

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

Lengths are in metres

(Sheet 1 of 15 Sheets)

Plan: **DP1259891**

Plan of Subdivision of Lot 4508 in DP1259888 & Easement with Lot 12 DP1291091 covered by Subdivision Certificate No. 111/2024/SC

Dated 3/7/2025

Full name & address of Proprietor(s) of the Land:

MOGUL STUD PTY LIMITED
 Suite 6, 131 Macquarie Street
 SYDNEY NSW 2000

JUNDU PTY LIMITED
 Suite 6, 131 Macquarie Street
 SYDNEY NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan:	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan:	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for Maintenance, Access and Other Purposes 0.9 wide (N)	4705 4706 4707 4708 4709 4711 4712 4713 4714 4715 4716 4717 4722 4724 4725	4704 4705 4706 4707 4710 4712 4714 4714 4715 4715 4717 4718 4737 4723 4724

APPROVED BY THE HILLS SHIRE COUNCIL

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 Authorised Delegate

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Number of item shown in the intention panel on the plan:	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan:	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1 (cont.)	Easement for Maintenance, Access and Other Purposes 0.9 wide (N)	4727 4728 4729 4730 4731 4735 4736 4737	4728 4729 4730 4731 4732 4734 4735 4736
2	Easement for Padmount Substation 2.75 wide (E)	4713	Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878
3	Restriction on the Use of Land (K)	Part Lot 4713 Part Lot 4714 As designated (K)	Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878
4	Restriction on the Use of Land (L)	Part Lot 4713 Part Lot 4714 As designated (L)	Epsilon Distribution Ministerial Holding Corporation ABN 59 253 130 878
5	Restriction on the Use of Land	Lots 4701 to 4737 inclusive	The Hills Shire Council

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6	Positive Covenant	Lots 4701 to 4737 inclusive	The Hills Shire council
7	Easement for Maintenance, Access and Other Purposes 0.9 wide (N1)	4708	4709
8	RIGHT OF ACCESS (R) (ENTIRE LOT)	Lot 12 DP1291091	The Hills Shire Council
9	Restriction on the Use of Land	Lots 4701 to 4737 inclusive	Every other lot except lot 4738
10	Restriction on the Use of Land	Lots 4701 to 4737 inclusive	Lot 3136 DP1217139
11	Restriction on the Use of Land	Lots 4701 to 4737 inclusive	Lot 3136 DP1217139

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 Authorised Delegate

C & R Ref: 108-20 Stage 12A FINAL 20231220

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Dated 3/7/2025

Part 1A (Release)

Number of item shown in the intention panel on the plan	Identify of easement, profit à prendre, restriction or positive covenant to be released and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement for Drainage of Water 7 Wide (C) – created by DP1234966	Lot 4508 DP1259888	The Hills Shire Council
2	Right of Access Variable Width (C2) – created by DP1260256	Lot 4508 DP1259888 & Lot 12 DP1291091	The Hills Shire Council

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Certificate No. 111/2024/SC

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Part 2 (Terms)

1. Terms of easement, profit à prendre, restriction or positive covenant numbered 1 & 7 in the plan

Terms of Easement for repairs as per Part 5 Schedule 8 of the Conveyancing Act 1919 as amended together with the following additions:

1. The grant of this easement is made subject to the existence of, and the right of the owner of the lot burdened to construct, eaves and guttering from the structure on the lot burdened, that overhang the site of the easement.
2. The grant of this easement is made subject to the right of the owner of the lot burdened to carry out repairs and maintenance or improvements to any landscaping within the site of the easement including installing a security gate at the entrance to the site of the easement from the front of the building structure on the lot burdened.

Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 1 & 7 in the plan.

The Owners of the Lots Benefitted.

2. Terms of easement, profit à prendre, restriction or positive covenant numbered 2 in the plan.

The terms set out in Section 1 of Memorandum No. AR578978 are incorporated into this document.

Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 2 in the plan.

Epsilon Distribution Ministerial Holding Corporation

3. Terms of easement, profit à prendre, restriction or positive covenant numbered 3 in the plan.

The terms set out in Section 8 of Memorandum No. AR578978 are incorporated into this document.

Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 3 in the plan.

Epsilon Distribution Ministerial Holding Corporation

4. Terms of easement, profit à prendre, restriction or positive covenant numbered 4 in the plan.

The terms set out in Section 9 of Memorandum No. AR578978 are incorporated into this document.

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Authorised Delegate

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**Name of person or Authority whose consent is required to release, vary or modify restriction,
positive covenant or easement numbered 4 in the plan.**

Epsilon Distribution Ministerial Holding Corporation

5. Terms of easement, profit à prendre, restriction or positive covenant numbered 5 in the plan.

No dwelling shall be constructed on the lot(s) hereby burdened unless the registered proprietor has first constructed or has made provision for the construction of a rainwater tank with a minimum capacity of 3000 litres in accordance with the requirements of The Hills Shire Council.

**Name of person or Authority whose consent is required to release, vary or modify restriction,
positive covenant or easement numbered 5 in the plan.**

The Hills Shire Council

6. Terms of easement, profit à prendre, restriction or positive covenant numbered 6 in the plan.

The registered proprietor of the lot(s) hereby burdened will maintain at the sole expense of the registered proprietors the whole of their lot as an asset protection zone, including, but not limited to, the removal of vegetation in accordance with fuel load requirements and restricting the placement of combustible materials, buildings or improvements, complying with the requirements of The Hills Shire Council and the NSW Rural Fire Service relevant and applicable at the time.

**Name of person or Authority whose consent is required to release, vary or modify restriction,
positive covenant or easement numbered 6 in the plan.**

The Hills Shire Council

7. Terms of easement, profit à prendre, restriction or positive covenant numbered 8 in the plan.

Terms of Right of access as per Part 11 Schedule 4A of the Conveyancing Act 1919 as amended together with the following addition:

1. The easement is a temporary extension of the adjoining public road and will function as a public road in accordance with the definition of "public road" included in the Roads Act 1993 for the purposes of providing access across the easement site.
2. The easement site is made accessible to the public.
3. The easement will be extinguished upon the dedication of the lot(s) burdened to the public as road.

**Name of person or Authority empowered to release, vary or modify restriction, positive covenant
or easement numbered 8 in the plan.**

The Hills Shire Council

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Authorised Delegate

C & R Ref: 108-20 Stage 12A FINAL 20231220

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8. Terms of easement, profit à prendre, restriction or positive covenant numbered 9 in the plan.

1) No building shall be erected or be erected to remain erected on the lot burdened other than one having external walls of brick, stone, concrete, glass, timber, fibre cement, Simulated Rendered Masonry or any combination thereof provided that:

(a) The proportion of brick, stone, concrete and Simulated Rendered Masonry shall not be less than:

- (i) 75% of the total area of the external walls in the case of a single storey building, or
- (ii) 60% of the total area of the external walls in the case of a two storey building.

For the purpose of this restriction "Simulated Rendered Masonry" means any painted panel where the joints are hidden when prepared and painted to give the appearance of rendered masonry.

2) No Building shall be erected or be permitted to remain erected on the lot burdened unless the plans of the building to be erected on the said lot were approved in writing by Jundu Pty Limited (hereinafter referred to in these Restrictions as to User as "the Developer") prior to lodgement of the same with The Hills Shire Council or any other appropriate consent authority.

3) No building shall be erected or be permitted to remain erected on the lot burdened having a roof of corrugated metal unless:

- (a) The roof is coloured with a pre-coated material using a process that is either the same or similar to the process known as *Colorbonding* and
- (b) It is passive in tone and earthy in colour and
- (c) Is non-reflective and
- (d) The prior approval in writing as to the colour has been obtained from the Developer

4) No building shall be erected or be permitted to remain erected on the lot burdened having a roof of fibre cement, asbestos cement, fibreglass or any other material of a similar nature.

5) No building erected on the lot burdened shall be permitted to be used or occupied as a private dwelling **unless** that building has a "building frontage" of at least 75% of the lot width measured at the building line.

For the purposes of this restriction "building frontage" is to be measured from the external faces of the external walls of the dwelling and shall include any garage contained within the main dwelling **BUT** it shall not include any other covered area that is not enclosed by walls such as, without limitation, any patio, porch, verandah and/or terrace.

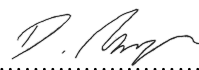
6) If the lot burdened has a frontage of 12.5 metres or greater to any public road, then no main dwelling will be erected or allowed to remain on the lot burdened unless: -

- a) it has a garage with a floor area of at least 29 square metres, and
- b) a garage door opening of at least 4.4 metres in width.

7) If the lot burdened has a frontage to a public road that is less than 12.5 metres, then no main dwelling will be erected or allowed to remain on the lot burdened unless it has a garage or carport with a floor area of at least 15 square metres.

8) Vehicles exceeding 3 tonnes shall not be garaged, housed, parked, maintained, worked on, serviced or be permitted to remain on the lot burdened except where used for delivery of goods and/or for the

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Certificate No. 111/2024/SC

Dated 3/7/2025

construction, maintenance and/or the alteration of any building erected or being erected on the lot burdened.

- 9) No dividing fence shall be erected or be permitted to remain on the lot burdened unless: -
- a) it has a minimum height of 1.8 metres, and
 - b) it is constructed of dark stained treated pine, and
 - c) it is a lapped and capped fence.
- 10) No fence shall be erected on the lot burdened that is closer to the street than the external wall of the main building erected on the lot burdened that faces the street. If the lot burdened is a corner lot, this restriction shall apply to both street frontages.
- 11) No fence or wall shall be erected on the lot burdened to divide it from any adjoining land owned by the Developer without the consent of the Developer, which consent may be given or withheld by the Developer in its absolute and unfettered discretion, but such consent shall be deemed to have been given in respect of any fence or dividing wall that is erected without expense to the Developer.
- 12) Whilst the Developer is the owner of the adjoining land to the burdened lot, the Developer shall not be required to contribute to any common boundary fencing or wall.
- 13) No building shall be erected or be permitted to remain erected on the lot burdened unless:
- a) A concrete or paved driveway from the front boundary of the lot burdened to the garage of the main building erected on the lot burdened, and
 - b) A concrete or paved pedestrian access from the front boundary of the lot burdened to the front door of the main building erected on the lot burdened, which pedestrian access may, in part, be over the paved driveway, and
 - c) landscaping to the whole of the unpaved area between the main building erected of the lot burdened and any street to which it has frontage is completed within 12 months of the practical completion of the main building erected on the lot burdened. Landscaping may include turf, but it must contain at least 5 square metres of decorative garden.
- 14) No outbuildings, tents, garages or caravans shall be erected, brought onto, be placed on or be permitted to remain on the lot burdened prior to the commencement of construction of a dwelling thereon.
- 15) No factory manufactured homes, mobile homes, demountable homes or other dwellings manufactured or previously situated off the lot burdened shall be brought onto, be placed on or be permitted to remain on the lot burdened.
- 16) No temporary or permanent driveway strips of any type constructed of any material whatsoever shall be constructed on the lot burdened unless the said strips are a minimum of 3 metres wide.
- 17) No boats, trucks, caravans, motor homes or trailers shall be placed, parked or be permitted to remain on the lot burdened in any position where they can be seen from any public place or street.
- 18) No dwelling shall be erected or be permitted to, remain on the lot, burdened with eaves and gutters less than 450 millimetres in width without the prior approval in writing having being

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Authorised Delegate 
Electronically signed by me David
Munday, affixed by me 3/7/2025

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obtained from the Developer which approval may be given or withheld by the Developer in its absolute and unfettered discretion.

- 19) No building shall be erected or be permitted to remain erected on the lot burdened if it, or any part of it, is used for any other purpose other than as a residential dwelling.

Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 9 in the plan.

DH Box Hill Pty Limited whilst ever it is mortgagee of a lot in the Plan and thereafter by the registered proprietors of the lots having the benefit of abovementioned restrictions

9. Terms of easement, profit à prendre, restriction or positive covenant numbered 10 in the plan.

1. No Exhibition Home shall be erected or be permitted to remain erected on the lot burdened. In this restriction, an Exhibition Home means a dwelling built for the purposes of the public exhibition and marketing of new dwellings, whether or not it is intended to be sold as a private dwelling after its use for those purposes is completed and includes any associated sales or home finance office or place used for displays.
2. This restriction shall cease to have effect if Homeworld Box Hill Pty. Limited becomes an externally administered body corporate (as that term is defined in section 9 of the Corporations Act 2001(Cwth) except where the purpose of the external administration is for reconstruction or amalgamation.


Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 10 in the plan.

The Owner(s) of the Lot Benefitted

10. Terms of easement, profit à prendre, restriction or positive covenant numbered 11 in the plan.

1. No building shall be erected or be permitted to remain erected on the lot burdened that is part of an Exhibition Village. In this restriction:
 - a. an Exhibition Village means 2 or more Exhibition Homes and any associated buildings and places used for house and land sales, site offices, advisory services, car parking, food and drink sales and other associated purposes, and
 - b. an Exhibition Home means a dwelling built for the purposes of the public exhibition and marketing of new dwellings, whether or not it is intended to be sold as a private dwelling after its use for those purposes is completed and includes any associated sales or home finance office or place used for displays

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Dated 3/7/2025

2. This restriction shall cease to have effect if Homeworld Box Hill Pty. Limited becomes an externally administered body corporate (as that term is defined in section 9 of the Corporations Act 2001(Cwth) except where the purpose of the external administration is for reconstruction or amalgamation.

Name of person or Authority whose consent is required to release, vary or modify restriction, positive covenant or easement numbered 11 in the plan.

The Owner(s) of the Lot Benefitted

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Dated 3/7/2025

SIGNATURES:

I certify that the attorney signed this instrument in my presence.

