



Public Exhibition Engagement Report

Draft Planning Agreement: South Kiama Urban Release Area

The South Kiama Urban Release Area will accommodate approximately 380 residential lots, open space, environmental conservation, stormwater management and associated infrastructure. The Developer has offered to enter into a Planning Agreement with Council to provide the required infrastructure.

This Planning Agreement applies to the whole of the South Kiama Urban Release Area and is associated with the Stage 1 Development Application 10.2025.68.1. Under the Planning Agreement, the applicant will provide material public benefits including dedication of land, construction of works and monetary contributions totalling approx. \$30M.

This report presents a summary of the community and stakeholder feedback received during the public exhibition, Council staff response and any proposed changes.



Public exhibition period

Monday 25 August to Monday 22 September 2025 (28 days).

Promotional activities

Dedicated Your Say Page, Media release, Monthly newsletter, Social Media posts, Community Pop up.

How community got involved



81
website
visitors



several
pop-up participants



11
submissions received

What we heard

Most of the submissions raised concerns in relation to the development, specifically concerns around traffic impacts of the development, rather than the Planning Agreement itself.

Outcome

There were no changes made to the Planning Agreement as a result of submissions.

What's next

The Planning Agreement will be reported back to Council for finalisation. If endorsed, the Planning Agreement will be executed by Council and the Developer. The Planning Agreement will then be implemented, including imposing a condition of consent on any DA approval requiring compliance with the Planning Agreement, securing registration on land title and other obligations as required.

Summary table of feedback received and staff responses

Feedback received	Response	Outcome
Aboriginal cultural heritage The submission noted that an Aboriginal Cultural Heritage Assessment (ACHA) Report was completed, however there is concern that there may be burials outside of the Kendalls Historic Cemetery and that additional ground penetrating is required.	Aboriginal Cultural Heritage was considered as part of the Planning Proposal and the ACHA will be considered and implemented as part of the Development Application process. This comment relates to the development rather than the Planning Agreement, therefore there is no change to the Planning Agreement.	No change to the Planning Agreement.
Cycleway on Saddleback Mountain Road The cycleway should be moved to the south side of Saddleback Mountain Road to ensure public safety and planning efficiency.	The location of shared use cycleways will be considered as part of the Development Application process. This comment relates to the development rather than the Planning Agreement, therefore there is no change to the Planning Agreement.	No change to the Planning Agreement.
Environmental and biodiversity impacts of the development The site may host rare, threatened or ecologically significant native species, and/or Endangered Ecological Communities. Concern that this has not been adequately addressed.	A Vegetation Management Plan (VMP) has been prepared to guide the management of environmental values on the site. Environmental and biodiversity impacts of a development are considered as part of the Development Application process. The Planning Agreement ensures that the required revegetation works will be carried out and maintained.	No change to the Planning Agreement.
Inadequate community infrastructure There was concern that the development is not receiving sufficient community infrastructure, and specifically that there is: a) No neighbourhood store b) No childcare facility c) No active open space (ie sports fields) d) Poor public transport	The development is providing adequate community infrastructure through the delivery of three on site local parks, shared use pathways, public transport routes and the enhancement of environmental land (ie informal open space). The development will also provide section 7.12 contributions towards off site community infrastructure (ie when dwellings are built). In relation to the specific concerns, the following is noted: a) The Kiama Council Draft Employment Lands Strategy identifies that the site may be suitable for local services, however the site has already been rezoned (by the NSW State Government) and this did not include zoning land for employment uses. Limited non-residential uses are permitted in the residential zones. This outcome will depend on feasibility.	No change to the Planning Agreement.

Feedback received	Response	Outcome
	b) Child care facilities are permissible in the R2 zone, so the planning controls enable this outcome on the site. c) The site is not suitable for the location of formal sports fields. The local parks will include active recreation (ie half basketball court). The development will also contribute Section 7.12 Contributions towards new or upgraded sports field facilities in the LGA. d) There is a planned bus route along the collector road to provide public transport, as well as an active transport network.	
Proposed signing and estate naming The term "South Kiama" should be avoided as it does not comply with the Geographical Names Board Place Name Guidelines and NSW Addressing Policy.	This comment is noted. The term 'South Kiama' is used to refer to the location of the Urban Release Area. The proposed estate name and signage will be considered as part of the Development Application.	No change to the Planning Agreement.
Public Benefit Offer is overinflated The Planning Agreement includes the value of riparian works which overinflates the actual value of infrastructure being provided by the Developer.	It is noted that the Planning Agreement includes the riparian works. These are an important environmental outcome of the development and inclusion in the Planning Agreement provides an extra layer of certainty to Council and the community on this outcome. The Developer is not receiving a 'credit' for this so there is no impact.	No change to the Planning Agreement.
Sewerage capacity Concern that the existing Sydney Water sewerage network is at capacity and cannot accommodate the additional growth, and that there are no planned infrastructure upgrades.	All of the required servicing upgrades and connections will be addressed as part of the Development Application and provided. This comment relates to the development rather than the Planning Agreement, therefore there is no change to the Planning Agreement.	No change to the Planning Agreement.
Traffic impacts of the development A lot of the submissions raised concerns about traffic issues as a result of the development occurring. These are noted separately below.	These comments relate to the development, rather than the Planning Agreement, therefore there is no change to the Planning Agreement. The developer is upgrading the access roads as part of the development. The traffic impacts are considered as part of the Planning Proposal and Development Application Process.	No change to the Planning Agreement.
• Impact on local roads and intersections The concerns include the primary traffic routes between the site, Kiama Town Centre and M1.	Traffic impacts are considered as part of the Planning Proposal and Development application processes.	No change to the Planning Agreement.
• Structural integrity of the bridge over the M1 Concern that the structural capacity of the existing bridge over the M1 Princess Highway is	Transport for NSW have advised: Our bridge assessment team has confirmed that the bridge is suitable for all HML Vehicles. The assets team also checked the bridge's	No change to the Planning Agreement.

