



Hawkesbury City Council

attachment 1
to
item 74

Copy of the exhibited draft
Voluntary Planning Agreement for
Jacaranda Ponds, Glossodia

date of meeting: 26 May 2015

location: council chambers

time: 6:30 p.m.

THIS PLANNING AGREEMENT is made on the day of 2015

BETWEEN:

Parties

HAWKESBURY CITY COUNCIL ("the Council")

AND:

E J COOPER AND SON PTY LTD (ACN 000 269 750) ("the Developer")

Introduction

- A. The Developer is the registered proprietor of part of the Development Land.
- B. This Voluntary Planning Agreement is complementary to Hawkesbury Local Environmental Plan 2012 (Amendment No.5) which rezoned the Development Land to enable the development of the site for approximately 580 residential lots, a range of community-recreation facilities, environmental corridors and a new package plant sewer system on the Development Land.
- C. The Developer proposes to make Development Applications to Council for Development Approval to carry out the Proposed Development.
- D. The Developer has offered to provide the Developer's Contribution and to dedicate the Dedication Land on the terms and conditions contained in this agreement if Development Approval is granted to the Proposed Development.

And it is agreed as follows

1 Definitions and Interpretation

In this agreement the following words and letters have the meanings set out below.

- 1.1 "**Act**" means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended from time to time).
- 1.2 "**Approval**" means any approvals consents, modifications, certificates (of all types) permits, endorsements, licenses, conditions or requirements (and any variation to them) which may be required by Law for the Proposed Development, the Roads Works or the Community Works.
- 1.3 "**Authority**" means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body, commission, department, agency, tribunal or other authority or body.
- 1.4 "**Base CPI**" means the CPI number for the quarter ending immediately before the commencement of this Agreement.
- 1.5 "**Business Day**" means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act and thing is to be performed or a payment is to be made.
- 1.6 "**Cash Contribution**" means, subject to clause 7 and clause 8.2, the maximum amount of \$1,691,800.

- 1.7 **"Community Works"** means, subject to clause 7 and clause 8.2, the construction of, or cash contribution in lieu of works, as determined by the VPA Schedule Projects Selection Committee as outlined in Schedule 3 towards, the community facilities outlined in Schedule 2.
- 1.8 **"Completion Certificate"** has the meaning given in clause 9.5.1.
- 1.9 **"Cost Certificate"** has the meaning given in clause 9.5.2.
- 1.10 **"Costs"** include costs, charges, fees, disbursements and expenses, including those incurred in connection with advisers.
- 1.11 **"CPI"** means the Consumer Price Index released by the Australian Bureau of Statistics for "Sydney - All Groups" or such other consumer price index that might replace it.
- 1.12 **"CPI Review Date"** means each anniversary of the date of this agreement.
- 1.13 **"Current CPI"** means the CPI number for the quarter ending immediately before the relevant CPI Review Date.
- 1.14 **"Dedication Land"** means those parts of the Development Land that the Rezoning Application proposes will be zoned RE1.
- 1.15 **"Defects Liability Period"** means, in respect of each stage of the Proposed Development, the period of 12 months from the date of the Completion Certificate, or the date of satisfactory rectification of a defect under clause 12.1, for the selected Road Works and Community Works carried out in connection with the relevant stage.
- 1.16 **"Developer's Contribution"** has the meaning given in clause 6.2.
- 1.17 **"Development Application"** means an application under Part 4 of the Act for Development Approval.
- 1.18 **"Development Approval"** means a development consent issued under the Act with respect to all or part of the Proposed Development.
- 1.19 **"Development Land"** means the land comprising:
- Lot 2 DP 533402 and Lot 52 DP 1104504, 103 Spinks Road, Glossodia
 - Lot 20 DP 214753, 213 Spinks Road, Glossodia
 - Lot 75 DP 214752, 361 Spinks Road, Glossodia
 - Lot 3 DP 230943, James Street, Glossodia
 - Lot 44 DP 214755, 3 Derby Place, Glossodia
 - Lot 50 DP 751637, 746A Kurmond Road, Freemans Reach
 - Lots 1, 2 and 3 DP 784300, 780A - 780C Kurmond Road, North Richmond
- 1.20 **"Dispute"** in connection with this agreement means an argument, a controversy, a difference, a dispute including of opinion or interpretation.

1.21 "**Event of Insolvency**" means anyone or more of the following occurrences:

- a) the Developer becomes bankrupt, is served with a bankruptcy notice or a bankruptcy petition, has committed an act of bankruptcy or has entered into an arrangement within and under the meaning of the *Bankruptcy Act 1976* (Cth); or
- b) the Developer becomes subject to any order or declaration under the *Mental Health Act 2007* (NSW) or is otherwise incapable of managing his or her own affairs.
- c) if the Developer is a company, if:
 - (i) a resolution is passed for the winding up or liquidation of that company;
 - (ii) a liquidator, provisional liquidator, receiver, receiver manager, controller, controlling manager, administrator, voluntary administrator or official manager is appointed to the Developer or a resolution is passed for the purposes of placing that party in the control of an external administrator;
 - (iii) it suspends payment of its debts or is unable to pay its debts including of money payable under this agreement or is deemed insolvent;
 - (iv) it fails to or is taken as having failed to comply with a statutory demand under the *Corporations Act 2001* (Cth);
 - (v) if anything analogous or having substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction with respect to the Developer.

1.22 "**Gazettal**" means publication in the NSW Government Gazette of the rezoning of the Development Land from the Mixed Agricultural Zone to rural residential/residential housing zones to make the Proposed Development permissible subject to obtaining development consent.

