

Deed

143 & 149 Ingleburn Road, Leppington Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Camden Council
GWS Estate Pty Ltd**

Date: 9 APRIL 2024.

143 & 149 Ingleburn Road, Leppington Planning Agreement

Table of Contents

Summary Sheet	4
Parties	6
Background	6
Operative provisions	7
Part 1 - Preliminary	7
1 Interpretation.....	7
2 Status of this Deed	10
3 Commencement	11
4 Application of this Deed	11
5 Warranties	11
6 Further agreements	11
7 Surrender of right of appeal, etc.	11
8 Application of s7.11, s7.12 and s7.24 of the Act to the Development.....	11
Part 2 – Development Contributions	12
9 Provision of Development Contributions	12
10 Dedication of land	12
Part 3 – Dispute Resolution	13
11 Dispute resolution – expert determination	13
12 Dispute Resolution - mediation.....	14
Part 4 - Enforcement.....	14
13 Security for performance of obligations	14
14 Call-up of Security	15
15 Release & return of Security.....	15
16 Acquisition of land required to be dedicated.....	15
17 Breach of obligations	16
18 Enforcement in a court of competent jurisdiction	17
Part 5 – Registration & Restriction on Dealings.....	17
19 Registration of this Deed	17
20 Restriction on dealings	18
Part 6 – Indemnities & Insurance	18
21 Risk.....	18

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

22	Release.....	19
23	Indemnity	19
24	Insurance	19
Part 7 – Other Provisions		20
25	Reports by Developer	20
26	Review of Deed	20
27	Notices	20
28	Approvals and Consent	21
29	Costs.....	21
30	Entire Deed	21
31	Further Acts	22
32	Governing Law and Jurisdiction	22
33	Joint and Individual Liability and Benefits	22
34	No Fetter.....	22
35	Illegality.....	22
36	Severability	22
37	Amendment	23
38	Waiver.....	23
39	GST.....	23
40	Explanatory Note	24
Schedule 1		25
Schedule 2.....		27
Execution.....		32
Appendix		33

143 & 149 Ingleburn Road, Leppington Planning Agreement

Summary Sheet

Council:

Name: Camden Council
Address: 70 Central Avenue, Oran Park, NSW 2570
Telephone: (02) 4654 7777
Email: mail@camden.nsw.gov.au
Representative: Ron Moore – General Manager

Developer:

Name: GWS Estate Pty Ltd
Address: 3/16 Weld Place, Prestons NSW 2170
Telephone: 0415891481
Email: ratu@isoagroup.com.au
Representative: Ratu Knight

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 19.

Restriction on dealings:

See clause 20.

Dispute Resolution:

See Part 3.

143 & 149 Ingleburn Road, Leppington Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 70 Central Avenue, ORAN PARK, NSW 2570 (**Council**)

and

GWS Estate Pty Ltd ACN 648 773 200 of 3/16 Weld Place, Prestons NSW 2170 (**Developer**)

Background

- A The Developer is the registered proprietor of the No. 143 Land and the No. 149 Land at Ingleburn Road, Leppington.
- B The Developer is carrying out the Development of the Land.
- C Development Consent to DA/2019/947 has been granted for development on 133 and 149 Ingleburn Road, Leppington.
- D Development Consent to DA/2020/1052 has been granted for development on 143 and 149 Ingleburn Road, Leppington.
- E The Developer offers to dedicate land to the Council in accordance with this Deed in connection with the Development.
- F For the purposes of condition 2.0(17) of the Development Consent to DA/2019/947 and condition 2.0(23) of the Development Consent to DA/2020/1052 the total amount of monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under those Development Consents are reduced by the sum of the Contribution Values.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

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

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

(a) one of the following trading banks:

- (i) Australia and New Zealand Banking Group Limited,
- (ii) Commonwealth Bank of Australia,
- (iii) Macquarie Bank Limited,
- (iv) National Australia Bank Limited,
- (iv) St George Bank Limited,
- (v) Westpac Banking Corporation, or

(b) any other financial institution approved by the Council in its absolute discretion.

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

Clearance Certificate means a clearance certificate issued by the Commissioner for Taxation under paragraph 14-220 of Schedule 1 of the *Taxation Administration Act 1953* (Cth).

Construction Certificate has the same meaning as in the Act.

