

Planning Agreement
187 & 191 Turner Road, Currans Hill

Camden Council (ABN 31 117 341 764) (**Council**)

Turner Road Developments NSW Pty Ltd (ABN 24 628 031 327) (**Developer**)

Kenneth Noel Broome, Lynne Broome, Jamie Noel Broome, Janet Josephine Broome, Jamie Leslie Griffin, Rachael Griffin and Aramis Investments Pty Ltd (ABN 41 124 643 554) and The Difference Development Pty Limited (ABN 58 600 988 010) (**Owners**)

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: 02 4626 5077
Fax: 02 4626 4826
DX: 5107 Campbelltown
Ref: 65 42 4282



Table Of Contents

Planning Agreement.....	1
187 & 191 Turner Road, Currans Hill	1
Parties.....	1
Background.....	3
Operative Provisions.....	3
1 Agreement.....	3
2 Definitions.....	3
2.1 Defined Terms.....	3
2.2 Interpretation	3
3 Application and operation of document	3
3.1 Planning Agreement	3
3.2 Application.....	3
3.3 Operation	3
4 Application of s7.11 and s7.12.....	3
4.1 Application.....	3
4.2 Consideration of Benefits	3
4.3 Section 7.24	4
5 Provision of Contributions.....	4
5.1 Designated Land	4
5.2 Works.....	4
5.3 Contribution Value	5
5.4 Access to the Land and location of Works.....	5
5.5 Monetary Contributions.....	5
5.6 Indexation of Amounts payable by Developer	5
5.7 Application of Development contributions.....	6
6 Approval of design for Works	6
6.1 Application of clause	6
6.2 Approval of design and specifications – Council requirements	6
6.3 Approval of design and specifications – Initial design	6
6.4 Approval of design and specifications – Certification of Development Application	6
6.5 Approval of design and specifications – Detailed design and Construction Certificate	7
7 Completion of Works	7
7.1 Issue of Completion Notice	7
7.2 Inspection by Council.....	8
7.3 Rectification Notice	8
7.4 Acceptance and Maintenance of Works	9
8 Maintenance Regime and Vegetation Management Plan.....	9
9 Defects Liability	10
9.1 Defects Notice.....	10
9.2 Developer to rectify Defects	10
9.3 Defects Liability Security.....	10
10 Variation of scope or timing for provision of Works	11
11 Deferral of the timing of Completion of an item of the Works.....	12
12 Developer Warranties and Indemnities.....	12
12.1 Warranties	12
12.2 Indemnity.....	13
13 Contamination	13
13.1 Definitions	13
13.2 Warranties and Indemnities	13
13.3 Remediation	13
14 Security	14
14.1 Provision of Security	14
14.2 Replacement of Security.....	14
14.3 Council may call on Security.....	14
14.4 Top up of Security	14
14.5 Release of Security	14
14.6 Indexation of value of Contribution Value and Security	15

	14.7	Compulsory acquisition of the Designated Land	15
	14.8	Developer must not deal with Designated Land	16
	14.9	Council may withhold Subdivision Certificate	16
15		Registration of this document	16
	15.1	Registration of this document	16
	15.2	Obligations of Developer	16
	15.3	Discharge from the Register	17
16		Assignment.....	17
	16.1	Restriction on Assignment	17
	16.2	Procedure for Assignment	17
17		Dispute Resolution – expert determination.....	18
18		Dispute Resolution - mediation	18
19		Force Majeure	19
	19.1	Definition	19
	19.2	Consequences of Force Majeure Event	19
	19.3	Inability to complete Works	19
	19.4	Exclusion of operation.....	19
	19.5	Dispute	19
20		Breach of this document	19
	20.1	Breach Notice.....	19
	20.2	Events of Default.....	20
	20.3	Consequences of Events of default	20
	20.4	Council may remedy Event of Default	20
21		Termination, Rescission or Determination.....	21
	21.1	Termination	21
	21.2	Consequence of termination	21
	21.3	Determination.....	21
22		Position of Council.....	21
	22.1	Consent authority.....	21
	22.2	Document does not fetter discretion	21
	22.3	Severance of provisions.....	21
	22.4	No Obligations.....	22
23		Confidentiality	22
	23.1	Document not Confidential.....	22
	23.2	Other Confidential Information	22
24		GST	22
	24.1	Defined GST Terms	22
	24.2	GST to be Added to Amounts Payable.....	22
	24.3	GST Obligations to Survive Termination	23
25		Miscellaneous.....	23
	25.1	Obligation to act in good faith	23
	25.2	Legal costs	23
26		Administrative Provisions	23
	26.1	Notices	23
	26.2	Entire Document	24
	26.3	Waiver.....	24
	26.4	Cooperation.....	24
	26.5	Counterparts	24
	26.6	Amendment.....	24
	26.7	Unenforceability	24
	26.8	Power of Attorney.....	24
	26.9	Governing law	24
		Schedule 1– Requirements under s7.4	26
		Schedule 2 – Defined Terms and Interpretation.....	27
		Part 2 - Interpretational Rules	31
		Schedule 3 – Designated Land	33
		Schedule 4 – Works.....	34
		Schedule 5 – Monetary Contributions.....	37
		Schedule 6– Design Approval and Maintenance Schedule	38
		Annexure 1 – Plan of Designated Land.....	39
		Execution page	41

Planning Agreement

187 & 191 Turner Road, Currans Hill

Parties

Council	Name	Camden Council
	Address	70 Central Avenue, Oran Park NSW 2570
	ABN	31 117 341 764
Developer	Name	Turner Road Developments NSW Pty Ltd
	Address	P.O. Box 292, Harrington Park NSW 2567
	ABN	24 628 031 327
Owners	Name	Kenneth Noel Broome
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Lynne Broome
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Jamie Noel Broome
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Janet Josephine Broome
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Jamie Leslie Griffin
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Rachael Griffin
	Address	C/- Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	Name	Aramis Investments Pty Ltd
	Address	Unit 2 4 Chamberlain Street Campbelltown NSW 2560
	ABN	41 124 643 554

	Name	The Difference Development Pty Limited
	Address	Suite 1 Level 6 410 Chapel Road Bankstown NSW 2200
	ABN	58 600 988 010

Background

- A The Owners own the Land.
- B The Developer wishes to carry out the Development.
- C The Developer has applied for the Development Consent and the Instrument Change.
- D The Developer has agreed to make the Contributions on and subject to the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions

2.1 Defined Terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

This document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document applies to both the Land and the Development.