1.23 "**GST**" has the same meaning as the GST Act and other words or expressions used in the GST Act which have a particular defined meaning (including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning.

1.24 "**GST Act**" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).

1.25 "**LPI**" means Land and Property Information.

1.26 "**Law**" means:

- a) the common law and principles of equity;
- b) the requirements of legislation, regulations and by-laws; and
- c) a binding order made by an Authority.

1.27 "**Maximum Community Works Contribution**" means, subject to clause 7 and clause 8, works, and cash contribution in lieu of works, as determined by the VPA Schedule Projects Selection Committee as outlined in Schedule 3, to the value of \$3,432,200,.

1.28 "**Maximum Total Contribution**" means, subject to clause 7 and clause 8, works and cash contributions to the value of \$17,400,000.

- 1.29 "**Maximum Road Works Contribution**" means, subject to clause 7 and clause 8, works, and cash contribution in lieu of works, as determined by the VPA Schedule Projects Selection Committee as outlined in Schedule 3, to the value of \$12,276,000.
- 1.30 "**Mortgage**" means a mortgage charge, lien pledge, title retention, deposit arrangement, caveat or equitable interest.
- 1.31 "**Party**" means a party to this agreement, including their successors and assigns.
- 1.32 "**VPA Schedule Projects Selection Committee**" means the committee established under clause 9.3 which is constituted, and has the role and functions, as generally outlined in Schedule 3.
- 1.33 "**Proposed Development**" means the rezoning and subdivision of the Development Land into approximately 580 residential lots and including community-recreation facilities, environmental corridors and a package plant sewerage system.
- 1.34 "**Residential Allotment**" means a lot comprising part of the Development Land to be created as part of the Proposed Development that is intended to be used for the purposes of a single dwelling house without being further sub-divided.
- 1.35 "**Residential Allotment Contribution**" means subject to clause 7.1.1, clause 8 and Schedule 3, works or cash to the value of \$30,000.
- 1.36 "**Rezoning Application**" means a Planning Proposal to rezone the Development Land in order to allow the Proposed Development to be carried out on that land.
- 1.37 "**Road Works**" means the road upgrades and improvements outlined in Schedule 1, or cash contribution in lieu of works, as determined by the VPA Schedule Projects Selection Committee as outlined in Schedule 3.
- 1.38 "**Subdivision Certificate**" means a certificate issued under section 109C(d) of the Act with respect to the Proposed Development.
- 1.39 "**Transfer**" means to settle, assign, transfer, convey, alienate, otherwise dispose of or part with possession of.

2 Interpretation

In this agreement unless the contrary intention appears:

- 2.1 One gender includes the opposite gender.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A party includes that party's executors, administrators, successors, permitted assigns, permitted legal representatives and substitutes.
- 2.4 Dollars or \$ means Australia dollars and all money payable under this agreement is payable in that currency.
- 2.5 "Including" and similar expressions are not words of limitation.
- 2.6 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

- 2.7 Headings, any table of contents or index are for convenience only and do not affect interpretation of this agreement.
- 2.8 An explanatory note which relates to this agreement does not affect the interpretation of this agreement.
- 2.9 A provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible wholly or partly for the preparation of this agreement or the inclusion of a term or condition in this agreement.
- 2.10 If an act and thing must be done on a specific day which is not a business day, it must be done instead on the next business day.
- 2.11 A person means and includes a person, a body corporate, Authority, firm, body of persons, association, trust, joint venture or other legal commercial entity or undertaking recognized by law whether or not incorporated.

3 Planning Agreement

- 3.1 This agreement
- 3.1.1 applies to the Development Land;
 - 3.1.2 is a planning agreement within the meaning set out in section 93F of the Act;
 - 3.1.3 is to be registered on the title of the Development Land under section 93H of the Act;
 - 3.1.4 is not a confidential document and may be exhibited without restriction by either party.
- 3.2 Subject to clause 3.3, this agreement operates from the date it is executed.
- 3.3 Clause 6 of this agreement will only operate if and when Council grants Development Approval (or Development Approvals as the case may be) to the Proposed Development on the Development Land.

4 Application of s94 and s94A of the Act to the Development

This agreement excludes the application of section 94A and section 94 of the Act to the Proposed Development.

5 Registration of this Agreement

a) Either:

- (i) within 20 Business Days of the date of the Gazettal; or
- (ii) within 120 days from the commencement of this Agreement;

whichever is the latter, the Developer must take all reasonable steps to procure the registration of the Agreement on the relevant folios of the register held by the LPI pertaining to the Development Land.

b) The Council agrees:

- (i) to provide a release and discharge of this Agreement with respect to the Development Land or any lot, including a strata lot, created on subdivision of the Development Land on satisfaction by the Developer of the obligation to provide the Developer's Contribution: and
- (ii) to do all things reasonably necessary, including the execution of any documents, to enable the Developer to remove the notation of this Agreement on the relevant folios of the register, held by the LPI pertaining to the Land.

c) The Council acknowledges that the registration of this Agreement on the relevant folios of the register held by the LPI pertaining to the Development Land, in combination with the security to be provided in respect of the Defects Liability Period under clause 12.2, together constitute suitable means of enforcement of this Agreement for the purposes of s93F(3)(g) under the *Environmental Planning and Assessment Act 1979*.

6 Developer's Contribution

6.1 Subject to the terms of this agreement, including clause 3.3, the Developer agrees to provide the Developer's Contribution.

6.2 The Developer's Contribution comprises:

- 6.2.1 such of the Road Works that are selected by the VPA Schedule Projects Selection Committee, up to the value of the Maximum Road Works Contribution; and
- 6.2.2 such of the Community Works that are selected by the VPA Schedule Projects Selection Committee, up to the value of the Maximum Community Works Contribution;

in accordance with clause 9 and Schedule 3 of this agreement and subject to receiving any necessary Approval for such works; and

6.2.3 the Cash Contribution.

