement.....	6
6 Costs.....	6
7 Entire Deed	6
8 Governing Law and Jurisdiction	6
9 No Fetter	6
10 Severability	6
11 Explanatory Note	7
Execution.....	8
Appendix 1	10
Appendix 2	11
Appendix 3	37



Gregory Hills Planning Agreement

Third Deed of Variation

Summary Sheet

Council:

Name: Camden Council
Address: 37 John Street, CAMDEN NSW 2570
Telephone: (02) 4654 7777
Facsimile: (02) 4654 7829
Email: mail@camden.nsw.gov.au
Representative: General Manager

Developer:

Name: Dart West Developments Pty Limited
Address: PO Box 228, NARELLAN NSW 2567
Telephone: (02) 4648 5511
Facsimile: (02) 4623 8925
Email: david.taylor@dartwest.com.au
Representative: Mr David Taylor – General Manager, Property

Landowner:

Name: Trustees of Marist Brothers
Address: PO Box 1247, MASCOT NSW 1460
Telephone: (02) 9218 4022
Facsimile: (02) 9218 4084
Email: anthony.robinson@marists.org.au
Representative: Br Anthony Robinson



Gregory Hills Planning Agreement – Third Deed of Variation

Under cl25C of the *Environmental Planning and Assessment Regulation 2000*

Parties

Camden Council ABN 31 117 341 764 of 37 John Street, CAMDEN NSW 2570
(**Council**)

and

Dart West Developments Pty Limited ABN 32 107 685 370 of PO Box 228, NARRELLAN NSW 2567 (**Developer**)

and

Trustees of the Marist Brothers ABN 91 064 875 510 of PO Box PO Box 1247, MASCOT NSW 1460 (**Landowner**)

Background

- A The Parties are parties to the Planning Agreement.
- B The Parties have agreed to amend the Planning Agreement with respect to changes to the boundaries of riparian corridors, as well as additional areas for open space, with consequential changes to Schedule 3 to reflect such amendments.

Operative provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Planning Agreement means the Gregory Hills Planning Agreement pursuant to s93F of the Act entered into between the Parties on 4 May 2012 and amended on 26 February 2013, 10 December 2013 and 9 December 2014.

- 1.2 Except as provided by clause 1.1, all capitalised words used in this Deed that are defined in clause 1.1 of the Planning Agreement have the same meaning as in the Planning Agreement.

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



- 1.3.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.3.2 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.3.3 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.3.4 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.3.5 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.3.6 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.3.7 A reference to this Deed includes the agreement recorded in this Deed.
- 1.3.8 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.3.9 Any schedules, appendices and attachments form part of this Deed.

2 Status of this Deed

- 2.1 This Deed is an amendment to the Planning Agreement within the meaning of clause 25C(3) of the Regulation.

3 Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4 Warranties

- 4.1 The Parties warrant to each other that they:
 - 4.1.1 have full capacity to enter into this Deed, and
 - 4.1.2 are able to fully comply with their obligations under this Deed and the Planning Agreement as modified by this Deed.



5 Amendment to Planning Agreement

- 5.1 On and from the date this Deed takes effect:
 - 5.1.1 the Planning Agreement is amended in accordance with the marking-up shown on the copy of the Planning Agreement contained in Appendix 1, and
 - 5.1.2 the table in Schedule 3 of the Planning Agreement is deleted and replaced with the table contained in Appendix 2.

6 Costs

- 6.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

7 Entire Deed

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

8 Governing Law and Jurisdiction

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

9 No Fetter

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

10 Severability

- 10.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.



- 10.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

11 Explanatory Note

- 11.1 The Appendix 3 contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 11.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.

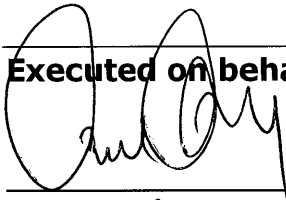


Execution

Executed as a Deed

Dated: 2 SEPTEMBER 2016

Executed on behalf of the Council

A handwritten signature in black ink, appearing to read 'Peta Kinnane', written over a horizontal line.

General Manager or delegate

PETA KINNANE - SENIOR GOVERNANCE OFFICER

Witness/Name/Position

Executed on behalf of Dart West Developments Pty Limited in
accordance with s127(1) of the Corporations Act (Cth) 2001

DAVID TAYLOR  General Manager

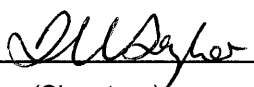
Name/Position

Name/Position



Executed on behalf of Trustees of the Marist Brothers. Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

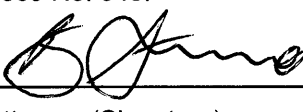


Witness (Signature)

DAVID TAYLOR

Name of Witness (Print Name)

Signed, sealed and delivered by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 2 April 2014 registered with Land & Property Information (NSW) Book 4665 No. 548.

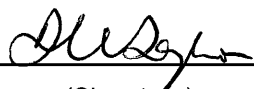


Attorney (Signature)

BERNARD FRANCIS KENNA

Name of Attorney (Print Name)

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

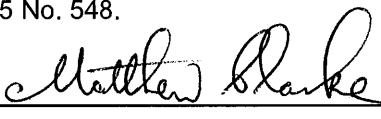


Witness (Signature)

DAVID TAYLOR

Name of Witness (Print Name)

Signed, sealed and delivered by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 2 April 2014 registered with Land & Property Information (NSW) Book 4665 No. 548.



Attorney (Signature)

MATTHEW KENNETH CLARKE.

Name of Attorney (Print Name)

Gregory Hills
Planning Agreement

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

Camden Council
Dart West Developments Pty Limited
Trustees of the Marist Brothers

Date:

ORIGIN AND AMENDMENTS

Gregory Hills Planning Agreement (VPA) Origin:

Execution as an Agreement Dated: 4 May 2012

Amendments to Gregory Hills Planning Agreement (VPA):

Amendment No.	Date Adopted	Date in Effect	Description
1	26 February 2013	31 May 2013	Gregory Hills VPA Variation includes changes to schedule 3 (Clause 35-39, 107-111 and 137).
2	10 December 2013	24 December 2013	Gregory Hills VPA Amendments including changes to clauses 12, 13, 25, 36, schedule 1 & schedule 3 and the inclusion of a new Appendix A.
3	9 December 2014	16 December 2014	Gregory Hills VPA Amendment to include additional open space shown on VPA Plan 3 and to amend Schedule 3 to include the additional open space land dedication and embellishment works. Schedule 3 is also amended for TL5 to correct the area of land to be dedicated and embellished.
<u>4</u>	<u>9 February 2016</u>	<u>2 September 2016</u>	<u>Gregory Hills VPA Amendments to amend boundaries of riparian corridors, incorporate additional open space and amend Schedule 3 to reflect these changes.</u>

Dart West Gregory Hills Planning Agreement

Table of Contents

Summary Sheet.....	5
Parties	7
Background	7
Operative provisions	7
Part 1 - Preliminary	7
1 Definitions & Interpretation	7
2 Application of this Agreement	11
3 Further agreements relating to this Agreement	11
4 Surrender of right of appeal, etc.	11
5 Application of s94, s94A and s94EF of the Act to the Development	11
6 Conditions of Consent	11
Part 2 – Development Contributions	12
7 Provision of Development Contributions	12
8 WIK Agreement and application of Surplus Credit	12
9 Procedures relating to payment of monetary Development Contributions	13
10 Procedures relating to the dedication of land	13
Part 3 - Provisions regarding the Carrying out of Work	14
11 Deferral of Work.....	14
12 Approval of design of Work	15
13 Staging of Works	16
14 Carrying out of Work.....	<u>17171716</u>
15 Access to the Land	17
16 Protection of people and property	17
17 Damage and repairs to Work.....	17
18 Variation of Work	17
19 Procedures relating to the completion of Work	18
20 Procedures relating to the rectification of defects	18
21 Failure to carry out Work	<u>20202019191819</u>
22 Works-As-Executed-Plan.....	<u>20202019</u>
Part 4 – Indemnities and Insurances	<u>20202019</u>
23 Indemnity and Insurance	<u>20202019</u>
Part 5 - Security	<u>21212120</u>

24	Provision of Security	21212120
25	Release & return of Security.....	22222221
26	Call-up of Security	22222221
Part 6 - Other Provisions.....		23232322
27	Recovery of cost of Work carried out by the Council	23232322
28	Enforcement in a court of competent jurisdiction	23232322
29	Dispute Resolution – expert determination.....	23232322
30	Dispute Resolution – mediation	24242423
31	Registration of this Agreement	24242423
32	Compulsory Acquisition	25252524
33	Assignment, sale of Land, etc	26262625
34	Monitoring & review of this Agreement.....	27272726
35	Variations to Contribution Items and Staging	28282827
36	Notices	28282827
37	Approvals and Consent	29292928
38	Legal costs.....	29292928
39	Entire Agreement	29292928
40	Further acts.....	30303029292829
41	Notations on section 149(2) Planning Certificates	30303029
42	Governing law and jurisdiction.....	30303029
43	Joint and individual liability and benefits.....	30303029
44	No fetter	30303029
45	Representations and Warranties	30303029
46	Severability	30303029292930
47	Modification.....	31313130
48	Waiver.....	31313130
49	GST.....	31313130
50	Explanatory Note relating to this Agreement.....	32323231
Schedule 1		33333332
Schedule 2		4242424038
Schedule 3		4343434139
Execution.....		44444442868488
Appendix A.....		46464644888690
1.1	Flooding and Watercycle Management.....	46464644888690

Dart West Gregory Hills Planning Agreement

Summary Sheet

Council:

Name: Camden Council
Address: 37 John Street, CAMDEN NSW 2570
Telephone: (02) 4654 7777
Facsimile: (02) 4654 7829
Email: mail@camden.nsw.gov.au
Representative: ~~Mr Ron Moore~~ The General Manager

Developers:

Name: Dart West Developments Pty Limited
Address: PO Box 228, NARELLAN NSW 2567
Telephone: (02) 4648 5511
Facsimile: (02) 4623 8925
Email: david.taylor@dartwest.com.au
Representative: Mr David Taylor – General Manager, Property

Landowner:

Name: Trustees of the Marist Brothers
Address: PO Box ~~138, DRUMMOYNE NSW 1470~~ 1247, Mascot NSW 1460
Telephone: (02) ~~9819 6622~~ 9819 6622 9218 4022
Facsimile: (02) ~~9819 6184~~ 9819 6184 9218 4084
Email: anthony.robinson@marists.org.au
Representative: Br Anthony Robinson —~~Provincial Secretary~~

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Schedule 3.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clauses 11.1.2, 24 and 32.

Registration:

Yes. See clause 31.

Restriction on dealings:

See clause 33.

Dispute Resolution:

Expert determination and mediation. See clauses 29 and 30.

Dart West Gregory Hills

Planning Agreement

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

Parties

Camden Council ABN 31 117 341 764 of 37 John Street, Camden, New South Wales
(Council)

and

Dart West Developments Pty Limited ABN 32 107 685 370 of PO Box
228, Narellan NSW 2567 (Developer)

and

Trustees of the Marist Brothers ABN 91 064 875 510 of PO Box [438](#),
[Drummoyne NSW 1470](#) [1247](#), [Mascot NSW 1460](#) (Landowner)

Background

- A The Landowner is the owner of the Land.
- B The Developer proposes to carry out the Development.
- C The Developer and the Landowner propose to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

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

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

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

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

Construction Certificate has the same meaning as in the Act.

Contribution Item or **Item** means an item or part of an item specified or described in Column 1 of Schedule 3.

Contribution Value means:

- (a) the amount contained in Column 7 of Schedule 3, in respect of Contribution Items contained in Schedule 3 as at the date of this Agreement; or
- (b) the amount agreed between the Parties in respect of any Contribution Items not included in Schedule 3 at the date of this Agreement,

indexed from ~~September 2011~~ March 2012 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics

CP means the *Oran Park and Turner Road Precincts Section 94 Contributions Plan*.

Defects Liability Period means the period commencing on the date on which a Work is taken to be complete under clause 19 of this Agreement and ending 12 months after that date.

Deferred Work Security means the Security provided under clause 11.1.2 of this Agreement.

Development means the development specified or described in Schedule 2.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

Final Lot means a lot which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development.

GST has the same meaning as in the GST Law.

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

Indicative Staging Plan means the Plans entitled VPA Plan 1—Gregory Hills, VPA Plan 2—Gregory Hills, VPA Plan 3—Gregory Hills Gregory Hills VPA Plan - Overview, as varied by agreement between all of the Parties from time to time.

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

Land means the land shown edged in heavy red on the Plan entitled *Land Covered by VPA – Gregory Hills*.

LG Act means the *Local Government Act 1993*.

LPI means Land and Property Information.

Maintenance Period means, in relation to a Contribution Item, a period of 5 years from the date of completion of the Contribution Item within the meaning of this Agreement.

Masterplan means the Plan entitled *Gregory Hills Masterplan*.

Party means a party to this agreement, including their successors and assigns.

Plan means a plan in the Plan Package.

Plan Package means the suite of plans contained in Schedule 1.

Plan of Management means a plan of management within the meaning of s36 of the LG Act.

Principal Certifying Authority has the same meaning as in the Act.

Rectification Notice means a notice in writing that identifies a defect in a Work and requires rectification of the defect within a specified period of time.

Registrar-General means the Registrar-General referred to in the *Real Property Act 1900*.

Registration Security means a Security provided under clause 31.3 of this Agreement.

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

Relevant Stage means:

- (a) in respect of a Contribution Item that is located wholly within a Stage, the Stage within which that Contribution Item is located,
- (b) in respect of a part of a Contribution Item where that Item is located in more than one Stage, the Stage within which the part of the Contribution Item is located,

as identified in the Indicative Staging Plan and Column 2 of the Table to Schedule 3.

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

Stage means a stage of the Development, as shown on the Indicative Staging Plan.

Subdivision Certificate has the same meaning as in the Act.

Superlot means any part of the Land in relation to which the Developer proposes to sell Final Lots which are not yet created, and which does not include any part of the Land to be dedicated under this Agreement.

Surplus Credit means \$426,459.00 indexed in accordance with clause 9.3 in the same manner as monetary Development Contributions.

Vegetation Management Plan means a plan that contains provisions relating to the establishment and maintenance of land.

WIK Agreement means the works-in-kind agreement entered into between the Developer and the Council on 12 January 2011.

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

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

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.

1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.

1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.

1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns, but does not include the owner of a Final Lot.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Further agreements relating to this Agreement

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

4 Surrender of right of appeal, etc.

- 4.1 The Developer or the Landowner are not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

5 Application of s94, s94A and s94EF of the Act to the Development

- 5.1 This Agreement excludes the application of s94 to the Development.
- 5.2 This Agreement excludes the application of s94A to the Development.
- 5.3 This Agreement does not exclude the application of s94EF to the Development.

6 Conditions of Consent

- 6.1 Nothing in this Agreement, other than clauses 5.1 and 5.2, limits or restricts the ability of Council to impose conditions on Development Consents

pursuant to the Act, and no action which the Developer takes in compliance with any such conditions constitutes a breach of this Agreement.

Part 2 – Development Contributions

7 Provision of Development Contributions

- 7.1 The Developer is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council, other than Development Contributions which comprise the dedication of land owned by the Landowner.
- 7.2 The Landowner is to make Development Contributions comprising the dedication of land to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council.
- 7.3 Schedule 3 has effect according to its terms.
- 7.4 The Council is to apply each Development Contribution made by the Developer or Landowner under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 7.5 Despite clause 7.3, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

8 WIK Agreement and application of Surplus Credit

- 8.1 Subject to clause 8.2, for the purposes of s94(5)(b) of the Act, the Council accepts the Development Contributions made by the Developer under the WIK Agreement in full satisfaction of the obligations imposed on the Developer under s94 of the Act by the following conditions of the following Development Consents:
 - 8.1.1 condition 6.15 of the Development Consent granted to DA No. 140/2010 by the Council on 6 April 2011,
 - 8.1.2 condition 4.25 of the Development Consent granted to DA No. 81/2009 by the Council on 28 September 2009,
 - 8.1.3 condition 4.8 of the Development Consent granted to DA No. 797/2010 by the Council on 12 October 2010, and
 - 8.1.4 condition 6 of the Development Consent granted to DA1193/2007, in relation to stage 1A of that development, and
 - 8.1.5 condition 7 of the Development Consent granted to DA1193/2007, in relation to stage 1B of that development.
- 8.2 The Parties agree that the Development Contributions made by the Developer under the WIK Agreement satisfy the Developer's obligation to pay the project management component of the contributions required by the conditions referred to in clauses 8.1.

