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## **Sanctuary Estate Planning Agreement**

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

**Landcom  
Newcastle City Council**

2011

**lindsaytaylorlawyers**  
Level 7 1 O'Connell Street Sydney NSW 2000, Australia  
T 02 8235 9700 • F 02 8235 9799 • W [www.lindsaytaylorlawyers.com.au](http://www.lindsaytaylorlawyers.com.au) • E [mail@lindsaytaylorlawyers.com.au](mailto:mail@lindsaytaylorlawyers.com.au)  
ABN 15 695 894 345

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## Sanctuary Estate Planning Agreement

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## Sanctuary Estate Planning Agreement

### Summary Sheet

#### Council:

**Name:** Newcastle City Council  
**Address:** 282 King Street, Newcastle NSW 2300  
**Telephone:** (02) 4974 2000  
**Facsimile:** (02) 4974 2222  
**Email:**  
**Representative:** Judy Jaeger

#### Developer:

**Name:** Landcom  
**Address:** Level 2, 330 Church Street, Parramatta NSW 2150  
**Telephone:** (02) 9841 8600  
**Facsimile:** (02) 9841 8688  
**Email:**  
**Representative:** Charles Bartlett

#### Land:

See definition of *Land* in clause 1.1.

#### Development:

See definition of *Development* in clause 1.1.

#### Development Contributions:

See Schedule 2.

#### Application of s94, s94A and s94EF of the Act:

See clause 6.



**Security:**

See clause 23.

**Registration:**

See clause 28.

**Restriction on dealings:**

See clause 29.

**Dispute Resolution:**

See clauses 26 and 27.



## Sanctuary Estate Planning Agreement

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

### Parties

**Landcom** ABN 79 268 260 688 of Level 2, 330 Church Street, Parramatta NSW 2150  
(Developer)

and

**Newcastle City Council** ABN 25 242 068 129 of 282 King Street, Newcastle NSW  
2300 (Council)

### Background

- A The Developer owns the Land.
- B The Existing Development is authorised by the Development Consent granted to DA 97/0555 as modified.
- C The Developer has lodged the Modification Application with the Council.
- D The Developer is prepared to make the Development Contributions provided for in this Agreement in connection with the carrying out of the Modified Development on the terms set out in this Agreement.

### Operative provisions

#### Part 1 - Preliminary

##### 1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

**Aboriginal Heritage Conservation Area** means the areas of land marked as such on Sheet 2 of the Map.

**Aboriginal Heritage Conservation Area Management Plan** means a plan for maintenance of the Aboriginal Heritage Conservation Area following establishment by the Developer prepared by the Developer to the satisfaction of the Council in accordance with Section 4.0 of the *Sanctuary Estate Overarching Aboriginal Cultural Heritage Management Plan* dated September 2008, prepared by Umwelt Environmental Consultants.

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

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**Additional Land** means the Searle Land and Cahill Land included in the Modification Application identified on Sheet 5 of the Map.

**Agreement** means this Agreement and includes any schedules, annexures and appendices to this Agreement.

**Cahill Land** means the land so identified on Sheet 5 of the Map.

**Contributions Plan** means the document titled The City of Newcastle Development Contributions Plan No. 1, 2005 adopted by the Council on 13 December 2005 as amended or any relevant contributions plan (within the meaning of the Act) that preceded or replaces that document.

**Cycleway Link** means a cycleway link as shown on Sheet 2 of the Map.

**Defects Liability Period** means the period commencing on the date on which a notice is given under clause 16.2 and ending 6 months after that date.

**Defendable Zones** means defendable zones as required by condition A.3.13(a) of the Development Consent granted to DA 97/0555 as in force at the date of this Agreement.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**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 for the benefit of the public.

**Entry Features** means structures and landscape treatments within public lands along the Minmi Rd frontage of the Land and at the two entry points to the Modified Development for the purposes of enabling visual identification of the project from Minmi Rd as identified on Sheet 2 of the Map.

**Existing Development** means the development authorised to be carried out on the Land (not including the Searle Land or the Cahill Land) by the Development Consent granted to DA 97/0555 as in force at the date of this Agreement.

**Final Lot** means a lot created for the purpose of separate occupation and disposition not being:

- (a) a lot that is to be dedicated or otherwise transferred to the Council or another public authority, or
- (b) a lot which, in the opinion of the Council, may be further subdivided.

**GST** has the same meaning as in the GST Law.

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

**Land** means the Land shown edged heavy black on Sheet 1 of the Map.

**Local Area s94 Funds** means monetary contributions within the meaning of the Act that were held by Council on 24 March 2010, to be applied towards the cost of the provision of public amenities and public services in the area of the Existing Development (for Community Building and Open Space & Recreation) in accordance with the Contribution Plan and such additional funds paid by Landcom since that time in accordance with conditions imposed



under s94 of the Act relating to the Existing Development and any amount earned by investment of those amounts from time to time.

**Local Field and Court Based Facilities** means Work including two full sized playing fields, two tennis courts, two netball courts, cricket wicket, car parking and associated structures, paths and landscaping broadly in accordance with the concept plan on Sheet 6 of the Map and Table 3.15 of the Contributions Plan.