Feedback received	Response	Outcome
unknown and may not be suitable to support the additional traffic volume.	condition, and it is in fair condition. Therefore, the bridge is appropriate for B-Double HML BD68.	
Additional northbound on ramp to M1 Suggest a northbound onramp direct to the M1 Princes Highway from the development site would alleviate the congestion and improve traffic flow. The Planning Agreement should provide for lots to be dedicated to Council to enable a future northbound on ramp to the M1.	Additional on / off ramps to the M1 was considered as part of the Planning Proposal however was not required by Transport for NSW.	No change to the Planning Agreement.
During peak periods and for High School Particular concern around peak traffic times (ie school and work start and finish times) and safety implications for road users, pedestrians and students.	This will be monitored. It is also noted that there is an alternative, 2 nd access to the High School that can be used.	No change to the Planning Agreement.
Realignment of Saddleback Mountain Road Concern about the realignment of Saddleback Mountain Road into the subdivision. This is an existing road, so the proposed changes would require road renaming & property renumbering.	This will be considered as part of the Development Application. The Developer will be required to construct the upgrade works in accordance with that approval. Any impact to road naming or property addresses will be managed through the development process.	No change to the Planning Agreement.
Saddleback Mountain Road There is concern of the traffic implications. Suggestions include: - Widen Saddleback Mountain Road now - Reduce the speed limit - Construct the Weir Street extension / access now	- It is noted that the development will change the current use of Saddleback Mountain Road. The section of road that fronts the development will be upgraded from a rural to residential standard. - Speed limits are determined through a separate process. - The Weir St connection will be constructed with Stage 4 of the development. The development is being carried out in a logical order, being north to south. Until that time, a temporary 2nd access road is being provided for emergency situations.	No change to the Planning Agreement.
There is only 1 access road Concern that there is only 1 access road to the estate.	The first stages of the development will access the site from Saddleback Mountain Road, which has both east and west connections. There is a temporary 2 nd access is provided for emergency situations until Stage 4 is constructed, at which time the Weir St extension will be delivered.	No change to the Planning Agreement.
During construction Concern about truck and vehicle movement during construction.	All developments require truck movements, and this will be considered as part of the Development Application processes.	No change to the Planning Agreement.

**South Kiama Urban Release Area
Planning Agreement**

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

**Kiama Municipal Council
and
White Constructions and Developments Pty Ltd**

[INSERT DATE]

South Kiama Urban Release Area Planning Agreement

**South Kiama Urban Release Area
Planning Agreement**

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South Kiama Urban Release Area Planning Agreement

South Kiama Urban Release Area Planning Agreement

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

Parties

Kiama Municipal Council ABN 22 379 679 108 of 11 Manning Street, Kiama NSW, 2433 (**Council**)

and

White Constructions and Developments Pty Ltd ABN 80 645 738 254 of Level 12, 82 Elizabeth Street, Sydney NSW, 2000 (**Developer**)

Background

- A The Developer proposes to carry out the Development on the Land.
- B The Development is the residential subdivision of approximately 380 lots and associated infrastructure including roads, riparian corridors, parks and stormwater infrastructure.
- C The Developer owns part of the Land.
- D Part of the Land is the subject of the Development Application.
- E The Developer has offered to make Development Contributions in accordance with this Agreement in connection with the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Agreement the following definitions apply:

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

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

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.

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

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

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.

Charge means the charge referred to in clause 26.

Charge Land means the land specified or described in Item 9 of Schedule 1.

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

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

Contamination has the same meaning as in the CLM Act.

Contribution Value means the \$ amount agreed between the Parties as the value of a Development Contribution made under this Agreement being the \$ amount specified in Column 4 of Schedule 2 corresponding to the Item as indexed in accordance with this Agreement.

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

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

Dedicated Land Map means the map of the land identified in the Table in Schedule 2 to be dedicated to the Council shown in Schedule 4.

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

Defects Liability Period means the period specified in item 8 of Schedule 2 commencing on the day immediately after the whole or any specified part of a Work is completed for the purposes of this Agreement.

Defects Liability Security means the Security set out at Item 11 of Schedule 1.

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Development means the development set out in item 2 of Schedule 1.

Development Application has the same meaning as in the Act.

Development Consent means the development consent specified or described in Item 5 of Schedule 1 or granted in respect of the Development.

Development Contribution means the dedication of land free of cost, a monetary contribution, the provision of any other material public benefit including but not limited to the provision of Works, or any combination of them, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Agreement.

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

ELNO has the meaning given to that term in the Participation Rules.

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

Final Lot means a lot created in the Development for separate residential occupation and disposition or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land:

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

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

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.

Item means an item specified in the table of Schedule 1 or column 1 of the table in Schedule 2 as the case may be.

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

Land means the land described in item 1 of Schedule 1.

LEP Amendment means the change to the environmental planning instrument specified or described in Item 3 in Schedule 1.

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

Map means the map of the Land the subject of this Agreement as set out in Schedule 3.

Occupation Certificate has the same meaning as in the Act.

Participation Rules means the participation rules as determined by the *Electronic Conveyancing National Law* as set out in the *Electronic Conveyancing (Adoption of National Law) Act 2012 (NSW)*.

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Party means a party to this Agreement.

PEXA means Property Exchange Australia Ltd.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Rectify means rectify, remedy or correct.

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

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

Site Audit Statement has the same meaning as in the CLM Act.

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 Agreement.

