

Voluntary Planning Agreement

Penrith City Council *ABN 43 794 422 563*

Stockland Fife Kemps Creek Pty Limited *(ACN 628 770 141) in its capacity as trustee of the Stockland Fife Kemps Creek Trust (ABN 47 273 439 938)*

Stockland Development Pty Limited *(ACN 000 064 835) and Fife Land 3 Pty Limited (ACN 654 088 838) in its capacity as trustee of the Fife Land 3 Trust (ABN 64 318 343 693)*

Stockland Development Pty Limited *(ACN 000 064 835) and Fife Land 2 Pty Limited (ACN 651 694 790) in its capacity as trustee for Fife Land 2 Trust (ABN 89 561 962 630)*

Australand C & I Land Holdings Pty Ltd *(ACN 107 356 641) in its capacity as trustee of the Frasers Property C&I Land Holdings (Kemps Creek No. 2) Trust (ABN 58 649 084 762)*

FPI Developments NSW Pty Limited *(ACN 648 326 676)*

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draft

Agreement

Date

Parties

First party

Name	Penrith City Council (Council)
ACN	43 794 422 563
Contact	The General Manager
Telephone	02 4732 7777

Second party

Name	Stockland Fife Kemps Creek Pty Limited in its capacity as trustee of the Stockland Fife Kemps Creek Trust (ABN 47 273 439 938) (SFKC)
ACN	628 770 141
Contact	Michael Wiseman
Email	michael.wiseman@fifecapital.com.au and fifea@fifecapital.com.au
Telephone	02 9251 2777

Third party

Name	Stockland Development Pty Limited
ACN	000 064 835
	and
Name	Fife Land 3 Pty Limited in its capacity as trustee of the Fife Land 3 Trust (ABN 64 318 343 693)
ACN	654 088 830
	(together, SFL3)
Contact	Michael Wiseman
Email	michael.wiseman@fifecapital.com.au and fifea@fifecapital.com.au
Telephone	02 9251 2777

Fourth party

Name	Stockland Development Pty Limited
ACN	000 064 835
	and
Name	Fife Land 2 Pty Limited in its capacity as trustee for Fife Land 2 Trust (ABN 89 561 962 630)
ACN	651 694 790
	(together, SFL2)
Contact	Brendon Lucas
Email	brendon.lucas@stockland.com.au and legal4@stockland.com.au
Telephone	02 9035 2000

Fifth party

Name	Australand C & I Land Holdings Pty Ltd in its capacity as trustee of the Frasers Property C&I Land Holdings (Kemps Creek No. 2) Trust (ABN 58 649 084 762) (Frasers Landowner)
ACN	107 356 641
Contact	Roland Martin
Email	Roland.Martin@frasersproperty.com.au
Telephone	02 9767 2068

Sixth party

Name	FPI Developments NSW Pty Limited (Frasers)
ACN	648 326 676
Contact	Roland Martin
Email	Roland.Martin@frasersproperty.com.au
Telephone	02 9767 2068

Background

- A. On 21 August 2024, SFKC, SFL3, SFL2, Frasers Landowner and Frasers (**Developer**) made an offer to enter into a Planning Agreement with Council within the meaning of section 7.4 of the Act on the following basis:
- SFKC, SFL3, SFL2 and Frasers are Applicants of Development Applications to carry out Development on the Land;

- b. Frasers Landowner is a Related Body Corporate to Frasers and is, therefore, a person who is associated with a person who has made a Development Application;
- c. SFKC, SFL3 and Frasers are the Road Developer, which will construct an upgrade to Aldington Road comprising the Works which are the subject of this agreement (**Aldington Upgrade**);
- d. SFKC, SFL3 and Frasers Landowner are Landowners, which will dedicate or transfer the Dedication Land to Council for the purpose of the Aldington Upgrade; and
- e. SFL2 is a Landowner, which will dedicate or transfer the Dedication Land SFL2 to Council for the purpose of the ultimate upgrade of Aldington Road.

B. The Applicants have made the following Development Applications:

- a. SSD-10479, lodged by SFKC on 19 October 2020, in which it volunteered to upgrade parts of Aldington Road, designed at a preliminary level, all within the existing road reserve save for that part of the road on the land the subject of the Development Application.
 - i. The Environmental Impact Statement (**EIS**) for that Development Application provided that, *"... Although the [Contributions] Plan is yet to be exhibited or finalised, it is the Applicant's intention to comply with the Plan by way of contribution or works in kind when it comes into force."*

Development Consent has been granted to SSD-10479 (**SFKC Consent**). On 24 June 2024, SFKC lodged an application to modify the SFKC Consent, pursuant to which it proposes to deliver a more detailed design for the preliminary components of the Aldington Upgrade (**SFKC Mod 3**). SFKC Mod 3 contemplates the delivery of the Aldington Upgrade as part of a Planning Agreement.

- b. SSD-17552047 (**Frasers DA**), lodged by Frasers on 19 October 2021, in which it was noted that the Aldington Upgrade was to be undertaken by way of a Planning Agreement.
 - i. The EIS for this Development Application provided that the Frasers had, *"...been in consultation with Council to develop a concept design of the Aldington and Abbots Road upgrades as part of a VPA offer. As demonstrated in Appendix 31, a VPA offer was made to Council on 9 July 2021... regarding the delivery of upgrade works."*
- c. DA22/0530, lodged by SFL3 on 8 June 2022.
 - i. The Statement of Environmental Effects (**SEE**) for that Development Application provided that, *"The design and construction of the Aldington Road upgrade is proposed to be delivered under WIK arrangements and the detail is still being discussed with stakeholders, and once agreed will proceed to the detailed design phase."*
- d. DA24/0268 (**SFL2 DA**), lodged by SFL2 on 25 March 2024.
 - i. The SEE for that Development Application provided that *"Certain works, such as upgrade works for Aldington Road, Abbots Road and Mamre Road intersection, will occur as part of a Works In Kind (WIK)"*

