

Proposed Amendments to Planning Agreement

Clause	Current wording	Proposed wording
5.6	Include a new paragraph at the bottom of the clause	The Monetary Contribution is to be used by Council towards the works listed in the Warnervale District Contribution Plan.
5.7	The payment required by Clause 5.6 of this Agreement may be offset by a credit to be given to the Proponent by Council for the transfer of the part of the "Road Land" which shown by hatching on the map in Schedule 2. The quantum of that credit is to be calculated according to its area (100.12m ²) multiplied by greater of \$45 per square metre or a rate per square metre introduced by a Contribution Plan that applies to that land at the date of payment	The payment required by Clause 5.6 of this Agreement may be offset by a credit to be given to the Proponent by Council for the land and works outlined in Schedule 4 of the agreement and approved by SCC/58/2020.
5.8	New Clause	<p>Reduction in monetary contributions</p> <p>(a) To enable the reduction of monetary contributions, the proponent must provide to Council the tender costs of works consistent with Schedule 4 and Schedule 5 and works approved in SCC/58/2020.</p> <p>(b) Council must advise the Proponent within 20 Business Days of receiving the tender costs, whether or not it agrees with the tender costs.</p> <p>(c) If Council agrees with the tender costs, the Monetary contributions in clause 5.6 of the planning agreement will be reduced by the amount specified in the tender schedule.</p> <p>(d) Works are to be completed as approved under SCC/58/2020 and the Contribution Works Procedure outlined in Schedule 5.</p>
16	Notices – Proponent Details	<p>Update proponent details</p> <p>Proponent: LGJJ Developments Pty Limited C/- ADW Johnson Pty Limited Attention: Brian McGregor PO Box 3717 Tuggerah NSW 2259</p>

		Email: brianm@adwjohnson.com.au
Schedule 2	Proposed Plan of Subdivision	Remove diagram and text box noting the Section 94 credit as this will be covered under Schedule 4.
Schedule 4	N/A – New Schedule	New Schedule – Works and Land dedication offsets
Schedule 5	N/A – New Schedule	New Schedule – Contribution Works Procedure

Schedule 4 – Works and Land Offsets

Work Item	Work Item	Quantity	Description
1	Shared pathway – Louisiana Road Corridor	52 metres	Provision of a 2.5m wide shared path from existing shared path adjacent to Lot 306 DP 1209924 to the eastern side of the Louisiana Road corridor
2	Shared pathway across Wadalba Wildlife Corridor	121 metres	Provision of a 2.5m wide shared path from the eastern side of Louisiana Road corridor to western end of proposed lot 60 DP 1282625
3	Share pathway adjacent to proposed lots 59 & 60 DP 1282625	90 metres	Provision of a 2.5m wide shared path form the western end of proposed lot 60 to eastern end of proposed lot 59
4	Pavement construction in Johns Road, Wadalba	172.5 metres	Half road pavement reconstruction for the realignment of Johns Road from Ch71.079 to Ch243.642 across the frontage of the Louisiana Road Corridor and the Wadalba Wildlife Corridor. The pavement credit will be calculated as the difference in cost between a local and collector road, to be consistent with the Warnervale District Contribution Plan 2021.
5	Land dedication – Road Widening, Johns Road Wadalba	172.5 metres	The land dedication rates to be consistent with item R49-12 within the Warnervale District Contribution Plan 2021.
6	Stormwater culvert upgrade under Johns Road, Wadalba – SW Line 12 (western culverts)	19.3 metres	Upgrade from 2 x 900mm dia RCP to 3x1500x1200 Box Culverts
7	Stormwater culvert upgrade under Johns Road, Wadalba – SW Line 13 (eastern culverts)	26.7 metres	Upgrade from 2 x 900mm dia RCP to 2x1500x1200 Box Culverts
8	Stormwater Line 7, Johns Road Wadalba	104.43 metres	Construction of stormwater line 7 in Johns Road, Wadalba from Ch215 to Ch110.57

Schedule 5 – Contribution Works Procedure

1. Obligation to Carry Out Works

- 1.1 The Applicant is to carry out and complete the Works on the Land at the locations shown on the Location Plan in Schedule 4.
- 1.2 The Applicant's obligation under clause 1.1 exists irrespective of whether the Applicant:
- 1.2.1 carries out the Works itself, or
 - 1.2.2 enters into an agreement with another person under which the other person carries, out the Works on the Applicant's behalf.
- 1.3 The Applicant is to carry out and complete the Works in a good and workmanlike manner having regard to the intended purpose of the Works and otherwise to the satisfaction of Council in accordance with:
- 1.3.1 the Development Consent, and
 - 1.3.2 the Construction Certificate with reference number SCC/58/2020, and
- all applicable laws, including those relating to occupational health and safety, and
- 1.3.3 this Agreement to the extent that it is not inconsistent with the Development Consent or an applicable law.
- 1.4 In the event of an inconsistency between the Planning Agreement and the Development Consent or any applicable law, the Development Consent or the law prevails to the extent of the inconsistency.
- 1.5 It is the Applicant's responsibility to ensure that everything necessary for the proper performance of its obligations under the Planning Agreement is supplied or made available.
- 1.6 The Works is to be Handed-Over to the Council in accordance with Schedule 3 of the Planning Agreement.