**Local Parks and Playgrounds** means the areas of land marked as such on Sheet 2 of the Map and satisfying as a minimum, the requirements in accordance with Table 3.15 of the Contribution Plan.

**Map** means Sheets 1- 6 contained in Schedule 1.

**Modification Application** means an application to the Council under s96 of the Act to modify the Development Consent for the Existing Development to enable the Modified Development to be carried out.

**Modified Development** means the Existing Development modified to enable the development described in the Sanctuary Masterplan 2010 to be carried out on the Land.

**Neighbourhood Centre** means a two level building broadly in accordance with concept on Sheet 6 of the Map. The upper level incorporates entry foyer, function room, meeting rooms, reception/office space, kitchen, storage areas, toilet amenities and balcony area. The lower level incorporates canteen, change rooms, referee/first aid room, bulk storage and public toilets.

**Neighbourhood Centre Precinct Work** means the Works referred to Items A, B1 and C in Part 3 of the Table in Schedule 2.

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

**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*.

**Residual Open Space (Additional)** means the areas of land associated with the Additional Land marked as such on Sheet 2 of the Map.

**Sanctuary Masterplan 2010** means the document titled *Sanctuary Masterplan 2010* prepared by ADW Johnson Pty Limited Version K, dated 6 October 2010.

**Searle Land** means the land so identified on Sheet 5 of the Map.

**Security** means a letter of undertaking from the Developer to the Council containing a commitment to comply with this Agreement on terms satisfactory to the Council.

**Subsequent Development** means any future development on the Land for residential purposes.

**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:



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- 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 a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 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.
- 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 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.
- 1.2.11 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.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 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.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

## 2 Status of this Agreement

- 2.1 This Agreement is a planning agreement within the meaning of s93F(1) of the Act.



### **3 Application of this Agreement**

- 3.1 This Agreement applies to the Land, to the Modified Development and to Subsequent Development.

### **4 Operation of this Agreement**

- 4.1 The Developer is not required to make the Development Contributions provided for in this Agreement unless:
- 4.1.1 the Modification Application is approved by the Council subject to a condition requiring the Developer to make the Development Contributions provided for in this Agreement, and
  - 4.1.2 to the extent that it is not part of any approval to the Modification Application or the Development Consent for the Existing Development, the Council has approved the Entry Features.
- 4.2 The Developer consents to a condition of the kind referred to in clause 4.1.1.
- 4.3 Except as provided by clause 4.1, the provisions of this Agreement operate with full force and effect on and from the date this Agreement is entered into by all of the Parties.

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

- 5.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

### **6 Application of s94, s94A and s94EF of the Act to the Development**

- 6.1 This Agreement excludes the application of s94 to development on the Land.
- 6.2 This Agreement excludes the application of s94A to development on the Land.
- 6.3 This Agreement does not exclude the application of s94EF to development on the Land.

## **Part 2 – Development Contributions**

### **7 Provision of Development Contributions**

- 7.1 The Developer is to make Development Contributions to the Council in accordance with Schedule 2 of this Agreement and any other relevant provision of this Agreement to the satisfaction of the Council.
- 7.2 The Council is to apply each Development Contribution made by the Developer under this Agreement:



- 7.2.1 in accordance with Schedule 2 or any other relevant provision of this Agreement,
- 7.2.2 for the benefit of the public, and
- 7.2.3 otherwise in accordance with this Agreement.

## **8 Procedures relating to payment of monetary Development Contributions**

- 8.1 A monetary Development Contribution is made for the purposes of this Agreement when the Council receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Council.
- 8.2 The Developer is to give the Council not less than 2 business days written notice of its intention to pay a monetary Development Contribution.
- 8.3 The Developer is not required to pay a monetary Development Contribution under this Agreement unless the Council, after having received the Developer's notice under clause 8.2, has given to the Developer a tax invoice for the amount of the Development Contribution.
- 8.4 The Developer is not in breach of this Agreement if it fails to pay a monetary Development 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 it.

## **9 Procedures relating to the dedication of land**

- 9.1 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 the title to the land to the Council when registered.
- 9.2 For the purposes of clause 9.1:
  - 9.2.1 the Developer is to give the Council, for execution by the Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to the land to be dedicated, and
  - 9.2.2 the Council is to execute the instrument of transfer and return it to Developer within 7 days of receiving it from Developer,
  - 9.2.3 the Developer is to lodge the instrument of transfer for registration at the Department of Lands within 7 days of receiving it from the Council duly executed,
  - 9.2.4 the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 9.3 Except in relation to the Item C in Part 3 of Schedule 2, if this Agreement requires the Developer to dedicate land to the Council on which the Developer is also required by this Agreement to carry out a Work, the Developer is to give to the Council the instrument of transfer relating to the land under clause 9.2.1 not later than 7 days after the Work is completed.



- 9.4 In relation to Item C in Part 3 of Schedule 2, the Developer is to give to the Council the instrument of transfer relating to the land under clause 9.2.1 at the same time as it is required to give an instrument of transfer for the land on which Items A and B1 in Part 3 of Schedule 2 are located under clause 9.3.

