

Deed

Spring Farm Precinct 5 Planning Agreement

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

Camden Council

Landcom

Date: 12 MAY 2021

Date to be inserted on the front page of this Deed in accordance with clause 3.2

Spring Farm Precinct 5 Planning Agreement

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Spring Farm Precinct 5 Planning Agreement

Summary Sheet

Council:

Name: Camden Council

Address: 70 Central Ave, Oran Park NSW 2570

Telephone: (02) 4654 7777

Facsimile: (02) 4654 7777

Email: mail@camden.nsw.gov.au

Representative: Ron Moore, General Manager

Developer:

Name: Landcom

Address: 60 Station Street, Parramatta NSW 2150

Telephone: (02) 9841 8696

Facsimile: (02) 9841 8688

Email: nlennon@landcom.nsw.gov.au

Representative: Nicholas Lennon, Development Director

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Part 2 and Schedule 1.

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

See clause 9.

Security:

See Part 4.

Registration:

No. See clause 21.

Restriction on dealings:

See clause 22.

Dispute Resolution:

See Part 3.

Spring Farm Precinct 5 Planning Agreement

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

Parties

Camden Council ABN 31 117 341 764 of 70 Central Ave, Oran Park NSW 2570
(**Council**)

and

Landcom ABN 79 268 260 688 of 60 Station Street, Parramatta NSW 2150
(**Developer**)

Background

- A The Developer has previously been granted the Previous Development Consents and has also been granted the Stage 5 Development Consent.
- B The Developer is required to pay monetary contributions to the Council under the conditions of the Previous Development Consents and the Stage 5 Development Consent.
- C The obligation to pay those monetary contributions was partially satisfied by the provision of material public benefits under the Previous Agreements.
- D The Parties have agreed to enter into this Deed for the Developer to make Development Contributions in the form of works, dedication of land and monetary contributions to the Council in connection with the Modification and for the Council to recognise Development Contributions in the form of works and dedication of land to Council.

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* (NSW), or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Deed.

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

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

Defect means anything that adversely affects, or is likely to adversely affect, the appearance, structural integrity, functionality or use or enjoyment of a Work or any part of a Work.

Defects Liability Period means the period of 1 year commencing on the day immediately after the first Subdivision Certificate is issued for the Development.

Development means the development (within the meaning of the Act) the subject of the Stage 5 Development Consent, 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.

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

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

Explanatory Note means the explanatory note annexed to this Deed.

Final Lot means a lot created in the Development for separate residential or commercial 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.

Garden Gates WIKA means the document titled '*Works in Kind Agreement Garden Gates at Mount Annan*' entered into between the Council and the Developer dated 1 April 2012 in respect of the Garden Gates DAs.

Garden Gates DAs means the Development Applications DA 300017/2002, DA 207/2005, DA 314/2006, DA 315/2006, DA 316/2006, DA 765/2007, DA 46/2011, DA 253/2011.

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.

Item means an item specified in Column 1 of Schedule 1.

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

Land means the land comprised in Lot 1 DP 516583, Lot 2 DP 863680, Lot 20 DP 632825, Lot 3 DP 1135124, Lot 2 DP 1135124 and Lot 1 DP 1135124 (though now subdivided to over 45 lots), and all land to be dedicated and on which Work are to be carried out as identified in Schedule 1, and any lots created by subdivision, strata subdivision or consolidation of those lots.

Liz Kernohan Drive DA means Development Application DA04/2011.

Liz Kernohan Drive WIKA means the document titled '*Works in Kind Agreement Liz Kernohan Drive 'Stage 1' between Richardson Road and Nicholson Parade, Spring Farm*' entered into between the Council and the Developer dated 29 October 2014 in respect of the Liz Kernohan Drive DA.

Modification means the modification under s4.55 of the Act of the Previous Development Consents and the Stage 5 Development Consent to reduce monetary Development Contributions required to be paid under those Developments Consents to \$0.

