

PLANNING AGREEMENT

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

BETWEEN

LegPro Pty Ltd ATF LegPro 54 Unit Trust

AND

Penrith City Council

FOR

Land Dedications, Works and Monetary Contributions relating to land generally bounded by Caddens Road and O'Connell Street, Caddens NSW

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Summary Sheet

Council

Name Penrith City Council
Address 601 High St, Penrith NSW 2750
Telephone (02) 4732 7777
Facsimile (02) 4732 7958
Email council@penrithcity.nsw.gov.au
Representative Mr Alan Stoneham – General
Manager

Developer

Name LegPro Pty Ltd ATF LegPro 54 Unit Trust
Address Level 27
Telephone 92521111
Email jatkinson@legacyproperty.com.au
Representative Jeff Atkinson

Land

Land means the following lots:

Lot 102 DP 1166542
Lot 31 DP 520322
Lot 1 DP 1229889
Lot 2 DP 1229889
Lot 3 DP 1229889
Lot 4 DP 1229889
Lot 5 DP 1229889
Lot 6 DP 1229889
Lot 1 DP 1225593
Lot 11 DP 522660
Lot 12 DP 522660
Lot 101 DP 564332
Lot 754 DP 1180111

Lot 2 DP 502333

Lot 6 DP 502333; or

if the above lots are consolidated prior to the execution of this Deed,

Land means the following lots:

Lot 102 DP 1166542

Lot 31 DP 520322

Lot 2 DP 1229889

Lot 3 DP 1229889

Lot 4 DP 1229890

Lot 2 DP 502333

Lot 6 DP 502333

Lot 5 DP 1229890

Lot 6 DP 1229890

The Development

The progressive development of the Land for the purposes of a residential subdivision known as the "Caddens Hill" development including:

- (a) Demolition of existing structures
- (b) Bulk earthworks
- (c) Remediation works
- (d) Residential and related subdivision
- (e) Drainage and other infrastructure works
- (f) Landscaping works

Land Dedications

See Schedule 1

Works

See Schedules 1 and 2

Monetary Contributions

See Schedule 3

Application of S94, S94A and S94EF of the Act

Not Applicable – See Clause 8

Registration

Applicable – See Clause 33

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SCHEDULE 6 -	O’Connell Street drawings

Planning Agreement

Dated __November 2017

Parties

Penrith City Council ABN 43 794 422 563 of 601 High Street, Penrith NSW 2750 (**Council**)

LegPro Pty Ltd (ACN 611 746 573) ATF LegPro 54 Unit Trust ABN 69 430 615 143 of Level 27, 19-29 Martin Place, Sydney NSW 2000 (**Developer**)

Background

- A. The Developer has entered into an agreement with, or is otherwise associated with, the Applicant in respect of the First Development Application.
- B. The Developer was the Applicant in respect of the Second Development Application.
- C. The Developer was the Applicant in respect of the Third Development Application.
- D. Development consent has been granted to each of the First, Second and Third Development Applications.
- E. The Developer has offered and the Council has agreed that the Developer will make Development Contributions in connection with the carrying out of the Development in lieu of Section 94 Contributions, at the times and in the manner set out in this Deed.
- F. The Developer and the Council agree that the Development Contributions amount to a material public benefit which will be used for or applied towards a public purpose.

Operative provisions

Part 1 - Preliminary

1. Interpretation

- 1.1 Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this Agreement.

2. Status of this Deed

- 2.1 The parties agree that this Deed is a planning agreement within the meaning of s93F of the Act.

3. Commencement

- 3.1 This Deed takes effect on the date when all Parties have executed one counterpart of this Deed.
- 3.2 The Party who executes this Deed last is to insert on the front page the date they did so and provide a copy of the fully executed and dated Deed to any other person who is a Party.

4. Application of this Deed

4.1 This Deed is made in respect of, and applies to, the Development and the Land.

5. Warranties

5.1 The Parties warrant to each other that they:

- (a) have full capacity to enter into this Deed, and
- (b) are able to fully comply with their obligations under this Deed.

6. Further agreements

6.1 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.

7. Surrender of right of appeal, etc.

7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or the validity of any of the Development Consents in so far as the subject-matter of the proceedings relates in substance to this Deed.

7.2 Clause 7.1 does not restrict the Developer or person with the benefit of any of the Development Consents from commencing an appeal in the Land and Environment Court in relation to any other aspect of the determination of any of the Development Applications including by way of an appeal against a refusal of any of the Development Applications and/or an appeal against any conditions imposed on any of the Development Consents in the determination of any of the Development Applications, provided that the subject matter of the appeal does not relate to this Deed or any condition of development consent requiring entry into this Deed.

7.3 Clause 7.1 does not restrict the Developer or person with the benefit of any of the Development Consents from commencing an appeal in the Land and Environment Court in relation to any subsequent development application or application to modify any of the Development Consents the subject of this Deed, provided that the subject matter of the appeal does not relate to this Deed or any condition of development consent requiring entry into this Deed.