Signed by the attorney named below who signed this instrument pursuant to the power of attorney specified for **Endeavour Energy Network Asset Partnership (ABN 30 586 412 717)** on behalf of **Epsilon Distribution Ministerial Holding Corporation (ABN 59 253 130 878)** pursuant to section 36 of the *Electricity Network Assets (Authorised Transactions) Act 2015* (NSW)

Signature of witness:



Digitally signed by
Natasha Issac
Date: 30.04.2025
02:26 PM

Name of witness:

Natasha Issac

Address of witness:
c/-Endeavour Energy
Level 41, 8 Parramatta Square
10 Darcy Street
Parramatta NSW 2150

This document was signed in counterpart and witnessed over audio visual link in accordance with Section 14G of the Electronic Transactions Act 2000.

Signature of attorney:



Digitally signed
by Simon Lawton
Date: 30.04.2025

Name and position of attorney:

Simon Lawton, Strategic Property Manager

Power of attorney:

Book 4833 No 383

Signing on behalf of:
Endeavour Energy Network Asset Partnership
ABN 30 586 412 717

Endeavour Energy reference:

URS27123

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Dated... 3/7/2025

SIGNATURES:

Executed by Sumitomo Mitsui Banking Corporation (ARBN 114 053 459) by its duly appointed attorney:

Signature of attorney:



Name and position of attorney:

Balaji Vallam, Executive Director

Power of attorney:

Book 4825 No 666

Signature of witness:



Name of witness:

Jay Kim

Address of witness:

L35, 2 Chifley Square
Sydney NSW 2000

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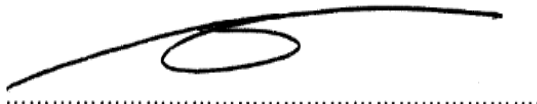
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SIGNATURES:

Executed by DH Box Hill Pty. Ltd. (ACN 625 555 553) by authority of its directors in accordance with Section 127 of the Corporations Act 2001:



.....
Signature



.....
Signature

Yasushi Ohesuka

.....
Name (Block Letters)

Izumi Kinjo

.....
Name (Block Letters)

Company Secretary

.....
Office Held

Director

.....
Office Held

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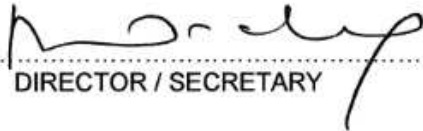
Plan of Subdivision of Lot 4508 in DP1259888 & Easement with Lot 12 DP1291091 covered by Subdivision Certificate No. 111/2024/SC

Dated... 3/7/2025

SIGNATURES:

Executed by Jundu Pty Limited (ACN 055 425 780) by authority of its directors in accordance with Section 127 of the Corporations Act 2001:

RICHARD BARNEY ARTHUR SCHEINBERG


.....
DIRECTOR / SECRETARY

DEBORAH CATHERINE REDELMAN


.....
DIRECTOR

Executed by Mogul Stud Pty Limited (ACN 000 331 840) by authority of its directors in accordance with Section 127 of the Corporations Act 2001 :


RICHARD BARNEY ARTHUR SCHEINBERG


.....
DIRECTOR / SECRETARY

DEBORAH CATHERINE REDELMAN


.....
DIRECTOR

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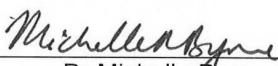
Dated 3/7/2025

SIGNATURES:

The common seal of **THE HILLS SHIRE COUNCIL** was affixed on 2 July 2025 in the presence
of Michael Edgar, General Manager, and Dr Michelle Byrne, Mayor pursuant to regulation 400 of the
Local Government (General) Regulation 2021.



Michael Edgar
General Manager



Dr Michelle Byrne
Mayor



REGISTERED:  14/07/2025

APPROVED BY THE HILLS SHIRE COUNCIL


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Authorised Delegate

Form: 11R
 Release: 4-3

REQUEST

New South Wales
 Real Property Act 1900



AP277256M

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the use of this form for the establishment and maintenance of the Real Property Act register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) STAMP DUTY	If applicable. Revenue NSW use only		RELODGED 12 JUN 2019
(B) TORRENS TITLE	See Annexure A		
(C) REGISTERED DEALING	Number	Torrens Title	TIME:
(D) LODGED BY	Document Collection Box 254Q	Name, Address or DX, Telephone, and Customer Account Number if any KALINDA DOYLE MILLS OAKLEY 1279096 Reference: AXGS/REDS: 318474	CODE R
(E) APPLICANT	The Hills Shire Council		
(F) NATURE OF REQUEST	Registration of planning agreement pursuant to s 7.6 of the Environmental Planning and Assessment Act 1979		

(G) TEXT OF REQUEST

Register the planning agreement entered into by Hills Shire Council, Jundu Pty Ltd as trustee for Hills of Carmel Estate Partnership and Mogul Stud Pty Ltd dated 13 December 2018, a copy of which is annexed to this request as Annexure E.

DATE

*I, PETER MICHAEL STUART
 AM AUTHORIZED TO MAKE THIS
 AMENDMENT.
 11.6.19*

(H) I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence.
 [See note* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Nicole Palisi

*I, PETER MICHAEL STUART
 ISSUING AM AUTHORIZED
 TO MAKE THIS AMENDMENT
 11.6.19*

Signature of authorised officer:

[Signature]

Name of witness:

**NICOLE PALISI
 3 COLUMBIA COURT
 NOWEST 2153 NSW**

Authorised officer's name:

**MICHAEL EDWARDS
 GENERAL MANAGER
 THE HILLS SHIRE COUNCIL
 S. 377 LOCAL GOVERNMENT ACT 1995**

Address of witness:

Authority of officer:

Signing on behalf of:

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS.

The applicant certifies that the eNOS data relevant to this dealing has been submitted and stored under

eNOS ID No. _____

Full name: _____

Signature: _____

* s117 RP Act requires that you must have known the signatory for more than 12 months or have sighted identifying documentation.

Annexure A to Request for Registration of Planning Agreement

Between:

The Hills Shire Council (Applicant)

Jundu Pty Ltd as Trustee for Hills of Carmel Estate Partnership

Mogul Stud Pty Limited (Registered Proprietor)

Dated: 13 December 2018

Lot	DP
49	1006798
50	1006798
11	1009338
19	1111404
20	1111404
3136	1217139
3139	1217139
3140	1217139
1	1235598
2	1235598
3	1235598
1192	1226133
1193	1226133
5	1235598
6	1235598
7	1235598
8	1235598
9	1235598
10	1235598
11	1235598
1	1238558
2	1238558
3	1238558
4	1238558
5	1238558
83	599307
204	1226134
205	1226134
206	1226134
207	1226134
2118	1226135

C. Reed
R. Payne
[Signature]
[Signature]
[Signature]
[Signature]

Annexure B to Request for Registration of Planning Agreement

Between:

The Hills Shire Council (Applicant)

Jundu Pty Ltd as Trustee for Hills of Carmel Estate Partnership

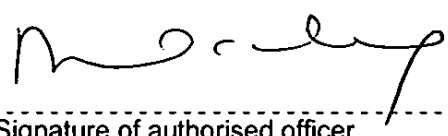
Mogul Stud Pty Limited (Registered Proprietor)

Dated: 13 December 2018

(Executed by Mogul Stud Pty Limited (registered proprietor)

Certified correct for the purposes of the Real Property Act 1900 by the authorised officers named below.

EXECUTED by Mogul Stud Pty Limited in accordance with section 127(1) of the Corporations Act 2001.



Signature of authorised officer

Signature of authorised officer


Print name

Michael Schrempke


Print name

Director

Director


Rosemarie Ryan
Level 6, 131 Macquarie St
Sydney NSW

Witness

Mogul Stud Pty Limited
by its attorney
Carl Robert Reid
pursuant to Power of 
Attorney Reg BK.4702
No 809
c. Reid



Annexure C to Request for Registration of Planning Agreement

Between:

The Hills Shire Council (Applicant)

Jundu Pty Ltd as Trustee for Hills of Carmel Estate Partnership

Mogul Stud Pty Limited (Registered Proprietor)

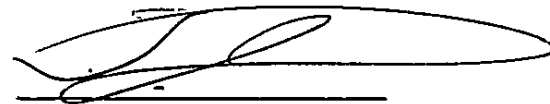
Dated: 13 December 2018

Executed by **Sumitomo Mitsui Banking Corporation** (mortgagee under mortgage AN455658)

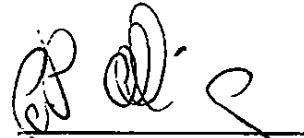
Certified correct for the purposes of the *Real Property Act 1900* by the authorised officers named below:

Executed by its attorney = Garth Olling
Under registered power of attorney dated 12 April 18,
Book 4947 No. 910

In the presence of:



Signature of witness



Signature of attorney

Takahiro Ishii

Name of witness

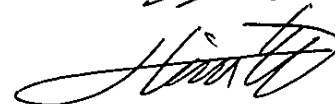
407, The Clifley Tower, 2 Clifley Square

Sydney, NSW 2000, Australia

Address of witness



Red



Annexure D to Request for Registration of Planning Agreement

Between:

The Hills Shire Council (Applicant)


Jundu Pty Ltd as Trustee for Hills of Carmel Estate Partnership

Mogul Stud Pty Limited (Registered Proprietor)

Dated: 13 December 2018

Executed by **DH Box Hills Pty Ltd** (mortgagee under mortgage AN460767).

Certified correct for the purposes of the *Real Property Act 1900* by the authorised officers named below:




Signature of Authorised Officer

Hidero Ito

Print Name

Managing Director

Position



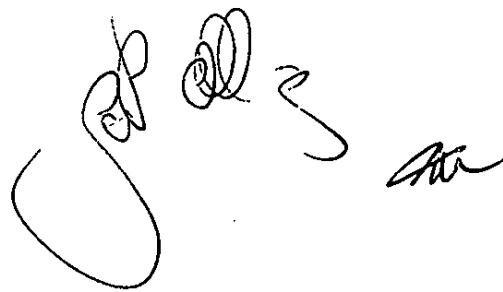
Signature of Authorised Officer

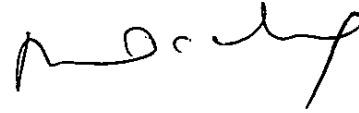
Teiji Nakanishi

Print Name

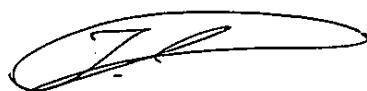
Director

Position





R. Ryan



Annexure E to request for registration of Planning Agreement
Between:
The Hills Shire Council (Applicant)
Jundu Pty Ltd as Trustee for Hills of Carmel Estate Partnership
Mogul Stud Pty Limited (Registered Proprietor)
Dated: 13 December 2018

Deed of Variation of Planning Agreement

The Hills Shire Council

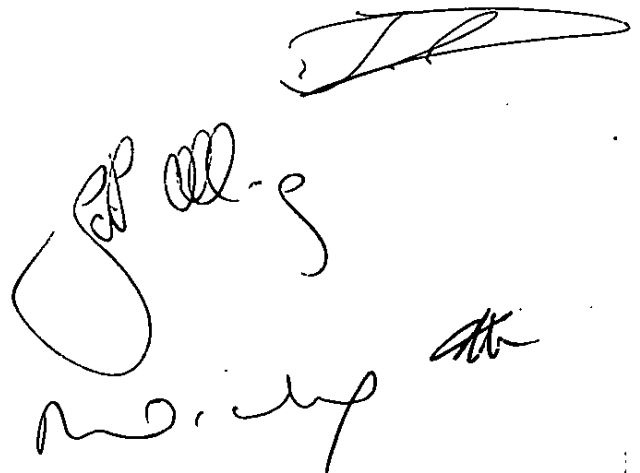
Jundu Pty Ltd as trustee for Hills of Carmel Estate
Partnership

Mogul Stud Pty Ltd

MO MILLS
OAKLEY

Level 12, 400 George Street
Sydney NSW 2000
Australia

T +61 2 8289 5800
F +61 2 9247 1315
Ref 3184741



Handwritten signatures and initials, including a large signature at the top right, a signature in the middle, and initials 'M.O.' below it.



Handwritten signatures and initials, including a signature 'R. Ryan' and a large signature at the bottom right.

Contents

1. Defined meanings	1
2. Variation of the Planning Agreement	1
3. Registration	2
4. Definitions and interpretation	3
Schedule 1 – Drawings	5
Executed as a deed.	11
Annexure A – Planning Agreement as varied by this Deed	12

Deed of Variation of Planning Agreement

Dated 13 DECEMBER 2018

Parties

1. The Hills Shire Council of 3 Columbia Court, Norwest NSW 2153 (Council).
2. Jundu Pty Ltd as trustee for Hills of Carmel Estate Partnership, ACN 055 425 780 Level 6, 131 Macquarie St, Sydney NSW 2000 (the Developer)
3. Mogul Stud Pty Ltd ACN 000 331 840 of Level 6, 131 Macquarie St, Sydney NSW 2000 (the Developer)

Background

- A. The Council and the Developer have entered into the Planning Agreement.
- B. The Developer has proposed that changes be made to the description of the land to which the Planning Agreement applies.
- C. The purpose of the change is to extend the operation of the Planning Agreement to include additional land.
- D. In accordance with section 25C(3) of the *Environmental Planning and Assessment Regulation 2000* the Parties agree to amend the Planning Agreement by entering into this Deed.
- E. This Deed is not a planning agreement.
- F. This Deed is an amendment of the Planning Agreement within the meaning of section 7.6(2) of the Act.
- G. The Parties agree that from the date of execution of this Deed the Planning Agreement will be varied as provided for by this Deed.

Operative provisions

1. Defined meanings

Words used in this Deed and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause of this Deed.

