

ATTACHMENT

6.2.1

CAERLEON VOLUNTARY PLANNING
AGREEMENT

Attachments 1-7



Mid-Western Regional Council

**Caerleon Mudgee Pty Limited atf Caerleon Mudgee
Trust** ACN 154 227 219

Planning Agreement

Environmental Planning & Assessment Act 1979

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Agreement made at _____ **on** _____ **2013**

Parties **Mid-Western Regional Council** of 86 Market Street, Mudgee NSW 2850
(the Council)

Caerleon Mudgee Pty Limited atf Caerleon Mudgee Trust ACN 154 227 219 of Level 5, 17-19 Bridge Street, Sydney NSW 2000 (**Developer**)

Background

- A. The Developer has entered into a contract for sale to purchase the Land with completion to take place on or about 23 September 2013.
- B. The Developer intends to develop the Land.
- C. The Developer sought a change to the zoning of the Land and the Land was rezoned by *Mid-Western Regional Local Environmental Plan 2012 Amendment No. 3 (LEP Change)* in order to allow the Proposed Development on the Land.
- D. The Developer proposes to make Development Applications in accordance with the LEP Change.
- E. On 19 April 2013 the Developer lodged with the Council the Neighbourhood 1 Development Application.
- F. The Developer has offered to make the Development Contributions.
- G. The Parties have therefore agreed to enter into this Agreement to enable the Developer to make the Development Contributions.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Accredited Certifier has the same meaning as in section 4(1) of the Act or in any act that replaces or repeals the Act.

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

Agreement means this Planning Agreement.

Application means an application for any Approval.

Approval means any approvals, consents, modifications, Part 4A Certificates, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Proposed Development or for the commencement or carrying out of works contemplated by this Agreement.

Annexure A means the three plans of the Land annexed to this Agreement comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins and identified as Annexure A.

Annexure B means the plan identifying the realignment of Fairydale Lane, the indicative location where the shared footpath/cycle path connects with the Isbester Property boundary, the Isbester Property, the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station which is annexed to this Agreement and identified as Annexure B.

Annexure C means the *Caerleon Mudgee Supplementary Landscape Report (Issue A)* prepared by Site Image (NSW) and dated 13 March 2013 which is annexed to this Agreement and identified as Annexure C.

Annexure D means Appendix C of the *Mid-Western Regional Council Development Control Plan 2013* annexed to this Agreement and identified as Annexure D.

Australian Standards means the standards published by, or on behalf of, Standards Australia Limited ACN 087 326 690.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

Bank Bill Rate means, the average bid rate for bills having a tenor 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). The rate set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

Bill means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth) but does not include a cheque.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claims means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise.

Commencement Date means the date that this Agreement operates under clause 2(b).

Complete, Completed and Completion means completion of an item of the Works.

Completion Notice means a notice setting out an item of the Works that the Developer believes is complete and which is:

- (a) in writing;
- (b) states that it has been issued under this Agreement; and
- (c) has been issued by an Accredited Certifier.

Consent Authority means, in relation to an Application, the Authority having the function to determine that Application.

Construction Certificate has the same meaning as in section 4(1) the Act or any act that replaces or repeals the Act.

CPI means the All Groups Consumer Price Index for Sydney as published by the Australian Bureau of Statistics. If the All Groups Consumer Price Index for Sydney ceases to be published by the Australian Bureau of Statistics, CPI means such replacement index which measures the total movement of consumer prices in Sydney which may be published by the Australian Bureau of Statistics.

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicated Land means the Land for Open Space, Land for Riparian Corridors, Land for Sewerage Pumping Station, Land for Stormwater Detention Basins and Land for Water Storage Reservoir.

Defect Liability Period means the period of 12 months from the date on which the Defect Liability Works reach Completion.

Defect Liability Works means the Works in Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3 that are constructed such as footpaths, cyclepaths, public toilets, and other such works, or planted such as trees (other than trees that have died from natural causes) but do not include the Works that are installed as fixtures such as tables, seating, play equipment, the temporary bus stop and other such works.

Development Application means each Application made or to be made under Part 4 of the Act or any act that replaces or repeals the Act, by or on behalf of the Developer, for consent to develop the whole or any part of the Land for the Proposed Development.

Development Consent means an Approval by the Consent Authority under Part 4 of the Act or any act that replaces or repeals the Act in response to a Development Application, including any modification of it.

Development Contribution means a contribution provided for in Schedule 3 to this Agreement.

Development Servicing Plan means a document prepared as a Development Servicing Plan for the purposes of and in accordance with Part 2 of the *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater*, December 2002, issued by the NSW Office of Water under section 306(3)(c) of the *Water Management Act 2000*.

Easements means the Easement for Rising Main and to Drain Sewerage, Easement for Transmission Line 30.48 Wide and Easement for Transmission Line 45 wide marked and shown as (A), (B) and (C) on DP1184239.

Explanatory Note means the explanatory note required by the Regulation.

Financial Year means each period of 12 months commencing on 1 July and ending on 30 June.

First DSP Charges are the DSP charges per Equivalent Tenement required to be paid first by the Developer in accordance with Item 19 of Schedule 3.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indexation Start Dates means 1 July in the year that falls after 12 months from the dates or times set out in Schedule 3 that Monetary Contribution is required to be paid by the Developer.

Indicative Concept Plan means a concept plan for the Land comprising:

- (a) a total lot yield of 900 – 1,200 lots;
- (b) a neighbourhood centre zoned as B4 Mixed Uses land located in the northern portion of the Land;
- (c) approximately one quarter of the Land as standard residential development area;
- (d) approximately one quarter of the Land as large lot residential development area;
- (e) approximately half of the Land as rural residential areas;
- (f) public open space and a riparian corridor across the balance of the Land;
- (g) a well-connected street network; and
- (h) sewer, water and stormwater drainage infrastructure,

as shown in Appendix C of *Mid-Western Regional Council Development Control Plan 2013* which is Annexure D to this Agreement.

Interest Rate in relation to interest payable under this Agreement means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Isbester Property means the land identified on the plan in Annexure B as the Isbester Property by reference to the legend on that plan.

Land means the land described in Schedule 2, and as shown on the plans attached as Annexure A.

Land for Open Space means the land identified as OS1, OS2, OS3, OS4 and OS5 on the open space hierarchy plan in Annexure A, by reference to the legend on that plan.

Land for Riparian Corridors means the land identified as riparian corridors on the open space hierarchy plan in Annexure A, by reference to the legend on that plan.

Land for Sewerage Pumping Station means the land identified as the land for sewerage pumping station and rising main on the plan in Annexure B, by reference to the legend on that plan.

Land for Stormwater Detention Basins means the land for stormwater detention basins, water quality facilities and open drains identified on the open space hierarchy plan in Annexure A, by reference to the legend on that plan.

Land for Water Storage Reservoir means the land identified as water storage reservoir including road access and distribution main on the plan in Annexure B, by reference to the legend on that plan.

Laws means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an authority, presently applying or as they may apply in the future.

LPI means the Land and Property Information Divisions of the Department of Finance and Services or any similar department or authority that may be established from time to time.

Mid-Western Regional Council Development Control Plan 2013 means the development control plan adopted by the Council on 6 February 2013 and that commenced on 11 February 2013.

Monetary Contributions means the monetary contributions set out in Column 4 of Items 18 and 19 of Schedule 3.

Neighbourhood 1 Development Application means the Development Application lodged by the Developer with the Council on or about 19 April 2013 seeking development consent for the subdivision of part of the Land to:

- (a) create 267 residential lots;
- (b) create 1 lot for a childcare centre;
- (c) create 3 residue lots to be set aside for open space with an area of approximately 29,782m² of open space; and

(d) the carrying out of subdivision works comprising site preparation and grading, tree removal, utilities augmentation, drainage, road construction and landscaping.

Occupation Certificate has the same meaning as in section 4(1) the Act or as in any act that replaces or repeals the Act.

Party means a party to this Agreement, including their respective successors and assigns.

Proposed Development means development generally in accordance with the Indicative Concept Plan.

Real Property Act means the *Real Property Act 1900 (NSW)*.

Register means the Torrens Title register maintained under the Real Property Act.

Regulation means the *Environmental Planning & Assessment Regulation 2000 (NSW)*.

Relevant Legal Challenge means proceedings in a court in which a declaration is sought that the LEP Change, any Development Consent and/or this Agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal.

Reticulation Works means the internal distribution pipes for water and sewerage within the Land that specifically serves the Land.

Sewerage Treatment Works means sewerage treatment works and effluent management works.

Sewer Collection Systems means trunk mains, pumping stations and rising mains used for and in relation to the collection of sewerage.

Spine Road means the proposed new collector road from Hill End Road on the boundary of the Land to Fairydale Lane, as shown on the plans at Annexure A.

Stage 1 means that area of the Land the subject of the Neighbourhood 1 Development Application.

State means the State of New South Wales.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on either or both the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Relevant Legal Challenge is discontinued; or
 - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
 - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that the LEP Change or/and this Agreement is invalid;whichever is the earlier;
- (b) subject to paragraph (c), if an appeal notice is filed and served in connection with final orders in the Relevant Legal Challenge or an appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the appeal is discontinued; or
 - (ii) for any other reason, the appeal no longer includes an appeal in respect of a court decision regarding the validity of the LEP Change and/or this Agreement whichever is earlier,unless the orders in the appeal require the Relevant Legal Challenge to be remitted to another court in relation to the validity of the LEP Change and/or this Agreement, in which case paragraph (a) reapplies; or
- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an appeal notice described in paragraph (b) has expired, if no valid appeal notice has been filed and served by that first-mentioned date.

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Land for Open Space, Land for Riparian Corridors, Land for Stormwater Detention Basins, Land for Sewerage Pumping Station and Land for Water Storage Reservoir. to the Council.

Valuer means a valuer who is a full member of the Australian Property Institute (NSW Division) with not less than 10 years of active engagement and experience in valuing properties which are used for purposes similar to the purpose for which the land the subject of the valuation is to be proposed to be used.

Water and Sewerage Infrastructure means Water Headworks, Water Distribution Works, Sewerage Treatment Works and Sewer Collection Systems but does not include Reticulation Works.

Water Distribution Works means trunk mains, storage and service reservoirs and minor pumping stations used for an in relation to the supply of water.

Water Headworks means dams, weirs, water treatment plants and works, headworks, major pumping stations and associated pipelines or tunnels used for and in relation to the supply of water.

Works means the works specified in Column 4 of Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3.

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;

(d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;

(e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a party to this Agreement is made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Operation and status of this Agreement

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) This Agreement is entered into and takes effect on its execution by all the Parties but the Developer is not required to make the Development Contributions in accordance with clause 5 of this Agreement unless and until a Development Consent has been granted to the Neighbourhood 1 Development Application and the Developer has acted on that Development Consent.

- (c) The Developer agrees that it will not to act on any Development Consent granted to the Neighbourhood 1 Development Application unless and until it is the owner of the Land.
- (d) This Agreement will terminate 1 month after the Development Contributions have been made in accordance with clause 5 of this Agreement.

3. Application of the Agreement

This Agreement applies to the Land.

4. Application of section 94, section 94A and section 94EF of the Act

4.1 This Agreement wholly excludes the application of sections 94 and 94A of the Act to:

- (a) the Proposed Development; and
- (b) the Development Consents.

4.2 This Agreement wholly excludes the application of any local infrastructure contributions that may be required as a consequence of any planning legislation that replaces or repeals the Act to:

- (a) the Proposed Development; and
- (b) the Development Consents.

4.3 This Agreement does not exclude the application of section 94EF of the Act.

5. Requirement to provide the Development Contributions

5.1 Carrying out and Completion of the Works

- (a) The Developer must at its cost procure that each item of the Works is completed in accordance with this Agreement and by the dates or times specified in Column 5 of Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3.
- (b) The Parties acknowledge and agree that further design detail and refinement are/may be necessary in relation to the Works.

- (c) The Developer must:
- (i) prepare the detailed description, including, design drawings, for each of the relevant Works and in relation to the Works in Items 10, 11, 12, 13 and 14 of Schedule 3, that detailed description and design is to be generally in accordance with the *Caerleon Mudgee Supplementary Landscape Report Issue A* prepared by Site Image and dated 13 March 2013 in Annexure C; and
 - (ii) submit it to Council for approval, such approval not to be unreasonably withheld, by the times set out below:
 - A. in relation to the Works in Item 10 of Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - B. in relation to the Works for Item 11 in Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - C. in relation to the Works in Item 12 in Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - D. in relation to the Works in Items 13 and 14 in Schedule 3 in each case, one (1) month before the application for any construction certificate for the relevant Works;
 - E. in relation to the Works in Item 15 of Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - F. in relation to Item 16, before the application for any construction certificate for the relevant Works.
 - G. in relation to Item 17, one (1) month before the times set out in Column 5 of Schedule 3 for Item 17,or in each case, such other time as agreed by the Parties in writing.

- (d) The Council must promptly (and in any event within 40 days of submission) give the Developer notice whether or not the design drawings and description of the Works prepared under subclause (c) are satisfactory. If the design or description are not satisfactory to the Council, acting reasonably, having regard to the *Caerleon Mudgee Supplementary Landscape Report Issue A* prepared by Site Image and dated 13 March 2013 in Annexure C then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Works are in accordance with the requirements of the *Caerleon Mudgee Supplementary Landscape Report Issue A* only. If the Developer does not agree to amend the proposed design to take into account the further information or modifications required by the Council under this clause then the dispute procedures in clause 11 will apply.
- (e) The Council and the Developer will use all reasonable endeavours and act in good faith to agree to the design and location of the shared footpath/cycle path to be provided from Stage 1 to the Isbester Property.
- (f) Following the agreement between the Council and the Developer as to the design and location of the shared footpath/cycle path referred to in paragraph (e) above, the Developer will use all reasonable endeavours to obtain the necessary approvals from any Authority required to be obtained before the shared footpath/cycle path can be constructed.
- (g) The Developer must construct and complete each item of the Works:
- (i) in accordance with all Approvals issued by an Authority with respect to the construction and use of the particular item of the Works;
 - (ii) in accordance with the detailed design for the Works referred to in paragraphs (c) and (d) above;
 - (iii) in accordance with any Australian Standards and Laws applicable to works of the same nature as each aspect of the relevant item of the Works; and
 - (iv) in a proper and workmanlike manner complying with the current industry practice and standards relating to each aspect of the relevant item of the Works.

- (h) When, in the opinion of the Developer, a Defect Liability Work has reached completion, the Developer must notify the Council's representative referred to in clause 16.1 in writing, and must include in that notice:
- (i) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the relevant Defect Liability Work has reached completion; and
 - (ii) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the relevant Defect Liability Work; and
 - (iii) at least three (3) sets of the "as built" drawings of the Defect Liability Works (excluding street trees), including one set in CAD format.
- (i) The Council's representative must inspect the relevant Defect Liability Work within fourteen (14) days of notification under clause 5.1(h) and must by notice to the Developer either:
- (i) concur that Completion has been achieved; or
 - (ii) disagree that Completion has been achieved and (if the Council's representative so disagrees) identify any material defects in the relevant Defect Liability Work that adversely affect the ordinary use and enjoyment of that work or will require maintenance or rectification to be performed to the relevant Defect Liability Work as a result of the existence of the defect (**Defect**) and which in the opinion of the Council's representative prevent Completion. For the avoidance of doubt a Defect does not include damage to a Defect Liability Work caused by a third party.
- (j) If the Council notifies the Developer of a Defect in the Defects Liability Works within the Defects Liability Period, then the Developer must remedy the Defect to the Council's reasonable standards, to the satisfaction of the Council's representative, within a reasonable period (having regard to the nature of the defect).

- (k) The Developer must follow the procedure set out in clause 5.1(h) in respect of the rectification of any Defect.
- (l) Clauses 5.1(h), (i), (j) and (k) do not detract from, limit or override any condition of any Development Consent requiring the Developer to pay to the Council a defect liability bond, or otherwise dealing with defects liability in relation to any infrastructure works carried out by the Developer as part of the Development and which are not subject to clauses 5.1(h), (i), (j) and (k) and transferred, dedicated to or vested in the Council. For the avoidance of doubt, such infrastructure works are subject to the conditions of any Development Consent.
- (m) Clauses 5.1(h), (i), (j), (k) and (l) do not merge on termination of this Agreement but instead survive such termination and continue to be effective until all of the obligations contemplated by those clauses have been completed.

5.2 Dedication of the Dedicated Land

- (a) The Developer must dedicate or transfer:
 - (i) the Land for Open Space;
 - (ii) the Land for Riparian Corridors;
 - (iii) the Land for Stormwater Detention Basins;
 - (iv) the Land for Sewerage Pumping Station, having an area of not greater than 0.1ha not including the area required for access and service provision; and
 - (v) the Land for Water Storage Reservoir, having an area of not greater than 0.5ha excluding the area required for access and service provision,

to the Council by the dates or times specified in Column 5 of Items 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Schedule 3, free of any trusts, estates, interests, covenants and encumbrances (other than the Easements) and at no cost to the Council.
- (b) After an item of Work has been completed and the land required to be dedicated in accordance with this Agreement has been dedicated or

transferred by the Developer to the Council, the Council accepts ownership, risk, possession and control of that land.

5.3 Council Works

- (a) The Developer will grant to the Council a licence to enter and occupy the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir generally in accordance with the provisions in Schedule 4 for the purpose of allowing Council to exercise any right granted to Council under this Agreement.
- (b) The Parties agree that in lieu of the Council carrying out the works to the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir, the Developer may build those works, at the Council's cost. The Parties acknowledge that in that event, a further agreement between the Parties will be required setting out each Parties' obligations in relation to those works.
- (c) The Parties agree to work together and act in good faith to agree to design and locate Water Headworks, Sewerage Treatment Works, Water Distribution Works and Sewer Collection Systems required to service the catchment area in the most efficient and cost effective manner for both parties.
- (d) In the event of any dispute between the Parties in relation to the design of the works referred to in paragraph 5.3(c) or the location of, the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir, the Parties agree that clause 11 will apply to the dispute.

5.4 Payment of Monetary Contributions

- (a) Subject to clause 5.7 and in accordance with clauses 5.4(b) and (c), the Developer must pay the Monetary Contributions to the Council by the dates or times specified in Column 5 of Items 18 and 19 of Schedule 3.
- (b) In relation to the Monetary Contribution in Item 19 of Schedule 3:
 - (i) if at any time the Council prepares new Development Servicing Plan calculations which are less than the Monetary Contribution required to be paid by the Developer in Item 19 of Schedule 3, the

Developer's obligation to pay the monetary contribution will be reduced to the lesser sum; and

- (ii) after a period of 10 years from the commencement of this Agreement, the Parties agree to use reasonable endeavours to renegotiate the Development Servicing Plan charges and clause 5.4(a) above will cease to apply to Development Service Plan charges after that 10 year period.
- (c) Any Monetary Contribution required to be paid under this Agreement is to be indexed as follows.

On each anniversary of the Indexation Start Date the Monetary Contributions will be varied in accordance with the following formula:

$$P = A + (A \times Z)$$

Where:

P means the Monetary Contributions payable for that Financial Year (**Relevant Financial Year**);

A means the Monetary Contributions payable for the Financial Year immediately before the Relevant Financial Year; and

Z is (Current Period CPI – Previous Period CPI) / Previous Period CPI (expressed as a percentage)

Where:

Current Period CPI means the CPI last published immediately before the commencement of the Relevant Financial Year; and

Previous Period CPI means the CPI last published immediately before the date which is one year prior to the commencement of the Relevant Financial Year.

However, if the figure for **Z** calculated in accordance with the above results in a figure which is greater than 3%, then **Z** will be 3%.

5.5 The Developer must pay the Monetary Contributions required under clause 5.4 either by cheque made payable to the Council or by electronic transfer into a bank account, the details of which are to be provided by the Council to the Developer.

5.6 The Council acknowledges that the Monetary Contributions are provided by the Developer to the Council for the carrying out of upgrade works to Fairydale Lane and for the provision of Water and Sewerage Infrastructure by the Council.

5.7 Offset of value of part of the Dedicated Land against the payment of Monetary Contributions

(a) The amount of the Monetary Contributions to be paid by the Developer under this Agreement is to be offset against the value of the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir to be dedicated to the Council by the Developer. For the avoidance of doubt, where the Land for Sewerage Pumping Station is zoned RE1 public recreation at the time it is dedicated to the Council, no offset applies to the Monetary Contributions.

