

St Marys Penrith Planning Agreement

Penrith City Council

St Marys Land Limited

Lendlease Development Pty Limited

St Marys Penrith Planning Agreement

Table of Contents

PART 1 – Formal Matters	5
1. Definitions and interpretation	5
2. Background	13
3. Structure and application of this deed	13
4. Performance Objectives and purposes of this deed	14
5. Commencement, term and amendment of this deed	14
6. Confidentiality and public announcements	15
7. Default	15
8. Dispute resolution	17
9. Dealings with this Deed	20
10. GST	21
11. Miscellaneous	22
PART 2 - The rights and obligations of Penrith Council and the Joint Venture	24
12. Purpose of Contributions	24
13. Contributions	24
14. Monetary Contributions	28
15. Better Outcomes	30
16. Works Contributions	31
17. Local Transport Works	31
18. Local Open Space Works	36
19. Human Services	38
20. Additional Services and Infrastructure Contributions	40
21. General Obligations of the Joint Venture	41
22. Guarantee	43
23. Key Dates	45
Annexure 1	46
Annexure 2A	48
Annexure 2B	51
Annexure 2C	53
Annexure 2D	55
Annexure 2E	57

St Marys Penrith Planning Agreement

Annexure 2F	59
Annexure 2G	61
Annexure 2H	63
Annexure 3	70
Annexure 4A	71
Annexure 4A1	72
Annexure 4A2	79
Annexure 4B	84
Annexure 4B1	86
Annexure 4B2	89
Annexure 5	92
Annexure 6A	93
Annexure 6B	97
Annexure 7	101
Annexure 8	104

St Marys Penrith Planning Agreement

Date

20/12/18

Parties

1. **Penrith City Council** (ABN 43 794 422 563) of 601 High Street, Penrith, New South Wales (*Penrith Council*)
2. **St Marys Land Limited** (ABN 32 088 278 602) of Level 4, 30 The Bond, 30 Hickson Road, Sydney, New South Wales (*Landowner*)
3. **Lendlease Development Pty Limited** (ABN 33 000 311 277) of Level 14, Tower Three International Towers Exchange Place, 300 Barangaroo Avenue Sydney, New South Wales (*LLD*)

Recitals

- A The Landowner owns the Land.
- B The Land is partly within Penrith Council's Local Government Area.
- C The Landowner and LLD are jointly developing the Land.
- D The Land is subject to the REP which was published in the Government Gazette on 19 January 2001.
- E On 13 December 2002, the State Development Agreement was entered into.
- F The REP, the EPS and relevant provisions of the Act will (without limiting any other Law) provide the structure to deal with the environmental planning issues associated with the development of the Land.
- G On:
- (a) 16 June 2003, the Dunheved South Precinct was declared as a Release Area; and
 - (b) 29 September 2006, the Western Precinct and the Central Precinct were each declared a Release Area,
- within the meaning of clause 7 of the REP.
- H On:
- (a) 29 April 2005, the Joint Venture lodged with Penrith Council for adoption a draft Precinct Plan for the Dunheved South Precinct;
 - (b) 25 July 2008, the Joint Venture lodged with Penrith Council for adoption a draft Precinct Plan for the Western Precinct; and

St Marys Penrith Planning Agreement

(c) 25 July 2008, the Joint Venture lodged with Penrith Council for adoption a draft Precinct Plan for the Central Precinct.

I In recognition of:

- (a) the special circumstances relating to the provision of infrastructure and other public services and amenities required for a development of the magnitude proposed for the Land under the REP;
- (b) the dedications, contributions and works which the Landowner and the Joint Venture would be expected, as at the date of this deed, by Law (including the Act) to make to carry out the Development, starting with the Dunheved South Precinct;
- (c) the preparedness of the Landowner and the Joint Venture to make dedications and contributions and to carry out other works which are in satisfaction of those required by Law (including the Act), all as contained in this deed;
- (d) the need to co-ordinate the funding, delivery and on-going provision of infrastructure and other services to be provided by Penrith Council, the Landowner and the Joint Venture to meet the demands of the Development, starting with the Dunheved South Development; and
- (e) the Landowner and the Joint Venture contributing to the community value of the Development (starting with the Dunheved South Development) in satisfaction of those obligations that would otherwise have been required under sections 94 and 94A of the Act,

the Parties entered into the Existing Planning Agreement.

J In recognition of the need to provide additional Local Transport Works to meet the demands of the Development as well as other matters relating to Local Open Space, Human Services and District Open Space, the Parties have entered into this deed.

K This deed restates and amends the Existing Planning Agreement in relation to the contributions arising from development in the Central Precinct and the Western Precinct.

L The Joint Venture may lodge a planning proposal to rezone the employment land in the Central Precinct to allow residential development of approximately 500-600 dwellings. The Contributions for Local Transport Works provided in this deed are also made in relation to such rezoning. The Contributions for Local Transport Works under this deed will be provided by the Joint Venture whether or not a planning proposal is pursued or any such zoning change made.

M This deed is a planning agreement, which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, and which excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act under certain circumstances as set out in clause 13.7 of this deed.

St Marys Penrith Planning Agreement

It is agreed as follows.

PART 1 – Formal Matters

1. Definitions and interpretation

1.1 Dictionary

The following words have these meanings in this deed unless the contrary intention appears:

Act means the *Environmental Planning & Assessment Act 1979*. *Additional Land* means any land outside the existing road reserve for an Item referred to in Schedule 2A that is required to be acquired by Penrith Council in order to accommodate that Item.

Additional Services and Infrastructure Contribution has the meaning given in clause 13.1.

Additional Services and Infrastructure Works means the works described in clause 20 and Annexure 5.

Approvals means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the Works and activities contemplated by this deed.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other agency or body with relevant power.

Balance Road Works has the meaning given in the State Development Agreement.

Blacktown Council means The Council of the City of Blacktown.

BBSW Rate means the average mid rate for bills which have a tenor of 90 days which average rate is displayed on the page of the Reuters Monitor System designated “BBSW” on the day on which interest is payable under this deed or, if there is a manifest error in the calculation of that average rate or that average rate is not displayed by 10.30am (Sydney time) on that date, the rate specified in good faith by the Commonwealth Bank of Australia at or around that time on that date having regard, to the extent possible, to the rates otherwise bid and offered for bills of that tenor at or around that time (including, without limitation, the sets of bid and offer rates for bills of that tenor displayed on that page “BBSW” at that time on that date) and if such rate does not exist then the prescribed rate of interest set by the *Supreme Court Act, 1970* and any applicable rules with respect to interest on debts due under a judgment or order.

Better Outcomes has the meaning given in clause 15.2.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Central Park means the area of approximately 100 hectares adjacent to the Central Precinct and identified on the plan in Annexure 7 and which may contain facilities such as those described in Annexure 7 but will be determined under clause 13.9(f).

Central Precinct means the Precinct identified as such in the REP (as shown generally on the Map).

St Marys Penrith Planning Agreement

Commencement Date means the date of execution by the parties of the deed.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

Construction Certificate has the meaning given to it in the EPA Act.

Contamination has the meaning given to it in the *Contaminated Land Management Act, 1997*.

Contributions has the meaning given in clause 13.1.

Councils means both Blacktown Council and Penrith Council.

CPI means Consumer Price Index Australia (6401.0) Table 5 – (Housing – Sydney).

Date of On-Maintenance has the meaning given in clause 18.7(d).

Default Notice has the meaning given in clause 7.1.

Department means the Department of Planning (formerly the Department of Infrastructure Planning and Natural Resources).

Development means the development (as defined by the Act) of the Land in accordance with the REP.

Discretion has the meaning given in clause 1.2.

District Open Space Contribution has the meaning in clause 13.1.

Draft Acquisition Plans means the following draft plans for the Local Transport Works:

- a) property adjustment plan showing the proposed acquisition area for the Additional Land, the proposed adjustment and remediation measures (comprising driveway adjustments, service connection adjustments and landscaping), full utility services overlays (comprising potable water, sewer, recycled water, electricity, gas and telecommunications) and an aerial image;
- b) proposed acquisition plan (which is generally consistent with the property adjustment plan) which contains:
 - i. a deposited plan of survey for the Item of Local Transport Works. Where the Additional Land for an Item comprises only part of land held under Torrens title, the residual lot, allotment or portion of that Additional Land must be shown as a separate lot;
 - ii. the heading of each proposed acquisition plan must be in words to the following general effect:

‘PLAN OF LAND TO BE ACQUIRED FOR THE PURPOSES OF THE
ROADS ACT, 1993’;
 - iii. a statement of intention in relation to the Additional Land required for each Item of Local Transport Works should be included in the statements panel on the

St Marys Penrith Planning Agreement

Administration Sheet of the plan. This statement should provide that the relevant lot(s) comprising the Additional Land is required for road and, after construction, will be dedicated as public road under section 10 of the *Roads Act, 1993*;

- c) proposed full road design including particulars for the proposed timeline for the completion of each Item of Local Transport Works relevant to the acquisition of Additional Land.

Dunheved North Precinct means the Precinct so identified in the REP (as shown generally on the Map).

Dunheved Precincts means the Dunheved North Precinct and the Dunheved South Precinct.

Dunheved South Development means the development (as defined by the Act) of the Dunheved South Precinct in accordance with the REP and the Precinct Plan for the Dunheved South Precinct, as adopted.

Dunheved South Precinct means the Precinct identified as such in the REP (as shown generally on the Map).

EPA Act means the *Environmental Planning and Assessment Act, 1979* (as amended from time to time).

EPS means *St Marys Environmental Planning Strategy 2000*.

Existing Planning Agreement means the planning agreement between the Joint Venture and Penrith Council dated 20 December 2006, and varied by a Deed of Variation dated 19 May 2009.

Final Acquisition Plans means the Draft Acquisition Plans as amended to accommodate any design change required to comply with a condition of an Approval or to obtain a Construction Certificate.

Human Services Contribution has the meaning given in clause 13.1.

Human Services Works means the human services works set out in Annexures 6A and 6B.

Index means the CPI, but if that Index ceases to be published, such other index as Penrith Council and the Joint Venture may agree or, failing agreement, as determined under clause 8.

Joint Venture means the Landowner and LLD, severally each for a one half share only of the joint venture interests (including rights and obligations) under this deed.

Joint Venture Party means:

- (a) the Landowner;
- (b) LLD;
- (c) Lendlease Communities (Australia) Limited;
- (d) Lendlease Corporation Limited; or
- (e) any Related Body Corporate of any of the entities referred to in this definition.

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

Land means the land to which the REP applies as described in clause 2 of the REP.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

LEADR means the body known as LEADR being Lawyers Engaged in Alternative Dispute Resolution or any body which substantially replaces it.

St Marys Penrith Planning Agreement

LG Act means the *Local Government Act 1993*.

Local Government Area means an area proclaimed under section 204(1) of the *Local Government Act 1993*.

Local Open Space means the land (including bicycle paths) identified as local open space on the plans contained in Annexures 4B, 4B1 and 4B2.

Local Open Space Contribution has the meaning given in clause 13.1.

Local Open Space Works means the works which are described in Annexures 4A, 4A1 and 4A2.

Local Transport Works means the local transport works set out in Annexure 2A.

LPI means the Office of Land and Property Information, New South Wales.

Map means the map contained in Annexure 1.

Minister means the Minister for the time being administering the Act.

Monthly Status Report means a report from Penrith Council that identifies the costs and works done by Penrith Council in a calendar month in relation to the acquisition of the Additional Land and the proposed works program and forecast costings that will be undertaken and/or incurred by Penrith Council in the following calendar month.

Notional Works Value means an estimate of the total proposed costs for each Item (including consultants' fees, authority fees and capital works) of Local Transport Works shown under the column headed "*Notional Works Value*" in the table that forms Annexure 2A. This notional amount does not operate as either a maximum or minimum amount of expenditure by the Joint Venture once the detailed design of each Item is agreed pursuant to the mechanisms under this Deed.

Original Commencement Date means the commencement date as set out in the Existing Planning Agreement.

Parent has the meaning given to that term in the State Development Agreement.

Part means a Part of this deed.

Party means a party to this deed. *Parties* has a corresponding meaning.

Performance Objectives means the performance objectives set out in Part 5 of the REP and the EPS.

Practical Completion means the stage of completion of the relevant Works when they are substantially completed and able to be used for their intended purpose.

Precinct has the meaning given to *Precinct* in the REP.

Precinct Plan has the meaning given to *Precinct Plan* in the REP.

Quantity Surveyor means a person who is:

- (a) a member of their respective professional organisation and has been a member for at least 5 years;
- (b) practises as a quantity surveyor for the relevant item of Works;
- (c) is active as a quantity surveyor for the relevant item of Works;
- (d) has at least 3 years' experience in valuing works similar to the relevant item of Works; and
- (e) undertakes to act fairly and promptly.

St Marys Penrith Planning Agreement

Redevelopment means any development (as defined in the Act) of part of the Land:

- (a) by a Third Party after the issue of an occupation certificate under the Act in relation to that land; or
- (b) by a Joint Venture Party where the development is not:
 - (i) consistent with the Performance Objectives, zone objectives and other requirements prescribed by the REP and the development controls prescribed by the EPS;
 - (ii) substantially in accordance with the structure plan forming part of the REP; and
 - (iii) consistent with any development agreement or planning agreement (including this deed) entered into by the Joint Venture relating to the Land in accordance with the REP and the EPS.

Related Body Corporate has the meaning given in s50 of the *Corporations Act 2001*.

Release Area means land declared to be a release area by the Minister under the REP.

Relevant Developer has the meaning given to that term in the State Development Agreement.

REP means *Sydney Regional Environmental Plan No 30 – St Marys* made by the Minister under section 51 of the Act.

RTA means Roads and Traffic Authority of New South Wales.

St Marys Blacktown Development Agreement means an agreement relating to the Development dated 15 November 2004 to which Blacktown Council, the Landowner and LLD were parties and includes any variation and replacement of that agreement.

State means the State of New South Wales and, where the context permits, includes a public authority as defined in section 4(1) of the Act.

State Development Agreement means an agreement relating to the Development dated 13 December 2002 and titled "St Mary's Development Agreement" to which the Minister, the RTA, the Landowner, LLD and others were parties and includes any variation and replacement of that agreement.

State Government means the government of the State, including its elected and appointed representatives.

Third Party means a person who is not a Joint Venture Party.

Traffic Modelling Study 2004 means the Traffic Modelling Study dated May 2004 prepared by Sims Varley and commissioned by the Department.

Transport Contribution has the meaning given in clause 13.1.

Transport Management Study 2007 means the *St Marys Development Transport Management Study* dated December 2007 and prepared by Sinclair Knight Merz which replaced the 1999 Transport Management Study.

Updated Traffic Modelling Study means the *St Marys Site Regional Traffic Modelling and Transport Assessment* dated October 2017 and prepared by WSP.

St Marys Penrith Planning Agreement

Western Precinct means the Precinct identified as such in the REP (as shown generally on the Map).

Works means any or all of the following:

- (a) Local Transport Works;
- (b) Local Open Space Works;
- (c) Human Services Works; and
- (d) Additional Services and Infrastructure Works.

Deed does not fetter discretion

- 1.2 This deed is not intended to operate to fetter, in any manner:
- (a) the power of Penrith Council to make any Law; or
 - (b) the exercise by Penrith Council of any statutory power or discretion,
- (all referred to in this deed as a *Discretion*).
- 1.3 No provision of this deed is intended to, or does, constitute any 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 a fetter on any Discretion, the Parties agree:
- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied; and
 - (b) in the event that clause 1.3(a) cannot be achieved without giving rise to a 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 in relation to the provision of this deed which is held to be a fetter to the extent that is possible having regard to the relevant court judgement.
- 1.4 Where a Law permits Penrith Council to contract out of a provision of that Law or gives Penrith Council power to exercise a Discretion, then if Penrith Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.
- 1.4A Without limiting clauses 1.2 to 1.4 (inclusive), nothing in this deed operates to limit the availability of any remedies available to Penrith Council under sections 123, 124 and 125 of the Act.

Interpretation Act 1987

- 1.5 Subject to clauses 1.2 to 1.3 of this deed, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* govern the interpretation of this deed to the extent to which they are applicable as if a reference in that Act to an *Act* or *instrument* is a reference to this deed and with such other modifications or adaptations as may be necessary for that governing purpose.

St Marys Penrith Planning Agreement

Annexures, headings and textual notes

- 1.6 The Annexures form part of this deed.
- 1.7 The headings and any textual notes in this deed do not form part of the operative provisions of this deed but are provided merely for the assistance of the reader.

Subject to applicable laws

- 1.8 This deed is to be read and performed subject to:
- (a) any Law or statutory rule; and
 - (b) any lawful decision, direction, requirement or the like of any Authority of the State, which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law, statutory rule, decision, direction or requirement does not constitute a breach of this deed even if it is contrary to this deed.

Effect of this deed

- 1.9 With effect from the date of this deed, the Existing Planning Agreement is amended and restated on the terms of this deed.
- 1.10 This deed is intended only to vary the Existing Planning Agreement and not to terminate, discharge, repeal or replace it. The provisions of the Existing Planning Agreement as amended by this deed continue in full force and effect.
- 1.11 Nothing in this deed:
- (a) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Existing Planning Agreement before the date of this deed; or
 - (b) discharges, releases or otherwise affects any liability or obligation which arose under the Existing Planning Agreement before the date of this deed.
- 1.12
- (a) The Parties agree that this deed is a planning agreement, which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, and which excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act under certain circumstances as set out in clause 13.7 of this deed.
 - (b) Any explanatory note prepared in relation to this deed is not to be used to assist in construing this deed.
 - (c) The Parties agree that the application of section 94EF of the Act has not been excluded because:
 - (i) section 94EF does not apply to the Development; and
 - (ii) the REP, the EPS and the State Development Agreement provide for the contributions which the Joint Venture is required to make to the State in relation to the Development.

St Marys Penrith Planning Agreement

Compliance with New Laws

- 1.13 If a Law is changed or a new Law comes into force (both referred to as *New Law*) and the Landowner or the Joint Venture is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only 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. **Conflicting interpretations**
- 1.14 If a provision of this deed is genuinely capable of different interpretations, the interpretation which:
- (a) is consistent with clauses 1.2 and 1.3;
 - (b) best meets the purposes of this deed; and
 - (c) promotes the aims of the REP and the Performance Objectives,
- is to be preferred.

Severance of invalid provisions

- 1.15 Subject to clause 1.3, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

Several liability

- 1.16 The Landowner and LLD are severally liable each for a one half share only of the Joint Venture interests (including rights and obligations) under this deed.

Approvals and consents

- 1.17 Where this deed calls for a Party to give its consent or approval, that consent or approval may be given or withheld, or given subject to conditions, in the absolute discretion of the Party, except where otherwise provided in this deed.

Indexation of amounts

- 1.18 All amounts payable by a Party under this deed are to be increased (with the calculation to be made as at the relevant date) in accordance with increases in the Index in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A** = the indexed amount at the relevant date;
- B** = the relevant amount as set out in this deed;
- C** = the Index most recently published before the relevant date; and

St Marys Penrith Planning Agreement

D = the Index most recently published before:

- a) the Original Commencement Date (or later date of indexation, as appropriate) for clauses 13.9(d), clause 19.3 and 21.11; or
- b) the Commencement Date (or later date of indexation, as appropriate) for the balance of provisions in this deed that require indexation.

1.19 (Not used)

1.20 (Not used)

1.21 (Not used)

Interest for late payment

1.22 In addition to any other remedy available to a Party for late payment, a Party must pay interest on any amount payable by it under this deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times notified by the person to whom the payment is due, calculated on daily balances. The rate to be applied to each daily balance is the rate equal to 3% per annum above the BBSW Rate. The person to whom the payment is due may notify a different rate for each day during the period. Interest which is not paid when due for payment may be capitalised by the person to whom the payment is due on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 1.22. The Party's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by this clause 1.22.

2. Background

Ownership of the Land

2.1 The Landowner is the legal owner of the Land.

REP

2.2 The REP provides a framework for the sustainable development and management of the Land and to achieve the other aims expressed in the REP.

2.3 The REP contemplates the making of a development agreement. This deed is a development agreement within the meaning of the REP.

3. Structure and application of this deed

Parts

3.1 Penrith Council acknowledges the provisions of clauses 3.1 to 3.10 of the State Development Agreement.

St Marys Penrith Planning Agreement

3.2 The Parties agree that:

- (a) this deed, the St Marys Blacktown Development Agreement and the State Development Agreement shall be read together;
- (b) this deed shall be treated as part of the State Development Agreement;
- (c) without affecting the previous paragraphs and subject to paragraph (d), if requested by the Joint Venture, Penrith Council must promptly execute a conformed copy of the State Development Agreement which comprises the terms of the State Development Agreement together with the terms of this deed, any similar deed entered into between the Parties relating to the Development and the St Marys Blacktown Development Agreement, with the relevant agreements with each Council appearing as separate sub-parts within Part 3 of the State Development Agreement; and
- (d) Penrith Council need not execute a conformed copy of the State Development Agreement in accordance with clause 3.2(c) if Part 1 of the conformed copy of the State Development Agreement has been varied or replaced when compared to Part 1 of the State Development Agreement in force as at the Original Commencement Date so that the rights or responsibilities of Penrith Council would be significantly altered.

