



Doonside Project Planning Agreement

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

Landcom

Minister Administering the Environmental Planning and
Assessment Act 1979

Dated: "[Insert Date]"



Planning Agreement

Parties

Landcom of Level 2, 330 Church Street, Parramatta NSW 2150 (**Developer**)

Minister Administering the Environmental Planning and Assessment Act 1979 of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)

Background

- A The Development is a project to which Part 3A of the Act applies.
- B The Developer has lodged with the Minister an application for approval of a project under Part 3A of the Act relating to the Development.
- C The Developer is prepared to make Development Contributions to the Council in connection with the carrying out of the Development under s93F of the Act.
- D The Developer has offered to enter into this Agreement to give effect to its Statement of Commitments.
- E The Developer will enter into further and more detailed arrangements with the Minister or the Council relating to the implementation of this Agreement in connection with any further Application to the Minister or the Council for an Approval to carry out the Development.
- F Until the Planning Agreement operates, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

Operative provisions

1 Definitions & Interpretation



1.1 In this Agreement the following definitions apply:

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

Application means an application to the Minister for an approval under s75E of the Act or to the Council under s78A of the Act.

Approval means an approval granted by the Minister under s75J of the Act or by the Council under s80 of the Act.

Compliance Certificate means a compliance certificate within the meaning of s109C(1)(a)(i) of the Act or such other certificate as the Council may require the Developer to provide to the Council for the purposes of clause 12.

Contribution Value means the amount specified in Column 4 of Schedule 3 in relation to a public facility specified in Column 1 of that Schedule.

Council means Blacktown City Council.

Development means the development specified or described in Schedule 2.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a public purpose.

Final Lot means a lot to be created in the Development for separate occupation and disposition not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Minister, or
- (b) a lot created by a subdivision of the Land which may be further subdivided.

First Defects Liability Period means the period of 180 days on and from the date on which the Developer gives the Minister a Compliance Certificate under clause 12 of this Agreement.



GST has the same meaning as in the GST Law.

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

Item means an item in Column 1 of Schedule 3.

Land means the land specified or described in Schedule 1 on which the Development is to be carried out.

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

PCG means the project control group established pursuant to a project delivery agreement between the Parties for the purposes of managing the Development.

Planning Agreement means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

Provision means the Developer's provision under this Agreement.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Purpose means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

Rectification Certificate means a compliance certificate within the meaning of s109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Notice or such other certificate as the Council may require the Developer to provide to the Council to that effect for the purposes of clause 13.



Rectification Notice means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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

Release, in relation to a Stage, means the issuing of the first construction certificate for the erection of a dwelling in the Stage.

Second Defects Liability Period means the period of 180 days on and from the date on which the Developer gives the Minister a Rectification Certificate under clause 13 of this Agreement relating to a Rectification Notice given in the First Defects Liability Period.

Stage means a stage in the carrying out of the Development.

Staging Plan means the plan of Stages contained in Part 2 of Schedule 3, or as otherwise approved by the PCG from time to time.

Statement of Commitments means the statement of commitments within the meaning of s75D(6) of the Act accompanying the Developer's application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.



1.2.13 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

1.2.14 Any schedules, appendices and attachments form part of this Agreement.

2 Application of this Agreement

This Agreement applies to the Development.

3 Status of this Agreement

3.1 Until the Planning Agreement operates, this document constitutes the Developer's irrevocable offer to enter into the Planning Agreement if an Approval is granted to the Development.

3.2 The Parties acknowledge that the offer referred to in clause 3.1 is made to fulfill the Developer's Statement of Commitments.

3.3 The Planning Agreement operates only if:

3.3.1 the carrying out of the Development is subject to a condition imposed under s93I(3) of the Act requiring this Planning Agreement to be entered into, and

3.3.2 the Planning Agreement is entered as required by clause 25C(1) of the Regulation, and

3.3.3 the Developer gives the Minister notice of its intention to commence the Development pursuant to section 81A(2)(c) of the Act.

4 Further Agreements Relating to this Agreement

4.1 The Developer is not to make an Application for an Approval to carry out the Development unless prior satisfactory arrangements have been made between the Developer and the Council relating to the detailed



implementation of the provisions of this Agreement requiring the Developer to make Development Contributions in relation to the Development.

4.2 Nothing in this Agreement requires the Developer enter into an agreement or arrangement with the Council that is beyond the scope of the Developer's obligations to make Development Contributions under this Agreement.

4.3 Without limiting clause 4.1, any such arrangements may include:

4.3.1 a binding offer or undertaking by the Developer in favour of the Council, on terms satisfactory to the Council, to enter into a planning agreement with the Council under s93F of the Act to implement this Agreement or any relevant part or aspect of it, or

4.3.2 a planning agreement between the Developer and the Council under s93F of the Act relating to the implementation of this Agreement or any relevant part or aspect of it.

4.4 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.

4.5 An agreement or arrangement referred to in clause 4.1, 4.2 or 4.3 is not to alter any matter for which provision is made in Schedule 3 and is not to be otherwise inconsistent with this Agreement.

4.6 Without limiting clause 4.1 or 4.3, an agreement or arrangement referred to in those clauses may make provision for:

4.6.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,

4.6.2 the location at which a Public Facility is to be provided and the time at which and the manner in which it will be made available,

4.6.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and



4.6.4 the time at which and the manner in which a Work is to be handed over to the Council.

4.7 Without limiting clause 4.1, an agreement or arrangement referred to in clauses 4.1 or 4.3 must make provision for the terms on which and the time at which the Council is to return the amount payable by the Developer to the Council under clause 14.1 to the Developer.