(b) The amount of the Monetary Contributions to be paid by the Developer under this Agreement are not to be offset against the value of any easement affecting the Land provided by, or required to be provided by the Developer to the Council.

(c) The value of the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir (excluding any easement affecting such land provided by, or required to be provided by the Developer to the Council) is to be determined in accordance with the following rates:

- (i) \$50.00 per sqm for non-residential zoned land; and
- (ii) \$187.50 per sqm for land zoned residential

(collectively, Rates).

(d) The Rates referred to in paragraph (c) above are to be indexed on 1 July in each year after the commencement of this Agreement in accordance with the following formula:

$$P = A + (A \times Z)$$

Where:

P means the relevant Rate applicable for that Financial Year (Relevant Financial Year);

A means the Rate applicable for the Financial Year immediately before the Relevant Financial Year; and

Z is $(\text{Current Period CPI} - \text{Previous Period CPI}) / \text{Previous Period CPI}$ (expressed as a percentage)

Where:

Current Period CPI means the CPI last published immediately before the commencement of the Relevant Financial Year; and

Previous Period CPI means the CPI last published immediately before the date which is one year prior to the commencement of the Relevant Financial Year.

However, if the figure for **Z** calculated in accordance with the above results in a figure which is greater than 3%, then **Z** will be 3%.

6. Completion of Works

6.1 The Developer must provide a Completion Notice to Council within fifteen (15) Business Days of completion of any item of the Works.

6.2 The Council must inspect the item of the Works set out in the Completion Notice within fifteen (15) Business Days of receipt of that Completion Notice.

6.3 Within the earlier of:

(a) fifteen (15) Business Days of inspecting the item of the Works set out in a Completion Notice; or

(b) twenty-eight (28) days from the receipt of the relevant Completion Notice,

the Council must provide notice in writing to the Developer that the item of the Works set out in the Completion Notice:

(c) has been completed; or

(d) has not been completed in which case the notice must also detail:

- (i) those aspects of the relevant item which have not been completed; and
- (ii) the work the Council requires the Developer to carry out in order to rectify those deficiencies.

6.4 If the Council does not provide the Developer with notice in accordance with clause 6.3 the item of the Works set out in the Completion Notice will be deemed to have been completed on the date nominated in the Completion Notice.

6.5 Where the Council serves notice on the Developer pursuant to clause 6.3(d) the Developer must:

- (a) rectify the deficiencies in that item of the Works in accordance with that notice within three (3) months from the date it is issued by the Council; or
- (b) serve a further notice on the Council that it disputes the matters set out in the Notice.

6.6 Where the Developer:

- (a) serves notice on the Council in accordance with clause 6.5, the dispute resolution provisions of this Agreement apply; or
- (b) rectifies the item of the Works in accordance with clause 6.5(a), it must serve upon the Council a new Completion Notice for that item of the works (New Completion Notice).

6.7 The provisions of clauses 6.2 to 6.5 (inclusive) apply to any New Completion Notice issued by the Developer.

7. Developer's Capacity and Liability

7.1 The Developer enters into this Agreement in its capacity as trustee of the Caerleon Mudgee Trust or such other trust from time to time (**Trust**) and not in its personal capacity. The Developer incurs any liability or obligations to the Council solely in its capacity as trustee of the Trust.

7.2 The liability of the Developer to Council under or arising out of or in connection with this Agreement is limited to and can only be enforced against the Developer to the extent to which it can be satisfied from that part of the Land being developed at the

time the liability arises only. This clause does not apply to the extent to which there is a reduction in the Developer's right of indemnification out of the assets of the trust due to fraud or wilful default or gross negligence by the Developer .

7.3 The Council has no right to an indemnity from and has no recourse against the members or beneficiaries of the Trust for or in respect of any liability or obligations of the Developer to Council.

7.4 This clause applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Developer to Council under this Agreement.

8. Registration of this Agreement

8.1 Registration of this Agreement

- (a) As contemplated by section 93H of the Act, the Developer, within two (2) calendar months of the date of this Agreement, agrees to procure the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for the Land.
- (b) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - A. has an estate or interest in the Land registered under the *Real Property Act 1900 (NSW)*; or
 - B. is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,to enable the registration of this Agreement under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for the Land in accordance with section 93H of the Act.
- (c) The Developer will, within 15 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance

with clause 8.1(a) and (b) above, provide the Council with a copy of the relevant folios of the Register for the Land.

8.2 Release and discharge of this Agreement

Where the Developer has satisfied its obligations under this Agreement in respect to any part of the Land, the Council will do all things reasonably required by the Developer to release and discharge this Agreement with respect to that part of the Land including removing this Agreement from the title of any part of that Land within 15 business days after a written request to do so by the Developer.

9. Security and enforcement

9.1 Security

In consideration of the Council entering into this Agreement, the Developer has agreed to provide security to the Council for performance of the Developer's obligations under this Agreement by the registration of this Agreement under clause 8.1 of this Agreement and by agreeing to clauses 9.2, and 9.3 of this Agreement.

9.2 Compulsory acquisition

- (a) If the Developer does not transfer any part of the Dedicated Land to the Council as required by this Agreement, the Developer consents to the Council compulsorily acquiring that part of the Dedicated Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00 for each part of the Dedicated Land required to be dedicated under this Agreement.
- (b) Before exercising the right conferred in clause 9.2(a), the Council must:
 - (i) give written notice to the Developer to rectify the non-compliance within 30 Business Days of receipt of the written notice; and
 - (ii) allow the Developer to rectify the non-compliance within 30 Business Days of the receipt of the written notice referred to in paragraph 9.2(b)(i).
- (c) The Developer and the Council agree that:

- (i) this clause 9.2 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
- (ii) in this clause 9.2 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

9.3 Council may charge interest on late payment of DSP Charges

The Developer agrees to pay interest to the Council on any amount of the Monetary Contributions in Item 19 of Schedule 3 from 28 days after it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

9.4 Enforcement

This Agreement may be enforced by any Party in any court of competent jurisdiction.

9.5 No prevention to enforcement

For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Council from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

9.6 Relevant Legal Challenge

- (a) Notwithstanding anything else in this Agreement, and subject to clause 9.6(b), the Council agrees that in the event that a Relevant Legal Challenge is commenced:
 - (i) the Developer's obligations to make the Development Contributions under this Agreement are suspended and the Council cannot require the Developer to make all of the Development Contributions; and

- (ii) the consent provided under this Agreement by the Developer to the compulsory acquisition of any part of the Dedicated Land by the Council is withdrawn, is of no effect and the Council cannot compulsorily acquire any part of the Dedicated Land pursuant to this Agreement.
- (b) Clause 9.6(a) will have effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that the LEP Change, or any of the Development Consents and/or this Agreement is invalid, the Parties agree that from (and including) the Suspension Expiry Date:
 - (i) the Developer's obligations to make the Development Contributions under this Agreement have full legal force and effect and the Developer must make the Development Contributions by the dates or times provided in Column 5 of Schedule 3; and
 - (ii) the Developer gives its consent to the Council compulsorily acquiring the Dedicated Land upon the terms agreed in this Agreement.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that the LEP Change, any of the Development Consents and/or this Agreement is invalid (**Court Order**), the Parties agree that from (and including) the Suspension Expiry Date:
 - (i) where the Developer has paid the whole or any part of the Monetary Contributions or transferred the whole or any part of the Dedicated Land to the Council or the Council has compulsorily acquired the whole or any part of the Dedicated Land under this Agreement by the Suspension Expiry Date, the provisions of clause 9.6(e) apply; or
 - (ii) where the Developer has not completed the whole or any part of the Works by the Suspension Expiry Date, the Developer has no obligation to complete the whole or any part of the Works relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to complete those Works;

- (iii) where the Developer has not transferred the whole or any part of the Dedicated Land to the Council by the Suspension Expiry Date:
 - A. the Developer has no obligation to transfer or dedicate the whole or any part of the Dedicated Land relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to transfer that Dedicated Land; and
 - B. the consent provided under this Agreement by the Developer to the compulsory acquisition of that Dedicated Land is withdrawn, is of no effect and the Council cannot compulsorily acquire that Dedicated Land pursuant to this Agreement; or
- (iv) where the Developer has not paid the whole or any part of the Monetary Contributions to the Council by the Suspension Expiry Date, the Developer has no obligation to pay the whole or part of the Monetary Contributions relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to pay those Monetary Contributions.
- (e) In the event that clause 9.6(d)(i) applies, the Council agrees:
 - (i) to transfer back to the Developer that part of Dedicated Land relating to or connected with the subject matter of the Court Order free of all encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer or compulsory acquisition); and
 - (ii) to deliver to the Developer within 20 Business Days after the Suspension Expiry Period Date:
 - A. a form of transfer or transfers in respect of the relevant Dedicated Land in favour of the Developer, for a consideration of \$1.00 executed by the Council and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and

B. the certificate or certificates of title for the relevant Dedicated Land,

and the Council must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the relevant Dedicated Land to the Developer free of all encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer or compulsory acquisition); and

(iii) to pay back to the Developer the relevant Monetary Contributions that were paid by the Developer to the Council pursuant to this Agreement, including interest calculated in accordance with the Interest Rate.

10. Dealings with Land

10.1 Subject to clause 10.1(b) the Developer must not have any Dealing unless:

- (a) the Developer first informs the proposed assignee, transferee, purchaser or other party of this Agreement and provides the proposed assignee, transferee, purchaser or other party with a copy of this Agreement; and
- (b) where the Dealing involves selling, transferring or assigning of the Land or part of the Land only, the Developer transfers the obligations of this Agreement to the assignee, transferee or purchaser. For the avoidance of doubt, the Developer is not required to transfer the obligations of this Agreement to any mortgagee or charge.

10.2 If the Incoming Party is acquiring an interest in the Land or part of the Land as a purchaser of one or more lots in a community scheme, (whether or not the community plan has, at the date of exchange, been registered at Land and Property Information NSW), then the Developer may create that interest without requiring that party to enter into an agreement with the Council and the interest so created will not be in breach of this Agreement.

11. Dispute resolution

11.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 11.

11.2 Written notice of dispute

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

11.3 Attempt to resolve

On receipt of notice under clause 11.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

11.4 Mediation

If the Parties do not agree within 21 days of receipt of notice under clause 11.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Disputes for Expert Determination

If the mediation referred to in clause 11.4 has not resulted in settlement of the dispute, any Party may, with the prior written consent of the other Party, refer the matter to expert determination in accordance with clause 11.6, such expert to act in accordance with the requirements of clauses 11.7, 11.8, 11.9, 11.10 and 11.11.

11.6 Choice of expert

- (a) A dispute to be referred to an expert in accordance with clause 11.5 must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under clause 11.5, appointed by the President or other senior officer for the time being of the body administering the relevant field.
- (b) If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

11.7 Requirements for expert

- (a) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in contest;
 - (ii) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
 - (iii) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (b) The Parties must enter into an agreement with the expert appointed under this clause 11.7 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

11.8 Directions to expert

In reaching a determination in respect of a dispute under clause 11.5, the independent expert must give effect to the intent of the Parties entering into this Agreement.

11.9 Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

11.10 Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and

- (c) any other documents, records or information the expert requests.

11.11 Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (d) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11.12 Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert will not be liable in respect of the expert determination, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11.13 Other courses of action

If the mediation referred to in clause 11.4 or the expert determination required or agreed under clause 11.5 has not resulted in resolution of the dispute, any Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

11.14 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 is to attempt to settle the dispute. No party may use any information or documents obtained through any

dispute resolution process undertaken under this clause 11 for any purpose other than in an attempt to settle the dispute.

11.15 No prejudice

This clause 11 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

12. GST

12.1 Interpretation

In this clause 12:

- (a) Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
- (b) GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- (c) GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (d) 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.
- (e) 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.

12.2 Subject to clause 12.3, 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.

12.3 Clause 12.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

- 12.4** 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:
- (a) 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;
 - (b) that any amounts payable by the Parties in accordance with clause 12.2 (as limited by clause 12.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 12.5** No payment of any amount pursuant to this clause, 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.
- 12.6** 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.
- 12.7** This clause continues to apply after expiration or termination of this Agreement.

13. Costs

The Developer agrees to pay the Council's reasonable legal costs and other costs incurred by the Council in relation to the negotiation, preparation, execution, advertising, stamping and registration of this Agreement up to \$10,000 (including GST).

14. Effect of Schedulised terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules to this Agreement as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

15. General provisions

15.1 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.

15.2 Further Acts

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

15.3 Governing Law and Jurisdiction

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

15.4 No fetter

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

15.5 Representations and warranties

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

15.6 Severability

- (a) If any part 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.

- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

15.7 Modification

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

15.8 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.

15.9 Good Faith

Each Party must act in good faith towards the other Party and use its best endeavours to comply with the spirit and intention of this Agreement.

15.10 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as a **New Law**) and the Developer is obliged by the New Law to do something or pay an amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.

16. Notices

16.1 Form

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

The Council

Address: 86 Market Street, Mudgee NSW 2850
Telephone: (02) 6378 2850
Fax: (02) 6378 2815
Attention: The General Manager

Developer

Address: Level 5, 17-19 Bridge Street, Sydney NSW 2000
Telephone: (02) 9253 0965
Fax: (02) 9253 0901
Attention: Nathan Davis

16.2 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted; or
 - (iii) if it is 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.

(b) Receipt - next Business Day

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 after 5pm on any Business 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.

17. Counterparts

This Agreement may be executed in any number of counterparts.

Schedule 1 - Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes.</p> <p>(b) Yes.</p> <p>(c) No.</p>
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Land (subject to the Note in Schedule 2).</p>
<p>Description of the change to the environmental planning instrument and development to which this Agreement relates (Section 93F(3)(a))</p>	<p>The LEP Change and the Proposed Development.</p>
<p>The scope, timing and manner of delivery of contributions required by the Planning Agreement - (Section 93F(3)(c))</p>	<p>See Schedule 3.</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>See clauses 4.1 and 4.2.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>See clauses 4.1 and 4.2.</p>

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Applicability of section 94EF of the Act - (Section 93F(3)(d))	See clause 4.3.
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 11.
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clauses 8.1 and 9.
Registration of the Planning Agreement - (Section 93F(3)(g))	The Parties agree that the Planning Agreement will be registered in accordance with clause 8.1.
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See clause 15.4.

Schedule 2 - Land

The whole of the land being Lot 21 in Deposited Plan 1186131 and Lot 1 (Part) in DP 721674*.

*Note: Part of this lot will be included as the Land to which this Agreement applies if the Developer is successful in its possessory title application for this lot.

Schedule 3 – Development Contributions

Schedule of development contributions and public benefits

Col 1 – Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
Dedicated Land					
1	Land for local Park OS1.	Public open space and recreation.	Dedication of a maximum of 1,646m ² of land for OS1 Northern reserve. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 10 of this Schedule relating to OS1, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
2	Land for local Park OS2.	Public open space and recreation.	Dedication of a maximum of 4,800m ² of land for OS2 Town Park. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 11 of this Schedule relating to OS2, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
3	Land for local Park OS3.	Public open space and recreation.	Dedication of a maximum of 2,000m ² of land for OS3 Creekside Park. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 12 relating to OS3, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
4	Land for local Park OS4.	Public open space and recreation.	Dedication of a maximum of 14,340m ² of land for OS4 Railway Park 1.	Works in kind are to be undertaken in stages for OS4 see: Item 13 in this Schedule. Dedication to occur within 28 days of completion of all of the	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			<p>Note: The size of the park is approximate and is subject to final development application documentation and approval.</p>	<p>works in Item 13 of Schedule 3 for OS4, as relevant to the stage of works, OR such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that will comprise the park will also be subdivided to enable dedication of parts of the park in stages.</p>	
5	Land for local Park OS5.	Public open space and recreation.	<p>Dedication of a maximum of 14,398m² of land for OS5 Railway Park 2.</p> <p>Note: The size of the park is approximate and is subject to final development application documentation and approval.</p>	<p>Works in kind are to be undertaken in stages for OS5: see Item 14 in this Schedule. Dedication to occur within 28 days of completion of all of the works in Item 14 of this Schedule relating to OS5, as relevant to the stage of works, OR such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that will comprise the park will also be subdivided to enable dedication of parts of the park in stages.</p>	See clauses 8.1 and 9.2.
6	Land for riparian corridor for public recreational use.	Public open space, recreation and stormwater facilities.	<p>Dedication of a maximum of 149,357m² of land including 3,550m² for footpaths within riparian corridor.</p> <p>Note: The size of the riparian corridor is approximate and is subject to final development application documentation and approval.</p>	<p>Works-in-kind are to be undertaken in stages see: Item 15 of this Schedule. Dedication to occur within 28 days of completion of works in Item 15 along the riparian corridor land relevant to the stage of works or such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that comprises the riparian corridor will also be subdivided to enable dedication of parts of the riparian</p>	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
7	Land for stormwater detention basins, water quality facilities and open drains.	Stormwater drainage facilities.	Dedication of land required for stormwater drainage facilities. Note: The size of land parcels will be subject to final design approved by the Developer, and development approval.	corridor in stages. Within 28 days of completion of works in Item 16 of this Schedule relating to the stormwater detention basins, water quality facilities and open drains. Development to occur over stages, therefore dedication to occur within 28 days of completion of each stage of work, OR such other time as agreed by the Parties in writing. Note: It is proposed that the land that comprises the stormwater detention basins, water quality facilities and open drains will also be subdivided to enable dedication in stages of parts of the land comprising stormwater detention basins, water quality facilities and open drains.	See clauses 8.1 and 9.2.
8	Land for Sewerage Pumping Station.	Waste water systems.	Dedication of land required for sewerage pumping station (SPS) and rising main, with offsets against the payment of other monetary contributions under the VPA for the value of the land dedicated (excluding any easements the location of which are subject to the Developer's approval), as agreed to by both Parties. Alternatively, the VPA will allow the dedication of the land via another means as	Within 28 days of the Council notifying the Developer in writing of completion of the works relating to the sewerage pumping station (SPS) and rising main, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
9	Land for Water Storage Reservoir	Water supply system.	<p>agreed by the Parties in writing.</p> <p>Note: The size of the land parcel will be subject to final design, approved by the Developer, and development approval but it is to be an area not greater than 0.1ha excluding the area for access and service provision.</p>	<p>Within 28 days of the Council notifying the Developer in writing of completion of the works relating to the water storage reservoir including road access and distribution main, OR such other time as agreed by the Parties in writing.</p>	<p>See clauses 8.1 and 9.2.</p>
		<p>Dedication of land required for the water storage reservoir including road access and distribution main, with offsets against the payment of other monetary contributions under the VPA for the value of the land dedicated (excluding any easements the location of which are subject to the Developer's approval), as agreed to by both Parties. Alternatively, the VPA will allow the dedication of the land via another means as agreed by the Parties in writing.</p> <p>Note: Size of land parcel will be subject to final design, approved by the Developer, and development approval but it is to be an area not greater than 0.5ha excluding the area for access and service provision.</p>			

