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Fairfield City Council

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New South Wales Land and Housing Corporation

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# Voluntary Planning Agreement

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Date 23 AUGUST 2024

## Parties

Fairfield City Council ABN 83 140 439 239 of 86 Avoca Road, Wakeley, NSW 2176  
(Council)

New South Wales Land and Housing Corporation ABN 24 960 729 253 a statutory corporation constituted by section 6 of the *Housing Act 2001* (NSW) of Level 1, 223-239 Liverpool Road, Ashfield NSW 2131 (Developer)

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## Background

- A The Developer owns the Land.
  - B On 12 January 2009, the then Minister for Planning granted the Project Approval for the development of the Bonnyrigg Estate.
  - C The Developer has progressed the development of Stages 1-7 of the Bonnyrigg Estate in accordance with the Project Approval. A planning agreement under section 7.4 of the Act was entered into in respect of the public benefit contributions to be delivered by the Developer in relation to Stages 1-7 of the Bonnyrigg Estate development. The Developer now intends to carry out the Development, being Stages 8-18 of the Bonnyrigg Estate development.
  - D Council is the consent authority for subsequent development applications lodged in accordance with the Project Approval.
  - E The Developer now offers to enter into this Agreement with Council for the provision of Development Contributions in connection with the Development. The Parties wish to formalise that arrangement by entering into this Agreement in accordance with section 7.4 of the Act.
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## Agreed terms

### 1 Definitions and interpretation

#### 1.1 Definitions

Terms used in this Agreement have the following meanings:

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

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3444-8873-8580v9

<b>Agreement</b>	this voluntary planning agreement, including any schedules and annexures.
<b>Bonnyrigg Estate</b>	the housing estate development identified and approved in the Project Approval, as modified from time to time, which includes the Development the subject of this Agreement.
<b>Business Day</b>	a day on which banks are open for business generally in Sydney, and which is not a Saturday, Sunday or bank or public holiday in Sydney and specifically excluding 27, 28, 29, 30 and 31 December.
<b>Certificate of Practical Completion</b>	has the meaning given to that expression in <b>clause 6.3(c)(i)</b> .
<b>Complying Development Certificate</b>	has the same meaning given to that expression in the Act.
<b>Construction Certificate</b>	has the same meaning given to that expression in the Act.
<b>Dedication of Land</b>	the transfer of the areas of the Land to Council for no cost as described in <b>Column 4 of Schedule 3</b> .
<b>Defect</b>	has the meaning given to that expression in <b>clause 7.1(a)</b> .
<b>Defects Liability Period</b>	with respect to each item of the Works in Kind, means six (6) months from the date the particular Works in Kind is subject to a Certificate of Practical Completion issued in accordance with <b>clause 6.3(c)(i)</b> .
<b>Defects Notice</b>	has the meaning given to that expression in <b>clause 7.1(a)</b> .
<b>Development</b>	the subdivision and other development of the Land for residential, commercial and related purposes, in accordance with the Project Approval.
<b>Development Consent</b>	has the same meaning given to that expression in the Act and includes any development consents granted by Council as the authority with delegation to assess and determine subsequent development applications lodged in accordance with the Project Approval.
<b>Development Contributions</b>	the contributions to be provided by the Developer in accordance with <b>clause 5</b> and <b>Schedule 3</b> .
<b>Dwelling Land</b>	has the same meaning given to that expression in the Act.
<b>Land</b>	the parcels of land comprising Stages 8-18 of the Bonnyrigg Estate, as identified in <b>Schedule 2</b> .
<b>LRS</b>	NSW Land Registry Services.
<b>Notice</b>	has the meaning given to that expression in <b>clause 11.2</b> .

<b>Occupation Certificate</b>	has the same meaning given to that expression in the Act.
<b>Party</b>	a party to this Agreement, including their successors and assigns.
<b>Practical Completion</b>	the stage in the carrying out and completion of the Works in Kind when construction is complete, except for minor omissions and defects:  (a) which do not prevent the Works in Kind from being reasonably capable of being used for their intended purpose; and  (b) the rectification of which will not prejudice the convenient use of the Works in Kind.
<b>Precinct</b>	one of the four precincts within the Land, which are identified on the plan at <b>Annexure E</b> .
<b>Project Approval</b>	the approval granted by the Minister for Planning to the concept plan application MP06_0046 on 12 January 2009, as modified from time to time.
<b>Real Property Act</b>	the <i>Real Property Act 1900</i> (NSW).
<b>Register</b>	the Torrens title register maintained under the Real Property Act.
<b>Registrar General</b>	the Registrar General of NSW.
<b>Regulation</b>	the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<b>Residential Lot</b>	a lot upon which a Dwelling or multiple Dwellings are to be erected and that is not intended to be further developed and subdivided into two or more lots under a plan of subdivision.
<b>Subdivision Certificate</b>	has the same meaning given to that expression in the Act.
<b>Works in Kind</b>	each of the works to be carried out as specified in <b>Column 2 of Schedule 3</b> .

