

# Planning Agreement

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**Land**            **94 WILSON DRIVE, MARULAN**

## Parties

**GOULBURN MULWAREE COUNCIL**  
(Council)

**MARULAN ESTATES PTY LTD**  
(Owner)

**DARRABY PTY LTD**  
(Developer)

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# Planning Agreement

## Dated

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## Parties

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**Goulburn Mulwaree Council ABN 84 049 849 319** of 184-194 Bourke Street, Goulburn NSW 2580 (**Council**)

**Marulan Estates Pty Ltd ACN 113 187 778** of 22-24 Junction Street, Forest Lodge NSW 2037 (**Owner**)

**Darraby Pty Ltd ACN 153 183 012** of 22-24 Junction Street, Forest Lodge NSW 2037 (**Developer**)

## Background

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- A. The Owner is the registered proprietor of the Land.
- B. The Owner and Developer have entered into Project Delivery Agreement in respect of the development of the Land.
- C. The Developer has lodged the Development Application with Council.
- D. The Developer has agreed to provide the Development Contributions in connection with carrying out the Development, subject to and on the terms and conditions set out in this Agreement.

## General terms

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### 1. Definitions

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The following definitions apply unless the context otherwise requires:

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

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

**Agreement** means this document and includes the schedules and annexures.

**Authority** means (as appropriate) any:

- (a) federal, state or local government;
- (b) department of any federal, state or local government;
- (c) any court or administrative tribunal; or
- (d) statutory corporation or regulatory body.

**Bank Guarantee** means a bank guarantee from an Australian bank, in a form acceptable to Council and without an expiry date.

**Business Day** means between 9am and 5pm Sydney time on a day other than a Saturday, Sunday, any other local, state or federal public holiday and any day between 20 December and 10 January inclusive.

**Claim** against any person any allegation, action, demand, cause of action, suit, proceeding, judgment, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

**Complete, Completed, Completion** means completed in accordance with the requirements of this Agreement.

**Completion Notice** means a notice issued by Council to the Developer pursuant to clause 6.2(a).

**Construction Costs** means, in respect of the Sewer Main Works, the lower of:

- (a) the actual costs incurred by the Developer in carrying out and completing the Sewer Main Works; or
- (b) \$490,110.00.

**Contribution Credit** means a contribution credit by Council towards a Development Contribution as set out in the column titled "Contribution Credit" in Schedule 3.

**Council** means Goulburn Mulwaree Council ABN 84 049 849 319.

**Date of Completion** means, in relation to each Item of Work, the date on which the works are Completed, being the earlier of:

- (a) the deemed date of completion under clause 6.3; or
- (b) the date of completion as set out in a Completion Notice.

**Defect** includes an omission in an Item of Work.

**Defects Liability Period** means, in relation to each Item of Work, 12 months from the Date of Completion of that Item of Work.

**Designated Land** means that part of the Land identified as Lots 108 and 115 (containing drainage reserves) on the plan attached at Schedule 4.

**Developer** means Darraby Pty Ltd ACN 153 183 012.

**Development** means the Equinox residential subdivision on the Land.

**Development Application** means development application DA334/1819 lodged by the Developer with Council in respect of the Land.

**Development Consent** means a development consent issued under the Act with respect to the Development Application.

**Development Contributions** means the provision of the Works, the making of the Monetary Contributions, the dedication of the Designated Lands, the provision of any other material public benefit as set out in this Agreement or any combination of them, by the Developer in accordance with this Agreement, which are to be used for, or applied towards a public purpose, but does not include any Bank Guarantees or other benefit provided by the Developer to Council to secure the enforcement of the Developer's obligations under this Agreement for the purposes of section 7.4(3)(g) of the Act.

**DSP** means the Goulburn Mulwaree Development Servicing Plan for Water Supply, Sewerage and Stormwater dated September 2017.

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset;
- (b) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or
- (c) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.

**EPA** means the NSW Environment Protection Authority.

**First Subdivision Certificate** means the first Subdivision Certificate issued under the Act with respect to the Development Consent.

**Force Majeure Event** means an earthquake, cyclone, fire, civil commotion, sabotage, act of a public enemy, war, contamination, flood or a severe weather event that inflicts damage or harm that could not have otherwise been prevented by taking reasonable and prudent action.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.

**Insolvency Event** means, in relation to the Developer, any of the following:

- (a) the Developer becomes insolvent;
- (b) the Developer assigns any of its property for the benefit of creditors or any class of them;

- (c) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Developer or the Developer enters into a scheme of arrangement with its creditors or is wound up;
- (d) the holder of a Security Interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (e) a judgment or order is made against the person in an amount exceeding \$20,000 (or the equivalent in any other currency) and proceedings to set aside, quash or stay that judgment or order is not commenced within 20 days after that judgment or order is made;
- (f) any step is taken to do anything listed in the above paragraphs; and
- (g) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**Item of Work** means an individual item of the Works specified or described in Section B of Schedule 3.

**Land** means the land described as Lot 23 in DP 1256090 and known as 94 Wilson Drive, Marulan NSW.

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

**Monetary Contributions** means the monetary contributions set out in Section C of Schedule 3.

**Owner** means Marulan Estates Pty Ltd ACN 113 187 778.

**Park Embellishment Works** means the works to be undertaken on Lot 108 as shown on the plan attached at Schedule 5 and agreed between the Parties.

**Parties** means the parties to this Agreement collectively and Party means each of them individually.

**Planning Legislation** means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

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

**Residential Lot** means a single lot created on the registration of a plan of subdivision as part of the Development intended to not be further subdivided and to be used for the purpose of the construction of one (1) or more residential dwellings.

**Road Upgrade Works** means the upgrade of local Council road (or part thereof) known as "Wilson Drive" in accordance with the scope and specifications in Schedule 3.

**Security Interest** means:

- (a) any mortgage, pledge, lien, charge or other preferential right, trust arrangement, agreement or arrangement of any kind given or created by

way of security, including a security interest (as defined in the *Personal Property Securities Act 2009*); and

- (b) any agreement to create or grant any arrangement described in paragraph (a).

**Sewer Main Works** means the installation of a sewer trunk main in accordance with the scope and specifications in Schedule 3.

**Stormwater Capitalisation Amount** means the Monetary Contribution for Council's capitalisation and maintenance costs for stormwater basin over 30 years, being \$91,000.

**Subdivision Certificate** means a subdivision certificate as defined in section 6.4(d) of the Act.

**Water Main Works** means the installation of a water trunk main from the Brayton Road main to the Development in accordance with the scope and specifications in Schedule 3.

**Works** means the works specified or described in Section B of Schedule 3 except in clause 5.2 where the "Works" means the works specified or described in Section B of Schedule 3 other than the Road Upgrade Works.

**Works as Executed Plan** means a plan that shows that construction has been completed in accordance with the engineering plans and specifications.

## 2. Interpretation

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### 2.1 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) a reference to:
- (i) one gender includes the other;
  - (ii) the singular includes the plural and the plural includes the singular;
  - (iii) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Agreement;
  - (iv) a document (including this Agreement) includes any variation or replacement of it;
  - (v) a statute, ordinance, code or other law includes a regulation or other statutory instrument made or issued under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (vi) a person includes a partnership, body corporate, unincorporated association or an authority;
  - (vii) a Party includes the Party's executors, administrators, successors and permitted assigns;

- (viii) **dollars, Australian dollars, A\$ or \$** is a reference to the lawful currency of Australia; and
- (ix) time is a reference to Sydney time;
- (b) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (c) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (d) if an act must be done on a given day which is not a Business Day, it must be done instead on the next Business Day;
- (e) the words **include, including, for example** or **such as** when introducing an example, do not limit the meaning of the words to which the example relates to the example or to examples of a similar kind;
- (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- (g) headings and any index are for convenience only and do not form part of this Agreement or affect its interpretation; and
- (h) a provision of this Agreement must not be construed to the disadvantage of a Party merely because that Party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

## **2.2 Parties**

- (a) If a Party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) A Party which is a trustee is bound both personally and in its capacity as a trustee.

## **3. Status**

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### **3.1 Planning Agreement**

This Agreement is a planning agreement:

- (a) within the meaning set out in section 7.4 of the Act; and
- (b) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

### **3.2 Application**

This Agreement applies to both the Land and the Development.



### **3.3 Commencement**

This Agreement commences and is effective on and from the later of:

- (a) the date that the Agreement is executed by both Parties or, if the Agreement is executed in counterparts, the date that the Parties have executed and exchanged counterparts of the Agreement; and
- (b) the date that Council grants Development Consent.

### **3.4 Application of Sections 7.11 and 7.12 of the Act**

- (a) This Agreement:
  - (i) excludes the application of section 7.11 of the Act to the Development; and
  - (ii) does not exclude the application of section 7.12 of the Act to the Development.
- (b) The benefits to be provided by the Developer under this Agreement are to be taken into consideration by Council in determining Development Contributions under section 7.12 of the Act.

## **4. Development Contributions**

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### **4.1 Provision of Development Contributions**

- (a) The Parties acknowledge and agree that the Developer's obligation to make Development Contributions under this Agreement only arises in connection with carrying out the Development.
- (b) Subject to the terms and conditions of this Agreement, the Developer must make Development Contributions to Council in accordance with clause 4 and Schedule 3.
- (c) Council agrees that the Developer will be entitled to credits as a result of making Development Contributions to Council, in accordance with Schedule 3.

### **4.2 Contribution Credits**

The Parties acknowledge and agree that:

- (a) the Developer must pay Council the Stormwater Capitalisation Amount at the times set out in Schedule 3; and
- (b) within twenty-one (21) days of Council's issuance of the First Subdivision Certificate, Council must pay the Developer \$157,500 (exclusive of GST) in respect of the Road Upgrade Works, provided that Council has received a valid tax invoice for that amount within five (5) days of the issuance of the First Subdivision Certificate; and
- (c) on Completion of the Park Embellishment Works in accordance with this Agreement, Council agrees to offset \$60,000 as credit to, and thereby reduce

the Developer's liability to pay any contributions pursuant to Development Contributions under section 7.12 of the Act.

#### 4.3 Sewer Main Works

The Parties acknowledge and agree that:

- (a) the delivery and completion of the Sewer Main Works will provide a public benefit; and
- (b) on Completion of the Sewer Main Works in accordance with this Agreement, Council, acting as the water supply authority under the *Water Management Act 2000* (NSW), has indicated its intention to reduce any contributions in relation to sewage works payable by the Developer under s 306 of the *Water Management Act 2000* (NSW) read with the DSP under s64 of the *Local Government Act 1993* (NSW) by an amount equal to 75% of the Construction Costs.

#### 4.4 Dedication of Designated Land

- (a) The Owner must dedicate the Designated Lands to Council:
  - (i) free of any trusts, estates, interests, covenants and Encumbrances;
  - (ii) by the times specified in Schedule 3; and
  - (iii) at no cost to Council,unless otherwise agreed in writing by Council.
- (b) The Developer must meet all costs associated with the dedication of the Designated Lands in accordance with clause 4.4(a), including any costs incurred by Council in relation to that dedication.
- (c) Council must do all things reasonably necessary to enable the Owner to comply with clause 4.4(a).
- (d) A Development Contribution comprising the dedication of Designated Lands under clause 4.4(a) is made when:
  - (i) a deposited plan is registered by the Registrar General that dedicates the Designated Lands as public reserve or drainage reserve under the *Local Government Act 1993* (NSW); or
  - (ii) the Developer provides the Council with:
    - (A) an instrument in registrable form under the *Real Property Act 1900* (NSW) executed by the Developer, such that title to the Designated Lands can be transferred to Council once the instrument is executed and registered by Council;
    - (B) written consent from any person required to consent to the transfer of the Designated Lands to Council; and
    - (C) confirmation that the certificate of title to the Designated Lands has been produced or will be produced within a reasonable

time with the Registrar-General to allow dedication of the Designated Lands to Council.