3.3 Operation

This document operates from the date it is executed by both parties.

4 Application of s7.11 and s7.12

4.1 Application

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development and the Land.

4.2 Consideration of Benefits

Section 7.11(6) of the Act does apply to the Contributions that are to be carried out or provided pursuant to this document.

4.3 Section 7.24

This document does not exclude the application of s7.24 to the Development.

5 Provision of Contributions

5.1 Designated Land

- (1) The Owners must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in **Schedule 3**.
- (2) The Developer must meet all costs associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) For the purpose of this document, Designated Land is dedicated to Council:
 - (a) if the relevant land is dedicated in a plan registered at the Land Registry Services Office of NSW, when that plan is so registered; or
 - (b) otherwise when the Developer or Owners deliver to Council:
 - (i) a transfer of the relevant land in registrable form;
 - (ii) the original Certificate of Title for the relevant land; and
 - (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land, excluding Encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Designated Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

5.2 Works

The Developer, at its cost, must:

- (1) obtain Development Consent, and any other Approval required by a relevant Authority, for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 4**; and
- (3) carry out and complete the Works:
 - (a) in accordance with the specifications referred to in **Schedule 4** for the relevant item of Work;
 - (b) in accordance with any design or specification specified or approved by Council in accordance with clause 6;
 - (c) in accordance with any relevant Development Consent;
 - (d) in accordance with any Approval issued by any Authority;
 - (e) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the environment;

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- (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and
 - (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW);
- (f) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
- (g) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.3 Contribution Value

If the Developer's actual cost of carrying out the Works, including any costs incurred pursuant to this document, determined at the date on which the Works are Completed, differs from the Contribution Value, then subject to the Works having been sufficiently completed in accordance with this document, neither party will be entitled to claim credit or reimbursement, as the case may be, for the difference.

5.4 Access to the Land and location of Works

- (1) The Developer and Owners are to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any of the Works.
- (2) The Developer and Owners must enable Council, its officers, employees, agents and contractors access to the location of the Works where this is not the Land, Council land or a public road.

5.5 Monetary Contributions

- (1) The Developer must pay the Monetary Contributions by the time specified in **Schedule 5**.
- (2) A Monetary Contribution is made for the purposes of this document when Council receives the full amount of the contribution payable under this document 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 Council.

5.6 Indexation of Amounts payable by Developer

The Monetary Contributions are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this document) in accordance with the following formula:

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

where:

A = the indexed amount;

B = the relevant amount as set out in this document;

C = the CPI most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and

D = the CPI most recently published before the commencement date of this document.

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

5.7 Application of Development contributions

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.

6 Approval of design for Works

6.1 Application of clause

This clause 6 applies to a Contribution comprising a Work for which 'Yes' is specified in the column headed 'Design Approval' in **Schedule 6** corresponding to the item, or for which development consent has not yet been granted as at the date of this Deed.

6.2 Approval of design and specifications – Council requirements

- (1) Prior to lodging a Development Application seeking Development Consent for a Work, the Developer is to obtain Council's approval under this clause for the design and specifications for the Work unless otherwise agreed in writing by the Council in relation to the Work.
- (2) Prior to commencing design of a Work, the Developer is to request that Council provide the Developer with its requirements for the location, design, materials and specifications for the provision of the Work.
- (3) When requesting Council's requirements under paragraph (2), the Developer may provide a proposal, including preliminary concept designs, to assist Council in preparing its requirements.
- (4) Council is to provide the Developer with its requirements for the Work in writing within forty (40) business days of receiving the request under paragraph (2).

6.3 Approval of design and specifications – Initial design

- (1) Once the Developer receives Council's requirements for a Work under paragraph 6.2(2), the Developer is to provide the initial design for the Work to Council for Council's approval.
- (2) The initial design for a Work is to include, or be accompanied by, such information as is required for the making of a Development Application for the Work.
- (3) Council is to advise the Developer in writing whether it approves of the initial design of the Work within two (2) months of receiving the initial design from the Developer.
- (4) The Developer is to make any change to the initial design for the Work required by Council.

6.4 Approval of design and specifications – Certification of Development Application

- (1) Once the initial design for a Work is approved, the Developer must submit a full copy of the Development Application for the Work to Council in draft and seek written

certification from Council that the Development Application is consistent with the approved initial design of the Work.

- (2) The Council must either provide the written certification referred to in paragraph (1), or advise the Developer that it will not provide the written certification, within fourteen (14) days.
- (3) The Developer is not to lodge any Development Application for a Work unless:
 - (a) Council has first approved the initial design for the Work or is taken to have approved the initial design for the Work in accordance with this clause 6; and
 - (b) Council has provided its written certification under paragraph (1) for that Development Application or is taken to have waived the requirement for that certification.
- (4) The Developer is to bear all costs associated with obtaining Council's approval or certification.