## 1.2 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;

- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;
- (i) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (j) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (k) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (l) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (m) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced; and
- (n) a reference to a clause, part schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

## 2 Planning agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the ways in which this Agreement addresses those requirements.

### 3 Application of this Agreement

This Agreement applies to the:

- (a) Land; and
- (b) Development.

### 4 Operation of this Agreement

The Parties agree that this Agreement operates on and from the date of this Agreement.

### 5 Contributions to be made under this Agreement

Subject to this Agreement, the Developer is to make Development Contributions comprising the:

- (a) carrying out and delivery of the Works in Kind; and
- (b) Dedication of Land.

### 6 Carrying out and delivery of Works in Kind

#### 6.1 Design of Works in Kind

The Developer must, promptly after the date of the Development Consent applicable to the relevant Works in Kind, prepare plans and specifications for the Works in Kind having regard to:

- (a) the Project Approval;
- (b) the relevant Development Consent;
- (c) applicable Council standards (except to the extent such standards are varied by the Project Approval or the relevant Development Consent); and
- (d) applicable Australian standards.

#### 6.2 Carrying out of Works in Kind

The Developer must:

- (a) carry out the Works in Kind:
  - (i) in a good and workmanlike manner; and
  - (ii) in accordance with the plans and specifications prepared under **clause 6.1**; and
- (b) bring the Works in Kind to Practical Completion by the time specified in **Column 3 of Schedule 3**.



### 6.3 Completion of Works in Kind

- (a) When the Developer is of the reasonable opinion that Works in Kind are near Practical Completion, the Developer must notify Council in writing within 10 Business Days before the date when Practical Completion is expected to be reached.
- (b) Council must inspect the Works in Kind promptly following, and within 10 Business Days of Council receiving, the notice under **clause 6.3(a)**.
- (c) Council must, within 10 Business Days of completing its inspection of the Works in Kind (and in any event, no later than 20 Business Days after receipt of the notice under **clause 6.3(a)**), provide notice to the Developer specifying that either:
  - (i) it is of the opinion that Practical Completion has been reached for the relevant Works in Kind stating the date when Practical Completion was reached (**Certificate of Practical Completion**); or
  - (ii) it is of the opinion that Practical Completion has not been reached, in which case it must set out all the matters that Council reasonably considers must be completed in order for Practical Completion to be reached.
- (d) If the Council does not provide the Developer with a notice under **clause 6.3(c)**, the Works in Kind the subject of the Developer's notice under **clause 6.3(a)** will be deemed to have been subject to a Certificate of Practical Completion on the date nominated in the Developer's notice.
- (e) The Developer:
  - (i) must correct any defects or finalise any incomplete work specified by Council under **clause 6.3(c)(ii)**, within the agreed time as reasonably nominated by the Developer, or if no time is nominated and agreed, within 10 Business Days after the Developer receives the notice issued under **clause 6.3(c)(ii)** from Council. Once complete, the provisions of **clauses 6.3(a) – (d)** will apply; or
  - (ii) if it does not agree with the matters set out in Council's notice issued under **clause 6.3(c)(ii)**, must notify Council that a dispute has arisen and **clause 10** of this Agreement will apply.
- (f) Council takes possession of the Works in Kind at 4:00pm on the date Council issues a Certificate of Practical Completion in accordance with **clause 6.3(c)(i)**.

### 6.4 Failure to deliver Works in Kind

- (a) If the Developer fails to complete all or any part of the Works in Kind as required by this Agreement by the time required by **clause 6.2(b)** and **Column 3 of Schedule 3** for that item of Works in Kind, Council may elect to complete that item or such part or parts of that item as are

outstanding, or as otherwise agreed, or appoint a contractor to carry out the relevant Works in Kind on Council's behalf.

- (b) If **clause 6.4(a)** applies the Developer authorises, following at least 5 Business Days' notice provided by Council to the Developer, Council, its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant Works in Kind.

## 7 Defects Liability

### 7.1 Defects Notice

- (a) Where a Certificate of Practical Completion has been issued for all or any part of the Works in Kind pursuant to **clause 6.3(c)(i)**, but the relevant part of the Works in Kind contains a material defect, being a defect which:
  - (i) adversely affects the ordinary use and/or enjoyment of the relevant part of the Works in Kind; or
  - (ii) will require maintenance or rectification works to be performed on the Works in Kind as a result of the existence of the defect,

**(Defect)**, Council may issue a defects notice (**Defects Notice**) to the Developer concerning that part of the Works in Kind, but only within the Defects Liability Period.
- (b) A Defects Notice must contain the following information:
  - (i) the nature and extent of the Defect;
  - (ii) the specific details of the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (iii) the time within which the Defect must be rectified (which must be a reasonable time and not less than 10 Business Days).