Contribution Value in relation to a Development Contribution Item means the \$ amount specified in Column 7 of the table in Schedule 1 in respect of that Development Contribution Item, or as agreed between the Parties as the value of the Development Contribution Item, indexed from the date specified in Column 7 of the table in Schedule 1 in accordance with the CPI.

Contributions Plan or **CP** means the document titled '*Camden Growth Areas Contributions Plan Amendment 1*' approved by the Council under s7.18 of the Act, as amended from time to time.

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

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

CPI means the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

DA/2019/947 Staging Plan means the plans contained in Sheet 1 of Schedule 2 being the staging plans approved in Development Consent to DA/2019/947.

DA/2020/1052 Staging Plan means the plans contained in Sheet 2 Schedule 2 being the staging plans approved in Development Consent to DA/2020/1052.

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

Development means:

- (a) the subdivision of the No. 149 Land pursuant to Development Consent granted to Development Application DA/2019/947, as modified from time to time, and
- (b) the subdivision of the No. 143 Land pursuant to Development Consent granted to Development Application DA/2020/1052, as modified from time to time.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Development Contribution Item means an item of Development Contribution specified in Column 1 of Schedule 1 or otherwise as agreed between the Parties in accordance with this Deed.

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

ELNO or **Electronic Lodgment Network Operator** has the meaning given to that term in the Participation Rules and the *Electronic Conveyancing National Law* (NSW).

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

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

GST has the same meaning as in the GST Law.

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

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

Foreign Resident Capital Gains Withholding Amount mean the amount a purchaser is required to pay to the Commissioner for Taxation under paragraph 14-200 of the *Taxation Administration Act 1953* (Cth).

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

Land means the No. 143 Land and No. 149 Land, and includes any lot created by the subdivision, strata subdivision or consolidation of that land.

Monetary Contributions means the means the monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under the conditions of Development Consent to DA/2019/947 and DA/2020/1052.

No. 143 Land means the land comprising Lot 11 DP 629130 otherwise known as 143 Ingleburn Road, Leppington as at the date of this Deed and includes any lot created by the subdivision, strata subdivision or consolidation of that land.

No. 149 Land means the land comprising Lot 100 DP 1260283 and Lot 20 DP832295 otherwise known as 149 and 133 Ingleburn Road, Leppington as at the date of this Deed and includes any lot created by the subdivision, strata subdivision or consolidation of that land.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* (NSW).

Party means a party to this Deed.

Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council indexed in accordance with the CPI from the date of this Deed.

Stage:

- (a) in relation to the Development the subject of Development Consent to DA/2019/947 means a stage of that Development as shown on the DA/2019/947 Staging Plan, and
- (b) in relation to the Development the subject of Development Consent to DA/2020/1052 means a stage of that Development as shown on the DA/2020/1052 Staging Plan.

DA/2019/947 Staging Plan means the plans contained in Sheet 1 of Schedule 2.

DA/2020/1052 Staging Plan means the plans contained in Sheet 2 Schedule 2.

Subdivision Certificate has the same meaning as in the Act.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

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

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

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

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that on and from the date they each execute this Deed until the date on which this deed commences, clause 20 of this Deed operates as a deed poll by the Developer in favour of the Council.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 all executed the same copy of this Deed, or
 - 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed does not exclude the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s7.24 of the Act to the Development.
- 8.3 The Parties acknowledge and agree that the Development Consents to Development Application DA/2019/947 and Development Application DA/2020/1052 have already been granted and accordingly, the benefits under

this Deed are not to be taken into consideration in determining a development contribution under s7.11 of the Act.

- 8.4 For the purposes of condition 2.0(17) of the Development Consent to DA/2019/947 and condition 2.0(23) of the Development Consent to DA/2020/1052 the total amount of monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under the conditions of those Development Consents are reduced by the sum of the Contribution Values.
- 8.5 If the Developer fails to dedicate the land required to be dedicated under this Deed, then the amount of Monetary Contributions otherwise payable pursuant to Development Consent to DA/2019/947 and DA/2020/1052 but for clause 8.4, becomes immediately due and payable.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Deed in relation to a Development Contribution comprising the carrying out of Work or dedication of land does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.
- 9.4 Despite clause 9.3, the Council may apply a Development Contribution made under this Deed towards a public purpose other than the public purpose specified in this Deed if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Dedication of land

