Planning Agreement
Riverlands Golf Course

Demian Holdings Pty Limited (ABN 83 082 158 049) & Riverland Estate Pty Limited (ABN 38 103 833 825) (**Developer**)

Bankstown City Council (ABN 38 380 045 375) (**Council**)

Document version: 28 August 2015

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Table of Contents

Parties **1**
Background **1**
Operative provisions **1**
1 Agreement **1**
2 Definitions and interpretation **1**
2.1 Defined terms 1
2.2 Interpretation 1
3 Application of this document **1**
3.1 Planning Agreement 1
3.2 Application 2
4 Operation of this document **2**
4.1 Formation of deed 2
4.2 Planning Agreement 2
4.3 Termination of Previous Agreements 2
4.4 Further agreements relating to this document 2
5 Application of s94, s94A and s94EF of the EPA Act to the Development **2**
5.1 Sections 94 & 94A 2
5.2 Section 94EF 2
6 Provision of Development Contributions **2**
6.1 Developer to provide 2
6.2 Application by Council 2
6.3 Designated Land 2
6.4 The Works 3
7 Contamination **3**
7.1 Definitions 3
7.2 Warranties and Indemnities 3
7.3 Remediation 4
8 Access to land **4**
8.1 The Designated Land 4
8.2 Council's land 4
8.3 Terms of access 4
9 Completion of Items of Work **4**
9.1 Service of Completion Notice 4
9.2 Inspection by Council 4
9.3 Council to serve notice 4
9.4 Deemed Completion 5
9.5 Response to Rectification Notice 5
9.6 Passing of title and risk 5
9.7 Works as Executed Plan 5
10 Rectification of Defects **5**
10.1 Defects Notice 5
10.2 Developer to rectify Defects 6
10.3 Consequences of failure to rectify Defects 6
11 Indemnity and insurance **6**
11.1 Indemnity 6
11.2 Insurance 6
12 Step in Rights **7**
12.1 Right of Council to Step-In 7
12.2 Consequence of Step-In 7
12.3 Obligations of Council when exercising Step-in Rights 7
12.4 Recovery of cost of Work carried out by the Council 7
13 Breach of this document **8**
13.1 Breach Notice 8
13.2 Events of default 8
13.3 Consequences of Events of default 8
14 Security **8**
14.1 Provision of Security 8
14.2 Replacement of Security 8
14.3 Council may call on Security 9
14.4 Top up of Security 9
14.5 Release of Primary Security 9

14.6 Release of Defects Security 9
14.7 Indexation of value of Contribution Value....9
14.8 Compulsory acquisition of the Designated Land....9
15 Dispute resolution 10
15.1 Application of this clause 10
15.2 Notice of Dispute 10
15.3 Further steps required before proceedings 10
15.4 Disputes for mediation or expert determination.... 10
15.5 Mediation 10
15.6 Expert determination 11
15.7 Final determination of Expert 11
15.8 Costs – Expert determination 11
15.9 Remedies available under the EPA Act 11
15.10 Urgent relief 12
15.11 Conduct pending resolution.... 12
16 Registration of this document.... 12
16.1 Registration 12
16.2 Obligations of the Developer 12
16.3 Discharge.... 12
17 Assignment 12
17.1 Restriction on Assignment.... 12
17.2 Procedure for Assignment.... 12
18 Monitoring & review of this Planning Agreement 13
18.1 Council to maintain register 13
18.2 Planning Agreement becomes invalid 13
19 Position of Council 13
19.1 Consent authority 13
19.2 Document does not fetter discretion.... 13
19.3 Severance of provisions 14
19.4 No obligations.... 14
20 Confidentiality.... 14
20.1 Document not Confidential 14
20.2 Other Confidential Information 14
21 Administrative provisions.... 15
21.1 Notices.... 15
21.2 Entire agreement.... 15
21.3 Waiver.... 15
21.4 Cooperation 15
21.5 Counterparts.... 15
21.6 Unenforceability.... 15
21.7 Power of Attorney.... 15
21.8 Governing law.... 16
21.9 Legal Costs.... 16
21.10 New Laws 16
21.11 Representations and Warranties.... 16
21.12 Modification 16
21.13 GST 17
Schedule 1 Definitions & Interpretation 18
Part 1 - Definitions.... 18
Part 2 - Interpretational Rules 22
Schedule 2 Works.... 24
Part 1 – Bank Stabilisation Works.... 24
Part 2 – Staged Infrastructure Works.... 28
Part 3 – Roads & Maritime Services (RMS) Infrastructure Works.... 35
Schedule 3 Designated Land.... 36
Part 1 –.... 36
Schedule 4 Terms of access 37
1 Definitions.... 37
2 Licence 37
2.1 Grant of the Licence.... 37
2.2 Personal rights 37
2.3 Leasehold interest.... 37

3 Compliance With authorities 37
3.1 No warranty as to suitability for use 37
3.2 Compliance with the terms of the Consents 38
3.3 Compliance with directions from Authorities 38
3.4 Obtaining further consents 38
4 Limitation of the Owner's liability 38
4.1 Insurances 38
4.2 Inspection of insurance 38
4.3 Cancellation of insurance 38
4.4 Risk 38
4.5 Indemnity 39
Annexure 1 Plan of the Land 40
Annexure 1A Bank Stabilisation Map 41
Annexure 2 Deed of Assignment 42
Parties 1
Background 1
Operative provisions 1
1 Definitions & interpretation 1
1.1 Defined Terms 1
1.2 Interpretation 1
2 Conditions precedent 1
2.1 Conditional agreement 1
2.2 Failure of Assignment Agreement 2
3 Assignment of Rights and Obligations 2
3.1 Agreement 2
3.2 Effect of the assignment of the Rights and Obligations 2
4 Mutual releases 2
5 Covenant by the Assignee 2
6 Cooperation 2
7 Administrative provisions 2
7.1 Notices 2
7.2 Entire Agreement 3
7.3 Waiver 3
7.4 Cooperation 3
7.5 Counterparts 3
7.6 Amendment 3
7.7 Unenforceability 3
7.8 Power of Attorney 3
7.9 Governing law 3
Execution page – Deed of Assignment 4
Schedule 1: Defined terms and Interpretation 5
Part 1 - Definitions 5
Part 2 - Interpretational Rules 6
Execution page - Planning Agreement 8

Planning Agreement
Riverlands Golf Course

Parties

Council	**Name**	Bankstown City Council
	Address	Civic Tower 66-72 Rickard Road Bankstown NSW 2170
	ABN	38 380 045 375
Developer	**Name**	Demian Holdings Pty Limited & Riverland Estate Pty Limited
	Address	Level 2, 7 Charles Street, Parramatta NSW 2124
	ABN	83 082 158 049 – Demian Holdings Pty Ltd 38 103 833 825 - Riverland Estate Pty Ltd

Background

A The Developer owns the Land.

B The Developer wishes to carry out the Development.

C The Developer has requested that Council seek the Instrument Change.

D The Developer has agreed to make the Development Contributions in connection with the carrying out of the Development in accordance with this deed if the Instrument Change is made.

Operative provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this deed, in consideration of, among other things, the mutual promises contained in this deed.

2 Definitions and interpretation

2.1 Defined terms

In this deed, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this deed.

3 Application of this document

3.1 Planning Agreement

This deed is a planning agreement:

(1) within the meaning set out in s93F of the EPA Act; and

(2) governed by Subdivision 2 of Division 6 of Part 4 of the EPA Act.

3.2 Application

This deed applies to the Land and to the Development.

4 Operation of this document

4.1 Formation of deed

The parties acknowledge and agree that this document is a deed and accordingly binds the parties as such:

(1) from the date it is formed; and

(2) until the date the Planning Agreement comes into effect.

4.2 Planning Agreement

The Planning Agreement operates from the date on which the later of the following occurs:

(1) it is entered into in accordance with the EPA Act and the Regulations; and

(2) the Instrument Change is made.

4.3 Termination of Previous Agreements

Upon the Planning Agreement becoming operative, the "Deed of Agreement" entered into between Council and Pross Chiyoda Pty Ltd dated 30 August 1990 concerning the Land is terminated.

4.4 Further agreements relating to this document

At any time and from time to time, the parties may enter into agreements relating to the subject-matter of the Planning Agreement:

(1) that are not inconsistent with this Planning Agreement; and

(2) which are entered into for the purpose of giving effect to this Planning Agreement.

5 Application of s94, s94A and s94EF of the EPA Act to the Development

5.1 Sections 94 & 94A

This document does not exclude the application of s94 and s94A to the Development.

5.2 Section 94EF

This document does not exclude the application of s94EF to the Development.

6 Provision of Development Contributions

6.1 Developer to provide

The Developer must:

(1) complete each Item of Work by the times set out in **Schedule 2**; and

(2) dedicate the Designated Land to Council by the times set out in **Schedule 3**.

6.2 Application by Council

Council must apply each Development Contribution made under this Planning Agreement towards the relevant public purpose for which it is made within a reasonable time of the relevant Development Contribution being made.

6.3 Designated Land

(1) The Designated Land must be dedicated to Council:

(a) free of any trusts, estates, interests, covenants and Encumbrances; and

(b) at no cost to Council.