2. Variation of the Planning Agreement

- 2.1 From the date of this Deed the terms of the Planning Agreement are varied as follows:

- (a) In clause 17.1, in the definition of 'Site', insert after (x):
 - (y) Lot 10 DP 883323;
 - (z) Lot 44 DP 39157;
 - (aa) Lot 45 DP 39157;
 - (bb) Lot 46 DP 39157;
- (b) In clause 17.1, in the definition of 'Site', omit after (bb):

7 November 2017

and insert:
- (c) 16 August 2018 The drawings under the heading 'Sheet 1: Site details' in Sheet 1 of Schedule 2 of the Planning Agreement is omitted and the drawings contained in sheet 1 of schedule 1 of this Deed is instead inserted.
- (d) The drawing under the heading 'Sheet 2: Indicative Staging Plan' in Sheet 2 of Schedule 2 of the Planning Agreement is omitted and the plan contained in Sheet 2 of Schedule 1 of this Deed is inserted instead.
- (e) The drawing under the heading 'Sheet 3: Indicative Layout Plan' in Sheet 3 of schedule 2 of the Planning Agreement is omitted and the plan contained in Sheet 3 of Schedule 1 of this Deed is inserted instead.
- (f) The drawing under the heading 'Sheet 4: Drainage Plan' in Sheet 4 of Schedule 2 of the Planning Agreement is omitted and the plan contained in Sheet 4 Schedule 1 of this Deed is inserted instead.
- (g) The plan under the heading 'Sheet 5: Road and Culvert Plan' in Sheet 5 of schedule 2 of the Planning Agreement is omitted and the plan contained in Sheet 5 of schedule 1 of this Deed is inserted instead.

2.2 As a consequence of clause 2.1, the Planning Agreement is now in the terms set out in Annexure A.

3. Registration

3.1 Developer agreement to registration

The Developer agrees to the registration of this Deed under section 7.6 of the Act in relation to the Developer's Land.

3.2 Registration of this Deed

- (a) Within 60 Business Days of this Deed coming into effect:
 - (i) the Developer at its own expense will take all reasonably practicable steps to obtain the agreement of the persons specified in section 7.6(1) of the Act whose agreement is necessary for the Registration on Title; and
 - (ii) if that agreement is obtained, take all reasonably practicable steps to secure:
 - (A) the execution of any documents; and

- (B) the production of the relevant certificates of title; and
 - (C) the lodgement and registration of this Agreement, by the Registrar-General in the relevant folio of the Register.
- (b) The Developer must give the Council a copy of the relevant folio of the Register and a copy of the registered dealing within 21 Business Days of registration of this Deed.
 - (c) The Council agrees to agree to do all things reasonably required by the Developer to achieve the registration of this Deed.

3.3 Release and discharge of this Deed

- (a) The parties agree to do all things reasonably required by the other party to promptly release and discharge this Deed with respect to its registration on any part or the whole of the Developer's Land, in any circumstances where the Planning Agreement requires or allows the release and discharge of the Planning Agreement in relation to that part or the whole of the Developers Land.
- (b) For avoidance of doubt, clause 9.3 of the Planning Agreement is a provision that requires the release and discharge of the Planning Agreement for the purposes of clause 3.3(a).

4. Definitions and interpretation

4.1 Definitions

In this Deed unless the context otherwise requires the following words have these meanings:

Act means the *Environmental Planning and Assessment Act 1979*;

Developer's Land means any land on which the Planning Agreement is Registered on Title;

Parties means the Council and the Developer;

Planning Agreement means the Planning Agreement entered into by the Parties and dated 19 June 2018 as subsequently varied;

Registration on Title means the registration of this Agreement under section 7.6 of the Act in the folio of the Register kept under the *Real Property Act 1900* in relation to the Developer's Land, and **Registered on Title** refers to the state of the Agreement being so registered.

4.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;

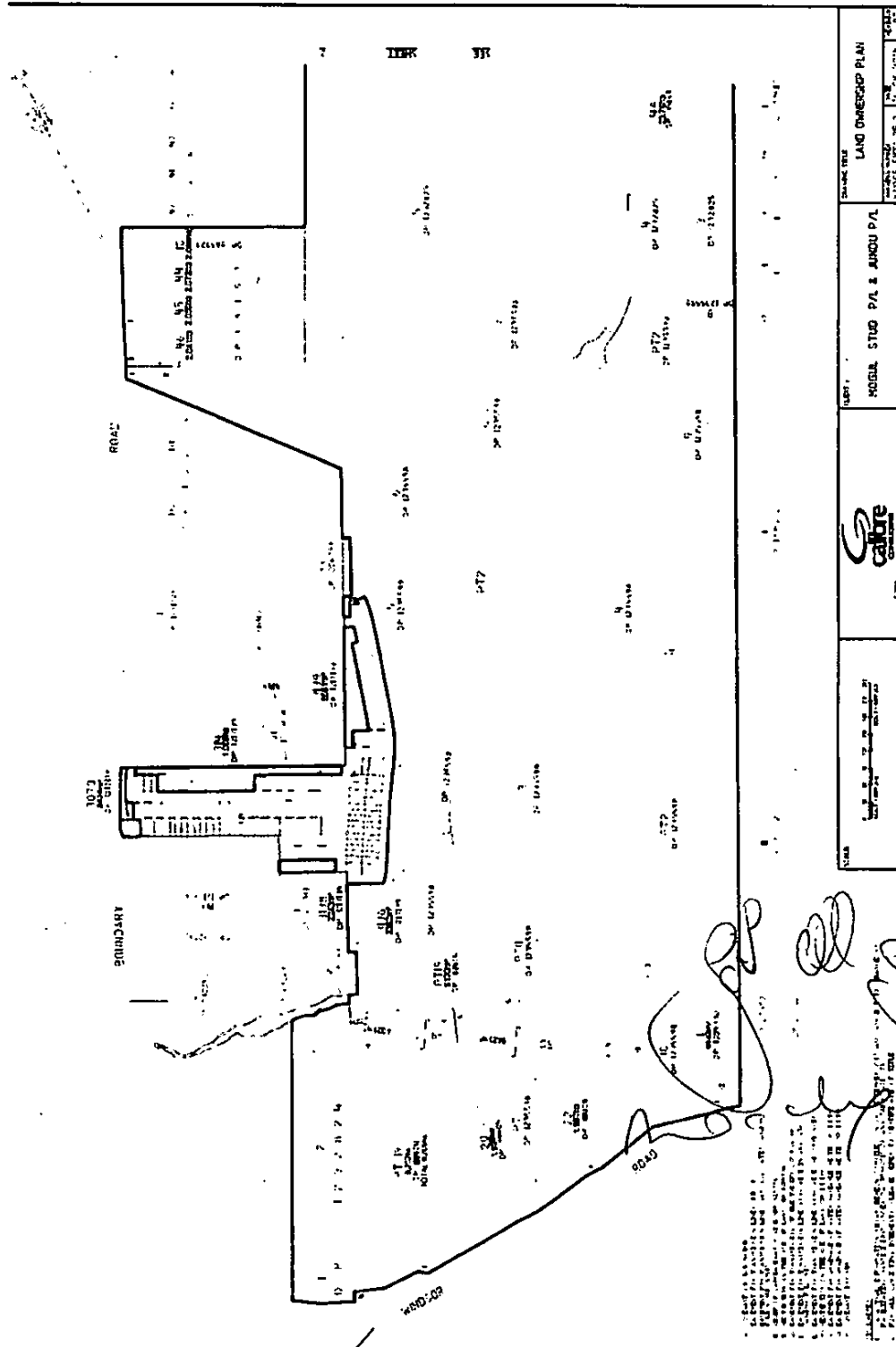
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or Deed includes that agreement or Deed as amended at any time;
- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (j) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (k) reference to an item is a reference to an item in the schedule to this Deed;
- (l) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed;
- (m) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause or subclause in this Deed means a cross-reference to that clause or subclause; and
- (n) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

4.3 Explanatory Note

In accordance with clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000* the explanatory note must not be used to assist in construing this Agreement.

Schedule 1 – Drawings

Sheet 1: Site details

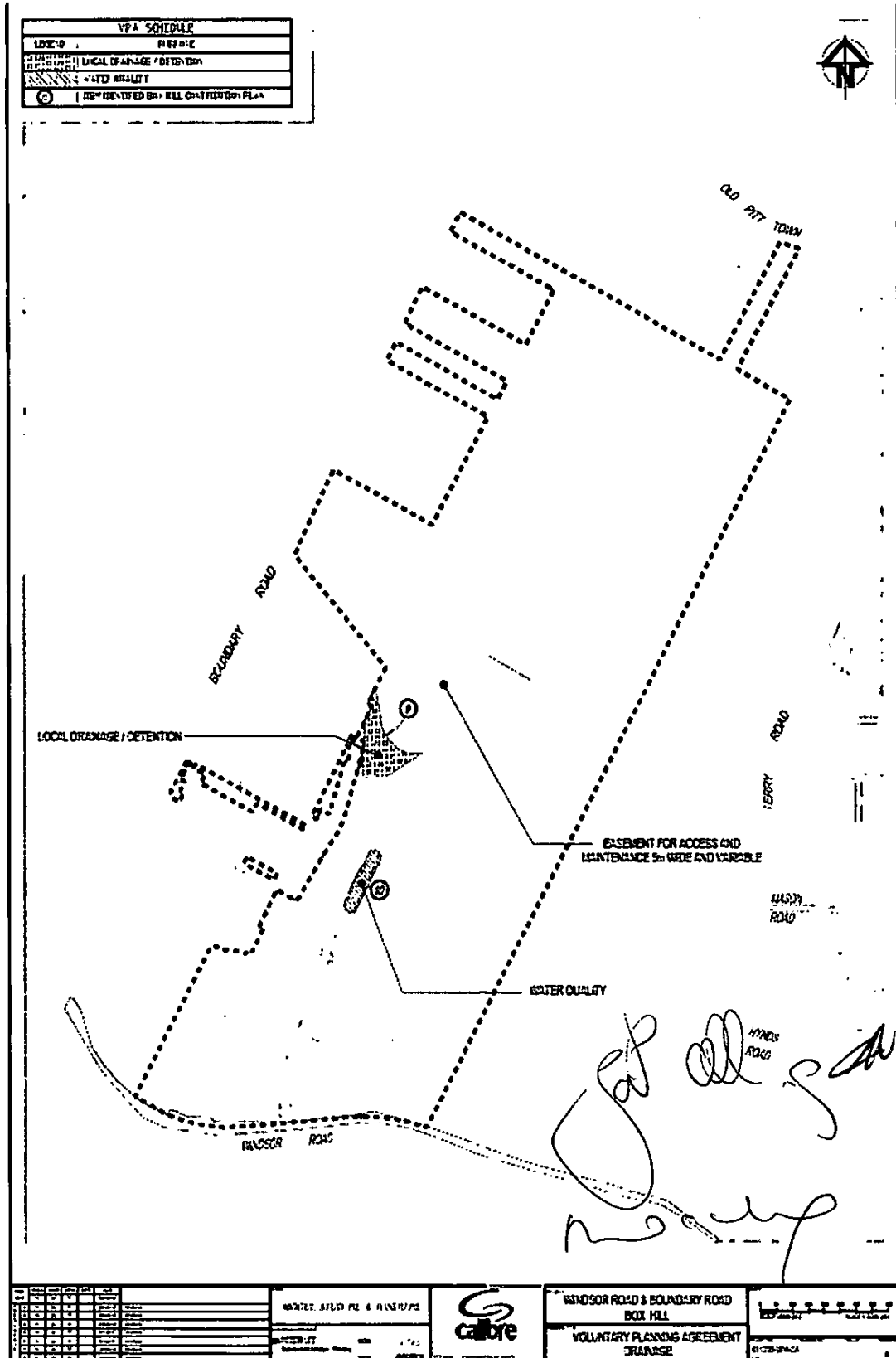


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5

Sheet 4: Drainage Plan

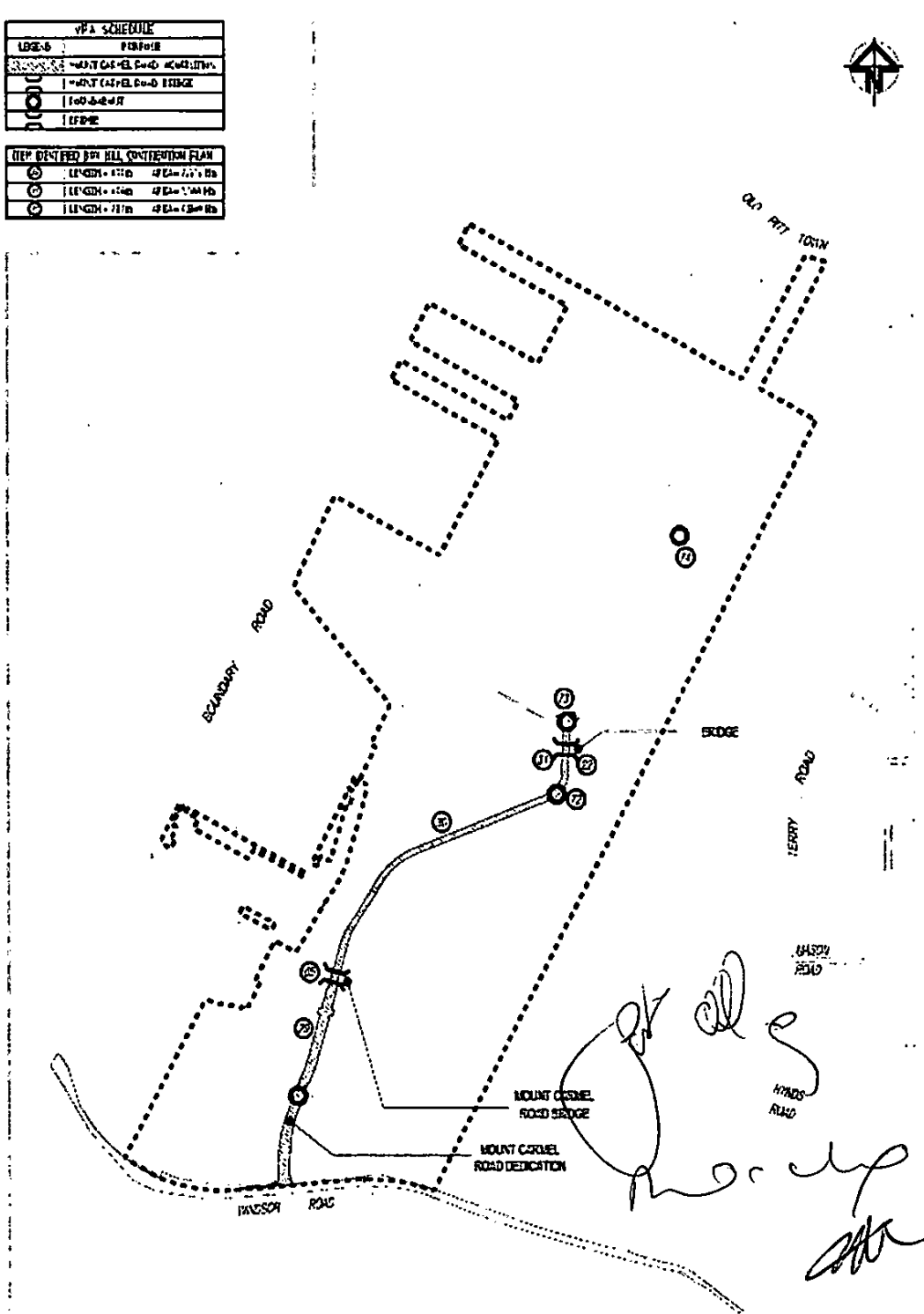


Ryan *at all go*

Sheet 5: Road and Culvert Plan

VPA SCHEDULE	
LOGE-5	PERFORME
1	MOUNT CAROL ROAD BRIDGE
2	1000-4-4-R
3	1000-4-4-R

ITEM IDENTIFIED BY HILL CONTINUUM PLAN	
1	LENGTH = 117m (R2) = 1.17m R2
2	LENGTH = 117m (R2) = 1.17m R2
3	LENGTH = 117m (R2) = 1.17m R2



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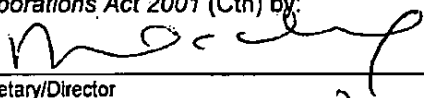
Rhyan Chad
 Page 17 of 74

Executed as a deed.