## **5. Works**

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### **5.1 Works**

Council and the Developer agree that the Developer must, subject to any credit under clause 4.2, carry out the Works at its own cost and in accordance with the scope and specifications in Schedule 3.

### **5.2 General Obligations regarding Works**

The Developer must, at its cost:

- (a) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Works;
- (b) carry out and complete each Item of Work by the time specified in Schedule 3; and
- (c) subject to Schedule 3, carry out and complete the Works:
  - (i) in accordance with the lawful requirements of, or consents issued, by any Authority;
  - (ii) in accordance with the reasonable requirements of Council and the Development Consent; and
  - (iii) in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian standards.

### **5.3 Road Upgrade Works**

- (a) Council and the Developer agree the Road Upgrade Works apply to a local road where Council is the consenting Authority.
- (b) Notwithstanding any other provision in this Agreement, the Developer's obligations in connection with the Road Upgrade Works is limited to the scope and specifications set out in Schedule 3.

### **5.4 Protection of People and Property**

- (a) The Developer must use all reasonable endeavours to ensure that, in relation to the performance of its obligations under this Agreement:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) In relation to those Items of Work located on Designated Lands, the Developer is responsible for care of those Works until the Designated Lands

are dedicated to Council in accordance with clause 4.4 or clause 13, after which those Items of Work will vest in Council.

## 5.5 Variation to Works

The design or specification of the Works may be varied by agreement in writing between the Parties without requiring an amendment to this Agreement.

## 5.6 Developer requested variations

- (a) The Developer may, by written notice to Council, propose any variation to design or specifications of any Works (**Works Variation Notice**).
- (b) Council must, within fourteen (14) days of receipt of a Works Variation Notice respond in writing, by either:
  - (i) agreeing to any or all variations proposed in the Works Variation Notice; or
  - (ii) proposing an alternate variation to any or all variations proposed in the Works Variation Notice (**Alternate Variation**); or
  - (iii) refusing any or all variations proposed in the Works Variation Notice if that variation(s) would, in Council's opinion, adversely affect the public benefit being provided under this Agreement.
- (c) The Developer must within seven (7) days after receiving a notice in accordance with clause 5.6(b)(ii), notify Council in writing whether the Alternate Variation can be effected, and, if it can be effected, the Developer's estimate of the:
  - (i) effect on the progress of the Development (including the Date of Completion); and
  - (ii) cost (including all warranties and time-related costs, if any) of the Alternate Variation.

For the purpose of this clause 5.6(c), an Alternate Variation cannot be effected if it:

- (iii) materially affects the Development;
  - (iv) materially reduces the financial return or profitability of the Development; or
  - (v) will result in increased cost or delay in the Works undertaken by the Developer.
- (d) Council must within fourteen (14) days of receipt of a written notice under clause 5.6(c) which states that the Alternate Variation can be effected, in writing either accept or reject the Alternate Variation. If Council does not issue a written notice within the time specified in this clause 5.6(d), Council is deemed to have:
    - (i) rejected the Alternate Variation; and

- (ii) agreed to the variation proposed in the relevant Works Variation Notice,

and the Developer may carry out the variation as proposed by the Developer.

- (e) If the Developer notifies Council under clause 5.6(c) that the Alternate Variation cannot be effected, the Developer shall have no obligation to carry out the Works the subject of the Alternate Variation.
- (f) If Council accepts the Alternate Variation under clause 5.6(d), the Developer will, at Council's cost, carry out the Works the subject of the Alternate Variation.
- (g) If Council accepts a variation proposed by the Developer in the Works Variation Notice under clause 5.6(b)(i), the Developer will, at its cost, carry out the Works the subject of the proposed variation.

## **5.7 Council requested variations**

Council may, by written notice to the Developer, reasonably require the Developer, at Council's cost, to vary the design or specification of the Works, in which case the Developer must comply with that requirement unless the proposed variation:

- (a) materially affects the Development;
- (b) materially reduces the financial return or profitability of the Development; or
- (c) will result in increased cost or delay in the Works undertaken by the Developer.

## **6. Completion of Works**

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### **6.1 Notice of Anticipated Completion**

When the Developer is of the opinion that an Item of Work has been Completed, the Developer must notify Council in writing and such notice must specify:

- (a) the Item of Work Completed; and
- (b) the date on which the Developer asserts the Item of Work was Completed.

### **6.2 Completion Notice**

Council must provide, within fourteen (14) days of the Developer's notice under clause 6.1, a notice in writing to the Developer that the relevant Item of Work:

- (a) has been Completed;
- (b) will need to be inspected, tested or assessed prior to Council issuing a Completion Notice; or
- (c) has not been Completed, in which case the notice must also detail:
  - (i) those aspects of the Item of Work which have not been Completed; and

- (ii) the work Council requires the Developer to carry out in order for the Item of Work to be Completed.

### **6.3 Deemed Completion**

If Council does not provide the Developer with notice within the time specified in clause 6.2, the Item of Work the subject of the Developer's notice under clause 6.1 will be deemed to have been Completed on the date nominated in the Developer's notice.

### **6.4 Effect of Council Notice**

- (a) Where Council serves notice on the Developer pursuant to clause 6.2(c), the Developer must:
  - (i) rectify the deficiencies in that Item of Work in accordance with that notice within a reasonable time (not being less than fourteen (14) days from the date it is issued by Council); or
  - (ii) serve a notice on Council that it disputes the matters set out in the notice.
- (b) Where the Developer:
  - (i) serves notice on Council in accordance with clause 6.4(a)(ii) the dispute resolution provisions of this Agreement apply; or
  - (ii) rectifies the Item of Work in accordance with clause 6.4(a)(ii) it must serve upon Council a new notice of Completion for the Item of Work it has rectified (**New Completion Notice**).

### **6.5 New Completion Notice**

The provisions of clauses 6.1 to 6.4 (inclusive) apply to each Item of Work and any New Completion Notice issued by the Developer.

### **6.6 Executed Plans**

- (a) Prior to Completion of an Item of Work, the Developer is to submit to Council a works as executed plan for the Completed Item of Work.
- (b) The Developer, being the copyright owner in the works as executed plan for the Completed Item of Work, assigns the copyright in the works as executed plan for the Completed Item of Work to Council free of cost to the Council.
- (c) If the Developer is not the copyright owner of the works as executed plan for the Completed Item of Work, the Developer is to promptly procure the assignment of the copyright of the works as executed plan for the Completed Item of Work at the Developer's expense.

## **7. Defects Liability**

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### **7.1 Defects Notice**

- (a) Where any Item of Work is Complete but that item contains a Defect which:

- (i) adversely affects the ordinary use and/or enjoyment of that item; or
- (ii) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the Defect,

Council may issue a notice to the Developer (**Defects Notice**) concerning that Item of Work but only during the Defects Liability Period applicable to that Item of Work.

- (b) A Defects Notice must contain the following information:
  - (i) the nature and extent of the Defect;
  - (ii) the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (iii) the time within which the Defect must be rectified by the Developer (which must be a reasonable time and not less than fourteen (14) days).

## **7.2 Developer to Rectify Defects**

- (a) The Developer must rectify the Defects contained within a Defects Notice prior to the date specified in that notice.
- (b) The Developer must follow the procedure set out in clauses 6.1 to 6.6 in respect of the completion of the rectification of any Defect as if a reference in that clause to an Item of Work is a reference to the relevant Defect.

## **7.3 Access to Designated Land**

If the Developer is required to access, use or occupy any part of the Designated Land for the purpose of discharging its obligations under this clause 7 after the relevant land has been dedicated or transferred to Council, Council will grant a fee free licence to the Developer:

- (a) with respect to so much of the relevant Designated Land; and
- (b) for such period,

that is reasonably necessary to allow the Developer to properly discharge those obligations.

## **7.4 Inspection**

- (a) Council may undertake an audit, inspection or testing of the Works under suspicion of non-compliance of this Agreement or any legislation with or without giving reasonable notice in accordance with the relevant legislative requirements.
- (b) The Developer is to provide Council with any assistance that is reasonably required by Council to enable Council to undertake any audit, inspection or test of the Works.

## **7.5 Right of Council to Step-in**

Council may, at its absolute discretion, enter upon the Land for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice, but only after giving the Developer seven (7) days written notice of its intention to do so.

## **7.6 Consequence of Step-in**

If Council elects to exercise the step-in rights granted to it under clause 7.5 then:

- (a) Council may:
  - (i) enter upon any part of the Land reasonably required to exercise those step-in rights; and
  - (ii) rectify the relevant defects or omissions in accordance with the Defects Notice;
- (b) the Developer must not impede or interfere with Council in exercising those rights; and
- (c) Council may claim any costs incurred by it in doing so from the Developer as a liquidated debt.

## **7.7 Costs of Council**

Where Council exercises its step-in rights under clause 7.6, it may:

- (a) call upon the Bank Guarantees provided by the Developer pursuant to clause 12 to meet any costs for which the Developer is liable under clause 7.6; and
- (b) recover as a debt due in a court of competent jurisdiction any difference between the amount of the Bank Guarantees and the costs incurred by Council in rectifying the Defects.

## **8. Warranties and Indemnities**

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### **8.1 Warranties**

The Developer warrants to Council that:

- (a) it is able to fully comply with its obligations under this Agreement;
- (b) it has full capacity to enter into this Agreement; and
- (c) there is no legal impediment to it entering into, or performing the obligations under, this Agreement.

### **8.2 Indemnity**

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



## 9. Contamination

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### 9.1 Definitions

For the purpose of this clause:

**Contamination** has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

**Contaminated** means subject to Contamination.

**Environment** means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism; and
- (e) natural or man-made or modified features or structures,

and includes ecosystems and all elements of the biosphere.

**Environmental Law** means all laws relating to the protection of or prevention of harm to the Environment including but not limited to any law relating to the use of land, planning, environmental assessment, the environmental or historic heritage, water, water catchments, pollution of air, soil, ground water or surface water, noise, soil, chemicals, pesticides, hazardous goods, building regulation, occupation of buildings, public health or safety, occupational health and safety, environmental hazard, any aspect of protection of the environment or the enforcement or administration of any of those laws (whether those laws arise under statute or the common law or pursuant to any permit, licence, approval, notice, decree, order or directive of any governmental agency or otherwise).

### 9.2 Warranty and indemnity

- (a) The Developer warrants that, as far as it is aware, and other than as disclosed in writing to Council prior to the formation of this Agreement, the Designated Land is not Contaminated.
- (b) The Developer indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on or under the Designated Land as at the date of dedication or transfer of the Designated Land to Council in accordance with this Agreement.

