

APPENDIX C DRAFT VOLUNTARY PLANNING AGREEMENT



HOPKINS CONSULTANTS

PTY LTD

2 November 2010

Our Ref: 6096
Your Ref: MP06-0212

Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Attention: Mr Dan Croft

Dear Dan,

Re: Confirm arrangements for Voluntary Planning Agreement
Major Project – 06-212 Re-subdivision
Riverpark Sancrox, Sancrox Road, Sancrox

We refer to the Preferred Project Report 06-0212 (PPR) currently before the Department, and to recent dealings with Port Macquarie-Hastings Council in regards to future infrastructure works to service the Sancrox region and the management of costings for same.

This letter serves to acknowledge the present lack of Development Servicing Plans &/or Contributions Plans applying specifically to these future works. We appreciate that for the purposes of advancing the assessment of our Preferred Project Report (PPR), an alternative arrangement for funding of these future works must be determined.

Accordingly, we tender the draft document titled "Riverpark Sancrox Planning Agreement" attached to this letter. This draft document comprises our "offer" to Port Macquarie-Hastings Council under the provisions of S.93F of the Environmental Planning & Assessment Act 1979, representing a draft Voluntary Planning Agreement (VPA) between the following parties:

- Port Macquarie Hastings Council
- Le Clos Pty Limited
- Clos Verdun Redevelopments Limited
- Riverpark Sancrox Pty Limited
- Cindy Smith and Jennifer Freeman



ABN 27 055 060 878

Suite 1, 109 William St

PO Box 1556, Port Macquarie 2444 NSW

Telephone: 02 6583 6722 Facsimile: 02 6584 9009

Email: mail@hopcon.com.au

Liability limited by a scheme approved under Professional Standards Legislation
S:\Projects\6096 Le Clos Verdun\Correspondence\Lt.PMHC - D Croft - 2 November 2010.doc

DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS

We would be pleased for this offer to be accepted in good faith and for the Department's assessment of the Preferred Project Report for this site to be expedited in conjunction with the formal consideration of this VPA.

Should you seek clarification of the above, or require additional information in relation to the Project, please do not hesitate to contact the undersigned.

Yours faithfully,



Andrew Lister
Senior Planner

Encl. Draft Riverpark Sancrox Planning Agreement – Ref: HAS_HAS00709_029



HOPKINS CONSULTANTS

PTY LTD

DEVELOPMENT MANAGERS • SURVEYORS • ENGINEERS • PLANNERS



lindsaytaylorlawyers

planning • environment • local government

Riverpark Sancrox Planning Agreement

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

Port Macquarie Hastings Council

Le Clos Pty Limited

Clos Verdun Redevelopments Limited

Riverpark Sancrox Pty Limited

Cindy Smith and Jennifer Freeman

lindsaytaylorlawyers

Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia

T 02 8235 9700 • **F** 02 8235 9799 • **W** www.lindsaytaylorlawyers.com.au • **E** mail@lindsaytaylorlawyers.com.au

ABN 15 695 894 345

Liability limited by a scheme approved under Professional Standards Legislation



Riverpark Sancrox Planning Agreement

Table of Contents

Summary Sheet.....	4
Parties.....	7
Background.....	7
Operative provisions.....	8
Part 1 - Preliminary	8
1 Definitions & Interpretation.....	8
2 Application of this Agreement	12
3 Further Agreements Relating to this Agreement.....	13
4 Surrender of right of appeal, etc.....	13
5 Application of s94, s94A and s94EF of the Act to the Development	13
Part 2 – Development Contributions.....	13
6 Provision of Development Contributions.....	13
7 Procedures relating to payment of monetary Development Contributions	14
8 Carrying out of Work	14
9 Access to the Land.....	15
10 Protection of people and property	16
11 Damage and repairs to Work	16
12 Variation of Work.....	16
13 Procedures relating to the completion of Work	16
14 Procedures relating to the rectification of defects	17
15 Failure to carry out Work.....	17
16 Works-As-Executed-Plan	18
Part 3 – Recoupment.....	18
17 Surplus Development Contributions.....	18
18 Payments to Project Manager	19
Part 4 – Other Provisions.....	19
19 Indemnity and Insurance	19
20 Provision of Security.....	20
21 Release & return of Security	20

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



22	Call-up of Security	21
23	Charge	21
24	Release & return of Charge	22
25	Call-up of Charge	22
26	Recovery of cost of Work carried out by the Council	24
27	Restriction on Development	25
28	Enforcement in a court of competent jurisdiction	25
29	Dispute Resolution – expert determination	26
30	Dispute Resolution - mediation	26
31	Registration of this Agreement	27
32	Assignment, Sale of Land, etc	27
33	Review of this Agreement	28
34	Notices	28
35	Approvals and Consent	29
36	Costs	29
37	Entire Agreement	29
38	Further Acts	29
39	Governing Law and Jurisdiction	30
40	Joint and Individual Liability and Benefits	30
41	No Fetter	30
42	Representations and Warranties	31
43	Severability	31
44	Modification	31
45	Waiver	31
46	GST	31
47	Explanatory Note Relating to this Agreement	33
Schedule 1		34
Schedule 2		35
Schedule 3		36
Schedule 4		39
Execution		40
Appendix		43

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Riverpark Sancrox Planning Agreement

Summary Sheet

Council:

Name: Port Macquarie Hastings Council
Address: Cnr Lord & Burrawan Streets PORT MACQUARIE NSW 2444
Telephone: (02) 6581 8111
Facsimile: (02) 6581 8123
Email: council@pmhc.nsw.gov.au
Representative: Tim Molloy

Project Manager:

Name: Riverpark Sancrox Pty Limited ACN 128 680 606
Address: 312 Sancrox Road, SANCROX NSW 2446
Telephone: (02) 4262 7486
Facsimile: (02) 4262 7486
Email: jim.wade@bigpond.com
Representative: Jim Wade

Applicant:

Name: Le Clos Pty Limited ACN 104 919 673
Address: 312 Sancrox Road, SANCROX NSW 2446
Telephone: (02) 4262 7486
Facsimile: (02) 4262 7486
Email: jim.wade@bigpond.com
Representative: Jim Wade

Developer:

Name: Clos Verdun Redevelopments Limited ACN 114 944 491
Address: 312 Sancrox Road, SANCROX NSW 2446

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Telephone: (02) 4262 7486
Facsimile: (02) 4262 7486
Email: jim.wade@bigpond.com
Representative: Jim Wade

Smith & Freeman

Name: Cindy Smith and Jennifer Freeman
Address: 312 Sancrox Road, SANCROX NSW 2446
Telephone: (02) 6586 4608
Facsimile: (02) 6586 4609
Email: smithonhastings@bigpond.com
Representative: Adrian Smith

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Schedule 1.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clause 20 and clause 23.