The common seal of The Hills Shire Council
was affixed under a resolution passed by council
on 27th November 2018
2018 in the presence of:

 General Manager		 Mayor
_____	_____	_____
Print name. MICHAEL EDMAL	Print name MICHELLE BYRNE	

Executed on behalf of Jundu Pty Ltd as trustee
for Hills of Carmel Estate Partnership ACN 055
425 780 in accordance with s127(1) of the
Corporations Act 2001 (Cth) by:

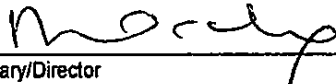

Secretary/Director

Print name MICHAEL SCHERUBAS



Director

Print name DEBORAH REDELMAN

Executed on behalf of Mogul Stud Pty Ltd ACN
00 331 840 in accordance with s127(1) of the
Corporations Act 2001 (Cth) by:


Secretary/Director

Print name MICHAEL SCHERUBAS


Director

Print name DEBORAH REDELMAN

Annexure A – Planning Agreement as varied by this Deed

Planning Agreement

The Hills Shire Council

Jundu Pty Ltd as trustee for Hills of Carmel Estate
Partnership

Mogul Stud Pty Ltd



Level 12, 400 George Street
Sydney NSW 2000
Australia

T +61 2 8289 5800
F +61 2 9247 1315
Ref:3184741

Contents

1. Defined meanings	1
2. Status of this Agreement	2
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Planning Agreement

Dated

Parties

1. **The Hills Shire Council** of 3 Columbia Court, Norwest NSW 2153 (**the Council**)
2. **Jundu Pty Ltd as trustee for Hills of Carmel Estate Partnership** ACN 055 425 780 of Level 6, 131 Macquarie St, Sydney NSW 2000 (**the Developer**)
3. **Mogul Stud Pty Ltd** ACN 000 331 840 of Level 6, 131 Macquarie St, Sydney NSW 2000 (**the Developer**)

Background

- A. The Developer is the owner of the Site.
- B. The Site is located within the Box Hill Precinct of the North West Growth Centre (identified by the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*).
- C. The relevant planning controls envisage that the Site will be developed for urban purposes.
- D. The Developer has made development applications to the Council (DA 1509/2015/JPZ, DA 1657/2015/ZB, DA 555/2017/ZB, DA 1415/2017/ZB, DA987/2017/ZB and DA573/2017/ZB) and proposes to make further development applications to the Council.
- E. In general terms, these development applications are (and will be) intended to facilitate the development of the Site for urban purposes.
- F. The Developer has offered to enter into this Agreement if Development Consents for the Development are granted and acted upon.
- G. The Agreement provides for the making of certain Development Contributions by the Developer in the circumstances set out within this Agreement.
- H. These Development Contributions are to be used for or applied towards a public purpose.
- I. The Developer will either be credited against its Section 94 Contributions or reimbursed by the Council in relation to the agreed cost of each Development Contribution.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Status of this Agreement

2.1 Planning Agreement

This Agreement is a planning agreement within the meaning of section 93F(1) of the Act.

2.2 Land

This Agreement applies to the Land.

2.3 Development

This Agreement applies to the Development.

2.4 Effect and obligations

Despite any other provision of this Agreement, the Developer is under no obligation to make any Development Contribution in accordance with this Agreement unless:

- (a) a Development Consent has been granted to carry out some or all of the Development;
- (b) a Construction Certificate has been issued in relation to that Development Consent;
- (c) the Development has been physically commenced in reliance on the Development Consent; and
- (d) the relevant circumstances set out in this Agreement as to when the Development Contribution must be made have arisen.

2.5 Security

The Council is satisfied this Agreement provides the enforcement of this Agreement by a suitable means in the event of a breach of this Agreement by the Developer, particularly by:

- (a) the ability for a Subdivision Certificate to be withheld by reason of section 109H(2) of the Act when read in conjunction with clause 4.1(a); and
- (b) the provisions of clause 9, clause 10 and clause 11.

3. Application of other development contribution provisions

3.1 Local infrastructure contributions — general

- (a) This Agreement excludes the application of section 94 of the Act to the Development, but only to the extent provided for in clause 8.2 and clause 8.4(d).
- (b) The benefits under this Agreement are to be taken into consideration in determining a Section 94 Contribution to the extent that is provided for in this Agreement.

3.2 Local infrastructure contributions — fixed levies

This Agreement wholly excludes the application of section 94A of the Act to the Development.

3.3 Special infrastructure contributions

This Agreement does not exclude the application of section 94EF of the Act.

3.4 Continuing application to Final Lots

For avoidance of doubt, this clause 3 does not cease to apply merely because this Agreement is not registered on the title of a Final Lot or because the owner of a Final Lot is not a party to this Agreement.

4. Development Contributions

4.1 Nature, extent and timing

- (a) The Developer must make the Development Contribution in Column 3 of the Table at the point in time set out in Column 5 of the Table.
- (b) In relation to a Work, the reference 'make' in clause 4.1(a) is a reference to the completion of the Work for the purposes of this Agreement.
- (c) Nothing in this Agreement precludes the Developer from electing to make a Development Contribution earlier than it is required to do so.

4.2 Public purpose of the Development Contributions

- (a) Each Development Contribution must be used for or applied towards the relevant public purpose set out in Column 4 of the Table.
- (b) Despite clause 4.2(a), the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the relevant public purpose set out in Column 4 of the Table if:
 - (i) at least five years has elapsed since the Defect Liability Period for the relevant Development Contribution ended; and
 - (ii) the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose.
- (c) This clause 4.2 has effect after the termination of this Agreement.

4.3 Values to be indexed

- (a) The Value of each Item is to be indexed in accordance with this clause and, despite other provisions of this Agreement (including Schedule 1 and clause 8) the relevant amount for an Item in Column 6 of the Table at a given point in time is taken to be the indexed amount.
- (b) The indexed amount of the Value at a given point in time is determined by the following formula:

$$\$V \times (1+P/100)^Y$$

Where:

\$V is the relevant Value for the Item

P is the Percentage

Y is the number of complete 12-month periods that have elapsed since 1 July 2016.

Note: The nominal Value amounts for each Item in Column 6 of the Table are based on the figures agreed between the parties as reflecting the relevant values as at 1 July 2016.

(c) In this clause **Percentage** means:

- (i) in relation to works Items, 3.33; and
- (ii) in relation to land dedication Items, 2.90.

Note: These percentages have been inserted because, at the time this Agreement was entered into, table 17 of the Contributions Plan indicated that net present values in the plan had been calculated on the basis of an escalation of land costs at 2.90 per cent and an annual escalation of construction costs of 3.33 per cent.

5. Dedicating land as a Development Contribution

5.1 When land is taken to be dedicated

A Development Contribution that is the dedication of land is taken to have been made (and made free of cost) if:

- (a) the land is dedicated as a public reserve or drainage reserve and vests in the Council for an estate in fee simple under section 49 of the *Local Government Act 1993*;
- (b) if dedication is to be effected by the registration of a plan of subdivision under section 9 of the *Roads Act 1993* and vested in fee simple in the Council under section 145 of that Act; or
- (c) the Council is given an instrument by the Developer, in registrable form, that (when registered) will effect the transfer of the title to the land to the Council.

5.2 Ancillary obligations of the parties in relation to the dedication of land

- (a) When the Council has been given an instrument by the Developer under clause 5.1(c), the Council must promptly do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (b) The Developer must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), when the Developer transfers that land to the Council under this Agreement.
- (c) For avoidance of doubt, clause 5.2(b) does not apply in relation to statutory rights that exist or arise under:
 - (i) section 37 or 44 of the *Sydney Water Act 1994*;
 - (ii) section 5 of the *Coal Acquisition Act 1981*;
 - (iii) section 51 or 53 of the *Electricity Supply Act 1995*;
 - (iv) section 52 of the *Gas Supply Act 1996*;
 - (v) section 59A of the *Local Government Act 1993*;

- (vi) section 379AA of the *Mining Act 1992* or any provision of that Act relating to an authority within the meaning of that Act;
 - (vii) any provision of the *Petroleum (Onshore) Act 1991* relating to a petroleum title within the meaning of that Act;
 - (viii) Schedule 6B of the *Transport Administration Act 1988*;
 - (ix) section 64 of the *Water Industry Competition Act 2006*;
 - (x) section 372B(3) of the *Water Management Act 2000*; or
 - (xi) section 29 of the *Water NSW Act 2014*.
- (d) Despite clause 5.2(b), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance or affectation, then:
- (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,the Council must not withhold its agreement unreasonably; and
 - (iii) in other circumstances, the Council may withhold its agreement at its absolute discretion.

5.3 No warranties, etc unless express or required

The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the Dedicated Land unless:

- (a) that warranty, representation, agreement or term is contained in the express terms of this Agreement; or
- (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.

5.4 The Developer's warranties in relation to the Dedicated Land

The Developer represents and warrants that the details of the ownership of the Dedicated Land are as set out in Sheet 1 of Schedule 2.

6. Carrying out of Work as a Development Contribution

6.1 Construction Certificates

The Developer:

- (a) must not make; and

- (b) must not permit, authorise or consent to any other person to make;

an application for the issue of (or modification of) a Construction Certificate for a Work (that is required to be carried out by the Developer under this Agreement) to any certifying authority, other than the Council.

6.2 Manner of the carrying out of Work

Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in a proper and workmanlike manner in accordance with:

- (a) the Development Consent that authorises the carrying out of the Work (if any); and
- (b) the consent given under section 138 of the *Roads Act 1993* (if any).

Nothing in this Agreement may be taken to be an authorisation to carry out any Work without Development Consent or a consent given under section 138 of the *Roads Act 1993*.

6.3 Access to land by Developer

- (a) The Council authorises the Developer to enter, occupy and use any land that is reasonably necessary for the purpose of performing its obligations under this Agreement.
- (b) Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 6.3(a).
- (c) Nothing in this Agreement constitutes a consent to carry out work under section 138 of the *Roads Act 1993*.

6.4 Access to land by Council

- (a) The Council may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- (b) The Council must give the Developer prior reasonable notice before it enters land under this clause 6.4.
- (c) Nothing in this Agreement creates or gives the Council any estate or interest in any part of the land referred to in this clause 6.4.

6.5 Council's obligations relating to Work

- (a) The Council must not unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement.
- (b) The Council must use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

6.6 Protection of people, property and utilities

- (a) The Developer must, in performing its obligations under this Agreement, as far as is reasonably practicable:
 - (i) take all necessary measures to protect people and property;

- (ii) avoid, on public roads, unnecessary interference with the passage of people and vehicles; and
 - (iii) prevent private or public nuisances (including noise and disturbances of an unreasonable nature).
- (b) Without limiting clause 6.6(a), the Developer must not obstruct, interfere with, impair or damage any:
- (i) public road, public footpath, public cycleway or other public thoroughfare; or
 - (ii) any publicly-owned pipe, conduit, drain, watercourse or other such utility or service on any land,

except as authorised in accordance with the relevant legislation and Approvals.

6.7 Repair of damage

- (a) The Developer is to maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the parties.
- (b) The Developer is to carry out its obligation under clause 6.7(a) at its own cost.

6.8 Completion of Work

- (a) The Developer is to give the Council written notice of the date on which it intends to complete the Work required to be carried out under this Agreement.
- (b) The Council is to inspect the Work the subject of the notice referred to in clause 6.8(a) within 14 days of the date specified in the notice for completion of the Work.
- (c) Work required to be carried out by the Developer under this Agreement is completed for the purposes of this Agreement when the Council gives a written notice to the Developer to that effect (**the Completion Notice**).
- (d) The Council must not unreasonably withhold or delay the Completion Notice.
- (e) If the Council is the owner of the land on which Work the subject of Completion Notice is located, the Council assumes responsibility for the Work upon the issuing of the Completion Notice.
- (f) If clause 6.8(e) does not apply when a Completion Notice is issued, the Council assumes responsibility for the Work if (and when) the Council becomes the owner of the land on which the Work is located.
- (g) Before the Council gives the Developer a Completion Notice, it may, acting reasonably, give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- (h) The Developer, at its own cost, is to promptly comply with any direction given in accordance with clause 6.8(g).

