

COVE RESIDENTIAL PTY LTD
ACN 096 886 823 4/8 MILSON ROAD,
CREMORNE NSW 2090

27 October 2017

WITHOUT PREJUDICE

General Manager
Wollondilly Shire Council
62-64 Menangle Street
PICTON NSW 2571

Attention: Mr Martin Beveridge
Developer Contributions Planning Co-ordinator

By email: Martin.Beveridge@wollondilly.nsw.gov.au

Dear Mr Beveridge

Cove Residential Pty Limited v Wollondilly Shire Council
DA 430/2016: 790 Montpelier Drive, The Oaks, 2570 - Lot 1 in DP1215738

Please note that upon agreement to the terms of the proposed Voluntary Planning Agreement (**VPA**) outlined in this letter, our lawyers will draft the VPA in accordance with the statutory requirements under section 93F, 93G and 93L of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* and Part 4, Division 1, Regulations 95A-F of the *Environmental Planning and Assessment Regulation 2000*. Our lawyers are experienced in drafting VPAs.

Cove Residential Pty Limited (**Applicant**) is the registered proprietor of Lot 1 in DP1215738, being land known as 790 Montpelier Drive, The Oaks (**Site**). With regard to DA 430/2016, the Applicant sets out the following revised terms of our offer to Council to enter into a planning agreement:

1. Unless identified otherwise, the works set out in paragraph 2 hereto shall be completed prior to the issue of the Subdivision Certificate. Upon registration of the Subdivision Plan all the works will be dedicated to Council.
2. The following development contributions will be provided by way of a voluntary planning agreement (**VPA**), with the exception of subparagraph 2(d)(11), the works as described shall be completed notwithstanding that those works may cost more than the estimate of costs set out below:
 - (a) Cove shall dedicate the following land to Council, at no cost to the Council: Lot 74 in Plan of Proposed subdivision for Lot 1 in DP 1215738 at Montpelier Drive, The Oaks in accordance with the plan by North West Surveys dated 11 July 2017 revision 01 being the whole of lot 74 with an area of 1.86 ha. The Dedication of Land is to occur generally in accordance with Council's Draft Dedication of Land Policy – PLA0036, version of 3 May 2016 – as approved by Council for exhibition. Lot 74 is valued at **\$945,000** in accordance with the valuation report commissioned by Council. The VPA shall provide for the whole of Lot 74 to be dedicated to Council whether or not Lot 74 exceeds the valuation determined by Council's valuer. Dedication of Lot 74 is to occur by registration of the Deposited Plan pursuant to section 49 of the *Local Government Act 1993*.
 - (b) Cove is to contribute \$244,608.76 to the Council to be applied towards the future maintenance of the Bio Retention basin from year 6 to year 35.

- (c) Cove will pay \$308,600.00 to the Council to be applied to the cost to clean out the Bio retention basin, remove and replace the filter media and replant the vegetation after 25 years.
- (d) Cove shall construct the public recreation area on Lot 74 in accordance with clause 4.7.3 of Council's Policy and Annexure A.
- (e) Cove shall also submit a Landscaping Plan to the Council for review and approval prior to the issue of the Construction Certificate for the Construction Works. The works must be carried out in accordance with the Landscaping Plan as approved by the Council.
- (f) The works which Cove will construct on the public recreation area are as follows:

	Item	Indicative Cost	Note
1.	Construct 275m long x 2.5m wide pedestrian/bicycle path to council specifications connecting Montpelier Drive to Neki Street, consistent with Annexure A.	\$68,012 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
2.	Construct 195 metres of 1.5 metre wide footpath to council specifications as per Annexure A.	\$29,250 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
3.	Additional 40 metres of 2.5m pathway to council specifications as per Annexure A.	\$10,000 (incl GST)	Applicant to construct to Council's specifications even if the cost exceeds the indicative cost.
4.	The preparation of dedicated land will ensure all slopes are graded so that the parkland can be easily maintained, consistent with Annexure A. Allowance to seed and hydro-mulch approximately 16,000m ² of parkland	\$14,960 (incl GST)	
5.	Plant 24 trees to provide future shade. Trees type and location is to be consistent with Annexure A.	\$5,808 (incl GST)	
6.	Supply and install six park benches on concrete plinths as per Council specification and consistent with Annexure A.	\$6,844 (incl GST)	

