



## **Voluntary Planning Agreement**

between

Sutherland Shire Council ABN 52 018 204 808

and

Breen Resources Pty Ltd ACN 615 045 497

330 Captain Cook Drive, Kurnell NSW 2231

Sutherland Shire Council  
Administration Centre  
4-20 Eton Street  
Sutherland NSW 2232  
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Ref: CR20-400100  
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This Deed is made this 17<sup>th</sup> day of February 2023

## PARTIES

**Sutherland Shire Council** a body politic under section 220 of the Local Government Act 1993, of 4-20 Eton Street, Sutherland in the State of New South Wales (**Council**)

and

**Breen Resources Pty Ltd** of Level 9, 92 Pitt Street, Sydney in the State of New South Wales (**Developer**)

## BACKGROUND

- A. Council is a body politic pursuant to section 220 of the *Local Government Act 1993*.
- B. The Developer is a proprietary company and is the occupier of the Land, which is currently used for the purposes of the Existing Breen Resources Facility, subject to the 1990 Consent.
- C. On 8 July 2021, the Developer lodged the EIS in support of State Significant Development Application No. SSD-10412, being the Development Application, with the Department. The Development Application seeks consent for the construction and operation of the New Resource Recovery Facility on Lot 5, and land restoration and contouring on the Land, including the delivery of the Embellished Marang Parklands.
- D. The Minister for Planning and Public Spaces or the Independent Planning Commission will be the consent authority for the Development Application.
- E. The Developer has offered to enter into this Agreement in connection with the Development Application.
- F. A portion of the land to which the Development Application relates, being Lots 1122 and 1123 and Lot 6, is the subject of an existing voluntary planning agreement, being the 2010 VPA, which was entered into by Breen Property Pty Ltd, Council and Australand Kurnell Pty Ltd (now Frasers Property) on 3 June 2010.
- G. It is intended by the Developer and Council that this Agreement will provide for the delivery of additional features to the works under the 2010 VPA.

## OPERATIVE PROVISIONS

### 1. DEFINITIONS AND INTERPRETATION

The following definitions apply unless the context otherwise requires:

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

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<b>Agreement</b>	means this agreement and includes any schedules, annexures and appendices to this Agreement.
<b>Annual Levy Reconciliation</b>	means the annual reconciliation of the Local Roads and Parklands Maintenance Levy as described in clause 8.1.
<b>Annual Payment</b>	has the meaning given to it in clause 7.1.
<b>Assign</b>	as the context requires refers to any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
<b>Authority</b>	means (as appropriate) any: <ul style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department or agency of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ul>
<b>Breen Compaction Works</b>	has the meaning given to it in the 2010 VPA.
<b>Breen Works</b>	has the meaning given to it in the 2010 VPA.
<b>Breen EPL Surrender Requirements</b>	means any conditions of surrender issued by the EPA in relation to the surrender of Environment Protection Licence 4608 (as amended) and Environment Protection Licence 20697 (as amended) as it relates to land below Top of Cap.
<b>Business Day</b>	means a day other than a Saturday, Sunday, public holiday or bank holiday.
<b>Capped</b>	means the completion of capping and earthworks on the Transferred Land to the Top of Cap.
<b>Commercial Use</b>	means landfilling below the cap and waste management operations.
<b>Construction Program</b>	means the Construction Program at Schedule 4, which is to be updated by the Developer and issued to Council within 30 Business Days at each of the following milestones: <ul style="list-style-type: none"> <li>1. Commencement of this Agreement;</li> <li>2. The granting of the first Construction Certificate for the Embellished Marang Parklands; and</li> <li>3. Commencement of the construction of each of the following components of the Development: <ul style="list-style-type: none"> <li>a. New Resource Recovery Facility; and</li> <li>b. Embellished Marang Parklands.</li> </ul> </li> </ul>
<b>Construction Related Delays</b>	means the following delays, which are to be applied generally in accordance with the Construction Program: <ul style="list-style-type: none"> <li>a. inclement weather or the effects of inclement weather;</li> <li>b. industrial disputes;</li> <li>c. force majeure, including a Force Majeure Event;</li> <li>d. approval or regulatory delays (including but not limited to DPIE, Council, Sydney Water or EPA);</li> </ul>

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	<ul style="list-style-type: none"> <li>e. delays as a result of a request, action or inaction from Australand Kurnell Pty Ltd (or its successors) under the 2010 VPA;</li> <li>f. delays as a result of a request from Council under the 2010 VPA that goes beyond the requirements of the 2010 VPA or the Agreement; and</li> <li>g. utility delays.</li> </ul>
	Notwithstanding the matters set out above, and with the exception of paragraph (a) and (c) above, a Construction Related Delay does not include a delay which is the result of the Developer's unreasonable inaction or negligence.
<b>COVID-19</b>	means the novel coronavirus disease (COVID-19) declared as a pandemic by the World Health Organisation on 11 March 2020.
<b>Claim</b>	means a claim against any person any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
<b>CPI</b>	means the Consumer Price Index (All Groups) for Sydney published from time to time by the Australian Bureau of Statistics.
<b>Defects Liability Period</b>	is 24 months commencing on the date of issue of the Practical Completion Certificate by the Principal Certifying Authority in relation to the Embellished Marang Parkland Works.
<b>Department</b>	means the Department of Planning, Industry and Environment of NSW.
<b>Development</b>	means the entire development contemplated by the Development Application.
<b>Development Application</b>	means State Significant Development Application SSD-10412.
<b>Development Consent</b>	means the development consent issued under the Act with respect to the Development Application.
<b>Embellished Marang Parklands</b>	means the parklands to be delivered on the Transferred Land, generally as depicted in the plan included in Schedule 3.
<b>Embellished Marang Parkland Works</b>	Means the works as described in Schedule 3.
<b>EIS</b>	means the Environmental Impact Statement lodged with the Development Application.
<b>EPA</b>	means the NSW Environment Protection Authority.
<b>Existing Development Consents</b>	<p>means the following development consents:</p> <ul style="list-style-type: none"> <li>a. DA 11-0941;</li> <li>b. DA 12-0083;</li> <li>c. DA 12-1439; and</li> <li>d. DA 12-1066.</li> </ul>

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<b>Force Majeure Event</b>	has the meaning given to it by clause 22 of this Agreement.
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the goods and services tax.
<b>Land</b>	means the land set out in Schedule 2.
<b>Law</b>	means all legislation, regulations, by-laws, common law and other binding order made by any Authority.
<b>Lot 1122</b>	means the land described in Lot 1122 in Deposited Plan 794114.
<b>Lot 1123</b>	means the land described in Lot 1123 in Deposited Plan 794114.
<b>Lot 5</b>	means the land described in Lot 5 in Deposited Plan 1158627.
<b>Lot 6</b>	means the land described in Lot 6 in Deposited Plan 1158627.
<b>Local Roads and Parkland Maintenance Levy</b>	means the payment to be made by the Developer in accordance with clause 8 for the maintenance, repair and upkeep of local roads used as access routes within 5 kilometres from the western edge of the Site and the maintenance and environmental obligations associated with the Embellished Marang Parklands.
<b>LRS</b>	means the NSW Land Registry Services.
<b>Monetary Penalty</b>	means the monetary penalties set out in clause 6.
<b>Monetary Penalty Reconciliation</b>	means the reconciliation of the Monetary Penalty as described in clause 6.3.
<b>New Resource Recovery Facility</b>	means the resource recovery facility as described in the Development Application.
<b>New Resource Recovery Commencement Date</b>	means the first day that the New Resource Recovery Facility is open to the public.
<b>Pandemic Relief Event</b>	means a disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Works.
<b>POEO Act</b>	means the <i>Protection of the Environment Operations Act 1997</i> (NSW).
<b>Practical Completion</b>	Means completion of: <ul style="list-style-type: none"> <li>a. Embellished Marang Parklands Works generally in accordance with the SSD Application plans, if approved, including any required modifications, as modified (if required);</li> <li>b. The Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields, generally in accordance with the Existing Development Consents, including any required modifications (if required); or</li> </ul>

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	<p>c. The Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields, generally in accordance with the Existing Development Consents, as modified (if required),</p> <p>as the case may be.</p>
<b>Principal Certifying Authority</b>	means the principal certifying authority appointed pursuant to clause 12 of this Agreement.
<b>Regulation</b>	means the <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<b>Stage 2 Playing Fields</b>	means the playing fields which will be constructed on part of the Stage 2 Land under the 2010 VPA.
<b>Stage 3 Playing Fields</b>	means the playing fields which will be constructed on part of the Stage 3 Land under the 2010 VPA.
<b>Stage 2 Land</b>	has the meaning given to in under the 2010 VPA.
<b>Stage 3 Land</b>	has the meaning given to in under the 2010 VPA.
<b>Termination Event</b>	means the events described in clauses 16.1(4) of this Agreement.
<b>Top of Cap</b>	means on any relevant point across the Transferred Land, the top of the compacted clay seal or the top of the engineered seal as a substitute for the compacted clay seal.
<b>Transferred Land</b>	has the meaning given to it in the 2010 VPA as it relates to land owned or controlled by the Developer as at the date of this Agreement, being Lot 6, Lot 1122 and Lot 1123.
<b>Works</b>	means the Embellished Marang Parklands Works and the Breen Compaction Works and Breen Works as they relate to the Stage 2 and Stage 3 Playing Fields.
<b>1990 Consent</b>	means development consent DA269/90 applying across the Land.
<b>2010 VPA</b>	Means the voluntary planning agreement entered into between the Developer, Council and Australand Kurnell Pty Ltd (now Frasers Property) on 3 June 2010 (as amended) set out in Schedule 5 to this Agreement.