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
Works					
10	Local Park OS1.	Public open space and recreation.	Carry out works in Northern Reserve (OS1) including tree and shrub planting, regeneration, footpaths, seating, signage/ interpretation. Note: Refer to "Caerleon – Mudgee Supplementary Landscape Report (Issue A)" prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered will create the 200 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.
11	Local Park OS2.	Public open space and recreation.	Carry out works in Town Park (OS2) including tree and shrub planting, footpaths, turf, seating, scooter park or basketball hoops or similar, playground with shade, kickabout space, pedestrian lighting, public toilets, BBQ area and picnic tables. Note: Refer to "Caerleon – Mudgee Supplementary Landscape Report (Issue A)" prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered would create the 350 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
12	Local Park OS3.	Public open space and recreation.	<p>Carry out works in Creekside Park (OS3) including tree and shrub planting, footpaths, seating, turf and play equipment.</p> <p>Note: Refer to "Caerleon – Mudgee Supplementary Landscape Report (Issue A)" prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered would create the 700 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.
13	Local Park OS4.	Public open space and recreation.	<p>Carry out works in Railway Park 1 (OS4) including tree and shrub planting, shared footpaths/ cyclepaths, seating, turf, street tree planting, outdoor gym equipment, play equipment and drainage elements.</p> <p>Note: Refer to "Caerleon – Mudgee Supplementary Landscape Report (Issue A)" prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Development of OS4 to occur over stages. Works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage in which the part of the park is situated, OR such other time as agreed by the Parties in writing.	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
14	Local Park OS5.	Public open space and recreation.	<p>Carry out works in Railway Park 2 (OS5) including tree and shrub planting, shared footpaths/cyclepaths, seating, turf, street tree planting and drainage elements.</p> <p>Note: Refer to "Caerleon – Mudgee Supplementary Landscape Report (Issue A)" prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Development of OS5 to occur over stages. Works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the part of the park is situated, OR such other time as agreed by the Parties in writing.	See clause 8.1.
15	Riparian corridors.	Open space, recreation and stormwater facilities.	Carry out construction of hard and soft landscaping riparian corridors, including tree and shrub planting, stabilisation works, shared footpaths/cyclepaths, seating and informal turf areas.	<p>Development within the riparian corridors to occur over stages and therefore works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the riparian corridor is situated, OR such other time as agreed by the Parties in writing.</p> <p>Notwithstanding the above and subject to clauses 5.1(e) and 5.1(f), the shared footpath/cycle path from that part of the Land comprising Stage 1 to the Isbester Property is to be completed within 3 months after the issue of an occupation certificate</p>	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
16	Stormwater detention basins, water quality facilities and open drains.	Stormwater drainage facilities.	Carry out construction of hard and soft landscaping within stormwater detention basins, water quality facilities and open drains, including tree and shrub planting, shared footpaths/cyclepaths, seating and turf. Value of construction of hard and soft landscape elements only.	Development within the stormwater drainage facilities to occur over stages. Works for each stage are to be completed prior to the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the stormwater detention basins, water quality facilities and open drains are situated, OR such other time as agreed by the Parties in writing.	See clause 8.1.
17	Bus stops.	Roads and traffic facilities and provision of public transport services.	Construction of one (1) temporary bus stop along the Spine Road comprising a bus stop marker.	Temporary bus stop: To be provided within 1 month of the issue of a subdivision certificate for a plan of subdivision that when registered would create the 100 th lot on the Land, provided that: 1. a bus operator has requested either the Council or the Developer to provide the temporary bus stops; and 2. the bus operator is operating a bus service along the Spine Road	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			Construction of up to four (4) permanent bus stops along the Spine Road including shelter, signage and road markings to Council's specifications.	or part of the Spine Road. Permanent bus stops: To be provided within 2 months of completion of the Spine Road and completion of the upgrade of Fairydale Lane, OR as requested by the relevant transport authority for its installation (whichever occurs later), OR such other time as agreed in writing by the Parties.	
Monetary Contributions					
18	Fairydale Lane upgrade.	Roads and traffic facilities.	<p>The Developer to pay the Council \$500,000 towards the upgrade of Fairydale Lane and the Council to deliver it to the following minimum standard:</p> <ul style="list-style-type: none"> • 2 x 3.25m travel lanes • 2 x 0.5m sealed shoulders • 2 x 1m unsealed shoulders <p>Total Seal width = 7.5m Total Pavement width = 9.5m Road marking centre and edge lines Swale drains both sides Box culvert at watercourse</p> <p>Payments to be made by per lot contributions of \$500 per lot up to 1,000 lots with the total amount of the contribution</p>	On connection of Fairydale Lane to the Spine Road the Developer is to pay Council a lump sum for the total per lot contribution for the number of lots created by registered plans of subdivision at that date at a rate of \$500 per lot. Thereafter, a per lot contribution is payable by the Developer upon registration of a plan of subdivision creating each lot with the per lot contribution increasing with indexation in accordance with clause 5.4(c) for any lot created twelve (12) months after connection of the Spine Road to Fairydale Lane.	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
19	DSP Charges (water and sewer).	Water and Sewerage Infrastructure.	<p>capped at \$500,000 plus indexation in accordance with clause 5.4(c) for each lot created 12 months after the connection of the Spine Road and Fairydale Lane.</p> <p>Note: Offset provisions in clause 5.7 may apply.</p> <p>Payment of \$7,837 per Equivalent Tenement for water and \$3,558 per Equivalent Tenement for sewerage where the Equivalent Tenement is a residential allotment (medium) 650m² – 1,200m² to the Council.</p> <p>Where the Equivalent Tenement is for residential development and is other than a residential allotment (medium) the amount of the contribution, will be adjusted in accordance with the charges for the development category set out in Schedule 5.</p> <p>The relevant contribution amount is to be paid for the delivery of the following Water and Sewerage Infrastructure:</p> <ol style="list-style-type: none"> Design and construction of Sewerage Treatment Works and Sewer Collection Systems and future 	<p>The Water and Sewerage Infrastructure are to be staged as follows:</p> <ol style="list-style-type: none"> <i>First tranche:</i> The Parties will, acting in good faith, develop and agree on a project schedule for the delivery of the Water and Sewerage Infrastructure to service the first 400 lots so as to enable the Developer to sell those 400 lots in accordance with the Developer’s proposed timetable for the sale of those lots. <i>Second tranche:</i> Water and Sewer Infrastructure to service the balance of the Proposed Development in accordance with the timetable agreed between the Developer and the Council, having regard to the Developer’s timing for the sale of the balance of the lots. Any dispute between the Developer and the Council as to the agreed timetable is to be 	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
		<p>upgrades/ amplifications to them required to service the residential development of the Proposed Development; AND</p> <p>2. Design and construction of Water Headworks and Water Distribution Works to supply water to the first stage of development (i.e. first 267 residential lots) and future upgrades/ amplifications required to service future stages of the residential development of the Proposed Development, including all development up to 500m AHD. Water infrastructure includes mains from Bellevue Hill Estate through the Land to Hill End Road.</p> <p>Note: Offset provisions in clause 5.7 may apply.</p>	<p>resolved in accordance with clause 11.</p> <p>The First DSP Charges are payable 12 months from the date of this Agreement or on registration of a plan of subdivision creating the 100th lot, whichever occurs first.</p> <p>If 12 months from the date of this Agreement occurs first, then the First DSP Charges payable will be an amount for the number of lots that have been created by a plan of subdivision within 12 months from the date of this Agreement.</p> <p>If the registration of the plan of subdivision creating the 100th lot occurs first, then the First DSP Charges payable will be an amount for the first 100 lots created by a plan of subdivision.</p> <p>The DSP charges per Equivalent Tenement for the balance of the lots is to be payable on the issue of a subdivision certificate for a plan of subdivision that when registered would create the lot, OR such other time agreed by the Parties in writing.</p>		

Schedule 4 – Terms of Licence

1. Definitions and Interpretation

1.1 In this Schedule, words beginning with a capital letter that are defined in clause 1.1 of this Agreement have the meaning ascribed to them in that clause.

1.2 For the purpose of this Schedule 4:

- (a) the **Land** means the land being accessed in accordance with this licence;
 - (b) the **Licensor** means the Developer;
 - (c) the **Licensee** means the Council; and
 - (d) the **Purpose** means the purpose for which the Licensee is accessing the Land from time to time.
-

2. Licence

2.1 Personal rights

- (a) The Licence is personal to the Licensee.
- (b) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without prior written consent of the Licensor.
- (c) The Licensor may refuse the granting of consent under paragraph 2.1(b) without reason and at its absolute discretion.

2.2 Leasehold interest

- (a) This Agreement does not grant to the Licensee a leasehold interest in the Land. The Parties agree that:
 - (i) subject to any contrary terms of this agreement, this licence does not confer exclusive possession of the Land on the Licensee; and
 - (ii) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - A. entry onto the Land; and/or
 - B. the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the Purpose; and
 - (iii) the Licensee does not have any right to quiet enjoyment of the Land; and
 - (iv) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensee.

3. Compliance with authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the Purpose.

3.2 Compliance with the terms of consents

In the conduct of the Purpose and compliance with its obligations under this Agreement, the Licensee must comply with the requirements of all Authorities.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, order or other requests served upon itself or the Licensor and which arise from the conduct of the Purpose on the Land by the Licensee.

3.4 Obtaining further consents

- (a) If the Licensee requires further consents to conduct the Purpose it must:
 - (i) make such applications itself; and
 - (ii) bear all costs incurred by it in relation to obtaining the relevant consent.
- (b) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

4. Limitation of the Licensor's liability

4.1 Insurances

- (a) The Licensee must effect and keep current and in force the following policies of insurance:
 - (i) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - A. personal injury or death of any person; and
 - B. loss or damage to property,
 - (ii) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;
 - (iii) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and

- (iv) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.
- (b) The policies referred to in paragraphs 4.1(a)(i), 4.1(a)(iii) and 4.1(a)(iv) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

- (a) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (b) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensee must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk

4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature), made in respect of the Licensee's use and occupation of the Land but only to the extent that any such Claim does not arise as the result of the wilful or negligent acts or omissions of the Licensor, its officers, employees, agents, contractors or invitees.

4.6 WH & S

For the purposes of this Agreement and in accordance with clause 293 of the *Work Health & Safety Regulation 2011 (NSW)* (**WH&S Regulation**), the Licensor:

- (a) will engage as the "principal contractor" for any part of the Purpose conducted on the Land, the head civil works contractor specified by the Licensee from time to time; and
- (b) will authorise the nominated head civil works contractor to exercise such authority of the Licensor as is necessary to enable the head civil works contractor to have control of the workplace and to discharge the duties of a principal contractor under Chapter 6 of the WH&S Regulation.

Schedule 5 – Water and Sewerage Charges for Development Categories

Water		ET/Unit
Residential	Residential allotment (small) <650m ²	0.75
	Residential allotment (medium) 650m ² -1200m ²	1
	Residential allotment (large) >1200m ²	1.5
	Flat/Unit/Villa (small) <70m ²	0.333
	Flat/Unit/Villa (medium) 70m ² - 85m ²	0.4
	Flat/Unit/Villa (large) > 85m ²	0.667

Sewer		ET/Unit
Residential	Residential allotment (small) <650m ²	0.75
	Residential allotment (medium) 650m ² -1200m ²	1
	Residential allotment (large) >1200m ²	1.05
	Flat/Unit/Villa (small) <70m ²	0.333
	Flat/Unit/Villa (medium) 70m ² - 85m ²	0.4
	Flat/Unit/Villa (large) > 85m ²	1

Executed as a deed

Signed sealed and delivered by

Mid-Western Regional Council by its delegates

Signature of General Manager

[]
General Manager

Signature of Mayor

[]
Mayor

Signature of Witness

Name of Witness in full

Executed by

Caerleon Mudgee Pty Limited ACN 154 227
219 in accordance with section 127 of the
Corporations Act by or in the presence of;

Signature of Director/Secretary

Name of Director/Secretary

Signature of Director

Name of Director

Annexure A – Plans of the Land comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins

Annexure B – Plan identifying the realignment of Fairydale Lane, the indicative location where the shared footpath/cycle path connects with the Isbester Property boundary, the Isbester Property, the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station

Annexure C – *Caerleon Mudgee Supplementary Landscape Report (Issue A)*
prepared by Site Image (NSW) and dated 13 March 2013

Annexure D – Appendix C of *Mid-Western Regional Council Development Control Plan 2013*

Sydney
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28 August 2013

Catherine Van Laeren
Group Manager – Development & Community Services
Mid-Western Regional Council
PO Box 156
Mudgee NSW 2850

Dear Catherine,

RE: Draft Planning Agreement between Mid-Western Regional Council and Caerleon Mudgee Pty Ltd

This submission has been prepared on behalf of Caerleon Mudgee Pty Limited atf Caerleon Mudgee Trust and is submitted to Mid-Western Regional Council to provide commentary on the Voluntary Planning Agreement (VPA) documents currently on public exhibition. These documents include:

- Caerleon Draft Planning Agreement – EXHIBITION COPY
- Annexure A Plan of the Land Part 1
- Annexure A Plan of the Land Part 2
- Annexure B Plan
- Annexure C Mudgee Landscape Supplementary Report A
- Annexure D Mid-Western Regional Council DCP Appendix C
- Explanatory Note.

The purpose of the submission is to request Council to amend minor errors and misdescriptions in the VPA documentation. The proposed amendments are outlined below and shown as tracked changes in the revised Draft Planning Agreement enclosed with this letter.

1. Amend definition of 'Annexure A'

The definition of Annexure A should be amended to:

Annexure A means three plans of the Land annexed to this Agreement comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins and identified as Annexure A.

The cover page for Annexure A of the Planning Agreement should be amended to:



Annexure A – Plans of the Land comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins.

Council was notified on 4 August 2013 that the Open Space Hierarchy plan was not uploaded on the Mid Western Regional Council website together with the remainder of the exhibited documents. However, Council confirmed that the plan would be made available should anyone make enquiries about the VPA at Council chambers. For clarity the Open Space Hierarchy plan (which forms part of Annexure A) is enclosed with this submission.

2. Amend definition of 'Annexure B'

The definition of Annexure B should be amended to the following:

Annexure B means the plan identifying the realignment of Fairydale Lane, the indicative location where the shared footpath/cycle path connects with the Isbester Property boundary, the Isbester Property, the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station which is annexed to this Agreement and identified as Annexure B.

The cover page for Annexure B of the Planning Agreement should be amended to:

Annexure B – Plan identifying the realignment of Fairydale Lane, the indicative location where the shared footpath/cycle path connects with the Isbester Property boundary, the Isbester Property, the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station.

3. Amend definition of 'Annexure D'

The definition of Annexure D should be amended to the following:

Annexure D means Appendix C of the Mid-Western Regional Council Development Control Plan 2013 annexed to this Agreement and identified as Annexure D.

4. Include new definitions

The following definitions should be included as they are capitalised terms used in the voluntary planning agreement and should be defined for the sake of clarity and completeness:

Australian Standards means the standards published by, or on behalf of, Standards Australia Limited ACN 087 326 690.

Development Servicing Plan means a document prepared as a Development Servicing Plan for the purposes of and in accordance with Part 2 of the Developer Charges Guidelines for Water Supply, Sewerage and Stormwater, December 2002, issued by the NSW Office of Water under section 306(3)(c) of the Water Management Act 2000.

Laws means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an authority, presently applying or as they may apply in the future.



5. Amend definition of 'Indicative Concept Plan'

The definition of Indicative Concept Plan should be amended to read as follows:

Indicative Concept Plan means a concept plan for the Land comprising:

- (a) a total lot yield of 900 – 1,200 lots;
- (b) a neighbourhood centre zoned as B4 Mixed Uses land located in the northern portion of the Land;
- (c) approximately one quarter of the Land as standard residential development area;
- (d) approximately one quarter of the Land as large lot residential development area;
- (e) approximately half of the Land as rural residential areas;
- (f) public open space and a riparian corridor across the balance of the Land;
- (g) a well-connected street network; and
- (h) sewer, water and stormwater drainage infrastructure,

as shown in Appendix C of Mid-Western Regional Council Development Control Plan 2013 which is Annexure D to this Agreement.

6. Amend definition of 'Transfer'

The definition of Transfer should be amended to:

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the Land for Open Space, Land for Riparian Corridors, Land for Stormwater Detention Basins, Land for Sewerage Pumping Station and Land for Water Storage Reservoir to the Council.

7. Amend description of the Land in Schedule 2

Following the consolidation of the land titles, Schedule 2 should be amended to read as follows:

Schedule 2 – Land

The whole of the land being Lot 21 in Deposited Plan 1186131 and Lot 1 (Part) in DP 721674*.

*Note: Part of this lot will be included as the Land to which this Agreement applies if the Developer is successful in its possessory title application for this lot.

8. Amend Clause 5

The incorrect reference to clause 10 within clause 5.1 (d) should be amended to correctly state "clause 11".



9. Other miscellaneous changes

A number of minor changes to definitions including the deletion of the definition of **Taxes**, as the term is not used in the voluntary planning agreement and as such is redundant, minor wording changes and correction of cross referencing errors, are shown as track changes in the attached Revised Draft Planning Agreement.

Please contact me on 9387 2600 or samantha@elton.com.au should you have any queries about this submission.

Yours sincerely

Samantha Czyz
Project Manager

samantha@elton.com.au

Attached with this submission:

- Revised version of the Caerleon Draft Planning Agreement (in Word with track changes)
- Revised version of the Caerleon Draft Planning Agreement (in PDF)
- Annexure A Plan of the Land Part 1
- Annexure A Plan of the Land Part 2
- Annexure A Open Space Hierarchy Plan
- Annexure B Plan
- Annexure C Mudgee Landscape Supplementary Report A
- Annexure D Mid-Western Regional Council DCP Appendix C
- Explanatory Note

Mid-Western Regional Council

Caerleon Mudgee Pty Limited atf Caerleon Mudgee Trust ACN 154 227 219

Planning Agreement

Environmental Planning & Assessment Act 1979

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Agreement made at _____ **on** _____ **2013**

Parties **Mid-Western Regional Council** of 86 Market Street, Mudgee NSW 2850
 (“**the Council**”)

Caerleon Mudgee Pty Limited **atf Caerleon Mudgee Trust ACN 154 227**
219 of Level 5, 17-19 Bridge Street, Sydney NSW 2000 (“**Developer**”)

Background

- A. The Developer has entered into a contract for sale to purchase the Land with completion to take place on or about 23 September 2013.
- B. The Developer intends to develop the Land.
- C. The Developer sought a change to the zoning of the Land and the Land was rezoned by *Mid-Western Regional Local Environmental Plan 2012 Amendment No. 3* (“**LEP Change**”) in order to allow the Proposed Development on the Land.
- D. The Developer proposes to make Development Applications in accordance with the LEP Change.
- E. On 19 April 2013 the Developer lodged with the Council the Neighbourhood 1 Development Application.
- F. The Developer has offered to make the Development Contributions.
- G. The Parties have therefore agreed to enter into this Agreement to enable the Developer to make the Development Contributions.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms and the provisions relating to the interpretation of this Agreement are as follows:

Accredited Certifier has the same meaning as in section 4(1) of the Act or in any act that replaces or repeals the Act.

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

Agreement means this Planning Agreement.

Application means an application for any Approval.

Approval means any approvals, consents, modifications, Part 4A Certificates, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Proposed Development or for the commencement or carrying out of works contemplated by this Agreement.

Annexure A means the [three plans](#) of the Land annexed to this Agreement [comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins](#) and identified as Annexure A.

Annexure B means the plan identifying the realignment of Fairydale Lane, [the indicative location of the where the shared footpath/cycle path as it reaches the boundary of connects with](#) the Isbester Property [boundary](#), the Isbester Property [boundary](#), the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station [which is annexed to this Agreement and identified as Annexure B](#).

Annexure C means the *Caerleon Mudgee Supplementary Landscape Report (Issue A)* prepared by Site Image (NSW) and dated 13 March 2013 which is annexed to this Agreement and identified as Annexure C.

Annexure D means [Annexure Appendix C](#) of the *Mid-Western Regional Council Development Control Plan 2013* annexed to this Agreement and identified as Annexure D.

Australian Standards means [the standards published by, or on behalf of, Standards Australia Limited ACN 087 326 690](#).

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

Bank Bill Rate means, the average bid rate for bills having a tenor 90 days as displayed on the “BBSY” page of the Reuters Monitor System on the day the relevant

payment is due (**Due Date**). The rate set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

Bill means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth) but does not include a cheque.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Claims means any allegation, debt, cause of action, liability, claim, proceedings, suit or demand of any nature however arising and whether fixed or unascertained, actual or contingent whether in law, in equity, under statute or otherwise.

Commencement Date means the date that this Agreement operates under clause 2(b).

Complete, Completed and Completion means completion of an item of the Works.

Completion Notice means a notice setting out an item of the Works that the Developer believes is complete and which is:

- (a) in writing;
- (b) states that it has been issued under this Agreement; and
- (c) has been issued by an Accredited Certifier.

Consent Authority means, in relation to an Application, the Authority having the function to determine that Application.

Construction Certificate has the same meaning as in section 4(1) the Act or any act that replaces or repeals the Act.

CPI means the All Groups Consumer Price Index for Sydney as published by the Australian Bureau of Statistics. If the All Groups Consumer Price Index for Sydney ceases to be published by the Australian Bureau of Statistics, CPI means such replacement index which measures the total movement of consumer prices in Sydney which may be published by the Australian Bureau of Statistics.

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicated Land means the Land for Open Space, Land for Riparian Corridors, Land for Sewerage Pumping Station, Land for Stormwater Detention Basins and Land for Water Storage Reservoir.

Defect Liability Period means the period of 12 months from the date on which the Defect Liability Works reach Completion.

Defect Liability Works means the Works in Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3 that are constructed such as footpaths, cyclepaths, public toilets, and other such works, or planted such as trees (other than trees that have died from natural causes) but do not include the Works that are installed as fixtures such as tables, seating, play equipment, the temporary bus stop and other such works.