Subdivision Certificate has the same meaning as in the Act.

WHS means work health and safety.

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

1.2 In the interpretation of this Agreement, 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 Agreement.
- 1.2.2 A reference in this Agreement 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 Agreement 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 Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement 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 Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.

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

2 Status of this Agreement

- 2.1 This Agreement is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

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

4 Application of this Agreement

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

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5 Warranties

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

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 Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

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:
- 7.1.1 the validity of this Agreement, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Agreement.
 - 7.1.2 A condition of consent imposed on a Development Consent requiring this Agreement be complied with in connection with the carrying out of the Development.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 Item 6.a states if this Agreement excludes or does not exclude the application of s7.11 to the Development.
- 8.2 If Item 6.a of Schedule 1 states that this Agreement does not wholly exclude the application of s7.11 of the Act to the Development, Item 7.b of Schedule 1 states whether the benefits provided by the Developer under this Agreement are to be taken into consideration when determining a Development Contribution under s7.11 relating to the Development.
- 8.3 Item 6.c of Schedule 1 states if this Agreement excludes or does not exclude the application of s7.12 to the Development.
- 8.4 This Agreement does not exclude the application of s7.24 to the Development.

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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 2, any other provision of this Agreement relating to the making of Development Contributions and otherwise to the satisfaction of the Council.
- 9.2 Any Contribution Value specified in this Agreement in relation to a Development Contribution does not serve to define the extent of the Developer's obligation to make the Development Contribution.
- 9.3 Where a Contribution Value relates to a monetary Development Contribution the Contribution Value of the monetary Development Contribution is to be indexed quarterly in accordance with CPI from the date of execution of this Agreement.
- 9.4 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 9.5 Despite clause 9.4, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council reasonably considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

10 Payment of monetary Development Contributions

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

11 Dedication of land

- 11.1 Where a Development Contribution comprises land identified in Schedule 2, that land is dedicated for the purposes of this Agreement when:
 - 11.1.1 the Council is given:
 - (a) a Clearance Certificate that is valid at the time of dedication of the land identified in Schedule 2, or
 - (b) the Foreign Resident Capital Gains Withholding Amount in respect of the land identified in Schedule 2, and
 - 11.1.2 One of the following has occurred:
 - (a) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the land identified in Schedule 2 as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public

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reserve or drainage reserve under the *Local Government Act 1993* (NSW), or

- (b) the Council is given evidence that a transfer of the land identified in Schedule 2 to the Council has been effected by means of electronic lodgement and registration through PEXA or another ELNO.

- 11.2 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 11.3 The Developer is to ensure that land dedicated to the Council under this Agreement is:
- 11.3.1 free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council;
- 11.3.2 suitable for the purpose for which it is to be dedicated and is not subject to any Contamination or is accompanied by a Site Audit Statement.
- 11.4 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Agreement is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

12 Carrying out of Work

- 12.1 Without limiting any other provision of this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with this Agreement, any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.
- 12.2 If any Works form part of Schedule 2 and the design has not been approved by the Council prior to the execution of this Agreement, the Developer is not to commence construction unless the Council has provided its written consent to the design of the Work.
- 12.3 In determining whether to give its consent, the Council may require the Developer to make any change to the plans as drawings of the Works as the Council reasonably considers necessary or desirable and the Developer must make those changes.
- 12.4 The Developer, at its own cost, is to comply with any reasonable direction given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Agreement.
- 12.5 The Developer must comply with and ensure that all persons involved in carrying out any Work complies with all WHS Laws and procedures applicable to the carrying out of those works.
- 12.6 The Developer is to promptly inform the Council of any incident occurring in relation to any Works on Council land where a person is injured or otherwise exposed to a risk to his or her health or safety, including, but not limited to, an incident which is required to be reported to WorkCover.

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13 Variation to Work

- 13.1 The design or specification of any Work that is required to be carried out by the Developer under this Agreement may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Agreement.
- 13.2 Without limiting clause 13.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 13.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 13.2.

14 Access to land by Developer

- 14.1 If Item 7 of Schedule 1 applies, the Council authorises the Developer to enter, occupy and use land specified in Item 7 of Schedule 1 for the purpose of performing its obligations under this Agreement.
- 14.2 The Council is to permit the Developer, upon receiving reasonable prior notice from the Developer, to enter any other Council owned or controlled land in order to enable the Developer to properly perform its obligations under this Agreement.
- 14.3 Nothing in this Agreement creates or gives the Developer any estate or interest in any part of the land referred to in clause 14.1 or 14.2.

15 Access to land by Council

- 15.1 The Council may enter any land on which Work is being carried out by the Developer under this Agreement in order to inspect, examine or test the Work, or to remedy any breach by the Developer of its obligations under this Agreement relating to the Work.
- 15.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 15.1.

16 Council's obligations relating to Work

- 16.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Agreement, and is to use its reasonable endeavours to ensure third parties unrelated to the Developer do not unreasonably delay, hinder or otherwise interfere with the performance of those obligations.

17 Protection of people, property & utilities

- 17.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Agreement that:

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- 17.1.1 all necessary measures are taken to protect people and property,
- 17.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 17.1.3 nuisances and unreasonable noise and disturbances are prevented.
- 17.2 Without limiting clause 17.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

18 Repair of damage

- 18.1 The Developer is to maintain any Work required to be carried out by the Developer under this Agreement until the Work is completed for the purposes of this Agreement or such later time as agreed between the Parties.
- 18.2 The Developer is to carry out its obligation under clause 18.1 at its own cost and to the satisfaction of the Council.