*Agreement or Voluntary Planning Agreement between developers,
Council and DPE in lieu of contributions".*

- C. On 4 April 2022, the Contributions Plan was made. The Contributions Plan provides for the collection of contributions required for the upgrade and widening of roads with the Mamre Road Precinct or works in kind, as well as the acquisition of land required to carry out the upgrade and widening or dedication, in lieu. The Aldington Upgrade is part of the Abbotts Road and Aldington Road works accounted for by the Contributions Plan where it is given the designation of DR1.
- D. The Developer intends to carry out the Works and dedicate or transfer the Dedication Land and Dedication Land SFL2 to Council, which will deliver part of the DR1 corridor. The provision of the Works and the dedication or transfer of the Dedication Land and Dedication Land SFL2 are a Material Public Benefit as they will enable the orderly and economic development of public infrastructure in accordance with the Contributions Plan. In particular, this agreement will facilitate the coordinated development of high priority transport infrastructure identified in the Contributions Plan, which is critical to facilitating the timely and orderly development of rezoned employment land in the Mamre Road Precinct.
- E. In consideration of the provision of the Material Public Benefit, Council agrees to apply an offset (in whole or part), calculated in accordance with this agreement, against the Contributions required by the Contributions Plan that are or will be payable by an Applicant pursuant to a condition of Development Consent for the Development.
- F. On 26 August 2024, the Council resolved to accept the Developer's offer to enter into this agreement with conditions precedent to its execution, which have now been satisfied.
- G. To the extent that an Applicant may wish to obtain offsets for another Material Public Benefit not referred to in this agreement, including internal collector roads within the Development, it may enter into a further Planning Agreement under the Act or a WIKA (if applicable) with Council, in accordance with the Contributions Plan.

The Parties hereto agree as follows:

Operative part

1 Definitions

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

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

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

Applicant means a person who proposes to make, or has made, a Development Application for the Development, or who may otherwise be entitled to carry out the Development from time to time;

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

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

Balance of Contributions means the Contributions which remain payable following payment of the Plan Administration Component in accordance with clause 6.1(c), indexed in accordance with cl.2.2.2 of the Contributions Plan.

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

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

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

Base CPI has the same meaning as in clause 2.2.2 of the Contributions Plan;

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking issued by an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia that has at all times an investment grade security rating from an industry recognised rating agency;

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

Certificate of Practical Completion means the written certificate issued under clause 8.1(b)(i) of Schedule 2 confirming the Works, or part of the Works, have been completed to the Council's satisfaction;

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

Completion Date means the date that is 18 months after the later of:

- (a) commencement of this agreement under clause 5; and
- (b) the date the Road Developer receives a Works Approval,

unless otherwise extended by mutual agreement between the parties.

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Construction Terms means the terms set out in Schedule 2;

Contribution Security has the meaning in clause 11.2.2;

Contributions means the money required to be paid pursuant to a condition of a Development Consent imposed under section 7.11 of the Act;

Contributions Plan means the *Mamre Road Precinct Development Contributions Plan 2022*, as amended from time to time;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Current CPI has the same meaning in clause 2.2.2 of the Contributions Plan;

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

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

Dedication Land means those parts of the Land shown on the plans at Annexure C, which are required to be dedicated or transferred to Council by a Landowner, and upon which the Works are to be constructed in accordance with this agreement;

Dedication Land SFL2 means the part of the SFL2 Land shown in Annexure C and marked as proposed Lots 305 and 307, upon which no Works will be constructed.

Dedication Land Offset means the dollar value of the Dedication Land or Dedication Land SFL2 (as applicable) determined by multiplying the area of the Dedication Land or Dedication Land SFL2 (as applicable) by the Dedication Land Rate;

Dedication Land Rate means \$575.00 per square metre indexed by multiplying the value of the Dedication Land or Dedication Land SFL2 (as applicable) by an amount equal to the Current CPI divided by the Base CPI;

Development means the carrying out of works and activities by an Applicant on the Land, being land that has frontage to Aldington Road, in accordance with a Development Consent, and includes works and activities for which Development Consent has been sought or are approved by the:

- a) SFKC Consent;
- b) SFL3 Consent;
- c) SFL2 DA; and
- d) Frasers DA.

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Frasers DA means State Significant Development application SSD-17552047 relating to part of the Frasers Southern Land;

Frasers Northern Land has the meaning given to that term in Annexure A;

Frasers Southern Land has the meaning given to that term in Annexure A;

GST has the same meaning as in the GST Law;

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

Handover means, with respect to any Works, the time Council takes possession of and assumes responsibility for those Works, in accordance with clause 8.2 of the Construction Terms in Schedule 2;

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable;

Intersection Works means the signalisation and line marking of an intersection (or part thereof) as generally shown on the plans in Schedule 1;

Intersection Works Offset means the number of signalised intersections or part thereof, multiplied by the agreed rate of \$750,000 per completed signalised intersection or the rate determined by Council for any part thereof, indexed by multiplying the rate by an amount equal to the Current CPI divided by the Base CPI;

Land means the land as set out in Annexure A, or any part thereof as the context requires;

Landowner means each owner of any part of the Land from time to time, being, as at the date of this agreement, all the persons listed in Annexure A;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Maintain means works to bring an item to or keep an item in a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, including repairing any defects due to use of poor materials or due to poor workmanship, but does not include repairing normal wear and tear, removing graffiti or repairing any item damaged as a consequence of vandalism.

Maintained and **Maintenance** have corresponding meanings to the term **Maintain**;

Mamre Road Precinct means the area of land the subject of the Contributions Plan;

Material Public Benefit means works and/or land dedication identified in the Contributions Plan;

Modification Application means any application to modify a Development Consent under section 4.55 of the Act;

Monetary Contribution means the Contributions payable by an Applicant after the Dedication Land Offset, Works Offsets, offsets under any WIKa in relation to the Development, and any payment to Council of a Contribution related to the Development are applied;

Monetary Contribution Certificate means a certificate issued to an Applicant which confirms the Contributions payable in carrying out a Development, and which may include the amount of Monetary Contributions paid in respect of the Development, the value of any works or land dedication offsets to be applied (including under this agreement), and the value of the Contributions payable including any negative value.