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

8.1 For the purposes of section 93F(5) of the Act, this Deed excludes the application of sections 94, and 94A of the Act to the Development, and replaces any obligations that have already been imposed upon the Development Consents pursuant to sections 94 and/or 94A of the Act.

8.2 For the avoidance of doubt, this clause applies to any additional lots not approved as at the date of execution of this deed, however schedule 3 provides that any such additional lots will be subject to additional monetary contributions at a fixed rate of \$30,000 per lot.

8.3 The provision of the Development Contributions pursuant to this Deed will be taken to negate and replace any requirement to provide any section 94 and/or 94A

contributions that have already been imposed upon the Development Consents pursuant to sections 94 and/or 94A of the Act.

- 8.4 From the Commencement Date, the Developer or any other person with the benefit of any of the Development Consents is immediately and irrevocably released from all obligations arising under any condition imposed upon any of the Development Consents pursuant to either or any of sections 94, 94A or 94EF of the Act, but is required to instead comply with the obligations under this Deed.
- 8.5 Clause 13 of this Deed applies according to its terms to require the reimbursement of certain monetary contributions that have already been paid by the Developer as at the date of this Deed.

Part 2 – Development Contributions

9. Obligation to seek approvals for and carry out Works

- 9.1 The Developer is required to carry out and complete on the Land the Works in accordance with Schedule 1 and any relevant plans in Schedule 2, but subject to the whole of this clause 9.
- 9.2 The Developer's obligation under clause exists irrespective of whether the Developer:
- (a) Carries out the Works itself; or
 - (b) Enters into an agreement with another person under which the other person carries out the Works on the Developer's behalf.
- 9.3 The Developer shall lodge with Council the drawings and specifications for the O'Connell Street East Road Upgrade Works by a Sunset Date of 31 December 2017.
- 9.4 The Council, acting reasonably, shall provide the Developer with all assistance necessary to facilitate the Developer carrying out of the O'Connell Street East Road Upgrade Works including but not limited to:
- (a) assist the Developer in obtaining the consent of any adjoining owners to undertake works on the adjoining owners land as and where required by the Developer.
 - (b) assist the Developer in obtaining approval from Roads and Maritime Services (**RMS**) under s39 of the *Roads Act 1993* for the full closure of O'Connell Street East during construction, and
 - (c) providing concurrence under section 138 of the *Roads Act 1993* to carry out the works.
- 9.5 The Developer shall not be liable in any way whatsoever for or in connection with any Contamination encountered within any land owned, occupied or managed by the Council in the course of carrying out the Works, including but not limited to any Contamination encountered within O'Connell Street and the Southern Sports Fields identified as Lot 754 DP1180111, and the Developer shall be entitled to claim from Council the additional cost for any required works in relation to such Contamination including but not limited to any remediation and off-site disposal works.
- 9.6 The parties acknowledge and agree that they will each use all reasonable endeavors to minimise the costs associated with any Contamination.

- 9.7 Should the Council or other authority seek to change or alter the scope of works agreed upon in this Deed, such alteration will be subject to the formal agreement of both parties who acknowledge and agree that they will work co-operatively together to reach such agreement. In such circumstances, the Developer shall not be liable for any additional costs which exceed the total values set out in Schedule 4 of this Deed as at the date of execution and the parties agree that Council must pay any such additional cost or reduce the relevant Cash Contribution payable by the Developer.
- 9.8 The Works (excluding all Works relating to or involving bio retention installation and maintenance) shall be completed by a Sunset Date of 30 June 2020.
- 9.9 The Sunset Date for the obtaining of all necessary approvals for the Works (as distinct from the Sunset Date for completion of the Works in clause 9.8), including but not limited to those approvals specified in clause 9.4 of this Deed, is 30 June 2018. Both parties must use best endeavors to obtain all such approvals by that Sunset Date.
- 9.10 The parties irrevocably agree that if, for any reason whatsoever (but subject to compliance by both parties with the obligation in clause 9.9 for the use of best endeavors), all necessary approvals and consents, including the approval/consent of private land owners, which are required to enable the carrying out of the O'Connell Street East Upgrade Works have not been obtained by 30 June 2018, then the Developer may elect that the O'Connell Street East Road Upgrade Works shall not be provided and will no longer constitute a requirement of this Deed and the Developer will, in lieu of providing the O'Connell Street East Upgrade Works, pay a monetary contribution to Council equivalent to the agreed value of the O'Connell Street East Upgrade Works as set out in Schedule 4 to this Deed by the time those works would have been required to be provided as set out in Schedule 1 to this Deed.
- 9.11 If any necessary approvals for the Works are not obtained by the Sunset Date, the parties agree to enter into an expedited dispute resolution process to determine whether such approvals and consents are reasonably able to be obtained within a timeline as negotiated and agreed to by both parties. The Sunset Date for the finalization of that dispute resolution process is 30 September 2018. The agreed process need not fall within Part 3 of this Deed, due to the necessity for expedition to meet the Sunset Date of 30 September 2018.
- 9.12 If no agreement can be reached by the Sunset Date in clause 9.11, then the Developer may instead elect to pay ordinary cash contributions to the same value as the O'Connell Street East Road Upgrade Works, as specified in Schedule 4 of this Deed.
- 9.13 The Developer may provide a bond in the event that works have commenced but have not been completed by the Sunset Date for completion of the Works in clause 9.8. In order to obtain the release of the subdivision certification from Council where any works have commenced, a bond may be provided to Council in accordance with Council's bond policy (as that policy exists at the date of the execution of this Deed). Any amendments which are inconsistent with the Council bond policy in existence at the time of execution of this Deed must be agreed to by both parties or are of no effect to this Deed. A copy of the Council bond policy as at the date of the execution of this Deed is to be attached as Appendix 1.