## 2. INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

<b>clauses, annexures and schedules</b>	<p>a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this agreement.</p> <p>a reference to anything includes a part of that thing.</p>
<b>reference to statutes</b>	a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued after that statute.

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<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>person</b>	<p>the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body, trust, or association or any government agency, or other owner corporation, authority, government or government agency.</p> <p>a reference to a body, whether statutory or not, 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 powers or functions.</p>
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>reference to a group of persons</b>	<p>a group of persons or things is a reference to any two or more of them jointly and to each of them individually.</p> <p>a covenant, an agreement or acknowledgment on the part of, or in favour of, two or more persons, binds them or enures to their benefit jointly and severally.</p>
<b>meaning not limited</b>	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
<b>next day</b>	if an act under this agreement to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
<b>next Business Day</b>	if an event must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.
<b>time of day</b>	time is a reference to Sydney time.
<b>headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.
<b>agreement</b>	a reference to any agreement, Agreement or instrument includes the same as varied, supplemented, novated or replaced from time to time.

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**Gender**

a reference to a gender includes any gender.

**3. APPLICATION AND OPERATION**

**3.1 Planning Agreement**

This deed of agreement is a planning agreement:

- (1) within the meaning set out in section 7.4 of the Act; and
- (2) governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

**3.2 Application**

This Agreement applies to the Land and the Development.

**3.3 Operation of agreement – conditions precedent**

**(1) Commencement**

This Agreement does not commence until:

- a. Grant of a final and operative Development Consent (as modified, if required) by the consent authority to the Development Application; and
- b. The Developer gives written Notice to Council that it intends to take up and act on the final and operative Development Consent (as modified, if required), which, if given, shall be provided within 21 days of the expiration or exhaustion of any appeal rights, or within 21 days of any decision from the Court to which the appeal was made, allowing for the exhaustion or expiration of any appeal rights from that decision; and
- c. All Parties execute the Agreement.

**(2) Term**

Once commenced, the Agreement will continue until the fulfilment by the Parties of all of their obligations under this Agreement unless it is terminated in accordance with clause 16.

**3.4 Agreement not Confidential**

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

**4. REGISTRATION OF THIS AGREEMENT**

**4.1 Registration**

- (1) The Developer must, at its expense, do all things necessary, within its power and control, to procure the registration of the Agreement on the relevant folios of the register held by the LRS pertaining to the Land pursuant to section 7.6 of the Act as soon as reasonably practicable after the commencement of this Agreement in accordance with clause 3.3(1) of this Agreement and, in any event, make any application for registration no later than 28 days after that date.

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- (2) The Developer will secure any consents necessary, including from the landowner, for registration of the Agreement on title.
  - (3) The Developer and Council agree that the notation that is to be registered on the title of the Land is to be in the following terms:

*"Planning Agreement pursuant to section 7.6 of the Environmental Planning and Assessment Act 1979"*

#### **4.2 Council's costs in connection with Registration**

The Developer must pay any reasonable costs incurred by Council in undertaking the registration referred to in clause 5.1(1) above.

#### **4.3 Removal from title of the Land**

- (1) Council must do all things necessary to enable the Developer to remove the registration of this Agreement from the title of Lots 1122 and 1123 and Lot 6 once all obligations under this Agreement in relation to those lots are completed.
- (2) Council must do all things necessary to enable the removal of the registration of this Agreement from the title of Lot 5 if:
  - a. the New Resource Recovery Facility on Lot 5 has ceased to operate; and
  - b. all outstanding monies under this Agreement up until the date in clause 4.3(2)a above have been paid.
- (3) The Developer must pay any reasonable costs incurred by Council in undertaking the removal of the registration from title referred to in clauses 4.3(1) and 4.3(2) above.

### **5. DEVELOPER'S OBLIGATIONS**

#### **5.1 Carrying out of the Embellished Marang Parklands Works**

The Developer undertakes, at its cost to:

- (1) if necessary, obtain any consents, approvals or permits required by a relevant Authority, for the conduct of the Embellished Marang Parklands Works;
- (2) carry out or procure the carrying out of the Embellished Marang Parklands Works:
  - a. generally in accordance with the requirements of the Development Consent;
  - b. in a proper and workmanlike manner complying with current industry practice and standards, including applicable Australian Standards; and
  - c. in such a manner that the Embellished Marang Parklands Works are fit for their intended purpose.
- (3) achieve Practical Completion of the Embellished Marang Parklands Works within the timeframes set out in clause 5.2 of this Agreement.

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## **5.2 Timing for the Practical Completion of the Embellished Marang Parklands Works**

- (1) Notwithstanding any term of the 2010 VPA and subject to any adjustments required to take into account any Construction Related Delays, the Developer must complete the Embellished Marang Parklands Works by 31 May 2026. For the avoidance of doubt, if the Developer is delayed by a Construction Related Delay in achieving Practical Completion of the Embellished Marang Parklands, the date by which Practical Completion for the Embellished Marang Parklands Works must be achieved, as set out in this clause, is extended by the duration of any Construction Related Delay.
- (2) For the purposes of clause 5.2(1) above, the Developer will be taken to have completed the Embellished Marang Parklands Works upon the achievement of Practical Completion of the Embellished Marang Parklands Works, which is to be determined by the Principal Certifying Authority to be appointed in accordance with clause 12.

## **5.3 Timing for the Practical Completion of the Breen Compaction Works and Breen Works as they relate to Stage 2 Playing Fields under the Existing VPA**

- (1) Notwithstanding any term of the 2010 VPA, and subject to any adjustments required to take into account any Construction Related Delays, the Developer must complete the Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields by 31 May 2026. For the avoidance of doubt, if the Developer is delayed by a Construction Related Delay in achieving Practical Completion of the Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields, the date by which Practical Completion for the Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields must be achieved, as set out in this clause, is extended by the duration of any Construction Related Delay.
- (2) For the purposes of clause 5.3(1) above, the Developer will be taken to have completed the Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields upon the achievement of Practical Completion of those works, which is to be determined by the Principal Certifying Authority to be appointed in accordance with clause 12.

## **5.4 Timing for the Practical Completion of the Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields under the Existing VPA**

- (1) Notwithstanding any term of the 2010 VPA, and subject to any adjustments required to take into account any Construction Related Delays, the Developer must complete the Breen Compaction Works and Breen Works required for the Stage 3 Playing Fields by 30 April 2026. For the avoidance of doubt, if the Developer is delayed by a Construction Related Delay in achieving Practical Completion of the Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields, the date by which Practical Completion for the Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields must be achieved, as set out in this clause, is extended by the duration of any Construction Related Delay.
- (2) For the purposes of clause 5.4(1) above, the Developer will be taken to have completed the Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields upon the achievement of Practical Completion of those works, which is to be determined by the Principal Certifying Authority to be appointed in accordance with clause 12.

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## **5.5 Cessation of Commercial Use of the Transferred Lands**

Notwithstanding any other provision within this Agreement, the Developer will cease all Commercial Use on the part of the Transferred Land owned or controlled by it by no later than 30 November 2026.

## **5.6 Surrender of the 1990 Consent**

As soon as practicable, following the latter of:

- a. the achievement of Practical Completion of the Breen Compaction Works and the Breen Works; or
- b. the New Resource Recovery Commencement Date,

the Developer must take all steps within its power and control, including obtaining all necessary landowner's consent, to surrender the 1990 Consent in accordance with clause 97 of the Regulation.