## **10 Carrying out of Work**

- 10.1 Any Work that is required to be carried out by the Developer under this Agreement is to be carried out in accordance with any design or specification agreed between the Parties, any relevant development consent and any other applicable law and otherwise to the satisfaction of the Council.
- 10.2 If the Developer is required by the Council to prepare or modify a design or specification relating to a Work for approval by the Council under clause 10.1, the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

## **11 Public Access & Use**

- 11.1 The Developer cannot be required to allow the public:
- 11.1.1 to enter upon or use land to be dedicated by the Developer to the Council under this Agreement until the land has been transferred to the Council,
- 11.1.2 to use any Work to be provided by the Developer to the Council under this Agreement until the Work has been completed and, if the work is situated on land to be dedicated by the Developer to the Council under this Agreement, until that land has been transferred to the Council.

## **12 Access to Land by Developer or Council**

- 12.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Land or any other land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Work or to remedy any breach of the Developer relating to the carrying out of a Work.
- 12.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by the Council for the purpose of enabling the Developer to carry out any Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

## **13 Protection of people and property**

- 13.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
- 13.1.1 all necessary measures are taken to protect people and property, and
- 13.1.2 unnecessary interference with the passage of people and vehicles is avoided, and



13.1.3 nuisances and unreasonable noise and disturbances are prevented.

## **14 Damage and repairs to Work**

14.1 The Developer, at its own cost, is to repair and make good to the satisfaction of the Council any loss or damage to a Work from any cause whatsoever which occurs prior to the date on which the Work is taken to have been completed under this Agreement.

## **15 Variation of Work**

- 15.1 A Work is not to be varied by the Developer, unless:
- 15.1.1 the Parties agree in writing to the variation, and
  - 15.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
  - 15.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 15.2 For the purposes of clause 15.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

## **16 Procedures relating to the completion of Work**

- 16.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Work is completed.
- 16.2 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement has been completed, the Developer is to give to the Council a notice in writing to that effect.
- 16.3 A Work (other than the Work in Item C in Part 3 of Schedule 2) the subject of a notice referred to in clause 16.2 is completed for the purposes of this Agreement:
- 16.3.1 if the Council has not given the Developer a Rectification Notice under clause 16.1 – on the expiration of the Defects Liability Period, or
  - 16.3.2 if the Council has given the Developer a Rectification Notice under clause 16.1 – on the date on which the Council gives the Developer a written notice stating that the defect the subject of the Rectification Notice has been rectified to the Council's satisfaction.
- 16.4 The Work in Item C in Part 3 of Schedule 2 the subject of a notice referred to in clause 16.2 is completed for the purposes of this Agreement when the Developer gives the Council an instrument of transfer relating to the land on which the Work is situated under clause 9.2.1.
- 16.5 The Council has sole responsibility for a Work on the date on which it is completed, or if clause 9.3 or 9.4 apply to the land on which the Work is located, on the date on which the Council is given the instrument of transfer relating to the land under clause 9.2.1 subject to anything to the contrary in this Agreement.



- 16.6 The Parties agree that Neighbourhood Centre Precinct Work must be completed so as to enable an instrument of transfer of the land on which it is located to be given to the Council prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development.
- 16.7 To avoid any doubt, the Parties agree that a Work provided by the Developer under this Agreement may not be used by the public prior to the Council having sole responsibility for the Work.

## **17 Procedures relating to the rectification of defects**

- 17.1 During the Defects Liability Period, the Council may give a Rectification Notice to the Developer.
- 17.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 17.3 If the Developer breaches clause 17.2, the Council may have the relevant defect rectified and may recover its costs of so doing as a debt due in a court of competent jurisdiction.

## **18 Failure to carry out Work**

- 18.1 If the Council considers that the Developer is in breach of any obligation under this Agreement relating to the carrying out of any Work, the Council may elect to give the Developer a notice requiring:
  - 18.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
  - 18.1.2 the breach to be rectified to the Council's satisfaction, or
- 18.2 A notice given under clause 18.1 is to allow the Developer a period of not less than 28 days or such further period as the Council considers reasonable in the circumstances to rectify the breach.
- 18.3 Without limiting any other rights the Council has to enforce this Agreement, the Council may, if the Developer does not comply with a notice given under clause 18.1 carry out and complete the Work the subject of the Developer's breach.
- 18.4 Clauses 26 and 27 do not prevent a notice being given under clause 18.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 26 or clause 27 ceases to apply when such a notice is given.

## **19 Works-As-Executed-Plan**

- 19.1 No later than 60 days after a Work is completed, the Developer is to give to the Council a full works-as-executed-plan in respect of the Work.