7.	Thin out pine tree grove at Montpelier Drive frontage to enable machine mowing of the area around and under the trees	\$16,500 (incl GST)	
8.	Supply and erect 1.2m high post and 3 rail hardwood fence to Montpelier Drive frontage and Neki street frontage, consistent with Annexure A.	\$17,974 (incl GST)	
9.	Plant out Watercourse 120 lineal metres as per Annexure A.	\$65,652 (incl GST)	
10.	Construct retaining walls to reduce grades 50sqm @ 500 per sqm as per NW Surveys plan 15340 dated 16 May 2017, consistent with Annexure A.	\$25,000 (incl GST)	
11.	Provisional allowance for supply and installation of proposed children's playground equipment and adult exercise items, to be selected and advised by Council.	\$60,000 (incl GST)	
	TOTAL (Items 1-10 to be constructed by the Applicant at no cost to Council) (Item 11 is a provisional allowance as requested by Council but limited to \$60,000 incl GST cost to the Applicant) (Items 1-11 to be provided generally in accordance with Annexure A)	\$320,000 (incl GST)	Council has the discretion to direct the Applicant to provide any or all of the items included in this table to a maximum sum of \$320,000 (GST included) and amount to be indexed to date of payment.

- (g) Cove will construct and cap the bio-retention basin and construct the on site detention basin on the Land in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016, and using Friend Civil Quotation dated 30 March 2017 which includes 1.2m pool fencing. The works are to be carried out in accordance with the Development Approval and the Department of Primary Industries' general terms of approval (GTAs) and to Council's satisfaction. The location of these items will be consistent with the plans at Annexures A and B.

The estimate of costs for item is, **\$484,352 (incl GST)**

- (h) Cove shall, at its cost, maintain and repair the on site detention basin for years 1-5, commencing on release of the Subdivision Certificate by Council. Maintenance is to be carried out in accordance with:
1. the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 2. the Maintenance schedule in Annexure C; and

3. In relation to the functioning of the on-site detention basin undertake any other reasonable requirements of the Council as notified to Cove from time to time.
 - (i) Cove shall, at its cost, maintain and repair the bio-retention basin for 5 years commencing on release of the Subdivision Certificate by doing the following:
 - (i) Remove the capping of the bio-retention basin not later than 3 years after the issue of the Subdivision Certificate;
 - (ii) After the capping is removed, undertake mulching and planting in accordance with the Stormwater Management Plan and Flood Impact Assessment, being Issue 2 dated 23 December 2016, prepared by Worley Parsons Services Pty Ltd, submitted to Council on 23 December 2016;
 - (iii) Undertake maintenance in accordance with the Maintenance schedule in Annexure C; and
 - (iv) In relation to the functioning of the bio-retention basin undertake maintenance or repair in accordance with any other reasonable requirements of the Council as notified to Cove from time to time.
 - (k) The provision of the above land dedication and construction of facilities shall be in full satisfaction of the Applicant's contributions under section 94 and 94A of the EP&A Act for DA 430/2016. It is noted the land is not subject to Special Infrastructure Contributions pursuant to s 94EF of the EP&A Act.
 - (l) The Applicant warrants that the works to be carried out by it pursuant to the VPA shall be fit for the purpose.
3. Subject to Council's in principle acceptance of the above, a Planning Agreement will be prepared in accordance with Council's Planning Agreements Policy. In particular, (and in addition to addressing the mandatory requirements of the Act in relation to Planning Agreements), the Planning Agreement will provide for the following (with full details of items to be resolved in the VPA):
- (a) *Timing of Contributions* - the Applicant accepts that the above contributions are to be made in the following timeframe:
 - (1) Construction and capping of the bio-retention basin – must be completed before the issue of the Subdivision Certificate
 - (2) Construction of on site detention basin– must be completed before the issue of the Subdivision Certificate
 - (3) construction of riparian corridor and cycleway- before the issue of the Subdivision Certificate;
 - (4) Maintenance contribution - before the issue of the Subdivision Certificate;
 - (5) Land dedication - upon registration of the Plan of Subdivision at LPI and the Applicant shall lodge the Subdivision Certificate providing for the dedication of Lot 74 as a public reserve with NSW Land and Property Information within 7 days of issue of the Subdivision Certificate by Council;

