

Deed

**499, 501, 585, 589, 591 & 593 Cobbitty Road,
Cobbitty**

Planning Agreement

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

Camden Council

Mirvac Homes (NSW) Pty Ltd

**Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty
Sub Trust**

Date:

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Summary Sheet

Council:

Name: Camden Council

Address: 70 Central Avenue, Oran Park, NSW 2570

Telephone: (02) 4654 7777

Email: mail@camden.nsw.gov.au

Representative: General Manager

Developer:

Name: Mirvac Homes (NSW) Pty Ltd

Address: Level 28, 200 George Street, Sydney NSW 2000

Telephone: (02) 9080 8052

Email: christopher.ephraums@mirvac.com

Representative: Christopher Ephraums

Cobbitty Sub Trust:

Name: Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

Address: Level 28, 200 George Street, Sydney NSW 2000

Telephone: TBC

Email: TBC

Representative: TBC

Land:

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See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and Schedule 1.

Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 34.

Restriction on dealings:

See clause 35.

Dispute Resolution:

See Part 3.

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

Parties

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

and

Mirvac Homes (NSW) Pty Ltd ACN 006 922 998 of Level 28, 200 George Street, Sydney NSW 2000 (**Developer**)

and

Mirvac Residential Sub Co Pty Ltd ACN 672 683 797 as trustee for the Cobbitty Sub Trust ABN 15 561 438 643 (**Cobbitty Sub Trust**)

Background

- A The Developer is the registered proprietor of land at Cobbitty Road, Cobbitty.
- B The Developer has entered into a contract for sale to transfer part of the Land (being the Registration Land) to the Cobbitty Sub Trust. Settlement of that contract may occur prior to or after the commencement of this Deed.
- C The Developer is carrying out the Development of the Land involving subdivision of the Land into residential lots.
- D The Existing Development Consents have been granted for development of 150 residential lots and the Developer has and intends to lodge further development applications for the Development.
- E The Developer offers to carry out works and dedicate land to the Council in accordance with this Deed in connection with the Development.
- F For the purposes of the Existing Development Consents and s7.11(5)(b) of the Act, the Council accepts the carrying out of works under this Deed in full satisfaction of the monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under those Development Consents.
- G The Developer is negotiating a land swap arrangement with an adjoining landowner. The Parties agree that on and from the date the land the subject of those negotiations becomes owned by the Developer or the Cobbitty Sub Trust, this Deed will apply to that land.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

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

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

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank Limited,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) HSBC Bank Australia Limited,
 - (vi) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Council in its absolute discretion.

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

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

Construction Certificate has the same meaning as in the Act.

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

Contributions Plan or **CP** means the document titled '*Oran Park and Turner Road Precincts Section 94 Contributions Plan*' approved by the Council under s7.18 of the Act, as amended and replaced from time to time.

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

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

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

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

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Design Approval and Maintenance Schedule means the table in Schedule 2.

Development means the subdivision of the Land into Final Lots, pursuant to the Existing Development Consents and future Development Consents, as modified from time to time.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

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

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

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

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

Existing Development Consents means the Development Consents granted to Development Applications DA/2022/176 and DA/2023/215 for subdivision of part of the Land to create 120 and 30 Final Lots, respectively, as modified from time to time. **[Drafting Note: Parties to check whether development consent has been granted to any additional DAs before finalisation of the VPA and, if so, whether any updates are required to be made to this definition. In particular, DA/2013/292, DA/2023/399, DA/2023/461 and DA/2023/580.]**

GST has the same meaning as in the GST Law.

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

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Final Lot means a lot created in the Development for separate residential occupation and disposition, including a strata lot created by registration of a strata plan within the meaning of the *Strata Schemes Development Act 2015* (NSW), or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

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

Force Majeure means any event or circumstance not within the control of the Party claiming Force Majeure, and which, by exercise of reasonable diligence, that Party was and is not reasonably able to prevent or overcome, including:

- (a) an act of God including but not limited to any pandemic or epidemic;
- (b) a strike, lock out or other industrial disturbance;
- (c) an act of an enemy or terrorist, including war, blockade or insurrection;
- (d) an act of any third party, including any accidental or malicious act, or vandalism; or
- (e) a riot or civil disturbance.

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

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

Land means Lots 3, 5 and 6 in DP1276275 and the land formerly contained in Lots 1, 2 and 4 in DP1276275 (which have been subdivided to create Lot 319 DP1289777, Lots 172, 173 and 174 in DP1289775 and a number of Final Lots) otherwise known as 499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty, and includes any lot created by the subdivision, strata subdivision or consolidation of that land.

Land Dedication Plan means the plan in Schedule 5.

Land Swap Land means the part of Lot 3102 DP1223680 that is within Lot 2 in proposed plan of subdivision DP1298600, being the land shown marked in red in the plan in Schedule 6.

Maintain, in relation to a Work, means keep in a good state of repair and working order, and includes repair of any damage to the Work.

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

Party means a party to this Deed.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect, and

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- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

Registration Land means Lots 3, 5 and 6 in DP1276275, Lot 319 in DP1289777 and Lots 172, 173 and 174 in DP1289775.

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

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

Stage means a stage of the Development as shown on the Staging Plan.

Staging Plan means the plan contained in Schedule 3.

Subdivision Certificate has the same meaning as in the Act.

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

Works Plan means the plan in Schedule 4.

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

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

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- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the employees, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 The Developer agrees that on and from the date they each execute this Deed until the date on which this Deed commences, clause 35 of this Deed operates as a deed poll by the Developer in favour of the Council.

3 Commencement

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

4 Application of this Deed

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

Application of this Deed to the Land Swap Land

- 4.2 The Parties acknowledge that the Land Swap Land is intended to be transferred to the Developer or the Cobbitty Sub Trust.
- 4.3 On and from the date the Developer or the Cobbitty Sub Trust becomes registered proprietor of the Land Swap Land:
 - 4.3.1 a reference to 'Land' in this Deed is taken to include the Land Swap Land,

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- 4.3.2 a reference to 'Registration Land' in this Deed is taken to include the Land Swap Land, and
- 4.3.3 the Developer and the Cobbitty Sub Trust are to register this Deed on the title to the Land Swap Land and clause 34 of this Deed applies to the Land Swap Land except that in respect of such application the reference to '*commencement of this Deed*' in clause 34.2 is to be read as a reference '*the date this Deed applies to the Land Swap Land*',
- 4.3.4 this Deed is to be registered on the title to the Land Swap Land prior to the issuing of any further Construction Certificate, Subdivision Certificate or Occupation Certificates in respect of the Development.
- 4.4 If, contrary to clause 4.2, the Land Swap Land is transferred to a person or entity that is not the Developer or the Cobbitty Sub Trust, then this Deed is to be registered on the title to the Land Swap Land prior to the issue of any further Construction Certificate, Subdivision Certificate or Occupation Certificates in respect of the Development and no such further certificates are to be issued unless and until this Deed has been registered.

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

8 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development.
- 8.3 The Parties acknowledge and agree that the Existing Development Consents have already been granted and accordingly, the benefits under this Deed are

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

- 8.4 For the purposes of the Existing Development Consents and s7.11(5)(b) of the Act, the Council accepts the carrying out of works under this Deed in full satisfaction of the monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under that Development Consent.

Part 2 – Development Contributions

9 Provision of Development Contributions

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

10 Payment of monetary Development Contributions

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

11 Dedication of land

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

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11.1.2 one of the following has occurred:

- (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- (b) the Council is given evidence that lodgement and registration of a transfer that is effective to transfer the title to the land to the Council has been effected by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO.

- 11.2 The Developer is to do all things reasonably necessary, including procuring that the Cobbitty Sub Trust do all things reasonably necessary where relevant and Cobbitty Sub Trust is to do all thing reasonably necessary, to enable the lodgement and registration of the relevant deposited plan or instrument of transfer to occur.
- 11.3 The Council must do all things reasonably requested by the Developer, at the Developer's cost, to enable the dedication of land under this Deed, and the Council must not do anything that would unreasonably hinder the ability of the Developer or Cobbitty Sub Trust to comply with their obligations to dedicate land under this Deed.
- 11.4 The Developer in respect of any land required to be dedicated under this Deed, and Cobbitty Sub Trust in respect of land required to be dedicated by Cobbitty Sub Trust under this Deed, are to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 11.5 If, having used all reasonable endeavours, the Developer or Cobbitty Sub Trust cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

12 Work Health & Safety Obligations

Definitions

12.1 In this clause:

Designer means a person referred to in s22(1) of the WHS Act.

Principal Contractor has the same meaning as in the WHS Act.