Net Developable Area or **NDA** has the same meaning as in the Contributions Plan;

Notice of Practical Completion means a notice under clause 8.1(a) of the Construction Terms in Schedule 2;

Occupation Certificate means an occupation certificate as defined under section 6.4 the Act;

Pavement Area means the area coloured grey (including any stormwater pipe and stormwater pit) called "Phase 2 Pavement", but excluding the area shown in red hatching, in the "Phase 2 Abortive Works" plans at Annexure D;

Pavement Offset means the dollar value of the Pavement Area determined by multiplying the area of the Pavement Area by the Pavement Rate;

Pavement Rate means AUD \$485.53 per square metre indexed according to clause 2.2.2 of the Contributions Plan, from the date of this agreement;

Phase 2 Stage 1 Works means the Works from CH 130 to and including the northern limit of Intersection 3 (CH 1095), as shown on the plans at Annexure D;

Phase 2 Stage 2 Works means the Works from CH 1095 to the 'limit of work' to the north of CH 2365, as shown on the plans at Annexure D;

Planning Agreement means an agreement entered into pursuant to section 7.4 of the Act;

Public Road has the same meaning as in the *Roads Act 1993* (NSW);

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

Regulation means the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* (NSW);

Related Body Corporate has the meaning given to that term in section 50 of the *Corporations Act 2001* (Cth);

Roads Subdivision Certificate means a Subdivision Certificate issued for the purpose of dedicating or transferring the Dedication Land

Replacement Security means a replacement security provided under clause 11.2.4;

Respective Proportion means the following proportion for each Road Developer:

- (a) Frasers – 46.66%;
- (b) SFKC – 44.12%; and
- (c) SFL3 – 9.22%.

Road Developer means each of the following parties separately, and all of them jointly:

- (a) Frasers;
- (b) SFKC; and
- (c) SFL3.

SFKC Consent means the Development Consent granted to State Significant Development application SSD-10479 and any modification(s) of that Development Consent;

SFKC Land has the meaning given to that term in Annexure A;

SFL2 DA means DA24/0268 made to the Council relating to the SFL2 Land;

SFL2 Land has the meaning given to that term in Annexure A;

SFL2 Road Works means the design and construction of the works on the SFL2 Land generally shown as 'AARU Ultimate Works As Per 1000 Series Set' on Project Drawing Nos. 21-843-C3106 and 21-843-C3107 at Schedule 1, as amended by any Approval required for the works;

SFL3 Consent means the Development Consent granted to Development Application DA22/0530 and any modification(s) of that Development Consent;

SFL3 Land has the meaning given to that term in Annexure A;

Stage means Phase 2 Stage 1 or Phase 2 Stage 2;

Subdivision Certificate means a subdivision certificate as defined under section 6.4 the Act issued in respect of the Development but excludes a Roads Subdivision Certificate;

Surveyor means a person registered under the *Surveying and Spatial Information Act 2002* (NSW) and approved by Council;

Verge Area means the areas coloured light green and called "Permanent Verge", but excluding the area shown in red hatching, in the "Phase 2 Abortive Works" plans at Annexure D;

Verge Rate means \$406.45 per square metre indexed according to clause 2.2.2 of the Contributions Plan, from the date of this agreement;

Verge Offset means the dollar value of the Verge Area determined by multiplying the area of the Verge Area by the Verge Rate;

WIKa means an agreement between an Applicant and Council made pursuant to section 7.11 of the Act;

Works means the design and construction of the works shown in the plans and specifications at Schedule 1 and subject to any conditions imposed by the roads authority pursuant to the Works Approval;

Works Approval means the Approval required to be provided by the roads authority for the design and for the construction of the Works including, but not limited to, an approval under section 138 of the *Roads Act 1993* (NSW) and any approval under the Act;

Works Offsets means the Pavement Offset, Verge Offset and Intersection Works Offset; and

Works Security has the meaning in clause 11.2.3.

2 Interpretation

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

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, General Manager, CEO or managing director)** the president, General Manager, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** except where expressly provided by this agreement, an agreement, representation, covenant, right or obligation:
 - (i) in favour of the Road Developer is for the benefit of each party comprising the Road Developer jointly and severally; and
 - (ii) on the part of the Road Developer binds each party comprising the Road Developer jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a Planning Agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for Planning Agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Development, and
- (b) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 *Monetary Contribution*

- (a) Each Applicant will be required to pay Contributions in connection with their respective Development.
- (b) Each Applicant must pay Contributions, indexed in accordance with cl.2.2.2 of the Contributions Plan, and in accordance with this agreement.
- (c) Each Applicant must pay the plan administration component of the Contributions, being \$3,128.00 per hectare of NDA of the Applicant's respective Development (indexed in accordance with cl.2.2.2 of the Contributions Plan), prior to the issue of any Subdivision Certificate for that Applicant's part of the Development (**Plan Administration Component**).
- (d) Once the Plan Administration Component is paid, each Applicant will be required to pay the Balance of Contributions or Monetary Contribution (as applicable) prior to the earlier of:
 - (i) the final Subdivision Certificate being issued in respect of that Applicant's respective Development; and
 - (ii) the third calendar year from that Applicant's provision of the Contribution Security.
- (e) Notwithstanding clause 6.1(d), on condition that the obligations in clauses 6.2 (Works) and 6.3 (Dedication of Land) are fulfilled by the Completion Date, the Council agrees to accept a Monetary Contribution (indexed in accordance with cl.2.2.2 of the Contributions Plan) in satisfaction of the Contributions payable in respect of the Development, after the following are applied to the Balance of Contributions, and in this order:
 - (i) where the Applicant is a Landowner - the Dedication Land Offset; and
 - (ii) where the Applicant is a Road Developer:
 - (A) the Pavement Offset;
 - (B) the Verge Offset; and
 - (C) the Intersection Works Offset,in the Road Developer's Respective Proportions.
- (f) In respect of each Stage of the Works, within 10 days of the later of Council receiving:
 - (i) a Notice of Practical Completion for that Stage of the Works; and