- 8.3 The Parties agree that on and from the date of this Agreement, the Council holds the Surplus Credit in favour of the Developer which is to be applied in satisfaction of:
- 8.3.1 any requirement imposed on the Developer under s94 of the Act by a Development Consent relating to the Development that has not yet been complied with, or
 - 8.3.2 any monetary Development Contributions required to be made under this Agreement,
- but only to the extent of the Surplus Credit.
- 8.4 The Parties agree that on and from the date of this Agreement:
- 8.4.1 all works required to be carried out under the WIK Agreement have been completed;
 - 8.4.2 any land required to be dedicated to Council under the WIK Agreement which has not already been dedicated to Council is to be dedicated to Council free of cost, pursuant to this Agreement; and
 - 8.4.3 the WIK Agreement will be terminated.

9 Procedures relating to payment of monetary Development Contributions

- 9.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 9.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 9.3 Monetary Development Contributions are to be indexed in accordance with the methodology for indexing contributions under the CP between the date of this Agreement, and the date of payment of the monetary Development Contributions.

10 Procedures relating to the dedication of land

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- 10.1.1 a deposited plan is registered in the register of plans maintained by the Registrar-General, that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *LG Act*, or
 - 10.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.
- 10.2 For the purposes of clause 10.1.2:

- 10.2.1 the Landowner is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated,
- 10.2.2 the Council is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from Landowner,
- 10.2.3 the Landowner is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed, and
- 10.2.4 the Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.3 If this Agreement requires the Landowner to dedicate land to the Council on which the Developer is required to carry out a Work under this Agreement, the Landowner is to give to the Council the instrument of transfer of the land under clause 10.2.1 not later than 7 days after the Work is taken to have been completed in accordance with this Agreement.
- 10.4 The Developer must notify the Landowner of any notices issued under clause 19 of this Agreement, so that the Landowner can determine when a Work is taken to have been completed in accordance with this Agreement.

Part 3 - Provisions regarding the Carrying out of Work

11 Deferral of Work

- 11.1 Notwithstanding any other provision of this Agreement, if the Developer forms the view at any time, that it is unable to make a Development Contribution comprising a Work by the time the Developer expects to apply for the issue of the Subdivision Certificate before which the Work is required to be completed under this Agreement, then:
 - 11.1.1 the Developer must provide written notice to the Council to that effect;
 - 11.1.2 the Developer must provide the Council with Security in an amount being 100% of the value of the uncompleted part of the Work (calculated with reference to and not exceeding the Contribution Value of the Work) before the date on which the application for the relevant Subdivision Certificate is made;
 - 11.1.3 the Developer must provide to Council, for Council's approval, a revised completion date for the Work;
 - 11.1.4 Council can approve, or not approve a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer must negotiate in good faith and agree upon a revised completion date for the Work; and
 - 11.1.5 the time for completion of the Work under this Agreement will be taken to be the revised completion date approved by the Council under clause 11.1.4.

- 11.2 If the Developer complies with clause 11.1, then it will not be considered to be in breach of this Agreement as a result of a failure to complete a Work by the time for completion of the Work specified in Column 6 of Schedule 3.
- 11.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 11.1.4, then the Council may call on the Security to meet any of its costs incurred under this Agreement in respect of the failure to complete the Work by the revised date for completion.
- 11.4 The amount of Security is to be indexed annually from ~~September 2011~~[March 2012](#) in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics.
- 11.5 The Developer is to ensure that a Security held by the Council at all times equals the amount of the Security so indexed.
- 11.6 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

12 Approval of design of Work

- 12.1 Council must approve the design and specifications for each Work unless otherwise agreed in writing by the Council in relation to any particular Work.
- 12.2 Prior to commencing design of a Work, the Developer must request that the Council provide the Developer with its requirements for the location (generally in accordance with the Indicative Staging Plan), design, materials and specifications for the provision of the Work.
- 12.3 When requesting Council's requirements under clause 12.2 the Developer may provide a proposal, including preliminary concept designs to assist Council in preparing its requirements.
- 12.4 Once the Developer receives the Council's requirements for the Work under clause 12.2, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- 12.5 The initial design for the Work is to include or be accompanied by such information as is required for the making of a Development Application for the Work including:
- 12.5.1 a draft Plan of Management for the land on which the Work is to be located on its dedication to the Council, if that land will be classified as community land within the meaning of the LG Act; and
 - 12.5.2 a draft Vegetation Management Plan for the land on which the Work is to be located, if the Council has advised the Developer that a Vegetation Management Plan is required,
 - 12.5.3 a detailed maintenance regime for the Work, and detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 12.6 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 2 months of receiving the initial design from the Developer.

- 12.7 The Developer will make any change to the initial design for the Work required by the Council.
- 12.8 The Developer is not to lodge any Development Application for a Work unless the Council has first approved the initial design for the Work and provided its written certification that the Development Application is consistent with the approved initial design of the Work.
- 12.9 The Council is to provide the written certification referred to in clause 12.8 within 14 days of being provided with a copy of the proposed Development Application by the Developer, unless the Council forms the view that the proposed Development Application is not consistent with the approved initial design of the Work.
- 12.10 A Development Application for Work is to be accompanied by the written certification referred to in clause 12.9 when lodged with the Council, as the consent authority.
- 12.11 The Developer is to bear all costs associated with obtaining the Council's approval to the initial design of a Work in Schedule 3 of this Agreement under this clause.
- 12.12 Following Development Consent being issued for a Work, the Developer shall work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 12.13 The Developer is not to lodge any application for a Construction Certificate for a Work, with any Principal Certifying Authority, unless the Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.
- 12.14 The Council is to provide the written certification referred to in Clause 12.13 within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer, unless the Council forms the view that the application is not consistent with the approved detailed design of the Work.
- 12.15 Council's written certification outlined in clause 12.14 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.
- 12.16 An application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 12.14 when lodged with the Council, as the consent authority.
- 12.17 For the avoidance of doubt, nothing in the clause as fettering the Council's discretion, as consent authority, in determining any Development Application for the Work.

13 Staging of Works

- 13.1 In order to ensure that the Developer can provide the Contribution Items comprising Works at the time required under this Agreement, the Developer must ensure that Development Applications are lodged which seek consent for the Works, in conjunction with the Relevant Stage.

14 Carrying out of Work

- 14.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out:
 - 14.1.1 in accordance with any design or specification specified by the Council,
 - 14.1.2 any relevant Development Consent, Construction Certificate and any other applicable law,
 - 14.1.3 in a good and workmanlike manner and to the accepted industry standards,
 - 14.1.4 and otherwise to the satisfaction of the Council.
- 14.2 If the Developer is required by the Council to prepare or modify a design or specification relating to a Work for approval by the Council under clause 14.1, the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

15 Access to the Land

- 15.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach by the Developer relating to the carrying out of a Work.
- 15.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

16 Protection of people and property

- 16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 16.1.1 all necessary measures are taken to protect people and property, and
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.

17 Damage and repairs to Work

- 17.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

18 Variation of Work

- 18.1 A Work is not to be varied by the Developer, unless:
 - 18.1.1 the Parties agree in writing to the variation, and
 - 18.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 18.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 18.2 For the purposes of clause 18.1 a variation may relate to any matter in relation to the Work that is dealt with by this Agreement.
- 18.3 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council shall be liable to pay to the Developer an amount equal to the increase in the costs of completing the Work, which results from the variation requested by the Council.
- 18.4 Council shall pay the amount referred to in clause 18.3 to the Developer after the Work is complete, and within 28 days of receipt of:
 - 18.4.1 a tax invoice for the amount claimed by the Developer; and
 - 18.4.2 documentation which demonstrates to Council's satisfaction the increase in costs as a result of the variation requested by the Council.
- 18.5 For the avoidance of doubt, a variation to a Work under this clause does not require the variation of this Agreement, provided the Council is satisfied that the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.

19 Procedures relating to the completion of Work

- 19.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the completion of the Work in accordance with this clause.
- 19.2 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement is complete, the Developer is to give to the Council a notice in writing to that effect.
- 19.3 The Council is taken to have accepted the completion of a Work that is the subject of a notice referred to in clause 19.2, if the Council gives the Developer a notice to that effect.
- 19.4 On completion of the Work, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement.

20 Procedures relating to the rectification of defects

- 20.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 20.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 20.3 If the Developer breaches clause 20.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

21 Failure to carry out Work

- 21.1 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, the Council may elect to give the Developer a notice requiring:
 - 21.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
 - 21.1.2 the breach to be rectified to the Council's satisfaction.
- 21.2 A notice given under clause 21.1 is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 21.3 Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 21.1:
 - 21.3.1 call upon any Security, and
 - 21.3.2 carry out and complete the Work the subject of the Developer's breach.
- 21.4 Clauses 29 and 30 do not prevent a notice being given under clause 21.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 29 or clause 30 ceases to apply when such a notice is given.
- 21.5 The Council is not required to give the Developer a notice under clause 21.1 as a pre-condition to calling-up any Security in relation to the Developer's breach if the Council reasonably believes that the Developer is unlikely to comply with a Rectification Notice.
- 21.6 If the Council calls up a Security pursuant to clause 21.5, the Council is to notify the Developer in writing immediately following the calling up of that Security.

22 Works-As-Executed-Plan

- 22.1 No later than 60 days after a Work is taken to have been completed in accordance with this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work the subject of the notice.

Part 4 – Indemnities and Insurances

23 Indemnity and Insurance

- 23.1 The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with:
 - 23.1.1 Council's approval of the design and specifications of any Work;

- 23.1.2 the carrying out by the Developer of any Work; and
- 23.1.3 the performance by the Developer of any other obligation under this Agreement.
- 23.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
 - 23.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 23.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 23.2.3 workers compensation insurance as required by law, and
 - 23.2.4 any other insurance required by law.
- 23.3 If the Developer fails to comply with clause 23.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
 - 23.3.1 by calling upon any Security provided by the Developer to the Council under this Agreement, or
 - 23.3.2 recovery as a debt due in a court of competent jurisdiction.
- 23.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 23.2.

Part 5 - Security

24 Provision of Security

- 24.1 To secure the performance of the Developer's obligations in relation to Contribution Items ~~42~~, ~~1331~~, ~~32~~ and ~~4345~~ the Developer is to provide the Council with Security such that the amount of Security held by the Council from the time set out in Column 1 of the Table to this clause equals the amount set out in Column 2 of the Table to this clause corresponding to that time.

Table

Column 1 Time	Column 2 Amount
On execution of this Agreement	\$740,137.02

Prior to the issuing of the Subdivision Certificate that creates the 501 st Final Lot in the Development.	\$1,480,274.04
Prior to the issuing of the Subdivision Certificate that creates the 1,051 st Final Lot in the Development.	\$2,220,411.07
Prior to the issuing of the Subdivision Certificate that creates the 1501 st Final Lot in the Development.	\$2,680,063.2464,493.28
Prior to the issuing of the Subdivision Certificate that creates the 1801 st Final Lot in the Development.	\$1,876,324.79

- 24.2 The amount of the Security is to be indexed annually from [September 2011](#) [March 2012](#) in accordance with the Consumer Price Index (All Groups - Sydney) published by the Australian Bureau of Statistics and the Developer must ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer by Council.

25 Release & return of Security

- 25.1 The Council is to return the Security or any remaining part of it to the Developer, within 28 days of the completion by the Developer of all of their obligations under this Agreement to the satisfaction of the Council.
- 25.2 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this Agreement.
- 25.3 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.

26 Call-up of Security

- 26.1 The Council may call-up any Security provided under this Agreement if, in its absolute discretion and despite clauses 29 and 30, it considers that the Developer has breached this Agreement.
- 26.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 26.3 If the Council calls on the Security, the Council may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of the Security held by the Council, equals, but does not exceed the amount of the Security the Council is entitled to hold under this Agreement.
- 26.4 Notwithstanding clause 26.1 or any other provision of this Agreement:

- 26.4.1 a Deferred Work Security can only be called-up in relation to a breach of this Agreement in respect of the carrying out of the Work in relation to which the Deferred Work Security was provided; and
- 26.4.2 a Registration Security can only be called-up in relation to a breach of this Agreement in respect of the Development Contributions required in relation to the Superlot for which the Registration Security was provided.

Part 6 - Other Provisions

27 Recovery of cost of Work carried out by the Council

- 27.1 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work that is not met by a Security provided under this Agreement, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 27.2 For the purpose of clause 27.1, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
 - 27.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 27.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 27.2.3 without limiting clause 27.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

28 Enforcement in a court of competent jurisdiction

- 28.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 28.2.1 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,
 - 28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

29 Dispute Resolution – expert determination

- 29.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 29.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be

referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.

- 29.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 29.4 If a notice is given under clause 29.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 29.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 29.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 29.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the expert determination.

30 Dispute Resolution – mediation

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 applies.
- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 30.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 30.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

31 Registration of this Agreement

- 31.1 Subject to clauses 31.2 and 31.3, and subject to the Developer or Landowner obtaining the agreement of the persons specified in section 93H(1) of the Act, the Parties agree that this Agreement will be registered as a planning agreement with the Registrar-General on the title to the Land as permitted by s93H of the Act.
- 31.2 The Parties agree that:
 - 31.2.1 this Agreement will not be registered on the title to any part of the Land which is a Final Lot; and
 - 31.2.2 on lodgement of any plans of subdivision of the Land with the LPI that create Final Lots, the LPI will be directed not to register this Agreement on the title to the Final Lots being created by that plan.

- 31.3 The Parties also agree that the registration of the Agreement will be removed from the title to a Superlot, before the Developer has met its obligations under this Agreement in relation to the Superlot, if:
- 31.3.1 The Landowner or Developer has notified the Council that it wishes to commence selling Final Lots to be created on the Superlot;
 - 31.3.2 The Landowner or Developer has provided Council with a copy of the proposed plan of subdivision for the Superlot;
 - 31.3.3 The Landowner and Developer are not in breach of this Agreement; and
 - 31.3.4 The Developer provides the Council with a Security in an amount equal to the Contribution Value of all Contribution Items involving the carrying out of Work and monetary Development Contributions which must be made under this Agreement in connection with the creation of Final Lots on that Superlot.
- 31.4 The Landowner agrees to sign all forms necessary, and do all things reasonably necessary to allow this Agreement to be registered under clause 31.1 including obtaining the consent of any mortgagee or other person with an interest in the Land to that registration, and having the certificates of title for the Land delivered to the Registrar-General.
- 31.5 The Parties agree to sign such documents and do such things as may be required to achieve the said registration within seven (7) days of the execution of this Agreement.
- 31.6 Upon completion of the obligations of the Developer and Landowner pursuant to this Agreement, the Parties must do such things as may be required to remove the recording of this Agreement as a planning agreement from the title of the Land, including removing the recording of the Agreement from the title to part of the Land in respect of this the Developer has met its obligations.
- 31.7 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Agreement in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.

32 Compulsory Acquisition

- 32.1 In the event that the Landowner does not dedicate any land required to be dedicated under this Agreement, at the time at which it is required to be dedicated, the Landowner consents to the Council compulsorily acquiring that land, for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 32.2 Council must only acquire land pursuant to clause 32.1 if to do so is reasonable, having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Agreement.
- 32.3 Clause 32.1 constitutes an agreement for the purposes of section 30 of the Just Terms Act.
- 32.4 If, as a result of the acquisition referred to in clause 32.1, the Council must pay compensation to any person other than the Landowner, the Developer or

Landowner must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.

- 32.5 Except as otherwise agreed between the Parties, the Landowner must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.
- 32.6 The Developer and the Landowner indemnify and keep indemnified the Council against all claims made against the Council as a consequence of the acquisition by the Council of the whole or any part of the Land except in relation to any claim that arises from the manner in which the land so acquired is used or managed by the Council.
- 32.7 The Landowner will promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 32, including without limit:
 - 32.7.1 signing any documents or forms;
 - 32.7.2 giving land owner's consent for lodgement of any Development Application;
 - 32.7.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*; and
 - 32.7.4 paying the Council's costs arising from clause 32.
- 32.8 Notwithstanding clause 32.5, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, and:
 - 32.8.1 Council cannot withhold its agreement unreasonably if the encumbrance or affectation does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement, unless the encumbrance or affectation is a charge arising as a result of unpaid taxes or charges; and
 - 32.8.2 in all other cases, Council may withhold its agreement in its absolute discretion.

33 Assignment, sale of Land, etc

- 33.1 Unless the matters specified in clause 33.2 are satisfied:
 - 33.1.1 Landowner is not to transfer any part of the Land, other than a Final Lot, to any person, or
 - 33.1.2 the Developer is not to assign to any person the Developer's rights or obligations under this Agreement or novate the Agreement to any person.
- 33.2 The matters required to be satisfied for the purposes of clause 33.1 are as follows:

- 33.2.1 the relevant Party has, at no cost to the Council, first procured the execution by the person to whom that Party's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
- 33.2.2 the Council, by notice in writing to the relevant Party, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
- 33.2.3 the relevant Party is not in breach of this Agreement, and
- 33.2.4 the Council, acting reasonably, otherwise consents to the transfer, assignment or novation.