4.8 If the prior satisfactory arrangements referred to in clause 4.1 have not been made within two (2) months of the date on which the Developer first notifies Council in writing that it wishes to make such arrangements, the Developer may lodge an Application for an Approval to carry out the Development, despite clause 4.1.

5 Application of s94 and s94A of the Act to the Development

5.1 This Agreement excludes the application of s94 and s94A of the Act to the Development.

6 Effect of Approvals on the Development

6.1 The purpose of this clause is to ensure that the Developer is not required to make Development Contributions in respect of the Development that exceed the sum of all Contribution Values.

6.2 If Development Consent is granted to the Development subject to a condition imposed under s75J(4) or 75O(4) of the Act requiring the Developer to carry out Work for a Public Purpose, the value of the Developer's Provision under this Agreement is to be reduced by the value of the Work.

6.3 For the purpose of clause 6.2, the value of the relevant Work is the value determined in accordance with clause 8 of this Agreement.

6.4 If clause 6.2 applies, the Parties, acting in good faith and using their best endeavours, are to agree on an appropriate adjustment of the Developer's obligations under this Agreement to give effect to that subclause.

7 Provision of Development Contributions under this Agreement



- 7.1 Subject to this Agreement, the Developer is to make Development Contributions towards each Public Facility specified in Column 1 of Schedule 3 to the Contribution Value specified in Column 4 of that Schedule in relation to the Public Facility.
- 7.2 A Development Contribution referred to in clause 7.1 is to be made:
- 7.2.1 in accordance with the specification in Column 1 of Schedule 3,
 - 7.2.2 for the Public Purpose referred to in Column 2 of Schedule 3 in relation to the relevant Public Facility,
 - 7.2.3 in the form specified in Column 3 of Schedule 3 in relation to the relevant Public Facility, and
 - 7.2.4 in accordance with any agreement entered into by the Parties under clause 4 of this Agreement.
- 7.3 Except as provided by clause 13, a Development Contribution made under this Agreement is made in full and final satisfaction of all costs and expenses required to be borne by the Developer of and incidental to the Provision of the Public Facility to which it relates.

8 Determination of Value

- 8.1 For the purposes of this Agreement, the Parties acknowledge that the Contribution Value specified in Column 4 of Schedule 3 in respect of the Public Facility specified in Column 1 of that Schedule is determined as follows:
- 8.1.1 where the Development Contribution is in the form of a monetary contribution, the Contribution Value is the dollar value of the monetary contribution,
 - 8.1.2 where the Development Contribution is in the form of the dedication of land, the Contribution Value is the estimated amount of compensation to which the Developer would be entitled under the



Land Acquisition (Just Terms Compensation) Act 1991 upon the compulsory acquisition of the land,

8.1.3 where the Development Contribution is in the form of Works, the Contribution Value is the estimated value of the completed works determined using the method that would be adopted by a suitably qualified quantity surveyor, and all costs associated with the provision of the completed works including the costs of design, project management, consultants and any fees and charges incurred by the Developer,

8.1.4 where the Development Contribution relating to the Public Facility is not one to which clauses 8.1.1-8.1.3 applies, the Contribution Value is the dollar amount as agreed between the Parties.

8.2 The value of any aspect of the Developer's Provision to be determined for purpose of this Agreement is taken to be the value determined, at the date specified by this Agreement or otherwise by agreement of the Parties, in accordance with clauses 8.1.1-8.1.3 as if a reference to the Contribution Value was a reference to the value of the aspect required to be determined.

9 Application of Development Contributions by the Minister

9.1 The Developer acknowledges that:

9.1.1 a Development Contribution made by the Developer under this Agreement is to be applied towards the Public Facility for which it is made and at the locations, in the manner and to the standards required by or under this Agreement, and

9.1.2 each such Public Facility is to be available for the Public Purpose relating to that facility and may be made available in the manner that best meets the demand for the facility created by the Development.

10 Monetary Contributions

10.1 If Schedule 3 specifies a rate at which a Monetary Contribution may be paid in respect of each Final Lot in the Development, the Monetary Contribution



may be so paid notwithstanding any lump sum amount specified in that Schedule.

10.2 A Monetary Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.

10.3 The Developer is to give the Council not less than 2 business days written notice of:

10.3.1 its intention to pay a Monetary Contribution,

10.3.2 the Public Facility to which the Monetary Contribution relates, and

10.3.3 the amount proposed to be paid.

10.4 The Developer is not required to pay a Monetary Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 10.3, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.

10.5 The Developer is not in breach of this Agreement if it fails to pay a Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by the Developer.

11 Dedication of Land

11.1 The Developer is required by this Agreement to dedicate land specified in Part 1 of the Table to Schedule 3 under the heading *Part A – Land Dedication* upon the earlier to occur of:

11.1.1 the issuing of a Subdivision Certificate to create a Final Lot within the Stage in which the land to be dedicated is situated, or

11.1.2 the handing-over to the Council under clause 12 of Work required by this Agreement to be carried out on the land that is to be dedicated to the Council



- 11.2 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to the Council when registered.
- 11.3 To allow for the registration of an instrument of transfer referred to in clause 11.1, the Developer is to:
- 11.3.1 produce to the Land Titles Office the certificate of title to land to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose, and
- 11.3.2 give to the Council an irrevocable undertaking to deliver to the Council the certificate of title if that certificate is released to the Developer by the Land Titles Office.
- 11.4 Subject to any agreement between the Developer and the Council to the contrary, the Developer is to dedicate land specified in the Table to Schedule 3 at the same time as it is required, in accordance with clause 12.3, to hand-over any Work required by this Agreement to be undertaken by the Developer on the land.