Supplier means a person referred to in s25(1) of the WHS Act.

WHS Act means the *Work Health & Safety Act 2011* (NSW) and includes any regulations made under that Act.

Work means a Work required to be provided by the Developer under this Deed.

Workplace has the same meaning as in the WHS Act.

Relationship to WHS Act

- 12.2 In the event of any inconsistency between an obligation imposed by or under the WHS Act and an obligation imposed by this clause 12, the obligation imposed by or under the WHS Act will prevail to the extent of the inconsistency.

General obligation to comply with WHS Act

- 12.3 The Developer must:
- 12.3.1 ensure compliance with the WHS Act relating to the design of a Work, and
 - 12.3.2 ensure, or procure that the Principal Contractor ensures, compliance with the WHS Act relating to the supply, construction, installation or commissioning of a Work.
- 12.4 Clauses 12.5 – 12.12 apply without limiting the generality of the obligation imposed by clause 12.3.

Management & control of workplace where Work is to be provided

- 12.5 In so far as the Developer or the Principal Contractor has management or control of the Workplace where a Work is required to be provided, the Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the Workplace, and the means of entering and exiting the Workplace, and anything arising from the Workplace, are without risks to the health and safety of any person.

Management & control of fixtures, fittings & plant where Works are carried out

- 12.6 In so far as the Developer or the Principal Contractor has the management or control of fixtures, fittings or plant, in whole or in part, at a Workplace where a Work is required to be provided, the Developer is to ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the fixtures, fittings and plant are without risks to the health and safety of any person.

Design of Work

- 12.7 In respect of a Work to which clause 14 applies, the Developer must provide to the Council a copy of the final design of a Work, certified by the Designer, before the Work is constructed, installed or commissioned.
- 12.8 In respect of a Work to which clause 14 applies, the Developer must ensure, or procure that the Designer ensures, that the Designer of a Work ensures, so far as is reasonably practicable, that the Work is designed to be without risks to the health and safety of persons as required by the WHS Act.
- 12.9 Without limiting the obligation imposed by clause 12.8, the Developer must ensure that the Designer of a Work ensures that the Work is designed in accordance with the applicable Code of Practice approved by SafeWork NSW titled '*Safe Design of Structures*' dated August 2019 or any document which is substituted for or replaces that document.

- 12.10 The Developer's obligation under clause 12.8 applies irrespective of whether the design of the Work required the Council's approval or the Council was consulted in the preparation of the design.
- 12.11 The Developer must ensure, or procure that the Designer ensures, that the Designer provides to the Council adequate, current and relevant information about the design of a Work as required by the WHS Act.

Construction, installation & supply of Work

- 12.12 The Developer must ensure or procure that the Principal Contractor ensures, so far as is reasonably practicable, that the way a Work is supplied, installed, constructed or commissioned ensures that it is without risks to the health and safety of persons as required by the WHS Act.
- 12.13 The Developer must ensure or procure that the Principal Contractor ensures that the Supplier of any part of a Work provides to the Council adequate, current and relevant information about the Work as required by the WHS Act.

13 Carrying out of Work

- 13.1 Without limiting any other provision of this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 13.2 Subject to clause 13.3, the Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.
- 13.3 If the Council requires the Developer to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed after:
 - 13.3.1 the approval of the relevant design or specification by the Council in accordance with clause 14 of this Deed; or
 - 13.3.2 any relevant Approval from an Authority for the Work has been granted,the Council must bear, at its sole cost, any additional costs incurred by the Developer in complying with the requirements of the Council with respect to the modification to a design or specification, or relevant Approval.

14 Approval of design of Work

- 14.1 This clause 14 applies to a Development Contribution Item comprising a Work for which 'Yes' is specified in Column 3 of the table in the Design Approval and Maintenance Schedule corresponding to the item, or for which Development Consent has not yet been granted as at the date of this Deed.
- 14.2 Prior to lodging any application seeking Approval for a Work (including any Development Application), the Developer is to obtain the Council's approval under this clause for the design and specifications for the Work unless otherwise agreed in writing by the Council in relation to the Work.

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- 14.3 Prior to commencing design of a Work, the Developer is to request that the Council provide the Developer with its requirements for the location (generally in accordance with the Works Plan), design, materials and specifications for the provision of the Work.
- 14.4 When requesting Council's requirements under clause 14.3, the Developer may provide a proposal, including preliminary concept designs, to assist Council in preparing its requirements.
- 14.5 The Council is to provide the Developer with its requirements for the Work in writing within 40 business days of receiving the request under clause 14.3.
- 14.6 Once the Developer receives the Council's requirements for a Work under clause 14.5, the Developer is to provide the initial design for the Work to Council for the Council's approval.
- 14.7 If Council does not provide the requirements for a Work within the timeframe specified in clause 14.5, the Developer may proceed to prepare and lodge the initial design of the Work.
- 14.8 The Council is to advise the Developer in writing whether it approves of the initial design of the Work within 40 business days of receiving the initial design from the Developer.
- 14.9 The Developer is to make any change to the initial design for the Work required by the Council.
- 14.10 Once the initial design for a Work is approved, the Developer must submit a full copy of the draft application for Approval for the Work to Council and seek written certification from Council that the application for Approval is consistent with the approved initial design of the Work, and the Council must either provide the written certification, or advise the Developer that it will not provide the written certification and the reasons why, within 14 days.
- 14.11 Subject only to clause 14.12, the Developer is not to lodge any application for Approval for a Work to which this clause 14 applies unless:
 - 14.11.1 the Council has first approved the initial design for the Work; and
 - 14.11.2 Council has provided its written certification under clause 14.10 for that application.
- 14.12 Notwithstanding clause 14.11:
 - 14.12.1 if Council does not provide a response to the initial design submitted by the Developer within the time frame required in clause 14.8, the Developer may lodge an application for an Approval for the Work consistent with the initial design submitted to Council, and
 - 14.12.2 if Council does not provide a response the draft application for Approval for the Work within the time frame required in clause 14.10, the Developer may lodge the application for an Approval for the Work consistent with the initial design approved by the Council.
- 14.13 The Developer is to bear all reasonable Costs incurred by the Council in connection with obtaining the Council's approval or certification under this clause.
- 14.14 Following Approval being issued for a Work, the Developer is to work with Council in the preparation of the detailed design for it and submit the detailed design to the Council for its approval.
- 14.15 Subject to clause 14.19, the Developer is not to lodge any application for a Construction Certificate for a Work, with any Certifying Authority, unless the

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Council has first approved the detailed design for the Work, and provided its written certification that the application for a Construction Certificate is consistent with the approved detailed design of the Work.

- 14.16 The Council is to provide the written certification referred to in clause 14.15, or notify the Developer that it will not provide the written certification and the reasons why, within 14 days of being provided with a copy of the application for a Construction Certificate by the Developer.
- 14.17 Council's written certification specified in clause 14.15 shall specify any particular milestones of construction of a Work and if so, the Developer is to provide the Council with a minimum of 24 hours' notice prior to commencing a particular milestone and allow the Council access to the relevant land to inspect the Work.
- 14.18 Subject to clause 14.19, an application for a Construction Certificate for a Work is to be accompanied by the written certification referred to in clause 14.16 when lodged with the Certifying Authority.
- 14.19 Notwithstanding clauses 14.15 and 14.18 if Council does not provide a response to the detailed design submitted by the Developer within the time frame required in clause 14.16, the Developer may lodge an application for a Construction Certificate for the Work consistent with the detailed design submitted to Council.
- 14.20 For the avoidance of doubt, nothing in this clause operates to fetter the Council's discretion, as consent authority, in determining any application for Approval for the Work.

15 Maintenance Regime and Vegetation Management Plan

- 15.1 If 'Yes' is specified in Column 4 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1, then the Developer is to prepare:
 - 15.1.1 a detailed maintenance regime for that Work for the maintenance period specified in Column 5 of that Schedule corresponding to that Work, and
 - 15.1.2 detailed costings, prepared by a suitably qualified person, for the carrying out of the maintenance regime.
- 15.2 If 'Yes' is specified in Column 6 of the Design Approval and Maintenance Schedule in respect of a Work specified in Column 1 then the Developer is to prepare a draft vegetation management plan for the land on which the Work is to be located.
- 15.3 A detailed maintenance regime and costings prepared under clause 15.1, and a draft vegetation management plan prepared under clause 15.2 are to be provided to the Council for the Council's approval at the following times:
 - 15.3.1 if design approval is required under clause 14 – at the same time as it provides the initial design for the Work to the Council, or
 - 15.3.2 if design approval is not required under clause 14 – within 1 month of the Developer obtaining Development Consent from the relevant Authority for the relevant Work, or 1 month after the commencement of the Deed, whichever is later.