19 Completion of Work

- 19.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Agreement or any Stage.
- 19.2 The Council is to inspect the Work the subject of the notice referred to in clause 19.1 within 14 days of the date specified in the notice for completion of the Work.
- 19.3 Work required to be carried out by the Developer under this Agreement, or a Stage, is completed for the purposes of this Agreement when the Council, acting reasonably, gives a written notice to the Developer to that effect.
- 19.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 19.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.
- 19.5 Before the Council gives the Developer a notice referred to in clause 19.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council.
- 19.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 19.5.

20 Rectification of defects

- 20.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 20.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

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- 20.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 20.1

21 Works-As-Executed-Plan

- 21.1 No later than 60 days after Work is completed for the purposes of this Agreement, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 21.2 The Developer, being the copyright owner in the plan referred to in clause 21.1, gives the Council a non-exclusive licence to use the copyright in the plans for the purposes of this Agreement.

22 Removal of Equipment

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

Part 3 – Dispute Resolution

23 Dispute resolution – expert determination

- 23.1 This clause applies to a Dispute between any of the Parties to this Agreement concerning a matter arising in connection with this Agreement that can be determined by an appropriately qualified expert if:
- 23.1.1 the Parties to the Dispute agree that it can be so determined, or
- 23.1.2 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.
- 23.2 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.
- 23.3 If a notice is given under clause 23.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 23.4 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.
- 23.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

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- 23.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 23.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

24 Dispute Resolution - mediation

- 24.1 This clause applies to any Dispute arising in connection with this Agreement other than a Dispute to which clause 23 applies.
- 24.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 24.3 If a notice is given under clause 24.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 24.4 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.
- 24.5 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.
- 24.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 24.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

25 Security for performance of obligations

- 25.1 The Developer is to provide Security to the Council in the amount specified in Item 10 **Error! Reference source not found.** of Schedule 1 in relation to the performance of its obligations under this Agreement.
- 25.2 The Developer is to provide the Security to the Council before it commences any part of the Development unless, before that time, the Council agrees in writing to apportion the Security to different Stages, in which case the Developer is to provide the portion of the Security relating to a particular Stage to the Council before it commences any part of the Development comprised in the Stage.
- 25.3 The Council, in its absolute discretion and despite clause 14, may refuse to allow the Developer to enter, occupy or use any land owned or controlled by the Council or refuse to provide the Developer with any plant, equipment, facilities or assistance relating to the carrying out the Development if the Developer has not provided the Security to the Council in accordance with this Agreement.

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- 25.4 The Council may call-up and apply the Security in accordance with clause 29 to remedy any breach of this Agreement notwithstanding any other remedy it may have under this Agreement, under any Act or otherwise at law or in equity.
- 25.5 Subject to clause 25.6, the Council is to release and return the Security or any unused part of it to the Developer within 14 days of completion of the obligation to which the Security relates.
- 25.6 The Council may retain the Defects Liability Security until either the end of the Defects Liability Period if no defects are identified during that period or if a Rectification Notice has been issued to the Developer under clause 20, within 14 days of the Council confirming in writing that all Defects the subject of any Rectification Notice have been rectified to the reasonable satisfaction of the Council.
- 25.7 The Developer may at any time provide the Council with a replacement Security.
- 25.8 On receipt of a replacement Security, the Council is to release and return the Security that has been replaced to the Developer.
- 25.9 If the Council calls-up the Security or any portion of it, it may, by written notice to the Developer, require the Developer to provide a further or replacement Security to ensure that the amount of Security held by the Council equals the amount it is entitled to hold under this Agreement.
- 25.10 The Developer is to ensure that the Security provided to the Council is at all times maintained to the full current indexed value and to this end, it must increase the Security every 12 months in accordance with Item 10.b of Schedule 1.
- 25.11 If the Developer forms the opinion that it will not be able to complete one or more Items of Work in accordance with this Agreement, then the Developer must provide written notice to Council which:
- (a) details the Item(s) of Work that will not be completed in accordance with this Agreement, and
 - (b) details the current status of the works undertaken for each item of Work, and
 - (c) requests an extension of the time in which the Item of Work may be completed (revised date).
- 25.12 On receipt of a notice, Council must, acting reasonably, consider the notice and confirm by way of notice to the Developer that either:
- (a) the request is acceptable, or
 - (b) the request is acceptable with an alternative completion date, or
 - (c) the request is rejected.
- 25.13
- (a) Where Council provides a notice in accordance with clause 25.12(a), the parties agree that the Item(s) of Work is to be completed by the revised date.
 - (b) Where Council provides a notice in accordance with clause 25.12(b), the parties agree that the Item(s) of Work is to be completed by the date nominated in that notice.
 - (c) Where the revised date for the completion of an Item(s) of Work has been extended in accordance with clauses 25.13(a) or 25.13(b),

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Council must not withhold the issue of a Subdivision Certificate by reason of an Item of Work not being completed.

26 Caveat and Discharge

- 26.1 The Developer agrees that:
 - 26.1.1 the Council may lodge a caveat on the title of the Land to which the Charge applies,
 - 26.1.2 the Council is to release the caveat from any part of the Land to which the Charge applies that is not the Charge Land once that part of the Land is contained in a separate lot to the Charge Land, and
 - 26.1.3 the Council cannot be required to have the caveat removed from the title to the Charge Land other than in accordance with clause 26.2.
- 26.2 In order to enable Final Lots to be sold, the Council is to release the Charge and withdraw the caveat from the title to any Final Lot on satisfaction by the Developer of its obligations under this Agreement to make Development Contributions in respect of the creation of the lot.
- 26.3 For the purposes of clause 26.2 the Council is to use its reasonable endeavours to provide any documentation necessary to enable the release of the Charge and withdrawal of the caveat from the title of a Final Lot on or immediately prior to the date for settlement of the sale of that lot.
- 26.4 Nothing in this Agreement prevents the registration of a plan of subdivision in respect of the Charge Land nor the creation of a Final Lot from the Charge Land.