12 Carrying Out & Hand-over of Work

- 12.1 The Developer is to carry out Work for the purpose of the Public Facilities specified or described in Items B1 – B15 in Part 1 of the Table to Schedule 3 under the heading *Part B – Works*.
- 12.2 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.
- 12.3 Subject to this Agreement, when the Developer considers that a Work relating to a Public Facility specified in Column 1 of the Table to Schedule 3 is complete, the Developer is to give to the Council a Compliance Certificate relating to the Work.



- 12.4 The Developer is to hand-over to the Council a Work that is the subject of a Compliance Certificate on the date specified by the Council following receipt of the Compliance Certificate .

13 Rectification of Defects

- 13.1 The Developer must, at its own cost, comply with any Rectification Notice given to it by the Council during the First Defects Liability Period and the Second Defects Liability Period.
- 13.2 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Work the subject of the relevant Rectification Notice.
- 13.3 A Rectification Certificate discharges the Developer from any further obligation to comply with a Rectification Notice.
- 13.4 The Developer acknowledges that any costs incurred by the Council as a result of the Developer's non-compliance with a Rectification Notice may be recovered by the Council as a debt due in a court of competent jurisdiction.

14 Provision of Security

- 14.1 Prior to the construction of any Work specified in Column 1 of Schedule 3, the Developer is to pay to the Council the amount of \$20,000 to cover any costs that may be incurred by the Council in enforcing this Agreement in the event of a breach by the Developer.

15 Enforcement

- 15.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 15.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 15.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,



15.2.2 the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

16 No Registration of this Agreement

The Parties agree not to register this Agreement under s93H of the Act.

17 Sale of the Land

17.1 The Developer agrees not to sell the Land or part of the Land, other than a Final Lot created pursuant to an Approval granted to the Application, unless:

17.1.1 it has, at no cost to the Minister or the Council, first procured the execution by the person with whom it is dealing a Deed in favour of the Minister or the Council on terms reasonably acceptable to them,

17.1.2 the Minister and the Council, by notice in writing to the Developer, have stated that evidence satisfactory to them has been produced by the Developer to show that the purchaser of the Land or part is reasonably capable of performing its obligations under the Deed referred to in clause 17.1.1, and

17.1.3 the Developer is not in breach of this Agreement.

17.2 The Developer is not obliged to procure the agreement referred to in clause 17.1.1 if that part of the Land being sold is a Final Lot.

18 Review of this Agreement

18.1 The Parties, acting in good faith and using their best endeavours, agree to review this Agreement every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Agreement.

18.2 For the purposes of clause 18.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the



Council or any other planning authority to restrict or prohibit any aspect of the Development.

- 18.3 A failure by a Party to agree to participate in, or to take action requested by the other Party as a consequence of, a review under clause 18.1 is taken to be a dispute for the purposes of clause 19.

19 Dispute Resolution

- 19.1 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.
- 19.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales as set out in Schedule 4 or such amended or other Rules that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 19.3 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

20 Notices

- 20.1 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:
- 20.1.1 delivered or posted to that Party at its address set out in Schedule 5.
- 20.1.2 faxed to that Party at its fax number set out in Schedule 5.
- 20.1.3 emailed to that Party at its email address set out in Schedule 5.



- 20.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 20.3.1 delivered, when it is left at the relevant address.
 - 20.3.2 sent by post, 2 business days after it is posted.
 - 20.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

21 Approvals and Consent

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

22 Costs

The Developer agrees to pay the Minister's reasonable costs not exceeding \$10,000 of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

23 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, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

24 Further Acts

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

25 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.

26 Joint and Individual Liability and Benefits

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

27 No Fetter

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

28 Representations and Warranties

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



29 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

30 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.

31 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. 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.

32 GST

32.1 In this clause:

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

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

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

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an



acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

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

- 32.2 Subject to clause 32.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 32.3 Clause 32.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 32.4 No additional amount shall be payable by the Council under clause 32.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 32.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
 - 32.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
 - 32.5.2 that any amounts payable by the Parties in accordance with clause 32.2 (as limited by clause 32.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 32.6 No payment of any amount pursuant to this clause 32, 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.

32.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

32.8 This clause continues to apply after expiration or termination of this Agreement.

33 Explanatory Note Relating to this Agreement

33.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

33.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



Schedule 1

(Clause 1.1)

The Land

Part Lot 2 DP 1103025 and Part Lot 61 DP 1111529



Schedule 2

(Clause 1.1)

The Development

The 730 lot residential development on the *Doonside Residential Parcel* described in the application by Landcom to the Minister under s75M of the Act dated [Drafting Note. Insert date].

