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Deed

Sancrox Employment Land Environmental Lands and Services Planning Agreement

Under [s93Fs7.4](#) of the *Environmental Planning and Assessment Act 1979*

**Port Macquarie-Hastings Council
Expressway Spares Pty Limited
James John Dunn & Catherine Brigette Dunn**

Date:

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Sancrox Employment Land Environmental Lands & Services Planning Agreement

Port Macquarie-Hastings Council

Expressway Spares Pty Limited

James John Dunn & Catherine Brigette Dunn

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Summary Sheet

Council:

Name: Port Macquarie-Hastings Council

Address: Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444

Telephone: (02) 6581 8111

Facsimile: (02) 6581 8123

Email: council@pmhc.nsw.gov.au

Representative: ~~Tim Molloy~~ Duncan Coulton

Developer:

Name: Expressway Spares Pty Limited

Address: 7 Sancrox Road, Wauchope, New South Wales, 2446

Telephone: 6585 1000

Facsimile: 6585 1969

Email: patrick@expressway.com.au

Representative: Patrick Cassegrain

Name: James John Dunn & Catherine Brigette Dunn

Address: 181 Sancrox Road, Wauchope, New South Wales, 2446

Telephone: 6585 3993

Facsimile: 6586 4494

Email: casunn@bigpond.net.au

Representative: Jim Dunn

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Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See Parts 2 – 6.

Application of ~~s94, s94As~~7.11, s7.12 and ~~s94Es~~7.24 of the Act:

See clause 7.

Security:

See clause 35.

Registration:

See clause 39.

Restriction on dealings:

See clause 40.

Dispute Resolution:

See clauses 37 and 38.

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Under [s93Fs7.4](#) of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie-Hastings Council ABN 11 235 906 601 of Cnr. Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

and

Expressway Spares Pty Limited ABN 55 000 483 107 of 7 Sancrox Road, Wauchope, New South Wales, 2446 (**Expressway Spares**)

and

James John Dunn & Catherine Brigette Dunn of 181 Sancrox Road, Wauchope, New South Wales, 2446 (**Dunn**)

Background

- A Expressway Spares owns the Expressway Spares Land and Dunn owns the Dunn Land.
- B The Sancrox LEP has taken effect.
- C Development Consent has been granted to the carrying out of the Development.
- D Expressway Spares and Dunn are willing to make Development Contributions provided in accordance with this Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

1.1 In this Deed the following definitions apply:

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

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Alternative Funding means funding obtained by the Council for the ongoing management of Environmental Management Land and Offsite Offset Environmental Land dedicated to the Council under this Deed that does not rely on monetary Development Contributions obtained by the Council under Division 67.1 of Part 47 of the Act (including under this Deed).

Alternative Offset Land means land reasonably considered by the Council to be capable of substituting for the Offsite Offset Environmental Land Stage B and which is the subject of a notice to that effect given by the Council to the Developer under clause 19.8.1.

Approved KPoM means the document titled '*Koala Plan of Management Sancrox Employment Precinct, Pacific Highway, Sancrox*' approved by the Council on 10 April 2013.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

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.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Compliance Certificate has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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

~~**Deed of Variation** means the deed of variation to this Deed entered into by the Parties on~~

Defects Liability Period means the period commencing on the date on which a Work is completed and ending 12 months after that date.

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Deferred Area means the area of land identified as such on Sheet 5 of the Map.

Detailed Management Plan means a document that makes provision for:

- (a) the establishment and maintenance of Environmental Management Land, Offsite Offset Environmental Land or the Dunn Residence Land, and
- (b) the staged dedication of the Environmental Management Land or the Offsite Offset Environmental Land as public reserve in conjunction with the carrying out of Development.

Developer means Expressway Spares and Dunn subject to clause 1.2. ~~1517~~.

Development means the development the subject of the Development Consent granted by the Council to DA 2012/305 on 10 April 2013 as modified, substituted or replaced from time to time.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

Dunn Land means Lot 62 DP 754434, [Lot 19 DP 1191370](#) ~~Lot 1 DP 226821~~, Lot 1 DP 124543, Lot 1 DP 1131036 and Lot 1 DP 1144490.

Dunn Residence Land means the land marked 'A' and 'B' on Sheet 1 of the Map.

Environmental Management Land means:

- (a) in relation to the Expressway Spares Land, the land identified as F and G on Sheet 1 of the Map,
- (b) in relation to the Dunn Land, the land identified C, D and E on Sheet 1 of the Map,
- (c) in relation to the McMullen Land, the land identified as H on Sheet 1 of the Map,
- (d) the Visual Buffer Land,
- (e) any other part of the Land that the Parties agree is Environmental Management Land for the purposes of this Deed before such land is required to be dedicated to the Council under this Deed.

Existing Easements means easements that are registered on the title to the Offsite Offset Environmental Land Stage B at the time copies of certificates of title are provided to the Council under clause 19.3 that Council reasonably considers will have an unacceptable effect on the performance of the Offsite Offset Environmental Land as environmental offset land.

Expressway Spares Land means ~~Lot 2 20 DP 2227401191370, Lot 30 41 DP 2557741191701, and Lot 31 39 DP 2557741191704~~ Lot 4 DP 1241253, Lots 37 and 38 DP 1191701, and Lot 121 DP 1252569.

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Establishment Obligation means the establishment of the Environmental Management Land, Offsite Offset Environmental Land and Dunn Residence Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise to the reasonable satisfaction of the Council.

Establishment Period means, except as otherwise expressly provided by this Deed, the period of not less than 12 months commencing when the Development is commenced (within the meaning of the Act) and ending when the Establishment Obligation is completed to the reasonable satisfaction of the Council.

First Deed of Variation means the deed of variation to this Deed entered into by the Parties on 16 January 2017.

Highway Upgrade Dedication Land has the same meaning as in the Sancrox Employment Land Road Construction Planning Agreement that was entered into between the Parties to this Deed on 15 April 2014.

Initial Developer Sewerage Service Work means [Expressway Spares, being](#) the person who commenced any part of the Development at a time when the construction of the Sewerage Service Work had not been commenced.

Initial Developer Water Supply Work means [Expressway Spares, being](#) the person who commenced any part of the Development at a time when the construction of the Water Supply Work had not been commenced.

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

Land means the Expressway Spares Land and the Dunn Land.

Management Contribution means a monetary Development Contribution per hectare of Net Developable Area indexed quarterly from 30 September 2010 in accordance with the *Consumer Price Index (All Groups - Sydney)* published by the Australian Bureau of Statistics calculated as follows:

$$DC \$ = \$640,408.00 / A$$

Where

DC = the monetary Development Contribution per hectare

A = the net area of Land in hectares zoned IN2 and IN1 under the Sancrox LEP after excluding Sancrox Road and the part of the Highway Upgrade Dedication Land and the Visual Buffer Land that is zoned either IN1 or IN2.

Management Contribution Refund means an amount calculated as follows:

$$\text{Refund } \$ = F \times YE \times A / T$$

Where

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F = the balance of all Management Contributions paid under this Deed and any similar planning agreement relating to the McMullen Land

YE = 20 – (the period of years between the date on which the Management Contribution is paid and the date any Alternative Funding takes effect expressed as a number to two decimal places)

A = the Net Developable Area in respect of which the Management Contribution is paid

T = the sum of the values of $YE \times A$ under this Deed and any similar planning agreement relating to the McMullen Land

Management Obligation means the management of the Environmental Management Land, Offsite Offset Environmental Land or Dunn Residence Land in accordance with:

- (a) the relevant requirements of any Development Consent relating to the Development, and
- (b) to the extent not inconsistent with such a Development Consent:
 - (i) any Detailed Management Plan approved by the Council, and
 - (ii) otherwise to the satisfaction of the Council.

Management Period means the period of three years commencing at the end of the Establishment Period for the Environmental Management Land or such other period or periods as the Parties agree.

Management Period Stage A means the period of three years commencing at the end of the Establishment Period for the Offsite Offset Environmental Land Stage A or such other period or periods as the Parties agree.

Management Period Stage B means the period commencing at the end of the Establishment Period for the Offsite Offset Environmental Land Stage B and ending on the later to occur of the following:

- (a) three years, or
- (b) when Lots 67-71 DP 805548, being the Offsite Offset Environmental Land Stage B is dedicated to the Council free of such encumbrances as are specified by the Council in a notice given to the Developer,
- (c) when Alternative Offset Land is dedicated to the Council.

Management Work means the Work required as part of the Management Obligation.

Map means the map comprising Sheets 1 - 5 in the Schedule.