Development Application means each Application made or to be made under Part 4 of the Act or any act that replaces or repeals the Act, by or on behalf of the Developer, for consent to develop the whole or any part of the Land for the Proposed Development.

Development Consent means an Approval by the Consent Authority under Part 4 of the Act or any act that replaces or repeals the Act in response to a Development Application, including any ~~Modification~~modification of it.

Development Contribution means a contribution provided for in Schedule 3 to this Agreement.

Development Servicing Plan means a document prepared as a Development Servicing Plan for the purposes of and in accordance with Part 2 of the *Developer Charges Guidelines for Water Supply, Sewerage and Stormwater, December 2002, issued by the NSW Office of Water under section 306(3)(c) of the *Water Management Act 2000*.*

Easements means the Easement for Rising Main and to Drain Sewerage, Easement for Transmission Line 30.48 Wide and Easement for Transmission Line 45 wide marked and shown as (A), (B) and (C) on DP1184239.

Explanatory Note means the explanatory note required by the Regulation.

Financial Year means each period of 12 months commencing on 1 July and ending on 30 June.

First DSP Charges are the DSP charges per Equivalent Tenement required to be paid first by the Developer in accordance with Item 19 of Schedule 3.

General Register of Deeds means the land registry so entitled and maintained under the *Conveyancing Act 1919* (NSW).

GST has the meaning it has in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Indexation Start Dates means 1 July in the year that falls after 12 months from the dates or times set out in Schedule 3 that Monetary Contribution is required to be paid by the Developer.

Indicative Concept Plan means a concept plan for the Land comprising:

- (a) a total lot yield of 900 – 1,200 lots;
- (b) a neighbourhood centre zoned as B4 Mixed Uses land located in the northern portion of the Land;
- (c) approximately one quarter of the Land as standard residential development area;
- (d) approximately one quarter of the Land as large lot residential development area;
- (e) approximately half of the Land as rural residential areas;
- (f) public open space and a riparian corridor across the balance of the Land;
- (g) a well-connected street network; and
- (h) sewer, water and stormwater drainage infrastructure,

as shown in Appendix C of *Mid-Western Regional Council Development Control Plan 2013* [which is Annexure D to this Agreement](#).

Interest Rate in relation to interest payable under this Agreement means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Isbester Property means the land identified on the plan in Annexure B as the Isbester Property by reference to the legend on that plan.

Land means the land described in Schedule 2, and as shown on the plans attached as Annexure A.

Land for Open Space means the land identified as OS1, OS2, OS3, OS4 and OS5 on the [open space hierarchy](#) plan in Annexure A, by reference to the legend on that plan.

Land for Riparian Corridors means the land identified as riparian corridors on the [open space hierarchy](#) plan in Annexure A, by reference to the legend on that plan.

Land for Sewerage Pumping Station means the land identified as the land for sewerage pumping station and rising main on the plan in Annexure B, by reference to the legend on that plan.

Land for Stormwater Detention Basins means the land for stormwater detention basins, water quality facilities and open drains identified on the [open space hierarchy](#) plan in Annexure A, by reference to the legend on that plan.

Land for Water Storage Reservoir means the land identified as water storage reservoir including road access and distribution main on the plan in Annexure B, by reference to the legend on that plan.

Laws means:

(a) [the common law including principles of equity; and](#)

(b) [the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an authority, presently applying or as they may apply in the future.](#)

LPI means the Land and Property Information Divisions of the Department of Finance and Services or any similar department or authority that may be established from time to time.

Mid-Western Regional Council Development Control Plan 2013 means the development control plan adopted by the Council on 6 February 2013 and that commenced on 11 February 2013.

Monetary Contributions means the monetary contributions set out in Column 4 of Items 18 and 19 of Schedule 3.

Neighbourhood 1 Development Application means the Development Application lodged by the Developer with the Council on or about 19 April 2013 seeking development consent for the subdivision of part of the Land to:

- (a) create 267 residential lots;
- (b) create 1 lot for a childcare centre;
- (c) create 3 residue lots to be set aside for open space with an area of approximately 29,782m² of open space; and
- (d) the carrying out of subdivision works comprising site preparation and grading, tree removal, utilities augmentation, drainage, road construction and landscaping.

Occupation Certificate has the same meaning as in section 4(1) the Act or as in any act that replaces or repeals the Act.

Party means a party to this Agreement, including their respective successors and assigns.

Proposed Development means development generally in accordance with the Indicative Concept Plan.

Real Property Act means the *Real Property Act* 1900 (NSW).

Register means the Torrens Title register maintained under the Real Property Act.

Regulation means the *Environmental Planning & Assessment Regulation* 2000 (NSW).

Relevant Legal Challenge means proceedings in a [Court](#) in which a declaration is sought that the LEP Change, any Development Consent and/or this Agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal.

Reticulation Works means the internal distribution pipes for water and sewerage within the Land that specifically serves the Land.

Sewerage Treatment Works means sewerage treatment works and effluent management works.

Sewer Collection Systems means trunk mains, pumping stations and rising mains used for and in relation to the collection of sewerage.

Spine Road means the proposed new collector road from Hill End Road on the boundary of the Land to Fairydale Lane, as shown on the plans [s](#) at Annexure A.

Stage 1 means that area of the Land the subject of the Neighbourhood 1 Development Application.

State means the State of New South Wales.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on either or both the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Relevant Legal Challenge is discontinued; or
 - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
 - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that the LEP [Change](#) or/and this Agreement is invalid;whichever is the earlier;
- (b) subject to paragraph (c), if an appeal notice is filed and served in connection with final orders in the Relevant Legal Challenge or an appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the appeal is discontinued; or
 - (ii) for any other reason, the appeal no longer includes an appeal in respect of a [Court-court](#) decision regarding the validity of the LEP [Change](#) and/or this Agreement whichever is earlier,unless the orders in the appeal require the Relevant Legal Challenge to be remitted to another [Court-court](#) in relation to the validity of the LEP [Change](#) and/or this Agreement, in which case paragraph (a) reapplies; or
- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an appeal notice described in paragraph (b) has expired, if no valid appeal notice has been filed and served by that first-mentioned date.

~~**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Minister or the Environment Minister.~~

Transfer means a transfer in the approved form under the Real Property Act which is duly stamped, signed and otherwise in registrable form for the purpose of transferring the [Land for Open Space](#), [Land for Riparian Corridors](#), [Land for Stormwater Detention Basins](#), [Land for Sewerage Pumping Station](#) and [Land for Water Storage Reservoir](#), and ~~Community Facilities~~ to the Council.

Valuer means a valuer who is a full member of the Australian Property Institute (NSW Division) with not less than 10 years of active engagement and experience in valuing properties which are used for purposes similar to the purpose for which the land the subject of the valuation is to be proposed to be used.

Water and Sewerage Infrastructure means Water Headworks, Water Distribution Works, Sewerage Treatment Works and Sewer Collection Systems but does not include Reticulation Works.

Water Distribution Works means trunk mains, storage and service reservoirs and minor pumping stations used for an in relation to the supply of water.

Water Headworks means dams, weirs, water treatment plants and works, headworks, major pumping stations and associated pipelines or tunnels used for and in relation to the supply of water.

Works means the works specified in Column 4 of Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3.

1.2 Interpretation

In this Agreement:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this Agreement includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) the Schedules and Annexures to this Agreement form part of this Agreement; and
- (l) if a party to this Agreement is made up of more than one person:
 - (i) an obligation of those persons is joint and several;
 - (ii) a right of those persons is held by each of them severally; and
 - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

2. Operation and status of this Agreement

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 93F of the Act.

- (b) This Agreement is entered into and takes effect on its execution by all the Parties but the Developer is not required to make the Development Contributions in accordance with clause 5 of this Agreement unless and until a Development Consent has been granted to the Neighbourhood 1 Development Application and the Developer has acted on that Development Consent.
- (c) The Developer agrees that it will not to act on any Development Consent granted to the Neighbourhood 1 Development Application unless and until it is the owner of the Land.
- (d) This Agreement will terminate 1 month after the Development Contributions have been made in accordance with clause 5 of this Agreement.

3. Application of the Agreement

This Agreement applies to the Land.

4. Application of section 94, section 94A and section 94EF of the Act

4.1 This Agreement wholly excludes the application of sections 94 and 94A of the Act to:

- (a) the Proposed Development; and
- (b) the Development Consents.

4.2 This Agreement wholly excludes the application of any local infrastructure contributions that may be required as a consequence of any planning legislation that replaces or repeals the Act to:

- (a) the Proposed Development; and
- (b) the Development Consents.

4.3 This Agreement does not exclude the application of section 94EF of the Act.

5. Requirement to provide the Development Contributions

5.1 Carrying out and Completion of the Works

- (a) The Developer must at its cost procure that each item of the Works is completed in accordance with this Agreement and by the dates or times specified in Column 5 of Items 10, 11, 12, 13, 14, 15, 16 and 17 of Schedule 3.
- (b) The Parties acknowledge and agree that further design detail and refinement are/may be necessary in relation to the Works.
- (c) The Developer must:
 - (i) prepare the detailed description, including, design drawings, for each of the relevant Works and in relation to the Works in Items 10, 11, 12, 13 and 14 of Schedule 3, that detailed description and design is to be generally in accordance with the *Caerleon Mudgee Supplementary Landscape Report Issue A* prepared by Site Image and dated 13 March 2013 [in Annexure C](#); and
 - (ii) submit it to Council for approval, such approval not to be unreasonably withheld, by the times set out below:
 - A. in relation to the Works in Item 10 of Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - B. in relation to the Works for Item 11 in Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - C. in relation to the Works in Item 12 in Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
 - D. in relation to the Works in Items 13 and 14 in Schedule 3 in each case, one (1) month before the application for any construction certificate for the relevant Works;

- E. in relation to the Works in Item 15 of Schedule 3, one (1) month before the application for any construction certificate for the relevant Works;
- F. in relation to Item 16, before the application for any construction certificate for the relevant Works.
- G. in relation to Item 17, one (1) month before the times set out in Column 5 of Schedule 3 for Item 17,

or in each case, such other time as agreed by the Parties in writing.

- (d) The Council must promptly (and in any event within 40 days of submission) give the Developer notice whether or not the design drawings and description of the Works prepared under subclause (c) are satisfactory. If the design or description are not satisfactory to the Council, acting reasonably, having regard to the *Caerleon Mudgee Supplementary Landscape Report Issue A* prepared by Site Image and dated 13 March 2013 [in Annexure C](#) then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Works are in accordance with the requirements of the *Caerleon Mudgee Supplementary Landscape Report Issue A* only. If the Developer does not agree to amend the proposed design to take into account the further information or modifications required by the Council under this clause then the dispute procedures in clause 11~~40~~ will apply.
- (e) The Council and the Developer will use all reasonable endeavours and act in good faith to agree to the design and location of the shared footpath/cycle path to be provided from Stage 1 to the Isbester Property.
- (f) Following the agreement between the Council and the Developer as to the design and location of the shared footpath/cycle path referred to in paragraph (e) above, the Developer will use all reasonable endeavours to obtain the necessary approvals from any Authority required to be obtained before the shared footpath/cycle path can be constructed.
- (g) The Developer must construct and complete each item of the Works:

- (i) in accordance with all Approvals issued by an Authority with respect to the construction and use of the particular item of the Works;
 - (ii) in accordance with the detailed design for the Works referred to in paragraphs (c) and (d) above;
 - (iii) in accordance with any Australian Standards and Laws applicable to works of the same nature as each aspect of the relevant item of the Works; and
 - (iv) in a proper and workmanlike manner complying with the current industry practice and standards relating to each aspect of the relevant item of the Works.
- (h) When, in the opinion of the Developer, a Defect Liability Work has reached completion, the Developer must notify the Council's representative referred to in clause 16.1 in writing, and must include in that notice:
- (i) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the relevant Defect Liability Work has reached completion; and
 - (ii) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the relevant Defect Liability Work; and
 - (iii) at least three (3) sets of the "as built" drawings of the Defect Liability Works (excluding street trees), including one set in CAD format.
- (i) The Council's representative must inspect the relevant Defect Liability Work within fourteen (14) days of notification under clause 5.1(h) and must by notice to the Developer either:
- (i) concur that Completion has been achieved; or
 - (ii) disagree that Completion has been achieved and (if the Council's representative so disagrees) identify any material defects in the relevant Defect Liability Work that adversely affect the ordinary

use and enjoyment of that work or will require maintenance or rectification to be performed to the relevant Defect Liability Work as a result of the existence of the defect (**Defect**) and which in the opinion of the Council's representative prevent Completion. For the avoidance of doubt a Defect does not include damage to a Defect Liability Work caused by a third party.

- (j) If the Council notifies the Developer of a Defect in the Defects Liability Works within the Defects Liability Period, then the Developer must remedy the Defect to the Council's reasonable standards, to the satisfaction of the Council's representative, within a reasonable period (having regard to the nature of the defect).
- (k) The Developer must follow the procedure set out in clause 5.1(h) in respect of the rectification of any Defect.
- (l) Clauses 5.1(h), (i), (j) and (k) do not detract from, limit or override any condition of any Development Consent requiring the Developer to pay to the Council a defect liability bond, or otherwise dealing with defects liability in relation to any infrastructure works carried out by the Developer as part of the Development and which are not subject to clauses 5.1(h), (i), (j) and (k) and transferred, dedicated to or vested in the Council. For the avoidance of doubt, such infrastructure works are subject to the conditions of any Development Consent.
- (m) Clauses 5.1(h), (i), (j), (k) and (l) do not merge on termination of this Agreement but instead survive such termination and continue to be effective until all of the obligations contemplated by those clauses have been completed.

5.2 Dedication of the Dedicated Land

- (a) The Developer must dedicate or transfer:
 - (i) the Land for Open Space;
 - (ii) the Land for Riparian Corridors;
 - (iii) the Land for Stormwater Detention Basins;

- (iv) the Land for Sewerage Pumping Station, having an area of not greater than 0.1ha not including the area required for access and service provision; and
- (v) the Land for Water Storage Reservoir, having an area of not greater than 0.5ha excluding the area required for access and service provision,

to the Council by the dates or times specified in Column 5 of Items 1, 2, 3, 4, 5, 6, 7, 8 and 9 of Schedule 3, free of any trusts, estates, interests, covenants and encumbrances (other than the Easements) and at no cost to the Council.

- (b) After an item of Work has been completed and the land required to be dedicated in accordance with this Agreement has been dedicated or transferred by the Developer to the Council, the Council accepts ownership, risk, possession and control of that land.

5.3 Council Works

- (a) The Developer will grant to the Council a licence to enter and occupy the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir generally in accordance with the provisions in Schedule 4 for the purpose of allowing Council to exercise any right granted to Council under this Agreement.
- (b) The Parties agree that in lieu of the Council carrying out the works to the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir, the Developer may build those works, at the Council's cost. The Parties acknowledge that in that event, a further agreement between the Parties will be required setting out each Parties' obligations in relation to those works.
- (c) The Parties agree to work together and act in good faith to agree to design and locate Water Headworks, Sewerage Treatment Works, Water Distribution Works and Sewer Collection Systems required to service the catchment area in the most efficient and cost effective manner for both parties.

- (d) In the event of any dispute between the Parties in relation to the design of the works referred to in paragraph 5.3(c) or the location of, the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir, the Parties agree that clause 11 will apply to the dispute.

5.4 Payment of Monetary Contributions

- (a) Subject to clause 5.7 and in accordance with clauses 5.4(b) and (c), the Developer must pay the Monetary Contributions to the Council by the dates or times specified in Column 5 of Items 18 and 19 of Schedule 3.
- (b) In relation to the Monetary Contribution in Item 19 of Schedule 3:
- (i) if at any time the Council prepares new Development Servicing Plan calculations which are less than the Monetary Contribution required to be paid by the Developer in Item 19 of Schedule 3, the Developer's obligation to pay the monetary contribution will be reduced to the lesser sum; and
 - (ii) after a period of 10 years from the commencement of this Agreement, the Parties agree to use reasonable endeavours to renegotiate the Development Servicing Plan charges and clause 5.4(a) above will cease to apply to Development Service Plan charges after that 10 year period.
- (c) Any Monetary Contribution required to be paid under this Agreement is to be indexed as follows.

On each anniversary of the Indexation Start Date the Monetary Contributions will be varied in accordance with the following formula:

$$P = A + (A \times Z)$$

Where:

P means the Monetary Contributions payable for that Financial Year (**Relevant Financial Year**);

A means the Monetary Contributions payable for the Financial Year immediately before the Relevant Financial Year; and

Z is (Current Period CPI – Previous Period CPI) / Previous Period CPI
(expressed as a percentage)

Where:

Current Period CPI means the CPI last published immediately before the commencement of the Relevant Financial Year; and

Previous Period CPI means the CPI last published immediately before the date which is one year prior to the commencement of the Relevant Financial Year.

However, if the figure for **Z** calculated in accordance with the above results in a figure which is greater than 3%, then **Z** will be 3%.

- 5.5** The Developer must pay the Monetary Contributions required under clause 5.4 either by cheque made payable to the Council or by electronic transfer into a bank account, the details of which are to be provided by the Council to the Developer.
- 5.6** The Council acknowledges that the Monetary Contributions are provided by the Developer to the Council for the carrying out of upgrade works to Fairydale Lane and for the provision of Water and Sewerage Infrastructure by the Council.
- 5.7** **Offset of value of part of the Dedicated Land against the payment of Monetary Contributions**
- (a) The amount of the Monetary Contributions to be paid by the Developer under this Agreement is to be offset against the value of the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir to be dedicated to the Council by the Developer. For the avoidance of doubt, where the Land for Sewerage Pumping Station is zoned RE1 public recreation at the time it is dedicated to the Council, no offset applies to the Monetary Contributions.
- (b) The amount of the Monetary Contributions to be paid by the Developer under this Agreement are not to be offset against the value of any easement affecting the Land provided by, or required to be provided by the Developer to the Council.
- (c) The value of the Land for Sewerage Pumping Station and the Land for Water Storage Reservoir (excluding any easement affecting such land

provided by, or required to be provided by the Developer to the Council) is to be determined in accordance with the following rates:

- (i) \$50.00 per sqm for non-residential zoned land; and
- (ii) \$187.50 per sqm for land zoned residential

(collectively, Rates).

- (d) The Rates referred to in paragraph (c) above are to be indexed on 1 July in each year after the commencement of this Agreement in accordance with the following formula:

$$P = A + (A \times Z)$$

Where:

P means the relevant Rate applicable for that Financial Year (Relevant Financial Year);

A means the Rate applicable for the Financial Year immediately before the Relevant Financial Year; and

Z is $(\text{Current Period CPI} - \text{Previous Period CPI}) / \text{Previous Period CPI}$ (expressed as a percentage)

Where:

Current Period CPI means the CPI last published immediately before the commencement of the Relevant Financial Year; and

Previous Period CPI means the CPI last published immediately before the date which is one year prior to the commencement of the Relevant Financial Year.

However, if the figure for Z calculated in accordance with the above results in a figure which is greater than 3%, then Z will be 3%.

6. Completion of Works

- 6.1 The Developer must provide a Completion Notice to Council within fifteen (15) Business Days of completion of any item of the Works.

- 6.2** The Council must inspect the item of the Works set out in the Completion Notice within fifteen (15) Business Days of receipt of that Completion Notice.
- 6.3** Within the earlier of:
- (a) fifteen (15) Business Days of inspecting the item of the Works set out in a Completion Notice; or
 - (b) twenty-eight (28) days from the receipt of the relevant Completion Notice,
- the Council must provide notice in writing to the Developer that the item of the Works set out in the Completion Notice:
- (c) has been completed; or
 - (d) has not been completed in which case the notice must also detail:
 - (i) those aspects of the relevant item which have not been completed; and
 - (ii) the work the Council requires the Developer to carry out in order to rectify those deficiencies.
- 6.4** If the Council does not provide the Developer with notice in accordance with clause 6.3 the item of the Works set out in the Completion Notice will be deemed to have been completed on the date nominated in the Completion Notice.
- 6.5** Where the Council serves notice on the Developer pursuant to clause 6.3(d) the Developer must:
- (a) rectify the deficiencies in that item of the Works in accordance with that notice within three (3) months from the date it is issued by the Council; or
 - (b) serve a further notice on the Council that it disputes the matters set out in the Notice.
- 6.6** Where the Developer:
- (a) serves notice on the Council in accordance with clause 6.5, the dispute resolution provisions of this Agreement apply; or
 - (b) rectifies the item of the Works in accordance with clause 6.5(a), it must serve upon the Council a new Completion Notice for that item of the works (New Completion Notice).

