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# Doonside Project Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Landcom

Minister Administering the Environmental Planning and  
Assessment Act 1979

Dated "[Insert Date]"

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## Planning Agreement

### Parties

**Landcom** of Level 2, 330 Church Street, Parramatta NSW 2150 (**Developer**)

**Minister Administering the Environmental Planning and Assessment Act 1979** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)

### Background

- A The Development is a project to which Part 3A of the Act applies.
- B The Developer has lodged with the Minister an application for approval of a project under Part 3A of the Act relating to the Development.
- C The Developer is prepared to make Development Contributions to the Council in connection with the carrying out of the Development under s93F of the Act.
- D The Developer has offered to enter into this Agreement to give effect to its Statement of Commitments..
- E The Developer will enter into further and more detailed arrangements with the Minister or the Council relating to the implementation of this Agreement in connection with any further Application to the Minister or the Council for an Approval to carry out the Development.
- F Until the Planning Agreement operates, this Agreement constitutes the Developer's offer to make Development Contributions in connection with the Development on the terms and conditions set out in this Agreement.

### Operative provisions

#### 1 Definitions & Interpretation



1.1 In this Agreement the following definitions apply:

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

**Application** means an application to the Minister for an approval under s75E of the Act or to the Council under s78A of the Act.

**Approval** means an approval granted by the Minister under s75J of the Act or by the Council under s80 of the Act.

**Compliance Certificate** means a compliance certificate within the meaning of s109C(1)(a)(i) of the Act or such other certificate as the Council may require the Developer to provide to the Council for the purposes of clause 12.

**Contribution Value** means the amount specified in Column 4 of Schedule 3 in relation to a public facility specified in Column 1 of that Schedule.

**Council** means Blacktown City Council.

**Development** means the development specified or described in Schedule 2.

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards, a public purpose.

**Final Lot** means a lot to be created in the Development for separate occupation and disposition not being:

- (a) a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to the Minister, or
- (b) a lot created by a subdivision of the Land which may be further subdivided.

**First Defects Liability Period** means the period of 180 days on and from the date on which the Developer gives the Minister a Compliance Certificate under clause 12 of this Agreement.



**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 or administration of the GST.

**Item** means an item in Column 1 of Schedule 3.

**Land** means the land specified or described in Schedule 1.

**Party** means a party to this agreement, including their successors and assigns.

**Planning Agreement** means the provisions of this Agreement under which the Developer is required to make Development Contributions in connection with the carrying out of the Development, and includes any provisions that are incidental or supplementary to those provisions.

**Provision** means the Developer's provision under this Agreement.

**Public Facility** means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

**Public Purpose** means any purpose that benefits the public or a section of the public, including but not limited to a purpose specified in s93F(2) of the Act.

**Rectification Certificate** means a compliance certificate within the meaning of s109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Notice or such other certificate as the Council may require the Developer to provide to the Council to that effect for the purposes of clause 13.

**Rectification Notice** means a notice in writing that identifies a defect in a work and requires rectification of the defect within a specified period of time.

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



**Second Defects Liability Period** means the period of 180 days on and from the date on which the Developer gives the Minister a Rectification Certificate under clause 13 of this Agreement relating to a Rectification Notice given in the First Defects Liability Period.

**Stage** means a stage in the Development.

**Statement of Commitments** means the statement of commitments within the meaning of s75D(6) of the Act accompanying the Developer's application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.

**Work** means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out by the Developer under this Agreement.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.

1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.

1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.

1.2.5 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.



- 1.2.6 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.7 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.8 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.9 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.10 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.11 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.12 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.13 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.14 Any schedules, appendices and attachments form part of this Agreement.

## **2 Application of this Agreement**

This Agreement applies to the Development.

## **3 Status of this Agreement**



- 3.1 Until the Planning Agreement operates, this document constitutes the Developer's irrevocable offer to enter into the Planning Agreement if an Approval is granted to the Development.
- 3.2 The Parties acknowledge that the offer referred to in clause 3.1 is made to fulfill the Developer's Statement of Commitments.
- 3.3 The Planning Agreement operates only if:
  - 3.3.1 the carrying out of the Development is subject to a condition imposed under s93I(3) of the Act requiring this Planning Agreement to be entered into, and
  - 3.3.2 the Planning Agreement is entered as required by clause 25C(1) of the Regulation, and
  - 3.3.3 the Developer gives the Minister notice of its intention to commence the Development pursuant to section 81A(2)(c) of the Act.

#### **4 Further Agreements Relating to this Agreement**

- 4.1 The Developer is not to make an Application for an Approval to carry out the Development unless prior satisfactory arrangements have been made between the Developer and the Council relating to the detailed implementation of the provisions of this Agreement requiring the Developer to make Development Contributions in relation to the Development.
- 4.2 Nothing in this Agreement requires the Developer enter into an agreement or arrangement with the Council that is beyond the scope of the Developer's obligations to make Development Contributions under this Agreement.
- 4.3 Without limiting clause 4.1, any such arrangements may include:
  - 4.3.1 a binding offer or undertaking by the Developer in favour of the Council, on terms satisfactory to the Council, to enter into a planning agreement with the Council under s93F of the Act to implement this Agreement or any relevant part or aspect of it, or



4.3.2 a planning agreement between the Developer and the Council under s93F of the Act relating to the implementation of this Agreement or any relevant part or aspect of it.

4.4 The Parties may, at any time, enter into such other agreements or arrangements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.

4.5 An agreement or arrangement referred to in clause 4.1, 4.2 or 4.3 is not to alter any matter for which provision is made in Schedule 3 and is not to be otherwise inconsistent with this Agreement.

4.6 Without limiting clause 4.1 or 4.3, an agreement or arrangement referred to in those clauses may make provision for:

4.6.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,

4.6.2 the location at which a Public Facility is to be provided and the time at which and the manner in which it will be made available,

4.6.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and

4.6.4 the time at which and the manner in which a Work is to be handed over to the Council.