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- 15.4 The Council is to advise the Developer in writing whether it approves of the detailed maintenance regime, detailed costings and draft vegetation management plan within 1 month of receiving them from the Developer.
- 15.5 The Developer is to make any change to the detailed maintenance regime, detailed costings and draft vegetation management plan required by the Council and re-submit them to the Council for approval and clause 15.4 re-applies to the amended documents.

16 Variation to Work

- 16.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the need for an amendment to this Deed
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 16.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2.
- 16.4 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work and submit the variation to the Council for approval. Subject to clause 16.5, the Developer is to promptly comply with any such direction at its own cost.
- 16.5 If Council requests a variation to a Work after a Construction Certificate has been issued for the Work, then the Council must pay to the Developer an amount equal to the increase in the costs of completing the Work which results from the variation requested by the Council.
- 16.6 The Council must pay the amount referred to in clause 16.5 to the Developer after the Work is complete, and within 28 days of receipt of a tax invoice for the amount claimed and documentation which demonstrates the increase in costs as a result of the variation requested by the Council.
- 16.7 The Developer may request that the Council approve a variation to the Development Contribution Items comprising a Work to be provided under this Deed.
- 16.8 The Council, in its absolute discretion, may agree to a variation of the Development Contribution Items comprising a Work, provided that:
 - 16.8.1 the variation does not result in the sum of the Contribution Values of all Development Contributions Items falling below the sum of the Contributions Values of all Development Contribution Items as at the date of this Deed; and
 - 16.8.2 the variation is generally consistent with the intended objectives and outcomes of this Deed at the date of this Deed.
- 16.9 The Council is to act reasonably in determining whether to grant a variation to the staging of the provision of the Development Contribution Items.
- 16.10 If a variation is made to the Development Contribution Items pursuant to this clause, then Schedule 1 will be deemed to be amended to include the varied Contribution Items, and their Contribution Values.

- 16.11 A variation to the Development Contribution Items or the staging of the provision of the Development Contribution Items under this clause does not require a variation to this Deed.

17 Access to land by Developer

- 17.1 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any Council owned or controlled land approved by the Council in order to enable the Developer to properly perform its obligations under this Deed.
- 17.2 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1.
- 17.3 The Cobbitty Sub Trust authorises the Developer to enter any land owned or controlled by the Cobbitty Sub Trust in order to enable the Developer to properly perform its obligations under this Deed.

18 Access to land by Council

- 18.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.
- 18.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 18.1.
- 18.3 In accessing the land, the Council must ensure that it complies with the reasonable directions of the Developer, including in respect to the protection of people, property and utilities.

19 Protection of people, property & utilities

- 19.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
- 19.1.1 all necessary measures are taken to protect people and property,
- 19.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 19.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 19.2 Without limiting clause 19.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20 Developer to Maintain Work

- 20.1 The Developer is to Maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.

- 20.2 The Developer is to carry out its obligation under clause 20.1 at its own cost and to the satisfaction of the Council.

21 Deferral of Work

- 21.1 Notwithstanding any other provision of this Deed, if the Developer forms the view at any time that it is unable to make a Development Contribution comprising a Work by the time that Work is required to be completed under this Deed, then:
- 21.1.1 the Developer is to provide written notice to the Council to that effect;
 - 21.1.2 the Developer is to provide the Council with a Security for 110% of the amount of Contribution Value that is equivalent to the proportion of the uncompleted part of the Work before the date on which the Work is required to be completed under this Deed;
 - 21.1.3 the Developer is to provide to Council, for Council's approval, a revised completion date for the Work;
 - 21.1.4 Council can approve, or not approve, a revised completion date in its discretion, and if the Council does not approve the Developer's revised completion date for the Work, the Council and Developer are to negotiate in good faith and agree upon a revised completion date for the Work; and
 - 21.1.5 the time for completion of the Work under this Deed will be taken to be the revised completion date approved by the Council under clause 21.1.4.
- 21.2 If the Developer complies with clause 21.1, then it will not be considered to be in breach of this Deed as a result of a failure to complete a Work by the time for completion of the Work specified in Column 6 of Schedule 1.
- 21.3 If the Work is not completed by the revised date for completion of the Work agreed under clause 21.1.5, then the Council may, after providing no less than 20 Business Days' notice to the Developer of its intention to do so call on the Security to meet any of its costs incurred under this Deed in respect of the failure to complete the Work by the revised date for completion. The Council must provide the Developer with a reasonable opportunity to complete the Work before incurring costs and calling on the Security to meet those costs under this clause 21.3.
- 21.4 The Developer need not provide any additional Security under this clause if at the time the Security would be payable under this clause, Council holds Security under the other provisions of this Deed in an amount which covers the amount of Security required to be held under those other clauses, and the amount of Security required to be held under this clause.
- 21.5 If a Party by reason of Force Majeure is delayed in performing or carrying out an obligation under this Deed and cannot perform or carry out the obligation by the time it is required to be performed or carried out, then that obligation is suspended for so long and to the extent that it is reasonably affected by the Force Majeure. In that case, the affected Party must give notice to the other Party with reasonable particulars including, so far as it is known, the probable extent to which the Party will be reasonably delayed in performing or carrying out its obligations. A Party is not liable for any reasonable delay in the performance of any of its obligations under this Deed to the extent that the delay is attributable to Force Majeure, regardless of the length of time for

which the Force Majeure continues. For the avoidance of doubt, it is noted that a Party to this Deed may still suffer damage which that Party may seek to recover from a third party, due to a delay in the performance of an obligation under this Deed by a Party to this Deed, attributable to circumstances amounting to Force Majeure which involve the third party.

- 21.6 If a Party by reason of Force Majeure is unable to perform or carry out an obligation under this Deed then the parties are to meet and negotiate in good faith any reasonable amendments to this Deed.
- 21.7 Clauses 21.5 and 21.6 do not apply to any obligation to make a payment.

22 Completion of Work

- 22.1 When the Developer believes that a Development Contribution Item comprising a Work is complete, it must give the Council a written notice (**Completion Notice**) which:
- 22.1.1 specifies the Development Contribution Item to which it applies; and
 - 22.1.2 states that it has been issued under this clause 22.1.
- 22.2 The Council must, and the Developer must permit the Council to, inspect the Development Contribution Item the subject of the Completion Notice in the presence of a representative of the Developer within twenty one (21) days of the date that the notice is given to the Council.
- 22.3 Within seven (7) days of inspecting a Development Contribution Item that is the subject of a Completion Notice, the Council must give the Developer a notice:
- 22.3.1 confirming that the Development Contribution Item has been completed in accordance with this Deed; or
 - 22.3.2 advising:
 - (a) that the Council does not accept that the Development Contribution Item has been completed in accordance with this Deed; and
 - (b) the reasons for that non-acceptance and directing the Developer to complete, Rectify or repair any specified part of the Work.
- 22.4 For the avoidance of doubt, the Council may give more than one written notice under clause 22.3.2 if the Council reasonably considers that it is necessary to do so.
- 22.5 If the Council does not provide a notice under clause 22.3 within the time frame specified in that clause, the Development Contribution Item that is subject to the Completion Notice will be deemed to have been completed in accordance with this Deed.
- 22.6 If the Developer does not accept the matters contained in a notice issued by the Council under clause 22.3.2, then the Developer may, within 14 days of the notice:
- 22.6.1 serve notice on the Council to that effect, in which case the matter will be a Dispute; and
 - 22.6.2 clause 26 applies to that Dispute.
- 22.7 The Developer, at its Cost, is to promptly comply with:

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- 22.7.1 a written notice under clause 22.3.2, if it does not serve notice on the Council under clause 22.6, or
 - 22.7.2 the expert determination of the expert appointed by the President of the NSW Law Society under clause 26.4, if a Dispute has been referred under clause 22.6.2.
- 22.8 If:
 - 22.8.1 the Council gives a notice under clause 22.3.2; and
 - 22.8.2 the Developer believes it has complied with that notice or clause 26, as the case may be, then

the Developer must issue a further Completion Notice with respect to that Development Contribution Item and clauses 22.2 to 22.7 reapply.
- 22.9 A Development Contribution Item comprising a Work will be complete for the purpose of this Deed:
 - 22.9.1 on the date the Council issues a notice under clause 22.3.1 confirming that the Development Contribution Item is complete; or
 - 22.9.2 if an expert has determined under clause 26 that the Work is complete for the purposes of this Deed, on the date the expert determines the Work was completed.
- 22.10 If the Council is the owner of the Land on which a Development Contribution Item has been completed, the Council assumes responsibility for the Work upon the date that Development Contribution Item was completed, but if it is not the owner at that time, it assumes that responsibility when the Development Contribution comprising the dedication of the Land upon which that Work is carried out is made to the Council under this Deed.
- 22.11 The Developer is to Maintain any Development Contribution Item for which a maintenance period is specified in Column 5 of the table in Schedule 2 for the Development Contribution Item, during that maintenance period.
- 22.12 For the purpose of and without limiting clause 22.11, if a detailed maintenance regime has been approved by the Council under clause 14.8 in respect of a Development Contribution Item, then the Developer is to Maintain the Development Contribution Item in accordance with that detailed maintenance regime.