### 7.2 Developer to rectify Defects

- (a) The Developer must:
  - (i) procure the performance of the work required to rectify the Defects contained within a Defects Notice after receipt of the Defects Notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the Defects Notice.
- (b) The Developer must follow the procedure set out in **clauses 6.3(a) – (d)** in respect of the satisfaction of the Defects Notice.
- (c) Where the Developer serves notice on Council in accordance with **clause 7.2(a)(ii)**, **clause 10** of this Agreement will apply.

### **7.3 Right of Council to step-in**

If the Developer fails to rectify a Defect which it is obliged to rectify, then Council may have the rectification carried out by others without prejudice to any other rights and remedies Council may have, but only after giving the Developer 5 Business Days' written notice of its intention to do so.

### **7.4 Consequence of step-in**

If Council elects to exercise the step-in rights granted to it under **clause 7.3** then:

- (a) Council may:
  - (i) enter upon any part of the Land that it requires to access in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (ii) rectify the relevant Defects in accordance with the Defects Notice; and
- (b) the Developer must not impede or interfere with Council in undertaking that work.

### **7.5 Costs of Council**

Where Council exercises its step-in rights all reasonable costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer. The Developer is entitled to dispute the costs in which case **clause 10** of this Agreement will apply.

## **8 Dedication of Land**

### **8.1 Delivery of the Dedication of Land**

The Developer must:

- (a) provide for the Dedication of Land specified in **Column 4 of Schedule 3**; and
- (b) dedicate the relevant part of the Land, embellishments and Works in Kind in accordance with the conditions of Development Consent for the subdivision of the Land on which the relevant Works in Kind is to be located, or such other time period as is agreed in writing between the Parties, in accordance with **clause 8.2**.

### **8.2 Dedication process**

- (a) The Developer must take all steps necessary to register at LRS the Dedication of Land to Council in accordance with the timing specified in **clause 8.1(b)** by:
  - (i) either delivering to Council;
    - (A) a form of transfer in respect of the relevant part of the Land executed by the owner of the Land in registrable form transferring that land for \$1.00; and

- (B) the certificates of title for the relevant part of the Land; or
  - (C) a deposited plan which indicates that the relevant part of the Land is intended to be dedicated to Council.
- (ii) lodging all necessary executed documents with LRS and responding to any enquiries or requisitions made by LRS; and
  - (iii) taking any other necessary action to give effect to the transfer of the title of the relevant part of the Land to Council.
- (b) Subject to the requirements under this **clause 8.2**, Council agrees that it will accept the Dedication of Land:
- (i) free of all encumbrances and interests other than any easements or interests required by any authority or utility service provider currently noted on the title of the relevant part of the Land or required under any Development Consent; and
  - (ii) in a condition such that the Land is suitable for use as public open space, unless a higher standard of environmental condition of the Land is agreed between the parties.
- (c) The Developer is responsible for paying any costs associated with the Dedication of Land to Council.

## 9 Application of s7.11, s7.12 and s7.24 of the Act to the Developer and benefits under this Agreement

- (a) Subject to **clause 9(b)**, this Agreement excludes the application of sections 7.11, 7.12 and 7.24 of the Act to the Land and the Development to the extent stated in **Schedule 1**.
- (b) The parties agree that the exclusion of the application of sections 7.11 and 7.12 to the Development, as stated in **Schedule 1**, does not apply to any Dwelling that, as a result of a modification to the Project Approval or any other means, is approved by grant of a Development Consent that would have the effect that the Development would exceed 3,000 total Dwellings.

## 10 Security and enforcement

### 10.1 Compliance with Project Approval

The Parties acknowledge and agree that:

- (a) Condition A7 of the Project Approval requires the Developer to comply with this Agreement;
- (b) a breach of this Agreement by the Developer amounts to a breach of the Developer's obligations to comply with the Project Approval in carrying out the Development; and

- (c) Condition A7 of the Project Approval constitutes an appropriate means of enforcing this Agreement for the purposes of section 7.4(3)(g) of the Act.

## 10.2 Compulsory Acquisition

- (a) If the Developer does not procure the Dedication of Land in accordance with **clause 8**, the Developer agrees that Council may compulsorily acquire all or part of the Land that has not been dedicated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* for the amount of \$1.00.
- (b) The Parties acknowledge and agree that:
  - (i) **clause 10.2(a)** is an agreement between the Developer and Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
  - (ii) all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition are agreed.

## 10.3 Letter of Undertaking

Prior to entry into this Agreement, the Developer agrees to provide to Council a letter of undertaking in a form acceptable to Council and naming Council as the beneficiary, as further security for the performance of the Developer's obligations under this Agreement.

# 11 Dispute Resolution

## 11.1 Dispute

If any dispute arises out of this Agreement, then the Parties must resolve that dispute in accordance with this **clause 10** and a Party to the Agreement must not commence any court or arbitration proceedings, except where a Party seeks urgent interlocutory relief. Any referral or undertaking of the dispute resolution process as set out in this **clause 10** does not suspend any other obligations of the Parties' under this Agreement.

