

Voluntary Planning Agreement

Reference: KUR955-00071

Ku-ring-gai Council

**Moree Terraces Pty Ltd (ACN 606 026 019) ATF Moree Terraces
Unit Trust (ABN 44 209 525 417)**

Sydney

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Agreement

Date 23 NOVEMBER 2017

Parties

First party

Name Ku-ring-gai Council (**Council**)
Contact Mr Jamie Taylor
Telephone (02) 9424 0000

Second party

Name Moree Terraces Pty Ltd (ACN 606 026 019) ATF
Moree Terraces Unit Trust (ABN 44 209 525 417)
(**Developer**)

Contact Dao Ming Huang (Kevin)
Telephone 0425 777 003

Background

- A. Council owns the Council Land being 33 Moree Street, Gordon and wishes to construct a road on that land.
- B. The Developer has lodged a Development Application with Council seeking Development Consent to construct a multi-dwelling housing development comprising 15 dwellings on the Development Land being 29, 29A and 31 Moree Street, Gordon.
- C. The Developer has agreed to engage and manage the Builder to carry out the Road Works on the Council Land in a professional and efficient manner and on the terms and conditions of this Deed.
- D. Council agrees that the cost of the Road Works will be offset against any contributions otherwise payable for the development and that Council will pay for the cost of the Road Works which is over the Contributions Amount subject to the terms of this Deed.
- E. The Developer acknowledges that the Council has obligations under the Dumaresq Street Deed and that nothing in this Deed is intended to conflict with Council's obligations under the Dumaresq Street Deed.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Actual Cost means the total reasonable costs actually incurred in carrying out the Road Works, as verified by the Quantity Surveyor. The Actual Costs include, without limitation

all Qualifying Costs, the reasonable costs of materials, labour, contract administration costs, clean up costs for the Road Works, and costs associated with obtaining any Approvals, but for the avoidance of doubt, excludes:

- (a) any costs incurred by the Council in respect of the Road Works;
- (b) any costs of constructing a driveway or access way from the Roads Works to the Development (or any other building or structure); and
- (c) any GST payable by the Developer, if the Developer is entitled to claim an input tax credit for that GST.

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Bond means an insurance bond from an AAA credit rated party;

Business Day means a day on which banks are open for general banking business in , excluding Saturdays and Sundays;

Certificate of Practical Completion means the written certificate confirming the Road Works, or part of the Road Works, have been completed to the Council's satisfaction which shall not be unreasonably withheld, issued under clause 8.1(d) of Schedule 2;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under s 109C of the Act;

Construction Terms means the terms set out in Schedule 2;

Contract Price means the total cost specified in the contract to carry out the Road Works and agreed to by Council.

Contribution means s94 contributions calculated pursuant to the Contributions Plan;

Contributions Plan means the *Ku-ring-gai Contributions Plan 2010*;

Council Contribution means the portion of the Actual Cost of the Road Works that Council agrees to pay as calculated in accordance with Clause 6.2.

Council Land means

(a) Lot 13 in Deposited Plan 666504, otherwise known as 33 Moree Street, Gordon;

(b) Lot 101 in Deposited Plan 1217373, otherwise known as 32 Dumaresq Street, Gordon

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Deed means this Deed and includes any schedules, annexures and appendices to this Deed;

Development means the development the Developer has Development Consent to carry out on the Development Land;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Development Contributions 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 a public purpose;

Development Land means:

(a) Lot 1 in Deposited Plan 846768, otherwise known as 29 Moree Street, Gordon

(b) Lot 2 in Deposited Plan 846768, otherwise known as 29A Moree Street, Gordon

(c) Lot 2 in Deposited Plan 212930, otherwise known as 31 Moree Street, Gordon

Dumaresq Street Deed means the voluntary planning agreement between Council and the owner of 28-30 Dumaresq Street, Gordon dated 25 September 2014 for the construction of part of the proposed road that is to be constructed by the Developer under this Deed.

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.

Estimated Cost means the initial estimate of the cost of the Road Works determined by the independent Quantity Surveyor, as provided for in Clause 6.2(f)(i) and subject to Clause 6.5(e).

Existing Road means the road reserve on Moree Street and Dumaresq Street adjacent to the Development Land and the Council Land.

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Modification Application means any application to modify the Development Consent under section 96 of the Act;

Monetary Contribution means the monetary contribution determined in accordance with clause 6.2 and payable by the Developer under clause 6.2 of this Deed

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Qualifying Costs means the reasonable costs incurred by the Developer in carrying out the Road Works and includes costs of providing a Bank Guarantee, remediation of any contamination and any other latent site conditions, Quantity Surveyor costs, insurance costs for any reasonable risk insured by the Developer, costs associated with any caveat on title (or the removal of any caveat from title) and any other costs incurred by the Developer as a result of complying with the Council's requirements for the construction and certification of the Road Works.

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

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

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Roads Act means *Roads Act 1993*

Road Specifications means the design drawings contained in Schedule 3.

Road Works means the work the Developer is to direct the Builder to carry out on the Council Land and Existing Road as described in Schedule 1.

2 Interpretation

In this Deed, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;

- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(rights and obligations)** a reference to a right or obligation of a party is a reference to a right or obligation of that party under this agreement;
- (h) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (i) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (j) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (k) **(singular)** the singular includes the plural and vice-versa;
- (l) **(gender)** words importing one gender include all other genders;
- (m) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (n) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (o) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (p) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (q) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (r) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;

- (s) (**replacement bodies**) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (t) (**Australian currency**) a reference to dollars or \$ is to Australian currency;
- (u) (**month**) a reference to a month is a reference to a calendar month;
- (v) (**year**) a reference to a year is a reference to twelve consecutive calendar months;

3 Planning Agreement under the Act

The parties agree that this Deed is a planning agreement within the meaning of section 93F of the Act.

4 Application of this Deed

This Deed applies to:

- (a) The Development,
- (b) The Council Land,
- (c) The Development Land, and
- (d) The Existing Road.

5 Operation of this Deed

5.1 Commencement of this Deed

This Deed commences on and from the date it is executed by all parties however no obligation or responsibility imposed on the Developer by this Deed commences until a valid Development Consent acceptable to the Developer has been granted for the Development.

5.2 Term of this Deed

This Deed will remain in force until the earlier of:

- (a) when it is terminated by operation of Law; or
- (b) when all obligations under the Deed are performed or satisfied; or
- (c) when any Development Consent obtained by the Developer to carry out the Development has lapsed, been surrendered or otherwise ceases to be in force.

6 Contributions to be made under this agreement

6.1 Provision of Development Contributions

- (a) The Developer is to make Development Contributions to the Council in accordance with this Deed.
- (b) The Council is to apply each Development Contribution made by the Developer under this Deed towards the public purpose for which it is made and otherwise in accordance with this Deed.

6.2 Development Contribution

- (a) The Developer is to engage, manage and direct the Builder to carry out the Road Works;

- (b) The Development Contribution to be made by the Developer under this agreement is the portion of the Actual Cost of the Road Works equivalent to the Contributions Payable for the Development under the Contributions Plan indexed in accordance with the Contributions Plan and fixed at the date upon which the construction certificate for the Road Works is issued.
- (c) The parties anticipate that the Actual Cost of the Road Works will exceed the value of the Contributions Payable.
- (d) Council agrees to pay the portion of the Actual Cost of the Road Works over and above the amount of the Development Contributions, called the Council Contribution, which is to be capped in accordance with the following formula:

$$CC = (EC \times 1.1) - DC$$

Where:

CC = Council Contribution

EC = Estimated Cost

DC = Development Contributions

- (e) If the Actual Cost of the Road Works is less than the Estimated Cost, then Clause 6.2(d) does not apply and the Council Contribution is to be calculated in accordance with the following formula:

$$CC = AC - DC$$

Where:

CC = Council Contribution

AC = Actual Cost of the Road Works

DC = Development Contributions

- (f) The Developer is to engage an independent Quantity Surveyor, with the prior written agreement of Council, who has a fiduciary duty to Council and the Developer, to:
 - (i) provide an initial estimate of the cost of the Road Works, called the Estimated Cost;
 - (ii) review and approve progress claims prior to payment; and
 - (iii) perform the certification functions under the Construction Contract for the Road Works, including such tasks as the valuation of variations, certifying payments and assessing extensions of time.
- (g) The Developer must submit progress claims to the Quantity Surveyor for the Actual Costs of the Road Works on the last day of each month (or as otherwise agreed by the parties, the Council acknowledging that it will act reasonably to accommodate any date for progress claims that minimises the extent to which the Developer is required to 'cash-flow' the Road Works) and within 10 business days of receiving the progress claim, the Quantity Surveyor must issue to the Developer and the Council a certificate certifying the amount of the Actual Costs (inclusive of GST) of the Road Works payable by Council (having regard to clause 6.2(d) above). Council must pay to the Developer the amount of the progress payments certified

by the Quantity Surveyor under this clause within 10 business days of receipt of the Quantity Surveyor's certification.