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Registration:

This planning agreement is to be registered on the title of the land. See clause 31.

Restriction on dealings:

See clause 32.

Dispute Resolution:

Expert determination and mediation. See clauses 29 and 30.

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Riverpark Sancrox Planning Agreement

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

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Cnr Lord and Burrawan Streets, PORT MACQUARIE NSW 2444 **(Council)**
and

Le Clos Pty Limited ACN 104 919 673 of 312 Sancrox Road, SANCROX NSW 2446 **(Applicant)**
and

Clos Verdun Redevelopments Limited ACN 114 944 491 of 312 Sancrox Road, SANCROX NSW 2446 **(Developer)**
and

Riverpark Sancrox Pty Limited ACN 128 680 606 of 312 Sancrox Road, SANCROX NSW 2446 **(Project Manager)**
and

Cindy Smith and Jennifer Freeman of 312 Sancrox Road, SANCROX NSW 2446 **(Smith & Freeman)**

Background

- A The Project Manager has been engaged by the registered proprietors of the Land at the date of this Agreement to undertake the Development on the Land as their agent.
- B The Applicant has made a Project Application for the Development on behalf of the Registered Proprietors.
- C The Project Manager may lodge Development Applications with the Council in the future for the further subdivision of the Residue Land and for the construction of dwellings or other buildings on the Lots.
- D Any of the Registered Proprietors may lodge Development Applications with the Council in the future for the construction of dwellings or other buildings on the Lots.
- E The Project Manager is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Agreement the following definitions apply:

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

Administration Levy Contribution means a monetary Development Contribution calculated as follows:

$$ALC = 2.2\% \times SC$$

where:

ALC is the Administration Levy Contribution; and

SC is the sum of the Local Roads Contributions and the District Roads Contributions

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

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank Limited,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Project Manager

Charge means the charge created under clause 23 of this Agreement.

Charge Land means that part of the Land which comprises Lots in Stages 10, 11 and 12, on the Plan of Proposed Subdivision.

Contribution Value (CV) means the cost of the Rawdon Island Road Water Main Augmentation Works.



CPI means the Consumer Price Index All Goods Sydney as published by the Australian Bureau of Statistics or its successors and includes any published index replacing that Index.

Construction Certificate has the same meaning as in the Act.

Defects Liability Period means the period commencing on the date on which a notice is given under clause 13.2 of this Agreement and ending 12 months after that date.

Development means the subdivision of the Land in accordance with the Plan of Proposed Subdivision, and the Project Approval.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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, the provision of Public Infrastructure or another public purpose.

District Roads Contribution means for each New Lot, the greater of:

- (a) \$4337, or
- (b) the amount of any monetary development contribution for the purpose of district roads authorised by the Roads CP,

indexed from 30 March 2010 in accordance with the Roads CP.

DSP means *Port Macquarie-Hastings Council Development Servicing Plans for the Hastings District, Comboyne, Telegraph Point & Long Flat Water Supply Schemes 2006* including any amendment or replacement plans.

DSP Contribution means, for each New Lot (other than the first New Lot created), a monetary Development Contribution payable under the DSP of 1.2ET (within the meaning of the DSP), reduced by 37%.

Future Development means any development of the New Lots.

GST has the same meaning as in the GST Law.

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

Indexation means the amount that the principal is increased or decreased by changes in the CPI.

Item means each item of Development Contribution specified in Column 1 of Schedule 1.

Land means the land described in Schedule 2.

Local Roads Contribution means for each New Lot \$10,790 indexed from 30 March 2010 in accordance with the Roads CP.

Local Water Supply Contribution means for each New Lot:



- (a) \$11,470, indexed from 30 March 2010 in accordance with the DSP, provided however,
- (b) when Council has completed a detailed design and costing of the Rawdon Island Road Water Main Augmentation Works, it will be an amount determined by Council from time to time, by dividing the Contribution Value plus the estimated cost of such other works which the Council determines are required to service the Rawdon Island Road Locality, by the sum of the number of New Lots and the number of new lots on other land in the Rawdon Island Road Locality.

Lots means the lots created as part of the Development other than Lot 1 on the Plan of Proposed Subdivision.

Minister means the Minister administering the Act.

New Lots means each Lot created in excess of 80 Lots in addition to Lot 1, Lot 157 and Lot 158 in the Plan of Proposed Subdivision, whether or not that New Lot is created at the same time as any or all of the Lots in the Plan of Proposed Subdivision or a subsequent subdivision of Residue Land.

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

Plan of Proposed Subdivision means the plan described in Schedule 3 and titled *Plan of Proposed Subdivision with Staging Plan Le Clos Verdun Sancrox*.

Prohibited Lots means all Lots in Stages 5 to 13 inclusive shown on the Plan of Proposed Subdivision.

Project Application means the application for project approval within the meaning of the Act, made by the Applicant to the Minister for Planning, for major project 06_0212.

Project Approval means any approval granted by the Minister for the Project Application pursuant to section 75J of the Act.

Project Manager's Works Contribution means the amount of all Local Water Supply Contributions to be paid in relation to New Lots.

Rawdon Island Road Locality means the area shown edged red and marked as such on the plan in Schedule 4 and any other land that Council determines receives a benefit from the Rawdon Island Road Water Main Augmentation Works.

Rawdon Island Road Water Main Augmentation Works means the construction of a 300mm diameter water main along Rawdon Island Road from its intersection with the Oxley Highway to Sancrox Road (or such other route as agreed by Council) to a design and specification approved by Council.

Recoupment Contribution means a Local Water Supply Contribution made under this Agreement, or a monetary Development Contribution inclusive of Indexation paid to the Council to meet the costs of the Rawdon Island Road Water Main Augmentation Works which is not made under this Agreement



and whether that Development Contribution was paid to Council before or after the date of this Agreement.