McMullen Land means Lot 1 DP 555095.

Net Developable Area means the area of a Party's land remaining after excluding any part of that land:

- (a) on which business or industrial development is not permissible under the Sancrox LEP (including the Dunn Residence Land),

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- (b) that is, or will be, required to be dedicated to the Council for the purposes of a local park or drainage reserve, and
- (c) that the Council agrees to exclude at the request of the Party.

Offsite Offset Environmental Land means:

- (a) the Offsite Offset Environmental Land Stage A, and
- (b) Offsite Offset Environmental Land Stage B or, if Council accepts Alternative Offset Land in accordance with clause 19.8, the land as amended to include that Alternative Offset Land.

Offsite Offset Environmental Land Stage A means the part of the land identified as '*Offsite Offset Environmental Lands*' that is marked as '*Stage A (11.9Ha)*' on Sheet 2 of the Map.

Offsite Offset Environmental Land Stage B means the part of the land identified as '*Offsite Offset Environmental Lands*' that is marked as '*Stage B (2.47Ha)*' on Sheet 2 of the Map.

Part 4A-6 Certificate has the same meaning as in the Act.

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

Payment Trigger Date means the commencement of the [Second Deed of Variation](#). The payment of a lump sum, within a reasonable timeframe, no later than 30 days after the Second Deed of Variation has been entered into by the Parties.

Rectification Notice means a notice 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.

Regulation means the *Environmental Planning and Assessment Regulation 2009*.

Sancrox Employment Zone Land means the Dunn Land, the Expressway Spares Land and the McMullen Land.

Sancrox LEP means *Port Macquarie-Hastings Local Environmental Plan 2011 (Amendment No.3)* which took effect on 26 August 2011.

Second Deed of Variation means the document titled '[Second Deed of Variation Sancrox Employment Land Environmental Lands and Services Planning Agreement](#)' entered into by the Parties to vary this Deed.

Security means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.

Sewerage Service Work means the following Work to a specification approved by the Council:

- (a) a sewer pump station at the location specified on Sheet 4 of the Map or such other location as is agreed between the Council and the Developer,
- (b) a rising main at the location specified on Sheet 4 of the Map connected to the sewer pump station referred to in paragraph (a), and

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- (c) a gravity sewer main at the location specified on Sheet 4 of the Map connected to the rising main referred to in paragraph (b) of this definition and the existing sewer main in Thrumster Street.

~~**Sewerage Services Contribution** means:~~

~~(a) — in relation to the Dunn Land, a monetary Development Contribution of \$828,790.45 (indexed as at 3 May 2023), being 44.22%, and~~

~~(b) — in relation to the Expressway Spares Land, a monetary Development Contribution of 21.56%,~~

~~towards of the cost of the construction of the Sewerage Service Work determined by Council (\$727,118.13) and indexed from the date of the determination (29 April 2019) to the date of payment in accordance with the Consumer Price Index (All Groups — Sydney) published by the Australian Bureau of Statistics.~~

Sewerage Services Contribution Reduction means:

(a) — the cost of the construction of the sewer pump station referred to in paragraph (a) of the definition of Sewerage Service Work determined by Council, being \$1,317,976.65 (as of 28 September 2022), and indexed from the date of the determination to the date of payment in accordance with the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics, and

(b) — the component of any Sewerage Services Contribution paid to the Council after the Sewerage Service Work is completed relating to the Work referred to in paragraphs (b) and (c) of the definition of Sewerage Service Work.

Sewerage Services DSP Contribution means a payment towards the cost of the Sewerage Service Work made to the Council in respect of the Land under s306(2) of the *Water Management Act 2000*.

Stage means a stage in the Development approved by the Development Consent for the Development, or any part of Development that the Parties agree is a stage for the purposes of this Deed.

Subdivision has the same meaning as *subdivision of land* in the Act.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Work has the same meaning as in the Act.

Visual Buffer Land means land forming part of the Land having a width of 10 metres adjacent to the Highway Upgrade Dedication Land, or such other land as is agreed to between the Parties.

~~**Water Supply Contribution** means:~~

~~(a) — in relation to the Dunn Land, a monetary Development Contribution of \$252,423.58 (indexed as at 3 May 2023), being 44.22% of the cost of construction of the Water Supply Work (\$219,134.86), to be indexed from 29 April 2019 to the date of payment in accordance with the Consumer Price Index (All Groups — Sydney) published by the Australian Bureau of Statistics~~

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- ~~(i) 61.91% of the cost of the construction of the Work referred to in paragraph (a) of the definition of *Water Supply Work* if that Work is undertaken by the Initial Developer Water Supply Work or,~~
 - ~~(ii) 45.86% of the cost of the 300mm diameter watermain and 61.91% of the cost of the 250mm diameter watermain referred to in paragraph (b) of the definition of *Water Supply Work*,~~
 - ~~(b) in relation to the Expressway Spares Land a monetary Development Contribution of:~~
 - ~~(i) 30.19% of the cost of the construction of the Work referred to in paragraph (a) of the definition of *Water Supply Work* if that Work is undertaken by the Initial Developer Water Supply Work or,~~
 - ~~(ii) 22.36% of the cost of the 300mm diameter watermain and 30.19% of the cost of the 250mm diameter watermain referred to in paragraph (b) of the definition of *Water Supply Work*,~~
- ~~being the cost determined by the Council and indexed from the date of that determination to the date of payment in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.~~

Water Supply Contribution Reduction means the cost of the construction of the Water Supply Work being \$540,723.86 (as of 28 September 2022), determined by the Council and indexed from the date of the determination to the date of payment in accordance with the *Consumer Price Index (All Groups – Sydney)* published by the Australian Bureau of Statistics.

Water Supply DSP Contribution means a payment towards the cost of the Water Supply Work made to the Council in respect of the Land under s306(2) of the *Water Management Act 2000*.

Water Supply Work means:

- ~~(a) if the Council determines that a watermain connection is available in or near Thrumster Street, a 250mm diameter main from that connection to Sancrox Road, or~~
- ~~(b) if the Council determines that such a connection is not available, a 300mm diameter watermain connecting to Council's 300mm diameter watermain near the Oxley Highway to the prolongation of Thrumster St and then a 250mm diameter watermain from that point to Sancrox Road at Sancrox and generally in the location shown on Sheet 4 of the Map, being a water main connecting to the Council's existing water supply network.~~
- (a) part of the 300mm watermain component of a 600mm/450mm/300mm watermain constructed between John Oxley Drive and the Pacific Highway near Partridge Creek,
- (b) the 300mm watermain along the eastern side of the Pacific Highway between Partridge Creek and the future alignment of Thrumster Street constructed by Lend Lease in conjunction with the duplication of the Pacific Highway, and
- (c) the 300mm watermain along the eastern side of Wambuyn Drive between the future alignment of Thrumster Street and Fernbank Creek

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[Road including connections to road crossings constructed as part of the Sancrox Road Interchange.](#)

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 Deed.

- 1.2 In the interpretation of this Deed, 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 Deed.
 - 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Deed 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 Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed 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 Deed to any agreement, deed or document is a reference to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference in this Deed to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
 - 1.2.9 A reference in this Deed to a notice given by one party to another party is a reference to a notice in writing.
 - 1.2.10 A reference in this Deed to the dedication of land to the Council is a reference to the dedication of the land free of cost to the Council.
 - 1.2.11 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.12 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.
 - 1.2.13 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.
 - 1.2.14 References to the word 'include' or 'including' are to be construed without limitation.

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- 1.2.15 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.16 A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.17 A reference to the Developer imposes a joint and several obligation on the Parties comprising the Developer unless the obligation is only reasonably capable of being performed by one of them in the particular circumstances.
- 1.2.18 Any schedules, appendices and attachments form part of this Deed.
- 1.2.19 Notes appearing in this Deed are operative provisions of this Deed.

2 Application of this Deed

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

3 Commencement of this Deed

- 3.1 This Agreement commences when it has been executed by all of the Parties.
- 3.2 The Party who executes this Deed last is to give notice to the other Parties once it has done so and promptly provide them with a copy of the fully executed version of this Deed.

4 Operation & effect of this Deed

- 4.1 Except as regards clause 19 of this Deed, the Developer is under no obligation to make the Development Contributions to the Council in accordance with this Deed unless and until Development Consent is granted to the Development or any part of it subject to a condition requiring the Development Contributions to be made in accordance with this Deed.

