

Voluntary Planning Agreement

Penrith City Council

ABN 43 794 422 563

Lendlease Communities (Werrington) Pty Ltd

ACN 635 502 082

Sydney

Level 29, MLC Centre, 19 Martin Place, Sydney NSW 2000

PO Box Q1164, QVB Post Office, Sydney NSW 1230

t: +61 2 9373 3555 | f: +61 2 9373 3599 | DX 282 Sydney | www.sparke.com.au

adelaide | brisbane | canberra | darwin | melbourne | newcastle | perth | sydney | upper hunter

1297752v1

NLS\NLS\88961533\1

Contents

Parties	5
Background	5
Operative part	6
1 <i>Definitions</i>	6
2 <i>Interpretation</i>	10
3 <i>Planning Agreement under the Act</i>	11
4 <i>Application of this agreement</i>	11
5 <i>Operation of this agreement</i>	11
5.1 Commencement	11
6 <i>Contributions to be made under this agreement</i>	11
6.1 Works	11
6.2 Dedication of Land	13
6.3 Maintenance and Rectification of Defects	14
6.4 Access to Council owned land	14
6.5 Indemnity for Council acquisition of TfNSW Land	14
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act</i>	15
7.1 Application of s 7.11, s 7.12 and s 7.24 of the Act	15
7.2 Generation and application of Surplus Contribution Credits	15
7.3 Reporting and recording generation and retirement of Surplus Credits	17
8 <i>Registration of this agreement</i>	18
8.1 Developer Interest	18
8.2 Registration of this agreement	18
8.3 Removal from Register	19
8.4 Caveat	20
9 <i>Review of this agreement</i>	20
9.1 Review generally	20
10 <i>Dispute Resolution</i>	21
10.1 Reference to Dispute	21
10.2 Notice of Dispute	21
10.3 Representatives of Parties to Meet	21
10.4 Further Notice if Not Settled	21
10.5 Mediation	21
10.6 Expert determination	22

10.7	Litigation	23
10.8	No suspension of contractual obligations	23
11	<i>Enforcement and Security</i>	23
11.1	Default	23
11.2	Security	23
11.3	Compulsory Acquisition	24
11.4	Restriction on the issue of Certificates	25
11.5	Sunset Date	25
11.6	General Enforcement	26
11.7	Breach of Obligations	26
12	<i>Assignment and Dealings</i>	27
12.1	Restrictions on dealings	27
13	<i>Approvals and consents</i>	28
14	<i>No fetter</i>	28
14.1	Discretion	28
14.2	No fetter	28
15	<i>Notices</i>	28
16	<i>General</i>	29
16.1	Relationship between parties	29
16.2	Time for doing acts	29
16.3	Further assurances	30
16.4	Variation	30
16.5	No assignment	30
16.6	Counterparts	30
16.7	Legal expenses, stamp duty and administration fees	30
16.8	Entire agreement	30
16.9	Representations and warranties	30
16.10	Severability	30
16.11	Invalidity	31
16.12	Waiver	31
16.13	GST	31
16.14	Governing law and jurisdiction	31
17	<i>Reporting</i>	31
	Schedule 1 Scope of works	33
	Schedule 2 Construction terms	39

Schedule 3 Easement Terms	49
Schedule 4 Summary of requirements (section 7.4)	50
Annexure A Plan showing Land	52
Annexure B Plan showing Dedication Land	54
Annexure C Plan showing Public Access Land	55
Annexure D Plans showing Works	56
Annexure E South Werrington Urban Village Map	57
Annexure F Vegetation Management Plan	58
Annexure G TfNSW Land	59
<u>Annexure H Stage 1 Residential Lots</u>	

Agreement

Date

Parties

First party

Name	Penrith City Council (Council)
ACN	43 794 422 563
Contact	The General Manager
Telephone	02 4732 7777

Second party

Name	Lendlease Communities (Werrington) Pty Ltd (Developer)
ACN	635 502 082
Contact	Matt Sullivan
Telephone	0438 575 059

Background

- A. The Developer purchased the Land on 4 June 2019.
- B. On 14 October 2019, the Developer lodged DA19/0704 with Council.
- C. On 17 February 2020, the Developer lodged DA 20-0081 with Council.
- D. On 18 December 2020 DA19/0704 was approved by Council.
- E. The Developer intends to lodge further Development Applications with Council in relation to the Development.
- F. DA19/0704 was accompanied by a letter dated 7 February 2020 from the Developer to Council (**Letter of Offer**) offering to enter into this agreement to make contributions for public purposes if Development Consent is granted.
- G. The Developer received a letter from Council dated 1 May 2020 which outlined the extent to which the offer in the Letter of Offer was accepted, and the conditions of the acceptance of that offer (**Letter of Acceptance**).
- H. This agreement documents the agreement between the parties arising from the matters outlined in the Letter of Offer and Letter of Acceptance.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council as agreed under this document and containing terms and conditions reasonably acceptable to the Council.

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction, issued under Schedule 29.1(b)

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Complying Development Certificate has the same meaning as in the Act;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in Schedule 2;

Contributions means the dedication of the Dedication Land or the carrying out of Works required under this agreement.

Contributions Plan has the same meaning as under the Act;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

DA19/0704 means the Development Application lodged with Council on 4 October 2019 and approved by the Sydney Western City Planning Panel on 18 December 2020 for the following development on the Land:

- a) the staged subdivision of land to create 228 Residential Lots, 17 industrial lots, open space lots, 14 residue lots and road dedication; and
- b) works including site preparation, vegetation removal, bulk earthworks, civil works, construction of roads, including the east-west collector road (Works Item T.52 in Table 1 of Schedule 1) and round-a-bout on Werrington road, stormwater infrastructure and basins (Works item W2.12 in Table 1 of Schedule 1).

DA 20-0081 means the Development Application lodged with Council on 17 February 2020 and approved on 2 November 2021 for the following development on the Land:

- a) Construction of the Central Reserve, comprising a large area of retained Cumberland plain woodland vegetation, a planted bio-retention area and large informal grassed basin, children's play space areas, barbeque picnic areas and associated shelters, active recreation zone and pedestrian access paths including Werrington Train Station through-site link connection.
- b) Construction of the Eastern Basin Park, comprising a planted bio-retention area and large informal grassed basin framed by planted embankments incorporating pedestrian access paths and passive seating and picnic shelter furniture elements.
- c) Implementation of the proposed vegetation management measures outlined in Vegetation Management Plan to ensure the ongoing viability and conservation of the E2 Environmental Conservation reserve.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Dedication Land means that part of the Land to be dedicated to Council in accordance with this agreement, as identified in Part 2 of Tables 1 and 2 in Schedule 1 and shown on the plan at Annexure B;

Development means the development (including any Approvals granted in relation to DA19/0704 and DA20/0081 and any further Approvals, including a Development Consent in respect of the Land), which is generally described as subdivision of the Land for the purpose of residential and industrial uses and associated road infrastructure, and the subsequent development of the Land for residential and industrial purposes (and associated uses, including but not limited to open space, roads, drainage, services, display homes and carparks);

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

GST has the same meaning as in the GST Law;

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

Handover means, with respect to any Works, the time Council takes possession of, and assumes responsibility for, the work in accordance with the Construction Terms;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within [21] days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

Land means the part of Lot 1 DP 1226122 shown hatched and labelled "Land Subject to the VPA", and the part of Lot 2 DP 1176624 shown as hatched and shaded labelled "Land Subject to VPA on Lot 2 DP1176624" on the Land map at Annexure A.