2. Ownership of Works, etc

- 2.1 Nothing in, or done under, this Agreement gives the Applicant:
- 2.1.1 any right, title or interest in the Works, or
 - 2.1.2 any estate or interest in the Land,
- whether at law or in equity.

3. Effect of Applicant's Compliance with this Agreement

- 3.1 For the purposes of condition 5.16 of the Development Consent and s7.4 of the Act:

3.1.1 the Hand-Over of the Works under this Agreement by the Applicant satisfies the Applicant's obligation under the Planning Agreement to make the Monetary Contributions to the extent of the sum of all Contribution Values, and

3.1.2 the Applicant is not required to pay the Monetary Contributions to that extent.

4. Determination of Value

5.1 For the purposes of this Agreement, the Parties acknowledge that the Value in relation to the Works is the value of the Works specified in the tender costs and agreed between the Parties

5.2 If the Applicant's actual cost of carrying out the Works, including any costs incurred pursuant to this Agreement, determined at the date on which the Works is Handed-Over to the Council:

5.2.1 exceeds the agreed Works Value, the Applicant is not entitled to claim credit or reimbursement, as the case may be, for the difference, or an increase to the Work Value,

5.2.2 is less than the agreed work Value, then for the purposes of this Agreement the agreed work Value is taken to be the actual cost of carrying out the Works.

5. Access to the Land

5.1 Subject to any applicable law, the Party that owns the Land authorises the other Party to enter the Land for the purposes of this Agreement.

6. Protection of People and Property

6.1 The Applicant is to ensure in relation to the carrying out of the Works that:

6.1.1 necessary measures are taken to protect people and property, and

6.1.2 unnecessary interference with the passage of people and vehicles is avoided, and

6.1.3 nuisances and unreasonable noise and disturbances are prevented.

7. Damage and Repairs to the Works

7.1 The Applicant, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to the Works from any cause whatsoever which occurs prior to the date on which the Works is Handed-Over to the Council.

8. Hand-Over of Works

8.1 The Applicant is to give the Council not less than 20 calendar days written notice of the date on which it proposes to Hand-Over the Works to the Council, which is not to be later than the Hand-Over Date.

8.2 The Council may, at any time before the date specified in the notice referred to in clause 8.1, direct the Applicant in writing:

- 8.2.1 to carry out work specified in the notice to complete the Works in accordance with clause 1.3 before it is Handed-Over to the Council, and
- 8.2.2 to Hand-Over the Works completed in accordance with the Council's direction to the Council by a specified date, irrespective of whether that date is later than the Hand-Over Date.
- 8.3 The Applicant is to comply with a direction referred to in clause 8.2 according to its terms and at the Applicants own cost.
- 8.4 Before the Works are handed-over to the Council, the Applicant is to remove from the Land:
 - 8.4.1 any rubbish or surplus material, and
 - 8.4.2 any temporary works, and
 - 8.4.3 any construction plant and equipment;relating to the carrying out of the Works as the case requires.
- 8.5 The Works is taken, to be Handed-Over to the Council when all of the following have occurred:
 - 8.5.1 the Council gives the Applicant written notice that the Works, including any direction given under clause 8.2 have been completed to the Council's satisfaction, and
 - 8.5.2 the Council issues the Subdivision Certificate for the Development, and
 - 8.5.3 the Council gives the Applicant written notice that Works-As-Executed-Plan satisfactory to the Council have been provided to the Council, and
 - 8.5.4 the Applicant has given the Council Security under clause 13.

9. Works-As-Executed-Plan

- 9.1 Works As Executed Plans are to be submitted to Council prior to the issue of the Subdivision Certificate for the Development.

10. Rectification. of Defects

- 10.1 During the Defects Liability Period the Council may give to the Applicant a Rectification Notice in relation to the Works specifying:
 - 10.1.1 the Works requiring rectification,
 - 10.1.2 the action required to be undertaken by the Applicant to rectify those Works, and
 - 10.1.3 the date on which those Works are to be rectified.