Mount Annan Land Dedication Agreement means the agreement between the Council and the Developer recorded in the letter dated on or around 13 May 2004 prepared by Martin Smith.

Mount Annan Land Dedication DAs means any Development Application to which the Mount Annan Land Dedication Agreement relates.

P201-500 DAs means the following Development Applications:

- (a) DA04/2011,
- (b) DA1189/2012,
- (c) DA261/2013,
- (d) DA522/2013, and
- (e) DA300/2014.

P201-500 WIKA means the document titled '*Works-in-Kind Agreement Precinct 201, Precinct 203, Precinct 302, Precinct 304, Precinct 305, Precinct 400 & Precinct 500*' entered into between the Council and the Developer dated 10 December 2015 in respect of the P201-500 DAs.

P46B DA means Development Application DA668/2011.

P46B Agreement means the agreement between the Council and the Developer recorded in the letter from the Developer to the Council dated 13 February 2013 in respect of the P46B DA.

Party means a party to this Deed.

Plan means the plan comprising Sheets 1, 2 and 3 in Schedule 2.

Previous Agreements means:

- (a) the Smeaton Grange S2 WIKA,
- (b) the Mount Annan Land Dedication Agreement,
- (c) the Liz Kernohan Drive WIKA,
- (d) the P201-500 WIKA,
- (e) P46B Agreement, and
- (f) the Garden Gates WIKA.

Previous Development Consents means the Development Consents granted in relation to the following Development Applications:

- (a) Smeaton Grange S2 DA,
- (b) Mount Annan Land Dedication DAs,
- (c) Liz Kernohan Drive DA,
- (d) P201-500 DAs, and
- (e) P46B DA.

Public Purpose means public purpose for each Item specified in Column 2 of Schedule 1.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Smeaton Grange S2 DA means Development Application DA6057/98.

Smeaton Grange S2 WIKA means the document titled '*Works in Kind Deed No. S2*' between the Council and The Business Land Group in respect of the Smeaton Grange S2 DA.

Stage 5 Development Consent means the Development Consent granted in respect of Development Application DA861/2014.

Subdivision Certificate has the same meaning as in the Act.

Timing means the timing for provision of each Item specified in Column 4 of Schedule 1.

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.

- 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 servants, 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.

3 Commencement

- 3.1 This Deed commences and has force and effect when both of the following have occurred:
 - 3.1.1 the Modification has been granted, and
 - 3.1.2 the Parties have:
 - (a) both executed the same copy of this Deed, or
 - (b) 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 is entered into in connection with the Modification.
- 4.2 This Deed applies to:
 - 4.2.1 the Land,
 - 4.2.2 the Development, and
 - 4.2.3 development (within the meaning of the Act) to which the Previous Development Consents relate.

5 Revocation of Previous Agreements

- 5.1 The Previous Agreements are revoked upon the commencement of this Deed pursuant to clause 3.
- 5.1 The revocation of the Previous Agreements does not:
 - 5.1.1 revive anything not in force or existing at the time at which the revocation takes effect, or
 - 5.1.2 affect the previous operation of the Previous Agreements or anything duly suffered, done or commenced under the Previous Agreements, or
 - 5.1.3 affect any right, privilege, obligation or liability acquired, accrued or incurred under the Previous Agreements prior to their revocation, or
 - 5.1.4 affect any liability or enforcement right incurred in respect of any offence or breach arising under the Previous Agreements prior to their revocation, or
 - 5.1.5 affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability or penalty,and, if any such exists, the relevant investigation, legal proceeding or remedy may be instituted, continued or enforced, as if the Previous Agreements had not been revoked or terminated.

6 Warranties

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

7 Further agreements

- 7.1 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.

8 Surrender of right of appeal, etc.

- 8.1 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.

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

- 9.1 This Deed does not exclude the application of s7.11 or s7.12 of the Act to the Development.
- 9.2 The benefits under this Deed are to be taken into consideration when determining a development contribution under s7.11 of the Act in relation to the Development.
- 9.3 This Deed does not exclude the application of s7.24 to the Development.