(2) For the purpose of this Planning Agreement, Designated Land is dedicated to Council:

(a) if the relevant land is dedicated in a plan registered at the Land & Property Information Office of NSW, when that plan is so registered; or

(b) otherwise when the Developer delivers to Council:

(i) a transfer of the relevant land in registrable form;

(ii) the original Certificate of Title for the relevant land; and

(iii) any document in registrable which, when registered, will remove any Encumbrances registered on the title of that land, and

those documents are registered at the Land and Property Information Office of NSW.

6.4 The Works

The Developer must construct and Complete the Works required to be constructed and Completed by it:

(1) in accordance with the requirements of, or consents issued by, any Authority;

(2) in accordance with any relevant Australian Standards applicable to works of the same nature as each Item of Work; and

(3) in a proper and workmanlike manner complying with current industry practice and standards relating to each Item of Work.

7 Contamination

7.1 Definitions

For the purpose of this clause 7.1:

(1) **Contamination** means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

(a) result in an Authority issuing a notice, direction or order under an Environmental Law; or

(b) which would constitute a violation of contribution of contravention of any Environmental Law.

(2) **Contaminated** means subject to Contamination.

(3) **Environmental Law** means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

7.2 Warranties and Indemnities

The Developer:

(1) warrants that as far as it is aware, and other than as disclosed to the Council, the Designated Land is not Contaminated; and

(2) indemnifies and must keep indemnified the Council against all liability for and associated with all Contamination present in, on and under the Designated Land before the date of this deed including full responsibility for compliance with and any liability in respect of such Contamination under the *Contaminated Lands Management Act 1997* (NSW) and all other relevant legislation and the requirements of the Department of Environment and Conservation and any other relevant Authority.

7.3 Remediation

(1) If the Council becomes aware or reasonably suspects that any part of the Designated Land was Contaminated before the date of this deed, the Council may as soon as practicable notify the Developer in writing to that effect.

(2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which the Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the Contamination in, on, under the surface of, and leaving from the relevant part of the Designated Land and provide copies of all reports on such investigations to Council (**Investigation Reports**).

(3) As soon as practicable after receipt by the Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Land might be dealt with so that it is no longer Contaminated.

(4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as the Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Land is no longer Contaminated.

8 Access to land

8.1 The Designated Land

The Developer will permit Council, its officers, employees, agents and contractors to enter any part of the Land, upon giving reasonable prior notice of no less than seven (7) days, in order to allow Council to inspect, examine or test any Item of Work or to exercise the Step-in Rights.

8.2 Council's land

Council will permit the Developer to enter, use and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any works under this Planning Agreement that are required to be carried out on that land or to perform any other obligation imposed on the Developer under this Planning Agreement.

8.3 Terms of access

If a party accesses any land owned by the other party in accordance with this clause 8 then the provisions of **Schedule 4** apply to that access.

9 Completion of Items of Work

9.1 Service of Completion Notice

When the Developer considers that an Item of Work is complete, the Developer must serve a Completion Notice on Council within ten (10) business days of completing that Item of Work.

9.2 Inspection by Council

Council must inspect any Item of Work that is specified in a Completion Notice within twenty (20) business days of the service of that Completion Notice.

9.3 Council to serve notice

(1) Within the earlier of:

(a) twenty (20) business days of inspecting the Item of Work set out in a Completion Notice; and

(b) thirty (30) business days from the date the relevant Completion Notice was served,

Council must provide notice in writing to the Developer that the Item of Work set out in the Completion Notice:

(c) has been Completed; or

(d) has not been Completed, in which case the notice is a **Rectification Notice** and must also detail:

(i) those aspects of the relevant Item of Work which have not be Completed; and

(ii) the work Council requires the Developer to carry out in order to rectify those deficiencies.

9.4 Deemed Completion

If Council does not provide the Developer with notice in accordance with clause 9.3, the Item of Work set out in the Completion Notice will be deemed to have been Completed on the date nominated in the Completion Notice.

9.5 Response to Rectification Notice

(1) Where Council serves a Rectification Notice on the Developer, the Developer must:

(a) rectify the deficiencies in that Item of Work in accordance with the Rectification Notice within three (3) months from the date it is served by Council; or

(b) serve a notice on Council that it disputes the matters set out in the Rectification Notice.

(2) Where the Developer:

(a) serves notice on the Council in accordance with paragraph (1)(b) the dispute resolution provisions of this Planning Agreement apply; or

(b) rectifies the relevant Item of Work in accordance with paragraph (1)(a), it must serve a new Completion Notice upon Council for the Item of Work it has rectified (**New Completion Notice**).

(3) The provisions of clauses 9.1 to 9.5 (inclusive) apply to any New Completion Notice issued by the Developer in accordance with paragraph (2)(b).

9.6 Passing of title and risk

On the later of:

(1) Completion of an Item of Work; and

(2) the date on which the land on which that Item of Work is situated is dedicated to Council,

Council:

(3) accepts ownership, possession and control of; and

(4) risk in,

that Item of Work.

9.7 Works as Executed Plan

No later than forty (40) business days after an Item of Work is Completed, the Developer must submit to Council a full works-as-executed-plan in respect of that Item of Work.

10 Rectification of Defects

10.1 Defects Notice

(1) If an Item of Work is Complete, but that Item of Work contains a defect which:

(a) adversely affects the ordinary use and/or enjoyment of the item; or

(b) will require maintenance or rectification works to be performed on it at some time in the future as a result of the existence of the defect;

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning that Item of Work, but only within the Defects Liability Period.

(2) A Defects Notice must contain the following information:

(a) the nature and extent of the Defect;

(b) the work Council requires the Developer to carry out in order to rectify the Defect; and

(c) the time within which the Defect must be rectified (which must be a reasonable time and not less than ten (10) business days).

10.2 Developer to rectify Defects

(1) Within the time stated in the Defects Notice, the Developer must either:

(a) rectify the Defects specified within a Defects Notice; or

(b) refer the matters contained in the Defects Notice for dispute resolution in accordance with clause 15.

(2) The Developer must follow the procedure set out in clause 9 in respect of the rectification of the Defects specified in the Defects Notice.

10.3 Consequences of failure to rectify Defects

If the Developer fails to:

(1) comply with a Defects Notice; or

(2) refer the matters contained in the Defects Notice for dispute resolution,

then Council may exercise its Step-in Rights with respect to the relevant Defect.

11 Indemnity and insurance

11.1 Indemnity

The Developer indemnifies Council against any Claims that may arise in connection with:

(1) the carrying out by the Developer of any Item of Work; and

(2) the performance by the relevant Developer of any other obligation under this document,

except to the extent that any such Claim arose as a result of an act or omission of Council.

11.2 Insurance

(1) The Developer must maintain the following insurances in relation to the Works required to be carried out by it under this document:

(a) contract works insurance, noting, naming or otherwise including the Council as an insured under the policy, for the full replacement value of each Item of Works that has not been Completed;

(b) public liability insurance for at least $20,000,000.00 for a single occurrence, noting, naming or otherwise including the Council as an insured under the policy, for liability to any third party;

(c) workers compensation insurance as required by law; and

(d) any other insurance required by law.

(2) The Developer must ensure that any subcontractor engaged by it to carry out any of the Works maintains its own policies of insurance as referred to in paragraphs (1)(b) to (1)(d).

(3) If the Developer fails to comply with paragraphs (1) or (2), Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose in which case the amount so paid is a debt due from the Developer to Council which may be recovered by the Council as it deems appropriate including:

(a) by calling upon the Security provided by the Developer under this Planning Agreement, or

(b) recovery as a debt due in a Court of competent jurisdiction.

12 Step in Rights

12.1 Right of Council to Step-In

Provided it gives the Developer any notice required to be provided under this Planning Agreement concerning the Developer's breach, Council may:

(1) carry out any work that the Developer has failed to do in accordance with this Planning Agreement; and

(2) enter upon that part of the Land reasonably necessary to allow Council to carry out that work and satisfy the obligations of the Developer,

(**Step-in Rights**).

12.2 Consequence of Step-In

If Council elects to exercise the Step-in Rights then the Developer must:

(1) cease performing the works that are subject to the Step-in Rights; and

(2) not impede or interfere with Council in undertaking that work.

12.3 Obligations of Council when exercising Step-in Rights

If Council exercises its Step-in Rights:

(1) Council:

(a) must maintain any insurances that the Developer was required to maintain with respect to the work being carried out by Council;

(b) indemnifies the Developer against any Claims that arise as a result of the exercise of those rights by Council, except to the extent that any such Claim arose as a result of an act or omission of the Developer;

(c) must cause as little disruption to the conduct of the Development; and

(d) must repair and make good any damage caused by it to any property of the Developer or a third party.

12.4 Recovery of cost of Work carried out by the Council

(1) Where Council exercises its Step-in Rights under clause 12.1 all reasonable costs incurred by Council in doing so may be claimed by Council as a liquidated debt owed by the Developer in a Court of competent jurisdiction.

(2) For the purpose of paragraph (1), Council's costs of exercising its Step-in Rights include, but are not limited to:

(a) the reasonable costs of Council's servants, agents and contractors reasonably incurred for that purpose;

(b) all fees and charges necessarily or reasonably incurred by Council in order to have the default rectified; and

(c) all legal costs and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Planning Agreement.