6.3 For the avoidance of doubt, the parties agree and acknowledge that:

- a) the Maximum Road Works Contribution functions as a cap on the Developer's Contribution required in respect of the Road Works, such that no further contribution is required in respect of the Road Works if the Developer's expenditure or contribution to the Council in respect of the Road Works has reached the Maximum Road Works Contribution; and
- b) the Maximum Community Works Contribution functions as a cap on the Developer's Contribution required in respect of the Community Works, such that no further contribution is required in respect of the Community Works if the Developer's expenditure or contribution to the Council in respect of the Community Works has reached the Maximum Community Works Contribution.

7 Calculation of Developer's Contributions

7.1 The Developer and Council acknowledge and agree that:

- 7.1.1 the Maximum Total Contribution has been calculated on the basis that approximately 580 Residential Allotments can be achieved on the Development Land and, subject to clause 8 and Schedule 3, the Developer will contribute cash and works to the maximum value of \$30,000 (as at the commencement of this Agreement and as adjusted in accordance with clause 8) per Residential Allotment (being the Residential Allotment Contribution);
- 7.1.2 if more or less than 580 Residential Allotments can be achieved on the Development Land, the Maximum Total Contribution is to be revised such that, subject to clause 8, the Developer's Contribution will have a maximum value of the Residential Allotment Contribution multiplied by the number of achievable Residential Allotments; and
- 7.1.3 if the Maximum Total Contribution is adjusted under clause 7.1.2, the Maximum Road Works Contribution the Maximum Community Works Contribution and the Cash Contribution must each be revised on a proportionate basis in accordance with the revision to the Maximum Total Contribution.

8 CPI Adjustment of Developer's Contributions

8.1 On each CPI Review Date the Residential Allotment Contribution will be calculated as follows:

$$RAC_C = RAC_B \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where:

RAC_B = The Residential Allotment Contribution at the commencement of this Agreement (i.e. \$30,000)

RAC_C = Adjusted Residential Allotment Contribution at CPI review date.

8.2 On each CPI Review Date the Maximum Road Works Contribution the Maximum Community Works Contribution and the Cash Contribution must be adjusted on a proportionate basis in accordance with the adjustment to the Maximum Total Contribution.

9 Staged Provision of Selected Road Works and Community Works

9.1 The parties acknowledge that it is intended that the Proposed Development will be undertaken in stages.

9.2 For each stage, subject to clauses 6 and 7 and Schedule 3, the Developer must provide:

9.2.1 the Road Works, to the extent that those works are selected by the VPA Schedule Projects Selection Committee in accordance with Schedule 3 and subject to and in accordance with any necessary Approval for such works; and

9.2.2 the Community Works, to the extent that those works are selected by the VPA Schedule Projects Selection Committee in accordance with Schedule 3 and subject to and in accordance with any necessary Approval for such works; but

only if the Maximum Road Works Contribution or Maximum Community Works Contribution, respectively, has not yet been reached.

9.3 Within 20 Business Days of the commencement of this agreement the Council and the Developer are to constitute the VPA Schedule Projects Selection Committee.

9.4 The Council and the Developer are to follow the procedures and steps as outlined in Schedule 3 to this agreement in respect of each application for Development Approval for a particular stage of the Proposed Development that is lodged with Council by the Developer.

9.5 Upon completion of the selected Road Works and Community Works for each stage of the Proposed Development the Developer must deliver to Council:

9.5.1 a certificate from the Developer's project manager certifying that the selected Road Works and Community Works for the particular stage of the Proposed Development have been completed in accordance with any necessary Approval(Completion Certificate); and

9.5.2 a certificate from an experienced and reputable quantity surveyor appointed by the Developer certifying the aggregate value of the selected Road Works and Community Works completed for the particular stage of the Proposed Development (Cost Certificate), including all reasonable design, consultancy and project management costs, which are not to include the Developer's internal project management and internal costs incurred in delivering the selected Road Works and Community Works.

9.6 The Developer must deliver to Council a Completion Certificate and a Cost Certificate for the selected Road Works and Community Works carried out in connection with each stage of the Proposed Development prior to the issue of a Subdivision Certificate for the relevant stage.

9.7 The parties agree that unless the Council disputes a Costs Certificate by notice in writing within 20 Business Days of receipt of the Costs Certificate, the aggregate value of the works in the Costs Certificate will comprise the relevant expenditure for those works in calculating whether the Maximum Road Works Contribution and/or Maximum Community Works Contribution has been reached.

- 9.8 For each stage, the Developer, if it wishes, may undertake any of the Road Works or Community Works that are selected by the VPA Schedule Projects Selection Committee to be carried out in connection with a stage of the Proposed Development other than the current stage subject to any necessary Approvals for that work being obtained. If the Developer completes those Road Works or Community Works, the Developer will be released from any obligation to complete those same works in connection with the stage of the Proposed Development in which the relevant Road Works or Community Works have been selected..
- 9.9 Council acknowledges and agrees that:
- 9.9.1 subject to clause 9.9.2, the Road Works and Community Works are not listed in order of priority; and
 - 9.9.2 subject to Schedule 3, as the Maximum Road Works Contribution and Maximum Community Works Contribution function as caps on the Road Works and Community Works portions of the Developer's Contribution respectively, any items of the Road Works and Community Works, or parts thereof, will be built only if there are sufficient funds available from the Maximum Road Works Contribution and Maximum Community Works Contribution respectively; and
 - 9.9.3 for the purpose of the Maximum Road Works Contribution or Maximum Community Works Contribution, the costs expended by the Developer in respect of reasonable design, consultancy and project management , excluding the Developer's internal project management and internal costs incurred, for Road Works and Community Works are included in the calculation of the aggregate value of those works.
- 9.10 Following completion of the Road Works or Community Works selected by the VPA Schedule Projects Selection Committee, in accordance with any necessary Approvals, the Developer must take all steps and do all things reasonably necessary to procure the Completion Certificate for the works.

