



Deed

Bella Vista and Kellyville Station Precincts Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

The Hills Shire Council

Landcom

NSW Department of Planning and Environment

Transport for New South Wales

Roads and Maritime Services

28 September 2017

Planning Agreement

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Planning Agreement

Summary Sheet

Council:

Name: The Hills Shire Council ABN 25 034 494 656

Address: 3 Columbia Court, Baulkham Hills NSW 2153

Telephone: (02) 9843 0555

Facsimile: (02) 9843 0409

Email: council@thehills.nsw.gov.au

Representative: Michael Edgar, General Manager

Developer:

Name: Landcom ABN 79 268 688

Address: Level 14, 60 Station Street, Parramatta NSW 2124

Telephone: (02) 9841 8600

Facsimile: (02) 9841 8688

Email: <http://www.landcom.com.au/contact/general-enquiries/>

Representative: ### #

Name: NSW Department of Planning and Environment

Address: 320 Pitt Street, Sydney NSW 2000

Telephone: 1300 305 695

Email: <http://www.planning.nsw.gov.au/Contact-Us>

Name: Transport for New South Wales

Address: 18 Lee Street, Chippendale NSW 2008

Telephone: (02) 8202 2200

Facsimile: (02) 8202 2209

Email: stakeholder.relations@transport.nsw.gov.au

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The Hills Shire Council

Landcom, NSW Department of Planning, Transport for NSW, RMS

Name: Roads and Maritime Services ABS 76 236 371 088

Address: 20-44 Ennis Road Milsons Point NSW 2061

Telephone: 131 782

Facsimile: (02) 8588 4105

Email: <https://secure.rms.nsw.gov.au/contact-us/>

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Clause 9.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Security:

See Part 4.

Registration:

See clause 16.

Restriction on dealings:

See clause 17.

Dispute Resolution:

See Part 3.

Bella Vista and Kellyville Station Precincts

The Hills Shire Council

Landcom, NSW Department of Planning, Transport for NSW, RMS

Bella Vista and Kellyville Station Precincts

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

The Hills Shire Council

ABN 25 034 494 656 of 3 Columbia Court, Baulkham Hills NSW 2153 (**Council**)

And

Landcom

ABN 79 268 688 of Level 14, 60 Station Street, Parramatta NSW 2124,

NSW Department of Planning and Environment

ABN 38 38 755 709 681 of 320 Pitt Street, Sydney NSW 2000,

Transport for New South Wales

18 Lee Street, Chippendale NSW 2008, and

Roads and Maritime Services

ABN 76 236 371 088 of 20-44 Ennis Road Milsons Point NSW 2061

(**Developer**)

Background

- A The Developer is the owner of the Land the subject of the dedication.
- B The Developer is prepared to make Development Contributions to the Council in conjunction with the carrying out of the Development as described in this Deed.

Operative provisions

Part 1 - Preliminary

1 Interpretation

1.1 In this Deed the following definitions apply:

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

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

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

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

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

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

Development means the principal subdivision of the Land establishing major lots or public domain areas.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

Encumbrances means an interest or power:

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

GST has the same meaning as in the GST Law.

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

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

Land means the land identified in Schedule 2.

LEP means The Hills Local Environmental Plan 2012.

Party means a party to this Deed.

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

Stage means a stage of the Development approved by a Development Consent or otherwise approved in writing by the Council for the purposes of this Deed.

Subdivision Certificate has the same meaning as in the Act.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.

- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s93F(1) of the Act.

3 Commencement

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

4 Application of this Deed

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

5 Warranties

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

6 Further agreements

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

7 Surrender of right of appeal, etc.

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

8 Application of s94, s94A and s94EF of the Act to the Development

- 8.1 This Deed does not exclude the application of s94 and 94A to the Development.
- 8.2 This Deed does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

9 Provision of Development Contributions

- 9.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 1, any other provision of this Deed relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

10 Dedication of land

- 10.1 The Developer must dedicate the land specified in Part B of Schedule 1 to Council at no cost, free of any trusts, estates, interests, covenants and Encumbrances by the time specified in that Schedule.
- 10.2 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:
- 10.2.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as under the *Local Government Act 1993*, or
- 10.2.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
- (b) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of that land,

- (c) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (d) the original certificate of title for the land being transferred.
- 10.3 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 10.4 Prior to dedication of the land to Council, the Developer at its cost must:
 - 10.4.1 remove any Equipment from Land and make good any damage or disturbance to the land as a result of that removal, and
 - 10.4.2 leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

11 Dispute resolution – expert determination

- 11.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
 - 11.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 11.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 11.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 11.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 11.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

12 Dispute Resolution - mediation

- 12.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 11 applies.
- 12.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 12.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 12.5 If the Dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the Dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 12.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 12.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

13 Acquisition of land required to be dedicated

- 13.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 13.2 Clause 13.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 13.3 If, as a result of the acquisition referred to in clause 13.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.
- 13.4 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 13.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 13, including without limitation:
 - 13.5.1 signing any documents or forms,
 - 13.5.2 giving land owner's consent for lodgement of any Development Application,
 - 13.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 13.5.4 paying the Council's costs arising under this clause 13.