- 10.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 10.1.1 the Council is provided with:
- (a) a Clearance Certificate that is valid at the time of dedication of land, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land to be dedicated, and
- 10.1.2 one of the following has occurred:

- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
 - (b) the Council is given evidence that lodgement and registration of a transfer that is effective to transfer the title to the land to the Council has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.
- 10.2 The Developer is to do all things reasonably necessary to enable the lodgement and registration of the relevant instrument of transfer to occur.
- 10.3 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 10.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 11.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 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.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Security for performance of obligations

- 13.1 Upon the execution of this Deed by all of the Parties the Developer is to provide the Council with Security in the amount equal to 115% of the sum of all Contribution Values.
- 13.2 The Developer is to ensure at all times that the Council holds Security equal to the greater of:
- 13.2.1 10% of the sum of the Contribution Values of all Development Contribution Items comprising the dedication of land and the carrying out of Works, which:
- (a) are not complete from time to time, within the meaning of this Agreement (if the Development Contribution Item is a Work); or
 - (b) have not been provided from time to time (if the Development Contribution Item is the dedication of land),
- (Outstanding Land and Works Items); or**
- 13.2.2 \$1,000,000.00,

provided that, if the sum of the Contribution Values of all Outstanding Land and Works Items falls below \$1,000,000.00, the Security required to be held under this clause is to equal the sum of the Contribution Values of all Outstanding Land and Works Items.

- 13.3 The amount of the Security required to be held under this clause is to be indexed annually in accordance with the CPI and the Developer is to ensure that the Security held by the Council at all times equals the indexed amount notified to the Developer by Council.
- 13.4 The Council, in its absolute discretion, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Deed.

14 Call-up of Security

- 14.1 Notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, the Council may call-up and apply the Security in accordance with clause 17 if, in its absolute discretion and despite clauses 11 and 12, it considers that the Developer has breached this Deed.
- 14.2 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.
- 14.3 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

15 Release & return of Security

- 15.1 The Council is to release and return the Security or any unused part of it to the Developer within 28 days of completion by the Developer of all of its obligations under this Deed to the satisfaction of the Council.
- 15.2 The Developer may at any time provide the Council with a replacement Security in the amount of the Security required to be provided under this Deed.
- 15.3 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer within 28 days of receipt of the replacement Security.

16 Acquisition of land required to be dedicated

- 16.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 16.2 The Council is to only acquire land pursuant to clause 16.1 if it considers it reasonable to do so having regard to the circumstances surrounding the

failure by the Developer to dedicate the land required to be dedicated under this Deed.

- 16.3 Clause 16.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 16.4 If, as a result of the acquisition referred to in clause 16.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 13.
- 16.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 16.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 16, including without limitation:
 - 16.6.1 signing any documents or forms,
 - 16.6.2 giving land owner's consent for lodgement of any Development Application,
 - 16.6.3 producing certificates of title (if required) to, or providing or procuring such consents as required by the Registrar-General under the *Real Property Act 1900*, and
 - 16.6.4 paying the Council's costs arising under this clause 16.

17 Breach of obligations

- 17.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the relevant Party:
 - 17.1.1 specifying the nature and extent of the breach,
 - 17.1.2 requiring that Party to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 17.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 17.2 If the Developer fails to fully comply with a notice referred to in clause 17.1, the Council may, without further notice to the Party, call-up the Security provided by the Developer under this Deed and apply it to remedy the breach.
- 17.3 Any costs incurred by the Council in remedying a breach in accordance with clause 17.2 may be recovered by the Council by either or a combination of the following means:
 - 17.3.1 by calling-up and applying the Security provided by the Developer under this Deed, or

- 17.3.2 as a debt due in a court of competent jurisdiction.
- 17.4 For the purpose of clause 17.3, the Council's costs of remedying a breach the subject of a notice given under clause 17.1 include, but are not limited to:
- 17.4.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
- 17.4.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
- 17.4.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 17.5 Nothing in this clause 17 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

18 Enforcement in a court of competent jurisdiction

- 18.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 18.2 For the avoidance of doubt, nothing in this Deed prevents:
- 18.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
- 18.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

19 Registration of this Deed

- 19.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 19.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 19.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
- 19.2.2 copies of the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 19.3 Within a reasonable time of receiving the instrument referred to in clause 19.2.1, the Council is to execute the instrument and deliver it to the Developer to be registered.
- 19.4 Within 7 days of receiving the instrument referred to in clause 19.2.1 from the Council, the Developer is to lodge the instrument with NSW Land Registry Services for registration, and is to provide written evidence that it has done so by that date.