13 Breach of this document

13.1 Breach Notice

If the Developer breaches this Planning Agreement, Council may serve a notice on the Developer (**Breach Notice**) specifying:

(1) the nature and extent of the alleged breach;

(2) if:

(a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or

(b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and

(3) the time within which Council requires the breach to be rectified, which must be a reasonable time of not less than forty (40) business days.

13.2 Events of default

The Developer commits an "Event of Default" if it:

(1) fails to:

(a) comply with a Breach Notice; or

(b) refer the matters contained in the Breach Notice for dispute resolution in accordance with clause 15, or

(2) becomes subject to an Insolvency Event.

13.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

(1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or

(2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

14 Security

14.1 Provision of Security

Prior to the issue of the first Construction Certificate for the Development, the Developer must deliver to Council:

(1) Security for the amount set out in Column 4 of **Schedule 2** (**Primary Security**); and

(2) separate Security for the amount set out in Column 5 of **Schedule 2** (**Defects Security**),

for each Item of Work.

14.2 Replacement of Security

(1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this Planning Agreement.

(2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

14.3 Council may call on Security

(1) If the Developer commits an Event of Default then Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.

(2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the relevant Event of Default.

14.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this Planning Agreement.

14.5 Release of Primary Security

Unless:

(1) Council has made or intends to make a demand against any Security provided by the Developer;

(2) the Development Contributions on account of which that Security was provided have not been made; or

(3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Primary Security within ten (10) business days of such a request being made.

14.6 Release of Defects Security

Unless:

(1) Council has made or intends to make a demand against any Security provided by the Developer;

(2) the relevant Defects Liability Period has not expired; or

(3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

14.7 Indexation of value of Contribution Value

(1) The Contribution Values will be indexed quarterly in accordance with the Consumer Price Index (All Groups - Sydney) as provided by the Australian Bureau of Statistics.

(2) The Developer must ensure that the Security held by Council at all times equals the indexed amount notified to the Developer by Council.

14.8 Compulsory acquisition of the Designated Land

(1) The Developer consents to the compulsory acquisition of the Designated Land:

(a) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) (**Acquisition Act**); and

(b) on the terms set out in this clause14.8.

(2) Council may only acquire the Designated Land compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this Planning Agreement.

(3) If Council acquires the Designated Land compulsorily in accordance with the Acquisition Act:

(a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is $1.00; and

(b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.

(4) The parties agree that the provisions of this clause 14.8 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.

15 Dispute resolution

15.1 Application of this clause

Subject to clause, any Dispute must be addressed in accordance with this clause 15.

15.2 Notice of Dispute

If a party believes that there is a Dispute, that party must serve a notice on the other parties:

(1) setting out the nature and extent of the Dispute; and

(2) advising what the party serving the notice needs to be done in order to resolve the Dispute,

(**Dispute Notice**).

15.3 Further steps required before proceedings

(1) For the purpose of this clause 15.3, the **Representatives** are:

(a) in the case of the Developer, the Chairman of that company from time to time, or if there is no Chairman, any one (1) of its Directors; and

(b) in the case of Council, the General Manager from time to time.

(2) Within ten (10) business days of a Dispute Notice being served, the Representatives of the parties must meet in order to attempt to resolve the Dispute.

15.4 Disputes for mediation or expert determination

(1) If the Representatives of the parties have not been able to resolve the Dispute under clause 15.3 and:

(a) the Dispute is one that could be determined by an appropriately qualified expert, either party may refer the Dispute to expert determination under clause 15.6; or

(b) the Dispute is not one that could be determined by an appropriately qualified expert, either party may refer the Dispute to mediation under clause 15.5.

(2) If, within five (5) business days after the expiry of the period referred to in clause 15.3, the parties cannot agree as to whether the Dispute can or cannot be resolved by expert determination, then either party may refer that dispute to the President of the Law Society of New South Wales for the time being for resolution.

(3) Any determination made by the President of the Law Society of New South Wales under paragraph (2) is binding on the parties.

15.5 Mediation

(1) This clause 15.5 only applies if the Dispute is to be determined by mediation.

(2) Any mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) business days, then by a mediator appointed by LEADR.

(3) If the mediation referred to in paragraph (a) has not resulted in settlement of the Dispute and has been terminated, then any party is at liberty to commence proceedings concerning the Dispute in a Court of competent jurisdiction.

15.6 Expert determination

(1) This clause 15.6 only applies if the Dispute is to be determined by expert determination.

(2) The Dispute must be determined by an independent expert (**Expert**) in the relevant field:

(a) agreed between and appointed jointly by the parties; or

(b) in the absence of agreement within five (5) Business Days after the Dispute becomes required to be determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.

(3) Each party must comply with all reasonable requests made by an Expert with respect to the determination of the Dispute, including:

(a) attending any meetings or conferences held by the Expert; and

(b) providing the Expert with any information relevant to the Dispute.

(4) In reaching a determination of a Dispute, the Expert must:

(a) act as an expert and not as an arbitrator;

(b) proceed in any manner that he or she thinks fit without being bound to observe the rules of natural justice or the rules of evidence;

(c) not accept verbal submissions unless both parties are present;

(d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;

(e) take into consideration all documents, information and other material which the parties give the Expert and which the Expert in its absolute discretion considers relevant to the determination of the Dispute;

(f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

(g) issue a draft certificate stating the Expert's intended determination (together with written reasons), giving each party ten (10) business days to make further submissions;

(h) issue a final certificate stating the Expert's determination (together with written reasons); and

(i) act with expedition with a view to issuing the final certificate as soon as practicable.

15.7 Final determination of Expert

The parties agree that the final determination by an Expert will be final and binding upon them except in the case of fraud or misfeasance by the Expert.

15.8 Costs – Expert determination

If any Expert does not award costs as part of his or her determination of the Dispute, each party must contribute equally to the Expert's costs in making that determination.

15.9 Remedies available under the EPA Act

This clause 15.9 does not operate to limit the availability of any remedies available to Council under sections 123, 124 and 125 of the EPA Act.

15.10 Urgent relief

This clause 15.10 does not prevent a party from seeking urgent injunctive or declaratory relief.

15.11 Conduct pending resolution

The parties must continue to perform their respective obligations under this deed if there is a Dispute but will not be required to complete the matter which is the subject of the Dispute, unless the appropriate party indemnifies the other relevant parties against any Claims that may arise in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

16 Registration of this document

16.1 Registration

This Planning Agreement must be registered on the title of the Land pursuant to section 93H of the EPA Act.

16.2 Obligations of the Developer

The Developer must:

(1) do all things necessary to allow the registration of this document to occur under clause 16.1, including but not limited to obtaining the consent of any mortgagee registered on the title of the Land; and

(2) pay any reasonable costs incurred by Council in undertaking that registration.

16.3 Discharge

(1) Council must do all things necessary to allow the Developer to remove this agreement from the title of the Developer's Land as soon as reasonably practicable upon request by the Developer where the Developer has:

(a) dedicated the Designated Land; and

(b) Completed the Works.

(2) The Developer must pay any reasonable costs incurred by Council in undertaking that discharge.

17 Assignment

17.1 Restriction on Assignment

Other than in accordance with this clause 17 the Developer may not:

(1) Assign any part of the Land, other than an End User Lot; and/or

(2) Assign their rights or obligations under this Planning Agreement.

17.2 Procedure for Assignment

(1) If the Developer:

(a) wishes to Assign any part of the Land, other than an End User Lot; and/or

(b) wishes to Assign its rights or obligations under this Planning Agreement,

then the Developer must:

(c) provide a written request to Council for the consent of Council to the relevant Assignment;

(d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it;

(e) obtain written consent of Council to the relevant Assignment; and

(f) at no cost to Council, procure the execution by the Assignee of a Deed of Assignment.

(2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this Planning Agreement.

(3) Council is deemed to have granted its consent to any request for an Assignment made by the Developer under paragraph (1)(c) if Council fails to provide a written response to that request (either by way of consent to the request or request for further information) within ten (10) business days of the request having been made.

18 Monitoring & review of this Planning Agreement

18.1 Council to maintain register

(1) Council, at its cost, must keep an accurate and up to date written register of the Development Contributions made by the Developer under this Planning Agreement (**Register**).

(2) The Register must contain (but is not limited to) particulars of the following:

(a) each Development Contribution made;

(b) the form of the Development Contribution;

(c) the public purpose on account of which the Development Contribution was made;

(d) the date on which the Development Contribution was made; and

(e) particulars of any Development Contributions that are required to have been made under this Planning Agreement, but have not been made by the date required.

(3) Council must allow the Developer to have access to the Register during the ordinary business hours of Council and at no cost.

(4) The Register is to be conclusive evidence of the matters it contains relating to the making of Development Contributions by the Developer under this Planning Agreement.

18.2 Planning Agreement becomes invalid

If this Planning Agreement becomes illegal, unenforceable or invalid (as a result of any change to a Law or otherwise), the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Planning Agreement is entered into.

19 Position of Council

19.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

19.2 Document does not fetter discretion

This deed is not intended to operate to fetter, in any unlawful manner:

(1) the power of Council to make any Law; or

(2) the exercise by Council of any statutory power or discretion,

(**Discretion**).