5 Further agreements relating to this Deed

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

6 Surrender of right of appeal, etc.

- 6.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court concerning:
 - 6.1.1 this Deed, or

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- 6.1.2 the Sancrox LEP, a Development Consent relating to the Development or an approval under ~~s96~~[s4.55](#) of the Act to modify a Development Consent relating to the Development to the extent that the Sancrox LEP was made or the Development Consent was granted or the modification was approved having regard to the existence of this Deed.

7 Application of ~~s94, s94A~~[s7.11, s7.12](#) and ~~s94E~~[Division 7.1, Subdivision 4](#) of the Act to the Development

- 7.1 This Agreement does not exclude the application of ~~s94~~[s7.11 of the Act](#) to the Development.
- 7.2 This Agreement excludes the application of ~~s94A~~[s7.12 of the Act](#) to Subdivision Work but not other Development.
- 7.3 This Agreement does not exclude the application of ~~s94E~~[Division 7.1, Subdivision 4](#) of the Act to the Development.

Part 2 – Provisions relating to Water Supply

~~8 Payment of Water Supply Contribution~~

- ~~9.0 This clause applies if the Developer is not the Initial Developer Water Supply Work to Dunn as the Developer.~~
- ~~10.0 The Developer is to pay the Water Supply Contribution to the Council before a Subdivision Certificate is issued in relation to any part of the Dunn Land. [~~*or 'The Council acknowledges that the Developer has paid the Water Supply Contribution to the Council']~~]~~
- ~~11.0 The payment required by clause 8.2 is in addition to any other Development Contribution that the Developer is required to make under this Deed or otherwise in relation to the Development.~~
- ~~12.0 The Council is to pay to the Developer any Water Supply DSP Contributions it receives in relation to the Land but not so as to exceed the Developer's Water Supply Contribution.~~

~~13~~**138 Construction of Water Supply Work**

- ~~13.1 This clause applies if the Developer is the Initial Developer Water Supply Work.~~
- ~~13.2 The Developer acknowledges that the Development cannot be carried out unless the Water Supply Work is available to serve the Development or arrangements satisfactory to the Council exist relating to the provision of the Water Supply Work to serve the Development.~~

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~~13.38.1 The Developer is to construct Expressway Spares as the Initial Developer Water Supply Work has constructed and completed the Water Supply Work to the reasonable satisfaction of the Council.~~

~~13.4 The Developer is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, a Subdivision Certificate or a Construction Certificate relating to the Development unless it has complied with its obligation under clause 9.3 or otherwise obtained the approval of the Council in writing to the application.~~

~~13.5 Clause 9.4 does not apply to:~~

~~13.6.0 a Construction Certificate:~~

~~(-) for Subdivision Work, or~~

~~(-) that does not relate to the erection of a building or the construction of the Water Supply Work,~~

~~13.9.0 a Subdivision Certificate relating to:~~

~~(-) the dedication or transfer of any part of the Land to facilitate the construction of the Water Supply Work,~~

~~(-) a boundary adjustment on any part of the Land relating to the construction of the Water Supply Work or the dedication or transfer of any land to facilitate the construction Water Supply Work,~~

~~(-) a subdivision to facilitate the sale of any part of the Land.~~

~~13.13 Once the Developer has complied with its obligation under clause 9.3, the Council is to pay to the Developer:~~

~~13.14.0 any Water Supply Contribution it then holds or later receives,~~

~~13.15.0 any Water Supply DSP Contribution it receives, and~~

~~13.16.0 any other monetary Development Contributions paid to the Council after the Water Supply Work has been completed in relation to land other than the Land that benefits from the Water Supply Work and which the Council considers, acting reasonably, should be paid to the Developer,~~

~~but only to the extent to which such payments do not exceed the Water Supply Contribution Reduction.~~

~~8.2 Within a reasonable time, not exceeding 30 90 days of the Payment Trigger Date, the Council is to pay Expressway Spares the Water Supply Contribution Reduction.~~

Part 3 – Provisions relating to Sewerage Services

~~14 Payment of Sewerage Services Contribution~~

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- ~~15.0 — This clause applies if the Developer is not the Initial Developer Sewerage Service Work to Dunn as the Developer.~~
- ~~16.0 — The Developer is to pay the Sewerage Services Contribution to the Council before a Subdivision Certificate is issued in relation to any part of the Land. [or 'The Council acknowledges that the Developer has paid the Sewerage Services Contribution to the Council']~~
- ~~17.0 — The payment required by clause 10.2 is in addition to any other Development Contribution that the Developer is required to make under this Deed or otherwise in relation to the Development.~~
- ~~18.0 — The Council is to pay to the Developer any Sewerage Services DSP Contribution it receives in relation to the Land but not so as to exceed the portion of the Developer's Sewerage Services Contribution relating to the sewer pump station referred to in paragraph (a) of the definition of Sewerage Service Work.~~

199 Construction of Sewerage Services Work

- ~~19.1 — This clause applies if the Developer is the Initial Developer Sewerage Service Work.~~
- ~~19.2 — The Developer acknowledges that the Development cannot be carried out unless the Sewerage Service Work is available to serve the Development or arrangements satisfactory to the Council exist relating to the provision of the Sewerage Service Work to serve the Development.~~
- ~~19.3 — The Developer is to construct Expressway Spares as the Initial Developer Sewerage Service Work has constructed and completed the Sewerage Service Work to the reasonable satisfaction of the Council.~~
- ~~19.4 — The Developer is not to apply for, or cause, suffer or permit an application to be made for, or procure the issuing of, a Subdivision Certificate or a Construction Certificate relating to the Development unless it has complied with its obligation under clause 11.3.~~
- ~~19.5 — Clause 11.4 does not apply to:~~
- ~~19.6.0 — a Construction Certificate for:~~
- ~~() — Subdivision Work, or~~
- ~~() — that does not relate to the erection of a building or the construction of the Sewerage Service Work,~~
- ~~19.9.0 — a Subdivision Certificate relating to:~~
- ~~() — the dedication or transfer of any part of the Land to facilitate the construction of the Sewerage Service Work,~~
- ~~() — a boundary adjustment on any part of the Land relating to the construction of the Sewerage Service Work or the dedication or transfer of any land to facilitate the construction Sewerage Service Work,~~
- ~~() — a subdivision to facilitate the sale of any part of the Land.~~
- ~~19.13 — Once the Developer has complied with its obligation under clause 11.3, the Council is to pay to the Developer:~~

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~~19.14.0 _____ any Sewerage Services Contribution it then holds or later receives, and~~

~~19.15.0 _____ any Sewerage Services DSP Contribution it receives,~~

~~19.16.0 _____ any other monetary Development Contributions paid to the Council after the Sewerage Services Work has been completed in relation to land other than the Land that benefits from the Sewerage Service Work and which the Council considers, acting reasonably, should be paid to the Developer,~~

~~9.1 _____ but only to the extent to which such payments do not exceed the Sewerage Services Contribution Reduction.~~

~~19.179.2 _____ Within a reasonable timeframe, not exceeding 30 90 days after the Payment Trigger Date, the Council is to pay Expressway Spares the Sewer Services Contribution Reduction.~~

Part 4 – Provisions relating to Environmental Lands

~~20~~10 Zoning of Visual Buffer Land

~~20.110.1 _____~~ The Developer is not to make or procure the making of any objection in relation to the making of a local environmental plan within the meaning of the Act that operates to rezone all or part of the Visual Buffer Land to Zone E3 within the meaning of the standard instrument in ~~clause 33A~~section 3.20 of the Act.

~~21~~11 Approval of Detailed Management Plan

~~21.111.1 _____~~ The Developer is to ensure that a Development Application that seeks Development Consent for the establishment and maintenance of Environmental Management Land is accompanied by a Detailed Management Plan in respect of that land.

~~21.211.2 _____~~ The Developer is not to establish or maintain Environmental Management Land except in accordance with:

~~21.2.111.2.1 _____~~ a Detailed Management Plan that has been approved by the Council in respect of that land, and

~~21.2.211.2.2 _____~~ the terms of any approval granted by the Council as modified from time to time.

~~22~~12 Establishment & Management of Environmental Management Land

~~22.112.1 _____~~ The Developer, at its own cost, is to perform:

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[22.1.1](#)[12.1.1](#) the Establishment Obligation during the Establishment Period; and

[22.1.2](#)[12.1.2](#) the Management Obligation during the Management Period.