## 11.2 Notice of Dispute

A Party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (**Notice**) to the other Party to this Agreement specifying the nature of the dispute.

## 11.3 Representatives of Parties to meet

- (a) The representatives of the Parties must promptly (and in any event within 14 Business Days of receipt of a Notice) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting; or

- (ii) agree that further material or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
- (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

#### **11.4 No party may constrain**

if:

- (a) at least one meeting has been held in accordance with **clause 11.3**;
- (b) the Parties have been unable to reach an outcome identified in **clause 11.3(b)(i) to (iii)**; and
- (c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 11.3**,

then that Party may, by providing 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

## **12 Notices**

### **12.1 Delivery**

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) emailed to that Party at its email address set out below.

#### **Fairfield City Council**

Attention: General Manager

Address: Fairfield City Council

PO Box 21

Fairfield NSW 1860

Phone Number: (02) 9725 0222

Email Address [mail@fairfieldcity.nsw.gov.au](mailto:mail@fairfieldcity.nsw.gov.au)

#### **Developer**

Attention: Jessica Habib

Address: Level 15, 4 Parramatta Square, 12 Darcy Street

Parramatta NSW 2150

Phone Number: 0436 862 262

Email Address Jessica.habib@dpie.nsw.gov.au

## 12.2 Change of Details

If a Party gives the other Party 10 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or electronically sent to the latest address or email address.

## 12.3 Giving of Notice

Subject to **clause 12.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; or
- (b) if it is sent by registered post, two Business Days after it is posted; or
- (c) if it is sent by email, as soon as the email has been sent to the correct email address and the recipient has received the email without error.

## 12.4 Delivery outside of business hours

If any notice, consent, information, application or request is delivered on a day that is not a Business Day, or if on a Business Day, after 5.00 pm 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.

## 13 Approvals and consent

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

## 14 Assignment and dealings

The Developer may not sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any) or rights or obligations under the terms of this Agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) at no cost to Council, first procures the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and

- (b) satisfies Council that the Developer is not in material breach of this Agreement.

## 15 Release and discharge

The Developer may request Council provide a release and discharge of the obligations under this Agreement to the extent that this Agreement affects any part of the Land in respect of which the:

- (a) Development has been completed; or
- (b) Developer proposes to sell to a third party; or
- (c) Land is to be dedicated to another Authority.

## 16 Termination of this Agreement

This Agreement terminates when the Developer either:

- (a) satisfies all its obligations under the Agreement; or
- (b) surrenders that part of the Project Approval that relates to the Development.

## 17 General

### 17.1 Legal Costs

Each Party agrees to bear its own costs associated with reviewing, preparing, negotiating, amending, executing and stamping this Agreement and any document related to this Agreement.

### 17.2 Entire Agreement

This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### 17.3 Further Acts

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

### 17.4 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its Courts and Courts of appeal. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

### 17.5 No Fetter

Nothing in this Agreement 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.

#### **17.6 Representations and warranties**

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

#### **17.7 Severability**

- (a) The Parties acknowledge that under and by virtue of Section 7.4(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- (b) The Parties agree that to the extent permitted by law, this Agreement prevails to the extent of its inconsistency with any law.
- (c) If a clause or part of a clause of this Agreement 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.
- (d) 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 Agreement, but the rest of this Agreement is not affected.

#### **17.8 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement and is in accordance with the provisions of the Act.

#### **17.9 Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation or exercise of a right of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation, right or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, right or breach or as an implied waiver of that obligation, right or breach in relation to any other occasion.
- (d) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

**17.10 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between Council and the Developer.

**17.11 Further Steps**

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

**17.12 Explanatory Note**

The explanatory note prepared in connection with this Agreement pursuant to the Regulation is not to be used to interpret this Agreement.

**17.13 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

**17.14 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

## Schedule 1 - Section 7.4 Requirements

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of this Agreement complying with the Act.

**Table 1 – Requirements under section 7.4 of the Act**

<b>Requirement under the Act</b>	<b>This Agreement</b>
<p><b>Planning instrument and/or development application – (section 7.4(1))</b>            The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of land to which this Agreement applies – (section 7.4(3)(a))</b></p>	See <b>Schedule 2.</b>
<p><b>Description of development to which this Agreement applies – (section 7.4(3)(b))</b></p>	The Development as defined in <b>clause 1.1.</b>
<p><b>The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4(3)(c))</b></p>	See <b>Schedule 3.</b>
<p><b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b></p>	The application of sections 7.11 and 7.12 of the Act are wholly excluded in respect of the Land and the Development.
<p><b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b></p>	The application of section 7.24 of the Act is not excluded in respect of the Development.
<p><b>Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4(3)(e))</b></p>	Not applicable.
<p><b>Mechanism for dispute resolution – (section 7.4(3)(f))</b></p>	See <b>clause 11.</b>

<b>Requirement under the Act</b>	<b>This Agreement</b>
<b>Enforcement of this Agreement</b> – (section 7.4(3)(g))	See <b>clause 10</b> .
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(10))	See <b>clauses 13 and 17.5</b> .