23 Rectification of defects

- 23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 23.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 23.1.

24 Works-As-Executed-Plan

- 24.1 No later than 60 days after Work is completed for the purposes of this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 24.2 The Developer, being the copyright owner in the plan referred to in clause 24.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

25 Removal of Equipment

- 25.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
 - 25.1.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - 25.1.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

26 Dispute resolution – expert determination

- 26.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 26.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 26.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 26.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 26.3 If a notice is given under clause 26.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 26.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 26.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 26.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 26.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

27 Dispute Resolution - mediation

- 27.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 26 applies.
- 27.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 27.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 27.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

28 Security for performance of obligations

- 28.1 Upon the execution of this Deed by all of the Parties the Developer is to provide the Council with Security in the amount of \$6,102,210. **[Drafting Note for exhibition: The security amount included here in the exhibition version was determined as at the commencement of the exhibition in accordance with clause 28.2. If any works are completed by the time the planning agreement is executed, then this amount may reduce, in accordance with clause 28.2.]**
 - 28.2 The Developer is to ensure at all times that the Council holds Security equal to the greater of:
 - 28.2.1 the Contribution Value for the most valuable Contribution Item comprising a Work which has not been completed from time to time, within the meaning of this Agreement (**Outstanding Work**);
 - 28.2.2 10% of the sum of the Contribution Values of all Development Contribution Items comprising the dedication of land and the carrying out of Works, which:
 - (a) are not complete from time to time, within the meaning of this Agreement (if the Development Contribution Item is a Work); or
 - (b) have not been provided from time to time (if the Development Contribution Item is the dedication of land),
- (Outstanding Land and Works Items); or**

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28.2.3 \$1,000,000.00,

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

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

29 Call-up of Security

- 29.1 Notwithstanding any other remedy it may have under this Deed, under any Act or otherwise at law or in equity, the Council may call-up and apply the Security in accordance with clause 32.
- 29.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the breach.
- 29.3 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Deed.

30 Release & return of Security

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

31 Acquisition of land required to be dedicated

- 31.1 If the Developer does not procure the dedication of land required to be dedicated under this Deed at the time at which it is required to be dedicated, or Cobbitty Sub Trust does not dedicate land required to be dedicated by it under this Deed at the time at which it is required to be dedicated, the Developer and the Cobbitty Sub Trust consent to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

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- 31.2 The Council is to only acquire land pursuant to clause 31.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer or Cobbitty Sub Trust to dedicate or procure the dedication of (as applicable) the land required to be dedicated under this Deed.
- 31.3 Clause 31.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 31.4 If, as a result of the acquisition referred to in clause 31.1, the Council is required to pay compensation to any person other than the Developer or the Cobbitty Sub Trust, the Developer is to reimburse the Council that amount, upon a written request being made by the Council, or the Council can call on any Security provided under clause 28.
- 31.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 31.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 31, including without limitation:
 - 31.6.1 signing any documents or forms,
 - 31.6.2 giving land owner's consent, or procuring that the Cobbitty Sub Trust gives land owner's consent, for lodgement of any Development Application,
 - 31.6.3 providing or procuring such consents as required by the Registrar-General under the *Real Property Act 1900*, and
 - 31.6.4 paying the Council's costs arising under this clause 31.

32 Breach of obligations

- 32.1 If the Council reasonably considers that the Developer or the Cobbitty Sub Trust is in breach of any obligation under this Deed, it may give a written notice to the Developer or the Cobbitty Sub Trust (as appropriate):
 - 32.1.1 specifying the nature and extent of the breach,
 - 32.1.2 requiring the Developer to:
 - (a) Rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of Rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 32.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 32.2 If the Developer or the Cobbitty Sub Trust (as appropriate) does not accept the matters contained in a notice issued by the Council under clause 32.1, then the Developer or the Cobbitty Sub Trust (as appropriate) may, within 14 days of the notice:

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- 32.2.1 serve notice on the Council to that effect, in which case the matter will be a Dispute; and
 - 32.2.2 clauses 26 or 27 (as applicable) apply to that Dispute.
- 32.3 If the Developer or the Cobbitty Sub Trust (as appropriate) fails to fully comply with a notice referred to in clause 32.1, but not before any Dispute is resolved in accordance with clauses 26 or 27 (as applicable), the Council may, without further notice to the Party, call-up the Security provided by the Developer under this Deed and apply it to remedy the breach.
- 32.4 If the Developer fails to comply with a notice given under clause 32.1 relating to the carrying out of Work under this Deed, following the completion of any Dispute resolution process that may arise under this Deed in connection with the notice, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 32.5 Any Costs reasonably incurred by the Council in remedying a breach in accordance with clause 32.3 or clause 32.4 may be recovered by the Council by either or a combination of the following means:
 - 32.5.1 by calling-up and applying the Security provided by the Developer under this Deed, or
 - 32.5.2 as a debt due in a court of competent jurisdiction.
- 32.6 For the purpose of clause 32.4, the Council's Costs of remedying a breach the subject of a notice given under clause 32.1 include, but are not limited to:
 - 32.6.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 32.6.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 32.6.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 32.7 Nothing in this clause 32 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer or the Cobbitty Sub Trust (as appropriate), including but not limited to seeking relief in an appropriate court.

33 Enforcement in a court of competent jurisdiction

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

Part 5 – Registration & Restriction on Dealings

34 Registration of this Deed

- 34.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 34.2 Upon commencement of this Deed, the Developer and the Cobbitty Sub Trust are to deliver to the Council in registrable form:
 - 34.2.1 an instrument requesting registration of this Deed on the title to the Registration Land duly executed by the registered proprietor, and
 - 34.2.2 copies of the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 34.3 Within a reasonable time of receiving the instrument referred to in clause 34.2.1, the Council is to execute the instrument and deliver it to the Developer to be registered.
- 34.4 Within 7 days of receiving the instrument referred to in clause 34.3 from the Council, the Developer and the Cobbitty Sub Trust are to lodge the instrument with NSW Land Registry Services for registration, and is to provide written evidence that it has done so by that date.
- 34.5 The Developer and the Cobbitty Sub Trust are to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 34.6 The Developer is to deliver to the Council, written evidence that this Deed has been registered on the title to the Land within 7 days of receiving confirmation of registration from NSW Land Registry Services.
- 34.7 The Parties are to act promptly in doing such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Registration Land:
 - 34.7.1 in so far as the part of the Registration Land comprises the land marked in blue in the plan in Schedule 6, being part Lot 1 in proposed plan of subdivision DP1298600, with 20 business days after the Developer and the Cobbitty Sub Trust provide Council with evidence that that land has been transferred to a third party;
 - 34.7.2 in so far as the part of the Registration Land concerned is a Final Lot, and
 - 34.7.3 in relation to any other part of the Registration Land, once the Developer and the Cobbitty Sub Trust have completed their obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

35 Restriction on dealings

- 35.1 The Developer and Cobbitty Sub Trust are not to:
 - 35.1.1 sell or transfer the Land, other than a Final Lot, or
 - 35.1.2 assign their rights or novate their obligations under this Deed, or novate this Deed,
- to any person unless:

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- 35.1.3 they have, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 35.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 35.1.5 the Developer is not in breach of this Deed, and
- 35.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld or in the circumstances specified in clause 35.4.
- 35.2 Subject to clause 35.4, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 35.1.
- 35.3 The Council acknowledges and agrees that:
 - 35.3.1 the Developer has entered into a contract for sale for the sale of part of the Land to the Cobbitty Sub Trust (**Sale Contract**);
 - 35.3.2 settlement of the Sale Contract may occur prior to or after commencement of this Deed;
 - 35.3.3 if the settlement of the Sale Contract does not occur prior to commencement of this Deed then the Council consents to the transfer of the part of the Land the subject of the Sale Contract to the Cobbitty Sub Trust; and
 - 35.3.4 the Developer will remain liable for all obligations of the Developer and Cobbitty Sub Trust under this Deed even after settlement of the Sale Contract.
- 35.4 Clause 35.1 does not apply in relation to any:
 - 35.4.1 transfer of that part of the Land referred to in clause 34.7.1;
 - 35.4.2 entry into only (and for the avoidance of doubt does not include settlement) of an agreement for the proposed sale of any part of the Land, whether entered into before or after the date of this Deed; or
 - 35.4.3 sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

36 Risk

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

37 Release

- 37.1 The Developer and Cobbitty Sub Trust release the Council from any Claim they either jointly or severally may have against the Council arising in connection with the performance of the Developer's or Cobbitty Sub Trust's obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 37.2 The Council releases the Developer or Cobbitty Sub Trust from any Claim it may have against the Developer or Cobbitty Sub Trust arising from or in connection with any damage caused to land which has been dedicated to the Council under this Deed (including land which continues to be managed or maintained by the Developer following dedication), except:
- 37.2.1 if, and to the extent that, the Claim arises as a result of the Developer's or Cobbitty Sub Trust's negligent act or omission, and
- 37.2.2 in relation to land which continues to be managed by the Developer, to the extent that the damage arises from an act or omission within the scope of the Developer's management and maintenance responsibilities under this Deed.