### 9.3 Contamination outside of the Land

Subject to clause 9.4, if the Developer discovers any Contamination in, on or under any land where the Works are being undertaken and carried out which is outside the boundary of the Land:

- (a) the Developer will:

- (i) immediately suspend any works being carried out in the immediate vicinity of the location where the Contamination was discovered, so as not to disturb the Contamination and shall not recommence such works until it can do so without disturbing the Contamination or without interfering with an investigation and/or remediation works undertaken in accordance with this clause 9.3;
- (ii) promptly notify Council of the presence of the Contamination; and
- (iii) within fourteen (14) days of the Developer providing a notice under clause 9.3(a)(ii), provide Council with a proposal:
  - (A) identifying one or more methodologies to investigate the full extent of the Contamination and remediate the Contamination; and
  - (B) providing budget costings in relation to each methodology identified in clause 9.3(a)(iii)(A),

**(Proposal);**

- (b) Council will, within fourteen (14) days of receiving the Proposal, instruct the Developer in writing:
  - (i) if the Developer had identified only one methodology in the Proposal, that Council accepts the Proposal; or
  - (ii) if the Developer had identified more than one methodology in the Proposal, the methodology (including the relevant budget costings) accepted by Council; or
  - (iii) if Council does not accept any of the methodologies identified in the Proposal (such consent not to be unreasonably withheld), Council's reasons for its disagreement and its preferred alternative methodology of remediating the Contamination; and
- (c) if:
  - (i) clause 9.3(b)(i) applies, the Developer will investigate and remediate the Contamination in accordance with the methodology in the Proposal;
  - (ii) clause 9.3(b)(ii) applies, the Developer will investigate and remediate the Contamination in accordance with the methodology accepted by Council;
  - (iii) clause 9.3(b)(iii) applies, the Developer will:
    - (A) investigate and remediate the Contamination in accordance with Council's alternative methodology; or
    - (B) notify Council that it does not agree with Council's alternative methodology and provide reasons for its disagreement, in which case:

- (1) the parties will cooperate and work together in good faith to identify an agreed methodology; and
- (2) the Developer will investigate and remediate the Contamination in accordance with the methodology agreed by the parties under clause 9.3(c)(iii)(B)(1); or
- (iv) Council does not provide an instruction within the time specified in clause 9.3(b), Council is deemed to have accepted the Proposal and the Developer will investigate and remediate the Contamination in accordance with any methodology identified in the Proposal,
 

and Council will bear all reasonable costs in connection with the investigation and remediation of that Contamination.
- (d) If the Parties have not agreed on a methodology under clause 9.3(c)(iii)(B)(1) within fourteen (14) days of the Developer's notice in clause 9.3(c)(iii)(B), then clause 14 applies.

#### **9.4 Contamination caused by Developer**

- (a) If Contamination in, on or under the Land or land which is outside the boundary of the Land is caused or contributed to by the Developer or as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, the Developer will, at its own cost and within a reasonable time, remediate (to the extent that such Contamination is caused or contributed by the Developer) the Contamination to a standard suitable for the current and proposed future use of that land known at the time of remediation.
- (b) Where Contamination is caused or contributed to by the Developer as a direct consequence of the Works being undertaken or carried out by the Developer under this Agreement, and that Contamination is in, on or under any land that is owned or occupied by the Council, or under the management and control of the Council, the Developer indemnifies and must keep indemnified Council against all liability for and associated with all such Contamination.

### **10. Registration of this Agreement**

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#### **10.1 Registration**

This Agreement must be registered on the title of the Land pursuant to section 7.6 of the Act.

#### **10.2 Obligations of the Developer**

The Developer must:

- (a) do all things necessary to allow the registration of this Agreement to occur, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and
- (b) pay any reasonable costs incurred by Council in undertaking that registration.

### **10.3 Removal from Title of the Land**

- (a) Council will do all things necessary to allow the Developer to remove the registration of this Agreement from the title of the Land where the Developer has:
  - (i) provided all Monetary Contributions;
  - (ii) Completed the Works; and
  - (iii) dedicated the Designated Land.
- (b) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.
- (c) Clause 10.3 does not merge on completion and shall survive on termination of this Agreement.

## **11. Determination of this Agreement**

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### **11.1 Determination**

This Agreement will determine upon the earlier of:

- (a) the Developer satisfying all of its obligations under the Agreement; and
- (b) registration of a plan of subdivision that creates the last Residential Lot in the Development.

### **11.2 Effect of Determination**

Upon the determination of this Agreement Council will do all things necessary to allow the Developer to remove the notation of this Agreement from the title of the whole or any part of the Land as quickly as possible.

## **12. Security**

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### **12.1 Delivery to Council of Bank Guarantee**

Except to the extent that a bank guarantee, bond or other security of equal or more value has been provided by the Developer in relation to the Works (or any part thereof) pursuant to a development consent (granted by Council or any other relevant Authority) in connection with the Land, prior to the issue of a Subdivision Works Certificate for the Development, the Developer must deliver to Council one (1) or more Bank Guarantees comprising of the following amounts:

- (a) 100% of the value of the Water Main Works, being \$366,000;
- (b) 75% of the value of the Road Upgrade Works, being \$472,500; and
- (c) 25% of the value of the Sewer Main Works, being \$122,527.50.

### **12.2 Security during Defects Liability Period**

- (a) Upon the Completion of the Water Main Works, the Road Upgrade Works or the Sewer Main Works and the commencement of the applicable Defects

Liability Period, Council must return any Bank Guarantees held by it with respect to the relevant Completed Item of Work.

- (b) In exchange, the Developer must provide Council with one (1) or more Bank Guarantees for an amount equal to 5% of the value for that Completed Item of Work as described in Section B of Schedule 3.

### **12.3 Council may call on Bank Guarantee**

Subject to Council providing the Developer with seven (7) days' prior written notice, Council may make an appropriation from the Bank Guarantee (and the proceeds of the Bank Guarantee, including any interest earned in respect of such proceeds) at any time, in such amount as the Council, acting reasonably, thinks appropriate for the costs of rectifying any default by the Developer under this Agreement and the costs of ensuring due and proper performance of the Developer's obligations under this Agreement, if:

- (a) an Insolvency Event occurs in respect of the Developer;
- (b) the Developer fails to deliver, or comply with its obligations under this Agreement in relation to the delivery of the Works (including with respect to the rectification of Defects during the Defects Liability Period), and such failure has not been rectified to the reasonable satisfaction of Council within fourteen (14) days of the Developer receiving a written notice from Council identifying those obligations which Council alleges the Developer has failed to deliver or comply with and requiring the Developer to perform those obligations; or
- (c) the Developer fails to make the Development Contributions in accordance with this Agreement.

### **12.4 Notice of Appropriation**

Within 10 days of Council making an appropriation from the Bank Guarantee under clause 12.3, Council must notify the Developer in writing of that appropriation.

### **12.5 Return of Bank Guarantee**

Council must, for each Item of Work for which one (1) or more Bank Guarantees have been provided by the Developer under clause 12.2(b) and within thirty (30) days from the expiration of the Defects Liability Period for that Item of Work, return to the Developer the Bank Guarantees (if any) provided for that Item of Work.

## **13. Compulsory acquisition of Dedicated Land**

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### **13.1 Consent to Compulsory Acquisition of the Designated Land**

Subject to clause 13.2(a), the Owner consents to the compulsory acquisition of the Designated Land:

- (a) in accordance with the Acquisition Act; and
- (b) on the terms set out in clause 13.2(b).

### 13.2 Council's right to acquire

- (a) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Owner has failed to comply with its obligations with respect to the dedication of that land under this Agreement.
- (b) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:
  - (i) the Owner agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
  - (ii) Council must complete that acquisition within twelve (12) months of a written notice from Council to the Owner and Developer setting out the Owner's failure to comply with its obligations with respect to the dedication of the Designated Land under this Agreement.

### 13.3 Consent of owners

The Parties agree that the provisions of clause 13 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of section 30 of the Acquisition Act.

## 14. Dispute Resolution

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### 14.1 Notice of Dispute

- (a) If a dispute between the Parties arises in connection with this Agreement or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
  - (i) is in writing;
  - (ii) adequately identifies and provides details of the Dispute;
  - (iii) stipulates what the First Party believes will resolve the Dispute; and
  - (iv) designates its representative (**Representative**) with the necessary authority to negotiate and resolve the Dispute.
- (b) The Second Party must, within seven (7) days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person with the necessary authority to negotiate and settle the Dispute (the representatives designated by the Parties being together, the **Representatives**).

### 14.2 Conduct Pending Resolution

The Parties must continue to perform their respective obligations under this Agreement if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

### **14.3 Further Steps Required before Proceedings**

Subject to clause 14.12 and except as otherwise expressly provided in this Agreement, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within seven (7) days of the date a notice under clause 14.1 is served.

### **14.4 Disputes for Mediation or Expert Determination**

If the Representatives have not been able to resolve the Dispute, then the Parties must agree within seven (7) days to either refer the matter to mediation under clause 14.5 or expert resolution under clause 14.6.

### **14.5 Disputes for Mediation**

- (a) If the Parties agree in accordance with clause 14.4 to refer the Dispute to mediation, the mediation must be conducted by a mediator agreed by the Parties and, if the Parties cannot agree within seven (7) days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (b) If the mediation referred to in clause 14.5(a) has not resulted in settlement of the Dispute and has been terminated, the Parties may agree to have the matter determined by expert determination under clause 14.6.

### **14.6 Choice of Expert**

- (a) If the Dispute is to be determined by expert determination, this clause 14.6 applies.
- (b) The Dispute must be determined by an independent expert in the relevant field:
  - (i) agreed between and appointed jointly by the Parties; or
  - (ii) in the absence of agreement within seven (7) days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (c) If the Parties fail to agree as to the relevant field within seven (7) days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the Parties.
- (d) The expert appointed to determine a Dispute:
  - (i) must have a technical understanding of the issues in dispute;
  - (ii) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and

- (iii) must inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then the expert must not be appointed except with written approval of the Parties.
- (e) The Parties must promptly enter into an agreement with the expert appointed under this clause setting out the terms of the expert's determination and the fees payable to the expert.

#### **14.7 Directions to Expert**

- (a) In reaching a determination in respect of a dispute under clause 14.6, the independent expert must give effect to the intent of the Parties entering into this Agreement and the purposes of this Agreement.
- (b) The expert must:
  - (i) act as an expert and not as an arbitrator;
  - (ii) not accept verbal submissions unless both Parties are present;
  - (iii) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
  - (iv) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
  - (v) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
  - (vi) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party fourteen (14) days to make further submissions;
  - (vii) issue a final certificate stating the expert's determination (together with written reasons); and
  - (viii) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The Parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
  - (i) a short statement of facts;
  - (ii) a description of the Dispute; and
  - (iii) any other documents, records or information which the expert requests.

#### **14.8 Expert may Convene Meetings**

- (a) The expert must hold a meeting with all of the Parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert



considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

- (b) The Parties agree that a meeting under paragraph (a) is not a hearing and is not an arbitration.

#### **14.9 Other Courses of Action**

If:

- (a) the Parties cannot agree in accordance with clause 14.3 to refer the matter to mediation or determination by an expert; or
  - (b) the mediation referred to in clause 14.5 has not resulted in settlement of the dispute, the mediation has been terminated and the Parties have not agreed to refer the matter to expert determination within seven (7) days after termination of the mediation,
- (c) then either party may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

#### **14.10 Final Determination of Expert**

The Parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

#### **14.11 Costs**

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

#### **14.12 Remedies Available under the Act**

This clause 14 does not operate to limit the availability of any remedies available to Council under sections 9.45 and 9.46 and Division 9.6 of the Act.