10. Obligation to make Land Dedications

10.1 The Developer is required to make the Land Dedications in accordance with Schedule 1.

10.2 The Land Dedications will be provided to Council at no cost to Council and will result in land being provided to Council to be used for a public purpose.

11. Obligation to pay monetary Development Contributions

11.1 The Developer is required to pay monetary Development Contributions to Council in accordance with Schedule 3.

12. Value of Development Contributions

12.1 The Parties agree that the value of the Development Contributions which the Developer is required to make under this Deed is as set out in Schedule 4.

13. Section 94 Contributions

13.1 The Parties agree that the Developer will provide the Development Contributions to Council in lieu of the Section 94 Contributions and the provision of the Outstanding Works Bond.

13.2 The Parties agree that the value of the Development Contributions which the Developer is required to make under this Deed and the value of the Section 94 Contributions is as set out in Schedule 5.

13.3 The parties agree that as at the date of execution of this Deed, the Developer has already paid contributions in respect of Stage 1 (in accordance with this Deed) of \$ 1 million in a monetary contribution and \$1.97 million by way of a bond. The bond is to be released in full to the developer within 5 business days of the execution of this Deed.

13.4 Any reimbursement required under clause 13.3 of this Deed shall be carried out by payment in cash or unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated to Council by the Developer.

14. Payment of monetary Development Contributions

14.1 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.

15. Carrying out of Work

15.1 Without limiting any other provision of 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

any design or specification specified or approved by the Council, any relevant Approval and any other applicable law.

- 15.2 The Developer is to obtain any Approvals necessary for the carrying out of the Work and is to comply with any reasonable directions given to it by the Council to prepare or modify a design or specification relating to a Work that the Developer is required to carry out under this Deed.

16. Variation to Work

- 16.1 The design or specification of any Work that is required to be carried out by the Developer under this Deed may be varied by agreement in writing between the Parties, acting reasonably, without the necessity for an amendment to this Deed.
- 16.2 Without limiting clause 16.1, the Developer may make a written request to the Council to approve a variation to the design or specification of a Work in order to enable it to comply with the requirements of any Authority imposed in connection with any Approval relating to the carrying out of the Work.
- 16.3 The Council is not to unreasonably delay or withhold its approval to a request made by the Developer under clause 16.2. Council is to provide a response to the request for a variation within 30 days of the developer's submission in writing being received.
- 16.4 Should a response to a request for variation not be provided by Council within 30 days, the parties agree that the variation request is to be taken as approved.
- 16.5 The Council, acting reasonably, may from time to time give a written direction to the Developer requiring it to vary the design or specification of a Work before the Work is carried out in a specified manner only if the variation:
- (a) is not inconsistent with the details contained in any Approval for the Work; and
 - (b) does not require works beyond or outside the scope of those Approvals, designs and specifications; and
 - (c) does not require the Developer to incur any additional costs above those expressly specified in this Deed.
- 16.6 The Developer is to comply promptly with a reasonable direction referred to in clause 16.5.

17. Access to land by Developer

- 17.1 The Council is to permit, by way of Licence the Developer to enter, occupy and use any:
- (a) Council owned or controlled land on which the Works are to be located and/or carried out; and
 - (b) other Council owned or controlled land agreed with the Council.

17.2 Council is to provide to the Developer any necessary Licence within Council's authority to provide for the purposes of allowing the Works to be carried out under this Deed, within 14 days of being requested to do so. This obligation relates only to any such Licence that is reasonably required in order to enable the Developer to carry out the Works efficiently and without incurring unnecessary expenses.

17.3 Nothing in this Deed creates or gives the Developer any estate or interest in any part of the land referred to in clause 17.1(a) or 17.1(b).

18. Access to land by Council

18.1 The Council may enter any land on which Work is being carried out by the Developer under this Deed in order to inspect, examine or test the Work or to remedy any breach by the Developer of its obligations under this Deed relating to the Work.

18.2 The Council is to give the Developer prior reasonable notice before it enters land under clause 18.1. For the purpose of this clause reasonable notice is taken to be 14 days.

18.3 Council cannot enter land pursuant to clause 18.1 for the purpose of remedying a breach by the Developer unless Council has first complied with clause 24 of this Deed.

18.4 This clause does not affect the rights of Council under any Act of Parliament.

19. Council's obligations relating to Work

19.1 The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed.

20. Protection of People, property & utilities

20.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:

- (a) all necessary measures are taken to protect people and property,
- (b) unnecessary interference with the passage of people and vehicles is avoided, and
- (c) nuisances and unreasonable noise and disturbances are prevented.