- (ii) confirmation that it is the owner of the Dedication Land,

Council will issue a Monetary Contribution Certificate to each Applicant.
- (g) For the purposes of clause 6.1(e), Council agrees that:
 - (i) Frasers is entitled to the offset for the dedication or transfer by the Frasers Landowner of the Frasers Northern Land and Frasers Southern Land; and
 - (ii) Frasers may elect in writing to Council whether a Dedication Land Offset to which it is entitled under clause 6.1(e) is to be offset against the amount of the Monetary Contributions payable in respect of any part of the Development on the Frasers Northern Land or Frasers Southern Land.
- (h) An Applicant may, at any time before the Monetary Contribution is payable, make a written request to Council for its Works Offsets and/or Dedication Land Offset (but no part thereof) to be applied to any Development where the person delivering the Development is a Related Body Corporate (with evidence provided of the relationship). If such a request is made Council will reissue the Monetary Contribution Certificate accordingly.
- (i) For the purpose of clause 6.1(d), where the Applicant is Frasers, it must pay Council a Monetary Contribution:
 - (i) in respect of the Frasers Northern Land, before the earlier of:
 - (A) the final Subdivision Certificate being issued in respect of Development on the Frasers Northern Land; and
 - (B) the third calendar year of Frasers providing the Contribution Security in respect of Development on the Frasers Northern Land; and
 - (ii) in respect of the Frasers Southern Land, before the earlier of:
 - (A) the final Subdivision Certificate being issued in respect of Development on the Frasers Southern Land; and
 - (B) the third calendar year of Frasers providing the Contribution Security in respect of Development on the Frasers Southern Land.
- (j) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (k) The payment of the Monetary Contribution will be taken to have been made by an Applicant when the Council notifies the Applicant in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (l) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards the purposes set out in the Contributions Plan.
- (m) Within 20 Business Days of an Applicant paying a Monetary Contribution in accordance with clause 6.1(d), the Council will issue that Applicant with a final Monetary Contribution Certificate.

- (n) The Council agrees that where a final Monetary Contribution Certificate issued to an Applicant confirms that a Monetary Contribution remains payable by that Applicant, the Council may in its discretion, and according to law, allow further offsets to be applied to reduce the Monetary Contribution payable if the Applicant provides further works and/or land dedication or transfer to Council as part of the Applicant's delivery of its respective part of the Development, subject to the Applicant entering into a further Planning Agreement or a WKA (if applicable) with Council, in accordance with the Contributions Plan.
- (o) For the avoidance of doubt, nothing in this agreement:
 - (i) requires Council to refund or repay any Contributions;
 - (ii) requires Council to pay any amount to an Applicant if the value of the Works and the Dedication Land is more than the Contributions payable; or
 - (iii) exempts an Applicant from paying Contributions not subject to a Works Offset or Dedication Land Offset.

6.2 Works

- (a) The Road Developer will carry out the Works in accordance with this agreement, including the Construction Terms, and any Development Consent or other Approval granted for the Works.
- (b) The Road Developer agrees that, if any Development Consent or other Approval granted for the Works is declared by a Court to be invalid, the Road Developer must use best endeavours to obtain a new Development Consent or Approval (as may be required) within 2 years of the declaration of invalidity.
- (c) The Works or any Stage of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works (or Stage of the Works).
- (d) The Works or any Stage of the Works required under this agreement will be taken to have been delivered to Council on Handover in accordance with the Construction Terms.
- (e) The Phase 2 Stage 1 Works must be delivered to the Council prior to the issue of the first Occupation Certificate issued in relation to:
 - (i) the SFKC Consent; and
 - (ii) any part of the Development on the Frasers Southern Land for which Development Consent may be granted in respect of the Frasers DA.
- (f) The Phase 2 Stage 2 Works must be delivered to Council prior to the issue of any subsequent Occupation Certificate:
 - (i) under the SFKC Consent; and
 - (ii) for any part of the Development on Land not part of the SFKC Consent.
- (g) The parties agree and acknowledge that the Works serve the public purpose/s of the provision of upgrades to existing roads for public use, servicing the broader community as well as the neighbouring landowners within the Mamre Road Precinct, as identified in the Contributions Plan.

- (h) The Road Developer must complete or cause to be completed the Works by the Completion Date. If the Developer reasonably believes that the Works will not be completed by the Completion Date, it is to notify Council within 14 days of becoming aware that it will not be able to complete with reasons.
- (i) The Road Developer covenants with Council that, at the time of entry into this agreement, it has obtained or made arrangements with third parties to obtain the necessary rights from third parties to enter onto third party land to carry out the Works.
- (j) If at any time during the delivery of the Works, a third party who had given or indicated that it would give rights to the Road Developer to enter onto that third party's land to carry out the Works revokes those rights or acts in a way that is materially inconsistent with those rights so as to prohibit the Road Developer from carrying out the Works, the Road Developer must:
 - (i) promptly provide written notification to Council;
 - (ii) include in its notice proposed steps to address the matter, such as amendments to the design of the Works;
 - (iii) use best endeavours to agree amendments to the design of the Works in consultation with Council and Transport for NSW; and
 - (iv) if necessary, propose a modification to any Approval or Development Consent for the Works and/or a variation to this agreement.
- (k) If clause 6.2(j) applies and an amended design of the Works is unable to be achieved within 12 months of a notice issued pursuant to clause 6.2(j)(i) and the Completion Date, whichever is earlier, a dispute is deemed to have arisen and clause 10 applies.
- (l) The parties acknowledge and agree that the Works may be delivered in Stages and the Council will issue a Monetary Contribution Certificate in respect of each Stage.
- (m) When a Stage of the Works is completed, the Road Developer is to provide Council with a Notice of Practical Completion for the Works, with a written notice that includes written confirmation from the Surveyor setting out:
 - (i) in square metres, the area of the Works that comprises the:
 - (A) Verge Area and the calculation of the Verge Offset, which is based on the Verge Area determined by the Surveyor; and
 - (B) Pavement Area and the calculation of the Pavement Offset, which is based on the Pavement Area determined by the Surveyor; and
 - (ii) Intersection Works and the Intersection Works Offset for that Stage of the Works.
- (n) When determining the area of the Works in accordance with clause 6.2(m)(i), the Surveyor will have regard to the "Phase 2 Abortive Works" plans at Annexure D.