## **5.7 Notification of change to Construction Program as a result of Construction Related Delays**

- (1) Any change to the Construction Program as a result of Construction Related Delays must be notified to Council by written notice as follows:
  - a. if the Construction Related Delay is a delay of more than 7 days, as soon as reasonably practicable but no more than 7 days after the Developer becomes aware of the commencement of the Construction Related Delay which would occasion a change to the Construction Program; and/or
  - b. within 14 days of the Construction Related Delay having ceased.
- (2) Notwithstanding the matters set out in clause 5.7(1)(a) and (b), the notification requirements outlined in clause 5.7(1)a will not apply to any Construction Related Delays that occur before this Agreement commences in accordance with clause 3.3(1).
- (3) Any notice provided to Council pursuant to clause 5.7(1) is to contain the Developer's reasons for the Construction Related Delay, the duration of the Construction Related Delay and an updated Construction Program.
- (4) Any dispute in relation to what constitutes a Construction Related Delay is to be resolved in accordance with clause 18 of the Agreement.
- (5) The parties agree that if a Construction Related Delay is not notified to Council in accordance with this clause 5.7, any such delay does not constitute a Construction Related Delay for the purposes of this Agreement.

## **6. MONETARY PENALTY FOR DELAY IN COMPLETION OF THE WORKS**

### **6.1 Application of the Monetary Penalty**

- (1) If the Developer fails to achieve Practical Completion (as defined in this Agreement) of any component of the Embellished Marang Parklands Works or the Breen Compaction Works or Breen Works as they relate to the Stage 2 or Stage 3 Playing Fields within the timeframes specified in clauses 5.2, 5.3 and 5.4 respectively, the Developer will be liable



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to pay the Monetary Penalty, the amount of which shall be determined in accordance with this clause 6.

- (2) The Developer and Council agree that while a Monetary Penalty will apply if any of the Embellished Marang Parklands Works or the Breen Compaction Works or Breen Works as they relate to the Stage 2 or Stage 3 Playing Fields do not achieve Practical Completion as set out in clauses 5.2, 5.3 or 5.4 respectively, the Monetary Penalty will only be applied once. That is, the Developer will never pay a Monetary Penalty which will exceed the amount referenced in clause 6.1(3) as at the relevant day, regardless of the number of components of the Works that are delayed in achieving Practical Completion as set out in clause 6.
- (3) Subject to clause 6.1(4) below, the Monetary Penalty is to be applied on a pro-rata basis, in accordance with the figures set out below until such time as Practical Completion of the relevant component of the Works is achieved:
- a. \$4,109 per day for the first 365 days;
  - b. \$4,795 per day for the next 365 days;
  - c. \$5,480 per day for the next 365 days;
  - d. \$6,160 per day for any delay beyond the 1,095<sup>th</sup> day.
- (4) The daily rate of the Monetary Penalty, if applicable, is to be pro-rated according to the total land area of the Works that have achieved Practical Completion across Lots 1122 and 1123 and Lot 6 combined.

**Note:** An example of how the Monetary Penalty is to be applied in this clause 6 is set out below.

The total land area of the Works is 40.94Ha, comprising:

- Marang Parklands – 29.79Ha; and
- Stage 2 Playing Fields – 4.78Ha; and
- Stage 3 Playing Fields – 6.37Ha.

### **Scenario**

If:

- 50% of the land area of the Embellished Marang Parklands Works achieve Practical Completion within the time set out in this Agreement (representing approximately 14.895Ha); and
- The remaining 50% of the land area of the Embellished Marang Parklands Works achieved Practical Completion 500 calendar days late; and
- All (100%) of the Breen Compaction Works and Breen Works, as they relate to Stage 2 Playing Fields are completed within the time set out in this Agreement (representing 4.78Ha of land area); and
- None (0%) of the Breen Compaction Works and Breen Works, as they relate to Stage 3 Playing Fields are completed within the time set out in this Agreement; and

- The remaining 100% of the land area of the Stage 3 Playing Fields achieve Practical Completion 50 calendar days late,

the Monetary Penalty that is to apply is to be calculated as below:

*Embellished Marang Parklands*

Length of delay = 500 days for 50% of the land area

Daily penalty of \$4,109 x pro-rata percentage of area penalty applies to being 50%  
x 29.79Ha/40.94Ha x number of days that the penalty applies (365 days) =  
\$545,659

+

Daily penalty of \$4,795 x pro-rata percentage of area penalty applies to being 50%  
x 29.79Ha/40.94Ha x number of days that the penalty applies (135 days) =  
\$235,513

*Delay to the Breen Compaction and Breen Works as they relate to the Stage 3 Playing Fields*

Length of delay = 50 days for 100% of the land area

Daily penalty of \$4,109 x pro-rata percentage of area penalty applies to being  
100% x 6.37Ha/40.94Ha x number of days that the penalty applies (50 days) =  
\$31,967

= \$545,659 + \$235,513 + \$31,967 = **\$813,139**

## 6.2 Timing for payment of the Monetary Penalty

- (1) In the event that a Monetary Penalty in clause 6.1 above is incurred, the Monetary Penalty is to be paid following the Practical Completion of each relevant component of the Works in accordance with clause 6.3 below.

## 6.3 Mechanism for payment of the Monetary Penalty

- (1) In the event that a Monetary Penalty in clause 6.1 above is incurred, the Developer is to provide Council within 15 Business Days of achieving Practical Completion of each relevant component of the Works with the following:
  - a. The Monetary Penalty Reconciliation that has been incurred in accordance with clause 6.1 above; and
  - b. A request that Council issue a tax invoice for the amount of the Monetary Penalty (if any) indicated in the Monetary Penalty Reconciliation.
- (2) Council must provide the Developer with a tax invoice within 15 Business Days of being requested to do so by the Developer consistent with clause 6.3(1) above.
- (3) The Monetary Penalty (if applicable) must be paid by the Developer to Council by bank cheque or electronic funds transfer within 30 Business Days of the issue of the relevant tax invoice by Council in accordance with clause 6.3(2) above.

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## 7. ANNUAL PAYMENT

### 7.1 Payment of an Annual Payment by the Developer

- (1) Subject to clause 9 of this Agreement and the receipt of a tax invoice in accordance with clause 7.1(4), the Developer will pay an Annual Payment to Council annually for a period of four years, commencing on 31 December 2021.
- (2) Subject to clause 9 of the Agreement, the Developer is to pay the Annual Payment in accordance with the following schedule, which is to be applied pro-rata, by time and by land area, according to the land area of the Transferred Land that has not been Capped to the written satisfaction of the EPA:
  - a. 31 December 2021 - \$350,000
  - b. 31 December 2022 - \$500,000
  - c. 31 December 2023 - \$850,000
  - d. 31 December 2024 - \$1,250,000
  - e. 31 December 2025 - \$1,250,000

**Note:** For example:

#### Scenario 1:

As at 31 December 2021, the Developer has not Capped any part of the Transferred Land the subject of this Agreement (being Lots 6, Lots 1122 and 1123) to the written satisfaction of the EPA, the Annual Payment will be \$350,000, calculated as follows:

Total of the Transferred Land capped at the beginning of the year = 0Ha

Adjusted Annual Payment at beginning of year = \$350,000

Daily Annual Payment per Ha =  $(\$350,000 / 40.94\text{Ha} / 365) = \$23.42/\text{day}/\text{Ha}$

Annual Payment Payable =  $\$23.42/\text{day}/\text{Ha} \times 365 \text{ days} \times 40.94\text{Ha} = \mathbf{\$350,000}$

#### Scenario 2:

On 1 July 2022, the Developer receives written confirmation from the EPA that they are satisfied that 10Ha of the total land area of the 40.94Ha of the Transferred Land has been Capped to its satisfaction. The remaining 30.94Ha is not Capped for the remainder of the calendar year. From 1 July 2022, the Annual Payment will not be payable in relation to the 10Ha of the Transferred Land that has been Capped.

The total Annual Payment as of 31 December 2022 is therefore adjusted from \$500,000 to \$438,768, calculated as follows:

Total Land Capped at the beginning of the year = 0Ha

Annual Payment at beginning of year = \$500,000

Total Land Capped as at 1 July 2022 = 10Ha

Daily Annual Payment per Ha =  $(\$500,000 / 40.94\text{Ha} / 365) = \$33.46/\text{day}/\text{Ha}$

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Pro-rata amount from 1 January 2022 to 1 July 2022 = \$33.46/day/Ha x 182 days  
x 40.94Ha = \$249,315

Pro-rata amount for year from 2 July 2022 to 31 December 2022 = \$33.46/day/Ha  
x 183 days x 30.94Ha \$189,453

Annual Payment Payable on 31 December 2022 = \$249,315 + \$189,453 =  
**\$438,768**


- (3) The Developer is to provide Council within 15 Business Days of the end of the payment period set out in clause 7.1(2) above, with:
  - a. Any documents evidencing that the EPA is satisfied that any part of the Transferred Land has been Capped to its satisfaction;
  - b. Having regard to any such documentation, the amount of the Annual Payment due and payable for that payment period (if any); and
  - c. A request that Council issue a tax invoice for the amount of the Annual Payment (if any) indicated in clause 7.1(3)b above.
- (4) Council must provide the Developer with a tax invoice within 15 Business Days of being requested to do so by the Developer consistent with clause 7.1(3) above.
- (5) Each Annual Payment (if applicable) must be paid by the Developer to Council by bank cheque or electronic funds transfer within 30 Business Days of the issue of the relevant tax invoice by Council in accordance with clause 7.1(4) above.