38 Indemnity

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

39 Insurance

- 39.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed up until the Work is taken to have been completed in accordance with this Deed:
- 39.1.1 contract works insurance for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 39.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 39.1.3 workers compensation insurance as required by law, and
- 39.1.4 any other insurance required by law.
- 39.2 If the Developer fails to comply with clause 39.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 39.2.1 by calling upon the Security provided by the Developer to the Council under this Deed, or

39.2.2 recovery as a debt due in a court of competent jurisdiction.

- 39.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 39.1.

Part 7 – Other Provisions

40 Reports by Developer

- 40.1 The Developer is to provide the Council with a report detailing the performance of its obligations under this Deed at each of the following times:
- 40.1.1 by not later than each anniversary of the date on which this Deed is entered into, and
 - 40.1.2 each time an application is made for a Subdivision Certificate that creates one or more Final Lot.
- 40.2 The reports referred to in clause 40.1 are to include sufficient detail to enable the Council to determine whether the Developer has complied with its obligations under this Deed at the relevant time and be in such a form and to address such matters as required by the Council from time to time.

41 Review of Deed

- 41.1 The Parties agree to review this Deed every year, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 41.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 41.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 41.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 41.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 41.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 41.1 (but not 41.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

42 Notices

- 42.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:

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- 42.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 42.1.2 emailed to that Party at its email address set out in the Summary Sheet.
- 42.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 42.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 42.3.1 delivered, when it is left at the relevant address,
 - 42.3.2 sent by post, 7 business days after it is posted, or
 - 42.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 42.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

43 Approvals and Consent

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

44 Costs

- 44.1 The Developer is to pay to the Council the Council's costs relating to preparing, negotiating, executing and stamping this Deed and any document related to this Deed, and the registration and removal of registration of this Deed, within 30 days of receiving a tax invoice from the Council for such payment.
- 44.2 The Developer is also to pay to the Council the Council's reasonable costs relating to enforcing this Deed within 30 days of receiving a tax invoice from the Council for such payment.

45 Entire Deed

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

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- 45.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

46 Further Acts

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

47 Governing Law and Jurisdiction

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

48 Joint and Individual Liability and Benefits

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

49 No Fetter

- 49.1 Nothing in this Deed shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

50 Illegality

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

51 Severability

- 51.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

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- 51.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

52 Amendment

- 52.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with s203(5) of the Regulation.

53 Waiver

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

54 GST

- 54.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

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Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 54.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 54.3 Clause 54.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 54.4 The parties intend that:
- 54.4.1 Divisions 81 and 82 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) apply to the supplies made under and in respect of this Deed; and
- 54.4.2 no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the Parties.
- 54.5 Notwithstanding clause 54.4.2, if there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), the Parties agree:
- 54.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and
- 54.5.2 that any amounts payable by the Parties in accordance with clause 54.2 to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 54.6 No payment of any amount pursuant to this clause 54, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 54.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 54.8 This clause continues to apply after expiration or termination of this Deed.

55 Explanatory Note

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

56 Electronic execution

- 56.1 Each Party:
- 56.1.1 consents to this contract being signed by electronic signature by the methods set out in clause 56.3;

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- 56.1.2 agrees that those methods validly identify the person signing and indicates that person's intention to sign this contract;
- 56.1.3 agrees that those methods are reliable as appropriate for the purpose of signing this contract; and
- 56.1.4 agrees that electronic signing of this contract by or on behalf of a Party by those methods indicates that Party's intention to be bound.
- 56.2 If this contract is signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- 56.3 For the purposes of clause 56.1, the methods are:
 - 56.3.1 insertion of an image (including a scanned image) of the person's own unique signature onto the contract; or
 - 56.3.2 insertion of the person's name onto the contract; or
 - 56.3.3 use of a stylus or touch finger or a touch screen to sign the contract, provided that in each of the above cases, words to the effect of 'Electronic signature of me, [insert full name], affixed by me, or at my direction, on [insert date]' are also included on the contract; or
 - 56.3.4 use of a reliable electronic signing platform (such as DocuSign or AdobeSign) to sign the contract; or
 - 56.3.5 as otherwise agreed in writing between the parties.

57 Limitation of Cobbitty Sub Trust's liability

- 57.1 Mirvac Residential Sub Co Pty Ltd ACN 672 683 797 (in this clause called "Trustee") enters into this Deed only in its capacity as Trustee of the Cobbitty Sub Trust ABN 15 561 438 643 ("Trust") constituted under the trust deed settling the Trust dated on or about 18 December 2023 as varied from time to time ("Constitution") and in no other capacity. A liability arising under or in connection with this Deed is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed.
- 57.2 No party to this Deed may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- 57.3 The provisions of this clause 57 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the Constitution or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as Trustee of the Trust.
- 57.4 Nothing in clause 57.3 shall make the Trustee liable to any claim for an amount greater than the amount which the vendor would have been able to claim and

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recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.

- 57.5 The Trustee is not obliged to do or refrain from doing anything under this contract (including Incur any liability) unless its liability is limited in the same manner as set out in clauses 57.1 to 57.4.

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Schedule 1

(Clause 9)

Development Contributions

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Development Contribution Item	Stage/Tranche	Location identifier on the Works Plan	Public Purpose	Nature and Extent	Timing	Contribution Value (Indexed to December 2022 CPI)

A. Carrying out of Work

1. Urban Road - Item numbered 1 on the Works Plan (Reference item)	Stages 1, 3 and 5 T3 DA01,	1	Transport Management Facilities	Developer to construct and complete Southern Boulevard West, being Charles MacIntosh Parkway (2 lanes)	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would	\$5,337,111
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T2.4 in the Contributions Plan).	T4 DA03c, T4 DA03a			in the general location marked as item 1 on the Works Plan.	create the first Final Lot that directly fronts the road	
2. Roundabouts - Item numbered 2A, 2B, 2C and 2D on the Works Plan (Reference item T2.6 in the Contributions Plan).	Stages 1, 3 and 5 T3 DA01, T4 DA03c, T4 DA03a	2A, 2B, 2C and 2D	Transport Management Facilities	Developer to construct and complete four (4) new roundabouts in the general locations marked as 2A, 2B, 2C and 2D on the Works Plan	In respect of each roundabout, prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the first Final Lot that directly fronts the road on which that roundabout is situated	\$1,579,027
3. Cycleways - Item numbered 3A, 3B and 3C on the Works Plan (Reference item T5.1 in the Contributions Plan).	Stages 1, 3, 5, 8, 9 and 10 T3 DA01, T4 DA03c, T4 DA03a, T3 DA03b T5 DA05b T5 DA05d	3A, 3B and 3C	Transport Management Facilities	Developer to construct and complete cycle ways (2.5m wide) in the following locations shown on the Works Plan: (i) 3A -cycleway area approximately 3,050m ² (ii) 3B -cycleway area approximately 515m ² (iii) 3C -cycleway area approximately 1,250m ²	In respect of each cycleway, prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the first Final Lot that directly fronts the cycleway	\$722,286
4. Four (4) bus stops (Reference item T5.2 in the Contributions Plan)	Stages 1, 3 and 5 T3 DA01,	N/A	Transport Management Facilities	Developer to construct and complete four (4) bus stops in locations as determined by the Council and Transport for New South Wales.	In respect of each bus stop, prior to the issuing of the first Occupation Certificate for a lot within that DA that creates the	\$101,679