27 Acquisition of land required for Work

- 27.1 This clause applies if, at the date of lodgement of a Development Application, the Developer is not the owner of all of the land on which any Work described in Schedule 2 will be carried out as part of that Development Application.
- 27.2 Prior to the lodgement of the Development Application the Developer is to notify the Council in writing that it is not the owner of all of the land on which the Work referred to in clause 27.1 will be carried out.
- 27.3 A notice under clause 27.2 is to be accompanied by the Security specified in Item 12 of Schedule 1 and is separate to the Security referred to in clause 25.
- 27.4 As soon as practicable after receipt of both the notice referred to in clause 27.2 and the Security referred to in clause 27.3, the Council is to consider a report on whether it should acquire the land not owned by the Developer on which the Work referred to in clause 27.1 will be carried out.
- 27.5 Within 14 days of receipt of a written notice from the Council, the Developer is to pay to the Council:
 - 27.5.1 the Council's costs, as specified in the notice, of and incidental to an acquisition of land not owned by the Developer on which the Work referred to in clause 27.1 will be carried out, and

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27.5.2 the amount of any compensation paid by the Council in relation to the acquisition along with a statement and supporting evidence as to how the compensation has been paid in accordance with the Just Terms Act.

- 27.6 The Developer is not to question the amounts specified in a notice referred to in clause 27.5.
- 27.7 The Council may call on the Security referred to in clause 27.3 if the Developer is in breach of clause 27.5.
- 27.8 The Council is to return the Security referred to in clause 27.3 to the Developer if and when the Developer complies with clause 27.5.
- 27.9 The Council may recover in any court of competent jurisdiction the difference between its costs of and incidental to the acquisition referred to in clause 27.5 together with the amount of any compensation paid by the Council in relation to that acquisition and the amount of the Security referred to in clause 27.3 as called upon under clause 27.7.

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28 Acquisition of land required to be dedicated

- 28.1 If the Developer does not dedicate land required to be dedicated under this Agreement 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.
- 28.2 The Council is to only acquire land pursuant to clause 28.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Agreement.
- 28.3 Clause 28.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 28.4 If, as a result of the acquisition referred to in clause 28.1, 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, or the Council can call on any Security provided under clause 25.
- 28.5 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 28.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 28, including without limitation:
- 28.6.1 signing any documents or forms,
 - 28.6.2 giving land owner's consent for lodgement of any Development Application,
 - 28.6.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 28.6.4 paying the Council's costs arising under this clause 28.

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29 Breach of obligations

- 29.1 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:
- 29.1.1 specifying the nature and extent of the breach,
 - 29.1.2 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,
 - 29.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 29.2 If the Developer fails to fully comply with a notice referred to in clause 29.1, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Agreement and apply it to remedy the Developer's breach.
- 29.3 If the Developer fails to comply with a notice given under clause 29.1 relating to the carrying out of Work 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 and any Equipment on such land for that purpose.
- 29.4 Any costs incurred by the Council in remedying a breach in accordance with clause 29.2 or clause 29.3 may be recovered by the Council by either or a combination of the following means:
- 29.4.1 by calling-up and applying the Security provided by the Developer under this Agreement, or
 - 29.4.2 as a debt due in a court of competent jurisdiction.
- 29.5 For the purpose of clause 29.4, the Council's costs of remedying a breach the subject of a notice given under clause 29.1 include, but are not limited to:
- 29.5.1 the costs of the Council's employees, agents and contractors reasonably incurred for that purpose,
 - 29.5.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 29.5.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 29.6 Nothing in this clause 29 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.

30 Enforcement in a court of competent jurisdiction

- 30.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 30.2 For the avoidance of doubt, nothing in this Agreement prevents:

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- 30.2.1 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, or
- 30.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

Part 5 – Registration & Restriction on Dealings

31 Registration of this Agreement

- 31.1 The Parties agree to register this Agreement for the purposes of s7.6(1) of the Act:
 - 31.1.1 on the Land that is owned by the Developer, within 30 days of the date of this Agreement.
 - 31.1.2 on the Land that is not owned by the Developer at the date of this Agreement, within 30 days of the Developer becoming the landowner of the relevant parcel applicable to this Agreement.
- 31.2 Not later than 14 days after this Agreement becomes registerable in accordance with clause 31.1, the Developer is to deliver to the Council in registrable form:
 - 31.2.1 an instrument requesting registration of this Agreement on the title to the Land duly executed by the Developer, and
 - 31.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 31.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Agreement to occur.
- 31.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:
 - 31.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 31.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any other reason.

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32 Restriction on dealings

- 32.1 The Developer is not to:
 - 32.1.1 sell or transfer the Land, other than a Final Lot, or
 - 32.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement,
- to any person unless:

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- 32.1.3 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 Agreement are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 32.1.4 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 Agreement, and
- 32.1.5 the Developer is not in breach of this Agreement, and
- 32.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 32.2 Subject to clause 32.3, the Developer acknowledges and agrees that they remain liable to fully perform their obligations under this Agreement unless and until they have complied with their obligations under clause 32.1.
- 32.3 Clause 32.1 does not apply in relation to any sale or transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

Part 6 – Indemnities & Insurance

33 Risk

- 33.1 The Developer performs this Agreement at its own risk and its own cost.

34 Release

- 34.1 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 Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

35 Indemnity

- 35.1 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 Agreement except if, and to the extent that, the Claim arises because of the Council's negligence or default.