**Schedule 3**

(Clause 7)

The Development Contributions**Part 1****Table**

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
Part A – Land Dedication				
A1	Dedication of the land shown on Plan 01 in Part 2 of Schedule 3 to Blacktown City Council, at no cost to Council, in relation to a number of facilities including Collector Road, local parks, and special purposes (heritage) and community centre land.	Public land.	Constructed on a Stage by Stage basis and generally in accordance with the Staging Plan.	N/A
A2	Dedication of the land shown on Plan 01 in Part 2 of Schedule 3 to Blacktown City Council, at no cost to Council, in relation to a number of facilities including public roads, and public open space.	Public land.	Constructed on a stage by stage basis and generally in accordance with the Staging Plan.	N/A
Contribution Value Subtotal				N/A
Part B – Works				
B1	Provision of collector road, including street tree planting as shown on Plan 02 in Part 2 of Schedule 3.	Public road.	When required for each Stage and generally in accordance with	\$1,703,886

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
			the Staging Plan.	
B2	<p>Upgrading of the following intersections as shown on Plan 02 in Part 2 of Schedule 3 to allow vehicular access to the development:</p> <p>(a) Eastern Road/Doonside Road (new signalized intersection);</p> <p>(b) Doonside Road/Bungaribee Road (new signalized intersection); and</p> <p>(c) Doonside Road/Douglas Road (new arm to existing signalized intersection and upgrading of traffic signals).</p>	Intersection upgrades.	Prior to the Release to which the facility relates as shown on the Staging Plan.	<p>(a) \$275,000</p> <p>(b) \$5,170,000</p> <p>(c) \$2,970,000</p>
B3	<p>The provision of two bridges linking the Development to the Western Sydney Parklands:</p> <p>(a) across Eastern Creek; and</p> <p>(b) across Bungaribee Creek,</p> <p>in the locations generally indicated on as shown on Plan 02 in Part 2 of Schedule 3 providing access for pedestrians, bicycles and maintenance</p>	Access to parklands.	When required for each Stage to connect to facilities available for public use in the Western Sydney Parklands and generally in accordance with the Staging Plan.	\$330,000

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	vehicles only.			
B4	Provision of a pedestrian/cycleway network internal to the Development and along the eastern side of the Development on Doonside Road between Eastern Road and Bungaribee Creek as shown on Plan 02 in Part 2 of Schedule 3.	Pedestrian/cycle way.	When required by each Stage of the Development and generally in accordance with the Staging Plan.	\$3,576,309
B5	Provision or upgrading of a pedestrian network linking the Development to external facilities including the Rainbow Shopping Centre, Doonside railway station and the Mountain View Adventist School and Church as shown on Plan 02 in Part 2 of Schedule 3.	Provision and upgrade of pedestrian network.	Prior to the Release to which the facility relates as shown on the Staging Plan.	\$531,300
B6	Conservation (other than ongoing maintenance) of the archaeological remains of the former Bungaribee House and its surrounds as provided for in the Developer's Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.	Conservation of archaeological remains.	When required by each Stage and generally in accordance with the Staging Plan.	A proportion of the combined value of Items B6 and B7, being \$ 2,890,437
B7	Construction of a community facility (Douglas Road Community Facility) to be operated by Blacktown City Council, subject to Council's request for such a facility and with part funding from Council. Arrangements in relation to	Council community facility.	Following discussions with the Council after Council has updated its Social Plan. Landcom will include details of the Douglas Road Community Facility in the Development	A proportion of the combined value of Items B6 and B7, being \$ 2,890,437.

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	<p>the location and construction of the Douglas Road Community Facility as follows:</p> <p>(a) If the Douglas Road Community Facility is constructed by Landcom as part of its development, Landcom will transfer it to the Council in return for a payment by the Council to Landcom.</p> <p>(b) If the Douglas Road Community Facility is not constructed by Landcom as part of its development, Landcom will pay an amount to Council which is equivalent to the s94 contribution that would be payable by Landcom in respect of that facility.</p>		Application described in B6 above.	
B8	Rehabilitation, revegetation and enhancement of two internal creeks (the Northern Creek and the Southern Creek) as provided for in the Developer's Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.	Environmental rehabilitation of creeks.	When required by each Stage of the Development and generally in accordance with the Staging Plan.	\$715,000
B9	Provision of detention basins along the eastern side of Bungaribee Creek and Eastern Creek in accordance with the <i>Water Sensitive Urban Design reports for the Western Sydney Parklands and the Doonside Residential Area</i>	Stormwater management.	Prior to the Release to which the facility relates as shown on the Staging Plan.	\$3,641,000

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	<i>prepared by Ecological Engineering, dated April 2007 and as amended from time to time.</i>			
B10	Implementation of a water-sensitive urban design scheme in accordance with the <i>Doonside Water Sensitive Urban Design report</i> prepared by Ecological Engineering, dated April 2007.	Water conservation	Constructed on a Stage by Stage basis.	\$1,226,500
B11	Embellishment of local parks and open space facilities as shown on Plan 03 in Part 2 of Schedule 3 dedicated in Item A2.	Embellishment of passive open space.	Prior to the Release to which the facility relates as shown on the Staging Plan.	\$1,611,867
B12	Provision of public art throughout public areas such as on public roads and in public open spaces, in accordance with the Doonside Public Art Strategy.	Public art.	Constructed on a Stage by Stage basis.	\$550,000
B13	Provision of three bus stops along the collector road in the locations generally indicated on as shown on Plan 02 in Part 2 of Schedule 3.	Public transport.	Constructed on a Stage by Stage basis.	\$70,269
Contribution Value Subtotal				\$25,261,568
Part C – Monetary Contributions				
C1	Payment by the land owner to the Western Sydney Parklands Trust to fund the provision of a vegetation offset in the	Vegetation offset	Prior to the Release of Stage 1.	\$1,096,400