## **Part 3 – Other Provisions**



## 20 Transfer & Use of Local Area s94 Funds

- 20.1 The Parties acknowledge that, as at 24 March 2010 the Council held approximately \$3,372,838.00 in Local Area s94 Funds.
- 20.2 The Council further acknowledges that it commits to apply the whole of the Local Area s94 Funds towards the Works required to be carried out by the Developer under this Agreement or otherwise to the land on which they are located that is to be dedicated to the Council.
- 20.3 The Developer is to give the Council not less than seven (7) written notice of its intention to commence a Work that it is required to provide to the Council under this Agreement.
- 20.4 Prior to giving a notice under clause 20.3, the Developer is to conduct a competitive tendering process for a lump sum contract for the carrying out of the Work on terms reasonably satisfactory to the Council. The Developer must:
- 20.4.1 provide the Council with a copy of the tender documents prior to the tender period commencing; and
- 20.4.2 prior to determining the preferred tenderer:
- (a) provide the Council with a copy of each tender response and its tender evaluation;
- (b) consider any written comments notified by the Council in relation to the tender, tender responses and tender evaluation within seven (7) days thereafter.
- 20.5 A notice referred to in clause 20.3 is to be accompanied by a copy of the contract entered into between the Developer and the preferred tenderer in respect of the Work.
- 20.6 Not later than 7 days after being given a notice under clause 20.3, the Council is to transfer into a bank account nominated by the Developer, an amount of money drawn from the Local Area s94 Funds that equals the lump sum tender price for constructing or providing the Work as specified in the contract or if there are insufficient funds, such lesser amount as is available.
- 20.7 Once payments have been made from the Local Area s94 Funds in respect of all Works required to be provided by Developer under this agreement, the balance of the Local Area s94 Funds (if any) is to be transferred to a bank account nominated by the Developer on account of the land required to be dedicated by the Developer under this Agreement.
- 20.8 The Developer is to maintain an accounting system that enables each transfer of money from the Local Area s94 Funds and such additional amounts earned from investment of that money, to be separately identified in the Developer's relevant bank account in relation to the Work towards which it is to be applied under this Agreement. The accounting system must also enable each payment out of the account towards a Work to be separately identified.
- 20.9 Any interest earned on money which has been transferred from the Local Area s94 Funds to the Developer's bank account is taken to form part of the transferred funds.
- 20.10 The Developer is to apply the money transferred from the Local Area s94 Funds towards the cost of constructing or providing the Work the subject of the notice referred to in clause 20.2 and for no other purpose.



- 20.11 Any money transferred from the Local Area s94 Funds that has not been applied by the Developer towards the cost of constructing or providing the Work the subject of the notice referred to in clause 20.2 upon completion of the Work is to be transferred to a bank account nominated by the Developer on account of land required to be dedicated by the Developer under this Agreement.

## **21 Aboriginal Conservation Area Management Plan, Defendable Zones and Cycleway Link**

- 21.1 The Developer must prepare and submit the Aboriginal Heritage Conservation Area Management Plan to the Council prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development.
- 21.2 The Developer is not required to make the monetary contribution for Cycleway Link in Part 1 of Schedule 1 unless construction of the Cycleway Link has commenced within 18 months of the issuing of a subdivision certificate for Stage 9 of the Modified Development.
- 21.3 On execution of this Agreement, the Council shall return to the Developer Treasury Corporation Undertaking L-2010-2 relating to the maintenance of Defendable Zones and condition B.2.7 of the Development Consent granted to DA97/0555.

## **22 Insurance**

- 22.1 The Developer warrants, and Council acknowledges, that:
- 22.1.1 Landcom is a member of the NSW Treasury Managed Fund;
- 22.1.2 the Fund provides Landcom with insurance cover against any liability arising from a breach by Landcom of its obligations under this Agreement.

## **23 Provision of Security**

- 23.1 The Developer is to give the Security to the Council when it executes this Agreement.

## **24 Recovery of cost of Work carried out by the Council**

- 24.1 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 24.2 For the purpose of clause 24.1, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
- 24.2.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
- 24.2.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and





24.2.3 without limiting clause 24.2.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

## **25 Enforcement in a court of competent jurisdiction**

- 25.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 25.2 For the avoidance of doubt, nothing in this Agreement prevents:
  - 25.2.1 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,
  - 25.2.2 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.

## **26 Dispute Resolution – expert determination**

- 26.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 26.2 Any dispute between the Parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties:
- 26.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 26.4 If a notice is given under clause 26.3, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 26.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 26.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 26.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

## **27 Dispute Resolution - mediation**

- 27.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 26 applies.
- 27.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 27.3 If a notice is given under clause 27.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.



- 27.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 27.5 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.

## **28 No Registration of this Agreement**

- 28.1 The Parties agree not to register this Agreement for the purposes of s93H of the Act.

## **29 Assignment, Sale of Land, etc**

- 29.1 Unless the matters specified in clause 29.2 are satisfied, the Developer is not to do any of the following:
- 29.1.1 transfer the Land or any part of it, other than a Final Lot, to any person, or
  - 29.1.2 assign the Developer's rights or obligations under this Agreement, or novate this Agreement, to any person.
- 29.2 The matters required to be satisfied for the purposes of clause 29.1 are as follows:
- 29.2.1 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be transferred, or the Developer's rights or obligations are to be assigned, or this Agreement is to be novated, of a deed of adoption and acknowledgement of this Agreement (with any necessary modifications) in favour of the Council, and
  - 29.2.2 the Developer has provided written evidence to the Council demonstrating that the transferee, assignee or novatee is reasonably financially capable of performing its obligations under the Agreement, and
  - 29.2.3 the Developer is not in breach of this Agreement.