## **7.2 Use of the Annual Payment by Council**

- (1) The Council must apply the Annual Payment to the maintenance or improvement of Embellished Marang Parklands and/ or the Stage 2 and Stage 3 Playing Fields.
- (2) On the third and sixth annual anniversary of the payment of the first Annual Payment, Council must prepare a report, signed by the Chief Executive Officer, outlining how the Annual Payments have been or will be applied to the maintenance of the Embellished Marang Parklands and/or Stage 2 and Stage 3 Playing Fields.
- (3) The total Annual Payment paid by the Developer to Council under clause 7.1 must be expended by Council by no later than five years from the achievement of Practical Completion of the Works by the Developer.
- (4) Within three months of the fifth anniversary of the achievement of Practical Completion of the Works, Council must prepare a report, signed by the Chief Executive Officer, confirming that the total of the Annual Payments have been applied to the maintenance or improvement of the Embellished Marang Parklands and/or Stage 2 and Stage 3 Playing Fields.

## **8. LOCAL ROADS AND PARKLANDS MAINTENANCE LEVY**

### **8.1 Payment of the Local Roads and Parklands Maintenance Levy**

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- (1) Subject to the receipt of a tax invoice in accordance with clause 8.1(5) below and subject to clauses ~~8.2 and 8.3~~ below, the Developer will pay to Council an annual Local Road and Parklands Maintenance Levy, in the amount of \$1.00 (excluding GST) per tonne of

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waste material delivered by road to be processed by the New Resource Recovery Facility.

- (2) The Developer will provide to Council an annual levy reconciliation of the Local Road and Parkland Maintenance Levy payment that is payable under this Agreement (the Annual Levy Reconciliation).
- (3) The Developer is to provide the Annual Levy Reconciliation to Council as follows:
  - a. The first Annual Levy Reconciliation is to be provided within 2 months of the first annual anniversary of the New Resource Recovery Facility Commencement Date; and
  - b. Each subsequent Annual Levy Reconciliation is to be provided within 2 months of the annual anniversary of the New Resource Recovery Facility Commencement Date.
- (4) The Developer and Council agree that the Annual Levy Reconciliation referred to in clause 8.1(2) above to be provided by the Developer to Council, and which is to set out the annual amount of the Local Roads and Parklands Maintenance Levy is to be based on the following:
  - a. Records submitted by or on behalf of the Developer to the EPA for the purposes of calculating waste tracking, as required under the POEO Act; or
  - b. In the alternative, records submitted by or on behalf of the Developer to the EPA for the purposes of calculating waste tracking, as required under any relevant Environment Protection License issued under the POEO Act for the New Resource Recovery Facility.
- (5) Within 28 days of receiving the Developer's Annual Levy Reconciliation referred to in clause 8.1(2) above, Council will issue to the Developer an invoice for the amount of the Local Roads and Parklands Maintenance Levy payable for the relevant 12 month period as specified in the Annual Levy Reconciliation.
- (6) The Local Roads and Parklands Maintenance Levy is due and payable by the Developer within 3 months of the invoice date referred to in clause 8.1(1) above.

## **8.2 Materials excluded from the Local Roads and Parklands Maintenance Levy**

- (1) Notwithstanding clause 8.1 above, the Local Roads and Parklands Maintenance Levy will:
  - a. not be levied against:
    - (i) any materials delivered to the Land to construct the Stage 2 and Stage 3 Playing Fields and the Embellished Marang Parklands; and/or
    - (ii) any materials brought onto Lot 5 for an operational purpose approved by the EPA, such as for the closure of any landfill on Lot 5; and/or
  - b. be calculated by applying a deduction, using records (where appropriate) submitted by or on behalf of the Developer to the EPA, to account for any materials processed at the New Resource Recovery Facility that are used to construct the Stage 2 or Stage 3 Playing Fields of the Embellished Marang Parklands.

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### **8.3 Calculation of the Local Roads and Parklands Maintenance Levy**

Payment of the Local Roads and Parklands Maintenance Levy is to be calculated according to the following formula:

- (1) For the first 12 years after the New Resource Recovery Facility Commencement Date, the \$1.00 per tonne levy is to increase by an amount equal to CPI plus 4%, which is to be applied each year on the anniversary of the New Resource Recovery Facility Commencement Date;
- (2) At the 13<sup>th</sup> year referred to in clause 8.3(1), the Local Roads and Parklands Maintenance Levy is to increase by an amount equal to CPI, applied each year on the anniversary of the New Resource Recovery Facility Commencement Date.

### **8.4 Use of the Local Roads and Parklands Maintenance Levy**

- (1) The Developer and Council agree that the Local Roads and Parklands Maintenance Levy is a contribution by the Developer to the maintenance of local roads used as access routes within 5 kilometres from the western edge of the Land and maintenance of and improvements to the Embellished Marang Parklands.
- (2) The Developer and Council agree that, calculated every 5 years from the New Resource Recovery Facility Commencement Date, Council must apply no less than 60% of the Local Roads and Parklands Maintenance Levy paid by the Developer under this Agreement to the Embellished Marang Parklands and the Stage 2 and Stage 3 Playing Fields.
- (3) Within 2 months of each 5 year anniversary of the New Resource Recovery Commencement Date, Council must:
  - a. Prepare a report, signed by the Chief Executive Officer, to demonstrate how the Local Roads and Parklands Maintenance Levy has been allocated; and
  - b. Provide the signed report to the Developer.
- (4) For the purposes of clause 9.4(2) above, in the event that Embellished Marang Parklands and the Stage 2 and Stage 3 Playing Fields do not exist at the date when Council must apply the said Local Roads and Parklands Maintenance Levy, 'apply' is taken to mean that Council is to set aside and spend the Local Roads and Parklands Maintenance Levy on the Embellished Marang Parklands and the Stage 2 and Stage 3 Playing Fields within 5 years of their creation.

## **9. CONTRIBUTIONS UNDER SECTION 7.11 OR 7.12 OF THE EP&A ACT**

### **9.1 The parties acknowledge and agree that:**

- (1) The Development Consent may impose conditions requiring the payment of contributions under sections 7.11 or 7.12 of the Act;
- (2) In the event that any such conditions are imposed (as referred to in clause 9.1(1) above), the total value of any such contribution is to be deducted from the Annual Payment which is payable under clause 7.1 of this Agreement;
- (3) In the event that the total value of the Annual Payment, as offset by the value of the 7.11 or 7.12 contribution in accordance with clause 9.1(2), is reduced to zero on any given

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year, the Developer will not be required to make a payment under clause 7 in that year; and

- (4) The amount of any contribution referred to in clause 9.1(1) is payable within 30 days of this Agreement being operative.

9.2 The parties further acknowledge and agree that:

- (1) Should the value of the section 7.11 or 7.12 contribution referred to in clause 9.1(1) above exceed the total value of the Annual Payment under clause 7.1 of the Agreement, the Parties are to participate in a conference with respect to how the cost of any such contribution is to be offset against the contributions being made by the Developer under this Agreement; and
- (2) If no agreement can be reached, the Parties are to follow the procedures set out in clause 18 of this Agreement.

## **10. TIMING TRANSFER OF THE TRANSFERRED LAND**

### **10.1 Timing of the transfer of the Transferred Land**

- (1) The Developer and Council acknowledge clause 7.7 the 2010 VPA in relation to the transfer of the Transferred Land.
- (2) Notwithstanding any other provision in this Agreement or the 2010 VPA, the Developer will take all steps within its power and control to cause that part of the Transferred Land owned or controlled by the Developer to be dedicated to Council by no later than 30 November 2027.

## **11. TRANSFER OF RISK**

### **11.1 Transfer of risk to Council**

Subject to this Agreement, upon the registration of the transfer of the Transferred Land to Council, all title and risk in that land passes to the Council.

### **11.2 Developer's obligations**

- (1) Notwithstanding clause 11.1 above, the Developer will continue to be responsible and bear liability for the Breen EPL Surrender Requirements until such time as the Developer completes or otherwise addresses any such conditions or requirements to the EPA's satisfaction.
- (2) Despite clause 11.2(1), the Developer will not be responsible for any condition of a surrender or a requirement on the Developer in relation to the Transferred Land that arises from:
- a. Any action by Council; and/or
  - b. Any inaction by Council, including for example a lack of maintenance or repair by Council in relation to the cap or land above the cap; and/or
  - c. Any action by a third party; and/or
  - d. Public use or recreational activity.