- 6.7** The provisions of clauses 6.2 to 6.5 (inclusive) apply to any New Completion Notice issued by the Developer.

7. Developer's Capacity and Liability

- 7.1** The Developer enters into this Agreement in its capacity as trustee of the Caerleon Mudgee Trust or such other trust from time to time (**Trust**) and not in its personal capacity. The Developer incurs any liability or obligations to the Council solely in its capacity as trustee of the Trust.
- 7.2** The liability of the Developer to Council under or arising out of or in connection with this Agreement is limited to and can only be enforced against the Developer to the extent to which it can be satisfied from that part of the Land being developed at the time the liability arises only. This clause does not apply to the extent to which there is a reduction in the Developer's right of indemnification out of the assets of the trust due to fraud or wilful default or gross negligence by the Developer .
- 7.3** The Council has no right to an indemnity from and has no recourse against the members or beneficiaries of the Trust for or in respect of any liability or obligations of the Developer to Council.
- 7.4** This clause applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Developer to Council under this Agreement.

8. Registration of this Agreement

8.1 Registration of this Agreement

- (a) As contemplated by section 93H of the Act, the Developer, within two (2) calendar months of the date of this Agreement, agrees to procure the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land.
- (b) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
- (i) the consent of each person who:
- A. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or

B. is seized or possessed of an estate or interest in the Land; and

(ii) the execution of any documents; and

(iii) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.

(c) The Developer will, within 15 Business Days of registration of this Agreement on the relevant folios of the Register for the Land in accordance with clause 8.1(a) and (b) above, provide the Council with a copy of the relevant folios of the Register for the Land.

8.2 Release and discharge of this Agreement

Where the Developer has satisfied its obligations under this Agreement in respect to any part of the Land, the Council will do all things reasonably required by the Developer to release and discharge this Agreement with respect to that part of the Land including removing this Agreement from the title of any part of that Land within 15 business days after a written request to do so by the Developer.

9. Security and enforcement

9.1 Security

In consideration of the Council entering into this Agreement, the Developer has agreed to provide security to the Council for performance of the Developer's obligations under this Agreement by the registration of this Agreement under clause 8.1 of this Agreement and by agreeing to clauses 9.2, and 9.3 of this Agreement.

9.2 Compulsory acquisition

(a) If the Developer does not transfer any part of the Dedicated Land to the Council as required by this Agreement, the Developer consents to the Council compulsorily acquiring that part of the Dedicated Land, in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00 for each part of the Dedicated Land required to be dedicated under this Agreement.

- (b) Before exercising the right conferred in clause 9.2(a), the Council must:
 - (i) give written notice to the Developer to rectify the non-compliance within 30 Business Days of receipt of the written notice; and
 - (ii) allow the Developer to rectify the non-compliance within 30 Business Days of the receipt of the written notice referred to in paragraph 9.2(b)(i).
- (c) The Developer and the Council agree that:
 - (i) this clause 9.2 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
 - (ii) in this clause 9.2 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

9.3 Council may charge interest on late payment of DSP Charges

The Developer agrees to pay interest to the Council on any amount of the Monetary Contributions in Item 19 of Schedule 3 from 28 days after it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Council, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

9.4 Enforcement

This Agreement may be enforced by any Party in any court of competent jurisdiction.

9.5 No prevention to enforcement

For the avoidance of doubt, nothing in this Agreement prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
- (b) the Council from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

9.6 Relevant Legal Challenge

- (a) Notwithstanding anything else in this Agreement, and subject to clause 9.6(b), the Council agrees that in the event that a Relevant Legal Challenge is commenced:
- (i) the Developer's obligations to make the Development Contributions under this Agreement are suspended and the Council cannot require the Developer to make all of the Development Contributions; and
 - (ii) the consent provided under this Agreement by the Developer to the compulsory acquisition of any part of the Dedicated Land by the Council is withdrawn, is of no effect and the Council cannot compulsorily acquire any part of the Dedicated Land pursuant to this Agreement.
- (b) Clause 9.6(a) will have effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that the LEP Change, or any of the Development Consents and/or this Agreement is invalid, the Parties agree that from (and including) the Suspension Expiry Date:
- (i) the Developer's obligations to make the Development Contributions under this Agreement have full legal force and effect and the Developer must make the Development Contributions by the dates or times provided in Column 5 of Schedule 3; and
 - (ii) the Developer gives its consent to the Council compulsorily acquiring the Dedicated Land upon the terms agreed in this Agreement.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that the LEP Change, any of the Development Consents and/or this Agreement is invalid (**Court Order**), the Parties agree that from (and including) the Suspension Expiry Date:
- (i) where the Developer has paid the whole or any part of the Monetary Contributions or transferred the whole or any part of the Dedicated Land to the Council or the Council has compulsorily

acquired the whole or any part of the Dedicated Land under this Agreement by the Suspension Expiry Date, the provisions of clause 9.6(e) apply; or

- (ii) where the Developer has not completed the whole or any part of the Works by the Suspension Expiry Date, the Developer has no obligation to complete the whole or any part of the Works relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to complete those Works;
- (iii) where the Developer has not transferred the whole or any part of the Dedicated Land to the Council by the Suspension Expiry Date:
 - A. the Developer has no obligation to transfer or dedicate the whole or any part of the Dedicated Land relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to transfer that Dedicated Land; and
 - B. the consent provided under this Agreement by the Developer to the compulsory acquisition of that Dedicated Land is withdrawn, is of no effect and the Council cannot compulsorily acquire that Dedicated Land pursuant to this Agreement; or
- (iv) where the Developer has not paid the whole or any part of the Monetary Contributions to the Council by the Suspension Expiry Date, the Developer has no obligation to pay the whole or part of the Monetary Contributions relating to or connected with the subject matter of the Court Order and the Council cannot require the Developer to pay those Monetary Contributions.
- (e) In the event that clause 9.6(d)(i) applies, the Council agrees:
 - (i) to transfer back to the Developer that part of Dedicated Land relating to or connected with the subject matter of the Court Order free of all encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer or compulsory acquisition); and

- (ii) to deliver to the Developer within 20 Business Days after the Suspension Expiry Period Date:
- A. a form of transfer or transfers in respect of the relevant Dedicated Land in favour of the Developer, for a consideration of \$1.00 executed by the Council and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - B. the certificate or certificates of title for the relevant Dedicated Land,
- and the Council must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the relevant Dedicated Land to the Developer free of all encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer or compulsory acquisition); ~~and-~~
- (iii) ~~to~~ pay back to the Developer the relevant Monetary Contributions that were paid by the Developer to the Council pursuant to this Agreement, including interest calculated in accordance with the Interest Rate.

10. Dealings with Land

10.1 Subject to clause 10.1(b) the Developer must not have any Dealing unless:

- (a) the Developer first informs the proposed assignee, transferee, purchaser or other party of this Agreement and provides the proposed assignee, transferee, purchaser or other party with a copy of this Agreement; and
- (b) where the Dealing involves selling, transferring or assigning of the Land or part of the Land only, the Developer transfers the obligations of this Agreement to the assignee, transferee or purchaser. For the avoidance of doubt, the Developer is not required to transfer the obligations of this Agreement to any mortgagee or charge.

10.2 If the Incoming Party is acquiring an interest in the Land or part of the Land as a purchaser of one or more lots in a community scheme, (whether or not the community

plan has, at the date of exchange, been registered at Land and Property Information NSW), then the Developer may create that interest without requiring that party to enter into an agreement with the Council and the interest so created will not be in breach of this Agreement.

11. Dispute resolution

11.1 Not commence

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 11.

11.2 Written notice of dispute

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

11.3 Attempt to resolve

On receipt of notice under clause 11.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

11.4 Mediation

If the Parties do not agree within 21 days of receipt of notice under clause 11.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The Parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Disputes for Expert Determination

If the mediation referred to in clause 11.4 has not resulted in settlement of the dispute, any Party may, with the prior written consent of the other Party, refer the matter to expert determination in accordance with clause 11.6, such expert to act in accordance with the requirements of clauses ~~11.5, 11.6~~, 11.7, 11.8, 11.9, 11.10 and 11.11.

11.6 Choice of expert

- (a) A dispute to be referred to an expert in accordance with clause 11.5 must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under clause 11.5, appointed by the President or other senior officer for the time being of the body administering the relevant field.
- (b) If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

11.7 Requirements for expert

- (a) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in contest;
 - (ii) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
 - (iii) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

- (b) The Parties must enter into an agreement with the expert appointed under this clause 11.7 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

11.8 Directions to expert

In reaching a determination in respect of a dispute under clause 11.5, the independent expert must give effect to the intent of the Parties entering into this Agreement.

11.9 Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

11.10 Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

11.11 Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (d) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11.12 Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert will not be liable in respect of the expert determination, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11.13 Other courses of action

If the mediation referred to in clause 11.4 or the expert determination required or agreed under clause 11.5 has not resulted in resolution of the dispute, any Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

11.14 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 1140 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 1140 for any purpose other than in an attempt to settle the dispute.

11.15 No prejudice

This clause 1140 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Agreement.

12. GST

12.1 Interpretation

In this clause 12:

- (a) Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.
- (b) GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- (c) GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (d) 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.
- (e) 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.

12.2 Subject to clause 12.3, 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.

- 12.3** Clause 12.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 12.4** 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:
- (a) 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;
 - (b) that any amounts payable by the Parties in accordance with clause 12.2 (as limited by clause 12.3) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 12.5** No payment of any amount pursuant to this clause, 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.
- 12.6** 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.
- 12.7** This clause continues to apply after expiration or termination of this Agreement.

13. Costs

The Developer agrees to pay the Council's reasonable legal costs and other costs incurred by the Council in relation to the negotiation, preparation, execution, advertising, stamping and registration of this Agreement up to \$10,000 (including GST).

14. Effect of Scheduled terms and conditions

The Parties agree to comply with the terms and conditions contained in the Schedules to this Agreement as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

15. General provisions

15.1 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Agreement was executed.

15.2 Further Acts

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

15.3 Governing Law and Jurisdiction

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

15.4 No fetter

Nothing in this Agreement is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, ~~and~~ nothing in this Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

15.5 Representations and warranties

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

15.6 Severability

- (a) If any part 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.
- (b) If any part of this Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

15.7 Modification

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

15.8 Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It 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.

15.9 Good Faith

Each Party must act in good faith towards the other Party and use its best endeavours to comply with the spirit and intention of this Agreement.

15.10 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as a **New Law**) and the Developer is obliged by the New Law to do something or pay an amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.

16. Notices

16.1 Form

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

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

The Council

Address: 86 Market Street, Mudgee NSW 2850
Telephone: (02) 6378 2850
Fax: (02) 6378 2815
Attention: The General Manager

Developer

Address: Level 5, 17-19 Bridge Street, Sydney NSW 2000
Telephone: (02) 9253 0965
Fax: (02) 9253 0901
Attention: Nathan Davis

16.2 Receipt

- (a) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted; or
 - (iii) if it is 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.

(b) Receipt - next Business Day

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 after 5pm on any Business 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.

17. Counterparts

This Agreement may be executed in any number of counterparts.

Schedule 1 - Requirements under section 93F of the Act

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes.</p> <p>(b) Yes.</p> <p>(c) No.</p>
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Land (subject to the Note in Schedule 2).</p>
<p>Description of the change to the environmental planning instrument and development to which this Agreement relates (Section 93F(3)(a))</p>	<p>The LEP Change and the Proposed Development.</p>
<p>The scope, timing and manner of delivery of contributions required by the Planning Agreement - (Section 93F(3)(c))</p>	<p>See the Schedule 3.</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>See clauses 4.1 and 4.2.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>See clauses 4.1 and 4.2.</p>

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Applicability of section 94EF of the Act - (Section 93F(3)(d))	See clause 4.3.
Mechanism for dispute resolution - (Section 93F(3)(f))	See clause 11.
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clauses 8.1 and 9.
Registration of the Planning Agreement - (Section 93F(3)(g))	The Parties agree that the Planning Agreement will be registered in accordance with clause 8.1.
No obligation to grant consent or exercise functions - (Section 93F(9))	No obligation. See clause 15.4.

Schedule 2 - Land

The whole of the land described in the following table:being Lot 21 in Deposited Plan 1186131 and Lot 1 (Part) in DP 721674*.

*Note: Part of this lot will be included as the Land to which this Agreement applies if the Developer is successful in its possessory title application for this lot.

Lot	Deposited Plan
1	132086
2	132086
3	132086
4	132086
5	132086
6	132086
7	132086
8	132086
9	132086
10	132086
129A	756894
130	756894
131	756894
133	756894
134	756894
135A	756894
136	756894
137	756894

Lot	Deposited Plan
139	756894
140	756894
141	756894
151	756894
189	756894
218	756894
219	756894
220	756894
221	756894
222	756894
223	756894
224	756894
225	756894
226	756894
227	756894
228	756894
229	756894
230	756894
231	756894
232	756894
233	756894
234	756894
235	756894
236	756894

Lot	Deposited Plan
237	756894
341	756894
1321	1113075
1322	1113075
4	1146227
2	1181749
1 (part)*	721674

~~*Note: Part of this lot will be included as the Land to which this Agreement applies if the Developer is successful in its possessory title application for this lot.~~

Schedule 3 – Development Contributions

Schedule of development contributions and public benefits

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
Dedicated Land					
1	Land for local Park OS1.	Public open space and recreation.	Dedication of a maximum of 1,646m ² of land for OS1 Northern reserve. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 10 of this Schedule relating to OS1, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
2	Land for local Park OS2.	Public open space and recreation.	Dedication of a maximum of 4,800m ² of land for OS2 Town Park. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 11 of this Schedule relating to OS2, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
3	Land for local Park OS3.	Public open space and recreation.	Dedication of a maximum of 2,000m ² of land for OS3 Creekside Park. Note: The size of the park is approximate and is subject to final development application documentation and approval.	Within 28 days of completion of the works in Item 12 relating to OS3, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.
4	Land for local Park OS4.	Public open space and recreation.	Dedication of a maximum of 14,340m ² of land for OS4 Railway Park 1.	Works in kind are to be undertaken in stages for OS4 see: Item 13 in this Schedule. Dedication to occur within 28 days of completion of all of the	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			<p>Note: The size of the park is approximate and is subject to final development application documentation and approval.</p>	<p>works in Item 13 of Schedule 3 for OS4, as relevant to the stage of works, OR such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that will comprise the park will also be subdivided to enable dedication of parts of the park in stages.</p>	
5	Land for local Park OS5.	Public open space and recreation.	<p>Dedication of a maximum of 14,398m² of land for OS5 Railway Park 2.</p> <p>Note: The size of the park is approximate and is subject to final development application documentation and approval.</p>	<p>Works in kind are to be undertaken in stages for OS5: see Item 14 in this Schedule. Dedication to occur within 28 days of completion of all of the works in Item 14 of this Schedule relating to OS5, as relevant to the stage of works, OR such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that will comprise the park will also be subdivided to enable dedication of parts of the park in stages.</p>	See clauses 8.1 and 9.2.
6	Land for riparian corridor for public recreational use.	Public open space, recreation and stormwater facilities.	<p>Dedication of a maximum of 149,357m² of land including 3,550m² for footpaths within riparian corridor.</p> <p>Note: The size of the riparian corridor is approximate and is subject to final development application documentation and approval.</p>	<p>Works-in-kind are to be undertaken in stages see: Item 15 of this Schedule. Dedication to occur within 28 days of completion of works in Item 15 along the riparian corridor land relevant to the stage of works or such other time as agreed by the Parties in writing.</p> <p>Note: It is proposed that the land that comprises the riparian corridor will also be subdivided to enable dedication of parts of the riparian</p>	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
				corridor in stages.	
7	Land for stormwater detention basins, water quality facilities and open drains.	Stormwater drainage facilities.	Dedication of land required for stormwater drainage facilities. Note: The size of land parcels will be subject to final design approved by the Developer, and development approval.	Within 28 days of completion of works in Item 16 of this Schedule relating to the stormwater detention basins, water quality facilities and open drains. Development to occur over stages, therefore dedication to occur within 28 days of completion of each stage of work, OR such other time as agreed by the Parties in writing. Note: It is proposed that the land that comprises the stormwater detention basins, water quality facilities and open drains will also be subdivided to enable dedication in stages of parts of the land comprising stormwater detention basins, water quality facilities and open drains.	See clauses 8.1 and 9.2.
8	Land for Sewerage Pumping Station.	Waste water systems.	Dedication of land required for sewerage pumping station (SPS) and rising main, with offsets against the payment of other monetary contributions under the VPA for the value of the land dedicated (excluding any easements the location of which are subject to the Developer's approval), as agreed to by both Parties. Alternatively, the VPA will allow the dedication of the land via another means as	Within 28 days of the Council notifying the Developer in writing of completion of the works relating to the sewerage pumping station (SPS) and rising main, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			<p>agreed by the Parties in writing.</p> <p>Note: The size of the land parcel will be subject to final design, approved by the Developer, and development approval but it is to be an area not greater than 0.1ha excluding the area for access and service provision.</p>		
9	Land for Water Storage Reservoir	Water supply system.	<p>Dedication of land required for the water storage reservoir including road access and distribution main, with offsets against the payment of other monetary contributions under the VPA for the value of the land dedicated (excluding any easements the location of which are subject to the Developer's approval), as agreed to by both Parties. Alternatively, the VPA will allow the dedication of the land via another means as agreed by the Parties in writing.</p> <p>Note: Size of land parcel will be subject to final design, approved by the Developer, and development approval but it is to be an area not greater than 0.5ha excluding the area for access and service provision.</p>	Within 28 days of the Council notifying the Developer in writing of completion of the works relating to the water storage reservoir including road access and distribution main, OR such other time as agreed by the Parties in writing.	See clauses 8.1 and 9.2.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
Works					
10	Local Park OS1.	Public open space and recreation.	<p>Carry out works in Northern Reserve (OS1) including tree and shrub planting, regeneration, footpaths, seating, signage/ interpretation.</p> <p>Note: Refer to “Caerleon – Mudgee Supplementary Landscape Report (Issue A)” prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered will create the 200 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.
11	Local Park OS2.	Public open space and recreation.	<p>Carry out works in Town Park (OS2) including tree and shrub planting, footpaths, turf, seating, scooter park or basketball hoops or similar, playground with shade, kickabout space, pedestrian lighting, public toilets, BBQ area and picnic tables.</p> <p>Note: Refer to “Caerleon – Mudgee Supplementary Landscape Report (Issue A)” prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered would create the 350 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
12	Local Park OS3.	Public open space and recreation.	<p>Carry out works in Creekside Park (OS3) including tree and shrub planting, footpaths, seating, turf and play equipment.</p> <p>Note: Refer to “Caerleon – Mudgee Supplementary Landscape Report (Issue A)” prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Prior to the issue of a subdivision certificate for a plan of subdivision that when registered would create the 700 th lot on the Land, OR such other time as agreed by the Parties in writing.	See clause 8.1.
13	Local Park OS4.	Public open space and recreation.	<p>Carry out works in Railway Park 1 (OS4) including tree and shrub planting, shared footpaths/ cyclepaths, seating, turf, street tree planting, outdoor gym equipment, play equipment and drainage elements.</p> <p>Note: Refer to “Caerleon – Mudgee Supplementary Landscape Report (Issue A)” prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	Development of OS4 to occur over stages. Works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage in which the part of the park is situated, OR such other time as agreed by the Parties in writing.	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
14	Local Park OS5.	Public open space and recreation.	<p>Carry out works in Railway Park 2 (OS5) including tree and shrub planting, shared footpaths/cyclepaths, seating, turf, street tree planting and drainage elements.</p> <p>Note: Refer to “Caerleon – Mudgee Supplementary Landscape Report (Issue A)” prepared by Site Image (NSW) and dated 13 March 2013 in Annexure C for further details on proposed scope of works and inclusions.</p>	<p>Development of OS5 to occur over stages. Works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the part of the park is situated, OR such other time as agreed by the Parties in writing.</p>	See clause 8.1.
15	Riparian corridors.	Open space, recreation and stormwater facilities.	Carry out construction of hard and soft landscaping riparian corridors, including tree and shrub planting, stabilisation works, shared footpaths/cyclepaths, seating and informal turf areas.	<p>Development within the riparian corridors to occur over stages and therefore works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the riparian corridor is situated, OR such other time as agreed by the Parties in writing.</p> <p>Notwithstanding the above and subject to clauses 5.1(e) and 5.1(f), the shared footpath/cycle path from that part of the Land comprising Stage 1 to the Isbester Property is to be completed within 3 months after the issue of an occupation certificate</p>	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
				for the first dwelling house in Stage 1, provided that the Developer has been able to obtain all approvals required from any Authority for the construction of that shared footpath/cycle path.	
16	Stormwater detention basins, water quality facilities and open drains.	Stormwater drainage facilities.	Carry out construction of hard and soft landscaping within stormwater detention basins, water quality facilities and open drains, including tree and shrub planting, shared footpaths/cyclepaths, seating and turf. Value of construction of hard and soft landscape elements only.	Development within the stormwater drainage facilities to occur over stages. Works for each stage are to be completed prior the issue of a subdivision certificate for a plan of subdivision that when registered would create the first lot for the relevant stage of work in which the stormwater detention basins, water quality facilities and open drains are situated, OR such other time as agreed by the Parties in writing.	See clause 8.1.
17	Bus stops.	Roads and traffic facilities and provision of public transport services.	Construction of one (1) temporary bus stop along the Spine Road comprising a bus stop marker.	Temporary bus stop: To be provided within 1 month of the issue of a subdivision certificate for a plan of subdivision that when registered would create the 100 th lot on the Land, provided that: 1. a bus operator has requested either the Council or the Developer to provide the temporary bus stops; and 2. the bus operator is operating a bus service along the Spine Road	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			Construction of up to four (4) permanent bus stops along the Spine Road including shelter, signage and road markings to Council's specifications.	or part of the Spine Road. Permanent bus stops: To be provided within 2 months of completion of the Spine Road and completion of the upgrade of Fairydale Lane, OR as requested by the relevant transport authority for its installation (whichever occurs later), OR such other time as agreed in writing by the Parties.	
Monetary Contributions					
18	Fairydale Lane upgrade.	Roads and traffic facilities.	<p>The Developer to pay the Council \$500,000 towards the upgrade of Fairydale Lane and the Council to deliver it to the following minimum standard:</p> <ul style="list-style-type: none"> • 2 x 3.25m travel lanes • 2 x 0.5m sealed shoulders • 2 x 1m unsealed shoulders <p>Total Seal width = 7.5m Total Pavement width = 9.5m Road marking centre and edge lines Swale drains both sides Box culvert at watercourse</p> <p>Payments to be made by per lot contributions of \$500 per lot up to 1,000 lots with the total amount of the contribution</p>	<p>On connection⁷ of Fairydale Lane to the Spine Road the Developer is to pay Council a lump sum for the total per lot contribution for the number of lots created by registered plans of subdivision at that date at a rate of \$500 per lot.</p> <p>Thereafter, a per lot contribution is payable by the Developer upon registration of a plan of subdivision creating each lot with the per lot contribution increasing with indexation in accordance with clause 5.4(c) for any lot created twelve (12) months after connection of the Spine Road to Fairydale Lane.</p>	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			<p>capped at \$500,000 plus indexation in accordance with clause 5.4(c) for each lot created 12 months after the connection of the Spine Road and Fairydale Lane.</p> <p>Note: Offset provisions in clause 5.7 may apply.</p>		
19	DSP Charges (water and sewer).	Water and Sewerage Infrastructure.	<p>Payment of \$7,837 per Equivalent Tenement for water and \$3,558 per Equivalent Tenement for sewerage where the Equivalent Tenement is a residential allotment (medium) 650m² – 1,200m² to the Council.</p> <p>Where the Equivalent Tenement is for residential development and is other than a residential allotment (medium) the amount of the contribution, will be adjusted in accordance with the charges for the development category set out in Schedule 5.</p> <p>The relevant contribution amount is to be paid for the delivery of the following Water and Sewerage Infrastructure:</p> <ol style="list-style-type: none"> 1. Design and construction of Sewerage Treatment Works and Sewer Collection Systems and future 	<p>The Water and Sewerage Infrastructure are to be staged as follows:</p> <ol style="list-style-type: none"> 1. <i>First tranche:</i> The Parties will, acting in good faith, develop and agree on a project schedule for the delivery of the Water and Sewerage Infrastructure to service the first 400 lots so as to enable the Developer to sell those 400 lots in accordance with the Developer’s proposed timetable for the sale of those lots. 2. <i>Second tranche:</i> Water and Sewer Infrastructure to service the balance of the Proposed Development in accordance with the timetable agreed between the Developer and the Council, having regard to the Developer’s timing for the sale of the balance of the lots. Any dispute between the Developer and the Council as to the agreed timetable is to be 	See clause 8.1.