6.3 *Dedication of Land*

- (a) Each Landowner must dedicate or cause to be transferred to the Council, at no cost to the Council, its respective part of the Dedication Land and the Dedication Land SFL2 freed and discharged from all estates, interests, trusts, restrictions,

dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.

- (b) Each Landowner must take all steps, prepare all documents and meet all costs required to dedicate or transfer its respective part of the Dedication Land and the Dedication Land SFL2 to the Council including, but not limited to:
 - (i) removing any encumbrances on the title to the land;
 - (ii) creating an interest in land in favour of Council if required;
 - (iii) subdividing the Land to create a separate lot for the Landowner's relevant part of the Dedication Land or Dedication Land SFL2 (as applicable);
 - (iv) preparing and lodging documents for registration;
 - (v) obtaining the consent of any other parties to the registration of the relevant documents; and
 - (vi) attending to any requisition relating to any dealing or document lodged for registration.
- (c) The obligation of a Landowner in clause 6.3(a) will be taken to have been satisfied:
 - (i) where transfer is to occur, when NSW Land Registry Services registers the instrument giving effect to the transfer and the Council is identified as the registered proprietor of that land without encumbrances as required by clause 6.3(a); or
 - (ii) where dedication is to occur, when the land is dedicated to Council as Public Road by registration of a plan of subdivision in accordance with section 9 of the *Roads Act 1993* (NSW).
- (d) The Dedication Land may be dedicated or transferred to Council at any time following commencement of the Works, but in any event prior to the issue of an Occupation Certificate for any part of the Development on the Land.
- (e) The Dedication Land SFL2 must be dedicated or transferred to Council following the carrying out of the SFL2 Road Works on the SFL2 Land, subject to:
 - (i) all Approvals for the delivery of the SFL2 Road Works being obtained; and
 - (ii) the SFL2 Road Works being carried out in accordance with those Approvals to the Council's satisfaction, acting reasonably.

The dedication or transfer of the Dedication Land SFL2 to Council must occur prior to the issue of an Occupation Certificate for any part of the Development on the SFL2 Land.

- (f) Where clause 6.3(e) applies, the Council agrees that:
 - (i) clause 6.1 applies to SFL2 as an "Applicant" under this agreement;
 - (ii) any reference in clause 6.1 (and any defined terms used in that clause) to "Dedication Land" is taken to be a reference to the Dedication Land SFL2;

- (iii) in clause 6.1(e), the words “Notwithstanding clause 6.1(d), on condition that the obligations in clauses 6.2 (Works) and 6.3 (Dedication of Land) are fulfilled by the Completion Date,” do not apply;
- (iv) clause 6.1(f) will not apply to the Dedication Land SFL2 and will be replaced by the following requirement in respect of that land:

In respect of the SFL2 Road Works, within 10 days of the later of Council receiving:

- (i) a notice of practical completion for those works; and*
- (ii) confirmation that the Council is the owner of the Dedication Land SFL2,*

Council will issue a Monetary Contribution Certificate to SFL2; and

- (v) no offsets are to be issued for the delivery of the SFL2 Road Works under this agreement.
- (g) The parties agree and acknowledge that the dedication or transfer of the:
 - (i) Dedication Land serves the public purpose of enabling the widening of Aldington Road for the Works; and
 - (ii) Dedication Land SFL2 serves the public purpose of providing for future road widening of Aldington Road.
- (h) Prior to the dedication or transfer of the Dedication Land or Dedication Land SFL2, each Landowner is to provide Council with a draft subdivision plan, with a written notice that includes written confirmation from the Surveyor setting out, in square metres, the area of the Dedication Land and the Dedication Land SFL2 (as applicable) and the calculation of the Dedication Land Offset for each Landowner, as determined by the Surveyor.
- (i) Where a draft subdivision plan provided to Council for the purpose of clause 6.3(h) contains variations to the Dedication Land, required by Council as part of any Works Approval, Council will determine according to law whether any such variations are acceptable in its capacity as the issuer of a Roads Subdivision Certificate.
- (j) When determining the areas of land for the purpose of clause 6.3(h), the Surveyor will have regard to the plans at Annexure C.

6.4 Dedication, Pavement, Verge and Intersection Rates

The parties agree that the Dedication Land Rate, Pavement Rate and Verge Rate, and Intersection Rate are consistent with the Contributions Plan as at the date of this agreement.

6.5 Maintenance and Rectification of Defects

The Road Developer must Maintain the Works and rectify any defects after Handover of the Works in accordance with the Construction Terms.

6.6 Access to Council owned land

- (a) The Council agrees to permit the Road Developer, upon receiving at least 10 Business Days' prior notice, to enter, pass through or occupy any Council owned or controlled land in order to enable the Road Developer to properly

perform its obligations under this agreement. Nothing in this clause creates or gives the Road Developer any estate or interest in any part of the Council owned or controlled land. This clause applies to any part of the Land which is dedicated or transferred to Council prior to Handover of the Works.

- (b) The Road Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the entry or access by the Road Developer to, or any presence of the Road Developer on, Council owned or controlled land for the purposes of performing their obligations under this agreement, except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

7 Application of s 7.11, s 7.12, s 7.24 and subdiv 4 of div 7.1 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of the former section 7.24 of the Act to the Development.
- (d) This agreement does not exclude the application of subdivision 4 of division 7.1 of the Act to the Development.
- (e) The benefits under this agreement are to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 Landowner Interest

- (a) Each Landowner represents and warrants to the Council that, on the date of this agreement, it:
 - (i) is the registered proprietor of its respective part of the Land and consents to the registration of this agreement in accordance with clause 8.2, and
 - (ii) has obtained the consent of each person who has an estate or interest in its respective part of the Land registered under the *Real Property Act 1900* (NSW), or is seized or possessed of an estate or interest in its respective part of the Land, to the registration of this agreement on title.