3.3 If there is any inconsistency between the provisions of this deed, the St Marys Blacktown Development Agreement and the State Development Agreement, the provisions of this deed applies to the Parties to the extent of that inconsistency.

4. Performance Objectives and purposes of this deed

Overall purpose of deed

4.1 Penrith Council acknowledges the provisions of clauses 4.1 and 4.2 of the State Development Agreement.

5. Commencement, term and amendment of this deed

Commencement of this deed

5.1 This deed commences on the Commencement Date.

Term of this deed

5.2 This deed will remain in force until:

- (a) it is terminated by operation of Law; or
- (b) all obligations are performed or satisfied.

St Marys Penrith Planning Agreement

Amendment of this deed

- 5.3 The Parties agree that, subject to section 93G of the Act this deed can be reviewed and amended at any time by mutual agreement.

6. Confidentiality and public announcements

This deed not confidential

- 6.1 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.

Other information confidential

- 6.2 The Parties acknowledge that:
- (a) Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and
 - (b) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- 6.3 Subject to clauses 6.4 and 6.5, each Party agrees:
- (a) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
 - (b) 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.
- 6.4 A Party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
 - (b) to any of their employees or consultants to whom it is considered necessary to disclose the information, if the employee or consultant undertakes to keep the information confidential.
- 6.5 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.

7. Default

Notice of default

- 7.1 In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, it may give notice in writing to that Party (*Default Notice*) giving full particulars of the

St Marys Penrith Planning Agreement

matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

Reasonable time

- 7.2 In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, the weather, availability of labour, plant and/or equipment, strikes and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

Suspension of time – dispute

- 7.3 If a Party, as it is entitled to do, refers the Default Notice to dispute resolution, clause 8.2 will apply.

Penrith Council may act in public interest

- 7.4 Despite clause 8.2, Penrith Council may, if in its reasonable opinion circumstances involving a significant threat to or significant interference with public safety so warrant, carry out (at its initial cost) the obligations of the Landowner or the Joint Venture under this deed as it alleges is that Party's responsibility and as is necessary to remedy the threat or interference, in which event such reasonable costs incurred by Penrith Council as relate to those obligations (which are ultimately found under clause 8 to be that Party's responsibility) in accordance with a notice given by Penrith Council may be recovered from the Landowner or the Joint Venture (as appropriate).

Penrith Council's remedies

- 7.5 If the Landowner or the Joint Venture fails to perform and fulfil an obligation as specified in a Default Notice (or any Default Notice amended after dispute resolution), Penrith Council may recover upon demand from the Landowner or the Joint Venture (as the case may be) the following amounts:
- (a) the whole of the moneys then due to Penrith Council and not paid by the Landowner or the Joint Venture;
 - (b) such reasonable sum as Penrith Council (acting reasonably) certifies as representing the estimated cost of:
 - (i) performing the obligations of the Landowner or the Joint Venture not performed or completed by the Landowner or the Joint Venture or altering or amending any completed work not constructed in a good and workmanlike manner (all of which are referred to as *Incomplete Works*); and
 - (ii) carrying out such other work or development as Penrith Council may reasonably consider necessary to mitigate the effects of any *Incomplete Works*; and
 - (iii) Penrith Council's reasonable charges for supervision, interest, administration costs, legal costs and overheads.

However, if the issue of whether or not the Landowner or Joint Venture is in default in relation to the relevant matter in the Default Notice has been referred for determination under clause 8, then Penrith Council may only exercise its rights under this clause once the matter is determined and in accordance with that determination.

St Marys Penrith Planning Agreement

Penrith Council's Rights of Recovery

- 7.6 If the sum or sums at any time or times received or recovered by Penrith Council under clause 7.5 are insufficient to complete the carrying out or altering or amending the work required by this deed, Penrith Council may at its election:
- (a) carry out, alter or amend such work at its discretion so far as the moneys received will, in the opinion of Penrith Council, reasonably allow; or
 - (b) complete the carrying out, altering or amending of such work as required by this deed and recover the difference between the reasonable costs actually incurred by it in so doing and the sums received or recovered under clause 7.5 from the Landowner or the Joint Venture (as the case may be).

No waiver

- 7.7 Any time or other indulgence which is given by Penrith Council, to the Landowner or the Joint Venture to enable them to perform this deed does not in any way amount to a waiver of any of the rights or remedies of Penrith Council under this deed.

8. Dispute resolution

Notice of dispute

- 8.1 If a dispute or lack of certainty between the Parties arises in connection with this deed or its subject matter (a *dispute*), then either Party must give to the other a notice of dispute in writing adequately identifying and providing details of the dispute.

Conduct pending resolution

- 8.2 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 the subject of the dispute, unless the appropriate Party indemnifies the other relevant Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

Further steps required before proceedings

- 8.3 Subject to clauses 8.20 and 8.21, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation or determination by an expert under clause 8.4, first be the subject of mediation by a mediator agreed by the Parties and, if the Parties cannot agree within 14 days, then by a mediator appointed by LEADR.

Disputes for expert determination

- 8.4 If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, either Party may by notice in writing require the matter to be determined by expert determination in accordance with clause 8.5.

St Marys Penrith

Planning Agreement

Choice of expert

- 8.5 A dispute to be determined in accordance with clause 8.4 must be determined by an independent expert in the relevant field:
- (a) agreed between and appointed jointly by the Parties; or
 - (b) in the absence of agreement within 14 days after the date of the notice under clause 8.4, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- 8.6 If the Parties fail to agree as to the relevant field within 14 days after the date of the notice under clause 8.4, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- 8.7 The expert appointed to determine a dispute:
- (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- 8.8 The Parties must promptly enter into an agreement with the expert appointed under clause 8.5 setting out the terms of the expert's determination and the fees payable to the expert.

Directions to expert

- 8.9 In reaching a determination in respect of a dispute under clause 8.4, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- 8.10 The expert must:
- (a) act as an expert and not as an arbitrator; and
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence; and
 - (c) not accept verbal submissions unless both Parties are present; and
 - (d) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party; and
 - (e) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
 - (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); and

St Marys Penrith Planning Agreement

- (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 14 days to make further submissions; and
- (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.

8.11 The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information which the expert requests.

Expert may commission reports

8.12 The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 8.8 of this deed.

Expert may convene meetings

8.13 The expert must hold a meeting with all of the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

8.14 The Parties agree that a meeting under clause 8.13 is not a hearing and is not an arbitration.

Other courses of action

8.15 If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, and a Party has failed to refer the matter to expert determination in accordance with clause 8.4 within 21 days after termination of the mediation, either Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

Confidentiality of information provided in dispute resolution process

8.16 The Parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law to do so or State Government policy or local government policy or any listing rule; and

St Marys Penrith Planning Agreement

- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- 8.17 The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
 - (b) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

Final determination of expert

- 8.18 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.

Costs

- 8.19 If any independent expert does not award costs, each Party must contribute equally to the expert's costs in making the determination.

Remedies available under the Act

- 8.20 Clauses 8.3 and 8.4 do not operate to limit the availability of any remedies available to Penrith Council under sections 123, 124 and 125 of the Act.

Urgent relief

- 8.21 This clause 8 does not prevent a party from seeking urgent injunctive or declaratory relief.

9. Dealings with this Deed

- 9.1 Subject to clauses 9.2 and 9.3, Penrith Council:
- (a) acknowledges the provisions of clauses 9.1 to 9.9 of the State Development Agreement;
 - (b) agrees that those provisions apply to this deed; and
 - (c) agrees that the consent of the Minister under clauses 9.2 or 9.7 of the State Development Agreement is binding upon Penrith Council to the same extent as if given by Penrith Council.

St Marys Penrith Planning Agreement

- 9.2 If clause 9.1 of the State Development Agreement is amended so that a Relevant Developer can more easily assign or novate its rights and obligations under the State Development Agreement, then:
- (a) clauses 9.1 to 9.4 of the State Development Agreement do not apply to Penrith Council; and
 - (b) the rights and obligations of the Joint Venture under this deed may only be assigned or novated with the consent of Penrith Council, which may not be unreasonably withheld.
- 9.3 If clause 9.6 of the State Development Agreement is amended so that a person can more easily become or cease to be a Parent of the Relevant Developer under the State Development Agreement, then:
- (a) clauses 9.6 to 9.8 of the State Development Agreement do not apply to Penrith Council; and
 - (b) a person may only become or cease to be a Parent of the Relevant Developer under this deed with the consent of Penrith Council, which may not be reasonably withheld.
- 9.4 The Parties have agreed that Penrith Council must not lodge a caveat on the title to the Land or any title resulting from the subdivision plan in relation to the Land.

10. GST

Definitions

10.1 In this clause:

Adjustment Note has the meaning given by the GST Law.

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Group has the meaning given by the GST Law.

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

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Margin Scheme has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and (except where expressly agreed otherwise) excluding a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

Tax Invoice has the meaning given by the GST Law.

St Marys Penrith Planning Agreement

GST to be added to amounts payable

- 10.2 If GST is payable on a Taxable Supply made under, by reference to or in connection with this deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.

Tax Invoice and Adjustment Note

- 10.3 No payment of any amount pursuant to this deed, 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.

Liability net of GST

- 10.4 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.

Impact of GST on CPI Adjustment

- 10.5 If an amount payable under this deed is adjusted by reference to a change to the CPI, then the impact of GST and any change in the rate of GST must be excluded from the change to the CPI.

GST obligations to survive termination

- 10.6 This clause will continue to apply after expiration or termination of this deed.

11. Miscellaneous

Choice of Law

- 11.1 The Laws of New South Wales as in force from time to time govern this deed.
- 11.2 Not used.

Further assurance

- 11.3 Each Party to this deed must sign and execute all documents and do all things as may be reasonably required to be done by the Party to give effect to this deed.

Force Majeure

- 11.4 (a) In this clause 11.4, *force majeure*, means any physical or material restraint beyond the reasonable control of the Party claiming the force majeure and includes, without limitation, fire, the discovery of threatened species on the Land or industrial disputes.

St Marys Penrith Planning Agreement

- (b) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this deed (other than an obligation to transfer land or make a payment), it must:
 - (i) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this deed.
- (c) If a Party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (d) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (e) The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- (f) The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer land or to pay money.
- (g) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure or the apportionment of any costs associated with the event of force majeure, that dispute must be referred for determination under clause 8.

PART 2 - The rights and obligations of Penrith Council and the Joint Venture

12. Purpose of Contributions

Purpose

12.1 This Part:

- (a) identifies the facilities, services and infrastructure needed to support the Development in the Penrith Council Local Government Area;
- (b) identifies when the facilities, services and infrastructure will be required, and who will be responsible for providing them; and
- (c) identifies when specific facilities and services or funds will be required to meet the demands created by the Development in the Penrith Council Local Government Area and how they will be provided.

13. Contributions

Contributions by the Joint Venturer

13.1 In accordance with this deed, the Parties agree that the Joint Venture must contribute:

- (a) the district open space contribution in accordance with clause 13.9 (*District Open Space Contribution*);
- (b) the Local Transport Works in accordance with clause 17 (*Transport Contribution*);
- (c) the Local Open Space Works in accordance with clause 18 (*Local Open Space Contribution*);
- (d) the Human Services Works in accordance with clause 19 (*Human Services Contribution*); and
- (e) the Additional Services and Infrastructure Works in accordance with clause 20 (*Additional Services and Infrastructure Contribution*),

(together, the *Contributions*).

13.2 Penrith Council acknowledges and agrees that:

- (a) this deed includes the Contributions for Local Transport Works in relation to a planning proposal which may be pursued by the Joint Venture seeking to rezone the employment

St Marys Penrith Planning Agreement

land in the Central Precinct to allow residential development of approximately 500-600 dwellings; and

- (b) the Contributions for Local Transport Works under this deed are made on the basis that this deed will operate with respect to development of the Central Precinct whether or not the zoning of the land in the Central Precinct is changed to allow residential development.

Contribution Alternatives

13.3 Subject to clause 13.4 and 13.5, the Joint Venture will make the Contributions referred to in clause 13.1 by the carrying out of Works and the provisions set out in clause 16 accordingly apply.

13.4 The Joint Venture may make any of the Contributions for Items 1 to 7 (inclusive) of Annexure 2A referred to in clause 13.1(b) by the payment of money to Penrith Council at the later of the following events:

- (a) any Approval required for an Item has not been obtained within 21 months of the lodgement of any Development Application or other documentation required for any Approval; or
- (b) Penrith Council does not acquire the Additional Land required for an Item within 30 months of the Commencement Date,

and the provisions set out in clause 14A would then apply.

For the avoidance of doubt, any Item of Local Transport Works that does not trigger this clause will need to be delivered by the Joint Venture by the carrying out of Works in accordance with the terms of this deed.

13.5 Penrith Council acknowledges and agrees that at the time the Joint Venture lodges a Development Application with Penrith Council for an Item of Local Transport Works:

- (a) the Joint Venture may not have received written consent from the owner of any Additional Land required for that Item; and
- (b) the absence of this information:
 - (i) will not affect the timing stipulated in clause 13.4; and
 - (ii) is not a sufficient reason for Penrith Council to reject any Development Application lodged by the Joint Venture pursuant to clause 51 of the EPA Regulations.
- (c) Should any Contribution for Local Transport Works be made by the payment of money in accordance with clause 13.4, the Developer agrees to withdraw any Development Application lodged with Penrith Council for that relevant Item in accordance with clause 52 of the EPA Regulations.

13.6 The Joint Venture may make any of the Contributions for Items 1, 2, 4, 5, 8 and 10 of Annexure 6A and Items 1, 2, 4 and 5 of Annexure 6B referred to in clause 13.1(d) by the payment of money to Penrith Council, and the provisions set out in clause 14 would then apply.

St Marys Penrith Planning Agreement

Contributions Plan

- 13.7 Penrith Council and the Joint Venture agree that:
- (a) Figure 2 in Section 1.4 of the EPS provides that this deed replaces contributions under section 94 of the Act for the provision of facilities and services;
 - (b) notwithstanding paragraph (a), the Parties have agreed to deal with a Redevelopment of any part of the Development in the Penrith Council Local Government Area in the manner described in paragraph (c); and
 - (c) the Contributions and obligations imposed on the Joint Venture in this deed are in place of and exclude the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development in the Penrith Council Local Government Area (other than to the extent contemplated by clause 13.8) but that they do not exclude the operation of sections 94 or 94A to a Redevelopment of any part of the Development in the Penrith Council Local Government Area provided that for such Redevelopment the benefits under this deed are to be taken into consideration by Penrith Council in determining a development contribution under section 94.
- 13.8 Penrith Council agrees that the provisions of this deed will satisfy the relevant Performance Objectives of the REP and the EPS and the Precinct Plan for the relevant Precinct.

District Open Space Contribution

- 13.9 (a) Subject to this clause 13.9 and despite any other provision of this deed or any change to the Penrith City District Open Space Facilities Development Contributions Plan, the Joint Venture must contribute to Penrith Council a maximum amount of \$13,305,500 in complete satisfaction of the District Open Space Contribution. For the avoidance of doubt, this clause 13.9(a) does not operate as a cap should the employment land in the Central Precinct be rezoned to allow residential development. If this occurs, clause 13.9(b) has effect.
- (b) Should the employment land in the Central Precinct be rezoned to allow residential development, Penrith Council and the Joint Venture agree that the Joint Venture will pay an additional District Open Space Contribution on a per person basis at the rate of \$1,495 per person, for the additional population generated by the rezoning, provided that the Joint Venture is not required to contribute a greater District Open Space Contribution on a per person basis than any other developer of land to which the Penrith City District Open Space Facilities Development Contributions Plan applies at the time that the recalculation occurs.
- (c) Not used.
- (d) Penrith Council and the Joint Venture agree that the Joint Venture will contribute the District Open Space Contribution by:
- (i) firstly, undertaking works in kind, including paying all fees and expenses, in the Central Park:
 - (A) for facilities determined in accordance with paragraph (f) and agreed by Penrith Council and the Joint Venture to the value of \$6,834,000;

St Marys Penrith Planning Agreement

- (B) for such other facilities within the Development as a Better Outcome in accordance with clause 15 and for such greater amount, in addition to the amount in subparagraph (A), as agreed in writing by Penrith Council and the Joint Venture acting reasonably if
 - (1) there is a demonstrable community benefit;
 - (2) Penrith Council's ability to deliver other identified projects under the Penrith City District Open Space Facilities Development Contributions Plan is not compromised; and
 - (3) any greater expenditure continues to satisfy the Joint Venture's obligations under this deed or elsewhere in relation to the Central Park,

which additional amount must be offset under subparagraph (d)(ii)(C),
and
- (C) prior to July 2021; and
- (ii) secondly, paying the balance of the District Open Space Contribution to Penrith Council by payment:
 - (A) \$1,400,000 following development approval for the construction of the 1,000th lot in the Western Precinct and the Central Precinct (combined);
 - (B) \$1,400,000 following development approval for the construction of the 2,000th lot in the Western Precinct and the Central Precinct (combined);
 - (C) \$2,071,850, less any additional amount as agreed in writing by Penrith Council and the Joint Venture under subparagraph (d)(i)(A), following development approval for the construction of the 3,000th lot in the Western Precinct and the Central Precinct (combined); and
 - (D) the balance of the District Open Space Contribution up to the maximum amount referred to in paragraph (c), following development approval for the construction of the 3,400th lot in the Western Precinct and the Central Precinct (combined).
- (e) Amounts specified in this clause 13.9 are increased in accordance with clause 1.18.
- (f) Penrith Council acknowledges that the Joint Venture has informed Penrith Council of the obligations existing elsewhere in relation to the Central Park. The Joint Venture must identify and liaise with potential user groups and relevant Authorities (including Penrith Council) in relation to the facilities which might be required in the Central Park to satisfy community needs, bearing in mind the amount referred to in subparagraph (d)(i)(A). Penrith Council and the Joint Venture acting reasonably must then agree in writing on the facilities to be provided by the Joint Venture under subparagraph (d)(i)(A).

14. Monetary Contributions

- 14.1 (a) If the Joint Venture makes any of the Contributions referred to in clauses 13.1(a), (c), (d) and (e) by the payment of money to Penrith Council in accordance with clause 13.5, then:
- (i) the amount of the monetary contribution payable is to be the amount reasonably determined by an independent Quantity Surveyor appointed in accordance with paragraph (b) and who makes the determination in accordance with paragraph (c);
 - (ii) the monetary contribution must be paid to Penrith Council within 90 days of the Quantity Surveyor's determination in accordance with paragraph (c); and
 - (iii) promptly upon receipt of the monetary contribution, Penrith Council must confirm in writing to the Joint Venture that the Joint Venture has satisfied its obligations under this deed with respect to that particular item of Works.
- (b) The Quantity Surveyor will be the person:
- (i) who is agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement, who is appointed by the President or other senior officer for the time being of the body which administers Quantity Surveyors in New South Wales.
- (c) When making the determination required under paragraph (a), the Quantity Surveyor must have regard to the following:
- (i) the scope and standard of the relevant item of Works in the relevant technical study; and
 - (ii) the design and standards usually required by Penrith Council for similar items of works, which standards are to be reasonably determined but which are to be no greater than those which apply to similar works carried out by or on behalf of Penrith Council.
- 14.2 Penrith Council agrees that if the Joint Venture performs its obligations in this deed by making a monetary contribution, Penrith Council must spend the monetary contribution on services, infrastructure or facilities to be delivered either:
- (a) firstly, at the relevant Precinct;
 - (b) secondly, at a location outside the relevant Precinct where there is a nexus between the proposed services, infrastructure or facilities and the Development; or
 - (c) thirdly, in accordance with an adopted Development Contributions Plan applying to the City of Penrith provided that the monetary contribution is spent on services, infrastructure or facilities which continue to satisfy relevant Performance Objectives of the REP and the EPS and the Precinct Plan for the relevant Precinct,
- other than for Item 5 in Annexure 6A and for Item 5 in Annexure 6B.

St Marys Penrith

Planning Agreement

- 14.3 Penrith Council must spend the monetary contribution on services, infrastructure or facilities referred to in clause 14.2 within 24 months, or such further time as the parties agree (acting reasonably), of receiving the monetary contribution where:
- (a) Penrith Council has received the full monetary contribution for the relevant service, infrastructure or facility from the Joint Venture, other developers or other contributors; and
 - (b) the relevant service, infrastructure or facility is required to be delivered within a period of 24 months of Penrith Council receiving the monetary contribution.
- 14.4 When requested by the Joint Venture in writing from time to time, Penrith Council must provide reasonable evidence to the Joint Venture of compliance by Penrith Council of its obligations under clauses 14.2 and 14.3.
- 14.5 Subject to clause 14.6, where it is impracticable (in reasonable circumstances) for Penrith Council to comply with clause 14.2 and the Joint Venture gives its written consent to Penrith Council not complying with clause 14.2, Penrith Council may spend the contribution on the upgrade of infrastructure or facilities or the provision of services external to the Development in the manner consented to by the Joint Venture.
- 14.6 Where Penrith Council gives the Joint Venture written notice that it intends to spend the contribution on the upgrade of infrastructure or facilities or the provision of services external to the Development, and the Joint Venture does not respond to Penrith Council within 90 days, Penrith Council may spend the contribution on the upgrade of infrastructure or facilities or the provision of services external to the Development in the manner required by Penrith Council.
- 14.7 The Joint Venture must give or procure access to Penrith Council to that part of the Land upon which works are to be carried out by Penrith Council for the purposes of carrying out the works contemplated by this clause 14 provided that Penrith Council executes a licence agreement on terms proposed by the Joint Venture, acting reasonably.