Col 1 - Item No.	Column 2 – Item	Column 3 – Public Purpose	Column 4 – Manner & Extent	Column 5 – Timing	Column 6 – Security
			<p>upgrades/ amplifications to them required to service the residential development of the Proposed Development; AND</p> <p>2. Design and construction of Water Headworks and Water Distribution Works to supply water to the first stage of development (i.e. first 267 residential lots) and future upgrades/ amplifications required to service future stages of the residential development of the Proposed Development, including all development up to 500m AHD. Water infrastructure includes mains from Bellevue Hill Estate through the Land to Hill End Road.</p> <p>Note: Offset provisions in clause 5.7 may apply.</p>	<p>resolved in accordance with clause 11.</p> <p>The First DSP Charges are payable 12 months from the date of this Agreement or on registration of a plan of subdivision creating the 100th lot, whichever occurs first.</p> <p>If 12 months from the date of this Agreement occurs first, then the First DSP Charges payable will be an amount for the number of lots that have been created by a plan of subdivision within 12 months from the date of this Agreement.</p> <p>If the registration of the plan of subdivision creating the 100th lot occurs first, then the First DSP Charges payable will be an amount for the first 100 lots created by a plan of subdivision.</p> <p>The DSP charges per Equivalent Tenement for the balance of the lots is to be payable on the issue of a subdivision certificate for a plan of subdivision that when registered would create the lot, OR such other time agreed by the Parties in writing.</p>	

Schedule 4 – Terms of Licence

1. Definitions and Interpretation

1.1 In this Schedule, words beginning with a capital letter that are defined in clause 1.1 of this Agreement have the meaning ascribed to them in that clause.

1.2 For the purpose of this Schedule 4:

- (a) the **Land** means the land being accessed in accordance with this licence;
- (b) the **Licensor** means the Developer;
- (c) the **Licensee** means the Council; and
- (d) the **Purpose** means the purpose for which the Licensee is accessing the Land from time to time.

2. Licence

2.1 Personal rights

- (a) The Licence is personal to the Licensee.
- (b) The Licensee may not encumber, assign or transfer (either directly or indirectly) the Licence without prior written consent of the Licensor.
- (c) The Licensor may refuse the granting of consent under paragraph 2.1(b)(2) without reason and at its absolute discretion.

2.2 Leasehold interest

- (a) This Agreement does not grant to the Licensee a leasehold interest in the Land. The Parties agree that:
 - (i) subject to any contrary terms of this agreement, this licence does not confer exclusive possession of the Land on the Licensee; and
 - (ii) the Licensee may not exclude the Licensor, its officers, employees and invitees from:
 - A. entry onto the Land; and/or
 - B. the performance of any works on the Land;provided that such entry onto and/or performance of work on the Land does not unreasonably interfere with the Purpose; and
 - (iii) the Licensee does not have any right to quiet enjoyment of the Land; and
 - (iv) the Licensee will not at any time seek to enforce an interest in the Land in competition with the interest held by the Licensee.

3. Compliance with authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Licensor has not made any representation or warranty to the Licensee regarding the suitability of the Land for the Purpose.

3.2 Compliance with the terms of consents

In the conduct of the Purpose and compliance with its obligations under this Agreement, the Licensee must comply with the requirements of all Authorities.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, order or other requests served upon itself or the Licensor and which arise from the conduct of the Purpose on the Land by the Licensee.

3.4 Obtaining further consents

- (a) If the Licensee requires further consents to conduct the Purpose it must:
 - (i) make such applications itself; and
 - (ii) bear all costs incurred by it in relation to obtaining the relevant consent.
- (b) The Licensor agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

4. Limitation of the Licensor's liability

4.1 Insurances

- (a) The Licensee must effect and keep current and in force the following policies of insurance:
 - (i) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - A. personal injury or death of any person; and
 - B. loss or damage to property,
 - (ii) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;
 - (iii) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and

- (iv) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.
- (b) The policies referred to in paragraphs 4.1(a)(i), 4.1(a)(iii) and 4.1(a)(iv) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

- (a) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.
- (b) The Licensor may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Licensor.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer the Licensee must notify the Licensor immediately.

4.4 Risk

The Licensee uses and occupies the Land at its own risk

4.5 Indemnity

The Licensee indemnifies the Licensor against any Claim (of whatever nature), made in respect of the Licensee's use and occupation of the Land but only to the extent that any such Claim does not arise as the result of the wilful or negligent acts or omissions of the Licensor, its officers, employees, agents, contractors or invitees.

4.6 WH & S

For the purposes of this Agreement and in accordance with clause 293 of the *Work Health & Safety Regulation 2011 (NSW)* (**WH&S Regulation**), the Licensor:

- (a) will engage as the "principal contractor" for any part of the Purpose conducted on the Land, the head civil works contractor specified by the Licensee from time to time; and
- (b) will authorise the nominated head civil works contractor to exercise such authority of the Licensor as is necessary to enable the head civil works contractor to have control of the workplace and to discharge the duties of a principal contractor under Chapter 6 of the WH&S Regulation.

Schedule 5 – Water and Sewerage Charges for Development Categories

Water		ET/Unit
Residential	Residential allotment (small) <650m ²	0.75
	Residential allotment (medium) 650m ² -1200m ²	1
	Residential allotment (large) >1200m ²	1.5
	Flat/Unit/Villa (small) <70m ²	0.333
	Flat/Unit/Villa (medium) 70m ² - 85m ²	0.4
	Flat/Unit/Villa (large) > 85m ²	0.667

Sewer		ET/Unit
Residential	Residential allotment (small) <650m ²	0.75
	Residential allotment (medium) 650m ² -1200m ²	1
	Residential allotment (large) >1200m ²	1.05
	Flat/Unit/Villa (small) <70m ²	0.333
	Flat/Unit/Villa (medium) 70m ² - 85m ²	0.4
	Flat/Unit/Villa (large) > 85m ²	1

Executed as a deed

Signed sealed and delivered by

Mid-Western Regional Council by its delegates

Signature of General Manager

[]
General Manager

Signature of Mayor

[]
Mayor

Signature of Witness

Name of Witness in full

Executed by

Caerleon Mudgee Pty Limited ACN 154 227
219 in accordance with section 127 of the
Corporations Act by or in the presence of;

Signature of Director/Secretary

Name of Director/Secretary

Signature of Director

Name of Director


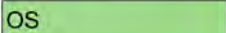





Annexure A – Plans of the Land comprising two Site Identification Maps identifying the Land and an open space hierarchy plan identifying the Land for Open Space, Land for Riparian Corridors and Land for Stormwater Detention Basins

Annexure B – Plan identifying the realignment of Fairydale Lane, the indicative location where the shared footpath/cycle path ~~reaches~~ connects with the ~~boundary of the~~ Isbester Property boundary, the Isbester Property boundary, the indicative location of the Land for Water Storage Reservoir and the indicative location of the Land for Sewerage Pumping Station

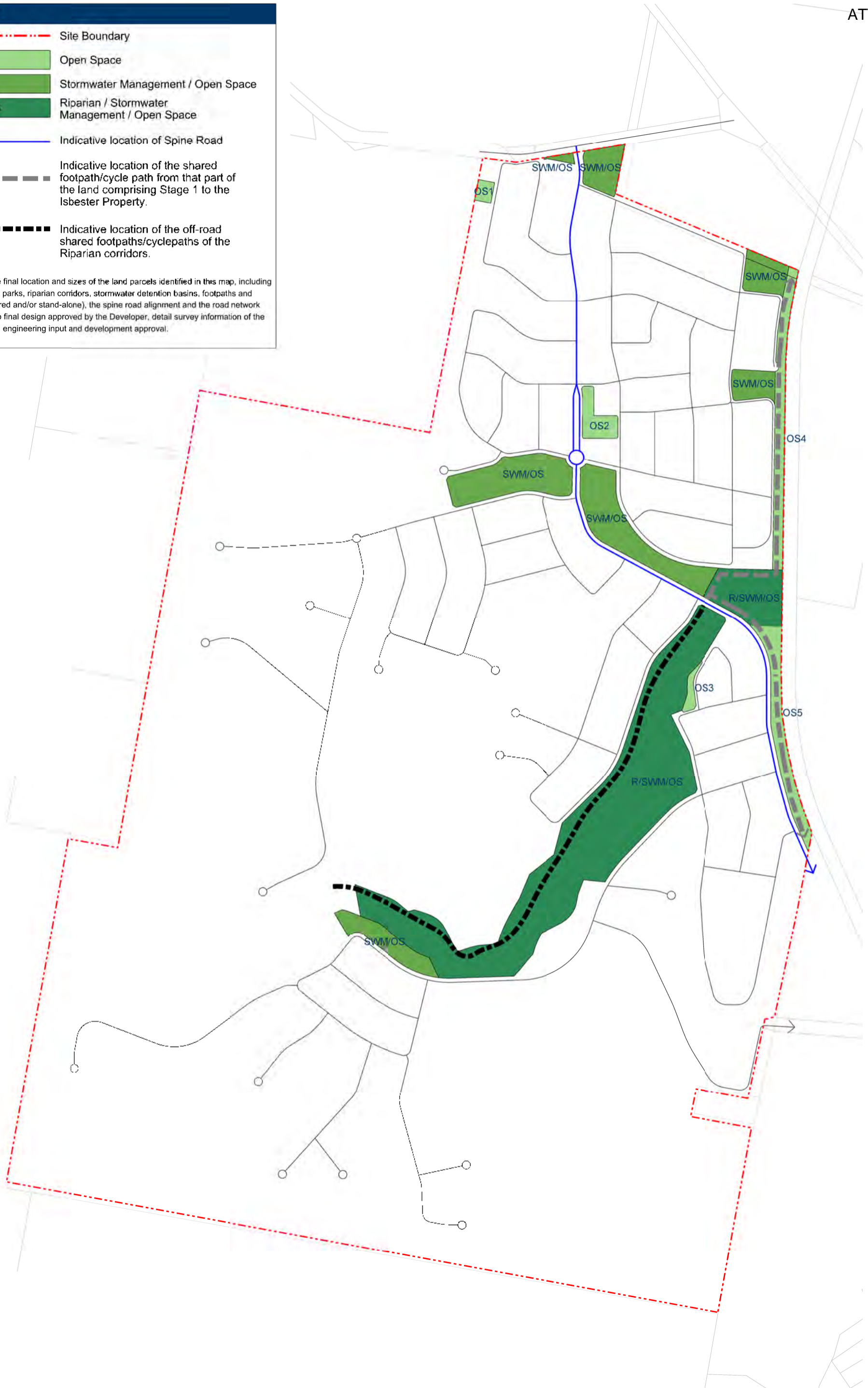
Annexure C – *Caerleon Mudgee Supplementary Landscape Report (Issue A)*
prepared by Site Image (NSW) and dated 13 March 2013

Annexure D – ~~Annexure~~ Appendix C of *Mid-Western Regional Council
Development Control Plan 2013*

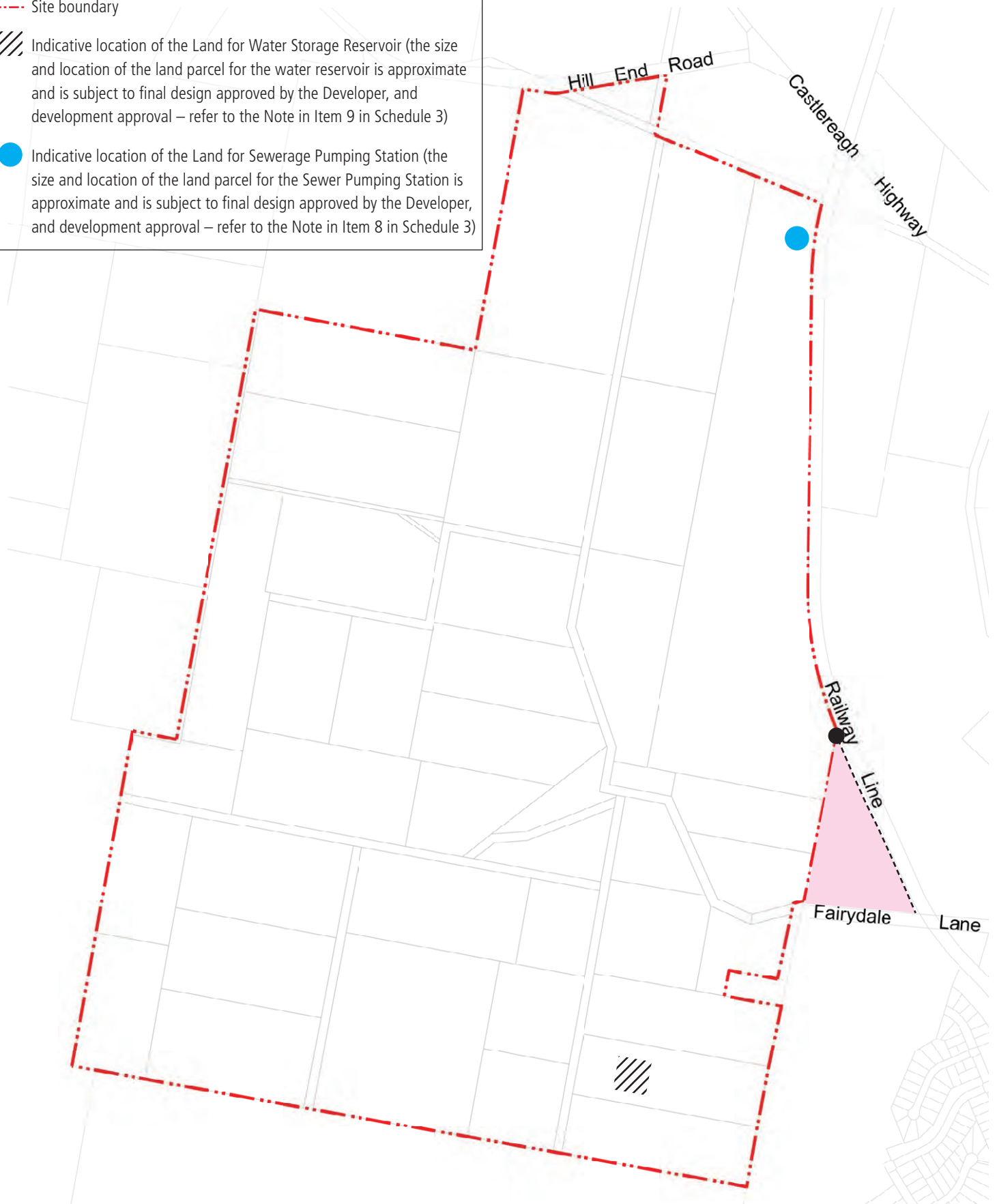
LEGEND

-  Site Boundary
-  OS Open Space
-  SWM/OS Stormwater Management / Open Space
-  R/SWM/OS Riparian / Stormwater Management / Open Space
-  Indicative location of Spine Road
-  Indicative location of the shared footpath/cycle path from that part of the land comprising Stage 1 to the Isbester Property.
-  Indicative location of the off-road shared footpaths/cyclepaths of the Riparian corridors.

Please note, the final location and sizes of the land parcels identified in this map, including the open space, parks, riparian corridors, stormwater detention basins, footpaths and cyclepaths (shared and/or stand-alone), the spine road alignment and the road network are all subject to final design approved by the Developer, detail survey information of the rail line location, engineering input and development approval.