10 Payment of Cash Contribution

- 10.1 The Developer must pay the Cash Contribution to Council as a contribution to the Community Facilities and Open Space works nominated as cash contributions in Schedule 2.
- 10.2 The Cash Contribution must be paid to Council, prior to the issue of the Subdivision Certificate, on a 'pro-rata' basis. The pro-rata payment calculation is to be based on the number of Residential Allotments included in the Subdivision Certificate for the relevant stage.

11 Dedication Land

- 11.1 In addition to the Developer's Contribution, for each stage of the Proposed Development, the Developer must take all steps necessary to register at the LPI the transfer of that part of the Dedication Land that is zoned RE1 and is located within the relevant stage of the Proposed Development to the Council in accordance with the timing specified in the relevant stage's Development Approval.
- 11.2 The parties acknowledge and agree that the value of the Dedication Land (as at the date of this agreement) is approximately \$5,000,000-\$6,000,000.

- 11.3 The Developer must effect the transfer of the Dedication Land that is zoned RE1 for each stage by:
- 11.3.1 either:
- a) delivering the certificates of title for the relevant part of the Dedication Land to Council; or
 - b) producing the certificates of title for the relevant part of the Dedication Land with LPI; and
- 11.3.2 delivering to Council either:
- a) a form of transfer in respect of the relevant portion of the Dedication Land executed by the Developer in registrable form transferring the relevant part of the Dedication Land for \$1.00; or
 - b) a deposited plan which indicates that the relevant part of the Dedication Land is intended to be dedicated to the Council;
- 11.3.3 assisting with any enquiries or requisitions made by the LPI; and
- 11.3.4 taking any other necessary action to give effect to the transfer of the title of the relevant part of the Dedication Land to the Council.
- 11.3.5 For the avoidance of doubt, the parties acknowledge and agree that other than in the circumstances where the Dedication Land is transferred to the Council for \$1.00 in accordance with clause 11.3.2(i), the Dedication Land is to be transferred to Council at no cost to Council.
- 11.4 Council agrees that it will accept the Dedication Land (or parts thereof) free of all encumbrances and interests other than any easements or interests required by any Authority or utility service provider currently noted on the title of the Dedication Land or required under any Development Approval, and will take all action necessary on its part to give effect to the transfer of the title of the relevant part of the Dedication Land to Council.

12 Defects Liability

- 12.1 If Council notifies the Developer within the Defects Liability Period of a defect in any of the selected Road Works or Community Works that the Developer has carried out, the Developer must remedy that defect to the reasonable satisfaction of Council, within a reasonable period (having regard to the nature of the defect).
- 12.2 From the date a Completion Certificate is issued, and accepted by Council in writing, in respect of relevant works, until the expiration of the Defects Liability Period, the Developer must provide the Council with security in the form of a bank guarantee to a maximum amount of 20% of the value of those works as set out in the relevant Cost Certificate.
- 12.3 On and from the expiry of the Defects Liability Period, and subject to the Developer resolving all Defects that are notified to it during the Defects Liability Period, Council releases the Developer from, and agrees that the Developer is not liable for, any liability or loss arising from or in connection with the performance of the Road Works and the Community Works.

13 G.S.T

- 13.1 Unless otherwise expressly stated all money or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- 13.2 Despite Clause 13.1, to the extent that the Commissioner of Taxation, a Court or Tribunal determines that any supply made under or in connection with this agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided and a valid Tax invoice is to be delivered to the recipient of the taxable supply and this clause will not merge on completion or termination of the agreement.

14 Dispute Resolution

14.1 Reference to Dispute

If a dispute arises between the Parties in relation to this Agreement, then the Parties must resolve that dispute in accordance with this clause.

14.2 Notice of Dispute

The Party wishing to commence the dispute resolution processes must notify the other Party in writing of:

- a) the intent to invoke this clause;
- b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- c) the outcomes which the notifying Party wishes to achieve (if practicable).

14.3 Representatives of Parties to Meet

- a) The representatives of the Parties must promptly (and in any event within 15 Business Days of the written notice provided in accordance with **clause 14.2**) 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 14.5** or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); and
 - (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.

14.4 No party may constrain

If:

- a) at least one meeting has been held in accordance with **clause 14.3**; and
- b) the Parties have been unable to reach an outcome identified in clause **14.3(b)(i) to (iii)**; and
- c) any of the Parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under **clause 14.3**, then, that Party may, by 15 Business Days written notice to the other Party, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause does not of itself amount to a breach of this Agreement.

14.5 Expert Determination

- a) If a Dispute arises between Parties to this Agreement, the Parties may agree to refer the Dispute to expert determination in Sydney, New South Wales administered by the Australian Commercial Dispute Centre (**ACDC**).
- b) The expert determination will be conducted in accordance with the ACDC Rules for Expert Determination (**Rules**) in force at the date of this Agreement. The Rules set out the procedures to be adopted, the process of selection of the expert and the costs involved, including the Parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- c) The expert determination will be final and binding on the Parties.
- d) This clause 14.5 survives termination of this Agreement.