20.2 Without limiting clause 20.1, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

20.3 For avoidance of doubt, the Council must act promptly and reasonably to facilitate such authorisations as are necessary, on reasonable terms, to enable the Developer to comply with its obligations under this deed in relation to the carrying out of Works in, on, or under the public domain.

21. Repair of damage

21.1 The Developer is to maintain any Work required to be carried out by the Developer under this Deed until the Work is completed for the purposes of this Deed or such later time as agreed between the Parties.

21.2 The Developer is to carry out its obligation under clause 21.1 at its own cost and to the satisfaction of the Council, in accordance with any specifications approved by the Council under clause 15.1.

21.3 This clause does not override or relieve the parties of any obligations or requirements contained within the issued development consents the subject of this agreement.

22. Completion of Work

22.1 The Developer is to give the Council written notice of the date on which it will complete Work required to be carried out under this Deed.

22.2 The Council is to inspect the Work the subject of the notice referred to in clause 22.1 within 30 business days of the date specified in the notice for completion of the Work.

22.3 Work required to be carried out by the Developer under this Deed is completed for the purposes of this Deed when the Council, acting reasonably, gives a written notice to the Developer to that effect.

22.4 If the Council is the owner of the land on which Work the subject of a notice referred to in clause 22.3 is issued, the Council assumes responsibility for the Work upon the issuing of the notice, but if it is not the owner at that time, it assumes that responsibility when it later becomes the owner.

22.5 Before the Council gives the Developer a notice referred to in clause 22.3, it may give the Developer a written direction to complete, rectify or repair any specified part of the Work to the reasonable satisfaction of the Council that notice must include an itemised list of the works required to complete, rectify or repair the Work.

22.6 The Developer, at its own cost, is to promptly comply with a direction referred to in clause 22.5.

23. Rectification of Defects

23.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.

- 23.2 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.
- 23.3 The Council is to do such things as are reasonably necessary to enable the Developer to comply with a Rectification Notice that has been given to it under clause 23.1.
- 23.4 A Rectification Notice issued by Council in accordance with clause 23.1 may only require Work undertaken by the Developer to be completed to the standard specified and approved by Council in accordance with clause 15 of this Deed.

24. Works-As-Executed-Plan

- 24.1 Unless otherwise agreed to in writing the Developer is to submit to the Council complete copies of works-as-executed-plans in respect of the Works in a format acceptable to Council no later than 60 days after the Works are completed in accordance with clause 22 of this Deed.

25. Removal of Equipment

- 25.1 When Work on any Council owned or controlled land is completed for the purposes of this Deed, the Developer, without delay, is to:
- (a) remove any Equipment from the Council owned and controlled land and make good any damage or disturbance to the land as a result of that removal; and
 - (b) leave the land in a neat and tidy state, clean and free of rubbish.

Part 3 – Dispute Resolution

26. Collaborative Approach

- 26.1 The parties acknowledge and agree that they will always act reasonably and collaboratively and flexibly in connection with this Deed, and that they will always use all reasonable endeavours to give effect to the requirements of, and to perform their obligations under, this Deed, so that and provided that neither party shall achieve or procure any advantage over the other in terms of the costs, resources and outcomes contemplated by this Deed.

27. Dispute resolution – expert determination

- 27.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- (a) the Parties to the Dispute agree that it can be so determined; or
 - (b) the Chief Executive Officer or head of the professional body that represents persons who have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 27.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.

- 27.3 If a notice is given under clause 27.2 the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 27.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.
- 27.5 The expert determination is binding on the Parties except in the case of fraud, misfeasance by the expert, or error of law.
- 27.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 27.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

28. Dispute Resolution – Mediation

- 28.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 27 applies.
- 28.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 28.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 28.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 28.5 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.
- 28.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 28.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 – Enforcement

29. Security for performance of obligations

- 29.1 The Developer must, procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to Stages 2, 3, 4, 5 and 6 as soon as

reasonably practicable after the Commencement Date and, in any event, no later than 90 Business Days after the Commencement Date.

- 29.2 The registered notation identified at 29.1 of this Deed may be progressively released from the titles of all of the lots within each Stage but only upon the full satisfaction of each of the Developer's obligations pertaining to that particular Stage.
- 29.3 The Developer shall be responsible for procuring all signatures which are necessary to enable all such releases and the Council will promptly (and in any case within 14 days of being requested to do so, and subject to clause 29.2 of this Deed) sign any form reasonably required to give effect to the release of the notation on title as required by this clause.

30. Acquisition of land required to be dedicated

- 30.1 Subject to clause 31, if the Developer does not dedicate land required to be dedicated under this Deed by the time it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 30.2 The Council is to only acquire land pursuant to clause 30.1 if it considers it reasonable to do so having regard to the circumstances surrounding the failure by the Developer to dedicate the land required to be dedicated under this Deed.
- 30.3 Clause 30.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 30.4 If, as a result of the acquisition referred to in clause 30.1, 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, or the Council can call on any Security provided under clause 29.
- 30.5 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 land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 30.6 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 30, including without limitation:
- (a) signing any documents or forms;
 - (b) giving land owner's consent for lodgement of any development application;
 - (c) producing certificates of title to the Registrar-General under the Real Property Act 1900; and
 - (d) paying the Council's costs arising under this clause 30.