- (h) Notwithstanding that the certified Actual Cost of the Road Works may exceed the amount of the Development Contribution, the Development Contribution will be deemed to have been made for the purposes of this Deed when the Developer receives the Certificate of Practical Completion for the Road Works.
- (i) The Estimated Cost is to be determined by the Independent Quantity Surveyor on the basis that the Road Works are to be carried out in an efficient and workmanlike manner and agreed to by the Parties in writing prior to the Developer calling tenders for the contract to construct the Road Works.

6.3 Road Works

- (a) The Developer will call for tenders for the contracts to construct the Road Works, but prior to doing so, the Developer must prepare an invitation to tender which includes a form of the Construction Contract that has been reviewed and approved by Council as containing terms to its reasonable satisfaction relating to the following:
 - Standard of work
 - Contract Price
 - Inspections by Council
 - Indemnities for Council
 - Insurances for the work and public liability
 - Defects liability, including security or bonds that can be called upon by the Council and novation of the contract to the Council following Practical Completion (reflecting the terms of clause 8.5 of the Construction Terms);
 - Information about the progress of works to be provided to the Council
 - Work, health and safety requirements;
 - Urgent works;
 - Assignment, upon an agreed period of written notice by the Council, of the Developer's rights as Principal under the Construction Contract to Council for the purpose of enforcement of the Principal's rights arising from any breach of the Construction Contract by the Builder that in Council's view the Principal has failed to have the Builder remedy (subject to Council indemnifying the Developer in respect of the costs of any dispute with the Builder in respect of the relevant alleged breach that is resolved or determined in the Builder's favour); and
 - Council's role in relation to the direction and approval of variations to the Road Works and the certification of Practical Completion under the Construction Contract.
- (b) The Developer agrees that Council may participate in the tender processes for the construction of Road Works and that the Council will be entitled to contribute to the

decision to award any tender, including determining the Contract Price. For the purposes of this clause, the Developer will ensure that a tender panel is established to consider all tenders for the construction of the Road Works and that the Council is a member of that tender panel.

- (c) The Developer, as Principal under the Construction Contract resulting from the tender process under clause 6.2(a) and (b), will engage, manage and direct the Builder to carry out the Road Works in accordance with this Deed, AUS-SPEC specifications for roadworks, the Road Specifications, the Construction Terms and any Development Consent granted for the Road Works.
- (d) The Developer is responsible for obtaining any Approval under the Act or the *Roads Act 1993* required for the carrying out of the Road Works. The cost of preparing and lodging any such application is to be included in the Actual Cost of the Road Works calculated in accordance with this agreement.
- (e) Council will within 2 days of being provided with an application document for the Road Works, provide any owners' consent, if necessary, for the application.
- (f) The Road Works or any part of the Road Works required under this Deed will be taken to have been completed for the purposes of this Deed when a Certificate of Practical Completion has been issued for those Road Works.
- (g) The Road Works are to be carried out and completed prior to the issuing of an Occupation Certificate for the Development.
- (h) In the event of an inconsistency between this Deed and any Approval for the Road Works or any applicable law, the Approval and the law prevail to the extent of the inconsistency.
- (i) The Parties acknowledge that the Developer is carrying out the Road Works under this Deed for and on behalf of the Council and on Council owned land.
- (j) Council acknowledges and agrees that it will process any applications regarding the Road Works expeditiously with a view to aligning, as far as reasonably practicable, the Road Works and construction of the Development. The parties acknowledge that nothing in this clause fetters the discretion of Council.
- (k) Council acknowledges and agrees that the Developer may undertake the Road Works and construction of the Development in stages to optimise time and minimise damage to both the Development and Council Land. Council agrees that it must not unreasonably delay payment or take any other action under this Deed which would delay the progress or finalisation of the Road Works.

6.4 *Not used*

6.5 *Variation to Road Works*

- (a) The Council may vary the Road Specifications from time to time after giving reasonable notice to the Developer. Council acknowledges that such variations may result in an adjustment of the Contract Price under the Construction Contract (as assessed by the Quantity Surveyor) and a corresponding adjustment of the amount of Actual Costs of the Road Works that it may be liable to pay the Developer under this Deed.

- (b) Where the Developer identifies a site condition that may result in a variation to the Road Works or Road Specifications, Council is to be notified in writing as soon as possible after the Developer becomes aware of the relevant site condition to allow Council the opportunity to carry out a sufficient investigation.
- (c) Council's prior written approval is required prior to the Developer carrying out any works that constitute a variation to the Road Works (other than urgent works within the meaning of the Construction Contract). In addition, the Developer acknowledges that should latent site conditions or changes in standards require a variation that would require a third party to carry out works or procure materials (not included in the calculation of the Contract Price) then Council may (acting reasonably) require up to three quotes in respect of the relevant works prior to approval of the variation.
- (d) Council agrees that costs incurred by the Developer resulting from any delays by Council in respect of its actions under this clause 6.5 are a Qualifying Cost.
- (e) If there is a variation to the Road Works under this clause, the Quantity Surveyor is to revise the Estimated Cost. In determining the revised Estimated Cost, the Quantity Surveyor is only to take into account the additional costs arising from the variation, on the basis that all works are carried out in an efficient and workmanlike manner. The revised Estimated Cost is to be agreed by the parties in writing and to be used to determine the Council Contribution under clause 6.2(d).

6.6 Ownership of Road Works and Road land

Nothing in, or done under, this Deed gives the Developer any right, title, or interest in the Road Works, or any estate or interest in the Council Land whether at Law or in equity.

6.7 Access to land

- (a) The Council authorises the Developer to enter, occupy and use the Council Land and Existing Road for the purpose of performing its obligations under this Deed.
- (b) The Council may enter any land on which the Road Works are being carried in order to inspect, examine or test the Road Works, or to remedy any breach by the Developer of its obligations under this Deed relating to the Road Works.
- (c) The Council authorises the Developer to enter, occupy and use the Council Land and Existing Road for the purpose of demolition, clearance and contractor establishment as soon as consent for all or any part of the Road Works is granted.
- (d) Once the Developer has been granted access to the Council Land and Existing Road in accordance with clause 6.7(c) the Developer will become responsible for site security and risks to property, people and the environment in active works areas until the practical completion of the Road Works. The Council agrees that the Developer may assign this responsibility to the Builder under the Construction Contract.

6.8 Council's obligations relating to the Road Works

- (a) The Council is not to unreasonably delay, hinder or otherwise interfere with the performance by the Developer of its obligations under this Deed.
- (b) Council is to promptly attend to all steps necessary for the dedication of the Land as a public road, including any reclassification of the land and rezoning of the land

required, in advance of the completion of the Road Works, so that the land can be used as a road by the public by or on the date of practical completion.

- (c) If for any reason the Land is not dedicated as public road prior to practical completion, Council will grant an easement in favour of the Development Land (including any newly formed lots on that land) at no cost to the Developer or landowner at that time.

6.9 Protection of people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable in relation to the performance of its obligations under this Deed that:
 - (i) all necessary measures are taken to protect people and property,
 - (ii) unnecessary interference with the passage of people and vehicles is avoided, and
 - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.9(a), 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 public utility or any relevant Authority or where interference by the Developer may be inferred from or is explicit in any Approval related to the Road Works or Development.
- (c) If the interference with a public road, public footpath, public cycleway or other public thoroughfare is unavoidable in the location of the Road Works, then the Developer is to ensure that an appropriate alternative route is provided that complies with the requirements of any traffic management measures, including a traffic management plan, required under a Development Consent issued for the Development. Council is to use its best endeavours to assist in providing traffic management measures. Council acknowledges that the costs incurred by the Developer in complying with this clause constitute Actual Costs of the Road Works.