6.9 Defect rectification

- (a) The Council may, acting reasonably, give the Developer a Rectification Notice during the Defects Liability Period.

- (b) 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.
- (c) The Council is to do such things as are reasonably necessary to enable the Developer to comply with such a Rectification Notice.

6.10 Works-as-executed-plan

- (a) No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- (b) The Developer, being the copyright owner in the plan referred to in clause 6.10(a), gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

6.11 Equipment removal

When Work on any Council owned or controlled land is completed for the purposes of this Agreement, the Developer, without unreasonable delay, is to:

- (a) remove any Equipment from land and make good any damage or disturbance to the land as a result of that removal; and
- (b) leave the land in a neat and tidy state, clean and free of rubbish.

6.12 Insurance

- (a) Prior to commencing the construction of any Work (required under this Agreement), the Developer must take out and keep current to the reasonable satisfaction of the Council the following insurances in relation to the relevant Work up until the Work is taken to have been completed in accordance with this Agreement:
 - (i) contract works insurance, noting the Council as an interested party, for the full replacement value of the Work (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works;
 - (ii) public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party;
 - (iii) workers compensation insurance as required by law; and
 - (iv) any other insurance required by law.
- (b) If the Developer does not comply with clause 6.12(a), the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as a debt due in a court of competent jurisdiction.
- (c) The Developer is not to commence the construction of any Work (required under this Agreement) unless it has first provided to the Council satisfactory written evidence of the relevant insurances specified in clause 6.12(a).

6.13 Infrastructure contracts

- (a) For the purposes of this clause 6.12 an **Infrastructure Contract** means a contract to be entered into by the Developer with a contractor with an estimated consideration of \$150,000 or more (excluding GST) for the provision of any Work described in the Table.
- (b) If clause 163(2) of the *Local Government (General) Regulation 2005* is amended to increase the figure of \$150,000 set out in that clause, the reference to \$150,000 in clause 6.13(a) is taken to be a reference to that increased figure for the time being.
- (c) The Developer must not enter into an Infrastructure Contract unless such contract is with a contractor selected in accordance with the process specified in clause 6.13(e).
- (d) Despite 6.13(c), the Council may — after the process specified in clause 6.13(e) has been carried out without the Developer awarding the contract to an acceptable contractor — exempt the Developer from the requirements of clause 6.13(e) if:
 - (i) the Council agrees in writing to the awarding of the contract to some other contractor selected by the Developer; and
 - (ii) the Developer provides the Council with full details of the manner of selection of that other contractor and reasons acceptable to the Council as to why the contract was not awarded to a contractor selected in accordance with clause 6.13(e).
- (e) The process to be followed for selection of a contractor by the Developer referred to in clause 6.13(c) is as follows:
 - (i) The Developer and the Council must have their respective representatives meet to determine whether the contractor for the proposed Infrastructure Contract will be selected by an open or selective tendering process:
 - (A) **Selective tendering process**

If a selective tendering process is determined then:

 - (I) the Council and the Developer must select a group of not less than three prospective tenderers to which invitations to tender for the contract will be issued;
 - (II) such invitees must each be known to operate within the geographic area of the Land and have expertise and experience in the type of Work to which the proposed contract relates;
 - (III) the invitations must provide the prospective tenderers at least 21 days within which to lodge their tenders with the Developer; and
 - (IV) the tenders received by the Developer must be opened in the presence of an officer of the Council on the closing date for the receipt of tenders which officer may take details of the tenders received (however, there is no requirement for a Council officer to be present if the officer fails to attend in circumstances when the Council has received written notice of the time, date and place for the opening of tenders at least seven days beforehand).

(B) Open tendering process

If an open tendering process is determined then:

(I) the Developer must advertise its intention of calling tenders for the contract in a Sydney metropolitan daily newspaper and a newspaper circulating in the Council's local government area:

(1) seeking interested prospective tenderers to contact the Developer for details of the proposed contract; and

(2) indicating the closing date for the receipt of tenders which date must be not sooner than:

(a) 21 days from the date of issue of the last invitation to tender; or

(b) 28 days from the date of publication of the first advertisement,

whichever date is the sooner;

(II) each of the advertisements must be published twice in both newspapers; and

(III) the Developer must provide a prospective tenderer with details of the proposed contract and tender process not later than two business days after a respondent to an advertisement requests such details.

(ii) The invitations to tenderers in both the selective and open tendering processes is to:

(A) be prepared and issued by the Developer;

(B) indicate to prospective tenderers the criteria upon which tenders will be assessed;

(C) provide sufficient details of the proposed contract to enable proper consideration of costing by prospective tenderers; and

(D) provide the name of a suitable person engaged by the Developer to contact with enquiries.

(iii) Any draft or final Infrastructure Contract is to be prepared and issued by the Developer, however it must including a provision giving effect to the requirements set out in clause 6.1.

(iv) Upon receipt of tenders from the selective tendering process or from respondents to the open tendering process, representatives of the Developer and the Council must meet to seek to agree upon a tenderer which will best be able to perform the contract having regard to the interests of both the Developer and the Council.

(v) In all aspects of the tendering processes outlined in this clause 6.13 the Developer must comply with the Council's *Statement of Business Ethics* (adopted by the General Manager, September 2013) so far as that statement applies to a contractor doing business with the Council.

- (f) Upon selection of the preferred tenderer either under clause 6.13(d) or clause 6.13(e) (as the case may be) the Developer may enter into the relevant Infrastructure Contract and not otherwise (subject to clause 6.13(h)).
- (g) Any failure by the Developer and the Council (or their representatives) to agree under either clause 6.13(e), clause 6.13(e)(i)(A)(i) or clause 6.13(e)(iv) may be conclusively resolved, by expert decision under clause 15, which will operate in lieu of an agreement.
- (h) The Council may, by written notice given to the Developer, exempt any proposed contract from the requirements of this clause 6.13; provided that any such exemption may not be given conditionally, unless those conditions have been agreed to in writing by the Developer.
- (i) Despite the other provisions of this clause 6.13, any Infrastructure Contract that is to be entered into within the first three years of the Agreement may, at the election of the Developer, be entered into following a selective tendering process under clause 6.13(e)(i)(A), provided that the prospective tenderers being the following companies (or their related entities):
 - (i) Western Earthmoving Pty Ltd, ABN 91 000 234 140;
 - (ii) TJ & RF Fordham Pty Ltd trading as TRN Group, ABN 56 000 548354;
 - (iii) Daracon Contractors Pty Ltd, ABN 82 002 344 667; and
 - (iv) JK Williams Contracting Pty Ltd, ABN 45 056 566 771.

7. Variations to Development Contributions

7.1 Variation may be requested and agreed to

- (a) The Developer may, in its absolute discretion, request that the Council approve a variation to the Development Contributions (that is, a change to the any of the provisions in Schedule 1).
- (b) The Council may, in its absolute discretion, agree to a variation of the Development Contributions, provided that the variation is generally consistent with the intended objectives and outcomes of this Agreement.

7.2 Effect of variation

An agreed written variation to the Development Contributions under this clause 7 has effect as if it formed part of Schedule 1 (and Schedule 1 has no effect to the extent of any inconsistency with that document) and no amendment to this Agreement is required.

8. Credit for Development Contributions

8.1 Facility categories

In this clause:

- (a) Development Contributions requiring the carrying out of Work for the public purpose of 'transport' (as per Column 4 of the Table) are taken to be within the same facility category as Section 94 Contributions imposed in relation to 'transport capital' or equivalent;

- (b) Development Contributions requiring the carrying out of Work for the public purpose of 'water management' (as per Column 4 of the Table) are taken to be within the same facility category as Section 94 Contributions imposed in relation to 'water management capital' or equivalent;
- (c) Development Contributions requiring the dedication of land for the public purpose of 'transport' (as per Column 4 of the Table) are taken to be within the same facility category as Section 94 Contributions imposed in relation to 'transport land' or equivalent;
- (d) Development Contributions requiring the dedication of land for the public purpose of 'water management' (as per Column 4 of the Table) are taken to be within the same facility category as Section 94 Contributions imposed in relation to 'water management land' or equivalent;

8.2 Discharge of Section 94 Contributions by the making of Development Contributions

The Section 94 Contributions for the Development in relation to a facility category may be discharged by the Developer meeting its obligations under this Agreement (but only to the extent of the sum of the Values for the Items that relate to that facility category).

8.3 Discharge Documents

- (a) In relation to a Development Contribution that requires the carrying out of Work, a Completion Notice is taken to be a Discharge Document.
- (b) In relation to a Development Contribution that requires the dedication of land, where that dedication is effected by the registration of a plan of subdivision, that registered plan of subdivision is taken to be a Discharge Document in relation to that Development Contribution.
- (c) In other circumstances, Discharge Document is a certificate issued by the Council, in relation to a given Development Contribution, in accordance with the following procedure:
 - (i) The Developer may give the Council a written request to issue a Discharge Document.
 - (ii) The Council must, within 45 days of receiving the request decide (acting reasonably) whether it considers the Developer has met the relevant obligation.
 - (iii) If the Council considers that the Developer has met the relevant obligation, the Council must issue a Discharge Document confirming the same.
 - (iv) If the Council does not consider that the Developer has met the relevant obligation, the Council will notify the Developer and provide an explanation as to why the Council considers that the Developer has not met the relevant obligation and, if applicable, provide details of:
 - (i) any additional reasonable tasks which must be undertaken; and/or
 - (ii) any reasonable information or documents which must be provided,by the Developer, in order to meet the relevant obligation.
 - (v) If clause 8.3(c)(iv) applies, the Developer may, after taking into account the Council's explanation and undertaking the tasks or providing the information or documents required, re-submit a request under clause 8.3(c)(i).

8.4 Use of Discharge Documents to offset Section 94 Contributions

- (a) Where there is a requirement to pay a Section 94 Contribution under the terms of a Development Consent for any part of the Development, the Developer may submit a copy of a Discharge Document to the Council in lieu of the payment of some or all of the Section 94 Contribution, provided that:
- (i) The Developer nominates the amount of the Section 94 Contribution to be discharged in a written notice that accompanies the copy of the Discharge Document (a **Nomination**).
 - (ii) The Section 94 Contribution amount to be discharged falls within the same facility category of the Development Contribution to which the Discharge Document relates.
 - (iii) The total amount that is Nominated by the Developer in relation to a given Development Contribution does not exceed the Value for that Item (including any amounts Nominated by the Developer in relation to the same Development Contribution on previous occasions).
 - (iv) Any part of the Value for that Item that has been reimbursed under clause 8.5 is not the subject of a Nomination.
- (b) For the purposes of clause 8.4(a)(iii) and 8.4(a)(iv) past amounts Nominated or reimbursed are to be indexed in accordance with clause 4.3.
- (c) For the purposes of clause 8.4(a)(iii) a past amount Nominated is only taken to have been previously Nominated if it actually resulted in a discharge of a Section 94 Contribution (to the extent of the past Nomination) under clause 8.4(d).
- (d) Despite section 94 of the Act, a Section 94 Contribution is not required to be paid to the extent of any Nomination that is made in accordance with clause 8.4(a).

8.5 Reimbursements

- (a) This clause 8.5 applies when the Developer has a Discharge Document for a Development Contribution, but is unable to Nominate the full Value for that Item.
- (b) The Developer is taken to be unable to Nominate the full Value if:
- (i) one or more Development Consent(s) which the Developer intends to implement (at the given time) require a Section 94 Contribution to be paid; and
 - (ii) either:
 - (A) those Development Consent(s) do not require a Section 94 Contribution to be paid in relation to the relevant facility category for that Development; or
 - (B) those Development Consent(s) require a contribution amount for that category, but it falls short of the amount that the Developer could otherwise Nominate.
- (c) When this clause 8.5 applies the Developer is entitled to lodge a claim for reimbursement from the Council (a **Reimbursement Claim**).
- (d) A Reimbursement Claim cannot be made in relation to any portion of the Value for an Item that has both:

- (i) already been the subject of a Nomination; and
 - (ii) actually resulted in a discharge of a Section 94 Contribution (to the extent of the Nomination) under clause 8.4(d).
- (e) A Reimbursement Claim cannot exceed:
- (i) the amount that could be otherwise nominated under clause 8.4(a) (if the circumstances set out in clause 8.5(b)(ii) did not exist); and
 - (ii) an amount actually paid as Section 94 Contributions under the Development Consent(s) referred to in clause 8.5(b)(i).
- (f) If the whole of an amount actually paid as Section 94 Contributions is used to justify a Reimbursement Claim (under clause 8.5(e)(ii)) that amount cannot be used subsequently to justify a new Reimbursement Claim.
- (g) If a portion of an amount actually paid as Section 94 Contributions is used to justify a Reimbursement Claim (under clause 8.5(e)(ii)) that portion cannot be used subsequently to justify a new Reimbursement Claim (although the unused portion can be so used).
- (h) When a Reimbursement Claim is made the Council must promptly reimburse the sum so claimed (no later than the 14th day of the month following the month in which the written claim is lodged with the Council).
- (i) A Reimbursement Claim cannot be made in relation to Items 10E, 22L, 29L, 30L, 31L, 65L, 72L, 73L, 74L and 81L, however this does not affect:
- (i) the Developer's right to a discharge of a Section 94 Contribution (to the extent of the Nomination) under clause 8.4(d) in relation to those Items; and
 - (ii) the Developer's right to prioritise those Items for the discharge of a Section 94 Contribution under clause 8.4(d) ahead of any Items that may be the subject of a Reimbursement Claim.

Note: At this time that this agreement was entered into, the Contributions Plan included (in section 2.18, page 12) the following provision:

This plan expressly authorises monetary s94 contributions paid for different purposes to be pooled and applied (progressively or otherwise) for those purposes.

9. Registration

9.1 Developer agreement to registration

The Developer agrees to the registration of this Agreement under section 93H of the Act in relation to the Site.