Part 2 – Development Contributions

10 Provision of Development Contributions

- 10.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1 (including in respect of Timing), any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 10.2 Any Contribution Value specified in this Deed in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.

- 10.3 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.
- 10.4 Despite clause 10.3, the Council may apply a monetary 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 monetary Development Contribution towards that other purpose rather than the purpose so specified.

11 Payment of monetary Development Contributions

- 11.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.

12 Dedication of land

- 12.1 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 12.1.1 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 (NSW)* or creates a public reserve or drainage reserve under the *Local Government Act 1993 (NSW)*, or
- 12.1.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900 (NSW)* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 12.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 12.3 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.
- 12.4 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 discretion, acting reasonably.

13 Completion of Work

- 13.1 The Council acknowledges and agrees that the Developer has carried out and completed the Works, as described in Part B of Schedule 1 of this Deed, to the satisfaction of Council.

14 Rectification of defects

- 14.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 14.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 14.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 14.1.

15 Works-As-Executed-Plan

- 15.1 The Council acknowledges that the Developer has submitted to Council a full works-as-executed plan in respect of the Work completed, as described in Part B of Schedule 1 of this Deed.
- 15.2 The Developer, being the copyright owner in the plan referred to in clause 15.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

Part 3 – Dispute Resolution

16 Dispute resolution – expert determination

- 16.1 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:
- 16.1.1 the Parties to the Dispute agree that it can be so determined, or
- 16.1.2 the Chief Executive Officer (or equivalent person) 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.
- 16.2 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.

- 16.3 If a notice is given under clause 16.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 16.4 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.
- 16.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 16.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 16.7 The Parties are to share equally the costs of the President of the NSW Law Society, the expert, and the expert determination.

17 Dispute Resolution - mediation

- 17.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 16 applies.
- 17.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 17.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

18 Acquisition of land required to be dedicated

- 18.1 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 section 10A and Division 1 of Part 2 of the Just Terms Act.

- 18.2 The Council is to only acquire land pursuant to clause 18.1 if it considers (acting reasonably) 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.
- 18.3 Clause 18.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 18.4 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.
- 18.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 18, including without limitation:
 - 18.5.1 signing any documents or forms,
 - 18.5.2 giving land owner's consent for lodgement of any Development Application,
 - 18.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900* (NSW), and
 - 18.5.4 paying the Council's costs arising under this clause 18.

19 Breach of obligations

- 19.1 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 Developer:
 - 19.1.1 specifying the nature and extent of the breach,
 - 19.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 19.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 19.2 If the Developer fails to fully comply with a notice referred to in clause 19.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to Rectify the Developer's breach.
- 19.3 If the Developer fails to comply with a notice given under clause 19.1 relating to the carrying out of Work under this Deed, the Council may step-in and Rectify the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

- 19.4 Any costs incurred by the Council in Rectifying a breach in accordance with clause 19.2 or clause 19.3 may be recovered by the Council by either or a combination of the following means:
- 19.4.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 19.4.2 as a debt due in a court of competent jurisdiction.
- 19.5 For the purpose of clause 19.4, the Council's costs of Rectifying a breach the subject of a notice given under clause 19.1 include, but are not limited to:
- 19.5.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 19.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 19.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 19.6 Nothing in this clause 19 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.

20 Enforcement in a court of competent jurisdiction

- 20.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 20.2 For the avoidance of doubt, nothing in this Deed prevents:
- 20.2.1 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
 - 20.2.2 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

21 Registration of this Deed

- 21.1 The Parties agree not to register this Deed for the purposes of s7.6(1) of the Act.

22 Restriction on dealings

- 22.1 The Developer is not to:
- 22.1.1 sell or transfer Lot 2 DP 863680, or

- 22.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 22.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom Lot 2 DP 863680 or part is to be sold or transferred or the Developer's 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
- 22.1.4 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
- 22.1.5 the Developer is not in breach of this Deed, and
- 22.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 22.2 Clause 22.1 does not apply in relation to the dedication of part of Lot 2 DP863680 to the Council as required by and in accordance with Item 2, Part C of Schedule 1 of this Deed, or the sale or transfer of any other part of Lot 2 DP863680 after that dedication has occurred.
- 22.3 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 22.1.