34 Monitoring & review of this Agreement

- 34.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Agreement is entered into a report detailing the performance of its obligations under this Agreement.
- 34.2 The report referred is to be in such a form and to address such matters as may be notified by the Council to the Developer from time to time.
- 34.3 The Council, at its own cost, is to keep a written register of the Development Contributions made by the Developer under this Agreement.
- 34.4 The register is to contain (but is not limited to) particulars of the following:
 - 34.4.1 each Development Contribution made,
 - 34.4.2 the form of the Development Contribution,
 - 34.4.3 the Contribution Item to which the Development Contribution relates by reference to Schedule 3 of this Agreement,
 - 34.4.4 the date on which the Development Contribution is made, and
 - 34.4.5 particulars of any Development Contributions that are required by this Agreement to have been made that the Developer has not made.
- 34.5 The Council is to allow the Parties to have access to the register during the ordinary business hours of the Council and at no cost.
- 34.6 The register is to be conclusive evidence of the matters it contains relating to the making of Development Contributions by the Developer under this Agreement.
- 34.7 The Parties agree to review this Agreement annually, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 34.8 For the purposes of clause 34.7, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 34.9 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 34.7, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

- 34.10 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 34.11 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 34.7 is not a dispute for the purposes of clauses 29 and 30 and is not a breach of this Agreement.

35 Variations to Contribution Items and Staging

- 35.1 The Developer may request that the Council approve a variation to the Contribution Items to be provided under this Agreement.
- 35.2 The Council may, in its absolute discretion agree to a variation of the Contribution Items, provided that the variation does not result in the sum of the Contribution Values of all Contribution Items falling below the sum of the Contributions Values of all Contribution Items as at the date of this Agreement and the variation is generally consistent with the intended objectives and outcomes of this Agreement at the date of this Agreement.
- 35.3 The Developer may request that the Council approve a variation to the staging of the provision of the Contribution Items.
- 35.4 The Developer may request that Council approve a variation to the proposed staging of the Development but only if the variation involves creation of sub-stages within a Stage of the Development.
- 35.5 The Council must act reasonably in determining whether to grant a variation to the staging of the provision of the Contribution Items or the staging of the Development.
- 35.6 If a variation is made to the Contribution Items pursuant to this clause, then Schedule 3 will be deemed to be amended to include the varied Contribution Items, and their Contribution Values.
- 35.7 Subject to clause 35.8, a variation to the Contribution Items or the staging of the provision of Contribution Items or to the staging of the Development under this clause does not require a variation to this Agreement.
- 35.8 If required in writing by the Council, the Plan Package is to be amended to reflect any approved variation referred to in clause 35.3 or clause 35.4.

36 Notices

- 36.1 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:
- 36.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 36.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
 - 36.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 36.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or

request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

- 36.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 36.3.1 delivered, when it is left at the relevant address,
 - 36.3.2 sent by post, 2 business days after it is posted,
 - 36.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 36.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 36.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

37 Approvals and Consent

- 37.1 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.
- 37.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

38 Legal costs

- 38.1 The Developer is to pay to the Council the Council's legal costs of preparing, negotiating, executing and stamping this Agreement, and any documents related to this Agreement within 7 days of a written demand by the Council for such payment.
- 38.2 The Developer is also to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.
- 38.3 The Developer is to pay the Council's costs of preparing, negotiating, executing and stamping any amendment to this Agreement.

39 Entire Agreement

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

40 Further acts

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

41 Notations on section 149(2) Planning Certificates

- 41.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land, other than a Final Lot.

42 Governing law and jurisdiction

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

43 Joint and individual liability and benefits

- 43.1 Except as otherwise set out in this Agreement:
- 43.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
- 43.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

44 No fetter

- 44.1 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.

45 Representations and Warranties

- 45.1 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.

46 Severability

- 46.1 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.
- 46.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

47 Modification

- 47.1 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.

48 Waiver

- 48.1 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 of, or breach of obligation by, another Party.
- 48.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 48.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

49 GST

- 49.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 49.2 Subject to clause 49.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 49.3 Clause 49.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

- 49.4 No additional amount shall be payable by the Council under clause 49.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 49.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 49.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 49.5.2 that any amounts payable by the Parties in accordance with clause 49.2 (as limited by clause 49.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 49.6 No payment of any amount pursuant to this clause 49, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 49.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 49.8 This clause continues to apply after expiration or termination of this Agreement.

50 Explanatory Note relating to this Agreement

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

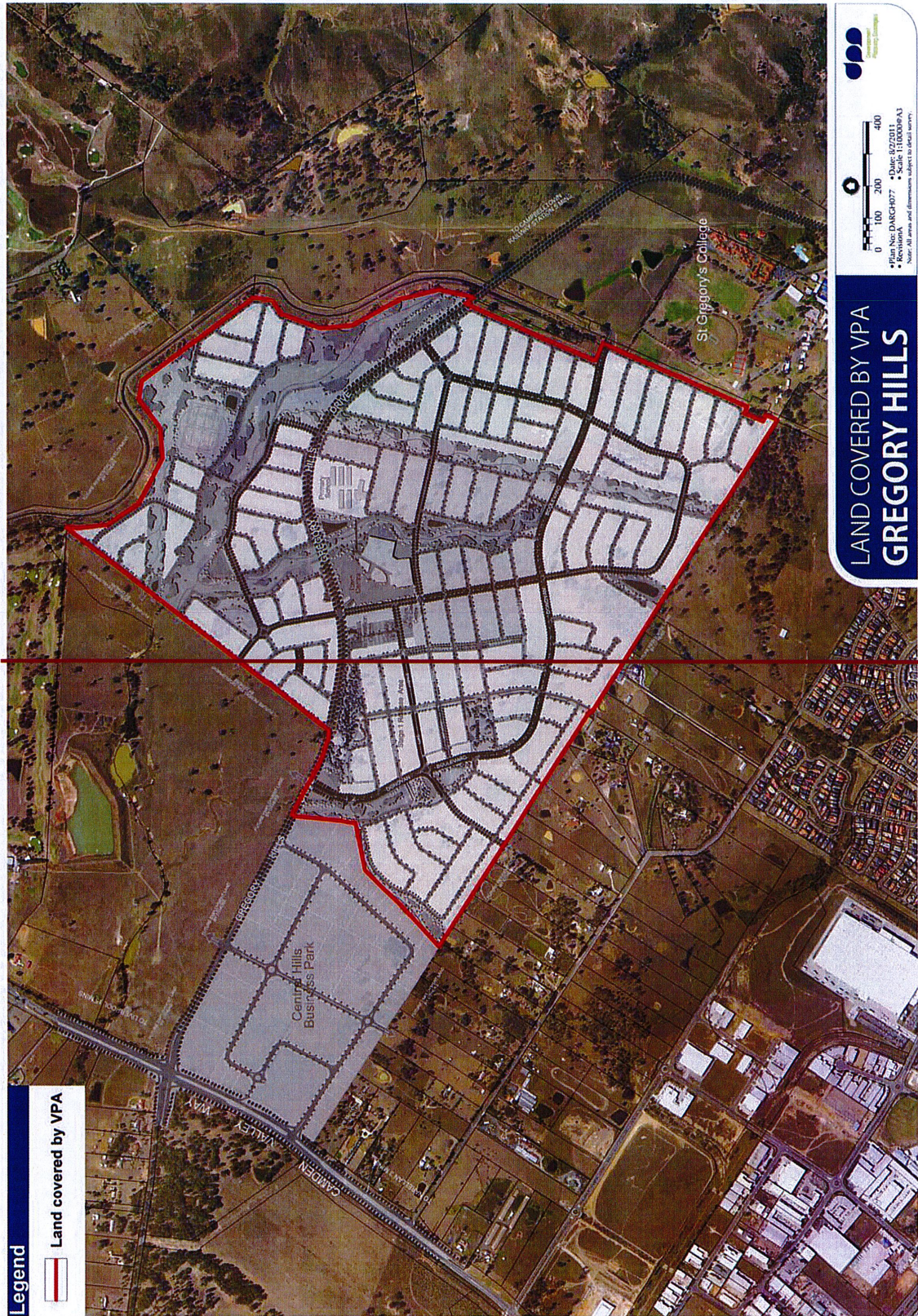
Schedule 1

(Clause 1.1)

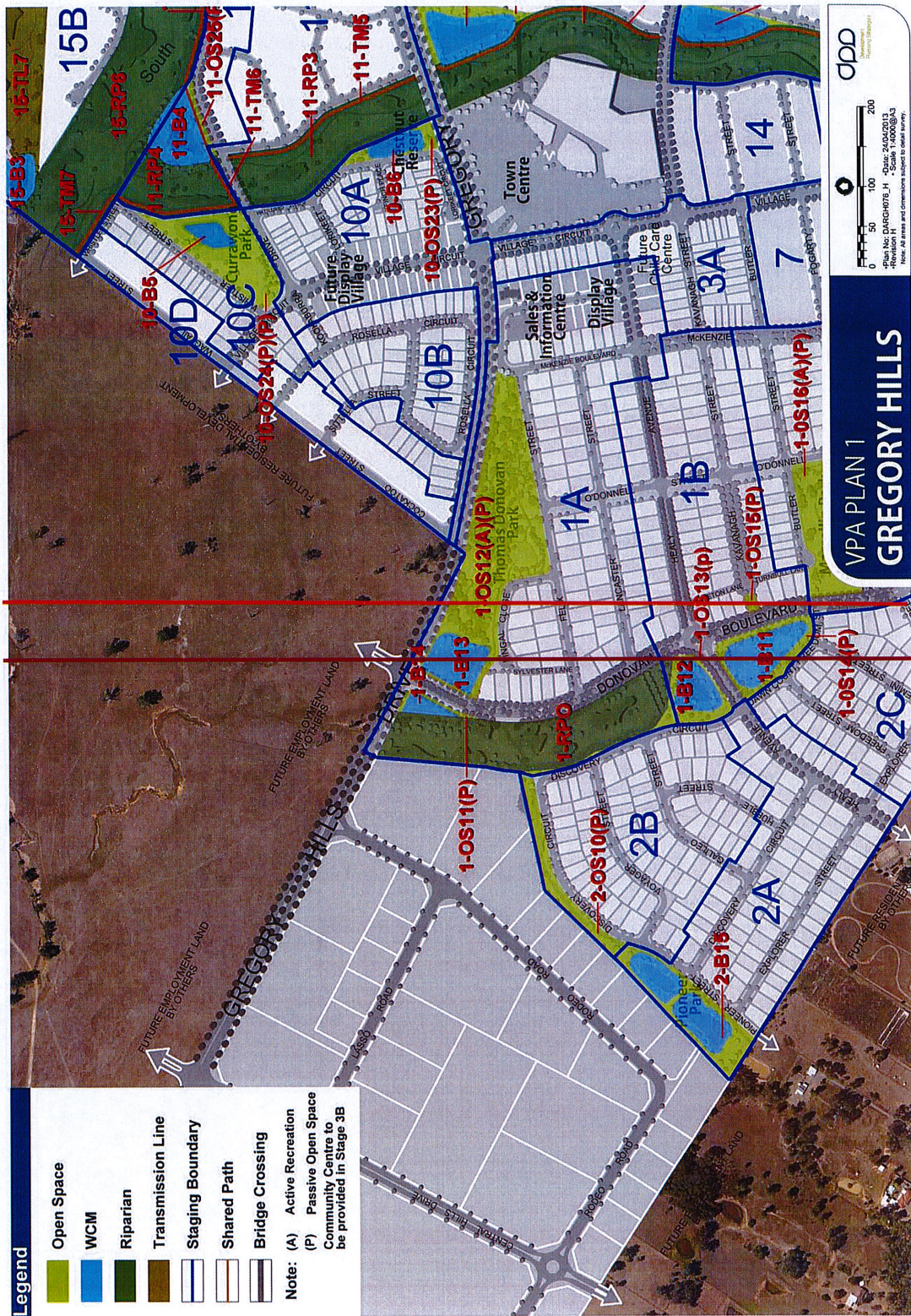
Plan Package

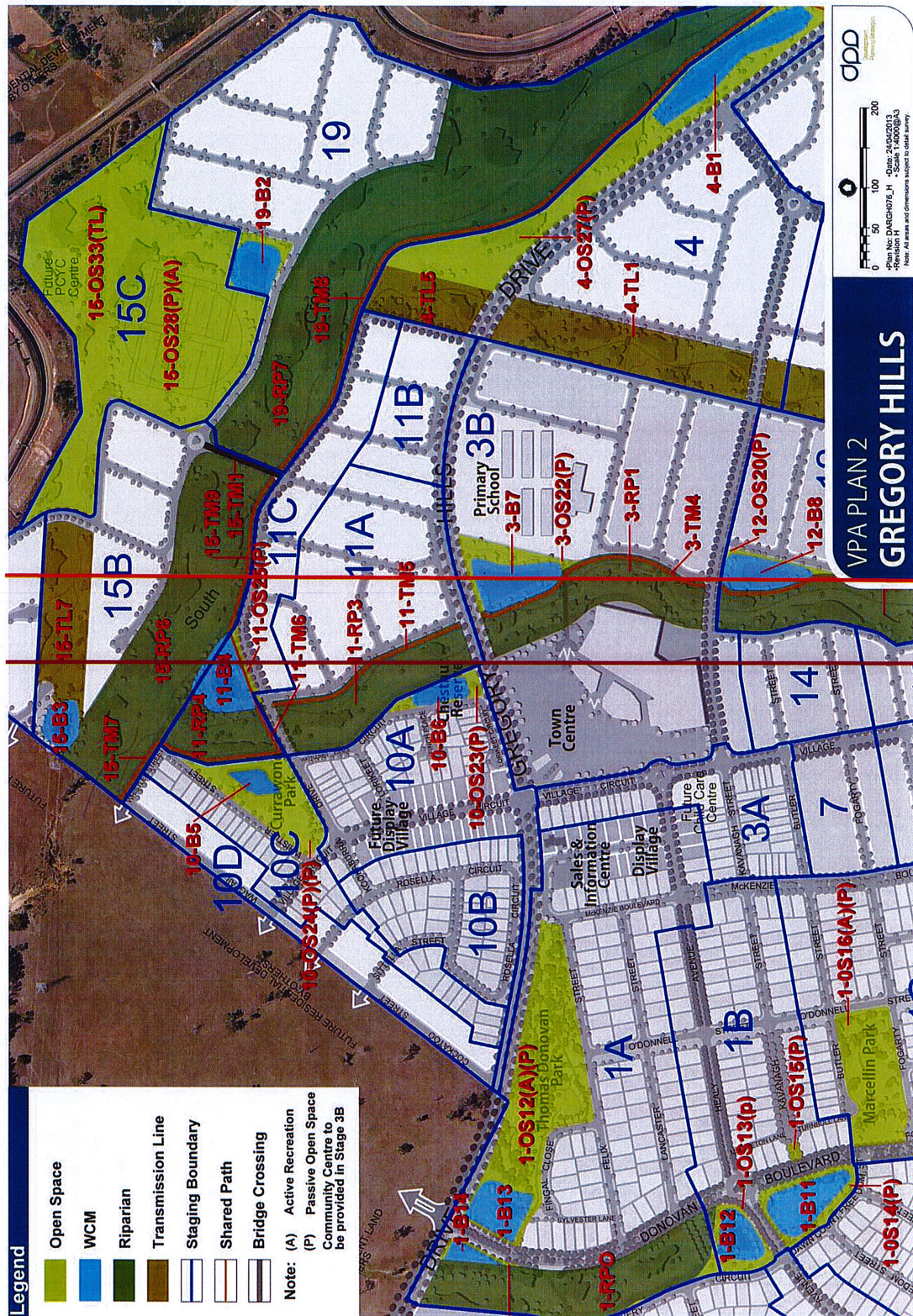
Plan Package on following pages.











Schedule 2

(Clause 1.1)

The Development

Development of the Land for urban purposes generally as shown on the Masterplan, involving:

- the subdivision of the Land to accommodate approximately 2,40670 dwellings and
- establishment of a road, utilities and stormwater management network,
- provision of various types of open space and creation of recreation areas
- provision of community and other facilities
- construction of residential housing, and
- construction of non residential development, including a local shopping centre.

Schedule 3

(Clause 7)

Development Contributions

Note: The following table sets out the Development Contributions that the Developer and Landowner are to provide under this Agreement. Items 1 to ~~50-49~~ inclusive and Item ~~9193~~ relate to the carrying out of Work. Items ~~501~~ to ~~90-88~~ inclusive and Item ~~93-91~~ relate to the dedication of land, Items ~~9489~~ and ~~92-90~~ relate to payment of monetary contributions.

Dart West Gregory Hills Planning Agreement
Camden Council
Dart West Developments Pty Limited
Trustees of the Marist Brothers

Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

General Manager [or delegate](#)

Witness/Name/Position

Executed on behalf of Dart West Developments Pty Limited in
accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Dart West Gregory Hills Planning Agreement

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers

Executed on behalf of Trustees of the Marist Brothers. Each attorney signing this document under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of the revocation of the power of attorney.