31. Breach of obligations

- 31.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
- (a) specifying the nature and extent of the breach;
 - (b) requiring the Developer to:
 - (i) rectify the breach if it reasonably considers it is capable of rectification; or
 - (ii) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if the breach is not reasonably capable of rectification;
 - (c) specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 31.2 If the Developer fails to fully comply with a notice referred to in clause 31.1 within the time specified in the notice, the Council may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach.
- 31.3 If the Developer fails to comply with a notice given under clause 31.1 relating to the carrying out of Work under this Deed, the Council may step-in and remedy the breach and may enter, occupy and use any land owned or controlled by the Developer and any Equipment on such land for that purpose.
- 31.4 Any costs reasonably incurred by the Council in remedying a breach in accordance with clause 31.2 or clause 31.3 may be recovered by the Council by either or a combination of the following means:
- (a) by calling-up and applying the Security provided by the Developer under this Deed; or
 - (b) as a debt due in a court of competent jurisdiction.
- 31.5 For the purpose of clause 31.4, the Council's costs of remedying a breach the subject of a notice given under clause 31.1 include, but are not limited to:
- (a) the costs of the Council's servants, agents and contractors reasonably incurred for that purpose;
 - (b) all fees and charges necessarily or reasonably incurred by the Council in remedying the breach; and
 - (c) all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 31.6 Nothing in this clause 31 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

32. Council to consult before enforcing this Deed

- 32.1 This clause applies to any of the Developer's obligations under this Deed.
- 32.2 If the Council reasonably forms the opinion that the Developer has failed to comply with an obligation to which this clause applies, it is not to enforce this Deed against the Developer unless it has first notified the Developer in writing of its intention to do so and has consulted with the Developer as to:
- (a) the reason for the non-compliance;
 - (b) the likely effects of the non-compliance; and
 - (c) the Developer's capacity in all of the circumstances to reasonably rectify the non-compliance.
- 32.3 The Council is not to enforce this Deed against the Developer unless, after having consulted with the Developer:
- (a) it has reasonably formed the opinion that the Developer has no reasonable excuse for the non-compliance;
 - (b) it has notified the Developer in writing that it intends to enforce the Deed not earlier than 14 days from the date of the notice; and
 - (c) the notice specifies the enforcement action it intends to take.
- 32.4 at any time between the date of the notice referred to in clause 32.3 and the time when the Council takes action to enforce this Deed, the Developer may notify the Council of a dispute under clause 27 or 28.
- 32.5 If the Developer notifies the Council in accordance with clause 32.4, the Council is not to enforce this Deed against the Developer in relation to the relevant non-compliance unless and until the dispute resolution process under clause 27 or 28 has been exhausted without resolution between the Parties.

33. Enforcement in a court of competent jurisdiction

- 33.1 Subject to clause 32 and without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 33.2 For the avoidance of doubt, nothing in this Deed prevents:
- (a) 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; or
 - (b) 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.

Part 5 – Registration and Restriction on Dealings

34. Registration of this Deed

- 34.1 The Parties agree to register this Deed on the title of the Land for the purposes of section 93H(1) of the Act.
- 34.2 Not later than 10 days after the commencement of this Deed, the Developer is to deliver to the Council in registrable form:
- (a) an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer; and
 - (b) the written irrevocable consent of each person referred to in section 93H(1) of the Act to that registration.
- 34.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 34.4 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 once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

35. Restriction on dealings

- 34.1 The Developer is not to:
- (a) sell or transfer the Land; or
 - (b) assign their rights or obligations under this Deed, or novate this Deed, to any person unless:
 - (c) the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council; and
 - (d) the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed; and
 - (e) the Developer is not in material breach of this Deed; and
 - (f) the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.

Part 6 – Indemnities & Insurance

36. Release

- 36.1 Each Party releases the other Party from any Claim it may have against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

37. Indemnity

- 37.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Deed except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

38. Insurance

- 38.1 The Developer, and/or its agents and/or contractors, is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work (excluding any cash contributions or monetary payments) 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:
- (a) 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;
 - (b) 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;
 - (c) workers compensation insurance as required by law; and
 - (d) any other insurance required by law.
- 38.2 If the Developer fails to comply with clause 38.1, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate including:
- (a) by calling upon the Security provided by the Developer to the Council under this Deed; or
 - (b) recovering the amount as a debt due in a court of competent jurisdiction.
- 38.3 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 38.1.

Part 7 – Other Provisions

39. Notices

- 39.1 Any notice, consent, information, application or request that is to 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:
- (a) delivered or posted to that Party at its address set out in the Summary Sheet;
 - (b) faxed to that Party at its fax number set out in the Summary Sheet; or
 - (c) emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, Information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 39.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- (a) delivered, when it is left at the relevant address;
 - (b) sent by post, 4 business days after it is posted;
 - (c) sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number; or
 - (d) sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 39.4 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.