## Schedule 2 - Land

Precinct	Lot(s)	Deposited Plan
Humphries Precinct (Stages 8 – 11)	103	262456
	105	
	107 – 112	
	114 – 115	
	117 – 119	
	121 – 126	
	129 – 138	
	140 – 142	
	143 – 151	262449
	153	
	155 – 159	
	161 – 163	
	165 – 171	
	173 – 176	
179 – 189		
191		
193		
195 – 197		
199		
201 – 214		
216 – 228		
415 – 416		
4099	1182418	
41	1172246	
Part 6225	1242892	
Town Centre Precinct (Stages 12 – 13)	453 – 454	839627
Tarlington East Precinct (Stages 14 – 15)	297	262452
	299 – 305	
	307 – 314	
	316 – 320	
	322 – 330	
	341 – 346	
	348 – 358	
	362	

Precinct	Lot(s)	Deposited Plan
	364 – 367 418	
	331 333 335 – 340	262454
<b>Tarlinton West Precinct (Stages 16 – 18)</b>	368 – 374 376 – 381 383 385 – 389 391 393 – 397 419 423 425	262454
	398 – 409	262452
	69 – 70	853680

## Schedule 3 - Development Contributions

### 1 Humphries Precinct (Stages 8 – 11)

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
1.	<p>A minimum 9,211m<sup>2</sup> Junior Play Park with an estimated value of \$3,934,094, located generally in accordance with the plan at Annexure A and comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• Retaining walls and tiered masonry walls;</li> <li>• Reinforced concrete OSD tank under the turfed area;</li> <li>• 1,133m<sup>2</sup> of concrete pavement;</li> <li>• 166m<sup>2</sup> of bicycle loop pavement;</li> <li>• 5,302m<sup>2</sup> of turfed area;</li> <li>• 1,295m<sup>2</sup> of soft landscaping;</li> <li>• 44 x new trees;</li> <li>• 256m<sup>2</sup> of basketball court area;</li> <li>• Playground equipment including sofffall and shade sails;</li> <li>• 2 x shelters;</li> <li>• 3 x picnic sets;</li> <li>• 3 x park benches;</li> <li>• 1 x drinking fountains;</li> <li>• Wayfinding signage;</li> <li>• Drainage to hardstand areas;</li> <li>• Irrigation to planted areas; and</li> <li>• Lighting to pavement areas.</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the 200<sup>th</sup> Dwelling in the Humphries Precinct.</p>	<p>Minimum 9,211m<sup>2</sup></p>

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
2.	<p>A minimum 1,705m<sup>2</sup> Humphries Road Drainage Reserve with an estimated value of \$2,917,482, comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• Stormwater pipework and pits;</li> <li>• Reinforced concrete OSD tank under the turfed area;</li> <li>• Gross pollutant traps;</li> <li>• 891m<sup>2</sup> of turfed area;</li> <li>• 582m<sup>2</sup> of soft landscaping including area of raised planter beds;</li> <li>• 56 x screening trees;</li> <li>• 3 x park benches;</li> <li>• Signage;</li> <li>• Irrigation to planted areas; and</li> <li>• Lighting to pavement areas.</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the first Dwelling north of Newleaf Parade that drains to the Humphries Road Drainage Reserve.</p>	<p>Minimum 1,705m<sup>2</sup></p>
3.	<p>A minimum 3,046m<sup>2</sup> Hilltop Park (final section) with an estimated value of \$616,962, comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• 297m<sup>2</sup> of concrete pavement;</li> <li>• 2,215m<sup>2</sup> of turfed area;</li> <li>• 415m<sup>2</sup> of soft landscaping;</li> <li>• 29 x new trees;</li> <li>• 2 x park benches;</li> <li>• Wayfinding signage; and</li> <li>• Lighting to pavement areas.</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the first Dwelling north of Newleaf Parade that drains to the Humphries Road Drainage Reserve.</p>	<p>Minimum 1,092m<sup>2</sup> (comprising the residue of the Hilltop Park that is yet to be dedicated)</p>



Corrs Chambers Westgarth

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
4.	Circa 592m of new half local road width adjacent parks with an estimated value of \$1,219,855, comprising the following scope of works: <ul style="list-style-type: none"> <li>• Erosion and sediment control;</li> <li>• Construction of new road pavement;</li> <li>• Kerb, gutter and dish drain;</li> <li>• 2.5m wide shared way;</li> <li>• Signage and linemarking;</li> <li>• Stormwater;</li> <li>• Landscaping of verge including new street trees; and</li> <li>• Street lighting.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 200 <sup>th</sup> Dwelling in the Humphries Precinct.	Circa 592m in length
5.	Circa 404m of cycleways (excluding collector roads and roads adjacent to parks) with an estimated value of \$146,458, comprising the following scope of works: <ul style="list-style-type: none"> <li>• Clearing and grubbing including boxing out cycleway; and</li> <li>• 2.5m wide cycleway.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 200 <sup>th</sup> Dwelling in the Humphries Precinct.	Not applicable (cycleways will be constructed within road reserves and parks that are to be dedicated to Council).
<b>Total estimated value of Works in Kind to be delivered in the Humphries Precinct = \$8,834,851</b>			