4.7 Without limiting clause 4.1, an agreement or arrangement referred to in clauses 4.1 or 4.3 must make provision for the terms on which and the time at which the Council is to return the amount payable by the Developer to the Council under clause 14.1 to the Developer.

## **5 Application of s94 and s94A of the Act to the Development**

5.1 This Agreement excludes the application of s94 and s94A of the Act to the Development.

## **6 Effect of Approvals on the Development**



- 6.1 The purpose of this clause is to ensure that the Developer is not required to make Development Contributions in respect of the Development that exceed the sum of all Contribution Values.
- 6.2 If Development Consent is granted to the Development subject to a condition imposed under s75J(4) or 75O(4) of the Act requiring the Developer to carry out Work for a Public Purpose, the value of the Developer's Provision under this Agreement is to be reduced by the value of the Work.
- 6.3 For the purpose of clause 6.2, the value of the relevant Work is the value determined in accordance with clause 8 of this Agreement.
- 6.4 If clause 6.2 applies, the Parties, acting in good faith and using their best endeavours, are to agree on an appropriate adjustment of the Developer's obligations under this Agreement to give effect to that subclause.

## **7 Provision of Development Contributions under this Agreement**

- 7.1 Subject to this Agreement, the Developer is to make Development Contributions towards each Public Facility specified in Column 1 of Schedule 3 to the Contribution Value specified in Column 4 of that Schedule in relation to the Public Facility.
- 7.2 A Development Contribution referred to in clause 7.1 is to be made:
- 7.2.1 in accordance with the specification in Column 1 of Schedule 3,
  - 7.2.2 for the Public Purpose referred to in Column 2 of Schedule 3 in relation to the relevant Public Facility,
  - 7.2.3 in the form specified in Column 3 of Schedule 3 in relation to the relevant Public Facility, and
  - 7.2.4 in accordance with any agreement entered into by the Parties under clause 4 of this Agreement.
- 7.3 Except as provided by clause 13, a Development Contribution made under this Agreement is made in full and final satisfaction of all costs and expenses



required to be borne by the Developer of and incidental to the Provision of the Public Facility to which it relates.

## 8 Determination of Value

8.1 For the purposes of this Agreement, the Parties acknowledge that the Contribution Value specified in Column 4 of Schedule 3 in respect of the Public Facility specified in Column 1 of that Schedule is determined as follows:

8.1.1 where the Development Contribution is in the form of a monetary contribution, the Contribution Value is the dollar value of the monetary contribution,

8.1.2 where the Development Contribution is in the form of the dedication of land, the Contribution Value is the estimated amount of compensation to which the Developer would be entitled under the *Land Acquisition (Just Terms Compensation) Act 1991* upon the compulsory acquisition of the land,

8.1.3 where the Development Contribution is in the form of Works, the Contribution Value is the estimated value of the completed works determined using the method that would be adopted by a suitably qualified quantity surveyor, and all costs associated with the provision of the completed works including the costs of design, project management, consultants and any fees and charges incurred by the Developer,

8.1.4 where the Development Contribution relating to the Public Facility is not one to which clauses 8.1.1-8.1.3 applies, the Contribution Value is the dollar amount as agreed between the Parties.

8.2 The value of any aspect of the Developer's Provision to be determined for purpose of this Agreement is taken to be the value determined, at the date specified by this Agreement or otherwise by agreement of the Parties, in accordance with clauses 8.1.1-8.1.3 as if a reference to the Contribution Value was a reference to the value of the aspect required to be determined.



## **9 Application of Development Contributions by the Minister**

9.1 The Developer acknowledges that:

9.1.1 a Development Contribution made by the Developer under this Agreement is to be applied towards the Public Facility for which it is made and at the locations, in the manner and to the standards required by or under this Agreement, and

9.1.2 each such Public Facility is to be available for the Public Purpose relating to that facility and may be made available in the manner that best meets the demand for the facility created by the Development.

## **10 Monetary Contributions**

10.1 If Schedule 3 specifies a rate at which a Monetary Contribution may be paid in respect of each Final Lot in the Development, the Monetary Contribution may be so paid notwithstanding any lump sum amount specified in that Schedule.

10.2 A Monetary Contribution is made for the purposes of this Agreement when cleared funds are deposited by means of electronic funds transfer into a bank account nominated by the Council.

10.3 The Developer is to give the Council not less than 2 business days written notice of:

10.3.1 its intention to pay a Monetary Contribution,

10.3.2 the Public Facility to which the Monetary Contribution relates, and

10.3.3 the amount proposed to be paid.

10.4 The Developer is not required to pay a Monetary Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 10.3, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay.



- 10.5 The Developer is not in breach of this Agreement if it fails to pay a Monetary Contribution at the time required by this Agreement by reason only of the Council's failure to give to the Developer a tax invoice in relation to the amount proposed to be paid by the Developer.

## 11 Dedication of Land

- 11.1 The Developer is required by this Agreement to dedicate land specified in Part 1 of the Table to Schedule 3 under the heading *Part A – Land Dedication* upon the earlier to occur of:

11.1.1 the issuing of a Subdivision Certificate to create a Final Lot within the Stage in which the land to be dedicated is situated, or

11.1.2 the handing-over to the Council under clause 12 of Work required by this Agreement to be carried out on the land that is to be dedicated to the Council

- 11.2 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement when the Council is given an instrument in registrable form under the *Real Property Act 1900* that is effective to transfer title to the land to the Council when registered.

