

Planning Agreement

Elizabeth Hills

Liverpool City Council (ABN 84 181 182 471) (**Council**)

Mirvac Homes (NSW) Pty Limited (ABN 22 006 922 998) (**Developer**)

Landcom (ABN 79 268 260 688) (**Landowner**)

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Planning Agreement

Elizabeth Hills

Parties

Council	Name	Liverpool City Council
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	ABN	84 181 182 471
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	Facsimile	(02) 9821 9333
	Email	gm@liverpool.nsw.gov.au
	Representative / Contact	Farooq Portelli
Developer	Name	Mirvac Homes (NSW) Pty Limited
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	ABN	22 006 922 998
	Telephone	(02) 9080 8054
	Facsimile	(02) 9080 8187
	Email	trevor_jensen@mirvac.com
	Representative / Contact	Trevor Jensen
Landowner	Name	Landcom
	Address	Level 2, 330 Church Street Parramatta NSW 2150
	ABN	79 268 260 688
	Telephone	(02) 9841 8600
	Facsimile	(02) 9841 8688
	Email	dsavage@landcom.nsw.gov.au
	Representative / Contact	Donna Savage

Background

- A** The Developer has entered into a contract with the Landowner to develop the Land.
- B** The Developer has made an application to the Council for the Instrument Change so as to enable an application to be made to the Council for the Development Consent.
- C** The Developer acknowledges that if the Development Consent is granted and the Development carried out, it is likely to increase the demand for the provision of public facilities.
- D** As a consequence of the matters set out in Recital C the Developer has offered to make the Development Contributions if the Instrument Change is gazetted on the terms set out in this deed.

Operative provisions

1 Definitions & interpretation

1.1 Defined Terms

In this deed, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this deed.

2 Application and operation of deed

2.1 Planning agreement

The parties agree that this deed is a planning agreement:

- (1) within the meaning set out in s93F of the Act; and
- (2) governed by Subdivision 2 of Division 6 of Part 4 of the Act.

2.2 Application

This deed applies to both the Land and the Development.

2.3 Operation

- (1) Subject to **clause 2.3(2)** this deed operates from the later of the date that:
 - (a) it is entered into in accordance with the *Environmental Planning & Assessment Regulations 2000* (NSW); and
 - (b) the Minister administering the Act causes the gazettal of the Draft LEP in the Government Gazette.
- (2) The following clauses of this deed will only operate if and when the Council grants the Development Consent:
 - (a) **clause 3**; and
 - (b) **clause 11**.

3 Provision of Development Contributions

3.1 Designated Land

- (1) The Landowner must transfer the Designated Land to the Council by the time specified in the column headed "Time for transfer to Council" in **Schedule 5** for the relevant item of Designated Land.
- (2) The Designated Land must be transferred to the Council at no cost to Council free of any trusts, estates, interests, covenants and encumbrances other than

any covenants, easements or restrictions reasonably required by an Authority in relation to the Development; and

- (3) The parties agree that **Schedule 5** has no function aside from **clause 3.1(2)**.

3.2 Monetary Contributions

- (1) Subject to **clause 3.7**, prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot, the Developer must pay to Council a Monetary Contribution calculated as follows:

$$MC = (LL \times \$4,588) + (SL \times \$4,139)$$

where:

MC = the Monetary Contribution to be paid in relation to the relevant plan of subdivision;

LL = the number of Large Lots in the relevant plan of subdivision; and

SL = the number of Small Lots in the relevant plan of subdivision.

- (2) The parties agree that **Schedule 6** demonstrates how the amounts of Monetary Contributions have been calculated, but does not otherwise determine how much Monetary Contribution will be paid.

3.3 Works

- (1) Subject to this deed, the Developer, at its cost:
- (a) must Complete each Item of Work in each Development Area indicated with '✓' in the table in **Schedule 3** before a Subdivision Certificate is issued for a plan of subdivision which creates a Residential Lot within that Development Area; and
 - (b) must obtain any form of consent required by a relevant Authority, for the construction and use of each Item of Work.
- (2) If an Item of Work is not Completed in accordance with this deed before the issuing of a Subdivision Certificate as referred to in **clause 3.3(1)(a)**, the Developer may apply to the Council for that Subdivision Certificate, providing it complies with the provisions of **clause 11.3**.
- (3) If an Item of Work is to be carried out on Designated Land, and is not Completed in accordance with this deed before the Designated Land is transferred to the Council under this deed, the Council agrees to give the Developer a licence to enter the Designated Land to Complete the Works.
- (4) The parties agree that **Schedule 4** demonstrates the Contribution Value of each Item of Work, but the relevant Contribution Value does not otherwise determine the scope of Works.

3.4 Standard of Construction of Works

The Developer must construct and complete each Item of Work:

- (1) in accordance with the requirements of, or consents issued by, any Authority;
- (2) in accordance with any Australian Standards applicable to works of the same nature as the relevant Item of Work; and
- (3) in a proper and workmanlike manner complying with current industry practice and standards relating to the relevant Item of Work.

3.5 Acceptance of Risk in Works

Council accepts ownership, possession and control of

- (1) the Designated Land when that land is dedicated to Council; and
- (2) and any Item of Work on that Land that has been Completed upon the later of:

-
- (a) the date the Designated Land on which the relevant Item of Work is located is transferred to Council; and
 - (b) the Completion of the relevant Item of Work.

3.6 Access for Works

Where the Developer needs to carry out Works on any Designated Land that has been transferred to Council, Council grants a licence to the Developer:

- (1) For the purpose of allowing the Developer to complete the relevant item of work; or
- (2) On the terms of the Access Licence.

3.7 Indexation

- (1) The Allowance Amount, Security Amount and Council Payment for each Item of Work and each Monetary Contribution will be indexed in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this deed;
- C** = the Index most recently published before the date that the relevant item is provided, Completed or paid as the case may be; and
- D** = the Index current as at June 2009.

If **A** is less than **B**, then the amount of the relevant amount will not change.

- (2) For the purpose of **clause 3.7(1)**:
 - (a) the Allowance Amount are indexed as at the date the Item of Work to which they relate is Completed;
 - (b) the Security Amount is indexed as at the date the relevant Bond or Bank Guarantee is provided under this deed;
 - (c) each component of the Monetary Contribution payable under **clause 3.2** is indexed as at the date it is paid;

3.8 Application of Development Contributions by the Council

Following provision by the Developer, the Council will make any Item of Work or Designated Land transferred pursuant to this deed available for the Public Purpose for which it is required in the manner that best meets the demand for the facility created by the Development.

3.9 Development Areas

The parties agree that:

- (1) the Development Areas are indicative only, and the Developer may in its reasonable discretion (and with reasonable written notice to Council) elect to increase or decrease the Development Areas by up to 10% from the areas set out in **Schedule 3**, or to otherwise alter any Development Area, in which case the contents of the notice provided to the Council and the Landowner will be substituted for **Schedule 3**;
- (2) the Developer may in its reasonable discretion (and with reasonable written notice to Council) alter the Items of Work from those set out in **Schedule 3**, in which case the contents of the notice provided to the Council and the Landowner will be substituted for **Schedule 3**, subject to the Council being satisfied, acting reasonably, that the total value of the Works Completed

under this deed is equal to or greater than the aggregate of the Contribution Values set out in **Schedule 3**;

- (3) the Developer is not obliged to :
 - (a) develop any of the Development Areas in any order;
 - (b) Complete the Development in any Development Area before commencing the Development in another; and
- (4) the Developer may in its absolute discretion carry out the Development in Stages which do not correspond with the boundaries of the Development Areas.

4 Completion of Works

4.1 Completion Notice

The Developer must provide a Completion Notice to the Council when it considers it has Completed any Item of Work.

4.2 Council must inspect

The Council must inspect the Item of Work set out in a Completion Notice within fourteen (14) days of the receipt of that notice.

4.3 Notice by Council

Within the earlier of:

- (1) fourteen (14) days of inspecting the Item of Work set out in a Completion Notice; and
 - (2) twenty-eight (28) days from the receipt of the relevant Completion Notice,
- the Council must provide notice in writing to the Developer that the Item of Work set out in the Completion Notice:
- (a) has been Completed; or
 - (b) has not been Completed (in Council's reasonable opinion), in which case the notice must also detail:
 - (i) those aspects of the relevant item which have not be Completed; and
 - (ii) the work the Council requires the Developer to carry out in order to Complete the Item of Work.