14A Monetary Contributions – Local Transport Works

- 14A.1 If the Joint Venture makes the Transport Contribution for a particular Item under clause 13.1(b) by the payment of money to Penrith Council in accordance with clause 13.4, then the monetary contribution for that Item of Local Transport Works must be equal to the Notional Works Value for that Item, as adjusted at the time of payment in accordance with clause 1.18.
- 14A.2 Penrith Council agrees that it must spend the monetary contribution referred to in clause 14A.1 towards the delivery by Penrith Council of:
- (a) that Item of Local Transport Works; or
 - (b) towards any road infrastructure works in the Penrith Council Local Government Area where there is a nexus between the proposed road infrastructure and the Development; or
 - (c) towards any road infrastructure works in the Penrith Council Local Government Area, as agreed by the Joint Venture acting reasonably.
- 14A.3 Penrith Council must deliver the Item referred to in clause 14A.2 within 12 months, or such further time as the parties agree (acting reasonably), of receiving the monetary contribution where Penrith

St Marys Penrith Planning Agreement

Council has received the full monetary contribution for the Item of Transport Works from the Joint Venture, other developers or other contributors.

- 14A.4 When requested by the Joint Venture in writing from time to time, Penrith Council must provide reasonable evidence to the Joint Venture of compliance by Penrith Council of its obligations under clauses 14A.2 and 14A.3.
- 14A.4 The Joint Venture must give or procure access to Penrith Council to that part of the Land upon which works are to be carried out by Penrith Council for the purposes of carrying out the Works contemplated by this clause 14A provided that Penrith Council executes a licence agreement on terms proposed by the Joint Venture, acting reasonably.

15. Better Outcomes

- 15.1 The REP, the EPS and the Precinct Plans for the Western Precinct and the Central Precinct identify opportunities for Penrith Council and the Joint Venture to seek more efficient, effective and flexible service delivery of facilities, services and infrastructure.
- 15.2 Penrith Council and the Joint Venture agree to act reasonably to consider opportunities for the:
- (i) shared use;
 - (ii) integrated service delivery;
 - (iii) flexibility in design;
 - (iv) co-location of facilities; and
 - (v) contributions being allocated to a mix of capital and recurrent costs,
- of the Local Open Space Contribution and/or the Human Services Contribution arising from the recognition that the needs of the community will change over the course of the Development (*Better Outcomes*).
- 15.3 If either party considers that there is an opportunity for Better Outcomes, it will provide a detailed proposal to the other party for their consideration.
- 15.4 Penrith Council and the Joint Venture agree to act promptly to consider any opportunity for Better Outcomes.
- 15.5 If a proposal for a Better Outcome is not agreed between Penrith Council and the Joint Venture:
- (a) in the case of Contribution relating to the Western Precinct, before the development approval of the 1,000th lot in the Western Precinct; or
 - (b) in the case of a Contribution relating to the Central Precinct, before the development approval of the 500th lot in the Central Precinct,
- then the Joint Venture must make the relevant Contribution agreed in this deed and the Joint Venture will have satisfied its obligation under clause 13.8.
- 15.6 Nothing in this clause 15 requires:
- (a) the Joint Venture to make additional Contributions to Penrith Council; or
 - (b) a party to agree to any proposal for a Better Outcome.

16. Works Contributions

- 16.1 If the Joint Venture is required to carry out works or provide services relating to the Development under clause 13.3, the following provisions apply:
- (a) the works or services must be identified in Annexures 2A, 4A, 4A1, 4A2 and 5 and clauses 13.9 and 20, as appropriate;
 - (b) the works or services must be carried out and completed by the relevant date specified in the relevant Annexure;
 - (c) the works or services must be carried out by a person with the necessary expertise, competence and skills;
 - (d) the works or services must be carried out in accordance with the design approved by and to the standards of Penrith Council, which standards are to be reasonably determined but which are no greater than those which apply to similar works or services carried out by or on behalf of Penrith Council;
 - (e) the value of the works or services for the purpose of determining the extent to which the Joint Venture has satisfied its obligation to make contributions in accordance with this Part 2 will be the lesser of:
 - (i) the actual cost of carrying out the works or services, including costs properly paid to the third parties, design and contractor's fees, fees for approvals and supervision costs; or
 - (ii) the value of the works or services determined by an appropriately qualified expert appointed by the Joint Venture and approved by Penrith Council (acting reasonably);
 - (f) the Joint Venture must provide to Penrith Council reasonable evidence of the actual cost of carrying out the works or services; and
 - (g) prior to the works or services commencing, they must be approved by Penrith Council (acting reasonably) in accordance with Penrith Council's usual requirements, to the extent relevant.
- 16.2 Penrith Council agrees to accept the carrying out of the works or services as a material public benefit in satisfaction of the payment of the Contributions otherwise required under sections 94 and 94A of the Act for the Development in the Penrith Council Local Government Area.

17. Local Transport Works

Local and Regional Transport Works

- 17.1 (a) The REP, the EPS, the Precinct Plan for the Dunheved South Precinct, the Traffic Modelling Study 2004, the Transport Management Study 2007 and the Updated Traffic Modelling Study identify transport upgrades necessary for the Development.
- (b) The Updated Traffic Modelling Study replaces the Transport Management Study 2007 which previously applied to the Development.

St Marys Penrith Planning Agreement

- (c) The Parties agree that:
 - (i) the Updated Traffic Modelling Study has been prepared in accordance with the State Development Agreement, the REP, the EPS and the relevant provisions of the Act and replaces the Transport Management Study 2007;
 - (ii) the Updated Traffic Modelling Study has been prepared to define the Balance Road Works in the Central District and the Western District arising from the Amending Precinct Plan and Development Control Strategy Amendment No. 2 conditionally approved by Penrith Council on 11 December 2017; and
 - (iii) the transport committee established under clause 16.4 of the State Development Agreement, as originally signed, has endorsed the Updated Traffic Modelling Study.
- (d) Subject to clause 13.4, the Joint Venture will undertake the Local Transport Works which comprise of the Items in Annexure 2A in accordance with the timing stipulated in Annexure 2A or as extended by agreement of the parties, acting reasonably.
- (e) The Local Transport Works include the requirement for a new road to be constructed by the Joint Venture connecting Christie Street and Links Road (the *Link Road*).

17.2 The Local Transport Works are the subject of this clause 17.

17.3 The regional transport works are covered by the State Development Agreement.

Scope of Works

17.4 The Local Transport Works to be undertaken with respect to site access intersections and other road intersection improvements must be undertaken in accordance with the EPS and the REP and are itemised in Annexure 2A as the Local Transport Works and particularised in Annexures 2B to 2G inclusive (where relevant).

Land Acquisition

17.5 If the detailed design plans for any Item of Local Transport Works (as approved or assessed in accordance with 17.18 or 17.19) requires Additional Land, Penrith Council will acquire the Additional Land in accordance with this clause 17.

17.6 Penrith Council acknowledges that the indicative Additional Land that will need to be acquired for the Local Transport Works is shown coloured orange on the plans that form Annexure 2H.

17.7 If the Joint Venture fails to provide the Draft Acquisition Plans or Final Acquisition Plans in accordance with the timing required in Schedule 2A, the time periods in clause 13.4 are suspended until the Joint Venture provides either the Draft Acquisition Plans or Final Acquisition Plans as required by Schedule 2A.

17.8 Once the detailed design plans for an Item of Local Transport Works have been agreed (by the parties acting reasonably), Penrith Council will begin negotiations in accordance with section 10A of the LA Act with the relevant land owner to acquire the minimum amount of Additional Land that

St Marys Penrith Planning Agreement

is required to undertake the relevant Item at a land value agreed between the parties to this deed in accordance with clauses 17.9 and 17.10 (Section 10A Negotiations).

- 17.9 Any Additional Land required for an Item of Local Transport Works that is owned by the Joint Venture or Penrith Council will be dedicated by that party free of cost and the parties agree that Penrith Council is not required to pay compensation nor undertake Section 10A Negotiations for that Additional Land.
- 17.10 With the exception of the Additional Land referred to in clause 17.9, the land value of any other Additional Land to be acquired by Penrith Council pursuant to this clause 17 is to be agreed between the parties based on the advice of a suitably qualified and experienced real estate valuer appointed by Penrith Council with the agreement of the Joint Venture.
- 17.11 If after 6 months of negotiations (or such later time as prescribed by the LA Act), Penrith Council has not reached agreement with the relevant land owner of the Additional Land required for an Item of Local Transport Works as to the amount of compensation for that Additional Land, Penrith Council must notify the Joint Venture in writing that agreement was unable to be reached.
- 17.12 On receipt of a notice under clause 17.11, the Joint Venture may then give written notice to Penrith Council requiring that Penrith Council uses its best endeavours to acquire the Additional Land required for that Item by compulsory process in accordance with the requirements of the LA Act.
- 17.13
- (a) The parties acknowledge that any compulsory acquisition of the Additional Land requires both a Council resolution under the LG Act and the approval of the appropriate Minister under section 178(2) of the Roads Act.
 - (b) Should either of the approvals referred to in 17.13(a) not be obtained, subject to 17.13 (c) clause 13.4 has immediate effect notwithstanding the requisite time period in clause 13.4(b) has not yet elapsed.
 - (c) The parties agree that clause 13.4 does not have immediate effect if a review authorised by Law of either of these decisions has been instituted by Penrith Council. In these circumstances and provided the time periods in clause 13.4 have not yet lapsed, clause 13.4 will only have effect if, following the review, the original decision not to grant approval still stands.
- 17.14 The Joint Venture will reimburse Penrith Council up to an amount of \$3,200,000 for the following costs of acquiring any Additional Land required for the Local Transport Works:
- (a) the Council's staffing costs of resourcing the acquisition process up to a maximum of \$115,000 (inclusive of GST) subject to Council providing a Monthly Status Report to the Joint Venture;
 - (b) the compensation payable as determined by the Valuer-General under the LA Act, or as agreed between the parties having regard to the relevant matters under section 55 of the LA Act or as otherwise determined by the Land and Environment Court on appeal; and
 - (c) the reasonable legal costs of any relevant land owner:
 - (i) associated with the Section 10A Negotiations; and

St Marys Penrith Planning Agreement

- (ii) any appeal to the Land and Environment Court arising from the acquisition if Penrith Council is so ordered by the Court.

17.15 Penrith Council acknowledges and agrees that should the costs payable under clause 17.14 exceed \$3,200,000:

- (a) any additional costs caught by clause 17.14 will be evenly split between the parties; and
- (b) Penrith Council will continue to use all best endeavours to acquire the Additional Land.

17.16 If any Additional Land (or part thereof) is acquired by compulsory process or otherwise, Penrith Council must

provide access to the acquired Additional Land to the Joint Venture when required to enable the Joint Venture to commence construction of the relevant Item.

Unknown Contamination

- 17.17 (a) Subject to clause 17.17(b), if any of the land comprised of an Item (including any Additional Land) is found to have any Contamination, Penrith Council agrees that the Joint Venture is only required to remediate that land so that it is fit for a commercial/industrial land use in accordance with standards applicable at the time of the Works.
- (b) Should the land immediately adjoining an Item be rezoned to a more sensitive land use before the commencement of Works for that Item, the parties agree to renegotiate the level of remediation that may be required for any Contamination found in any land comprised of that Item.

Development Approval

17.18 The Joint Venture must at its cost prepare, lodge and prosecute an application for any required Approvals for the Local Transport Works (other than those works subject to clause 13.4 and any land acquisition appeals arising from clause 17.11) in accordance with the Act, the *Roads Act 1993* and the following provisions.

17.19 Despite clause 17.18:

- (a) Penrith Council acknowledges that the Local Transport Works will be dedicated to Penrith Council and in that respect will be constructed by the Joint Venture for and on behalf of Penrith Council in accordance with the requirements of this deed.
- (b) If the Local Transport Works can be carried out without development consent under the provisions of *State Environmental Planning Policy (Infrastructure)*, or any other environmental planning instrument, the Joint Venture must prepare an environmental assessment and provide any other information reasonably required by Penrith Council for the purposes of Council's consideration of the proposal under Part 5 of the EPA Act.

Design Standards to be provided by Penrith Council

- 17.20 (a) Prior to commencing the preparation of design and engineering documentation to accompany the application for any required approval or any assessment required under Part 5 of the EPA Act, the Joint Venture must request in writing from Penrith Council details of

St Marys Penrith Planning Agreement

the standard of design and engineering documentation for construction of works similar to the Local Transport Works.

- (b) Penrith Council must provide all the standards which it requires the Joint Venture to comply with in carrying out the Local Transport Works within 20 Business Days of the Joint Venture's written request, which standards must be consistent with the standards then adopted by Penrith Council for construction of similar works.
- (c) If Penrith Council fails to provide the standards referred to in paragraphs (a) and (b) within this time, then the standards to be adopted by the Joint Venture must be consistent with standards then adopted by Penrith Council for construction of similar works.

Payment of Fees

17.21 The Joint Venture must pay to Penrith Council any reasonable fees imposed by Penrith Council as a condition of any approval granted by it.

Inspection of Work

- 17.22 (a) The Local Transport Works will be jointly inspected by Penrith Council and the Joint Venture:
- (i) during the construction process of each item of the Local Transport Works and at times and stages set out in the approvals; and
 - (ii) prior to Practical Completion of each item of the Local Transport Works.
- (b) Penrith Council must identify and notify to the Joint Venture any defects in the Local Transport Works within 20 Business Days of the inspection referred to in paragraph (a).

Rectification of Defects

- 17.23 (a) The Joint Venture must rectify or cause the contractor to rectify defects promptly, having regard to the nature of any defect, identified by the inspection processes referred to in clause 17.22 (a).
- (b) The Joint Venture must rectify or cause the contractor to rectify any defects promptly, having regard to the nature of any defect, identified within 12 months of Practical Completion of each item of the Local Transport Works (*Defects Liability Period*).

Final Inspection and Rectification of Works

- 17.24 (a) Prior to the completion of the relevant Defects Liability Period for a Practically Completed item of work, Penrith Council and the Joint Venture will again jointly inspect the works.
- (b) Penrith Council must identify and notify to the Joint Venture any remaining defects in the works.
- (c) The Joint Venture must commence rectification of any defects identified in this clause 17.24 within 20 Business Days of receiving the notification of the defect.

St Marys Penrith Planning Agreement

Acceptance of Works

- 17.25 (a) When the Joint Venture has reasonably resolved all identified defects, the Joint Venture must notify Penrith Council of the final completion of the item of work.
- (b) Penrith Council must, within 20 Business Days of the notification, advise the Joint Venture of its acceptance of the completed item of work. If Penrith Council does not agree that the item of work is completed, clause 17.27 will apply.
- (c) If Penrith Council fails to advise the Joint Venture within 20 Business Days, then the Joint Venture is to be taken to have satisfied all its obligations in respect to that item of work and Penrith Council is taken to have accepted that item of work.

Access to Roads

- 17.26 Penrith Council must, if necessary, seek the concurrence of the RTA and give access to each public road over which Penrith Council has control to the Joint Venture and its contractors, agents and servants (acting reasonably) for the purpose of constructing the Local Transport Works.

Failure to Agree

- 17.27 If Penrith Council and the Joint Venture are unable to reach agreement on any issue raised by or resulting from clause 17.4 and clauses 17.17 to 17.26 inclusive, a dispute will be taken to have arisen which must be resolved under clause 8.
- 17.28 If the dispute is referred to an expert under clause 8, the Parties agree the independent expert must be a qualified engineer appointed by the President of the Institution of Engineers (New South Wales) and the independent expert's decision will be conclusive and binding and the Parties must give effect to it.

18. Local Open Space Works

Local Open Space Works

- 18.1 The REP, the EPS and the Precinct Plans for the Development identify regional park, regional open space and Local Open Space requirements for the Development.
- 18.2 The Local Open Space Works (embellished to a standard which must be consistent with the standards then adopted by Penrith Council for similar works) are the subject of this clause 18.
- 18.3 The State Development Agreement provides for the regional park and regional open space works.

Inspection of Work

- 18.4 (a) Prior to the Practical Completion of each item of the Local Open Space Works, Penrith Council and the Joint Venture will jointly inspect the works.
- (b) Penrith Council must promptly identify and notify to the Joint Venture any defects in the Local Open Space Works.

St Marys Penrith Planning Agreement

Local Open Space Works Approval Procedure

18.5 The approval procedure for Local Open Space Works is specified in Annexure 3.

Rectification of Defects

- 18.6 (a) The Joint Venture must rectify or cause the contractor to rectify defects promptly, having regard to the nature of the defect, identified by the process referred to in clause 18.4(a).
- (b) The Joint Venture must rectify or cause the contractor to rectify any defects promptly, having regard to the nature of the defects, identified within 6 months of Practical Completion of each item of the Local Open Space Works.

Acceptance of Works

- 18.7 (a) When the Joint Venture has reasonably resolved all identified defects, the Joint Venture must notify Penrith Council of the final completion of the item of work.
- (b) Penrith Council must, within 20 Business Days of the notification, advise the Joint Venture of its acceptance of the completed item of work. If Penrith Council does not agree that the item of work is completed, clause 18.8 will apply.
- (c) If Penrith Council fails to advise the Joint Venture within 20 Business Days, then the Joint Venture is to be taken to have satisfied all its obligations in relation to that item of work and Penrith Council is taken to have accepted that item of work.
- (d) The date which is 20 Business Days after the notification referred to in clause 18.7(a) shall be the *Date of On-Maintenance*.

Failure to Agree

- 18.8 If Penrith Council and the Joint Venture are unable to reach agreement on any issue raised by or resulting from clauses 18.4 to 18.7 inclusive, a dispute will be taken to have arisen which must be resolved under clause 8.
- 18.9 If the dispute is referred to an expert under clause 8, the Parties agree the independent expert must be a qualified landscape architect appointed by the President of the Australian Institute of Landscape Architects (New South Wales Chapter) and the independent expert's decision will be conclusive and binding and the Parties must give effect to it.

Handover of Works

- 18.10 (a) The Joint Venture shall maintain each item of Local Open Space Works for a minimum period of 12 months commencing from the Date of On-Maintenance prior to handover of the item of Local Open Space Works to Penrith Council.
- (b) The Joint Venture shall notify Penrith Council, prior to the first day of October each calendar year, of Local Open Space Works that will qualify for/and are intended to be, handed over to Penrith Council on the first day of July of the following calendar year, or other agreed date.

St Marys Penrith Planning Agreement

- (c) All 12 month maintenance periods for Local Open Space Works that will expire prior to the first day of July of the following calendar year, or other agreed date, shall be deemed to qualify for handover to Penrith Council at that date.
- (d) The Joint Venture shall submit to Penrith Council, prior to the first day of October each calendar year, an appropriate plan of management relating to the Local Open Space Works that will qualify for and is intended to be handed over to Penrith Council on first day of July of the following calendar year, or other agreed date.
- (e) Penrith Council will commence budget submissions to respective Penrith Council committees to ensure adequate maintenance funding for the Local Open Space Works commencing from the first day of July of the following calendar year, or other agreed date.
- (f) Prior to handover of the completed Local Open Space Works, Penrith Council and the Joint Venture must carry out a final inspection of the Local Open Space Works. Within 5 Business Days of the final inspection, Penrith Council must identify by notice in writing to the Joint Venture any remaining defects in the Local Open Space Works. The Joint Venture must rectify, or procure the rectification of, those remaining defects within 20 Business Days after the day on which the Joint Venture receives Penrith Council's notification.

Dedication of Local Open Space

- 18.11 (a) The Landowner must do all things necessary to dedicate a separate lot or lots for the relevant Local Open Space in the relevant Precinct to Penrith Council, or at Penrith Council's election the Office of Environment and Heritage.
- (b) The dedication of the relevant Local Open Space in the relevant Precinct will be at no cost to Penrith Council (or the Office of Environment and Heritage) and the land value of the Local Open Space is additional to the value of the relevant works specified in the Annexures.

Access for Maintenance

- 18.12 Penrith Council must, upon dedication of the land referred to in clause 18.11, grant the Joint Venture or its servants, agents or contractors access to those areas of the Local Open Space transferred to it for the purposes of maintenance and repairs in accordance with the Joint Venture's obligations under this deed.

19. Human Services

Human Services Works

- 19.1 The REP, EPS and Precinct Plans for the Western Precinct and the Central Precinct identify human services and facilities requirements for the Western Precinct and the Central Precinct.
- 19.2 The human services and facilities requirements which are the subject of this clause 19 are detailed in Annexures 6A and 6B.

St Marys Penrith Planning Agreement

19.3 Subject to clause 1.18, the Joint Venture's total maximum liability (excluding land contributions) under this clause 19 is \$5,304,016 in respect of the Western Precinct and \$2,353,071 in the Central Precinct.

Design Standards to be provided by Penrith Council

- 19.4 (a) Prior to commencing the preparation of design and documentation to accompany the application for any required planning approval, the Joint Venture must request in writing from Penrith Council details of the standard of design and documentation for construction of works similar to the Human Services Works.
- (b) Penrith Council must provide all the standards which it requires the Joint Venture to comply with in carrying out the Human Services Works within 20 Business Days of the Joint Venture's written request, which standards must be consistent with the standards then adopted by Penrith Council for construction of similar works.
- (c) If Penrith Council fails to provide the standards referred to in paragraphs (a) and (b) within this time, then the standards to be adopted by the Joint Venture must be consistent with the standards then adopted by Penrith Council for construction of similar works.