6.5 Approval of design and specifications – Detailed design and Construction Certificate

- (1) Following Development Consent being issued for a Work, the Developer is to work with Council in the preparation of the detailed design for the relevant Work and submit the detailed design to the Council for its approval.
- (2) The Developer is not to lodge any application for a Construction Certificate for a Work, with any Authority, unless 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.
- (3) Council is to provide the written certification referred to in paragraph (2), or notify the Developer that it will not provide the written certification, within fourteen (14) days of being provided with a copy of the application for a Construction Certificate by the Developer.
- (4) Council's written certification specified in paragraph (2) must specify any particular milestones of construction of a Work and if so, the Developer is to provide Council with a minimum of twenty-four (24) hours' notice prior to commencing a particular milestone and allow Council access to the relevant land to inspect the Work.
- (5) An application for a Construction Certificate for a Work is to be accompanied by Council's written certification specified in paragraph (2) when lodged with the Authority, unless Council is deemed to have waived the requirement for certification under this clause 6.

7 Completion of Works

7.1 Issue of Completion Notice

- (1) When the Developer believes that a Work is complete, it must give the Council a written notice (**Completion Notice**) which:
 - (a) specifies the Work to which it applies; and
 - (b) states that it has been issued under this clause 7.1(1).

7.2 Inspection by Council

The Council must, and the Developer must permit the Council to, inspect the Work the subject of the Completion Notice in the presence of a representative of the Developer within twenty one (21) days of the date that the notice is given to the Council.

7.3 Rectification Notice

- (1) Within twenty-five (25) business days of inspecting a Work that is the subject of a Completion Notice, the Council must give the Developer a notice:
 - (a) confirming that the Work has been completed in accordance with this Deed; or
 - (b) advising:
 - (i) that the Council does not accept that the Work has been completed in accordance with this Deed; and
 - (ii) the reasons for that non-acceptance and directing the Developer to complete, rectify or repair any specified part of the Work ('**Rectification Notice**').
- (2) For the avoidance of doubt, the Council may give more than one Rectification Notice under clause 7.3(1)(b) if the Council reasonably considers that it is necessary to do so.
- (3) If the Developer does not accept the matters contained in a Rectification Notice issued by the Council under clause 7.3(1)(b) then it must, within 14 days, serve notice on Council to that effect, in which case the Council is to appoint a suitably qualified expert at the Cost of the Developer to determine whether the Work has been completed in accordance with this Deed.
- (4) If a Party does not accept the determination of the Council appointed expert pursuant to clause 7.3(3), then that Party may, within 14 days of the expert determination:
 - (a) serve notice on the other Party to that effect, in which case the matter will be a Dispute; and
 - (b) refer that Dispute immediately to the President of the Law Society and clauses 17(4) to 17(7) (inclusive) apply to that Dispute.
- (5) The Developer, at its Cost, is to promptly comply with:
 - (a) a written notice under clause 7.3(1)(b), if it does not serve notice on the Council under clause 7.3(3), or
 - (b) the expert determination of the Council's appointed expert under clause 7.3(3), if no notice is served under clause 7.3(4), or
 - (c) the expert determination of the expert appointed by the President of the NSW Law Society under clause 17(4), if a Dispute has been referred under clause (4)(b).
- (6) If:
 - (a) the Council gives a notice under clause 7.3(1)(b); and
 - (b) the Developer believes it has complied with that notice or an expert determination under clause 7.3(3) or clause 17 as the case may be, then

the Developer must issue a further Completion Notice with respect to that Work and clauses 0 to (5) inclusive reappplies.

- (7) A Work will be complete for the purpose of this Deed:
- (a) on the date the Council issues a notice under clause 7.3(1)(a) confirming that the Work is complete; or
 - (b) if the Council fails to issue any notice under clause 7.3(1), at the end of the period of 28 days from the date the Completion Notice is given to the Council, or
 - (c) if an expert has determined under clause 7.3(3) or clause 17 that the Work is complete for the purposes of this Deed, on the date of the expert determination.

7.4 Acceptance and Maintenance of Works

- (1) If the Council is the owner of the Land on which a Work has been completed, the Council assumes responsibility for the Work upon the date that the Work was completed, but if it is not the owner at that time, it assumes that responsibility when the Development Contribution comprising the dedication of the Land upon which that Work is carried out is made to Council under this Deed.
- (2) The Developer is to Maintain any Work for which a Maintenance Period is specified in Column 6 of the Design Approval and Maintenance Schedule for the Work, for the duration of that Maintenance Period.
- (3) For the purpose of and without limiting clause (2), if a detailed maintenance regime has been approved by the Council under clause 8 in respect of a Work, then the Developer is to Maintain the Work in accordance with that detailed maintenance regime.

8 Maintenance Regime and Vegetation Management Plan

- (1) If 'Yes' is specified in Column 5 of the Design Approval and Maintenance Schedule in respect of a Development Contribution Item specified in Column 1 of that schedule, then the Developer is to prepare:
 - (a) a detailed maintenance regime for that Development Contribution Item for the Maintenance Period specified in Column 6 of that Schedule corresponding to that Development Contribution Item, and
 - (b) a detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- (2) If 'Yes' is specified in Column 7 of the Design Approval and Maintenance Schedule in respect of a Development Contribution Item specified in Column 1 then the Developer is to prepare a draft Vegetation Management Plan for the land on which the Development Contribution Item is to be located.
- (3) A detailed maintenance regime and costings prepared under clause (1), and a draft Vegetation Management Plan prepared under clause (2) are to be provided to the Council for the Council's approval at the following times:
 - (a) if design approval is required under clause 6 of this Agreement – at the same time as it provides the initial design for the Development Contribution Item to the Council,
 - (b) if design approval is not required under clause 6 of this Agreement – within 1 month of the Developer obtaining Development Consent from the relevant

Authority for the relevant Development Contribution Item, or 1 month after the commencement of the Deed, whichever is later.