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.

Registered Proprietor means the registered proprietors of the Land from time to time.

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

Residue Land means all of the land in Stages 2 to 13 inclusive shown on the Plan of Proposed Subdivision.

Roads CP means the *Port Macquarie-Hastings Major Roads Contributions Plan 2004* in force at the date of this Agreement or as amended by the first relevant amendment to that plan or the first substituted plan after the date of this Agreement.

Sancrox Reservoir means the construction by Council of a new 20 megalitre water supply reservoir to serve the water supply needs of the Thrumster/Sancrox locality.

Security means a Bank Guarantee, bond or other form of security agreed between the Parties.

Stage means a stage of the Development as shown on the Plan of Proposed Subdivision.

Subdivision Certificate has the same meaning as in the Act.

Surplus Value (SV) means the Contribution Value inclusive of Indexation from the date of completion of the Rawdon Island Road Water Main Augmentation Works, less the amount of any Local Water Supply Contributions which the Project Manager is not obliged to pay pursuant to clause 6.7.

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 Project Manager 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 a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

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



3 Further Agreements Relating to this Agreement

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

4 Surrender of right of appeal, etc.

- 4.1 The Applicant, Project Manager, the Developer and, Smith & Freeman, are not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent or Project Approval relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement, and they must ensure that none of the Registered Proprietors commence or maintain or cause to be commenced or maintained any such proceedings.

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

- 5.1 This Agreement does not exclude the application of s94 or s94A to the Development.
- 5.2 This Agreement does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

6 Provision of Development Contributions

- 6.1 The Project Manager is to make Development Contributions to the Council in accordance with this Agreement and otherwise to the satisfaction of the Council.
- 6.2 Schedule 1 has effect in relation to Development Contributions to be made by the Project Manager under this Agreement.
- 6.3 The Project Manager is to make such other Development Contributions to the Council as are provided for in this Agreement to the satisfaction of the Council.



- 6.4 The Council is to apply each Development Contribution made by the Project Manager under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 6.5 Despite clause 6.4, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.
- 6.6 The Project Manager's entire obligation under the DSP is satisfied by the making of the Development Contribution in Item 4 of Schedule 1, being only the major headworks component of any charge which the Council could require the Project Manager to pay under the DSP.
- 6.7 Notwithstanding any other provision of this Agreement, the Project Manager is not required to make any Local Water Supply Contributions from the date of completion of the Rawdon Island Road Water Augmentation Works, if those works are constructed by the Project Manager.

7 Procedures relating to payment of monetary Development Contributions

- 7.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 7.2 The Project Manager is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 7.3 The Project Manager is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Project Manager's notice under clause 7.2, has given to the Project Manager a tax invoice for the amount of the Development Contribution.
- 7.4 The Project Manager is not in breach of this Agreement if it fails to pay a monetary Development Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Project Manager a tax invoice in relation to the amount proposed to be paid by it.

8 Carrying out of Work

- 8.1 Any Work that is required to be carried out by the Project Manager under this Agreement or which the Project Manager elects to carry out under this Agreement is to be carried out in accordance with any design or specification specified by the Council, any relevant development consent and any other applicable law, and otherwise to the satisfaction of the Council.



- 8.2 If the Project Manager is required by the Council to prepare or modify a design or specification relating to a Work for approval by the Council under clause 8.1, the Project Manager is to bear all costs relating to the preparation or modification and approval of the design and specification.
- 8.3 If the Project Manager intends to construct the Rawdon Island Road Water Main Augmentation Works, it must give the Council notice of its intention to do so.
- 8.4 The Council must, within 14 days of receipt of the notice referred to in clause 8.3, notify the Project Manager whether the Project Manager can construct the Rawdon Island Road Water Main Augmentation Works, or whether a different developer, or Council, intends to construct those works.
- 8.5 If the Project Manager is notified that it can construct the Rawdon Island Road Water Main Augmentation Works then the Project Manager must commence construction within 3 months from the date on which the Council approves the design for the Works.
- 8.6 If the Project Manager commences construction of the Rawdon Island Road Water Main Augmentation Works, then those works are to be completed within 18 months of the date of commencement of the construction of the Rawdon Island Road Water Main Augmentation Works unless the Council has given prior written notice to the Project Manager that the Council will accept the completion of those works at a later date.
- 8.7 The Project Manager may request Council to undertake any Works on behalf of the Project Manager subject to the Project Manager and Council reaching agreement as to price and other terms and conditions of the Work. Council agrees to act in good faith in the preparation of any quotation for the Works and the construction of the Works.
- 8.8 If the Council notifies the Project Manager that the Project Manager can construct the Rawdon Island Road Water Main Augmentation Works, then the construction of the Rawdon Island Road Water Main Augmentation Works is taken to be a Development Contribution which the Project Manager is required to make under this Agreement, and the Project Manager becomes bound by the provisions of this Agreement relating to the carrying out of the Work.

9 Access to the Land

- 9.1 The Council is to permit the Project Manager to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Project Manager to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Project Manager by or under this Agreement.
- 9.2 If any Work under this Agreement is required to be carried out on any land other than the Land, or land owned by the Council, then the Council at its expense will obtain all consents necessary for the Project Manager to enter onto that land and carry out the required Work.



10 Protection of people and property

- 10.1 The Project Manager is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 10.1.1 all necessary measures are taken to protect people and property, and
 - 10.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 10.1.3 nuisances and unreasonable noise and disturbances are prevented.

11 Damage and repairs to Work

- 11.1 The Project Manager, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work taken to have been completed under this Agreement.

12 Variation of Work

- 12.1 A Work is not to be varied by the Project Manager, unless:
 - 12.1.1 the Council and the Project Manager agree in writing to the variation, and
 - 12.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 12.1.3 the Project Manager bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 12.2 For the purposes of clause 12.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement. Any variation to Work requested by Council will be at Council's expense.

13 Procedures relating to the completion of Work

- 13.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the completion of the Work in accordance with this clause.
- 13.2 Subject to this Agreement, when the Project Manager considers that a Work required to be carried out by the Project Manager under this Agreement is complete, the Project Manager is to give to the Council a notice in writing to that effect.
- 13.3 The Council is taken to have accepted the completion of a Work that is the subject of a notice referred to in clause 13.2:



- 13.3.1 where the Council has not given the Project Manager a Rectification Notice under clause 14.1 – at the expiration of the Defects Liability Period, or
- 13.3.2 where the Council has given the Project Manager a Rectification Notice under clause 14.1 – on the date on which the Council gives the Project Manager a written notice stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction.

- 13.4 On completion of the Work, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement.

14 Procedures relating to the rectification of defects

- 14.1 During the Defects Liability Period, the Council may give to the Project Manager a Rectification Notice.
- 14.2 The Project Manager is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 14.3 If the Project Manager breaches clause 14.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

15 Failure to carry out Work

- 15.1 If the Council considers that the Project Manager is in breach of any obligation under this Agreement relating to the carrying out of any Work, the Council may elect to give the Project Manager, the Applicant, the Developer and Smith & Freeman a notice requiring:
 - 15.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
 - 15.1.2 the breach to be rectified to the Council's satisfaction.
- 15.2 The Council is not required to give the Applicant, the Project Manager, the Developer or Smith & Freeman a notice under clause 15.1 as a pre-condition to calling-up the Charge referred to in clause 25 in relation to the Project Manager's breach.
- 15.3 A notice given under clause 15.1 is to allow the Project Manager a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 15.4 Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Project Manager does not comply with a notice given under clause 15.1:
 - 15.4.1 call upon the Charge referred to in clause 25, and



- 15.4.2 carry out and complete the Work the subject of the Project Manager's breach.
- 15.5 Clauses 29 and 30 do not prevent a notice being given under clause 15.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 29 or clause 30 ceases to apply when such a notice is given.

16 Works-As-Executed-Plan

- 16.1 No later than 60 days after a Work is taken to have been completed in accordance with this Agreement, the Project Manager is to submit to the Council a full works-as-executed-plan in respect of the Work the subject of the notice.

Part 3 – Recoupment

17 Surplus Development Contributions

- 17.1 The Council acknowledges that if the Project Manager constructs the Rawdon Island Road Water Main Augmentation Works the Project Manager will be providing a Development Contribution in the form of the Rawdon Island Road Water Main Augmentation Works that:
 - 17.1.1 exceeds the demand created by the Development, and
 - 17.1.2 meets the demand, or part of the demand, created by other development which may occur in the vicinity of the Development.
- 17.2 The Council must give consideration to amending the DSP or entering into planning agreements within the meaning of the Act to authorise the Council to collect monetary Development Contributions from the developers of other developments which create a demand for the Rawdon Island Road Water Main Augmentation Works to be applied towards the cost of the Rawdon Island Road Water Main Augmentation Works.
- 17.3 The Council must give consideration to including in any amended DSP or planning agreement referred to in clause 17.2 provisions to the effect that:
 - 17.3.1 the Development Contribution are based upon the Contribution Value inclusive of Indexation from the date the Rawdon Island Road Water Main Augmentation Works are completed in accordance with this Agreement until the amended DSP or planning agreement is made or entered into, and
 - 17.3.2 provides for the Indexation of Development Contributions from the date of the making of the amended DSP or entry into the planning agreement until the Development Contribution is paid to the Council.



18 Payments to Project Manager

- 18.1 This clause applies if the Project Manager constructs the Rawdon Island Road Water Main Augmentation Works.
- 18.2 Each time a Recoupment Contribution is paid to the Council, the Council is to pay the Project Manager an amount equal to the amount of the Recoupment Contribution received by Council.
- 18.3 The Council is to make the first payment required by clause 18.2 within 28 days of the later of the date on which the Rawdon Island Road Water Main Augmentation Works are taken to have been completed under clause 13.3 and the date of receipt of the first Recoupment Contribution by the Council.
- 18.4 Not later than 28 days after a request by the Project Manager (who is only entitled to make 4 such requests per calendar year) following the making of the first payment of a Recoupment Contribution to the Council, the Council is to pay the Project Manager an amount equal to all Recoupment Contributions it has received since the date of the previous payment.
- 18.5 Once the sum of the payments made to the Developer under this clause (not including any interest earned on Recoupment Contributions by the Council) equals or exceeds the Surplus Value, the Council has no further obligation to make any payments under this clause.

Part 4 – Other Provisions

19 Indemnity and Insurance

- 19.1 The Project Manager indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Project Manager of any Work and the performance by the Project Manager of any other obligation under this Agreement.
- 19.2 The Project Manager is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Project Manager under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
 - 19.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Project Manager's liability in respect of damage to or destruction of the Works,



- 19.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Project Manager and any subcontractor of the Project Manager, for liability to any third party,
- 19.2.3 workers compensation insurance as required by law, and
- 19.2.4 any other insurance required by law.
- 19.3 If the Project Manager fails to comply with clause 19.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Project Manager to the Council and may be recovered by the Council as it deems appropriate including:
 - 19.3.1 by calling upon the Security provided by the Project Manager to the Council under this Agreement, or
 - 19.3.2 recovery as a debt due in a court of competent jurisdiction.
- 19.4 The Project Manager is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 19.2.

20 Provision of Security

- 20.1 Prior to the commencement of the carrying out of the Rawdon Island Road Water Main Augmentation Works, the Developer is to provide the Council with Security on terms and in an amount agreed between the Parties.
- 20.2 For the purpose of determining the form, terms and amount of the Security, the Parties are to have regard to any policy or practice of the Council, current at the time, relating to the provision of security to the Council for the construction of public infrastructure by developers.
- 20.3 Clause 29 does not apply to a dispute arising under or in relation to this clause.

21 Release & return of Security

- 21.1 The Council may but is not obliged to progressively release and return the Security to the Project Manager as and when the Project Manager performs its obligations under this Agreement to the satisfaction of the Council but may only do so if:
 - 21.1.1 the Council considers that the remaining amount of the Security is adequate having regard to the Project Manager's remaining obligations under this Agreement, and
 - 21.1.2 the Project Manager is not in breach of this Agreement at the time the Security is to be returned.



- 21.2 The Council is to return the Security or any remaining part of it to the Project Manager within 28 days of the completion by the Project Manager of all of its obligations under this Agreement to the satisfaction of the Council.
- 21.3 At any time following the provision of the Security, the Project Manager may provide the Council with a replacement Security in the amount of the Security required to be provided under clause 20.1.
- 21.4 On receipt of a replacement Security, the Council is to release and return to the Project Manager as directed, the Security it holds which has been replaced.

22 Call-up of Security

- 22.1 The Council may call-up the Security if, in its absolute discretion and despite clauses 29 and 30, it considers that the Project Manager has breached this Agreement.
- 22.2 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Project Manager's breach being:
 - 22.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 22.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 22.2.3 without limiting clause 22.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Project Manager's breach.
- 22.3 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Project Manager, require the Project Manager to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under clause 20.1.

23 Charge

- 23.1 The Developer and, Smith & Freeman warrant that they will be the owner of the Charge Land after the registration of the Plan of Proposed Subdivision.
- 23.2 The Developer and, Smith & Freeman agree to grant to the Council a fixed and specific charge over their right, title and interest in the Charge Land, or a part of the Charge Land nominated by the Developer and, Smith & Freeman, and agreed to by the Council, within 28 days of release of the first Subdivision Certificate relating to the Plan of Proposed Subdivision without any personal covenants of liability by Smith & Freeman other than their interest in the Charge Land.



- 23.3 If the Charge is to be granted over part only of the Charge Land, then the Developer and, Smith & Freeman must, prior to the date of the grant of the Charge, provide the Council with a valuation prepared by a suitably qualified valuer, of that part of the Charge Land to which the Charge is to apply.
- 23.4 The Council will only agree to the grant of the Charge over part of the Charge Land if the Council notifies the Developer and Smith & Freeman in writing that it is satisfied that the value of the land which is to be subject to the Charge, is at least 1.5 times the Contribution Value.

24 Release & return of Charge

- 24.1 If:
 - 24.1.1 the Rawdon Island Road Water Main Augmentation Works have been completed in accordance with this Agreement or otherwise to the satisfaction of the Council, or
 - 24.1.2 the Council notifies the Project Manager, the Developer and, Smith & Freeman that the Rawdon Island Road Water Main Augmentation Works are to be constructed by another developer, or by the Council, then on the making of a request by the Project Manager, the Developer or Smith & Freeman, the Council is to give the Developer, and Smith & Freeman, a discharge of the Charge in registrable form and remove any and all caveats which the Council holds over the Charge Land.
- 24.2 Subject to clause 25, the Council may, on the making of a request by the Developer or, Smith & Freeman or the Project Manager pursuant to clause 24.1, give the Developer and, Smith & Freeman a discharge of the Charge in registrable form and remove any and all caveats which the Council holds over the Charge Land if:
 - 24.2.1 the Council is satisfied that the Rawdon Island Road Water Main Augmentation Works have been carried out to its satisfaction notwithstanding that those Works were not carried out in accordance with this Agreement, or
 - 24.2.2 the Council is otherwise satisfied that adequate provision has been made for the carrying out of the Rawdon Island Road Water Main Augmentation Works.

25 Call-up of Charge

- 25.1 If the Project Manager agrees to construct the Rawdon Island Road Water Main Augmentation Works and they are not completed within 18 months from commencement of the Road Water Main Augmentation Works or such further time as the Council may agree in writing then the Developer and, Smith & Freeman are to execute and do all such things as the Council may reasonably require for the purpose of the Council exercising the powers, authorities and



discretions conferred by this Agreement on the Council. In particular, the Developer and, Smith & Freeman will as requested by the Council:

- 25.1.1 execute all transfers, conveyances, assignments and assurances of all or part of the Charge Land whether to the Council or nominee,
 - 25.1.2 perform, or cause to be performed, all acts and things necessary or desirable to give effect to the Council's powers, authorities and discretions, and
 - 25.1.3 give all notices, orders and directions which the Council considers to be expedient.
- 25.2 After the time period referred to in clause 25.1 has elapsed, the Council may, at the Council's discretion and without notice:
- 25.2.1 enter upon and take possession of the Charge Land or any part of it, or
 - 25.2.2 with or without taking such possession, at the Council's discretion, sell, call in or convert into money, the Charge Land:
 - (a) together or in parcels,
 - (b) at public auction or by private contract, and
 - (c) for a lump sum or a sum payable by instalments or for a sum on account and a mortgage charge for the balance, or
 - 25.2.3 if exercising rights under clause 25.2.2
 - (a) upon every such sale, make any special or other stipulations as to title or evidence or commencement of title or otherwise which the Council may deem proper,
 - (b) buy in or rescind or vary any contract of sale of the Charge Land and resell the same without being responsible for any loss which may be incurred, and
 - (c) compromise and effect compositions and, for any of those purposes, execute and make all such assurances and things as the Council thinks fit.
- 25.3 At any time after the time period referred to in clause 25.1 has elapsed, the Council may, at the Council's discretion, do any of the following things for the purpose of exercising the Council's powers of sale under clause 25.2:
- 25.3.1 appoint a receiver or manager or receiver and manager of the Charge Land,
 - 25.3.2 remove any receiver or manager so appointed,
 - 25.3.3 pay such receiver or manager such remuneration as the Council thinks fit,
 - 25.3.4 repair and keep in repair the buildings, factories, works, machinery, plant and other property on the Charge Land,



- 25.3.5 insure all or any of the Charge Land or anything on it of an insurable nature against loss or damage by fire and other risks as the Council sees fit,
- 25.3.6 settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Charge Land and execute releases or other discharges,
- 25.3.7 bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever and whether civil or criminal in relation to the Charge Land,
- 25.3.8 execute and do such acts, deeds and things as to the Council may appear necessary or proper for or in relation to any of the above things,
- 25.3.9 generally do and cause to be done such acts and things which the Developer or, Smith & Freeman might have done for the protection and the improvement of the Charge Land.
- 25.4 A receiver and manager appointed by the Council will have all of the powers of taking possession, selling and dealing with the Charge Land as are given to the Council under this Agreement.
- 25.5 The proceeds derived from the sale of the Charge Land pursuant to clause 25.2 will be applied as follows:
 - 25.5.1 first, in paying all costs and expenses properly incurred or to be incurred in the performance or exercise of any of the powers vested in the Council under this Agreement, including under this clause 25 and the remuneration of the receiver and manager (if any),
 - 25.5.2 second, in or towards payment of the cost to the Council of carrying out the Rawdon Island Road Water Main Augmentation Works, and
 - 25.5.3 last, in paying the surplus (if any) to the Developer and, Smith & Freeman who shall divide the surplus between them pro rata to the area and value of the Charge Land upon the sale of the Charge Land.

26 Recovery of cost of Work carried out by the Council

- 26.1 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work that is not met by the Security referred to in clause 20, the Council may recover the cost from the Project Manager or the Developer in a court of competent jurisdiction.
- 26.2 For the purpose of clause 26.1, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
 - 26.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,

- 26.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 26.2.3 without limiting clause 26.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's, the Applicant's, the Project Manager's, or Smith & Freeman's failure to comply with this Agreement.

27 Restriction on Development

- 27.1 The Parties are not to apply for, or procure, or cause, suffer or permit the issuing of:
 - 27.1.1 a Subdivision Certificate for the creation of the 110th Lot, or
 - 27.1.2 a Construction Certificate for any development on any of the Prohibited Lots,unless:
 - 27.1.3 the Rawdon Island Road Water Main Augmentation Works have been completed in accordance with clause 13.3 of this Agreement, or have otherwise been accepted as complete by the Council, and have been commissioned,
 - and
 - 27.1.4 the Sancrox Reservoir has been constructed and commissioned,unless the Council has otherwise given written notice to the Project Manager of its consent to the lodgement of further development applications before the commissioning of the Sancrox Reservoir.

28 Enforcement in a court of competent jurisdiction

- 28.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 28.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 28.2.1 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,
 - 28.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.



29 Dispute Resolution – expert determination

- 29.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 29.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 29.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 29.4 If a notice is given under clause 29.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 29.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 29.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 29.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

30 Dispute Resolution - mediation

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 applies.
- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 30.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 30.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

31 Registration of this Agreement

- 31.1 The Parties agree to register this Agreement for the purposes of s93H of the Act on the title of those lots which contain the Prohibited Lots subject to obtaining the agreement of the persons specified in s93H(1) of the Act .
- 31.2 The Council will do all things reasonably required by the Project Manager to enable the registration of this Agreement to be removed from the title of those Lots which are not Prohibited Lots, on registration of the plan of subdivision which creates those Lots.
- 31.3 The Project Manager may also request that the registration of this Agreement be removed from the title of a Prohibited Lot (**Specified Lot**) and that the Agreement instead be registered on the title to another of the Lots (**Substituted Lot**).
- 31.4 If the Council consents to the registration of the Agreement on the title to the Substituted Lot, the Council will do all things reasonably required to enable the registration of the Agreement to be removed from the title of the Specified Lot.

32 Assignment, Sale of Land, etc

- 32.1 Unless the matters specified in clause 32.2 are satisfied, the Developer, Smith & Freeman, the Project Manager or the Applicant are not to do any of the following:
 - 32.1.1 if the Party is an owner of the Charge Land, to transfer any part of the Charge Land to any person, or
 - 32.1.2 assign or novate to any person the parties rights or obligations under this Agreement, or
 - 32.1.3 assign, transfer or novate any of their rights or obligations in relation to the Development to any person not a party to this Agreement.
- 32.2 The matters required to be satisfied for the purposes of clause 32.1 are as follows:
 - 32.2.1 the Developer, Smith & Freeman, the Applicant or the Project Manager, as the case may be, have, at no cost to the Council, first procured the execution by the person to whom their rights or obligations under this Agreement or in relation to the Development are to be assigned, transferred or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
 - 32.2.2 the Council, by notice in writing to the Developer, Smith & Freeman, the Applicant and the Project Manager, has stated that evidence satisfactory to the Council, acting reasonably, has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,



- 32.2.3 the transferee or assignor is not in breach of this Agreement, and
- 32.2.4 the Council, acting reasonably, otherwise consents to the transfer, assignment or novation.

33 Review of this Agreement

- 33.1 The Parties agree to review this Agreement if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 33.2 For the purposes of clause 33.1, 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.
- 33.3 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 33.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 33.4 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 33.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 33.1 is not a dispute for the purposes of clauses 29 and 30 and is not a breach of this Agreement.

34 Notices

- 34.1 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:
 - 34.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 34.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 34.2 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.
- 34.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 34.3.1 delivered, when it is left at the relevant address,
 - 34.3.2 sent by post, 2 business days after it is posted, or



34.3.3 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.

34.4 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.

35 Approvals and Consent

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

36 Costs

- 36.1 The Project Manager is to pay to the Council the Council's costs not exceeding \$18,500 (inclusive of GST) of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 7 days of a written demand by the Council for such payment.
- 36.2 If the Developer, the Applicant and the Project Manager are in breach of this Agreement then the party at fault is also to pay to the Council the Council's costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

37 Entire Agreement

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

38 Further Acts

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



39 Governing Law and Jurisdiction

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

40 Joint and Individual Liability and Benefits

- 40.1 Except as otherwise set out in this Agreement:
 - 40.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
 - 40.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.
- 40.2 Smith & Freeman are parties to this Agreement solely for the purpose of granting the Charge, and have no other rights or obligations under this Agreement except as expressly provided by this Agreement, or arising from the grant of the Charge.
- 40.3 If the Project Manager fails to carry out any of its obligations under this Agreement, then in addition to any rights which the Council has against the Project Manager and the other parties to this Agreement, the Council may require the Developer or the Applicant to meet the obligations of the Project Manager under this Agreement, in which case all of the rights and obligations of the Project Manager under this Agreement will become the rights and obligations of the Developer or the Applicant, as the case may be.
- 40.4 Nothing in clause 40.3 requires the Council to request another party meet the obligations of the Project Manager before the Council exercises any of its rights under this Agreement as a result of a breach of this Agreement by the Project Manager.

41 No Fetter

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



42 Representations and Warranties

- 42.1 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.

43 Severability

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

44 Modification

- 44.1 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.

45 Waiver

- 45.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 45.2 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.
- 45.3 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.

46 GST

- 46.1 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.

- 46.2 Subject to clause 46.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 46.3 Clause 46.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 46.4 No additional amount shall be payable by the Council under clause 46.2 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.
- 46.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 46.5.1 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,
- 46.5.2 that any amounts payable by the Parties in accordance with clause 46.2 (as limited by clause 46.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 46.6 No payment of any amount pursuant to this clause 46, 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.
- 46.7 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.
- 46.8 This clause continues to apply after expiration or termination of this Agreement.

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



47 Explanatory Note Relating to this Agreement

- 47.1 The Appendix contains the explanatory note relating to this Agreement required by clause 25E of the Regulation.
- 47.2 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 Agreement.



Schedule 1

(Clause 6)

Development Contributions

Column 1	Column 2	Column 3
Item	Public Purpose	Timing
Monetary Contributions		
1. Local Roads Contributions	Public roads	Prior to the issue of the Subdivision Certificate for the creation of the relevant lot.
2. District Roads Contributions	Public roads	Prior to the issue of the Subdivision Certificate for the creation of the relevant lot.
3. Local Water Supply Contributions	Water supply	Prior to the issue of the Subdivision Certificate for the creation of the relevant lot.
4. DSP Contribution	Water supply	Prior to the issue of the Subdivision Certificate for the creation of the relevant lot.
5. Administration Levy Contribution	Administration	Prior to the issue of the Subdivision Certificate for the creation of the relevant lot.

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Schedule 2

(Clause 1.1)

The Land

Lots 1-13, 15-66, 68, 70-72, 74-80, 83, 84 & 86-88 in Deposited Plan DP 791199

Lots 90 – 95 in Deposited Plan DP 805549

Lot 51 in Deposited Plan DP 775871

**Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman**



Schedule 3

(Clause 1.1)

Plan of Proposed Subdivision

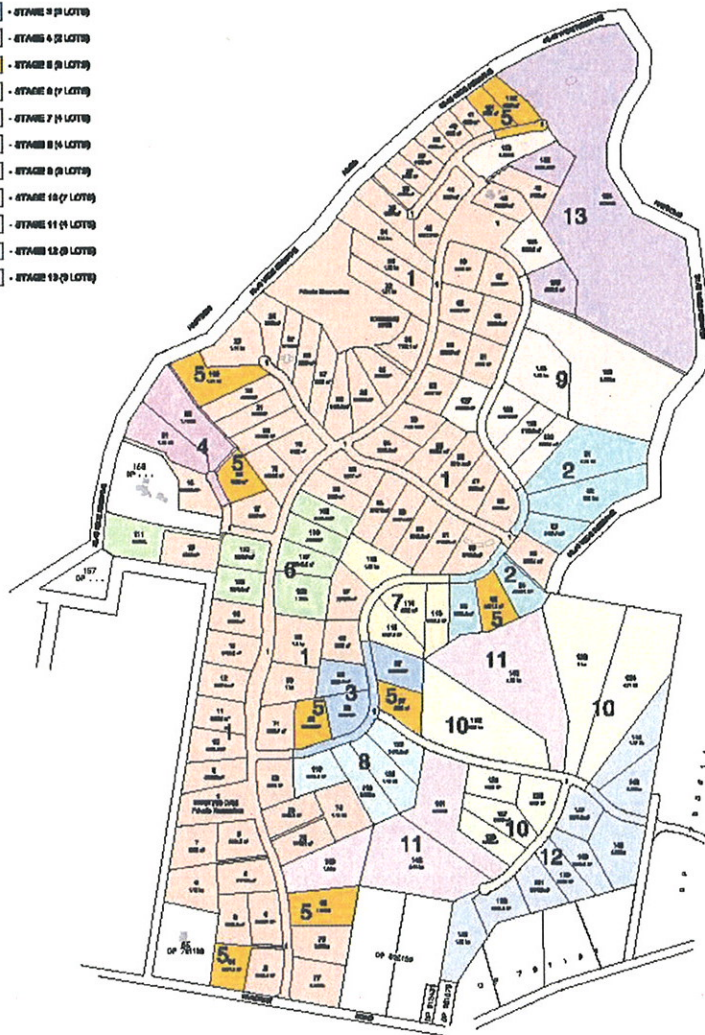
The Plan of Proposed Subdivision is the plan on the following page.

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



LEGEND

1	- STAGE 1 (73 LOTS)
2	- STAGE 2 (8 LOTS)
3	- STAGE 3 (2 LOTS)
4	- STAGE 4 (2 LOTS)
5	- STAGE 5 (2 LOTS)
6	- STAGE 6 (2 LOTS)
7	- STAGE 7 (1 LOT)
8	- STAGE 8 (1 LOT)
9	- STAGE 9 (1 LOT)
10	- STAGE 10 (1 LOT)
11	- STAGE 11 (1 LOT)
12	- STAGE 12 (1 LOT)
13	- STAGE 13 (1 LOT)



1:500 SCALE
 1:1000 SCALE

NOTES:
 ALL DEVELOPMENT AREAS LOT LAYOUTS & SERVICES DESIGN ARE SUBJECT TO
 FINAL PLANNING, DETAILED ENGINEERING, ENVIRONMENTAL, STAGING & APPROVAL
 BY PORT MACQUARIE HASTINGS COUNCIL.