Expenditure by Community Development Worker

- 19.5 The Joint Venture and Penrith Council agree that the community development worker referred to in item 9 of Annexure 6A and item 9 of Annexure 6B may only expend amounts referred to in item 7 of Annexure 6A and item 7 of Annexure 6B (community initiatives fund) as follows:
- (a) amounts up to \$1,500 may be expended by the community development worker at their discretion; and
- (b) amounts equal to or in excess of \$1,500 may only be expended by the community development worker with the prior written approval of a representative of Penrith Council and a representative of the Joint Venture.

Failure to Agree

- 19.6 If Penrith Council and the Joint Venture are unable to reach agreement on any issue raised by or resulting from the Joint Venture carrying out an item of Human Services Works specified in Annexures 6A and 6B, a dispute will be taken to have arisen which must be resolved under clause 8.
- 19.7 If the dispute is referred to an expert under clause 8, the Parties agree the independent expert's decision will be conclusive and binding and the Parties must give effect to it.

20. Additional Services and Infrastructure Contributions

Additional Services and Infrastructure Works

- 20.1 (a) **(Stormwater drainage infrastructure)** The Joint Venture must construct all stormwater drainage infrastructure within the Dunheved South Precinct in accordance with the EPS and the REP and generally as described in Annexure 5.
- (b) **(Maintenance of stormwater drainage infrastructure)** The Joint Venture must maintain the works described in paragraph (a) for 3 years from the date of Practical Completion of the relevant works in each sub-catchment.
- (c) **(Dedication of drainage reserves)** The Landowner must do all things necessary to dedicate drainage reserves within the Dunheved South Precinct to Penrith Council.
- (d) **(No cost to Penrith Council)** The dedication of the drainage reserves within the Dunheved South Precinct will be at no cost to Penrith Council and the land value of the drainage reserves is additional to the value of the relevant works specified in the Annexures.
- (e) **(Maintenance by Penrith Council)** At the expiry of the Joint Venture's period of maintenance under paragraph (b), Penrith Council must maintain the works described in clause 20.1 so that they function as designed.
- (f) **(Landscape and Urban Design Strategy)** The Joint Venture must prepare a landscape and urban design strategy prior to Penrith Council's certification of the first subdivision plan for the South Dunheved Precinct. The landscape and urban design strategy will address such issues as:
- (i) open space area associated with the retail node;
 - (ii) built landscape;
 - (iii) vegetation species;
 - (iv) street tree hierarchy;
 - (v) street furniture and public art;
 - (vi) surface finishes;
 - (vii) lighting;
 - (viii) entry statement; and
 - (ix) crime prevention through environmental design.
- (g) **(Water cycle measures)** Under clause 21 of the State Development Agreement, the Joint Venture must ensure that the Development incorporates water use minimisation measures. The Joint Venture must ensure that water cycle measures implemented for the Dunheved South Precinct are implemented in a manner which is consistent with the requirements of the State Development Agreement and the Precinct Plan for the Dunheved South Precinct.
- (h) **(Bulk servicing)** Under clause 18.15 of the State Development Agreement, the Joint Venture must ensure that trunk infrastructure and headworks for water, sewerage and drainage are available to enable the development of land zoned for employment. The Joint Venture acknowledges that development of the Dunheved Precincts is an important element

of the implementation of the Employment Development Strategy referred to in clause 18.3 of the State Development Agreement.

- (i) **(Urban design and infrastructure standards)** The Joint Venture must construct all infrastructure, with the option of constructing the whole of the public domain in lieu of providing funding for construction, to design and maintenance standards identified in the Precinct Plan for the Dunheved South Precinct.
- (j) **(Community Environment Program)** The Joint Venture must implement a program as part of the marketing of land in the Dunheved South Precinct to influence the design of buildings as well as the behaviour of the resident worker population. The program must provide information and design advice on reducing energy and water use, reducing waste, reducing impacts on biodiversity and the alternatives to car travel. The report referred to in paragraph (k) will be prepared to monitor the success of this program and provide feedback so that awareness is maintained.
- (k) **(Monitoring)** Under clause 20 of the State Development Agreement, the Joint Venture must deliver to the Minister a report which complies with that clause. The obligations of the Joint Venture under this deed will form part of that reporting obligation.

Dedication of Roads

- 20.2
- (a) The Landowner must do all things necessary to dedicate the internal local roadways within the Dunheved South Precinct to Penrith Council and the land value of the internal local roadways is additional to the value of the relevant works specified in the Annexures.
 - (b) The dedication of the internal local roadways within the Dunheved South Precinct will be at no cost to Penrith Council and the land value of the internal local roadways is additional to the value of the relevant works specified in the Annexures.

21. General Obligations of the Joint Venture

Compliance with Requirements

- 21.1 Despite any other provision of this deed, the Joint Venture must carry out the Works in accordance with the following:
- (a) having due regard to the safety and rights of the public;
 - (b) having due regard to the requirements of each Authority which has a right to impose a requirement or whose consent or approval is required with respect to the carrying out of any Works;
 - (c) without interrupting or otherwise disturbing the traffic flow on any road without first obtaining the written consent of Penrith Council;
 - (d) by first obtaining the approval of Penrith Council to any arrangements to modify traffic flow, divert or control traffic for the purposes of any construction work;
 - (e) signposting any works to ensure the safety of vehicular traffic and pedestrian movement and guidance. Signposting must not contain advertising material;

St Marys Penrith Planning Agreement

- (f) permitting Penrith Council or any person authorised by Penrith Council to enter and inspect any construction work carried out or being carried out by the Joint Venture under this Part 2; and
- (g) provide all reasonable information and material relevant to the performance of its obligations under this clause if requested in writing by Penrith Council, including information relating to traffic control, records and tests and services results for any construction works and any other relevant information held or received from time to time.

Remedial Protective and Urgent Repair

21.2 The Joint Venture must, while carrying out Works and immediately on receipt of a notice from Penrith Council, carry out such reasonable remedial protective repair or other urgent work as may be necessary to prevent loss or damage to those construction works or adjacent property, or to prevent personal injury or death by or as a result of construction by the Joint Venture or its contractors.

Failure to Perform Urgent Work

21.3 If the Joint Venture is unwilling or unable to perform the urgent work required in the notice issued under clause 21.2, then Penrith Council may do the urgent work and the reasonable cost of that work will be a debt due to Penrith Council.

Failure to complete Works

- 21.4 If the Joint Venture fails to complete the Works within 20 Business Days of receipt of written notice from Penrith Council specifying the obligation breached, then:
- (a) Penrith Council may call up the guarantee lodged under clause 22, to enable Penrith Council to complete and/or rectify the Works; and
 - (b) should the amount of the guarantee lodged under clause 22 be insufficient to complete and/or rectify the Works, then Penrith Council may claim the reasonable cost of completing the Works (acting reasonably and having regard to the status and condition of the works completed) as a debt in any court of competent jurisdiction. The cost shall be assessed as at the time the Works are carried out.

Indemnity

- 21.5 The Joint Venture must indemnify Penrith Council from and against all actions, claims, costs, expenses and damages (including the cost of defending or settling any action or claim) in respect of loss of or damage to property (including Penrith Council's property) or personal injury (including death) to any person to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by the Joint Venture and in respect of or flowing from any breach of this Part 2.
- 21.6 For the avoidance of doubt, the Joint Venture's liability under clause 21.5 is reduced to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by a person other than the Joint Venture.

St Marys Penrith Planning Agreement

Provision of proceedings

- 21.7 If Penrith Council receives or is served with any communication, notice, summons, complaint or any legal process from any person or entity in respect of which an indemnity is provided to Penrith Council by the Joint Venture under clause 21.5, then Penrith Council must promptly provide to the Joint Venture a copy of any such communication, notice, summons, complaint or legal process and all particulars of the same and full details of all the relevant circumstances and events.
- 21.8 Penrith Council must not consent to any matter or thing contained or referred to in any such document or communication nor take any related action, where the matter or thing affects the Joint Venture, without first obtaining the written consent of the Joint Venture.

Appearance in proceedings

- 21.9 The Joint Venture, by its solicitors or counsel, may at its cost appear in and have the conduct of every such matter and proceedings referred to in clause 21.7 notwithstanding that Penrith Council may also appear in any such matter or proceedings. The Joint Venture may at its cost defend or prosecute and appeal against any decision of any court or other Authority in such manner as the Joint Venture in its discretion may think fit.

Penrith Council's legal costs

- 21.10 The Joint Venture must make a contribution to Penrith Council's reasonable legal costs in relation to the preparation of this deed up to the agreed maximum amount of \$30,000 (inclusive of GST) payable within 20 Business Days after receipt of a Tax Invoice addressed to Maryland Development Company Pty Limited (ABN 45 069 368 896), which is the company operated for the Development by the Joint Venture.

Penrith Council's administration costs

- 21.11 The Joint Venture must make a contribution to Penrith Council's costs of administering this deed in the agreed amount of \$15,000 (exclusive of GST) payable within 20 Business Days after receipt of a Tax Invoice addressed to Maryland Development Company Pty Limited (ABN 45 069 368 896), which is the company operated for the Development by the Joint Venture. Such amount is to be indexed at the time of payment in accordance with clause 1.18.

22. Guarantee

- 22.1 In this clause:

Guarantee means an irrevocable and unconditional undertaking:

- (a) by one of the following trading banks:
- (i) Australia and New Zealand Banking Group Limited;
 - (ii) Commonwealth Bank of Australia;
 - (iii) National Australia Bank Limited;

St Marys Penrith Planning Agreement

- (iv) Westpac Banking Corporation; or
 - (v) St George Bank Limited, or
 - (b) by such other bank within the meaning of the *Banking Act 1959* (Cth), or a bank constituted by a Law of the Commonwealth, reasonably acceptable to Penrith Council,
expressed to be for the performance by the Joint Venture of its obligations under this deed.
- 22.2 With the exception of the Local Transport Works which is dealt with separately below, Penrith Council and the Joint Venture agree that Annexure 8 represents the timing of the obligations under this deed, based on the number of lots which have received development approval, and the security required to ensure the performance of those obligations in millions of dollars. The security comprises two components being:
- (a) a Baseline Guarantee; and
 - (b) a Top Up Guarantee,
- as those expressions are used in the last two lines of Annexure 8.
- 22.3 The Joint Venture must lodge with Penrith Council a Guarantee or Guarantees at the relevant times:
- (a) for an amount equal to the Baseline Guarantee; and
 - (b) for an amount equal to the Top Up Guarantee.
- 22.4 For the Local Transport Works, Penrith Council and the Joint Venture agree that this clause 22.4 represents the security required to ensure the performance of those obligations under this deed. The security comprises two components:
- (a) a separate Guarantee for each Item of Local Transport Works for an amount equal to the Notional Works Value of that Item to be provided by the Joint Venture on the Commencement Date (**Local Transport Works Guarantees**); and
 - (b) top-up Local Transport Works Guarantees for any additional amount calculated in accordance with clause 22.5 to be provided by the Joint Venture each anniversary of the Commencement Date (**Top Up Local Transport Works Guarantees**).
- 22.5 The Local Transport Works Guarantee for an Item of Local Transport Works that has not reached Practical Completion is to be indexed annually in accordance with clause 1.18.
- 22.6 Penrith Council must return the Guarantees:
- (a) in the case of the Guarantee referred to in clause 22.2(a), within 10 Business Days of the Joint Venture having complied with all the Joint Venture's obligations to which the Guarantee relates; and
 - (b) in the case of the Guarantees referred to in clause 22.2(b), within 10 Business Days of the relevant item of Works reaching Practical Completion; and
 - (c) in the case of the Guarantees referred to in clause 22.4, within 10 Business Days of the relevant Item of Local Transport Work reaching Practical Completion or the payment of a monetary contribution for a relevant item of Work in accordance with clause 14A, whichever occurs first.

St Marys Penrith Planning Agreement

- 22.7 Once in each year, the Parties in good faith will discuss the upcoming Contributions and Works for the Development in the Penrith Local Government Area and amend the amount and the timing of the Guarantees required under Annexure 8 to secure the performance of those Contributions and Works, and Annexure 8 will be accordingly amended or replaced.
- 22.8 Penrith Council and the Joint Venture agree that the guarantee timings specified in the Annexures are to be disregarded and are replaced with the timings referred to in Annexure 8.

23. Key Dates

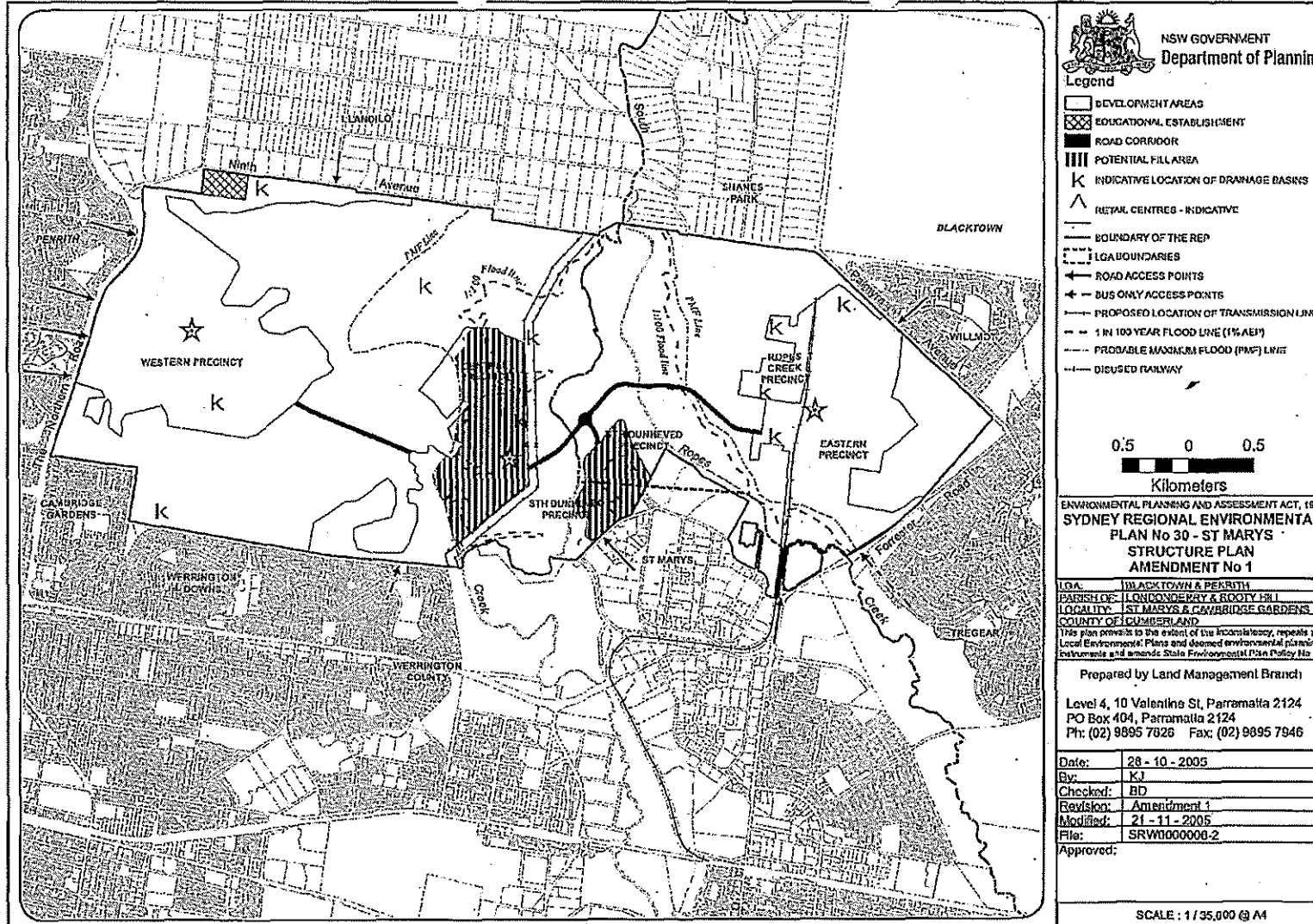
- 23.1 Within a reasonable time after the date of this deed, the Joint Venture will prepare and provide to Penrith Council a summary of the key dates and the parties' obligations under this deed.

St Marys Penrith
Planning Agreement

Annexure 1

Map

St Marys Penrith Planning Agreement



St Marys Penrith Planning Agreement

Annexure 2A

Local Transport Works (Clause 17)

Item	Proposed Scope of Works	Timing for lodgement of applications for Approvals	Timing for lodgement of application for Construction Certificate	Timing of Works/Other considerations	Notional Works Value
ITEM 1: Intersection upgrade - Forrester Road, Links Road and Ropes Crossing Boulevard	Staged removal of existing roundabout and installation of traffic signals and increased lane approaches (see Drawing SK701 Rev 2 in Annexure 2B).	9 months from execution of the Deed. The application for Approval to include the Draft Acquisition Plans.	4 months from Approval of the works for this Item. The application for Construction Certificate to include the Final Acquisition Plans.	Works to be completed by 31 May 2021. For provision of appropriate security, see clause 22.4.	\$7,696,451
ITEM 2: Intersection upgrade - Forrester Road, Christie Street, Boronia Avenue	Staged removal of existing roundabout and installation of traffic signals and increased lane approaches (see Drawing SK702 Rev 2 in Annexure 2C).	9 months from execution of the Deed. The application for Approval to include the Draft Acquisition Plans.	4 months from Approval of the works for this Item. The application for Construction Certificate to include the Final Acquisition Plans.	Works to be completed by 30 November 2021. For provision of appropriate security, see clause 22.4.	\$6,690,499
ITEM 3: Intersection upgrade - The Northern Road, Borrowdale Way,	Inclusion of a 60m left slip lane (The Northern Road approach), and	9 months from execution of the Deed. The application for Approval	4 months from Approval of the works for this Item. The application for Construction	Works to be completed by 31 May 2022. For provision of appropriate security, see clause 22.4.	\$1,825,570

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Planning Agreement

Item	Proposed Scope of Works	Timing for lodgement of applications for Approvals	Timing for lodgement of application for Construction Certificate	Timing of Works/Other considerations	Notional Works Value
Greenwood Parkway	inclusion of a 100m right turn lane (Greenwood Parkway) (see Drawing SK700 Rev 2 in Annexure 2D to this offer).	to include the Draft Acquisition Plans.	Certificate to include the Final Acquisition Plans.		
<u>ITEM 4:</u> New intersection - Links Road Extension and Christie Street	Installation of a new intersection (see Drawing SK703 Rev 2 in Annexure 2E).	9 months from execution of the Deed. The application for Approval to include the Draft Acquisition Plans.	4 months from Approval of the works for this Item. The application for Construction Certificate to include the Final Acquisition Plans.	Works to be completed by 30 September 2020. For provision of appropriate security, see clause 22.4.	\$3,806,478
<u>ITEM 5:</u> Links Road Upgrade and Extension (Dunheved Precinct to Christie Street)	Augmentation of existing Links Road and extension of existing Links Road to Christie Street. The road cross-section to be 21.6m wide with 14.0m wide carriageway (see Drawing SK612 Rev 3 in Annexure 2F).	9 months from execution of the Deed. The application for Approval to include the Draft Acquisition Plans.	4 months from Approval of the works for this Item. The application for Construction Certificate to include the Final Acquisition Plans.	Works to be completed by 30 September 2020. For provision of appropriate security, see clause 22.4.	\$10,927,000
<u>ITEM 6:</u> Line marking: Christie Street (South	Line marking and signage to establish two lanes in	9 months from execution of the Deed.	4 months from Approval of the works for this Item.	Works to be completed by 30 November 2019.	\$500,000