8.2 Registration of this agreement

- (a) Each Landowner agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of its respective part of the Land in accordance with section 7.6 of the Act.
- (b) Each Landowner, at its own expense, must:
 - (i) procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 40 Business Days after that date;

- (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register of its respective part of the Land as soon as reasonably practicable after this agreement is lodged for registration; and
 - (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred, including in the form of a title search.
- (c) Each Landowner, at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) an acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to its respective part of the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the relevant part of the Land as mortgagee in possession; and
 - (ii) the execution of any documents;
 to enable the registration of this agreement in accordance with this clause 8.2.
- (d) The Council agrees to do all things that may be reasonably required, within a reasonable time, to assist each Landowner to meet their obligations under this clause 8.2.

8.3 Removal from Register

The Council will, at the relevant Landowner's cost, provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied that any obligations under this agreement in respect of that part of the Land have been duly fulfilled. For the avoidance of doubt, the parties agree that the Council may, at its discretion, release and discharge this agreement over certain folios of the Register for the Land in stages.

8.4 Caveat

- (a) Each Landowner acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and each Landowner is deemed to have granted, an equitable estate and interest in its respective parts of the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the relevant part of the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for its respective part of the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the relevant Landowner's cost, register a withdrawal of any caveat in respect of the Landowner's respective part of the Land within five Business Days after that Landowner complies with clause 8.2.

- (c) A Landowner must notify the Council within five Business Days after the registration of any subdivision plan that creates a separate lot for the Dedication Land or Dedication Land SFL2 or any part of the Dedication Land or Dedication Land SFL2.
- (d) Each Landowner acknowledges and agrees that, in the event a separate lot is created for its respective part of the Dedication Land or Dedication Land SFL2 or any part of the Dedication Land or Dedication Land SFL2, it will not object to Council lodging a caveat in the relevant folios of the Register for that land, nor will it seek to remove any such caveat lodged by Council, until the relevant part of the Land is dedicated or transferred to Council in accordance with this agreement.

9 Review of this agreement

9.1 *Review generally*

- (a) This agreement may be reviewed or modified.
- (b) Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (c) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement and complies with clause 16.4.
- (d) A party is not in breach of this agreement if it does not agree to a modification to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

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

10.2 *Notice of Dispute*

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

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

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 10 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or

- (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 30 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 *Mediation*

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

- (a) The parties must agree to the terms of reference of the mediation within 20 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator, he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 10 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

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

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 10 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 5 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

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

10.8 *No suspension of contractual obligations*

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

11 **Enforcement and Security**

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 Security

11.2.1 Definition

In this clause 11.2, **Security** means each performance security to be provided pursuant to this agreement, and includes the Contribution Security, the Works Security and any Replacement Security, as the context requires.

11.2.2 Contribution Security

- (a) Within seven (7) days of an Applicant's payment of the Plan Administration Component of the Contribution for its Development in accordance with clause 6.1(c), that Applicant must provide to the Council Security in the form of a Bank Guarantee or Bond in an amount equivalent to the Balance of Contributions or the Monetary Contribution (as the case may be) payable as at the date the Security is provided, calculated in accordance with clause 11.2.2(b) (**Contribution Security**).
- (b) In determining an Applicant's Contribution Security or Replacement Security for the purposes of clauses 11.2.2(a) and 11.2.4(d) (as applicable), the relevant Applicant and Council agree to subtract from the Applicant's Balance of Contributions or Monetary Contribution liability (as the case may be) any:
 - (i) Plan Administration Component paid by that Applicant;
 - (ii) Works Offsets or Dedication Land Offsets that are attributable to that Applicant having regard to the procedures for the allocation of offsets in clause 6.1;
 - (iii) cash payments made to Council for the purposes of discharging that Applicant's Monetary Contribution liability; and
 - (iv) the value of any Material Public Benefit the subject of any WIKa or Planning Agreement entered into with Council in relation to that Applicant's Development.
- (c) Council acknowledges and agrees that, notwithstanding any other clause in this agreement, an obligation of an Applicant to provide a Contribution Security pursuant to this clause 11.2.2 is personal to each Applicant in respect of its Development and no other Applicant is liable for another Applicant's obligation to provide a Contribution Security.
- (d) If an Applicant fails to pay its Balance of Contributions or Monetary Contribution in accordance with clause 6.1(d), Council may call on the Contribution Security provided by that Applicant.
- (e) Each Applicant acknowledges and agrees that:

- (i) Council has an unfettered on demand right to have recourse to the Contribution Security if the event described in clause 11.2.2(d) occurs; and
- (ii) Council may apply the proceeds of a Contribution Security by an Applicant to satisfy:
 - (A) any obligation of that Applicant under this agreement to pay Contributions; and
 - (B) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by that Applicant to comply with this agreement.
- (iii) it will not under any circumstances, injunct or otherwise restrain:
 - (A) any issuer of any Contribution Security from paying Council pursuant to a Contribution Security; or
 - (B) Council from:
 - 1. taking any steps to obtain payment under any Contribution Security;
 - 2. converting into money any Contribution Security that does not consist of money; or
 - 3. using the moneys received under any Contribution Security.