- (4) The Council is to advise the Developer in writing whether it approves of the detailed maintenance regime, detailed costings and draft Vegetation Management Plan within 1 month of receiving them from the Developer.
- (5) The Developer is to make any change to the detailed maintenance regime, detailed costings and draft Vegetation Management Plan required by the Council and re-submit them to the Council for approval and clause (4) re-applies to the amended documents.

9 Defects Liability

9.1 Defects Notice

- (1) Where any part of the Works has been Completed but those Works contain a material defect which, in the opinion of the Council, acting reasonably:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(**Defect**), Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

9.2 Developer to rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable within the time in which the Defect must be rectified after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 7 in respect of the satisfaction of the Defects Notice.

9.3 Defects Liability Security

- (1) The Developer must provide, in respect of each item of Work, security equal to 10% of the Contribution Value for that item of Work, indexed to the date on which the Work is handed over to the Council pursuant to clause 7 of this Agreement (**Defects Liability Security**).
- (2) The Defects Liability Security is to be provided by the Developer to the Council on the date that the Defects Liability Period commences and is to be held by the Council for the duration of the Defects Liability Period.
- (3) The Council may call on the Defects Liability Security only where the Developer fails to rectify a Defect identified in a Defect Notice issued by Council pursuant to clause 9.1.

(4) At the expiration period of the Defects Liability Period for any item of Works, the Council is to promptly release any Defects Liability Security in respect of that item of Works which has not been called on by the Council.

(5) Clauses 14.2 to 14.9 do not apply in respect to the Defects Liability Security.

10 Variation of scope or timing for provision of Works

(1) The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed

(2) Without limiting clause 10, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.

(3) The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause (2).

(4) The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner and submit the variation to the Council for approval.

(5) The Developer is to comply promptly with a direction referred to in clause (4) at its own cost and subject to clause (6)– (10), is to carry out and complete the Work in accordance with the varied design or specification approved by the Council.

(6) If the Developer considers that a variation to the design or specification of a Work requested by the Council under clause (4) will increase the estimated cost of constructing the Work such that the estimated cost exceeds the indexed Contribution Value of the Work, then the varied design or specification of a Work submitted by the Developer under clause (4) is to be accompanied by a report prepared by a registered quantity surveyor approved by the Council ('**QS Report**') which sets out the estimated cost of constructing the Work to the varied design or specification and the amount of exceedance ('**Exceedance Amount**').

(7) The Council is to consider the QS Report provided by the Developer under clause (6) and notify the Developer whether:

(a) it agrees with the QS Report, or

(b) it does not agree with the QS Report, or

(c) it requires a further variation to the design or specification of the Work, or

(d) it no longer requires a variation to the design or specification.

(8) If the Council agrees with the QS Report, then the Developer is to carry out and complete the Work in accordance with the varied design or specification and upon completion of the Work in accordance with this Deed and provision of relevant invoices to the Council, the Council is to pay to the Developer the lesser of:

(a) the Exceedance Amount referred to in the QS Report, and

(b) the amount by which the actual cost of construction, as evidenced by relevant invoices, exceeds the Contribution Value.

-
- (9) If the Council notifies the Developer that it does not agree with the QS Report then the notice is taken to be a notice under 17(2) and the Parties are to resolve the Dispute by way of expert determination.
 - (10) If the Council notifies the Developer that it requires a further variation to the design or specification of the Work then clauses (5) to (10) re-applies.

11 Deferral of the timing of Completion of an item of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
 - (a) it is unable to Complete any item of the Works by the time specified in **Schedule 4**; or
 - (b) it believes that there is a risk of damage to any item of the Works if they are delivered by the time required in **Schedule 4**,

(**Deferred Works**), then the Developer may seek Council's approval to defer the Completion of the relevant item of the Works by providing written notice to the Council:
 - (c) identifying the relevant item of Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the Works; and
 - (e) identifying the anticipated time for Completion of the relevant item of Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
 - (a) the revised date for Completion required by Council; and
 - (b) any reasonable conditions Council requires with respect to the deferral (including any requirement for additional Security on account of that deferral).
- (3) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (2)(b) above;
 - (b) the Developer is to provide the Council with a Security for 115% of the amount of Contribution Value that is equivalent to the proportion of the uncompleted part of the Work before the date on which the Work is required to be completed under this Deed;
 - (c) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document;
 - (d) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

12 Developer Warranties and Indemnities

12.1 Warranties

The Developer and Owners warrant to Council that they:

-
- (1) are able to fully comply with its obligations under this document;
 - (2) have full capacity to enter into this document; and
 - (3) there is no legal impediment to them entering into this document, or performing the obligations imposed under it.

12.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

13 Contamination

13.1 Definitions

For the purpose of this clause 13:

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

13.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is not Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Land including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997 (NSW)* and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority.

13.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).

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- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
 - (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

14 Security

14.1 Provision of Security

- (1) Upon the execution of this Deed by all of the Parties the Developer is to provide the Council with Security in the form of a Bank Guarantee and in an amount determined in accordance clause 14.1(2).
- (2) During the term of this Deed, the Developer is to ensure at all times that the Council holds Security equal to the lesser of:
 - (a) the Contribution Value for the most valuable Work which has not been completed, within the meaning of this Deed (**Outstanding Work**);
 - (b) 25% of the sum of the Contribution Values of all Development Contribution Items comprising the dedication of land and the carrying out of Works, which:
 - (i) are not complete (if the Development Contribution Item is a Work); or
 - (ii) have not been provided (if the Development Contribution Item is the dedication of land),**(Outstanding Land and Works Items)**; or
 - (c) \$308,500.00.