14.6 Urgent Relief

At any time, a Party may, without inconsistency with anything in this clause 14, seek urgent interlocutory relief in respect of a dispute under this Agreement from any Court having jurisdiction.

15 Agreement of the Developer

15.1 The Developer warrants that it:

- 15.1.1 is the legal and beneficial owner of part of the Development Land;
- 15.1.2 will take all practicable steps and use best endeavours and do all acts and things required to procure:
 - 15.1.2.1 the execution of any documents necessary to effect registration of this agreement with LPI; and
 - 15.1.2.2 the production of the relevant certificates of title for the Development Land and the registration of this agreement at LPI on the title of the Development Land within twenty (20) Business Days of the date of the commencement of this agreement.

- 15.2 Council shall not be required to seal any sub-division plan made pursuant to the Gazettal unless and until this agreement has been registered at LPI on the title of the Development Land.

16 Compulsory Acquisition

- a) If the Developer and/or the Land Owner do not procure the transfer of all or part of the Dedication Land that is zoned RE1, in accordance with clause 11, the Developer and Land Owner agree that the Council may compulsorily acquire all or part of the Dedication Land that is zoned RE1 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- b) The Land Owner and the Council agree that:
 - (i) **clause 16(a)** is an agreement between the Land Owner and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) the Land Owner and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

17 Enforcement by any party

- a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any Party in any court of competent jurisdiction.
- b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in a court of competent jurisdiction to enforce any aspect of this Agreement or any matter to which this Agreement relates, subject to compliance with clause 14; and
 - (ii) the Council from exercising any function under the Act or any other Act or law.

18 Assignment

- 18.1 The Developer must not Transfer its interest in the whole or any part of the Development Land (other than a Residential Allotment located in a stage for which the relevant Developer's Contribution has been provided to Council) without the written consent of the Council, such consent not to be unreasonably withheld or delayed.

18.1.1 Approval is reasonably withheld if the proposed assignee, or person is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of the Developer and the rights of the Council under this Agreement.

18.1.2 Any request to the Council from the Developer or Land Owner to assign, encumber or deal with any right, obligation or interest under this Agreement to another party must include, but not be limited to, financial details and references relating to that other party. The Council must also be permitted to make reasonable enquiries into these matters of that party.

18.2 The transferee must execute a deed in a form and with conditions acceptable to Council acting reasonably, including;

18.2.1 agreement to comply with this agreement as if the transferee was the Developer with respect to that part of the Development Land transferred, including in relation to obligations which arose before the Transfer; and

18.2.2 acknowledgement and agreement that the rights of the Council under this agreement are not diminished in any way.

19 Release

When the Developer has satisfied all of the obligations imposed on it under this agreement in respect of that part of the Development Land for which a Subdivision Certificate has been issued and for which the Developer's Contribution has been delivered then the Council must promptly at the request and at the reasonable expense of the Developer do all acts and things necessary to remove this agreement from the title of that part of the Development Land.

20 Termination

20.1 This agreement may be terminated by the Council by written notice to the Developer if:

20.1.1 the Developer commits a breach of any of the terms and conditions of this agreement and fails to remedy such a breach within fourteen (14) days of receipt of a written notice (which specifies the breach and requires the Developer to remedy the breach) whereupon the date of such termination will be effective on the 15th day from receipt of such written notice; or

20.1.2 an Event of Insolvency occurs.

21 Review Procedures

The parties may agree to review this agreement in circumstances and in a manner determined by the parties. Any amendment, modification, supplement or replacement document which results from a review must be in writing, signed by the parties and registered at LPI under Section 93H of the Act.

22 Notices

22.1 Any notice, request for information to be made or information to be given under this agreement must, in order to be valid, be in writing and must be given to or served upon a party:

22.1.1 by being left at that party's address or such other address as may be notified to the first party giving or serving any such document which will be deemed served when so left; or

22.1.2 by being posted in a pre-paid ordinary, certified or registered letter addressed to that party at such address which will be deemed duly served three (3) Business Days after the posting of the same; or

22.1.3 by being dispatched by facsimile transmission to that party and which will be deemed served at the time recorded on the facsimile machine of the party serving such document of an error free transmission to the correct facsimile number.

22.2 For the purposes of this clause the parties' contact details for service are:

The Developer

Address:

EJ Cooper and Son
642 Great Western Highway
PENDLE HILL NSW 2145 PO Box 21

Facsimile: 9636 9636

Council

Address:

Hawkesbury City Council
Attention: General Manager
366 George Street,
WINDSOR NSW 2571

Telephone: 4560 4444

Facsimile: 4587 7740

23 Proper Law and Jurisdiction

This agreement is made and will be construed and governed in accordance with the Law of the State of NSW South Wales. Each party submits to the exclusive jurisdiction of each and every Court or Tribunal of the said State having jurisdiction to hear the matter submitted to it.

24 Severance

24.1 If it is held by any Court or Tribunal that:

24.1.1 any part or condition of this agreement is void, invalid, illegal or otherwise unenforceable, or

24.1.2 this agreement would be void, voidable, invalid, illegal or otherwise unenforceable unless any part or condition of this agreement was severed then that part or provision which is severed from this agreement will not affect the continued operation of the remainder of this agreement which has not been severed nor the validity or enforceability of that part or condition, provided that the fundamental purpose of or the intentions expressed by the parties under this agreement is not substantially altered.

25 Waiver

25.1 No failure on the part of a party to exercise and no delay in exercising and no cause of dealing with respect to, any condition and the rights, powers or remedies of that party under this agreement will impair any of those rights, powers or remedies, nor constitute a waiver of any of those rights, powers or remedies.