#### **14.13 Urgent Relief**

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this Agreement.

### **15. Position of Council**

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#### **15.1 Consent Authority**

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

#### **15.2 Agreement does not Fetter Discretion**

This Agreement is not intended to operate to fetter:

- (a) the power of Council to make any Law; or
- (b) the exercise by Council of any statutory power or discretion (**Discretion**).

### 15.3 Severance of Provisions

- (a) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter of any Discretion, the Parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 15 is substantially satisfied;
  - (ii) in the event that the intention in clause 15.3(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
  - (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (b) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this Agreement contracted out of a provision or exercised a Discretion under this Agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

### 15.4 No Obligations

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

## 16. GST

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### 16.1 Definitions

In this clause:

**Taxable supply, GST, Tax Invoice and Input Tax Credit** have the same meaning given to them in GST Law.

### 16.2 Non-monetary Supplies

- (a) The Parties agree that any non-monetary supplies made by one party to the other pursuant to this Agreement (including Works and the dedication of land) will be exempt from GST pursuant to Division 82 of the GST Law.
- (b) In the event that one party reasonably believes that the non-monetary supply it makes to the other is a Taxable Supply then the Parties agree to negotiate in good faith to agree to the GST inclusive market value of that Taxable Supply as follows:
  - (i) The party making the Taxable Supply will issue a Tax Invoice to the other as soon as practicable after agreeing to the GST inclusive

market value and will disclose the amount of GST included in the GST inclusive market value.

- (ii) The recipient of the Taxable Supply will pay to the other party the amount of the included GST within fifteen (15) days of receiving the Tax Invoice.
- (c) In the event that both Parties reasonably believe that each make a non-monetary Taxable Supply to the other, any GST payable by one party to the other will be off-set against each other and any net difference will be paid by the party with the greater obligation.

### **16.3 Supply Expressed in Terms of Money**

- (a) Any amounts payable under or in connection with the Agreement unless expressed to include GST is GST exclusive and does not include an amount on account of GST.
- (b) If any party reasonably believes that it is liable to pay GST on a supply expressed in terms of money (or where the consideration for the supply is expressed in terms of money) and made to the other party under this Agreement and the supply was not expressed to include GST, then:
  - (i) the recipient of the supply must pay an amount equal to the GST on that supply to that other party;
  - (ii) the party making the supply will issue a Tax Invoice to the other party; and
  - (iii) the recipient of the supply will pay the amount of the GST to the supplier within fifteen (15) days of receiving the Tax Invoice.

### **16.4 Expenses and Costs incurred**

If any expenses or costs incurred by one party are required to be reimbursed by the other party under this Agreement, then the amount of the reimbursement will be calculated as follows:

- (a) The amount of the cost or expense incurred by the party seeking reimbursement will be initially calculated excluding any Input Tax Credit to which that party is entitled to claim.
- (b) This amount initially calculated will be increased by the applicable rate of GST to equal a GST inclusive reimbursement amount and this amount will be paid by the party liable to make the reimbursement.
- (c) The party being reimbursed will issue a Tax Invoice to the other at the GST inclusive reimbursement amount prior to being reimbursed.

### **16.5 Survival of Clause**

Clause 16 does not merge on completion and shall survive termination of this Agreement.

## **17. Access to Land**

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### **17.1 Application of Clause**

This clause applies if the Developer accesses, uses and/or occupies any land owned by Council in performing its obligations or exercising its rights under this Agreement (**Necessary Access**).

### **17.2 Terms of Licence**

The Terms of Schedule 2 apply to any Necessary Access.

## **18. Explanatory Note**

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### **18.1 Explanatory Note**

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

## **19. Legal Costs**

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### **19.1 Legal costs**

The Developer shall bear its own costs and those of Council in relation to the preparation, negotiation, execution and registration of this Agreement and any document related to this Agreement.

## **20. Administrative Provisions**

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### **20.1 Notices**

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

- (c) For the purpose of this clause the address of a person is the address set out in this Agreement or another address of which that person may from time to time give notice to each other person.

## **20.2 Severability**

If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

## **20.3 Entire understanding**

This Agreement:

- (a) is the entire Agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior Agreement or understanding between the Parties on anything connected with that subject matter.

## **20.4 Variation**

An amendment or variation to this Agreement is not effective unless it is in writing and signed by the Parties.

## **20.5 Waivers and consents**

Except as expressly stated in this Agreement, each Party acknowledges that:

- (a) a waiver or consent under this Agreement is not effective unless it is in writing and signed by the Parties entitled to give the waiver or consent;
- (b) a waiver or consent may be given conditionally or unconditionally or withheld at the absolute discretion of the Party entitled to give the waiver or consent;
- (c) a waiver of a power or right or the giving of consent is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given;
- (d) a party's failure or delay to exercise a power or right does not operate as a waiver of that power or right; and
- (e) the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

## **20.6 Counterparts**

This Agreement may be executed in a number of counterparts and the counterparts taken together constitute one and the same instrument.

## **20.7 No right of set off**

Except as expressly stated in this Agreement, a Party has no right of set-off against a payment due to another Party.

## **20.8 Relationship of parties**

Nothing in this Agreement creates a relationship between the Parties of partnership, employment, principal and agent or of trustee and beneficiary.

## **20.9 Power of Attorney**

Each attorney (if any) who executes this Agreement on behalf of a party declares that the attorney has no notice of:

- (a) the revocation or suspension of the power of attorney by the grantor; or
- (b) the death of the grantor.

## **20.10 Review Requirements**

- (a) The Parties agree to review during the event that either party believes that a change in circumstances has or will occur that will affect the operation and carrying out of this Agreement.
- (b) Review of this Agreement is required if any Legislation is introduced or changed to the effect that it would limit, stop, substantially change or otherwise hinder the operation or implementation of this Agreement in the opinion of either Party.
- (c) The Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement should reasonable and necessary amendments be identified.
- (d) If this Agreement becomes illegal, unenforceable or invalid as a result of any change to Legislation, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

## **20.11 Further Agreements**

This Agreement does not restrict further agreements between the Parties that are not inconsistent with this Agreement.

## **20.12 Force Majeure**

If a Party is affected, or likely to be affected, by a Force Majeure Event, that Party must promptly notify the other Party, giving:

- (a) full details of the event;
- (b) an estimate of its duration;
- (c) the obligations under this Agreement it affects and how much it will affect them; and
- (d) the steps either taken or planned to manage its effects.

### **20.13 Suspension of Obligations under a Force Majeure**

- (a) A Party's obligations under this Agreement are suspended if those obligations are affected by a Force Majeure Event for as long as the event continues.
- (b) A Party affected by a Force Majeure Event must do all it reasonably can to remove, overcome or minimise the effects of the event as quickly as possible.

### **20.14 Surrender of Right of Appeal**

The Developer is not to commence or maintain any proceedings in any court, tribunal or similar appealing against or questioning the validity of this Agreement or an approval relating to the Development in so far as the subject matter of the proceedings relates to this Agreement.

### **20.15 Notations under s 10.7(5) of the Act**

Council may, at its absolute discretion, make a notation on a planning certificate issued under section 10.7(5) of the Act detailing the application or effect this Agreement has on the Land.

### **20.16 Confidentiality**

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

### **20.17 Governing law**

The law of New South Wales governs this Agreement.

### **20.18 Jurisdiction**

The Parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts which are entitled to hear appeals from them.

EXECUTED as an Agreement.

EXECUTED by and on behalf of **GOULBURN  
MULWAREE COUNCIL ABN 84 049 849 319**  
by its authorised delegate pursuant to section  
377 of the Local Government Act 1993 in the  
presence of:



Signature of authorised delegate

**WARWICK L. BENNETT**  
Name of authorised delegate




Signature of witness

**Amy Croker**  
Name of witness

**184 Bourke St Goulburn**  
Address of witness

EXECUTED by  
**MARULAN ESTATES PTY LTD ACN 113 187  
778** by its attorney **DARRABY PTY LTD ACN  
153 183 012** under power of attorney Book  
4754 No 431 in accordance with section 127 of  
the *Corporations Act 2001*



Signature of ~~director~~ company secretary

**TIMOTHY BAINBRIDGE**  
Name of ~~director~~ company secretary



Signature of director

**Bentley Cottle**  
Name of director

EXECUTED by  
**DARRABY PTY LTD ACN 153 183 012**  
in accordance with section 127 of  
the *Corporations Act 2001*



Signature of ~~director~~ company secretary

**TIMOTHY BAINBRIDGE**  
Name of ~~director~~ company secretary



Signature of director

**Bentley Cottle**  
Name of director



## Schedule 1 – Requirements under Section 7.4 of the Act

Requirement Under the Act	This Agreement
<p><b>Planning instrument and/or Development Application – section 7.4(1)</b></p> <p>The Developer has:</p> <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument;</li> <li>(b) made, or propose to make, a Development Application;</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	
<p><b>Description of land to which this Agreement applies – section 7.4(3)(a)</b></p>	<p>The land described as Lot 23 in DP 1256090 and known as 94 Wilson Drive, Marulan NSW</p>
<p><b>Description of change to the environmental planning instrument or the development to which this Agreement applies – section 7.4(3)(b)</b></p>	<p>Subdivision of the Land to create 127 Residential Lots plus 2 drainage reserves</p>
<p><b>Application of section 7.11 of the Act – section 7.4(3)(d)</b></p>	<p>Refer to clause 3.4 of this Agreement.</p>
<p><b>Application of section 7.12 of the Act – section 7.4(3)(d)</b></p>	<p>Refer to clause 3.4 of this Agreement.</p>
<p><b>Consideration of benefits under this Agreement if section 7.11 applies – section 7.4(3)(e)</b></p>	<p>Refer to clause 3.4 of this Agreement.</p>
<p><b>Mechanism for dispute resolution – section 7.4(3)(f)</b></p>	<p>Refer to clause 14 of this Agreement.</p>
<p><b>Enforcement of this Agreement – section 7.4(3)(g)</b></p>	<p>Refer to clause 12 of this Agreement.</p>
<p><b>No obligation to grant consent or exercise functions – section 7.4(9)</b></p>	<p>Refer to clause 15 of this Agreement.</p>

## Schedule 2 – Terms of Licence

### 1. Definitions

For the purposes of this Schedule 2:

- (a) the **Land** is the land being accessed under the Licence;
- (b) the **Licence** means the licence of the Land to which this Schedule applies;
- (c) the **Licensee** is the party accessing the Land; and
- (d) the **Licensor** is the owner of the Land.

### 2. Licence

#### 2.1 Personal Rights

- (a) The Licence is personal to the Licensee.
- (b) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without the prior written consent of the Licensor.
- (c) The Licensor may refuse the granting of consent under paragraph (ii) without reason and at its absolute discretion.

#### 2.2 Leasehold Interest

- (a) This Agreement does not grant to the Licensee a leasehold interest in the Land. The Parties agree that:
  - (i) the Licence does not confer exclusive possession of the Land on the Licensee;
  - (ii) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
    - (A) entry onto the Land; and
    - (B) the performance of any works on the Land,provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the activities being carried out on the Land by the Licensee;
- (b) the Licensee does not have any right to quiet enjoyment of the Land; and
- (c) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensor.