- (6) Works in recreation area - to be completed prior to the issue of the Subdivision Certificate.
- (7) Maintenance of the on site detention basin – to be carried out in accordance with the requirements of Annexure C for a period of 5 years from the issue of the Subdivision Certificate
- (8) Maintenance of bio-retention basin– capping will be removed within 3 years of the issue of the Subdivision Certificate. Once the capping is removed the stormwater quality treatment measures will be installed, including the final filter media layer and planting, and maintain the basin and stormwater quality measures in accordance with the requirements of Annexure C for the remainder of the 5 year period calculated from the issue of the Subdivision Certificate.

(b) *Timing of Security* -. The Applicant agrees to provide the following security:

- (1) Terms in the agreement such that Council can compulsorily acquire the land to be dedicated to Council for \$1.00 in the event of a breach of the agreement which alleged breach is not rectified in 28 days of receiving notice of same from Council;
- (2) Bonds or Bank Guarantees for the amounts specified in the table below to be provided to Council after the grant of development consent to DA 430/2016 and prior to the construction certificate as security for Coves obligation to carry out the works specified in the table:

Amount	Work obligation
\$320,000	Construction of the public recreation area works on Lot 74
\$44,136	The maintenance and repair of Bio retention basin for 5 years commencing on release of subdivision certificate
\$30,000	The maintenance and repair of all stormwater management facilities (other than the Bio retention basin), commencing on release of the Subdivision Certificate by Council for years 1 - 5

- (c) *Acceptance of works* - the Planning Agreement would be consistent with cl 4.7.3 of Council's Policy;
- (d) *Application of Section 94 and Section 94A* - section 94 or section 94A of the Act will not apply to the development the subject of consent to DA 430/2016.
- (e) *Dispute resolution* - the VPA will include mechanisms for dispute resolution that may arise from this VPA and which shall include (inter alia) resolution by mediation and by expert determination.
- (f) *Indexation and present value* - the monetary contributions of \$244,608.76 and \$308,600 (outlined at 2.(b) and (c) above) have already been adjusted for CPI indexing and taking into account net present value as per clause 4.5.1(a) of Council's Dedication of Land Policy, and as requested by Council (see annexure C).
- (g) *Costs* - the Applicant agrees to pay Council's reasonable costs in negotiating, preparing, and entering into the Planning Agreement, up to a limit of \$10,000 including GST. The applicant agrees to pay Council's costs in relation to negotiating execution and registration of the VPA up to a limit of \$10,000 (including of GST).

- (h) *Registration* - on execution of the VPA, the Applicant will give Council an instrument in registrable form to provide for the registration of the VPA on the title to the land, including all necessary consents to register the VPA. Council will attend to the registration of the VPA.

4. We enclose the following Annexures:

- (a) **Annexure A** - Plan of Proposed Pathway, Landscaping and Facilities over Proposed Lot 74, Revision 7, dated 18 August 2017, prepared by North Western Surveys (Project Reference 15340);
- (b) **Annexure B** - Plan of Proposed Subdivision for Lot 1 in DP 1215738, Revision 01, dated 11.07.2017, prepared by North Western Surveys (Project Reference 15340/207);
- (c) **Annexure C** - Indicative Costs for Maintenance of Stormwater Basins as per Attachment 1 of *Draft Dedication of Land Policy - PLA0036*]
- (d) **Annexure D** - Envelope Plan;
- (e) **Annexure E** - Demolition Plan;
- (f) **Annexure F** - Dispute Resolution Provisions