25.2 No single or partial exercise by a party of any condition and rights, powers or remedies under this agreement will preclude any other or further exercise of those or exercise of any other conditions rights or remedies.

- 25.3 Any condition and the rights, powers or remedies under or relating to this agreement are cumulative and will not exclude any other rights, powers or remedies under or relating to this agreement at Law.
- 25.4 No waiver of any of the conditions of this agreement will be effective unless in writing signed by the party against whom such waiver is sought to be enforced.
- 25.5 Any waiver of the conditions of this agreement will be effective only in the specific instance and for the specific purpose given and the waiver will not be deemed a waiver of such obligations or of any subsequent breach of the same or some other obligation.

26 Approvals and Consent

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

27 Assignment and Dealings

None of the parties to this agreement may assign or otherwise deal with their rights, powers, obligations and remedies under this agreement or allow any interest in them to arise or be varied, save and except as provided in clause 18.

28 Entire Agreement

This agreement contains all the terms and conditions to which the parties have agreed on in relation to the matters which they have dealt with. No party can rely on an earlier document, anything said or done by another party, or omitted to be relied upon, said or done except as permitted by Law.

29 No Fetter

- 29.1 Nothing in the agreement is to be construed as requiring the Council to do anything
- 29.1.1 that would cause it to be in breach of any of its obligations at Law;
 - 29.1.2 limiting or fettering in any way the exercise of any statutory discretion or duty; at Law;
or
 - 29.1.3 imposing any obligations to grant an Approval.

30 Representatives and Warranties

Each party agrees that it has the power and authority to enter into this agreement and comply with its obligations and that entry into this agreement will not result in a breach of Law.

31 Costs

Each party must bear and pay its own costs of and incidental to the preparation and execution of this agreement.

Executed as an agreement on

2015

Execution by Council

Signed by Hawkesbury City Council by its
authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness

Authorised Officer's Name:
Signing on behalf of: Hawkesbury City Council
Power of Attorney Book:
No: _____

Address of witness

Execution by E J Cooper and Son Pty Ltd

Signed by E J Cooper and Son Pty Ltd by:

Signature of director/company secretary

Signature of director

Print name

Print name

Schedule 1 - Road Works

VPA ITEM	Location	Proposed Works
1	Spinks Road - from Mitchell Drive to Creek Ridge Road.	<p>Rehabilitate existing 6.0m wide pavement including road widening to provide a 9m wide sealed surface.</p> <p>Works comprise:</p> <ul style="list-style-type: none"> Excavate existing shoulder material to a depth of approximately 250mm subject to Geotechnical Report. Remove unsuitable subgrade material as determined by Council's representative within existing pavement and replace with suitable road base. Cement stabilise sub-grade over a minimum width of 9.2m to the requirements of the geotechnical report. Place and compact suitable base course material to a depth as determined by geotechnical report. Provide a 9.0m wide two coat seal including appropriate line marking. <p>Notes</p> <ul style="list-style-type: none"> Relocate public utilities where necessary. Adjust adjoining driveways including drainage facilities where necessary.
2	Spinks Road – from Boomerang Drive to Mitchell Drive	Rehabilitate existing pavement of variable width. Works comprise in situ stabilisation in accordance with a geotechnical report.
3	Intersection of Creek Ridge Road and Spinks Road	Reconstruct the entire bend of variable width with full depth Asphalt. Minimum depth 250mm.
4	Creek Ridge Road – from Spinks Road to Kurmond Road	<p>Rehabilitate existing pavement including road widening to provide a 9m wide sealed surface.</p> <p>Works comprise:</p> <ul style="list-style-type: none"> Excavate existing shoulder material to a depth of approximately 250mm subject to Geotechnical Report. Remove unsuitable subgrade material as determined by Council's representative within existing pavement and replace with suitable road base. Cement stabilise sub-grade over a minimum width of 9.2m to the requirements of the geotechnical report. Place and compact suitable base course material to a depth as determined by geotechnical report. Provide a 9.0m wide two coat seal including appropriate line marking. <p>Notes</p> <ul style="list-style-type: none"> Relocate public utilities where necessary. Adjust adjoining driveways including drainage facilities where necessary.

VPA ITEM	Location	Proposed Works
5	Currency Creek Culvert – Spinks Road north of Kurmond Road.	<p>Extend existing culvert where necessary to provide for a 9m wide sealed pavement.</p> <p>Scope of works will be based on the following:</p> <ul style="list-style-type: none"> • Submit a detailed plan showing the existing and proposed road alignment over the culvert. • Details should also include culvert position/dimensions including guard rail and supporting edge beam.
6	Spinks Road – from Glossodia Bush Fire shed to Kurmond Road	<p>Rehabilitate existing pavement including road widening to provide a 9m wide sealed surface.</p> <p>Works comprise:</p> <ul style="list-style-type: none"> • Excavate existing shoulder material to a depth of approximately 250mm subject to Geotechnical Report. • Remove unsuitable subgrade material as determined by Council's representative within existing pavement and replace with suitable road base. • Cement stabilise sub-grade over a minimum width of 9.2m to the requirements of the geotechnical report. • Place and compact suitable base course material to a depth as determined by geotechnical report. • Provide a 9.0m wide two coat seal including appropriate line marking. <p>Notes</p> <ul style="list-style-type: none"> • Relocate public utilities where necessary. • Adjust adjoining driveways including drainage facilities where necessary.
7	Intersection of Spinks Road and Kurmond Road	Construct a dual lane roundabout including all road approaches. All trafficable areas to be a minimum 250mm full depth asphalt. Relocate public utilities where necessary.
8	Intersection of Wire Lane and Kurmond Road	Construct a dual lane roundabout including all road approaches. All trafficable areas to be a minimum 250mm full depth asphalt. Relocate public utilities where necessary.