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	Western Sydney Parklands to compensate for the loss of Cumberland Plain Woodland as a consequence of the Development, with the offset being generally in accordance with the <i>Draft Doonside Conservation Plan, dated March 2007</i> and as agreed with the Western Sydney Parklands Trust.			
C2	Payment by the Developer towards the provision of supporting facilities within Keerela Reserve	Embellishment of public reserve	On completion of Stage 4	\$800,000
C3	Payment by the Developer towards the bus operation costs servicing the site.	Public transport.	On completion of the Collector Road, Stage 6.	\$450,000
Contribution Value Subtotal				\$2,346,400
PART D - Miscellaneous				
D1	Maintenance of the landscaping works listed in items B1 to B13 inclusive beyond the defects liability period usually imposed by Blacktown City Council for similar development works.	Extended maintenance responsibility by developer	For a period of two (2) years after completion of the Stage to which the facility relates.	\$720,310
D2	Provision of welcome packs to each household in the Development	Integration and familiarization of the new	Prior to the issue of the occupation certificate for each dwelling within the	\$431,000

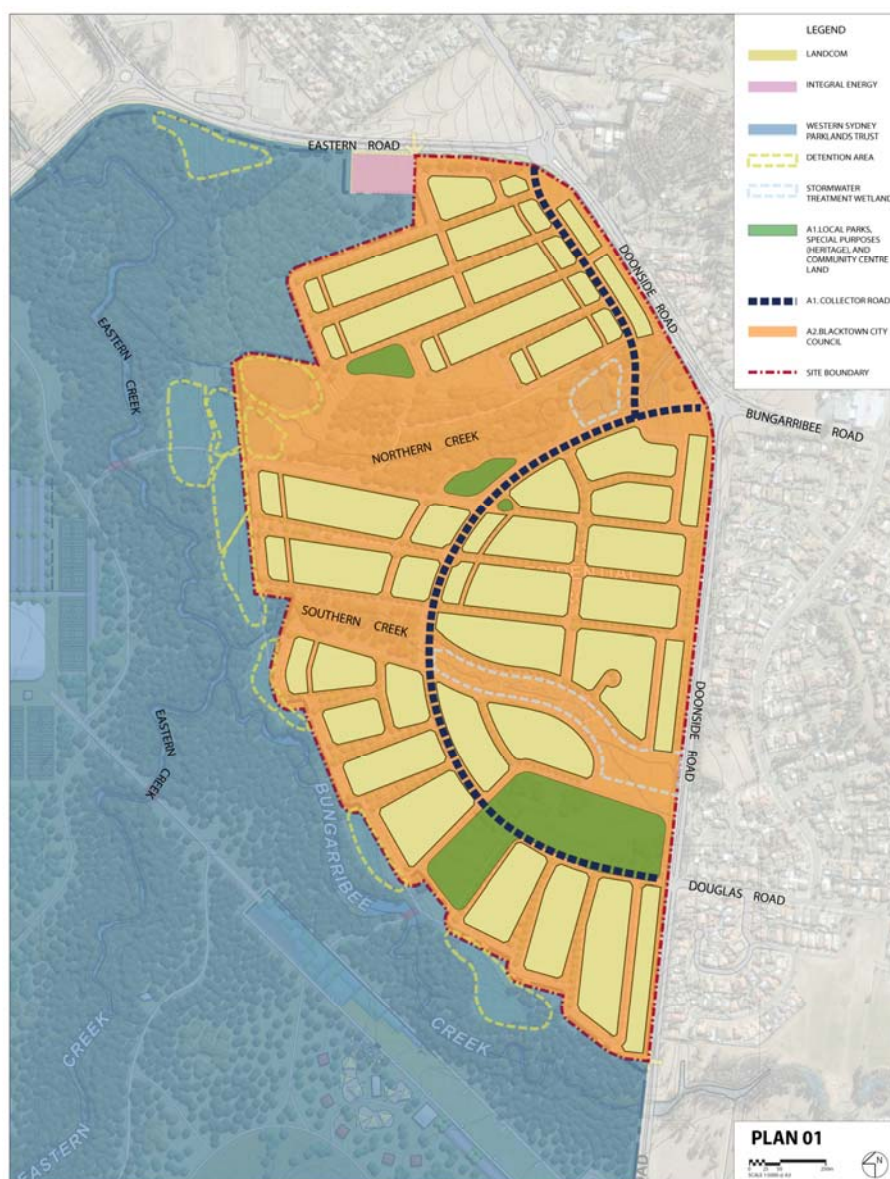


Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
		community	Development.	
D3	Provision of entry statements at the vehicular and pedestrian entries of the Development.	Streetscape enhancement	Prior to the Releases to which the facilities relate.	\$440,000
Contribution Value Subtotal				\$1,591,310
Contribution Value Total for Planning Agreement				\$29,199,278