Part 6 – Indemnities

23 Risk

- 23.1 The Developer performs this Deed at its own risk and its own Cost.

24 Release

- 24.1 The Developer releases the Council from any Claim it 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.

25 Indemnity

- 25.1 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.

Part 7 – Other Provisions

26 Annual report by Developer

- 26.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed, to the extent that there are any outstanding obligations.

27 Review of Deed

- 27.1 On the anniversary of the date of this Deed, the Parties agree to review this Deed (to the extent that there are any outstanding obligations), 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.
- 27.2 For the purposes of clause 27.1, 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.
- 27.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 27.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 27.4 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 27.1 is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
- 27.5 The Parties agree that this clause 27 is of no effect following satisfaction of the Development Contributions by the Developer and otherwise of the parties respective obligations under this Deed.

28 Notices

- 28.1 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:
- 28.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 28.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 28.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 28.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 28.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

- 28.3.1 delivered, when it is left at the relevant address,
 - 28.3.2 sent by post, 2 business days after it is posted,
 - 28.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 28.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 28.4 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.

29 Approvals and Consent

- 29.1 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.
- 29.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

30 Costs

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

31 Entire Deed

- 31.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 31.2 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.

32 Further Acts

- 32.1 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.

33 Governing Law and Jurisdiction

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

34 Joint and Individual Liability and Benefits

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

35 No Fetter

- 35.1 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.

36 Illegality

- 36.1 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.

37 Severability

- 37.1 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.
- 37.2 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.

38 Amendment

- 38.1 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.

39 Waiver

- 39.1 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.
- 39.2 A waiver by a Party is only effective if it:
- 39.2.1 is in writing,
 - 39.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 39.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 39.2.4 is signed and dated by the Party giving the waiver.
- 39.3 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.
- 39.4 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.
- 39.5 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.

40 GST

- 40.1 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.

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.

- 40.2 Subject to clause 40.4, 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.
- 40.3 Clause 40.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 40.4 No additional amount shall be payable by the Council under clause 40.2 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.
- 40.5 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 GST Law, the Parties agree:
- 40.5.1 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;
- 40.5.2 that any amounts payable by the Parties in accordance with clause 40.2 (as limited by clause 40.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 40.6 No payment of any amount pursuant to this clause 40, 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.
- 40.7 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.
- 40.8 This clause continues to apply after expiration or termination of this Deed.

41 Explanatory Note

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

Schedule 1

(Clause 10)

Development Contributions

Column 1 Item/ Contribution	Column 2 Public Purpose	Column 3 Manner & Extent	Column 4 Timing	Column 5 Contribution Value
				December 2020 CPI
				2019 LVI
				2020 LVI (Item C.2)

A. Monetary Contributions

1. Volunteer Emergency Services	Volunteer Emergency Services	\$1,575	To be paid to the Council within 28 days of the commencement of this Deed	\$1,575
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Spring Farm Precinct 5 Planning Agreement
Camden Council
Landcom

2. Plan Administration	Plan Administration	\$19,859	To be paid to the Council within 28 days of the commencement of this Deed	\$19,859
3. Monetary contributions in lieu of monetary contributions payable under Previous Development Consents & Stage 5 Development Consent prior to the Modification	Public purposes for which monetary contributions under s7.11 of the Act could be imposed in respect of the Development and development the subject of the Previous Development Consents.	\$1,435,204	To be paid to the Council within 28 days of the commencement of this Deed	\$1,435,204
Total				\$1,456,638