4.4 Deemed Completion

If the Council does not provide the Developer with notice in accordance with **clause 4.3**, the Item of Work set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

4.5 Effect of Council notice

- (1) Where the Council serves notice on the Developer pursuant to **clause 4.3(2)(b)** the Developer must:
 - (a) Complete that item in accordance with that notice within three (3) months from the date it is issued by the Council (or within such other time as is reasonable in the circumstances); or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (2) Where the Developer:
 - (a) serves notice on the Council in accordance with **clause (1)(b)** the dispute resolution provisions of this deed apply; or

- (b) Completes the relevant Item of Work in accordance with **clause (1)(a)** it must serve upon the Council a new Completion Notice for the relevant Item of Work it has Completed (**New Completion Notice**).
- (3) The provisions of **clauses 4.2 to 4.5** (inclusive) apply to any New Completion Notice issued by the Developer.

5 Defects liability

5.1 Defects Notice

- (1) Where any Item of Work is Complete but that item contains a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of that item; or
 - (b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect,

(**Defect**) Council may, during the Defects Liability Period, issue a notice to the Developer (**Defects Notice**) concerning that Item of Work.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the reasonable work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fourteen (14) days).

5.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice within the time set out in the Defects Notice as referred to in **clause 5.1(2)(c)**.
- (2) The Developer must follow the procedure set out in **clause 3.9** in respect of the completion of the rectification of any Defect.

5.3 Right of Council to Step-In

- (1) Council may, at its absolute discretion, enter upon the Land in accordance with the terms of the Access Licence for the purpose of rectifying a Defect set out in the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer seven (7) days written notice of its intention to do so.
- (2) The terms of the Access Licence apply to any access to the land by Council under clause 5.3 (1).

5.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under **clause 5.3** then:

- (1) Council may:
 - (a) enter upon any part of the Land; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with the Council in exercising those rights.

5.5 Costs of Council

Where Council exercises its step-in rights under **clause 5.3** all costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer, except to the extent that such costs result from the negligence or mismanagement of Council in rectifying the relevant Defects.

6 Application of s94 & s94A

This deed excludes the application of section 94 and section 94A of the Act.

7 Developer warranties and indemnities

7.1 Warranty

The Developer warrants to Council that:

- (1) it is able to fully comply with its obligations under this deed;
- (2) it has full capacity to enter into this deed; and
- (3) there is no legal impediment to it entering into this deed, or performing the obligations imposed under it.

7.2 Indemnity

The Developer indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all Claims arising from the Developer carrying out the Works or performing any other obligation under this deed, except to the extent that the Claim is caused or occasioned by the Council or its employees, officers, agents, contractors and workmen.

8 Contamination

8.1 Definitions

For the purpose of this **clause 8**:

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

8.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to the Council, the Designated Land is not Contaminated; and
- (2) indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on and under the Designated Land before the date of this deed including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority.

8.3 Remediation

- (1) If the Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this deed, the Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to **clause 8.3(1)** the Developer will at its cost (with the assistance of qualified experts) carry

out all reasonable investigations (including investigations which the Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).

- (3) As soon as practicable after receipt by the Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to **clause 8.3(3)** the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as the Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

9 Determination of this deed

This deed will determine upon the Developer satisfying all of the obligations imposed on it in full (including any obligations under **clause 5**).

10 Registration of this deed

10.1 Obligation to Register

- (1) The Developer agrees to procure that this deed is registered on the title to the Land pursuant to section 93H of the Act as soon as practicable after execution of this deed;
- (2) The Landowner agrees to perform any action and sign any document necessary for the Developer to comply with **clause 10.1(1)**; and
- (3) Council will, at the reasonable cost of the Developer, perform any action and sign any document necessary for the Developer to comply with **clause 10.1(1)**.

10.2 Discharge of deed

Council will:

- (1) provide to the Developer a release and discharge of this deed in registrable form relating to any Residential Lots within a plan of subdivision, at the same time as, or immediately after, it issues a Subdivision Certificate for the plan of subdivision, upon registration of which will create those residential lots, and
- (2) provide to the Developer a total release and discharge of this deed in registrable form upon Completion of the Works, the provision of the Monetary Contributions and the dedication of the Designated Land.

11 Security

11.1 Prohibition

No party may Assign its rights under this deed without the prior written consent of the other parties.

11.2 Assignment of Land

The Developer or Landowner must not Assign its interest in the Land (other than a Residential Lot or as required under this deed) unless:

- (1) the Council consents to the Assignment and such consent shall not be unreasonably withheld; and
- (2) the Developer or Landowner has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be Assigned, of a

deed in favour of the Council binding the relevant Assignee to the terms of this deed as if a reference in this deed to the Developer or the Landowner as the case may be was a reference to the Assignee.

11.3 Delivery to Council of Bond or Bank Guarantee

- (1) The Developer must contemporaneously with the lodgement of an application for a Subdivision Certificate deliver to the Council a Bond or a Bank Guarantee in an amount equal to:
 - (a) for each Item of Work referable to that Subdivision Certificate application (as determined by **Schedule 3**) that has been Completed and the Defects Liability Period has not expired, the sum of the Defect Liability Amounts for each Completed Item of Work; and
 - (b) in circumstances where **clause 3.3(2)** applies, the sum (as indexed under this deed) of the Security Amounts for each Item of Work that has not been Completed.
- (2) The Developer undertakes to the Council not to permit any other person to lodge an application for the relevant Subdivision Certificate until it has complied with **clause (1)**.

11.4 Council may call on Bond or Bank Guarantee

- (1) If the Developer does not Complete the Item(s) of Work which are the subject of the Bond or a Bank Guarantee delivered to the Council under **clause 11.3** by the earlier of:
 - (a) three (3) years after the relevant Subdivision Certificate was issued by the Council (or such other time as Council agrees for Completion); and
 - (b) the date of registration of the last plan of subdivision which creates Residential Lots (or such other time as Council agrees for Completion); and

the Council may issue the Developer with a notice requiring the Developer to Complete the Item(s) of Work within twenty-one (21) days or such other time as is reasonable.

- (2) If the Developer fails to comply with a notice issued under **clause 11.4(1)** to the reasonable satisfaction of the Council, the Council may, without limiting any other avenues available to it, Complete the Item(s) of Work in which case all costs incurred by it in doing so are a liquidated debt owed to Council by the Developer. Council may call on the Bond or Bank Guarantee provided to it with respect to the relevant Item of Work to the extent necessary to reimburse the Council for any costs incurred by it in Completing that Item of Work.

11.5 Top up of Bond or Bank Guarantee

Where a Bond or a Bank Guarantee has been delivered under **clause 11.3(1)(b)**, the Developer must ensure that the amount secured by any Bond or Bank Guarantee is returned to the relevant Security Amount within seven (7) days of being requested in writing to do so by the Council.

11.6 Replacement of Bond or Bank Guarantee

At any time following the provision of a Bond or Bank Guarantee, the Developer may provide Council with one or more replacement Bonds or Bank Guarantees totalling the amount of all Bonds or Bank Guarantees required to be provided under this deed for the time being. On receipt of such replacement Bond or Bank Guarantee, the Council must release and return to the Developer, as directed, the Bonds and Bank Guarantees which it holds that have been replaced.

11.7 Return of Bond or Bank Guarantee - Security Value

When the Developer Completes an Item of Work, it may provide to Council a Bond or Bank Guarantee for the purposes of **clause 11.3(1)(b)** referable to the remaining Items of Work that have not been Completed, and Council will return release and return to the Developer, as directed, the Bonds and Bank Guarantees which it holds.

11.8 Return of Bond or Bank Guarantee for Defects Liability Amount

The Council must release and return each Bond or Bank Guarantee to the Developer it holds which is referable to a Defects Liability Amount forthwith (and in any case no later than one (1) month) after the Defects Liability Period has expired with respect to that Item of Work and a written request has been made for the return of that Bond or Bank Guarantee.

12 Council payment

Council must pay the Developer the Council Payments within one (1) month of:

- (1) Completion of the Item of Work to which the Council Payment relates (as set out in **Schedule 4**); and
- (2) the Developer issuing a tax invoice for the Council Payment to Council.