- 10.2 The Applicant must comply with a Rectification Notice at its own cost according to the terms of the Notice whether or not the cost of doing so exceeds the amount of Security provided under clause 13.
- 10.3 When the Applicant considers that rectification is complete, the Applicant may give to the Council a Rectification Certificate relating to the Works the subject of the relevant Rectification Notice.
- 10.4 A Rectification Certificate discharges the Applicant from any further obligation to comply with the relevant Rectification Notice.
- 10.5 If the Applicant does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the defect and may:
- 10.5.1 call upon the Security to meet its costs in rectifying the defect, and
 - 10.5.2 recover, as a debt due in a court of competent jurisdiction, any difference between the amount of the Security and the costs incurred by the Council in rectifying the defect.

11. Cost of Works carried out by the Council

- 11.1 The Parties acknowledge and agree that where, in accordance with this Agreement, the Council incurs a cost in carrying out, completing or rectifying a defect in the Works, the Council may recover from the Applicant in a court of competent jurisdiction its full costs, including costs determined in accordance with clause 11.2.1-11.2.3.
- 11.2 The Council's costs of carrying out, completing or rectifying the Works in accordance with this Agreement include, but are not limited to:
- 11.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose
 - 11.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Works carried out, completed or rectified,
 - 11.2.3 Without limiting the generality of the preceding sub-clause, all legal costs and expenses reasonably incurred by the Council, by reason of the Applicant's failure to comply with this Agreement.

12. Indemnity and Insurance

- 12.1 The Applicant indemnifies the Council, its employees, officers, agents, contractors and workmen from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, actions, claims and demands whatsoever which may be sustained, suffered, recovered or made arising in connection with the carrying out by the Applicant of the Works and any other obligation under this Agreement.
- 12.2 The Applicant is to take out and keep current to the satisfaction of the Council the following insurances in relation to the Works up until the relevant date of Hand-Over to Council:

- 12.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Applicant's liability in respect of damage to or destruction of the Works,
 - 12.2.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers the Council, the Applicant and any subcontractor of the Applicant, for liability to any third party,
 - 12.2.3 workers compensation insurance as required by law, and
 - 12.2.4 any other insurance required by law.
- 12.3 If the Applicant fails to comply with clause 12.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Applicant to the Council and may be recovered by the Council as it deems appropriate including:
- 12.3.1 by calling upon the Security provided by the Applicant to the Council under this Agreement, or
 - 12.3.2 recovery as a debt due in a court of competent jurisdiction.
- 12.4 The Applicant is not to commence to carry out the Works unless it has first provided to the Council satisfactory written evidence of all the insurances specified in clause 12.2.

13. Provision of Security

- 13.1 Prior to the works being Handed Over to the Council and the Council giving notice under Clause 8.5 the Applicant must provide the Council with Security in the amount of 5 percent (5%) of the cost of works.
- 13.2 The Council may call upon the Security if the Council considers that the Applicant has failed to comply with a Rectification Notice issued under clause 11 or any, notice referred to in clause 13.1 in respect of a Rectification Notice.
- 13.3 If the Council calls on the Security, the Council may, by notice in writing to the Applicant require the Applicant to provide a further Security in an amount which, together with any unused portion of any existing Security does not exceed the amount specified in clause 13.1.
- 13.4 The Council may apply the Security in satisfaction of:
 - 13.4.1 the carrying out of the Works, and
 - 13.4.2 any liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Applicant to comply with this Agreement.
- 13.5 The Council is to release and return the Security to the Applicant, less any amount of the Security called upon by the Council, in accordance with clause 13.2, on the later of:

13.5.1 60 days after the expiry of the Defects Liability Period, and

13.5.2 all Rectification Certificates relating to Works the subject of all Rectification Notices having been given to the Council under clause 11.

14. Failure to Carry out Works

14.1 Subject to clause 14, if the Council considers the Applicant is in breach of any obligation under this Agreement relating to the carrying out of the Works, the Council may but is not obliged to give the Applicant a notice requiring:

14.1.1 the breach to be rectified to the Council's satisfaction, or

14.1.2 the carrying out of the Works immediately cease and the breach to be rectified to the Council's satisfaction.

14.2 A notice given under clause 14.1 is to allow the Applicant a period of not less than 28 days to rectify the breach

14.3 Without limiting any other rights Council has to enforce this Agreement, the Council may, if the Applicant does not comply with a notice given under clause 14.1:

14.3.1 call upon the Security in accordance with clause 14, and

14.3.2 carryout and complete the Works.

14.4 For the purposes of clause 14.3, any difference between the amount of the Security called upon by the Council and the costs incurred by the Council in completing the Works may be recovered by the Council from the Applicant as a debt due in a court of competent jurisdiction.