## **30 Notices**

- 30.1 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:
- 30.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
  - 30.1.2 faxed to that Party at its fax number set out in the Summary Sheet.



- 30.2 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.
- 30.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 30.3.1 delivered, when it is left at the relevant address,
  - 30.3.2 sent by post, 2 business days after it is posted, or
  - 30.3.3 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.
- 30.4 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.

### **31 Approvals and Consent**

- 31.1 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.
- 31.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

### **32 Entire Agreement**

- 32.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 32.2 No Party can rely on any 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 this Agreement or under the law.

### **33 Further Acts**

- 33.1 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.

### **34 Governing Law and Jurisdiction**

- 34.1 This Agreement is governed by the law of New South Wales.
- 34.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.



- 34.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

### **35 Joint and Individual Liability and Benefits**

- 35.1 Except as otherwise set out in this Agreement:
- 35.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
  - 35.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

### **36 No Fetter**

- 36.1 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.

### **37 Representations and Warranties**

- 37.1 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.

### **38 Severability**

- 38.1 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.
- 38.2 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.

### **39 Modification**

- 39.1 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.

### **40 Waiver**

- 40.1 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.



- 40.2 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.
- 40.3 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.

## 41 GST

- 41.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 41.2 Subject to clause 41.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 41.3 Clause 41.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 41.4 No additional amount shall be payable by the Council under clause 41.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 41.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 41.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 41.5.2 that any amounts payable by the Parties in accordance with clause 41.2 (as limited by clause 41.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 41.6 No payment of any amount pursuant to this clause 41, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly

**Sanctuary Estate Planning Agreement**

**Landcom**

**Newcastle City Council**

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agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

- 41.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 41.8 This clause continues to apply after expiration or termination of this Agreement.