- 19.5 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 19.6 The Developer is to deliver to the Council, written evidence that this Deed has been registered on the title to the Land within 7 days of receiving confirmation of registration from the Land and Property Information.
- 19.7 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- 19.7.1 in so far as the part of the Land concerned is a Final Lot,
- 19.7.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

20 Restriction on dealings

- 20.1 The Developer is are not to:
- 20.1.1 sell or transfer the Land, other than a Final Lot, or
- 20.1.2 assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
- 20.1.3 they have, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the their rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 20.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 20.1.5 the Developer is not in breach of this Deed, and
- 20.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 20.2 Subject to clause 20.3, the Developer acknowledges and agrees that they remain liable to fully perform their obligations under this Deed unless and until it has complied with its obligations under clause 20.1.
- 20.3 Clause 20.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

21 Risk

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

22 Release

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

23 Indemnity

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

24 Insurance

- 24.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 24.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 24.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 24.1.3 workers compensation insurance as required by law, and
 - 24.1.4 any other insurance required by law.
- 24.2 If the Developer fails to comply with clause 24.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 24.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or
 - 24.2.2 recovery as a debt due in a court of competent jurisdiction.
- 24.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 24.1.

Part 7 – Other Provisions

25 Reports by Developer

- 25.1 The Developer is to provide the Council with a report detailing the performance of its obligations under this Deed at each of the following times:
- 25.1.1 by not later than each anniversary of the date on which this Deed is entered into, and
 - 25.1.2 each time an application is made for a Subdivision Certificate that creates one or more Final Lot.
- 25.2 The reports referred to in clause 25.1 are to include sufficient detail to enable the Council to determine whether the Developer has complied with its obligations under this Deed at the relevant time and be in such a form and to address such matters as required by the Council from time to time.

26 Review of Deed

- 26.1 The Parties agree to review this Deed every year, 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 Deed.
- 26.2 For the purposes of clause 26.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 26.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 26.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 26.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 26.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 26.1 (but not 26.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

27 Notices

- 27.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 27.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 27.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 27.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is

only given or made by that other Party if it is delivered, posted or emailed to the latest address.

- 27.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 27.3.1 delivered, when it is left at the relevant address,
 - 27.3.2 sent by post, 2 business days after it is posted, or
 - 27.3.3 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.
- 27.4 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.

28 Approvals and Consent

- 28.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 28.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

29 Costs

- 29.1 The Developer is to pay to the Council the Council's costs relating to preparing, negotiating, executing and stamping this Deed and any document related to this Deed, and the registration and removal of registration of this Deed, within 7 days of a written demand by the Council for such payment.
- 29.2 The Developer is also to pay to the Council the Council's reasonable costs relating to enforcing this Deed within 7 days of a written demand by the Council for such payment.

30 Entire Deed

- 30.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 30.2 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.

31 Further Acts

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

32 Governing Law and Jurisdiction

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

33 Joint and Individual Liability and Benefits

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

34 No Fetter

- 34.1 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.

35 Illegality

- 35.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

36 Severability

- 36.1 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.
- 36.2 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.

37 Amendment

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

38 Waiver

- 38.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 38.2 A waiver by a Party is only effective if it:
- 38.2.1 is in writing,
 - 38.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 38.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 38.2.4 is signed and dated by the Party giving the waiver.
- 38.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 38.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 38.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

39 GST

- 39.1 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.

- 39.2 Subject to clause 39.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 39.3 Clause 39.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 39.4 No additional amount shall be payable by the Council under clause 39.2 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.
- 39.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 39.5.1 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;
- 39.5.2 that any amounts payable by the Parties in accordance with clause 39.2 (as limited by clause 39.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 39.6 No payment of any amount pursuant to this clause 39, 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.
- 39.7 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.
- 39.8 This clause continues to apply after expiration or termination of this Deed.