- 11.3 To allow for the registration of an instrument of transfer referred to in clause 11.1, the Developer is to:

11.3.1 produce to the Land Titles Office the certificate of title to land to be dedicated under this Agreement or a direction allowing the certificate of title to be used for that purpose, and

11.3.2 give to the Council an irrevocable undertaking to deliver to the Council the certificate of title if that certificate is released to the Developer by the Land Titles Office.

- 11.4 Subject to any agreement between the Developer and the Council to the contrary, the Developer is to dedicate land specified in the Table to Schedule 3 at the same time as it is required, in accordance with clause 12.3, to hand-



over any Work required by this Agreement to be undertaken by the Developer on the land.

## 12 Carrying Out & Hand-over of Work

- 12.1 The Developer is to carry out Work for the purpose of the Public Facilities specified or described in Items B1 – B15 in Part 1 of the Table to Schedule 3 under the heading *Part B – Works*.
- 12.2 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the hand-over of the Work in accordance with this clause.
- 12.3 Subject to this Agreement, when the Developer considers that a Work relating to a Public Facility specified in Column 1 of the Table to Schedule 3 is complete, the Developer is to give to the Council a Compliance Certificate relating to the Work.
- 12.4 The Developer is to hand-over to the Council a Work that is the subject of a Compliance Certificate on the date specified by the Council following receipt of the Compliance Certificate .

## 13 Rectification of Defects

- 13.1 The Developer must, at its own cost, comply with any Rectification Notice given to it by the Council during the First Defects Liability Period and the Second Defects Liability Period.
- 13.2 When the Developer considers that rectification is complete, the Developer may give to the Council a Rectification Certificate relating to the Work the subject of the relevant Rectification Notice.
- 13.3 A Rectification Certificate discharges the Developer from any further obligation to comply with a Rectification Notice.
- 13.4 The Developer acknowledges that any costs incurred by the Council as a result of the Developer's non-compliance with a Rectification Notice may be recovered by the Council as a debt due in a court of competent jurisdiction.



#### **14 Provision of Security**

- 14.1 Prior to the construction of any Work specified in Column 1 of Schedule 3, the Developer is to pay to the Council the amount of \$20,000 to cover any costs that may be incurred by the Council in enforcing this Agreement in the event of a breach by the Developer.

#### **15 Enforcement**

- 15.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party in any court of competent jurisdiction.
- 15.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 15.2.1 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,
- 15.2.2 the Minister 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.

#### **16 No Registration of this Agreement**

The Parties agree not to register this Agreement under s93H of the Act.

#### **17 Sale of the Land**

- 17.1 The Developer agrees not to sell the Land or part of the Land, other than a Final Lot created pursuant to an Approval granted to the Application, unless:
- 17.1.1 it has, at no cost to the Minister or the Council, first procured the execution by the person with whom it is dealing a Deed in favour of the Minister or the Council on terms reasonably acceptable to them,
- 17.1.2 the Minister and the Council, by notice in writing to the Developer, have stated that evidence satisfactory to them has been produced by the Developer to show that the purchaser of the Land or part is



reasonably capable of performing its obligations under the Deed referred to in clause 17.1.1, and

17.1.3 the Developer is not in breach of this Agreement.

17.2 The Developer is not obliged to procure the agreement referred to in clause 17.1.1 if that part of the Land being sold is a Final Lot.

## **18 Review of this Agreement**

18.1 The Parties, acting in good faith and using their best endeavours, agree to review this Agreement every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred that materially affects the operation of this Agreement.

18.2 For the purposes of clause 18.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

18.3 A failure by a Party to agree to participate in, or to take action requested by the other Party as a consequence of, a review under clause 18.1 is taken to be a dispute for the purposes of clause 19.

## **19 Dispute Resolution**

19.1 Should a dispute arise under this Agreement, the Parties shall firstly meet in an attempt to resolve the dispute.

19.2 If the dispute is not resolved within 28 days of the date that a Party first raises the issue about which there is a dispute, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales as set out in Schedule 4 or such amended or other Rules that are current at the time the dispute is mediated, and must request the President of the Law Society, or the President's nominee, to select a mediator.

19.3 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has



been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

## 20 Notices

20.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

20.1.1 delivered or posted to that Party at its address set out in Schedule 5.

20.1.2 faxed to that Party at its fax number set out in Schedule 5.

20.1.3 emailed to that Party at its email address set out in Schedule 5.

20.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

20.3 Any notice, consent, information, application or request is to be treated as given or made if it is:

20.3.1 delivered, when it is left at the relevant address.

20.3.2 sent by post, 2 business days after it is posted.

20.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

20.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.



**21 Approvals and Consent**

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

**22 Costs**

The Developer agrees to pay the Minister's reasonable costs not exceeding \$10,000 of preparing, negotiating, executing and stamping this Agreement and any document related to this Agreement.

**23 Entire Agreement**

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

**24 Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

**25 Governing Law and Jurisdiction**

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

**26 Joint and Individual Liability and Benefits**

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them



jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

**27 No Fetter**

Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**28 Representations and Warranties**

The Parties represent and warrant that they have power 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.

**29 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.

**30 Modification**

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

**31 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any



other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

### **32 GST**

32.1 Except as provided by clause 32.2, if any Party reasonably decides that it is liable to pay GST on a supply made to the other Party under this Agreement and the supply was not priced to include GST, then the recipient of the supply must pay an additional amount equal to the GST on that supply.

32.2 If the Developer is or becomes liable to pay GST on a Development Contribution under this Agreement, the Contribution Value of that Development Contribution shall be taken to include the value of the GST which the Developer is liable to pay.

### **33 Explanatory Note Relating to this Agreement**

33.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

33.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.