13 Force majeure

13.1 Definition

In this **clause 13, Force Majeure Event** means any physical or material restraint beyond the reasonable control of a party claiming the Force Majeure Event and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

13.2 Consequences of Force Majeure Event

- (1) If a party is unable by reason of Force Majeure Event to carry out wholly or in part its obligations under this deed, it must:
 - (a) give to the other party prompt notice of the Force Majeure Event with reasonably detailed particulars of it; and
 - (b) suggest a reasonable alternative method, if any, of satisfying its obligations under this deed.
- (2) If a party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the parties so far as they are affected by the Force Majeure Event are suspended during continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.

13.3 Inability to complete Works

- (1) The party giving such notice under this clause must use all reasonable effort and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.
- (2) If the Developer is unable to Complete any Item of Work due to a Force Majeure Event the Developer must pay to Council the Allowance Amount specified in **Schedule 4** with respect to that Item of Work less the amount of any Security Amount for that Item of Work provided to Council, and the amount payable to Council may be apportioned, if necessary, in such manner as may be fair and reasonable.
- (3) If the Developer makes a payment to Council under Clause 13.3(2), Council may, at any time after the relevant payment is made under clause 13.3(2), call on any Bond or Bank Guarantee delivered to it under clause 11.3.

13.4 Exclusion of operation

The parties agree that this **clause 12** does not apply to an obligation of a party to transfer land or to pay money.

13.5 Dispute

If the parties are unable to agree on the existence of an event of Force Majeure Event or the period during which the obligations of the parties are suspended during the continuance of the Force Majeure Event, that dispute must be referred for determination under **clause 15**.

14 Review & amendment

14.1 Review

If either party requests a review of the whole or any part of this deed then the parties must use their best endeavours, acting in good faith, to review the deed in accordance with that request.

14.2 Amendment

If the parties agree to amend this deed as a result of a review conducted under this **clause 14** then any such amendment must be made:

- (1) in writing signed by all parties; and
- (2) subject to the provisions of the Act.

15 Dispute resolution

15.1 Notice of dispute

If a dispute or lack of certainty between the parties arises in connection with this deed or its subject matter (a **dispute**), then either party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within five (5) Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the dispute (the representatives designated by the Parties being together, the **Representatives**).

15.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the appropriate party indemnifies the other relevant parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying party.

15.3 Further steps required before proceedings

Subject to **clauses 15.14 and 15.15** and except as otherwise expressly provided in this deed, any dispute between the parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under **clause 15.5** or determination by an expert under **clause 15.6**, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) Business Days.

15.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the dispute, then the parties must agree within five (5) Business Days to either refer the matter to mediation under **clause 15.5** or expert resolution under **clause 15.6**.

15.5 Disputes for mediation

- (1) If the parties agree in accordance with **clause 15.4** to refer the dispute to mediation, the mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) Business Days, then by a mediator appointed by LEADR.
- (2) If the mediation referred to in **clause 15.5(1)** has not resulted in settlement of the dispute and has been terminated, the parties may agree to have the matter determined by expert determination under **clause 15.6**.

15.6 Choice of expert

- (1) If the parties agree to have the matter determined by expert determination, this **clause 15.6** applies.
- (2) The dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) Business Days after the date that the parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (3) If the parties fail to agree as to the relevant field within five (5) Business Days after the parties agree to have the matter determined by expert determination, either party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a dispute must:
 - (a) have a technical understanding of the issues in dispute;
 - (b) not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) inform the Parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into an agreement with the expert appointed under this **clause 15.6** setting out the terms of the expert's determination and the fees payable to the expert.

15.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under **clause 15.6**, the independent expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;
 - (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;

-
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) Business Days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the dispute; and
 - (c) any other documents, records or information which the expert requests.

15.8 Expert may commission reports

- (1) Subject to **clause (2)**:
- (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with **clause 15.6(5)** of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

15.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under **clause (1)** is not a hearing and is not an arbitration.

15.10 Other courses of action

If:

- (1) the parties cannot agree in accordance with **clause 15.4** to refer the matter to mediation or determination by an expert; or
- (2) the mediation referred to in **clause 15.5** has not resulted in settlement of the dispute and has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) Business Days after termination of the mediation;

then either party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

15.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (a) subject to **clause 15.11(b)**, to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

15.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

15.13 Costs

If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

15.14 Remedies available under the Act

This **clause 15** does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the Act.

15.15 Urgent relief

This **clause 15** does not prevent a party from seeking urgent injunctive or declaratory relief.

16 Default and termination

16.1 Events of default

The Developer commits an **Event of Default** if:

- (1) it breaches an essential term of this deed; or
- (2) it breaches a non-essential term of this deed and fails to rectify that breach within a reasonable time (which must not be less than ten (10) business days) of being requested to do so by the Council.

16.2 Consequences of Events of default

Where the Developer commits an Event of Default, the Council may terminate this deed by notice in writing to the Developer.

16.3 No restriction on rights

The rights vested in the Council pursuant to **clause 16.2** do not prevent the Council from exercising any other rights that it may possess at law.

16.4 Consequence of termination

Upon termination of this deed:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

17 Position of Council

17.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Legislation.

17.2 Agreement does not fetter discretion

This deed is not intended to operate to fetter, in any unlawful manner:

- (1) the power of the Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion, (Discretion).

17.3 Severance of provisions

- (1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this **clause 16** is substantially satisfied; and
 - (b) in the event that sub-clause (a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect.
- (2) Where the Law permits the Council to contract out of a provision of that Law or gives the Council power to exercise a Discretion, then if the Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with the Law.

17.4 No obligations

Nothing in this deed will be deemed to impose any obligation on the Council to exercise any of its functions under the Act in relation to the Draft LEP, the Land or the Development.

18 Confidentiality

18.1 Agreement not Confidential

The terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any party.

18.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this deed;
 - (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this deed; and
 - (c) subject to **clauses 18.2(2) and (3)**, each party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, state government policy, local government policy or any listing rule; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

19 GST

19.1 Defined GST Terms

Defined terms used in this **clause 19** have the meaning ascribed to them in the GST Law.

19.2 GST to be Added to Amounts Payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this deed, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive. Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this deed are exclusive of GST.

19.3 GST Obligations to Survive Termination

This **clause 19** will continue to apply after expiration or termination of this deed.

20 Miscellaneous

20.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to the rights and obligations of the parties set out in this deed; and
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of it; and

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- (3) make decisions that are required of it in good faith and in a manner consistent with the completion of the transactions set out in this deed; and
 - (4) be just and faithful in its activities and dealings with the other parties.

20.2 Legal costs

- (1) The Developer agrees to:
 - (a) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this deed;
 - (b) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this agreement including any breach or default by the Developer of its obligations under this deedto an aggregate total of \$5,000.00, within fourteen (14) days of receipt of a Tax Invoice from Council.
- (2) Should Council form the reasonable opinion that its costs referred to in **clause 20.2(1)** will exceed \$5,000.00 the parties will discuss in good faith the payment of further costs by the Developer.

21 Administrative provisions

21.1 Notices

- (1) Any notice, consent or other communication under this deed must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address; or
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by facsimile to that person's address; or
 - (d) emailed to the person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
 - (b) if sent by pre-paid mail, on the third Business Day after posting;
 - (c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day; and
 - (d) if sent by email to a person's email address before close of a business day, then on the day of delivery at that person's email address if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out in this deed or another address of which that person may from time to time give notice to each other person.

21.2 Entire agreement

This deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

21.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this deed and the rights and obligations of the parties under it.

21.5 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

21.6 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

21.7 Unenforceability

Any provision of this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

21.8 Power of Attorney

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

21.9 Governing law

The law in force in the State of New South Wales governs this deed. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this deed ; and
 - (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.
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Execution page

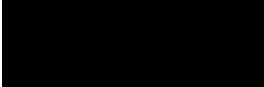
Executed as a deed

Dated:


Executed by Mirvac Homes (NSW) Pty Limited in accordance with section 127(1) of the Corporations Act by authority of its directors.