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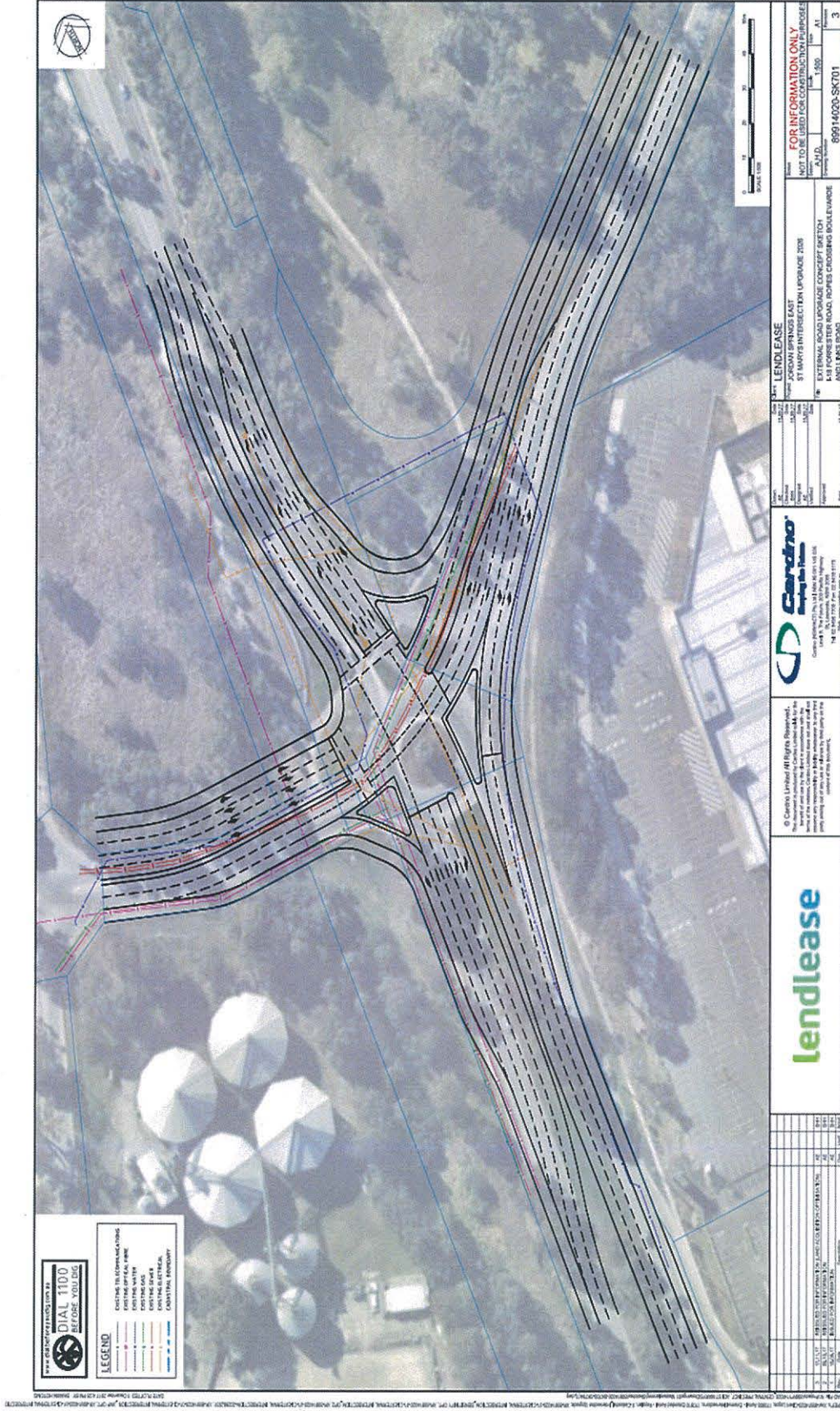
Item	Proposed Scope of Works	Timing for lodgement of applications for Approvals	Timing for lodgement of application for Construction Certificate	Timing of Works/Other considerations	Notional Works Value
Creek Bridge to Forrester Road)	each direction.	The application for Approval to include the Draft Acquisition Plans.	The application for Construction Certificate to include the Final Acquisition Plans.	For provision of appropriate security, see clause 22.4.	
<u>ITEM 7:</u> Road widening: Forrester Road (Links Road intersection to Ropes Creek Bridge)	Upgrade Forrester Road to 4 lanes with sealed shoulders between Ropes Creek and Links Road intersection (not including Ropes Creek bridge) (see Drawing SK608 Rev 2 in Annexure 2G)	9 months from execution of the Deed. The application for Approval to include the Draft Acquisition Plans.	4 months from Approval of the works for this Item. The application for Construction Certificate to include the Final Acquisition Plans.	Works to be completed by 31 May 2021. For provision of appropriate security, see clause 22.4.	\$2,400,000
TOTAL				\$33,845,998	

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Annexure 2B

**Local Transport Works (Clause 17) – Item 1 – Intersection upgrade –
Forrester Road, Links Road and Ropes Crossing Boulevard**

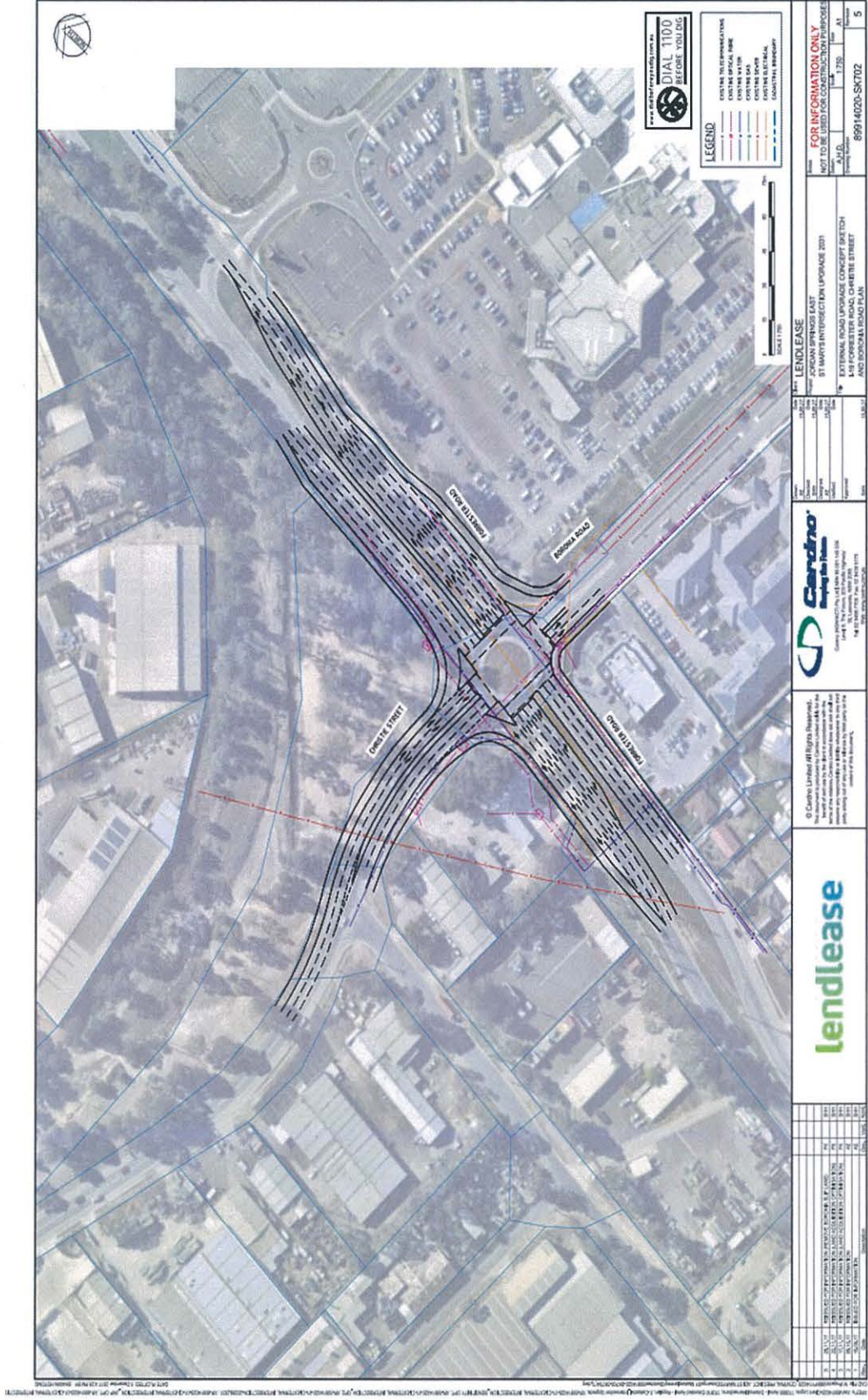
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Annexure 2C

**Local Transport Works (Clause 17) – Item 2 – Intersection upgrade –
Forrester Road, Christie Street, Boronia Avenue**

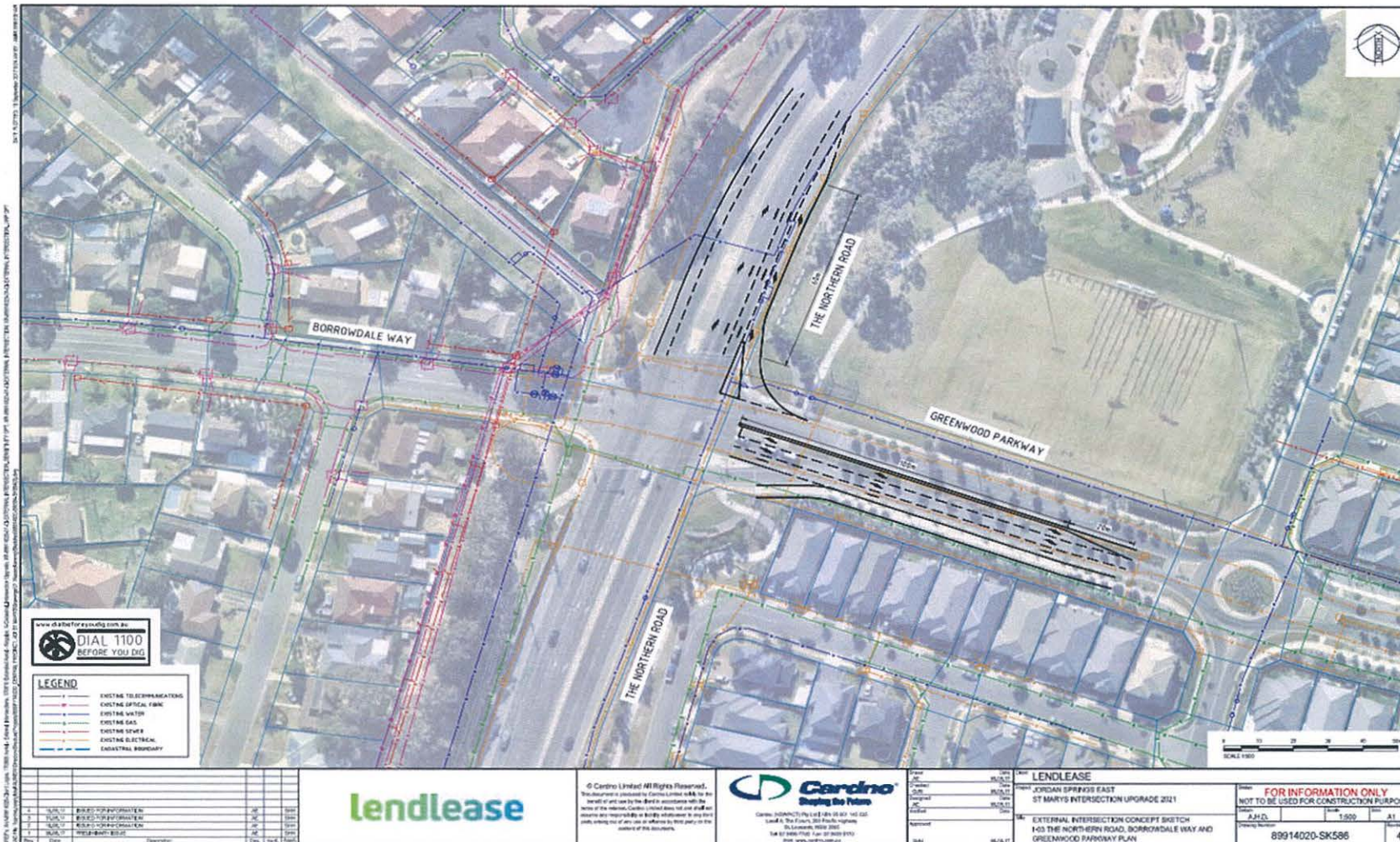
St Marys Penrith Planning Agreement



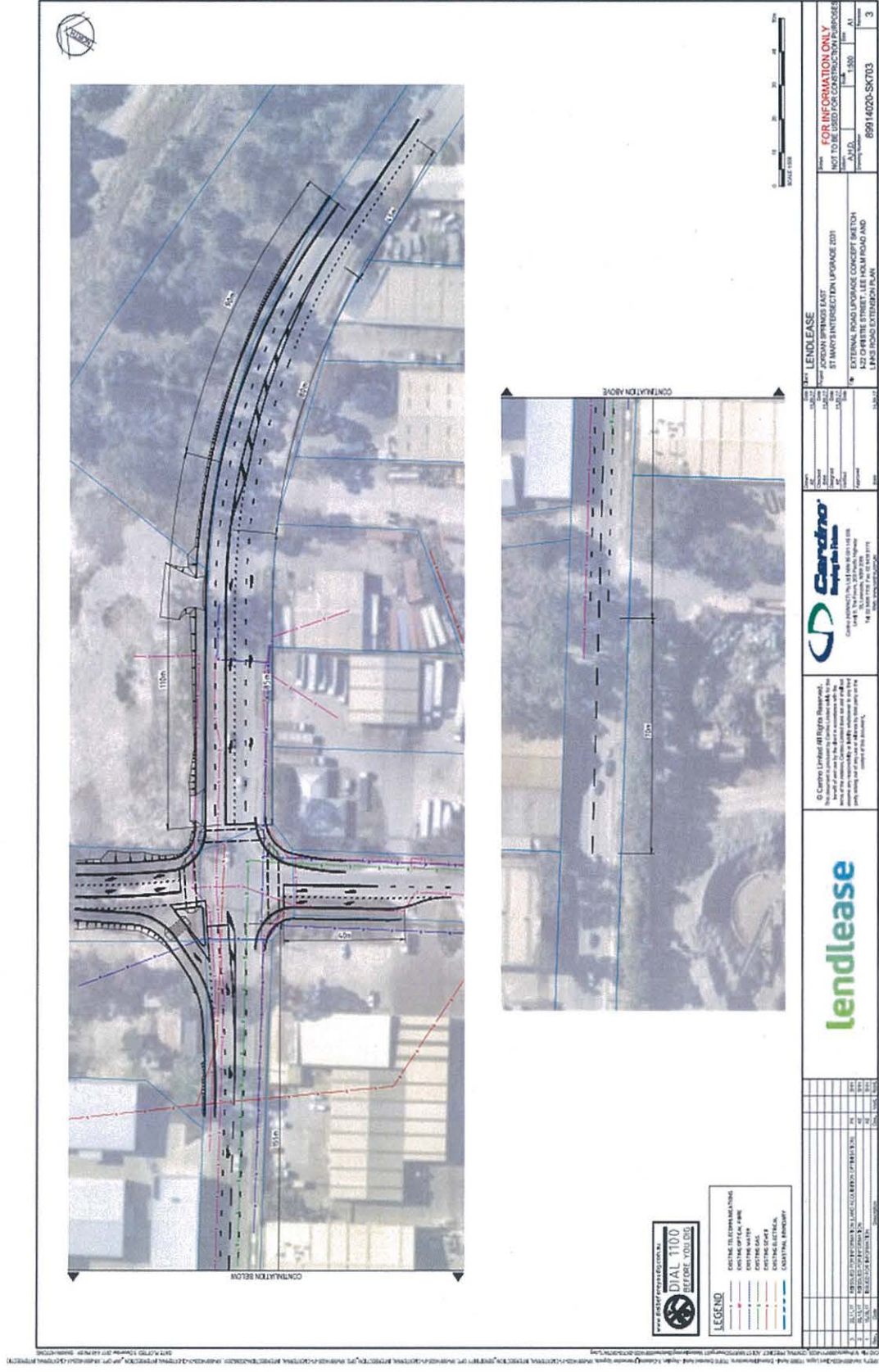
Annexure 2D

**Local Transport Works (Clause 17) – Item 3 – Intersection upgrade – The
Northern Road, Borrowdale Way, Greenwood Parkway**

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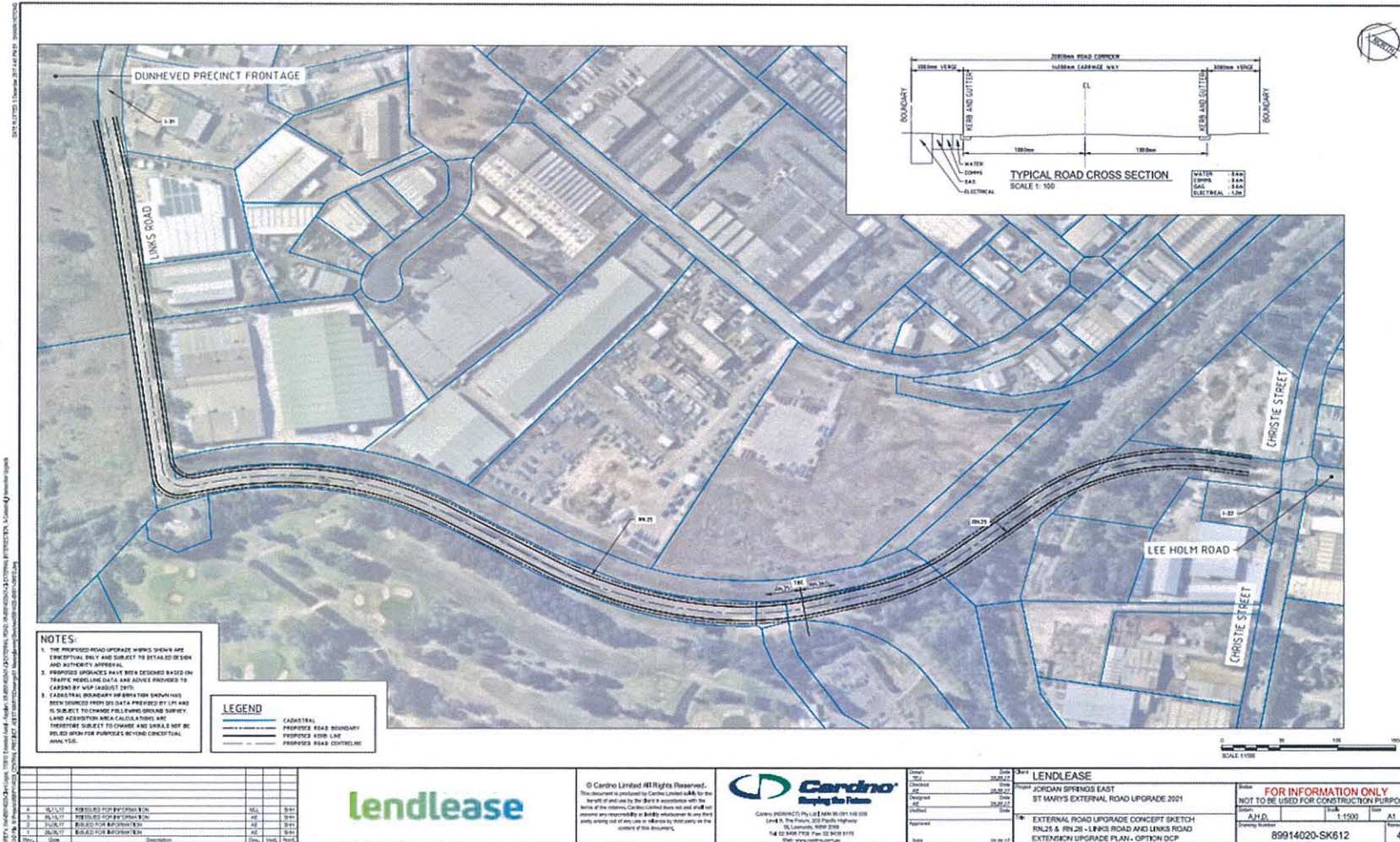


<p>FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES</p> <p>Project: ST MARYS INTERSECTION UPGRADE 2021 Client: ST MARYS INTERSECTION UPGRADE 2021 Drawing Number: 89914020-SKT03 Revision: 3</p>	
<p>LENDLEASE</p> <p>Cardno Engineering & Planning 14, LINDSEY STREET SYDNEY NSW 1585 TEL: 02 9550 2200 WWW.CARDNO.COM.AU</p>	
<p>© Cardno Limited All Rights Reserved. This document is the property of Cardno Limited. It is to be used only for the purposes stated in the contract and is not to be distributed, copied, or reproduced without the written consent of Cardno Limited.</p>	
<p>Legend</p> <ul style="list-style-type: none"> EXISTING TELEGRAPH POLES EXISTING OPTICAL FIBRE EXISTING GAS EXISTING SEWER EXISTING STORMWATER EXISTING DRAINAGE 	
<p>DIAL 1100 BEFORE YOU GO!</p>	