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	T4 DA03c, T4 DA03a				Public Road on which the bus stop is to be located or such other time as agreed in writing between the Parties.	
5. Bridge Crossing – Item 4A on Work Plan (Reference item T6.2 in the Contributions Plan)	Stage 1 T3 DA01	4A	Transport Management Facilities	Developer to construct and complete a bridge crossing in the location identified as 4A on the Works Plan.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 125 th Final Lot	\$1,845,488
6. Water cycle management works and stormwater pipes for the Cobbitty Creeks Catchment Sub catchment 3A -3B - Items 8 and 11 on Work Plan (Reference item W5.2 and W7.1 in the Contributions Plan)	(i) Stage 5 T4 DA03c (ii) Stages 5 and 9 T4 DA03c T5 DA05b	8 11	Water cycle management facilities	Developer to construct and complete water cycle management works and stormwater pipes for the Cobbitty Creeks Catchment: (i) Wetland footprint – sub catchment 3A-3B with an area of 15,050m ² in the location identified as 8 on the Works Plan (Reference item W5.2 in the Contributions Plan) (ii) Pipework in catchment with a length of 1000m in the location identified as 11 on the Works Plan (Reference item W7.1 in the Contributions Plan)	(i) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 500 th Final Lot (ii) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$1,346,696 \$1,282,566

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7. Water cycle management works - Items 9A and 9B and 10A, 10B, 10C, 10D, 10E, 10F and 10G on Work Plan (Reference item W6.2 and W6.3 in the Contributions Plan)	(i) Stage 5 T4 DA03c	9A and 9B	Water Cycle Management Facilities	Developer to construct and complete water cycle management works including bioretention basins: (i) sub catchment 3A-3B with an area of approximately 2,500sqm in the location identified as 9A and 9B on the Works Plan. (ii) In sub catchment 4A-4B with an area of approximately 5,975sqm in the location identified as 10A, 10B, 10C, 10D, 10E, 10F and 10G on the Works Plan.	(i) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 500 th Final Lot	\$417,580
	(ii) Stages 4, 5, 7 and 9 T4 DA03c, T3 DA03a, T3 DA02a, T5 DA05b	10A, 10B, 10C, 10D, 10E, 10F and 10G			(ii) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the following Final Lot: (a) 10A, B, C and G – 650 th (b) 10D, E and F – 850 th	\$998,015
8. Playing fields/Village Green (Reference item OSR3.1 in the Contributions Plan)	Stages 5 and 9 T4 DA03c T5 DA05d	5A	Open Space and Recreation	Developer to construct and complete playing fields/a village green with an area of 34,250m ² which includes one village green/community oval, hard courts, amenity building, outdoor gym, seating and car parking in the location identified as 5A on the Works Plan.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$4,261,443
9. Children's play space - Item 6A on Work Plan (Reference item	Stage 9 T5 DA05d	6A	Open Space and Recreation	Developer to construct, complete and embellish a children's play space with an area of 5,000m ² in line with scope details in table 4.1 of the CP in	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would	\$298,271

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OSR3.3 in the Contributions Plan)			the location identified as 6A on the Works Plan.	create the 850 th Final Lot		
10. Children's playground - Item 6B on Work Plan (Reference item and OSR3.3 in the Contributions Plan)	Stage 8 T3 DA03b	6B	Open Space and Recreation	Developer to construct, complete and embellish a children's playground with an area of 5,000m2 in line with scope details in table 4.1 of the CP in the location identified as 6B on the Works Plan.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$298,271
11. Other Passive Open Spaces – Riparian Style Embellishment - Item 7A, 7B, 7C, 7D, 7E on Work Plan (Reference item OSR4.4 in the Contributions Plan)	Stages 4, 5, 7 and 9 T3 DA03a, T3 DA02a, T4 DA03c, T5 DA05b	7A, 7B, 7C, 7D, 7E	Open Space and Recreation	Developer to construct, complete and embellish riparian style passive open space with a total area of 47,525m ² in accordance with the scope of works specified in the vegetation management plan approved by Council under clause 15 in the location identified as 7A, 7B, 7C, 7D, 7E on the Works Plan	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would, in respect of the relevant Item of open space, create the following Final Lot: (a) 7A – 850 th (b) 7B – 550 th (c) 7C, D and E – 650 th	\$1,417,534
12. Riparian land	Stages 4, 5, and 7 T3 DA03c, T3	12A, 12B, 12C and 12D	Passive open space – riparian land	Developer to construct, complete and embellish riparian land with a total area of 8.85ha in accordance with the vegetation management plan approved by the Council under clause 15 in the location identified as	Prior to the issuing of the first Subdivision Certificate for a deposited plan that when registered would	Nil

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	DA02a, T3 DA03a			12A, 12B, 12C and 12D on the Works Plan	create the 650 th Final Lot	
13. Upgrade of Cobbitty Road (Reference item T3.1 in the Contributions Plan)	Stages 1, 4, 7 and 8	13	Transport Management Facilities	Developer to construct and complete the upgrade of Cobbitty Road in the location identified as 13 on the Works Plan. The works will be limited to upgrading an existing 7m wide carriageway, including milling the existing surface, fixing soft spots, re- sheeting 30mm AC, line marking and traffic management.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the first Final Lot that directly fronts the road	\$476,176

B. Dedication of Land**Contribution
Value (Indexed
to September
2022 Land
Value Index)**

14. Land for Urban Roads - (Reference item T1.1 in the Contributions Plan)	Stages 1, 3 and 5 T3 DA01, T4 DA03c, T4 DA03a	2	Transport Management Facilities	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 27,040m2 in the location identified as 1 on the Works Plan on which Development Contribution Item 1 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the first Final Lot that directly fronts the road	\$13,520,000
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15. Land for Water cycle management works and stormwater pipes for the Cobbitty Creeks Catchment Sub catchment 3A - 3B	Stage 5 T4 DA03c Stage 9 T5 DA05b	5C	Water Cycle Management Facilities	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 15,050m ² in the location identified as 5C on the Land Dedication Plan on which Development Contribution Item 6 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$1,655,470
16. Land for Water cycle management works in subcatchment 3A - 3B and 4A-4B (Reference item W1.9 and W1.10 in the Contributions Plan)	(i) Stage 5 T4 DA03c (ii) Stages 4, 5, 7 and 9 T4 DA03c, T3 DA03a, T3 DA02a, T5 DA05b	5A and 5B 6A, 6B, 6C, 6D, 6E, 6F and 6G	Water Cycle Management Facilities	Developer to dedicate to the Council free of cost to the Council land on which Development Contribution Item 7 is located, being: (i) sub catchment 3A-3B with an area of approximately 2,500sqm in the location identified as 5A and 5B on the Land Dedication Plan. (ii) In sub catchment 4A-4B with an area of approximately 5,975sqm in the location identified as 6A, 6B, 6C, 6D, 10E, 6F and 6G on the Land Dedication Plan.	(i) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot (ii) Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the following Final Lot: (a) 6A and 6B – 850 th (b) 6C, 6D, 6E, 6F and 6G – 650 th	\$274,995 \$2,122,500
17. Land for playing fields/Village Green (Reference item	Stages 5 and 9	3B	Open Space and recreation	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 34,250m ² in	Prior to the issuing of a Subdivision Certificate for a deposited plan that	\$8,385,055

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OSR3.1 in the Contributions Plan)	T4 DA03c T5 DA05d			the location identified as 3B on the Land Dedication Plan on which Development Contribution Item 8 is located.	when registered would create the 650 th Final Lot	
18. Land for Children's playground/play space (Reference item OSR1.1 in the Contributions Plan)	Stage 9 T5 DA05d	3A	Open Space and Recreation	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 5,000m ² in the location identified as 3A on the Land Dedication Plan on which Development Contribution Item 9 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 850 th Final Lot	\$2,500,000
19. Land for Children's playground/play space (Reference item OSR1.1 in the Contributions Plan)	Stage 8 T3 DA03b	3C	Open Space and Recreation	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 5,000m ² in the location identified as 3C on the Land Dedication Plan on which Development Contribution Item 10 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$2,500,000
20. Land for Other Passive Open Spaces (Reference item OSR1.9 in the Contributions Plan)	Stage 7 T3 DA03a	4D	Open Space and Recreation	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 2,100m ² in the location identified as 4D on the Land Dedication Plan for passive open space.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 650 th Final Lot	\$230,996
21. Land for Other Passive Open Spaces (Reference	Stage 7 T3 DA03a	4E	Open Space and Recreation	Developer to dedicate to the Council free of cost to the Council land with an area of not less than 3,450m ² in the location identified as 4E on the	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would	\$379,493