B. Carrying out of Work

1. Half Road fronting open space (314m) (Contributions Plan reference SF54) (Plan ref. 1)	Roads and traffic	Construction and completion of half width road fronting open space of a length of not less than 314m in the location identified with reference number 1 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$259,122
2. Roundabout (Major) (Contributions Plan reference SF16) (Plan ref. 2)	Roads and traffic	Construction and completion of roundabout in the location identified with reference number 2 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$192,986

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3. Roundabout (Major) (Contributions Plan reference SF16) (Plan ref 3)	Roads and traffic	Construction and completion of roundabout in the location identified with reference number 3 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$ 192,986
4. Richardson Road Construction (300m) (Contributions Plan reference SF24) (Plan ref 4)	Roads and traffic	Construction and completion of Richardson Road of a length of not less than 300m in the location identified with reference number 4 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$ 746,854
5. Richardson Road Streetscape (300m) (Contributions Plan reference SF26) (Plan ref 5)	Roads and traffic	Construction and completion of streetscape of Richardson Road of a length of not less than 300m in the location identified with reference number 5 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$ 353,918
6. Richardson Road Undergrounding Electrical (300m) (Contributions Plan reference SF25) (Plan ref 6)	Roads and traffic	Construction and completion of undergrounding of electrical services on Richardson Road of a length of not less than 300m in the location identified with reference number 6 in Sheet 1 of the Plan	The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.	\$ 721,598

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<p>7. Richardson Road Design (300m) (Contributions Plan reference SF23) (Plan ref 7)</p>	<p>Roads and traffic</p>	<p>Completion of design of Richardson Road of a length of not less than 300m in the location identified with reference number 7 in Sheet 1 of the Plan</p>	<p>The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.</p>	<p>\$21,154</p>
<p>8. Open Space Embellishment (Contributions Plan reference OS9) (Plan ref 11)</p>	<p>Open Space</p>	<p>Construction and completion of embellishment of not less than 2,500sqm of open space in the location identified with reference number 8 in Sheet 2 of the Plan</p>	<p>The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.</p>	<p>\$115,842</p>
<p>9. Bulk Earthworks (Contributions Plan reference SF52) (Plan ref 12)</p>	<p>Open Space</p>	<p>Carrying out of bulk earthworks in the location identified with reference number 9 in Sheet 2 of the Plan</p>	<p>The parties acknowledge that the Developer has completed this Work to the satisfaction of Council prior to the date of this Deed.</p>	<p>\$489,591</p>
<p>Total</p>				<p>\$3,094,052</p>

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C. Dedication of Land

<p>10. Greenberg Street (Half Road Fronting Open Space Land) (314m) (Contributions Plan reference SF5) (Plan ref 14)</p>	<p>Roads and traffic</p>	<p>Dedication to the Council free of cost to the Council of half width of Greenberg Street being of a length of not less than 314m and an area of not less than 2041sqm in the location identified with reference number 10 in Sheet 3 of the Plan.</p>	<p>The parties acknowledge that this land has been dedicated to the Council prior to the date of this Deed.</p>	<p>\$357,175</p>
<p>11. Part of Lot 2 DP 863680 (Land for Road non-flood affected) (Contributions Plan reference SF3) (Plan ref 15)</p>	<p>Roads and traffic</p>	<p>Dedication to the Council free of cost to the Council of a road being part of Lot 2 DP863680 of a length of not less than 132m and an area of not less than 2655sqm in the location identified with reference number 11 in Sheet 3 of the Plan.</p>	<p>To be dedicated to the Council free of cost to the Council within 28 days of the later of:</p> <ol style="list-style-type: none"> 1. commencement of this Deed; or 2. Council releasing the Subdivision Certificate for the plan of subdivision creating that part of Lot 2 DP863680 to be dedicated. 	<p>\$663,750</p>

Dedication to occur pursuant to clause 12.1.1 of this Deed.