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

Signed, sealed and delivered by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.

Witness (Signature)

Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

I certify that the person signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed the instrument in my presence.

Signed, sealed and delivered by the persons named below who signed this instrument on behalf of **Trustees of the Marist Brothers** pursuant to power of attorney dated 12 May 2008 registered with Land & Property Information (NSW) Book 4543 No. 900.

Witness (Signature)

Attorney (Signature)

Name of Witness (Print Name)

Name of Attorney (Print Name)

Appendix A

(Schedule 3, Miscellaneous Works item 93, Column 5)

Note: This is the relevant text extracted from the Turner Road Precinct Development Control Plan as in existence on 18 March 2013.

1.1 Flooding and Watercycle Management

Objectives

- (1) To minimise the potential impact of flooding on development.
- (2) To incorporate best practice stormwater management principles and strategies in development proposals.
- (3) To mitigate the impacts of urban development on stormwater quality.
- (4) To control the impacts of urban development on channel bed and bank erosion by controlling the magnitude and duration of sediment-transporting flows.
- (5) Limit changes in flow rate or flow duration within the receiving waterway as a result of development.

Controls

- (1) No residential allotments are to be located at a level lower than the 1% Annual Exceedance Probability (AEP) flood level plus a freeboard of 500mm (i.e. within the 'flood planning area'). Pedestrian and cycle pathways and open space may extend within the 1% AEP flood level, provided that the safe access criteria contained in the *NSW Floodplain Manual* are met.
- (2) Management of 'minor' flows using piped systems for the 20% AEP (residential land use) and 10% AEP (commercial land use) shall be in accordance with Camden Council's *Engineering Design Specification – Subdivision and Development Works*. Management measures shall be designed to:
 - prevent damage by stormwater to the built and natural environment,
 - reduce nuisance flows to a level which is acceptable to the community,
 - provide a stormwater system which can be economically maintained and which uses open space in a compatible manner,
 - control flooding,
 - minimise urban water run-off pollutants to watercourses, and
 - meet the standards for a 20% AEP flood level.

Dart West Gregory Hills Planning Agreement

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers

- (3) Management of 'major' flows using dedicated overland flow paths such as open space areas, roads and riparian corridors for all flows in excess of the pipe drainage system capacity and above the 20% AEP shall be in accordance with Camden Council's *Engineering Design Specification*. Management measures shall be designed to:
- prevent both short term and long term inundation of habitable dwellings,
 - manage flooding to create lots above the designated flood level with flood free access to a public road located above the 1% AEP flood level,
 - control flooding and enable access to lots, stabilise the land form and control erosion,
 - provide for the orderly and safe evacuation of people away from rising floodwaters,
 - stabilise the land form and control erosion, and
 - meet the standards for a 1% AEP flood level.
- (4) Where practical, development shall attenuate up to the 50% AEP peak flow for discharges into the local tributaries, particularly Category 1 and 2 creeks. This will be achieved using detention storage within water quality features and detention basins.
- (5) The developed 1% AEP peak flow is to be reduced to pre-development flows through the incorporation of stormwater detention and management devices.
- (6) All development is to incorporate water sensitive urban design (WSUD). WSUD is to be adopted throughout the development to promote sustainable and integrated management of land and water resources incorporating best practice stormwater management, water conservation and environmental protection. A WSUD Strategy is to be submitted as part of any subdivision DA and shall include:
- identification of water management and other relevant objectives (relating, for example, to salinity hazard),
 - identification and assessment of relevant site characteristics and constraints, including flood evacuation routes,
 - identification of potentially feasible (storm) water management strategies, which may comprise stormwater reuse options, best planning practices, stormwater treatment measures (in both public and private domain),
 - assessment of the potential strategies, including the nature, basis and outcomes of stormwater modelling used to assess alternative solutions. This assessment of alternative strategies should address compliance with management objectives, life cycle costs, ongoing operations and maintenance requirements, land take requirements, expected reliability and future management responsibilities,
 - assessment of the likely construction costs associated with the WSUD strategy as well as a maintenance framework addressing maintenance strategies and costs, and
 - a suitably detailed description of the preferred WSUD strategy and elements therein, in the form of documents, plans and conceptual diagrams (as appropriate).
- (7) The WSUD Strategy shall demonstrate how the stormwater quality targets set by the Department of Environment and Climate Change (DECC) (**Table 10**) will be achieved and shall be consistent with 'Technical Note: Interim Recommended Parameters for Stormwater Modelling – North-West and South-West Growth Centres' and 'Managing Urban Stormwater: Stormwater Planning' (DECC) and *Australian Runoff Quality* (Engineers Australia). A monitoring plan that encompasses strategies for water sampling, maintenance of WSUD facilities and risk management in the short, medium and longer terms is to be included as part of the WSUD strategy.
- (8) Compliance with the targets at **Table 10** is to be determined through stormwater quality modelling in accordance with the parameters outlined in the relevant technical guidance from DECC.
- (9) The WSUD strategy is to take into account riparian zone and creek management and include the following measures:
- the ephemeral hydrology of creeks is to be maintained or restored, where possible, by diverting excess flow via intercepting stormwater pipes to downstream storages for reuse,

Dart West Gregory Hills Planning Agreement

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers

- flow attenuation and/or diversion via the intercepting stormwater pipes will be required to meet the stream erosion index objectives established by DECC (**Table 10**),
- flow in excess of the 20% AEP peak flow may flow into the creek and be conveyed to detention basins that form part of the major drainage system, and
- erosion control and bank stabilisation measures shall be incorporated within the waterway where required.

Table 10: Environmental Stormwater Objectives

	WATER QUALITY				ENVIRONMENTAL FLOWS
	% reduction in pollutant loads				Stream erosion control ratio
	Gross Pollutants (>5mm)	Total suspended solids	Total phosphorus	Total nitrogen	Post-development duration of above 'stream forming flow' : Natural duration of above 'stream forming flow' ¹
Stormwater management objective	90	85	65	45	3.5 – 5.0 : 1 ²
'Ideal' stormwater outcome	100	95	95	85	1 : 1

1 For the purposes of these objectives , the 'stream forming flow is defined as 50% of the 50% AEP flow rate estimated for the catchment under natural conditions

2 This ratio should be minimised to limit stream erosion to the minimum practicable. Development proposals should be designed to achieve a value as close to one as practicable, and values within the nominated range should not be exceeded. A specific target cannot be defined at this time

Explanatory Note 1

A copy of the Explanatory Note dated 4 May 2012 is on the following pages.

Please Note the following Explanatory Notes do not form part of the Planning Agreement.

Dart West Gregory Hills Planning Agreement

Explanatory Note

Prepared by:

Camden Council
Dart West Developments Pty Ltd
Trustees of the Marist Brothers

Contents

	Page Number
Executive summary	ii
1. Introduction	1
2. Objectives of the planning agreement	2
3. Nature and effect of the planning agreement	3
3.1 Summary	3
3.2 Land and works contributions	3
3.3 Monetary contributions	4
3.4 Inclusion of riparian corridors and lands burdened by transmission easements	5
4. Merits of the planning agreement	6
4.1 Promotion of the public interest	6
4.2 Promotion of the Council's charter	7
4.3 Planning purposes and the objects of the EP&A Act	9
4.4 Conformity with Council's works program	10
4.5 Requirements to be complied with before a certificate is issued	10
Attachments	11

Executive summary

Dart West Developments Pty Ltd (**Dart West**) is developing the Gregory Hills estate within the Turner Road Precinct.

When completed, Gregory Hills will be home to about 7,000 people, and include 2,375 dwellings, a local shopping centre and community and recreation facilities.

Dart West, the owner of the land (Trustees of the Marist Brothers) and Camden Council (**Council**) propose to enter into a planning agreement under section 93F of the Environmental Planning and Assessment Act 1979 (**EP&A Act**) to facilitate the provision of local infrastructure to meet the Gregory Hills development.

In summary, the proposed planning agreement requires the developer and land owner to:

- dedicate land to the Council and construct facilities identified in Council's Contributions Plan;
- make 'settle-up' and 'project management' monetary contributions to the Council that can then be used by the Council to deliver other infrastructure included in the Contributions Plan and required by the development;
- embellish and dedicate to the Council over 22 hectares of land within riparian corridors in accordance with Council's Dedication of Riparian Corridors Policy; and
- embellish and dedicate to the Council over 13 hectares of land within high voltage electricity easements (including approximately 4 hectares identified within the Contributions Plan) in accordance with Council's Dedication of Land Burdened by Transmission Easements Policy.

There are considered to be many public benefits that would accrue as a result of the proposed planning agreement, some of which include:

- utilisation of the developers' expertise in infrastructure provision;
- timely completion of many Turner Road Precinct infrastructure items included in the Contributions Plan through the developer delivering the infrastructure at the same time as land is subdivided and developed;
- shifting the infrastructure project risk from Council to the land developer;
- allowing the Council to concentrate its planning effort on other parts of the Turner Road Precinct that will need a more proactive approach to infrastructure provision;
- streamlining contributions arrangements and minimising the resources required by Council to manage development contributions over the life of the development; and
- clarity for the Council and the community on the future development and management of substantial sections of riparian corridors and electricity transmission easements located within the Turner Road Precinct.

There are not considered to be any negative impacts of the proposed planning agreement.

1. Introduction

The Trustees of the Marist Brothers owns the Gregory Hills site. Dart West is currently developing the Gregory Hills site.

The Gregory Hills site is situated in the Turner Road Precinct, which is located in the north east part of the Camden Local Government Area. The Turner Road Precinct will ultimately accommodate around 4,020 new dwellings. The Gregory Hills development will accommodate 2,375 new dwellings, or around 59 percent of the Precinct's planned residential development.

There is a significant amount of local infrastructure that is required to be provided to meet the demands of the urban development expected in the Turner Road Precinct.

Council's Oran Park and Turner Road Precincts Section 94 Contributions Plan (the **Contributions Plan**) addresses the local infrastructure necessary to support future development in the Precinct, including infrastructure planned for the Gregory Hills site.

Dart West, the Trustees of the Marist Brothers and Council propose to enter into a planning agreement under section 93F of the EP&A Act to provide public purposes.

The proposed planning agreement will be a mechanism for implementing the Contributions Plan to the extent that the developer and land owner have an interest in that plan. The proposed agreement will also establish how riparian corridors and transmission easements on the Gregory Hills site will be managed.

This document (the **Explanatory Note**) has been prepared to assist in the public's understanding of the proposed agreement and its impacts, and has been prepared to meet the requirements of Environmental Planning and Assessment Regulation 2000 (**EP&A Regulation**).

2. Objectives of the planning agreement

(This matter is required under clause 25E(1)(a) of the EP&A Regulation to be addressed in the Explanatory Note)

The objectives of the proposed planning agreement are as follows:

- To deliver the local infrastructure included in the Contributions Plan insofar as it relates to the Gregory Hills site.
- To ensure that local infrastructure is delivered in a timely manner, harmonising the delivery of public assets with the delivery of subdivided lots for sale.
- To maximise provision efficiencies by supporting the delivery of local infrastructure by the developer at or around the same time as land is subdivided and developed.
- To minimise the potential exposure to Council of infrastructure cost overruns involving Contributions Plan infrastructure situated on the Gregory Hills site.
- To remove the need for piecemeal and incremental calculation of section 94 contributions with every affected development application involving the Gregory Hills site.
- To lock-in the infrastructure program for a large part of the Turner Road Precinct, thereby allowing the Council to concentrate its planning effort on those parts of the Precinct that will need a more proactive approach to infrastructure provision (i.e. smaller landholdings and fragmented ownership areas).
- To provide clarity on the future development and management of the riparian corridors and electricity transmission easements located within the Gregory Hills site.

3. Nature and effect of the planning agreement

(This matter is required under clause 25E(1)(a) of the EP&A Regulation to be addressed in the Explanatory Note)

3.1 Summary

The proposed agreement imposes the following obligations on Dart West and the Trustees of the Marist Brothers:

- Dedicate land and undertake works located on the Gregory Hills site that are identified in the Contributions Plan.
- Make a cash contribution to the Council that is the amount calculated by the following general formula:

The total cash contribution for the Gregory Hills development calculated in accordance with the Contributions Plan

less

The total attributable value of the land and works to be provided under the proposed planning agreement (based on the values contained in the Contributions Plan)

- Make a cash contribution to the Council for the purposes of Contributions Plan project management. The contribution amount will be 1/3 of the total project management costs attributable to the open space and recreation, community and transport management facilities to be provided under this agreement.
- Restore and / or embellish riparian corridor and transmission easement land situated within the Gregory Hills site, and dedicate that land to the Council.

3.2 Land and works contributions

Type of provision	Details
Open space and recreation facilities identified in the Contributions Plan (land and works)	<ul style="list-style-type: none"> • One double playing field • One children's playground • One children's play space • One community park / green space • A total open space provision of 18.07 hectares, comprising 3.8 hectares representing the above facilities, and 14.27 hectares representing passive open space.
Community facilities identified in the Contributions Plan (land and works)	One multi-purpose community centre on a site of 1,288m ² .
Transport management facilities identified in the Contributions Plan	<ul style="list-style-type: none"> • One 2 lane water crossing • 2,600 linear metres of shared cycleway along riparian corridors • 6 bus shelters
Water cycle management facilities (land and	A total of 6.2 hectares of land accommodating a network of

Type of provision	Details
works)	detention and bio-retention facilities that serve the entire development.
Embellished riparian corridor land (land and works)	A total of 22.3 hectares of riparian corridor land embellished and gradually handed over to Council in accordance with its requirements.
Embellished transmission easement land (land and works)	A total of 9.9 hectares of electricity transmission easement land embellished and gradually handed over to Council in accordance with its requirements.

Maps showing the extent and staging of proposed land and works are shown in Schedule 1 of the proposed planning agreement.

Details regarding the staging of these contributions are included in Schedule 3 to the proposed planning agreement.

3.3 Monetary contributions

In the absence of the proposed planning agreement, developers of land in the Gregory Hills site would have been required under development consents to provide to the Council section 94 monetary or land contributions towards the provision of local infrastructure.

The proposed agreement instead requires Dart West and the Trustees of the Marist Brothers to dedicate land and undertake works (or equivalent works) identified in the Contributions Plan.

The difference between the developers' obligations under the Contributions Plan and the value of the land and works to be provided by Dart West and the Trustees of the Marist Brothers will be paid as monetary contributions.

The monetary contributions payable by the developers are shown in Items 21 and 22 of Schedule 3 to the agreement, and may be summarized as follows:

- A total 'settle-up' amount of approximately \$10.2 million determined by deducting the contribution value of all the land and works to be provided by Dart West and the Trustees of the Marist Brothers from the amount that they would otherwise have been required to pay under the Contributions Plan.
- A total 'project management' amount of approximately \$268,000 which is one third of the total project management costs incurred by Dart West in respect of all items involving works to be provided to the Council.

These amounts:

- account for the whole Gregory Hills development and account for surpluses related to contributions made under recent development consents and recently negotiated works-in-kind agreements; but
- have been indexed to CPI as of September 2011.

Both settle-up and project management cash contributions will be used by the Council to deliver other infrastructure required by the development and included in the Contributions Plan, or another public purpose if the Council considers that the public interest would be better served by applying the contribution towards that other purpose.

Details regarding the staging of the payment of these amounts are included in Schedule 3 to the agreement.

3.4 Inclusion of riparian corridors and lands burdened by transmission easements

In addition to the Contributions Plan items, the proposed planning agreement is to include the rehabilitation, embellishment and hand over of land within riparian corridors and areas burdened by transmission easements.

Council has adopted policies that require the merits of transferring these types of land to be assessed against a range of criteria, before it considers whether to accept responsibility for such lands.

An analysis of the developers' offer of riparian corridor land against Council's Dedication of Riparian Corridors Policy is included as Attachment A.

An analysis of the developers' offer of transmission easement land against Council's Dedication of Land burdened by Transmission Easements Policy is included as Attachment B.

These analyses show how these lands integrate with the wider planning objectives for the Precinct. The Gregory Hills site's riparian corridor and transmission easements lands will support achievement of the Precinct's:

- environmental conservation objectives;
- visual amenity objectives;
- passive recreation and pedestrian and cycle access; and
- water cycle management planning objectives.

4. Merits of the planning agreement

(This matter is required under clause 25E(1)(b) of the EP&A Regulation to be addressed in the Explanatory Note)

The merits of the proposed planning agreement are evident in:

- its promotion of the public interest (Part 4.1 of the Explanatory Note);
- its promotion of the Council's charter (Part 4.2);
- its delivery of planning purposes (Part 4.3);
- its delivery of Council's works program (Part 4.4); and
- its provisions require developer commitments to be provided prior to the issue of certificates (Part 4.5).