5. **Additional commercial terms of VPA**

General provisions

- (a) Interpretation of key terms (these will be in the Definitions section of the VPA.
- (b) Commencement of the VPA: upon execution by Council and the Applicant which is to take place within 90 days of the expiration of the notification of the VPA.
- (c) Warranties:
- By the Applicant that it will carry out the works pursuant to DA 430/2016 in one line so that only one application will be made for the Subdivision Certificate.
 - The works carried out by the Applicant to be dedicated to Council shall be fit for the purpose.
- (d) Whether any entity is entering into the VPA as a trustee? Response: Cove Residential Pty Limited ACN 096 886 823 is the registered proprietor of the land the subject of DA 430/2016 (Cove). Cove holds the land in trust for:
- i. Alvis Speed Pty Limited ACN 154 320 715
 - ii. Zaneo Pty Limited ACN 154 319 463
 - iii. Bonville No. 1 Pty Limited ACN 169 872 280
 - iv. Brian Huxley Investments Pty Limited ABN 84 746 103 469
 - v. Welas Pty Limited ACN 000 757 960
- (e) Whether and to what extent the VPA is intended to bind associated entities of the

developer (subject to trustee?). There is no intention bearing in mind the bank guarantee being provided.

(f) Bar to proceedings challenging the VPA

- Neither the Applicant nor Council shall commence proceedings challenging the VPA. This does not prevent the Applicant from challenging the non-issue, or refusal, of DA 430/2016 or the conditions of consent imposed by Council other than those conditions applying to the VPA in accordance with this offer.

Developer works

(g) General obligations relating to Developer works

- To be carried out in accordance with the VPA and conditions of consent;
- That the works to be dedicated to Council shall be fit for the purpose.

(h) Design of Developer works

- The works in Lot 74 shall be to Council's specifications being the works for the Council public reserve.
- The works for the detention basin shall be approved at CC stage and to comply with Council's specifications.

(i) Warranties relating to Developer works

- All works will be fit for the purpose.

(j) Cost of Developer works

- See above.

(k) Ownership and care of Developer works

- See above.

(l) Work Health and Safety

- It is the Applicant's obligation to comply with all legal requirements in relation to Work Health and Safety during the construction of the works on Lot 74 prior to the issue of the Subdivision Certificate.

(m) Entry onto Land

- The land remains in the ownership of the Applicant until all works are complete, at which point it is dedicated to Council upon registration of the Plan of Subdivision.
- Council will be given permission to enter the land at any time on 48 hours' notice.

(n) Audit inspection testing of Developer works

- In accordance with the requirements under the relevant legislation as overseen

by private certifier.

- (o) Practical completion of Developer works
 - On issue of the Subdivision Certificate.
- (p) Transfer of ownership of Developer works
 - On registration of the Subdivision Plan.
- (q) Rectification of defects
 - Notification on or before the expiration of 1 year from the date of the issue of the Subdivision Certificate

Other provisions

- (r) The VPA will be registered on title and travels with the land as a right in rem.
- (s) Breach of obligations
 - This will be taken care of in the VPA but note the bond /bank guarantee and the requirement for works to be completed prior to the Subdivision Certificate.
- (t) Termination
 - On the fifth anniversary of registration of the Plan of Subdivision and meeting the requirements of Conditions 1(a), (b) and (c) above.
- (u) Indemnities
 - As set out in the above offer.
- (v) Insurances
 - The Applicant shall deliver Certificates of Currency for the relevant insurances to Council during the construction of the works under DA 430/2016.
- (w) Confidentiality
 - The VPA will be registered on the title of the land and therefore will not be confidential.
- (x) Ownership of intellectual property
 - The ownership of the Plans remains with the owner of the IP, but the Council will be given a licence to use the IP to perform its functions (under the VPA and statute).
- (y) Force majeure
 - The usual clause will be included
- (z) Amendment of the VPA

- By the written consent of both parties.
- (aa) Waiver of obligations'
- By the written consent of both parties.
- (bb) GST provisions
- If it is determined that GST is payable under the VPA, then the applicant shall supply a tax invoice to Council and within 90 days of receipt of the tax invoice Council shall pay the amount equal to GST on that supply. Any tax invoice must comply with the GST law.