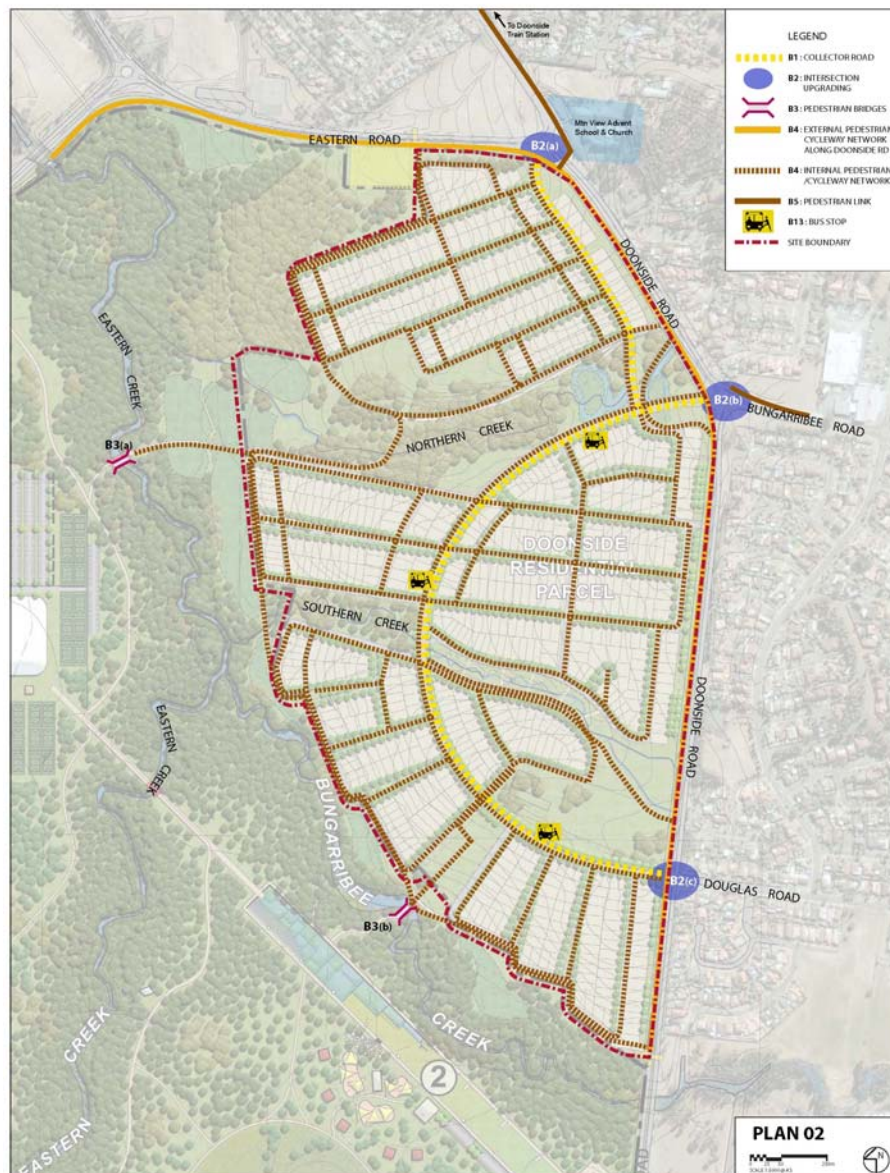
Part 2

Supporting Plans

Land Dedication Plan – 01

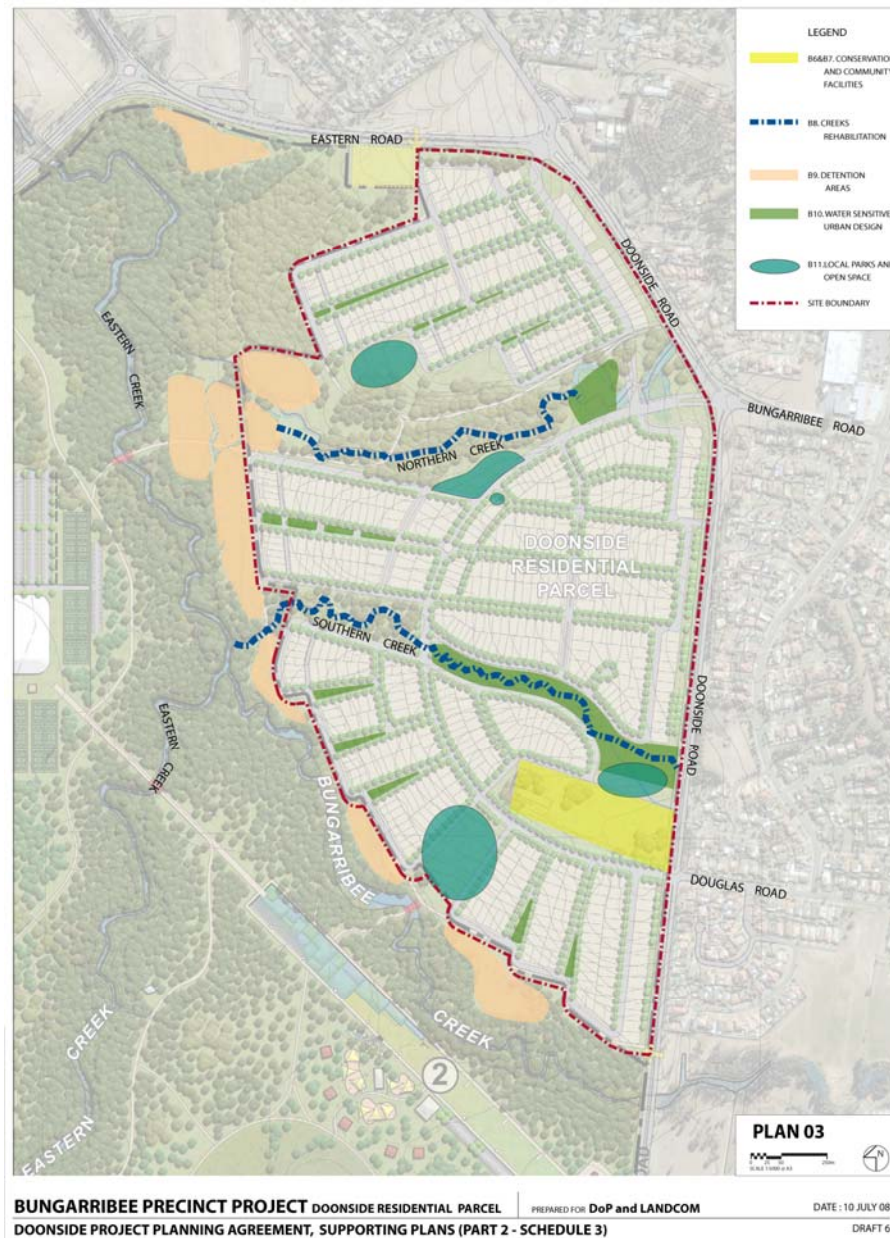


Works Plan – 02 and 03

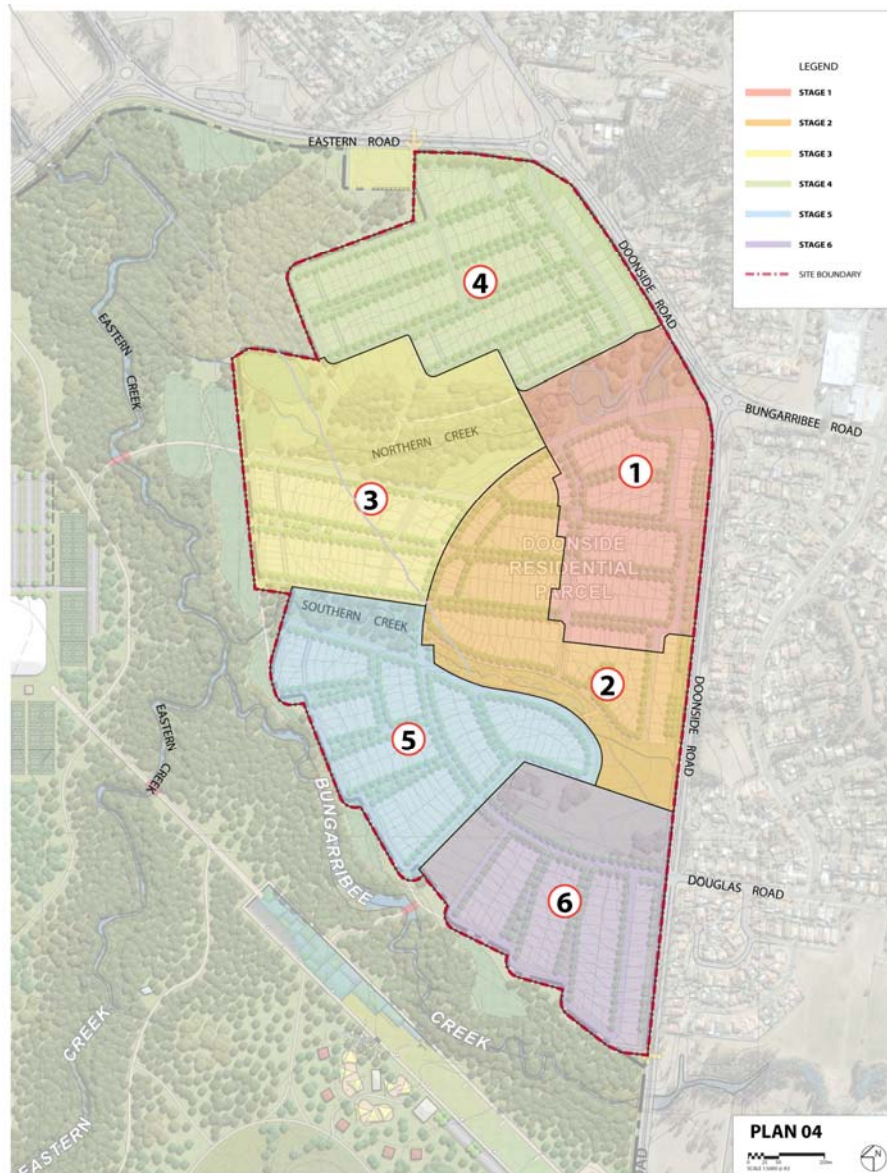


BUNGARRIBEE PRECINCT PROJECT DOONSIDE RESIDENTIAL PARCEL PREPARED FOR DoP and LANDCOM
DOONSIDE PROJECT PLANNING AGREEMENT, SUPPORTING PLANS (PART 2 - SCHEDULE 3)

DATE: 10 JULY 08
DRAFT 7



Staging Plan – 04



BUNGARRIBEE PRECINCT PROJECT DOONSIDE RESIDENTIAL PARCEL PREPARED FOR DoP and LANDCOM
DOONSIDE PROJECT PLANNING AGREEMENT, SUPPORTING PLANS (PART 2 - SCHEDULE 3)

DATE: 14 AUGUST 07
DRAFT 2



Schedule 4

(Clause 19)

Law Society of NSW – Mediation Rules

Functions of the Mediator

1. The mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute ("the Dispute") by agreement between them.
2. The mediator will not make decisions for a party or impose a solution on the parties.
3. The mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

Conflicts of Interest

4. The mediator must disclose to the parties to the best of the mediator's knowledge any prior dealings the mediator has had with either of them and any interest the mediator has in the Dispute.
5. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator's capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the mediator.

Co-operation in the Mediation

6. The parties must co-operate with the mediator and each other during the mediation to achieve a mutually satisfying outcome to their dispute.
7. Each party must use its best endeavours to comply with reasonable requests made by the mediator to promote the efficient and expeditious resolution of the Dispute.