19.3 Severance of provisions

(1) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

(a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 19 is substantially satisfied;

(b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and

(c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this deed 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 deed contracted out of a provision or exercised a Discretion under this deed, then to the extent of this deed is not to be taken to be inconsistent with the Law.

19.4 No obligations

Nothing in this deed will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

20 Confidentiality

20.1 Document not Confidential

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

20.2 Other Confidential Information

(1) The parties acknowledge that:

(a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this deed;

(b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this deed; and

(c) subject to paragraphs (2) and (3), each party agrees:

(i) not to disclose any Confidential Information received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or

(ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.

(2) A party may disclose Confidential Information in the following circumstances:

(a) in order to comply with the Law, or the requirements of any Authority; or

(b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.

(3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

21 Administrative provisions

21.1 Notices

(1) Any notice, consent or other communication under this document 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's address;

(b) sent by pre-paid mail to that person's address; or

(c) transmitted by facsimile to that person's 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 third Business Day after posting; and

(c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission 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 in this document or another address of which that person may from time to time give notice to each other person.

21.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

21.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

21.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

21.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

21.6 Unenforceability

Any provision of this document 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 document or affecting the validity or enforceability of that provision in any other jurisdiction.

21.7 Power of Attorney

Each attorney who executes this document 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.

21.8 Governing law

The law in force in the State of New South Wales governs this document. 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 document; and

(2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

21.9 Legal Costs

(1) The Developer must meet the reasonable costs and expenses incurred by Council in relation to

(a) preparing, negotiating and executing this deed; and

(b) preparing, negotiating and executing any document required to be entered into in accordance with this deed,

up to a maximum amount of twenty thousand dollars ($20,000), plus GST.

(2) Any amount required to be paid by the Developer under this clause 21.9 must be paid by the Developer within ten (10) business days of the later of:

(a) a written demand by Council for such payment; and

(b) Council providing to the Developer:

(i) a Tax Invoice from Council for the amount being claimed; and

(ii) a copy of the tax invoices received by Council from its solicitors on account of those costs.

21.10 New Laws

If a Law is changed or a new Law comes into force (both referred to as **New Law**) and the Developer is obliged by the New Law to:

(1) do something (including paying any money) which it is already contractually obliged to do under this deed then, only to the extent that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed and vice versa; or

(2) contribute a further material public benefit not contemplated in this deed, any environmental planning instrument or any development control plan applying to the Development as at the date of this deed, the relevant Developer may require that the provisions of this deed, and the Development Contributions to be made under it, be taken into account in the assessment of that further contribution.

21.11 Representations and Warranties

Each party represents and warrants to the other parties that:

(1) it has the power and authority to enter into this deed and comply with their obligations under this deed; and

(2) the entry into this deed will not result in the breach of any Law by it.

21.12 Modification

No modification of this deed will be of any force or effect unless it is:

(1) made in accordance with the EPA Act and/or the Regulations; or

(2) otherwise is in writing and signed by the parties.

21.13 GST

(1) In this clause:

(a) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply;

(b) **GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

(c) **Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law;

(d) **Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply; and

(e) any other term that:

(i) appears in this clause with a capital letter as its first letter; and

(ii) is defined in the GST Law but is not defined in this clause has the meaning given to it in the GST Law.

(2) Subject to paragraphs (3) & (4), if GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

(3) Paragraph (2) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this document to be GST inclusive.

(4) No additional amount is payable by Council under paragraph (2) unless, and only to the extent that, Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

(5) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this document by one party to the other party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), the parties agree:

(a) to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies; and

(b) that any amounts payable by the parties in accordance with paragraph (2) (as limited by paragraph (4)) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

(6) No payment of any amount pursuant to this clause 21.13, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

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

(8) This clause continues to apply after this document ends.

Schedule 1
Definitions & Interpretation

Part 1 - Definitions

Assign, Assignment and Assigned	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.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: (1) Australia and New Zealand Banking Group Limited; (2) Commonwealth Bank of Australia; (3) Macquarie Bank; (4) National Australia Bank Limited; (5) St George Bank Limited; (6) Westpac Banking Corporation; or (7) any other financial institution approved by the Council, in its absolute discretion, in response to a request from either Developer.
Claims	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.
Complete	means the completion of any Item of Work in accordance with this document.
Completion Notice	means a notice served by a Developer under clause 9.1 and which must include the following details: (1) the Item of Work(s) to which it relates; (2) the date of the notice; and (3) the dates and times at which the relevant Item of Work(s) may be inspected by Council.
Confidential Information	means: (1) **intellectual property**: any and all Intellectual Property; and

(2) **financial information**: information regarding costs, profits, markets, sales and other financial information;

(3) **business information**: information regarding business relationships and strategies, development plans, marketing, product concepts, trade secrets and other business information the business of the disclosing party and the disclosing party's clients or third party suppliers;

(4) **personal information**: any personal information relating to the officers (as defined in s9 of the *Corporations Act 2001* (Cth)), partners, employees, agents, contractors or clients of the disclosing party;

(5) **information obtained through performance**: all information which becomes known to a party as a consequence of it performing the obligations imposed on it under this document including (without limitation) all records, documents, accounts, plans, specifications, price lists, customer lists, correspondence, photos and papers of every description relating to the disclosing party;

(6) **technical information**: information regarding designs, development processes and tools, hardware specifications, know-how, production, research, software specifications, data bases and software developed or used by a party whether as owner or under licence from any person and other technical information; and

(7) **disclosed information**: any other information disclosed by a disclosing party that:

(a) is identified as being confidential; or

would be apparent to a reasonable person that such information was disclosed in confidence by the disclosing party.

Construction Certificate means a certificate issued under s109C(1)(b) of the EPA Act.

Contribution Value for each Item of Work or parcel of Designated Land, is the value ascribed to that item in Column 4 of **Schedules 2 and 3**, respectively.

Contributions Plan means the Bankstown City Council's Section 94A Contributions Plan (as amended from time to time) and adopted by Council.

Deed of Assignment means a deed in the form attached as **Annexure 2**.

Designated Land means the land required to be dedicated by the Developers in accordance with this document as set out in **Schedule 3**.

Defect has the meaning ascribed to that term in clause 10.1.

Defects Liability Period	means a twelve (12) month period commencing on the date on which an Item of Work is Completed.
Defects Notice	means a notice served under clause 10.1.
Development	has the same meaning as in the EPA Act.
Development Application	has the same meaning as in the EPA Act.
Development Consent	has the same meaning as in the EPA Act.
Development Contributions	mean the Works and the dedication of the Designated Land.
Development Site	means that part of the Land subject to Zone E3 as identified in the Planning Proposal – PP_2011_BANKS_001.
Dispute	means any dispute in relation to this deed (or any part of it) or anything arising out of this document.
Encumber	means to grant an Encumbrance.
Encumbrance	means an interest or power: (1) reserved in or over an interest in any asset; (2) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (3) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.
End User Lot	means any separate lot within the Land that is not intended to be further subdivided.
EPA Act	means the *Environmental Planning and Assessment Act 1979* (NSW).
GST	has the same meaning as in the GST Law.
GST Law	has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of GST.
Instrument Change	means Bankstown Local Environmental Plan 2015 and Planning Proposal - PP_2011_BANKS_001.

Intellectual Property means all intellectual property rights conferred by law including (without limitation):

(1) patents, designs, formulas, plans, specifications or other documents created in connection with the Development;

(2) copyright, trademark, trade business, company names, business names, websites, URLs or email addresses; and

(3) all other proprietary rights and all other intellectual property defined in Article 2 of the Convention establishing the World Intellectual Property Organisation (July 1967),

relating to the Development.

Item of Work means an individual item of the Works specified in Column 1 of **Schedule 2**.

Land means properties known as:

Address	**Lot**	**DP**
56 Prescott Parade, Milperra	10	731859
123A Raleigh Road, Milperra	1	813006
123 Raleigh Road, Milperra	1	625013
67 Auld Avenue, Milperra	23 - 27	7304
67A Auld Avenue, Milperra	1	813007
80A Auld Avenue, Milperra	232	805826
80 Auld Avenue, Milperra	231	805826
80 Auld Avenue, Milperra	38 - 41	7304
80 Auld Avenue, Milperra	50 - 59	7304
90 Auld Avenue, Milperra	22	749985
100 Auld Avenue, Milperra	21	749985

Laws means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Rectification Notice means a notice in writing that identifies a Defect in an Item of Work and which is served under clause 9.3.

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

Security	means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Council.
Step-in Rights	means the step-in rights set out in clause 11.
Works	means the physical works required to be conducted by the Developer in accordance with this deed as set out in **Schedule 2**.

Part 2 - Interpretational Rules

Clauses, annexures and schedules	A clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
Variations or replacements	A document (including this document) includes any variation or replacement of it.
Reference to statutes	A statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
Singular includes plural	The singular includes the plural and vice versa.
Person	The word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
Executors, administrators, successors	A particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia.
Calculation of time	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.
Reference to a day	A day is to be interpreted as the period of time commencing at midnight and ending twenty four (24) hours later.
Accounting terms	An accounting term is a reference to that term as it is used in accounting standards under the *Corporations Act 2001* (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
Reference to a group of persons	A group of persons or things is a reference to any two or more of them jointly and to each of them individually.
Meaning not limited	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.