Spring Farm Precinct 5 Planning Agreement

Camden Council

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12. Land for Road non-flood affected (Contributions Plan reference SF3) (Plan ref 16)	Roads and traffic	Dedication to the Council free of cost to the Council of a road of a length of not less than 90m and an area of not less than 1811sqm in the location identified with reference number 12 in Sheet 3 of the Plan.	The parties acknowledge that this land has been dedicated to the Council prior to the date of this Deed.	\$316,925
13. Lot 48 DP 1232874 (Roundabout Land) (Contributions Plan reference SF3) (Plan ref 17)	Roads and traffic	Dedication to the Council free of cost to the Council of Lot 48 DP-1232874 for a roundabout being land with an area of not less than 599sqm in the location identified with reference number 13 in Sheet 3 of the Plan.	The parties acknowledge that this land has been dedicated to the Council prior to the date of this Deed.	\$104,825
14. Lot 44 DP 1210526 (Open Space Reserve) (Contributions Plan reference OS3) (Plan ref 18)	Open space	Dedication to the Council free of cost to the Council of Lot 44 DP-1210526 for an open space reserve being land with an area of 2598sqm in the location identified with reference number 14 in Sheet 3 of the Plan.	The parties acknowledge that this land has been dedicated to the Council prior to the date of this Deed.	\$454,650
15. Lot 45 DP 1210526 (Land for Community Facility) (Contributions Plan reference C1) (Plan ref 19)	Community facility	Dedication to the Council free of cost to the Council of Lot 45 DP-1210526 for a community facility being land with an area of 2088.8 sqm in the location identified with reference number 15 in Sheet 3 of the Plan.	The parties acknowledge that this land has been dedicated to Council prior to the date of this Deed.	\$365,540

**Spring Farm Precinct 5 Planning Agreement
Camden Council
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	Total	\$2,262,865.00
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Schedule 2

(Clause 1.1)

Plan

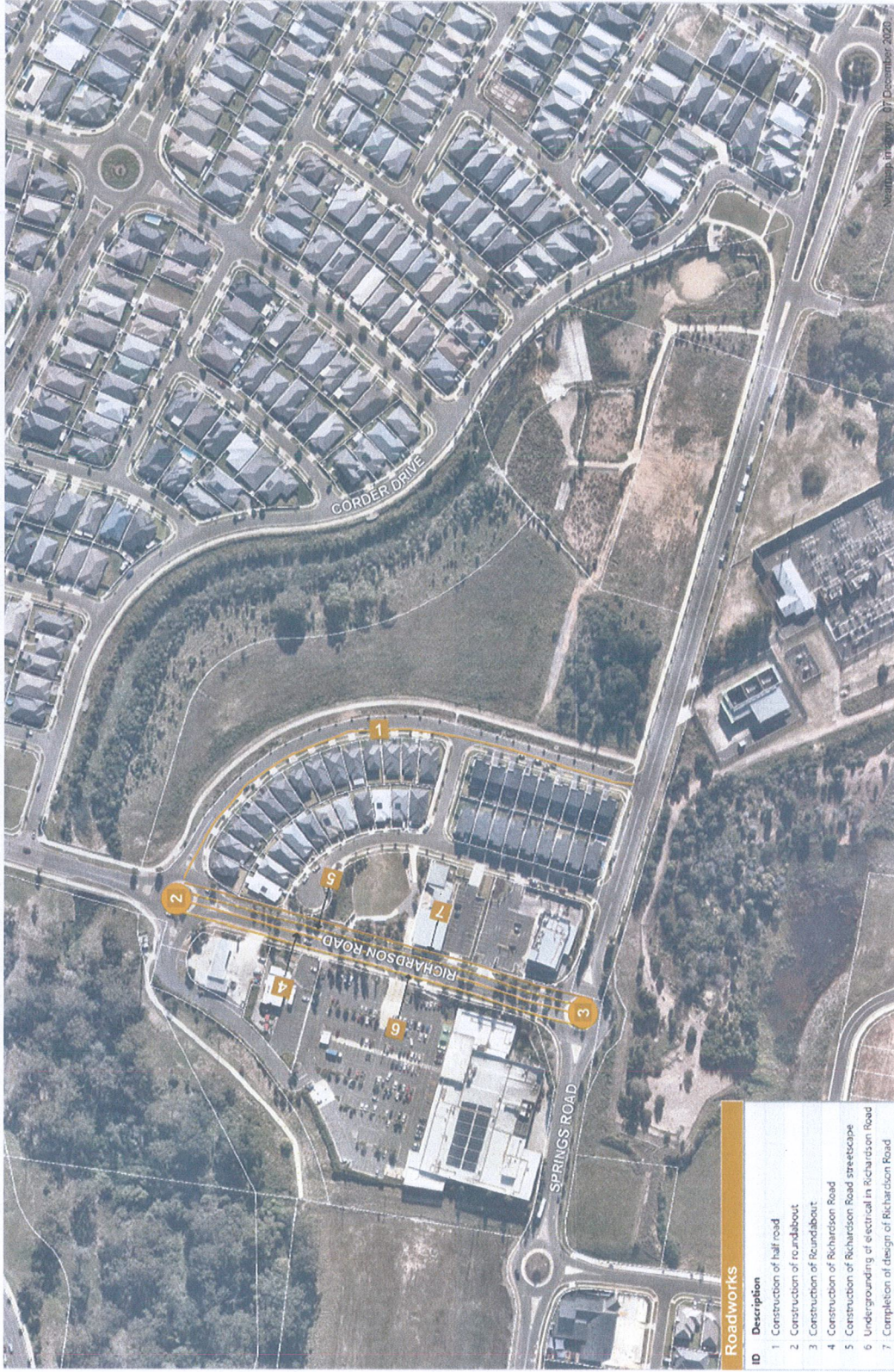
Sheets 1, 2 and 3 on the following pages.