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Maintain means works to bring an item to or keep an item in a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include repairing normal wear and tear, removing graffiti or repairing any item damaged as a consequence of vandalism. **Maintained** and **Maintenance** have corresponding meanings.

Modification Application means any application to modify the Development Consent under section 4.55 of the Act;

Occupation Certificate means an occupation certificate as defined under section 6.4 the Act;

Public Access Land means that part of the Land to be made accessible to the public shown lined and labelled "Denotes Land for Public Access" on the plan in Annexure C;

Public Reserve has the same meaning as in the *Local Government Act 1993*;

Public Road has the same meaning as in the *Roads Act 1993*;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Residential Lot means a residential lot that is not capable of further subdivision.

South Werrington Urban Village means the area generally identified as such in Figure 2.2 on page 12 of the WELL CP, being the area of land shown on the South Werrington Urban Village Plan prepared by Cardno at Annexure E (comprised of the Land, Lot 1 DP1226122, Lot 2 DP 1176624, Lot 1 DP527752, Lot 1 DP 713280, Lot 1 DP 221780, Lot 1 DP 740520, Lot 2 DP 218959, Part of Lot 3 DP81099, Part of Lot 11 DP802940, and Lot 1 DP 132721).

Subdivision Certificate means a subdivision certificate defined under section 6.4 of the Act;

Subdivision Works Certificate means a subdivision works certificate defined under section 6.4 of the Act;

Sunset Date means, in respect of each item of Work, the expiry of the relevant period in the column entitled "Sunset Date" in Tables 1 and 2;

Surplus Credits means the surplus contribution credits generated and applied in accordance with clauses 7.2 and 7.3 of this agreement;

UWS North Werrington means the area generally identified as such in Figure 2.2 on page 12 of the WELL CP;

Vegetation Management Plan means the document titled "Lot 1 DP 1226122 Vegetation Management Plan" prepared by Niche Environment and Heritage for Lendlease dated 24 March 2021 enclosed at Annexure F;

WELL CP means the Werrington Enterprise Living and Learning (WELL) Precinct Development Contributions Plan (2008), a contributions plan prepared in accordance with section 7.11 of the Act; and

Works means the work set out in Part 1 of each of Tables 1 and 2 in Schedule 1.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, General Manager, CEO or managing director)** the president, General Manager, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;

- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - i. in favour of two or more persons is for the benefit of them jointly and severally; and
 - ii. on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) 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 power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 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 4 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

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

5 Operation of this agreement

5.1 Commencement

This agreement commences on and from the date this agreement has been executed by all parties.

6 Contributions to be made under this agreement

6.1 Works

- (a) The Developer will carry out the Works in accordance with this agreement, including the Construction Terms, and any Development Consent or other Approval granted for the Works.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.

- (c) The Works or any part of the Works required under this agreement will be taken to have been delivered to Council on Handover in accordance with the Construction Terms, unless otherwise agreed between the parties.
- (d) Each individual item comprising the Works must be delivered to the Council in accordance with the timeframes specified in the column entitled 'Timing' in the tables at Schedule 1.
- (e) The parties agree and acknowledge that the Works serve the following public purposes;
 - i. Enabling the delivery of the following items outlined in Part D – Works schedules, maps and references in the WELL CP:
 - (A) Item OSR4.6a - Passive Open Space - South Werrington Urban Village Park (bushland park);
 - (B) Item OSR4.6b - Passive Open Space - South Werrington Urban Village Park (remainder);
 - (C) Item W2.12 – Claremont Creek Catchment - Sp3-w1, being the basin in Item OSR4.6b;
 - (D) Item T2.48 – Local Facilities – Transport Services – WELL Precinct Cycleways
 - (E) Item T2.52 – Local Facilities – Collector Road Construction – East-West Link collector road link through South Werrington Urban Village sub-precinct;
 - ii. Enabling the delivery of the following additional works not outlined in the WELL CP:
 - (A) Staged resurfacing of Chapman Street road pavement and associated public domain works;
 - (B) the works outlined in Part 5 – Management Actions of the Vegetation Management Plan for a period of 2 years following commencement of the Development; and
 - (C) construction of Werrington Road/Rance Road/ East West Collector Road (stub connection only) roundabout (see Works item 3 in Part 1 of Table 2 in Schedule 1).
- (f) If any item of Work has been completed prior to the commencement of this agreement, the parties agree that:
 - i. once this agreement commences, that item of Work is taken to have been carried out or completed under this agreement; and
 - ii. the Developer will not be in breach of this agreement if the Construction Terms and procedures therein have not been observed in respect of that item of Work.
- (g) If any item of Work has been commenced but not yet completed prior to the commencement of this agreement, the parties agree that:
 - i. once this agreement commences, the steps taken in carrying out the item of Work is taken to have been carried out under this agreement;

- ii. the Developer will not be in breach of this agreement if the Construction Terms and procedures therein have not been observed in respect of that item of Work to date; and
- iii. upon commencement of this agreement, the Developer will comply with the remaining applicable clauses of the Construction Terms in relation to that item of Work insofar as compliance does not delay the continuation of the carrying out of the item of Work.

6.2 *Dedication of Land*

- (a) The Developer must dedicate or cause to be transferred to the Council, at no cost to the Council, each item of Dedication Land freed and discharged from all estates, interests, trusts, restrictions (excluding any restrictions required to be imposed on the Land in accordance with any conditions of a Development Consent), dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the Dedication Land, including but not limited to, outstanding municipal rates and charges, water rates and land tax.
- (b) The Developer must take all steps, prepare all documents and meet all costs required to dedicate the Dedication Land including, but not limited to:
 - i. removing any encumbrances on the title to the Dedication Land (excluding any encumbrances required to be imposed on the Dedication Land in accordance with any conditions of a Development Consent);
 - ii. creating an interest in land in favour of Council if required;
 - iii. creating a separate lot for the Dedication Land;
 - iv. preparing and lodging documents for registration;
 - v. obtaining the consent of any other parties to the registration of the relevant documents; and
 - vi. attending to any requisition relating to any dealing or document lodged for registration.
- (c) The obligation to dedicate the land described in Item OSR2.6 in Part 2 of Table 1 in Schedule 1 will be taken to have been satisfied when that land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 49 of the *Local Government Act 1993*.
- (d) The obligation to dedicate the land described in Item T1.2 in Part 2 of Table 1 in Schedule 1 will be taken to have been satisfied when that land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993*.
- (e) The obligation to dedicate each item of the Dedication Land (other than the land described in clauses 6.2(c) and 6.2(d) of this agreement) will be taken to have been satisfied in respect of each item when a Certificate of Title or electronic equivalent is issued by NSW Land Registry Services for that part of the Dedication Land identifying the Council as the registered proprietor of that land without encumbrances (excluding encumbrances required to be imposed on the Land in accordance with any conditions of consent in a Development Consent) as required by clause 6.3(a).