Next day	If an act under this document 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.
Next Business Day	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.
Time of day	Time is a reference to Sydney time.
Headings	Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this Deed.
Agreement	A reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	A reference to one gender extends and applies to the other and neuter gender.

Schedule 2
Works

Part 1 – Bank Stabilisation Works

Column 1 Item of Work	Column 2 Timing of Completion	Column 3 Scope of Works	Column 4 Contribution Value	Column 5 Defects Liability Amount
Bank stabilisation works on the Georges River (adjacent to the proposed Zone RE1 land) Site reference E73 – Next to the Clubhouse and north of the M5 on the plan as attached in **Annexure 1A.**	Before the first to occur of the following: (1) The date that is twelve (12) months after the date that this deed is entered into. (2) The issue of a Construction Certificate for any part of the Development Site. (3) The issue of a Subdivision Certificate for any part of the Development Site.	Bank stabilisation engineering plans to be approved by Council. The civil plans should be prepared in accordance with the recommendations and guidelines of: • "River Bank Stabilisation Report prepared by NPC dated April 2014." • Guidelines & specifications of the relevant State Government agencies/bodies. If the bank stabilisation works require planting of native vegetation, Council will need to approve the vegetation management plan and maintenance period for five (5) years. Bank stabilisation works will need to be approved by Council after the maintenance period and prior to handover.	$484,511	$48,452

Bank stabilisation works on the Georges River (adjacent to the proposed Zone RE1 land) Site reference E74 – Under the M5 on the plan as attached in **Annexure 1A.**	Before the first to occur of the following: (1) The date that is twelve (12) months after the date that this deed is entered into. (2) The issue of a Construction Certificate for any part of the Development Site. (3) The issue of a Subdivision Certificate for any part of the Development Site.	Bank stabilisation engineering plans to be approved by Council. The civil plans should be prepared in accordance with the recommendations and guidelines of: • "River Bank Stabilisation Report prepared by NPC dated April 2014." • Guidelines & specifications of the relevant State Government agencies/bodies. If the bank stabilisation works require planting of native vegetation, Council will need to approve the vegetation management plan and maintenance period for five (5) years. Bank stabilisation works will need to be approved by Council after the maintenance period and prior to handover.	$74,089	$7,409
Bank stabilisation works on the Georges River (adjacent to the proposed Zone RE1 land) Site reference E68A - North of the Milperra Drainage on the plan as attached in **Annexure 1A**.	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 50% or more of the gross	Bank stabilisation engineering plans to be approved by Council. The civil plans should be prepared in accordance with the recommendations and guidelines of:	$74,442	$7,445

	area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 50% or more of the gross area of the Development Site.	• "River Bank Stabilisation Report prepared by NPC dated April 2014." • Guidelines & specifications of the relevant State Government agencies/bodies. If the bank stabilisation works require planting of native vegetation, Council will need to approve the vegetation management plan and maintenance period for five (5) years. Bank stabilisation works will need to be approved by Council after the maintenance period and prior to handover.		
Bank stabilisation works on the Georges River (adjacent to the proposed Zone RE1 land) Site reference E68 - North of the Milperra Drainage on the plan as attached in **Annexure 1A**.	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 50% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for	Bank stabilisation engineering plans to be approved by Council. The civil plans should be prepared in accordance with the recommendations and guidelines of: • "River Bank Stabilisation Report prepared by NPC dated April 2014." • Guidelines & specifications of the relevant State Government agencies/bodies.	$163,155	$16,316

	50% or more of the gross area of the Development Site.	If the bank stabilisation works require planting of native vegetation, Council will need to approve the vegetation management plan and maintenance period for five (5) years. Bank stabilisation works will need to be approved by Council after the maintenance period and prior to handover.		
Bank stabilisation works on the Georges River (adjacent to the proposed Zone RE1 land) Site reference E71 – between the Milperra Drain and the Ecologically Endangered Community on the plan as attached in **Annexure 1A**.	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 50% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 50% or more of the gross area of the Development Site.	Bank stabilisation engineering plans to be approved by Council. The civil plans should be prepared in accordance with the recommendations and guidelines of: • "River Bank Stabilisation Report prepared by NPC dated April 2014." • Guidelines & specifications of the relevant State Government agencies/bodies. If the bank stabilisation works require planting of native vegetation, Council will need to approve the vegetation management plan and maintenance period for five (5) years. Bank stabilisation works will need to be approved by	$796,766	$79,677

		Council after the maintenance period and prior to handover.		

Part 2 – Staged Infrastructure Works

Column 1 **Item of Work**	**Column 2** **Timing of Completion**	**Column 3** **Scope of Works**	***Column 4*** ***Contribution Value***	***Column 5*** ***Defects Liability Amount***
Construction of connecting road network – Keys Parade, Raleigh Road and Pozieres Avenue	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 5% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 5% or more of the gross area of the Development Site.	Internal roads will allow three separate connecting roads to the proposed Zone E3 land. Construction of Keys Parade, and connecting roads to Raleigh Road and Prescott Parade to be carried out in accordance with the following specification: - Public roads that are 17 metre wide (comprising 10 metre wide carriageway and 3.5 metre wide footpath on each side) which connects to the vehicular access points at Henry Lawson Drive, Raleigh Road and Prescott Parade.	$2,474,000	$247,400
Road infrastructure upgrades - Pozieres Parade improvements	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 5%	Carrying out improved lane delineation along the full length of Pozieres Avenue.	$3,795	$380

	or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 5% or more of the gross area of the Development Site.			
Road infrastructure upgrades - Raised Junctions	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 5% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 5% or more of the gross area of the Development Site.	Raising junction platforms and slow points on Pozieres Avenue at the intersection of on Pozieres Avenue/Bugden Avenue and Pozieres Avenue/Warlencourt Avenue.	$93,500	$9,350
Road infrastructure upgrades - School Zone	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 5% or more of the gross area of the Development Site.	Carrying out improvements to the existing school zone including providing improved (flashing) school zone signage and slow points.	$27,500	$2,750

	(2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 5% or more of the gross area of the Development Site.			
Road infrastructure upgrades - Roundabout	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 5% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 5% or more of the gross area of the Development Site.	Construction of a roundabout at the intersection of Raleigh Road/Pozieres Avenue and the proposed development access road.	$385,000	$38,500
Road infrastructure upgrades - Public shared access to public foreshore walkway	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 50% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in	Providing one (1) public pedestrian links from the proposed Zone E3 land to the public walkway – Zone RE1 land. The width of the shared access should be a minimum 3.5 metres, in accordance with Austroads standards.	$96,000	$9,600

	Subdivision Certificates having been issued for 50% or more of the gross area of the Development Site.			
Foreshore walkway embellishment - Pedestrian/cycleway	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 50% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 50% or more of the gross area of the Development Site.	A pedestrian/cycleway which connects to Vale of Ah Reserve (North) and Deepwater Reserve (South, under the M5 bridge). The width of the shared walkway should be a minimum 3.5 metres, in accordance with Austroads standards.	$996,000	$99,600
Build a pedestrian/cyclist crossing over the northern creek on the Zone RE1 land	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 75% or more of the gross	Crossing to be designed in accordance with relevant State government agencies/bodies guidelines & specifications and Council's engineering standards. Structural plans required to be approved by Council prior to construction.	$252,000	$25,200

	area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 75% or more of the gross area of the Development Site.	Works as executed plans required following construction and approved by Council. The crossing should be compatible with the shared path along Zone RE1 land.		
Build a pedestrian/cyclist crossing over the southern mangroves on the Zone RE1 land	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 75% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 75% or more of the gross area of the Development Site.	Crossing to be designed in accordance with relevant State government agencies/bodies guidelines & specifications and Council's engineering standards. Structural plans required to be approved by Council prior to construction. Works as executed plans required following construction and approved by Council. The crossing should be compatible with the shared path along Zone RE1 land.	$1,064,000	$106,400
Riparian Corridor along the Foreshore Walk and Zone RE2 land.	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for	Create a 50 metre wide riparian corridor from the top of the bank of the Georges River Vegetation planting and vegetation management plan to be prepared for the Riparian Corridor in accordance with:	$2,076,938	$207,694

	75% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 75% or more of the gross area of the Development Site.	• "Flora assessment: Updated study of the approximately 82 ha site of the Riverlands Golf Course site at Milperra", dated 23 January 2012, prepared by Anne Clements and Associates. • "Fauna habitat & species constraints to potential redevelopment of the Riverlands Golf Course, Milperra", dated 22 January 2012, prepared by Ambrose Ecological Services. • "Biodiversity Strategy", Council. • Comments, guidelines and specifications of the relevant State Government agencies/bodies. Vegetation planting will require the utilisation of locally endemic seed stock sourced from the site or a reputable seed supply company, in accordance with the guidelines by the relevant State agency. New planting will require a maintenance period of five (5) years by the Developer.		
Riparian Corridor along the Northern Creek	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for	Create a 20 metre wide riparian corridor from the top of the bank of the northern creek. Vegetation management plan to be developed in accordance with: • "Flora assessment: Updated study of the approximately 82 ha site of	$20,000	$2,000