14.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

14.3 Council may call on Security

If the Developer commits an Event of Default Council, without limiting any other remedies available to it, may call on any Security provided by the Developer in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

14.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

14.5 Release of Security

Unless:

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- (1) Council has made or intends to make a demand against any Security provided by the Developer;
 - (2) the Contributions on account of which that Security was provided have not been made to the satisfaction of Council; or
 - (3) the Developer is in breach of this document at the relevant time,
- Council, upon a written request being made by the Developer, must return the Security within twenty-eight (28) days of such a request being made.

14.6 Indexation of value of Contribution Value and Security

- (1) The Contribution Values for the Works and any Security provided for the Works will be indexed quarterly in accordance with the CPI provided by the Australian Bureau of Statistics.
- (2) The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.

14.7 Compulsory acquisition of the Designated Land

- (1) The Owners consent to the compulsory acquisition of the Designated Land:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 14.7
- (2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer or Owners have committed an Event of Default with respect the dedication of that land under this document.
- (3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
 - (a) the Owners agree that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (4) The parties agree that the provisions of this clause 14.7 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- (5) If Council:
 - (a) acquires the Designated Land under paragraph (3); and
 - (b) is required to pay any compensation to a third party as a result of that acquisition,

then the Developer must pay Council the amount of that compensation upon a written request being made by Council.
- (6) The Developer and Owners indemnify and keeps indemnified Council against all Claims made against Council as a result of any acquisition by Council of the whole or any part of the Designated Land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.

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- (7) The Developer and Owners are to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 14.6, including without limitation:
- (a) signing any documents or forms,
 - (b) giving land owner's consent for lodgement of any Development Application,
 - (c) producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - (d) paying Council's costs arising under this clause 14.6.

14.8 Developer must not deal with Designated Land

- (1) The Developer must not during the term of this document sell, transfer, mortgage, charge or grant a lease or license or any other right of occupancy to any person over the Designated Land without first obtaining Council's consent in writing.
- (2) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

14.9 Council may withhold Subdivision Certificate

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of its obligation to make any Contribution under this document.
- (2) Council may withhold the issue of a Subdivision Certificate if, at the relevant time, the Developer is in breach of any obligation to make any Contribution under this document until such time as the breach is rectified.

15 Registration of this document

15.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 15.2, Council will undertake that registration at the cost of the Developer.

15.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and

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- (c) the production of the relevant duplicate certificates of title,
- to enable the registration of this document in accordance with clause 15.1.
- (2) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
- (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than sixty (60) business days after that date; and
- (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

15.3 Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the obligations under this document have been satisfied; or
- (2) if this document is terminated or rescinded.

16 Assignment

16.1 Restriction on Assignment

Other than in accordance with this clause 16 the Developer and Owners may not Assign their rights or obligations under this document.

16.2 Procedure for Assignment

- (1) If the Developer or Owners wish to Assign their rights or obligations under this document, then they must:
- (a) provide a written request to Council for the consent of Council to the relevant Assignment;
- (b) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;
- (c) obtain written consent of Council to the relevant Assignment; and
- (d) at no cost to Council, procure:
- (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
- (ii) the provision of all Securities to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.

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- (2) Council is under no obligation to consider granting its consent to any request made by the Developer or Owners under paragraph (1)(a) if, at the time the request is made, the Developer or Owners is in breach of this document.

17 Dispute Resolution – expert determination

- (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:
- (a) the Parties to the Dispute agree that it can be so determined, or
 - (b) 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.
- (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.
- (3) If a notice is given under clause 17(2), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (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.
- (5) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- (6) Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- (7) The Parties are to share equally the costs of the President, the expert, and the expert determination.

18 Dispute Resolution - mediation

- (1) This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 17 applies.
- (2) Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- (3) If a notice is given under clause 18(2), the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- (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.
- (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.
- (6) Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.

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- (7) The Parties are to share equally the costs of the President, the mediator, and the mediation.

19 Force Majeure

19.1 Definition

In this clause 19, force majeure (**Force Majeure**), means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

19.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure to carry out wholly or in part its obligations under this document, it must:
- (a) give to the other party prompt notice of the Force Majeure with reasonably full particulars; and
 - (b) suggest an alternative method, if any, of satisfying its obligations under this document.
- (2) If a party is unable to satisfy its obligations under this document by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure are then suspended during continuance of the Force Majeure and any further period as may be reasonable in the circumstances.

19.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any part of the Works due to a Force Majeure event the Developer may elect to pay to Council the Contribution Value of the relevant works and upon amount of that amount being made to Council the obligation of the Developer to undertake the relevant item(s) of the Works under this document is discharged.

19.4 Exclusion of operation

The parties agree that this Force Majeure provision does not apply to an obligation of a party to transfer land or to pay money.

19.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure, that dispute must be referred for determination under clause 17.

20 Breach of this document

20.1 Breach Notice

If the Developer or Owners breach this document, Council may serve a notice on the party who has committed the breach (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:

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- (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

20.2 Events of Default

The Developer or Owners commit an **Event of Default** if that party:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

20.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law, call on any Security provided by the Developer in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

20.4 Council may remedy Event of Default

- (1) If the Developer commits an Event of Default, the Council may do all things necessary to remedy the default, or to complete or make safe any Works, including entering, occupying and using any land owned or controlled by the Developer, and any Equipment on such land, for that purpose.
- (2) Any costs incurred by the Council in remedying a breach in accordance with clause 20.4 may be recovered by the Council, by either or a combination of the following means:
 - (a) by calling-up and applying the Security provided by the Developer under this Deed, or
 - (b) as a debt due in a court of competent jurisdiction.
- (3) For the purpose of clause (2), the Council's costs of remedying an Event of Default include, but are not limited to:
 - (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (4) Nothing in this clause 20.4 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.

21 Termination, Rescission or Determination

21.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) Council serves notice on the Developer terminating this Planning Agreement where the Developer has failed to comply with a notice issued in accordance with clause 20.1.
- (3) The Development Consent lapses.