## Schedule 1

(Clause 1.1)

### The Land

The land the subject of the Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development

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## Schedule 2

(Clause 1.1)

### The Development

The development described in the Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development

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## Schedule 3

(Clause 7)

## The Development Contributions

## Part 1

## Table

Column 1	Column 2	Column 3	Column 4	
Item	Public Purpose	Timing	Contribution Value	
<b>Part A – Land Dedication</b>				
A1	Dedication of the land shown on Plan 01 in Part 2 of Schedule 3 to Blacktown City Council, at no cost to Council, in relation to a number of facilities including public roads, public open space, special purposes (heritage) and community land.	Public land	Constructed on a stage by stage basis and generally in accordance with the Staging Plan in Part 2 of Schedule 3.	Nil
<b>Contribution Value Subtotal</b>			<b>Nil</b>	
<b>Part B – Works</b>				
B1	Provision of local roads and a collector road, including street tree planting as shown on Plan 02 in Part 2 of Schedule 3.	Public road	When required by each stage of the Development and generally in accordance with the Staging Plan in Part 2 of Schedule 3, which may be amended by the Developer	Nil



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
			from time to time.	
B2	<p>Upgrading of the following intersections as shown on Plan 02 in Part 2 of Schedule 3 to allow vehicular access to the development:</p> <p>(a) Eastern Creek/Doonside Road;</p> <p>(b) Doonside Road/Bungarribee Road (new arm to existing roundabout and reconfiguration of intersection); and</p> <p>(c) Doonside Road/Douglas Road (new arm to signalized intersection and upgrading of traffic signals).</p>	Intersection upgrades	Prior to the release of the stage to which the facility relates as shown on the Staging Plan in Part 2 of Schedule 3.	Nil
B3	<p>The provision of three mid block signalized pedestrian crossings:</p> <p>(a) on Eastern Road, west of the Doonside Road roundabout;</p> <p>(b) on Doonside Road, adjacent to Birdwood Avenue; and</p> <p>(c) on Doonside Road, adjacent to Bowes Place, as shown on Plan 02 in</p>	Pedestrian safety	Prior to the release of the stage to which the facility relates as shown on the Staging Plan in Part 2 of Schedule 3.	\$990,000

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	Part 2 of Schedule 3.			
B4	<p>The provision of two pedestrian bridges linking the Development to the Western Sydney Parklands:</p> <p>(a) across Eastern Creek; and</p> <p>(b) across Bungarribee Creek,</p> <p>in the locations generally indicated on as shown on Plan 02 in Part 2 of Schedule 3 providing access for pedestrians, bicycles and maintenance vehicles only.</p>	Access to parklands	When required by each stage of the Development and generally in accordance with the Staging Plan in Part 2 of Schedule 3.	\$330,000
B5	Provision of a pedestrian/cycleway network internal to the Development and along the eastern side of the Development on Doonside Road between Eastern Road and Bungarribee Creek as shown on Plan 02 in Part 2 of Schedule 3.	Pedestrian/cycle way	When required by each stage of the Development and generally in accordance with the Staging Plan in Part 2 of Schedule 3	\$3,748,500
B6	Provision or upgrading of a pedestrian network linking the Development to external facilities including the Rainbow Shopping Centre, Doonside railway station and the Mountain View Adventist School and Church as shown on Plan 01 in Part 2 of Schedule 3.	Provision and upgrade of pedestrian network	Prior to the release of the stage to which the facility relates stage as shown on the Staging Plan in Part 2 of Schedule 3.	\$40,500

Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
B7	<p>Conservation (other than ongoing maintenance) of the archaeological remains of the former Bungarrabee House and its surrounds as provided for in the Developer's Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.</p>	Conservation of archaeological remains	When required by each stage of the Development and generally in accordance with the Staging Plan in Part 2 of Schedule 3.	A proportion of the combined value of Items B7 and B8, being \$ 2,890,500
B8	<p>Construction of a community facility (<b>Douglas Road Community Facility</b>) to be operated by Blacktown City Council, subject to Council's request for such a facility and with part funding from Council.</p> <p>Arrangements in relation to the location and construction of the Douglas Road Community Facility as follows:</p> <p>(a) If the <b>Douglas Road Community Facility</b> is constructed by Landcom as part of its development, Landcom will transfer it to the Council in return for a payment by the Council to Landcom.</p> <p>(b) If the <b>Douglas Road Community Facility</b> is not constructed by Landcom as part of its development, Landcom will pay an amount to Council which is equivalent to the s94 contribution that would be</p>	Council community facility	Following discussions and negotiation with Blacktown City Council after Council has updated its Social Plan, expected to be after June 2007. Landcom will include details of the Douglas Road Community Facility in the Development Application described in B7 above.	A proportion of the combined value of Items B7 and B8, being \$ 2,890,500.



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	payable by Landcom in respect of that facility.			
B9	The creation of a vegetated acoustic buffer on the eastern side of the Development along Doonside Road as shown on Plan 03 in Part 2 of Schedule 3.	Acoustic treatment	Prior to the release of the stage to which the facility relates as shown on the Staging Plan in Part 2 of Schedule 3.	\$829,500
B10	Rehabilitation, revegetation and enhancement of two internal creeks (the Northern Creek and the Southern Creek) as provided for in the Developer's Application to the Minister under s75M of the Act for an Approval for a concept plan relating to the Development.	Environmental rehabilitation of creeks	When required by each stage of the Development and generally in accordance with the Staging Plan in Part 2 of Schedule 3.	\$1,199,000
B11	Provision of detention basins along the eastern side of Bungarabee Creek and Eastern Creek in accordance with the <i>Water Sensitive Urban Design reports for the Western Sydney Parklands and the Doonside Residential Area prepared by Ecological Engineering, dated April 2007</i> and as amended from time to time.	Stormwater management	Prior to the release of the stage to which the facility relates as shown on the Staging Plan in Part 2 of Schedule 3.	\$3,976,500
B12	Implementation of a water-sensitive urban design scheme in accordance with the <i>Doonside Water Sensitive Urban Design</i>	Water conservation	Constructed on a stage by stage basis.	\$1,171,500