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- (3) Council will provide the Developer with access to the Transferred Land for the purposes of the Developer complying with its obligation under this clause 11.

## **12. APPOINTMENT AND ROLE OF PRINCIPAL CERTIFYING AUTHORITY**

### **12.1 Role of the Principal Certifying Authority**

- (1) Subject to this clause 12.1, the Developer and Council agree that a Principal Certifying Authority will be appointed to determine Practical Completion (or part thereof), within the meaning of this Agreement, of the following:
- a. The Embellished Marang Parklands Works (as set out in clause 5.1 above);
  - b. Breen Compaction Works and Breen Works as they relate to the Stage 2 Playing Fields (see clause 5.2 above);
  - c. Breen Compaction Works and Breen Works as they relate to the Stage 3 Playing Fields (see clause 5.3 above); and
  - d. the total land area of the Works that have achieved Practical Completion across Lots 1122 and 1123 and Lot 6 combined (see clause 6.1(4) above)

### **12.2 Appointment of the Principal Certifying Authority**

- (1) The Principal Certifying Authority for the purposes of this Agreement will be appointed from a list, to be provided by Council to the Developer on request, of no less than 5 suitably qualified persons who are available to accept the appointment as Principal Certifying Authority and who have offices in metropolitan Sydney.
- (2) Council must provide the list of names referred to in clause 12.2(1) above, within 21 days of receiving a written request from the Developer to be provided with the list.
- (3) If, despite the requirements in clause 12.2(2) above, Council does not provide the list of names within 21 days of receiving a written request, the Developer may appoint a suitably qualified Principal Certifying Authority of its own selection, without further consultation of Council.

## **13. DEFECTS LIABILITY**

- (1) The Council may notify the Developer by written notice of defects in the Embellished Marang Parklands Works as depicted in Schedule 3 during the Defects Liability Period.
- (2) After the receipt of a notice from Council under clause 13(1), the Developer must:
- a. Within 21 days, if required, carry out works to make safe that defect; and
  - b. As soon as practicable:
    - (i) Rectify and make good the defect, if necessary;
    - (ii) keep the Council reasonably informed of the work to be taken to rectify the defect; and
    - (iii) make good any damage to any playing field caused by the access permitted under clause 13(3).



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- (3) The Council agrees to give the Developer and their contractors access to the Embellished Marang Parklands to rectify any defects which are the subject of a notice referred to in clause 13(1) of this Agreement.

## **14. WARRANTIES**

### **14.1 Warranties**

Each party warrants to each other that as at the date of this Agreement:

- (1) it is able to fully comply with its obligations under this Agreement;
- (2) it has full capacity to enter into this Agreement;
- (3) entry into this Agreement will not result in the breach of any Law; and
- (4) there is no legal impediment to it entering into this agreement, or performing the obligations imposed under it.

## **15. SECURITY AND ENFORCEMENT**

### **15.1 Enforcement**

The Developer and Council agree that:

- (1) Registration of this Agreement under clause 4 of this Agreement; and
  - (2) The scheme for the Developer to pay a Monetary Penalty under clause 6, if required,
- constitute suitable means of enforcement for the purposes of section 7.4(3)(g) of the Act.

### **15.2 Prohibition**

Neither party may Assign their rights under this Agreement without the prior written consent of the other party.

### **15.3 Assignment of Land**

The Developer must not Assign its interest in the Land, unless:

- (1) Council consents to the Assignment; and
- (2) the proposed assignee enters into an agreement to the satisfaction of Council under which the assignee agrees to be bound by the terms of this agreement with respect to the relevant part of the Land being Assigned.

## **16. TERMINATION**

### **16.1 The Developer's right to terminate on a Termination Event**

- (1) On the occurrence of the Termination Event referred to in clause 16.1(4) of this Agreement, the Developer may by written notice to Council terminate this Agreement, effective on the date specified in any such notice.

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- (2) No failure to exercise, nor any delay in exercising the Developer's rights under this clause will operate as a waiver or cause the rights of the Developer under this clause to lapse or be otherwise diminished.
  - (3) This termination right is without prejudice to the Developer's right to exercise all legal and equitable rights and remedies available to the Developer in respect of the Termination Event.
  - (4) The Termination Event for which the Developer may terminate the Agreement is if Council commits a breach of either clause 8.2 or 9.4 of this Agreement which is incapable of remedy.

#### **16.2 Consequences of Termination**

- (1) On the date of termination of this Agreement, the Council releases the Developer from any obligation to perform any term, or any liability arising out of, this Agreement after the date of termination.
- (2) Termination of this Agreement does not release either party from any obligation or liability arising under this Agreement before termination.

#### **17. CHANGE IN LAW**

- (1) In the event of a change in the *Protection of the Environment Operations Act 1997* (NSW) or the *Contaminated Land Management Act 1997* (NSW) or any related regulation, guideline or policy as the case may be that will mean that the Developer is unable to carry out the Development as identified in the EIS to the Development Application, Council and the Developer are to negotiate in good faith on:
  - a. the appropriate reduction in the scope of those aspects of the Embellished Marang Parklands that are not already required by the 2010; and
  - b. the timing of achieving Practical Completion of the Works as set out in clause 6.

#### **18. DISPUTE RESOLUTION**

##### **18.1 Notice of dispute**

If a Party claims that a dispute exists under this Agreement (Claimant), it must give written notice to the other Party or Parties (Respondent) stating the matters in dispute and designating as its representative a person to negotiate the dispute (Claim Notice). No Party may commence court proceedings (except for proceedings seeking interlocutory relief) regarding a dispute unless it has first complied with this clause 18.

##### **18.2 Response to Notice**

Within 10 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

##### **18.3 Negotiation**

The nominated representatives must:

- (1) meet to discuss the matter in good faith within 5 Business Days after service by the Respondent of notice of its representative; and

- 
- (2) use reasonable endeavours to settle or resolve the dispute within 40 Business Days after they have met

#### **18.4 Further Notice if not settled**

If the dispute is not resolved within 40 Business Days after the nominated representatives have met, any Party may give to the other Parties a notice calling for determination of the dispute (**Dispute Notice**) by mediation under clause 18.5 or by expert determination under clause 18.6.

#### **18.5 Mediation**

If a Party gives a Dispute Notice calling for the dispute to be mediated:

- (1) the relevant Parties to the dispute must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute (NSW Chapter) apply);
- (2) the Mediator will be agreed between the Parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either Party may request the Resolution Institute (NSW Chapter) to appoint a mediator;
- (3) the Mediator appointed under this clause 18.5 must:
  - a. have reasonable qualifications and practical experience in the area of the dispute; and
  - b. have no interest or duty which conflicts or may conflict with their function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (4) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (5) the Parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (6) 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;
- (7) in relation to costs and expenses:
  - a. each Party will bear their own professional and expert costs incurred in connection with the mediation; and
  - b. the costs of the Mediator will be shared equally by the Council and the Developer unless the Mediator determines 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

#### **18.6 Expert Determination**

If a Party gives a Dispute Notice calling for the dispute to be resolved by expert determination:

- (1) the dispute must be determined by an independent expert in the relevant field:

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- a. agreed upon and appointed jointly by the Council and the Developer; or
  - b. in the event that no agreement is reached or appointment made within 30 Business Days, appointed on application of a Party by the Resolution Institute (NSW Chapter);
- (2) the expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
  - (3) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
  - (4) 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;
  - (5) the Council and the Developer will bear their own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
  - (6) any determination made by an expert under this clause is final and binding upon the Parties except where 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 and any Party may commence litigation in relation to the dispute if it has not been resolved within 40 Business Days of the expert giving his or her decision.

#### **18.7 Litigation**

If the dispute is not finally resolved in accordance with this clause 18, then any Party is at liberty to litigate the dispute. Subject to this clause, this Agreement may be enforced by any Party in any court of competent jurisdiction

#### **18.8 Continue to perform obligations**

Each Party to this Agreement must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute

#### **18.9 Priority of Documents**

In the event of a dispute, this Agreement is to take priority over all other documents concerning or dealing with the subject matter of this Agreement.

- (1) The following document hierarchy then exists:
  - a. Schedules to this Agreement;
  - b. Development Consent;
  - c. The Existing Development Consents;
  - d. 1990 Consent;
  - e. Construction Certificates

#### **18.10 No merger**

This clause 18 does not merge on termination of this Agreement

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## 19. POSITION OF COUNCIL

### 19.1 Agreement does not fetter discretion

This Agreement is not intended to operate to fetter:

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

### 19.2 Severance of provisions

- (1) No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
  - a. they will take all practical steps to ensure the objective of this clause is substantially satisfied; and
  - b. to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this agreement contracted out of a provision or exercised a Discretion under this agreement, then to the extent of this Agreement is not to be taken to be inconsistent with the Law.