[22.2](#)[12.2](#) The Developer is to perform its obligations under clause 14.1 in accordance with:

[22.2.1](#)[12.2.1](#) this Deed, and

[22.2.2](#)[12.2.2](#) any further agreement that is entered into by the Developer and the Council under clause 5, and

[22.2.3](#)[12.2.3](#) any requirements and directions notified in writing by the Council to the Developer at any time before the Environmental Management Land Management Work is taken to have been completed that are not inconsistent with:

(a) this Deed, or

(b) any agreement referred to in clause 14.2.2, or

(c) any Development Consent relating to the Development.

[22.3](#)[12.3](#) The Establishment Obligation and the Management Obligation in respect of land of or dedicated by that Developer are not to be varied by that Developer, unless:

[22.3.1](#)[12.3.1](#) that Developer and the Council agree in writing to the variation, and

[22.3.2](#)[12.3.2](#) any consent or approval required under the Act or any other law to the variation is first obtained.

[22.4](#)[12.4](#) Clauses 30 and 31 applies to completion of the Establishment Obligation and the Management Obligation subject to the following:

[22.4.1](#)[12.4.1](#) the Defects Liability Period referred to in clause 31 means the period commencing on the date on which the Work is taken to have been completed under this Deed and ending 14 days after that date.

[22.4.2](#)[12.4.2](#) the Council does not accept responsibility for the Work comprising the Establishment Obligation until the land is dedicated to the Council in accordance with this Deed.

23.13 Failure to Perform Establishment or Management Obligation

[23.1](#)[13.1](#) If the Council considers that the Developer is in breach of the Establishment Obligation or the Management Obligation relating to land of or dedicated by that Developer, the Council may give that Developer a notice requiring the breach to be rectified to the satisfaction of the Council.

[23.2](#)[13.2](#) A notice given under clause 15.1 is to allow the Developer a period of not less than 28 days or such other period as the Council considers appropriate in the circumstances of the case to rectify the breach.

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23.313.3 The Developer is to comply with a notice under clause 15.1 strictly according to its terms.

2414 Inspection of the Environmental Management Land

24.114.1 Before Environmental Management Land is dedicated to the Council in accordance with this Deed, the Developer is to permit the Council, its officers, employees, agents and contractors to enter that land at any time, upon giving reasonable prior notice, to inspect, examine or test that land.

24.214.2 After Environmental Management Land is dedicated to the Council in accordance with this Deed, the Developer is to permit the Council, its officers, employees, agents and contractors to pass through land owned, occupied or otherwise controlled by the Developer to enable the Council to obtain access to the Environmental Management Land.

24.314.3 This clause does not derogate from any other rights the Council has under this Deed to enter Environmental Management Land.

2515 Dedication of Environmental Management Land

25.115.1 The Developer is to dedicate the Environmental Management Land to the Council at the following times:

25.1.115.1.1 if the Development in a Stage relating to any Environmental Management Land involves Subdivision – upon registration of the first plan of subdivision relating to that Stage or at such other time as that Developer and the Council agree, or,

25.1.215.1.2 if the Development in a Stage relating to any Environmental Management Land does not involve Subdivision - before the first Part 4A-6 Certificate is issued relating to that Stage or at such other time as that Developer and the Council agree.

2616 Management Contribution

26.116.1 The Developer is to pay the Management Contribution to the Council on a Stage by Stage basis:

26.1.116.1.1 based on the Net Developable Area of the part of the Land within the Stage, and

26.1.216.1.2 before a Subdivision Certificate is issued in relation to the Stage, or at such other time as the Parties agree.

26.216.2 The Management Contribution and any interest earned on its investment is to be held and applied by the Council for a period of 17 years on and from the expiration of the Management Period towards the ongoing environmental management of the Environmental Management Land and the Offsite Offset Environmental Land but only where that land has been dedicated to the Council.

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[26.316.3](#) The Council is to use its reasonable endeavours to obtain Alternative Funding as soon as reasonably practicable after this Deed is entered into.

[26.416.4](#) The Developer is not to raise any requisition or objection in respect of anything done by the Council under clause 18.3.

[26.516.5](#) If, at any time after the date of this Deed, the Council obtains Alternative Funding, the Council is to send a notice to each Developer:

[26.5.116.5.1](#) informing the Developer that the Council has obtained the Alternative Funding, and

[26.5.216.5.2](#) specifying the amount of the Management Contribution Refund that may be claimed by the Developer, and

[26.5.316.5.3](#) in the case where the Developer has not yet paid the Management Contribution - informing the Developer that the amount of that contribution payable to the Council is to be reduced by the amount specified in clause 18.5.2, and

[26.5.416.5.4](#) in the case where the Developer has paid the Management Contribution - informing the Developer that the amount specified in clause 18.5.2 will be paid by the Council to the Developer if the Council receives within 28 days of the date on the Council's notice a notice from the Developer claiming the Management Contribution Refund.

[26.616.6](#) If a notice under clause 18.5 is given to the Developer in a case:

[26.6.116.6.1](#) where the Developer has not yet paid the Management Contribution, that contribution is taken for the purposes of this Deed to have been reduced by the amount specified in clause 18.5.2, and

[26.6.216.6.2](#) where the Developer has paid the Management Contribution, the Council is to pay the Management Contribution Refund to the Developer if it receives the notice from the Developer referred to in clause 18.5.4.

[26.716.7](#) The Management Contribution payable by the Developer may be reduced by agreement in writing between the Developer and the Council but only if the agreement also provides for an extended Management Period.

Part 5 – Provisions Relating to Offsite Offset Environmental Land

2717 Establishment, rehabilitation, dedication and management of Offsite Offset Environmental Land

[27.117.1](#) Clauses 13 -16 of this Deed apply to the Offsite Offset Environmental Land in the same way that they apply to the Environmental Management Land with the following modifications:

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27.1.117.1.1 a reference to a Detailed Management Plan is a reference to a plan that contains provisions relating to the establishment, rehabilitation and maintenance of Offsite Offset Environmental Land including provision for the staged dedication of the Offsite Offset Environmental Land as a public reserve;

27.1.217.1.2 a reference to the Establishment Period is a reference to the period commencing on the date of the First Deed of Variation,

27.1.317.1.3 a reference to the Management Period is:

- (a) a reference to the Management Period Stage A in respect of Offsite Offset Environmental Land Stage A, and
- (b) a reference to Management Period Stage B in respect of Offsite Offset Environmental Land Stage B.

27.217.2 Clause 17 of this Deed applies to the Offsite Offset Environmental Land Stage A in the same way that it applies to the Environmental Management Land.

27.317.3 Expressway Spares is to provide Council with copies of the certificates of title for the Offsite Offset Environmental Land Stage B within 90 days of the date of the First Deed of Variation.

27.417.4 Within 14 days of the provision of the certificates of title under clause 19.3, the Council must notify Expressway Spares of the Existing Easements.

27.517.5 Expressway Spares is to use reasonable endeavours to extinguish the Existing Easements notified to it under clause 19.4.

27.617.6 Expressway Spares is to dedicate the Offsite Offset Environmental Land Stage B to the Council promptly after the Existing Easements notified to it under clause 19.4 have been extinguished.

27.717.7 If Expressway Spares, having used all reasonable endeavours, is unable to extinguish the Existing Easements, then Expressway Spares must notify the Council and offer to Council proposed Alternative Offset Land.

27.817.8 Council must notify Expressway Spares in writing whether Council:

27.8.117.8.1 accepts the proposed Alternative Offset Land, or

27.8.217.8.2 rejects the proposed Alternative Offset Land, in which case further proposed Alternative Offset Land must be offered to the Council.

27.917.9 The Developer is not to do any of the following in the Deferred Area during the Management Period Stage B other than in accordance with the Approved KPoM:

27.9.117.9.1 make an application to the Council to carry out any development, or carry out any development, or

27.9.217.9.2 make an application to the Council or any other Authority to clear vegetation, or clear vegetation.

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19A Acquisition of Offsite Offset Environmental Land Stage A

- 19A.1 The Council may compulsorily acquire the Offsite Offset Environmental Land Stage A for environmental protection purposes pursuant to s186 of the *Local Government Act 1993* and the Just Terms Act if it considers it reasonable to do so in the public interest.
- 19A.2 Clause 19A.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 19A.3 If, as a result of the acquisition referred to in clause 19A.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.
- 19A.4 The Developer 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 Environmental Dedication Land except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 19A.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 19A, including without limitation:
- 19A.5.1 signing any documents or forms,
 - 19A.5.2 giving land owner's consent for lodgement of any Development Application,
 - 19A.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 19A.5.4 paying the Council's costs arising under this clause 19A.