## 2 Town Centre Precinct (Stages 12 – 13)

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
6.	<p>A minimum 2,000m<sup>2</sup> Bonnyrigg Square with an estimated value of \$1,426,891, located generally in accordance with the plan at Annexure B and comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• 1,292m<sup>2</sup> of concrete pavement including 364m<sup>2</sup> of paved area;</li> <li>• Integrated concrete seats;</li> <li>• 478m<sup>2</sup> of turfed area;</li> <li>• 230m<sup>2</sup> of soft landscaping including area of raised planter beds;</li> <li>• 33 x new trees;</li> <li>• Water feature;</li> <li>• Public art;</li> <li>• Signage;</li> <li>• Drainage to hardstand areas;</li> <li>• Irrigation to planted areas; and</li> <li>• Lighting to pavement areas.</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the 440<sup>th</sup> Dwelling in the Town Centre Precinct.</p>	<p>Minimum 2,000m<sup>2</sup></p>
7.	<p>A minimum 4,000m<sup>2</sup> Village Green with an estimated value of \$983,972, located generally in accordance with the plan at Annexure B and comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• 1,155m<sup>2</sup> of concrete pavement including 468m<sup>2</sup> of paved area;</li> <li>• 1,705m<sup>2</sup> of turfed area;</li> <li>• 672m<sup>2</sup> of soft landscaping;</li> <li>• 100 x new trees;</li> <li>• Inclusive play playground equipment including softfall and shade sails;</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the 440<sup>th</sup> Dwelling in the Town Centre Precinct.</p>	<p>Minimum 4,000m<sup>2</sup></p>

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
	<ul style="list-style-type: none"> <li>• 3 x shelters;</li> <li>• 3 x picnic sets;</li> <li>• 12 x park benches;</li> <li>• Drainage to hardstand areas;</li> <li>• Irrigation to planted areas;</li> <li>• Lighting to pavement areas; and</li> <li>• Angle parking.</li> </ul>		
8.	<p>A circa 1,854m<sup>2</sup> Town Centre Pedestrian Shareway with an estimated value of \$412,659, comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• 1,236m<sup>2</sup> of concrete pavement;</li> <li>• 618m<sup>2</sup> of soft landscaping;</li> <li>• 21 x new trees; and</li> <li>• Lighting.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 440 <sup>th</sup> Dwelling in the Town Centre Precinct.	Circa 1,854m <sup>2</sup>
9.	<p>Circa 236m of new half local road width adjacent parks with an estimated value of \$486,293, comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• Erosion and sediment control;</li> <li>• Construction of new road pavement;</li> <li>• Kerb, gutter and dish drain;</li> <li>• 2.5m wide shared way;</li> <li>• Signage and linemarking;</li> <li>• Stormwater;</li> <li>• Landscaping of verge including new street trees; and</li> <li>• Street lighting.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 440 <sup>th</sup> Dwelling in the Town Centre Precinct.	Circa 592m in length
10.	A gross pollutant trap and associated pipework in the Lower Valley Creek Park with an estimated value of \$160,000.	Practical Completion must be reached prior to the	Not applicable.

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
		issue of an Occupation Certificate for the 440 <sup>th</sup> Dwelling in the Town Centre Precinct.	
<b>Total estimated value of Works in Kind to be delivered in the Town Centre Precinct = \$3,469,815</b>			

### 3 Tarlington East Precinct (Stages 14 – 15)

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
11.	<p>A minimum 23,000m<sup>2</sup> Upper Valley Creek Park with an estimated value of \$3,177,532, located generally in accordance with the plan at Annexure C and comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• Clearing and grubbing the site;</li> <li>• Earthworks;</li> <li>• Construction of 1,488m<sup>2</sup> of bioswales;</li> <li>• 4,041m<sup>2</sup> of concrete pavement;</li> <li>• 426m<sup>2</sup> of gravel pavement;</li> <li>• 15,450m<sup>2</sup> of turfed area;</li> <li>• 2,200m<sup>2</sup> of soft landscaping;</li> <li>• 60 x new trees;</li> <li>• Boardwalks across creek;</li> <li>• 3 small pieces of play equipment including soft fall and shade sails;</li> <li>• 815m<sup>2</sup> of basketball court;</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 400 <sup>th</sup> Dwelling in the Tarlington East Precinct.	Minimum 23,000m <sup>2</sup>