6.10 Repair of damage

The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any damage to the Road Works resulting from any cause whatsoever that occurs before the date on which the Road Works are completed for the purposes of this Deed, other than damage caused by the Council or a public utility company, unless the construction contract for the Road Works is novated to Council.

6.11 Removal of Equipment

When the Road Works are completed for the purposes of this Deed, the Developer, without delay, is to:

- (a) remove any Equipment from the Council Land and make good any damage or disturbance to the land as a result of that removal, and
- (b) leave the Council Land in a neat and tidy state, clean and free of rubbish.

7 Application of s 94, s 94A and s 94EF of the Act to the Development

- (a) This Deed excludes the application of section 94 of the Act to the Development, other than for the purpose of calculating matters referred to in this Deed.
- (b) This Deed excludes the application of section 94A of the Act to the Development.
- (c) This Deed does not exclude the application of section 94EF of the Act to the Development.

8 Registration of this Deed

8.1 Interest

- (a) The Developer represents and warrants to the Council that on the date of this Deed,
 - (i) It is entitled to seek to develop the Development Land,
 - (ii) It is either the registered proprietor of the Development Land or has entered into an agreement by which it will be entitled to be the registered proprietor of the Land.
- (b) The Developer must notify the Council promptly after it becomes the registered proprietor of the Development Land.

8.2 Registration of this Deed

- (a) The Developer agrees to procure the registration of this Deed under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Development Land in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after the execution and Commencement Date, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Development Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Development Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this Deed if it takes possession of the Development Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title,
 to enable the registration of this Deed in accordance with clause 8.2.

8.3 Removal from Register

Within 14 days of receipt of written notice from the Developer of the issue of the certificate of Practical Completion Council will provide a release and discharge of this Deed so that it may be removed from the folios of the Register for the Development

Land (or any part of it) provided the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

8.4 Caveat

- (a) The Developer acknowledges and agrees that:
 - (i) when this Deed is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Development Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Development Land in respect of which to lodge a caveat over the Development Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Development Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost (which Council acknowledges is a Qualifying Cost) register a withdrawal of any caveat in respect of the Development Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Development Land.
- (c) The Council must take all steps to promptly remove any caveat lodged in its favour over the Development Land if the road (whether public or private) is in use or if the caveat would prevent any transfer of land

9 Review of this Deed

- (a) This Deed may be reviewed or modified. Any review or modification of this Deed will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this Deed will be of any force or effect unless it is in writing and signed by the parties to this Deed.
- (c) A party is not in breach of this Deed if it does not agree to an amendment to this Deed requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this Deed, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other party of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material, expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 28 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 10 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of The Resolution Institute (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 10 Business Days of receipt of the Determination Notice, either Party may request the President of The Resolution Institute (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute, and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment,
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 10 Business Days of the resolution);

- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales,
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs (noting it is agreed that the Developer's share of the expert's costs and fees will constitute a Qualifying Cost in the event that the dispute is determined in its favour) ; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 10 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this Agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this Agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this Deed, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Restriction on the issue of Certificates*

- (a) In accordance with section 109H(2) of the Act the obligations to:
 - (i) engage, manage and direct the Builder to carry out the Road Works; and
 - (ii) provide a Bond for any item of the Road Works for defects liability under the Construction Terms,must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.3 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this Deed may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Deed prevents:
 - (i) 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; and
 - (ii) 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.

12 Assignment and Dealings

12.1 Assignment

- (a) A party must not assign or deal with any right under this Deed without the prior written consent of the other party.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this Deed for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Development Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this Deed

13 Approvals and consents

Except as otherwise set out in this Deed, and subject to any statutory obligations, a party may, acting reasonably and with reasonable advance notice, give or withhold an approval or consent to be given under this Deed, subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This Deed is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this Deed is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Deed is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this Deed which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this Deed (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this Deed:

- (i) to Ku-ring-gai Council:

Fax: (02) 9424 0001

Email: kmc@kmc.nsw.gov.au

Attention: Mr Jamie Taylor

- (ii) to Moree Terraces Pty
Ltd (ACN 606 026 019)
ATF Moree Terraces
Unit Trust (ABN 44 209
525 417):

Fax: -

Post: c/o FCS Associates & Co Suite 1201, 179
Elizabeth St Sydney NSW 2000

Or Unit 803 60-62 York St Sydney NSW 2000

Email: kevin.h@klfgroup.com.au

Attention: Kevin Huang

- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;

- (ii) states in the body of the message or the subject field that it is sent as a Notice under this Deed;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this Deed;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

(A) to Ku-ring-gai Council: Attention: Mr Jamie Taylor
kmc@kmc.nsw.gov.au

(B) to Moree Terraces Pty Ltd 1) Attention: Mr Kevin Huang
(ACN 606 026 019) ATF
Moree Terraces Unit Trust
(ABN 44 209 525 417):
kevin.h@klfgroup.com.au

- (b) The recipient of a Notice served under this clause 15.2 must:

- (i) promptly acknowledge receipt of the Notice; and
- (ii) keep an electronic copy of the Notice,

15.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
- (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
- whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this Deed:
- (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
- (i) bind another party; or
 - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this Deed.

16.4 Variation

A provision of this Deed can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 No assignment

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

16.6 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

The Developer must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this Deed.

16.8 Entire agreement

The contents of this Deed constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this Deed and comply with their obligations under the Deed and that entry into this Deed will not result in the breach of any law.

16.10 Severability

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. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this Deed is void, voidable, or unenforceable if it is not read down;
 - (ii) this Deed will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this Deed will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this Deed has full effect even if clause 11 applies.

16.12 Waiver

- (a) A right or remedy created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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. 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. 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.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this Deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

17 Limitation of liability

- (a) Subject to clause 17(b), the Developer's liability to the Council arising out of or in connection with this Deed, in tort (including negligence) or under statute or otherwise at law or in equity is limited in the aggregate to the amount of the Development Contribution.

- (b) The limitation of liability in clause 17(a) does not apply to (and does not limit or restrict in any way the Developer's liability to) the extent that the liability:
 - (i) cannot be limited at law;
 - (ii) arises in respect of an infringement of any Intellectual Property Rights;
 - (iii) arises out of or in connection with:
 - (A) any liability to or claims by a third party in respect of loss of or damage to property; or
 - (B) any injury to or death of any person; or
 - (iv) is caused by a wilful, reckless, fraudulent criminal or malicious act of the Developer; or
 - (v) arises out of work that is required to be carried out during the Defects Liability Period.

	<ul style="list-style-type: none"> h. Council's Detail Sheet 2 – DWG C08 – Rev A – 26 June 2017 i. Sections Sheet – DWG C09 – Rev A – 26 June 2017 j. Driveway Sections – DWG C10 – Rev A – 26 June 2017 k. Road Cross Sections Sheet 1 – DWG C11 – Rev A – 26 June 2017 l. Road Cross Sections Sheet 2 – DWG C12 – Rev A – 26 June 2017 m. Road Cross Sections Sheet 3 – DWG C13 – Rev A – 26 June 2017 n. Kerb Return Sheets – DWG C14 – Rev A – 26 June 2017 o. Retaining Wall Details and Elevations – DWG C15 – Rev A – 26 June 2017 p. Culvert Details Sheet – DWG C16 – Rev A – 26 June 2017 q. Staging Plan – DWG C17 – Rev A – 26 June 2017 r. Setout Plan Sheet 1 – DWG C18 – Rev A – 26 June 2017 s. Setout Plan Sheet 2 – DWG C19 – Rev A – 26 June 2017 t. Setout Plan Sheet 3 – DWG C20 – Rev A – 26 June 2017 	
10.	Environment Approval For Works – Potential Impact Assessment - Approval No. 2017/247951 by Ku-ring-gai Council TRIM Reference S11300	8 September 2017
11.	Site Survey Plans by Project Surveyors <ul style="list-style-type: none"> a. Survey Plan, Drawing No. 3523B-DETAIL-1, Sheet 1 of 2 b. Survey Plan, Drawing No. 3523B-DETAIL-2, Sheet 2 of 2 	10 October 2016
12.	Site Walkover Assessment 2385-ER-1-2 by Alliance Geotechnical	27 July 2016
13.	Tree Assessment Schedule	undated

Unless otherwise directed by Council, the Developer must construct only those works shown on these plans between Moree Street and the boundary line of 33 Moree Street, Gordon (Lot 13 in Deposited Plan 666504) and 32 Dumaesq Street, Gordon (Lot 101 in Deposited Plan 1217373). A direction from Council may limit or extend the location and extent of works required to be carried out by the Developer. The works that shall be carried out by the Developer shall be limited to those works specified by the Council in any direction given.