14 Breach of obligations

- 14.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- 14.1.1 specifying the nature and extent of the breach,
 - 14.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 14.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 14.2 Nothing in this clause 14 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

15 Enforcement in a court of competent jurisdiction

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

Part 5 – Registration & Restriction on Dealings

16 Registration of this Deed

- 16.1 The Parties agree to register this Deed for the purposes of s93H(1) of the Act.
- 16.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- 16.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and
 - 16.2.2 the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 16.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.

- 16.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to any part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

17 Restriction on dealings

- 17.1 The Developer must not:
- 17.1.1 sell or transfer the Land, other than land required to be dedicated to the Council under this Deed, or
 - 17.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,
- to any person unless:
- 17.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
 - 17.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
 - 17.1.5 the Developer is not in breach of this Deed, and
 - 17.1.6 the Council otherwise consents to the transfer, assignment or novation.
- 17.2 The Council is under no obligation to consider granting its consent to any request made by the Developer under this clause 17 if, at the time the request is made, the Developer is in breach of this Deed.
- 17.3 Subject to clause **Error! Reference source not found.**, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 17.1.

Part 6 – Indemnities & Insurance

18 Risk

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

19 Release

- 19.1 The Developer releases the Council from any Claim it may have against the Council arising in connection with the performance of the Developer's

obligations under this Deed except if, and to the extent that, the Claim arises because of the Council's negligence or default.

20 Indemnity

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

Part 7 – Other Provisions

21 Annual report by Developer

- 21.1 The Developer is to provide to the Council by not later than each anniversary of the date on which this Deed is entered into a report detailing the performance of its obligations under this Deed.
- 21.2 The report referred is to be in such a form and to address such matters as required by the Council from time to time.

22 Review of Deed

- 22.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 22.2 For the purposes of clause 22.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.
- 22.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 22.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.
- 22.4 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 22.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 22.1 (but not 22.4) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.

23 Notices

- 23.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 23.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 23.1.2 faxed to that Party at its fax number (if any) set out in the Summary Sheet, or
 - 23.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 23.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 23.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 23.3.1 delivered, when it is left at the relevant address,
 - 23.3.2 sent by post, 2 business days after it is posted,
 - 23.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
 - 23.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 23.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

24 Costs

- 24.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 24.2 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

25 Entire agreement

- 25.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 25.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

26 Further Acts

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

27 Governing Law and Jurisdiction

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

28 Joint and Individual Liability and Benefits

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

29 Position of the Council

The parties acknowledge that the Council is a consent authority with statutory rights and obligations pursuant to the terms of the:

- 29.1.1 Act;
- 29.1.2 *Roads Act 1993* (NSW); and
- 29.1.3 *Local Government Act 1993* (NSW),
(collectively referred to as the **Planning Legislation**).

This Deed is not intended to operate to fetter, in any unlawful manner:

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

No provision of this Deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 29.1.6 they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 29 is substantially satisfied;

29.1.7 in the event that clause 29.1.6 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Deed has full force and effect; and

29.1.8 to endeavour to satisfy the common objectives of the parties on relation to the provision of this Deed which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.

Where the Law permits Council to contract out of a provision of that law or gives Council power to exercise a Discretion, then if Council has in this Deed contracted out of a provision or exercised a Discretion under this Deed, then to the extent of this deed is not to be taken to be inconsistent with the law.

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

30 Illegality

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

31 Severability

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

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

32 Amendment

32.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

33 Waiver

33.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

33.2 A waiver by a Party is only effective if it:

33.2.1 is in writing,

33.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,

33.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,

33.2.4 is signed and dated by the Party giving the waiver.

33.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.