Annexure 2F

**Local Transport Works (Clause 17) – Item 5 – Links Road Upgrade and
Extension (Dunheved Road to Christie Street)**

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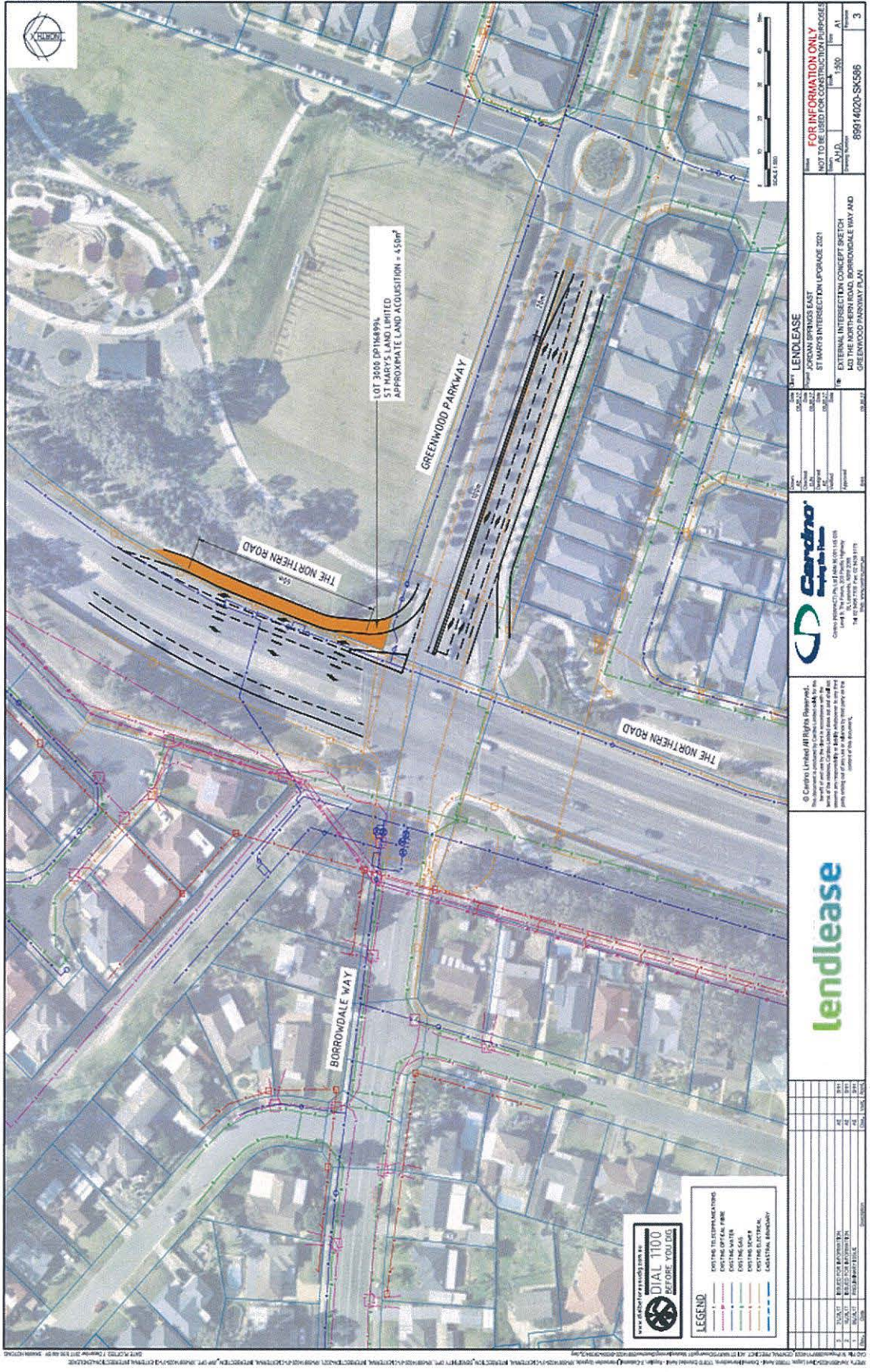
Annexure 2G

**Local Transport Works (Clause 17) – Intersection upgrade – Item 7 – Road
widening: Forrester Road (Links Road intersection to Ropes Creek Bridge)**

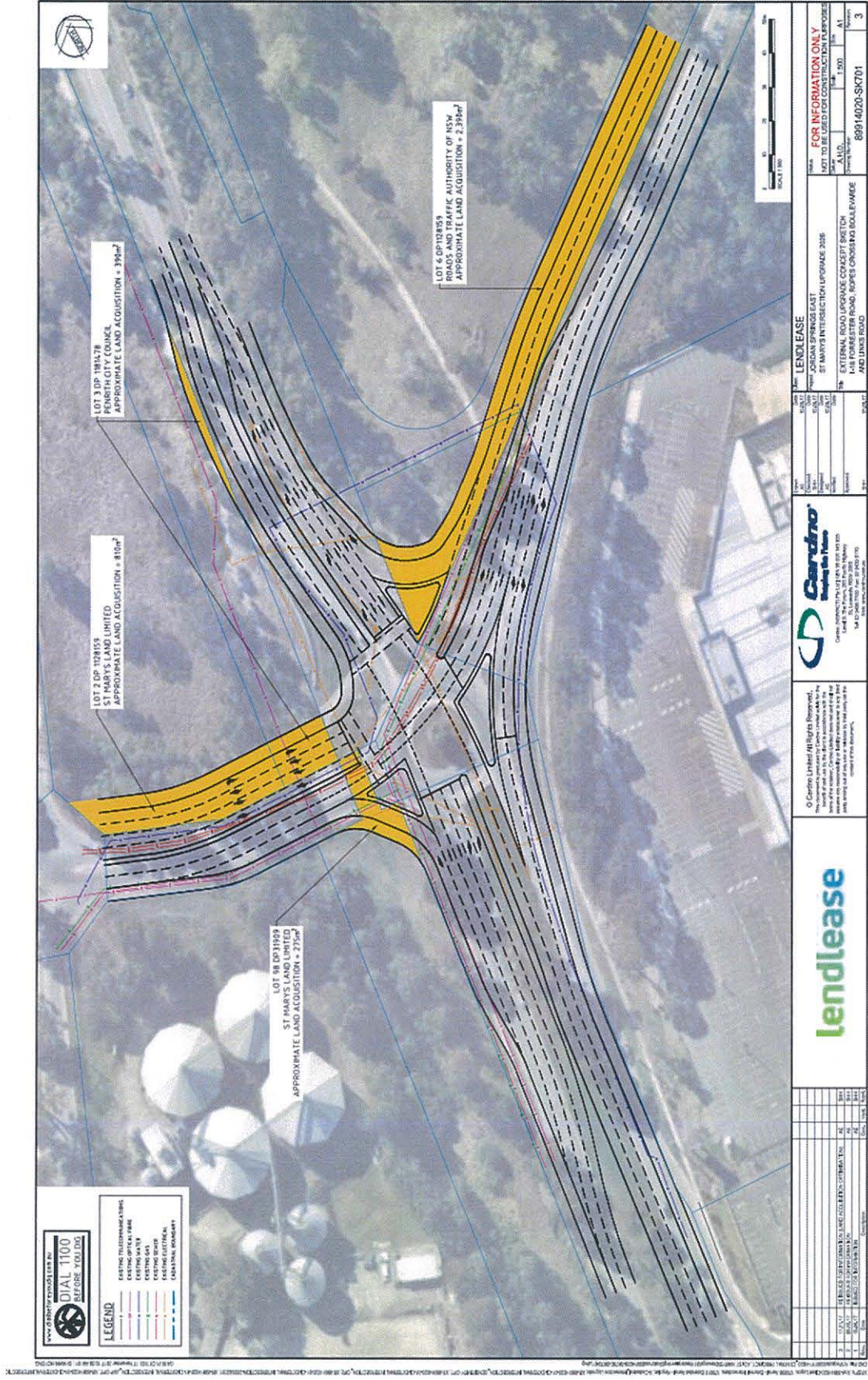
Annexure 2H

Local Transport Works (Clause 17) – Indicative Additional Land

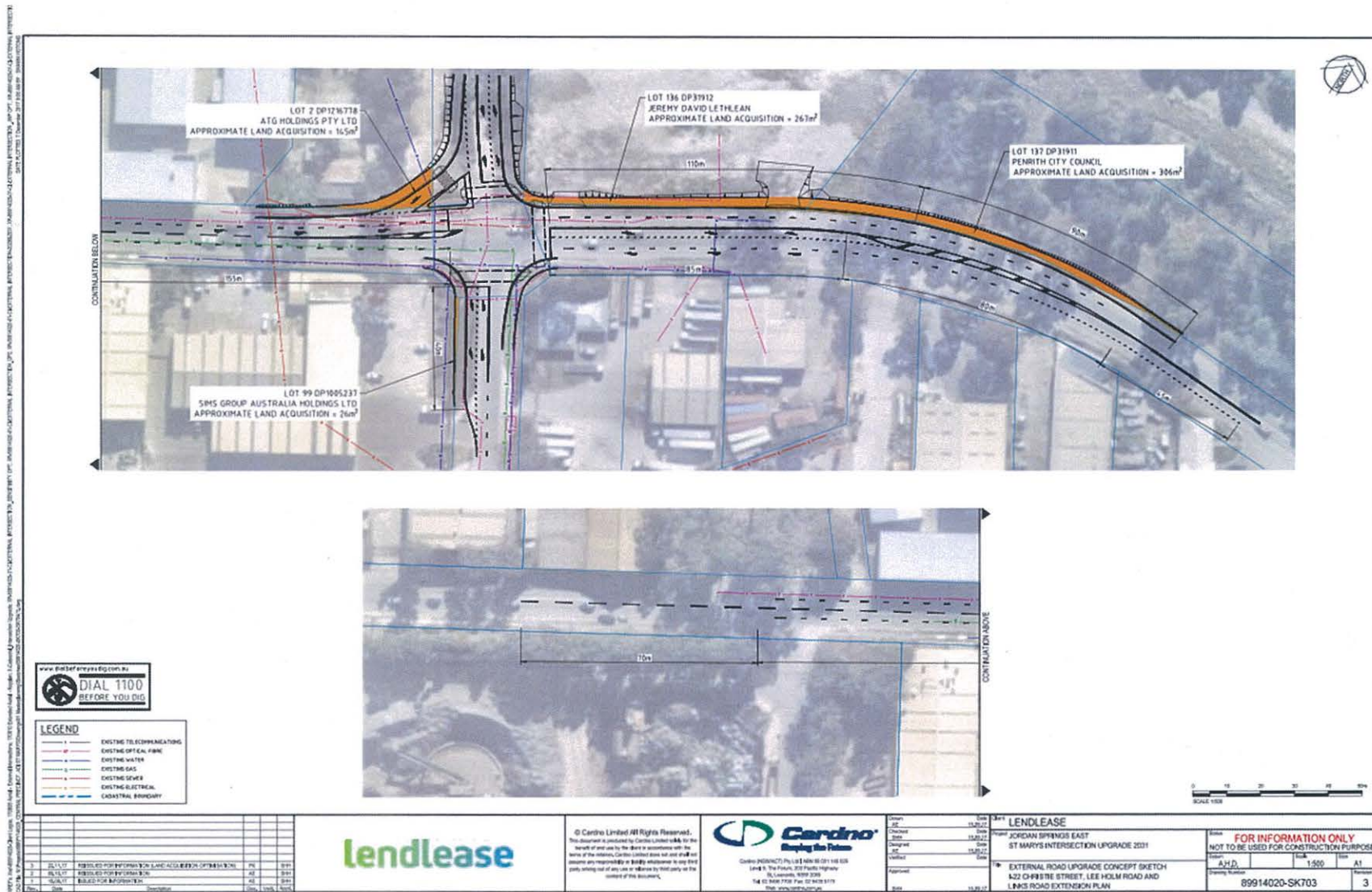
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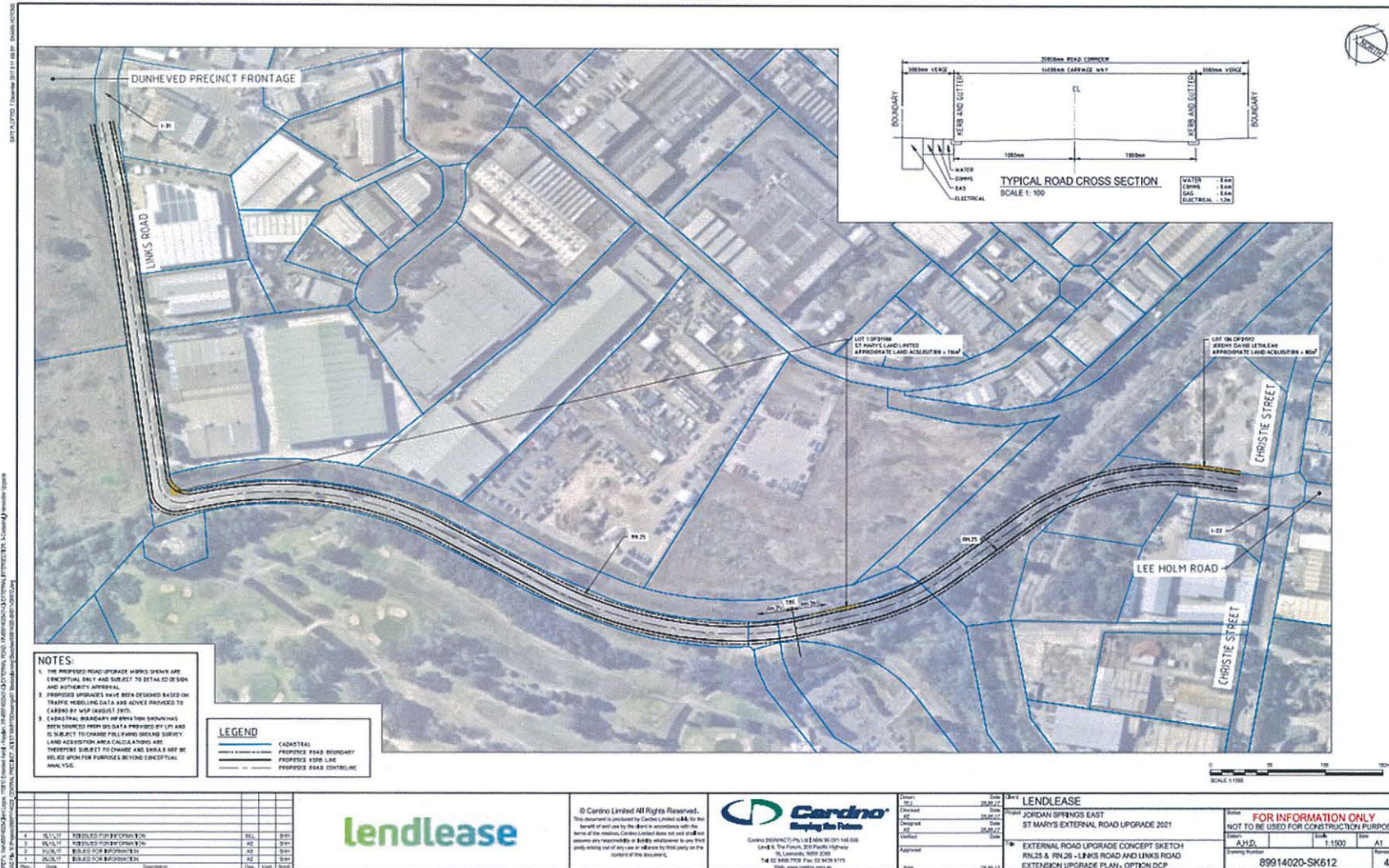
St Marys Penrith Planning Agreement



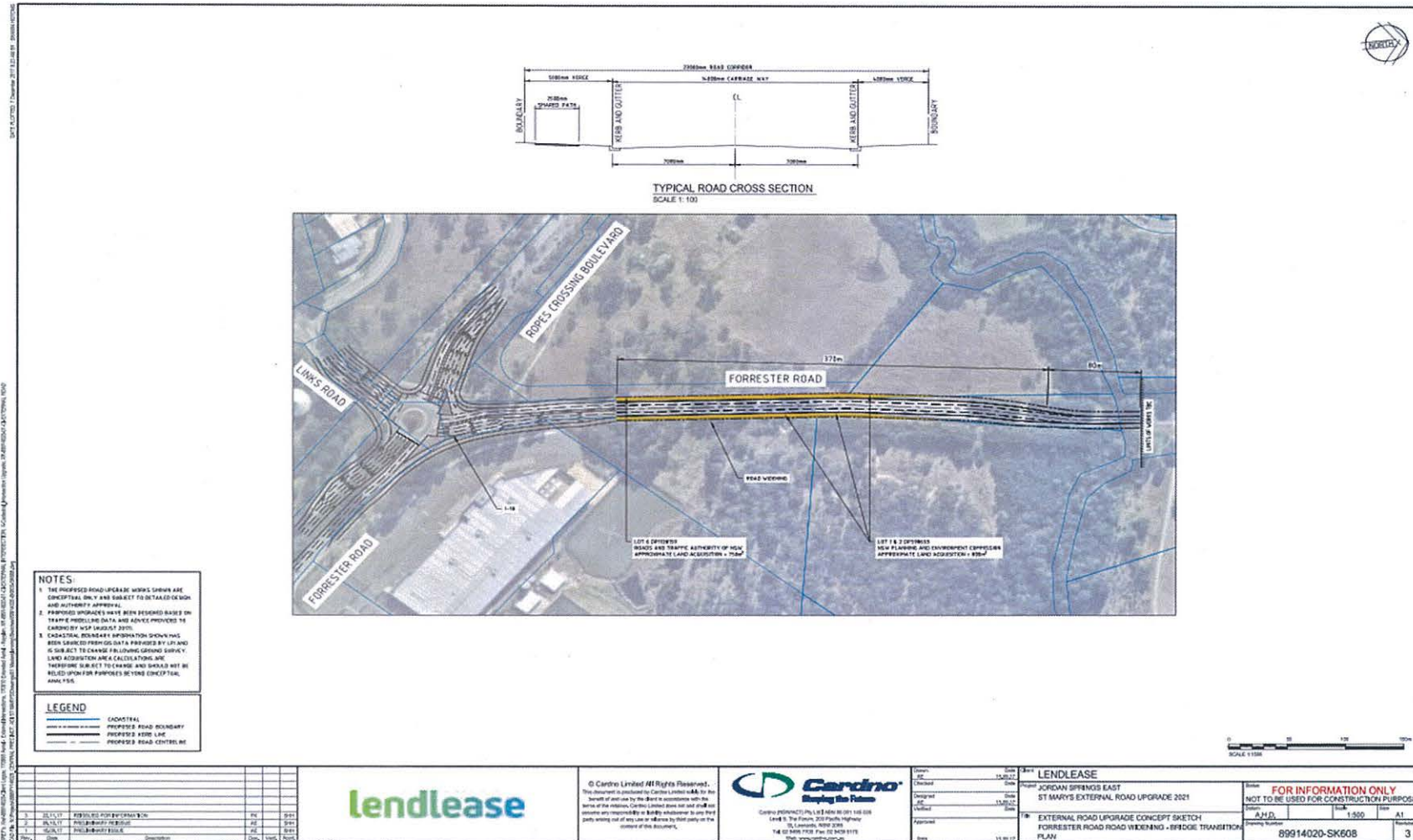
St Marys Penrith Planning Agreement



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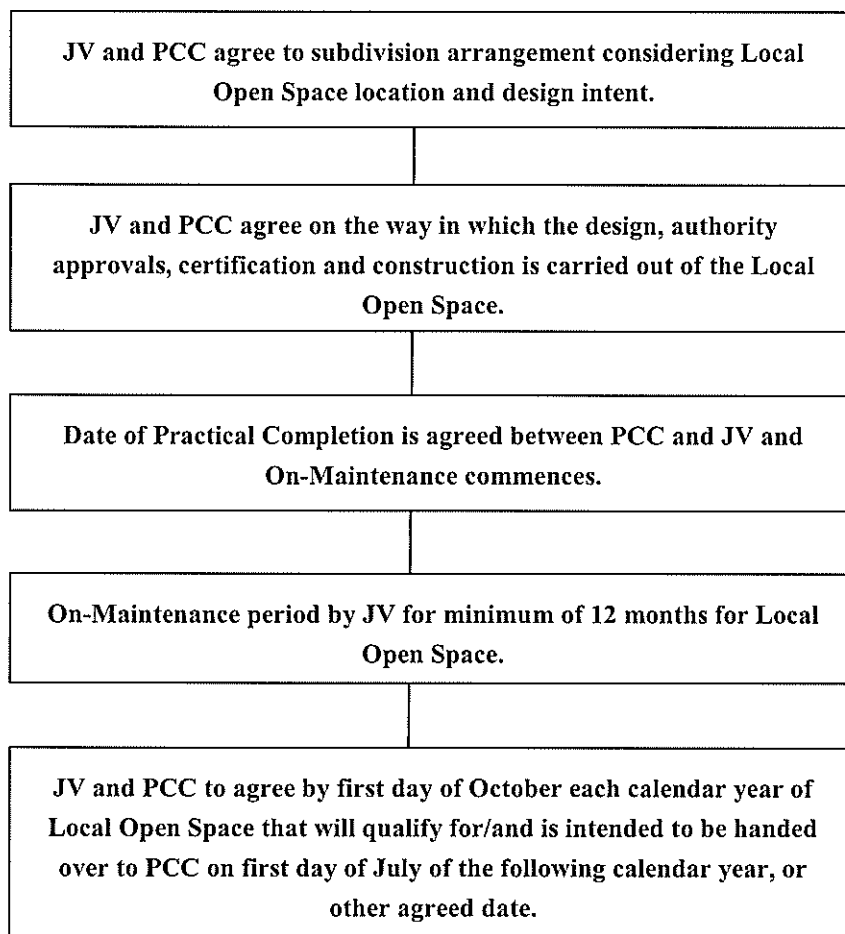


St Marys Penrith Planning Agreement



Annexure 3

Local Open Space Approval Procedure (Clause 18)



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Annexure 4A

Local Open Space Works (Clause 18)

Item	Proposed Scope of Works	Timing of Works
ITEM 11 :- Open space area associated with convenience and retail food outlets	A paved, shaded outdoor eating area, approximately 100-150 square metres, incorporating seating, shade structures and tree planting (design, size and treatment to be finalised through Landscape and Urban Design Strategy and future development applications).	Prior to occupation of 75% of industrial establishments within the Dunheved Precincts. Notional value of works : \$45,000 Guarantee timing : This was provided within 20 Business Days of the Original Commencement Date.
ITEM 12:- Convenience and retail food outlet	Joint Venture to use reasonable endeavours, by negotiating in good faith with end use purchasers of suitable parcels of land, to ensure that a convenience and retail food outlet is established in either of the Dunheved Precincts.	Prior to occupation of 75% of industrial establishments within the Dunheved Precincts. Joint Venture will use reasonable endeavours to ensure this is delivered in conjunction with the open space area referred to above. Notional value of works : Not applicable Guarantee timing: Not applicable
ITEM 13 :- Bicycle Path	Provision of a maximum 5 metre wide shared pedestrian and cycle path on the western side of the main collector street and associated signage, barrier rails and refuges as required. Extent of works to reflect concept plan included as Figure 21 in draft Precinct Plan for Dunheved Precincts (See Annexure 4B).	Works to be completed concurrently with drainage works and road works within the Dunheved Precincts but no later than the day which is one year after the day that the subdivision certificate has been granted for the adjoining associated stage. Notional value of works : \$150,000 Guarantee timing : This was provided within 20 Business Days of the Original Commencement Date.