9.2 Registration of this Agreement

- (a) Within 60 Business Days of this Agreement coming into effect:
- (i) the Developer at its own expense will take all reasonably practicable steps to obtain the agreement of the persons specified in section 93H(1) of the Act whose agreement is necessary for the Registration on Title; and

- (ii) if that agreement is obtained, take all reasonably practicable steps to secure:
 - (A) the execution of any documents; and
 - (B) the production of the relevant certificates of title; and
 - (C) the lodgement and registration of this Agreement, by the Registrar-General in the relevant folios of the Register.

- (b) The Developer must give the Council a copy of the relevant folios of the Register and a copy of the registered dealing within 21 Business Days of registration of this Agreement.

9.3 Release and discharge of this Agreement

The parties agree to do all things reasonably required by the other party to promptly release and discharge this Agreement with respect to:

- (a) a Final Lot or Service Lot, upon its creation;
- (b) all parts of the Site, upon this Agreement being terminated.

10. Transfer, assignment or novation

10.1 Consent for transfer of Relevant Lots

- (a) The Developer must not transfer the Site or any part of the Site to any person without the consent of the Council.
- (b) This clause 10.1 does not apply to:
 - (i) the dedication of the Dedicated Land to the Council; or
 - (ii) to the conversion of that part of the Site that is not Dedicated Land into common property (within the meaning of the *Strata Schemes Management Act 1996*);
 - (iii) to the conversion of that part of the Site that is not Dedicated Land into association property (within the meaning of the *Community Land Management Act 1989*); or
 - (iv) the transfer of a Service Lot or Final Lot.

10.2 Consent for assignment or novation of this Agreement

- (a) The Developer must not assign or novate to any person its rights or obligations under this Agreement without the consent of the Council.
- (b) For avoidance of doubt, this clause 10.2 does not preclude the transfer of any part of the Site.

10.3 The giving of consent by the Council

- (a) The Council must give its consent under clause 10.1(a) or clause 10.2(a) if:
 - (i) the Developer has, at no cost to the Council, first procured by the person to whom:

- (A) the land will be transferred; or
- (B) the rights or obligations under this Agreement are to be assigned or novated,

the execution of a deed of novation on reasonable terms (being a deed generally in terms of the Novation Deed); and

- (ii) reasonable evidence has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under this Agreement; and
- (iii) either:
 - (A) there is no current Material Breach of this Agreement by the Developer;
 - (B) there is a current Material Breach of this Agreement, but the Developer has compensated the Council such that the Council is in the same financial position as it would have been had the breach not taken place; or
 - (C) there is a current Material Breach of this Agreement and it is incapable of being remedied, but the breach has not had and is unlikely to have any adverse impact on the Council's financial position.

(b) The Council, on giving consent under clause 10.3(a) must enter into the deed of novation referred to in clause 10.3(a)(i).

(c) In this clause 10.3 **Material Breach** means either or both of the following

- (i) a breach of a significant obligation of a party under this Agreement;
- (ii) a breach of substantial import or consequence to a party by the other party.

10.4 No requirement for consent when Agreement is registered.

Clause 10.1 and clause 10.2 do not apply in connection with the transfer of the whole or any part of the Site if this Agreement is, at the time of transfer, Registered on Title.

10.5 Novation Deed deemed to apply in certain circumstances

If the whole or any part of the Site is transferred without a Novation Deed being entered into (**Transferred Land**), and this Agreement is registered on the title to the Site, then this Agreement is deemed to include the provisions of the Novation Deed as if it had been entered into:

- (a) by the person who has ceased to own the Transferred Land (who is taken to be the Existing Developer in the Novation Deed);
- (b) by the person who has become the owner of the Transferred Land (who is taken to be the New Developer in the Novation Deed); and
- (c) by the Council,

on the basis that:

- (d) the Effective Date is either:

- (i) if the New Developer was not a party to the Agreement until the transfer of the Transferred Land, the date that the New Developer become a Party under section 93H(3) of the Act; or
- (ii) if the New Developer was a party prior to the transfer of the Transferred Land, the date that the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the Transferred Land from the Existing Developer to the New Developer.

11. Enforcement in relation to the dedication of land

11.1 Agreement under the Just Terms Act

- (a) Subject to clause 11.2, if the Developer does not dedicate the land required to be dedicated under this Agreement:
 - (i) at the time at which it is required to be dedicated; or
 - (ii) at any point after that time,the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- (b) Clause 11.1(a) is an agreement for the purposes of section 30 of the Just Terms Act.

11.2 Limitations on that agreement

The Council may only acquire land pursuant to clause 11.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.

11.3 Ancillary obligations

- (a) If, as a result of the acquisition referred to in clause 11.1, the Council must pay compensation to any person other than the Developer; the Developer must reimburse the Council for that amount, upon a written request being made by the Council.
- (b) The Developer indemnifies and keeps indemnified, the Council against all claims made against the Council under the Just Terms Act as a result of any acquisition by the Council of the whole or any part of the Dedicated Land under clause 11.1(a).
- (c) The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 11, including:
 - (i) signing any documents or forms;
 - (ii) producing certificates of title to the Registrar-General under the Real Property Act; and
 - (iii) paying the Council's reasonable costs arising under this clause 11.

12. Certain stage 12 works and land

12.1 Certain stage 12 works and land

This clause applies in relation to items identified in the Contributions Plan as:

- (a) BH01A 'Combined Basin, raingardens and drainage structures'; and
- (b) CR-A 'Culvert Crossing A'.

and the land on which those works would be constructed (the **Stage 12 Works**).

12.2 Intention of the parties

It is the intention of the parties that the arrangements that will ultimately apply to the Stage 12 Works will be similar to the arrangements for the Items under this Agreement.

12.3 Good faith discussions

- (a) The parties agree to have good faith discussions with a view to achieving the outcome referred to in clause 12.2.
- (b) The parties agree to be open to the possibility of achieving the outcome referred to in clause 12.2 by way of a new planning agreement or a variation to or under this planning agreement.
- (c) This clause 12 does not compel either party to reach any agreement.

13. Termination

13.1 Termination of this Agreement

The Developer may terminate this Agreement by giving written notice to the Council in either of the following circumstances:

- (a) if:
 - (i) there is no Development Consent in force that requires this planning agreement to be entered into as a condition of consent; and
 - (ii) no benefit has been obtained under clauses 8.2 and 8.4(d); or
- (b) the Developer has made the Development Contributions required under this Agreement and any Defect Liability Period has ended.

13.2 Consequences of the termination of this Agreement

- (a) If this Agreement is terminated under clause 13.1:
 - (i) the parties are released and discharged from their obligations under this Agreement; and
 - (ii) the Council must promptly release and return any Security provided by the Developer under this Agreement.

- (b) Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

13.3 Costs and expenses

Despite clause 13.2, termination of this Agreement does not release and/or discharge the Developer from any obligations under clause 14 and clause 16 to pay the Council's reasonable costs and expenses.

14. Breach of obligations

14.1 Breach notice

If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement, it may give a written notice (**Breach Notice**) to the Developer:

- (a) specifying the nature and extent of the breach;
- (b) requiring the Developer to either:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) if the Developer reasonably considers the breach is not capable of rectification, pay a reasonable amount in compensation to the Council in lieu of rectifying the breach,

specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.

- (c) If the Developer:
 - (i) does not comply with a Breach Notice relating to the carrying out of Work under this Agreement; and
 - (ii) has no reasonable excuse for its non-compliance,

the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.

14.2 Costs of remedying a breach

- (a) Any reasonable costs incurred by the Council in remedying a breach in accordance with clause 14.1 may be recovered by the Council as a debt due in a court of competent jurisdiction, but only if there has been an actual breach by the Developer of the obligations under this Agreement that were the subject of the Breach Notice.
- (b) For the purpose of this clause 14.2, the Council's costs of remedying a breach the subject of a Breach Notice include, but are not limited to:
 - (i) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (ii) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and

(iii) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.

(c) Nothing in this clause 14 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Agreement by the Developer, including but not limited to seeking relief in an appropriate court.

15. Dispute resolution

15.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this Agreement (**Dispute**) that dispute must be referred for determination under this clause 15.

15.2 No legal proceedings

- (a) The parties must not bring or maintain any action on any Dispute until it has been referred and determined as provided in this clause 15.
- (b) Clause 15.2(a) does not prevent:
- (i) class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) being commenced, maintained and concluded; or
 - (ii) urgent injunctive relief to keep a particular position.

15.3 Notice of disputes

A party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

15.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice, the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour, within the following seven-day period, to appoint an expert by agreement (**the Expert**). That appointment must be recorded in writing and signed by each nominated officer:
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

15.5 Assistance to the Expert

- (a) Once the Expert has been appointed, the parties must:
- (i) each use their best endeavours to make available to the Expert, all information the Expert requires to settle or determine the Dispute; and

(ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.

(b) The parties may give written submissions to the Expert but must provide copies to the other parties at the same time.

15.6 Expert's decision

(a) The decision of the Expert must:

(i) be in writing and give reasons; and

(ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.

(b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.

(c) The Expert's decision is final and binding on the parties.

(d) The Expert must act as an expert and not as an arbitrator.

15.7 Expert's costs

(a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert, those expenses must be borne by the parties equally.

(b) In determining the apportionment of costs, the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party, in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

15.8 Continual performance

Each party must continue to perform its obligations under this document while any dispute is being determined under this clause 15.

16. General provisions

16.1 Costs

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

(b) The amount referred to in clause 16.1(a) is subject to a cap of \$35,000 exclusive of GST.

(c) The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

16.2 GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document, the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply.

Note: It is the common understanding of the parties that the payment of a Reimbursement Claim is consideration for the performance of work. This means that the parties believe that the Developer will make a taxable supply to the Council in relation to work that is remunerated by the payment of the Reimbursement Claim. The consideration for that taxable supply is the cash payment for the Reimbursement Claim. Accordingly clause 16.2(a) will apply in relation to Reimbursement Claims (and the amount of each Reimbursement Claim would be the 'net consideration' for the supply).

- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement must be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause 16.2 is subject to any other specific agreement regarding the payment of GST on supplies.

16.3 Duties

The party at law to pay stamp duty, must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this document, or any agreement or document executed or effected under this document.

16.4 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

16.5 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post to the address of the recipient specified in this provision or most recently notified by the recipient to the sender.

Addresses for notices:

The Council

The Hills Shire Council
PO Box 7064, Baulkham Hills BC NSW 2153

The Developer

Jundu Pty Ltd as trustee for Hills of Carmel Estate Partnership
PO Box R1849
Royal Exchange NSW 1225

Mogul Stud Pty Ltd
PO Box R1849
Royal Exchange NSW 1225

- (c) A notice to the Developer must be given in relation to each of the persons who are the Developer.

16.6 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

16.7 Amendments

This Agreement may be amended or revoked by further agreement in writing signed by the parties (including by means of a further planning agreement).

16.8 Third parties

This document confers rights only upon a person expressed to be a party and not upon any other person.

16.9 Pre-contractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

16.10 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

16.11 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

16.12 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

16.13 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

16.14 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

16.15 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

16.16 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of, or lien over, the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.
- (d) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.

16.17 Where more than one person is the Developer

- (a) Where more than one person is bound by this Agreement as the Developer any right that is capable of being exercised by the Developer under this Agreement may only be exercised by those persons jointly and each person who is a Developer may, at its absolute discretion, decline to exercise such a right.
- (b) Clause 16.17(a) does not apply to a right that may be exercised by:
 - (i) a Developer, or

- (ii) two or more persons who are each a Developer (but not all persons who are a Developer) acting jointly,

without any prejudice to the other persons who are a Developer.

- (c) The provisions of clause 16.17(a) and clause 16.17(b) have effect subject to:

- (i) any written agreement between the parties concerned (which may be in the form of a deed under clause 10.3(a)(i)); and

- (ii) clause 15.

- (d) This clause 16.17 does not prevent the Council from taking action or seeking injunctive relief against any person who is a Developer under this Agreement in respect of any breach of this Agreement.

16.18 Validity of this Agreement

- (a) No party is to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:

- (i) the validity of this Agreement; or

- (ii) the granting or modifying of any Development Consent to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.

- (b) If this Agreement or any part of it becomes 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 Agreement is entered into.

16.19 Annual reporting

- (a) The Developer is to provide to the Council (no later than each anniversary of the date on which this Agreement is entered into) a report outlining the performance of its obligations under this Agreement.

- (b) The report under this clause 16.19 is to be in such a form and to address such matters as reasonably required by the Council from time to time.

- (c) This clause 16.19 has no effect unless the Development has been physically commenced.

16.20 Review of this Agreement

- (a) The parties must review this Agreement every two years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

- (b) For the purposes of this clause 16.20, 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.

- (c) For the purposes of addressing any matter arising from a review of this Agreement, the parties must use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

- (d) 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 16.20(a) is not a breach of this Agreement and is not able to be dealt with under clause 15.