## 20. GST

### 20.1 In this clause 20:

- (1) GST means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (GST Act) or any replacement or other relevant legislation and regulations;
- (2) words or expressions used in this clause which have a particular meaning in the GST law (as defined in the GST Act), any applicable legislative determinations and Australian Taxation Office public rulings, have the same meaning, unless the context otherwise requires;
- (3) any reference to GST payable by a party includes any corresponding GST payable by the representative member of any GST group of which that party is a member; and
- (4) any reference to an input tax credit entitlement by a party includes any corresponding input tax credit entitlement by the representative member of any GST group of which that party is a member.

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20.2 Unless GST is expressly included, the consideration to be paid or provided under any other clause of this Agreement for any supply made under or in connection with this Agreement does not include GST.

20.3 The parties warrant that they are registered or required to be registered for GST.

20.4 In relation to non-monetary supplies, the parties acknowledge their understanding that:

- (1) any non-monetary supplies made by one party to the other pursuant to this Agreement (including Works) will be exempt from GST pursuant to Division 82 of the GST Act;
- (2) if GST is imposed on any non-monetary supplies made under or in accordance with this agreement, the recipient must, upon receipt of a valid tax invoice, pay to the supplier an amount equal to the GST payable on or for the taxable supply

20.5 To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration 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 as the GST exclusive consideration is to be paid or provided.

20.6 A party's right to payment under clause 20.5 is subject to a valid tax invoice or adjustment note being delivered by the supplier to the recipient of the taxable supply.

20.7 To the extent that a party is required to reimburse or indemnify another party for a loss, cost or expense incurred by that other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

20.8 If an adjustment event occurs in respect of a supply made under or in connection with this Agreement:

- (1) the supplier must notify the recipient of the refund, credit or further amount payable on account of GST by the supplier issuing to the recipient an adjustment note (or by cancelling the earlier tax invoice and issuing a replacement tax invoice) within 5 business days of becoming aware of the adjustment event; and
- (2) the supplier must provide a refund or credit to the recipient, or the recipient must pay a further amount to the supplier, in accordance with the adjustment note or replacement tax invoice issued under sub clause 20.8(1) of this clause 20 within 10 business days of receipt of the adjustment note or replacement tax invoice

20.9 To the extent that any consideration payable to a party under this Agreement is determined by reference to a cost incurred by a party, or to a price, value, sales, revenue or similar amount, the GST exclusive amount of that cost, price, value, sales, revenue or similar amount must be used.

## **21. LEGAL COSTS**

Each party must bear its own costs (including legal costs and disbursements) with respect to the preparation, negotiation, exhibition, formation, implementation and enforcement of this Agreement.

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## **22. FORCE MAJEURE**

### **22.1 Force Majeure Events**

The following are Force Majeure Events:

- (1) Lightning, earthquake, cyclone, natural disaster, landslide or mudslide;
- (2) Explosion, malicious damage, riots, acts of sabotage, or "terrorist act" (as defined in section 5 of the *Terrorism Insurance Act 2003* (Cth)) as at the date of this Agreement;
- (3) A flood which might at the date of this Agreement be expected to occur less frequently than once in every fifty years;
- (4) War, invasion, act of a foreign enemy, hostilities between nations (whether declared or not), civil war, rebellion, martial law, revolution, confiscation of property by force or by order of any government or military authority;
- (5) Ionising radiation, nuclear activity, nuclear waste, or combustion of nuclear fuel;
- (6) Legal proceedings by any person (other than the Developer and persons associated with the Developer) challenging the validity of the Development Consent, or any legal proceedings challenging the carrying out of the Works;
- (7) Pandemic, including COVID-19 and a Pandemic Relief Event,

which prevent or delay the Developer from carrying out or achieving Practical Completion of the Works under this Agreement.

### **22.2 Consequences of a Force Majeure Event**

- (1) If the Developer is unable, by reason of a Force Majeure Event to carry out wholly or in part its obligations under this Agreement, it must:
  - a. Give to Council prompt notice of the Force Majeure Event with reasonably full particulars; and
  - b. Suggest an alternative method, if any, of satisfying its obligation under this Agreement.
- (2) If, by reason of a Force Majeure Event, the Developer is unable to satisfy its obligations under this Agreement by an alternative method, the obligations of the Developer, and any time periods, so far as they are affected by the Force Majeure Event are then suspended during the continuance of the Force Majeure Event and any further period as may be reasonable in the circumstances.
- (3) If the Developer gives a notice under this clause, it must use all reasonable efforts and diligence to remove the Force Majeure Event or ameliorate its effects as quickly as practicable.
- (4) If Council and the Developer are unable to agree on the existence of a Force Majeure Event or the period during which the obligations of the Developer, and any time periods, are suspended during the continuance of the Force Majeure Event, that dispute must be referred to for determination under clause 18.
- (5) For the avoidance of doubt, this clause is subject to clause 18 where relevant.

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## **23. ADMINISTRATIVE AND INTERPRETIVE PROVISIONS**

### **23.1 Notices**

- (1) Any notice, consent or other communication under this agreement must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
  - a. delivered to that person or that person's address;
  - b. sent by pre-paid mail to that person's address; or
  - c. sent by email to that person's email address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
  - a. if delivered to a person's address, on the day of delivery if a Business Day, otherwise on the next Business Day;
  - b. if sent by pre-paid mail, on the fourth Business Day after posting; and
  - c. if sent by email to a person's email address and a confirmation of receipt can be retrieved, on the day it was sent if a Business Day, otherwise on the next Business Day.
- (3) For the purpose of this clause the address of a person is the address set out below:

Council:	Chief Executive Officer Sutherland Shire Council 4-20 Eton Street, Sutherland NSW 2232 ssc@ssc.nsw.gov.au
Developer	Damien Vella Chief Executive Officer Level 9, 92 Pitt Street, Sydney NSW 2000 damien@breen.com.au

### **23.2 Power of Attorney**

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

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

### **23.3 Governing law**

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



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

#### **23.4 Variations**

The Agreement may be varied or amended only by the express written approval of each Party using their best endeavours and acting in good faith and in compliance with the Act.

#### **23.5 Waivers**

The failure to exercise or delay in exercising by any party of any right conferred by this agreement shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party. To avoid doubt, if a party exercises a particular right or power or enforces a particular remedy, this does not prevent them from also exercising or enforcing a different one whether separately or at the same time.

#### **23.6 Remedies**

The rights of a party conferred by this agreement are cumulative and are not exclusive of any rights provided by law.

#### **23.7 Pre-Contractual Negotiation**

This agreement expresses and incorporates the entire agreement between the parties in relation to its subject matter and all the terms of that agreement and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

Neither party shall, after execution of this agreement, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this agreement.

#### **23.8 Further Assistance**

The Developer shall perform all acts necessary to give full effect to this agreement.

#### **23.9 Joint liability and benefit**

Except as otherwise specified, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

#### **23.10 Severability**

Save for the operation of clause 19.2, any provision of this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

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**23.11 Third Parties**

This agreement shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

**23.12 Survival of terms**

The terms of this agreement survive its termination to the extent permitted by law.

**23.13 Independent legal advice**

Each party acknowledges that there has been adequate opportunity to obtain independent legal advice as to the meaning and effect of this agreement before it was signed.

**23.14 No agency**

This agreement does not create a relationship of agency between the parties. Neither party shall act or represent itself as acting on behalf of the other party.

**23.15 No Merger**

Nothing in this agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

**23.16 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this agreement or any part of it.

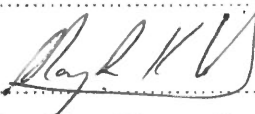
**23.17 Explanatory note**

Whilst the parties note their agreement to the explanatory note provided in Schedule 6 to this agreement, the explanatory note is not to be used to assist in construing this agreement.

THE PARTIES AGREE TO THE PRECEDING TERMS AND CONDITIONS OF THIS  
VOLUNTARY PLANNING AGREEMENT (BEING A DEED OF AGREEMENT)

EXECUTED AS A DEED

Signed, sealed and delivered by Sutherland Shire Council by its Attorney, Council's Chief  
Executive Officer pursuant to Power of Attorney dated 13 May 2022 (Registered 27 May 2022  
BOOK 4798 No. 867)

  
Chief Executive Officer – Manjeet Kaur Grewal

Date: 17/02/2023

I certify that I am an eligible witness and that the Attorney signed this Deed in my presence.