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
	<ul style="list-style-type: none"> <li>• 1 x shelter;</li> <li>• 2 x picnic sets;</li> <li>• 9 x park benches;</li> <li>• Wayfinding signage; and</li> <li>• Lighting to pavement areas.</li> <li>• Off Leash Dog Park</li> </ul>		
12.	Circa 271m of new half local road width adjacent parks with an estimated value of \$558,413, comprising the following scope of works: <ul style="list-style-type: none"> <li>• Erosion and sediment control;</li> <li>• Construction of new road pavement;</li> <li>• Kerb, gutter and dish drain;</li> <li>• 2.5m wide shared way;</li> <li>• Signage and linemarking;</li> <li>• Stormwater;</li> <li>• Landscaping of verge including new street trees; and</li> <li>• Street lighting.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 400 <sup>th</sup> Dwelling in the Tarlington East Precinct.	Circa 271m in length
13.	Circa 243m of cycleways (excluding collector roads and roads adjacent to parks) with an estimated value of \$88,092, comprising the following scope of works: <ul style="list-style-type: none"> <li>• Clearing and grubbing including boxing out cycleway; and</li> <li>• 2.5m wide cycleway.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 400 <sup>th</sup> Dwelling in the Tarlington East Precinct.	Not applicable (cycleways will be constructed within road reserves and parks that are to be dedicated to Council).
14.	Two gross pollutant traps and associated pipework in the Upper Valley Creek Park with an estimated value of \$320,000.	Practical Completion must be reached prior to the issue of an Occupation	Not applicable (will be constructed within the Upper

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
		Certificate for the 400 <sup>th</sup> Dwelling in the Tarlington East Precinct.	Valley Creek Park, which is to be dedicated to Council).
15.	An external bus shelter to be constructed on either Elizabeth Drive or Cabramatta Road with an estimated value of \$32,000.	Practical Completion must be reached prior to the issue of an Occupation Certificate for the final Dwelling in the Tarlington East Precinct.	Not applicable.
<b>Total estimated value of Works in Kind to be delivered in the Tarlington East Precinct = \$4,176,037</b>			

#### 4 Tarlington West Precinct (Stages 16 – 18)

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
16.	A minimum 19,000m <sup>2</sup> Bonnyrigg Community Park with an estimated value of \$3,202,680, located generally in accordance with the plan at Annexure D and comprising the following scope of works: <ul style="list-style-type: none"> <li>• 560m<sup>2</sup> new pergola with allowance for electrical outlets and lighting</li> <li>• 3,483m<sup>2</sup> of concrete pavement;</li> <li>• 603m<sup>2</sup> of bicycle pavement;</li> <li>• 587m<sup>2</sup> of pavement pedestrian seating area adjacent pergola;</li> <li>• 10,782m<sup>2</sup> of turfed area;</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 600 <sup>th</sup> Dwelling in the Tarlington West Precinct.	Minimum 19,000m <sup>2</sup>

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
	<ul style="list-style-type: none"> <li>• 1,378m<sup>2</sup> of soft landscaping;</li> <li>• 112 x new trees;</li> <li>• 1,273m<sup>2</sup> of basketball court, or similar area;</li> <li>• Inclusive play playground equipment including softfall;</li> <li>• 1 x BBQ facility;</li> <li>• 2 x shelters;</li> <li>• 4 x picnic sets;</li> <li>• Park benches and seats;</li> <li>• Bicycle hoops;</li> <li>• 1 x drinking fountain;</li> <li>• Wayfinding signage;</li> <li>• Drainage to hardstand areas;</li> <li>• Irrigation to planted areas; and</li> <li>• Lighting to pavement areas.</li> </ul>		
17.	<p>Circa 660m of new half local road width adjacent parks with an estimated value of \$1,359,973, comprising the following scope of works:</p> <ul style="list-style-type: none"> <li>• Erosion and sediment control;</li> <li>• Construction of new road pavement;</li> <li>• Kerb, gutter and dish drain;</li> <li>• 2.5m wide shared way;</li> <li>• Signage and linemarking;</li> <li>• Stormwater;</li> <li>• Landscaping of verge including new street trees; and</li> <li>• Street lighting.</li> </ul>	<p>Practical Completion must be reached prior to the issue of an Occupation Certificate for the 600<sup>th</sup> Dwelling in the Tarlington West Precinct.</p>	<p>Circa 660m in length</p>