28-18 Making of Development Applications

28-118.1 The Developer is not to make, or cause or permit to be made, or to give its consent as owner to the making of, an application for a Subdivision Certificate relating to the part of the Development on the Expressway Spares Land unless the Offsite Offset Environmental Land Stage A has been acquired by the Council.

28-218.2 Clause 20.1 does not apply if the Council and the Developer agree in writing to the contrary.

Part 6 – Provisions Relating to Dunn Residence Land

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2919 Establishment and management of Dunn Residence Land

29.1.19.1 Clauses 13-16 of this Deed apply to the Dunn Residence Land in the same way that they apply to the Environmental Management Land with the following modifications:

29.1.19.1.1 a reference to a Detailed Management Plan is a reference to a plan that contains provisions relating to the establishment and perpetual maintenance of the Dunn Residence Land.

29.1.19.1.2 a reference to the Establishment Period is a reference to the Establishment Period applicable to the Environmental Management Land marked 'C' on Sheet 1 of the Map.

29.1.19.1.3 a reference to the Management Period is a reference to the period commencing immediately at the end of the Establishment Period and ending as specified in the Detailed Management Plan.

29.219.2 The Developer is not to make, or cause or permit to be made, or to give its consent as owner to the making of, an application under the Act relating to the Development of the Dunn Land or the issuing of a Subdivision Certificate to separate the Dunn Residence Land from the Dunn Land unless the Detailed Management Plan for the Dunn Residence Land has been approved by the Council.

3020 Annual Report

30.120.1 The Party who is the owner of the Dunn Residence Land must submit an annual report by 28 July in each year that demonstrates that maintenance requirements required to be carried out in relation to that land during the Management Period have been met during the 12 month period prior to 1 July in the same year.

Part 7 – General Provisions Relating to Development Contributions

3121 Procedures relating to payment of monetary Development Contributions

31.121.1 A monetary Development Contribution is made for the purposes of this Deed when the Council receives the full amount of the contribution payable under this Deed 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.

31.221.2 The Developer is to give the Council not less than 2 business days notice of its intention to pay a monetary Development Contribution.

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[31.321.3](#) The Developer is not required to pay a monetary Development Contribution under this Deed unless the Council, after having received the Developer's notice under clause 23.2, has given to the Developer a tax invoice for the amount of the Development Contribution.

[31.421.4](#) The Developer is not in breach of this Deed if it fails to pay a monetary Development Contribution at the time required by this Deed by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by it.

3222 Procedures relating to the dedication of land

[32.122.1](#) A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:

[32.1.122.1.1](#) a deposited plan is registered in the register of plans maintained by the Registrar-General, that dedicates land as a public road (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

[32.1.222.1.2](#) 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.

[32.222.2](#) For the purposes of clause 24.1.2:

[32.2.122.2.1](#) the Developer 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

[32.2.222.2.2](#) the Council is to execute the instrument of transfer and return it to Developer within 7 days of receiving it from the Developer,

[32.2.322.2.3](#) the Developer is to lodge the instrument of transfer for registration with the Registrar-General, within 7 days of receiving it from the Council duly executed,

[32.2.422.2.4](#) the Developer and the Council are to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

[32.322.3](#) If this Deed requires the Developer to dedicate land to the Council on which the Developer is also required to carry out a Work under this Deed, the Developer is to dedicate the land not later than 7 days after the Work is completed.

3323 Carrying out of Work

[33.123.1](#) Except as otherwise specifically provided by this Deed, any Work that is required to be carried out by the Developer under this Deed is to be carried out in accordance with:

[33.1.123.1.1](#) any relevant Development Consent,

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~~33.1.2~~33.1.2 any relevant policies and specifications of the Council existing at the time such a consent is granted,

~~33.1.3~~33.1.3 any other applicable law, and

~~33.1.4~~33.1.4 otherwise to the reasonable satisfaction of the Council.

~~33.2~~—If the Developer is reasonably required by the Council to prepare or modify a design or specification relating to a Work for approval by the Council under this Deed, the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

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3424 Access to the Land

34.124.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter any of its land or any other 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.

34.224.2 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 Deed that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Deed.

3525 Protection of people and property

35.125.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:

35.1.125.1.1 all necessary measures are taken to protect people and property,

35.1.225.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

35.1.325.1.3 nuisances and unreasonable noise and disturbances are prevented.

3626 Damage and repairs to Work

36.126.1 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 other than a negligent act or omission of the Council that occurs prior to the date on which the Work is completed under this Deed.

3727 Variation of Work

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

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

37.1.227.1.2 any consent or approval that is required to the variation under the Act or any other law is first obtained, and

37.1.327.1.3 the Developer bears all of the Council's costs of and incidental to the variation.

37.2 For the purposes of clause 29.1 a variation may relate to any matter in relation to the Work that is dealt with by this Deed.

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3828 Completion of Work

38.128.1 Work is completed for the purposes of this Deed if the Council, acting reasonably, gives a certificate to the Developer to that effect or the Developer gives the Council a Compliance Certificate to that effect.

3929 Rectification of defects

39.129.1 During the Defects Liability Period, the Council may give the Developer a Rectification Notice.

39.229.2 Subject to the resolution of a dispute in accordance with this Deed, the Developer is to comply with a Rectification Notice at its own cost and to the reasonable satisfaction of the Council.

4030 Works-As-Executed-Plan

40.130.1 No later than 60 days after a Work is taken to have been completed in accordance with this Deed, the Developer is to submit to the Council a full works-as-executed-plan in respect of the Work.

Part 8 – Other Provisions

4131 Indemnity and Insurance

41.131.1 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 Deed.

41.231.2 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 Deed up until the Work is taken to have been completed in accordance with this Deed:

41.2.131.2.1 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,

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[41.2.231.2.2](#) 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,

[41.2.331.2.3](#) workers compensation insurance as required by law, and

[41.2.431.2.4](#) any other insurance required by law.

[41.331.3](#) If the Developer fails to comply with clause 33.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due by the Developer to the Council.

[41.431.4](#) 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 33.2.

4232 Failure to carry out Work

[42.132.1](#) If the Council reasonably considers that the Developer is in breach of any obligation under this Deed 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.

[42.232.2](#) The dispute resolution provisions of this Deed do not apply to the giving of a notice under clause 34.1.

[42.332.3](#) A notice given under clause 34.1 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.

[42.432.4](#) A notice under clause 34.1 satisfies the requirement for a notice in clause 34.8 if it also complies with the requirements of that clause.

[42.532.5](#) The Council may carry out and complete the Work the subject of a notice under clause 34.1 if the Developer fails to comply with the notice to the Council's reasonable satisfaction.

[42.632.6](#) The Developer is to do all things reasonably necessary to enable the Council to exercise its rights under clause 34.5.

[42.732.7](#) 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 Deed that is not met by calling-up the Security, the Council may recover the cost from the Developer in a court of competent jurisdiction.

[42.832.8](#) For the purpose of clause 34.7, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:

[42.8.132.8.1](#) the reasonable costs of the Councils servants, agents and contractors reasonably incurred for that purpose,

[42.8.232.8.2](#) all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

[42.8.332.8.3](#) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Deed.

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4333 Security for performance

- 43.133.1 In this clause 35, a reference to Work is a reference to:
- 43.1.133.1.1 the Management Obligation in relation to the Environmental Management Land,
 - 43.1.233.1.2 the Establishment Obligation in relation to the Offsite Offset Environmental Land,
 - 43.1.333.1.3 the Management Obligation in relation to the Offsite Offset Environmental Land,
 - 43.1.433.1.4 the completion of the Water Supply Work, and
 - 43.1.533.1.5 the completion of the sewer pump station and rising main referred to in paragraph (a) and (b), respectively, of the definition of *Sewerage Service Work*.
- 43.233.2 The Developer is not to carry out Work unless, prior to the commencement of the Work, the Developer provides the Council with Security for the Work in an amount agreed to by the Council.
- 43.333.3 For the purposes of clause 35.2, the Parties are to have regard to any policy or practice of the Council, current at the time the Security is provided, relating to the provision of security to the Council for the construction of public infrastructure by developers.
- 43.433.4 The Council is to release and return the Security or any unused part of it to the Developer within 14 days of compliance by the Developer with its Development Contribution obligations under this Deed to the reasonable satisfaction of the Council.
- 43.533.5 The Developer may at any time provide the Council with a replacement Security.
- 43.633.6 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.
- 43.733.7 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 Deed.
- 43.833.8 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.
- 43.933.9 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:
- 43.9.133.9.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 43.9.233.9.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and

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[43.9.333.9.3](#) all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's non-compliance.