### **3. Compliance with Authorities**

#### **3.1 No Warranty as to Suitability for Use**

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the purposes of the Licensee.

#### **3.2 Compliance with the Terms of the Consents**

The Licensee must comply with the requirements of all Authorities in relation to its access to the Land and the conduct of any activities on it by the Licensee.

#### **3.3 Compliance with Directions from Authorities**

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Licensor and which arise from the conduct of any activities on the Land by the Licensee.

#### **3.4 Obtaining Further Consents**

- (a) If the Licensee requires further consents to conduct activities on the Land, it must:
  - (i) make such applications itself; and
  - (ii) bear all costs incurred by it in relation to obtaining the relevant consent.
- (b) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application to any Authority.

### **4. Limitation on the Licensor's Liability**

#### **4.1 Insurances**

- (a) The Licensee must effect and keep current and in force the following policies of insurance:
  - (i) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
    - (A) personal injury or death of any person; and
    - (B) loss or damage to property;
  - (ii) Workers compensation insurance under the Workers Compensation Act 1987 covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the activities on the Land by the Licensee;
  - (iii) A comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the performance of the activities on the Land by the Licensee; and

- (iv) A contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the activities on the Land by the Licensee.
- (b) The policies referred to in paragraphs (a)(i), (a)(iii) and (a)(iv) must note the interest of the Licensor as principal.

#### **4.2 Inspection of Insurance**

- (a) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (b) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies wherever requested by the Licensor.

#### **4.3 Cancellation of Insurance**

If any policy is cancelled either by the Licensee or the insurer the Licensor must notify the Licensor immediately.

#### **4.4 Risk**

The Licensee uses and occupies the Land at its own risk.

#### **4.5 Indemnity**

The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and/or occupation of the Land.

### Schedule 3 – Development Contributions

Contribution	Public Purpose	Manner & Extent	Timing	Contribution Credit / Payment	Value of Works
<b>A. Dedication of Land</b>					
Dedication of Lot 108 for stormwater detention purposes and public open space	Stormwater management and public open space	Dedication of land for the purposes of ongoing stormwater infrastructure management and provision of public open space	Works to be completed prior to the issuance of the Subdivision Certificate that creates Lot 108	\$0.00	-
Dedication of Lot 115 for stormwater detention purposes	Stormwater management	Dedication of land for the purposes of ongoing stormwater infrastructure management	Works to be completed prior to the issuance of the Subdivision Certificate that creates Lot 115	\$0.00	-
<b>B. Carrying out of Work</b>					
Water Main Works	Provision of reticulated water supply	Supply and install 200mm Water Main from Brayton Road intersection to development site (in accordance with Council's water and sewer construction standards), but excluding any removal of contaminated waste or remediation works associated with contamination identified during works outside the boundary of the Land.  Full scope of requirements to be included in s 306 Certificate and approved plans.	Works to be completed prior to the issuance of the First Subdivision Certificate	\$0.00	\$366,000.00
Sewer Main Works	Provision of reticulated sewer infrastructure	Supply and install 450mm sewer main from the existing sewer pump station to the dedicated location on the southbound side of the Hume	Works to be completed prior to the issuance of the First	75% of the Construction Costs - only in relation to reducing any sewage works contributions	\$490,110.00

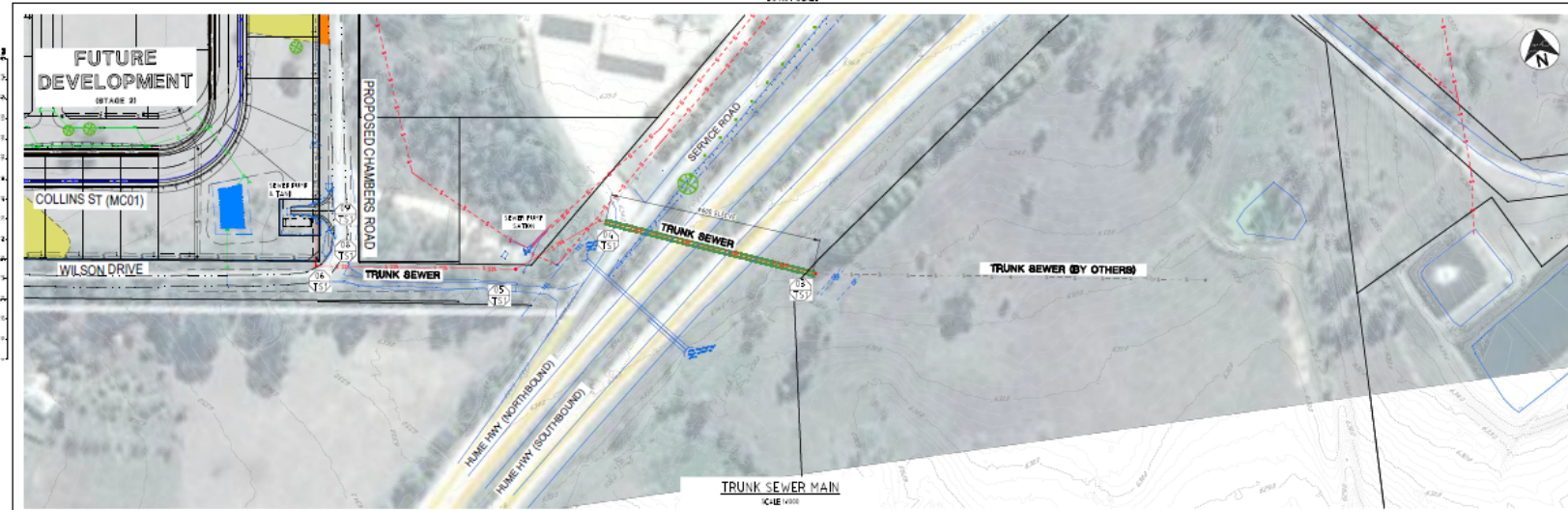
		<p>Highway (in accordance with Council's water and sewer construction standards), but excluding any removal of contaminated waste or remediation works associated with contamination identified during works outside the boundary of the Land.</p> <p>Full scope of requirements to be included in s 306 Certificate and approved plans.</p>	Subdivision Certificate	determined to be payable under s306 of the <i>Water Management Act 2000</i> (NSW)	
Road Upgrade Works	Provision of access from existing road network and partial upgrade of existing road network	<p>Construction of road upgrade works as outlined in Figure 1 in accordance with Council's Engineering Standards, including the following:</p> <ol style="list-style-type: none"> <li>1. excavation of existing road shoulders to new kerb alignment;</li> <li>2. construction of 320mm thick subbase pavement and road base to road shoulder (subject to geotechnical investigation);</li> <li>3. construction of kerb and guttering;</li> <li>4. construction of nine new industrial driveways with 200mm thick DGB20 road base;</li> <li>5. construction of 1.2 metre wide footpath along one side of the road;</li> <li>6. geotechnical pavement testing to confirm 10 year design life of a residential collector road – 4 x 10<sub>5</sub> ESA in accordance with Council's Engineering Standards;</li> </ol>	Works to be completed prior to the issuance of the First Subdivision Certificate	\$157,500.00 (exclusive of GST) (as a cash payment from Council to the Developer)	\$630,000.00

		<p>7. any rehabilitation of the existing pavement required as a result of the pavement testing to achieve the 10 year design life;</p> <p>8. construct new 14/7mm bitumen seal to new road extent and over existing pavement;</p> <p>9. install pram ramps as required and relay topsoil and grass seed to verges;</p> <p>10. existing services pits / lids to match new pavement level;</p> <p>11. inclusion of pipes and pits for road stormwater; and</p> <p>12. asphalt concrete pavement to be provided to the intersection of Portland Avenue and Wilson Drive in accordance with Figure 1,</p> <p>but excludes any removal of contaminated waste or remediation works associated with contamination identified during works within the Council's road reserve.</p>			
Park Embellishment Works	Public open space	In accordance with the works set out in Schedule 5	Works to be completed prior to the issuance of the Subdivision Certificate that creates Lot 108	\$60,000.00	\$60,000.00
Stormwater Detention Basin Works	Stormwater management	The construction of the stormwater basin must be substantially in accordance with the Development Consent, the referenced plans, WaterNSW Concurrence Requirements and the	Works to be completed prior to the issuance of the First Subdivision Certificate	\$0.00	\$165,000.00

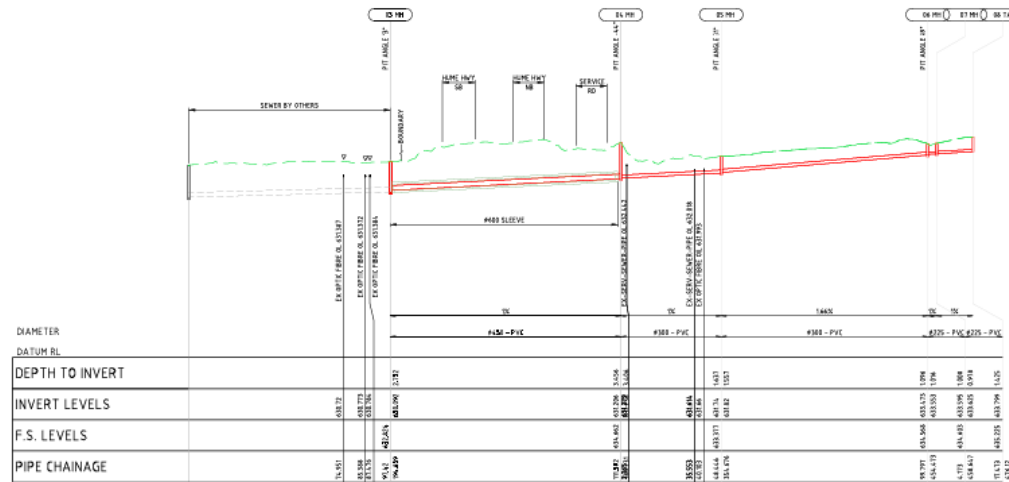
		Subdivision Works Certificate.			
<b>C. Monetary Contribution</b>					
Monetary Contribution of \$45,500.00	Drainage	Capitalisation and ongoing maintenance (30 years) of stormwater basin	To be paid prior to the issuance of the Subdivision Certificate that creates Lot 108	\$0.00	-
Monetary Contribution of \$45,500.00	Drainage	Capitalisation and ongoing maintenance (30 years) of stormwater basin	To be paid prior to the issuance of the Subdivision Certificate that creates Lot 115	\$0.00	-



**TRUNK SEWER MAIN PLAN**  
DO NOT SCALE



**TRUNK SEWER MAIN**  
SCALE 1:400



**SEWER LINE TS1**  
SCALE HORIZ 1:500  
VERT 1:200

24/03/2020

SK202

EXCESS:\Projects\Equinox-SH2-SRLE\QUIN\PROJ\A4-2010-SK202-HEADWORKS.dwg

NO.	DATE	BY	DESCRIPTION
1			
2			
3			
4	20/03/20	GENERAL REVISION - EXTENT	G.T.
5	20/11/19	ADJUSTED FOR CD SW CHAINAGE	S.T.
6	02/10/19	UNDERSCORE EXTENT ADJUSTED	AW
7	04/07/19	APPROVED	JIT

**PRELIMINARY**

SCALE IN METRES  
1:1000 (A1) 0 5 10 20 30 40 50 60 70 80 10000 (A2)