Schedule 2 Construction terms

1 Interpretation

For the purposes of this Schedule 2, the defined terms in clause 1 of this Deed and the Interpretation principles in clause 2 of this Deed will apply and, unless context indicates a contrary intention:

Builder means any entity contracted under the Construction Contract to carry out the Works.

Certifying Authority has the meaning given to it in the Act.

Construction Contract means the contract to carry out the Road Works (whether or not that is a contract for the Road Works only or forms part of a contract for the building of other components of the Development).

Defects Liability Period means in respect of each item of building works which together comprise the Road Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Road Works.

Detailed Design means the final specifications and finishes for the Road Works prepared in accordance with clause 5.2 of this Schedule 2 and will include the design of the Road Works, the location for the Road Works, installation specifications and estimated costs of construction and/or installation.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

Superintendent means the Superintendent appointed under any Construction Contract.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this Deed, then the Developer will acquire all Approvals necessary to carry out the Road Works at its own cost. Council acknowledges that the costs of acquiring such Approvals constitute Qualifying Costs.

2.3 The Developer must ensure that the Road Works carried out under this Deed are carried out:

- (a) in accordance with the relevant Development Consent for the Road Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation;
- (b) the Road Specifications; and
- (c) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

3 Costs of Works

See clause 6.2 in the Deed.

4 Project Management and Contractor Engagement

4.1 The Developer will be responsible for managing the Road Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Road Works agrees to:

- (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract;
- (b) request and provide adequate notice and details to a Council representative to be present at each on-site meeting attended by the Superintendent; and
- (c) has the relevant licences required for the works being carried out.

4.3 Council acknowledges that failure by the Council's representative to attend any on-site meeting following the provision of adequate notice by the contractor of the on-site meeting is not the responsibility of the Developer.

5 Design Development and Approvals

5.1 Concept Design

Council and the Developer have worked in consultation with each other to prepare and agree on the concept design described in the scope of works in Schedule 1 to this Deed and shown in Road Specifications in Schedule 3 to this Deed.

5.2 Detailed Design

- (a) Prior to Road Works commencing the Council is to provide the Developer with the Detailed Design.
- (b) Within 15 Business Days of receiving the draft Detailed Design, the Developer or their nominated agent will respond to the Council with any suggested amendments to the draft Detailed Design.
- (c) Council and the Developer must work in consultation with each other to prepare and agree upon the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 15 Business Days of Developer providing its suggested amendments in accordance with clause 5.2(b) of this Schedule 2, to avoid possible delays to the issue of a Construction Certificate, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
 - (i) is consistent with the obligation to engage, manage and direct the Builder to carry out the Road Works under this Deed; and
 - (ii) is consistent with the Development Consent; and
 - (iii) does not materially and adversely affect the Development; and

(iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this clause 5 of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

5.4 **Good faith**

The parties must act promptly and in good faith to consult in relation to the finalization of the Detailed Design.

6 Carrying out of Works

6.1 **Communication**

The Developer must keep Council reasonably informed of progress of the Road Works and provide to Council such information about the Road Works as Council reasonably requests.

6.2 **Standard of Road Works**

- (a) The Developer shall, and must cause the Builder to, use suitable new materials and meet specification requirements when carrying out the Road Works. Recycled materials may be used for pavements and backfilling with the prior approval of Council.
- (b) The qualitative standard of the finishes for the Road Works must be no less than those described in the following documents:
 - (i) Any relevant Australian Standard;
 - (ii) Austroads Specifications;
 - (iii) Aus-spec Specifications; and
 - (iv) Specifications from third party utilities (Ausgrid, Telstra, Sydney Water).
- (c) The Developer may but is not obliged to reinstate any Road Works where damage or destruction is as a result of:
 - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Road Works under this Deed; or
 - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Road Works; or
 - (iii) The use or occupation of any part of the Road Works by a public utility company or its employees, consultants or agent unless these works are required as part of the Road Works.

7 Inspection

- (a) On completion of the Detailed Design, the Council will advise the Developer of the required witness and hold points for items of work to be carried out under the Construction Contract that are required to be inspected by Council (**Inspection Stage**). If the Council does not provide this information, the Developer must request the schedule from the Council prior to the Road Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage the Developer must notify the Council of a proposed inspection date (**Inspection Date**).

- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Council Land to inspect the Road Works and that the works to which the inspection relates have, to the best of the Developer's knowledge, been carried out such that the works are ready for inspection.
- (d) In addition to carrying out inspections required at each Inspection Stage, the Council may enter the Council Land or any part of the Council Land on which the Works are located to inspect the progress of the Road Works, subject to:
 - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
 - (ii) giving reasonable notice to the Developer;
 - (iii) complying with all reasonable directions of the Developer; and
 - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule 2) notify the Developer of any defect or non-compliance in the Works and direct the Developer to direct the Builder to carry out work to rectify that defect or non-compliance within a reasonable period of time at the Developer's cost. Such work may include, but is not limited to:
 - (i) removal of defective or non-complying material;
 - (ii) demolishing defective or non-complying work;
 - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
 - (iv) not delivering any defective or non-complying material to the site of the Works.

To the extent that complying with a direction under this clause 7(e) involves the Developer carrying out:

- (v) works contrary to any Approval;
- (vi) works not included in the design documents that would not be considered necessary as judged by an expert in the relevant field;
- (vii) changes to complying works not considered necessary as judged by an expert in the relevant field; or
- (viii) any variations not included in the scope of works,

then Council must reimburse the Developer for any and all additional costs incurred by the Developer in carrying out those works.

- (f) If the Developer is issued a direction under clause 7(e) of this Schedule 2, the Developer must, at its cost, have the Builder rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.

- (g) If the Developer fails to comply with a direction to under 7(e) of this Schedule 2, the Council will be entitled to refuse to accept that the Road Works (or the relevant parts of the Road Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Road Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer have rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 2 does not constitute:
 - (i) acceptance by the Council that the Road Works comply with all Approvals and Laws; or
 - (ii) an Approval by the Council in respect of the Road Works; or
 - (iii) an agreement or acknowledgment by the Council that the Road Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this Deed.
- (i) The Council will act as Certifying Authority for the Road Works and hereby agrees to provide evidence of engineering sign-off and approvals of the Road Works at various stages throughout the construction to the Developer.
- (j) In the event that an item of work completed for an Inspection Stage cannot be tested or verified by Council, the Developer must obtain testing data from a NATA accredited testing facility and provide the results to Council. The Council will notify the Developer of those Inspection Stages that require independent testing upon completion of the Detailed Design.

8 Completion

8.1 Practical Completion

- (a) When the Developer considers that the Road Works, or any parts of the Road Works, are complete, the Developer must send a Notice to the Council accompanied by:
 - (i) complete works as executed plans,
 - (ii) any relevant certificates or consents of any public utility authority,
 - (iii) sign-off for practical completion by an independent superintendent, and
 - (iv) a request for written certification from the Council that the Road Works are complete.
- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 2, the Council will carry out an inspection of the Road Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Road Works have been completed (Certificate of Practical Completion); or
 - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 2, the Developer will provide that

information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 2 for written certification that the Road Works have been completed.

- (d) Practical completion will be achieved in relation to the Road Works or any part of the Road Works when a Certificate of Practical Completion has been issued by Council for those Road Works.