**Schedule 1**  
(Clause 1.1)

**Map**

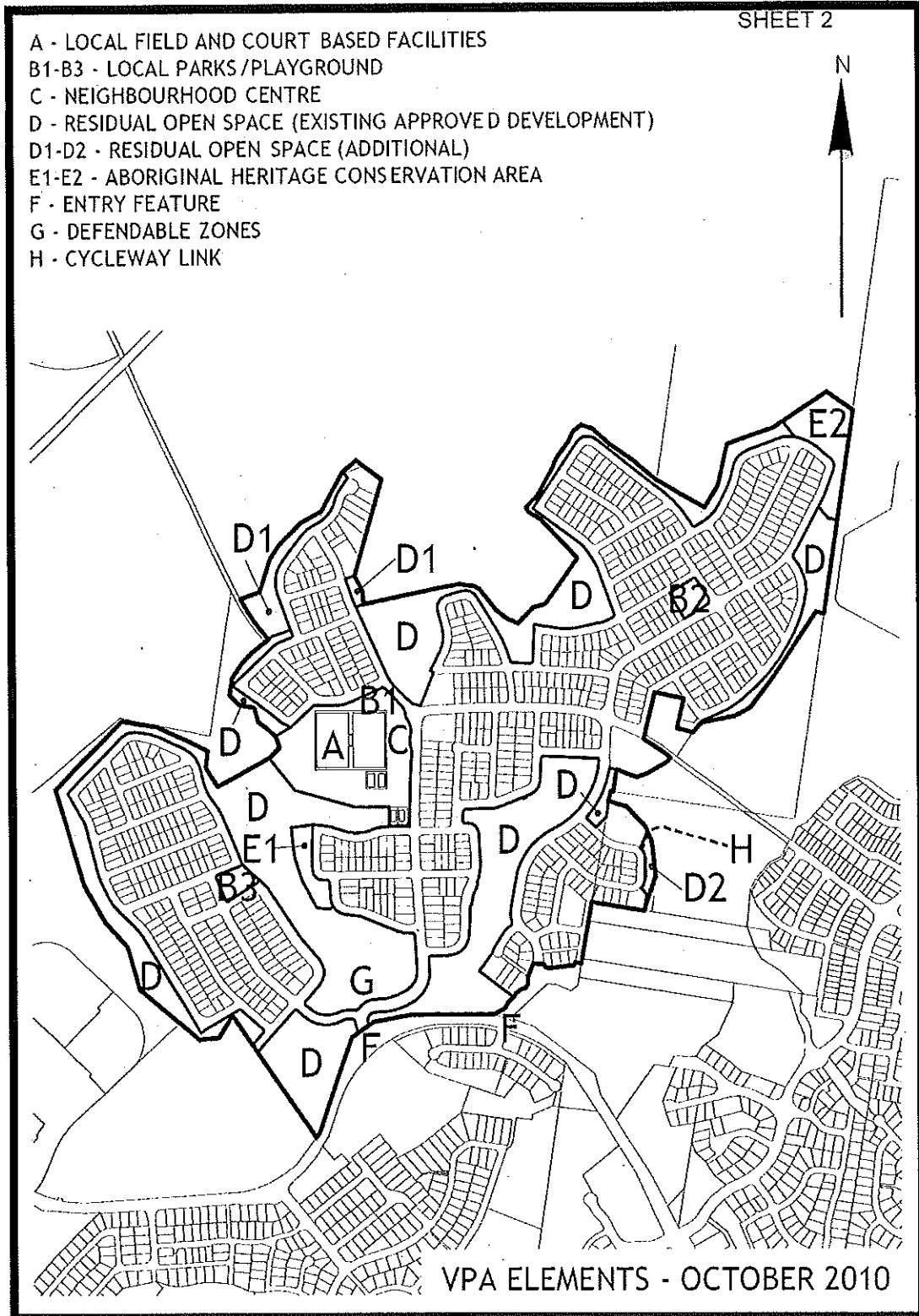
See Sheets 1 – 6



Sanctuary Estate Planning Agreement

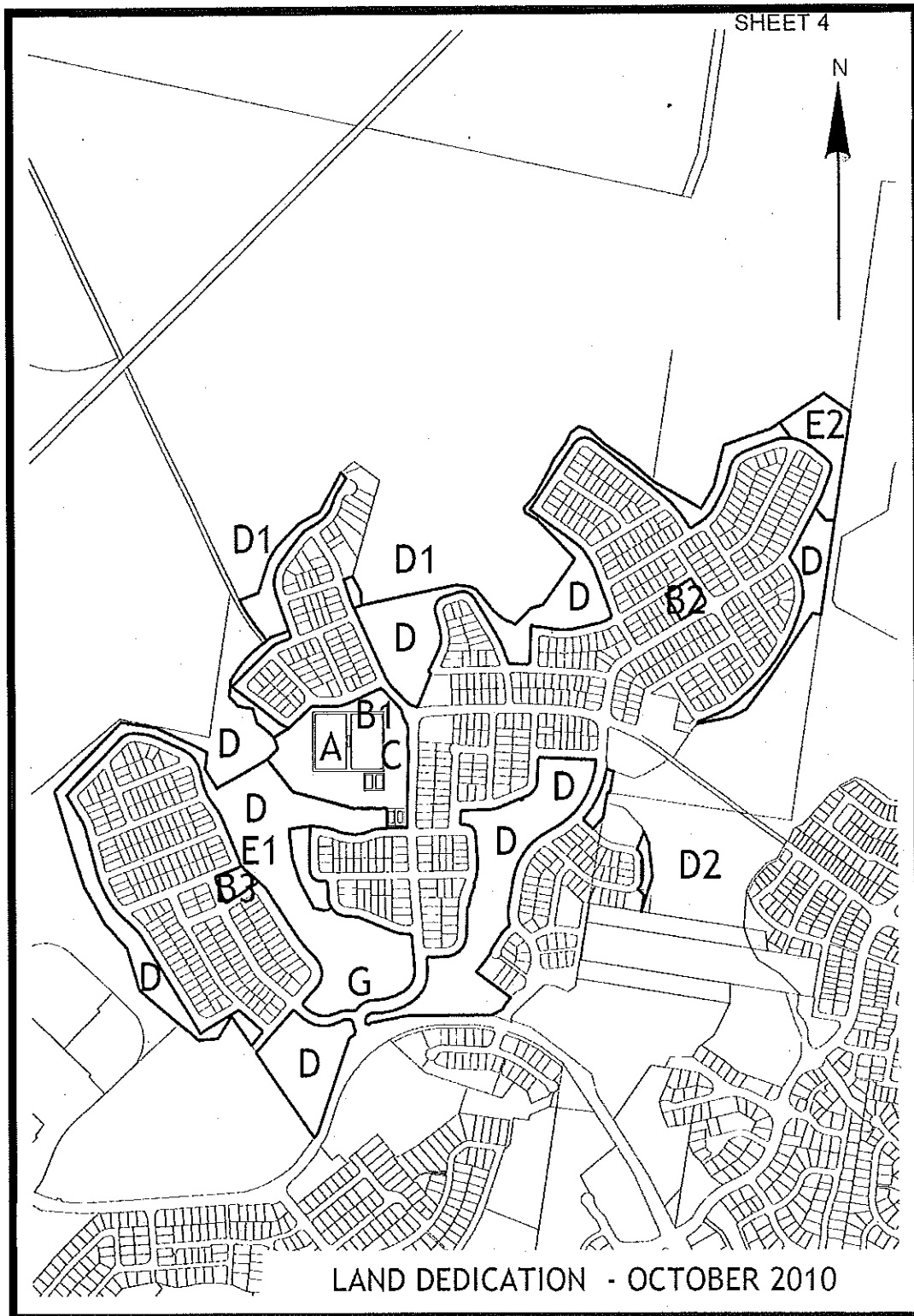
Landcom

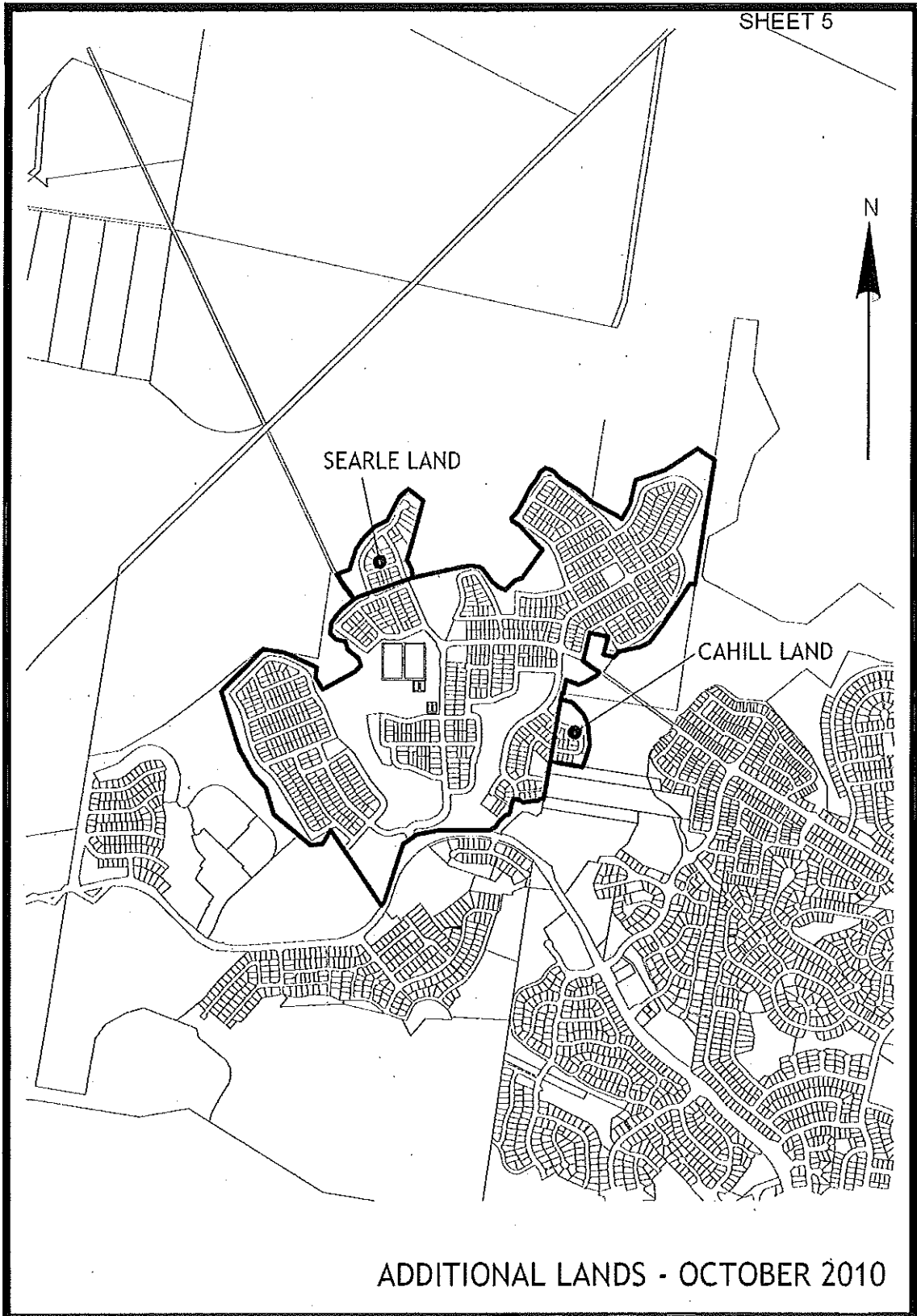
Newcastle City Council







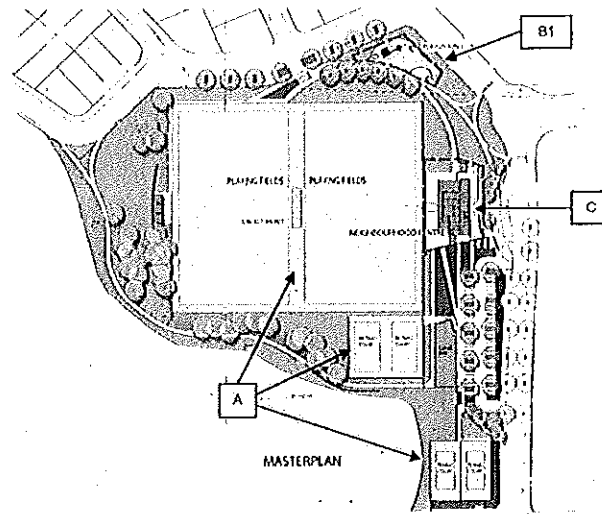




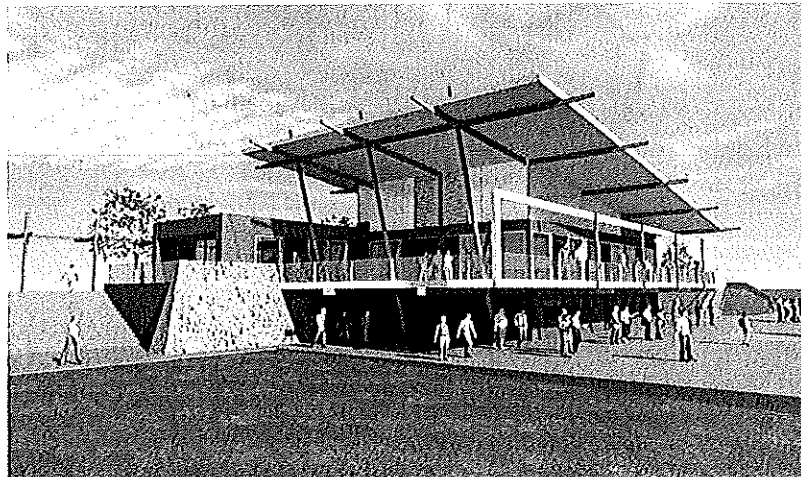


SHEET 6

LOCAL FIELD AND COURT BASED FACILITIES



NEIGHBOURHOOD CENTRE



The above images are concepts only, subject to change upon detailed design and approval.



**Schedule 2**

(Clause 7)

**Development Contributions**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Public Facility</b>	<b>Map Reference</b>	<b>Extent</b>	<b>Timing</b>
<b>Part 1 - Monetary Contributions to be paid to the Council</b>			
H Cycleway Link	Sheet 2	\$150,000.00	Within 18 months of the issuing of the first subdivision certificate for Stage 9 of the Modified Development subject to clause 21.2.
<b>Part 2 - Dedication of land to the Council</b>			
B1 Local Parks & Playgrounds	Sheet 4 and Sheet 6	Refer Sheet 4 and Sheet 6 of the Map	Prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development.
B2 Local Parks & Playground	Sheet 4	Refer Sheet 4 of the Map	Refer Clause 9.3
B3 Local Parks & Playground	Sheet 4	Refer Sheet 4 of the Map	Refer Clause 9.3
A Local Field and Court Based Facilities	Sheet 4 and Sheet 6	Refer Sheet 4 and Sheet 6 of the Map	Prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development