Director/Secretary (Signature)



Director (Signature)




Name of Director/ Secretary (Print Name)


GARY WOOD

Name of Director (Print Name)

Executed by Liverpool City Council by its duly constituted Attorney, Farooq Portelli pursuant to the registered Power of Attorney Book 4418 No 998 in the presence of:



Witness (Signature)



Attorney (Signature)

TANYA C'BRIEN

Name of Witness (Print Name)


FAROOQ C. PORTELLI

Name of Attorney (Print Name)

Signed by me

SEAN O'TOOLE.....

as delegate of **Landcom**, and I hereby certify that I have no notice of revocation of such delegation



Witness (sign and print name)
DAVID SCHOFIELD



Delegate

Schedule 1

Commercial Terms

Developer	Name	Mirvac Homes (NSW) Pty Limited
	Address	60 Margaret St, SYDNEY 2000
	ABN	22 006 922 988
	Telephone	(02) 9080 8054
	Facsimile	(02) 9080 8187
	Email	trevor_jensen@mirvac.com
	Representative / Contact	Trevor Jensen
Council	Name	Liverpool City Council
	Address	1 Hoxton Park Road LIVERPOOL NSW 2170
	ABN	84 181 182 471
	Telephone	(02) 9821 9222
	Facsimile	(02) 9821 9333
	Email	gm@liverpool.nsw.gov.au
	Representative / Contact	Farooq Portelli
Landowner	Name	Landcom
	Address	Level 2, 330 Church Street Parramatta NSW 2150
	ABN	79 268 260 688
	Telephone	(02) 9841 8600
	Facsimile	(02) 9841 8688
	Email	dsavage@landcom.nsw.gov.au
	Representative / Contact	Donna Savage
Land	Lot 11 in Deposited Plan 1139171 as shown on the plan attached as Annexure 1 .	

Current LEP	Liverpool Local Environmental Plan 2008
Draft LEP	Amendment to Liverpool Local Environmental Plan 2008 which rezones the Land from RU1 Primary Production to R1 - General Residential, RE1 - Public Recreation generally in accordance with the plan attached as Annexure 2 .

Requirements Under Section 93F of the Act

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application – (Section 93F(1))</p> <p>The Developer has:</p> <p>sought a change to an environmental planning instrument.</p> <p>made, or proposes to make, a Development Application.</p> <p>entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) Not applicable</p>
<p>Description of land to which this deed applies – (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p>Description of change to the environmental planning instrument to which agreement applies – (Section 93F(3)(b))</p>	<p>The amendments to be made by the draft LEP.</p>
<p>Application of section 94 of the Act – (Section 93F(3)(d))</p>	<p>Section 94 is excluded.</p>
<p>Applicability of section 94A of the Act – (Section 93F(3)(d))</p>	<p>Section 94A is excluded.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f))</p>	<p>See clause 15.</p>
<p>Enforcement of this deed (Section 93F(3)(g))</p>	<p>See clause 11.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(3)(9))</p>	<p>See clause 17.</p>

Schedule 2 Defined Terms And Interpretation

Part 1 - Definitions

Access Licence	means the terms and conditions set out in Schedule 7.
Act	means the <i>Environmental Planning & Assessment Act 1979</i> (NSW).
Allowance Amount	subject to clause 3.7 , means the amount specified in respect of an Item of Work in Schedule 4 as "Allowance Amount".
Assign	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: <ol style="list-style-type: none">(1) federal, state or local government; or(2) department of any federal, state or local government; or(3) any court or administrative tribunal; or(4) statutory corporation or regulatory body.
Bond or Bank Guarantee	means an irrevocable and unconditional undertaking by a financial institution approved by the Council, to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.
Claim	against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Complete	with respect to an Item of Work means that particular item has been completed to the standard required under this deed to the satisfaction of Council, and Completed and Completion have a commensurate meaning.
Completion Notice	means a notice setting out an Item of Work that the Developer believes is complete and which is: <ol style="list-style-type: none">(1) in writing; and(2) issued by an Independent Engineer; and(3) contains an acknowledgement from the Independent Engineer that it is recognised that the Council relies upon the certification provided by that Engineer.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the

public domain and which:

- (1) is by its nature confidential;
- (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (3) any party knows or ought to know is confidential;
- (4) is information which may be reasonably considered to be of a confidential nature.

Construction Certificate		has the same meaning ascribed to that term in the Act.
Contributions Plan		means Liverpool Contributions Plan 2001 (as amended) as at the date of this deed.
Council Licence	Access	means a licence on the terms set out in Schedule 7 .
Council Payment		subject to clause 3.7 , means the amount specified in respect of an Item of Work in Schedule 4 as "Council Payment".
Defects Period	Liability	means twelve (12) months after the relevant Item of Work is Complete.
Defects Amount	Liability	for each Item of Work, means 2.5% of the Allowance Amount for that Item of Work, and being the amount specified in respect of each Item of Work in Schedule 4 as the "Defects Liability Amount".
Designated Land		means that part of the Land specified in column 2 of Schedule 5 under the heading "Description of Designated Land".
Development		means the development of the Land for residential and ancillary purposes in accordance with the Draft LEP.
Development Area		means each of the areas within the Land as set out in the plan in Annexure 3 (as amended by any notice under clause 3.10(1)), being north, north west, east, central, and south.
Development Consent		means any development consent issued under the Act for the Development.
Development Control Plan		means a Development Control Plan under the provisions of the Act, as adopted by Liverpool City Council.
Development Contribution		means the Monetary Contributions, the Designated Land and the Works.
Draft LEP		means the "Draft LEP" set out in Schedule 1 .
GST Law		means the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other act or regulation relating to the imposition or administration of the GST.

Independent Engineer	means an appropriately qualified and experienced civil engineer who is a member of the Institute of Engineers Australia (now known as ENGINEERS AUSTRALIA) or the Association of Professional Engineers, Scientists and Managers, Australia that is approved by the Council (which approval must not be unreasonably withheld).
Index	means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician from time to time.
Instrument Change	means the making of the Draft LEP.
Item of Work	means an individual item of the Works as set out in Schedule 4 .
Land	means the "Land" set out in Schedule 1 .
Large Lot	means a Residential Lot greater than 450m ² in area.
Law	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
LEADR	means LEADR - Association of Dispute Resolvers (see www.leadr.com.au).
Legislation	means the Act and the <i>Local Government Act 1993</i> (NSW).
Monetary Contribution	means a monetary contribution payable pursuant to clause 3.2 .
Public Purpose	has the same meaning as in s.93F(2) of the Act.
Public Recreation Land	means that part of the Land zoned RE1 (Public Recreation) as shown on the plan attached as Annexure 2 .
Residential Lot	means a lot comprising part of the Land that is intended to be used for the purpose of a dwelling or a dwelling house without being further subdivided.
Security Amount	means the amount specified in respect of an Item of Work in Schedule 4 as "Security Amount".
Small Lot	means a Residential Lot of 450m ² or less in area.
Stage	means a stage of the Development.
Subdivision Certificate	has the meaning ascribed to that term in the Act.
Works	means the works specified in Schedule 4 (including any design, project management and advice from consultants in relation to the provision of those works).

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
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reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular plural	includes the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
next day	if an act under this deed to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next Business Day	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
time of day	time is a reference to Sydney time.
headings	headings (including those in brackets at the beginning of clauses) are for convenience only and do not affect the interpretation of this deed.
deed	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other

Schedule 3
Timing of Proposed Works in Development Areas - clause 3.3

Items of Work	Development Area North (14.068ha)	Development Area East (3.356ha)	Development Area Central (18.746ha)	Development Area South (7.953ha)
2.5m pedestrian/bike path, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 1 - Description of Work (a). 	✓	✓	✓	✓
3m pedestrian/bike bridge, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 1 - Description of Work (b). 			✓	✓
Riparian planting within the Public Recreation Land, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 2 - Description of Work (a). 	✓	✓	✓	
Passive recreation elements, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 2 - Description of Work (b). 	✓	✓	✓	✓
Street trees, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 2 - Description of Work (c). 	✓	✓	✓	✓

Items of Work	Development Area North (14.068ha)	Development Area East (3.356ha)	Development Area Central (19.746ha)	Development Area South (7.953ha)
Vehicular access over Hinchinbrook Creek, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 4 - Description of Work (a). 	✓		✓	
Roundabout at Feodore Dr and Stirling St intersection, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 4 - Description of Work (b). 	✓		✓	
Drainage basin 3B, being: <ul style="list-style-type: none"> - Schedule 4 - Item of Work 5 - Description of Work (a). 	✓			✓

Items of Work	Development Area North (14.068ha)	Development Area East (3.356ha)	Development Area Central (18.746ha)	Development Area South (7.953ha)
Local drainage measures, being: - Schedule 4 - Item of Work 5 - Description of Work (b).	✓	✓	✓	✓
Water quality wetlands / biofilters and GPT's, being: - Schedule 4 - Item of Work 5 - Description of Work (c)	✓	✓	✓	✓
Reconstruction of water quality basin adjacent to Lascelles Street for use for water quality treatment with associated drainage infrastructure & GPT as shown on the Development plans in Annexure 4		✓		

Note: See clause 3.3 in relation to the obligation of the Developer to provide the Items of Work in each Development Area indicated with '✓' in the table above before a Subdivision Certificate is issued for a plan of subdivision which creates a Residential Lot within that Development Area.