[43.1033.10](#) If the Council calls-up the Security, it may, by notice 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 Deed.

[43.1133.11](#) The dispute resolution provisions of this Deed do not apply to a matter the subject of this clause.

4434 Enforcement in a court of competent jurisdiction

[44.134.1](#) Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.

[44.234.2](#) For the avoidance of doubt, nothing in this Deed prevents:

[44.2.134.2.1](#) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates,

[44.2.234.2.2](#) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

4535 Dispute Resolution – expert determination

[45.135.1](#) This clause applies to a dispute under this Deed which relates to a matter that can be determined by an appropriately qualified expert.

[45.235.2](#) 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.

[45.335.3](#) Such a dispute is taken to arise if one Party gives another Party a notice specifying particulars of the dispute.

[45.435.4](#) If a notice is given under clause 37.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

[45.535.5](#) If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the Association of Chartered Surveyors NSW or President of Engineers Australia, NSW Branch, to appoint an expert for expert determination.

[45.635.6](#) The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.

[45.735.7](#) Each Party must bear its own costs arising from or in connection with the appointment of the expert and the expert determination.

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4636 Dispute Resolution - mediation

- [46.136.1](#) This clause applies to any dispute under this Deed other than a dispute to which clause 37 applies.
- [46.236.2](#) Such a dispute is taken to arise if one Party gives another Party a notice specifying particulars of the dispute.
- [46.336.3](#) If a notice is given under clause 38.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- [46.436.4](#) If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- [46.536.5](#) 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.

4737 Registration of this Deed

- [47.137.1](#) The Parties agree to register this Deed subject to obtaining the agreement of the persons specified in [s93Hs7.6\(1\)](#) of the Act to registration.
- [47.237.2](#) The Developer is to use its reasonable endeavours to obtain the consent of the persons specified in [s93Hs7.6\(1\)](#) of the Act to registration of this Deed.
- [47.337.3](#) If the agreement of the persons specified in [s93Hs7.6\(1\)](#) of the Act to registration of this Deed is obtained, the Parties are to do such things as are reasonably necessary to enable registration to occur.
- [47.437.4](#) Subject to this clause, within 60 days of the Sancrox LEP taking effect, the Developer is to provide the Council with the following documents to enable registration of this Deed:
- [47.4.137.4.1](#) an instrument requesting registration of this Deed on the title to the Land in registrable form duly executed by the Developer, and
 - [47.4.237.4.2](#) the written irrevocable consent of each person referred to in [s93Hs7.6\(1\)](#) of the Act to that registration.
- [47.537.5](#) The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
- [47.5.137.5.1](#) in so far as the part of the Land concerned is a lot created in the Development that the Council reasonably considers is intended for separate occupation and disposition,
 - [47.5.237.5.2](#) in relation to any other part of the Land, once that the Developer has completed its obligations under this Deed to the

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reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any reason whatsoever.

4838 Assignment, Sale of Land, etc

48.138.1 Unless the matters specified in clause 40.2 are satisfied, the Developer is not to do any of the following:

48.1.138.1.1 if the Developer is the owner of the Land, to sell or transfer the Land to any person, or

48.1.238.1.2 assign or novate to any person the Developer's rights or obligations under this Deed.

48.238.2 The matters required to be satisfied for the purposes of clause 40.1 are as follows:

48.2.138.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of an agreement in favour of the Council on the same terms as this Deed, and

48.2.238.2.2 the Council, by notice to the Developer, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement, and

48.2.338.2.3 the Developer is not in breach of this Deed, and

48.2.438.2.4 the Council otherwise consents to the transfer, assignment or novation, which consent is not to be unreasonably withheld.

48.338.3 This clause 40 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

4939 Review of this Deed

49.139.1 The Parties agree to review this Deed if any party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed and requests a review.

49.239.2 For the purposes of clause 41.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

49.339.3 For the purposes of addressing any matter arising from a review of this Deed, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

49.439.4 If this Deed 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 Deed is entered into.

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49.539.5 A failure by a Party to agree to take action requested by the other Party as a consequence of a review of this Deed is not a dispute for the purposes of the dispute resolution provisions of this Deed.

5040 Notices

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

50.1.140.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or

50.1.240.1.2 faxed to that Party at its fax number set out in the Summary Sheet.

50.240.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

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

50.3.140.3.1 delivered, when it is left at the relevant address,

50.3.240.3.2 sent by post, 2 business days after it is posted, or

50.3.340.3.3 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.

50.440.4 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.

5141 Costs

51.141.1 The Developer is to pay to the Council the Council's costs not exceeding \$11,000.00 ex GST of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed within 7 days of a written demand by the Council for such payment.

5242 Entire Agreement

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

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[52.242.2](#) 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 Deed was executed, except as permitted by law.

[5343](#) Further Acts

[53.143.1](#) Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

[5444](#) Governing Law and Jurisdiction

[54.144.1](#) This Agreement is governed by the law of New South Wales.

[54.244.2](#) The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

[54.344.3](#) The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

[5545](#) No Fetter

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

[5646](#) Representations and Warranties

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

[5747](#) Severability

[57.147.1](#) If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

[57.247.2](#) 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 Deed, but the rest of this Deed is not affected.

[5848](#) Modification

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[58.148.1](#) No modification of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed.

5949 Waiver

[59.149.1](#) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

[59.249.2](#) A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

[59.349.3](#) It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

6050 GST

[60.150.1](#) 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.

[60.250.2](#) Subject to clause 52.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

[60.350.3](#) Clause 52.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.

[60.450.4](#) No additional amount shall be payable by the Council under clause 52.2 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.

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~~60.5~~50.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

~~60.5.1~~50.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;

~~60.5.2~~50.5.2 that any amounts payable by the Parties in accordance with clause 52.2 (as limited by clause 52.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

~~60.6~~50.6 No payment of any amount pursuant to this clause 52, 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.

~~60.7~~50.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

~~60.8~~50.8 This clause continues to apply after expiration or termination of this Deed.

~~61~~51 Explanatory Note Relating to this Deed

~~61.1~~51.1 The Appendix contains the Explanatory Note relating to this Deed required by ~~clause 25E~~section 205 of the Regulation.

~~61.2~~51.2 Pursuant to ~~clause 25E~~(7) section 205(5) 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.

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Schedule

(Clause 1.1)

Map

Sheet 1 – Environmental Management Land and Dunn Residence Land

Sancrox Employment Land Environmental Lands & Services Planning Agreement

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Schedule

(Clause 1.1)

Map

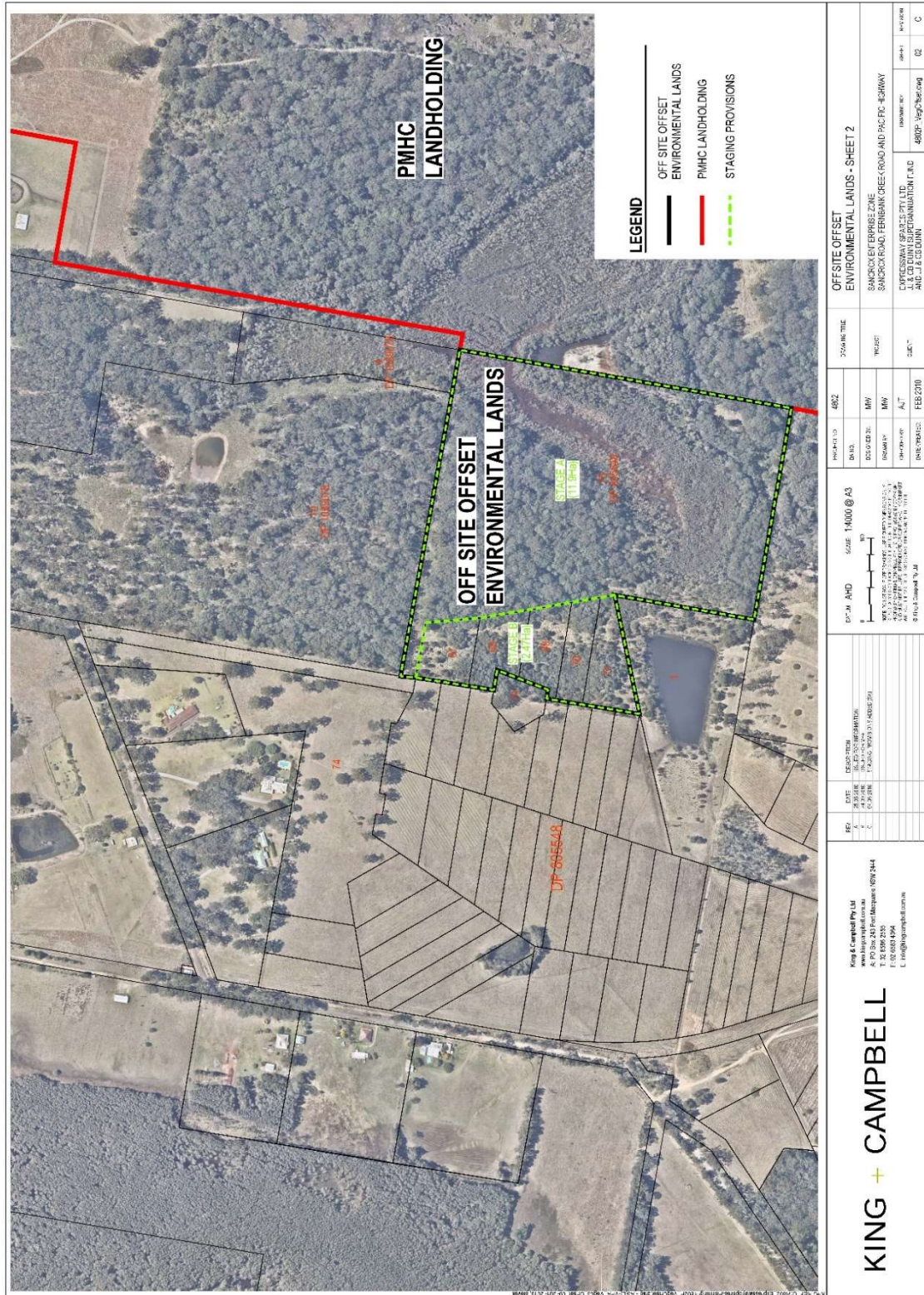
Sheet 2 - Offsite Offset Environmental Land