NO.	DATE	BY	DESCRIPTION
1			
2			
3			
4	19/09/19	DESIGNED	P.T.E.
5	19/09/19	DESIGNED	DATE
6		APPROVED	DATE

**S.R.L.E.**  
Sustainable Resource Limited  
187 Burke Street, Goulburn NSW 2603  
P.O. Box 111, Teralba NSW 2430

**EQUINOX - STAGE 2**  
PROPOSED URBAN SUBDIVISION  
GOULBURN STREET  
GOULBURN, NSW  
FOR  
DARRABY P/L

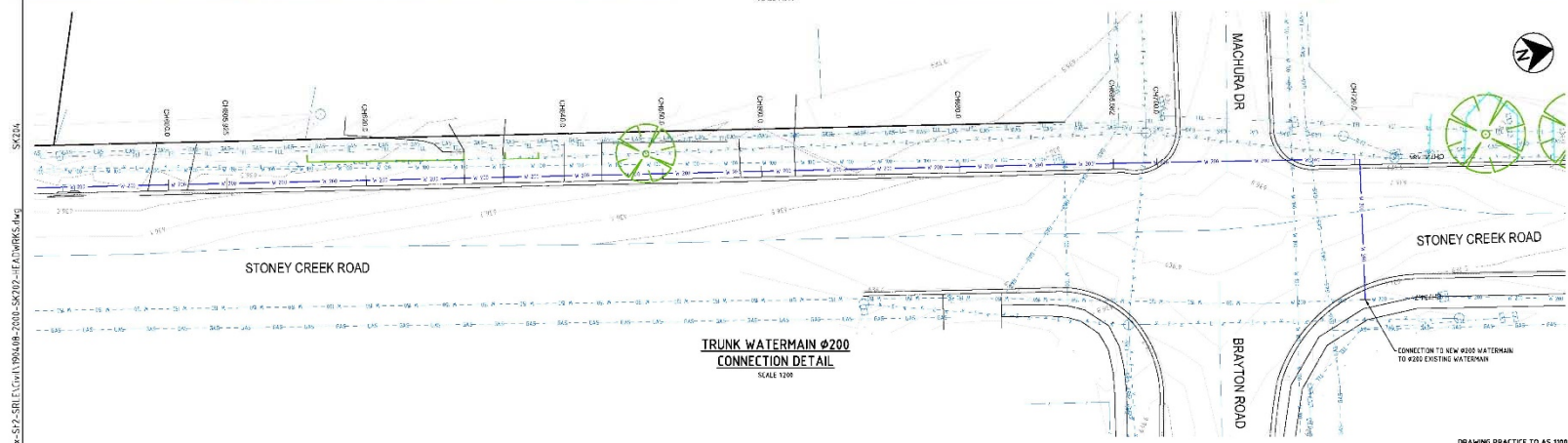
**PROPOSED HEADWORKS TRUNK SEWER MAIN**

DATE: 20/03/20  
DRAWING PRACTICE TO AS 1100  
T1606 - SK202

**TRUNK WATER MAIN PLAN**  
DO NOT SCALE

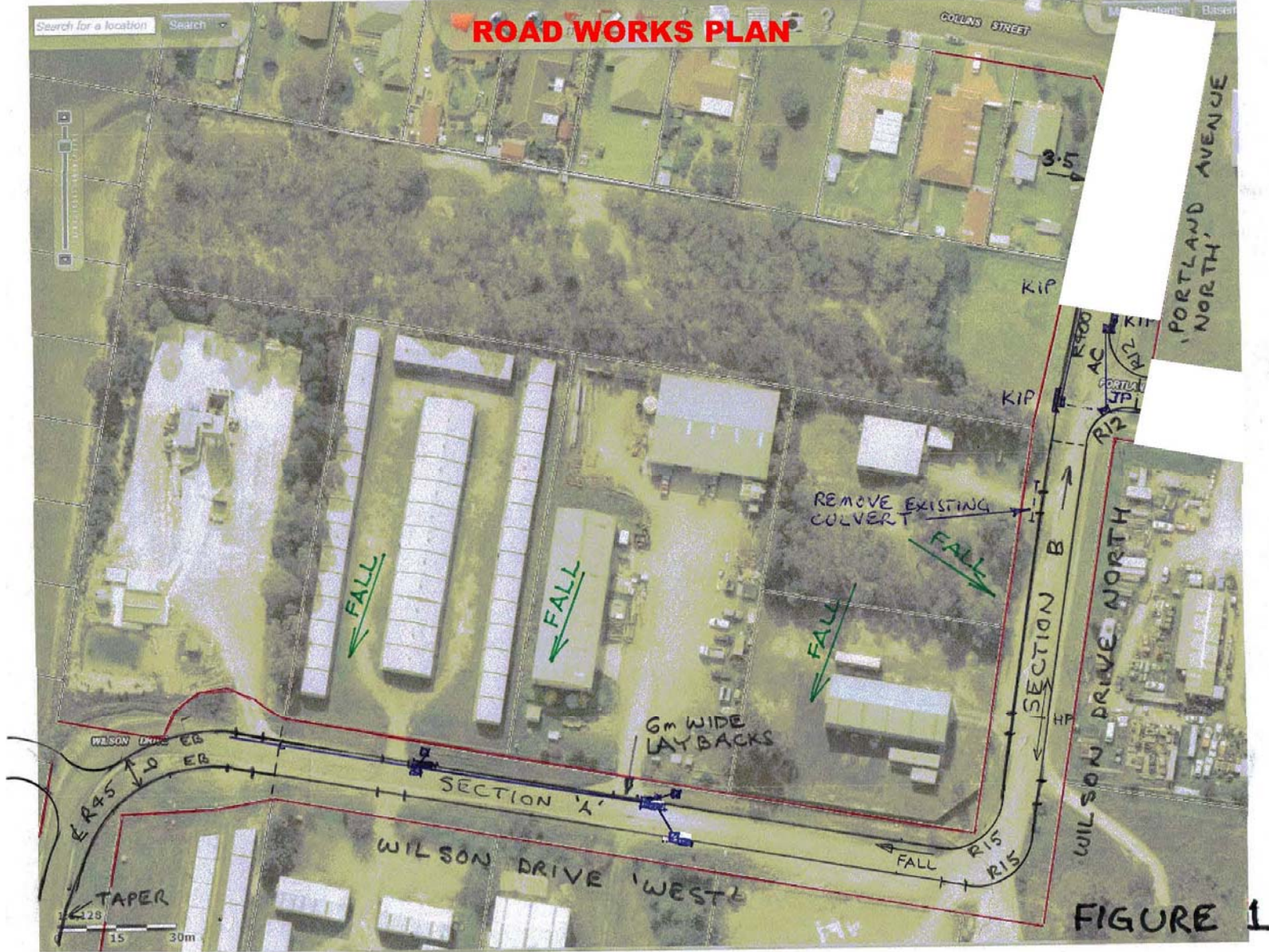


**TRUNK WATERMAIN Ø200**  
SCALE 1:800

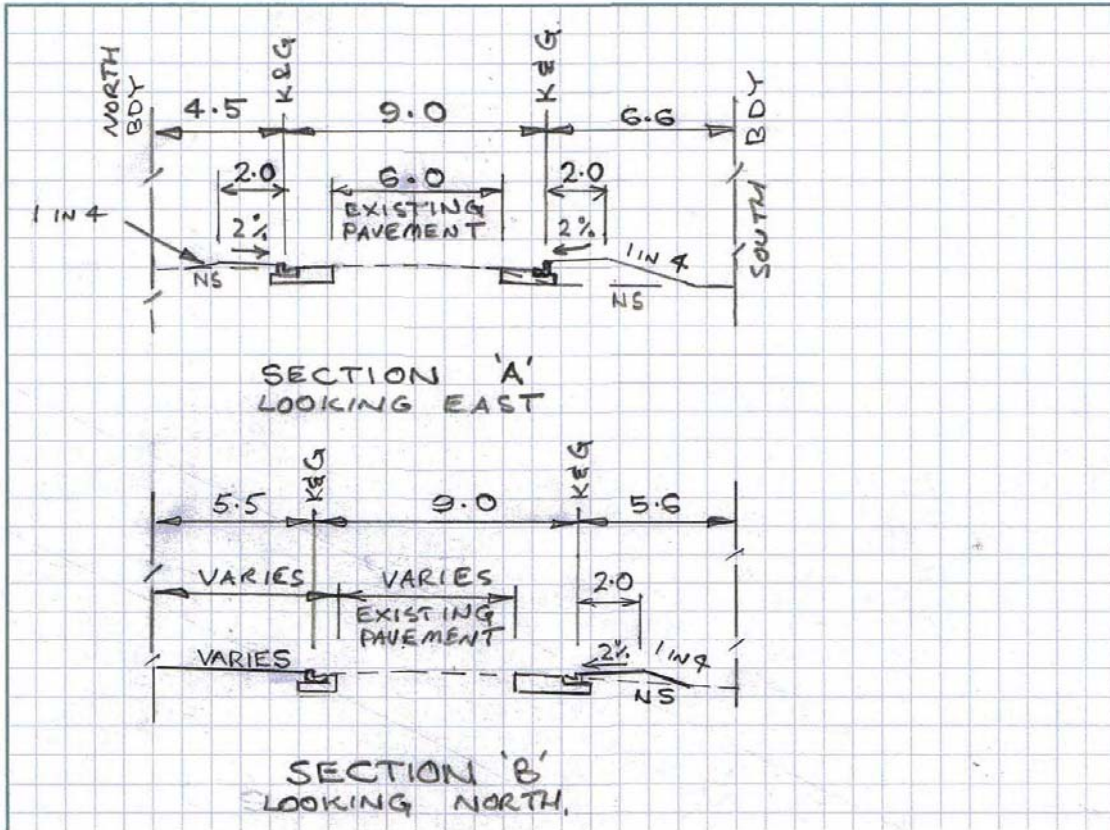


**TRUNK WATERMAIN Ø200**  
**CONNECTION DETAIL**  
SCALE 1:200

<p>20/03/2020</p> <p>SK204</p> <p>C:\Users\195408-Engineer-S172-SRI\Documents\195408-2000-SK204-HEADWORKS.dwg</p>	<p><b>PRELIMINARY</b></p> <p>SCALE IN METRES</p> <p>1:1000 (A1) 0 5 10 20 40</p> <p>SCALE IN METRES</p> <p>1:2000 (A3) 0 5 10 20 40</p> <p>1:200 (A1) 0 2 4 6 8 10</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td>DRAWN</td> <td>DESIGNED</td> <td>DATE</td> </tr> <tr> <td>SVC</td> <td>---</td> <td>---</td> </tr> <tr> <td>DATE</td> <td>VERIFIED</td> <td>DATE</td> </tr> <tr> <td>SEP'19</td> <td>---</td> <td>---</td> </tr> <tr> <td>SCALE</td> <td>APPROVED</td> <td>DATE</td> </tr> <tr> <td>---</td> <td>---</td> <td>---</td> </tr> </table> <p style="font-size: small;">© Copyrighted S.R.L.E. - 2019 All Rights Reserved</p>	DRAWN	DESIGNED	DATE	SVC	---	---	DATE	VERIFIED	DATE	SEP'19	---	---	SCALE	APPROVED	DATE	---	---	---	<p><b>S.R.L.E.</b></p> <p><b>Southern Rural Local Engineers</b></p> <p>Head Office: 202 4822 3477 187 Bourke Street, Sydney NSW 2000 P.O. Box 116, Yarrald NSW 2818</p>	<p>PROJ. TITLE: <b>EQUINOX - STAGE 2</b> PROPOSED URBAN SUBDIVISION GOLDBURN STREET Goulburn, NSW FOR DARRABY P/L</p>	<p>DRG. TITLE: <b>PROPOSED HEADWORKS TRUNK WATER MAIN</b></p> <p>DRG. NO.: T01606 - SK204</p>
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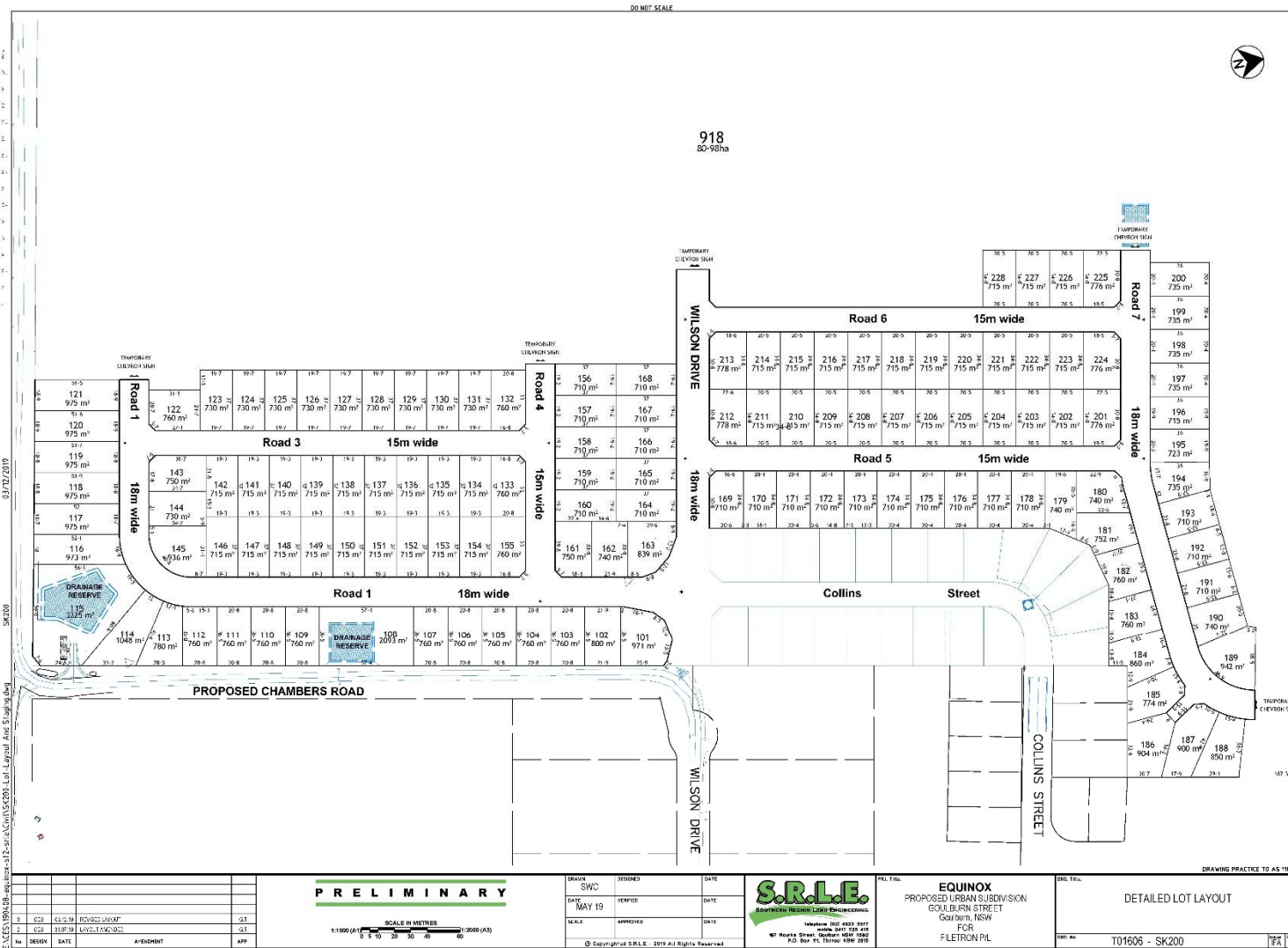


JOB NAME:	EQUINOX SUBDIVISION MARULAN	JOB No:	TOIGOG
DESCRIPTION:	EXTERNAL ROAD UPGRADES	DATE:	7/11/2019
		PAGE:	1 OF 1



- ROAD RESERVES ARE 20.115 WIDE
- ALL NEW KERBS

# Schedule 4 – Designated Land Plan



## Schedule 5 – Park Embellishment Works

The *Landscape Plan – Park and Playground* (Drawing B01120/2) prepared by Susie Reynolds Designs and dated December 2020 is attached to illustrate the scope of ‘Park Embellishment Works’.

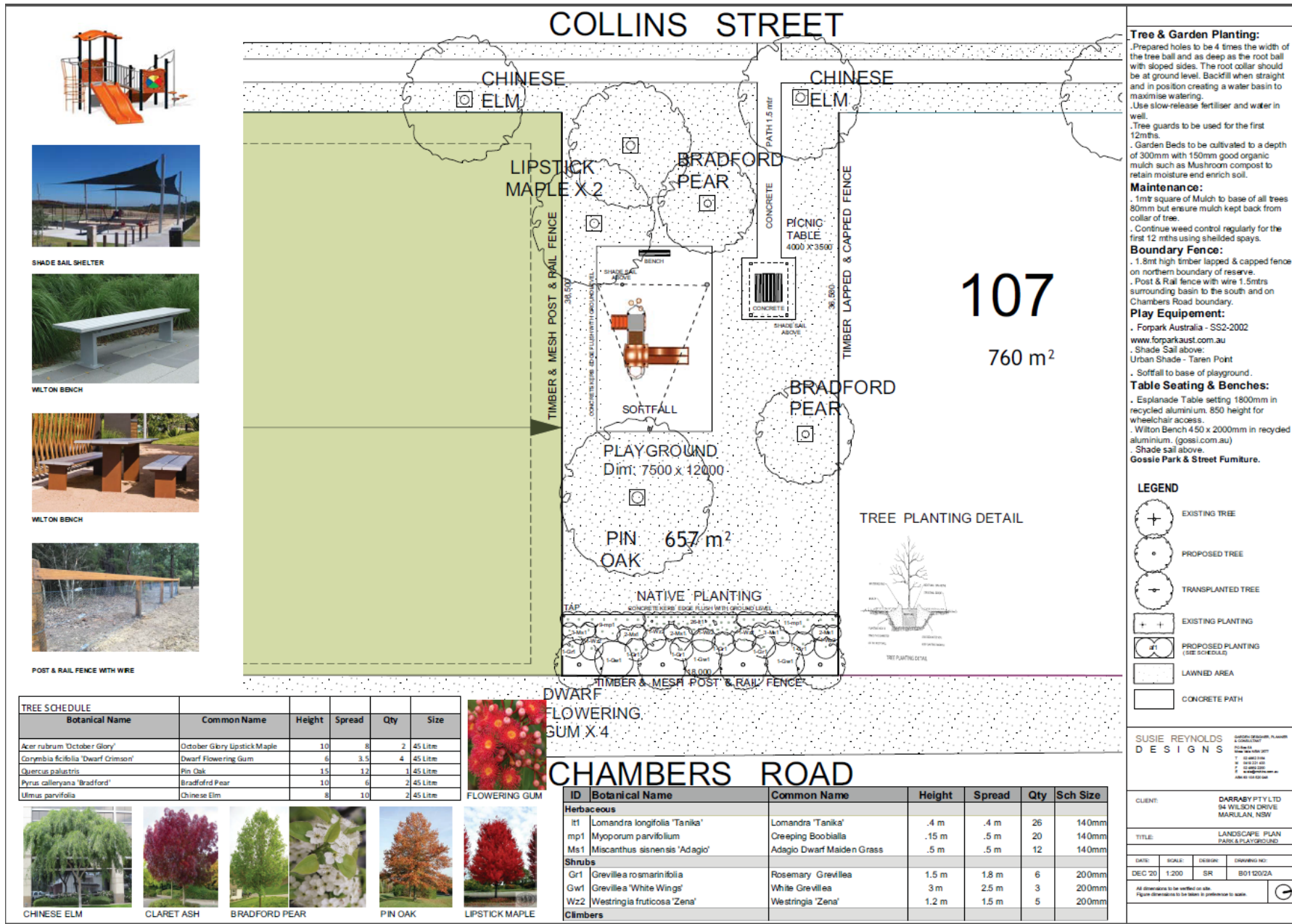
### Landscape Handover and Maintenance Protocol

1. On Practical Completion of an Item of Work, Council is to attend an on-site meeting to inspect both Site Work-- Hard Landscaping and Site Work— Soft Landscaping (acknowledging that not all soft landscaping will be fully established).