**Schedule 4
Works - clause 3.2**

Item of Work	Description of Work	Allowance amount	Security Amount	Defects Liability Amount	Contribution Value	Council Payment
1. Pedestrian path / Cycleway.	(a) Construction of a 2.5m shared pedestrian/bike path within the relevant Development Area of the site as per Council's requirements in accordance with the Development Control Plan as shown in the plan in Annexure 4 .	\$1,189,062	\$1,189,062	\$59,453,	\$1,189,062	\$0
	(b) Construction of a 3m shared pedestrian/bike bridge across Hinchinbrook Creek as shown in the plan numbered SK02C in Annexure 4 .	\$264,000	\$264,000	\$13,200	\$264,000	\$0
2. Landscaping and vegetation management of the Public Recreation Land.	(a) Riparian planting within the Public Recreation Land and maintenance generally in accordance with the vegetation management plan (in this schedule - VMP) contained in the VMP report by Eco Logical Australia dated March 2010 adjacent to the relevant Development Area.	\$1,067,212	\$1,067,212	\$53,360	\$1,067,212	\$0
	(b) Passive recreation elements including seats and boardwalks in public recreation land generally in accordance with the VMP adjacent to the relevant Development Area.	\$348,232	\$348,232	\$17,411	\$348,232	\$0

Item of Work	Description of Work	Allowance amount	Security Amount	Defects Liability Amount	Contribution Value	Council Payment
	(c) Street trees in accordance with the Development Control Plan within the relevant Development Area.	\$108,400	\$108,400	\$5,420	\$108,400	\$0
3.Public recreation facilities within the Public Recreation Land.	(a) Construction and embellishment of public recreation facilities to reasonable Council specifications within the Public Recreation Land contiguous with the relevant Development Area including: <ul style="list-style-type: none"> ➤ Playground equipment ➤ BBQ facilities 	\$388,160	\$388,160	\$19,408	\$388,160	\$0
4.Road facilities	(a) Vehicular access over Hinchinbrook Creek corridor generally as shown in the plan numbered SK04C in Annexure 4.	\$660,000	\$660,000	\$33,000	\$660,000	\$0
	(b) Roundabout at Feodore Dr and Stirling St intersection to Council's reasonable specifications generally as shown in the plan numbered SK03C in Annexure 4.	\$165,000	\$165,000	\$8,250	\$165,000	\$0
5.Local Drainage facilities	(a) Construction of drainage basin 3B to the north west of the Land (within Western Sydney Parklands) generally in accordance with Council's drainage strategy as endorsed by Council; and subject to the approval of Western Sydney Parklands.	\$2,750,000	\$2,750,000	\$137,500	\$1,725,255	\$1,024,745

Item of Work	Description of Work	Allowance amount	Security Amount	Defects Liability Amount	Contribution Value	Council Payment
	(b) Construction of local drainage measures as required to drain water from the Development to Council's reasonable specifications in areas contiguous with the relevant Development Area including works as generally shown in the plan numbered SK05C in Annexure 4 .	\$434,238	\$434,238	\$21,712	\$434,238	\$0
	(c) Water quality wetlands / biofilters and Gross Pollutant Traps (GPT's) as shown on the generally as shown in the plan numbered SK06C in Annexure 4 in areas contiguous with the relevant Development Areas.	\$2,073,100	\$2,073,100	\$103,655	\$2,073,100	\$0
	(d) Reconstruction of water quality basin adjacent to Lascelles Street for use for water quality treatment with associated drainage infrastructure & GPT as generally as shown in the plan numbered SK06C in Annexure 4 .	\$2,300,000	\$2,300,000	\$115,000	\$2,300,000	\$0
Total Works Value		\$11,747,404				\$1,024,745

**Schedule 5
Designated Land - clause 3.1**

Public Purpose	Description of Designated Land	Time for transfer to Council	Value
Public recreation land	Public Recreation Land	Upon or prior to Completion of riparian planting and maintenance Works within the Public Recreation Land (being Works listed in Schedule 4, Item 2, Description of Works (a)) during the Development of each Development Area.	Drainage Corridor: 12.35ha Area within drainage corridor below the 100 year flood extent = 5.31ha at \$30/m ² = \$1,593,000 Area within drainage corridor clear of the 100 year flood extent = 5.17ha at \$135/m ² = \$6,979,500 Additional areas of land (1.87ha) for retention of water quality basins adjacent to Lascelles Street within Public Recreation Land transferred to Council at zero cost
Total Land Value			\$8,572,500
Total Works Value + Total Land Value			\$20,319,904

**Schedule 6
Monetary Contributions - clause 3.2**

Item no.	Public Purpose	Timing of payment -	Amount (per Large or Small Lot)		Total Amount
1.	Community Facilities	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	Large Lot	\$2,049	\$645,435
			Small Lot	\$1,876	\$590,940
2.	Recreation	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	Large Lot	\$2,404	\$757,260
			Small Lot	\$2,143	\$675,045
3.	Administration	Prior to the issue of a Subdivision Certificate for a plan of subdivision that when registered would create a Residential Lot.	Large Lot	\$135	\$42,525
			Small Lot	\$120	\$37,800
Total Monetary Contribution per Large Lot - clause 3.2				\$4,588	
Total Monetary Contribution per Small Lot - clause 3.2				\$4,139	
Total Monetary Contribution					\$2,749,005

Schedule 7
Council Access Licence Terms - clause 5.3

1 Definitions

- (1) In this schedule, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** of this deed have the meaning ascribed to them in that schedule.
- (2) For the purpose of this **Schedule 7**:
 - (a) **the Land** means the land being accessed in accordance with this licence;
 - (b) **the Licensor** means the party that owns the land being accessed under this licence;
 - (c) **the Licensee** means the other party; and
 - (d) **the Purpose** means the purpose for which the Licensee is accessing the Land from time to time.

2 Licence

2.1 Personal rights

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

2.2 Leasehold interest

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

3 Compliance with authorities

3.1 No warranty as to suitability for use

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

3.2 Compliance with the terms of consents

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

3.3 Compliance with directions from Authorities

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

3.4 Obtaining further consents

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

4 Limitation of the Licensor's liability

4.1 Insurances

- (1) The Licensee must effect and keep current and in force the following policies of insurance:
 - (a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Licensor in an amount of \$20,000,000 for any one occurrence in respect of any liability for:
 - (i) personal injury or death of any person; and
 - (ii) loss of or damage to property,
 - (b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;
 - (c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and
 - (d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.
- (2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must note the interest of the Licensor as principal.

4.2 Inspection of insurance

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

4.3 Cancellation of insurance

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

4.4 Risk

The Licensee uses and occupies the Land at its own risk.