- (f) For the avoidance of doubt, all Works required by this agreement on the Dedication Land must be completed in accordance with clause 6.2 prior to Council accepting the dedication.
- (g) Each item of Dedication Land must be dedicated or transferred to Council in accordance with the timeframes set out for the dedication of each item of Dedication Land in the column entitled "Timing" in Part 2 of Table 1 and Part 2 of Table 2 in Schedule 1.
- (h) The parties agree and acknowledge that the dedication of the Dedication Land in accordance with Part 2 of Table 1 and Part 2 of Table 2 in Schedule 1 serve the public purpose of the provision of community land and public roads.

6.3 *Maintenance and Rectification of Defects*

The Developer must Maintain the Works and rectify any defects after Handover of the Works in accordance with the Construction Terms.

6.4 *Access to Council owned land*

- (a) The Council agrees to permit the Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Developer to properly perform its obligations under this agreement. Nothing in this clause creates or gives the Developer any estate or interest in any part of the Council owned or controlled land.
- (b) The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Developer to, or any presence of the Developer on, Council owned or controlled land for the purposes of performing their obligations under this agreement, except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

6.5 *Indemnity for Council acquisition of TfNSW Land*

- (a) This clause applies to the portion of land shown shaded and labelled as "road widening" on the map at Annexure G (**TfNSW Land**) within Lot 12 DP 734612, which at the date of this agreement is owned by Transport for NSW (**TfNSW**).
- (b) Council may seek to acquire, by whatever means it considers necessary and appropriate, the TfNSW Land. If it does so (at its discretion), the Developer agrees to indemnify the Council for its reasonable costs incurred as a result of Council acquiring the TfNSW Land (which includes the cost of obtaining legal advice, Council staff time, and other related reasonable costs), subject to compliance with this clause.
- (c) As soon as practicable after receiving confirmation that the ownership of the TfNSW Land has been transferred to or acquired by Council, Council is to provide notice to the Developer which:
 - i. confirms that Council is the owner of the TfNSW Land, and provides proof of such ownership;
 - ii. advises the Developer as to the total costs incurred in acquiring the TfNSW Land (which must be reasonable), and provides proof of those costs (by way of itemised invoices) (**Acquisition Cost**).

- (d) Within 20 Business Days of receiving a notice from Council under clause 6.5(c), the Developer is to pay to Council the Acquisition Cost.
- (e) The Acquisition Cost payment must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account nominated by Council.
- (f) The Acquisition Cost payment will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's nominated bank account.
- (g) The parties agree and acknowledge that the Acquisition Cost payment satisfies the obligation of the Developer to indemnify Council for its reasonable costs incurred in acquiring the TfNSW Land under clause 6.5(b) being land which forms part of the land upon which road upgrades are proposed by the Developer under DA19/0704.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

7.1 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement excludes the application of section 7.11 of the Act to the Development and the Land.
- (b) This agreement excludes the application of section 7.12 of the Act to the Development and the Land.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.

7.2 Generation and application of Surplus Contribution Credits

- (a) The parties acknowledge and agree that:
 - i. Under the WELL CP:
 - (A) the Developer is obliged to make local infrastructure contributions to Council to the value of \$30,000 per subdivided residential lot (or dwelling) and \$167,778 p/ha of net developable area of subdivided industrial land; and
 - (B) the obligation to make monetary contributions arises when the Developer seeks the release of a subdivision certificate for residential or industrial lots approved under various Development Applications (or complying development certificates) for the Land.
 - ii. In lieu of making a monetary contribution under the WELL CP, the Developer has offered to make the Contributions under this agreement, which includes carrying out items of work and dedicating land identified in the WELL CP within the South Werrington Urban Village.
 - iii. Under this agreement, the value of the Contributions offered under this agreement may, at times throughout the Development, exceed the value of monetary contributions otherwise required to be made by the Developer under the WELL CP in relation to the Development.
- (b) A Surplus Credit (calculated under this clause) will accrue if, at any stage of the Development, the total value of Contributions provided by the Developer exceeds

the total quantum of contributions otherwise required to be provided for the Development under the WELL CP at the particular time, determined using the contributions rates identified in clause 7.2(a)(A) above.

Surplus Credits are calculated as follows:

i. $SC = CV - (RCO + ICO)$

Where:

SC means the Surplus Credit

CV means the sum of the Contribution Values of the Work or Works in Schedule 1 that have been completed at the relevant time.

RCO means the residential contribution obligation, being the number of Residential Lots created on the Land at the relevant time multiplied by the residential contribution rate of \$30,000.

ICO means the contribution obligation, being the area in ha of the net developable area of industrial lots that have been created at the relevant time multiplied by the industrial contribution rate, being \$167,778.

- (c) Reporting and recording of the generation and retirement of Surplus Credits must be undertaken in accordance with clause 7.3 of this agreement.
- (d) If at any time Surplus Credits are agreed or taken to be agreed by Council under clause 7.3 to be available for use by the Developer, the Developer may request by written notice to the Council that Surplus Credits be retired by:
 - i. Council repaying amounts nominated by the Developer (subject to compliance with the process and the limitation on payment in clause 7.2(e) and clause 7.2(g)(iii)); or
 - ii. applying the Surplus Credits in satisfaction of contribution obligations of the Developer or any of its Related Body Corporates elsewhere within the South Werrington Urban Village or North Werrington.
- (e) The parties agree that:
 - i. subject to clause 7.2(e)(ii), within twenty (20) Business Days of receipt of a written request from the Developer under clause 7.2(d) Council will reimburse the value of the nominated Surplus Credit to the Developer (drawing on any monetary contributions Council has received under s7.4, s7.11 or s7.12 of the Act as a result of residential development carried out by others in the South Werrington Urban Village and non-residential development in the North Werrington); and
 - ii. Council is only obliged to make the payment under this clause 7.2(e) if the value of the nominated Surplus Credit in the written request made under clause 7.2(d)(i) has been paid to Council under s7.4, s7.11 or s7.12 of the Act as a result of residential development carried out by others in the South Werrington Urban Village and non-residential development in the North Werrington.
- (f) Within twenty (20) Business Days of receipt of a written request from the Developer under clause 7.2(d)(ii), Council agrees to provide confirmation that the

Surplus Credits may be applied in satisfaction of contribution obligations of the Developer or any of its Related Body Corporates elsewhere within UWS North Werrington and/or South Werrington Urban Village.