21.2 Consequence of termination

Upon termination of this Planning Agreement:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

21.3 Determination

This Planning Agreement will determine upon the Developer satisfying all of the obligations imposed on it in full.

22 Position of Council

22.1 Consent authority

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

22.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

22.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 22 is substantially satisfied; and
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

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

22.4 No Obligations

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

23 Confidentiality

23.1 Document not Confidential

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

23.2 Other Confidential Information

- (1) The parties acknowledge that:
- (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

24 GST

24.1 Defined GST Terms

Defined terms used in this clause 24 have the meaning ascribed to them in the GST Law.

24.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

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- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
 - (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

24.3 GST Obligations to Survive Termination

This clause 24 will continue to apply after expiration of termination of this document.

25 Miscellaneous

25.1 Obligation to act in good faith

Without in any way fettering the discretion of the Council, the parties must at all times:

- (1) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (2) make decisions that are required of them in good faith; and
- (3) be just and faithful in their activities and dealings with the other parties.

25.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay the reasonable legal costs and disbursements referred to in paragraph (1) within ten (10) business days of receipt of a Tax Invoice from Council; and
- (3) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document.

26 Administrative Provisions

26.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if sent by pre-paid mail, on the third Business Day after posting; and

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- (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

26.2 Entire Document

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

26.3 Waiver

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

26.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

26.5 Counterparts

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

26.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

26.7 Unenforceability

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

26.8 Power of Attorney

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

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

26.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p>Description of land to which this agreement applies – (Section 7.4(3)(a))</p>	<p>36/28024</p> <p>107/1260604</p> <p>106/1260604</p>
<p>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</p>	<p>Yes</p>
<p>Application of section 7.11 of the Act – (Section 7.4(3)(d))</p>	<p>Does not apply (see clause 4.1).</p>
<p>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</p>	<p>Does not apply (see clause 4.1).</p>
<p>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</p>	<p>Refer to clause 4.2 of this document.</p>
<p>Mechanism for Dispute resolution – (Section 7.4(3)(f))</p>	<p>See clause 17 and 18.</p>
<p>Enforcement of this agreement (Section 7.4(3)(g))</p>	<p>See clause 14.</p>
<p>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</p>	<p>See clause 22.</p>

Schedule 2 – Defined Terms and Interpretation

Part 1 – Definitions

Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Approval	includes any approval, consent, licence, permission or the like other than a Development Consent.
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government;(2) department of any federal, state or local government;(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one (1) of the following trading banks: <ol style="list-style-type: none">(1) Australia and New Zealand Banking Group Limited.(2) Commonwealth Bank of Australia.(3) Macquarie Bank.(4) National Australia Bank Limited.(5) St George Bank Limited.(6) Westpac Banking Corporation.(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
Business Day	means a day of the week other than Saturday or Sunday on which banks are open for business generally in Sydney, and excludes public holidays.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Completed	means completed in accordance with the requirements of this document.

Completion Notice	has the meaning ascribed in clause 7.1.
Confidential Information	<p>means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:</p> <ol style="list-style-type: none"> (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 6.4(d) of the Act.
Contributions	means the Works, Designated Land and Monetary Contributions.
Contribution Value	means the amount specified in Schedule 4 in the column headed "contribution value" for each item of the Works.
CPI	means the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.
Defect	has the meaning ascribed to it in clause 9.1.
Defects Notice	has the meaning ascribed to it in clause 9.1.
Defects Liability Period	means, in respect of any item of Works, twelve (12) months from the date on which Council accepts ownership of those Works pursuant to clause 7 of this Deed.
Defects Liability Security	has the meaning given by clause 9.3
Design Approval and Maintenance Schedule	means the table in Schedule 6 .
Designated Land	means that part of the Land hatched as E2 zoned land on the plan that is attached as Annexure 1 .
Development	means the development by demolition of existing structures, remediation of contaminated land, staged subdivision to create residential lots and residue lots and associated site works with respect to the Land, the subject of current Development Consents and future Development Applications granted by the Council as modified from time to time.
Development Application	means an application for the Development Consent.
Development Consent	means the consent issued under the Act for the Development.
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 4 .
Dispute	has the meaning ascribed to it in clause 17(1).
Encumbrance(s)	means an interest or power: <ul style="list-style-type: none"> (1) reserved in or over an interest in any asset; (2) arising under, or with respect to, a Bio-Banking Agreement; (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. <p>Encumber means to grant an Encumbrance.</p>
Event of Default	has the meaning ascribed to it in clause 20.2.
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: <ul style="list-style-type: none"> (1) that is to be dedicated or otherwise transferred to Council; or (2) on which is situated a dwelling-house that was in existence on the date of this document.
Force Majeure	has the meaning ascribed to it in clause 19.
GST Law	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Insolvency Event	means the happening of any of the following events: <ul style="list-style-type: none"> (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up. (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.

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- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
 - (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
 - (5) A body corporate is or states that it is insolvent.
 - (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001 (Cth)* (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
 - (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act.
 - (8) A body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate.
 - (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
 - (10) A receiver, manager or receiver and manager is appointed to the Company.
 - (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
 - (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Instrument Change

means the planning proposal amending the following Camden LEP 2010 maps:

- (1) Land Zoning Map – Sheet LZN_017.
- (2) Height of Building Map - Sheet HOB_017.
- (3) Lot Size Map Sheet LSZ_017.

Land

means the "Land" set out in **Schedule 1**.