40. Approvals and Consent

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

41. Costs

- 41.1 Each Party is to pay its own costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed.
- 41.2 The Developer is to pay to the Council the Council's reasonable costs of enforcing this Deed within 10 business days of a written demand by the Council for such payment.

42. Entire Deed

- 42.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 41.2 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.

43. Further Acts

- 43.1 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.

44. Governing Law and Jurisdiction

- 44.1 This Deed is governed by the law of New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

45. Joint and Individual Liability and Benefits

- 45.1 Except as otherwise set out in this Deed;
- (a) any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually; and
 - (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

46. No Fetter

- 46.1 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.

47. Illegality

- 47.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

48. Severability

- 48.1 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.
- 48.2 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.

49. Amendment

- 49.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

50. Waiver

- 50.1 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.
- 50.2 A waiver by a Party is only effective if it is in writing.
- 50.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

51. GST

- 51.1 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.

- 51.2 Subject to clause 51.4, 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.
- 51.3 Clause 50.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 51.4 No additional amount shall be payable by the Council under clause 51.2 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.
- 51.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that are not subject to Division 82 of the GST Law, the Parties agree:
- (a) 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; and
 - (b) that any amounts payable by the Parties in accordance with clause 51.2 (as limited by clause 51.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 51.6 No payment of any amount pursuant to this clause 50, 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.
- 51.7 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.
- 51.8 This clause continues to apply after expiration or termination of this Deed.

52. Indexation

- 52.1 This Deed, or anything arising from, out of, or under it, shall not be subject to any form of indexation whatsoever and the Developer shall not, under any circumstances, be required to pay Council any monetary amount greater than what is expressly set out in this Deed, unless the Developer agrees to do so in writing.

52.2 No refund or credit payable by or owed by the Council to the Developer shall be subject to any indexation.

53. Explanatory Note

53.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation. Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

54. Definitions and interpretation

54.1 In this document unless the context otherwise requires:

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

Approval includes approval, consent, development consent, licence, permission or the like.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Commencement Date means the first date on which all Parties to this Deed have executed one counterpart of this Deed.

Construction Certificate has the same meaning as in the Act.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics or if this price index is discounted then such price index as Council may select.

Contamination means any material which is present in, on or under any land which has the effect of preventing that land from being able to be used for the purpose which it is intended to be used under this Deed unless and until such time as the material is removed from the land and the land has undergone any remediation necessary to ensure that the land is able to be used for the purpose intended under this Deed.

Council means Penrith City Council.

Dedication means the creation or transfer of an estate in fee simple.

Deed means this planning agreement and includes any schedules, annexures and appendices to this deed.

Developer means the entity known as LegPro Pty Ltd ATF LegPro 54 Unit Trust.

Development means the proposed 539 lot subdivision which has been approved under the First, Second and Third Development Consents collectively in respect of the Land and which is known as the "Caddens Hills" development, and which includes any modification of that development approved by the consent authority

from time to time providing any increase in lot yield will require additional monetary contributions.

Development Applications means any or all, individually or collectively, of the First, Second and Third Development Applications.

Development Consents means any or all, individually or collectively, of the development consents granted by the Council under section 80 of the Act to the Development Applications.

Development Consents means any or all, individually or collectively, of the First, Second and Third Development Consents.

Development Contributions means the combination of the Land Dedications, Works and Monetary Development Contributions which the Developer is required to carry out under this Deed.

Defects Liability Period means the period of 1 year commencing on the day immediately after a Work is completed for the purposes of this Deed.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

Encumbrance includes any mortgage or charge, lease, (or other right of occupancy) or profit-à-prendre.

Equipment means any equipment, apparatus, vehicle or other equipment or thing to be used by or on behalf of the Developer in connection with the performance of its obligations under this Deed.

First Development Consent means the Development Consent which was granted to the First Development Application for a 99 lot residential subdivision in respect of the land known as 89A and 89B O'Connell Street, Caddens NSW and which forms Stage 1 of the "Caddens Hill" development.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Item of Works means an item of the Works.

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

Land means the land specified in the Summary Sheet.

Land Dedications means the land dedications set out in Schedule 1.

Licence means a licence authorising access to Council-owned land, generally in accordance with the terms of the attached example licence agreement, but as reasonably amended to reflect the Works and timeframes set out in this Deed.

Monetary Development Contributions means the monetary contributions specified in Schedule 3.

O'Connell Street East Upgrade Works means the works set out in the plans in Schedule 2.

Outstanding Works Bond means the outstanding works bond which is required under condition 48 of the First Development Consent.

Party means a party to this Deed.

Prescribed Rate means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

Rectification Certificate means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the notice.