8.2 **Delivery of documents**

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Road Works or any part of the Road Works deliver to the Council complete and legible copies of:
 - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals in Hard Copy, PDF format and DWG (AutoCAD 2016) format. The "as built" (works as executed) drawings are to meet or exceed the level of detail provided in the construction drawings;
 - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
 - (iii) copies of all Approvals required for use of the land subject to the Road Works
 - (iv) Copies of all independent testing carried out on site, including but not limited to: materials testing for compliance, CCTV inspection of any drainage lines installed, and compaction testing.
 - (v) Photos showing compliance of works with the standards where a Council Inspection was not required.
- (b) Council may withhold the final payment to the Developer in accordance with this Deed until the documents referred to in clause 8.2(a) have been provided to Council.
- (c) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Road Works or any part of the Works, provide the Council with a tour of the land subject to the Road Works and provide reasonable instructions on the operation and use of the Services on that land.

8.3 **Assignment of Warranties and Causes of Action**

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Road Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

8.4 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for the Road Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the Road Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
 - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
 - (ii) the Developer procures an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.4(a) of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 8.5(b)(iii) of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.
- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

8.5 Defects Liability Period

- (a) The parties agree that upon Practical Completion being achieved they shall promptly execute a deed of novation (in terms to the Developer's satisfaction, acting reasonably) being a deed between the Developer, Builder and Council effecting a novation to the Council of the rights and obligations of the Developer under the Construction Contract during the Defects Liability Period.
- (b) For the avoidance of doubt, Council's rights and obligations pursuant to the novation of the Construction Contract must be in the terms of this clause 8.5(b)(i)-(x) below.
 - (i) During the Defects Liability Period, the Council (acting reasonably) may give to the Builder a notice (Rectification Notice) in writing that identifies a defect in the Works and specifies:
 - (A) action required to be undertaken by the Builder to rectify that defect (Rectification Works); and
 - (B) the date on which the defect must be rectified (**Rectification Date**).
 - (ii) The Builder must comply with the Rectification Notice by:

- (A) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
 - (B) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
 - (C) carrying out the Rectification Works.
- (iii) The Council must give the Builder and its contractors any access required to carry out the Rectification Works.
- (iv) When the Builder considers that the Rectification Works are complete, the Builder must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out (**Rectification Works Notice**).
- (v) The Council may inspect the Rectification Works within 15 Business Days of receiving a Rectification Works Notice from the Builder and, acting reasonably:
 - (A) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
 - (B) notify the Builder in writing that it is satisfied the Rectification Works are complete.
- (vi) The Builder must meet all costs of and incidental to rectification of defects under this clause 8.4.
- (vii) The Defects Liability period of 12 months re-commences for those works that are carried out by the Builder pursuant to a Rectification Notice from the date the Council notifies the Builder in writing that it is satisfied the Rectification Works are complete.
- (viii) If the Builder fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Council Land without further notice to the Builder, and may:
 - (A) call upon any Bond or Bank Guarantee provided to the Council as security for defects liability Schedule 2 to meet its costs of carrying out Rectification Works; and
 - (B) recover as a debt due to the Council by the Builder in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (ix) The Builder must request that Council inspect the Road Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Road Works at any time after receiving the request from the Builder and before to the end of the Defects Liability Period.
- (x) If, prior to the end of the Defects Liability Period:
 - (A) the Developer fails to request the inspection, or
 - (B) the Council does not carry out the inspection, or

(C) any works requested for rectification have not been carried out
the Council may extend the Defects Liability Period so that the inspection
may be carried out.

8.6 Not used

9 Risk

Subject to clause 13, the Developer undertakes the Road Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Road Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
 - (i) construction works insurance for the value of the Road Works;
 - (ii) public liability insurance for at least \$20 million;
 - (iii) workers compensation insurance as required by Law;
 - (iv) Professional indemnity insurance for at least \$20 million.
- (b) The Developer must provide evidence of currency of the insurances required by clause 10(a) of this Schedule 2 (to be effected and maintained by the Builder) upon request by the Council, acting reasonably, throughout the term of this Deed.

11 Indemnities

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in respect of loss of or damage to the Council's property and in respect of personal injury or death or loss of or damage to any other property in connection with the carrying out by the Developer of the Road Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

12 Intellectual Property Rights

The Developer acknowledges that the Council or its contractors hold all rights to copyright and any intellectual property which may exist in the design of the Road Works. To the extent the Council has or receives intellectual property rights for the design of the Road Works, the Council shall assign those intellectual property rights to Developer or permit use thereof.

13 Risk of contamination

13.1 Council acknowledges and agrees:

- (a) that it must disclose to the Developer as soon as practicable all knowledge of site conditions that will or may affect the Road Works;
- (b) that the Developer is not responsible for the management and remediation of any contamination or latent site conditions present upon or under the land on which the Road Works are to be carried out;

- (c) where approved by Council the costs of any remediation works, including cost of time, that is carried out by the Developer constitutes a Qualifying Cost that is to be offset against the Developer's Contribution; and
- (d) to the fullest extent permitted by Law to indemnify and release the Developer from any Claim which might arise from any contamination with respect to the land on which the Road Works are to be carried out.

14 Plans

- (a) The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:
 - (i) matters affecting Road Works not capable of identification on or before the date of this agreement; or
 - (ii) by agreement between the parties.

Schedule 3 Road Specifications

Schedule 4 Summary of requirements (section 93F)

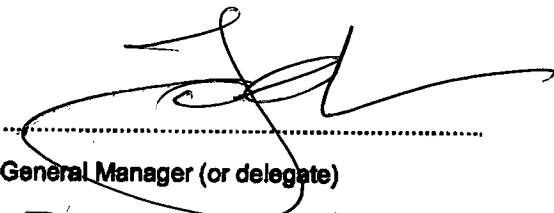
Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 93F(1) 2) The Landowners have: (a) Sought a change to an environmental planning instrument (b) Made, or propose to make a Development Application (c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies	3) No 4) Yes 5) No
6) Description of the land to which the planning Agreement applies – Section 93F(3)(a)	7) The Council Land, the Development Land and the Existing Road.
8) Description of the change to the environmental planning instrument to which the agreement applies 93F(3)(c)(i)	9) Not applicable
10) Description of the development to which the agreement applies 93F(3)(c)(ii)	11) The Development the subject of development application DA0095/16 or any subsequent development application on the Development Land.
12) The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 93F(3)(c)	13) See clause 6.2
14) Applicability of section 94 of the Act – Section 93F(3)(d)	15) The application of section 94 of the Act is excluded in respect of the Development, other than for the purposes of calculating matters referred to in the Deed.
16) Applicability of section 94A of the Act – Section 93F(3)(d)	17) The application of section 94A of the Act is excluded in respect of the Development.
18) Applicability of section 94EF of the Act – Section 93F(3)(d)	19) The application of section 94EF of the Act is not excluded in respect of the Development.
20) Mechanism for dispute resolution – Section 93F(3)(f)	21) See clause 10
22) Enforcement of the Planning Agreement –	23) See clause 11


Section 93F(3)(g)	
24) Registration of the Planning Agreement – Section 93F(3)(g)	25) See clause 8
26) No obligation to grant consent or exercise functions – Section 93F(9)	See clause 14 (no fetter)

Executed as a Deed

Signed on behalf of

~~Executed by Ku-ring-gal Council under~~)
~~seal in accordance with a resolution of the~~)
~~Council made on~~ :

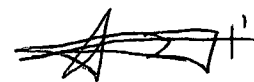

.....
General Manager (or delegate)
JOHN MCKEE


.....
Witness
DAVID JAMES TAYLOR

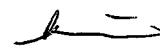
.....
~~Mayor (or delegate)~~

.....
Witness

27) Executed by Moree Terraces Pty Ltd 28))
(ACN 606 026 019) ATF Moree)
Terraces Unit Trust (ABN 44 209 525)
417) In accordance with section 127 of)
the Corporations Act 2001 (Cth) by:


.....
Signature of Director

Jing Yi Wang
.....
Print name of Director

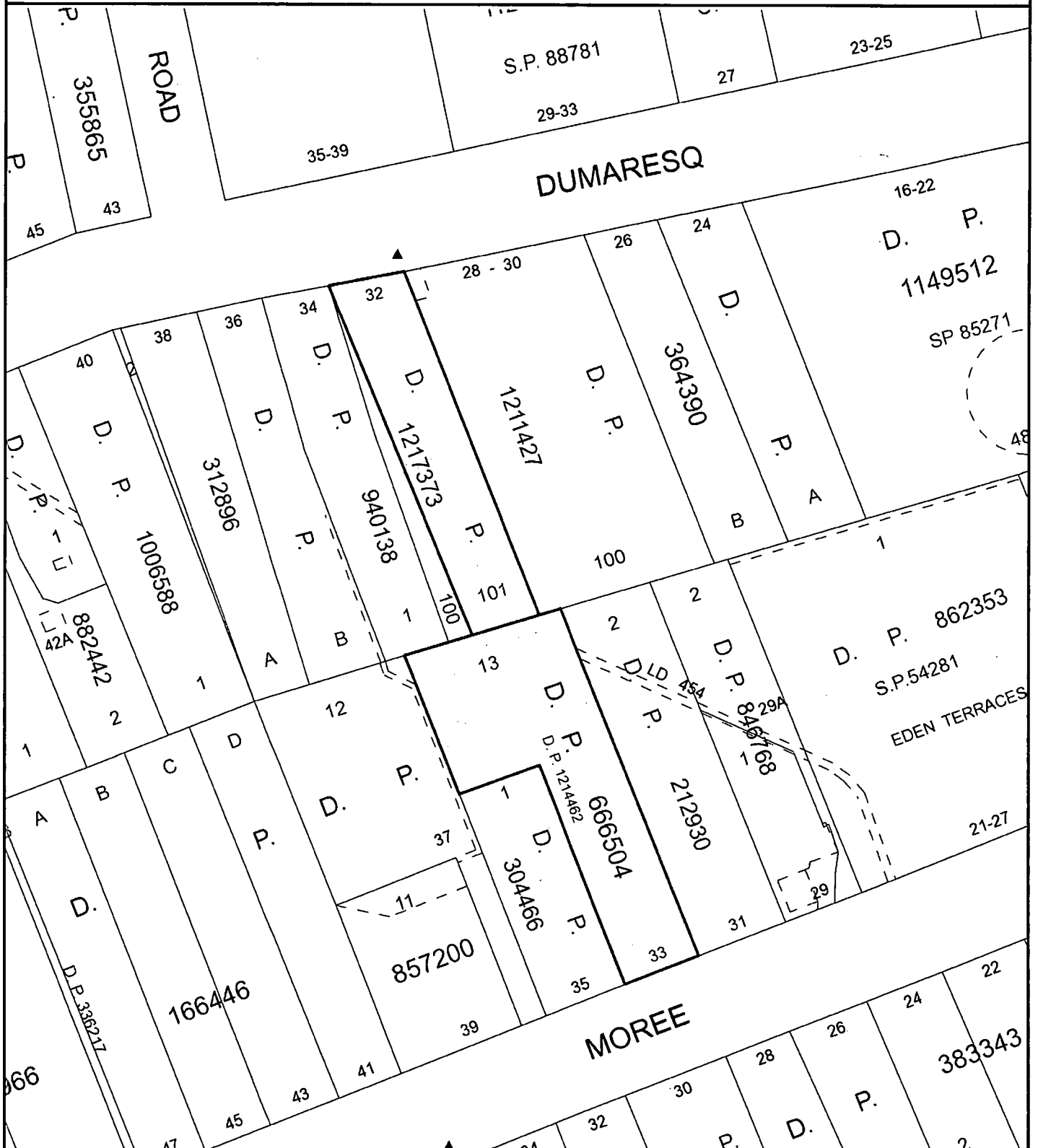

.....
Signature of Director/Secretary

DAOMING HUANG
.....
Print name of Director/Secretary


Annexure A Plan showing Council Land

Plan showing Council Land

Annexure A



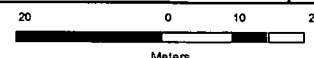
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 Subject Land

Scale 1:1000

06/03/2017

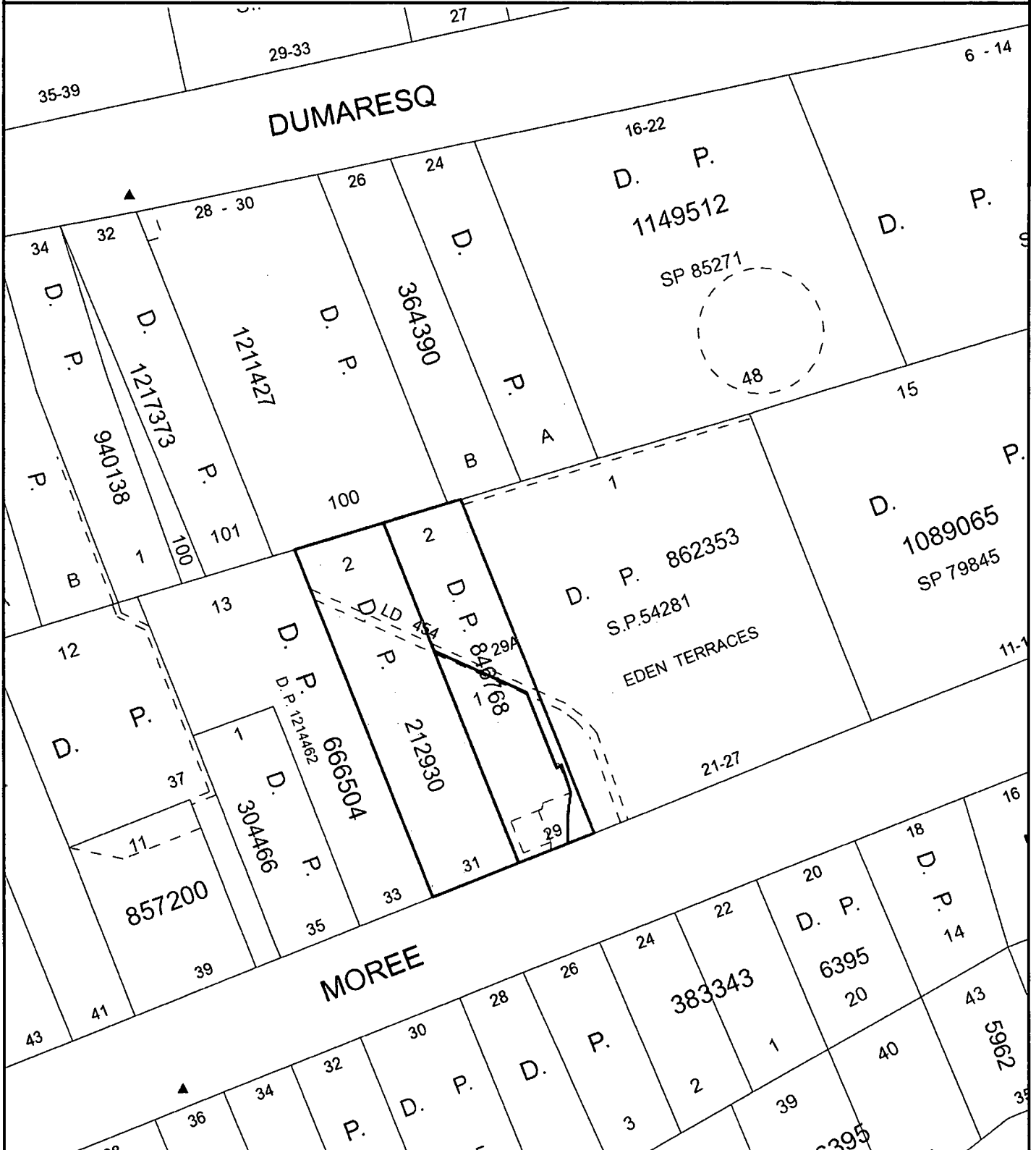
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Annexure B Plan showing Development Land

Plan showing Development Land

Annexure B



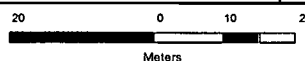
Legend

 Subject Land

Scale 1:1000

06/03/2017

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- THE SUBJECT TITLE NOTES
- *RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
 - *DP1200526 (S) EASEMENT FOR CONSTRUCTION & MAINTENANCE 3 WIDE APPURTENANT TO THE LAND ABOVE DESCRIBED
 - *DP1217373 (A) EASEMENT FOR SUPPORT AFFECTING THE WHOLE OF THE LAND ABOVE DESCRIBED APPURTENANT TO THE LAND ABOVE DESCRIBED
 - *LAND EXCLUDES MINERALS (S.141 PUBLIC WORKS ACT, 1912)
 - *THE MINERALS ARE COMPRISED IN LOT 1 IN DP1216462