2. At or prior to the Practical Completion Date for a Site Work the Developer's contractor will provide a maintenance plan for the Site Work — Hard Landscaping and Site Work— Soft Landscaping.
3. Subject to being satisfied, acting reasonably, that the Site Work is consistent with the approved plans and specifications, Council shall issue a Certificate of Practical Completion, subject to the maintenance of the Site Work by the Developer's contractor in accordance with the maintenance plan for a period of 104 weeks from the Practical Completion Date for the Site Work.
4. In respect of the Item of Work— Hard Landscaping the maintenance plan will address:
  - inspection and repair of cracks and / or undermining to the footpaths within the open space;
  - a maintenance schedule for the playground to ensure that upon completion of the Maintenance Period it will be in a good state of repair, well maintained, and meets a fit for purpose standard as generally prescribed in the following standards at the time of installation:
    - AS4685 (2014): Playground equipment and surfacing;
    - AS4422 (2016): Playground surfacing — Specifications, requirement and test method; and
    - AS/WS 4486.1 : Playgrounds and playground equipment;
  - a maintenance schedule for the seating, shade structures and picnic area facilities, to ensure that upon completion of the Maintenance Period they will be in a good state of repair, well maintained, and meet a fit for purpose standard.
5. In respect of the Item of Work— Soft Landscaping the maintenance plan will address:
  - mowing of open space grass areas; ○ over sowing of patchy grass areas;
  - watering of all new trees,
  - replacement of dead or diseased trees, shrubs & groundcovers;
  - weed control and spraying of grass areas and garden beds;
  - formative pruning of all trees (including adjustment or replacement of stakes and
  - removal of stakes/ties when tree is self-supporting);
  - mulch top ups to gardens to maintain a minimum 100mm depth.
6. From the Practical Completion Date of an Item of Work, the Developer's contractor will maintain the Site Work — Hard Landscaping and the Site Work — Soft Landscaping in accordance with the maintenance plan for a period of 104 weeks.
7. The developer will be entitled to temporarily fence the area off to prevent public access during the first 12 months of the maintenance period to assist in the establishment of soft landscaping.

This will coincide with the construction of surrounding dwellings (within the subdivision)

during which there is no demand for access to public open space. Temporary fencing will be removed as homes are completed and become occupied.