	75% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 75% or more of the gross area of the Development Site.	the Riverlands Golf Course site at Milperra", dated 23 January 2012, prepared by Anne Clements and Associates. • "Fauna habitat & species constraints to potential redevelopment of the Riverlands Golf Course, Milperra", dated 22 January 2012, prepared by Ambrose Ecological Services. • "Biodiversity Strategy", Council. • Comments, guidelines and specifications of the relevant State Government agencies/bodies.		
Riparian Corridor along the Northern Creek	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 75% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 75% or more of the gross	Carry out rehabilitation/ecological reconstruction of the local native ground layer vegetation. Vegetation planting will require the utilisation of locally endemic seed stock sourced from the site or a reputable seed supply company, in accordance with the guidelines by the relevant State agency. New planting will require a maintenance period of five (5) years by the Developer.	$412,720	$41,272

	area of the Development Site.			
Section 88E Covenant	Within twenty eight (28) days of Council providing notice to the Developer requiring it to do so.	Procure the registration of a Section 88E Covenant in favour of Council with respect to the Land other than the Designated Land.	Nil	Nil

Part 3 – Roads & Maritime Services (RMS) Infrastructure Works

Column 1 Item of Work	Column 2 Timing of Completion	Column 3 Scope of Works
Road infrastructure upgrades - Keys Parade and Henry Lawson Drive intersection	Before the first to occur of the following: (1) The issue of a Construction Certificate which results in Construction Certificates having been issued for 15% or more of the gross area of the Development Site. (2) The issue of a Subdivision Certificate which results in Subdivision Certificates having been issued for 15% or more of the gross area of the Development Site.	The Developer to enter into a Work Authorisation Deed agreement with the Roads and Maritime Services (RMS) (on terms acceptable to both the Developer and the RMS), in respect of carrying out and completion of the Road Works. Enhancement and signalising the Keys Parade and Henry Lawson Drive intersection in accordance with RMS specifications. It is required that this work acknowledge the requirements RMS has placed on Henry Lawson Drive where it needs a dedicated right and left turn lane from Henry Lawson Drive to Keys Parade.

Schedule 3
Designated Land

Part 1 –

Column 1 Description of Designated Land	Colum 2 Timing of dedication	Column 3 Public purpose	Colum 4 Contribution Value
The land marked ["X"] on the plan attached as **Annexure 1**.	Before the first to occur of the following: (1) The date that is twelve (12) months after the date that this deed is entered into. (2) The issue of a Construction Certificate for any part of the Development Site. (3) The issue of a Subdivision Certificate for any part of the Development Site.	Public recreation land	At no cost to Council.

Schedule 4
Terms of access

1 Definitions

In this **Schedule 4**, words beginning with a capital letter that are defined:

(1) in clause 2 of this document have the meaning ascribed to them in that clause; or

(2) which are not defined in that clause, have the meaning ascribed to them as set out below:

(a) **Licence** means the rights of the Licensee to access the Premises granted under this deed.

(b) **Licensee** means the party accessing the Premises.

(c) **Owner** means the owner of the Premises.

(d) **Premises** means that part of the Land being accessed.

(e) **Purpose** means the purpose for which the Licence was granted under this deed.

2 Licence

2.1 Grant of the Licence

The Owner grants the Licence to the Licensee for the Purpose.

2.2 Personal rights

(1) The Licence is personal to the Licensee.

(2) The Licensee may not Encumber nor Assign the Licence without the prior written consent of the Owner.

(3) The Owner may refuse the granting of consent under paragraph (2) without reason and at its absolute discretion.

2.3 Leasehold interest

(1) This **Schedule 4** does not grant to the Licensee a leasehold interest in the Premises. The parties agree that:

(a) subject to any contrary terms of this document, the Licence does not confer exclusive possession of the Premises on the Licensee; and

(b) the Licensee may not exclude the Owner, its officers, employees and invitees from:

(i) entry onto the Premises; and/or

(ii) the performance of any works on the Premises;

provided that such entry onto and/or performance of work on the Premises does not unreasonably interfere with the conduct of the Purpose; and

(2) the Licensee does not have any right to quiet enjoyment of the Premises; and

(3) the Licensee will not at any time seek to enforce an interest in the Premises in competition with the interest held by the Licensee.

3 Compliance With authorities

3.1 No warranty as to suitability for use

The Licensee acknowledges and agrees that the Owner has not made any representation or warranty to the Licensee regarding the suitability of the Premises for the Purpose.

3.2 Compliance with the terms of the Consents

In the conduct of the Purpose and compliance with its obligations under this **Schedule 4**, the Licensee must comply with the requirements of all Authorities.

3.3 Compliance with directions from Authorities

The Licensee must comply with all notices, directions, orders or other requests served upon itself or the Owner and which arise from the conduct of the Purpose on the Premises by the Licensee.

3.4 Obtaining further consents

(1) If the Licensee requires further consents to conduct the Purpose it must:

(a) make such applications itself; and

(b) bear all costs incurred by it in relation to obtaining the relevant consent.

(2) The Owner agrees that it will, where required, sign all authorities reasonably required by the Licensee to make any application for consent to any Authority.

4 Limitation of the Owner's liability

4.1 Insurances

(1) The Licensee must effect and keep current and in force the following policies of insurance:

(a) a Broadform Public Liability Insurance policy with a reputable insurance company approved by the Owner in an amount of $20,000,000 for any one occurrence in respect of any liability for:

(i) personal injury or death of any person; and

(ii) loss of or damage to property,

(b) workers compensation insurance under the *Workers Compensation Act 1987* (NSW) covering all persons employed or deemed to be employed by the Licensee in connection with the conduct of the Purpose;

(c) a comprehensive policy of motor vehicle insurance or an unlimited third party property insurance policy in respect of all motor vehicles used in the conduct of the Purpose; and

(d) a contractor's risk policy of insurance in respect of all plant and equipment (including unregistered motor vehicles) used in the conduct of the Purpose.

(2) The policies referred to in paragraphs (1)(a), (1)(c) and (1)(d) must, if possible, note the interest of the Owner as principal.

4.2 Inspection of insurance

(1) The Licensee must produce at the renewal of each policy a certificate of currency issued by the insurer establishing that the policy is valid.

(2) The Owner may carry out random audits to verify insurances held by the Licensee. The Licensee will assist in any audit and provide evidence of the terms and currency of the insurance policies whenever requested by the Owner.

4.3 Cancellation of insurance

If any policy is cancelled either by the Licensee or the insurer, the Licensee must notify the Owner immediately.

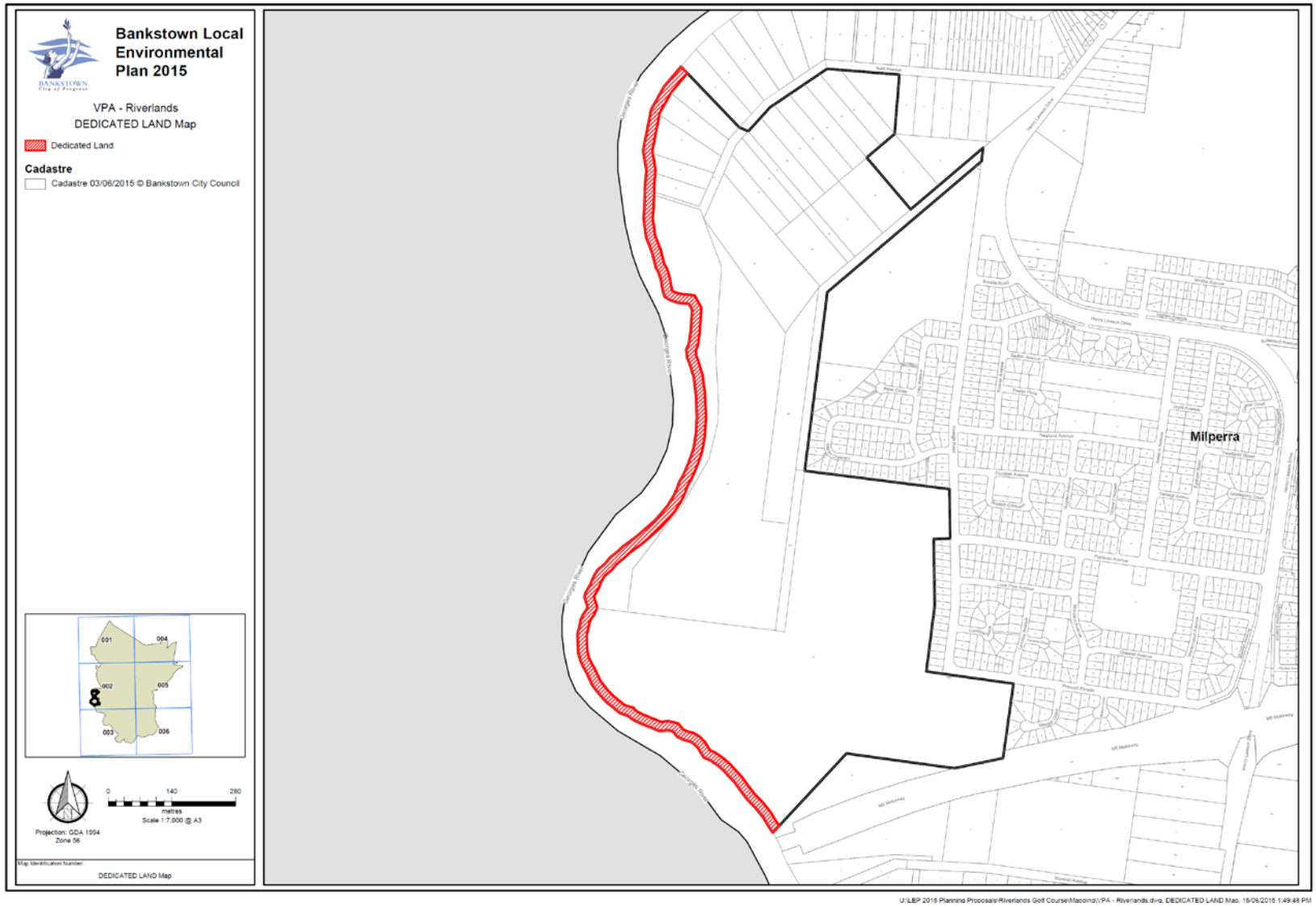
4.4 Risk

The Licensee uses and occupies the Premises at its own risk.