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 Planning Agreement

Annexure 4A1

Local Open Space Works – Western Precinct (Clause 18)

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
1.	<p>Western Village Oval (1)</p> <p>Neighbourhood Park - Level 1 Park (5.5Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - playing fields with irrigation and night lighting - hard courts with night lighting - amenities block with associated services - play space with shade structures /shelters - picnic facilities - pathways - associated landscaping - approximately 80 carparking spaces provided on site (with night lighting) and on road directly adjoining the open space frontage to Village Centre area 	<p>No later than the day which is 1 year after the day that the number of residential lots for which subdivision certificates have been provided for the Western Precinct reaches 1200 lots.</p>	<p>\$5,598,450</p>

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<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
4.	<p>Biodiversity Corridor (~0.85Ha)(3A)</p> <p>As agreed by both parties, the Joint Venture will transfer the 0.85Ha biodiversity corridor located in the vicinity of Village 6.</p>	Before April 2018	\$100,000
5.	<p>Hilltop Pocket Park (4)</p> <p>Pocket Park – Level 3 Park (0.8Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping 	No later than the day which is 2 years after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$592,000
6.	<p>West Pocket Park (5)</p> <p>Pocket Park – Level 3 Park (0.7Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping 	No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$518,000

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 Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
7.	<p>East Pocket Park (6)</p> <p>Pocket Park – Level 3 Park (0.9Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping 	<p>No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.</p>	\$666,000
8.	<p>South Pocket Park (7)</p> <p>Pocket Park – Level 3 Park (0.7Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping – Internal / street path linkages, and connections to cycle / pedestrian links 	<p>No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.</p>	\$518,000

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
9.	<p>North Corridor Park (A) (1.7Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - play space and picnic facilities - associated landscaping - Internal / street path linkages, and connections to cycle / pedestrian links - Native canopy tree planting - non linked canopies within fire protection zone 	No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$680,000
10.	<p>Central Basin Park (B) (0.5Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - play space - picnic facilities - associated landscaping - Internal / street path linkages, and connections to cycle / pedestrian links - Native canopy tree planting - non linked canopies within fire protection zone - 15% of open space permitted to contribute to stormwater detention 	No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$200,000

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
11.	<p>Eastern Basin Park (C) (0.5Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - play space - picnic facilities - associated landscaping - Internal / street path linkages, and connections to cycle / pedestrian links - Native canopy tree planting - non linked canopies within fire protection zone - 15% of open space permitted to contribute to stormwater detention 	No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$200,000
12.	<p>Ninth Ave Corridor Park (D) (0.5Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - play space - picnic facilities - associated landscaping - Internal / street path linkages, and connections to cycle / pedestrian links - Native canopy tree planting - non linked canopies within fire protection zone - 15% of open space permitted to contribute to stormwater detention 	No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.	\$200,000

St Marys Penrith
 Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
13.	<p>Offroad Share Path (2.5m Pedestrian and Cycle Path)</p> <p>2.5m share path concrete in road reserve, concrete or bitumen in open space to be dedicated to Penrith City Council. Length 1,350m.</p>	<p>The provision of the internal path network shall be staged in accordance with adjoining residential stage development and associated road work and/or landscape and open space works.</p> <p>No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.</p>	\$320,625
14.	<p>Landscape Master Plan</p> <p>A Landscape Master Plan will be developed incorporating schedules of built landscape and open space materials, streetscape and parkland furniture, surfaces and finishes, planting regime including street trees.</p>	<p>The development of a Landscape Master Plan for landscape and open space elements in the Western Precinct will be Developed by the Joint Venture and submitted for approval to Penrith City Council at the time of the first development application of the first subdivision stage.</p>	N/A

St Marys Penrith
 Planning Agreement

Annexure 4A2

Central Precinct
 Local Open Space Works – (Clause 18)

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
1.	<p>Central Precinct Oval (G)</p> <p>Neighbourhood Park - Level 1 Park (3.5Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - playing field with irrigation and night lighting - multifunction hardcourt - amenities block with associated services - play space - picnic facilities - associated landscaping - carparking considered in integration with other Regional Open Space uses to maximise shared use provided on site and on road directly adjoining the open space frontage. 	<p>Development Application to be lodged no later than July 2019.</p> <p>Construction completion planned for July 2021.</p>	\$3,562,650

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
2.	<p>Cultural Heritage Local Park (8)</p> <p>Local Park – Level 2 Park (0.89Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – interpretive signage – playspace – picnic facilities – associated landscaping 	Construction completion planned for July 2019	\$888,000
3.	<p>Edge Pocket Park (9)</p> <p>Pocket Park – Level 3 Park (0.75Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping – Internal / street path linkages, and connections to cycle / pedestrian links 	Construction completion planned for July 2019	\$518,000

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
4.	<p>Central Pocket Park (10)</p> <p>Pocket Park – Level 3 Park (1.22Ha):</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – kick about area – play space – picnic facilities – associated landscaping – Internal / street path linkages, and connections to cycle / pedestrian links 	<p>DA lodged June 2018.</p> <p>Construction completion planned for January 2020.</p>	<p>\$1,184,000</p> <p>(This amount is inclusive of the \$740,000 transferred from Item 3 of Annexure 4A1).</p>
5.	<p>Central Precinct North Corridor Park (E) (0.75Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> – play space and picnic facilities – associated landscaping – Internal / street path linkages, and connections to cycle / pedestrian links – Native canopy tree planting - non linked canopies within fire protection zone 	<p>DA to be lodged no later than February 2019.</p> <p>Construction completion planned for September 2020.</p>	<p>\$280,000</p>

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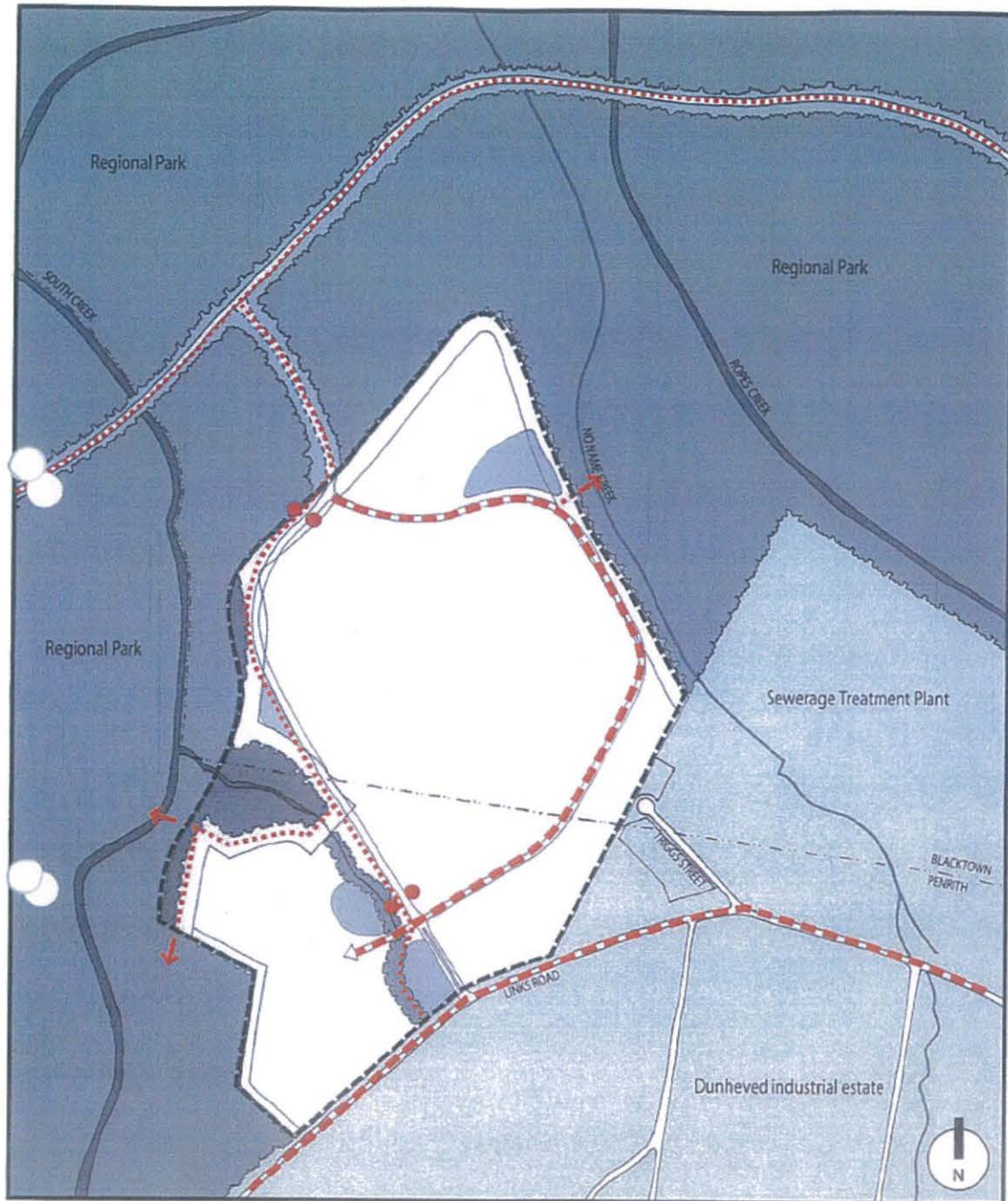
<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
6.	<p>Central Precinct South Corridor Park (F) (1.2Ha)</p> <p>Recreation range and facilities which may be considered for provision:</p> <ul style="list-style-type: none"> - play space and picnic facilities - associated landscaping - Internal / street path linkages, and connections to cycle / pedestrian links - Native canopy tree planting - non linked canopies within fire protection zone 	Construction completion planned for July 2019	\$200,000
7.	<p>Offroad Share Path (2.5m Pedestrian and Cycle Path)</p> <p>2.5m share path concrete in road reserve, concrete or bitumen in open space to be dedicated to Penrith City Council. Length 1,615m.</p>	<p>The provision of the internal path network shall be staged in accordance with adjoining residential stage development and associated road work and/or landscape and open space works.</p> <p>No later than the day which is 1 year after the day that the subdivision certificate has been granted for the adjoining associated residential stage.</p>	\$383,562

St Marys Penrith
 Planning Agreement

<i>Item</i>	<i>Open Space Description</i>	<i>Time</i>	<i>Notional Value</i>
8.	<p>Landscape Master Plan</p> <p>A Landscape Master Plan will be developed incorporating schedules of built landscape and open space materials (including structural elements), streetscape and parkland furniture, surfaces and finishes, planting regime including street trees.</p>	<p>The development of a Landscape Master Plan for landscape and open space elements in the Central Precinct will be Developed by the Joint Venture and submitted for approval to Penrith City Council at the time of the first development application of the first subdivision stage.</p>	N/A

Annexure 4B

Local Open Space Works (Clause 18) – Bicycle Path



Pedestrian and Bicycle Routes
 (indicative layout)

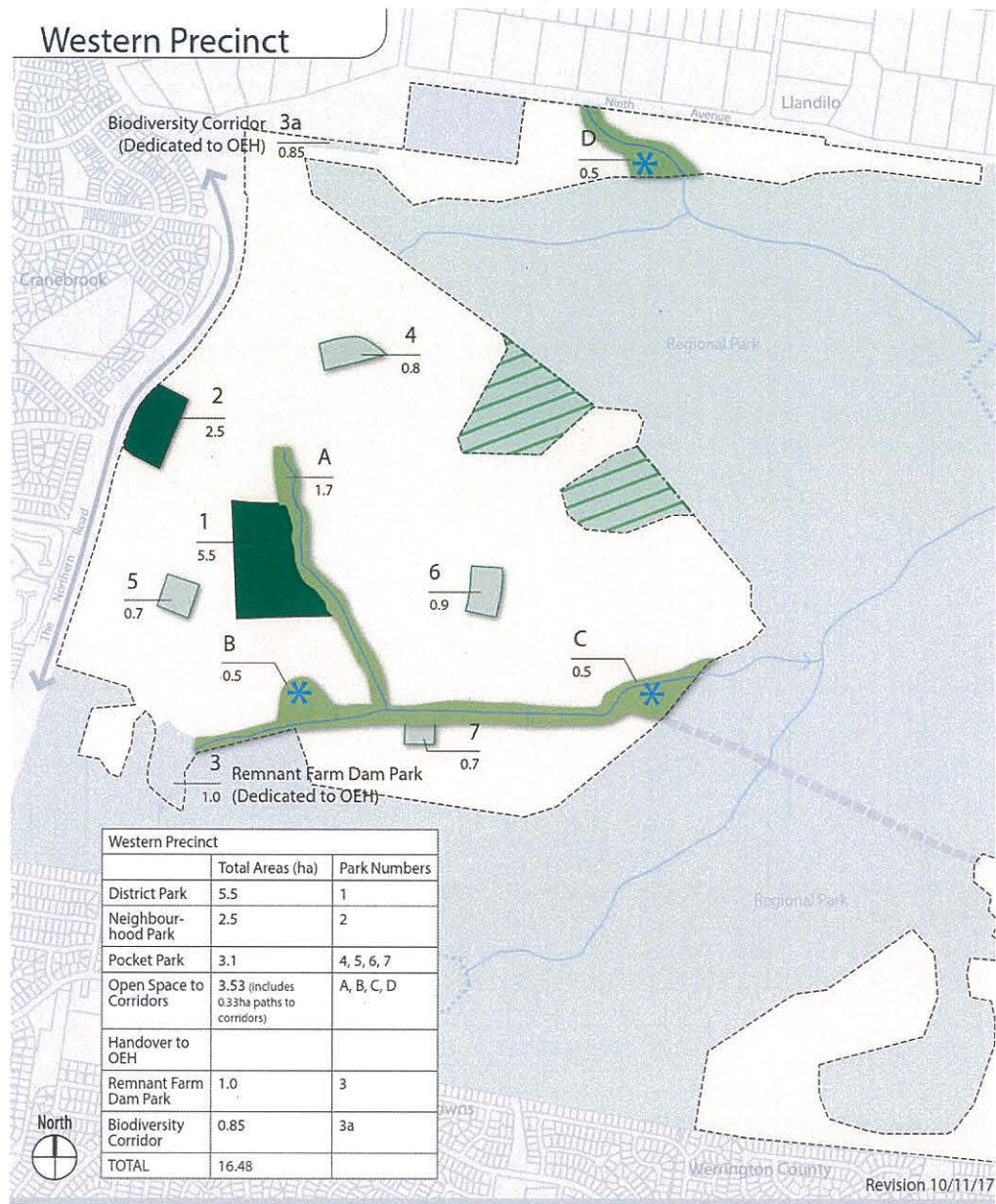
- | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
|  Bus Stop / Shelter
<small>(Approximate Location)</small> |  Potential Access to Regional Park
<small>(Subject to DEC Regional Park Plan of Management)</small> |  LGA Boundary |
|  Shared Off-Street
Pedestrian and Bicycle Routes |  On-Road Cycle Way |  Precinct Boundary |



Annexure 4B1

Local Open Space Works – Western Precinct (Clause 18)

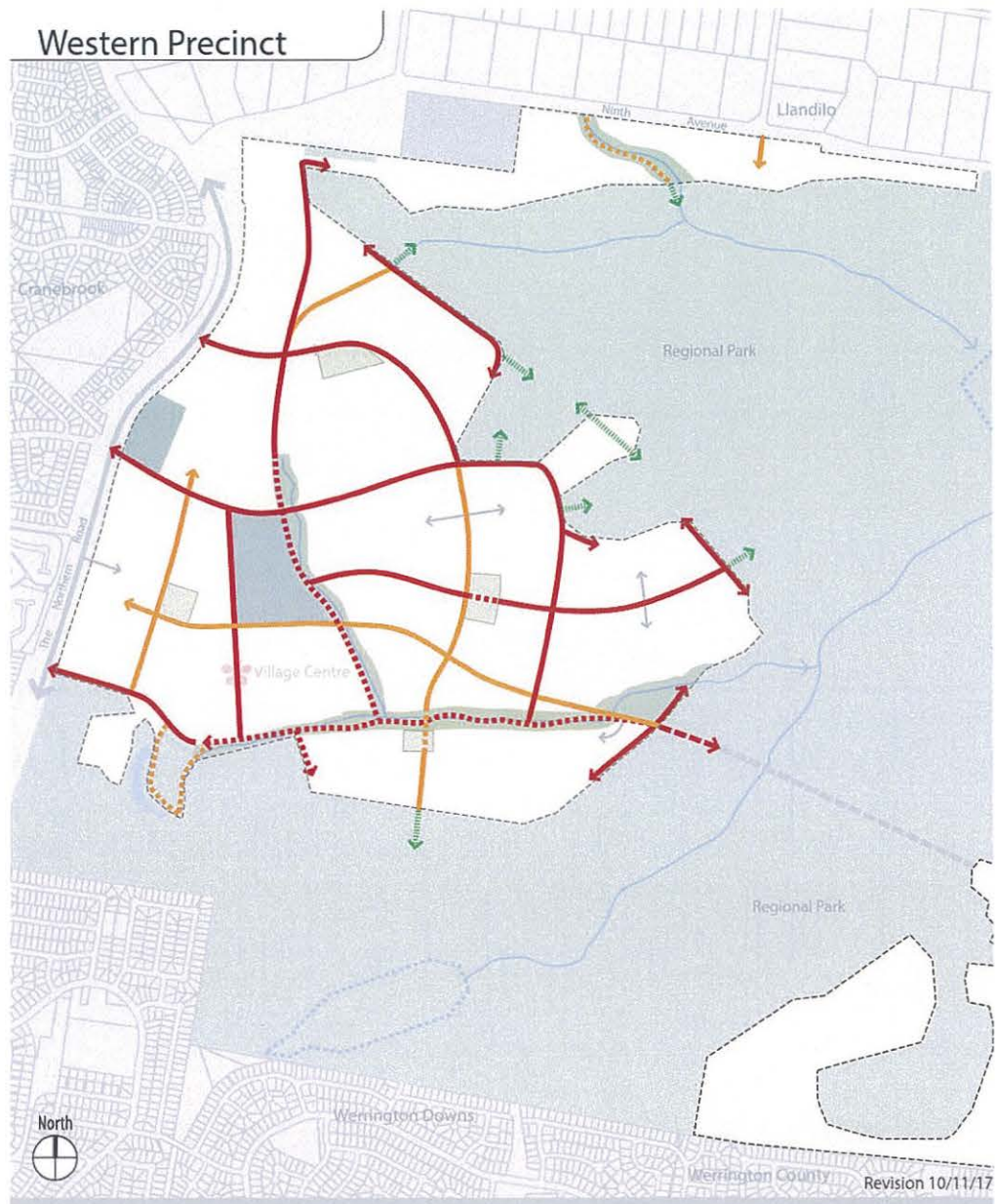
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Open Space Master Plan

- Riparian Corridor / Parkland
- Passive Open Space
- Active Open Space
- Regional Park Passive Open Space Opportunity (approx. size 11ha)
- Water Management Basin/Lake

Note: Location of all elements indicative only, subject to confirmation via detailed design.