4.1 Promotion of the public interest

(This matter is required under clause 25E(2)(a) of the EP&A Regulation to be addressed in the Explanatory Note)

The public benefits to be secured by this planning agreement will flow from the achievement of the planning agreements' objectives (refer to Part 2 of the Explanatory Note).

Significant efficiencies will be achieved through the agreement by allowing Dart West and the Trustees of the Marist Brothers both:

- greater involvement in the timing and scope of the Contributions Plan infrastructure items that affect their development; and
- the ability to coordinate the concurrent roll-out of urban lots and local infrastructure.

The expected efficiencies, together with anticipated public benefits of the proposed agreement, are described below:

- The entering into a proposed planning agreement would continue the cooperative approach to infrastructure provision has already been initiated through Council's approval of Gregory Hills Stage 1A works in kind agreement, and Council's agreement to accept responsibility for a section of riparian corridor land ('Tributary 1') abutting Stage 1A.
- The agreement relieves Council of the project risk associated with the provision of local infrastructure on the Gregory Hills site. Any cost overruns, rather than being met by the Council or other developers in the Contributions Plan area, would be met by Dart West.
- The agreement is likely to result in, over the development life, a significant reduction in the resources required by the parties to calculate and administer development contributions associated with the development.
- The agreement allows the Council to concentrate its planning effort on those parts of the Precinct that will need a proactive approach to infrastructure provision. Small landowners comprise a small, yet not insubstantial, portion of the Turner Road Precinct development. By entering into the agreement Council is relieved of the obligation of delivering infrastructure in Gregory Hills (which is more ably delivered by the developers) and can instead focus on providing infrastructure in locations where it is less likely that developers would directly provide that infrastructure.

- The Gregory Hills riparian corridor land comprises significant environmental value and is also integral to the achievement of the Precinct's pedestrian and cycle access and water cycle management planning objectives. Appropriate arrangements for the sustainable ongoing management of the riparian corridors are therefore in the interests of the wider community. The planning agreement addresses these matters. A specific analysis of the merits of the proposed dedication of riparian land (as well as electricity easement land) to the Council is included in the Attachments to this Explanatory Note.

There are various provisions in the proposed planning agreement relating to the implementation of the agreement that protect and uphold the public interest. These include the following:

- Under clause 7.5 of the agreement the Council has discretion in the way it may apply contributions it receives under the agreement.
- Provisions (including clauses 18 and 21) requiring the developer to repair and make good works or rectify defects in works provided under the agreement.
- Under clause 35 of the agreement Dart West is required to prepare, at least annually, a report detailing the performance of its obligations under this Agreement; and the Council is to keep a written register of the development contributions made by Dart West under the agreement.
- Various provisions relating to security including:
 - (i) Where the developer proposes a deferral of work (clause 11 of the agreement);
 - (ii) Provision of a security amount covering the outstanding contributions obligations under the agreement (clause 25); and
 - (iii) Compulsory acquisition of land by Council for a nominal amount in the event the land is not dedicated at the time required under the agreement (clause 33).

4.2 Promotion of the Council's charter

(This matter is required under clause 25E(2)(d) of the EP&A Regulation to be addressed in the Explanatory Note)

A planning agreement should promote elements of the Council's charter, which is established under section 8 of the Local Government Act 1993.

It is considered that the proposed planning agreement would further a number of elements of the charter, as shown below:

Element of the Council's charter (section 8 of the Local Government Act 1993)	How does the agreement promote the element?
To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.	<p>This element is embedded in the purposes and objectives of the proposed planning agreement. That is:</p> <ul style="list-style-type: none"> • the proposed agreement will be the subject of community input prior to its consideration by the Council; • the services and facilities to be provided reflect the objectives of the Contributions Plan and the Council's Dedication of Riparian Corridors and Dedication of Land burdened by Transmission Easements Policies; and • the proposed agreement includes arrangements for the staged handover of completed facilities following a developer-sponsored maintenance period.

Gregory Hills Planning Agreement Explanatory Note

Element of the Council's charter (section 8 of the Local Government Act 1993)	How does the agreement promote the element?
To exercise community leadership.	<p>The proposed agreement:</p> <ul style="list-style-type: none"> • Secures the means of providing local infrastructure to meet the needs of a major development in one of Camden's key growth areas. • Taps into and applies the expertise offered by land developers towards providing substantial public benefits for the future Turner Road Precinct community. • Together with other similar agreements that have been negotiated, establishes Camden Council as an innovative facilitator of greenfield urban development schemes.
To promote and to provide and plan for the needs of children.	<p>The proposed agreement provides for the delivery of various facilities focused on the needs of children, including various sports facilities, a playgrounds and a play space, cycleways, natural areas for exploring, and a multi-purpose facility.</p>
To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.	<p>The development site's more significant natural areas include its extensive riparian corridors. It is considered the optimum long term management regime for most of the riparian corridor land will be achieved if the land is embellished and dedicated to Camden Council in accordance with its standards, specifications and policies.</p> <p>As a result, over 22 hectares of the development site's riparian corridor lands are proposed to become public assets under the proposed agreement.</p> <p>Response to ESD principles:</p> <ul style="list-style-type: none"> • The precautionary principle, inter-generational equity; and conservation of biological diversity and ecological integrity: Proposed agreement supports natural areas being retained, protected and integrated into the development scheme. • Improved valuation, pricing and incentive mechanisms: Proposed agreement establishes a framework whereby infrastructure users are accountable for the provision of that infrastructure; allows earlier provision of the infrastructure (by the developer) than would be the case with 'business as usual'; and allows the most efficient means of delivering that infrastructure (i.e. by the developer).
To have regard to the long term and cumulative effects of its decisions.	<p>The development has a life of at least 10 years. The proposed agreement sets out a framework for the efficient delivery and sustainable ongoing management of a substantial amount of public infrastructure on the development site.</p> <p>The agreement would relieve Council of the project risk associated with the provision of local infrastructure on the development site and allows the Council to concentrate its planning effort on other parts of the</p>

Element of the Council's charter (section 8 of the Local Government Act 1993)	How does the agreement promote the element?
To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible.	Turner Road Precinct that will need a proactive approach to infrastructure provision. The proposed agreement includes provisions placing asset maintenance obligations on the developers for a period after the works are completed. The proposed agreement also includes appropriate asset handover and defects liability provisions.
To engage in long-term strategic planning on behalf of the local community.	The proposed agreement spans at least a 10 year time frame, assuring the long-term provision and management of public assets and infrastructure.
To exercise its functions in a manner that is consistent with and promotes social justice principles of equity, access, participation and rights.	The proposed agreement creates spaces and places for public interaction and provides facilities for the delivery of public services to the local community.
To raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants.	The proposed agreement includes the payment of monetary contributions to the Council for its management of infrastructure projects and for the provision of other Turner Road Precinct infrastructure not proposed to be delivered under this agreement. The monetary contribution amounts reflect the total value of the balance of the infrastructure needs that will not be provided directly by the developer.

4.3 Planning purposes and the objects of the EP&A Act

(This matter is required under clause 25E(2)(a), (c) and (e) of the EP&A Regulation to be addressed in the Explanatory Note)

The planning purposes served by the planning agreement can best be addressed by reference to the objects of the EP&A Act.

It is considered that this planning agreement would further each of the following objectives of the EP&A Act:

Objective of the EP&A Act (section 5)	How does the agreement promote the objective?
To encourage the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.	The proposed agreement provides a basis for the comprehensive management of the delivery of the local infrastructure requirements of the Gregory Hills development. The proposed agreement also establishes land use management arrangements for the site's riparian corridor lands and electricity easements lands.
To encourage the promotion and co-ordination of the orderly and economic use and development of land.	Orderly development of land is encouraged by (through the agreement) establishing a basis whereby local infrastructure is delivered at or around the same time as surrounding development.

Objective of the EP&A Act (section 5)	How does the agreement promote the objective?
To encourage the provision of land for public purposes.	The proposed agreement includes provision of around 55 hectares of land for public purposes.
To encourage the provision and co-ordination of community services and facilities.	<p>The proposed agreement will sustain provision and coordination of local infrastructure (which includes, community, open space, recreation, transport management and water cycle management facilities) delivered at or around the same time as surrounding development.</p> <p>Additionally, the proposed agreement would result in some of the facilities planned for the Turner Road Precinct development (for example, the community centre and sports fields) occurring sooner than would have been achieved with a business-as-usual approach.</p>
To encourage the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats.	Refer to comments on ecologically sustainable development in Part 4.1.2.
To encourage ecologically sustainable development	Refer to comments on ecologically sustainable development in Part 4.1.2.

4.4 Conformity with Council's works program

(This matter is required under clause 25E(2)(f) of the EP&A Regulation to be addressed in the Explanatory Note)

By adopting the Oran Park and Turner Road Precincts Section 94 Contributions Plan, Council effectively adopted the works included in that plan into its long term works program.

The proposed agreement is a vehicle for the Council to complete a significant part of its Turner Road Precinct works program in a more timely and efficient fashion.

4.5 Requirements to be complied with before a certificate is issued

(This matter is required under clause 25E(2)(g) of the EP&A Regulation to be addressed in the Explanatory Note)

Schedule 3 of the agreement contains details of when contributions of land, works or money are to be met by the developers.

The Schedule states that land will be required to be dedicated, works will be required to be completed, and cash contributions will be required to be paid before the issue of a Subdivision Certificate for stages of development. If the developer seeks the issue of a Subdivision Certificate prior to the completion of these works, Clause 11 of the planning agreement requires the payment of security against the value of the incomplete works within the relevant stage.

Attachments

Attachment A	Dedication of Riparian Corridors Policy Assessment
Attachment B	Dedication of Land burdened by Transmission Easements Policy Assessment

Attachment A

Dedication of Riparian Corridors Policy Assessment

**Offer to enter into a Voluntary Planning Agreement for the
Embellishment and Dedication of Riparian Corridors in the
Gregory Hills development**

DART WEST
DEVELOPMENTS PTY LTD

Suite 6
320A Camden Valley Way
PO Box 228
Narellan NSW 2567
Phone: (02) 4648 5511
Fax: (02) 4648 4827

Summary

The developer of the Gregory Hills site, Dart West Developments Pty Ltd, proposes to dedicate riparian corridor land as public open space to Camden Council.

The developer considers that effective long-term management of the riparian corridors land on the site will be achieved if the land is appropriately embellished and is dedicated to Camden Council in accordance with its standards, specifications and policies. Council's Riparian Corridors Policy states that the Council and the developer should enter into a Voluntary Planning Agreement (VPA) under section 93F of the Environmental Planning and Assessment Act 1979 to enable this to occur.

This document constitutes the formal submission, in accordance with the provisions of 'Camden Council Policy 1.18 Dedication of Riparian Corridors' (**Riparian Corridors Policy**).

The proposal is generally as follows:

- The developer will rehabilitate / embellish the riparian corridor lands to Council's satisfaction.
- The developer will maintain those lands for a period of 5 years following the completion of the embellishment works.
- The developer seeks Council approval for the transfer / dedication of the lands to Council after that period.

The subject riparian corridors are lands in and adjacent to both South Creek and one of its tributaries (this tributary shall be referred to in this document as Tributary 2).

Council has already approved acceptance of the dedication of Tributary 1 in the same site, from the developer, pursuant to the provisions of the Riparian Corridors Policy. The proposal contained in this document reflects the Tributary 1 proposal, however relates to the remaining Gregory Hills riparian corridor lands.

The riparian areas of the site integrate with the water cycle management and open space networks established in the section 94 contributions plan for the Turner Road Precinct. No credit is being sought in relation to section 94 contributions as a result of the proposed dedication of the riparian corridor land.

The Gregory Hills site includes substantial linear areas of riparian corridor land that can integrate with the existing linear electricity transmission easements into a public pedestrian and cycle access network. A separate submission is being prepared that proposes the dedication of these transmission easements pursuant to the relevant Council policy.

This document:

- sets out the proposal to enter into a VPA regarding riparian corridors land;
- outlines Council's policy framework for the dedication of such land and in doing so, framing the case for the Council to agree to enter into the VPA; and
- responds to the specific requirements contained in that policy as they relate to the VPA offer.

Inquiries regarding the proposal should be directed to the developer's General Manager, Property (Mr David Taylor).

Council's Policy Framework

Council's Riparian Corridors Policy establishes "the terms and conditions upon which Council will consider proposals to accept dedication of riparian corridor land to Council".

In the 'Policy Statement' (p3), it is stated that:

Camden Council may accept riparian corridor land as public open space only where community and environmental benefits are adequately demonstrated, such as:

- *Protection of significant environmental features of the land;*
- *Recognition of cultural landscapes;*
- *Retention of significant view lines;*
- *Use of an appropriate Community purpose, such as cycle/ walkway, passive open space, environmental education etc.;*
- *Providing linkages between areas of open space that are unencumbered by the riparian corridor at regular intervals along the corridor.*

The Riparian Corridors Policy then states that:

The onus will be on the proponent to demonstrate that any proposal to dedicate a riparian corridor to Council complies with this Policy, in particular with regard to demonstrating that the on-going costs and activities for Council of managing and maintaining the land will be minimal.

The proposal to dedicate riparian land to Council is consistent with Council's plans for the Turner Road Precinct, and considered critical in achieving a high quality release area development.

Dedication of completed and embellished riparian corridors land to Council will:

- allow the land to be held and managed "in single ownership and as a continuous corridor" in accordance with objective (4) of Clause 6.1 of the Turner Road Precinct Development Control Plan 2007 (**Turner Road DCP**);
- provide for the protection of significant remnant vegetation identified in Figure 22 of the Turner Road DCP;
- form a significant portion of the site's open space network as illustrated in Figure 16 of the Turner Road DCP;
- allow for its use for appropriate community purposes, such as pedestrian and cycle ways as identified in Figure 14 of the Turner Road DCP and included as Transport Management Facilities in the Oran Park and Turner Road Precincts Section 94 Contributions Plan (**OPTR s94 Plan**);
- provide linkages between ten (10) passive and active open space areas identified in the OPTR s94 Plan; and
- complement the water cycle management facilities proposed to serve the Turner Road Precinct development and included in the OPTR s94 Plan.

Assessment of Offer against Council's Policy

Identification of land

Figure 1 shows the location of the riparian land that comprises part of the Gregory Hills master plan, and which is proposed to be dedicated to the Council.

Figure 1 Land to be dedicated to Council



A detailed map and a schedule identifying the areas of these lands (by development stage) are included as an attachment to the Gregory Hills Planning Agreement Proposal prepared by Dart West Developments Pty Ltd.

Consultation

The policy provides that in circumstances where a Waterfront Land Strategy has been prepared there is no need to consult with the Department of Environment, Energy and Climate Change.

The Oran Park and Turner Road Waterfront Land Strategy was gazetted on 17 July 2009 in Government Gazette No. 105. Accordingly, the developer intends to consult only with Camden Council.

Community and environmental benefits

The community and environmental benefits that are expected to result from having the riparian land being maintained in single ownership by a public authority are identified in Table 1.

Table 1: Community and environmental benefits

Benefit	Description
Passive surveillance of corridor land from streets and open spaces	<p>Single public ownership is consistent with the public Street Network Plan included as Figure 5 in the Turner Road DCP.</p> <p>The plan shows sub arterial roads, collector roads and local streets directly abutting the riparian corridors for most of their length. These roads will be public land. Where not interfacing public roads, the corridors interface the planned public open space network.</p> <p>The only major private land interface with the riparian corridor shown on the DCP is on the eastern side of the local neighbourhood centre.</p>
Supports the delivery of the section 94 contributions plan	<p>Single public ownership will facilitate the delivery of linear public amenities and services identified in the OPTR s94 Plan, especially pedestrian and cycle paths, which in turn provide linkages between many of the proposed open space areas included in that plan.</p> <p>Without the land being held in public ownership the pedestrian and cycle paths may need to be accommodated on adjoining public roads. This would potentially reduce the safety and amenity of these public facilities.</p>
Integral to the planned open space network; Sustainable transport	<p>Further to the above point, and despite its exclusion from the section 94 plan, it is plain that the riparian corridor land on the site is critical to the planned recreation network for Turner Road Precinct.</p> <p>The riparian corridor forms part of an integrated open space and recreation network across Gregory Hills and linking to adjacent areas to the east, north, west and south.</p> <p>It provides the means for future residents to safely navigate through various parts of the Precinct and its facilities (and beyond to Scenic Hills, Oran Park, Harrington grove and Smeaton Grange) using non motorised transport means.</p>
Improved community health outcomes	<p>The attraction of an extensive pedestrian / cycle way network would likely result in high levels of public use, and contribute to improved community health outcomes.</p>
Improved water quality; Conservation of catchment ecological values	<p>Single public ownership will more readily allow the land to be managed as a single coherent system so as to protect the remnant vegetation and other environmental features.</p> <p>The multiple-ownership alternative is likely to yield inconsistent (and therefore inferior) conservation outcomes that, ultimately, will lead to a substandard riparian corridor in the upper reaches South Creek.</p> <p>If riparian systems in the upper reaches of the system are not satisfactorily managed, this will have negative cumulative effects throughout the Growth Centre precincts downstream of the site.</p> <p>Council ownership would enable perpetual protection of a corridor which Dart West is in the process of restoring from its historic agricultural use. This would have consequent short and long term environmental improvements arising from the removal of stock from the corridor, thereby enabling re-establishment of a range of native fauna and flora, which in turn will deliver improved water quality outcomes.</p>
Conservation of	<p>The Turner Road DCP (Figure 19) identifies a discreet Aboriginal archaeological</p>

Benefit	Description
archaeological heritage	conservation area in the riparian corridor land in the eastern section of the South Creek riparian corridor land. The riparian corridor will be a key cultural marker for the future community of Gregory Hills. Single public ownership will more readily allow the protection and ongoing management of conservation area
Environmental education	Creation of the riparian corridor as a cohesive environmental unit will be assisted by provision of interpretive signage that described and celebrated the corridor's ecological and archaeological values.
Bushfire protection	Single public ownership will more readily allow the establishment of appropriate Asset Protection Zones (APZ) for the purposes of bushfire hazard management, in accordance with clause 6.6 of the Turner Road DCP and ongoing management of those APZ by public authorities without unnecessary interference.
Safeguard view corridors	Single public ownership will more readily allow the retention of significant view corridors and reduce the potential of unauthorised clearing of natural vegetation.