17. Definitions and interpretation

17.1 Definitions

In this document unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*;

Agreement or this document means this Deed and includes any schedules, annexures and appendices to this Deed;

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

Approved Institution means:

- (a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
- (b) a general insurer within the meaning of the *Insurance Act 1973* (Cth); or
- (c) any other financial institution or insurer approved by the Council in its absolute discretion;

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

Breach Notice — see clause 14.1;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales;

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses;

Completion Notice — see clause 6.8(c);

Construction Certificate has the same meaning as in the Act;

Contributions Plan means *Contributions Plan No 15 Box Hill Precinct* or any other contributions plan that allows a condition to be imposed under section 94 of the Act;

Dedicated Land means the land to be, or that is, dedicated under this Agreement;

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:

- (a) for Item 22 and Item 65 — the period of three years;

(b) for all other Works—the period of one year,

commencing on the day immediately after a Work is completed for the purposes of this Agreement;

Development means the development of the Site for urban purposes;

Development Consent means a development consent (within the meaning of the Act) for the Development;

Development Contribution means any of the following:

- (c) a monetary contribution;
 - (d) a dedication of land free of cost; or
 - (e) the provision of any other material public benefit,
- provided for in this Agreement and described in Schedule 1;

Discharge Document—see clause 8.3;

Dispute—see clause 15.1;

Dispute Notice—see clause 15.3;

Drainage Plan means drawing set out in Sheet 4 of Schedule 2;

Effective Date—see the Novation Deed and clause 10.5(d);

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit a prendre;

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 Agreement;

Expert—see clause 15.4;

Final Lot means a lot created for separate occupation and disposition which is not intended to be further subdivided (by any means including strata subdivision) for the purposes of the Development, but does not include a Service Lot;

GST has the meaning given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act (1999)* (Cth);

GST Amount—see clause 16.2;

Indicative Layout Plan means drawing set out in Sheet 3 of Schedule 2;

Indicative Staging Plan means drawing set out in Sheet 2 of Schedule 2;

Item means the relevant or indicated item in the Table;

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

Land means:

- (a) the Site; and

(a) the portion of Windsor Road that is immediately adjacent to the Site;

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;

Material Breach — see clause 10.3;

Nomination — see clause 8.4(a)(i);

Novation Deed means the draft deed in Annexure A;

Real Property Act means the *Real Property Act 1900*;

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;

Registration on Title means the registration of this Agreement under section 93H of the Act in the folio of the Register kept under the Real Property Act in relation to the Relevant Lots, and **Registered on Title** refers to the state of the Agreement being so registered;

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

Reimbursement Claim — see clause 8.5(c);

Road and Culvert Plan means drawing set out in Sheet 5 of Schedule 2;

Section 94 Contribution means a development contribution under section 94 of the Act;

Site means:

- (a) Lot 181 DP 135218;
- (b) Lot 19 DP 1111404;
- (c) Lot 20 DP 1111404;
- (d) Lot 3144 DP 1217139;
- (e) Lot 22 DP 1111404;
- (f) Lot 3143 DP 1217139;
- (g) Lot 49 DP 1006798;
- (h) Lot 50 DP 1006798;
- (i) Lot 101 DP 1097611;
- (j) Lot 11 DP 1009338;
- (k) Lot 12 DP 1009338;

- (l) Lot 3142 DP 1217139;
- (m) Lot 14A DP 39159;
- (n) Lot 11 DP 883323;
- (o) Lot 83 DP 599307;
- (p) Lot 33A DP 39159;
- (q) Lot 29A DP 39159;
- (r) Lot 34 DP 39157;
- (s) Lot 3141 DP 1217139;
- (t) Lot 3136 DP 1217139;
- (u) Lot 3138 DP 1217139,
- (v) Lot 3139 DP 1217139,
- (w) Lot 3140 DP 1217139,
- (x) Lot 3070 DP 1217139;
- (y) Lot 10 DP 883323;
- (z) Lot 44 DP 39157;
- (aa) Lot 45 DP 39157;
- (bb) Lot 46 DP 39157.

as depicted in the drawing prepared by Calibre Consulting, 'Land Ownership Plan', Sheets 1-2, Drawing number X11295, 16 August 2018, Revision 00, as set out in Sheet 1 of Schedule 2;

Service Lot means a lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to the Council;
- (b) for any public utility undertaking (within the meaning of the Standard Instrument);
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management,

but does not include a lot which is intended to be further subdivided by or on behalf of the Developer but does include association property within the meaning of the *Community Land Development Act 1989* used for a purpose mentioned in (c) above;

Stage 1 means the Final Lots that would be within the area identified as 'Stage 1' in the Indicative Staging Plan;

Stage 2 means the Final Lots that would be within the area identified as 'Stage 2' in the Indicative Staging Plan;

Stage 7 means the Final Lots that would be within the area identified as 'Stage 7' in the Indicative Staging Plan;

Stage 12 means the Final Lots that would be within the area identified as 'Stage 12' in the Indicative Staging Plan;

Stage 12 Works — see clause 12.1;

Standard Instrument means the standard instrument for a principal local environmental plan set out in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Agreement;

Subdivision Certificate has the same meaning as in the Act;

Table means the table set out in Schedule 1;

Transferred Land — see clause 10.5;

Value means the amount for that Item as set out in Column 6 of the Table;

Note: The parties have agreed on the values in the unique circumstances of this planning agreement and, in agreeing to these values, the Developer has had regard to the advantages of the broader planning agreement.

Work means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on, over or under land.

17.2 Interpretation

- (a) In this document unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) a reference to a party means a party to this Agreement, including their successors and assigns and a person bound by the Agreement under section 93H(3) of the Act;
 - (vi) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
 - (vii) any reference to any agreement or document includes that agreement or document as amended at any time;
 - (viii) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
 - (ix) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
 - (x) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;

- (xi) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
 - (xii) any ambiguities in the interpretation of this Agreement shall not be construed against the drafting party.
 - (xiii) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
 - (xiv) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
 - (xv) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day;
 - (xvi) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated; and
 - (xvii) dimensions give in relation to roads includes any shoulder, cycleway, pedestrian footway and the like.
- (b) Nothing in this Agreement is to be taken to require the Council to do anything that would cause it to be in breach of any of its statutory obligations.
 - (c) Nothing in this Agreement, including the Indicative Staging Plan, requires the Developer to produce any or a particular number of Final Lots, or produce the Final Lots (or a subdivision stage) in any particular order.

17.3 No joint venture, etc

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

17.4 No obligation to grant or modify a Development Consent

- (a) This Agreement does not impose an obligation on the Council to grant or modify any Development Consent.
- (b) For avoidance of doubt, clause 17.4(a) does not affect any obligation of the consent authority (under section 79C(1)(a)(iia) of the Act) to take this Agreement into consideration.

17.5 No breach, etc of a Development Consent

Despite any other provision of this Agreement, this Agreement does not require, allow or preclude anything from being done if by so doing it would cause the Developer to:

(a) be in breach; or

(b) not fulfil a requirement,

of a Development Consent in force and applying to the Land.

17.6 Explanatory Note

In accordance with clause 25E(7) of the *Environmental Planning and Assessment Regulation 2000* the explanatory note must not be used to assist in construing this Agreement.

Schedule 1 – Development Contributions

(Clause 4 and Clause 17.1)

Table

Column 1 Item Number	Column 2 Contributions Plan Identification	Column 3 Description	Column 4 Public purpose	Column 5 When contributions required	Column 6 Value (as at a base date of 1 July 2016, as per clause 4.3(b))
9	BH03C Drainage structure	Detention basin works referred to in DA 1327/201/ZB as are comprised in BH03C shown in Sheet 004, Figure 6: Location of facilities contained in the Contributions Plan as at the date of this Agreement.	Water management	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 1	\$5,411,654
10	RGBH10 'Raingarden (in BHPF01)'	Construction of a raingarden within playing fields that is: <ul style="list-style-type: none"> • approximately 8,850m² in area across two separate raingardens; • generally consistent with the drainage engineering plans submitted with DA 1509/2015/JPZ • generally in the location shaded blue and marked with a '10' on the Indicative Layout Plan. 	Water management	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$1,661,000
22	CR-D 'Culvert Crossing D'	Construction of a bridge for the crossing of Mount Carmel Road over a riparian corridor that is: <ul style="list-style-type: none"> • generally consistent with the road and drainage engineering plans approved by DA 1509/2015/JPZ/B as amended); and • generally in the location marked with a solid yellow line and identified with a '22' on the Indicative Layout Plan. 	Water management	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$2,804,000

Column 1 Item Number	Column 2 Contributions Plan Identification	Column 3 Description	Column 4 Public Purpose	Column 5 When Contributions required	Column 6 Value (as at 1st January 2016) (as per clause 4.1(b))
29	BHNR01A 'New Main Road — Mt Carmel Road — Windsor Road to Killarney Chain of Ponds'	Construction of Mount Carmel Road between Windsor Road and Killarney Chain of Ponds, such that is: <ul style="list-style-type: none"> generally consistent with the road engineering plans approved by DA 573/2017ZB (as amended); and generally in the location marked yellow and identified with a '29' on the Indicative Layout Plan 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$8,103,050
30	BHNR01B 'New Main Road — Mt Carmel Road — Killarney Chain of Ponds to Mason Road'	Construction of Mount Carmel Road between Killarney Chain of Ponds and Mason Road, such that is: <ul style="list-style-type: none"> generally consistent with the road engineering plans approved by 573/2017ZB (as amended); and generally in the location marked yellow and identified with a '30' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$5,495,172
31	BHNR02A 'New Main Road — Mt Carmel Road — Mason Road to Boundary Road "Link Road"	Construction of Mount Carmel Road between Mason Road and the Boundary Road link road, such that is: <ul style="list-style-type: none"> generally consistent with the road engineering plans approved by DA 573/2017ZB (as amended); and generally in the location marked yellow and identified with a '31' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$8,369,160
65	BR-1 'Mt Carmel Road Bridge over Killarney Chain of Ponds'	Construction of a bridge for Mount Carmel Road Killarney Chain of Ponds that is: <ul style="list-style-type: none"> generally consistent with the road engineering plans approved by DA 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$7,403,400

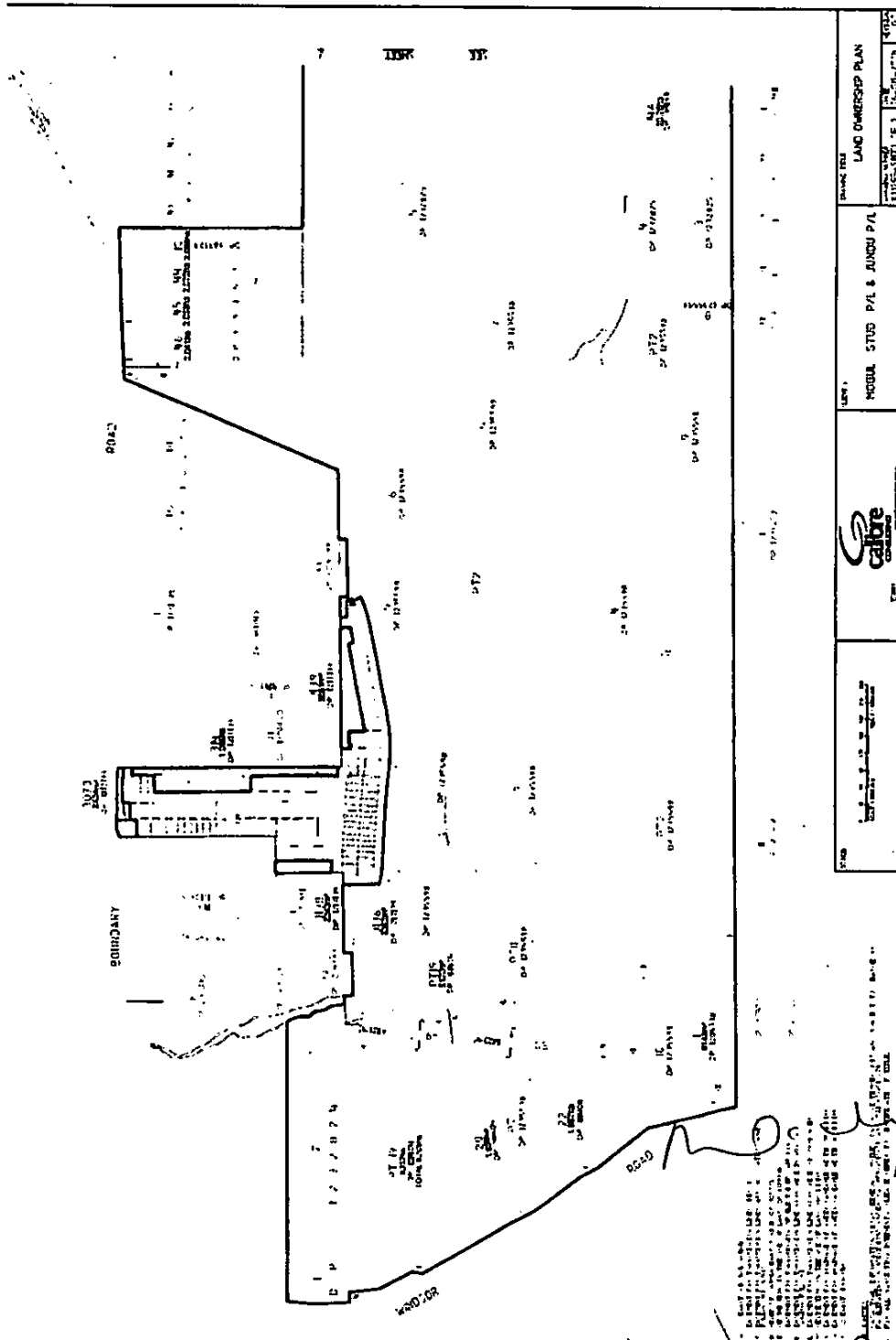
Column 1 Item Number	Column 2 Contributions Plan Identification	Column 3 Description	Column 4 Public purpose	Column 5 When contribution is required	Column 6 Value (as at a base date of 1 July 2015, as per clause 4.3(6))
72	BHT07 'Mt Carmel Road / Mason Road'	<p>ZB573/2017/ZB (as amended); and</p> <ul style="list-style-type: none"> generally in the location marked with purple lines and identified with a '65' on the Indicative Layout Plan. <p>Construction of a roundabout at the intersection of Mount Carmel Road and Mason Road that is:</p> <ul style="list-style-type: none"> generally consistent with the road engineering plans submitted with DA 1509/2015/JPZ and generally in the location marked with a pink circle and identified with a '72' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$435,104
73	BHT08 'Mt Carmel Road / Boundary Road Link'	<p>Construction of a roundabout at the intersection of Mount Carmel Road and the Boundary Road link road that is:</p> <ul style="list-style-type: none"> generally consistent with the road engineering plans for Stage 1 submitted with DA 1509/2015/JPZ; and generally in the location marked with a pink circle and identified with a '73' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$435,104
74	BHT09 'Mt Carmel Road / George Street'	<p>Construction of a roundabout at the intersection of Mount Carmel Road and George Street that is:</p> <ul style="list-style-type: none"> of a nature that is generally consistent with Item 73; and generally in the location marked with a pink circle and identified with a '74' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 7	\$435,104

Column 1 Item Number	Column 2 Contributions Plan Identification	Column 3 Description	Column 4 Public Purpose	Column 5 When contribution is required	Column 6 Value (as at a base date of 1 July 2016 as per clause 43(b))
81	BHT17 'Mt Carmel Road / Future Business Park Road'	Construction of a roundabout at the intersection of Mount Carmel Road and future business park road that is: <ul style="list-style-type: none"> generally consistent with the road engineering plans approved by DA 573/2017ZB (as amended); and generally in the location marked with a black circle and identified with a '81' on the Indicative Layout Plan. 	Transport	Immediately prior to the issue of the Subdivision Certificate for the creation of the first Final Lot in Stage 2	\$435,104
29L	Refer to Item 29 above	Dedication of the area of land on which Item 29 is constructed.	Transport	If dedication is to be effected by the registration of a plan of subdivision under section 9(2) of the Roads Act 1993 — upon the registration of the plan of subdivision creating the Final Lot referred to in Column 5 for Item 29. Otherwise — at the same point-in-time as specified in Column 5 for Item 29.	\$1,187,184
30L	Refer to Item 30 above	Dedication of the area of land on which Item 30 is constructed.	Transport	If dedication is to be effected by the registration of a plan of subdivision under section 9(2) of the Roads Act 1993 — upon the registration of the plan of subdivision creating the Final Lot referred to in Column 5 for Item 30. Otherwise — at the same point-in-time as specified in Column 5 for Item 30.	\$497,236
31L	Refer to Item 31 above	Dedication of the area of land on which Item 31 is constructed.	Transport	If dedication is to be effected by the registration of a plan of	\$1,255,816

Column 1 Item Number	Column 2 Contributions Plan Identification	Column 3 Description	Column 4 Public purpose	Column 5 When contributions is required	Column 6 Value (as at a base date of 1 July 2016 (as per clause 4.3(b)))
				subdivision under section 9(2) of the Roads Act 1993 — upon the registration of the plan of subdivision creating the Final Lot referred to in Column 5 for Item 31. Otherwise — at the same point-in-time as specified in Column 5 for Item 31.	