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<b>C</b> <b>Neighbourhood Centre</b>	Sheet 4 and Sheet 6	Refer Sheet 4 and Sheet 6 of the Map	Prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development
<b>D1</b> <b>Residual Open Space (Additional)</b>	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development
<b>D2</b> <b>Residual Open Space (Additional)</b>	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 9 of the Modified Development
<b>E1</b> <b>Aboriginal Heritage Conservation Area</b>	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 4 of the Modified Development but not before establishment of the E1 area in accordance with Section 4.0 of the Sanctuary Estate Overarching Aboriginal Cultural Heritage Management Plan.
<b>E2</b> <b>Aboriginal Heritage Conservation Area</b>	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 16 of the Modified Development but not before establishment of the E2 area in accordance with Section 4.0 of the Sanctuary Estate Overarching Aboriginal Cultural Heritage Management Plan.
<b>G</b> <b>Defendable Zones</b>	Sheet 4	Refer Sheet 4 of the Map	Prior to the issuing of the first subdivision certificate for Stage 23 of the Modified Development

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## Part 3 - Works to be handed-over to the Council

<b>B1</b> Local Parks & Playground	Sheet 3 and Sheet 6	Refer Sheets 3 and 6 of the Map	Refer clause 16.6
<b>B2</b> Local Parks & Playground	Sheet 3	Refer Sheet 3 of the Map	Prior to the issuing of the first subdivision certificate for Stage 16 of the Modified Development