4.5 Indemnity

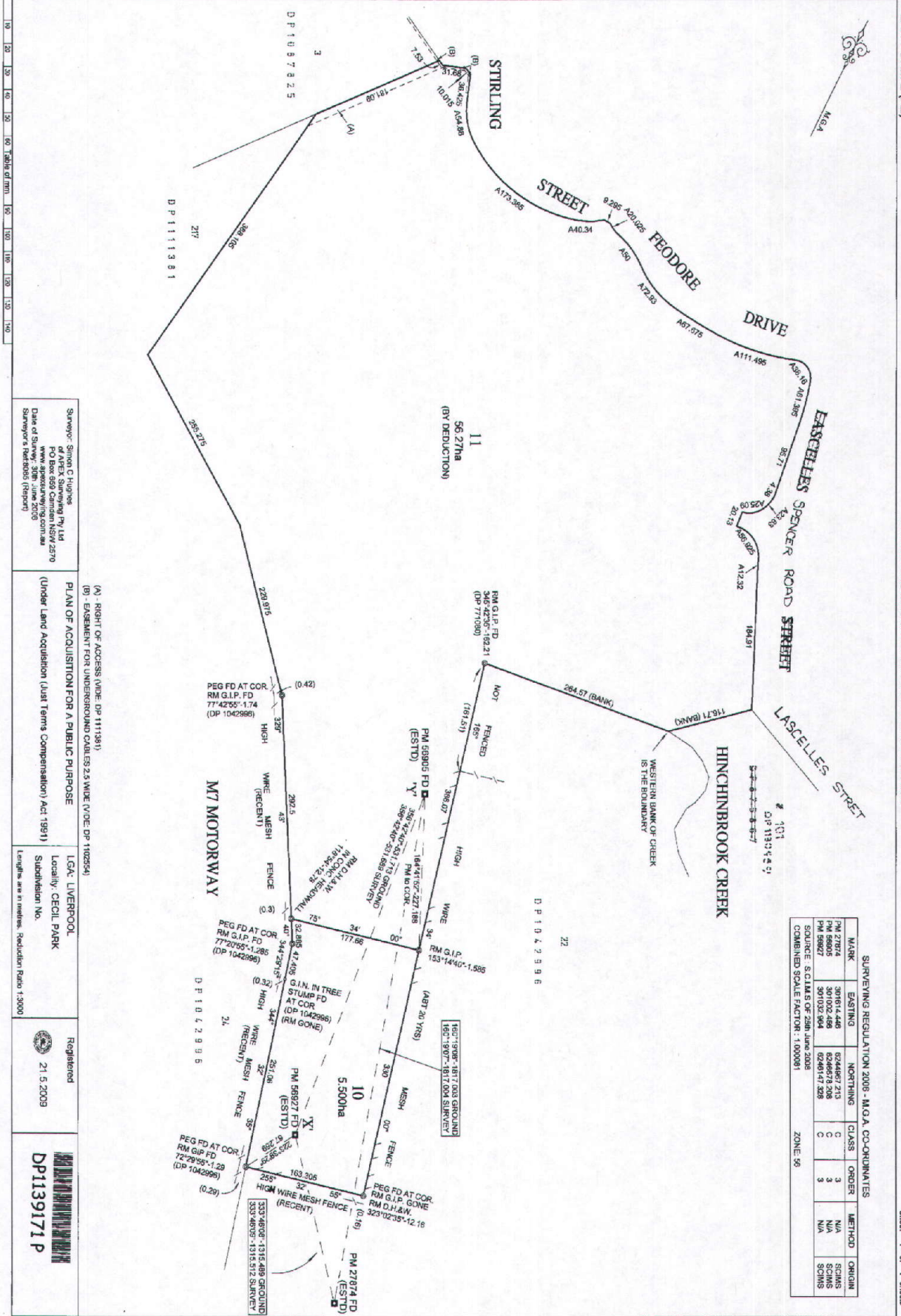
The Licensee indemnifies the Licensor against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Land.

4.6 OH & S

For the purposes of this deed and in accordance with clause 210 of the *Occupational Health & Safety Regulation 2001* (NSW) (**OH&S Regulation**), the Licensor:

- (1) will appoint as the "principal contractor" for any part of the Purpose conducted on the Land, the head civil works contractor specified by the Licensee from time to time; and
- (2) will authorise the nominated head civil works contractor to exercise such authority of the Licensor as is necessary to enable the head civil works contractor to discharge the responsibilities imposed on a principal contractor under Part 8 of the OH&S Regulation.

Annexure 1
Lot 11 in Deposited Plan 1139171



Surveyor: Simon C Hughes
 P.O. Box 559 Camdenu NSW 2270
 www.spsurveying.com.au
 Date of Survey: 20th June 2008
 Surveyor's Certificate: (SPSR)

PLAN OF ACQUISITION FOR A PUBLIC PURPOSE
 (Under Land Acquisition (Just Terms Compensation) Act 1991)
 LOCALITY: LIVERPOOL
 SUBDIVISION NO. 215, 2009

Registered
 21 5 2009
 DP1139171 P



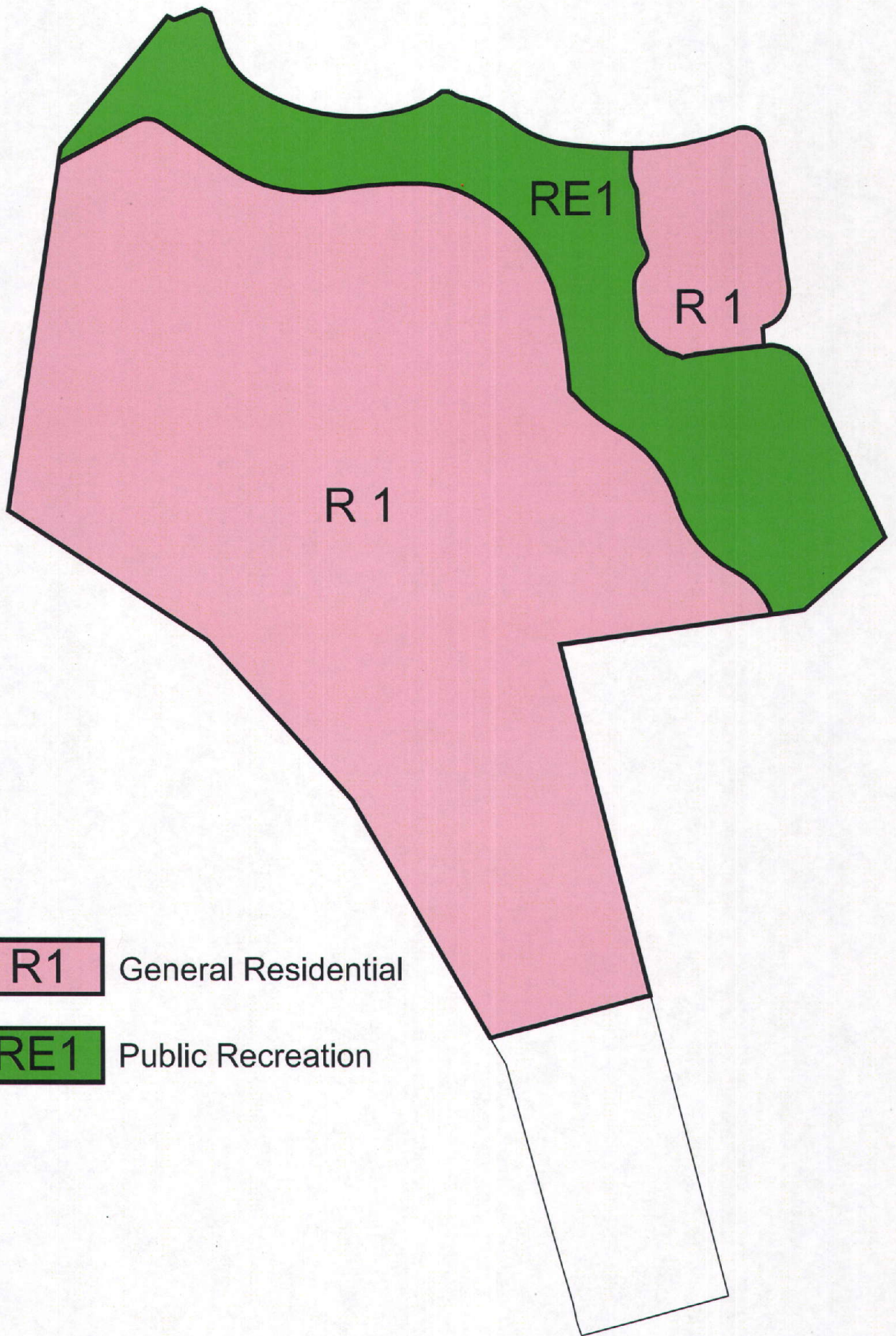
SURVEYING REGULATION 2006 - M.Q.A. CO-ORDINATES

MARK	EASTING	NORTHING	CLASS	ORDER	METHOD	ORIGIN
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PM 58905	397002.486	624487.208	C	3	NA	SCIMS
PM 58927	397002.504	624487.208	C	3	NA	SCIMS