**Spring Farm Precinct 5 Planning Agreement
Camden Council
Landcom**

Sheet 1

See the following page.

Spring Farm Precinct 5 Planning Agreement
Camden Council
Landcom



Spring Farm
LGA : Camden

Sheet 2

See the following page.

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**Spring Farm Precinct 5 Planning Agreement
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Sheet 3

See the following page.

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Land dedications

ID	Description
10	Greenberg Street
11	part Lot 2, DP653660
12	Land for road
13	Lot 48, DP1232874
14	Lot 44, DP1210526
15	Lot 45, DP1210526

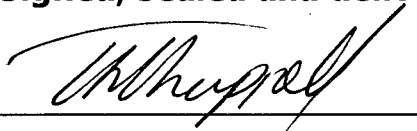
Spring Farm
LGA : Camden

Execution

Executed as a Deed

Dated: 12 MAY 2021

Signed, sealed and delivered on behalf of the Council



Council Representative

BK 477 - Nb 753

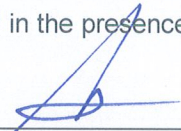


Witness

Signed, sealed and delivered on behalf of the Developer

Signed for and on behalf of Landcom by its attorneys jointly under power of attorney Book 4768 No 634 dated 29 November 2019. By signing this document, each attorney certifies that they have no notice of revocation of such powers and authorities.

Signed in the presence of:




Signature of witness

RAY FARD

Name of witness

60 STATION ST, PARRAMATTA

Address of witness



Signature of attorney

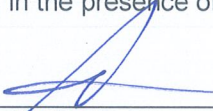
Jeff Williams

Name of attorney

Development Director

Position of attorney

Signed in the presence of:



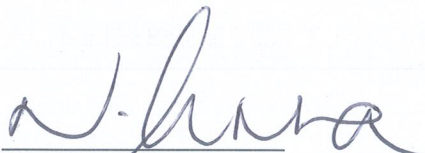
Signature of witness

RAY FARD

Name of witness

60 STATION ST, PARRAMATTA

Address of witness



Signature of attorney

NICHOLAS LENNON

Name of attorney

DEVELOPMENT DIRECTOR

Position of attorney

Appendix

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

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)

Landcom ABN 79 268 260 688 of Level 14, 60 Station Street, Parramatta NSW 2150 (Developer)

Description of the Land to which the Draft Planning Agreement Applies

This Draft Planning Agreement applies to the land referred to in Schedule 1, and any lots created by subdivision, strata subdivision or consolidation of those lots.