11.2.3 Works Security

- (a) Upon commencement of this agreement, the Road Developer must provide to the Council Security in the form of Bank Guarantees and/or Bonds that together total an amount equivalent to 125% of the agreed value of the Works (**Works Security**).
- (b) Council agrees that it will accept separate Works Securities on the basis that:
 - (i) the Road Developer provides no more than three Works Securities for each of:
 - (A) the agreed value of the Phase 2 Stage 1 Works (**Stage 1 Works Security**);
 - (B) 25% of the agreed value of the Phase 2 Stage 1 Works (**Stage 1 Defects Security**);
 - (C) the agreed value of the Phase 2 Stage 2 Works (**Stage 2 Works Security**); and
 - (D) 25% of the agreed value of the Phase 2 Stage 2 Works (**Stage 2 Defects Security**),

which, for the avoidance of doubt, totals a maximum of 12 Works Securities, unless otherwise agreed;
 - (ii) the Works Securities are provided simultaneously; and
 - (iii) the aggregate of the Works Securities totals an amount equivalent to 125% of the agreed value of the Works.

- (c) Without limiting any other remedies available to Council under this agreement, Council may call on any one or more of the Works Securities if:
- (i) the Road Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (ii) all of the Road Developers become Insolvent;
 - (iii) a Development Consent or other Approval for the Works is declared by a Court to be invalid, and a new Development Consent or Approval (as may be required) for the Works has not been obtained within the timeframe specified in clause 6.2(b); or
 - (iv) the Works are not completed by the Completion Date.
- (d) The Road Developer acknowledges and agrees that:
- (i) Council has an unfettered on demand right to have recourse to the Works Security if any event described in clause 11.2.3(c) occurs;
 - (ii) the Council may apply the proceeds of any Works Security to satisfy:
 - (A) any obligation of the Road Developer under this agreement to carry out and complete the Works in accordance with the agreement; and
 - (B) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Road Developer to comply with this agreement; and
 - (iii) it will not under any circumstances, in whole or otherwise restrain:
 - (A) the issuer of any Works Security from paying Council pursuant to a Works Security; or
 - (B) Council from:
 - 1. taking any steps to obtain payment under any Works Security;
 - 2. converting into money any Works Security that does not consist of money; or
 - 3. using the moneys received under any Works Security.

11.2.4 Replacement Security

- (a) Within 20 Business Days of each calendar year of any Security provided under this clause 11, if requested by Council in writing, the Road Developer or an Applicant (as applicable) must provide Council with one or more replacement securities (**Replacement Securities**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Security,

B is the amount of the Security to be replaced,

C is the CPI for the quarter ending immediately before the date of the Security to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Security,

provided A is greater than B.

- (b) On receipt of a Replacement Security provided under clause 11.2.4(a), the Council must release and return to the relevant Road Developer or Applicant, as directed by that Road Developer or Applicant, the Security that has been replaced as soon as reasonably practicable.
- (c) At any time following the provision of a Security under this clause, the Road Developer or an Applicant(s) may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause 11.2 for the time being. On receipt of such replacement Security, the Council must release and return to the relevant Road Developers or Applicant(s), as directed, the Securities which it holds that have been replaced as soon as reasonably practicable.
- (d) Within seven (7) days of:
 - (i) the issue of a Monetary Contribution Certificate;
 - (ii) entry into a WIKA or Planning Agreement with Council in relation to the Development; and/or
 - (iii) the satisfaction of obligations under a WIKA or Planning Agreement,the Applicant may issue a request for a Replacement Security in the reduced amount of an Applicant's Monetary Contribution liability calculated in accordance with clause 11.2.2(b).

11.2.5 Return

- (a) In respect of Contribution Security, unless:
 - (i) Council has made or intends to make a demand against an Applicant's Contribution Security; or
 - (ii) that Applicant is in material or substantial breach of this agreement as it relates to the obligation to pay Contributions at the relevant time,Council must return a Contribution Security provided by that Applicant within 10 Business Days after that Applicant has discharged its obligation to pay Contributions in respect of that Applicant's Development.
- (b) In respect of Works Security, unless:
 - (i) Council has made or intends to make a demand against any Works Security provided by the Road Developer; or
 - (ii) the Road Developer is in material or substantial breach of this agreement as it relates to the Works at the relevant time,Council must promptly return a Works Security provided under this clause 11 if requested by a Road Developer and:

- (iii) in respect of the Stage 1 Works Security and Stage 2 Works Security, Handover has occurred for the Stage to which the Works Security relates; and
- (iv) in respect of the Stage 1 Defects Security and Stage 2 Defects Security, the Defects Liability and Maintenance Period (as defined in the Construction Terms) for the Stage to which the Works Security relates has expired.

11.2.6 *Enforcement*

Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:

- (a) any obligation of the Road Developer or an Applicant under this agreement; or
 - (b) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Road Developer or an Applicant to comply with this agreement,
- that is not or cannot be satisfied by calling on a Security.

11.3 *Compulsory Acquisition*

- (a) If a Landowner does not dedicate or transfer that part of the Dedication Land it owns to Council as required by this agreement, the Landowner agrees that the Council may compulsorily acquire that part of the Dedication Land the Landowner has failed to dedicate or transfer, in which case the Landowner consents to the Council compulsorily acquiring that part of the Dedication Land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from the Landowner.
- (b) Clause 11.3(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between a Landowner and Council, the Landowner must ensure that the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3(a).
- (d) A Landowner whose land is acquired in accordance with clause 11.3(a) indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land acquired.
- (e) The Landowner must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.3(a) that are not or cannot be recovered by calling on a Security.

11.3A *Compulsory Acquisition – SFL2*

- (a) If SFL2 does not dedicate or transfer the Dedication Land SFL2 to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case SFL2 consents to the Council compulsorily acquiring that land

for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) and may recover any costs, including legal costs, incurred by the Council on acquisition of the land from SFL2.

- (b) Clause 11.3A(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (c) Except as otherwise agreed between SFL2 and Council, SFL2 must ensure the Dedication Land SFL2 is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with clause 11.3A(a).
- (d) SFL2 indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the Dedication Land SFL2 under clause 11.3A(a).
- (e) SFL2 must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the Dedication Land SFL2 under clause 11.3A(a) that are not or cannot be recovered by calling on a Security.