33.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

33.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

34 GST

34.1 In this clause:

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

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

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

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

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

34.2 Subject to clause 34.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

34.3 Clause 34.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

34.4 No additional amount shall be payable by the Council under clause 34.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

34.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

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- 34.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 34.5.2 that any amounts payable by the Parties in accordance with clause 34.2 (as limited by clause 34.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 34.6 No payment of any amount pursuant to this clause 34, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 34.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 34.8 This clause continues to apply after expiration or termination of this Deed.

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Schedule 1 Dedication of Land

| Column 1 Item | Column 2 Public Purpose | Column 3 Manner and Extent | Column 4 Timing |
|-----------------------|----------------------------|--|---|
| Local Park 1 (LP1) | Passive Open Space | A minimum of 1,910m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Local Park 3 (LP3) | Passive Open Space | A minimum of 4,941m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Local Park 4 (LP4) | Passive Open Space | A minimum of 8,219m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Local Park 5 (LP5) | Passive Open Space | A minimum of 3,165m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Local Park 6 (LP6) | Passive Open Space | A minimum of 4,002m ² of land for public open space, generally in | Within 30 days of the issue of a Subdivision Certificate relating |

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| | | | |
|----------------------------|--------------------|---|---|
| | | accordance with the size and location shown on the Plan in Schedule 2 | to land on which land to be dedicated for local open space is located |
| Local Park 7 (LP7) | Passive Open Space | A minimum of 4,013m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Local Park 8 (LP8) | Passive Open Space | A minimum of 3,368m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Neighbourhood Park 1 (NP1) | Passive Open Space | A minimum of 20,930m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |
| Neighbourhood Park 2 (NP2) | Passive Open Space | A minimum of 16,601m ² of land for public open space, generally in accordance with the size and location shown on the Plan in Schedule 2 | Within 30 days of the issue of a Subdivision Certificate relating to land on which land to be dedicated for local open space is located |