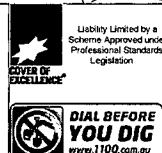
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NOTES:

- *BOUNDARIES HAVE NOT BEEN DEFINED BY SURVEY AND ARE DIAGRAMMATIC ONLY.
- *LAND DIMENSIONS AND AREAS HAVE BEEN COMPILED FROM PLANS OBTAINED FROM LPM.
- *BEARINGS RELATE TO: MGA NORTH ORIGINATING FROM DP121427
- *LEVEL DATUM IS AND ORIGINATING FROM SSM 70172 RL101.655 LOCATED AT DUMARESQ STREET.
- *VISIBLE, ACCESSIBLE SERVICES ONLY HAVE BEEN LOCATED. THIS PLAN DOES NOT PURPORT TO SHOW UNDERGROUND SERVICES.
- *THE EXISTENCE OF UNDERGROUND SERVICES HAS NOT BEEN ESTABLISHED.
- *EXISTENCE OF SERVICES MUST BE VERIFIED BY CONTACTING DIAL BEFORE YOU DIG (DBYD) 1100.COM.AU
- *CRITICAL SERVICES MUST BE EXPOSED AND LOCATED
- *NEIGHBOURING HOUSES, WINDOWS AND ROOF POSITIONS ARE APPROXIMATE ONLY.
- *FLOOR LEVELS GENERALLY SURVEYED AT DOOR THRESHOLDS. INTERNAL ROOMS NOT SURVEYED.
- *CONTOURS SHOWN ARE INDICATIVE OF LAND FORM. SPOT LEVELS SHOULD TAKE PRECEDENCE.
- *REFER TO FACE OF PLAN FOR SUBJECT TITLE NOTATIONS.
- *THIS TITLEBLOCK IS AN INTEGRAL PART OF THIS DRAWING AND SHOULD NOT BE REMOVED.

LEGEND

ELP - ELECTRIC LIGHT POLE
HYD - HYDRANT
TW - TOP WALL
TK - TOP KERB
TG - TOP GUTTER
PP - POWER POLE
SWH - SEWER MANHOLE
SP - SIGN POST
SV - STOP VALVE
TEL - TELSTRA PIT
VC - VEHICLE CROSSING
WM - WATER METER



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REV	AMENDMENTS	DATE

CLIENT: ITW PTY LTD
PLAN OF: No33 MOREE STREET &
No32 DUMARESQ STREET
CORDON
BEING: LOT 13 IN DP66504 &
LOT 101 IN DP1217373
SHOWING: GENERAL DETAIL AND
SITE LEVELS
PURPOSE: ARCHITECTURAL DESIGN
COUNCIL SUBMISSION
SHEET 1 OF 2

SCALE 1:200

SURVEYOR :	AARON B
DATUM : <td>AUSTRALIAN HEIGHT DATUM</td>	AUSTRALIAN HEIGHT DATUM
ORIGIN : <td>PM 55148 RL89.894</td>	PM 55148 RL89.894
JOB REF. : <td>35238-DETAIL</td>	35238-DETAIL
DRAWING No. : <td>35238-DETAIL-1</td>	35238-DETAIL-1
CHECKED : <td>SCOTT O</td>	SCOTT O
DATE OF SURVEY : <td>10th OCTOBER 2016</td>	10th OCTOBER 2016
REDUCTION RATIO : <td>1:200</td>	1:200

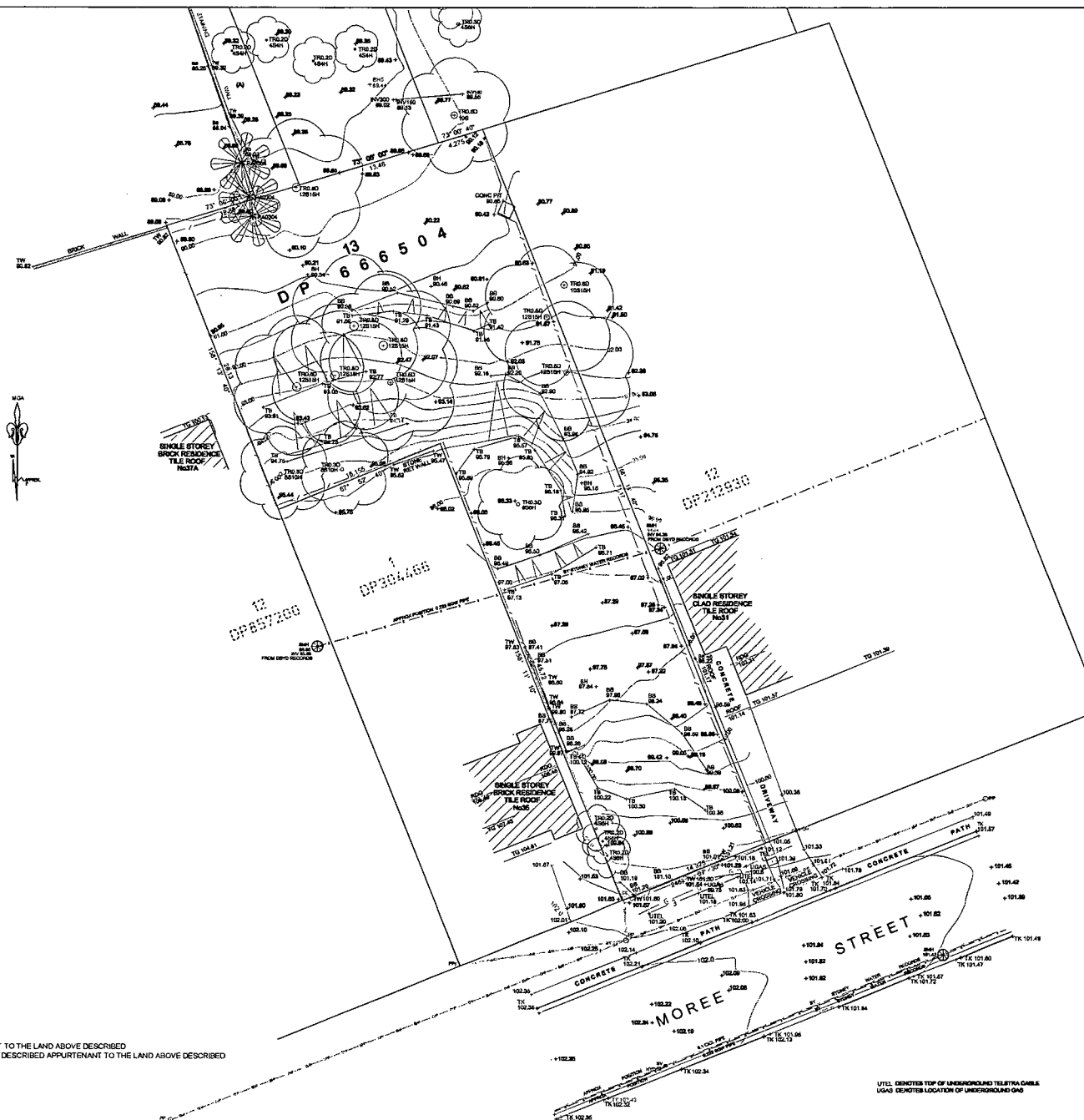
MACQUARIE PARK

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MACQUARIE CENTRE NSW 2113
SUITE 404, LEVEL 4
No13-15 LYON PARK ROAD,
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email: office@projectsurveyors.com.au
www.projectsurveyors.com.au
ABN 20 988 433 974



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- * THE SUBJECT TITLE NOTES
- * RESERVATIONS AND CONDITIONS IN THE CROWN GRANT(S)
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- * LAND EXCLUDES MINERALS (S.141 PUBLIC WORKS ACT, 1912)
- * THE MINERALS ARE COMPRISED IN LOT 1 IN DP1214462

A1

NOTES:

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- * LAND DIMENSIONS AND AREAS HAVE BEEN COMPILED FROM PLANS OBTAINED FROM LPM.
- * BEARINGS RELATE TO MGA NORTH ORIGINATING FROM DP1211407
- * LEVEL DATUM IS AND ORIGINATING FROM SSM 70172 RL 101.650 LOCATED AT DUMARESQ STREET.
- * VISIBLE, ACCESSIBLE SERVICES ONLY HAVE BEEN LOCATED. THIS PLAN DOES NOT PURPORT TO SHOW UNDERGROUND SERVICES.
- * THE EXISTENCE OF UNDERGROUND SERVICES HAS NOT BEEN ESTABLISHED.
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REV AMENDMENTS DATE