~~\*I certify that I have known the Attorney for at least 12 months OR \*I have not known the Attorney for at least 12 months, but I have confirmed the Attorney's identity by sighting an original identification document and the document I relied on was~~

\*Cross out text which does not apply

Signature of Witness: 

Name of Witness: IAN DRINNAN

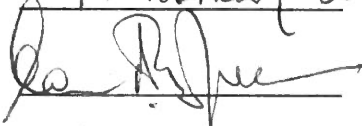
Address of Witness: C/- 4-20 Eton Street, Sutherland, NSW

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Executed by Breen Resources Pty Ltd (the Developer)

ACN 615 045 497 in accordance with section 127 of the *Corporations Act 2001*:

Date:

17 February 2023  


Signature:

Print Name:

Tom A.G. BREEN  
Director

Signature:



Print Name:

JOHN HUTTON  
~~Director and/or Secretary~~

## SCHEDULE 1: REQUIREMENTS UNDER SECTION 7.4 OF THE ACT

Requirement Under The Act	This Agreement
<b>Planning instrument and/or development application – (Section 7.4(1))</b> The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
<b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b>  <b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b>	See clause 1.  N/A
<b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b>	N/A
<b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b>	N/A
<b>Applicability of section 7.24 of the Act – (Section 7.4(3)(d))</b>	N/A
<b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b>	N/A
<b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b>	See clause 17.
<b>Enforcement of this agreement (Section 7.4(3)(g))</b>	See clause 15.1.
<b>No obligation to grant consent or exercise functions – (Section 7.4(9))</b>	See clause 19.1
<b>Registration of this agreement</b> The parties agree that this agreement will be registered.	See clause 4.

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## **SCHEDULE 2: LAND**

The Land under this Agreement comprises:

1. Lot 1122 in DP794114
2. Lot 1123 in DP794114
3. Lot 5 in DP1158627
4. Lot 6 in DP1158627

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### **SCHEDULE 3: EMBELLISHED MARANG PARKLAND WORKS**

The Developer will embellish the Marang Parklands generally in accordance with the Embellished Marang Parklands Plan included in Figure 7 of the Landscape Master Plan prepared by Clouston Associates (Issue C dated 12 March 2021), depicted in Appendix C of the SSD Application, comprising:

- a. Car parking for 200 cars and coaches;
- b. Outdoor amphitheatre, without terracing;
- c. Picnic facilities, including picnic tables and shelters;
- d. Playground and village green;
- e. Slide at the key lookout point on Lot 1122;
- f. Accessible walking tracks and trails; and
- g. Extensive landscaping across the Embellished Marang Parklands comprising Kurnell Dune Forest, Coastal Heath and grasses.

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**SCHEDULE 4: CONSTRUCTION PROGRAM**



Table 1.1: Summary of Project Phases and Milestones				Project Phases and Milestones									
Phase	Sub-Phase	Start Date	End Date	Duration (Days)	Start Date	End Date	Duration (Days)	Start Date	End Date	Duration (Days)	Start Date	End Date	Duration (Days)
Phase 1: Initial Assessment	1.1.1. Project Kick-off	2023-01-01	2023-01-05	5	2023-01-01	2023-01-05	5	2023-01-01	2023-01-05	5	2023-01-01	2023-01-05	5
	1.1.2. Stakeholder Identification	2023-01-06	2023-01-10	5	2023-01-06	2023-01-10	5	2023-01-06	2023-01-10	5	2023-01-06	2023-01-10	5
	1.1.3. Initial Assessment	2023-01-11	2023-01-15	5	2023-01-11	2023-01-15	5	2023-01-11	2023-01-15	5	2023-01-11	2023-01-15	5
	1.1.4. Initial Assessment	2023-01-16	2023-01-20	5	2023-01-16	2023-01-20	5	2023-01-16	2023-01-20	5	2023-01-16	2023-01-20	5
	1.1.5. Initial Assessment	2023-01-21	2023-01-25	5	2023-01-21	2023-01-25	5	2023-01-21	2023-01-25	5	2023-01-21	2023-01-25	5
	1.1.6. Initial Assessment	2023-01-26	2023-01-30	5	2023-01-26	2023-01-30	5	2023-01-26	2023-01-30	5	2023-01-26	2023-01-30	5
	1.1.7. Initial Assessment	2023-01-31	2023-02-04	5	2023-01-31	2023-02-04	5	2023-01-31	2023-02-04	5	2023-01-31	2023-02-04	5
	1.1.8. Initial Assessment	2023-02-05	2023-02-09	5	2023-02-05	2023-02-09	5	2023-02-05	2023-02-09	5	2023-02-05	2023-02-09	5
	1.1.9. Initial Assessment	2023-02-10	2023-02-14	5	2023-02-10	2023-02-14	5	2023-02-10	2023-02-14	5	2023-02-10	2023-02-14	5
	1.1.10. Initial Assessment	2023-02-15	2023-02-19	5	2023-02-15	2023-02-19	5	2023-02-15	2023-02-19	5	2023-02-15	2023-02-19	5
Phase 2: Planning	2.1.1. Planning	2023-02-20	2023-02-24	5	2023-02-20	2023-02-24	5	2023-02-20	2023-02-24	5	2023-02-20	2023-02-24	5
	2.1.2. Planning	2023-02-25	2023-02-29	5	2023-02-25	2023-02-29	5	2023-02-25	2023-02-29	5	2023-02-25	2023-02-29	5
	2.1.3. Planning	2023-03-01	2023-03-05	5	2023-03-01	2023-03-05	5	2023-03-01	2023-03-05	5	2023-03-01	2023-03-05	5
	2.1.4. Planning	2023-03-06	2023-03-10	5	2023-03-06	2023-03-10	5	2023-03-06	2023-03-10	5	2023-03-06	2023-03-10	5
	2.1.5. Planning	2023-03-11	2023-03-15	5	2023-03-11	2023-03-15	5	2023-03-11	2023-03-15	5	2023-03-11	2023-03-15	5
	2.1.6. Planning	2023-03-16	2023-03-20	5	2023-03-16	2023-03-20	5	2023-03-16	2023-03-20	5	2023-03-16	2023-03-20	5
	2.1.7. Planning	2023-03-21	2023-03-25	5	2023-03-21	2023-03-25	5	2023-03-21	2023-03-25	5	2023-03-21	2023-03-25	5
	2.1.8. Planning	2023-03-26	2023-03-30	5	2023-03-26	2023-03-30	5	2023-03-26	2023-03-30	5	2023-03-26	2023-03-30	5
	2.1.9. Planning	2023-03-31	2023-04-04	5	2023-03-31	2023-04-04	5	2023-03-31	2023-04-04	5	2023-03-31	2023-04-04	5
	2.1.10. Planning	2023-04-05	2023-04-09	5	2023-04-05	2023-04-09	5	2023-04-05	2023-04-09	5	2023-04-05	2023-04-09	5
Phase 3: Execution	3.1.1. Execution	2023-04-10	2023-04-14	5	2023-04-10	2023-04-14	5	2023-04-10	2023-04-14	5	2023-04-10	2023-04-14	5
	3.1.2. Execution	2023-04-15	2023-04-19	5	2023-04-15	2023-04-19	5	2023-04-15	2023-04-19	5	2023-04-15	2023-04-19	5
	3.1.3. Execution	2023-04-20	2023-04-24	5	2023-04-20	2023-04-24	5	2023-04-20	2023-04-24	5	2023-04-20	2023-04-24	5
	3.1.4. Execution	2023-04-25	2023-04-29	5	2023-04-25	2023-04-29	5	2023-04-25	2023-04-29	5	2023-04-25	2023-04-29	5
	3.1.5. Execution	2023-04-30	2023-05-04	5	2023-04-30	2023-05-04	5	2023-04-30	2023-05-04	5	2023-04-30	2023-05-04	5
	3.1.6. Execution	2023-05-05	2023-05-09	5	2023-05-05	2023-05-09	5	2023-05-05	2023-05-09	5	2023-05-05	2023-05-09	5
	3.1.7. Execution	2023-05-10	2023-05-14	5	2023-05-10	2023-05-14	5	2023-05-10	2023-05-14	5	2023-05-10	2023-05-14	5
	3.1.8. Execution	2023-05-15	2023-05-19	5	2023-05-15	2023-05-19	5	2023-05-15	2023-05-19	5	2023-05-15	2023-05-19	5
	3.1.9. Execution	2023-05-20	2023-05-24	5	2023-05-20	2023-05-24	5	2023-05-20	2023-05-24	5	2023-05-20	2023-05-24	5
	3.1.10. Execution	2023-05-25	2023-05-29	5	2023-05-25	2023-05-29	5	2023-05-25	2023-05-29	5	2023-05-25	2023-05-29	5
Phase 4: Monitoring and Evaluation	4.1.1. Monitoring and Evaluation	2023-05-30	2023-06-03	5	2023-05-30	2023-06-03	5	2023-05-30	2023-06-03	5	2023-05-30	2023-06-03	5
	4.1.2. Monitoring and Evaluation	2023-06-04	2023-06-08	5	2023-06-04	2023-06-08	5	2023-06-04	2023-06-08	5	2023-06-04	2023-06-08	5
	4.1.3. Monitoring and Evaluation	2023-06-09	2023-06-13	5	2023-06-09	2023-06-13	5	2023-06-09	2023-06-13	5	2023-06-09	2023-06-13	5
	4.1.4. Monitoring and Evaluation	2023-06-14	2023-06-18	5	2023-06-14	2023-06-18	5	2023-06-14	2023-06-18	5	2023-06-14	2023-06-18	5
	4.1.5. Monitoring and Evaluation	2023-06-19	2023-06-23	5	2023-06-19	2023-06-23	5	2023-06-19	2023-06-23	5	2023-06-19	2023-06-23	5
	4.1.6. Monitoring and Evaluation	2023-06-24	2023-06-28	5	2023-06-24	2023-06-28	5	2023-06-24	2023-06-28	5	2023-06-24	2023-06-28	5
	4.1.7. Monitoring and Evaluation	2023-06-29	2023-07-03	5	2023-06-29	2023-07-03	5	2023-06-29	2023-07-03	5	2023-06-29	2023-07-03	5
	4.1.8. Monitoring and Evaluation	2023-07-04	2023-07-08	5	2023-07-04	2023-07-08	5	2023-07-04	2023-07-08	5	2023-07-04	2023-07-08	5
	4.1.9. Monitoring and Evaluation	2023-07-09	2023-07-13	5	2023-07-09	2023-07-13	5	2023-07-09	2023-07-13	5	2023-07-09	2023-07-13	5
	4.1.10. Monitoring and Evaluation	2023-07-14	2023-07-18	5	2023-07-14	2023-07-18	5	2023-07-14	2023-07-18	5	2023-07-14	2023-07-18	5