40 Explanatory Note

- 40.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 205 of the Regulation.
- 40.2 Pursuant to clause 205(5) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Development Contribution Item	Stage	Location identifier on the Contributions Plan	Public Purpose	Nature and Extent	Timing	Contribution Value (Indexed to September 2021 Land Value Index)

Dedication of Land

1. Land for Channel Park CP9	Stage 1 of the Development the subject of Development Consent to DA/2019/947	CP9	Open Space	Developer to dedicate to the Council free of cost to the Council land for a channel park being the area identified as 'Residue Lot 47' on the DA/2019/947 Staging Plan with an area of not less than 316.9sqm.	Upon the registration of the first plan of subdivision that creates the first Final Lots in Stage 1 of the Development the	\$117,253
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143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

subject of Development
Consent to DA/2019/947

2. Land for Detention Basin B8	Stage 1 of the Development the subject of Development Consent to DA/2020/1052	B8	Drainage	Developer to dedicate to the Council free of cost to the Council land for a detention basin being the area identified as 'Residue Lot 2' on the DA/2020/1052 Staging Plan with an area of not less than 13,753.1sqm.	After completion of Development Contribution Item 1 and upon the registration of the first plan of subdivision that creates Final Lots in Stage 1 of the Development the subject of Development Consent to DA/2020/1052	\$2,980,223
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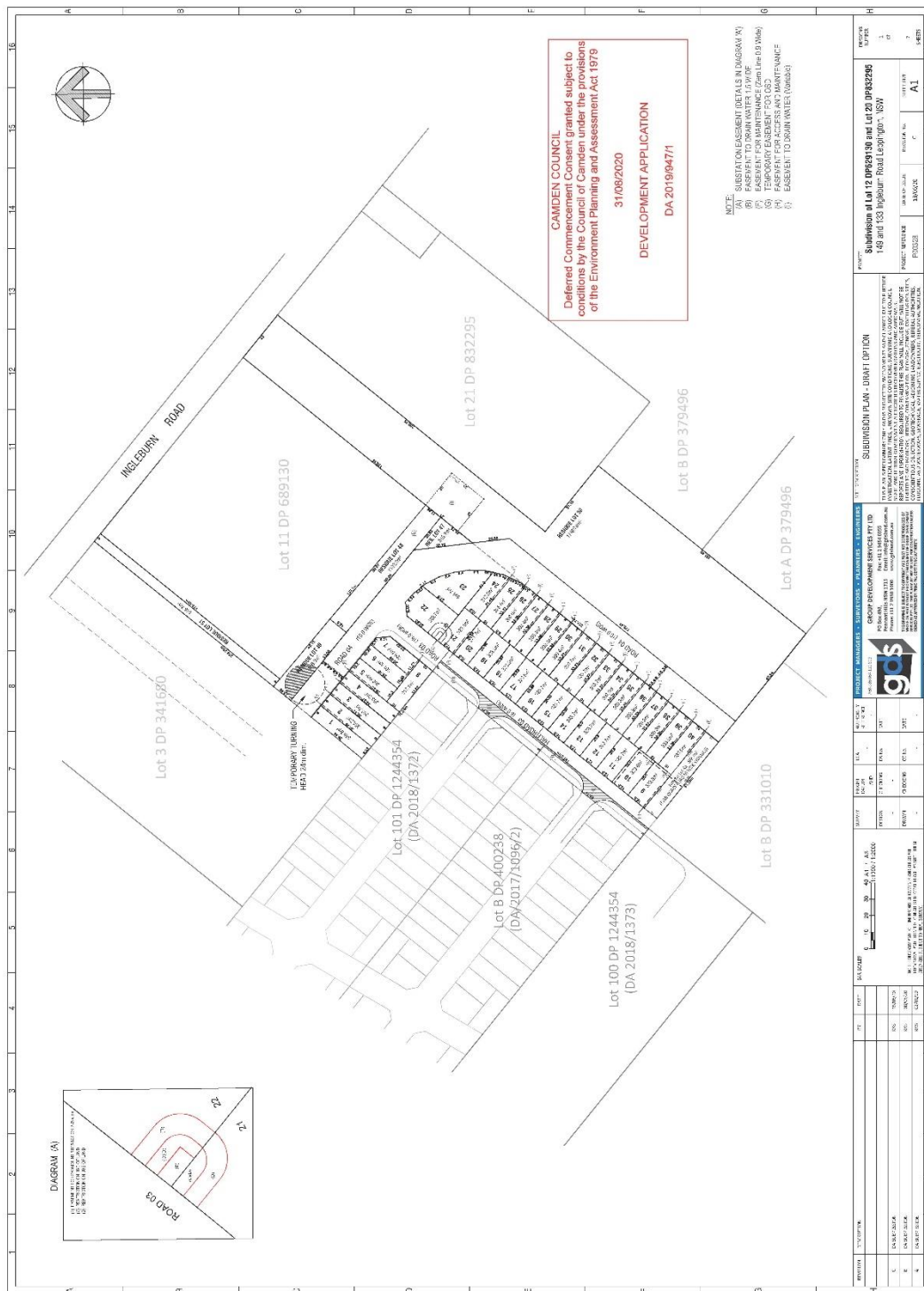
Schedule 2