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Maintain	in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.
Monetary Contributions	means the monetary contributions set out in Schedule 5 .
Occupation Certificate	has the same meaning as in section 6.4(c) of the Act.
Owners	means as tenants in common: <ul style="list-style-type: none"> (1) Kenneth Noel Broome and Lynne Broome as joint tenants in 50/100 share; (2) Jamie Noel Broome and Janet Josephine Broome as joint tenants in 25/100 share; and (3) Jamie Leslie Griffin and Rachael Griffin as joint tenants in 25/100 share, of folio identifier 36/28024; and <ul style="list-style-type: none"> (4) Aramis Investments Pty Ltd (ACN 124 643 554) in 50/100 share; and (5) The Difference Development Pty Limited (ACN 600 988 010) in 50/100 share, of folio identifiers 106/1260604 and 107/1260604.
Planning Legislation	means the Act, the <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Rectification Notice	has the meaning ascribed to it in clause 7.3.
Security	has the means ascribed to it in clause 14.1.
Subdivision Certificate	has the same meaning as in section 6.4(d) of the Act.
Work(s)	means the works specified or described in Column 1 of Schedule 4 .

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 – Designated Land

Item	Public Purpose	Quantity	Time for Completion
The whole of the Designated Land	Riparian Corridor Protection and Enhancement	17,539 sqm	On the registration of a plan of subdivision creating the first Final Lot adjoining the Designated Land.

Schedule 4 – Works

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Item of Works	Specification	Public Purpose	Quantity	Time for Completion	Contribution Value
1.1 Shared pathways including retaining walls	Topographic cadastral Survey works to design the shared pathways and other Active Open Space and Recreation works Consultant and Project Management Fees to complete the design the shared pathways and other Active Open Space and Recreation works Construction of Shared Pathways and retaining walls to provide Active Open Space and Recreation	Active Open Space and Recreation	1500 sqm of 3.0m wide shared pathway	Prior to the issue of the first Final Lot in the subdivision stage through which the pathway passes	\$754,592.00
1.2 Outdoor gym equipment	Construction of Outdoor Gym equipment to provide Active Open Space and Recreation	Active Open Space and Recreation	3 item	Prior to the issue of the first Final Lot in the subdivision stage within which outdoor gym equipment is situated	\$30,386.00
1.3 Landscaping in Designated Land	Construction of Landscaping to provide Active Open Space and Recreation	Active Open Space and Recreation	1 item	Prior to the dedication of the Designated Land.	\$35,451.00
1.4 Riparian Corridor	Construction of Riparian Corridor including Drainage channel and vegetated banks	Riparian corridor	1 item	Prior to the dedication of the Designated Land.	Nil

2.1 OSD Basin	<p>Topographic cadastral Survey works to design the OSD basin</p> <p>Civil and Structural design works to design the OSD basin as well as flooding assessment and project management of approvals</p> <p>Construction of the OSD Basin</p>	Stormwater Management	1 item	Prior to the issue of the first Final Lot in the subdivision stage that includes the OSD Basin	\$162,060.00
2.2 WSUD Elements	<p>Topographic cadastral Survey works to design WSUD elements (bio-filtration basins and Filter pits)</p> <p>Civil and Structural design works to design the WSUD elements (bio-filtration basins and Filter pits) as well as flooding assessment and project management of approvals</p> <p>Construction of various bio-filtration basins and Filter pits throughout the site</p>	Stormwater Management	1 item	Prior to the issue of the first Final Lot in the subdivision stage that includes the WSUD elements	\$268,412.00
3.1 Road Widening	<p>All works necessary to widen the Road Pavement to allow for a future pedestrian Refuge Island, including additional box culverts, \$4.55 Modification Application, and all Engineering Design works or monetary payment to Council equal to the Contribution Value</p>	Transport Management	1 item	Prior to the issue of the first Final Lot in the subdivision stage that creates the collector road (Arlington St) crossing the channel	\$30,386.00

	amount in Column 6 for this item.			1 item			<p>Prior to the issue of the first Final Lot in the subdivision stage that creates either the northern or southern shared pathway identified in item 1.1 above</p>	\$10,129.00
3.2 Pedestrian Refuge Island	Construction of Pedestrian Refuge Island or monetary payment to Council equal to the Contribution Value amount in Column 6 for this item	Transport Management						