SOURCE: SCHEMATIC OF 23RD JAN 2008
 COMBINED SCALE FACTOR: 1.000081

ZONE 56

Annexure 2
Draft amendment to Local Environmental Plan 2008 - zoning map



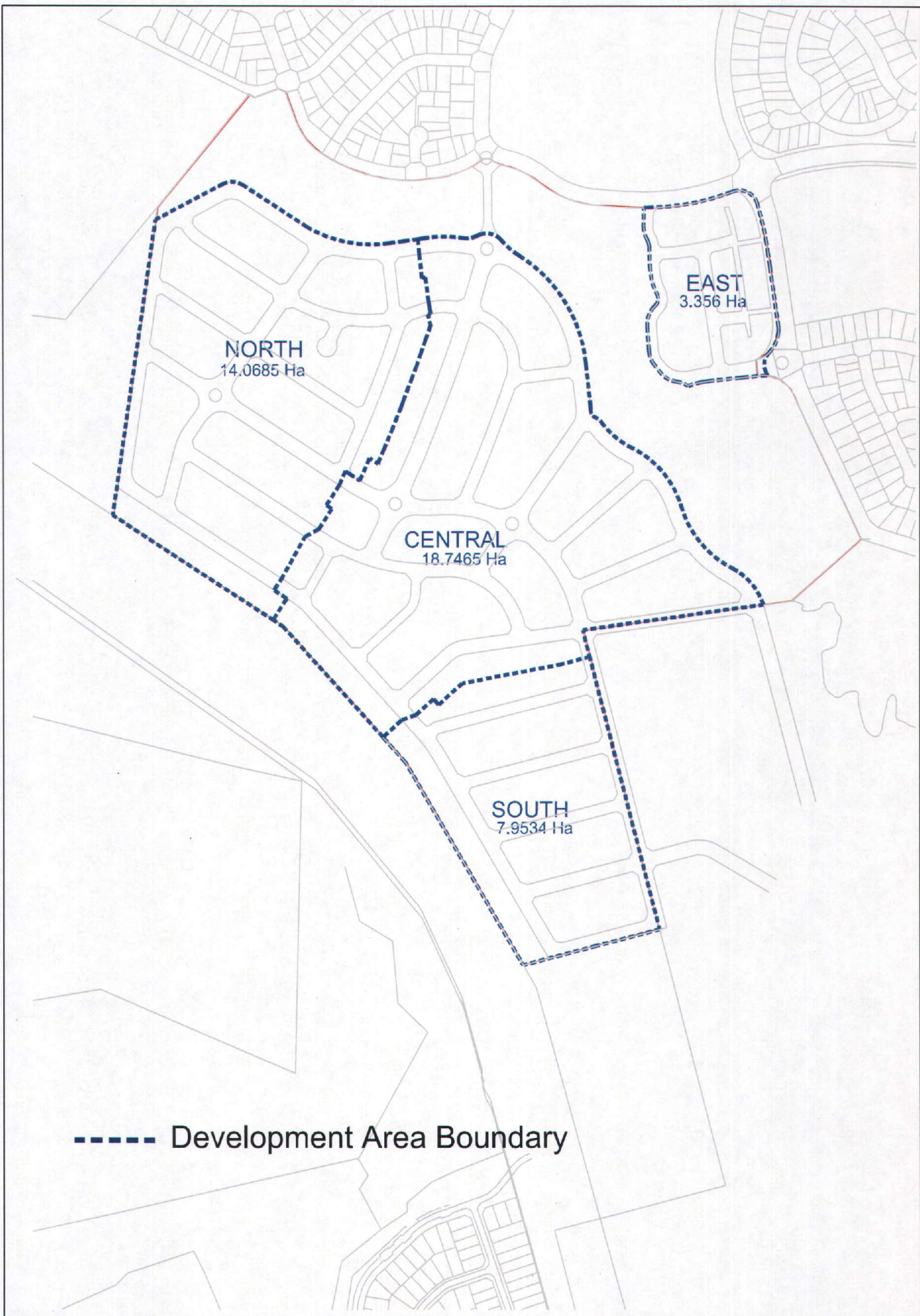
R1

General Residential

RE1

Public Recreation

Annexure 3
Development Areas



Annexure 4
Schedule 4 plans

Links to Western Sydney
Parklands & M7



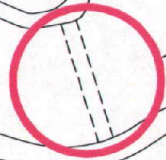
— Combined Pedestrian
& Cycle Way in
Open Space

- - - Combined Pedestrian
& Cycle Way in
Street Verges



FEODORE DRIVE

PEDESTRIAN BRIDGE
40m SPAN x 3.0m WIDTH



MOTORWAY

M7

NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF BROWN CONSULTING (NSW) PTY LTD.

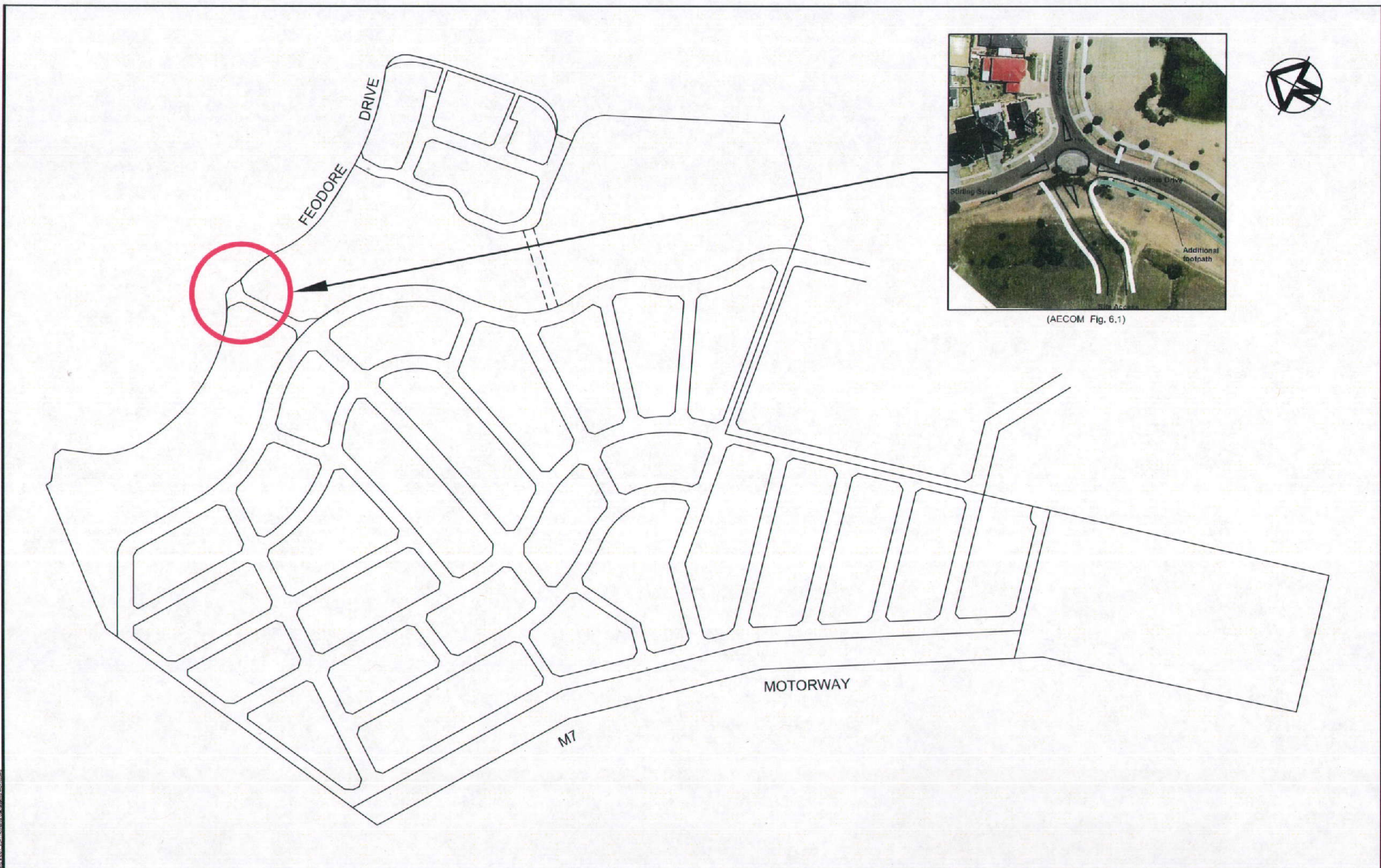
Brown Consulting (NSW) Pty Ltd Engineers & Managers
LEVEL 2, 2 BURBANK PLACE PO BOX 8700
NORWEST BUSINESS PARK BAULKHAM HILLS NSW 2153
Telephone 02 8808 5000 Facsimile 02 8808 5699
Sydney Brisbane Melbourne Sydney Singapore Auckland Christchurch