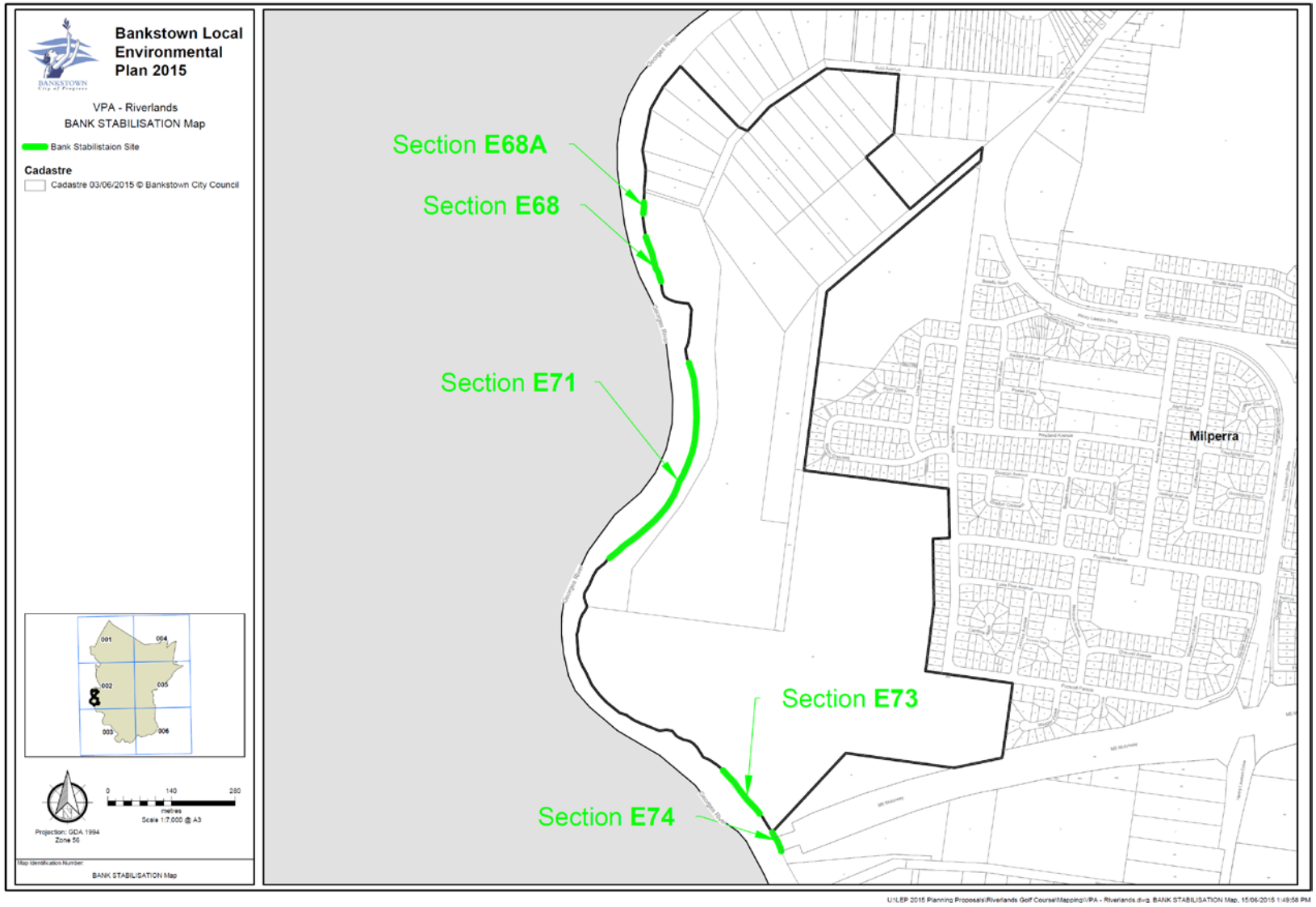
4.5 Indemnity

The Licensee indemnifies the Owner against any Claim (of whatever nature) made in respect of the Licensee's use and occupation of the Premises.

Annexure 1
Plan of the Land



Annexure 1A
Bank Stabilisation Map



Annexure 2
Deed of Assignment

Deed of Assignment – Planning Agreement – Riverlands Golf Course

Demian Holdings Pty Limited (ABN 83 082 158 049) & Riverland Estate Pty Limited (ABN 38 103 833 825) (**Developer**)

Bankstown City Council (ABN 38 380 045 375) (**Council**)

Marsdens Law Group
Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560
Tel: (02) 4626 5077
Fax: (02) 4626 4826
DX: 5107 Campbelltown
Ref: 65 36 0948 JRT

Deed of Assignment
Planning Agreement – Riverlands Golf Course

Parties

Council	**Name**	Bankstown City Council
	Address	Civic Tower, 66-72 Rickard Road, Bankstown NSW 2170
	ABN	38 380 045 375
Assignee	**Name**	TBC
	Address	TBC
	ABN	TBC
Developer	**Name**	Demian Holdings Pty Limited & Riverland Estate Pty Limited
	Address	Level 2, 7 Charles Street, Parramatta NSW 2124
	ABN	Demian Holdings Pty Limited (ABN 83 082 158 049) & Riverland Estate Pty Limited (ABN 38 103 833 825)

Background

A The Assignor and Council are parties to the Planning Agreement.

B The Assignor has, pursuant to the Assignment Agreement, agreed to transfer the Land to the Assignee.

C Council has, pursuant to the terms of the Planning Agreement, consented to the Assignor assigning its interest in the Land, as well as the Rights and Obligations, to the Assignee.

D Council, the Assignor and the Assignee set out in this deed the terms upon which the Rights and Obligations are assigned from the Assignor to the Assignee.

Operative provisions

1 Definitions & interpretation

1.1 Defined Terms

In this deed, words beginning with a capital letter that are defined in Part 1 of **Schedule 1** have the meaning ascribed to them in that schedule.

1.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 1** apply in the interpretation of this deed.

2 Conditions precedent

2.1 Conditional agreement

This deed is conditional upon the Land Assignment being effected in accordance with the Assignment Agreement.

2.2 Failure of Assignment Agreement

If the Assignment Agreement is terminated or rescinded without the Land Assignment being effected then this deed ends on the date of that termination or rescission.

3 Assignment of Rights and Obligations

3.1 Agreement

On the date that the Land Assignment is effected in accordance with the Assignment Agreement:

(1) the Assignor assigns the Rights and Obligations to the Assignee;

(2) the Assignee accepts the Assignor's assignment of the Rights and Obligations; and

(3) the Consenting Parties consent to the assignment of the Rights and Obligations.

3.2 Effect of the assignment of the Rights and Obligations

As a consequence of the assignment of the Rights and Obligations the parties agree that, from the date of the Land Assignment:

(1) the Assignor is released from the Obligations;

(2) the Assignee may exercise the Rights as if a reference to the Assignor in the Planning Agreement were a reference to the Assignee; and

(3) Council must conduct itself in accordance with the Planning Agreement (but only to the extent of the Rights and Obligations) as if a reference to the Assignor were a reference to the Assignee.

4 Mutual releases

The Assignor and Council release and hold harmless each other against all Claims which arise in relation to the Rights and Obligations and the Land after that date of the Land Assignment.

5 Covenant by the Assignee

The Assignee warrants to both the Assignor and Council` will enjoy, perform, observe and carry out the Rights and Obligations as if a reference in the Planning Agreement to the Assignor were a reference to the Assignee.

6 Cooperation

Each party agrees that it will do all such acts and things as are reasonably necessary to:

(1) perfect the assignment of the Rights and Obligations; and

(2) otherwise give effect to the transactions recorded in this deed.

7 Administrative provisions

7.1 Notices

(1) Any notice, consent or other communication under this deed 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's address; or

(b) sent by pre-paid mail to that person's address; or

(c) transmitted by facsimile to that person's 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; and

(b) if sent by pre-paid mail, on the third Business Day after posting; and

(c) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission 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 in this deed or another address of which that person may from time to time give notice to each other person.