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	<i>report prepared by Ecological Engineering dated April 2007.</i>			
B13	Embellishment of of passive local open space facilities as shown on Plan 03 in Part 2 of Schedule 3 dedicated in Item A2.	Embellishment of passive open space	Prior to the release of the stage to which the facility relates as shown on the Staging Plan in Part 2 of Schedule 3.	\$1,612,000
B14	Provision of public art throughout public areas such as on public roads and in public open spaces, in accordance with the Doonside Public Art Strategy.	Public art	Constructed on a stage by stage basis.	\$550,000
B15	Provision of three bus stops along the collector road in the locations generally indicated on as shown on Plan 02 in Part 2 of Schedule 3.	Public transport	Constructed on a stage by stage basis.	\$60,000
<b>Contribution Value Subtotal</b>				<b>\$17,398,000</b>
<b>Part C – Monetary Contributions</b>				
C1	Payment by the Developer to the Western Sydney Parklands Trust to fund the provision of a vegetation offset in the Western Sydney Parklands to compensate for the loss of Cumberland Plain Woodland as a consequence of the Development, with the		Prior to the release of Stage 1.	\$1,096,400



Column 1		Column 2	Column 3	Column 4
Item		Public Purpose	Timing	Contribution Value
	offset being generally in accordance with the <i>Draft Doonside Conservation Plan, dated March 2007</i> and as agreed with the Western Sydney Parklands Trust.			
<b>Contribution Value Subtotal</b>				<b>\$1,096,400</b>
<b>Contribution Value Total for Planning Agreement</b>				<b>\$18,494,400</b>