8. During the Maintenance Period Council will attend quarterly inspections to view the status of the landscape, and provide written commentary as to any remedial works that it reasonably considers are required to meet the requirements of the maintenance plan.
9. Within 4 weeks prior to the completion of the 104-week Maintenance Period, the Council is to attend an on-site meeting to inspect the Site Work — Hard Landscaping and the Site Work Soft Landscaping.
10. For Council to accept handover of the Item of Work it will need to be satisfied, acting reasonably, that:
  - all Items of Work Hard Landscaping are free of material defects, are in a good state of repair and fit for purpose, including, but not limited to:
    - that all concrete pathways are to be free of structural cracks and/or undermining;
    - that the playground is free of material defects, in a good state of repair and well maintained, and meets a fit for purpose standard as generally prescribed in the following standards at the time of installation:
      - AS4685 (2014): Playground equipment and surfacing;
      - AS4422 (2016): Playground surfacing — Specifications, requirement and test method; and
      - AS/NZS 4486.1: Playgrounds and playground equipment;
    - that the seating, shade structures and picnic area facilities are free of material defects, in a good state of repair and well maintained, and meet a fit for purpose standard; and
    - that a final as constructed plan is provided including a list of parts including codes and suppliers any maintenance tools that are supplied with the playground at installation and an inspection checklist;
  - soft Landscaping meets the following specifications:
    - dryland grass has healthy growth and at least 85% coverage across the site;
    - all dead or diseased trees and dead or diseased shrub & groundcover bed plantings have been replaced and all plants are established,
    - firm in the ground, and showing a dominant leader consistent with the age and the prevailing growing conditions over the Maintenance Period;
    - all garden beds are mulched with a minimum 100mm cover required;
    - and weeds in (grassed and shrub bed areas) have been controlled as per the maintenance plan.
11. Upon Council being satisfied, acting reasonably, that the assets are presented as noted above, the Council will issue a certificate of acceptance.
12. All Items of Work will transfer from the Developer and become the property and responsibility of the Council on and from the date the land on which the relevant work is located is dedicated to the Council.



**Tree & Garden Planting:**

. Prepared holes to be 4 times the width of the tree ball and as deep as the root ball with sloped sides. The root collar should be at ground level. Backfill when straight and in position creating a water basin to maximise watering.  
 . Use slow-release fertiliser and water in well.  
 . Tree guards to be used for the first 12mths.  
 . Garden Beds to be cultivated to a depth of 300mm with 150mm good organic mulch such as Mushroom compost to retain moisture and enrich soil.

**Maintenance:**

. 1m² square of Mulch to base of all trees 80mm but ensure mulch kept back from collar of tree.  
 . Continue weed control regularly for the first 12 mths using shielded spays.

**Boundary Fence:**

. 1.8m high timber lapped & capped fence on northern boundary of reserve.  
 . Post & Rail fence with wire 1.5mtrs surrounding basin to the south and on Chambers Road boundary.

**Play Equipment:**

. Forpark Australia - SS2-2002  
 www.forparkaust.com.au  
 . Shade Sail above.  
 . Urban Shade - Taren Point  
 . Softfall to base of playground.

**Table Seating & Benches:**

. Esplanade Table setting 1800mm in recycled aluminium. 850 height for wheelchair access.  
 . Wilton Bench 4.50 x 2000mm in recycled aluminium. (gossi.com.au)  
 . Shade sail above.

**Gossie Park & Street Furniture.**

**LEGEND**

- EXISTING TREE
- PROPOSED TREE
- TRANSPLANTED TREE
- EXISTING PLANTING
- PROPOSED PLANTING (SEE SCHEDULE)
- LAWNED AREA
- CONCRETE PATH

SUSIE REYNOLDS  
 DESIGNS  
 02 4621 2222  
 02 4621 2223  
 02 4621 2224  
 02 4621 2225  
 02 4621 2226

CLIENT: DARRABY PTY LTD  
 84 WILSON DRIVE  
 MARULAN, NSW

TITLE: LANDSCAPE PLAN  
 PARK/PLAYGROUND

DATE: DEC '20 SCALE: 1:200 DESIGN: SR DRAWING NO: B01/2002A

All dimensions to be verified on site. Figure dimensions to be taken in preference to scale.

Botanical Name	Common Name	Height	Spread	Qty	Size
<i>Acer rubrum</i> 'October Glory'	October Glory Upstick Maple	10	8	2	45 Litre
<i>Corymbia ficifolia</i> 'Dwarf Crimson'	Dwarf Flowering Gum	6	3.5	4	45 Litre
<i>Quercus pallustris</i>	Pin Oak	15	12	1	45 Litre
<i>Pyrus calleryana</i> 'Bradford'	Bradford Pear	10	6	2	45 Litre
<i>Ulmus parvifolia</i>	Chinese Elm	8	10	2	45 Litre



DWARF FLOWERING GUM X 4



CHINESE ELM CLARET ASH BRADFORD PEAR PIN OAK LIPSTICK MAPLE

**CHAMBERS ROAD**

ID	Botanical Name	Common Name	Height	Spread	Qty	Sch Size
<b>Herbaceous</b>						
Ht1	<i>Lomandra longifolia</i> 'Tanika'	Lomandra 'Tanika'	.4 m	.4 m	26	140mm
mp1	<i>Myoporum parvifolium</i>	Creeping Boobialla	.15 m	.5 m	20	140mm
Ms1	<i>Miscanthus sinensis</i> 'Adagio'	Adagio Dwarf Maiden Grass	.5 m	.5 m	12	140mm
<b>Shrubs</b>						
Gr1	<i>Grevillea rosmarinifolia</i>	Rosemary Grevillea	1.5 m	1.8 m	6	200mm
Gw1	<i>Grevillea</i> 'White Wings'	White Grevillea	3 m	2.5 m	3	200mm
Wz2	<i>Westringia fruticosa</i> 'Zena'	Westringia 'Zena'	1.2 m	1.5 m	5	200mm
<b>Climbers</b>						



## Appendix A – Explanatory Note

### Exhibition of draft Planning Agreement

#### Lot 23 DP 1256090, known as 94 Wilson Drive, Marulan

*Environmental Planning & Assessment Regulation 2000 (clause 25E)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement is in connection with a proposed development of land at Lot 23 DP 1256090, known as 94 Wilson Drive, Marulan.]

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulations)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

Darraby Pty Ltd (**the Developer**) made an offer to Goulburn Mulwaree Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the subject land.

#### Description of subject land

The land to which the Planning Agreement applies is described as Lot 23 DP 1256090, known as 94 Wilson Drive, Marulan (**the Land**).

#### Description of the Development Application to which the Planning Agreement applies

The Planning Agreement is in association with DA/0334/1819 proposing the subdivision of land comprising 126 residential lots, two (2) drainage lots and one (1) residual lot at Lot 23 DP 1256090, 94 Wilson Drive Marulan.

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

##### Monetary Contribution

The Planning Agreement requires a monetary contribution in the amount of \$91,000 (30 year Treasury bond rate 1.895%) for the capitalised renewal cost of the stormwater management facility, for an assumed life of 30 years.

The Treasury bond rate above is as at 16 November 2020. The Treasury bond rate that will apply is the rate that will be applicable at the time of the final endorsement of the Planning Agreement, for a 30 year period.

## Works

The Planning Agreement requires the following developer works:

- a) Construction of local road upgrade works as outlined in Figure 1 in accordance with Council's Engineering Standards, including:
  - excavation of existing road shoulders to new kerb alignment;
  - construction of 320mm thick sub base pavement and road base to road shoulder (subject to geotechnical investigation);
  - construction of kerb and guttering; construction of nine new industrial driveways with 200mm thick DGB20 road base;
  - construction of 1.2 metre wide footpath along one side of the road;
  - geotechnical pavement testing to confirm 10 year design life of a residential collector road –  $4 \times 10^5$  ESA in accordance with Council's Engineering Standards;
  - any rehabilitation of the existing pavement required as a result of the pavement testing to achieve the 10 year design life;
  - construct new 14/7mm bitumen seal to new road extent and over existing pavement;
  - install pram ramps as required and relay topsoil and grass seed to verges;
  - existing services pits / lids to match new pavement level;
  - inclusion of pipes and pits for road stormwater; and
  - asphalt concrete pavement to be provided to the intersection of Portland Avenue and Wilson Drive in accordance with Figure 1.

The works exclude any removal of contaminated waste or remediation works associated with contamination identified during works within the Council's road reserve.

The value of road upgrade work is calculated at \$630,000 and Council's contribution is a monetary contribution of \$157,500.

- b) Carry out park embellishment works in accordance with Schedule 5. The value of the embellishments by the developer is \$60,000.

## Land

The Planning Agreement requires dedication of:

- c) Dedication of Lot 108 for the purposes of stormwater detention and public open space. The land dedication is at no cost to Council.
- d) Dedication of Lot 115 for the purpose of stormwater management. The land dedication is at no cost to Council.

## **Assessment of the Merits of the Planning Agreement**

### **How the Planning Agreement Promotes the Objects of the Act and the public interest**

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- to promote the orderly and economic use and development of land.

The draft Planning Agreement promotes the public interest by:

- upgrading Wilson Drive which will benefit existing and future residents and the local road network;
- acknowledging the intention to supply and install a sewer main from the existing sewer pump station to the dedicated location on the southbound side of the Hume Highway will benefit existing and future residents and the local sewer infrastructure network; and
- providing a local park with embellishment works will benefit existing and future residents.

### **The Planning Purposes served by the Planning Agreement**

The monetary contribution will be used for the funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure.

The works will be carried out for the purposes of the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

That land will be dedicated for the purposes of stormwater management and public open space, and as such the provision of (or the recoupment of the cost of providing) public amenities or public services and the provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land.

### **How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter (now section 8A)**

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to give councils the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and the wider public.

By enabling Council to provide public infrastructure and facilities, the Planning Agreement is consistent with the following guiding principles of councils, set out in section 8A of the *Local Government Act 1993* (replacing the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.

- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should consider the principles of ecologically sustainable development.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

### **Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The Planning Agreement conforms generally but not specifically with Council's Capital Works Program through the proposed improvements to the local road network, sewer infrastructure and the availability of public open space within Marulan.

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

The Planning Agreement requires the dedication of land, carrying out of work and monetary contributions to be satisfied prior to the issue of a subdivision certificate.

### **Further Notes**

In addition to the Planning Agreement made in accordance with the provisions of the *Environmental Planning and Assessment Act 1979*, notification is also given to a further agreement between the Developer and Council, specifically in relation the provision of water and sewer infrastructure as administered by the *Water Management Act 2000*. The intention of this agreement is as follows:

- a) Supply and install 200mm Water Main from Brayton Road intersection to the development site (in accordance with Council's water and sewer construction standards), but excluding any removal of contaminated waste or remediation works associated with contamination identified during works outside the boundary of the Land.

These water main works are fully funded by the developer.

- b) Supply and install 450mm sewer main from the existing sewer pump station to the dedicated location on the southbound side of the Hume Highway (in accordance with Council's water and sewer construction standards), but excluding any removal of contaminated waste or remediation works associated with contamination identified during works outside the boundary of the land.

The value of the sewer main work is calculated at \$490,110 and Council is to contribute 75% of the construction cost (excluding GST).