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item OSR1.9 in the Contributions Plan)				Land Dedication Plan for passive open space.	create the 650 th Final Lot	
22. Land for Other Passive Open Spaces (Reference item OSR1.9 in the Contributions Plan)	Stages 5, 7 and 9 T3 DA03a, T4 DA03c, T5 DA05b	4A, 4B and 4C	Open Space and Recreation	Developer to dedicate to the Council free of cost to the Council land for passive open space with an area of not less than 41,975m ² in the location identified as 4A, 4B and 4C on the Land Dedication Plan on which Development Contribution Item 11 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the following Final Lot: (a) 4A – 850 th (b) 4B and 4C – 650 th	\$4,617,166
23. Land for Riparian Corridor	Stages 4, 5, and 7 T4 DA03c, T3 DA02a, T3 DA03a	7A, 7B, 7C and 7D	Open Space, Recreation, and Environmental Conservation	Developer to dedicate to the Council free of cost to the Council land for riparian corridor with an area of approximately 8.85ha in the location identified as 7A, 7B, 7C and 7D on the Land Dedication Plan on which Development Contribution Item 12 is located.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 800 th Final Lot	\$0
24. Land for multi-purpose community centre (Reference item C1.2 in the Contributions Plan)	Stage 5 T4 DA03c	1	Community Facilities	Developer to dedicate to the Council free of cost to the Council land for a multi-purpose community centre with an area of not less than 1,127m ² in the general location identified as 1 on the Land Dedication Plan.	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 800 th Final Lot	\$563,500

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C. Monetary Contributions

25. Multi-purpose community centre	N/A	N/A	Community Facilities	Developer to pay monetary Development Contributions in the amount of \$2,272,368 to be applied towards the provision- of a multi-purpose community centre	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 800 th Final Lot	\$2,272,368
26. Multi-purpose community centre car-park and landscaping	N/A	N/A	Community Facilities	Developer to pay monetary Development Contributions in the amount of \$106,821 to be applied towards the provision of car-parking and landscaping for a multi-purpose community centre	Prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 800 th Final Lot	\$106,821
27. Monetary contributions for Final Lots over and above 948 Final Lots	N/A	N/A	Public facilities identified in the Contributions Plan.	Developer to pay monetary Development Contributions for each Final Lot over and above 948 Final Lots in the Development in the amount calculated in accordance with the following formula: \$Amount per Final Lot = \$29,342,513 / 948	The amount per Final Lot to be paid prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create that Final Lot	Amount per Final Lot = \$29,342,513 / 948

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28. Monetary contributions for Administration	N/A	N/A	Administration	Developer to pay monetary Development Contribution in the amount of 0.75% of the sum of all Contribution Values for all Works to be carried out under this Deed	The amount is to be paid prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 180 th Final Lot	Amount equal to 0.75% of the sum of all Contribution Values for all Works to be carried out under this Deed
29. Monetary contributions for active open space (playing fields)	N/A	N/A	Recreation facilities	Developer to pay a monetary contribution in the amount of \$1,511,595 to be applied towards the provision of active open space	The amount is to be paid prior to the issuing of a Subdivision Certificate for a deposited plan that when registered would create the 800 th Final Lot	\$1,511,595

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Schedule 2

(Clause 1.1)

Design Approval and Maintenance Schedule

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Development Contribution Item	Location identifier on Works Plan	Design Approval required? (Clause 14)	Maintenance regime required? (Clause 15)	Maintenance period (Clause 15)	Vegetation management plan required? (Clause 15.2)
1. Urban roads	1	Yes	Yes	12 months	No
2. Roundabouts	2A, 2B, 2C and 2D	Yes	Yes	12 months	No
3. Cycleways	3A, 3B and 3C	Yes	Yes	12 months	No
4. Four (4) bus stops	N/A	Yes	Yes	12 months	No
5. Bridge Crossing	4A	No	Yes	12 months	No
6. Water cycle management works					

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- Wetland footprint	8	Yes	Yes	12 months	Yes
- Pipework	11	Yes	Yes	12 months	No
7. Water cycle management works					
- Subcatchment 3A-3B	9A and 9B	Yes	Yes	12 months	No
- Subcatchment 4A-4B	10A, 10B, 10C, 10D, 10E, 10F and 10G	Yes	Yes	12 months	No
8. Playing fields	5A	Yes	Yes	12 months	No
9. Children's playground/ playspace	6A	Yes	Yes	12 months	No
10. Children's playground/ playspace	6B	Yes	Yes	12 months	No
11. Other Passive Open Spaces	7A, 7B, 7C, 7D, 7E	Yes	Yes	12 months	Yes
12. Riparian land	12A, 12B, 12C and 12D	Yes	Yes	5 years	Yes
13. Upgrade of Cobbitty Road	13	Yes	Yes	12 months	No

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning

Agreement

Camden Council

Mirvac Homes (NSW) Pty Ltd

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Schedule 3

(Clause 9)

Staging Plan

See next pages.

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

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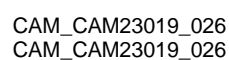
Schedule 4

(Clause 9)

Works Plan

See next pages.

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499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

Camden Council

Mirvac Homes (NSW) Pty Ltd

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

Schedule 5

Land Dedication Plan

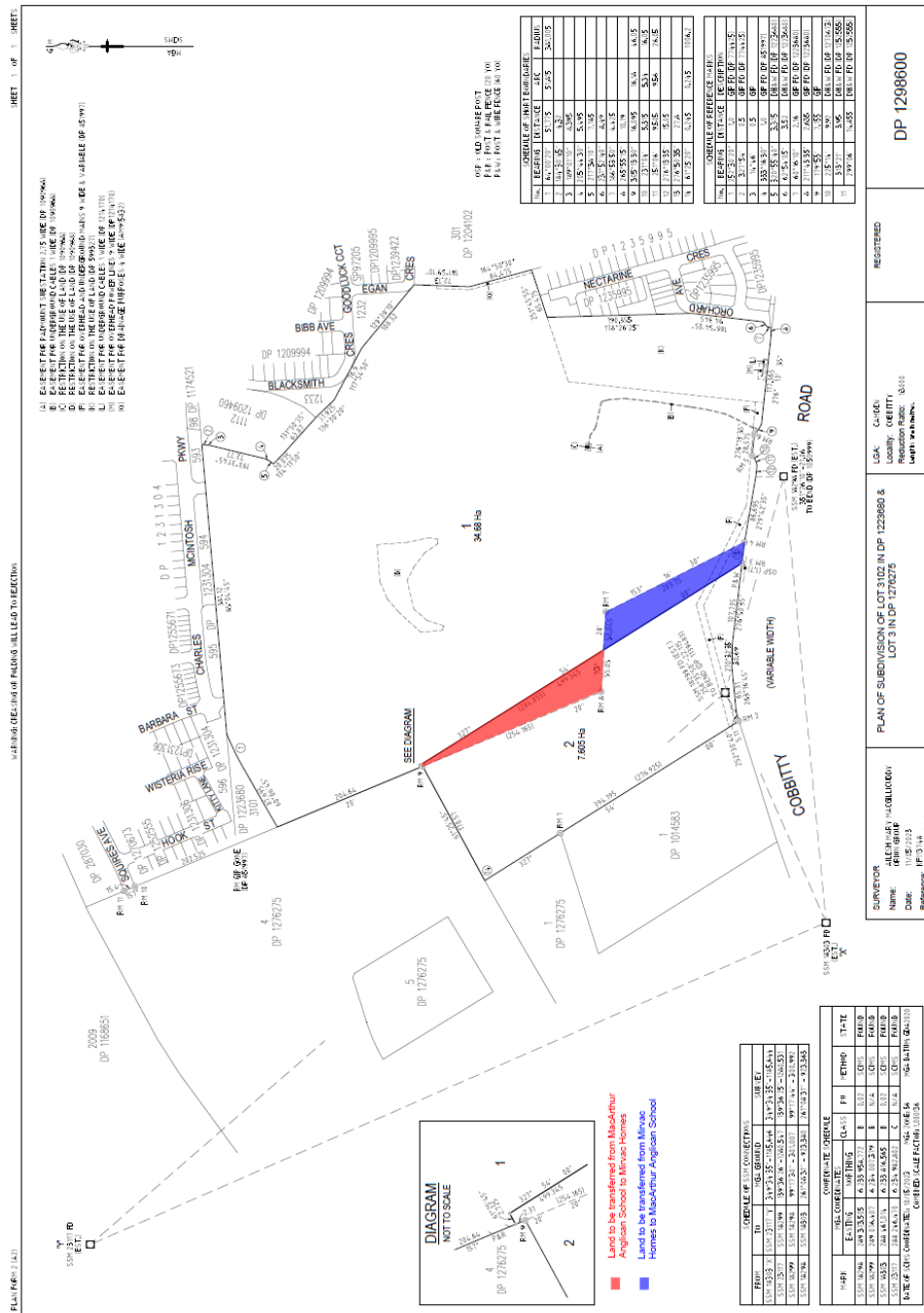
See next pages

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement
Camden Council
Mirvac Homes (NSW) Pty Ltd
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Schedule 6