CLIENT: TFW PTY LTD
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GORDON
BEING: LOT 13 IN DP66504 &
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SHOWING: GENERAL DETAIL AND
SITE LEVELS
PURPOSE: ARCHITECTURAL DESIGN
COUNCIL SUBMISSION
SHEET 2 OF 2

SCALE 1:200

SURVEYOR: AARON B
DATUM: AUSTRALIAN HEIGHT DATUM
ORIGIN: PM 55148 RL89.894
JOB REF: 3523B-DETAIL
DRAWING No. 3523B-DETAIL-2
CHECKED: SCOTT D
DATE OF SURVEY: 10th OCTOBER 2016
REDUCTION RATIO: 1:200

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No13-15 LYON PARK ROAD,
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Annexure C Draft Explanatory note

Explanatory Note

Exhibition of draft Voluntary Planning Agreement

Lot 13 in Deposited Plan 666504, otherwise known as 33 Moree Street, Gordon

Environmental Planning & Assessment Regulation 2000 (clause 25E)

Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 93F of the *Environmental Planning and Assessment Act 1979* (**the Act**).

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (**the Regulations**).

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

Parties

Moree Terraces Pty Ltd as trustee for the Moree Terraces Unit Trust (**the Developer**) made an offer to Ku-ring-gai Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with development application relating to the following land:

- (a) Lot 1 in Deposited Plan 846768, otherwise known as 29 Moree Street, Gordon
- (b) Lot 2 in Deposited Plan 846768, otherwise known as 29A Moree Street, Gordon
- (c) Lot 2 in Deposited Plan 212930, otherwise known as 31 Moree Street, Gordon

Description of subject land

The Planning Agreement applies to the following land:

- (a) Lot 1 in Deposited Plan 846768, otherwise known as 29 Moree Street, Gordon;
- (b) Lot 2 in Deposited Plan 846768, otherwise known as 29A Moree Street, Gordon;
- (c) Lot 2 in Deposited Plan 212930, otherwise known as 31 Moree Street, Gordon;
- (d) Lot 13 in Deposited Plan 666504, otherwise known as 33 Moree Street, Gordon;
- (e) Lot 1 in Deposited Plan 949218, otherwise known as 32 Dumaresq Street, Gordon; and
- (f) The road reserves adjacent to the land described in paragraphs (a) to (e).

Description of the Development Application to which the Planning Agreement applies

The Developer has lodged a Development Application Council reference DA0095/16 with Council seeking development consent to demolish the existing dwellings on 29, 29A and 31 Moree Street, Gordon and to construct 15 townhouses including basement parking. Vehicular access to the Development is proposed to be via the new public road connecting Moree Street and Dumaresq Street. The new public road is to be constructed on land known as 33 Moree Street and 32 Dumaresq Street, Gordon.

Summary of Objectives, Nature and Effect of the Planning Agreement

The objective of the Planning Agreement is to ensure that road works required to be constructed under the Ku-ring-gai Contributions Plan 2010 are carried out for the public benefit.

The Planning Agreement:

- excludes the application of section 94 and section 94A of the Environmental Planning and Assessment Act 1979 to the Development
- does not exclude the application of section 94EF of the Environmental Planning and Assessment Act 1979 to the Development
- requires the Developer to carry out road works on Council's behalf in lieu of payment of monetary development contributions
- requires the parties to engage an independent quantity surveyor who has a fiduciary duty to Council and the Developer who will be responsible for estimating the costs of the road works and approving progress claims for payment
- is to be registered on the title of the Development Land
- imposes restrictions on the Developer transferring the Development Land or part of the Development Land or assigning an interest under the Planning Agreement
- provides a dispute resolution method for resolving a dispute under the agreement
- provides that the agreement is governed by the law of New South Wales

Works

The Planning Agreement requires the Developer is to construct part of the new public road that is proposed to connect Moree Street and Dumaresq Street, Gordon.

Assessment of the Merits of the Planning Agreement

The Planning Agreement:

- provides public infrastructure required to be constructed by Council under Ku-ring-gai Contributions Plan 2010 in connection with the Development
- ensures that vehicular access to the Development is provided from the new road rather than Moree Street
- promotes and co-ordinates the orderly and economic use and development of land

How the Planning Agreement Promotes the Objects of the Act and the public interest

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- to encourage the promotion and co-ordination of the orderly and economic use and development of land,
- to encourage the provision of land for public purposes

- to encourage the provision and co-ordination of community services and facilities

The draft Planning Agreement promotes these objectives by:

- ensuring that road infrastructure required to be constructed by Council under Ku-ring-gai Contributions Plan 2010 is provided in connection with the Development
- ensures that land that was previously in private ownership is made available for use by the public as a public road

The planning agreement provides for the delivery of part of a road link between Moree Street and Dumaresq Street. The delivery of road links in the Gordon Local Centre will improve pedestrian and vehicular circulation in and around the centre. The inclusion of new road links in the suite of strategic planning documents supporting intensive redevelopment in Gordon (including Ku-ring-gai Local Environmental Plan (Local Centres) 2012, Ku-ring-gai Development Control Plan, Ku-ring-gai Public Domain Plan 2010 and Ku-ring-gai Contributions Plan 2010) was supported by the NSW State Government including the Roads and Maritime Services.

- The adjoining development has also orientated its driveway access to the new road rather than Moree Street enabling vehicular crossings to be removed from Moree Street further enhancing vehicular circulation and pedestrian amenity.

The Planning Purposes served by the Planning Agreement

The works will be carried out for the purposes of providing roads infrastructure for the local community.

The inclusion of new road links in the suite of strategic planning documents supporting intensive redevelopment in Gordon including: Ku-ring-gai Local Environmental Plan (Local Centres) 2012, Ku-ring-gai Development Control Plan, Ku-ring-gai Public Domain Plan 2010 and Ku-ring-gai Contributions Plan 2010, was supported by the NSW State Government including the Roads and Maritime Services. The provision of new road links will support improved vehicular and pedestrian circulation in and around the Gordon Local Centre.

The Planning Agreement ensures that the best planning outcome is achieved for the Development as it will allow vehicular access to be provided to the Development from the new road rather than Moree Street.

How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter

The Planning Agreement is consistent with the following guiding principles for Councils contained in section 8A of the *Local Government Act 1993*:

- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way

- Councils should work with others to secure appropriate services for local community needs

The Planning Agreement promotes these guiding principles by:

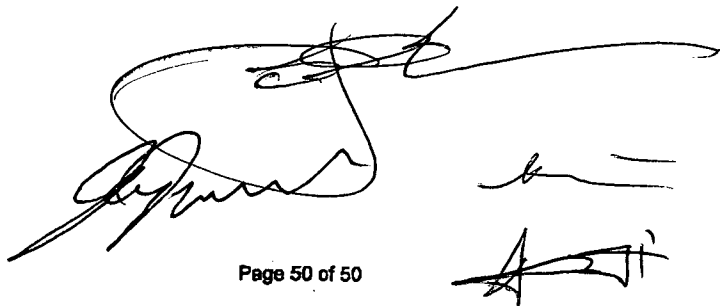
- Ensuring the construction of critical local road infrastructure in a timely fashion
- Providing incentives for a Developer to construct the road in an efficient and cost effective manner and thereby providing value for residents and ratepayers of Ku-ring-gai

Whether the Planning Agreement Conforms with the Council's Capital Works Program

The road is required to be constructed by Council under Ku-ring-gai Contributions Plan 2010. The delivery of works that are incorporated within Ku-ring-gai Council's Contributions Plan, Long Term Financial Plan and Capital Works Programme in association with the concurrent construction of an adjoining development, facilitates the timely delivery of infrastructure funded by development contributions, concurrent with development.

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

The Planning Agreement requires the road to be constructed prior to the issue of an occupation certificate for the Development.

The block contains three handwritten marks. On the left is a large, stylized signature. To its right are two smaller marks: a horizontal line with a short vertical stroke at the end, and below that, a more complex signature or set of initials.