Column 1 Item No.	Column 2 Description of Works in Kind	Column 3 Timing for completion of Works in Kind	Column 4 Dedication of Land
18.	Circa 217m of cycleways (excluding collector roads and roads adjacent to parks) with an estimated value of \$78,667, comprising the following scope of works: <ul style="list-style-type: none"> <li>• Clearing and grubbing including boxing out cycleway; and</li> <li>• 2.5m wide cycleway.</li> </ul>	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 600 <sup>th</sup> Dwelling in the Tarlington West Precinct.	Not applicable (cycleways will be constructed within road reserves and parks that are to be dedicated to Council).
19.	A minimum 1,566m <sup>2</sup> Tarlington Drainage Reserve with an estimated value of \$2,680,069, based on the scope of works for the Humphries Road Drainage Reserve at Item 2 of this Schedule 3.	Practical Completion must be reached prior to the issue of an Occupation Certificate for the 600 <sup>th</sup> Dwelling in the Tarlington West Precinct.	Minimum 1,566m <sup>2</sup>
20.	Minimum 220m <sup>2</sup> of gross lettable area for additional community space (in a location to be determined), or for another purpose to be agreed between the parties, with an estimated value of \$1,721,060.	Not applicable.	Minimum 220m <sup>2</sup>
<b>Total estimated value of Works in Kind to be delivered in the Tarlington West Precinct = \$9,042,449</b>			



# Execution

**Executed** as an agreement.

**Executed by Fairfield City Council by** )  
its duly appointed officer in the )  
presence of: )

  
.....  
Witness

**SONIA DRCA**  
.....  
Name of Witness (print)

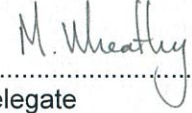
  
.....  
Officer

**Bradley Cutts**  
.....  
Name of Officer (print)

**Executed by Michael Wheatley**..... as )  
delegate of **New South Wales Land and** )  
**Housing Corporation** ABN 24 960 729 )  
253 and I hereby certify that I have no )  
notice of revocation of such delegation. )

  
.....  
Witness

**Jennifer Iorfino**  
.....  
Name of Witness (print)

  
.....  
Delegate

**Michael Wheatley**  
.....  
Name of Delegate (print)

## Annexure A - Junior Play Park

### Junior Play Park



Concept Plan



Locational Plan

#### Key features

- ① Existing mature tree canopy
- ② Children's play equipment
- ③ Shaded BBQ facilities
- ④ Vegetated rainwater bio-retention basins
- ⑤ Basketball half-court
- ⑥ Open lawn

## Annexure B - Bonnyrigg Square & Village Green



Concept Plan



Locational Plan

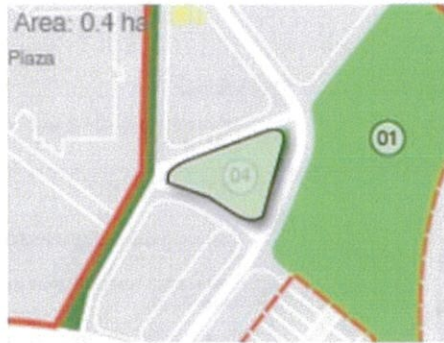
### Key features

- ① Arrival plaza/gateway into the precinct with public art
- ② Open manicured lawn
- ③ Cafe/dining space along Bonnyrigg Avenue
- ④ Flexible plaza space with recessed water feature
- ⑤ Raised planters and feature tree planting with seating options
- ⑥ Retail / Community ground floor use
- ⑦ Community share way alongside existing boundary tree planting
- ⑧ Cafe/dining space and active frontages
- ⑨ Potential future development by others (currently a shopping centre car park)

# Village Green Plan



Concept Plan



Locational Plan

### Key features

- ① Community share way along existing tree canopy
- ② Arrival plaza into the precinct with opportunity for public art
- ③ Potential future pedestrian link to Bonnyrigg Plaza
- ④ Plaza/ spill out spaces for commercial ground floor use
- ⑤ Raised planters and feature tree planting with seating options
- ⑥ Children's play equipment
- ⑦ Open active field
- ⑧ Shaded BBQ facilities
- ⑨ Lower Valley Creek Park



## Annexure C - Upper Valley Creek Park



Concept Plan



Locational Plan

### Key features

- ① Dry creek line and bioswales
- ② Significant heritage tree
- ③ Shared path for cycling/running
- ④ Basketball court
- ⑤ Shaded BBQ facilities
- ⑥ Small play area
- ⑦ Open lawn areas
- ⑧ Entry into the precinct with public art and wayfinding opportunity

## Annexure D - Bonnyrigg Community Park



Concept Plan



### Locational Plan

#### Key features

- ① Adventure playground with children's bike loop
- ② Potential for water play equipment in densely vegetated setting
- ③ Community pavilion/amenities
- ④ Plaza/spill out spaces for community use with raised planters
- ⑤ Large open lawn as event space, e.g. outdoor cinema nights
- ⑥ Shaded BBQ/picnic facilities
- ⑦ Open lawn area
- ⑧ Basketball courts
- ⑨ Pedestrian through-site links to Bonnyrigg Public School and Upper Valley Creek
- ⑩ Retained significant cultural tree

## Annexure E - Bonnyrigg Precincts



**Key:**

1. Humphries Road Precinct
2. Town Centre Precinct
3. Tarlington West Precinct
4. Tarlington East Precinct