VPA ITEM	Location	Proposed Works
9	Gorricks Lane and Freemans Reach Road	<p>Rehabilitate existing pavement including road widening to provide a variable width sealed surface based on the width of the existing road reserve.</p> <p>Works comprise:</p> <ul style="list-style-type: none"> • Excavate existing shoulder material to a depth of approximately 250mm subject to Geotechnical Report. • Remove unsuitable subgrade material as determined by Council's representative within existing pavement and replace with suitable road base. • Cement stabilise sub-grade in accordance with the geotechnical report. • Place and compact suitable base course material to a depth as determined by geotechnical report. • Provide a 200mm full depth asphalt with a minimum width of 6.2m. <p>Notes</p> <ul style="list-style-type: none"> • Relocate public utilities where necessary. • Adjust adjoining driveways including drainage facilities where necessary.
10	Wire Lane from Kurmond Road to Terrace Road	<p>Rehabilitate existing pavement including road widening to provide a 9m wide sealed surface.</p> <p>Works comprise:</p> <ul style="list-style-type: none"> • Excavate existing shoulder material to a depth of approximately 250mm subject to Geotechnical Report. • Remove unsuitable subgrade material as determined by Council's representative within existing pavement and replace with suitable road base. • Cement stabilise sub-grade over a minimum width of 9.2m to the requirements of the geotechnical report. • Place and compact suitable base course material to a depth as determined by geotechnical report. • Provide a 9.0m wide two coat seal including appropriate line marking. <p>Notes</p> <ul style="list-style-type: none"> • Relocate public utilities where necessary. • Adjust adjoining driveways including drainage facilities where necessary.

Schedule 2 - Community Works

COMMUNITY FACILITES - JACARANDA PONDS VPA				
		Quantity		
Pedestrian Crossing - Spinks Road		1	5,490	WORKS IN KIND (Timing of Works determined in Development Consents)
Bus Stop - Spinks Road		2	14,288	
2.5m wide shared footpath (Derby Place to Shopping Centre - 800m)		800	280,000	
Refurbishment and Extensions to Glossodia Community Centre:				
Additional Office				CASH CONTRIBUTION
Extension to BandA School Care (min 12 places X 3.25m ²)				
Additional Storage				
New Playground				
Level playground and replace synthetic surface (200m ² x \$103m ²)				
Shade Structure (1000m ² x \$224m ²)				
Refurbish Kitchen (to commercial standard)				
Upgrade and Extend Amenities (to include shower)				
Upgrade Car Park @ \$132m ²				
			453,950	
Refurbishment and Extensions to Pre-School				
Additional Office and Staff Amenities				CASH CONTRIBUTION
Extension to Long Day Care Centre (21 places X 3.25m ²)				
Extend Nappy Change Room				
Refurbish Kitchen (to commercial standard)				
Refurbish and Upgrade Children's Amenities				
			393,025	
Total Community Facilities			1,146,780	

Open Space/Community Facilities - Works Schedule				
Lakeside Park	Costs			
Shelter x 2 - Inclusive of picnic facilities	\$60,000			WORKS IN KIND (Works to be completed prior to the issue of the Subdivision Certificate for the 125th Lot)
Pathway around lake (excluding path over dam wall which is not part of the VPA)	\$180,000			
Small Playground - (to meet the need of 5-12yr olds) and junior skate surround to playspace to connect with main pathway and other amenities. Include Nature Base Play elements to site.	\$50,000			
Bins x5 - 120ltr Wheelie Bin Enclosures	\$15,000			
Bicycle rack x1	\$2,000			
Fringing vegetation establishment (1000 plants purchase and install and Establishment)	\$15,000			
Total	\$322,000			

Village Green	Costs			
Playground (District playground to meet the needs of 0-5 and 5-12 yr olds, inclusive play space for 12 - 15 yrs old) and junior skate surround to playspace to connect with main pathway and other amenities.	\$250,000			WORKS IN KIND (Works to be completed prior to the issue of the 401st Lot)
Shelter x 4 - Inclusive of picnic facilities	\$100,000			
BBQ x 2 - each unit to consist of a double plate BBQ's	40,000			
Multi purpose court (similar to Bligh Park - may need to expand) the Provision of skate pad facilities, agility activities and the ball court area to allow for multiple application (Basketball, Fustal, Netball)	\$250,000			
Passive Area (fencing, bag holders, water)	\$100,000			
Irrigation to Village green - irrigation for both the grassed areas and gardens to be integrated to CloudMaster system for ease of operation	\$100,000			
Water Refill Station	\$10,000			
Bins x6 - 120ltr Wheelie Bin Enclosures	\$20,000			
Toilet Block - inclusive of separate Male / Female and disable	\$100,000			
Bicycle rack x1	\$2,000			

Village Green	Costs			
Fringing vegetation establishment (1000 plants purchase and install and Establishment)	\$15,000			
General Seating through area x6 -park seating to be aligned with pathway network and playgrounds	\$20,000			
Pathways	\$150,000			
Lighting - LED lighting technology to be used to reduce long term cost and Maintenance. Pending on location use of independent solar technology may be appropriate	\$70,000			
Total	\$1,227,000			

Lookout	Costs			
Seating	\$15,000			WORKS IN KIND (Works to be completed prior to the issue of the Subdivision Certificate for the 176th Lot)
Pathways to be determined	\$40,000			
Bins x2	\$5,000			
Total	\$60,000			