For these reasons, it is considered that single public ownership is the preferred approach and this is consistent with the objective (4) of Clause 6.1 of the Turner Road DCP, which states:

To manage riparian corridors, wherever possible, in single ownership and as a continuous corridor.

Consideration of other ownership options

There are two broad ownership paradigms available for riparian land. That is, they can be held in single ownership as public land or, in multiple ownership by each of the adjoining land-holders. Although multiple-ownership could reduce the public cost, at least for the short term, it would be less likely to achieve the significant community and environmental benefits that the land potentially offers.

Table 2 examines these options.

Table 2: Other ownership options

Option	Comments
Incorporation into rear of private housing lots	<p>Much of the corridor adjoins planned local open space or planned local subdivision roads in accordance with the Turner Road DCP. Location of planned open space and roads prevents lots being located to incorporate corridor in private ownership.</p> <p>The OPTR s94 Plan establishes that Council will be managing numerous parcels of public open space adjoining the Turner Road Precinct riparian corridors. A seamless interface between these areas is appropriate on public amenity and environmental conservation grounds.</p> <p>The pedestrian and cycleway network in the OPTR s94 Plan is focused entirely on the riparian corridors. While the network could be achieved through individual private lots (say through creation of a right of public access), the amenity of that facility is likely to be compromised by the likely variable commitment to maintenance of the corridor by those owners.</p>

Option	Comments
Incorporation into a major development with substantial frontage to the corridor	<p>The following possible opportunities were considered:</p> <ul style="list-style-type: none"> • The local neighbourhood centre development. • Land in the vicinity of the local neighbourhood centre along the Tributary 2 riparian corridor may in the future be developed for a Seniors' Living development. <p>There are drawbacks to limiting the transfer of corridor to public ownership in these cases.</p> <p>In the case of the neighbourhood centre site:</p> <ul style="list-style-type: none"> • it is likely that only one side of the corridor could be managed in private hands, leaving other parties being responsible for the other side of the watercourse. This piecemeal outcome would likely lead to unsatisfactory environmental conservation outcomes; and • it is doubtful whether a local retail centre proprietor would result in satisfactory ongoing management of the adjoining riparian corridor. <p>Larger seniors living developments are established on sites of several hectares in size. A single development site of this size may be able to absorb and manage a section of the Tributary 2 riparian corridor in walking distance of the neighbourhood centre. However, no operator wishing to develop a seniors site in this location has yet been identified. In keeping with prudent development practice, it is also Dart West's intention to not 'lock-in' a particular development outcome and keep development options for this later development area as flexible as possible.</p>
Single ownership by a non-Council entity	<p>No environmental trust or other non-government organisation has expressed interest in the land and the developer understands that, with limited resources, such organisations would focus on more significant or higher profile projects. The situation with government departments and authorities reflects the same shortage of resources.</p>

Information in Table 2 suggests that while in theory certain sections of the riparian corridor could be managed by private landowners, in practice such an arrangement likely to result in an unsatisfactory outcome for Council, the community, or the developer, or all of these.

Dart West submits that the maximum community and environmental benefits associated with the riparian corridors can only be achieved by public ownership, but understands that Council and the community will be concerned at the ongoing costs of accepting this responsibility.

As the riparian land will emulate as closely as possible the native vegetation communities, it is considered that these areas should, in large part, be self-managing in terms of the landscape and ecosystem. Costs that are contemplated would relate to managing the human impacts of the surrounding urban environment (for example, rubbish dumping, companion animals). The private ownership alternative would still mean human impacts would need to be managed, but by private interests instead of the Council. Private land owners would have varying levels of interest in maintaining riparian areas and it is quite likely that a costly and cumbersome system of compliance would result from implementation of a private ownership model (for example, by formal orders and other legal means initiated by the Council).

Dart West has obtained costs of managing riparian land for Council's consideration of this issue. The following information has been provided by Mr Steven House, Director, Eco Logical Australia:

- For bush regeneration maintenance average costs recorded in places like Harrington Grove are in the order of \$2,000 / ha / annum – i.e. \$0.20 per square metre.
- Creeks tend to be more expensive due to water availability, higher nutrients and edge effects from the urban environment, i.e. about \$0.50 per square metre. This would equate to one person hour per 100 square metres per annum (@\$50/hr). This is sufficient to undertake spot spraying of weeds and minimal hand removal.
- Prices would reduce from these rates over the long term.

Other terms and conditions

The following table identifies from the Riparian Corridors Policy the terms and conditions of Council's acceptance of the riparian land into public ownership that have not already been dealt with, and comments on the compliance of this proposal with those terms and conditions.

Term or condition	Comment regarding compliance
No Section 94 credits will be granted relating to the land or to any embellishments proposed upon the land (unless a portion of the land is approved for a use associated with a Section 94 facility, e.g. open space, cycle way, road crossing, drainage).	<p>The developer proposes to provide the following works within or affecting the riparian areas as identified in the section 94 contributions plan:</p> <ul style="list-style-type: none"> • pedestrian paths/ cycleways; • water cycle management facilities. <p>The developer intends to obtain a contributions offset for these works.</p> <p>No other monetary section 94 contribution offsets are sought as part of the proposed dedication and embellishment of riparian corridors land.</p>
Development adjoining the corridor must be designed in accordance with Safer by Design principles (such as through the provision of perimeter roads, landscape design that maintains sight lines and lighting appropriate to the intended use).	<p>The developer does apply the Safer by Design principles in its design of open space and adjoining land. Much of the adjoining development is public roadways and so generally provides high levels of surveillance. Council will have the opportunity during the assessment of each application in relation to the staged hand over of riparian corridor land to provide further advice or guidance as necessary to ensure such principles are implemented.</p>
The developer will pay for the maintenance costs of the land for a minimum period of five years from the date of practical completion of the embellishment works, or such longer period as is required to achieve the outcomes stated in the Vegetation Management Plan (VMP) for the land. However, the land may be dedicated to Council at an earlier time, when it is agreed that the outcomes stated in the VMP for the land have been achieved (but no less than 2 years from the commencement of the maintenance period) subject to the continued funding of the minimum 5 year maintenance period by the developer.	<p>The developer is prepared to meet the full cost of maintenance of the riparian corridor land for a period of five years from the date of practical completion of the embellishment works.</p> <p>A VMP will be prepared by the developer, for approval by Council, as part of the DA for adjoining subdivision of land. The VMP will provide the relevant statement of outcomes and performance measures to ensure that these outcomes are achieved.</p> <p>Opportunities for early handover will be considered at a later stage once restoration works are complete and maintenance is underway.</p>
The land will be dedicated in a staged fashion corresponding with the staging of development	<p>The developer agrees to the staged dedication of riparian corridor land to align with the adjoining</p>

Term or condition	Comment regarding compliance
adjacent to the riparian corridor; dedication will not be accepted despite the above provisions, until the adjoining land has been developed.	development.
The land will be landscaped in a manner that considers salinity impacts and minimises bushfire risk.	Salinity and bush-fire risk will be considered in the preparation of (and subsequent iterations of) the VMP, including in the choices of plant species.
The land will be landscaped or otherwise embellished in consultation with Council and in a manner that will ensure minimal on-going maintenance and management costs and in accordance with the requirements of an approved Vegetation Management Plan for the land.	The developer will adhere to the requirement by specifying suitable landscaping and other embellishments consistent with a passive recreation and riparian environment. The developer will coordinate with Council's landscaping, recreation and environmental sustainability professionals prior to lodging development applications for the work.
NOTE: The subject land and any proposed embellishments must be provided at no cost to Council as negotiated through a Voluntary Planning Agreement (VPA) process.	The developer agrees to this approach subject to section 94 contribution offsets being granted for the cycleway and water cycle management works that are identified in the section 94 contributions plan and that are within the riparian corridors.
NOTE: Council may modify or add to the above general terms and conditions having regard to the circumstances of each case.	Noted, although it would be considered more appropriate to incorporate any additional requirements within the provisions of the VMP.
NOTE: Council encourages innovative management and maintenance solutions, including offers of joint or developer-funded maintenance for an appropriate period post dedication of land.	The developers are happy to discuss any alternative or additional management options that are suggested by the Council for the riparian corridors lands, provided it is consistent with the principle of single public authority management.
NOTE: Acceptance of land in accordance with this policy will be at the sole discretion of Council.	Noted.

Works schedule

The Riparian Corridors Policy provides, in addition to the general terms and conditions, the following requirements:

The proponent is to provide (in the approved Vegetation Management Plan and Draft Plan of Management for the land) a schedule of works with a cost estimates for all components of the works for the ongoing management and maintenance of the land.

Any riparian corridor proposed to be dedicated to Council must be designed, constructed and maintained in accordance with the relevant Vegetation Management Plan approved for the subject land and in accordance with all relevant conditions of development consent for works on the subject land.

The schedule of works and estimate of ongoing costs will be provided in the relevant VMP as part of the development application for the subdivision of adjoining land.

Conclusion

This submission represents a formal application by Dart West on behalf of the Trustees of the Marist Brothers for Council to accept ownership of the Tributary 2 and South Creek riparian lands. Dart West recognises that the application will lead to further discussion with Council.

Dart West is committed to the implementation of a significant proportion of the Turner Road Precinct development over the long term. This commitment:

- is comprehensive and covers both private land and the public infrastructure networks necessary to sustain a high quality of life for the future residents; and
- has been demonstrated by the high quality of infrastructure completed for Stage 1A of the Gregory Hills development.

The developer seeks to sustain the infrastructure delivery partnership with Council by entering into a VPA with the Council addressing all local infrastructure requirements on the Gregory Hills site, including the ongoing use, ownership and management of land in riparian corridors.

There is a significant public interest in achieving satisfactory outcomes for these lands. The riparian lands adjacent to South Creek and Tributary 2 are integral to the achievement of the Turner Road Precinct's environmental conservation, pedestrian and cycle access, open space and recreation, and water cycle management objectives.

Appropriate and sustainable ongoing management of the riparian corridors of Turner Road Precinct, including the gradual handover of these areas to the Council with appropriate maintenance commitments, is considered to be the optimum outcome for the future Turner Road Precinct community.

It is considered that this proposal is consistent with Council's Riparian Corridors Policy, and is the optimum management model to best achieve the Policy Statement.

The proposal to have the Council own and manage the land would:

- deliver long term protection of significant environmental features of the land, as well as assist in conservation outcomes further downstream in South Creek;
- assist in the retention of significant view lines and in the management of bushfire risk, than if the land was retained in private ownership;
- represent the most appropriate means of conserving significant archaeological heritage features on the site;
- result in the land being used for a range of worthwhile community purposes, including being part of a wider integrated cycle/walkway and passive open space network and, through its prominent location, it will contribute to environmental education;
- provide linkages between planned areas of open space in the Turner Road Precinct that are unencumbered by the riparian corridor; and
- have net community benefits in terms of sustainable transport, community health and environmental education outcomes.

Dart West recognises that the Policy requires it to prepare a Plan of Management under the Local Government Act for the land proposed to be dedicated. Dart West will commence this work after further discussion with Council about this application, including

being provided with guidance by Council as to the requirements of the Plan of Management.

Accordingly, the developer seeks Council's in-principle endorsement of the proposal to dedicate riparian corridors land to the Council.

Attachment B

Dedication of Land burdened by Transmission Easements Policy Assessment

**Offer to enter into a Voluntary Planning Agreement for the
Embellishment and Dedication of Land burdened by
Transmission Easements in the Gregory Hills development**

DART WEST
DEVELOPMENTS PTY LTD

Suite 6
320A Camden Valley Way
PO Box 228
Narellan NSW 2567
Phone: (02) 4648 5511
Fax: (02) 4648 4827

Summary

The developer of the Gregory Hills site, Dart West Developments Pty Ltd, proposes to dedicate land burdened by transmission easements as public open space to Camden Council.

The developer considers that effective long-term management of the land will be best achieved if the transmission easements that traverse the site are embellished as a new 'linear park' in accordance with Council's standards, specifications and policies, and then dedicated to the Council after a suitable maintenance period. Council's Transmission Easements Policy states that the Council and the developer should enter into a Voluntary Planning Agreement (**VPA**) under section 93F of the Environmental Planning and Assessment Act 1979 to enable this to occur.

This document also constitutes Dart West's formal submission in accordance with the provisions of 'Camden Council Policy 1.19 Dedication of Land Burdened by Transmission Easements' (**Transmission Easements Policy**).

The proposal is generally as follows:

- The developer will create the linear park along the transmission easement lands to Council's satisfaction.
- The developer will maintain those lands for a period of 5 years following the completion of the embellishment works.
- The developer seeks Council approval for the transfer / dedication of the lands to Council after that period.

There are two transmission easements passing through the site and they intersect at the northern edge of the site, adjacent to the main active recreation facility (playing fields) planned for the Turner Road Precinct.

The proposed linear park will provide for a substantial expansion of the open space network in Gregory Hills; provide the opportunity for public car parking to support the active recreation uses; and also extend the pedestrian/ cycleway networks established in the section 94 contributions plan for the Precinct. No credit is being sought in relation to section 94 contributions as a result of the proposed dedication of the transmission easement land, apart from those areas identified for acquisition and embellishment under the contributions plan.

The proposed linear park complements, and would integrate with, substantial linear areas of riparian corridor land that is within the Gregory Hills site. A separate submission will be made proposing the dedication of these lands pursuant to the relevant policy.

This document:

- sets out the proposal to enter into a VPA regarding transmission easements land;
- outlines Council's policy framework for the dedication of such land and in doing so, framing the case for the Council to agree to enter into the VPA; and
- responds to the specific requirements contained in that policy as they relate to the VPA offer.

Inquiries regarding the proposal should be directed to the developer's General Manager, Property (Mr David Taylor).

Council's Policy Framework

Council's Transmission Easements Policy establishes "the terms and conditions upon which Council will consider proposals to accept dedication of land burdened by transmission easement land to Council".

In the 'Policy Statement' (p3), it is stated that:

Camden Council may accept land burdened by transmission easements as public open space only where community and environmental benefits are adequately demonstrated, such as:

- *Recognition of cultural landscapes;*
- *Retention of significant view lines;*
- *Protection of significant environmental features of the land;*
- *Use for an appropriate community purpose, such as cycle/ walkway, a dog off-leash area, car parking, native plant nursery, community garden etc;*
- *Providing linkages between areas of open space that are unencumbered by the power easement at regular intervals along the easement corridor.*

The policy then states that:

The onus will be on the proponent to demonstrate that any proposal to dedicate land burdened by a transmission easement to Council complies with this Policy, in particular with regard to demonstrating that the on-going costs and activities for Council of managing and maintaining the land will be minimal.

The proposal to dedicate transmission easements land to Council is consistent with achieving a high level of residential design and amenity enunciated in development plans and policies prepared for the Turner Road Precinct.

The proposal comprises part of an overall plan for a single entity (i.e. Council) to manage the site's open space, riparian lands and easement lands.

Dedication of completed and embellished transmission easement land will:

- provide for a well-located and extensive addition to the Precinct's access and movement network, thereby significantly enhancing the permeability, interconnectedness and convenience of the network. This is consistent with the objectives of clause 3.1 of the Turner Road Precinct Development Control Plan 2007 (**Turner Road DCP**);
- allow for its use for appropriate community purposes, such as pedestrian and cycle ways along the entire easement length, car-parking areas to support the sports fields, recreational activities such as dog off-leash areas, viewing and seating spaces and a public art project to support the creation of a local (i.e. Gregory Hills) identity. These will be in addition to works identified in the Oran Park and Turner Road Precincts Section 94 Contributions Plan (**OPTR s94 Plan**);
- create new linkages between planned community facilities on the site including, for example, between the new public school and the proposed sports fields; and
- create a significant expansion of the site's open space network compared to that illustrated in Figure 16 of the Turner Road DCP at no further capital cost to Council.