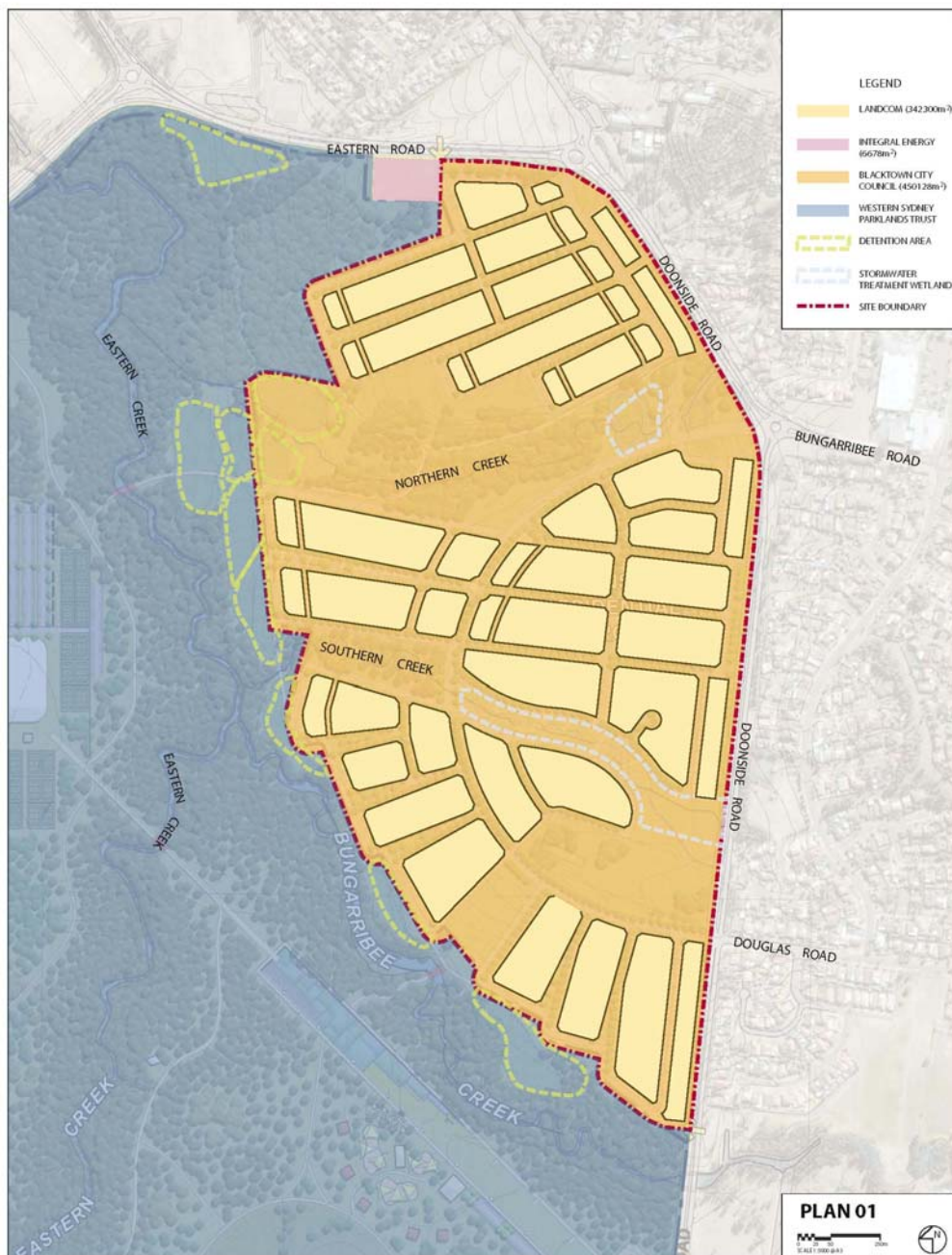
DRAFT



Part 2

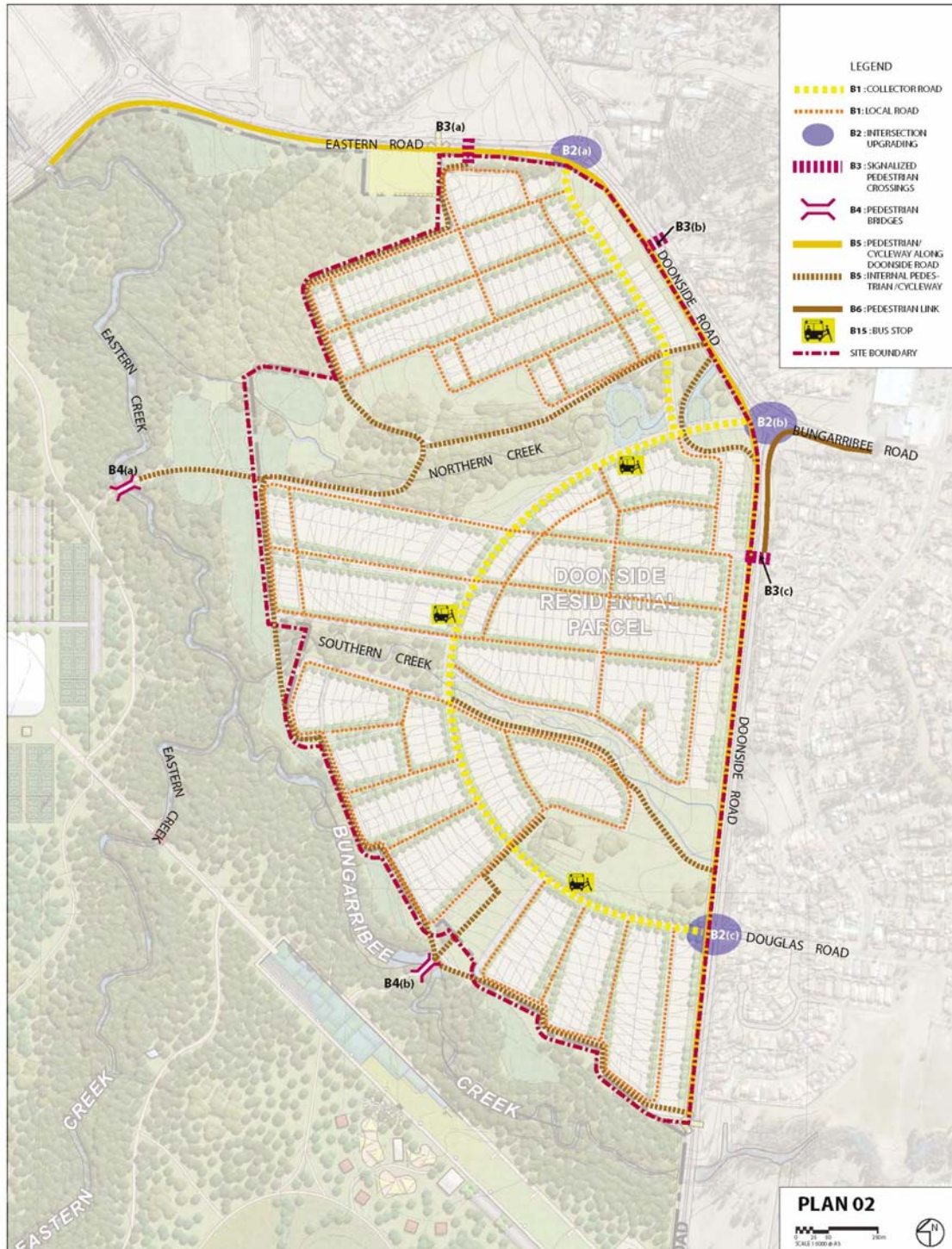
Supporting Plans

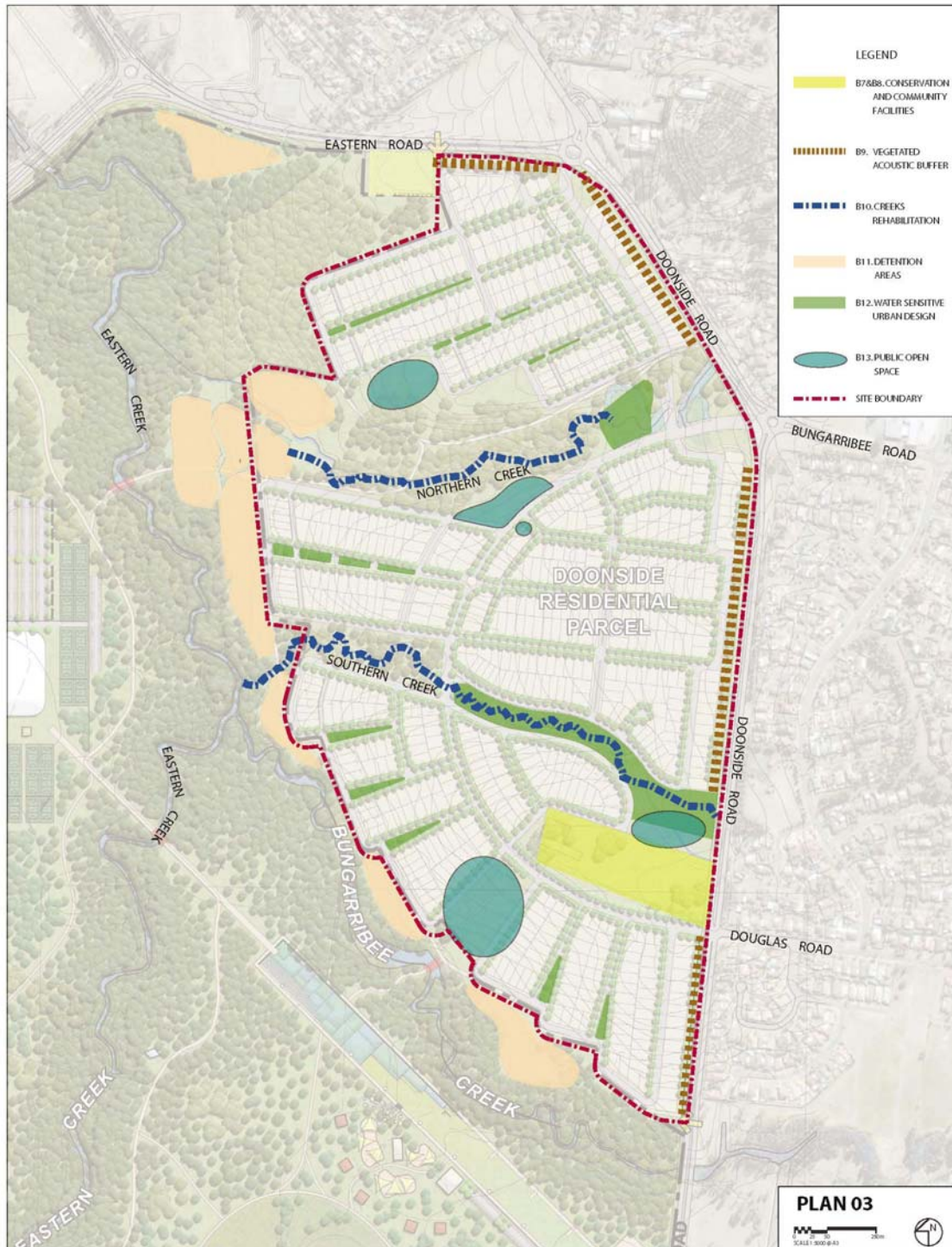
Land Dedication Plan – 01





Works Plan – 02 and 03





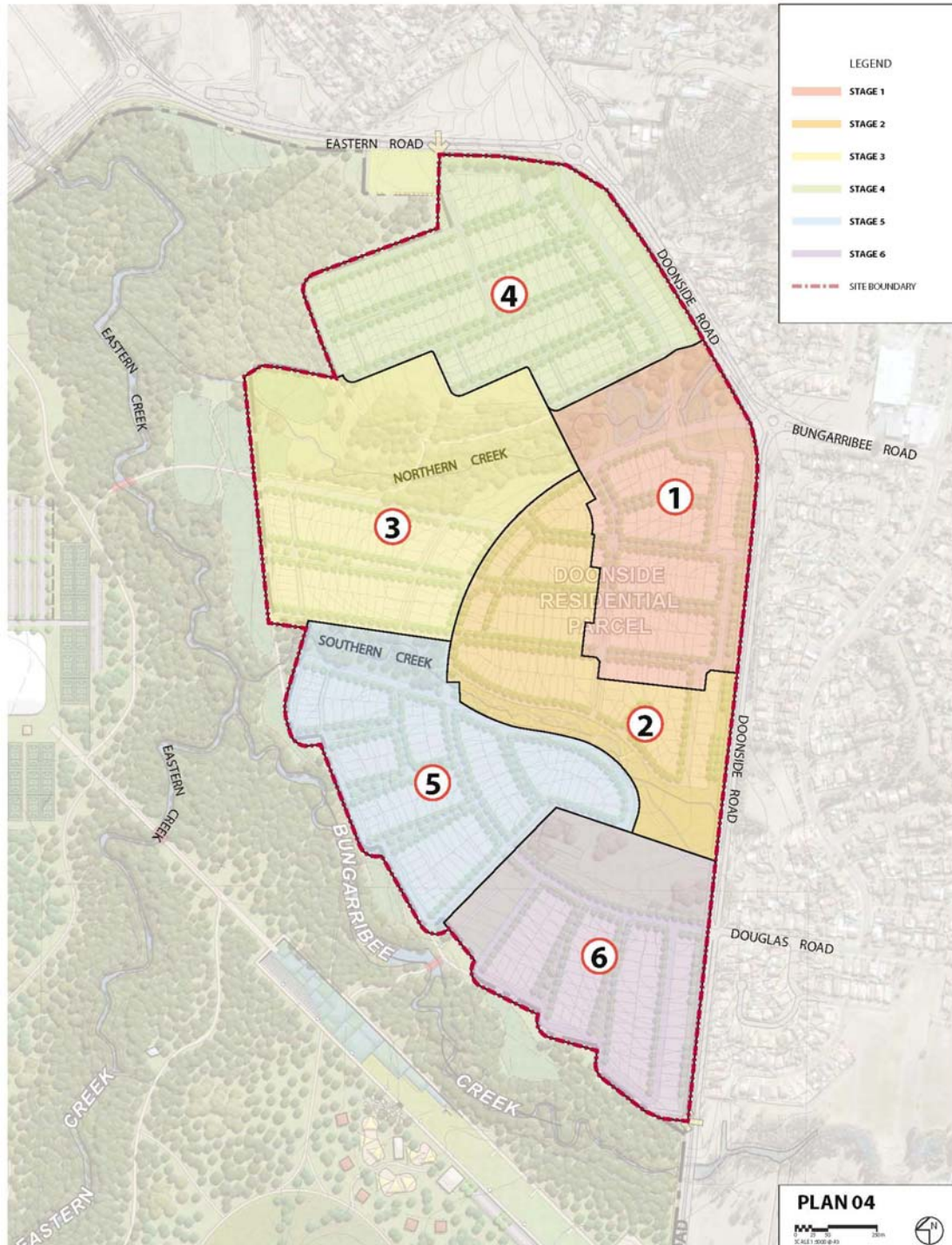
**BUNGARRIBEE PRECINCT PROJECT DOONSIDE RESIDENTIAL PARCEL**  
 DOONSIDE PROJECT PLANNING AGREEMENT, SUPPORTING PLANS (PART 2 - SCHEDULE 3)

PREPARED FOR: DoP and LANDCOM

DATE: 14 AUGUST 07  
 DRAFT 4



Staging Plan – 04





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Schedule 4

(Clause 19)

**Law Society of NSW – Mediation Rules**

**Functions of the Mediator**

1. The mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute (“the Dispute”) by agreement between them.
2. The mediator will not make decisions for a party or impose a solution on the parties.
3. The mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

**Conflicts of Interest**

4. The mediator must disclose to the parties to the best of the mediator’s knowledge any prior dealings the mediator has had with either of them and any interest the mediator has in the Dispute.
5. If in the course of the mediation the mediator becomes aware of any circumstances that might reasonably be considered to affect the mediator’s capacity to act impartially the mediator will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the mediator.