River Corridor	Costs			
Vegetation Management/Establishment (secondary/tertiary)- Cumberland Plain Woodland (CPW) + River Flat Eucalypt Forest (RFEF) + Aquatic = 52ha. (\$52,000 p.a. for 10 years @ \$1000/ha if in good condition when given to Council)	\$520,000			WORKS IN KIND (Works to be completed prior to the issue of the 201st Lot)
Total	\$520,000			

Redevelopment of Woodbury Reserve	Costs			
Shade structure to playground	\$22,400			CASH CONTRIBUTION
Fitness Trail	\$60,000			
Dog Off Leash area	\$20,000			
BMX Track	\$70,000			
Park Shelters x 3	\$90,000			

Redevelopment of Woodbury Reserve	Costs			
Car Park Upgrade (900m ²)	\$118,800			
Pathways (600m)	\$134,400			
Upgrade playing fields (plus floodlighting)	\$188,200			
Undercover spectator seating	\$20,000			
Shared Pathway from derby place to reserve (260m)	\$91,000			
Additional security lighting	\$30,000			
Total	\$844,800			

Schedule 3 - Guidelines for the VPA Schedule Projects Selection Committee

Constitution of the Committee

The VPA Schedule Projects Selection Committee is to be constituted by two staff representatives of the Council (that are authorised by the Council to make decisions on its behalf in respect of the Proposed Development and as nominated by the Council) and two representatives of the Developer (as nominated by the Developer).

In the event of an equality of votes, if the parties are unable to reach agreement, clause 14 applies.

Role of the Committee

The VPA Schedule Projects Selection Committee will be responsible for selecting, subject to available development contribution funds, which of the Road Works or Community Works will be carried out in connection with each particular stage of the Proposed Development.

Meetings and Minutes

The VPA Schedule Projects Selection Committee is to meet approximately 40 Business Days prior to the lodgement by the Developer of an application for Development Approval for a particular stage of the Proposed Development.

The VPA Schedule Projects Selection Committee is to record and provide to the Developer and the Council minutes of each meeting it holds within 5 Business Days of each meeting being held.

Process to be followed by the VPA Schedule Projects Selection Committee, the Developer and the Council in relation to the Road Works and the Community Works

Step 1: For each application for Development Approval for a particular stage of the Proposed Development the VPA Schedule Projects Selection Committee is to convene a meeting for the purpose of considering the funds available (or that are estimated to be available) from the relevant Development Approval (if granted) and then, subject to those available funds, select which of the Road Works and Community Works will be carried out in connection with the particular stage of the Proposed Development.

Step 2: Following the VPA Schedule Projects Selection Committee meeting in relation to a particular proposed application for Development Approval, the Developer is to submit to the Council a detailed scope, cost forecast and proposed contingency amounts and concept design for the Road Works and Community Works selected by the VPA Schedule Projects Selection Committee at the meeting referred to in Step 1 above. If the cost forecast and proposed contingency amounts indicate that the Maximum Road Works Contribution and/or the Maximum Community Works Contribution would be exceeded if the selected Road Works and/or Community Works are carried out, then:

- a) despite any other provision in this agreement, the Developer is not obliged to carry out the selected Road Works and/or Community Works (as the case may be) that would give rise to any such exceedance; and

- b) unless otherwise agreed by the Developer and the Council in writing, the Developer is to provide the balance of funds for the contribution for Road Works and/or Community Works under this agreement up to the value of the Maximum Road Works Contribution and/or Maximum Community Works Contribution (as the case may be) to the Council in the form of a monetary payment in lieu of carrying out the selected Road Works and/or Community Works (as the case may be).

Step 3: After the relevant Development Approval and all other necessary Approvals have been granted, the Developer is to prepare construction plans for the selected Road Works and Community Works.

Step 4: The Developer is to tender the construction works for the selected Road Works and Community Works and provide a copy of that tender to Council. Following the tender process the Developer is to provide a tender recommendation to the Council for agreement prior to commencement of works.

Step 5: The Developer is to arrange and manage the carrying out of the selected Road Works and Community Works subject to and in accordance with any necessary Approvals and is to report to the Council on a quarterly or agreed milestone, basis on the progress of the works.

Step 6: If after commencing the selected Road Works and/or Community Works for a particular stage of the Proposed Development it becomes apparent to the Developer that the Maximum Road Works Contribution and/or the Maximum Community Works Contribution is likely to be exceeded if the works are completed, the Developer must notify the Council in writing within a reasonable period of becoming aware of the likely exceedance, but no more than 10 Business Days. Unless otherwise agreed by the Developer and the Council in writing, the Developer and the Council must equally share the cost of any exceedance of delivering the selected Road Works above the Maximum Road Works Contribution and of delivering the selected Community Works above the Maximum Community Works Contribution to enable the timely completion of such works by the Developer, provided always that the amount of the cost exceedance is no greater than 25% of the estimated cost of such Road Works and/or Community Works at the time the works were selected by the VPA Schedule Projects Selection Committee. If the amount of the cost exceedance is greater than 25% of the estimated cost of such works (as set out in the information that is submitted by the Developer to the Council in accordance with Step 2 above), then the Council and the Developer will meet in good faith and seek to reach agreement as to whether the relevant Road Works or Community Works should continue to be provided (and if so, by whom) and the shared costs arrangement for provision of such works, or whether an alternative contribution arrangement should be entered into in lieu of completing such works. If there is any dispute in relation to this step, including the costs sharing or works provision arrangements set out here, then the Developer and the Council must follow the dispute resolution procedures outlined in clause 14 of this agreement.

Step 7: The Developer is to provide the Council with a Completion Certificate and a Cost Certificate for the relevant selected Road Works and Community Works in accordance with clause 9.5 of this agreement.