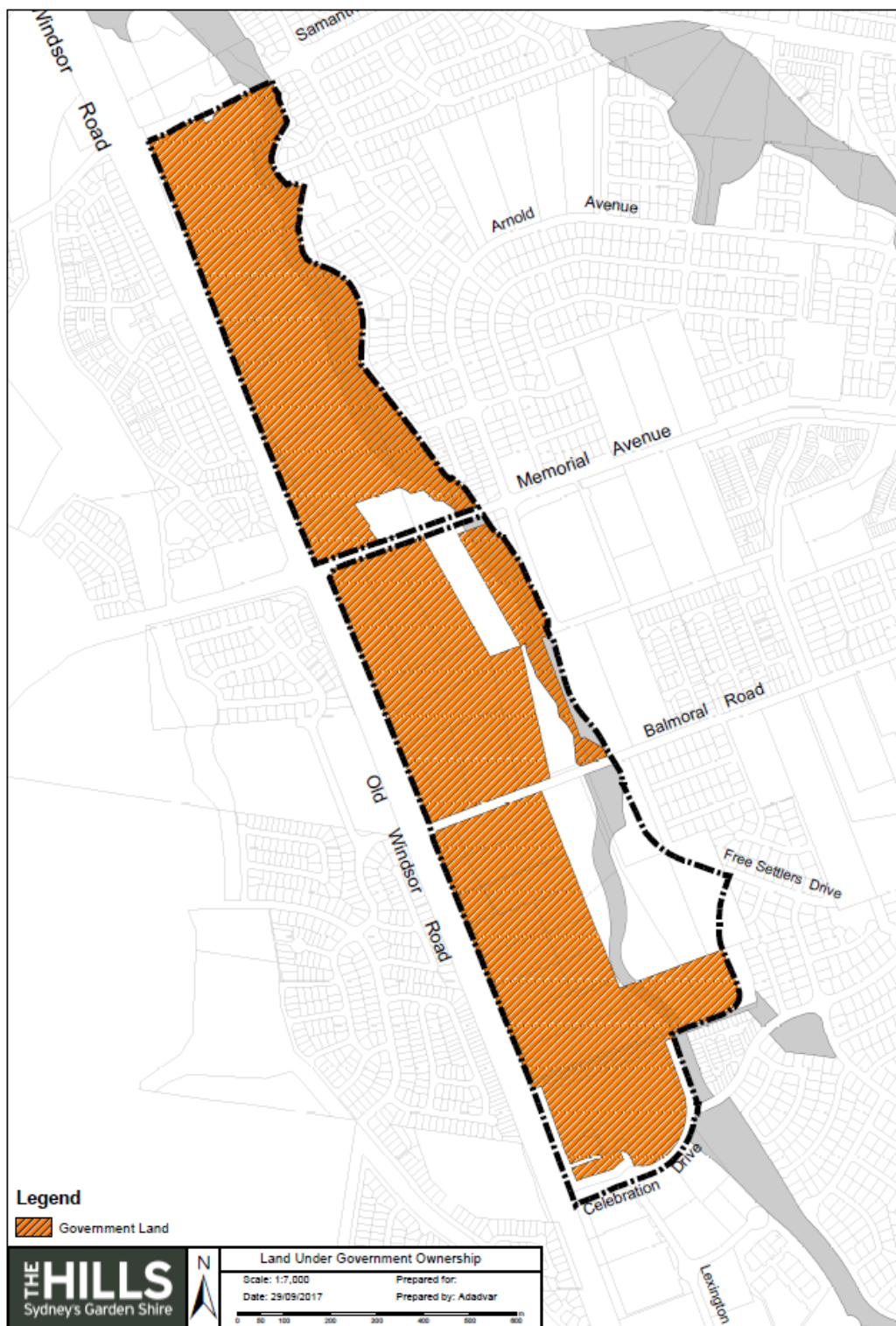
Schedule 2

Land to be dedicated



Schedule 3

Land to which VPA Applies



Execution

Executed as a Deed

Dated:

Executed on behalf of the Council

General Manager

Witness

Mayor

Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001

Landcom

Name/Position

Name/Position

NSW Department of Planning

Name/Position

Name/Position

Transport for NSW

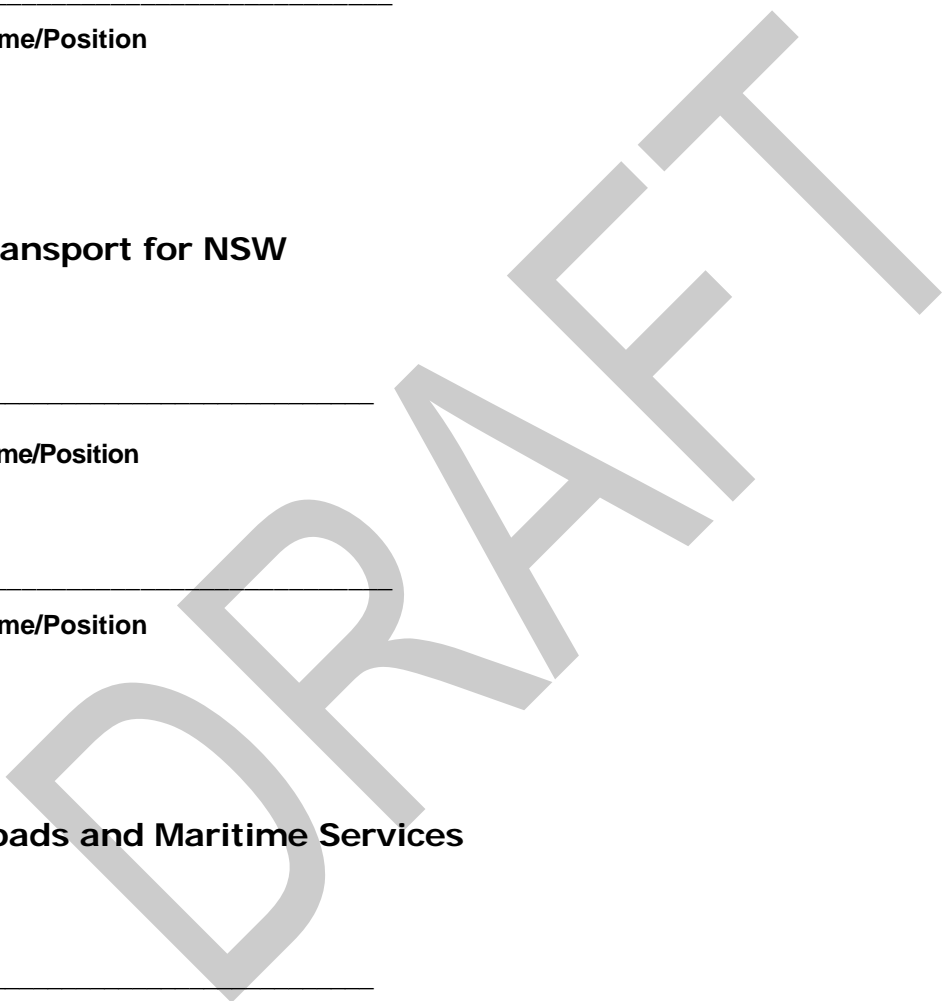
Name/Position

Name/Position

Roads and Maritime Services

Name/Position

Name/Position



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