36 Insurance

- 36.1 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out

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by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:

- 36.1.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 36.1.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 36.1.3 professional indemnity insurance
 - 36.1.4 workers compensation insurance as required by law, and
 - 36.1.5 any other insurance required by law.
- 36.2 If the Developer fails to comply with clause 36.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 36.2.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
 - 36.2.2 recovery as a debt due in a court of competent jurisdiction.
- 36.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 36.1.

Part 7 – Other Provisions

37 Annual report by Developer

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

38 Review of Agreement

- 38.1 The Parties agree to review this Agreement by the end of the period specified in Item 15 of Schedule 1 and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 38.2 For the purposes of clause 38.1, 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.

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- 38.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 38.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 38.4 If this Agreement 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 Agreement is entered into.
- 38.5 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 38.1 (but not 38.4) is not a Dispute for the purposes of this Agreement and is not a breach of this Agreement.

39 Notices

- 39.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 39.1.1 delivered or posted to that Party at its address set out in Items 13 – 16 of Schedule 1, or
 - 39.1.2 emailed to that Party at its email address set out in Items 13 – 16 of Schedule 1.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 39.3.1 delivered, when it is left at the relevant address,
 - 39.3.2 sent by post, 3 business days after it is posted, or
 - 39.3.3 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 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.

40 Approvals and Consent

- 40.1 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.
- 40.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

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41 Costs

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

42 Entire Agreement

- 42.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 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 Agreement was executed, except as permitted by law.

43 Further Acts

- 43.1 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 Agreement and all transactions incidental to it.

44 Governing Law and Jurisdiction

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

45 Joint and Individual Liability and Benefits

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

46 No Fetter

- 46.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law,

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and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

47 Illegality

- 47.1 If this Agreement 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 Agreement is entered into.

48 Severability

- 48.1 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.
- 48.2 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 Agreement, but the rest of this Agreement is not affected.

49 Amendment

- 49.1 No amendment of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement in accordance with clause 203(5) of the Regulation.

50 Waiver

- 50.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 50.2 A waiver by a Party is only effective if it:
- 50.2.1 is in writing,
 - 50.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
 - 50.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
 - 50.2.4 is signed and dated by the Party giving the waiver.
- 50.3 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.
- 50.4 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.

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- 50.5 For the purposes of this Agreement, 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.

51 GST

- 51.1 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.

- 51.2 Subject to clause 51.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 51.3 Clause 51.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 51.4 No additional amount shall be payable by the Council under clause 51.2 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.
- 51.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement 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:
- 51.5.1 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;
- 51.5.2 that any amounts payable by the Parties in accordance with clause 51.2 (as limited by clause 51.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 51.6 No payment of any amount pursuant to this clause 51, 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.

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- 51.7 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.
- 51.8 This clause continues to apply after expiration or termination of this Agreement.

52 Explanatory Note

- 52.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 205 of the Regulation.
- 52.2 Pursuant to clause 205 of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Agreement.

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Schedule 1
Planning Agreement Details

(Clause 1.1)

Item	Details
1. Land	Lot 1 DP707300, 40 Saddleback Mountain Road, Kiama NSW 2533 Lot 5 DP740252, 51 South Kiama Drive, Kiama NSW 2533 Part of Lot 101 DP1077617, 11 Weir Street Kiama Heights NSW 2533 (Proposed Lot 21) Part of Lot 102 DP1077617, 8 Weir Street, Kiama Heights NSW 2533 The Land is shown at Schedule 4.
2. Development	The residential subdivision of approximately 380 lots and associated infrastructure including roads, riparian corridors, parks and stormwater infrastructure, to be completed over stages.
3. LEP Amendment	Not applicable.
4. Development Application:	Portal Reference - PAN-533320 Council Reference - 10.2025.68.1
5. Development Consent	[Insert the date of the notice of determination]
6. Application of the following provisions of the Act to the Development:	
a. Section 7.11	Wholly excluded from the Development. For completeness, section 7.11 contributions will not be excluded in respect of future Development Applications following completion of the Development.
b. Consideration of benefits	Not to be considered.
c. Section 7.12	Wholly excluded from the Development. For completeness, section 7.12 contributions will not be excluded in respect of future Development Applications following completion of the Development.
d. Division 7.1, Subdivision 4	Not excluded.

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7. Access to Council Land	Access to Council Land will be required to Work Items 6, 7 and 8.
8. Defects Liability Period	12 months from the date of completion or handover.
9. Charge Land	Not applicable.
10. Security: a. Security b. Indexation of Security	 \$1,000,000.00. To be provided prior to the issue of a Subdivision Works Certificate and to be held by Council until 12 months after all obligations under this Agreement, including maintenance periods, have been completed. . CPI
11. Defects Liability Security	Included in Security amount at 10(a)
12. Security for Works on land not owned by Developer	The Value of the Item of Work to be carried out on Land not owned by the Developer.
13. Council Contact for Notices	Postal Address: PO Box 75 KIAMA NSW 2533 Email: council@kiama.nsw.gov.au Telephone: 02 4232 0444 Representative: Ms Jane Stroud
14. Developer Contact for Notices	Postal Address: Level 12, 82 Elizabeth Street Sydney NSW 2000 Email: tonyp@modernco.com.au Telephone: 0400 408 794 Representative: Tony Pizzolato
15. Review Period	Not applicable. Refer to clause 39.