11.4 Restriction on the issue of Certificates

- (a) In accordance with section 6.10 of the Act and section 48 of the Regulation, the following obligations under this agreement must be satisfied in relation to the issue of an Occupation Certificate for Development:
 - (i) dedication or transfer of the Dedication Land in accordance with clause 6.3(d); and
 - (ii) Handover of the Works in accordance with clauses 6.2(e) and 6.2(f).
- (b) In accordance with section 6.10 of the Act and section 48 of the Regulation, the obligation to dedicate or transfer the Dedication Land SFL2 in accordance with clause 6.3(e) must be satisfied before an Occupation Certificate is issued for Development on the SFL2 Land.
- (c) In accordance with section 6.15(1)(d) of the Act, an Applicant's obligations to:
 - (i) provide a Contribution Security in accordance with clause 11.2.2(a);
 - (ii) pay the Monetary Contribution in accordance with clauses 6.1(d) and 6.1(i),are restrictions on the issue of Subdivision Certificates for Development on that Applicant's part of the Land.

11.5 General Enforcement

- (a) Subject to clause 10 ("Dispute Resolution") and without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and

- (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 Assignment and Dealings

12.1 Assignment

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

12.2 Transfer of Land

A Landowner may not, transfer, assign or dispose of the whole or any part of its right, title or freehold interest in the Land (present or future) to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:

- (a) the Landowner satisfies the Council that the proposed Transferee is financially capable of complying with the relevant Landowner's obligations under this agreement and, if that Landowner is also a Road Developer, the Road Developer's obligations under this agreement;
- (b) the Landowner satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
- (c) the Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Landowner and, if that Landowner is also a Road Developer, of the Road Developer under this agreement;
- (d) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
- (e) the Landowner and the Transferee pay the Council's reasonable costs in relation to the assignment.

13 Approvals and consents

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

14 No fetter

14.1 Discretion

- (a) This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to a Development Application

in respect of the Development or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

- (b) The Council nevertheless acknowledges that in accordance with section 7.11(6) of the Act, when considering the Contributions payable by an Applicant pursuant to a future Development Consent that applies to land within the Mamre Road Precinct, the consent authority must have regard to the final Monetary Contribution Certificate issued in accordance with clause 6.1(m) and take into consideration the value of the Works Offset and the Dedication Land Offset (as applicable) to the extent that they exceed the Monetary Contribution in determining the amount of the Contributions payable at that time pursuant to the future Development Consent.

14.2 *No fetter*

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

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

15 Notices

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

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

- (i) to Penrith City Council: PO Box 60, Penrith, NSW 2751
Fax: (02) 4732 7958
Email: council@penrith.city
Attention: The General Manager
- (ii) to The Company
Directors and
Secretary, Australand
C & I Land Holdings
Pty Ltd and FPI
Developments NSW
Pty Limited
Level 2, Building C, 1 Homebush Bay
Drive, RHODES NSW 2138
Email:
Roland.Martin@frasersproperty.com.au
Attention: Roland Martin

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|-------|--|---|
| (iii) | to The Company
Directors and
Secretary, Stockland
Fife Kemps Creek Pty
Limited | Level 12, 89 York Street, SYDNEY NSW

Email:
michael.wiseman@fifecapital.com.au and
fifea@fifecapital.com.au

Attention: Michael Wiseman |
| (iv) | to The Company
Directors and
Secretary, Stockland
Development Pty
Limited and Fife Land 3
Pty Limited | Level 12, 89 York Street, SYDNEY NSW

Email:
michael.wiseman@fifecapital.com.au and
fifea@fifecapital.com.au

Attention: Michael Wiseman |
| (v) | to The Company
Directors and
Secretary, Stockland
Development Pty
Limited and Fife Land 2
Pty Limited | Level 25, 133 Castlereagh Street,
SYDNEY NSW

Email: brendon.lucas@stockland.com.au
and legal4@stockland.com.au

Attention: Brendon Lucas |

- (c) is taken to be given or made:
- (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of an email, when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above; and
- (d) if under clause 15(c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
- (i) constitutes a partnership between Council and the other parties to this agreement; or
 - (ii) except as expressly provided, makes the other parties to this agreement agents of Council for any purpose.
- (b) An Applicant cannot in any way or for any purpose:
- (i) bind Council; or
 - (ii) contract in the name of Council.

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

16.1A Liability of the Road Developer

For the avoidance of doubt and without derogating from clause 2(p), as the Road Developer consists of more than one person, liability of the Road Developer under this agreement is a joint liability of all those persons and a separate liability of each of them.

16.1B Civil Liability Act

It is agreed that, to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any obligations and liabilities of the Road Developer under this agreement, whether such obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute, or otherwise at law.

16.2 Time for doing acts

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

16.3 Further assurances

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

16.4 Variation

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

16.5 Counterparts

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

16.6A Electronic execution

- (a) Each party consents to this agreement and any variations of this agreement being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this agreement or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this agreement and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the agreement;
 - (ii) insertion of the person's name on to the agreement; or

- (iii) use of a stylus or touch finger or a touch screen to sign the agreement, provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the agreement;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the agreement; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this agreement and that electronic signing of this agreement by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this agreement transmitted by email or other means of electronic transmission is deemed to have the same legal effect as delivery of an original executed copy of this agreement for all purposes.

16.6 Legal expenses, stamp duty and administration fees

The Road Developer must pay on demand Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, stamping, and release and discharge of this agreement, including the reasonable costs incurred by the Council in obtaining any advice about this agreement or the value of land or works to be delivered under this agreement.

16.7 Entire agreement

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

16.8 Representations and warranties

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

16.9 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.10 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.

- (b) A word or provision must be severed if:
 - (i) despite the operation of clause 16.10(a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.10(b) applies.

16.11 Waiver

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

16.12 GST

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

16.13 Governing law and jurisdiction

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

17 Reporting

On or before 31 July in each calendar year after the execution of this agreement and until all obligations under this agreement are satisfied, the Road Developer must provide a written report to Council detailing the progress of the provision of Contributions under this agreement and the progress of the Works.