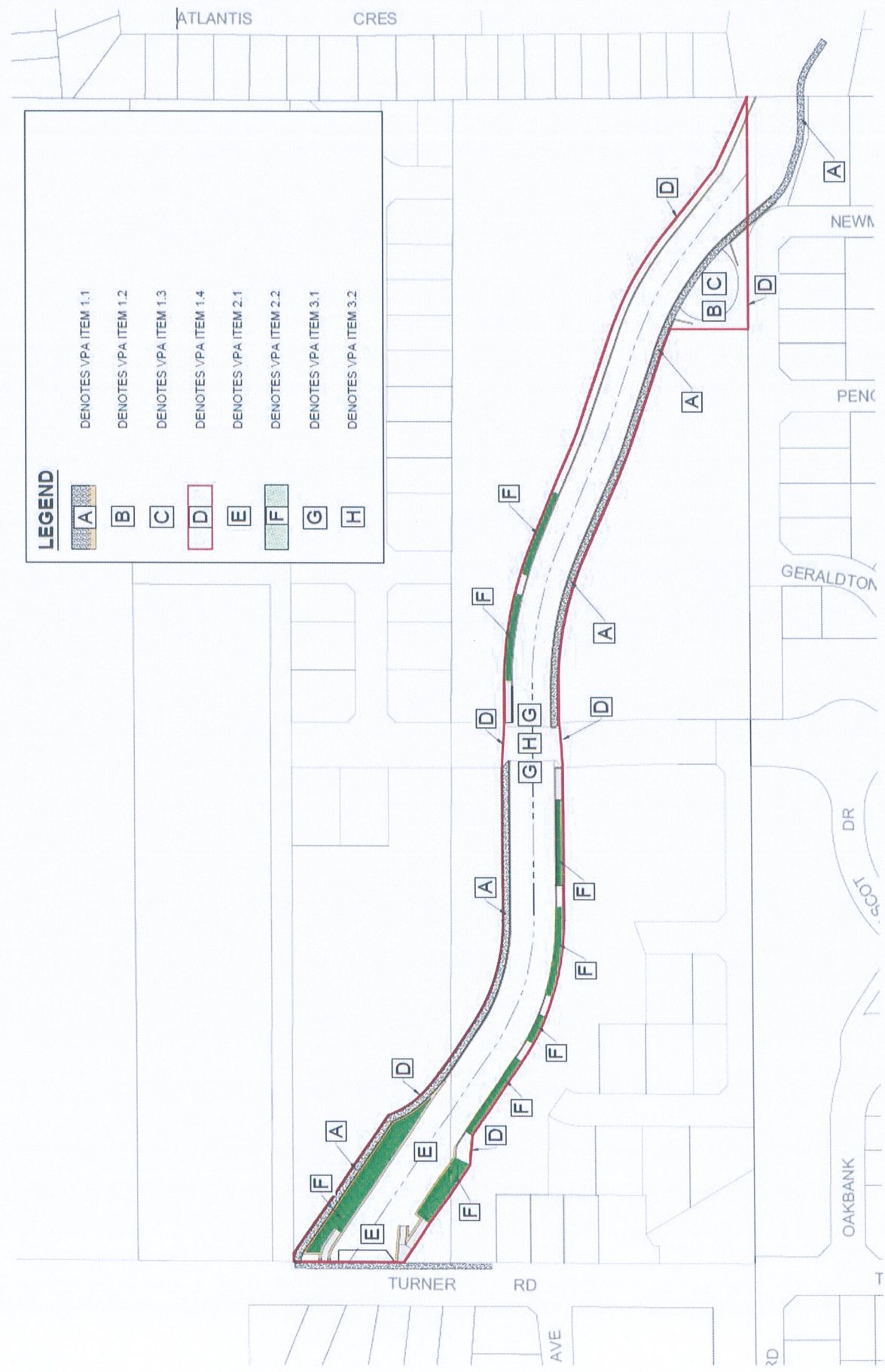
Schedule 5 – Monetary Contributions

Item	Time for Completion	Contribution Value
Monetary Contributions	Prior to the issue of a Subdivision Certificate for a Final Lot.	\$5,941.00 per Final Lot.

Schedule 6— Design Approval and Maintenance Schedule

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Development Contribution Item	Location identifier on Works Plan	Status of Work	Design Approval required?	Maintenance regime required?	Maintenance Period	Vegetation Management Plan required?
Shared pathways including retaining walls	A	Work has not yet commenced	Yes	Yes	12 months	No
Outdoor gym equipment	B	Work has not yet commenced	Yes	Yes	12 months	No
Landscaping in Designated Land	C	Work has not yet commenced	Yes	Yes	12 months	No
OSD Basin	E	Work has not yet commenced	Yes	Yes	12 months	No
WSUD Elements	F	Work has not yet commenced	Yes	Yes	12 months	No
Riparian Corridor	D	Work has not yet commenced	Yes	Yes	5 Years	Yes
Pedestrian Refuge Island	H	Work has not yet commenced	Yes	Yes	12 months	No
Road Widening	G	Work has not yet commenced	Yes	Yes	12 months	No

Annexure 1 – Plan of Designated Land




Execution page

Executed as an agreement.

Dated: 01 JUNE 2021


Executed by Camden Council by its Chief Executive Officer and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated . BK 4774, No 753 - Power of Attorney



General Manager (Signature) *Delegate*

TINA L CHAPPELL

Name of General Manager (Print Name)
Delegate

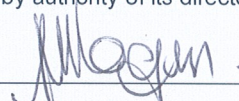


Mayor (Signature)
Witness

BEN RICHARDS

Name of Mayor (Print Name)
Witness


Executed by Turner Road Developments NSW Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.



Director/Secretary (Signature)

JOHN R ROGAN

Name of Director/Secretary (Print Name)

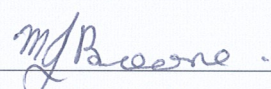


Director (Signature)

GREGORY KELLNER

Name of Director (Print Name)

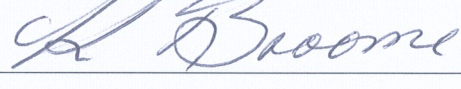
Executed by Kenneth Noel Broome and Lynne Broome in the presence of:



Witness (Signature)

MARILYN BROOME

Name of Witness (Print Name)

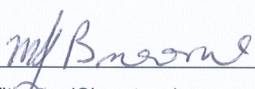


Kenneth Noel Broome (Signature)

L Broome

Lynne Broome (Signature)

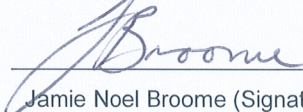
Executed by Jamie Noel Broome and Janet Josephine Broome in the presence of:



Witness (Signature)

MARILYN BROOME

Name of Witness (Print Name)



Jamie Noel Broome (Signature)

J Broome

Janet Josephine Broome (Signature)

Executed by Jamie Leslie Griffin and Rachael Griffin in the presence of:

M. Broome
Witness (Signature)

MARILYN BROOME
Name of Witness (Print Name)

J. Griffin
Jamie Leslie Griffin (Signature)

R. Griffin
Rachael Griffin (Signature)

Executed by Aramis Investments Pty Ltd in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

K. Haines-Kellner
Director/Secretary (Signature)

Kristine Haines-Kellner
Name of Director/Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

Executed by The Difference Development Pty Limited in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.

M. Rogan
Director/Secretary (Signature)

JOHN R. ROGAN
Name of Director/Secretary (Print Name)

M. Rogan
Director (Signature)

MATT ROGAN
Name of Director (Print Name)