Description of Proposed Development

This Draft Planning Agreement applies to development, within the meaning of the Act, the subject of the Stage 5 Development Consent, as modified from time to time, and the development the subject of the Previous Consents.

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

Objectives of Draft Planning Agreement

The objectives of the Draft Planning Agreement are to provide infrastructure and facilities to meet the requirements of the Development and provide for the dedication of associated land to Council. Specifically, the Developer is to provide work and land for the purposes of open space and roads and traffic, and monetary contributions for volunteer emergency services, plan administration and public purposes for which monetary contributions under s7.11 of the Act could be imposed in respect of the Development. To the extent the value of the works and land are less than what the Developer would normally be required to pay under s7.11 of the *Environmental Planning and Assessment Act 1979* (based on \$30,000 per lot) in respect of the Previous Development Consents and the Stage 5 Development Consent, the Developer is to pay the Council monetary contributions for the difference.

The Draft Planning Agreement incorporates obligations of the Developer under existing works-in-kind agreements and other agreements entered into with the Council, and has the effect of rescinding those agreements.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the EPA Act. It is a voluntary agreement, under which the Developer makes Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) for various public purposes (as defined in s 7.4(2) of the EPA Act). The Draft Planning Agreement also recognises the Developer's Development Contributions to Council in the form of land dedication for a Public Purpose and completion of Works.

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of the Development,
- terminates the various works-in-kind agreements entered into between the Council and the Developer,
- does not exclude the application of s 7.11 and s 7.12 of the EPA Act to the Development,
- does not exclude the application of s 7.24 of the EPA Act to the Development,
- requires dedication of land and carrying out of works for various public purposes and acknowledges that some of those development contributions have been provided prior to the date of the planning agreement,
- recognises completion of Works by the Developer and dedication of land to Council for a Public Purpose,
- requires the payment of monetary contributions for various public purposes,
- the Deed provides for compulsory acquisition arrangements for the land dedication in the event of a failure to dedicate land,
- is not required to be registered on the title to the Land,
- imposes restrictions on the Developer transferring Lot 2 DP 863680 or assigning an interest under the Agreement,

- provides two dispute resolution methods where a dispute arises under the agreement, being mediation and expert determination,
- provides that the agreement is governed by the law of New South Wales,
- provides that the A New Tax System (Goods and Services Tax) Act 1999 (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates the orderly and economic use and development of the Land to which the Planning Agreement applies,
- allows for the delivery and co-ordination of various public amenities and facilities,
- provides land for public purposes in connection with the Development, including for water management, open space and roads and traffic,
- provides and co-ordinates community services and facilities in connection with the Development, and

The Draft Planning Agreement provides a reasonable means of achieving these planning purposes by requiring the Developer to make monetary, works and land dedication contributions to Council, to facilitate the development of the land in connection with the provision of necessary infrastructure and community facilities.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by:

- promoting the objects of the EPA Act set out in sections 1.3(a), (c) and (j); and
- delivering infrastructure and facilities which benefit the local and wider community.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Guiding Principles for councils in s8A of the Local Government Act 1993 (Previously s8 Elements of the Council’s Charter)

The Draft Planning Agreement promotes the guiding principles for councils by ensuring that land is managed and works are delivered which will ensure adequate, equitable and appropriate services and facilities are provided for the community as made necessary by the Development in an affordable way, and enables Council to work with others to secure appropriate services for local community needs.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program

By adopting the Camden Contributions Plan 2011, Council effectively adopted the works included in that plan into its long term works program. The proposed agreement is a vehicle for the Council to complete a significant part of its Spring Farm works program in a more timely and efficient fashion and therefore is consistent with the Council’s capital works program.

All Planning Authorities – 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. This Draft Planning Agreement does not contain requirements which must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued.