

Altitude Aspire

Planning Agreement

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

Tweed Shire Council

Newland Developers Pty Limited

Metricon (QLD) Pty Limited

[Drafting Note. Insert Date]

Altitude Aspire Planning Agreement

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Summary Sheet

Council:

Name: Tweed Shire Council
Address: Tumbulgum Road, Murwillumbah NSW 2484
Telephone: 02 65902429
Facsimile: [Insert Details]
Email: [Insert Details]
Representative: [Insert Details]

Developer:

Name: Newland Developers Pty Limited
Address: [Insert Details]
Telephone: 07 55625634
Facsimile: [Insert Details]
Email: [Insert Details]
Representative: Stuart Campbell

Landowner:

Name: Metricon (QLD) Pty Limited
Address: [Insert Details]
Telephone: [Insert Details]
Facsimile: [Insert Details]
Email: [Insert Details]
Representative: [Insert Details]

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See the Schedule 1 Table and the Detailed Tables in Schedule 2.

Application of s94, s94A and s94EF of the Act:

See clause 8.

Security:

See clauses 17, 39 and 40.

Registration:

See clause 44.

Restriction on dealings:

See clause 45.

Dispute Resolution:

See clauses 42 and 43.

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Under s93F of the Environmental Planning and Assessment Act 1979

Parties

Tweed Shire Council ABN 90178732496 of Tumbulgum Road, Murwillumbah, New South Wales 2484 (**Council**)

and

Newland Developers Pty Limited ABN 17095933115 of [Insert Details] (**Developer**)

Metricon (QLD) Pty Limited ABN [Insert Details] of [Insert Details] (**Landowner**)

Background

- A The Landowner owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C Amendment 10 to the LEP was gazetted on 26 October 2007 and rezoned the Land for urban purposes.
- D The Development was declared to be a Part 3A Project by the Part 3A Project Declaration.
- E The Development is a transitional Part 3A project within the meaning of clause 2 of Schedule 6A of the Act and continues to be governed by Part 3A of the Act (despite its repeal) but subject to that Schedule.
- F The Developer has made the Project Application to the Minister in order to obtain the Project Approval.
- G The Developer and the Landowner are 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).

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

Altitude Aspire means the Development.

Area E means the area of land to which *Tweed Local Environmental Plan Amendment No. 10* related, and to which Section B24 of the DCP will relate, once operative .

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

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

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contributions Plan has the same meaning as in the Act.

Defects Liability Period means the period commencing on the date on which responsibility for Work passes from the Developer to the Council in accordance with this Agreement and ending 6 months after that date.

Development means the development on the Land described in the Part 3A Project Declaration as modified by the document titled '*Preferred Project Report Major Project Application 09_0166 Residential Subdivision at Fraser Drive, Terranora (Altitude Aspire)*' prepared by Darryl Anderson Consulting

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Pty Limited dated April 2012 and any Development Consent granted in respect of that Development.

Development Application means an application made under the Act for Development Consent.

Development Consent means a consent or approval under the Act that authorises the carrying out of the Development or any part of it.

Development Contribution means a monetary contribution, the dedication of land free of cost to the Council, 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.

Detailed Tables means the tables in Schedule 2.

DSP Charge means a charge imposed by the Council under s306(2)(a) of the *Water Management Act 2000* in accordance with a DSP.

Development Control Plan (DCP) means *Tweed Development Control Plan 2008*

Development Servicing Plan (DSP) means a plan adopted by the Council for the purposes of imposing requirements under s306(2) of the *Water Management Act 2000*.

Equivalent Tenement (ET) means the capacity within a water supply or sewerage infrastructure system, as the case may be, required to service a single detached residential dwelling

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.

IPD Index means the index titled 'Value of Work Done (Implicit Price Deflator); Chain Volume Measures; Engineering Construction' published by the Australian Bureau of Statistics with product number 8782.0.65.001.

Item means a numbered Item in the Schedule 1 Table.

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

Land means the land described in the Part 3A Project Declaration being 'Lot 1 DP 304649, Lot 1 DP 175235, Lot 1 DP 781687, Lot 2 DP 778727, Lot 1 DP 781697, Lot 1 DP 169490, Lot 40 DP 254416 and Lot 43 DP 254416 Fraser Drive, Terranora'.

LEP means the *Tweed Local Environmental Plan 2000*.

Minister means the Minister for the time being having responsibility for administering the Act.

Occupation Certificate has the same meaning as in the Act.

Part 3A Project Declaration means the instrument relating to the Land titled 'Record of Minister's opinion for the purposes of Clause 6(1) of the State Environmental Planning Policy (Major Projects) 2005' signed by the Minister's delegate on 15 September 2009.

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

Project Application means Project Application No._09_0166 made by the Developer to the Minister for Project Approval.

Project Approval means Development Consent to the Project Application.

Real Property Act means the *Real Property Act 1900*.

Rectification Notice means a notice in writing issued in the Defects Liability Period that identifies a defect in a Work and requires rectification of the defect during the Defects Liability Period or during such later period specified in the notice as is reasonable in the circumstances.

Registrar-General has the same meaning as in the Real Property Act.

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

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

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

Security means a Bank Guarantee unless the Council, in its absolute discretion, agrees to another kind of security as a suitable means of enforcing the Developer's obligations under this agreement.

Schedule 1 Table means the Table in Schedule 1.

Stage means a stage in the Development approved by Development Consent or otherwise agreed between the Parties for the purposes of this Agreement.

Subdivision Certificate has the same meaning as in the Act.

Tweed Land Index means the index titled '*Tweed Shire Council Land Cost Index*' published from year to year by the Council in Council's Revenue Policy and Statement under its Management Plan.

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.

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- 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 Status, application & effect of this Agreement

- 2.1 This Agreement is a planning agreement for the purposes of s93F of the Act.
- 2.2 This Agreement applies to the Land and to the Development.

3 Commencement of this Agreement

- 3.1 This Agreement commences when it has been executed by all of the Parties after it has been publicly notified in accordance with the Act.
- 3.2 The Party who executes this Agreement last is to notify the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Agreement.

4 Commencement of Development Contributions obligations

- 4.1 The Development Contributions required to be made by the Developer under this Agreement are consequent upon the increased demand for public facilities caused by the carrying out of the Development.
- 4.2 The Developer and Landowner are under no obligation to make Development Contributions to the Council in accordance with this Agreement unless:
 - 4.2.1 the Project Approval has been given,
 - 4.2.2 the Development has been commenced (within the meaning of the Act), and
 - 4.2.3 the relevant requirements of this Agreement as to when the Development Contributions are to be made have occurred or been satisfied.

5 Limitation on Landowner's Development Contributions obligations

- 5.1 The Landowner's obligations under this Agreement to make Development Contributions to the Council are limited to any requirement to dedicate any part of the Land to the Council.
- 5.2 The Developer has no obligation, and is not liable for a failure by the Landowner, to dedicate any part of the Land to the Council under or in accordance with this Agreement
- 5.3 The Landowner is not liable for any failure by the Developer to make Development Contributions not comprising the dedication of any part of the Land under or in accordance with this Agreement.
- 5.4 The Landowner, while it owns the Land, is to do all such things as are necessary to allow the Developer to enter the Land for the purpose of complying with its obligations under this Agreement.

6 Further Agreements Relating to this Agreement

- 6.1 The Parties may, at any time and from time to time, for the purpose of implementing this Agreement, enter into an agreement that provides more

detail relating to the subject-matter of this Agreement than is contained in this Agreement.

- 6.2 Any such agreement is not to be inconsistent with this Agreement.

7 Surrender of right of appeal, etc.

- 7.1 Neither the Developer nor the Landowner is to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
- 7.1.1 the validity of this Agreement, or
 - 7.1.2 the granting or modification of any Development Consent to the Development to the extent that the Development Consent was granted or modified having regard to the existence of this Agreement.

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

- 8.1 This Agreement excludes the application of s94A of the Act to the Development.
- 8.2 This Agreement does not exclude the application of s94 or s94EF of the Act to the Development.
- 8.3 Benefits under this Agreement are not to be taken into consideration in determining a development contribution under s94 of the Act to the Development.

9 Satisfaction of conditions imposed under s94 of the Act

- 9.1 This clause applies to a Work that is required to be carried out under this Agreement that relates to a matter for which a condition of Development Consent under s94 of the Act is imposed in relation to the Development.
- 9.2 Pursuant to s94(5)(b) of the Act, the Council accepts the Work, completed in accordance with this Agreement, in satisfaction of the condition, to the Contribution Value specified in Column 4 of the Schedule 1 Table corresponding to the Work or to the extent otherwise specified in this Agreement.

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10 Satisfaction of requirements under s306 of the Water Management Act 2000

- 10.1 This clause applies to a Work that is required to be carried out under this Agreement that relates to a matter in respect of which the Council may impose a requirement under an applicable DSP in relation to the Development.
- 10.2 The Work, completed in accordance with this Agreement, satisfies any requirement that has been or could be imposed by the Council under the applicable DSP to the Contribution Value specified in Column 4 of the Schedule 1 Table corresponding to the Work or to the extent otherwise specified in this Agreement.

Part 2 – General obligation for Development Contributions

11 Provision of Development Contributions by Developer

- 11.1 Subject to this Agreement, the Developer and Landowner are to make the Development Contributions provided for in the Schedule 1 Table and elsewhere in this Agreement to the Council in accordance with this Agreement at no cost to the Council and otherwise to the reasonable satisfaction of the Council.
- 11.2 The Council is to apply each Development Contribution made by the Developer under this Agreement towards the purpose for which it is made and otherwise in accordance with this Agreement.
- 11.3 Despite clause 11.2, 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.

12 Adjustment of monetary Development Contributions rates and amounts

- 12.1 Contribution rates specified in this Agreement that are to be used to calculate the amount of monetary Development Contributions required to be paid by the Developer to the Council under this Agreement are to be indexed from the date of this Agreement to the date on which they are paid using:
 - 12.1.1 the Tweed Land Index, in respect of contribution rates relating to the acquisition of land, and
 - 12.1.2 the IPD Index in respect of all other contribution rates.

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- 12.2 Monetary Development contribution amounts specified in this Agreement that are required to be paid by the Developer to the Council under this Agreement are to be indexed from the date of this Agreement to the date on which they are paid to the Council in full using the IPD Index.

13 Development Contributions exceeding the requirements of this Agreement

- 13.1 This clause applies to any Development Contribution made by the Developer to the Council that, with the prior written consent of the Council, exceeds the requirements of this Agreement by a value agreed to by the Council when giving that consent.
- 13.2 To the extent permitted by law and reasonable in the circumstances, the Council is to take the value referred to in clause 13.1 into consideration when determining Development Contributions that the Developer should make to the Council in respect of development on land within Area E other than the Land.
- 13.3 Nothing in this clause should be construed as enabling an offset against future contributions arising from the carrying out of a Work if the value of the Work has been relied on to satisfy the Developer's obligations under clauses 9 or 10.

14 Acceptance of alternative Development Contributions by the Council

- 14.1 The Council may, in its absolute discretion, agree to accept from the Developer a Development Contribution that is not specified in this Agreement in part or full satisfaction of a Development Contribution other than a Development Contribution which the Council advises the Developer is infrastructure essential to the servicing of the Development.
- 14.2 The Developer may request that the Council approve in writing, a variation to the scope or the timing for the provision of Development Contributions, and the Council may determine, in its absolute discretion whether to approve the variation.
- 14.3 The Developer is not to vary the Development Contributions required, or the scope or the timing for provision of a Development Contribution unless:
- 14.3.1 the Parties agree in writing to the variation, and
- 14.3.2 any consent or approval required under the Act or any other law to the variation is first obtained, if required, and
- 14.3.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 14.4 If a variation is made to the Development Contributions or the scope or timing for provision of a Development Contribution pursuant to this clause, then the

Schedule 1 Table will be deemed to be amended to refer to the Development Contributions and their timing, as varied.

- 14.5 A variation to the Development Contributions or the scope or timing for the provision of a Development Contribution under this clause does not require an amendment to this Agreement.

Part 3 - Provisions relating to road infrastructure

15 Definitions

15.1 In this Part:

15.1.1 the Developer is the *Initial Developer Broadwater Parkway Work* if the Developer wishes to obtain a Subdivision Certificate to create the 172nd Residential Lot in the Development and at that time, the Broadwater Parkway Works has not been constructed by any other person;

15.1.2 *Broadwater Parkway Work* means the Works identified as Items 9 and 10.

16.15 Obligation of Developer in respect of Broadwater Parkway Work

16.1 The Developer is only required to carry out the Broadwater Parkway Work if it is the Initial Developer Broadwater Parkway Work.

16.2.15.1 If the Developer is not the Initial Developer Broadwater Parkway Work, then the Developer must make monetary Development Contributions towards the Broadwater Parkway Work, being:

16.2.1 the monetary Development Contributions towards the Works which comprise Item 9 which would be required under any Contributions Plan relating to the Land; and

16.2.2.15.1.1 \$12,108 per Residential Lot [Drafting Note: sum to be finalised].

16.3 If the Developer is the Initial Developer Broadwater Parkway Work, then the Council is deemed to have consented, for the purposes of clause 13.1, to the Developer making Development Contributions in excess of that required under this Agreement, if the cost of the Broadwater Parkway Work exceeds the monetary Development Contributions required under clause 16.2, and the Council will agree that the value of the exceedance is the amount by which the cost of the Broadwater Parkway Work exceeds the monetary Development Contributions required under clause 16.2.

16.4.15.2 In clause 15.13, a reference to the *cost of the Broadwater Parkway Work* is the cost agreed between Council and the Developer, including:

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- 16.4.115.2.1 the design and construction costs for the Broadway Parkway Work;
- 16.4.215.2.2 the costs of obtaining all necessary approvals for the Broadway Parkway Work; and
- 16.4.315.2.3 the value of any land which the Developer ~~acquires~~dedicates to construct the Broadway Parkway Work.

Part 4 – Provisions relating to water supply infrastructure

1716 Adjustment of DSP to include Apportionment of costs of costs of -new reservoir, and-duplicate feed-in water main and trunk gravity water main

- 17.1 The Developer must design, obtain all necessary approvals for, construct, and dedicate to Council the Works identified as Items 11 and 13 (**Reservoir Works**) on land owned by the Council and dedicate the Reservoir Works to Council.
- 17.2 The Developer is to bear a proportion of the costs of the Reservoir Works which is the amount of costs the Developer would have incurred if it had constructed the Reservoir Works with a capacity of only 0.7ML (**Developer's Proportion**).
- 17.3 The parties acknowledge that an additional 0.8ML of the capacity of the Reservoir Works services other future development within Area E other than the Development, and the additional costs of constructing the Reservoir Works to provide for that additional 0.8ML capacity over and above the 0.7ML required to service the Development, will be borne by future development within Area E (**Area E Proportion**).
- 17.4 The Council will bear the remaining costs of the Reservoir Works (**Council's Proportion**).
- 17.5 The Council is to pay to the Developer the Council's Proportion of the costs of the Reservoir Works at the time of commissioning of those Works.
- 16.1 To the extent permitted by law, the Council is to apply DSP Charges to development within Area E to fund the Area E Proportion of the cost of the Reservoir Works, duplicate feeds water main and trunk gravity main, and an additional 5% of the Area E Proportion of the cost of the Reservoir Works to meet Council's administrative costs.
- 17.6
- 17.7 The Council is to pay to the Developer following completion of the Reservoir Works referred to in clause 18.1 by the Developer, any DSP Charges or other monies paid to it by other developers within Area E towards the cost of the Reservoir Works, but not including payments towards the additional 5% of the Area E Proportion.

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- ~~17.8~~ Payments made by the Council to the Developer under clause 18.6 are not to exceed the Area E Proportion of the cost of the Reservoir Works referred to in clause 18.1.
- ~~17.9~~ In this clause 18, a reference to the *cost of the Reservoir Works* is the cost agreed between Council and the Developer, including:
- ~~17.9.1~~ design and construction costs for the Reservoir Works;
 - ~~17.9.2~~ costs of obtaining all necessary approvals for the Reservoir Works; and
 - ~~17.9.3~~ the value of the land on which the Reservoir Works are constructed, and the agreed cost is to be used to calculate any DSP Charges the Council requires, and specified in any applicable DSP Plan adopted by Council in relation to the Reservoir Works
- ~~17.10~~ The Developer is to submit to the Council its calculations of the Developer's Proportion, the Area E Proportion and the Council's Proportion, together with all necessary supporting documentation, for approval by the Council prior to the issue of a Construction Certificate for the Reservoir Works.
- 16.2 The new reservoir shall be constructed on Council owned land (chambers reservoir site).
- 16.3 The Council will ensure there is available sufficient water supply capacity to enable the development of Altitude Aspire in accordance with the approved Staging Plan.

Apportionment of the cost of trunk gravity main

~~The Developer must design, obtain all necessary approvals for, construct, and dedicate to Council the Works identified as Item 12 (**Gravity Main Works**), and the Landowner is to dedicate the land on which they are located.~~

~~The Developer is to bear a proportion of the cost of the Gravity Main Works which is the amount of the costs of the Gravity Main Works which the Developer would have incurred had it constructed the Gravity Main Works only to service the Development, and not to service other development within the catchment of the Reservoir Works.~~

~~To the extent permitted by law, the Council is to apply DSP Charges to be applied to development within the catchment of the Reservoir Works to fund the proportion of the costs of the Gravity Main Works which is not to be borne by the Developer, and an additional 5% of the those costs to meet Council's administrative costs.~~

~~The Council is to pay to the Developer following completion of the Gravity Main Works by the Developer, any DSP Charges or other monies paid to it in respect of other development towards the cost of the Gravity Main Works. Payments made by the Council to the Developer under clause 19.3 are not to exceed the difference between the proportion of the costs of the Gravity Main Works to be borne by the Developer, and the actual costs of the Gravity Main Works.~~

~~In this clause, a reference to the cost of the Gravity Main Works is the cost agreed between Council and the Developer, including:~~

~~design and construction costs for the Gravity Main Works;~~

~~costs of obtaining all necessary approvals for the Gravity Main Works; and~~

~~the value of the land on which the Gravity Main Works are constructed,~~

~~and the agreed cost is to be used to calculate any DSP Charges the Council requires, and specified in any applicable DSP Plan adopted by Council in relation to the Gravity Main Works~~

~~The Developer is to submit to the Council its calculations of the proportion of the costs of the Gravity Main Works which the Developer is to bear, together with all necessary supporting documentation, for approval by the Council prior to the issue of a Construction Certificate for the Gravity Main Works.~~

Part 5 – Provisions relating to sewer infrastructure

1817 Definitions

18.1 In this Part:

Primary Sewer Infrastructure Works means the Works identified as Items 14 and 15 in the Schedule 1 Table.

120 ET Additional Sewer Infrastructure Works means the Works specified as Items 16 and 17 in the Schedule 1 Table.

Full Additional Sewer Infrastructure Works means Items 18 and 19 in the Schedule 1 Table in addition to the 120 ET Sewer Infrastructure Works.

Comment [BW1]: Sewer infrastructure work is Item 14 to 19 of Schedule 1

19 Obligation to construct sewer infrastructure Works

19.1 The Developer is to carry out 120 ET Additional Sewer Infrastructure Works or the Full Additional Sewer Infrastructure Works in conjunction with the Primary Infrastructure Works

19.2 The Developer may elect which of the 120 ET Additional Sewer Infrastructure Works or the Full Additional Sewer Infrastructure Works it carries out in conjunction with the Primary Infrastructure Works.

19.3 Despite clauses 21.1 and 21.2, the Developer may not carry out any part of the Development that involves the creation of more than 120 ET in Area E unless the Full Additional Sewer Infrastructure Works have been completed to the satisfaction of the Council (whether by the Developer or otherwise).

2018 ~~Adjustment of DSP for Apportionment of costs of sewer infrastructure Works~~

- ~~20.1 The Developer is to bear a proportion of the cost of the Work identified as Items 14-19 (**Sewer Infrastructure Works**) which is the amount of the costs of the Sewer Infrastructure Works which the Developer would have incurred had it constructed the Sewer Infrastructure Works only to service the Development, and not to service other future development within Area E and existing development.~~
- 18.1 To the extent permitted by law, the Council is to apply DSP Charges to development which benefits from the Sewer Infrastructure Works, ~~other than the Development~~, to fund the ~~proportion of the~~ costs of the Sewer Infrastructure Works. ~~which is not to be borne by the Developer, and an additional 5% of the these costs to meet Council's administrative costs.~~
- 20.2 The Developer may at his discretion construct the RSPS and Council will apply an offset to the Section 64 headworks contribution.
- ~~20.3 The Council is to pay to the Developer annually following the completion of the Sewer Infrastructure Works, any DSP Charges or other monies paid to it in respect of other development towards the cost of the Sewer Infrastructure Works~~
- ~~20.4 Payments made by the Council to the Developer under clause 22.3 are not to exceed the difference between the proportion of the costs of the Sewer Infrastructure Works to be borne by the Developer, and the actual costs of the Sewer Infrastructure Works.~~
- ~~20.5 In this clause, a reference to the cost of the Sewer Infrastructure Works is the cost agreed between Council and the Developer, including:~~
- ~~20.5.1 design and construction costs for the Sewer Infrastructure Works;~~
- ~~20.5.2 costs of obtaining all necessary approvals for the Sewer Infrastructure Works; and~~
- ~~20.5.3 the value of the land on which the Sewer Infrastructure Works are constructed,~~
- ~~and the agreed cost is to be used to calculate any DSP Charges the Council requires, and specified in any applicable DSP Plan adopted by Council in relation to the Sewer Infrastructure Works.~~
- ~~20.6 The Developer is to submit to the Council its calculations of the costs of the Sewer Infrastructure Works which the Developer is to bear, together with all necessary supporting documentation, for approval by the Council prior to the issue of a Construction Certificate for the Sewer Infrastructure Works.~~

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Part 6 – Provisions relating to stormwater drainage and flood mitigation infrastructure

~~21.19~~ Offset against per lot payments

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- ~~21.119.1~~ Any monetary Development Contribution that has been paid by the Developer to the Council in accordance with Item 2 of the Schedule 1 Table is to be applied in reduction of the monetary Development Contributions payable or paid by the Developer to the Council in accordance with Items 3 and 4 of that Schedule.

Part 7 – Provisions relating to wetland acquisition and rehabilitation

~~22.20~~ Obligation of Council

- ~~22.120.1~~ The monetary Development Contributions paid by the Developer to the Council in accordance with Item 4 in the Schedule 1 Table are to be applied by the Council towards rehabilitation and restoration Works on land comprising Lot 227 DP755740 in accordance with the vegetation management plan approved in relation to the Project Application after:
- ~~22.1.120.1.1~~ that land has been acquired by the Council, and
- ~~22.1.220.1.2~~ the Council has accumulated sufficient funds to undertake the Works.

Part 8 – General provisions relating to Development Contributions

~~23.21~~ Procedures relating to payment of monetary Development Contributions

- ~~23.121.1~~ 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.
- ~~23.2~~ The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.

~~24.22~~ Procedures relating to the dedication of land

- ~~24.122.1~~ A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when:
- ~~24.1.122.1.1~~ a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road

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(including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or

24.1.222.1.2 the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer the title to the land to the Council when registered.

24.222.2 For the purposes of clause 26.1.2:

24.2.422.2.1 the Landowner is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and

24.2.222.2.2 the Council is to execute the instrument of transfer and return it to Landowner within 7 days of receiving it from the Landowner, and

24.2.322.2.3 the Landowner is to lodge the instrument of transfer for registration with the Registrar-General within 7 days of receiving it from the Council duly executed, and

24.2.422.2.4 the Landowner and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

2523 Carrying out of Work

25.123.1 Except as otherwise specifically provided by this Agreement, any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with:

25.1.423.1.1 any relevant Development Consent,

25.1.223.1.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,

25.1.323.1.3 any other applicable law, and

25.1.423.1.4 otherwise to the reasonable satisfaction of the Council.

25.223.2 The Developer is to comply with any direction given to it by the Council, acting reasonably, to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Agreement.

2624 Variation of Work

26.124.1 A Work is not to be varied by the Developer, unless:

26.1.124.1.1 the Developer and the Council agree in writing to the variation, and

26.1.224.1.2 any consent or approval that is required to the variation under the Act or any other law is first obtained.

26.224.2 For the purposes of clause 28.1 a variation may relate to any matter in relation to the Work that is dealt with by this Agreement.

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2725 Approvals for Work on Council land

- 27-125.1 This clause applies to any Work required by this Agreement to be carried out by the Developer on land owned or controlled by the Council.
- 27-225.2 If Work to which this clause applies requires Development Consent, the Council is to give its consent as the owner of the land to the making of a Development Application for the Work by the Developer.
- 27-325.3 If Work to which this clause applies requires an approval under the *Roads Act 1993* from the Council, the Council is to:
- 27-3-125.3.1 take such steps as are permitted by law to grant such an approval upon application being duly made by the Developer, and
- 27-3-225.3.2 grant a licence to the Developer to occupy the road reserve to enable the carrying out of the Work.

2826 Access to the Land

- 28-126.1 The Landowner is to permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- 28-226.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer 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 Developer by or under this Agreement.

2927 Protection of people and property

- 29-127.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 29-1-127.1.1 all necessary measures are taken to protect people and property, and
- 29-1-227.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
- 29-1-327.1.3 nuisances and unreasonable noise and disturbances are prevented.

3028 Damage and repairs to Work

- 30-128.1 The Developer, 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 before the date on which the Work is completed.

~~31 Council as certifier~~

~~31.1 The Developer must appoint Council as the certifying authority, within the meaning of the Act, for any Works which the Developer carries out under this Agreement.~~

Comment [BW2]: EP&A Act allows private Certifications for roadworks & drainage.

3229 Completion of Work

- 32.129.1 Work is completed for the purposes of this Agreement when the Council, acting reasonably, gives the Developer notice in writing to that effect.
- 32.229.2 Subject to this Agreement, responsibility for the Work passes from the Developer to the Council when the Work is completed.
- 32.329.3 If Work is carried out on land that is to be dedicated to the Council under this Agreement, responsibility for the Work does not pass from the Developer to the Council unless and until the Work is completed and the land is dedicated in accordance with this Agreement.

3330 Rectification of defects

- 33.130.1 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.
- 33.230.2 Subject to the resolution of a dispute in accordance with this Agreement, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

3431 Works-As-Executed-Plan

- 34.431.1 No later than 60 days after a Work is completed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.
- 34.231.2 The Developer, to the extent that it is able at law, grants to the Council an irrevocable licence to use the plans provided under clause 36.1 for all reasonable purposes having regard to the Council's ownership and operation of the Work, and the nature of the Work.

3532 Failure to carry out Work

- 35.132.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Agreement relating to a Work, including compliance with a Rectification Notice, the Council may give the Developer a notice requiring the breach to be rectified to the Council's reasonable satisfaction.
- 35.232.2 The dispute resolution provisions of this Agreement do not apply to the giving of a notice under clause 37.1.

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- 35.332.3 A notice given under clause 37.1 is to allow the Developer a period of not less than 28 days to rectify the breach or such further period as the Council considers reasonable in the circumstances.
- 35.432.4 The Council may carry out and complete the Work the subject of a notice under clause 37.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.
- 35.532.5 The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 37.4.
- 35.632.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work resulting from non-compliance by the Developer with this Agreement that is not met by calling-up the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 35.732.7 For the purpose of clause 37.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
- 35.7.132.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 35.7.232.7.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
- 35.7.332.7.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

3633 Indemnity and Insurance

- 36.133.1 The Developer 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 a negligent act or omission of the Developer in carrying out any Work and the performance of any other obligation under this Agreement.
- 36.233.2 The Developer is to take out and keep current, or is to ensure that its contractors 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 Developer under this Agreement up until the Work is completed:
- 36.2.133.2.1 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 Developer's liability in respect of damage to or destruction of the Works,
- 36.2.233.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 36.2.333.2.3 workers compensation insurance as required by law, and

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36.2.433.2.4 any other insurance required by law.

36.333.3 If the Developer fails to comply with clause 38.2, 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 is to be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:

36.3.433.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or

36.3.233.3.2 recovery as a debt due in a court of competent jurisdiction.

36.433.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.2.

37— Security for Performance

37.1 Except as otherwise provided by this Agreement, the Developer is not to carry out any Work identified in Part B of the Schedule 1 Table unless, before the commencement of the Work, the Developer provides the Council with Security that is adequate to secure the performance of the Developer's obligations relating to the Work:

37.1.1 in accordance with an agreement between the Council and the Developer relating to the provision of Security, or

37.1.2 failing such agreement, on such terms and conditions required by the Council acting reasonably.

37.2 For the purposes of 39.1, 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.

37.3 The Council is to release and return the Security held under this clause or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations under this Agreement to the reasonable satisfaction of the Council.

37.4 The Developer may at any time provide the Council with a replacement Security.

37.5 On receipt of a replacement Security, the Council is to release and return to the Developer, as directed, the Security it holds that has been replaced.

37.6 The Council may call up the Security if it considers, acting reasonably, that the Developer has not complied with its Development Contributions obligations under this Agreement.

37.7 However, the Council is not to call up the Security unless it has given the Developer not less than 30 days notice of its intention to do so and the Developer has not rectified the non-compliance to the Council's reasonable satisfaction before that period has expired.

37.8 If the Council calls up the Security, it may use the amount paid to it in satisfaction of any costs incurred by it in remedying the non-compliance including but not limited to:

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~~37.8.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,~~

~~37.8.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and~~

~~37.8.3 all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.~~

~~37.9 If the Council calls up the Security, it may, by notice in writing to the Developer, require the Developer 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 this Agreement.~~

~~37.10 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.~~

38.34 Security for obligation to dedicate land

~~38.134.1~~ If the Landowner does not dedicate land required to be dedicated under this Agreement at the time at which it is required to be dedicated or at all, the Landowner consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.

~~38.234.2~~ Council is to only acquire land pursuant to clause 40.1 if to do so is reasonable having regard to the circumstances surrounding the failure by the Landowner to dedicate the land required to be dedicated under this Agreement.

~~38.334.3~~ Clause 40.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.

~~38.434.4~~ If, as a result of the acquisition referred to in clause 40.1, the Council must pay compensation to any person other than the Landowner, the Landowner must reimburse the Council for that amount, upon a written request being made by the Council, or the Council can call on any Security.

~~38.534.5~~ Except as otherwise agreed between the Parties, the Landowner must ensure that the land to be dedicated under this Agreement is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Landowner is liable to transfer that land to the Council under this Agreement, and the date on which the Council compulsorily acquires the whole or any part of that land in accordance with the Just Terms Act.

~~38.634.6~~ The Landowner indemnifies and keeps indemnified the Council against all claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Land.

~~38.734.7~~ The Landowner is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 40 including without limitation:

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- 38.7.134.7.1 signing any documents or forms;
 - 38.7.234.7.2 giving land owner's consent for lodgement of any Development Application;
 - 38.7.334.7.3 producing certificates of title to the Registrar-General under the Real Property Act; and
 - 38.7.434.7.4 paying the Council's costs arising under this clause 40.
- 38.834.8 Notwithstanding clause 40.5, if, despite having used its best endeavours, the Landowner cannot ensure that the land to be dedicated is free from all encumbrances and affectations, then the Landowner may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 9 – Other provisions

3935 Enforcement in a court of competent jurisdiction

- 39.135.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 39.235.2 For the avoidance of doubt, nothing in this Agreement prevents:
 - 39.2.135.2.1 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,
 - 39.2.235.2.2 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.
- 39.335.3 The Developer is to pay to the Council the Council's reasonable costs of enforcing this Agreement within 7 days of a written demand by the Council for such payment.

4036 Dispute Resolution – expert determination

- 40.136.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 40.236.2 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.
- 40.336.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.

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- 40.436.4 If a notice is given under clause 42.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 40.536.5 If the dispute is not resolved within a further 28 days, the dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 40.636.6 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 40.736.7 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

4137 Dispute Resolution - mediation

- 41.137.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 42 applies.
- 41.237.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 41.337.3 If a notice is given under clause 43.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 41.437.4 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee, to select a mediator.
- 41.537.5 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.

4238 Registration of this Agreement

- 42.138.1 The Parties agree to register this Agreement subject to obtaining the agreement of the persons specified in s93H(1) of the Act to registration.
- 42.238.2 The Developer and the Landowner are to use their reasonable endeavours to obtain the consent of the persons specified in s93H(1) of the Act to registration of this Agreement.
- 42.338.3 If the agreement of the persons specified in s93H(1) of the Act to registration of this Agreement is obtained, the Parties are to do such things as are reasonably necessary to enable registration to occur.
- 42.438.4 Subject to this clause, within 60 days of the commencement of this Agreement, the Developer and the Landowner are to provide the Council with the following documents to enable registration of this Agreement:

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~~42.4.138.4.1~~ an instrument requesting registration of this Agreement on the title to the Land in registrable form duly executed by the Landowner, and

~~42.4.238.4.2~~ the written irrevocable consent of each person referred to in s93H(1) of the Act to that registration.

* ~~42.538.5~~ The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Land:

~~42.5.138.5.1~~ in so far as the part of the Land concerned is a Final Lot,

~~42.5.238.5.2~~ in relation to any other part of the Land, once the Landowner has completed its obligations under this Agreement to the reasonable satisfaction of the Council or this Agreement is terminated or otherwise comes to an end for any reason whatsoever.

4339 Assignment, sale of land, etc

~~43.139.1~~ Unless the matters specified in clause 45.2 are satisfied:

~~43.1.139.1.1~~ the Landowner is not to transfer the Land to any person,

~~43.1.239.1.2~~ the Developer is not to assign or novate to any person its rights or obligations under this Agreement.

~~43.239.2~~ The matters required to be satisfied for the purposes of clause 45.1 are as follows:

~~43.2.139.2.1~~ the Landowner or Developer, as the case requires, has, at no cost to the Council, first procured the execution by the person to whom the Land will be transferred or the rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms reasonably satisfactory to the Council, and

~~43.2.239.2.2~~ the Council, by notice in writing to the Landowner or Developer as the case requires, has stated that evidence satisfactory to the Council has been produced to show that the transferee, assignee or novatee is reasonably capable of performing its obligations under the Agreement, and

~~43.2.339.2.3~~ the Landowner or Developer, as the case requires, is not in breach of this Agreement, and

~~43.2.439.2.4~~ the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

~~43.339.3~~ This clause does not apply in relation to any transfer of the Land if this Agreement is registered on the title to the Land at the time of the sale.

4440 Review of this Agreement

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- 44.140.1 The Developer is to provide the Council with an annual report detailing the performance of its obligations under this Agreement.
- 44.240.2 The report is to be:
- 44.2.140.2.1 given no later than each anniversary of the date on which this Agreement is entered into, and
- 44.2.240.2.2 in the form and addressing the matters the Council notifies to the Developer from time to time.
- 44.340.3 The Parties are to review this Agreement every 3 years, and otherwise if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 44.440.4 For the purposes of clause 46.3, the relevant changes include:
- 44.4.140.4.1 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, or
- 44.4.240.4.2 any Alternative Funding has been obtained by any Party.
- 44.540.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 46.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 44.640.6 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.
- 44.740.7 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 46.3 is not a dispute for the purposes of clauses 42 and 43, and is not a breach of this Agreement.
- 44.840.8 In this clause, **Alternative Funding** means any funding obtained by any Party from persons not a party to this Agreement that may be applied towards the cost of the Works.

45.1 Notices

- 45.141.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 45.1.141.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
- 45.1.241.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 45.1.341.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 45.241.2 If a Party gives the other Party 3 business days notice of a change of its address, fax number or email address, any notice, consent, information,

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application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.

~~45.341.3~~ Any notice, consent, information, application or request is to be treated as given or made if it is:

~~45.3.441.3.1~~ delivered, when it is left at the relevant address,

~~45.3.241.3.2~~ sent by post, 2 business days after it is posted,

~~45.3.341.3.3~~ sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or

~~45.3.441.3.4~~ sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.

~~45.441.4~~ 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.

4642 Costs

~~46.142.1~~ The Developer is to pay to the Council the Council's costs not exceeding ~~\$35,000~~ **[Drafting Note: Insert agreed amount]** 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.

4743 Entire Agreement

~~47.143.1~~ This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.

~~47.243.2~~ 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.

4844 Further Acts

~~48.144.1~~ Each Party is to 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.

4945 Governing Law and Jurisdiction

~~49.145.1~~ This Agreement is governed by the law of New South Wales.

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49.245.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

49.345.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

5046 Joint and Individual Liability and Benefits

50.146.1 Except as otherwise set out in this Agreement:

50.1.146.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

50.1.246.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

5147 No Fetter

51.147.1 Nothing in this Agreement is to 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 is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

5248 Representations and Warranties

52.148.1 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.

5349 Severability

53.149.1 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 is to be read in the latter way.

53.249.2 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.

5450 Modification

54.150.1 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.

5551 Waiver

- 55-451.1 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.
- 55-251.2 A waiver by a Party is only effective if it is in writing and only in relation to the particular obligation or breach in respect of which it is given.

5652 GST

- 56-152.1 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.
- 56-252.2 Subject to clause 58.4, 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 is to also pay the GST Amount as additional Consideration.
- 56-352.3 Clause 58.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 56-452.4 No additional amount is to be payable by the Council under clause 58.2 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.
- 56-552.5 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:
- 56-5-152.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices in respect of those Supplies;
- 56-5-252.5.2 that any amounts payable by the Parties in accordance with clause 58.2 (as limited by clause 58.4) to each other in respect of

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those Supplies will be set off against each other to the extent that they are equivalent in amount.

56-652.6 No payment of any amount pursuant to this clause 58, 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.

56-752.7 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, is to exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

56-852.8 This clause continues to apply after expiration or termination of this Agreement.

5753 Completion of obligations under this Agreement

57-453.1 This clause applies where the Developer or Landowner has completed all of its obligations under this Agreement to the satisfaction of the Council.

57-253.2 The Developer or Landowner, as the case may be, may make an application to the Council in writing requesting the Council to certify in writing that it has completed all of its obligations under this Agreement to the satisfaction of the Council.

57-353.3 The Council is to issue the certificate referred to in clause 59.2 within 28 days of receiving the application referred to in that clause.

5854 Explanatory Note Relating to this Agreement

58-454.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

58-254.2 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)

Table

Column 1	Column 2	Column 3	Column 4
Public Facility	Scope of Obligation	When Required	Contribution Value \$
PART A - Monetary Contributions			
1. Water pump station upgrade	Monetary contribution to Council towards upgrade of WPS22	Prior to the commissioning of the Works being Item 11	\$TBC
2. Stormwater drainage easement	Council's costs of acquiring easement over Lot 227 DP 755740	On registration of the Subdivision Certificate that creates the first lot	All acquisition costs
3.1. Flood mitigation assets	As per schedule	On registration of each Subdivision Certificate	Per lot contribution as per schedule
4.2. Wetland acquisition and rehabilitation	Council's costs of purchase of Lot 227 DP 755740 and wetland rehabilitation works.	On registration of each Subdivision Certificate	Per lot contribution as per schedule
5.3. Casual (Passive) Public Open Space	Any shortfall between DCP-A5 Subdivision Manual Requirements and MP09_0166 approval	On registration of Subdivision Certificate that creates each open space lot	As per schedule.
6.4. Structured Public Open Space	In accordance with DCP-B24 Area E Urban Release Development Code	On registration of each Subdivision Certificate	Per lot contribution as per schedule
5. Broadwater	Monitoring contribution	On registration of each	Per lot contribution as

Comment [BW3]: Legal point of discharge exists by way of easement water course

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Column 1	Column 2	Column 3	Column 4
Public Facility	Scope of Obligation	When Required	Contribution Value \$
Parkway		Subdivision Certificate	per schedule
PART B - Dedication of land			
7.6. Broadwater Parkway Road Reserve	Full extent of road reserve through the land, as shown on land dedication map.	On registration of the Subdivision Certificate that creates the first lot	Value of land dedicated provides a credit against contributions for construction of Broadwater Parkway under VPA.
8.7. Casual (Passive) Open Space	In accordance with MP09_0166 approval	On registration of the Subdivision Certificate that creates each open space lot	
PART C - Carrying out of Work			
9. Intersection Broadwater Parkway and Fraser Drive	Intersection works and that length of Broadwater Parkway contained in Tweed Road Contribution Plan (TRCP)	Prior to the issue of a Subdivision Certificate that creates the 172 nd Residential Lot in the Development	Credit against TRCP
10. Broadwater Parkway	From western most extent of TRCP works to western boundary of the land.	At or before registration of the Subdivision Certificate that creates the first lot in Stage 7	Credit against road contribution under VPA
11.8. Water reservoir	Reinforced concrete reservoir on Lot 100 DP 809493	Prior to the issue of a Subdivision Certificate for the first Residential Lot in the Development	Relevant S64 charges Cost apportionment per VPA
12.9. Trunk gravity water main and connections	From new water reservoir to the land	On registration of the Subdivision Certificate that creates the first lot	Cost apportionment per VPA
13.10. Duplicate feed-in water main	From WPS22 to the new water reservoir	On registration of the Subdivision Certificate	Cost apportionment per VPA

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Column 1	Column 2	Column 3	Column 4
Public Facility	Scope of Obligation	When Required	Contribution Value \$
and connections		that creates the first lot	
14.11. New Regional Sewer Pump Station (RSPS)	Pump well to ultimate capacity to service Area E and external catchments (Terranora Village and Parkes Lane). Pump capacity to 120ET (unless proceeding to ultimate configuration)	On registration of the Subdivision Certificate that creates the first lot	Proportional cost of providing capacity to external catchments credit against DSP.
15.12. Sewer rising main	375mm SRM from Fraser Drive Sewer Pump Station (SPS 3018) to Banora Point Waste Water Treatment Plant	On registration of the Subdivision Certificate that creates the first lot	Credit against DSP.
16.13. Pumps, pipes and electrical equipment relating to RSPS (for Area E development yield up to 120 ET)	To convey load arising from 120 ET development within Altitude Aspire development plus load from existing Terranora Village Sub-Regional Pump Station	On registration of the Subdivision Certificate that creates the first lot	[Drafting Note. Instructions required]
17.14. Fraser Drive Sewer Pump Station (for Area E development yield up to 120 ET)	Upgrade SPS3018 to provide for increased flows	On registration of the Subdivision Certificate that creates the first lot	Cost apportionment per VPA
18.15. Sewer rising main (for Area E development yield exceeding 120 ET)	Extension of 375mm SRM from RSPS to the first stage SRM at SPS3018, including changes to outlet works at RSPS and interconnection works at SPS3018	On registration of the Subdivision Certificate that exceeds 120 ET for the Area E development	Credit against DSP
19.16. Pumps, pipes	To convey load arising	On registration of the	[Drafting Note.]

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Column 1	Column 2	Column 3	Column 4
Public Facility	Scope of Obligation	When Required	Contribution Value \$
and electrical equipment relating to RSPS (for Area E development yield exceeding 120 ET)	from Altitude Aspire development when fully developed, remainder of Area E when fully developed, existing Terranora Village Sub-Regional Pump Station, and future Parkes Lane sewerage scheme	Subdivision Certificate that exceeds 120 ET for the Area E development	Instructions required]
20.17. Casual (Passive) Public Open Space	Embellishment in accordance with MP09_0166 approval	On registration of the Subdivision Certificate that creates each open space lot	

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Schedule 2

(Clause 6)

Comment [BW4]: Clarify?

Detailed Tables

[Drafting Notes. Insert here Schedules 2-7 contained in the 'Principles Document', making sure they are properly linked to the Schedule 1 Table and there is no inconsistency with the Schedule 1 Table]

DRAFT

Altitude Aspire Planning Agreement
Tweed Shire Council
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Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council

General Manager

Witness/Name/Position

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

Name/Position

Name/Position

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Metricon (QLD) Pty Limited

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

Name/Position

Name/Position

DRAFT

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Metricon (QLD) Pty Limited

Appendix

(Clause 61)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Tweed Shire Council ABN 90178732496 of Tumbulgum Road, Murwillumbah, New South Wales 2484 (**Council**)

and

Newland Developers Pty Limited ABN 17095933115 of [Insert Details] (**Developer**)

Metricon (QLD) Pty Limited ABN [Insert Details] of [Insert Details] (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

[Drafting Note: To be Completed]

Description of Proposed Development

[Drafting Note: To be Completed]

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

Objectives of Draft Planning Agreement

[Drafting Note: To be Completed]

Nature of Draft Planning Agreement

[Drafting Note: To be Completed]

Effect of the Draft Planning Agreement

[Drafting Note: To be Completed]

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

[Drafting Note: To be Completed]

How the Draft Planning Agreement Promotes the Public Interest

[Drafting Note: To be Completed]

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:

[Drafting Note: To be Completed]

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

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[Drafting Note: To be Completed]

DRAFT