Land Swap Land



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Camden Council

Mirvac Homes (NSW) Pty Ltd

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of Mirvac Homes (NSW) Pty Ltd in accordance
with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

Camden Council

Mirvac Homes (NSW) Pty Ltd

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

**Executed on behalf of the Mirvac Residential Sub Co Pty Ltd
ACN 672 683 797 as trustee for the Cobbitty Sub Trust ABN
15 561 438 643** in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

Camden Council

Mirvac Homes (NSW) Pty Ltd

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust

Appendix

(Clause 55)

Environmental Planning and Assessment Regulation 2021

(Section 205)

Explanatory Note

Draft Planning Agreement

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

Parties

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

and

Mirvac Homes (NSW) Pty Ltd ACN 006 922 998 of Level 28, 200 George Street,
Sydney NSW 2000 (**Developer**)

and

Mirvac Residential Sub Co Pty Ltd ACN 672 683 797 as trustee for the Cobbitty Sub Trust
ABN 15 561 438 643 (**Cobbitty Sub Trust**)

Description of the Land to which the Draft Planning Agreement Applies

The Draft Planning Agreement applies to land comprised in Lots 3, 5 and 6 in DP1276275, and the land formerly comprised in Lots 1, 2 and 4 in DP1276275 (which have been subdivided to create Lot 319 DP1289777, Lots 172, 173 and 174 in DP1289775 and a number of Final Lots) otherwise known as 499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty, and part of Lot 3102 DP1223680 which will be transferred to the Developer as part of a boundary adjustment arrangement with a third party, and includes any lot created by the subdivision, strata subdivision or consolidation of that land.

The Draft Planning Agreement also applies to land to be transferred to the Developer or the Cobbitty Sub Trust, being the part of Lot 3102 DP1223680 that is within Lot 2 in proposed plan of subdivision DP1298600, being the land shown marked in red in the plan in Schedule 6.

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

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Description of Proposed Development

The Draft Planning Agreement applies to the subdivision of the Land into Final Lots, pursuant to the Existing Development Consents and future Development Consents, as modified from time to time.

Description of Development Contributions

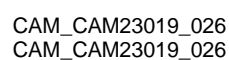
The Draft Planning Agreement requires the carrying out of work for:

- transport management facilities including sub-arterial road, roundabouts, roads, bus stops,
- water cycle management facilities including wetland and detention basins and water quality bio-ribbons,
- open space and recreation facilities including a playing field with associated children's play equipment and other passive open space with riparian style embellishments, and
- a multipurpose community centre.

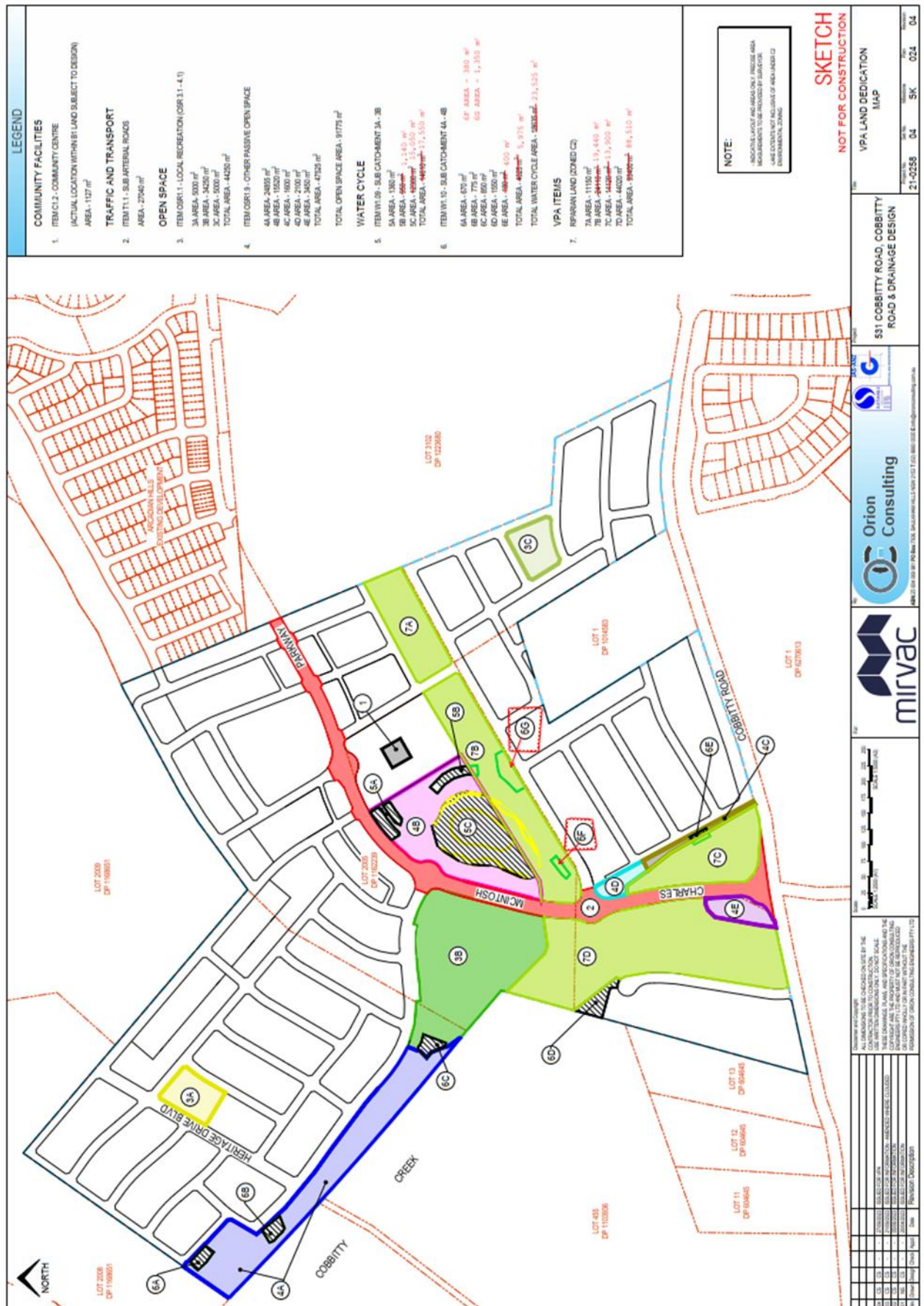
The draft Planning Agreement also requires the dedication of land for some of the above work.

Plans showing the location of the works and land to be dedicated are provided below:

Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust



Mirvac Residential Sub Co Pty Ltd as trustee for the Cobbitty Sub Trust



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

Objectives, Nature and Effect of Draft Planning Agreement

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

The objective of the Draft Planning Agreement is to require the carrying out of work and dedication of land for transport management facilities, water cycle management facilities, open space and recreation facilities and community facilities, being items identified in the Oran Park & Turner Road Section 94 Contributions Plan. The Draft Planning Agreement also requires the payment of monetary contributions for various public purposes.

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- excludes the application of s7.11 and s7.12 of the Act to the Development
- does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Development
- requires the carrying out of work and dedication of land for various public purposes
- requires the payment of monetary contributions for various public purposes
- is to be registered on the title to the Land
- imposes restrictions on the Parties assigning an interest under the agreement and the Developer and Cobbitty Sub Trust transferring land,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

The Draft Planning Agreement also provides that for the purposes of the Existing Development Consents the amount of monetary Development Contributions required to be paid to the Council pursuant to s7.11 of the Act under that Development Consent is fully satisfied by the carrying out of works under this Deed.

Assessment of the Merits of the Draft Planning Agreement

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement requires the carrying out of work and dedication of land for a transport management facilities, water cycle management facilities, open space and

499, 501, 585, 589, 591 & 593 Cobbitty Road, Cobbitty Planning Agreement

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recreation facilities and community facilities. These development contributions are listed in the Oran Park & Turner Road Section 94 Contributions Plan and will improve the road, drainage, recreation, and open space facilities that will serve the wider community.

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates the provision of public infrastructure and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

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

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

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

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

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

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

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

Yes.