Rectification Notice means a notice in writing:

- (a) identifying the nature and extent of a Defect,
- (b) specifying the works or actions that are required to Rectify the Defect,
- (c) specifying the date by which or the period within which the Defect is to be rectified.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Second Development Consent means the Development Consent which was granted to the Second Development Application for a 257 lot residential subdivision over 3 stages in respect of the following land and which forms Stages 2-4 of the "Caddens Hill" development:

117-127 O'Connell Street, Caddens NSW

129-141 O'Connell Street, Caddens NSW

143-159 O'Connell Street, Caddens NSW

185 Caddens Road, Caddens NSW

187 Caddens Road, Caddens NSW

189 Caddens Road, Caddens NSW

207 Caddens Road, Caddens NSW

754 Caddens Road, Caddens NSW

Security means registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the land satisfactory to the Council, or such other form of security as the Council may require in its absolute discretion.

Section 94 Contributions means the total value of the contributions required to be paid under any condition imposed upon any or all of the Development Consents pursuant to section 94 of the Act.

Stage 1 means Lot 31 DP520322 and Lot 102 DP1166542; or if the subdivision has occurred in accordance with approved DA15/0992, Stage 1 means Lots 1 to 102 inclusive DP1201629.

Stage 2 means Lot 2 DP1229889.

Stage 3 means Lot 3 DP1229889.

Stage 4 means Lot 1 DP1225593, Lot 1 DP1229889, Lot 4 DP1229889, Lot 6 DP1229889, Lot 2 DP502333, Lot 6 DP502333, Lot 101 DP564332 or; if the consolidation of these lots has occurred before the execution of this Agreement, Stage 4 means Lot 4 DP1229890, Lot 2 DP502333, Lot 6 DP502333.

Stage 5 means Lot 5 DP1229889, Lot 101 DP564332, Lot 1 DP1225593, Lot 11 DP522660, Lot 12 DP522660 or; if the consolidation of these lots has occurred before the execution of this Agreement, Stage 5 means Lot 5 DP1229890.

Stage 6 means Lot 5 DP1229889 Lot 11 DP522660 and Lot 12 DP522660 or; if the consolidation of these lots has occurred before the execution of this Agreement, Stage 6 means Lot 6 DP1229890.

Summary Sheet means the section of this Deed headed Summary Sheet.

Sunset Date means the absolute final date for any specified obligation or event under this Deed, which cannot be extended under any circumstances without the written agreement of both parties, or unless this Deed expressly states otherwise.

Third Development Consent means the Development Consent which was granted to the Third Development Application for a 183 lot residential subdivision over 2 stages in respect of the following land and which forms Stages 5-6 of the "Caddens Hill" development:

117-127 O'Connell Street, Caddens NSW

129-141 O'Connell Street, Caddens NSW

143-159 O'Connell Street, Caddens NSW

185 Caddens Road, Caddens NSW

187 Caddens Road, Caddens NSW

Works means the works specified or described in Schedule 1 and includes any Item of Works and any part of any Item of Works.

Works-As-Executed-Plan means detailed plans and specifications of the completed Works.

54.2 Interpretation

In this document unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and
- (p) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

SCHEDULE 1 – WORKS AND LAND DEDICATIONS DEVELOPMENT CONTRIBUTIONS

Item	Phase	Timing
OSR2.2/4.2 Eastern Hilltop Park	Embellishment	Prior to Stage 4 subdivision certificate
	Land Dedication	With Stage 4 subdivision
	Maintenance	12 months from Stage 4 subdivision certificate
OSR3.2 Southern Sports Fields	Embellishment	Prior to Stage 5 subdivision certificate (outstanding works may be bonded if not complete)
	Maintenance	Later of: 12 months from Stage 5 subdivision certificate OR 12 months from practical completion
T2.49 O'Connell Street East Road Upgrade	Civil works	Prior to Stage 6 subdivision certificate
W2.2 Water management facility	Sediment basin	Prior to Stage 2 subdivision certificate
	Bio-retention installation	Earlier of: Completion of 80% of dwellings in Stages 2 and 3 OR 24 months from Stage 2 subdivision certificate
	Maintenance of bio-retention facility	36 months from installation
W1.2/2.4 Water management facility Embellishment	Sediment basin	Prior to Stage 5 subdivision certificate
	Land dedication	With Stage 5 subdivision
	Bio-retention installation	Earlier of: Completion of 80% of dwellings in Stage 5 OR 24 months from Stage 5 subdivision certificate
	Maintenance of bio-retention facility	36 months from installation
Additional water management facility	Sediment basin	With Stage 4 subdivision
	Land dedication	With Stage 4 subdivision
	Bio-retention installation	Earlier of: Completion of 80% of dwellings in Stage 4 OR 24 months from Stage 4 subdivision certificate
	Maintenance of bio-retention facility	36 months from installation

SCHEDULE 2

-Hilltop Park- DA17/0479

-Southern Sports Field- DA17/0508

SCHEDULE 3 – MONETARY DEVELOPMENT CONTRIBUTIONS

Stage	Proposed Cash Contribution at Subdivision Certificate
1	\$1,000,000
2	\$500,000
3	\$515,162
4	\$0
5	\$0
6	\$0
TOTAL	\$2,015,162

Any additional lots beyond what has already been approved as at the date of this agreement will be subject to additional monetary contributions at a fixed rate of \$30,000 per lot.