- (g) Notwithstanding clauses 7.2(e) and 7.2(f) above,
- i. The maximum value of Surplus Credits that can be generated under this agreement are capped at:
 - (A) \$5,144,987 in respect of Works items T1.2 and T2.52 of Schedule 1; and
 - (B) \$3,751,800 in respect of all other Works items other than T1.2 and T2.52 of Schedule 1.
 - ii. Surplus Credits generated in respect of Works items T1.2 and T2.52:
 - (A) can only be applied under this clause 7.2 once the Developer has achieved Practical Completion of Works Item T2.52 (as approved under DA19/0704); and
 - (B) can only be applied under clause 7.2(e) if the value of the nominated Surplus Credit in the written request made under clause 7.2(d)(i) has been paid to Council under s7.4, s7.11 or s7.12 of the Act as a result of non-residential development carried out by others in North Werrington only.
 - iii. Council is only obliged to reimburse the Developer under clause 7.2(e) if it receives monetary contributions from other developers in connection with the development of land within the South Werrington Urban Village Precinct and/or North Werrington Precinct and any such reimbursement/s will be paid to the Developer at a rate of:
 - (A) \$28,860 for each residential lot in the South Werrington Urban Village Precinct and/or North Werrington Precinct for which monetary contributions have been paid to Council; and
 - (B) at the contribution rate per hectare of net developable land (calculated under clause 3.4.3 of the WELL CP) for non-residential land in the North Werrington Precinct for which monetary contributions have been paid to Council.

7.3 *Reporting and recording generation and retirement of Surplus Credits*

- (a) From commencement of this agreement, the Developer must provide annual written reports to Council outlining:
 - i. which of the items in Table 1 of Schedule 1 have been completed;
 - ii. whether the completion of items in Table 1 of Schedule 1 results in the generation of Surplus Credits, and if so, the value of those Surplus Credits;
 - iii. the value of the Surplus Credits that have been retired (if any); and
 - iv. the value of remaining Surplus Credits.
- (b) If Council does not dispute the content of the report provided under clause 7.3(a) within 10 Business Days of receiving the report, the values of the Surplus Credits in the report are taken as being agreed between the parties.

7.4 *Recoupment of contributions paid or Security provided prior to execution of agreement*

- (a) In the event that the Developer has paid contributions, including by way of a monetary payment or Security, under the WELL CP in accordance with a condition of consent imposed in relation to the Development prior to the commencement of this agreement, Council agrees to reimburse or return the monetary payment or Security to the Developer within 20 Business Days of the registration of this agreement pursuant to clause 8.2 of this agreement.
- (b) Once the monetary payment or Security referred to in cl 7.4(a) has been reimbursed or returned to the Developer, this agreement is to operate in accordance with its own terms.
- (c) Prior to the monetary payment or Security referred to in cl 7.4(a) being reimbursed or returned to the Developer, the Developer must ensure that any Security required to be provided under this agreement is duly provided to the Council.

8 *Registration of this agreement*

8.1 *Developer Interest*

- (a) The Developer represents and warrants to the Council that as of 28 February 2023, it was the registered proprietor of the Land, excluding:
 - i. The part of the Land shaded and labelled 'Stage 1 residential lots to be created under DA19 0704 & DA20 0200 on Annexure H; and
 - ii. part of the Land which, at the date of this agreement, was located in Lot 2 DP1176624 as shown hatched and shaded, and labelled as "Land Subject To VPA on Lot 2 DP1176624" on the Plan showing the Land at Annexure A.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act, excluding:
 - i. any current and proposed Residential Lots, including but not limited to the lots shaded and labelled 'Stage 1 residential lots to be created under DA19 0704 & DA20 0200 on the plan at Annexure H; and
 - ii. part of the Land which, at the date of this agreement, was located in Lot 2 DP1176624 as shown hatched and shaded, and labelled as "Land Subject To VPA on Lot 2 DP1176624" on the Plan showing the Land at Annexure A.
- (b) The Developer, at its own expense, must:
 - i. procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date;
 - ii. procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land (subject to cl 8.2(a)) as soon as reasonably practicable after this agreement is lodged for registration; and

- iii. provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer warrants that, as at the date of this agreement, it has obtained the consent of each person who has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW) (excluding owners of any lot which is part of the Land shaded and labelled 'Stage 1 residential lots to be created under DA19 0704 & DA20 0200 on Annexure H) or is seized or possessed of an estate or interest in the Land to the registration of this agreement on title.
- (d) The Developer, at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - i. An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - ii. The execution of any documents; and
 - iii. The production of the relevant duplicate certificates of title or electronic equivalents,

to enable the registration of this agreement in accordance with clause 8.2ii.
- (e) Council agrees to do all things necessary to allow the Developer to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 7.6 of the Act.

8.3 *Removal from Register*

- (a) From time to time, the Developer may request the Council to facilitate the progressive release and discharge of this document from the relevant folio(s) of the Register for the relevant part of the Land, for which at the date of the request:
 - i. in respect of land the subject of an item of Work, a Certificate of Practical Completion has been issued, and no further works are proposed on the Land the subject of the item of Work under this agreement; and
 - ii. in respect of an item of Dedication Land, a Subdivision Certificate has been granted for the subdivision of land which will facilitate the dedication of the relevant Dedication Land.
- (b) Within 10 Business Days of receipt of a request from the Developer pursuant to clause 8.3(a), the Council will, at the Developer's cost, provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the relevant part of the Land, provided the Council (acting reasonably) is satisfied that:
 - i. the Developer has duly fulfilled its obligations to provide Contributions under this agreement in respect of that part of the Land;
 - ii. there are no outstanding Contributions required to be delivered under this agreement in respect of that part of the Land.

8.4 Caveat

- (a) The Developer acknowledges and agrees that:
 - i. when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the parts of the Land for which it is the registered proprietor as at the date of this agreement for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in that Land in respect of which to lodge a caveat over the Land notifying that interest;
 - ii. it will not object to the Council lodging a caveat in the relevant folios of the Register for the parts of the Land for which it is the registered proprietor as at the date of this agreement, nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2(a).
- (c) The Developer must notify the Council within 5 Business Days after the registration of any subdivision plan that creates a separate lot for the Dedication Land or any part of the Dedication Land.
- (d) The Developer acknowledges and agrees that, in the event a separate lot is created for the Dedication Land or any part of the Dedication Land (and dedication of the Dedication Land is not affected upon registration of the plan of subdivision) it will not object to Council lodging a caveat in the relevant folios of the Register for that part of the Dedication Land, nor will it seek to remove any such caveat lodged by Council, until the relevant part of the Land is dedicated to Council in accordance with this agreement.