Assessment of Offer against Council's Policy

Identification of land

Figure 1 shows the location of the electricity transmission easement land that comprises part of the Gregory Hills master plan, and which is proposed to be dedicated to the Council.

Figure 1 Land to be dedicated to Council



A detailed map and a schedule identifying the areas of these lands (by development stage) are included as an attachment to the Gregory Hills Planning Agreement Proposal prepared by Dart West Developments Pty Ltd.

Concept plans

Preliminary concept plans and indicative images for the landscaping and embellishment of the transmission easements and the creation of the linear park are attached to this submission.

Features of the proposed treatment of the lands include:

- continuous and direct pedestrian and cycle connection between the southern residential areas and the proposed Turner Road playing fields;
- integration with pedestrian and cycle ways proposed for the riparian corridors, including provision of at least one crossing of South Creek not envisaged in the OPTR s94 Plan;
- provision of opportunities for passive surveillance by positioning local roads as an interface between the transmission easement and residential dwellings; and
- provision of dog off leash areas, public art elements, and a southern lookout.

Consultation

The Transmission Easements Policy provides that the proponents shall consult with Camden Council and the relevant energy companies with regard to the use, embellishment, ownership and management of the land burdened by the transmission easement. The relevant energy company is TransGrid.

The concept design of the easement embellishments have taken account of commonly used / best practice guidelines in the treatment of transmission easement lands, that is:

- ISSC 3 - Industry Safety Steering Committee, NSW; Guideline for Managing Vegetation Near Power Lines (Integrating Community, Safety and Environmental Values); December 2005
- Integral Energy - Tree Management Plan; June 2007
- SP AusNet - A Guide to Living with Transmission Line Easements; February 2007
- SP AusNet - Easement Use: Planting on Easements; February 2007

Formal consultation with TransGrid is proposed to take place during the development application preparation process, following in-principle agreement to continue VPA negotiations to dedicate easement lands to Council.

Community and environmental benefits

The community and environmental benefits that are expected to result from having the easement lands being maintained in single ownership by a public authority are identified in Table 1.

Table 1: Community and environmental benefits

Benefit	Description
Passive surveillance of easement land from streets and open spaces	<p>Single public ownership is consistent with the public Street Network Plan included as Figure 5 in the Turner Road DCP.</p> <p>The plan shows local and collector roads and planned open space directly abutting the easements for most of their length. These roads will be public land. Where frontage roads are not shown, the master plan can readily be modified to ensure all easement lands have a public land interface.</p> <p>The arrangement of houses fronting onto these roads, and the public use of the open space lands, creates the opportunity for public use of the easement lands, and therefore passive surveillance of the lands.</p>
Increased value of and access to the local	<p>Single public ownership would, through creation of a major linear park, maximise the amount of publicly accessible open space and also the maximum range of additional facilities such as pedestrian and cycle paths, car-parking areas to support the sports</p>

Benefit	Description
open space network	fields, recreational activities such as dog off-leash areas, viewing and seating spaces and public art.
Supports the delivery of the section 94 contributions plan	<p>A portion of the transmission easement land is identified for acquisition and embellishment as part of the OPTR s94 Plan (i.e. land adjacent to the playing fields in the north east part of Gregory Hills.</p> <p>Additionally, the provision of further pedestrian and cycle ways will significantly enhance the OPTR s94 Plan network (based on the riparian corridors) in the eastern side of the Turner Road Precinct.</p>
Fully integrated with the planned open space network; Sustainable transport	<p>The easement lands, with embellishment for passive and pedestrian / cycle way purposes, will form part of a comprehensive and integrated open space and recreation network across Gregory Hills and linking to adjacent areas to the east, north, west and south.</p> <p>It therefore enhances the opportunities for future residents to safely navigate through various parts of the Precinct and its facilities (and beyond to Scenic Hills, Oran Park, Harrington grove and Smeaton Grange) using non motorised transport means.</p>
Improved community health outcomes	The attraction of an extensive pedestrian / cycle way network would likely result in high levels of public use, and contribute to improved community health outcomes.
Safeguard view corridors	<p>Single public ownership would create an internal view corridor south to north and north to south through the release area unimpeded by fencing and other structures that may detract from the views and the general experience of the facilities provided on the land.</p> <p>At its southern extent, provision will also be made for a public place for residents to obtain views toward Mount Annan to the south and to Scenic Hills area generally.</p>
Conservation of catchment ecological values	<p>Single public ownership would allow for the protection of significant environmental features of the Turner Road Precinct landscape by providing additional connections between riparian corridors and internal pocket parks, where established Cumberland Plain Woodland species have been retained.</p> <p>This allows for increased pollinator activity across and through the site through significant plantings of endemic vegetation within the transmission easement. This was an objective of the initial 'LVIA – Landscape Visual Impact Assessment, 2005' prepared by the Growth Centres Commission, NSW; and one of the key recommendations of the future planning of Gregory Hills.</p>
Reduced cost to community over the longer term	Single public ownership will more readily allow the land, together with riparian lands and other Council owned public open space, to be managed as a single coherent network. In Dart West's view, this would significantly reduce the overall cost to the community when compared to the establishment of parallel management systems by different organisations.

Dart West is of the view that these benefits, together with the absence of a suitable and viable alternative ownership model (discussed below), suggest a strong case for Council's future ownership and management of all of the transmission easement lands within the Gregory Hills site.

Consideration of other ownership options

The OPTR s94 Plan establishes that Council will own and manage numerous parcels of public open space adjoining the land burdened by transmission easements in the Turner Road Precinct, including the playing fields facility north of South Creek.

In fact, the OPTR s94 Plan provides for over 4 hectares of electricity transmission easement land adjacent to the playing fields to be acquired and embellished by Council. There is therefore no argument about the future ownership model for this portion of the easement land. The proposed VPA will enable realisation of this part of the OPTR s94 Plan to be achieved.

Apart from the above land, there are two broad ownership paradigms available for the easement land. That is, the land can be held in single ownership as public land or in multiple ownership by each of the adjoining land-holders. Although multiple-ownership could reduce the public maintenance cost, at least for the short term, it would be less likely to achieve the public benefits that the land potentially offers.

Table 2 examines alternative ownership models.

Table 2: Other ownership options

Option	Comments
Incorporation into rear of private housing lots	<p>Possible for that section of the easement land in the north of the Gregory Hills site (i.e. west of the playing fields); and easement land south of Gregory Hills Drive; to be developed for large-lot residential development in accordance with the R1 zoning.</p> <p>The positive aspects of this approach are that provides for a different house product for the area (i.e. large lots well in excess of 2,000m²), and avoids the public having to be responsible for the maintenance of the land. The negative impacts of this approach are mainly visual with the location of numerous boundary fences situated perpendicular to the easement line likely to provide an inferior urban outcome.</p> <p>Compounding the likely negative visual impact is that this form of use of the easements is a 'wasted opportunity' for the local community. The public single ownership model is the only one that can realistically provide all of the community and environmental and community benefits described previously in this submission.</p>
Incorporation into a major development with substantial frontage to the corridor	<p>The following possible opportunities were considered:</p> <ul style="list-style-type: none"> • A higher density housing development on land south east of the local neighbourhood centre. • A seniors living development. <p>The first of these options was discounted as the market for such development is likely to involve sites no larger than 5,000m². Such development would result in similar outcomes to those envisaged for detached housing lots above.</p> <p>Larger seniors living developments are established on sites of several hectares in size. A single development site of this size may be able to absorb and manage a section of the transmission easement corridor. The market for developing such a site encumbered by a transmission easement is untested, but is likely to be extremely limited.</p> <p>This option is therefore unlikely to be viable.</p>
Single ownership by a non-Council entity	<p>TransGrid enjoys the benefits of access to the easement which is all that it requires to maintain the transmission line. No non-government organisation has expressed</p>

Option	Comments
	interest in the land nor is likely to.
	Single ownership by a non-Council entity is therefore not viable.

Dart West submits that the maximum community and environmental benefits associated with the easement lands can only be achieved by public ownership, but understands that Council and the community will be concerned at the ongoing costs of accepting this responsibility.

The concept plans included in the attachments show minimal embellishment of the space and low-maintenance native vegetation planting. Dart West has only recently commenced Gregory Hills development and does not have the experience that Council would have in maintenance cost matters. Dart West would therefore seek advice from Council's open space asset managers on their estimate for maintaining passive parks with similar planting and embellishment to that proposed in the easement lands.

Other terms and conditions

The following table identifies from the Transmission Easements Policy the terms and conditions of Council's acceptance of the easement land into public ownership that have not already been dealt with, and comments on the compliance of this proposal with those terms and conditions.

Term or condition	Comment regarding compliance
No Section 94 credits will be granted relating to the land or to any embellishments proposed upon the land (unless a portion of the land is approved for a use associated with a Section 94 facility, e.g. car parking for a sports field, subject to the concurrence of the energy company).	The developer will only seek section 94 contribution offsets that part of the easement land identified for acquisition and embellishment as open space in the OPTR s94 Plan. No offsets will be sought for other easement lands.
The land will be additional to the normal open space requirements and will not be permitted to be used for the primary components of the section 94 facilities (i.e. not for sports fields or play grounds but may be used for car parking) and shall not reduce the total area of land to be dedicated under the plan.	Noted and agreed. It is intended to expand both land and facilities associated with passive open space embellishments only (such as seating and public art).
Development adjoining the easement must be designed in accordance with Safer by Design Principles (such as through the provision of perimeter roads, landscape design that maintains sight lines and lighting appropriate to the intended use and opportunities to provide passive surveillance).	The developer does apply the Safer by Design principles in its design of open space and adjoining land. Much of the adjoining development is public roadways and so generally provides high levels of surveillance. Council will have the opportunity during the assessment of each application to provide further advice or guidance as necessary to ensure such principles are implemented.
The developer will pay for the maintenance costs of the land for a minimum period of five years from the date of practical completion of the embellishment works, or such longer period as is required to achieve the outcomes for the land. However, the land may be dedicated to Council at an earlier time, when it is	The developer is prepared to meet the full cost of maintenance of the transmission easement land for a period of five years from the date of practical completion of the embellishment works. Further development of the concept plans will assist in providing a statement of outcomes and performance

Term or condition	Comment regarding compliance
agreed that the outcomes for the land have been achieved (but no less than 2 years from the commencement of the maintenance period) subject to the continued funding of the minimum 5 year maintenance period by the developer.	measures to ensure that these outcomes are achieved. Opportunities for early handover will be considered at a later stage once works are complete and maintenance is underway.
The land will be dedicated in a staged fashion corresponding with the staging of development adjacent to the easement corridor. Dedication will not be accepted despite the above provisions, until the adjoining land has been developed.	The developer agrees to the staged dedication of transmission easement land to align with the adjoining development.
The land will be landscaped or otherwise embellished in consultation with Council and in accordance with the requirements of the relevant energy companies.	Upon receipt of, in principle, advice from Council that it will accept ownership of the easement lands, the developer proposes to refer this plan, concept designs and a draft Plan of Management (PoM) to TransGrid to gain their general concurrence. Once that is obtained the developer will further develop the draft PoM as necessary and provide any relevant details to fully articulate the proposal.
The land will be landscaped in a manner that considers salinity impacts and minimises bushfire risk.	Salinity and bush-fire risk will be considered in the preparation of the relevant concept details, including in the choices of plant species.
The design and embellishment must ensure minimal on-going maintenance and management costs.	Noted and agreed. Preferred species and landscape design approaches incorporated into the concept plans are low maintenance cost solutions. The suitability of public art installations and passive open space embellishments can be the subject of further discussion with Council officers.
Drainage of the land is designed to Council's satisfaction and to ensure no detrimental impacts on private property or usable open space land.	Noted and agreed.
NOTE: The subject land and any proposed embellishments must be provided at no cost to Council as negotiated through a Voluntary Planning Agreement (VPA) process.	The developer agrees to this approach subject to section 94 contribution offsets being granted for the land and works that are identified in the OPTR s94 Plan.
NOTE: Council may modify or add to the above general terms and conditions having regard to the circumstances of each case.	Noted.
NOTE: Council encourages innovative management and maintenance solutions, including offers of joint or developer-funded maintenance for an appropriate period post dedication of land.	The developer is happy to discuss any alternative or additional management options that are suggested by the Council for the easement lands, provided it is consistent with the principle of single public authority management.
NOTE: Acceptance of land in accordance with this policy will be at the sole discretion of Council.	Noted.

Works schedule

The policy provides, in addition to the general terms and condition, the following detailed requirements:

"The proponent is to provide (in the Draft Plan of Management for the land) a schedule of works with a cost estimate for all components of the works for the ongoing management and maintenance of the land."

The draft PoM (currently in preparation) will identify the various management issues and provide a recommendation as to how these can be addressed. A draft landscape maintenance timetable will also comprise part of the draft PoM.

As stated previously, the ongoing management regime for the space would resemble that of other passive parks in the LGA. Dart West submits that Council's asset managers would have access to comprehensive data on costs of maintenance for these spaces.

Conclusion

Dart West is committed to the implementation of a significant proportion of the Turner Road Precinct over the long term. This commitment:

- is comprehensive and covers both private land and the public infrastructure networks necessary to sustain a high quality of life for the future residents; and
- has been demonstrated by the high quality of infrastructure completed for Stage 1A of the Gregory Hills development.

The developer seeks to sustain the infrastructure delivery partnership with Council by entering into a VPA with the Council addressing all local infrastructure requirements on the Gregory Hills site, including the ongoing use, ownership and management of land burdened by transmission easements.

There is significant public interest in ensuring quality design and planning outcomes for these lands are achieved, and that poor design and visual outcomes are avoided.

At the same time there are significant opportunities for public use and enjoyment of the land. The transmission easement lands represent a great opportunity to enhance the liveability of Turner Road Precinct by the creation of an outstanding 'linear park'.

It is considered that this proposal is consistent with Council's Transmission Easements Policy and is the optimum management model to best achieve the Policy Statement.

The proposal to have the Council own and manage the land would:

- implement the OPTR s94 Plan in so far as the areas surrounding the proposed playing fields is concerned;
- represent a valuable and worthwhile addition to the other public infrastructure being provided on the Gregory Hills site;
- enhance the quantity and quality of open space in the area, and substantially improve the access and movement networks, particularly in the south eastern part of the Turner Road Precinct;
- have much less negative visual impact than the likely alternative development; and

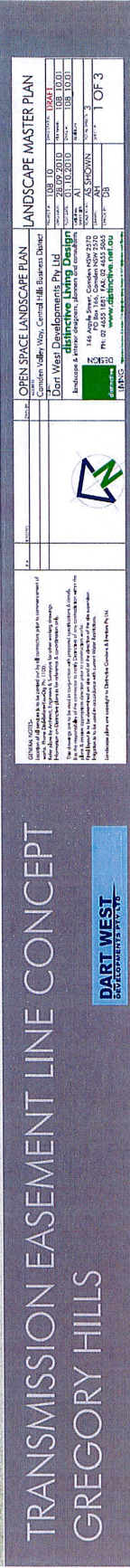
- have net community benefits in terms of sustainable transport, and community health outcomes.

Appropriate and sustainable ongoing management of the transmission easements land at the Gregory Hills site, including the gradual handover of these areas to the Council with appropriate maintenance commitments, is considered to be the optimum outcome for the community.

Accordingly, Dart West seeks Council's in-principle endorsement of its proposal to dedicate transmission easements land to the Council.