7.2 Entire Agreement

This deed is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

7.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

7.4 Cooperation

Each party must sign, execute and deliver all deeds, documents, instruments and act reasonably and effectively to carry out and give full effect to this deed and the rights and obligations of the parties under it.

7.5 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

7.6 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

7.7 Unenforceability

Any provision of this deed 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 deed or affecting the validity or enforceability of that provision in any other jurisdiction.

7.8 Power of Attorney

Each attorney who executes this deed 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.

7.9 Governing law

The law in force in the State of New South Wales governs this deed. 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 deed; and

(2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

Execution page – Deed of Assignment

Executed as a deed

Dated: 15 September 2015

Signed, sealed and delivered by **Bankstown City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated 23 June 2015.

[redacted]

General Manager (Signature)

Matthew Stewart

Name of General Manager (Print Name)

[redacted]

Mayor (Signature)

LINDA DOWNEY

Name of Mayor (Print Name)

Signed, sealed and delivered by **the Assignee** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

[redacted]

Director/Secretary (Signature)

CHARBEL DEMIAN

Name of Director/ Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

Signed, sealed and delivered by **the Developer** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

[redacted]

Director/Secretary (Signature)

CHARBEL DEMIAN

Name of Director/ Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

Schedule 1:
Defined terms and Interpretation

Part 1 - Definitions

Assignment Agreement means the agreement entered into, or proposed to be entered into, between the Assignor and the Assignee pursuant to which the Land Assignment will be effected.

Assignor means TBC

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.

Land means the following allotments:

Address	**Lot**	**DP**
56 Prescott Parade, Milperra	10	731859
123A Raleigh Road, Milperra	1	813006
123 Raleigh Road, Milperra	1	625013
67 Auld Avenue, Milperra	23 - 27	7304
67A Auld Avenue, Milperra	1	813007
80A Auld Avenue, Milperra	232	805826
80 Auld Avenue, Milperra	231	805826
80 Auld Avenue, Milperra	38 - 41	7304
80 Auld Avenue, Milperra	50 - 59	7304
90 Auld Avenue, Milperra	22	749985
100 Auld Avenue, Milperra	21	749985

Land Assignment means the assignment of the Land from the Assignor to the Assignee.

Obligations means the obligations of the Assignee under the Planning Agreement in so far as they relate to the Land.

Planning Agreement means the planning agreement proposed to be entered into between Council and the Developers with respect to the Land and in accordance with which this deed has been entered into.

Rights means the rights of the Assignee under the Planning Agreement in so far as they relate to the Land.

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed.
variations or replacements	a document (including this deed) includes any variation or replacement of it.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
dollars	Australian dollars, dollars, $ or A$ is a reference to the lawful currency of Australia.
calculation of time	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.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the *Corporations Act 2001* (Cth) or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	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.
next day	if an act under this deed 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.
next Business Day	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.
time of day	time is a reference to Sydney time.

headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.
agreement	a reference to any agreement, deed or instrument includes the same as varied, supplemented, novated or replaced from time to time.
gender	a reference to one gender extends and applies to the other and neuter gender.

Execution page - Planning Agreement

Executed as a deed

Dated: 15 September 2015

Signed, sealed and delivered by **Bankstown City Council** by its General Manager and Mayor by the affixing of the Common Seal of Council in accordance with resolution dated 23 June 2015.

[redacted]

General Manager (Signature)

Matthew Stewart

Name of General Manager (Print Name)

[redacted]

Mayor (Signature)

LINDA DOWNEY

Name of Mayor (Print Name)

Signed, sealed and delivered by **the Developer** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

[redacted]

Director/Secretary (Signature)

CHARBEL DEMIAN

Name of Director/ Secretary (Print Name)

Director (Signature)

Name of Director (Print Name)

EXPLANATORY NOTE
Pursuant to Clause 25E of the Environmental Planning and Assessment Regulation 2000

DRAFT VOLUNTARY PLANNING AGREEMENT

PP_2011_BANKS_001 – Riverlands Golf Course site at No 56 Prescott Parade in Milperra

1. Background

At the Ordinary Meeting of 14 December 2010, Council resolved to submit a planning proposal to the Department of Planning & Environment for the rezoning of certain land in Milperra known as the Riverlands Golf Course site. The planning proposal is seeking to rezone around 15 hectares of Zone RE2 Private Recreation land to Zone E3 Environmental Management land, which will allow a variety of land uses such as dwelling houses, childcare centres and schools.

On 3 March 2011, Council received a Gateway Determination to complete additional specialist studies, and a voluntary planning agreement prior to public exhibition.

There is an existing Deed of Agreement with the property owner for public works and the draft voluntary planning agreement will replace the deed.

2. The Objectives, Nature and Effect of the Proposed Agreement

The objective of the draft voluntary planning agreement is to secure public benefit works in connection with the planning proposal (PP_2011_BANKS_001) for the Riverlands Golf Course site at No 56 Prescott Parade in Milperra.

3. The Proposed Scope of Works

The draft voluntary planning agreement seeks to secure the following public benefit works:

(a) Dedication of a 20 metre wide land corridor along the Georges River, known as foreshore land (approximately 41,100 sqm).
(b) Embellishment of the foreshore land to provide a shared cycle and pedestrian path way, boardwalks and bridges.
(c) Bank stabilisation works along the Georges River.
(d) Establishment and revegetation of the riparian corridors along the Georges River and the Northern Creek.
(e) Improvement works and dedication of Keys Parade.
(f) Traffic mitigation works on Raleigh Road and Pozieres Avenue.
(g) Improvement works at certain intersections on Henry Lawson Drive (subject to a separate agreement with Roads & Maritime Services).

4. Assessment of the Merits of the Proposed Agreement including the impact (positive or negative) on the public or any relevant section of the public

The merits of the draft voluntary planning agreement are likely to benefit the local community by increasing the amenity of the areas where the public benefit works will be undertaken.

5. Identification as to How the Proposed Agreement Promotes the Public Interest and One or More of the Objects of the Act

The proposed agreement promotes the public interest by requiring the Developer to carry out works for the public benefit. The draft voluntary planning agreement promotes the objects of the Act by providing land for public purposes, making resources available to Council for the provision of the community facilities and services, and protecting the environment.

6. Council Charter under Section 8 of the Local Government Act 1993

The draft voluntary planning agreement properly protects and conserves the environment of the area and engages in long-term strategic planning on behalf of the community, in accordance with Section 8 of the Local Government Act 1993.

7. Identification of the Planning Purpose Served by the Proposed Agreement

The draft voluntary planning agreement intends to promote the public interest by improving local infrastructure and the provision of open space to accommodate access to the foreshore land and the needs of the incoming population.

8. Assessment of Whether the Proposed Agreement Provides a Reasonable Means of Achieving that Purpose

The draft voluntary planning agreement serves the planning purpose of enhancing the access to foreshore land, public domain and local infrastructure in the vicinity of the site.

9. Identification as to whether the Proposed Agreement Conforms with Council's Capital Works Program

The draft voluntary planning agreement does not form part of Council's capital works program.

10. Requirements of the Proposed Agreement pursuant to Clause 25E (2)(g) of the Environmental Planning and Assessment Regulations 2000

The draft voluntary planning agreement is related to a planning proposal or at the rezoning stage and therefore, it is unpredictable if construction or subdivision will occur first. As such, the completion of public works is based on the following stages:

- Critical works – completed within 12 months of the execution of the draft voluntary planning agreement, prior to the issue of a construction certificate or subdivision certificate applying to any part of the proposed environmental management land.

- Works applying to 5% of the environmental management land - completed prior to the issue of a construction certificate or subdivision certificate applying to 5% of the gross area of the environmental management land.

- Works applying to 50% of the environmental management land - completed prior to the issue of a construction certificate or subdivision certificate applying to 50% of the gross area of the environmental management land.

- Works applying to 75% of the environmental management land – completed prior to the issue of a construction certificate or subdivision certificate applying to 75% of the gross area of the environmental management land.

More specifically, the following public works are categorised in the above stages:

- Land dedication of the foreshore land – completed within 12 months of the execution of the draft voluntary planning agreement.

- Critical bank stabilisation works – completed prior to the issue of a construction certificate or subdivision certificate applying to any part of the proposed environmental management land.

Stages	Public Works
Critical	Land dedication of the foreshore land
	Bank stabilisation works on sites E73 and E74
5%	Construction and dedication of Keys Parade
	Line delineation on Pozieres Avenue
	Raised junctions on Pozieres Avenue
	School zone improvements on Pozieres Avenue
	Roundabout on Raleigh Road
15%	Upgrade the intersection of Keys Parade and Henry Lawson Drive (with agreement with the Roads & Maritime Services)
50%	Bank stabilisation works on sites E68, E68A and E71
	A public walkway connecting foreshore land and the residential land
	Shared pedestrian and cycle way along the foreshore land
75%	A crossing over the northern creek along the foreshore land
	A crossing over the southern mangroves area along the foreshore land
	Establish and vegetate the riparian corridor along the Georges River
	Establish the riparian corridor along the northern creek
	Vegetate the riparian corridor along the northern creek

Note:

- This explanatory note has been prepared jointly with the other parties proposing to enter into the planning agreement.
- The explanatory note is to be exhibited with the copy of the proposed agreement.
- This explanatory note is not to be used to assist in construing the planning agreement.