Schedule 2 – Drawings

(Clause 17) Sheet 1: Site details

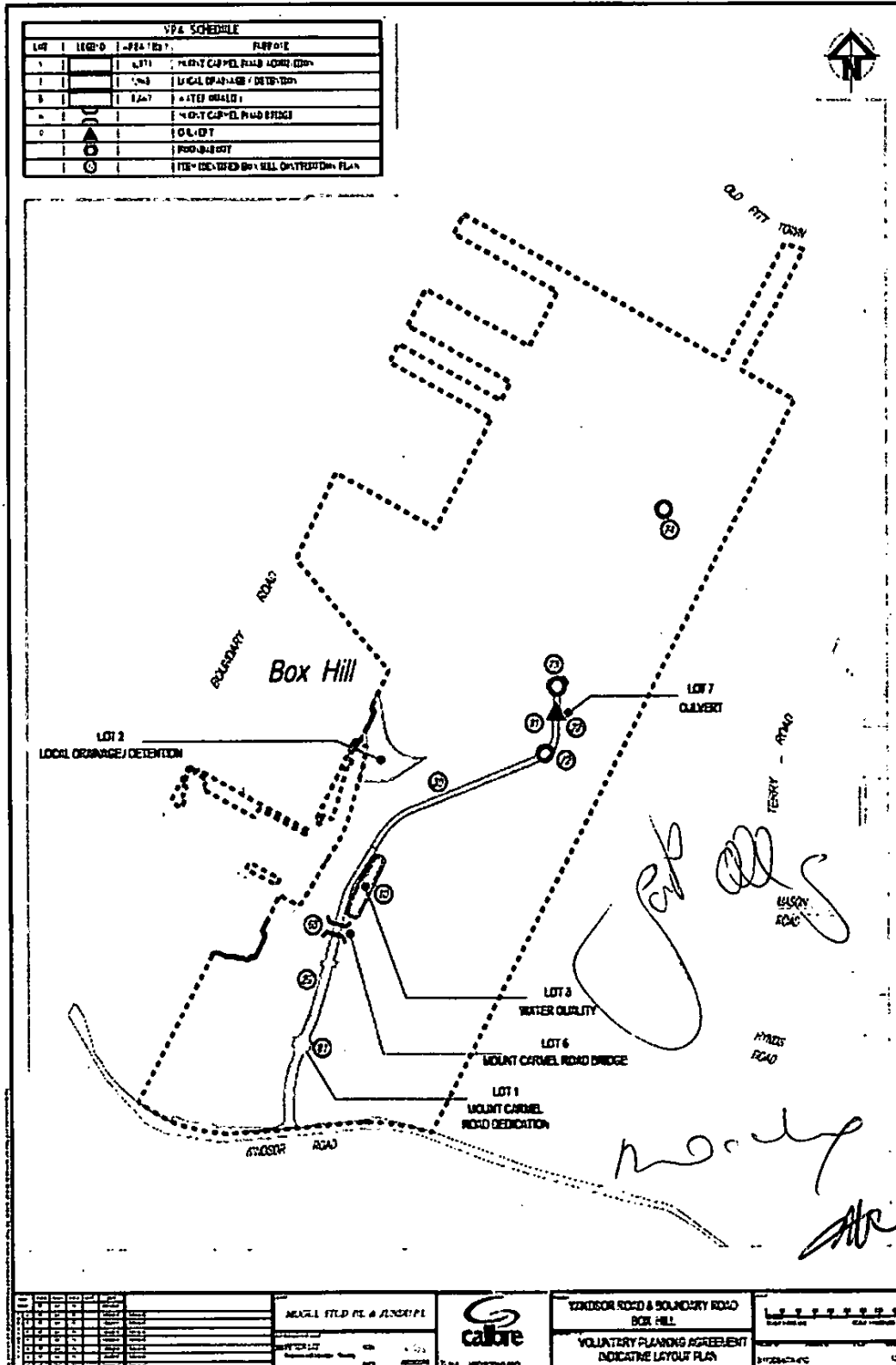


[Handwritten signature]

Rhys C Reed

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Sheet 3: Indicative Layout Plan



[Original execution block omitted]

Annexure A – Draft Deed of Novation

Deed of Novation

The Hills Shire Council

[Insert name of existing developer]

[Insert name of new developer]

Deed of Novation

Dated

Parties

1. The Hills Shire Council of 3 Columbia Court, Baulkham Hills NSW 2153 (the Council)
2. [Insert name of existing developer] ACN [insert ACN] of [insert address] (the Existing Developer)
3. [Insert name of new developer] ACN [insert ACN] of [insert address] (the New Developer)

Background

- A. The Council and the Existing Developer have entered into the Agreement.
- B. The Existing Developer intends to transfer [Insert title reference(s)] to the New Developer.

[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]

- C. The Existing Developer has agreed to transfer the Rights and Obligations to the New Developer.
- D. The Council has consented to the transfer of the Existing Developer's Rights and Obligations to the New Developer and the parties have agreed to enter into this Deed to give effect to their common intentions:

[If, as a result of the transfer, the Existing Developer will still own part of the Site:]

- C. The New Developer has agreed to accept the Rights and Obligations as a Developer under the Agreement.
- D. The Council has consented to the transfer of the relevant land to the New Developer and the inclusion of the New Developer as a Developer party to the Agreement and the parties have agreed to enter into this Deed to give effect to their common intentions.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Novation

[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]

With effect on and from the Effective Date:

- (a) The New Developer is substituted for the Existing Developer under the Agreement as if the New Developer had originally been a party to the Agreement instead of the Existing Developer and all references in the Agreement to the Existing Developer in any capacity must be read and construed as if they were references to the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the Agreement and the obligations imposed on the Existing Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Existing Developer under the Agreement (even if an obligation, right or benefit, arose or accrued before the Effective Date).

[If, as a result of the transfer, the Existing Developer will still own part of the Site:]

With effect on and from the Effective Date:

- (a) The New Developer is taken to be a party to the Agreement and the definition of Developer in the Agreement is taken to include the New Developer; and
- (b) The New Developer is bound by, and must comply with, the provisions of the of Agreement and the obligations imposed on the Developer by the Agreement and the New Developer enjoys all the rights and benefits of the Developer under the Agreement (even if an obligation, right or benefit; arose or accrued before the Effective Date).

3. Consent

[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]

With effect on and from the Effective Date, the Council:

- (a) consents to the New Developer being substituted for Existing Developer on the terms outlined at clause.2 of this Deed;
- (b) accepts the assumptions by the New Developer of all the liabilities of the Existing Developer under the Agreement instead of those liabilities being liabilities of the Existing Developer; and
- (c) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement instead of the Existing Developer.

[If, as a result of the transfer, the Existing Developer will still own part of the Site:]

With effect on and from the Effective Date, the Council:

- (d) consents to the New Developer becoming a Developer under the terms of the Agreement as outlined at clause 2 of this Deed;
- (e) agrees to be bound by the terms of the Agreement in every way as if the New Developer were a party to the Agreement.

4. Release and Indemnity

[If, as a result of the transfer, the Existing Developer will no longer own any of the Site:]

4.1 Release and Discharge (the Council)

On and from the Effective Date, the Council releases the Existing Developer from all Rights and Obligations and from all Claims that it may have against the Existing Developer under or in respect of the Agreement.

4.2 Release and Discharge (the Existing Developer)

On and from the Effective Date, the Existing Developer releases the Council from all its obligations under the Agreement and from all Claims that it may have against the Council under or in respect of the Agreement.

4.3 Indemnity

On and from the Effective Date, the New Developer indemnifies the Existing Developer from and against all Liabilities and Claims that it may have against the Existing Developer in respect of the Agreement.

[Omit clause 4 if, as a result of the transfer, the Existing Developer will still own part of the Site]

5. Representations and Warranties

5.1 Power

Both of the Existing Developer and the New Developer represent and warrant to the Council and to each other that:

- (a) it is an individual or corporation validly existing under the laws of Australia;
- (b) if it is a corporation – that it has the corporate power to enter into and perform its obligations under this Deed and has taken all necessary corporate action to authorise execution, delivery and performance of this Deed;
- (c) this Deed is valid and binding upon it and is enforceable against it in accordance with its terms; and
- (d) if it is a corporation – that no application or order has been made for the winding up or liquidation of it, no action has been taken to seize or take possession of any of its assets, there are no unsatisfied judgments against it and it is able to pay its debts as and when they come due and payable.

5.2 Reliance by the Council

The Existing Developer and the New Developer each acknowledge that the Council has entered into this Deed in reliance on the representations and warranties detailed in clause 5.1.

6. General provisions

6.1 Developer Costs

The Existing Developer and the New Developer must pay their own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.2 The Council's Costs

The Existing Developer and the New Developer are jointly and severally responsible for Council's reasonable legal costs in relation to the negotiation, preparation and execution of this Deed, but are not otherwise liable for the Council's costs in relation to the:

- (a) performance, amendment or registration of, or any consent given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

6.3 GST

If any payment made by one party to any other party under or relating to this Deed constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this Deed.

6.4 Duties

- (a) The New Developer must promptly, within the initial applicable period prescribed by law, pay any duty payable in relation to the execution, performance and registration of this Deed, or any agreement or document executed or effected under this Deed.
- (b) The New Developer indemnifies Council and the Existing Developer against any loss incurred by any other party in relation to any duty specified in this provision, whether through default by the New Developer under this provision or otherwise.

6.5 Assignment

A party must not transfer any right or liability under this Deed without the prior consent of each other party, except where this Deed provides otherwise.

6.6 Notices

- (a) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified in this provision or most recently notified by the recipient to the sender.

[Insert address for notices for each of the parties]

- (b) Any notice to or by a party under this Deed must be in writing and signed by either:
 - (i) the sender or, if a corporate party, an authorised officer of the sender, or
 - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this Deed upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

6.7 Governing law and jurisdiction

- (a) This Deed is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

6.8 Amendments

Any amendment to this Deed has no force or effect, unless effected by a document executed by the parties.

6.9 Third parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

6.10 Pre-contractual negotiation

This Deed:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

6.11 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this Deed, whether before or after performance of this Deed.

6.12 Continuing performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation in this Deed survives the execution of any document for the purposes of, and continues after, performance of this Deed.
- (c) Any indemnity agreed by any party under this Deed:

- (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other agreement; and
- (ii) survives and continues after performance of this Deed,

6.13 Waivers

Any failure by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

6.14 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

6.15 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

6.16 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same Deed.

6.17 Party acting as trustee

If a party enters into this Deed as trustee of a trust, that party and its successors as trustee of the trust will be liable under this Deed in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this Deed:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this Deed on behalf of the trust and that this Deed is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust; and
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

7. Definitions and interpretation

7.1 Definitions

In this Deed unless the context otherwise requires:

Claims includes actions, proceedings, suits, causes of action, arbitration, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Agreement means the voluntary planning agreement between the Council and the Existing Developer dated [insert date], a copy of which is annexed to this Deed as Annexure A.

Deed means this Deed and includes any Annexures to this Deed.

Effective Date means the date upon which the Existing Developer provides the New Developer with an instrument, in registrable form, that (when registered) will effect the transfer of the title to the land from the Existing Developer to the New Developer.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;

Liabilities include all liabilities (whether actual, contingent or prospective), losses, damages, costs and expenses of whatever description.

Rights and Obligations means all of the rights, benefits and obligations imposed or conferred on the Existing Developer by the Agreement.

7.2 Interpretation

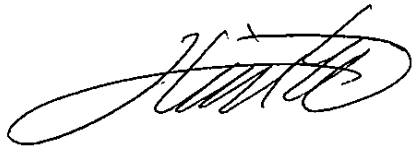
In this Deed unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this Deed includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) any ambiguities in the interpretation of this Deed shall not be construed against the drafting party; and
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this Deed.

Executed as a deed.

[Insert relevant attestation clauses]

[Insert the executed planning agreement that is the subject of the novation as Annexure A]



R. Ryan

Chris