South Kiama Urban Release Area Planning Agreement

Schedule 2

(Clause 9)

Development Contributions – See below table

Item/ Contribution	Public Purpose	Manner & Extent	Timing
A. Monetary Contributions			
1. Total \$100,000	Maintenance of Kendall's Cemetery.	A one off monetary contribution toward Council's maintenance of Kendall's Cemetery	Prior to the issue of a Subdivision Certificate for Stage 2B.
2. Stage 1 \$166,224 Stage 2A \$238,695 Stage 2B \$20,112 Stage 3A \$68,063 Stage 3B \$186,352 Stage 4A \$95,862 Stage 4B 195,389 Total \$970,697	Maintenance of riparian lands.	A stage by stage monetary contribution toward Council's maintenance of the riparian areas.	Prior to the issue of a Subdivision Certificate for the relevant Stage.
3. Stage 1 \$53,059 Stage 2A \$77,055 Stage 3B \$77,976 Stage 4B \$161,156 Total \$369,246	Maintenance of retaining walls.	A stage by stage monetary contribution toward Council's inspection and maintenance of retaining walls within the development.	Prior to the issue of a Subdivision Certificate for the relevant Stage.
4. Stage 1 \$122,150 Stage 2A \$51,978 Stage 2B \$4,092 Stage 3A \$6,946	Administration of the Planning Agreement.	A stage by stage monetary contribution towards Council's administration of the Planning Agreement.	Prior to the issue of a Subdivision Certificate for the relevant Stage.

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
Stage 3B \$22,282 Stage 4A \$105,728 Stage 4B \$38,415 Total \$351,591			
B. Dedication of Land			
1. Local Park	Open Space.	The dedication of approximately 1,950sqm of land for local open space. <i>Notional value \$585,000</i>	Prior to the issue of a Subdivision Certificate for Stage 1. As part of the subdivision of Stage 1 the land must be shown as Public Reserve on the plan of subdivision for dedication to Council.
2. Kendall's Park	Open Space.	The dedication of approximately 2,650sqm of land for local open space. <i>Notional value \$795,000</i>	Prior to the issue of a Subdivision Certificate for Stage 2B. As part of the subdivision of Stage 2B the land must be shown as Public Reserve on the plan of subdivision for dedication to Council.
3. Munna Munnora Park	Open Space.	The dedication of approximately 3,150sqm of land for local open space. <i>Notional value \$56,700</i>	Prior to the issue of a Subdivision Certificate for Stage 4A. As part of the subdivision of Stage 4A the land must be shown as Public Reserve on the plan of subdivision for dedication to Council.
4. Riparian corridors	Riparian Corridors.	The dedication of approximately 117,500sqm of land for riparian corridors.	As part of the subdivision of the relevant Stage (ie the stage in which the

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
		Stage 1 10,843 sqm Stage 2A 12,447 sqm Stage 2B 1,135 sqm Stage 3A 2,439 sqm Stage 3B 10,517 sqm Stage 4A 40,439 sqm Stage 4A 39,680 sqm <i>Notional value</i> Stage 1 \$840,300 Stage 2A \$1,597,694 Stage 2B \$145,688 Stage 3A \$49,574 Stage 3B \$213,766 Stage 4A \$719,026 Stage 4B \$705,530 Total \$4,271,578	land is included) the land must be shown as Drainage Reserve on the plan of subdivision for dedication to Council.
5. Bioretention basins	Stormwater management.	The dedication of land for stormwater management including a buffer for maintenance access. <i>Notional value</i> Stage 1 \$17,036 Stage 2A \$1,13,881 Stage 4A \$29,130 Stage 4B \$10,656 Total \$70,704	As part of the subdivision of the relevant Stage (ie the stage in which the land is included) the land must be shown as Drainage Reserve on the plan of subdivision for dedication to Council.
C. Carrying out of Work			
1. Local Park	Open Space.	The embellishment of a local park in accordance with the approved plan, including active recreation (ie half basketball court), playground equipment, seating, pergola, planting and lighting. The final design is to be approved by Council with the Development Application and	Prior to the issue of a Subdivision Certificate for Stage 1.

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
		Subdivision Works Certificate. The park is to be maintained by the Developer for 24 months from dedication in accordance with a maintenance plan approved by Council. <i>Notional value \$1,146,644 (includes maintenance cost)</i>	
2. Kendall's Park	Open Space.	The embellishment of open space in accordance with the approved plan, including seating, pathways, lighting and landscaping. The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. The park is to be maintained by the Developer for 24 months from dedication in accordance with a maintenance plan approved by Council. <i>Notional value \$142,743 (includes maintenance cost)</i>	Prior to the issue of a Subdivision Certificate for Stage 2B.
3. Munna Munnora Park	Open Space.	The embellishment of a local park in accordance with the approved plan, including playground equipment, seating, pathways, landscaping and lighting. The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. The park is to be maintained by the Developer for 24 months from dedication in accordance with a maintenance plan approved by Council. <i>Notional value</i>	Prior to the issue of a Subdivision Certificate for Stage 4A.

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
		<i>\$1,476,417 (includes maintenance cost)</i>	
4. Riparian corridors	Riparian Corridors.	Regeneration works in accordance with the approved Vegetation Management Plan and the approved Development Application. The riparian corridors are to be maintained by the Developer for 5 years from dedication in accordance with the requirements of clause 12.11.62 of the Kiama DCP 2020. <i>Notional value</i> <i>Stage 1 \$3,990,934</i> <i>Stage 2A \$2,918,431</i> <i>Stage 2B \$130,040</i> <i>Stage 3A \$463,069</i> <i>Stage 3B \$1,365,456</i> <i>Stage 4A \$3,338,301</i> <i>Stage 4B \$1,951,652</i> <i>Total \$14,157,883 (includes maintenance cost)</i>	Prior to the issue of a Subdivision Certificate for the relevant Stage (ie the stage in which the land is included).
5. Bioretention basins	Stormwater management.	Construction of four bioretention basins and associated infrastructure including gross pollutant traps. The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. The stormwater infrastructure is to be maintained by the Developer for 24 months from dedication in accordance with a maintenance plan approved by Council. <i>Notional value</i> <i>Stage 1 \$746,848</i>	Prior to the issue of a Subdivision Certificate for the relevant Stage (ie the stage in which the land is included).