- Indicative location of the realignment of Fairydale Lane to run along railway buffer (to be undertaken by Council)
- Indicative location where shared footpath / cycle path reaches the boundary of the Isbester Property (refer to Item 15 in Schedule 3)
- Isbester Property
- .- Site boundary
- /// Indicative location of the Land for Water Storage Reservoir (the size and location of the land parcel for the water reservoir is approximate and is subject to final design approved by the Developer, and development approval – refer to the Note in Item 9 in Schedule 3)
- Indicative location of the Land for Sewerage Pumping Station (the size and location of the land parcel for the Sewer Pumping Station is approximate and is subject to final design approved by the Developer, and development approval – refer to the Note in Item 8 in Schedule 3)





CAERLEON - MUDGEE Supplementary Landscape Report Issue A: 13 03 2013



SITE IMAGE
LANDSCAPE ARCHITECTS
Sydney Melbourne Ho Chi Minh City

Blaxland Property
CLIENT

Development Planning Strategies
PLANNER

Site Image (NSW) Pty Ltd ABN 44 801 262 380 as agent for Site Image NSW Partnership
Level 1, 3-5 Baptist Street Surry Hills NSW 2010 Australia | T +61 2 8332 5600



INTRODUCTION

CONTENTS

<p>This report is a supplementary report to the Landscape Concept Design Report & DA Masterplan Submission for the development of Mudgee Caerleon.</p> <p>The report concentrates on the Landscape character & amenities of the various open space areas - predominately in Neighbourhood 1, but also gives some indication of the design of the Neighbourhood Park and potential pocket park to the creekside area.</p> <p>All furniture & equipment models shown are indicative only at this stage.</p>	<p>Page 1</p>
<p>1) Introduction</p>	<p>Page 1</p>
<p>2) Open Space & Vegetated Areas</p>	<p>Page 2</p>
<p>3) Openspace Masterplan</p>	<p>Page 3</p>
<p>4) Entry (Precinct 1)</p>	<p>Page 4</p>
<p>5) Basin Play Area (Precinct 2)</p>	<p>Page 5</p>
<p>6) Open Space Corridor (Precinct 2)</p>	<p>Page 6</p>
<p>7) Basin Picnic Area (Precinct 2)</p>	<p>Page 7</p>
<p>8) Neighbourhood Park</p>	<p>Page 8</p>
<p>9) Creekside Pocket Park</p>	<p>Page 9</p>



SITE IMAGE
CAERLEON MUDGEE

Level 1, 3-5 Baptist Street Surry Hills NSW 2010 Australia T 61 2 9333 6600

Client

Site Image Job Number

BLAXLAND PROPERTY

SS13 - 2563

Drawing Number

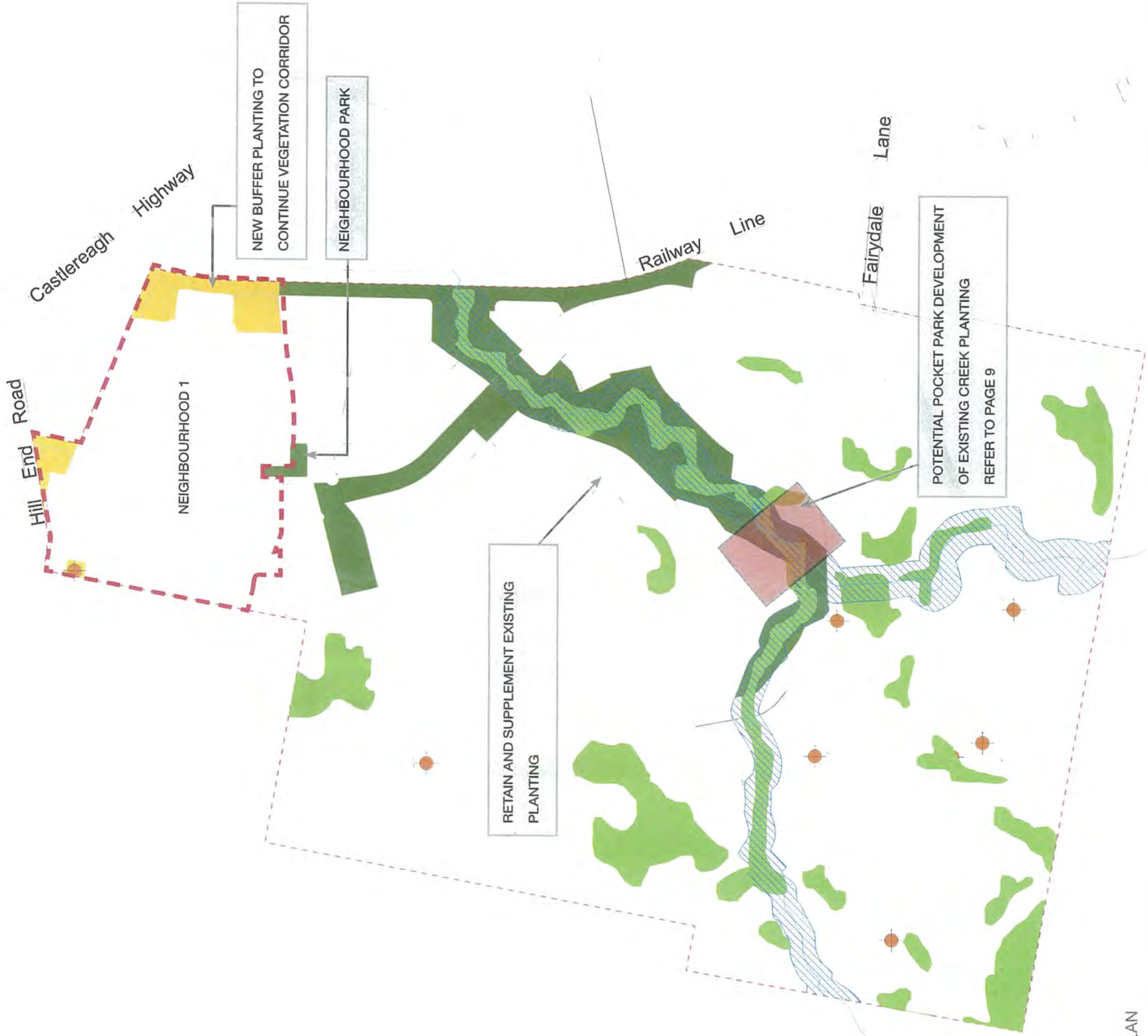
Issue A

5001

13/05/2018

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- PROPOSED OPEN SPACE WITHIN NEIGHBOURHOOD 1 STAGE OF THE DEVELOPMENT
- PROPOSED OPEN SPACE (FUTURE STAGES OF THE DEVELOPMENT)



REPRODUCED OPEN SPACE & VEGETATED AREAS MASTERPLAN
(As per Landscape Concept Design Report)



SITE IMAGE
Sydney Melbourne Hobart Brisbane Perth

CAERLEON - MUDGEES

Open Space & Vegetated Areas



Client
Site Image Job Number
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BLAXLAND PROPERTY
SS13 - 2563

Drawing Number
Issue
Date
S002
A
13/03/2013



Client
Site Image Job Number

BLAXLAND PROPERTY
SS13 - 2563

Drawing Number
Issue
Date

S003
A
13/03/2013



Pavillion / Gazebo Structure



Seating



Shared pedestrian path / cycleway



Entry Wall / Signage



Platanus acerifolia



Acer platanoides



Eleocharis reticulatus



Backhousia citriodora



Syzygium hedge



Dianella



SITE IMAGE
LANDSCAPE ARCHITECTS
Sydney | Melbourne | Hob. Ch. Man. City

CAERLEON - MUDGEES

ENTRY AREA - PRECINCT 1

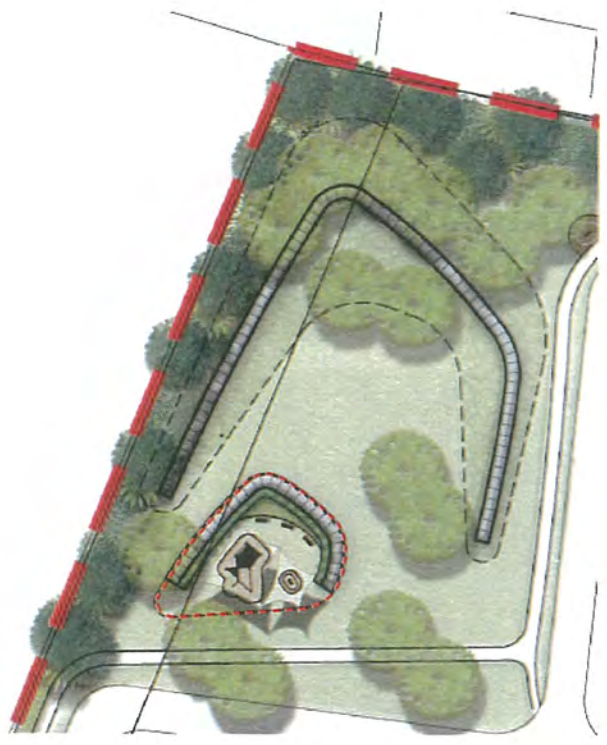


Client
Site Image Job Number

BLAXLAND PROPERTY
SS13 - 2563

Drawing Number
Issue
Date

S004
A
13/03/2013
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KEY PLAN



Liriodendron tulipifera



Acer platanoides



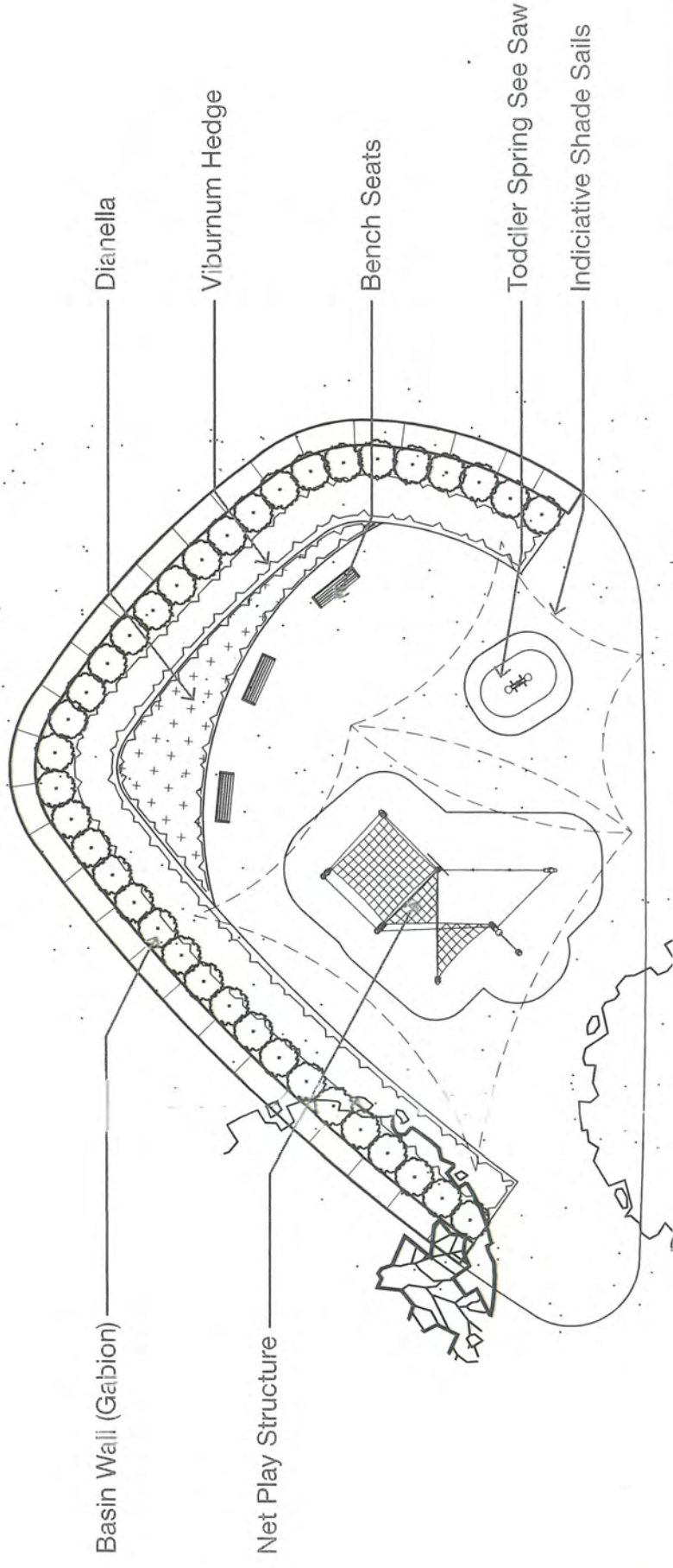
Viburnum tinus



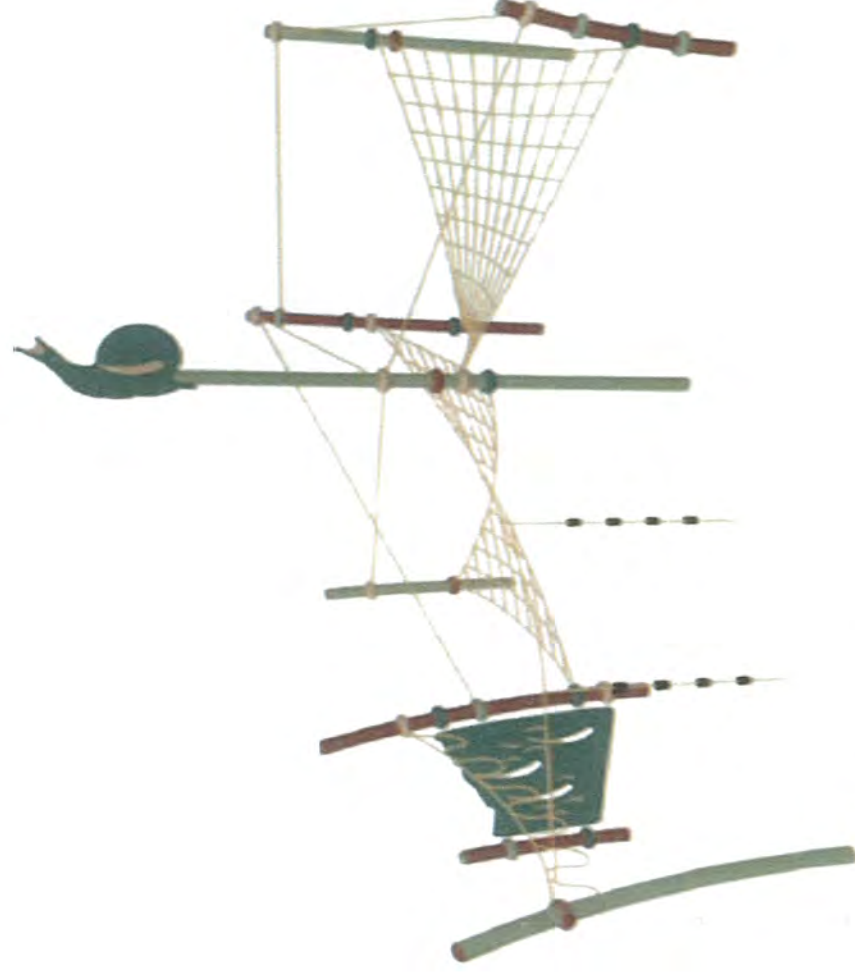
Dianella revoluta



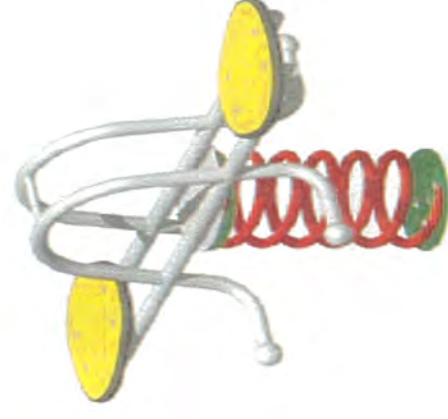
Bench Seat



PLAY AREA 1:250



Net Play Structure (5+ yrs)



Toddler Spring See Saw (2+ yrs)



SITE IMAGE
 1300 2 3110 31 11 11 11
 Sydney Melbourne Brisbane Perth Christchurch

CAERLEON - MUDGEE

PLAY AREA - PRECINCT 2

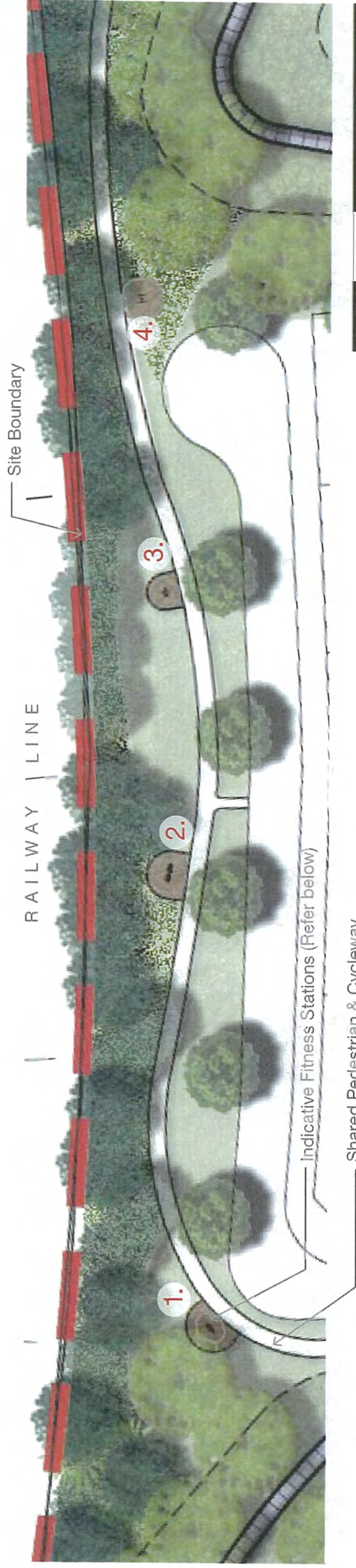
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 Site Image Job Number

BLAXLAND PROPERTY
 SS13 - 2563

Drawing Number
 Issue
 Date

S005
 A
 13/03/2013

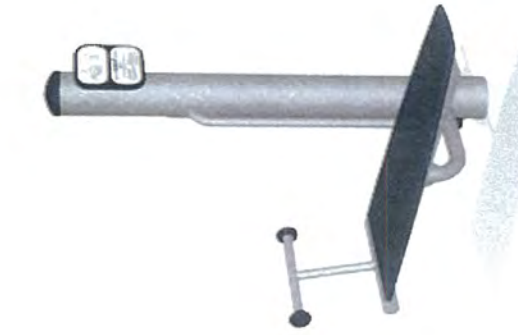
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1. Power Bike