SCALE DISTANCE

A3 1:4000 0 20 40 60 80 100m A1 1:2000

PROJECT TITLE
**CECIL HILLS
PEDESTRIAN BRIDGE**

SK02C 4/3/2010



(AECOM Fig. 6.1)

Brown Consulting (NSW) Pty Ltd Engineers & Managers
 Level 2, 2 Burbank Place PO Box 8300
 Norwest Business Park Baulkham Hills NSW 2153
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 Sydney Brisbane Melbourne Sydney Singapore Darwin Cairns

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 NORWEST BUSINESS PARK BAULKHAM HILLS NSW 2153
 Telephone 02 8808 5000 Facsimile 02 8808 5099
 Sydney Brisbane Melbourne Sydney Singapore Darwin Cairns

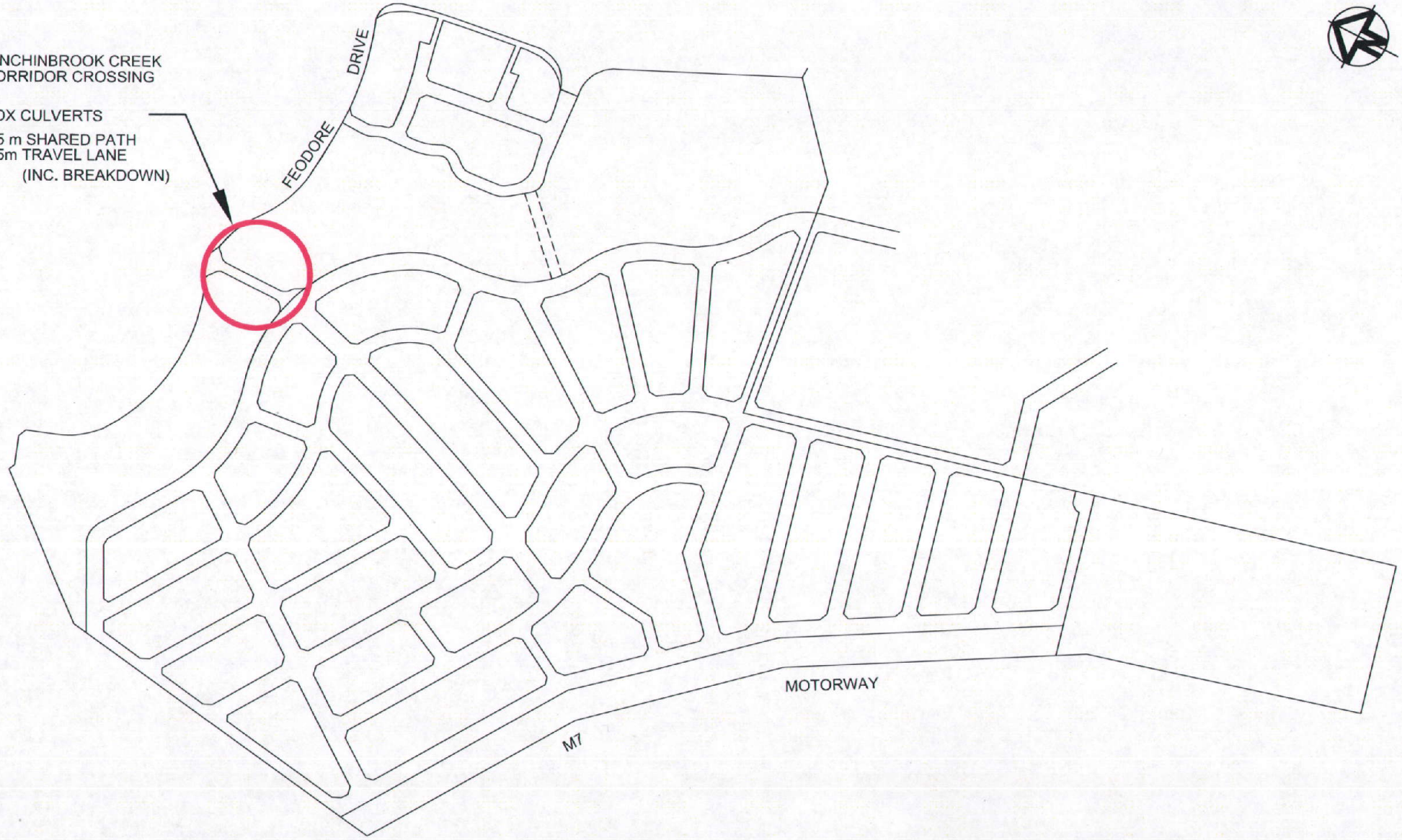
BROWN

SCALE METERS
 A3 1:4000 0 20 40 60 80 100m A1 1:2000

CECIL HILLS
FEODORE DRIVE ROUNDABOUT
 SK03C 4/3/2010

HINCHINBROOK CREEK
CORRIDOR CROSSING

BOX CULVERTS
2.5 m SHARED PATH
5.5m TRAVEL LANE
(INC. BREAKDOWN)



10/02/2010 10:50:00 AM C:\Users\j\Documents\Projects\2010\20100210\20100210.dwg

Brown Consulting (NSW) Pty Ltd Engineers & Managers
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Telephone 02 8308 2000 Facsimile 02 8808 5099
Sydney Brisbane Melbourne Perth Singapore Seattle Coast

SCALE METERS

A3 1:4000 0 20 40 60 80 100m A1 1:2000

CECIL HILLS
HINCHINBROOK CREEK
CORRIDOR CROSSING

SK04C 4/3/2010



BULK EARTHWORKS OVER
EXTENT OF HINCHINBROOK CREEK
CORRIDOR

FEODORE
DRIVE

MOTORWAY

M7

Drawn: S.A. 12/10/10, B.C. 12/10/10, M.C. 12/10/10, J.C. 12/10/10, K.C. 12/10/10, L.C. 12/10/10, N.C. 12/10/10, O.C. 12/10/10, P.C. 12/10/10, Q.C. 12/10/10, R.C. 12/10/10, S.C. 12/10/10, T.C. 12/10/10, U.C. 12/10/10, V.C. 12/10/10, W.C. 12/10/10, X.C. 12/10/10, Y.C. 12/10/10, Z.C. 12/10/10

Brown Consulting (NSW) Pty Ltd Engineers & Managers
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NORWEST BUSINESS PARK BAULKHAM HILLS NSW 2153
Telephone 02 8808 5000 Facsimile 02 8808 3099
Services: Surveying, Site Investigation, Design, Construction, Quantity Surveying

SCALE METRES

A3 1:4000 0 20 40 60 80 100m A1 1:2000

CECIL HILLS
HINCHINBROOK CREEK
CORRIDOR EARTHWORK

SK05C 4/3/2010



LEGEND :

- WETLAND
- BIOFILTER
- GPT

(CARDNO W4758 Flg. 4.1)

DRAWING NUMBER: W4758 Flg. 4.1
 PROJECT: CECIL HILLS WATER QUALITY
 DATE: 4/3/2010

<p> Brown Consulting (NSW) Pty Ltd Engineers & Managers LEVEL 2, 2 BURBANK PLACE PO BOX 8300 NORTHWEST BUSINESS PARK BALUXHAM HILLS NSW 2153 Telephone: 02 8808 5000 Facsimile: 02 8808 3699 <small>Colours: Blue, Red, Green, Yellow, Orange, Black</small> </p> <p style="text-align: center; font-weight: bold; font-size: 1.2em;">BROWN</p>	<p>SCALE METERS</p> <p>A3 1:4000 0 20 40 60 80 100m A1 1:2000</p>	<p style="text-align: center;"> CECIL HILLS WATER QUALITY </p> <p style="text-align: right;"> SK06C 4/3/2010 </p>
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