Attachments

Preliminary concept plans and images



TRANSMISSION EASEMENT LINE CONCEPT
GREGORY HILLS



Appendix 2

(Clause 5.1.2)

Table to Schedule 3 of the Planning Agreement

The table to Schedule 3 of the Planning Agreement appears on the following pages

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council



Dart West Developments Pty Limited

Trustees of the Marist Brothers

Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
Carrying out of Work						
1	1A	OS 11 (OSR4.3)	Passive open space and recreation	603m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$13,724
2	1A	OS 12 (OSR3.3)	Active open space and recreation	One children's playspace on a 3,000m ² site near the centre of the Land south of Gregory Hills Drive, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$227,592
3	1A	OS 12 (OSR4.2)	Passive open space and recreation	22,300m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,827,106
4	1B	OS 13 (OSR4.3)	Passive open space and recreation	766m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$17,661

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
5	1B	OS 14 (OSR4.3)	Passive open space and recreation	2,633m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$59,926
6	1B	OS 15 (OSR4.3)	Passive open space and recreation	335m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$7,624
7	1C	OS 16 (OSR3.2)	Active open space and recreation	One children's playground on a 3,000m ² site in the south-western part of Gregory Hills, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$227,592
8	1C	OS 16 (OSR4.3)	Passive open space and recreation	7,540m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$171,608
9	1A	RP0	Riparian corridor protection & enhancement	24,500m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$367,500

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
10	2A and 2B	OS 10 (OSR4.2)	Passive open space and recreation	10,710m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$877,502
	3A					
11	3B	OS 22 (OSR 4.1)	Passive open space and recreation	A Town Park with an area of 7,336 m ² .	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,903,713
12	4	OS 27 (OSR4.2)	Passive open space and recreation	19,030m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,559,185
13	4	TL1	Open space corridor and transmission line easement	19,805m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$142,091
14	4	TL5	Open space corridor and transmission line easement	10,520m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$75,476

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
15	5A and 5B	TL2	Open space corridor and transmission line easement	24,377m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$174,893
	6&7	-				
16	8A	OS 17 (OSR4.2)	Passive open space and recreation	2,090m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$171,272
	9	-				
17	10A	OS23 (OSR4.3)	Passive open space and recreation	1,152m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council.	\$26,219
	10B					

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
18	10C	OS 24 (OSR4.1)	Passive open space and recreation	One community park/green space of 5,000m ² .	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council.	\$1,297,273
19	10C	OS 24 (OSR4.2)	Passive open space and recreation	3,120m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage or at such later date agreed to by Council.	\$255,631
20	10D	TL3	Open space corridor and transmission line easement	1,680m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$12,053
21	11A	TM5	Transport management	612m ² of bike paths with a width of 2.5m (244.8m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$70,050

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
22	11A	RP3	Riparian corridor protection & enhancement	16,000m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$240,000
23	11A	TM6	Transport management	560m ² of bike paths with a width of 2.5m (224m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$64,110
24	11A	RP4	Riparian corridor protection & enhancement	10,000m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$150,000
25	11B	OS 25 (OSR4.3)	Passive open space and recreation	543m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$12,361
26	11B	TM10	Transport management	267.5m ² of bike paths with a width of 2.5m (107m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$30,624

Gregory Hills Planning Agreement – Third Deed of Variation
Camden Council
Dart West Developments Pty Limited
Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
27	12	OS 18 (OSR4.2)	Passive open space and recreation	21,391m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,752,956
28	12	TM3	Transport management	1017.5m ² of bike paths with a width of 2.5m (407m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$116,486
29	12	OS CANAL (OSR4.2)	Passive open space and recreation	2118m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$173,566
30	13	TL4	Open space corridor and transmission line easement	28,782m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$206,497
31	14	C2.2	Community facility	One 523m ² multi-purpose community centre on a 1,308m ² site generally in the central part of the Land, meeting Council's specifications.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,971,649

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
32	14	C2.2a	Community facility	One 785m ² car park and landscaped area located within the 1,308m ² site for the multi-purpose community centre.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$94,599
33	14	TM4	Transport management	762m ² of bike paths with a width of 2.5m (304.8m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$87,219
34	14	RP1	Riparian corridor protection & enhancement	14,445m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$216,675
35	15A	OS35 (OSR 4.2)	Passive open space and recreation	440m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$36,057
36	15A	TL8	Open space corridor and transmission line easement	1,981m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$14,213

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
37	15B	TM1	Transport management	A two lane bridge crossing of South Creek in the northern part of the Land, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,408,173
38	15B	TM7	Transport management	230m ² of bike paths with a width of 2.5m (92m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$26,331
39	15B	TM9	Transport management	532.5m ² of bike paths with a width of 2.5m (213m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$60,962
40	15B	RP6	Riparian corridor protection & enhancement	28,635m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$429,525
41	15B	TL7	Open space corridor and transmission line easement	12,112m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$86,898

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
42	15B	OS34 (OSR4.2)	Passive open space and recreation	1,215m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$99,567
43	15C	OS 28 (OSR3.1)	Active open space and recreation	A 2.7ha double playing field on a site north of South Creek, meeting the specifications provided in the CP.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$3,359,233
44	15C	OS 28 (OSR4.2)	Passive open space and recreation	7,497m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$614,366
45	15C	OS 33 (OSR 4.3)	Passive open space	43,540m ² of embellished passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$991,119
	16 & 17	-				
46	18	OS 1 (OSR4.2)	Passive open space and recreation	318m ² of passive open space.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$26,060

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
47	19	TM8	Transport management	2,325m ² of bike paths with a width of 2.5m (930m length).	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$266,172
48	19	RP7	Riparian corridor protection & enhancement	69,669m ² of embellished riparian land.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$1,045,035
49	19	OS34(TL)	Open space corridor and transmission line easement	1,205m ² of embellished transmission line easement land including cycle/pedestrian/access path.	Prior to the issue of the Subdivision Certificate that creates the first Final Lot in the Relevant Stage.	\$8,645
Dedication of Land						
50	1	OS 11 (OSR4.3)	Passive open space and recreation	Dedication of a 603m ² site on which Item 1 is to be provided.	On completion, within the meaning of this Agreement, of Item 1, and otherwise in accordance with this Agreement, or at such later date as	\$57,285

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
					agreed to by Council.	
51	1	OS 12 (OSR3.3)	Active open space and recreation	Dedication of a 3,000m ² site near the centre of the Land south of Gregory Hills Drive, on which Item 2 is to be provided.	On completion, within the meaning of this Agreement, of Item 2, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$285,000
52	1	OS 12 (OSR4.2)	Passive open space and recreation	Dedication of 22,300m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 3, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$2,118,500
53	1	OS 13 (OSR4.3)	Passive open space and recreation	Dedication of 766m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 4, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$72,770

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
54	1	OS 14 (OSR4.3)	Passive open space and recreation	Dedication of 2,633m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 5, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$250,135
55	1	OS 15 (OSR4.3)	Passive open space and recreation	Dedication of 335m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 6, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$31,825
56	1	OS 16 (OSR3.2)	Active open space and recreation	Dedication of land containing one children's playground on a 3,000m ² site near the south-western part of Gregory Hills, meeting the specifications provided in the CP.	On completion, within the meaning of this Agreement, of Item 7, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$285,000
57	1	OS 16 (OSR4.3)	Passive open space and recreation	Dedication of 7,540m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 8, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$716,300

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
					agreed to by Council	
58	1	RP0	Riparian corridor protection & enhancement	Dedication of 24,500m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 9.	Nil
59	2	OS 10 (OSR4.2)	Passive open space and recreation	Dedication of 10,710m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 10, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$1,017,450
	3A					
60	3B	OS 22 (OSR 4.2)	Passive open space and recreation	Dedication of 7,336m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 11, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$696,920

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
61	4	OS 27 (OSR4.2)	Passive open space and recreation	Dedication of 19,030m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 12 and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$1,807,850
62	4	TL1	Open space corridor and transmission line easement	Dedication of 19,805m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 13.	Nil
63	4	TL5	Open space corridor and transmission line easement	Dedication of 10,520m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 14.	Nil
64	5	TL2	Open space corridor and transmission line easement	Dedication of 24,337m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 15.	Nil
	6&7	-				

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
65	8	OS 17 (OSR4.2)	Passive open space and recreation	Dedication of 2,090m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 16, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$198,550
	9	-				
66	10A	OS23 (OSR4.3)	Passive open space and recreation	Dedication of 1,152m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 17, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$109,440
	10B	-				
67	10C	OS 24 (OSR4.1)	Passive open space and recreation	Dedication of one community park/green space of 5,000m ² .	On completion, within the meaning of this Agreement, of Item 18, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$475,000

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
68	10C	OS 24 (OSR4.2)	Passive open space and recreation	Dedication of 3,120m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 19, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$296,400
69	10D	TL3	Open space corridor and transmission line easement	Dedication of 1,680m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 20.	Nil
70	11A	RP3	Riparian corridor protection & enhancement	Dedication of 16,000m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 22.	Nil
71	11A	RP4	Riparian corridor protection & enhancement	Dedication of 10,000m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 24.	Nil

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
72	11B	OS 25 (OSR4.3)	Passive open space and recreation	Dedication of 543m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 25, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$51,585
73	12	OS 18 (OSR4.3)	Passive open space and recreation	Dedication of 21,391m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 27, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$2,032,145
74	12	OS CANAL	Passive open space and recreation	Dedication of 2,118m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 29, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$201,210
75	13	TL4	Open space corridor and transmission line easement	Dedication of 28,782m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 30.	Nil

Gregory Hills Planning Agreement – Third Deed of Variation
Camden Council
Dart West Developments Pty Limited
Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
76	14	C2.2	Community facility	Dedication of a 1,308m ² site containing one 523m ² multi-purpose community centre and one 785m ² car park and landscaped area.	On completion, within the meaning of this Agreement, of Items 31 and 32, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$124,260
77	14	RP1	Riparian corridor protection & enhancement	Dedication of 14,445m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 34.	Nil
78	15A	OS35 (OSR 4.2)	Passive open space and recreation	440m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 35, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$41,800
79	15A	TL8	Open space corridor and transmission line easement	Dedication of 1,981m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 36.	Nil

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
80	15B	RP6	Riparian corridor protection & enhancement	Dedication of 28,635m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 40.	Nil
81	15B	TL7	Open space corridor and transmission line easement	Dedication of 12,112m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 41.	Nil
82	15B	OS34 (OSR4.2)	Passive open space and recreation	Dedication of 1,215m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 42, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$115,425
83	15C	OS 28 (OSR3.1)	Active open space and recreation	Dedication of a 2.7ha double playing field on a site north of South Creek.	On completion, within the meaning of this Agreement, of Item 43, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$2,565,000

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
84	15C	OS 28 (OSR4.2)	Passive open space and recreation	Dedication of 7,497m ² of passive open space.	On completion, within the meaning of this Agreement, of Item 44, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$712,215
85	15C	OS 33	Passive open space	Dedication of 43,540m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 45, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$4,136,300
	16 & 17	-				
86	18	OS1	Passive open space	Dedication of 318m ² of embellished passive open space.	On completion, within the meaning of this Agreement, of Item 46, and otherwise in accordance with this Agreement, or at such later date as agreed to by Council	\$30,210

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
87	19	RP7	Riparian corridor protection & enhancement	Dedication of 69,669m ² of embellished riparian land.	On the expiration of the Maintenance Period for Item 48.	Nil
88	19	OS34(TL)	Open space corridor and transmission line easement	Dedication of 1,205m ² of embellished transmission line easement land including cycle/pedestrian/access path.	On the expiration of the Maintenance Period for Item 49.	Nil
Monetary Contributions						
89	N/A	N/A	Various	An amount determined by deducting the Contribution Value for all Contribution Items comprising Works (other than Items 9, 13, 14, 15, 22, 24, 29, 30, 34, 36, 40, 41, 48, 49) from	Payment of an amount per lot prior to the issuing of the Subdivision Certificate for each Final Lot created after the 2000 th Final Lot	\$10,459,672

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
				the amount that would otherwise be payable by the Developer in respect of the Development, under the CP.	The amount payable per lot will be determined by dividing the value of Item 89 (minus any early cash contributions towards Item 89 made by the Developer before the issuing of the Subdivision Certificate for the 2001 st Final Lot) by the number '467'.	
90	N/A	N/A	Administration	An amount which is one third of the total project management costs allowed for in the CP, in respect of all Items involving Works provided to Council under this Agreement (other than Items 9, 13, 14, 15, 22, 24, 29, 30, 34, 36, 40, 41, 48, 49).	<p>Payment of an amount per lot prior to the issuing of the Subdivision Certificate for each Final Lot.</p> <p>The amount payable per lot will be determined by the following formula:</p> <p>\$N = Balance / L</p> <p>Where</p>	\$235,736

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
					<p>\$N is the contribution amount for the 'N'th lot</p> <p>Balance is the amount of Item 90 that remains to be paid at the date of calculation (being the value of Item 90 minus any previous cash contributions towards Item 90 before the date of calculation)</p> <p>L is the number of lots for which Item 136 remains to be paid, including the lot the subject of the payment (being 2,460 - N + 1)</p>	
Miscellaneous						
91		B1 to B15 inclusive	Water Cycle Management	Construction of and dedication of land for a water cycle management system in the locations identified as B1 to B15 on the Plan Package provided in Schedule 1, to the satisfaction of	Work to be completed immediately prior to the issuing of a Subdivision Certificate that creates a Final Lot that is serviced by the water cycle management system, or such other date agreed to by Council under	\$15,273,647

Gregory Hills Planning Agreement – Third Deed of Variation

Camden Council

Dart West Developments Pty Limited

Trustees of the Marist Brothers



Column 1 Item	Column 2 Relevant Stage	Column 3 Identifier on Indicative Staging Plan	Column 4 Public Purpose	Column 5 Description	Column 6 Timing	Column 7 Contribution Value (Mar 2012)
				<p>the Council which:</p> <ul style="list-style-type: none"> • Achieves the flooding and water cycle management objectives and controls (as described in Appendix A of this Agreement) for each sub-catchment (as determined by the Council) on the Land; • insofar as the deployment of the system requires the dedication of land it is to be generally consistent with the Plan Package provided in Schedule 1; and • may incorporate a range of engineering devices including open water bodies, bioretention, wetlands and dry basins. 	<p>clause 11.</p> <p>Land on which a water cycle management work is located is to be dedicated on completion, within the meaning of the Agreement, of that work, or at such other date as agreed to by Council.</p>	



Appendix 3

(Clause 11)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Third Deed of Variation (Draft Deed)

Under cl25C(5) of the *Environmental Planning and Assessment Regulation 2000*

Parties

Camden Council ABN 31 117 341 764 of 37 John Street, CAMDEN NSW 2570 (**Council**)

Dart West Developments Pty Limited ABN 32 107 685 370 of PO Box 228,
NARRELLAN NSW 2567 (**Developer**)

Trustees of Marist Brothers ABN 91 064 875 510 of PO Box 1247, Mascot NSW 1460
(**Landowner**)

Description of the Land to which the Draft Deed of Variation Applies

The Draft Deed applies to the same Land the subject of the Planning Agreement.

Description of Proposed Development

The Draft Deed relates to the same Development the subject of the Planning Agreement.



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

Objectives of Draft Deed of Variation

The objective of the Draft Deed is to amend the Planning Agreement to amend boundaries of riparian corridors, incorporate additional open space and replace the existing Development Contributions (Schedule 3) with a new schedule to be provided under the Planning Agreement.

With respect to the provision of additional open space, it is anticipated that the proposed town centre park (Contribution Item 11) will include the following:

- a playground with a minimum of 4 play pieces that target older children (12-15 yrs.) and encourages physical activity, agility, challenge, competition and provides a safe place to socialise and chill out;
- a fenced playground with a minimum of 4 play pieces that target younger children (5-12yrs.);
- pedestrian/cycleway path circuit around the site with sporadic bench seating;
- connection footway bridge from the town centre carpark to the park;
- picnic shelters (BBQ's are not requested);
- general kick around area;
- bubblers and bin locations;
- pathway lighting on PE and timer control; and
- informative/interpretive signage is suggested along the cycle circuit to provide some background historical information of the area.

Nature of Draft Deed of Variation

The Draft Deed is a deed of variation to the Planning Agreement under cl25C(3) of the *Environmental Planning and Assessment Regulation 2000*.

Effect of the Draft Deed of Variation

The Draft Deed amends the Planning Agreement in the manner set out in Clause 5 of this Deed.

Assessment of the Merits of the Draft Deed of Variation

The Planning Purposes Served by the Draft Deed of Variation

The planning purposes served by the Draft Deed are the same as those set out in the Planning Agreement.



How the Draft Deed of Variation Promotes the Public Interest

The Draft Deed promotes the public interest in the same manner set out in the Planning Agreement.

For Planning Authorities:

Development Corporations - How the Draft Deed of Variation Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Deed of Variation Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Deed of Variation Promotes the Elements of the Council's Charter

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

- (i) directly providing, after due consultation, adequate, equitable and appropriate services and facilities for the community and ensuring that those services and facilities are managed efficiently and effectively,
- (ii) promoting, providing and planning for the needs of children,
- (iii) having regard to the long term and cumulative effects of its decisions,
- (iv) allowing the Council to act as an effective custodian and trustee of public assets by allowing the Council to effectively account for and manage the assets for which it is responsible,
- (v) raising funds for local purposes by requiring the payment of monetary contributions by the parties that create the need by for infrastructure and services, and thus easing the financial burden on the community at large, and
- (vi) keeping the local community and the State government (and through it, the wider community) informed about its activities.

All Planning Authorities – Whether the Draft Deed of Variation Conforms with the Authority's Capital Works Program

The Draft Deed requires that specified works be carried out by the Developer for the purposes of providing public facilities, particularly recreation facilities.

These works are not included in the Council's relevant current capital works program.



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

This Draft Deed does not specify that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued. However, the Planning Agreement does specify such requirements.