Pedestrian and Cycle Network

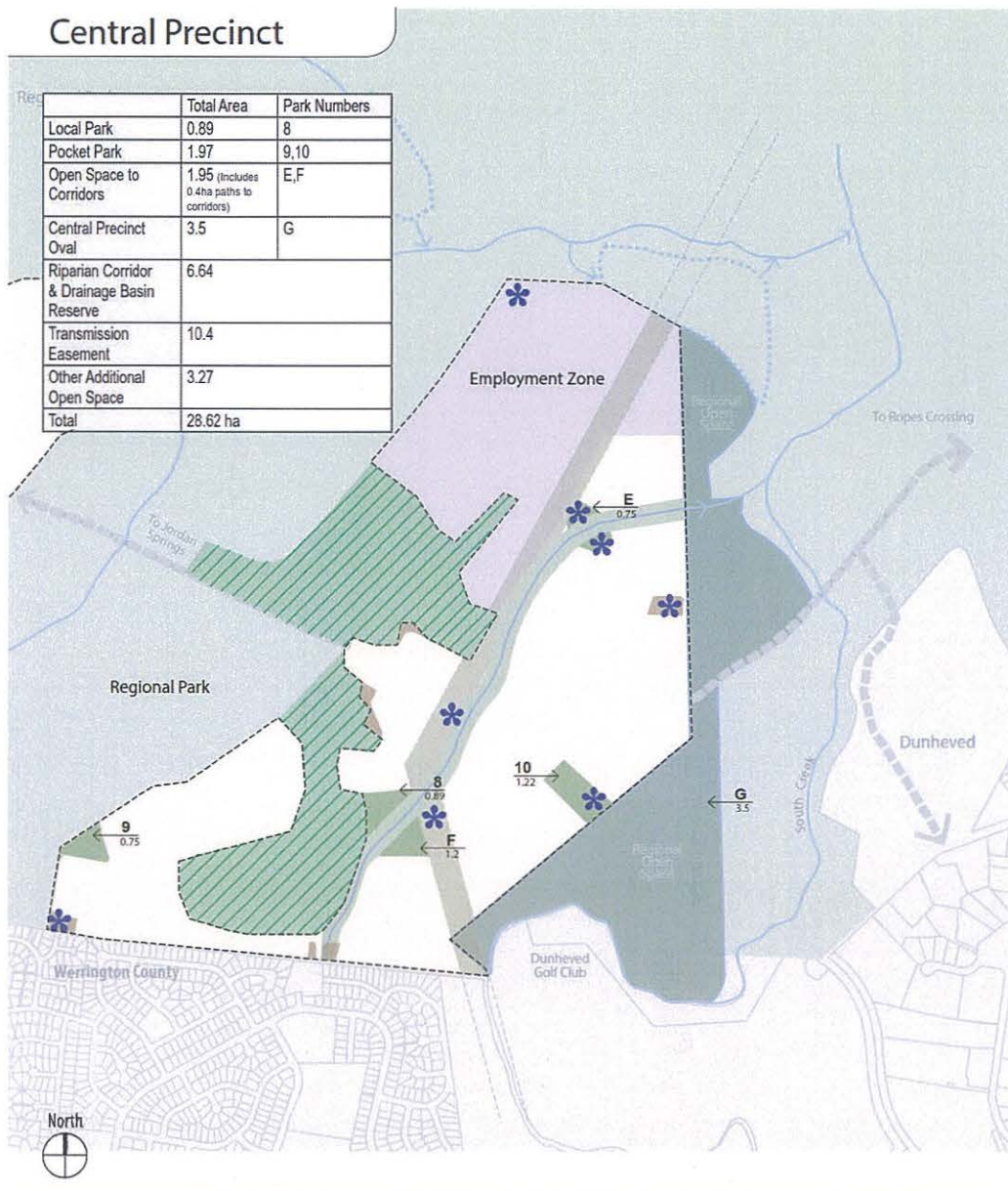
- Shared path (2.5m)
- Off-road Shared path
- Pedestrian path (1.5m)
- Off-road Pedestrian path
- Potential Regional Park access

Note: Location of all elements indicative only, subject to confirmation via detailed design.

Annexure 4B2

Local Open Space Works – Central Precinct (Clause 18)

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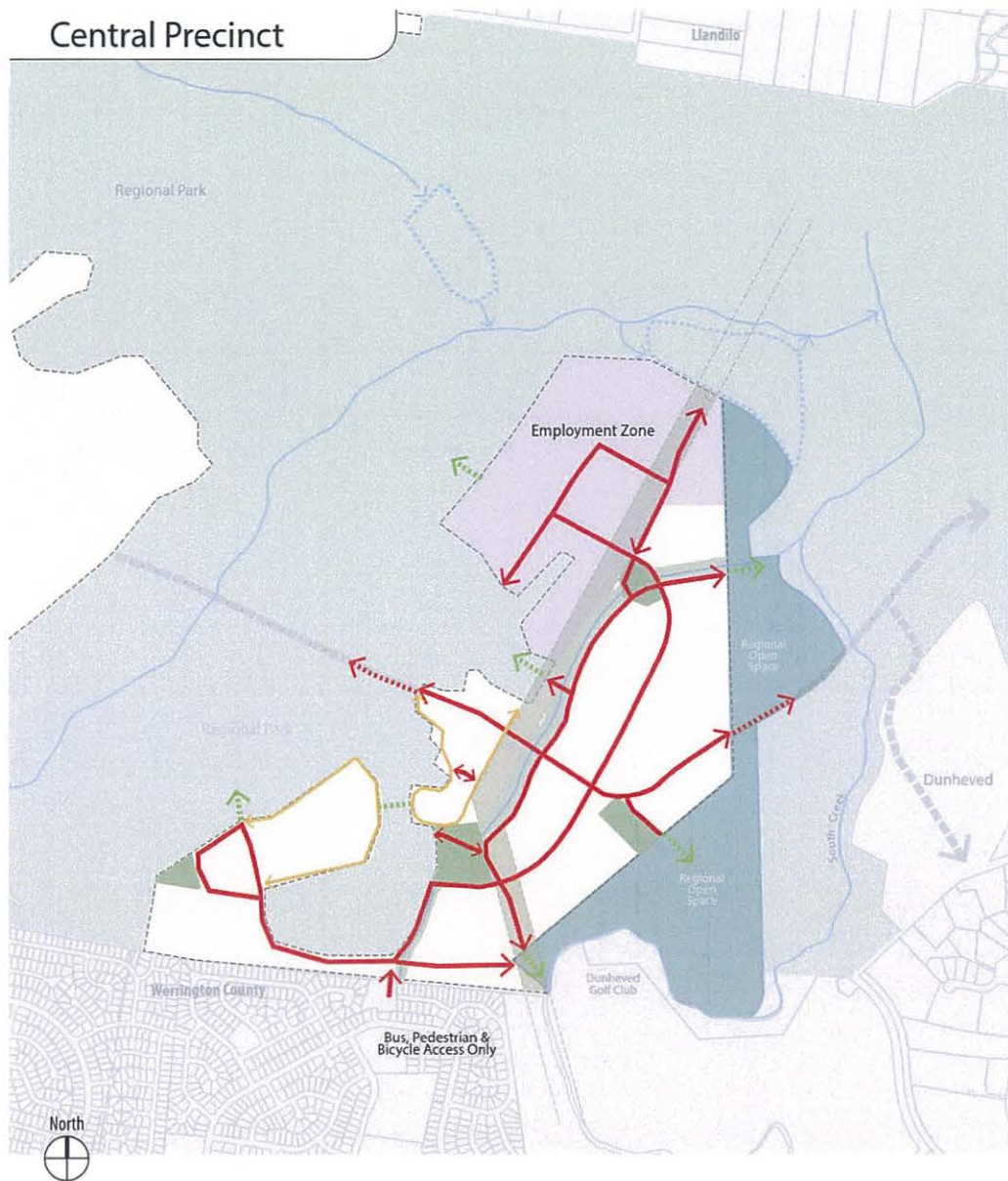


Open Space Masterplan

Scale: NTS

- Precinct Boundary
- Urban Zone
- Employment Zone
- * Water Quality Basin
- Riparian Corridor & Drainage Reserve
- Passive Local Open Space
- Transmission Easements
- Zoned Drainage Basins
- Regional Open Space Active Recreation Zone
- Other Additional Open Space
- Regional Park recreation Zone (46ha)

Note: Location of all elements indicative only, subject to confirmation via detailed design.



Pedestrian and Cycle Network

Scale: NTS

-----	Precinct Boundary		Riparian Corridor & Drainage Reserve		Shared Path (2.5m)
-----	Urban Zone		Neighbourhood Parks		Shared Path External Network (2.5m)
-----	Employment Zone		Transmission Easement		Potential Regional Access
					Pedestrian Path (1.5m)

Note: Location of all elements indicative only, subject to confirmation via detailed design.

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Planning Agreement

Annexure 5

Stormwater Drainage Infrastructure (Clause 20.1)

Item	Proposed Scope of Works	Timing of Works
ITEM 14 :- Combined water quality basins	Construct 2 water quality basins along tributary to South Creek within Dunheved South Precinct.	Works to be completed concurrently with road works within the Dunheved Precincts. Notional value of works : \$600,000 Guarantee timing : This was provided within 20 Business Days of the Original Commencement Date.

St Marys Penrith Planning Agreement

Annexure 6A

Human Services Works – Western Precinct (Clause 19)

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
1	Multi-purpose community resource and neighbourhood centre	810sqm maximum built area, plus land (4,000sqm maximum). Include landscaping, parking, site works and children's playground.	Permanent facility to be operational by the issue of occupancy certificate for the 1,200 th dwelling.	Includes contributions for Youth, Aged and Disability. Landtake and facility to be determined on the basis of Better Outcomes clause.	\$2,176,515
1a	Additional contribution to multi-purpose community resource and neighbourhood centre	As agreed between both parties, the Joint Venture will provide an additional \$665,000 towards the multi-purpose community resource and neighbourhood centre.	Permanent facility to be operational by the issue of occupancy certificate for the 1,200 th dwelling.	Includes contributions for Youth, Aged and Disability. Landtake and facility to be determined on the basis of Better Outcomes clause.	\$665,000
2	Community Fit out Fund	Fit out costs for multi-purpose community resource centre.	Incorporated into multi-purpose community resource centre.	Incorporated into multi-purpose community resource centre.	\$132,056
3	Temporary Neighbourhood Centre	Incorporated into multi-purpose community resource and neighbourhood centre.	Incorporated into multi-purpose community resource and neighbourhood centre.	Incorporated into multi-purpose community resource and neighbourhood centre.	\$150,000

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
4	Library Contribution	Incorporated into multi-purpose community resource centre.	Incorporated into multi-purpose community resource centre.	Incorporated into multi-purpose community resource centre Allowance may be made for a portion of the stated Library Contribution to be utilised offsite but not more than 10% of the Library Contribution.	\$1,350,400
5	Cultural facilities	In accordance with Council's Cultural Facilities Plan.	50% payable upon issue of the occupancy certificate for the 1,000 th residential dwelling. Balance of Total Maximum Value payable upon issue of the 2,000 th residential dwelling.		\$486,400
6	Resident Information Package	To be distributed to all households upon moving into the precinct.	To be provided to households as residents move into dwellings.		\$7,350

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Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
7	Community Initiatives Fund	Funds to support emerging community groups and initiatives.	Rate of expenditure is to be determined on the basis of the Better Outcomes clause taking into account the pace of development and the most efficient use of the Community Initiatives Fund allocation.	Details to be determined through Better Outcomes clause.	\$56,295
8	Community Facilities Studies	\$20,000 for both Western and Central Precincts combined.	Population monitoring to be on-going. Needs studies to occur as required.	Study to determine characteristics and needs/preferences of community.	\$20,000
9	Community Development Worker	Part-time worker, based on salary for full-time equivalent worker for two years. To be integrated with Central Precinct.	To commence 18 months after the issue of the first occupancy certificate for a residential dwelling for an equivalent period of employment to the value of \$180,000. Hours per week to be determined on the basis of the Better Outcomes clause taking into account the pace of development and the most efficient use of the Community Development Worker allocation.	Details to be determined through Better Outcomes clause.	\$180,000

St Marys Penrith
Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
10	Community Bus	12 seater bus.	To be provided within 2 years of first occupancy certificate for a residential dwelling.	Details to be determined through Better Outcomes clause.	\$80,000

St Marys Penrith
 Planning Agreement

Annexure 6B

Human Services Works – Central Precinct (Clause 19)

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
1	Community Activity and Neighbourhood Centre	450sqm maximum built area, plus land (maximum of 2,500sqm if required) Includes landscaping, carparking, site works and children's playground.	DA to be lodged no later than February 2019. Construction completion planned for January 2021.	Includes contribution for Youth, Aged and Disability. Community facility and car parking may be co-located with amenities building/clubhouse for sports fields in Open Space Hub within Regional Open Space, subject to Better Outcomes clause. Otherwise if not co-located, separate land provision will be required.	\$893,970

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
1a	Additional contribution to the Community Activity and Neighbourhood Centre	As agreed between both parties, the Joint Venture will provide an additional \$335,000 towards the multi-purpose community resource and neighbourhood centre.	Construction completion planned for January 2021	Includes contribution for Youth, Aged and Disability. Community facility and car parking may be co-located with amenities building/clubhouse for sports fields in Open Space Hub within Regional Open Space, subject to Better Outcomes clause. Otherwise if not co-located, separate land provision will be required.	\$335,000
2	Community Fit out Fund	Fit out costs for community activity centre.	Incorporated into community activity centre.	Incorporated into community activity centre.	\$51,584
3	Temporary Neighbourhood Centre	Incorporated into community activity and neighbourhood centre.	Incorporated into community activity and neighbourhood centre.	Incorporated into community activity and neighbourhood centre.	\$150,000
4	Library Contribution	Incorporated into multi-purpose Community Resource Centre for Western Precinct.	Incorporated into multi-purpose Community Resource Centre for Western Precinct	Incorporated into multi-purpose Community Resource Centre for Western Precinct.	\$527,500

St Marys Penrith Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
5	Cultural facilities	In accordance with Council's Cultural Facilities Plan.	50% payable upon issue of the occupancy certificate for the 500 th residential dwelling. Balance of Total Maximum Value payable upon issue of the 900 th residential dwelling.		\$190,000
6	Resident Information Package	To be distributed to all households as they move into the Precinct.	To be provided as residents move into dwellings.		\$2,910
7	Community Initiatives Fund	Funds to support emerging community groups and initiatives.	Rate of expenditure to be determined on the basis of the Better Outcomes clause taking into account the pace of development and the most efficient use of the Community Initiatives Fund allocation.	Details to be determined through Better Outcomes clause.	\$22,107
8	Community Facilities Studies	Study to determine characteristics and needs/preferences of community.	Population monitoring to be on-going. Needs studies to occur as required.	Contribution for Community Facilities Studies for both Western and Central Precincts allowed for in Schedule 2A (Western Precinct - Human Services Works).	N/A

St Marys Penrith
 Planning Agreement

<i>Item</i>	<i>Type of facility</i>	<i>Requirements</i>	<i>Timing</i>	<i>Comment</i>	<i>Notional Value</i>
9	Community Development Worker	Part-time worker, based on salary for full-time equivalent worker for two years. Integrated with Western Precinct.	To commence 18 months after the issue of the first occupancy certificate for residential a dwelling for an equivalent period of employment to the value of \$180,000. Hours per week to be determined on the basis of the Better Outcomes clause taking into account the pace of development and the most efficient use of the Community Development Worker allocation.	Details to be determined through Better Outcomes clause.	\$180,000

Annexure 7

Central Park and Facilities

St Marys Penrith Planning Agreement



St Marys Penrith

Planning Agreement

Facilities

Central Park may contain a combination of some of the following active and passive facilities as varied to suit Authority and user groups specific requirements as the detailed design and Authority approval process is undertaken:

- (a) active recreation elements located in the regional open space as shown on the plan in this Annexure 7 such as:
 - (i) a high quality competition field;
 - (ii) a synthetic all weather field;
 - (iii) other playing fields; and/or
 - (iv) tennis, netball and basketball courts to satisfy Authority requirements, and
- (b) passive recreation elements located in the non-listed AHC regional park as shown on the plan in this Annexure 7 such as:
 - (i) carparking nodes;
 - (ii) shelter nodes;
 - (iii) picnic and/or barbeque nodes;
 - (iv) cycleways, pathways and/or walking trails; and/or
 - (v) heritage and/or interpretative nodes.

St Marys Penrith
 Planning Agreement

Annexure 8

Bank Guarantees (Clause 22)

Item	Amount	Timing	Start	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000	3250	3500
Annexure 4A (Dunheved Open Space)																	
Item 11	45,000	DPP (75%)			0.045	(0.045)											
Item 12	N/A	N/A															
Item 13	150,000	DPP	0.030			(0.030)											
Annexure 4A1 (Western Precinct Open Space)																	
Item 1	5,598,450	1,200 (W)					5.598	(5.598)									
Item 2	2,000,000	1,500 (W)							2.000	(2.000)							
Item 3	740,000	500 (W)				0.740	(0.740)										
Item 4	592,000	2,000 (W)									0.592	(0.592)					
Item 5	518,000	250 (W)		0.518	(0.518)												
Item 6	666,000	1,250 (W)						0.666	(0.666)								
Item 7	518,000	1,500 (W)						0.518	(0.518)								
Item 8	680,000	2,250 (W)											0.680	(0.680)			

St Marys Penrith
 Planning Agreement

Item	Amount	Timing	Start	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000	3250	3500
Item 9	200,000	750 (W)					0.200	(0.200)									
Item 10	200,000	1,500 (W)							0.200		(0.200)						
Item 11	200,000	2,500 (W)											0.200	(0.200)			
Item 12	320,625	Ongoing (W)	0.030												(0.030)		
Item 13	N/A	N/A															
Annexure 4A2 (Central Open Space)																	
Item 1	3,562,650	3,000 (C)											3.563	(3.563)			
Item 2	888,000	3,000 (C)												0.888	(0.888)		
Item 3	578,000	3,250 (C)													0.518	(0.518)	
Item 4	444,000	2,500 (C)												0.444	(0.444)		
Item 5	280,000	2,500 (C)												0.280	(0.280)		
Item 6	200,000	2,750 (C)												0.200	(0.200)		
Item 7	383,562	2,500 (C)												0.061			(0.061)
Item 8	N/A	N/A															
Annexure 5 Drainage (Dunheved)																	
Item 14 (Revised estimate)	600,000	DP	0.200		(0.200)												
Annexure 6A Human Services Western)																	

St Marys Penrith Planning Agreement

Item	Amount	Timing	Start	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000	3250	3500
Item 1	2,176,515	1,200 (W)					2,177		(2,177)								
Item 2	132,056	1,200 (W)					0.132		(0.132)								
Item 3	150,000		0.150		(0.150)												
Item 4	1,350,400	1,200 (W)					1.350		(1.350)								
Item 5	456,000	1,000- 2,000 (W)					0.228	(0.228)			0.228	(0.228)					
Item 6	7,350	Ongoing	0.001									(0.001)					
Item 7	56,295	Ongoing		0.007	0.007			(0.007)	(0.007)								
Item 8	20,000	Ongoing	0.002									(0.002)					
Item 9	180,000	Ongoing		0.030					(0.030)								
Item 10	80,000			0.080	(0.080)												
Annexure 6B Human Services (Central)																	
Item 1	893,970	500 (C)										0.894		(0.894)			
Item 2	51,584	500 (C)										0.052		(0.052)			
Item 3	150,000	Start + 18 mths										0.150	(0.150)				
Item 4	527,500	500 (C)										0.528		(0.528)			
Item 5	190,000	500; 900 (C)										0.095	(0.095)	0.095	(0.095)		

St Marys Penrith
 Planning Agreement

Item	Amount	Timing	Start	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000	3250	3500
Item 6	2,910	Ongoing										0.001				(0.001)	
Item 7	22,107	Ongoing												0.005	0.005	(0.005)	(0.005)
Item 8	N/A	N/A															
Item 9	180,000												0.040				(0.040)
Clause 13.9																	
Clause 13.9(d) (i)	6,834,000	500 (C)											6.834	(6.834)			
Clause 13.9(d)(ii)(A)	1,400,000	1,000 (W)				1.400	(1.400)										
Clause 13.9(d)(ii)(13)	1,400,000	2,000 (W)								1.400	(1.400)						
Clause 13.9(d)(ii)(C)	2,071,550	3,000 (W, C)												2.072	(2.072)		
Starting Guarantee Amount (Rounded)			0.900	0.900	1.060	1.610	2.220	9.770	4.920	2.240	1.640	0.860	5.320	11.500	3.400	0.635	0.115
Augment (Rounded)			Nil	0.640	1.500	2.140	9.690	1.180	2.200	1.400	0.820	5.280	9.990	3.260	0.520	Nil	Nil
Redeem (Rounded)			Nil	(0.480)	(0.950)	(1.530)	(2.140)	(6.030)	(4.880)	(2.000)	(1.600)	(0.820)	(3.810)	(11.360)	(3.285)	(0.520)	(0.110)
Revised Guarantee Amount (Rounded)			0.900	1.060	1.610	2.220	9.770	4.920	2.240	1.640	0.860	5.320	11.500	3.400	0.635	0.115	Nil

St Marys Penrith Planning Agreement

Item	Amount	Timing	Start	250	500	750	1000	1250	1500	1750	2000	2250	2500	2750	3000	3250	3500
BASELINE GUARANTEE			1.000	1.000	2.000	2.000	2.000	2.000	2.000	2.000	1.000	2.000	2.000	2.000	2.000	0.200	Nil
TOP UP GUARANTEE			Nil	Nil	Nil	Nil	7.800	3.000	0.250	Nil	Nil	3.300	9.500	1.500	2.000	Nil	Nil

Notes: (P) Denotes St Marys Project wide allotments; (DPP) denotes Dunheved Precinct; (W) denotes Western Precinct; (C) denotes Central Precinct.

St Marys Penrith
Planning Agreement

EXECUTED as a deed.

By the authorised officer of
Penrith City Council
~~The Common Seal of Penrith City Council was~~

hereto affixed on day of
20 pursuant to

resolution no.

made on day of

20 ;


General Manager

Nonnie Win
Print Name

W. J. Mitchell
~~Mayer~~ Witness

WAYNE J MITCHELL
Print Name

Executed as a deed in accordance with s127 of
the Corporations Act by St Marys Land
Limited:


Director Signature

MATTHEW JAMES WALLACE

Print Name


Director/Secretary Signature

Susan Ann Westlake

Print Name

Executed as a deed in accordance with s127 of
the Corporations Act by Lendlease
Development Pty Limited:


Director Signature

MATTHEW JAMES WALLACE

Print Name


Director/Secretary Signature

Susan Ann Westlake

Print Name