2. Free Runner - Cross Trainer



3. Sit Up Bench



4. Body Flexer - Upperbody Trainer



Eucalyptus mannifera



Melaleuca linariifolia



Elaeocarpus reticulatus



Banksia marginata



Grevillea moonlight



Westringia Fruticosa



Dianella revoluta



SITE IMAGE
LANDSCAPE ARCHITECTS
Sydney · Melbourne · Ho Chi Minh City

CAERLEON - MUDGEE

OPEN SPACE CORRIDOR - PRECINCT 2



Client

Site Image Job Number

SS13 - 2563

BLAXLAND PROPERTY

SS13 - 2563

Drawing Number

S006

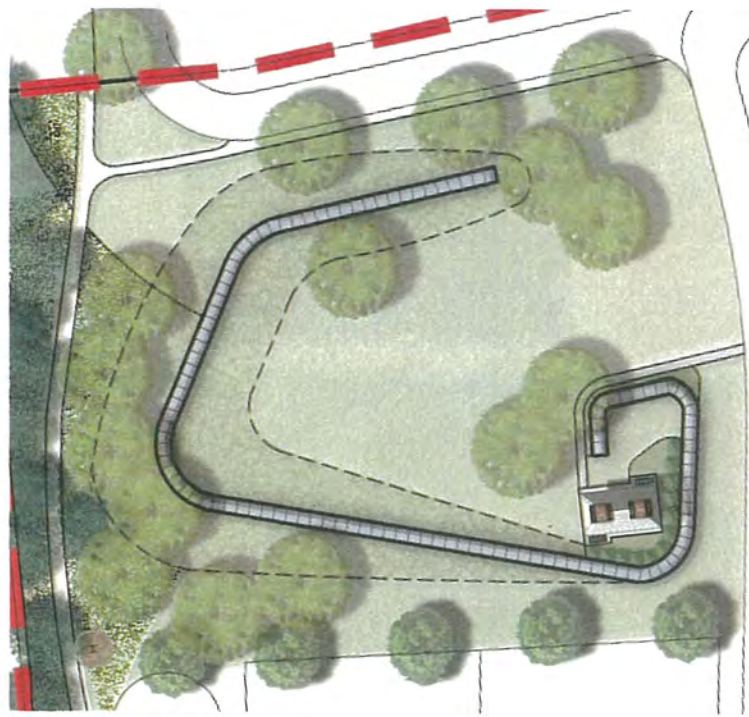
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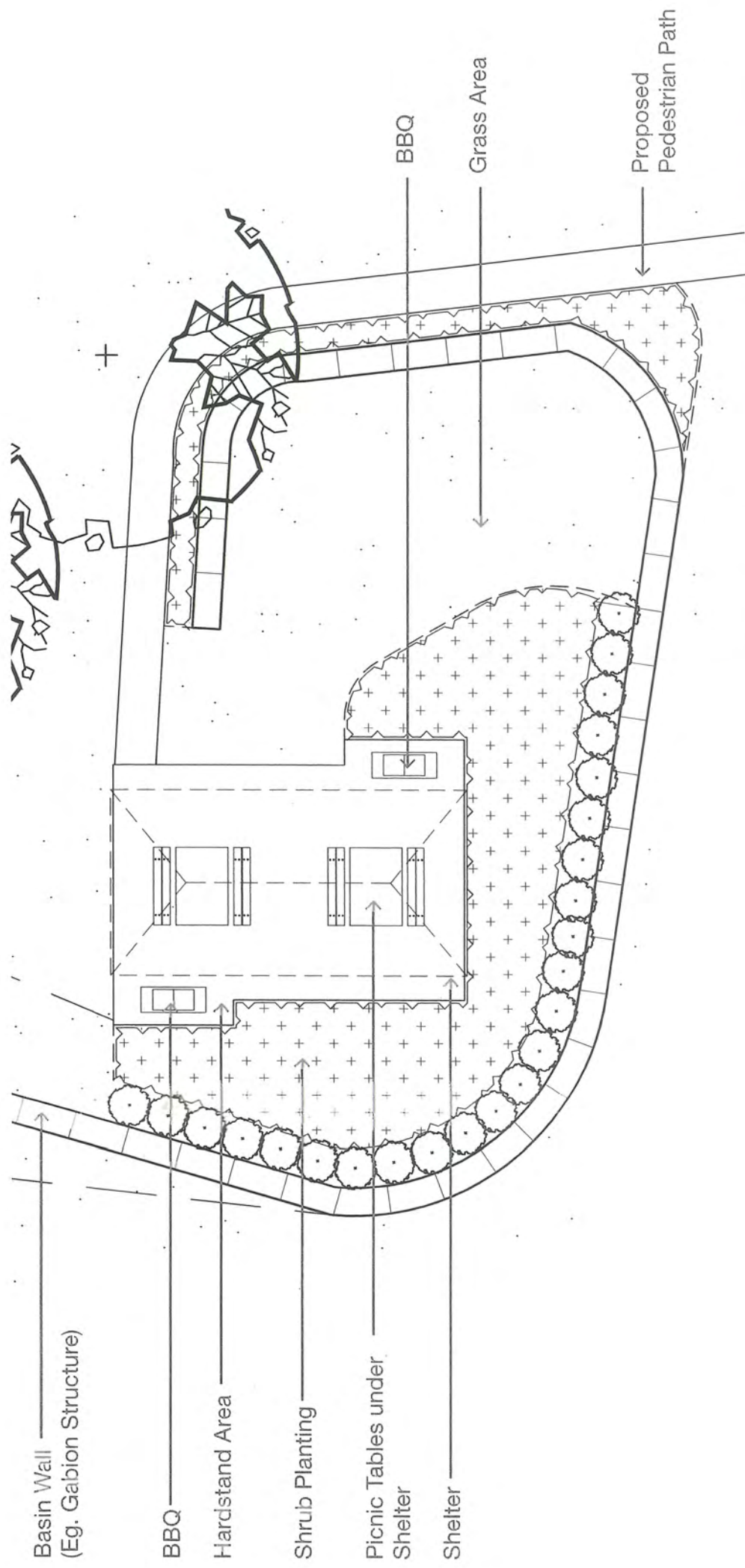
Date

13/03/2013

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KEY PLAN



PLAY AREA 1:200



Shelter



Picnic Tables



BBQ



Liriodendron tulipifera



Viburnum tinus



Westringia Fruticosa



SITE IMAGE
LANDSCAPE ARCHITECTS

Sydney | Melbourne | Ho Chi Minh City

CAERLEON - MUDGEE

PICNIC AREA - PRECINCT 2

Client

BLAXLAND PROPERTY

Drawing Number

SU07

Site Image Job Number

SS13 - 2563

Issue

A

Date

13/03/2013

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1. Shelter



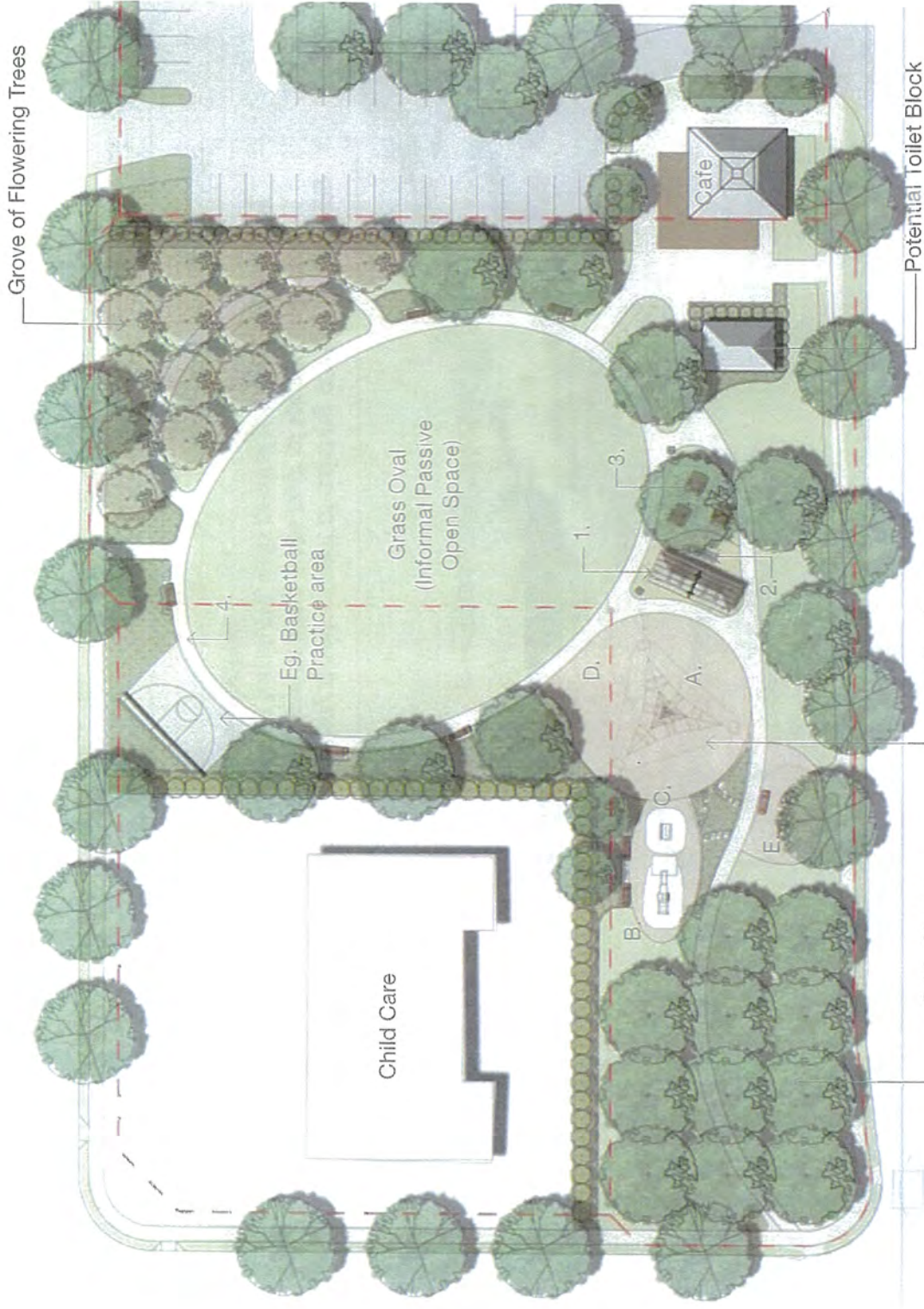
2. BBQ



3. Picnic Table



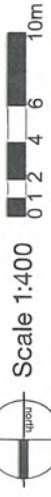
4. Seat



Grid of Large Deciduous Trees

Play Area

Potential Toilet Block



Platanus acerifolia (London Plane)



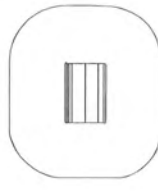
Cafe



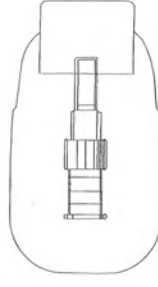
Pyrus ussuriensis (Manchurian Pear)



D. Round - About



C. Dining Car



B. The Engine Car



E. Youth Play (8-15yrs)



A. Net Play

CAERLEON - MUDGEE
NEIGHBOURHOOD PARK



Typical Existing Creekside Planting



- Proposed low key development of existing creekside planting potentially with low seating walls built of locally collected stone (or custom furniture), with central grassed area & new eucalyptus tree planting.



SITE IMAGE
LANDSCAPE ARCHITECTS
Sydney, Melbourne | Ho Chi Minh City

CAERLEON - MUDGEES
CREEKSIDE POCKET PARK

Client: BLAXLAND PROPERTY
Drawing Number: S009
Issue: A
Date: 13/03/2019
Site Image Job Number: SS13 - 2563
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Explanatory Note

Draft Planning Agreement

Mid-Western Regional Council Caerleon Mudgee Pty Limited atf Caerleon Mudgee Trust

Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the **Act**).

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the **Regulation**).

Parties to the Planning Agreement

The parties to the Planning Agreement are Caerleon Mudgee Pty Limited atf Caerleon Mudgee Trust ACN 154 227 219 (**the developer**) and the Mid-Western Regional Council (**the Council**).

Description of the Land

The Planning Agreement applies to a 308 hectare parcel of land at Caerleon NSW, generally bound by Hill End Road to the north, rural/bushlands to the west and south and a decommissioned rail line to the east. The land comprises of the following legal titles:

Lot	Deposited Plan
1	132086
2	132086
3	132086
4	132086
5	132086
6	132086
7	132086
8	132086
9	132086
10	132086
129A	756894
130	756894
131	756894
133	756894
134	756894
135A	756894
136	756894

137	756894
139	756894
140	756894
141	756894
151	756894
189	756894
218	756894
219	756894
220	756894
221	756894
222	756894
223	756894
224	756894
225	756894
226	756894
227	756894
228	756894
229	756894
230	756894
231	756894
232	756894
233	756894
234	756894
235	756894
236	756894
237	756894
341	756894
1321	1113075
1322	1113075
1	1146227
2	1181749
1 (part)*	721674

*Note: Part of this lot will be included as the Land to which the Voluntary Planning Agreement applies if the Developer is successful in its possessory title application for this lot.

Description of the Proposed Development

The developer is seeking to develop land for approximately 1,000 residential lots including open space, land for a neighbourhood centre and associated infrastructure.

An Indicative Concept Plan, adopted by Council and included in *Mid Western Regional Development Control Plan 2012*, broadly outlines the ultimate development vision for the Land, including the preferred location of residential and non-residential land uses, roads, open space and infrastructure to guide future planning and development.

The Indicative Concept Plan allows for approximately 1,000 residential lots across three distinct residential character areas that align with topography and other features of the land. Approximately one quarter of the land is proposed as standard residential development area with one quarter as

larger/rural residential lots. The Indicative Concept Plan also provides for a neighbourhood centre comprising approximately 2 hectares of mixed-use/commercial/community land uses located in the northern portion of the land. New public open space, in the form of public parks with playgrounds, cycleways and landscaping, are identified in the concept plan together with a riparian corridor proposed to remain intact. Infrastructure to service the proposed development includes a well-connected street network as well as sewer, water and stormwater drainage infrastructure.

The proposed development will be carried out in stages over a number of years.

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

The land is located on the edge of Mudgee and has been rezoned via Amendment Number 3 (published 15 March 2013 to the Mid-Western Regional Local Environmental Plan 2012 for residential, open space and mixed use purposes.

A development application for Stage One of the development comprising the creation of 267 residential lots, one lot for a child care use and 3 residual lots to be set aside for open space with an area of approximately 29,782m² of open space, and the carrying out of subdivision works involving site preparation and grading, tree removal, utilities augmentation, drainage, road construction and landscaping has been determined subject to the parties entering into a Voluntary Planning Agreement to provide key infrastructure to enable the whole precinct to be developed for residential uses.

Contributions must be made by the Developer in the manner set out in Schedule 3 to the Planning Agreement.

The Developer is required to register the Planning Agreement on the title to the Land in accordance with section 93H of the Act.

The Council has the power to compulsorily acquire any land required to be transferred under the terms of the Planning Agreement (and that the Developer fails to transfer) for \$1.00.

The Council has agreed, as outlined in Schedule 3 Item 19, to deferred payment of water and sewer contributions until such time as the registration of the Plan of Subdivision that creates the 100th lot or 12 months from the date of this Agreement, whichever occurs first. The Council has agreed to the deferment to facilitate the development of a major new greenfield site. The Developer has agreed to pay interest on any outstanding amount of the monetary contribution for water and sewer contributions from 28 days after such contributions become due for payment.

Specifically the Planning Agreement provides for the following (refer to Schedule 3) :

- **Local Parks**—Land developed and dedicated for Open Space and recreation including the provision of facilities such as footpaths, seating, playground equipment, outdoor gym equipment, BBQ facilities, and public toilets.
- **Riparian Corridor and Recreational Use** development and dedication of land for riparian corridors including upgrades to land including soft landscaping, stabilisation works, shared footpath/cycleways and seating.

- **Stormwater** –development and dedication of Land for stormwater facilities including the construction of stormwater detention basins, water quality facilities and open drains.
- **Land for Sewerage Pumping Station** – dedication of land for sewerage pumping stations and rising mains, with offsets against the payment of monetary contributions under the voluntary planning agreement for the value of the land dedicated (excluding any easements). If the land is zoned RE1 public recreation no offsets for monetary contributions will apply.
- **Land for Water Storage Reservoir** – dedication of land for water storage reservoir including road access and distribution main. The value of this land is to be offset against monetary contributions (excluding any easements).
- **Bus Stops** – A temporary bus stop to be provided in Stage 1 of the development with up to 4 permanent bus stops to be provided along the Spine Road upon completion of Spine Road and the upgrade to Fairydale Lane.
- **Fairydale Dale Lane Upgrade** – The Developer is to pay the Council \$500,000 towards the upgrade of Fairydale Lane on a per lot basis once the Spine Road has connected to Fairydale Lane.
- **Water and Sewer Contributions** – The Developer is to pay \$ 7, 837 per Equivalent Tenement for water and \$3,558 per Equivalent Tenement for sewerage on a per lot basis. The Council has agreed, as outlined in Schedule 3 Item 19, to deferred payment of water and sewer charges until the registration of the Plan of Subdivision that creates the 100th lot or 12 months from the date of this Agreement, whichever occurs first

Assessment of the Merits of the Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 93F of the Act, the Planning Agreement promotes the following public purposes:

- the provision of (or recoupment of the cost of providing) public amenities and facilities;
- the provision of infrastructure relating to land;
- the conservation or enhancement of the natural environment.

The Council and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above. This is because it will ensure that the developer makes appropriate contributions towards the provision of infrastructure, facilities and services referred to in Mid-Western Development Control 2013 and promotes the development of the land in accordance with Mid-Western Regional Local Environmental Plan 2012. The Planning Agreement achieves this by coordinating the dedication of land for public facilities and services; coordinating the delivery of sewer and water infrastructure in a timely manner; and ensuring the timely and reasonable payment of contributions (monetary and works-in-kind) by the Developer to Council in stages that enable all necessary infrastructure to be in place before occupation occurs.

How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure and facilities to satisfy the need that is generated by the development of the land. The Planning Agreement provides broader public benefits to the Mudgee community. The creation and dedication of land for new, high-quality landscaped public open space will provide areas for public recreation. There will be a variety of open space areas at Caerleon to cater not only to new residents, but the wider Mudgee township, ranging from passive recreation space, children's play areas, formal outdoor gathering spaces and natural riparian corridors. In addition to land dedication, works-in-kind to construct and embellish the open spaces will ensure the areas are high quality and provide suitable areas of shade, footpaths and seating, areas for children's play, public amenities, BBQ areas and play/gym equipment.

Traffic and transport infrastructure improvements will improve some of the wider transport links in the area, creating a new alternative access to the Mudgee township and the potential for a connected bicycle and pedestrian route from the CBD to Caerleon along the spine road.

The Planning Agreement will also provide benefits to existing areas in the Mudgee township by contributing towards new infrastructure that extends, or has the potential to extend, to services areas other than the land itself such as water and sewer services.

How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and
- the promotion and co-ordination of the orderly and economic use and development of land;
- the protection, provision and co-ordination of communication and utility services.

The Planning Agreement promotes the objects of the Act as set out above by requiring the Developer to make a contribution towards the provision of infrastructure and facilities generated by the development of the land. The provision of community services and facilities such as open space parks and riparian corridors, for passive and active public recreation, will be facilitated through the dedication and embellishment of open space land. A riparian corridor running through the site will be retained in its natural form, with the introduction of a low impact cycleway to enable public enjoyment of the land. The orderly and economically feasible development of the land will be facilitated by the Planning Agreement, including the provision of essential infrastructure to service residential release.

How the Planning Agreement Promotes the elements of the Council's Charter

The Planning Agreement promotes the following elements of the Council's Charter contained in Section 8 of the Local Government Act 1993 as required by cl 25E(d) of the Environmental Planning and Assessment Regulations:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively
- to promote and to provide and plan for the needs of children
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development
- to bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for and manage the assets for which it is responsible

The Planning Agreement has been prepared giving due consideration to the Charter, in particular in the negotiation of contributions to be provided by the Developer. For example, the dedication of land for public open space has given due consideration for the long-term management of the land as a public asset of Council. The Planning Agreement balances the need for adequate provision of open space whilst minimising surplus provision of open space so as to not add to the on-going cost of maintenance. In this regard the Planning Agreement ensures an efficient use of land.

The Planning Agreement also gives due consideration to the needs of children, by planning for a child care centre and through the dedication of land for open space and its embellishment to include a children's playground.

The Planning Agreement also promotes the principles of ecologically sustainable development by facilitating the release of land for residential development, whilst planning for all transport, utility and social infrastructure requirements.

Council's Public Works Program

The infrastructure works required by the payment of the monetary contributions are consistent with Council's capital works program, with the construction of water and sewer infrastructure to service the initial stages of the development scheduled for 2013/14 and the upgrade of Fairydale Lane scheduled for 2014/15. Further water and sewer augmentation is scheduled to meet the demands of the development as lots are released.

Requirements Relating to Construction, Occupation and Subdivision Certificates

Clause 5.1 of the Planning Agreement requires the Developer to submit to Council for approval detailed descriptions including design drawings for works relating to open space and riparian corridors specified in Schedule 3, one month before the application for the Construction Certificate for the relevant works, and in relation to the stormwater detention basins, water quality facilities and open drains, before the application for the Construction Certificate.

Schedule 3 of the Planning Agreement requires that provision of facilities in open space, riparian corridors and stormwater detention basins, water quality facilities and open drains, as specified in the detailed design and Schedule 3 are to be completed by the Developer prior to the release of the Subdivision Certificate for the relevant stage of the development.

Schedule 3 of the Planning Agreement allows for the deferred payment of water and sewer contributions until the registration of the Plan of Subdivision that creates the 100th lot, or 12 months from the date of this Agreement, whichever occurs first. For the balance of the lots, the water and sewer contributions are payable on the issue of a Subdivision Certificate for the relevant lots.

Schedule 3 of the Planning Agreement (Item 17) allows for the provision of a temporary bus stop within one month of the issue of a subdivision certificate for a Plan of Subdivision that creates the 100th lot, provided that a bus operator has requested either the Council or the Developer to provide the temporary bus stops and the bus operator is operating a bus service along the Spine Road or part of the Spine Road. Permanent bus stops are to be provided within two months of completion of the Spine Road and completion of the upgrade of Fairydale Lane, or as requested by the relevant transport authority (whichever occurs later), or such other time as agreed in writing by the Parties.

Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.