**Co-operation in the Mediation**

6. The parties must co-operate with the mediator and each other during the mediation to achieve a mutually satisfying outcome to their dispute.
7. Each party must use its best endeavours to comply with reasonable requests made by the mediator to promote the efficient and expeditious resolution of the Dispute.



### **Authority and Representation**

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.
9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

### **Conduct of the Mediation**

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such manner as the mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.
12. Without limiting the mediator's powers under Rule 10 the mediator may give directions as to:
  - 12.1 Preliminary conferences prior to the mediation conference.
  - 12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
  - 12.3 The exchange of brief written outlines of the issues involved.
  - 12.4 Service on the mediator prior to the mediation conference of any such reports and outlines.

### **Communication between the Mediator and a Party**



13. The mediator may meet as frequently as the mediator deems appropriate with the parties together or with a party alone and in the latter case the mediator need not disclose the meeting to the other party.
14. The mediator may communicate with any party orally and/or in writing.
15. Subject to Rule 16, any document relied upon by a party and provided to the mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the mediator by a party in the absence of the other party may not be disclosed by the mediator to the other party unless the disclosing party permits the mediator to do so.

#### **Confidential Information**

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including the preliminary steps:
  - 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
  - 17.2 may not be used for a purpose other than the mediation.

#### **Privilege**

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:
  - 18.1 Any settlement proposal, whether made by a party or the mediator.
  - 18.2 The willingness of a party to consider any such proposal.
  - 18.3 Any admission or concession or other statement or document made by a party.
  - 18.4 Any statement or document made by the mediator.



### **Subsequent Proceedings**

19. The mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the Dispute.
20. Neither party will take action to cause the mediator to breach Rule 19.

### **Termination**

21. A party may terminate the mediation immediately by giving written notice to each other party and to the mediator at any time during or after the mediation conference.
22. The mediator may immediately terminate the engagement as mediator by giving written notice to the parties of that termination, if, after consultation with the parties, the mediator forms the view that the mediator will be unable to assist the parties to achieve resolution of the Dispute. The mediation will not be terminated in that event unless a party gives notice to that effect to each other party. The parties must appoint another mediator, where the mediation is not terminated.
23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

### **Settlement**

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the mediator before any of the participants leave the mediation conference.

### **Enforcement**

25. In the event that part or all of the Dispute is settled either party will be at liberty:
  - 25.1 To enforce the terms of the settlement by judicial proceedings.



- 25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the mediator and any other person engaged in the mediation.

### **Exclusion of Liability and Indemnity**

26. The mediator will not be liable to a party except in the case of fraud by the mediator for any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.
27. The parties shall jointly and severally indemnify the mediator against all claims, except in the case of fraud by the mediator, arising out of or in any way referable to any act or omission by the mediator in the performance or purported performance of the mediator's obligations in the mediation.

### **Costs**

28. The parties will share equally and will be jointly and severally liable to the mediator for the mediator's fees for the mediation. The mediator may, at any time and from time to time, require each party to deposit with the mediator such sum as the mediator considers appropriate to meet the mediator's anticipated fees and disbursements. The mediator may decline to embark upon or continue the mediation until all such deposits are made.
29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause.



Schedule 5

(Clause 20)

Contact for Notices

**Minister**

Attention: ##

Address: ##

Fax Number: ##

Email: ##

**Developer**

Attention: Stuart McCowan

Address: Level 2, 330 Church Street, Parramatta NSW 2150

Fax Number: 9841 8666

Email: [smccowan@landcom.nsw.gov.au](mailto:smccowan@landcom.nsw.gov.au)



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## Execution

Dated: ##

Executed as an Agreement: ##

**On behalf of the Developer:**

**SIGNED** by me Sean O'Toole, Managing )

Director as Delegate of Landcom and I )

hereby certify that I have no notice of )

revocation of such delegation )

In the presence of )

\_\_\_\_\_ )

**On behalf of the Minister:**

**[Drafting Note Execution. Insert an execution clause for the Minister]**



Appendix

(Clause 40)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the Environmental Planning and Assessment Act 1979

Parties

**Landcom** of Level 2, 330 Church Street, Parramatta NSW 2150 (**Developer**)

**Minister Administering the Environmental Planning and Assessment Act 1979**  
of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000  
(**Minister**)

1 **Description of Subject Land**

<b>Lot</b>	<b>DP</b>
6	1010405
1	1041487

2 **Description of Proposed Application**

## [Drafting Note: Please include a similar description as that given in Schedule 2]

3 **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

## [Drafting Note: Minister to complete]



**4 Assessment of the Merits of the Draft Planning Agreement**

**4.1 The Planning Purposes Served by the Draft Planning Agreement**

#### [Drafting Note: Minister to complete]

**4.2 How the Draft Planning Agreement Promotes the Public Interest**

#### [Drafting Note: Minister to complete]

**4.3 For Planning Authorities:**

N/A

**4.3.1 Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under Which it is Constituted**

N/A

**4.3.2 All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority’s Capital Works Program**

## to be completed by the Minister ##

Dated: ##

Signed on behalf of the Minister:

Signed on behalf of the Developer:



DRAFT