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Schedule

(Clause 1.1)

Map

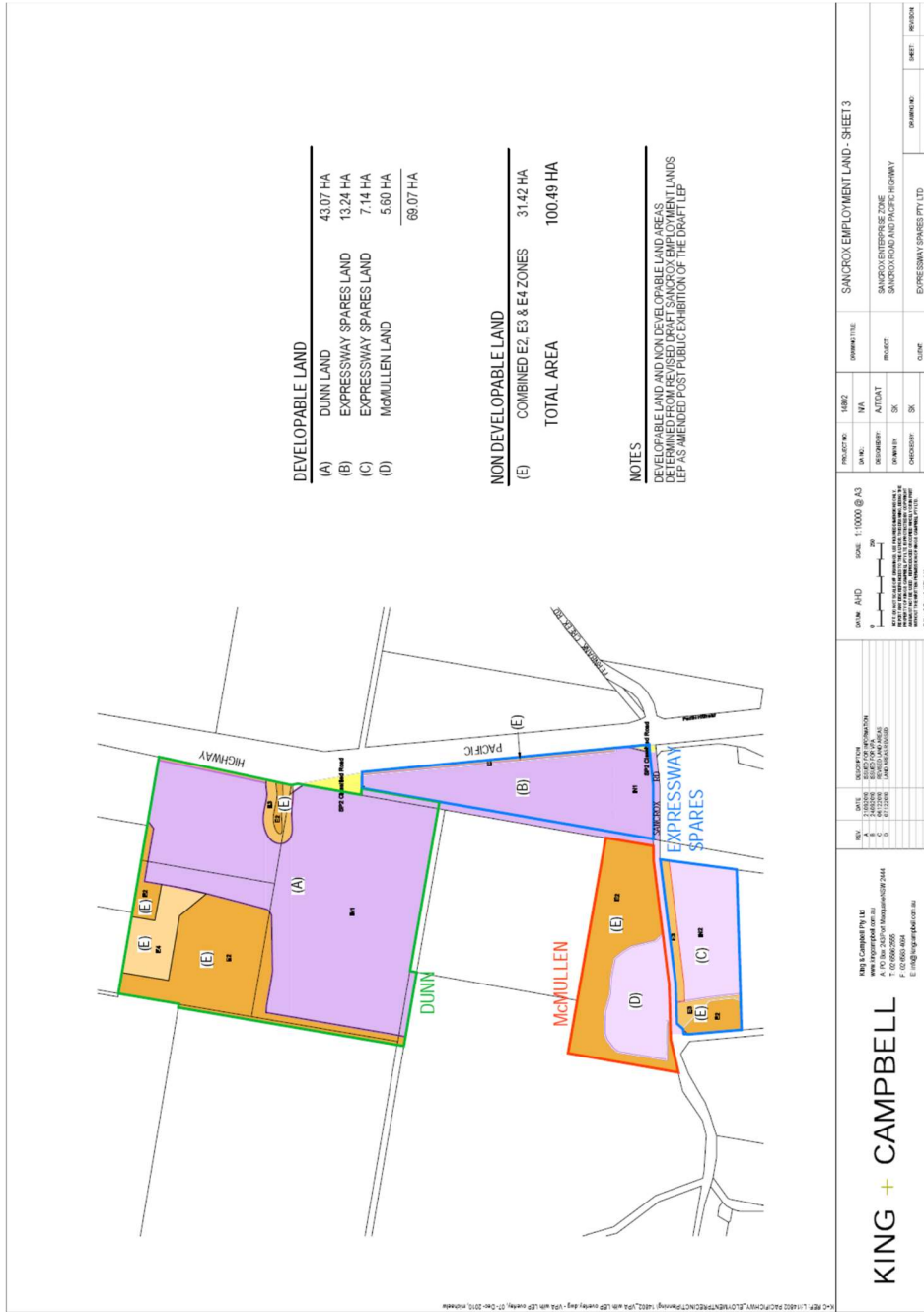
Sheet 3 – Sancrox Employment Zone Land identifying Expressway Spares Land, Dunn Land and McMullen Land

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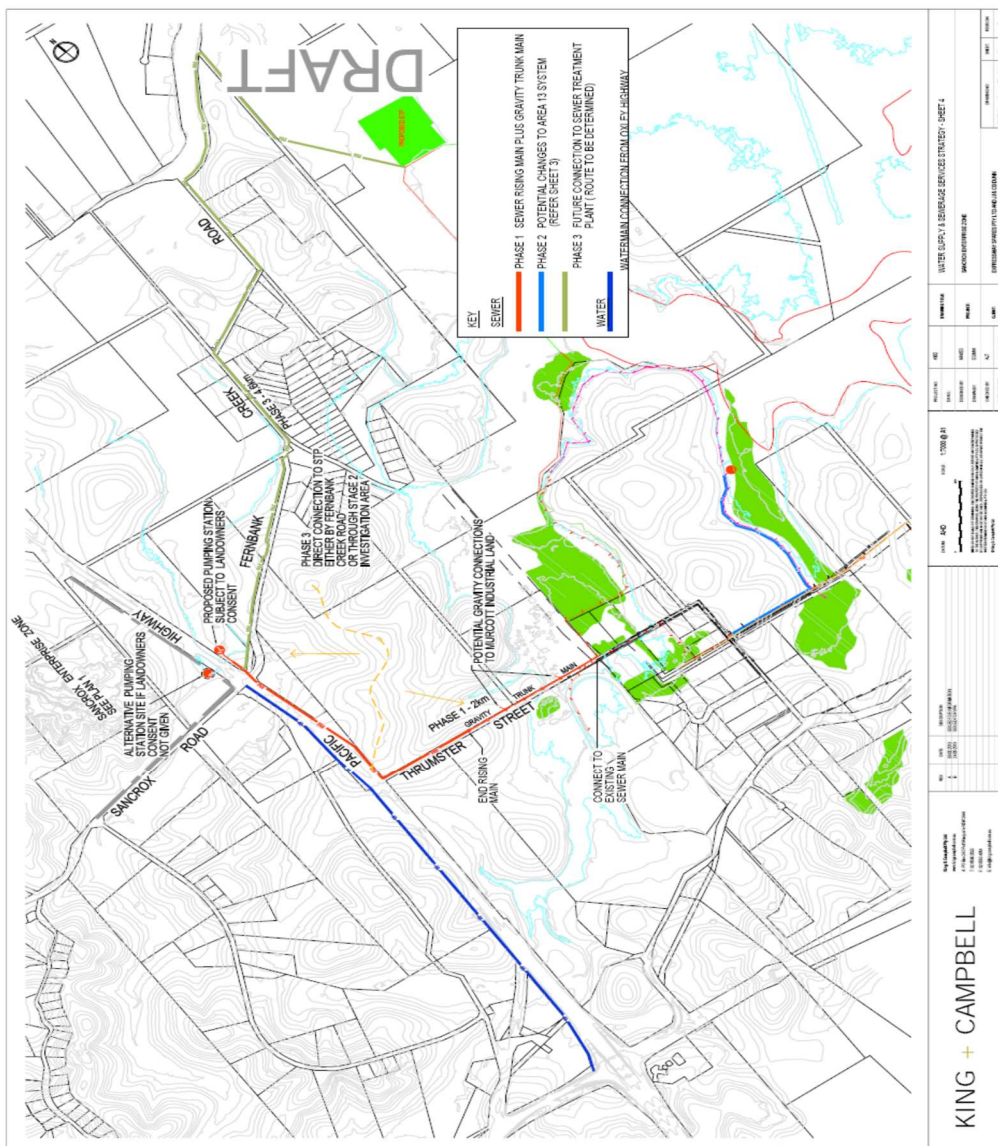