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
		<i>Stage 2A \$546,766</i> <i>Stage 4A \$800,210</i> <i>Stage 4B \$466,632</i> <i>\$2,560,456 (includes maintenance cost)</i>	
6. Saddleback Mountain Road	Transport.	Construction of road upgrades and intersection realignments on Saddleback Mountain Road, from the bridge over the M1 and extending in a westerly direction for approximately 200m. The Works include new pavement, new services, undergrounding of existing services, kerb and guttering, driveways and footpaths. The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. <i>Notional value \$2,258,878</i>	Prior to the issue of a Subdivision Certificate for Stage 1.
7. Underpass	Transport.	Connection to the underpass from South Kiama Drive to provide pedestrian and cycleway link to existing networks. The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. <i>Notional value \$120,000</i>	Prior to the issue of a Subdivision Certificate for Stage 3B.
8. Weir Street	Transport.	Upgrade of Weir Street from the north facing off ramp of the M1, in a westerly direction for approximately 150m, including new pavement, new services, undergrounding of existing services, kerb and guttering, driveways and footpaths.	Prior to the issue of a Subdivision Certificate for Stage 4A.

South Kiama Urban Release Area Planning Agreement

Item/ Contribution	Public Purpose	Manner & Extent	Timing
		The final design is to be approved by Council with the Development Application and Subdivision Works Certificate. <i>Notional value \$1,433,617</i>	

Item 15.3

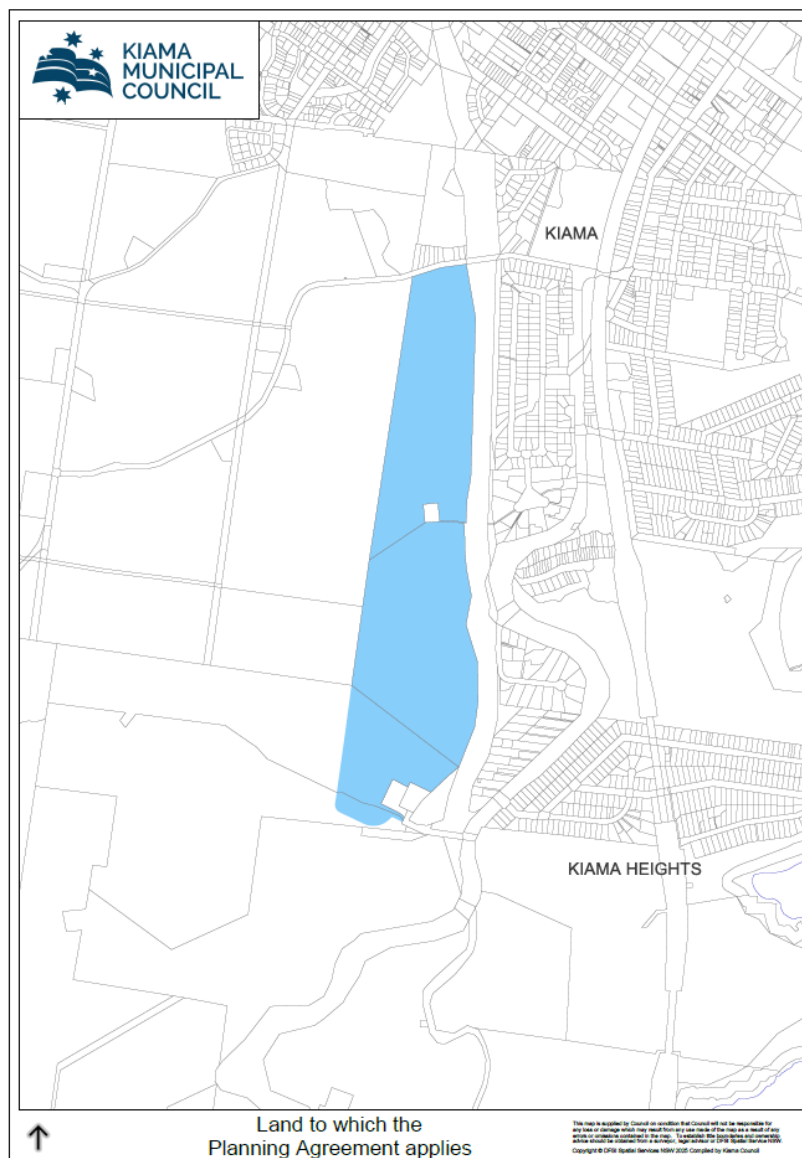
Enclosure 2

South Kiama Urban Release Area Planning Agreement

Schedule 3

(Clause 1 and Item 1 of Schedule 1)

Map of the Land



Item 15.3

Enclosure 2

Item 15.3

(Clause 9 and Schedule 2)

Enclosure 2



South Kiama Urban Release Area Planning Agreement

Schedule 5
(Schedule 2)

Indicative Staging Plan



Note: The Staging Plan is indicative only and is provided for the purpose of the timing of Items in this agreement. The Development is subject to approval with a Development Application. Where there are changes to the order or boundary of staging, Council will advise the revised Timing (by stage) that the Item of Land or Works in Schedule 2 must be completed.

South Kiama Urban Release Area Planning Agreement

Execution

Executed as an Agreement

Dated:

Executed on behalf of Kiama Municipal Council pursuant to delegation of the Council dated [insert date]

Chief Executive Officer

Witness

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

Name/Position

Name/Position

Item 15.3

Enclosure 2