Authority and Representation

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.
9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

Conduct of the Mediation

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such manner as the mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.
12. Without limiting the mediator's powers under Rule 10 the mediator may give directions as to:
 - 12.1 Preliminary conferences prior to the mediation conference.
 - 12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
 - 12.3 The exchange of brief written outlines of the issues involved.
 - 12.4 Service on the mediator prior to the mediation conference of any such reports and outlines.

Communication between the Mediator and a Party



13. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone and in the latter case the mediator need not disclose the meeting to the other party.
14. The mediator may communicate with any party orally and/or in writing.
15. Subject to Rule 16, any document relied upon by a party and provided to the mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the mediator by a party in the absence of the other party may not be disclosed by the mediator to the other party unless the disclosing party permits the mediator to do so.

Confidential Information

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps:
 - 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
 - 17.2 may not be used for a purpose other than the mediation.

Privilege

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:
 - 18.1 Any settlement proposal, whether made by a party or the mediator.
 - 18.2 The willingness of a party to consider any such proposal.
 - 18.3 Any admission or concession or other statement or document made by a party.
 - 18.4 Any statement or document made by the mediator.



Subsequent Proceedings

19. The mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the Dispute.
20. Neither party will take action to cause the mediator to breach Rule 19.

Termination

21. A party may terminate the mediation immediately by giving written notice to each other party and to the mediator at any time during or after the mediation conference.
22. The mediator may immediately terminate the engagement as mediator by giving written notice to the parties of that termination, if, after consultation with the parties, the mediator forms the view that the mediator will be unable to assist the parties to achieve resolution of the Dispute. The mediation will not be terminated in that event unless a party gives notice to that effect to each other party. The parties must appoint another mediator, where the mediation is not terminated.
23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

Settlement

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the mediator before any of the participants leave the mediation conference.

Enforcement

25. In the event that part or all of the Dispute is settled either party will be at liberty:
 - 25.1 To enforce the terms of the settlement by judicial proceedings.



- 25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the mediator and any other person engaged in the mediation.

Exclusion of Liability and Indemnity

26. The mediator will not be liable to a party except in the case of fraud by the mediator for any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.
27. The parties shall jointly and severally indemnify the mediator against all claims, except in the case of fraud by the mediator, arising out of or in any way referable to any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.

Costs

28. The parties will share equally and will be jointly and severally liable to the mediator for the mediator's fees for the mediation. The mediator may, at any time and from time to time, require each party to deposit with the mediator such sum as the mediator considers appropriate to meet the mediator's anticipated fees and disbursements. The mediator may decline to embark upon or continue the mediation until all such deposits are made.
29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause.



Schedule 5

(Clause 20)

Contact for Notices

Developer

Attention: Camille Abbott

Address: Level 2, 330 Church Street, Parramatta NSW 2150

Fax Number: 9841 8666

Email: cabbott@landcom.nsw.gov.au

Minister

Attention: The Director-General

Address: 23-33 Bridge Street Sydney NSW 2000

Fax Number: 9228 6299

Email: sam.haddad@planning.nsw.gov.au



Execution

Dated: ##

Executed as an Agreement: ##

On behalf of the Developer:

SIGNED by me Sean O'Toole, Managing)

Director as Delegate of Landcom and I)

hereby certify that I have no notice of) _____

revocation of such delegation)

In the presence of)

_____)

On behalf of the Minister:

[Drafting Note Execution. Insert an execution clause for the Minister]



Appendix

(Clause 33)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Landcom of Level 2, 330 Church Street, Parramatta NSW 2150 (**Developer**)

Minister Administering the Environmental Planning and Assessment Act 1979
of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000
(**Minister**)

Description of Subject Land

Part Lot 2 DP 1103025 and Part Lot 61 DP 1111529

Description of Project Application

The 730 lot residential development on the *Doonside Residential Parcel* described in the application by Landcom to the Minister under s75M of the *Environmental Planning and Assessment Act 1979* dated [**Drafting Note. Insert date**].

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

The draft planning agreement provides for the payment of monetary contributions towards the cost of public facilities, conservation and vegetation offsets, the dedication of land for public facilities and the carrying out and handing over of works



for the purpose of public facilities, as described in Schedule 3 of the draft planning agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft planning agreement provides for the provision of infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The draft planning agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject land to be developed in a timely and efficient manner to promote economic development, and
- enable the provision of:
 - public land,
 - public roads,
 - access to parklands,
 - pedestrian/cycleway,
 - conservation of archaeological remains,
 - Council community facilities,
 - environmental rehabilitation of creeks,
 - stormwater management,
 - water conservation,
 - embellishment of passive open spaces,
 - public art,
 - public transport,
 - conservation and vegetation offsets.



How the Draft Planning Agreement Promotes the Public Interest and One or More Objects of the *Environmental Planning and Assessment Act 1979*

The draft planning agreement facilitates the carrying out of work and the provision of a range of facilities that serve a number of public purposes in the area.

The draft planning agreement, by making provision for the Developer to make development contributions towards:

- Public land,
- Public roads,
- Access to parklands,
- Pedestrian/cycleway,
- Conservation of archaeological remains,
- Council community facilities,
- Environmental rehabilitation of creeks,
- Stormwater management,
- Water conservation,
- Embellishment of passive open spaces,
- Public art,
- Public transport,
- Conservation and vegetation offsets

promotes the following objects of the *Environmental Planning and Assessment Act 1979* as contained in section 5 of that Act:

- 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,
- the promotion and co-ordination of the orderly and economic use and development of land
- the provision of land for public purposes



- the provision and co-ordination of community services and facilities,
- the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats

For Planning Authorities:

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted

N/A

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

[Drafting Note. Minister to complete]