DATE	17/01/2018
BY	REVISED

LE CLOS VERDUN SANCROX



PLAN OF PROPOSED SUBDIVISION WITH STAGING PLAN LE CLOS VERDUN SANCROX
--

A1
0008
19

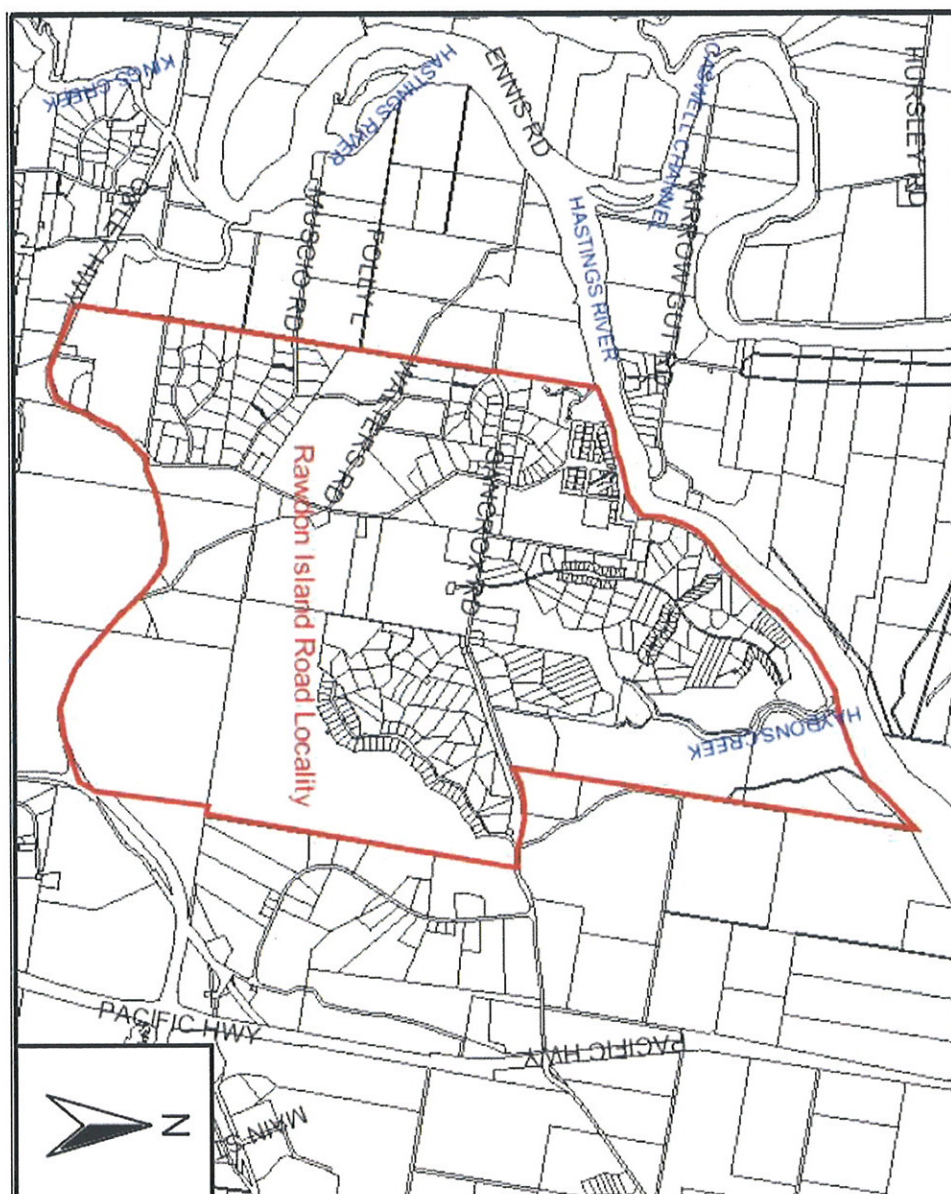
**Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman**



Schedule 4

(Clause 1.1)

Rawdon Island Road Locality



**Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman**



Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

General Manager

Witness/Name/Position

Executed by the Project Manager in accordance with s127(1) of the Corporations Act (Cth) 2001

Name/Position

Name/Position

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Executed by the Applicant in accordance with s127(1) of the Corporations Act (Cth)
2001

Name/Position

Name/Position

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

Name/Position

Name/Position

**Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman**



Signed by the said Cindy Smith in the presence of:

Cindy Smith

Witness

Signed by the said Jennifer Freeman in the presence of:

Jennifer Freeman

Witness

Riverpark Sancrox Planning Agreement
Port Macquarie Hastings Council
Le Clos Pty Limited
Clos Verdun Redevelopments Limited
Riverpark Sancrox Pty Limited
Cindy Smith and Jennifer Freeman



Appendix

(Clause 47)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Port Macquarie Hastings Council ABN 11 236 901 601 of Cnr Lord and Burrawan Streets, PORT MACQUARIE NSW 2444 (**Council**)

Le Clos Pty Limited ACN 114 944 491 of 312 Sancrox Road, SANCROX NSW 2446 (**Applicant**)

Clos Verdun Redevelopments Limited ABN 38 104 919 673 of 312 Sancrox Road, SANCROX NSW 2446 (**Developer**)

Riverpark Sancrox Pty Limited ACN 128 680 606 of 312 Sancrox Road, SANCROX NSW 2446 (**Project Manager**)

Cindy Smith and Jennifer Freeman of 312 Sancrox Road, SANCROX NSW 2446 (**Smith & Freeman**)

Description of the Land to which the Draft Planning Agreement Applies

Lots 1-13, 15-66, 68, 70-72, 74-80, 83, 84 & 86-88 in Deposited Plan DP 791199, Lots 90 – 95 in Deposited Plan DP 805549 and Lot 51 in Deposited Plan DP 775871, Sancrox Road, Sancrox.

Description of Proposed Development

The proposed development is the subdivision of the Land in accordance with the Plan of Proposed Subdivision as shown in Schedule 3.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide suitable funding for the provision of infrastructure, facilities and services to meet the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Environmental Planning and Assessment Act 1979 (**Act**). The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Developer for various public purposes (as defined in s93F(3) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- does not exclude the application of s 94 and s94A of the Act to the Development,
- requires monetary Development Contributions,
- requires the carrying out of specified Works by the Developer for the purposes of providing water supply,
- allows offsets of a specified percentage against specified monetary Development Contributions, in consideration of the benefits provided to the Council by the Developer under the agreement,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works.



- requires the Developer to provide the Council with security in the event that the Council is required to enforce the terms of the agreement,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

- promotes and co-ordinates of the orderly and economic use and development of the Land to which the agreement applies,
- provides land for public purposes in connection with the Development,
- provides and co-ordinates community services and facilities in connection with the Development, and
- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

How the Draft Planning Agreement Promotes the Public Interest

The draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(ii)-(v) and 5(c) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

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



Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

- providing services and facilities for the community,
- ensuring that public facilities provided by the Developer and Owners under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- by providing a means for the private funding of public facilities for the benefit of the Development and the wider community,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement

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

The Draft Planning Agreement requires that specified Works be carried out by the Developer for water supply and the payment of contributions for roadworks.

The water supply and roadworks are not included in the Council's relevant current capital works program. However, the Council's Management Plan identifies these types of works in the relevant capital works program. Accordingly, the provision of these Works under the agreement is consistent and conforms with the capital works envisioned by the Council's Management Plan.