9 Review of this agreement

9.1 Review generally

- (a) This agreement may be reviewed or modified.
- (b) The parties acknowledge and agree that:
 - i. any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties;
 - ii. no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
 - iii. a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.
- (c) In the event that a Development Consent forming part of the Development is granted or modified following the commencement of this agreement which results in:
 - i. the Developer being unable to deliver any of the Contributions under this agreement;

- ii. a need to change the scope or specification of any of the Contributions,
- the parties agree to negotiate in good faith to expeditiously amend this agreement to reflect the Development Consent so the Contribution item can be delivered by the Developer.

10 Dispute Resolution

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) 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,
 - ii. agree that further material or expert determination in accordance with clause 10.6 about a particular issue 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.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 20 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;

- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - i. Have reasonable qualifications and practical experience in the area of the dispute; and
 - ii. Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 15 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - i. Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - ii. The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - i. Agreed upon and appointed jointly by the parties; and
 - ii. In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;

- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - i. Within 10 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - ii. The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 *Enforcement and Security*

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Security*

- (a) In this clause 11.2, **Security** means a Bank Guarantee, Bond or cash deposit to be held by Council.
- (b) Prior to the issue of the first Subdivision Works Certificate for each stage of the Development (as identified on the map at Annexure A), the Developer must provide to the Council Security in an amount equivalent to 125% of the agreed value of the items of Work (as outlined in the column entitled "Monetary contributions value*" in the tables in Schedule 1) to be delivered in that stage, as identified in column 3 (entitled "Stage of Development during which item will be carried out" in the tables in Schedule 1).

- (c) The Council may call on a Security provided under this clause:
 - i. if the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - ii. if the Developer becomes insolvent.
- (d) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Securities which it holds that have been replaced as soon as reasonably practicable.
- (e) The Council must promptly return a Security provided under this clause if requested by the Developer and:
 - i. Handover has occurred for the particular item of Works or Dedication Land has been dedicated to which the Security relates; and
 - ii. the Developer has provided a Bond or Bank Guarantee required under the Construction Terms for defects liability and maintenance of that particular item of Works.
- (f) For the avoidance of doubt, Council may retain a component of the Security it holds for an item of Works that is equivalent to 25% of the value of that item of Work, in satisfaction of the requirement to submit a Bank Guarantee or Bond under the Construction Terms for defects liability and maintenance.
- (g) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - i. any obligation of the Developer under this agreement; or
 - ii. any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Security.
- (h) Notwithstanding the above, the parties agree that the bond payable under condition 61 of the consent granted to DA19/0704 is taken to be Security in respect of Works item 3 in Table 2 of Schedule 1, and no additional Security is payable in respects of this item of Work under this agreement.

11.3 *Compulsory Acquisition*

- (a) If the Developer does not dedicate an item of Dedication Land to Council by the relevant Sunset Date, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the Land Acquisition (Just Terms Compensation) Act 1991 and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from the Developer.

- (b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).
- (d) 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 relevant land under clause 11.3(a).
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Security.

11.4 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.14 of the Act and clause 34 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* the following obligation under this agreement must be satisfied before a Subdivision Works Certificate is issued for the Development or any part of the Development:
 - i. Provision of Securities required under clause 11.2.
- (b) In accordance with section 6.15(1)(d) of the Act, the following obligations under this agreement must be satisfied before a Subdivision Certificate is issued for the Development or any part of the Development:
 - i. Delivery of the Works in accordance with clause 6.1; and
 - ii. Dedication of the Dedication Land in accordance with clause 6.2.

11.5 *Sunset Date*

- (a) The parties agree that the Sunset Date specifies the time by which the Developer must have delivered the relevant item of Work.
- (b) In the event that a Certificate of Practical Completion has not been issued for an item of Work prior to the applicable Sunset Date in column 6 in Tables 1 and 2, Council may elect (by issue of a Notice to the Developer) to step-in and undertake or complete the item of Work (whichever is relevant) and may enter, occupy and use any land owned or controlled by the Developer in order to do so.
- (c) Any costs incurred by the Council in undertaking an item of Work in accordance with this clause may be recovered by the Council by calling-up and applying the Security provided by the Developer under cl 11.2(b) of this agreement.
- (d) In the event that Council exercises its step-in rights by issue of a Notice under clause 11.5(b) in respect of any item of Work, the parties agree that upon issue of the Notice, that item of Work is deemed to have been completed for the purposes of this agreement, in particular, for the purposes of Schedule 1 of this agreement.

11.6 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - i. a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - ii. the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

11.7 *Breach of Obligations*

- (a) If the Council reasonably considers that the Developer is in breach of any obligation under this agreement, it may give a written notice to the Developer:
 - i. specifying the nature and extent of the breach,
 - ii. 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,
 - iii. specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- (b) If the Developer fails to fully comply with a notice referred to in clause 11.7(a), the Council may, following 10 Business Days' notice to the Developer, call-up the Security provided by the Developer under this agreement and apply it to remedy the Developer's breach.
- (c) If the Developer fails to comply with a notice given under clause 11.7(a) relating to the carrying out of Works under this agreement, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer.
- (d) Any costs incurred by the Council in remedying a breach in accordance with clause 11.7(b) or 11.7(c) may be recovered by the Council by either or a combination of the following means:
 - i. by calling-up and applying the Security provided by the Developer under this agreement, or
 - ii. as a debt due in a court of competent jurisdiction.
- (e) For the purpose of clause 11.7(d), the Council's costs of remedying a breach the subject of a notice given under clause 11.7(a) include, but are not limited to:
 - i. the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,

- ii. all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - iii. all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- (f) Nothing in this clause 11.7 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this agreement by the Developer, including but not limited to seeking relief in an appropriate court.

12 Assignment and Dealings

12.1 Restrictions on dealings

- (a) Subject to subclause (c), a party must not:
- i. assign or deal with any right or obligations under this agreement; or
 - ii. transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development;
- to another person (**Transferee**), unless before it assigns, deals, sells, transfers or disposes of that right, obligation title or interest:
- (A) the Developer has given the Council no less than 10 Business Days' notice in writing of the proposed sale, transfer, assignment or novation of its rights or obligations under this agreement;
 - (B) the Developer procures that the Transferee provides to the Council replacement security in favour of the Council, in place of any such security provided by, or required to be provided by, the Developer which has not then been released;
 - (C) the Developer procures that any Transferee of the Developer's rights and obligations under this agreement promptly executes a deed in favour of the Council whereby:
 - (i) the Transferee becomes contractually bound with the Council to perform the Developer's obligations and have the benefit of the Developer's rights under this agreement; and
 - (ii) the Transferee is released from its obligations under this agreement.
 - (D) the Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (E) the Developer is not in breach of this agreement.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Clauses 12.1(a) and 12.1(b) do not apply:
- i. to any parts of the Land from which this agreement has been released or discharged;
 - ii. to any Residential Lots; or

- iii. if the Transferee is Lendlease Communities (Werrington) Pty Ltd ACN 635 502 082 or a Related Body Corporate of Lendlease Corporation Limited ACN 000 226 228.