Staging Plan

See next pages

Sheet 1
(DA/2019/947 Staging Plan)

Subdivision of Lot 100 DP1260283 and Lot 20 DP832295 – Stage 1.



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council



General Manager

MILAN MAREJIC
DIRECTOR GROWTH & FINANCE
9 APRIL 2024

~~Mayor~~



Witness DARREN CABALLERO

Witness

Executed on behalf of GWS Estate Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001



G YANENDRA KARUI (DIRECTOR)

Name/Position



WAYDY SMANI (DIRECTOR)

Name/Position

Appendix

(Clause 40)

Environmental Planning and Assessment Regulation 2021

(Clause 205)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Camden Council ABN 31 117 341 764 of 70 Central Avenue, ORAN PARK, NSW 2570
(Council)

and

GWS Estate Pty Ltd ACN 648 773 200 of 3/16 Weld Place, Prestons NSW 2170
(Developer)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to land comprised in:

- Lot 11 DP 629130 otherwise known as 143 Ingleburn Road, Leppington as at the date of this Deed and
- Lot 100 DP 1260283 and Lot 20 DP832295 otherwise known as 149 and 133 Ingleburn Road, Leppington as at the date of this Deed,

And includes any lot created by the subdivision, strata subdivision or consolidation of those lots.

Description of Proposed Development

The Draft Planning Agreement applies to development

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

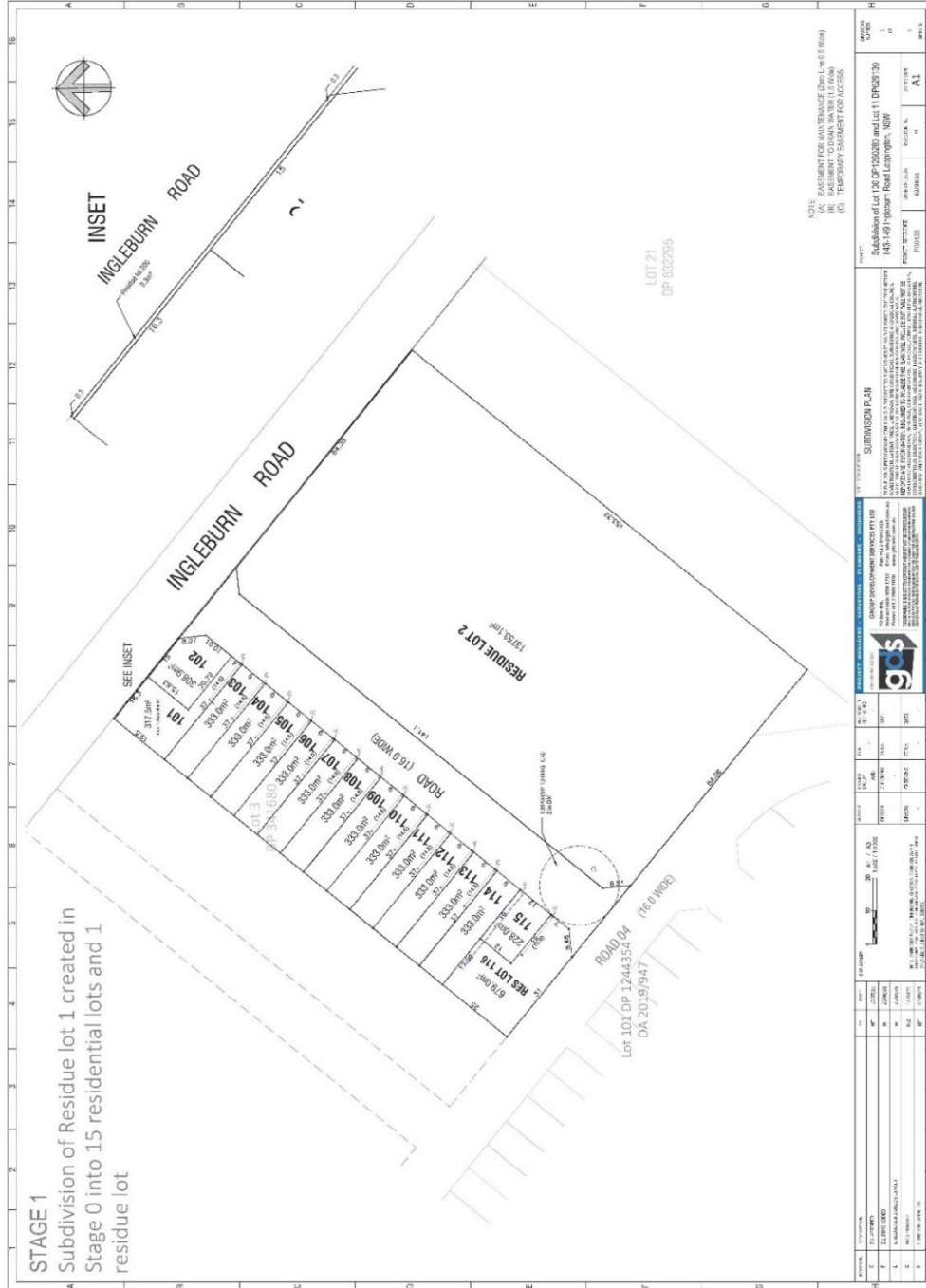
- the subdivision of Lot 100 DP 1260283 and Lot 20 DP832295 pursuant to Development Consent granted to Development Application DA/2019/947, as modified from time to time.
- the subdivision of the Lot 11 DP 629130 pursuant to Development Consent granted to Development Application DA/2020/1052, as modified from time to time.