SCHEDULE 4 – VALUE OF LAND DEDICATIONS AND WORKS

Item	Value of Land or Works
OSR2.2 Eastern Hilltop Park Land dedication 3,515sqm*	\$938,505*
OSR4.2 Eastern Hilltop Park Embellishment	\$637,176
OSR3.2 Southern Sports Fields Embellishment	\$5,182,549
T2.49 O'Connell Street East Road Upgrade Works	\$7,156,608
W2.2 Water management facility Embellishment	No cost to Council
W1.2 Water management facility Land Dedication	No cost to Council
W2.4 Water management facility Embellishment	No cost to Council
Additional water management facility Land Dedication	No cost to Council
Additional water management facility Embellishment	No cost to Council
TOTAL	\$13,914,838

* Amount based on current Council acquisition rate of \$267m²

SCHEDULE 5 – VALUE OF DEVELOPMENT CONTRIBUTIONS AND VALUE OF SECTION 94 CONTRIBUTIONS COMPARISON

Stage	S94 Contribution Value	Proposed Value of Land & Works	Proposed Cash Contribution at Subdivision Certificate
1	\$2,970,000	\$0	\$1,000,000
2	\$2,010,000	\$0	\$500,000
3	\$2,700,000	\$0	\$515,162
4	\$2,880,000	\$1,575,681	\$0
5	\$3,090,000	\$5,182,549	\$0
6	\$2,280,000	\$7,156,608	\$0
Total	\$15,930,000	\$13,914,838	\$2,015,162
		\$15,930,000	

SCHEDULE 6 – O’CONNELL STREET DRAWINGS

Execution Page

The common seal of **Penrith City Council** was affixed under a resolution passed by council on 2017 in the presence of:

General Manager

Mayor

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

Secretary/Director

Director

Print name

Print name

EXPLANATORY NOTE TO VOLUNTARY PLANNING AGREEMENT

RESIDENTIAL SUBDIVISION DEVELOPMENT KNOWN AS THE “CADDENS HILL” DEVELOPMENT AT LAND GENERALLY BOUNDED BY CADDENS ROAD AND O’CONNELL STREET, CADDENS NSW

Background

The developer intends to carry out the “Caddens Hill” development pursuant to the Development Consents.

The developer has offered to enter into the Planning Agreement in connection with the carrying out of the “Caddens Hill” development to specify the development contributions to be made to Council in connection with the carrying out of the development in lieu of section 94 contributions subject to and in accordance with the Planning Agreement.

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

The objective of the proposed Planning Agreement is to record the terms of the offer made by the developer and its obligations (if the Planning Agreement is entered into with the Council) to:

- make particular land dedications to Council free of cost for public open space and infrastructure purposes;
- carry out certain works both in connection with and separate from the land dedications for various public open space and infrastructure purposes including road upgrade works; and
- pay monetary contributions to Council for public benefit purposes.

The Planning Agreement relates to the delivery of infrastructure to support the increased demands for facilities arising from the development, to facilitate the provision of and embellishment of public open spaces and facilities, and is generally consistent with Council’s planning controls and policies for the locality.

If the proposed Planning Agreement is entered into between the developer and the Council, the developer will be required to make the Development Contributions collectively set out in Schedules 1-3 of the Planning Agreement. The combination of works, land dedications and monetary contributions will respond to the on-going expansion of new residential development in the locality and is consistent with the objectives of Council’s Contributions plans to improve public amenity and provide new infrastructure.

Assessment of the Merits of the proposed Planning Agreement and Impact on the Public

The Planning Agreement provides for overall contributions by the developer to the value of \$15,930,000, for delivery at the times set out in Schedules 1 and 3 of the Planning Agreement.

It has been entered into to provide certainty for the developer and the Council as to the nature and value of significant development contributions for infrastructure and other public benefit purposes, and is targeted to the particular needs and opportunities arising from the development and locality generally.

Identification of how the proposed Planning Agreement promotes the public interest

The Planning Agreement supports the delivery of infrastructure required to meet expectations regarding safe and efficient functioning of the local road network, improvements of the public domain, creation of and improvements to public recreational facilities and to provide attractive amenity and public safety for residents.

Identification of how the proposed Planning Agreement promotes elements of the Council's charter under the Local Government Act 1993

The Planning Agreement promotes the Council's charter under section 8 of the *Local Government Act 1993* by providing adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.

Identification of the planning purpose served by the proposed Planning Agreement and whether the proposed Planning Agreement provides for a reasonable means of achieving that purpose

The Planning Agreement provides a reasonable means of achieving and securing outcomes envisaged by Council's plans and strategies by identifying the works, land dedications, method and value of payment and timing to ensure the public benefits secured by the Planning Agreement meet the increased demand for public facilities resulting from the development and in the locality generally.

Identification of whether the agreement conforms with the Council's capital works program

The proposed Planning Agreement, being a comprehensive package of land dedications, works and monetary contributions, will assist in providing for local needs and infrastructure in association with Council's S94 and S94A Contributions Plans.