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**SCHEDULE 5: 2010 VPA**

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## SCHEDULE 6: THE EXPLANATORY NOTE

### Explanatory Note under clause 25E of the Environmental Planning & Assessment Regulation 2000

Exhibition of draft Voluntary Planning Agreement

Lot 1122 in DP794114; Lot 1123 in DP794114; Lot 5 in DP1158627 Lot 6 in DP1158627 known as 330 Captain Cook Drive, Kurnell NSW 2231

#### Planning Agreement

The purpose of this Explanatory Note is to provide a summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979* (**the Act**).

This Explanatory Note has been prepared jointly by the Developer and Council subject to 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

Breen Resources Pty Ltd (**the Developer**) has made an offer to Sutherland Shire Council (**the Council**) to enter into a voluntary Planning Agreement, in connection with a Development Application relating to the land.

#### Description of subject land

The land to which the Planning Agreement applies is described as Lot 1122 in DP794114; Lot 1123 in DP794114; Lot 5 in DP1158627 Lot 6 in DP1158627 known as 330 Captain Cook Drive, Kurnell NSW 2231 (**the Land**).

#### Description of the Development Application to which the Planning Agreement applies

The development application to which the Planning Agreement relates is as follows.

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In December 2020, the Developer lodged a State Significant Development Application (SSDA), including for a new Resource Recovery Facility on their site at Kurnell. The development generally comprises several key elements including:

- Establishment of a new Resource Recovery Facility off Lindum Road.
- Continuation of the current land restoration activities.
- Annual site capacity of 650,000 tonnes estimated to comprise 600,000 tonnes construction and demolition waste and 50,000 tonnes commercial and industrial waste.
- A slight increase in the overall landfill capacity of the site.
- Capping and contouring of a modified and in some areas a higher parkland landform surrounding the playing fields.
- Higher specification/embellishment of the Marang Parklands on the western portion of the site.

### **Summary of Objectives, Nature and Effect of the Planning Agreement**

The Planning Agreement will require the provision of the carrying out of the dedication of land, monetary contributions for public infrastructure and improvements and material public benefits in Kurnell.

The key aspects of the Planning Agreement include:

- The delivery of the new Embellished Marang Parklands which represent a significant improvement in facilities and amenities compared to the parklands to be delivered under the 2010 VPA. The masterplan for the Embellished Parklands as proposed as part of the SSDA is included in Figure 1 of this Explanatory Note [see clause 6.1 of the Planning Agreement]
- Delivery timeframe for certain works by the Developer relating to:
  - Playing fields which are required under the 2010 VPA [see clauses 5.3 and 5.4 of the Planning Agreement].
  - Embellished Marang Parklands which are required under this Planning Agreement [see clause 5.2 of the Planning Agreement].
- A Sunset clause:
  - The Developer will cease all commercial use on the part of the land to be dedicated by it under the 2010 VPA that is owned or controlled by it by no later than 30 November 2026 [see clause 5.5 of the Planning Agreement].
  - The Developer will take all steps within its power and control to cause the land that is owned or controlled by it and that is required to be dedicated under the 2010 VPA to be dedicated by no later than 30 November 2027 [see clause 10.1 of the Planning Agreement].
- 'Rental' payments (referred to as Annual Payments in the Planning Agreement) apply, on a pro-rata basis, to certain lands until such time as the final landfill cap has been completed and certified by the EPA [see clause 7 of the Planning Agreement].
- Escalating monetary penalty payments apply to certain works if they become outstanding works [see clause 6 of the Planning Agreement].
- Local Roads and Parklands Maintenance Levy, which will be indexed, in relation to certain material received at the New Resource Recovery Facility [see clause 8 of the Planning Agreement].
- Principal Certifying Authority for determination of practical completion of works to be appointed from list supplied by Council, within a certain time [see clause 12 of the Planning Agreement].

### **Details of the Embellished Marang Parklands**



Figure 1: Masterplan of the Embellished Marang Parklands as proposed as part of the SSDA

Key features of the Embellished Marang Parklands include:

- Car parking for 200 cars and coaches;
- Outdoor amphitheatre;
- Picnic facilities, including picnic tables and shelters;
- Playground and village green;
- Slide at the key lookout point;
- Accessible walking tracks and trails; and
- Extensive landscaping across the Embellished Marang Parklands comprising Kurnell Dune Forest, Coastal Heath and grasses.

The above contributions are made in connection with a proposed development of the Land.

### Assessment of the Merits of the Planning Agreement

#### 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*:

- the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- the orderly and economic use and development of land,
- good design and amenity of the built environment, and
- increased opportunity for community participation in environmental planning and assessment.

The draft Planning Agreement promotes the public interest by providing public amenities and public infrastructure improvements in Kurnell.

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### The Planning Purposes served by the Planning Agreement

The Planning Agreement provides for payment of the monies in column 1 of the Table below, which are to be applied towards the public purposes in column 2 in the table below:

Monetary Contribution	Public purpose
Payment of a monetary penalty in relation to delay (if any) in completing the Embellished Marang Parklands, Breen Compaction Works or Breen Works relating to the Stage 2 and Stage 3 Playing Fields [see clause 6 of the Planning Agreement]	The provision of (or the recoupment of the cost of providing) public amenities or public services.
An annual payment in relation to the land area of the Transferred Land (Lot 6, Lot 1122 and Lot 1123) that has not been Capped to the written satisfaction of the Environment Protection Authority [see clause 7 of the Planning Agreement]	Maintenance and improvement works in relation to the Embellished Marang Parklands
Local roads and parklands maintenance levy in the amount of \$1.00 (excluding GST) per tonne of certain material delivered by road to be processed by the New Resource Recovery Facility [see clause 8 of the Planning Agreement]	Maintenance of local roads used as access routes within 5 km from the western edge of the Embellished Marang Parklands  Maintenance of the Embellished Marang Parklands and Stage 2 and 3 Playing Fields

### How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter (now section 8A)

By enabling Council to provide public infrastructure and facilities, the Planning Agreement is consistent with the following guiding principles of councils, set out in section 8A of the *Local Government Act 1993*:

- Councils should provide strong and effective representation, leadership, planning and decision-making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should consider the long term and cumulative effects of actions on future generations.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

### Whether the Planning Agreement conforms with the Council's Capital Works Program

The Planning Agreement is satisfactory having regard to Council's Capital Works Program ('CWP') by the construction of additional public amenities. These public improvements are outside of the scope of Council's immediate Capital Works Program and their cost will be borne by the Developer.

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As the public improvements as provided under this Planning Agreement will have a nil net cost to Council and align with strategic objectives for Kurnell the proposed improvements are considered to generally conform with the intent of Council's Capital Works Program.

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

- NA