13 Approvals and consents

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 obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;

- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - i. to Penrith City Council: PO Box 60, Penrith, NSW 2751
Fax: (02) 4732 7958
Email: council@penrith.city
Attention: The General Manager
 - ii. to Lendlease Communities Level 14, Tower Three, International Towers Sydney (Werrington):
Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
Email: aucosec@lendlease.com
Attention: The Company Secretary
- (c) is taken to be given or made:
 - i. in the case of hand delivery, when delivered;
 - ii. in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - iii. in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this agreement:
 - i. constitutes a partnership between the parties; or
 - ii. except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - i. bind another party; or
 - ii. contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time

for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 No assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 Counterparts

- (a) This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.
- (b) Each party acknowledges and agrees that the other party may execute this agreement using an electronic method (for example, DocuSign), and that an electronic copy of this agreement that contains the electronic signatures of the parties that have been affixed using such electronic method, will be treated as an original.

16.7 Legal expenses, stamp duty and administration fees

- (a) The Developer must pay on demand Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, stamping, and release and discharge of this agreement, including the reasonable costs incurred by the Council in obtaining any advice about this agreement or the value of land or works to be delivered under this agreement.
- (b) On execution of this agreement, the Developer must pay an administration, monitoring and enforcement fee to the Council in the amount of \$100,000.00.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority 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.

16.10 Severability

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. 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.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - i. this agreement is void, voidable, or unenforceable if it is not read down;
 - ii. this agreement will not be void, voidable or unenforceable if it is read down; and
 - iii. the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - i. despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - ii. this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

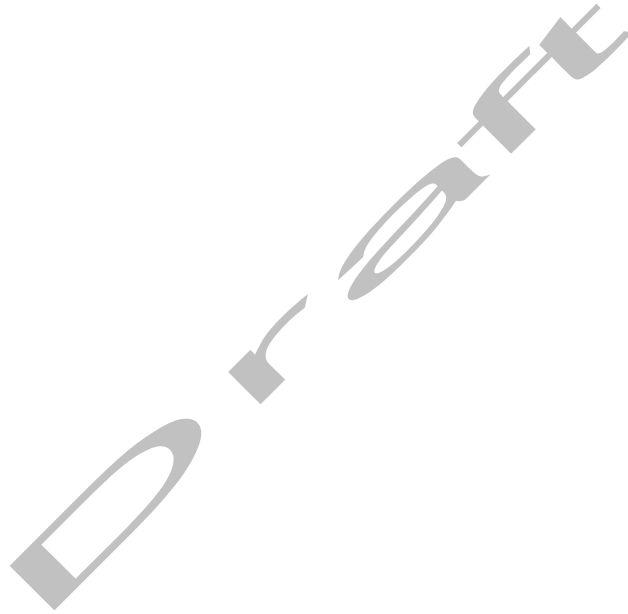
16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

17 Reporting

- (a) On or before 31 July in each calendar year after the execution of this agreement and until the Developer's obligations under this agreement are satisfied, the Developer must provide a written report to Council detailing the progress of the provision of Contributions under this agreement and the progress of the Development.

- (b) Within 20 days of the issue of a Certificate of Practical Completion in respect of an Item of Work, the Developer must provide to Council a cost report/valuation of that Item of Work that complies with the requirements of section 206 of the Regulation as amended.



Schedule 1 Scope of works

Table 1 Proposed Contribution Item and Delivery – WELL CP items

Item No. (WELL CP works schedule reference)	Nature and extent of contribution	Stage of Development during which item will be carried out	Timing	Monetary contributions value*	Sunset Date
Part 1 - Works					
OSR4.6a	Open Space: Construction and embellishment of SWUV bushland park (i.e. Central Park).	Stage 2A	Central Reserve embellishment to be completed prior to the issue of subdivision certificate for the first Residential Lot in Stage 2A of the Development, as shown on the plans showing the Works at Annexure D	\$475,045	3 years from issue of Subdivision Certificate for Stage 1A
OSR4.6b	Open Space: Construction and embellishment of SWUV park (remainder) (i.e. Eastern Park).	Stage 3	Eastern Park embellishment to be completed prior to the issue of subdivision certificate for the first Residential Lot in Stage 3 of the Development, as shown on the plans showing the Works at Annexure D	\$468,711	3 years from issue of Subdivision Certificate for Stage 2A
W2.12	Water Cycle Management: Construction of water quality and detention basin (i.e. Eastern Park) – extent of works to also account for Central Park stormwater basin.	Stage 3	Eastern Park basin works (i.e. final design capacity) to be completed prior to the issue of subdivision certificate for first Residential Lot in Stage 3 of the Development, as shown on the plans showing the Works at Annexure D	\$2,901,742 (based on WELL CP for Eastern Park basin only)	3 years from issue of Subdivision Certificate for Stage 2B

T2.48	Traffic Management: Construction of cycle ways – assumed 2.5m width at \$75/m ²	See T2.52 below	Staged delivery of cycleways in line with local road network and open space and proposed staged delivery of East-West Collector Road (i.e. Road 11) (see Item T2.52 below).	\$235,168	3 years from issue of Subdivision Certificate for Stage 2B
T2.52	Traffic Management: Construction East-West Collector Road (i.e. Road 11) – assumed 22m width at \$109/m ²	a) Stage 2A b) Stage 2B c) Stage 4B	<p><i>Obligation commences once the Developer has obtained all required Approvals to carry out this Works item on the part of Lot 2 DP 1176624 within the Land shown on the plans at Annexure D.</i></p> <p>Staged delivery of Road 11 as follows:</p> <ul style="list-style-type: none"> a) between Road 07 and Werrington Road prior to the issue of subdivision certificate for lot in Stage 2A of the Development, as shown on the plans showing the Works at Annexure D. b) between Road 12 and Werrington Road prior to the issue of subdivision certificate for lot in Stage 2B of the Development, as shown on the plans showing the Works at Annexure D. c) between Road 07 and western boundary (i.e. Western Sydney University) prior to the issue of subdivision certificate for first IN2 industrial lot in Stage 4B of the Development, as shown on the plans showing the Works at Annexure D. 	<p>\$3,809,920 comprised of 35% of this value for Stage 2A and 2B (with Security under clause 11.2(b) being payable prior to issue of the first Subdivision Works Certificate for Stage 2A only) and 65% of this value for Stage 4B</p> <p>(50% apportionment shared between WSU North Werrington and SWUV)</p>	3 years from issue of Subdivision Certificate for Stage 4A