<b>B3</b> Local Parks & Playground	Sheet 3	Refer Sheet 3 of the Map	Prior to the issuing of the first subdivision certificate for Stage 16 of the Modified Development
<b>A</b> Local Field and Court Based Facilities	Sheet 3 and Sheet 6	Refer Sheet 6. In accordance with existing concept layouts and quantity surveyor estimates as agreed with Council officers but subject to final detailed specifications agreed by the parties prior to the issuing of a construction certificate.	Refer clause 16.6
<b>C</b> Neighbourhood Centre	Sheet 3 and Sheet 6	Refer Sheet 6. In accordance with existing concept layouts floorplans, elevations and quantity surveyor estimates as agreed with Council officers but subject to final detailed specifications agreed by the parties prior to the issuing of a construction certificate.	Refer clause 16.6

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## Part 4 - Other material public benefits

Nil



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## Execution

### Executed as an Agreement

Dated: 21 April 2014

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**Executed on behalf of the Developer** 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:

  
\_\_\_\_\_

Sean O'Toole:


  
\_\_\_\_\_

Witness/Name/Position


FRANK WILMORE  
MANAGER LEGAL

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**Executed on behalf of the Council**

  
\_\_\_\_\_

 General Manager

  
\_\_\_\_\_

EXECUTIVE ASSISTANT TO THE GENERAL MANAGER  
Witness/Name/Position