Schedule

(Clause 1.1)

Map

Sheet 4 – Water Supply and Sewerage Services Strategy



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Schedule

(Clause 1.1)

Map

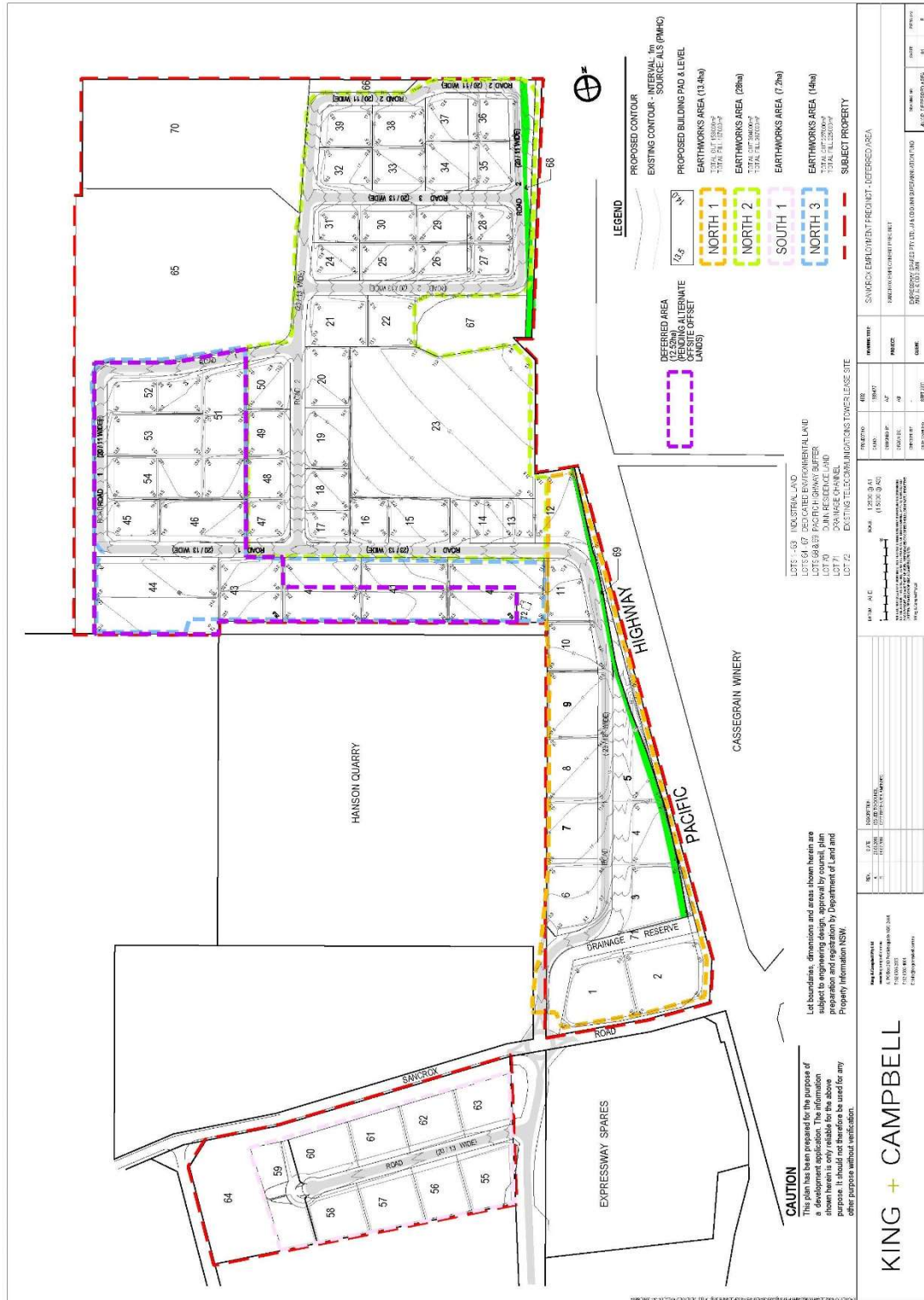
Sheet 5 – Deferred Area

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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 Expressway Spares in accordance with s127(1) of the *Corporations Act (Cth) 2001*

Name/Position

Name/Position

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Expressway Spares Pty Limited

James John Dunn & Catherine Brigette Dunn

Executed by James John Dunn

James John Dunn

Witness

Executed by Catherine Brigette Dunn

Catherine Brigette Dunn

Witness

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Expressway Spares Pty Limited

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Appendix

(Clause 53)

Environmental Planning and Assessment Regulation [20002021](#)

(~~Clause 25E~~[Section 205](#))

Explanatory Note

Draft Planning Agreement

Under [s7.4s93F](#) of the *Environmental Planning and Assessment Act 1979*

Parties

Port Macquarie-Hastings Council ABN 11 236 901 601 of Corner Lord and Burrawan Streets, Port Macquarie, New South Wales, 2444 (**Council**)

Expressway Spares Pty Limited ABN 55 000 483 107 of 7 Sancrox Road, Wauchope, New South Wales, 2446 (**Expressway Spares**)

James John Dunn & Catherine Brigette Dunn of 181 Sancrox Road, Wauchope, New South Wales, 2446 (**Dunn**)

Description of the Land to which the Draft Planning Agreement Applies

[Lot 2 DP 222740](#)[Lot 20 DP 1191370](#), [Lot 30 DP 255774](#)[Lot 41 DP 1191701](#), and ~~Lot 31 DP 255774~~[Lot 39 DP 1191701](#), Lot 62 DP 754434, [Lot 1 DP 226824](#)[Lot 19 DP 1191370](#), Lot 1 DP 124543, Lot 1 DP 1131036 and Lot 1 DP 1144490

Description of Proposed Development

Development of the Land for industrial purposes

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

Objectives of Draft Planning Agreement

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

Nature of Draft Planning Agreement

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

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the carrying out by the Developer of development on the Land
- does not exclude the application of s 94 of the Act to the Development,
- excludes the application of s94A of the Act to Subdivision Work but not other Development.
- requires monetary Development Contributions,
- requires the carrying out of specified Works including water supply works, sewerage works and establishment and management of environmental land, by the Developer,
- requires the Council to apply monetary Development Contributions made under the agreement towards the specified purpose for which they were made and at the location, in the manner and to the standard (if any) specified in the agreement,
- imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works.
- requires the Developer to provide the Council with security in the event that the Council is required to enforce the terms of the agreement,
- is to be registered on the title to the Land,
- imposes restrictions on the Parties transferring the Land or part of the Land or assigning an interest under the agreement,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement.

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Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement:

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

How the Draft Planning Agreement Promotes the Public Interest

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

For Planning Authorities:

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

N/A

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

N/A

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

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

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

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

The Draft Planning Agreement requires that specified Works be carried out by the Developer for water supply, sewerage services. The works are not included in the Council's relevant current capital works program. However,

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the Council's Management Plan identifies these types of works in the relevant capital works program. The sewerage services works are included in Council's current capital works program. Accordingly, the provision of these Works under the agreement is consistent and conforms with the capital works envisioned by the Council's Management Plan.

Whether the Draft Planning Agreement specifies that certain requirements must be complied with before issuing of a construction certificate, occupation certificate or subdivision certificate

This Draft Planning agreement contains requirements that must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued, being:

- payment of Water Supply Contribution
- construction of Water Supply Work
- payment of Sewerage Services Contribution
- construction of Sewerage Services Work
- dedication of Environmental Management Land
- payment of Management Contribution