Part 2 - Dedication of Dedication Land				
OSR 2.6	Open Space: Land dedication of 2.92 ha of passive open space land (i.e. Central Park and Eastern Park).	a) Stage 2A b) Stage 3	At the completion of the embellishment works associated with respective open space areas as follows: a) Central Park – prior to the issue of subdivision certificate for first Residential Lot in Stage 2A of the Development, as shown on the plan showing the Dedication Land at Annexure B. b) Eastern Park – prior to the issue of subdivision certificate for first Residential Lot in Stage 3 of the Development, as shown on the plan showing the Dedication Land at Annexure B.	<p>\$6,819,499 (based on WELL CP 2.52 ha)</p> <p>(with Security under clause 11.2(b) being payable prior to issue of the first Subdivision Works Certificate for Stage 2A only)</p> <p>For a) 3 years from issue of Subdivision Certificate for Stage 1A</p> <p>For b) 3 years from issue of Subdivision Certificate for Stage 2A</p>
T1.2	Traffic Management: Land dedication of 2.35 ha of road corridor between Werrington Road and UWS boundary (i.e. proposed East-West Collector Road – i.e. Road 11)	a) Stage 2A b) Stage 4B	Following the completion of Road 11 works as follows: a) between Road 07 and Werrington Road at the time of the issue of the subdivision certificate for lot in Stage 2A of the Development, as shown on the plan showing the Dedication Lands at Annexure B. b) between Road 07 and western boundary (i.e. Western Sydney University) at the time of the issue of the subdivision certificate for the first IN2 industrial lot in Stage 4B of the Development, as shown on the plan showing the Works at Annexure B.	<p>\$5,953,531 (based on WELL CP – i.e. 22m x 1,000m) and comprised of 35% of this value for Stage 2A and 65% of this value for Stage 4B</p> <p>(50% apportionment shared between WVSU North Werrington and SWUV)</p> <p>3 years from issue of Subdivision Certificate for Stage 4A</p>
Total contributions value				\$20,663,616

Other public purposes

In addition to the delivery of the above WELL CP items, Lendlease proposes to provide the following items as outlined in Table 2 at nil cost to Council for public purposes, being road and stormwater drainage works and dedication of conservation lands.

Table 2 - Proposed Contribution Item and Delivery – additional items

Item No.	Proposed nature and extent of works/land	Stage of Development during which item will be carried out	Timing	Value	Sunset Date
Part 1 - Works					
1.	Traffic Management: Staged resurfacing of Chapman Street road pavement and associated public domain works.	Stage 1	First layer prior to the issue of a subdivision certificate for the first Residential Lot in Stage 1 of the Development, as shown on the plan showing the Works at Annexure D.	\$250,000	3 years from issue of Subdivision Certificate for Stage 1A
		Stage 2A	Final layer prior to the issue of a subdivision certificate for the first Residential Lot in Stage 2A of the Development, as shown on the plan showing the Works at Annexure D.		3 years from issue of Subdivision Certificate for Stage 1A
		Stage 1	Undertake the works outlined in Part 5 – Management Actions in the Vegetation Management Plan for a period of two (2) years from the commencement of the Development.	N/A	3 years from issue of Subdivision Certificate for Stage 1A
2.	Works in accordance with Part 5 of Vegetation Management Plan (See Annexure F)	Stage 1			
3.	Traffic Management: Construction and dedication of Werrington	N/A (see clause 11.2)	Prior to the issue of a subdivision certificate for the first residential lot in Stage 2A and subsequent dedication in conjunction with the	\$1,500,000	12 months from issue of Subdivision Certificate for Stage 1A

	Road/Rance Road/East-West Collect Road (stub connection only) roundabout as approved under DA19/0704.		delivery of the eastern portion of East-West Collector Road (i.e. Road 11).		
Part 2 - Dedication of Dedication Land					
1.	Dedication of at approximately 1.2 ha of E2 Environmental Conservation land shown on the plan showing the Dedication Land at Annexure B.		Following registration of E2 superlot subdivision certificate (i.e. proposed Lot 1000) as part of subdivision certificate for the first Residential Lot in Stage 1A of the Development.	\$1,020,000 (at \$85/m ² for constrained land)	2 years from issue of Subdivision Certificate for Stage 1A
Total value (nil cost to Council)				\$2,770,000	

FILED

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this agreement and the Interpretation principles in clause 2 of this agreement will apply, unless context indicates a contrary intention.

Builder means any entity contracted under the Construction Contract to carry out the Works.

Construction Contract means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

Defects Liability and Maintenance Period means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which Handover of the Works occurs.

Detailed Design means the final specifications and finishes for the Works prepared in accordance with clause 6.2 of this Schedule 2, which cannot be inconsistent with any Development Consent and Construction Certificate and/or Subdivision Works Certificate granted in respect of the Works, and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

Maintenance Schedule means a document which sets out the proposed maintenance works (which cannot be inconsistent with any Development Consent granted in respect of the Works) and estimated costs for the relevant part of the Works over the Maintenance Period.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Application [not used]

3 Requirements of Authorities and Approvals

3.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

3.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

3.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and

- (b) in a good and workmanlike manner and so that they are diligently progressed until completion.

It is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval, the terms of the Approval shall take precedence.

4 Costs of Works

All costs of the Works must be borne by the Developer.

5 Project Management and Contractor Engagement

- 5.1 The Developer will be responsible for managing the Works.
- 5.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:
 - (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
 - (b) request a Council representative to be present at a fortnightly on-site meeting attended by the Superintendent by providing 3 business days' notice.

6 Design Development

6.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree the concept plans for the Works at Annexure D.

6.2 Detailed Design

- (a) Prior to Works commencing the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 15 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 20 Business Days of Council providing its suggested amendments in accordance with clause 6.2(b) of this Schedule (unless the parties agree to allow further time for consultation under clause Schedule 26.2(c) of Schedule 2) the parties agree that:
 - (i) the dispute resolution process as set out in clause 10 of this agreement is to be utilised to finalise the Detailed Design; and
 - (ii) either party may issue the notice under clause 10.2 to commence the dispute resolution process.
- (e) In undertaking dispute resolution under this clause and clause 10 of this agreement, the parties must use all reasonable endeavours to ensure that the final Detailed Design of any item of Work:
 - (i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and
 - (ii) is consistent with the Development Consent; and

- (iii) does not materially and adversely affect the Development; and
- (iv) is not unreasonable.

6.3 Any acceptance by the Council of the Detailed Design under this clause 6 is not to be taken as approval of or to any Construction Certificate for the Works.

6.4 Good faith

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

7 Carrying out of Works

7.1 Communication

The Developer must notify Council on the commencement of the Works and keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

7.2 Standard of Works

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 7.2(b)(ii) of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
 - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
 - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

7.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this agreement:
 - (i) all necessary measures are taken to protect people and property;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.

- (b) Without limiting clause 6.3(a) of this Schedule, 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.

8 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**).
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council and its employees, contractors, agents or representatives may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council must, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 8(c) or 8(d) of this Schedule), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If Council does not notify the Developer of any defect or non-compliance in the Works under clause 8(e) of this Schedule, the Work is deemed to have no defect or non-compliance.
- (g) If the Developer is issued a direction to carry out further work under clause 8(e) of this Schedule, the Developer must, at its cost, rectify the defect or non-

compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.