Description of Development Contributions

The Draft Planning Agreement requires the dedication of 316.9sqm of land for a channel park being part of the land identified in the Contributions Plan as CP9, and dedication of 13,778.2sqm of land for a detention basin being part of the land identified in the Contributions Plan as B8.

Plans showing the location of the land to be dedicated is provided below, as 'Residue Lot 47' and 'Residue Lot 2':

143 & 149 Ingleburn Road, Leppington Planning Agreement
Camden Council
GWS Estate Pty Ltd



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

Objectives, Nature and Effect of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions are made by the Developer for various public purposes (as defined in s7.4(3) of the Act).

The objective of the Draft Planning Agreement is to require the dedication of land for a channel park and detention basin, being land identified in the Camden Growth Areas Contributions Plan.

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- does not exclude the application of s7.11 and s7.12 of the Act to the Development
- does not exclude the application of s7.24 of the Act to the Development
- requires the dedication of land for a channel park and detention basin
- is to be registered on the title to the Land
- imposes restrictions on the Parties assigning an interest under the agreement and the Developer transferring the land,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

The Draft Planning Agreement also provides that for the purposes of condition 2.0(17) of the Development Consent to DA/2019/947 the amount of monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under that Development Consent is reduced by the sum of the values of the land to be dedicated.

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement requires the dedication of land for a channel park and detention basin. These development contributions are listed in the Camden Growth Areas Contributions Plan and will improve the drainage and open space facilities that will serve the wider community.

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,

143 & 149 Ingleburn Road, Leppington Planning Agreement

Camden Council

GWS Estate Pty Ltd

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

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s1.3 (a), (b), and (j) of the Act.

The Draft Planning Agreement also promotes a number of elements of the principles for local government in Chapter 3 of the *Local Government Act 1993* (NSW) (formerly the Council's charter under section 8 of the *Local Government Act 1993* (NSW)).

The Draft Planning Agreement which requires the Developer to dedicate land for a channel park and detention basin and which is required to be publicly notified promotes the following principles:

- the management of lands and other assets so that current and future local community needs can be met in an affordable way,
- working with others to secure appropriate services for local community needs, and
- actively engaging with their local communities, through the use of the integrated planning and reporting framework and other measures.

Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

Yes. The Draft Planning Agreement conforms with the Council's Capital Works Program.

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

No.