- (h) If the Developer fails to comply with a direction to carry out work given under clause 8(e) of this Schedule, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (i) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 8(e) of this Schedule does not constitute:
 - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Works; or
 - (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

9 Completion

9.1 Practical Completion

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 9.1(a) of this Schedule, the Council will carry out an inspection of the Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Works have been completed, which will constitute a Certificate of Practical Completion; or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the Certificate of Practical Completion being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 9.1(b)(ii) of this Schedule, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 9.1(a) of this Schedule for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

9.2 Handover

- (a) The Developer is responsible for the delivery and care of the Works at all times prior to Handover of the Works.
- (b) Handover will occur and Council will assume responsibility for the Works:
 - (i) upon dedication to Council of the land on which Works are located; or
 - (ii) if Works are carried out on land already owned by Council, on the issue of a Certificate of Practical Completion for those Works.
- (c) Notwithstanding clause (b), in the event that:
 - (i) Dedication to Council of land on which Works are located will be affected by registration of a plan of subdivision; and
 - (ii) the issue of a subdivision certificate for that subdivision requires prior Handover of certain Works such that the subdivision cannot take place,

Council agrees that within five (5) Business Day of receiving a notice from the Developer under this clause, it will release the relevant subdivision certificate to allow to subdivision (and therefore dedication of the relevant Dedication Land) to take place, at which time Handover under Schedule 29.2(b) of this Schedule will be affected.

9.3 Delivery of documents

- (a) If it has not already done so, the Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

9.4 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

10 Defects Liability and Maintenance

10.1 Maintenance

- (a) Prior to the issue of a Certificate of Practical Completion for any part of the Works, the Developer must provide to the Council a Maintenance Schedule.
- (b) Within 10 Business Days of receiving the Maintenance Schedule, Council must issue a written notice to the Developer advising of any changes it requires to the Maintenance Schedule, which changes must be reasonable and in accordance with Council's usual practice for maintaining works of the same type and which cannot be inconsistent with any Development Consent, Construction Certificate or Subdivision Works Certificate granted in respect of the Works.
- (c) Within 5 Business Days of receiving the Council's notice under clause 10.1(b) of this Schedule, the Developer must provide to Council a final Maintenance Schedule incorporating the Council's changes.
- (d) The Works or any part of those works, must be Maintained by the Developer in accordance with the Maintenance Schedule for the Maintenance Period.
- (e) The Developer must follow relevant Council policies and obtain all Approvals necessary to carry out the Maintenance required under this clause.
- (f) The Council must give the Developer and its contractors any access required to carry out Maintenance in accordance with the Maintenance Schedule.

10.2 Defects Liability and Maintenance Period

- (a) During the Defects Liability and Maintenance Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works or any Maintenance requirement that has not been complied with.
- (b) The Rectification Notice must specify:
 - (i) action required to be undertaken by the Developer to rectify the defect or Maintain the Works (**Rectification Works**); and
 - (ii) the date on which the defect must be rectified, or the Maintenance work completed (**Rectification Date**).
- (c) The Developer must comply with the Rectification Notice by:
 - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
 - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect or Maintain the Works; and
 - (iii) carrying out the Rectification Works.
- (d) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (e) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.

- (f) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 10.2(e) of this Schedule and, acting reasonably:
 - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (g) The Developer must meet all costs of and incidental to rectification of defects or Maintenance of Works under this clause 10.2.
- (h) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
 - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 10.3 of this Schedule to meet its costs of carrying out Rectification Works; and
 - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the Bond or Bank Guarantee and the costs incurred by the Council in carrying out Rectification Works.
- (i) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability and Maintenance Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability and Maintenance Period.

10.3 **Security for Defects Liability**

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 25% of the construction costs for the particular item of Works.
- (b) The Developer discloses and the Council acknowledges that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability and Maintenance Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 10.3(a) of this Schedule for that item of Works (or any remaining balance of it) to the Developer.

- (d) Notwithstanding clause 10.2(c) of this Schedule, if during the Defects Liability and Maintenance Period for a particular item of Works, the Council issues a Rectification Notice, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until the Rectification Notice has been complied with.

11 Risk

The Developer undertakes the Works entirely at its own risk.

12 Insurance

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
- (i) construction works insurance for the value of the Works;
 - (ii) public risk insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 12(a) of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

13 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

14 Intellectual Property Rights

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, and is legally able to assign such rights, the Developer shall assign those intellectual property rights to Council or permit use thereof

15 Risk of contamination

- 15.1 The Developer acknowledges and agrees in respect of land owned by the Developer:
- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out until the date that the Dedication Land is dedicated to Council in accordance with this agreement;
 - (b) it will attend to any necessary remediation at their own costs until the date that the Dedication Land is dedicated to Council in accordance with this agreement; and
 - (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which

the Works are to be carried out, until the date that the Dedication Land is dedicated to Council in accordance with this agreement.

15.2 The parties agree in respect of land not owned by the Developer:

- (a) that the Developer will undertake the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) the Developer will attend to any necessary remediation, however Council agrees to reimburse the Developer for half the cost of carrying out those works;
- (c) to the fullest extent permitted by Law, Council will indemnify and release the Developer from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

16 Plans

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

Schedule 3 Easement Terms

[not used]

DRAFT

Schedule 4 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p>	<p>The part of Lot 1 DP 1226122 shown hatched and labelled “Land Subject to the VPA”, and the part of Lot 2 DP 1176624 shown hatched and shaded and labelled “Land Subject to VPA on Lot 2 DP1176624” on the map at Annexure A.</p>
<p>Description of the change to the environmental planning instrument or development to which the Planning Agreement applies - Section 7.4(3)(b)</p>	<p>N/A</p>
<p>The scope, timing and manner of delivery of contributions required by the Planning Agreement – Section 7.4(3)(c)</p>	<p>See Schedule 1</p>
<p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p>	<p>This agreement excludes the application s7.11 to the Development and the Land</p>
<p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p>	<p>This agreement excludes the application s7.12 to the Development and the Land</p>
<p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p>	<p>This agreement does not exclude the application s7.24 to the Development or the Land</p>
<p>Whether the benefits are or are not to be taken into consideration in determining a</p>	<p>This agreement excludes the application s7.11 to the Development and the Land</p>

development contribution under section 7.11 – Section 7.4(3)(e)	
Mechanism for dispute resolution – Section 7.4(3)(f)	Part 10
Enforcement of the Planning Agreement by a suitable means – Section 7.4(3)(g)	Part 11
Registration of the Planning Agreement – Section 7.6	Part 8
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14 (no fetter)

*

Executed as an agreement

Executed for and on behalf of **Penrith**)
City Council by its authorised delegate in)
accordance with a resolution of the)
Council dated [insert date]:)

.....
Signature of witness

.....
Signature of Authorised Delegate

Print position:

.....
Print name

.....
Print name

Signed by **Lendlease Communities**
(Werrington) Pty Ltd in accordance with section
127 of the *Corporations Act 2001* (Cth) by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)