7. Additional matters in relation to the form of offer

- (a) This offer remains open until close of business on 3 November 2017.
- (b) The offer is irrevocable.
- (c) The offer is made for the purpose of allowing Council to assess and determine DA 430/2016.
- (d) The applicant agrees to a condition of consent being imposed under DA430/2016 requiring it to enter into a VPA in the terms of this offer.

Yours faithfully



**Director
Cove Residential Pty Limited**

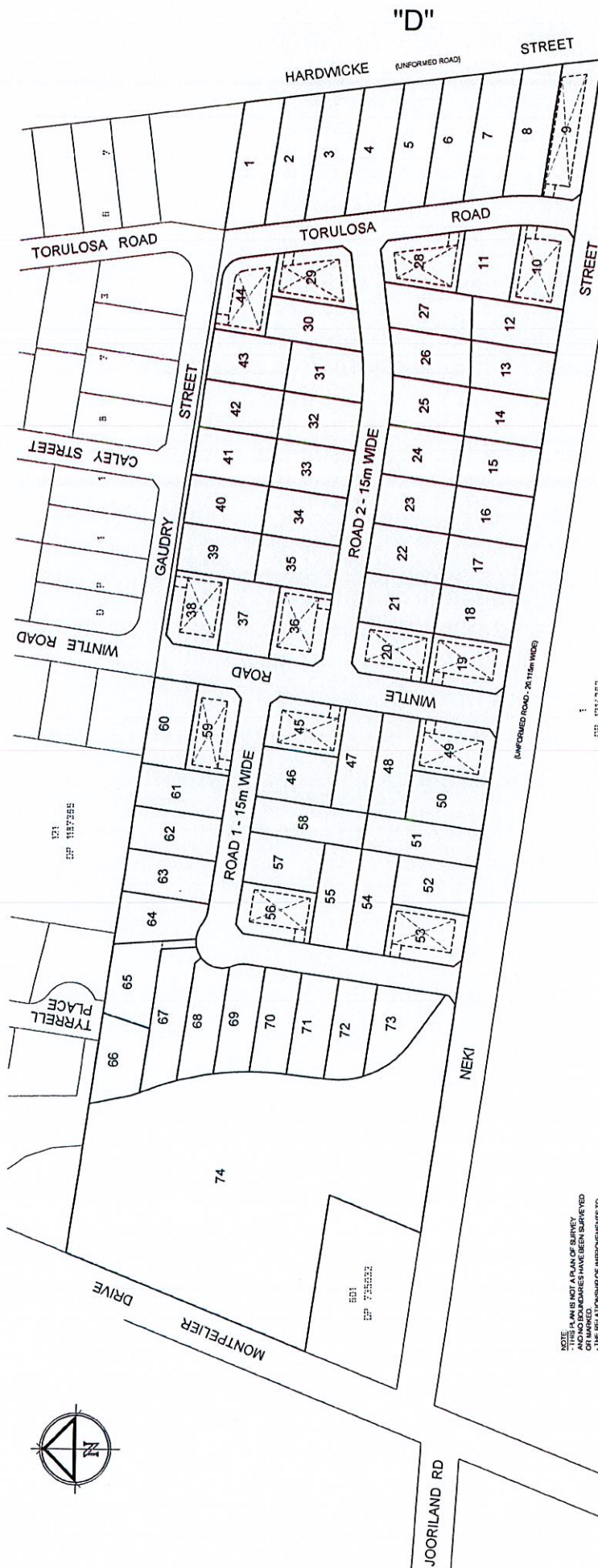
Table 1

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Table 1

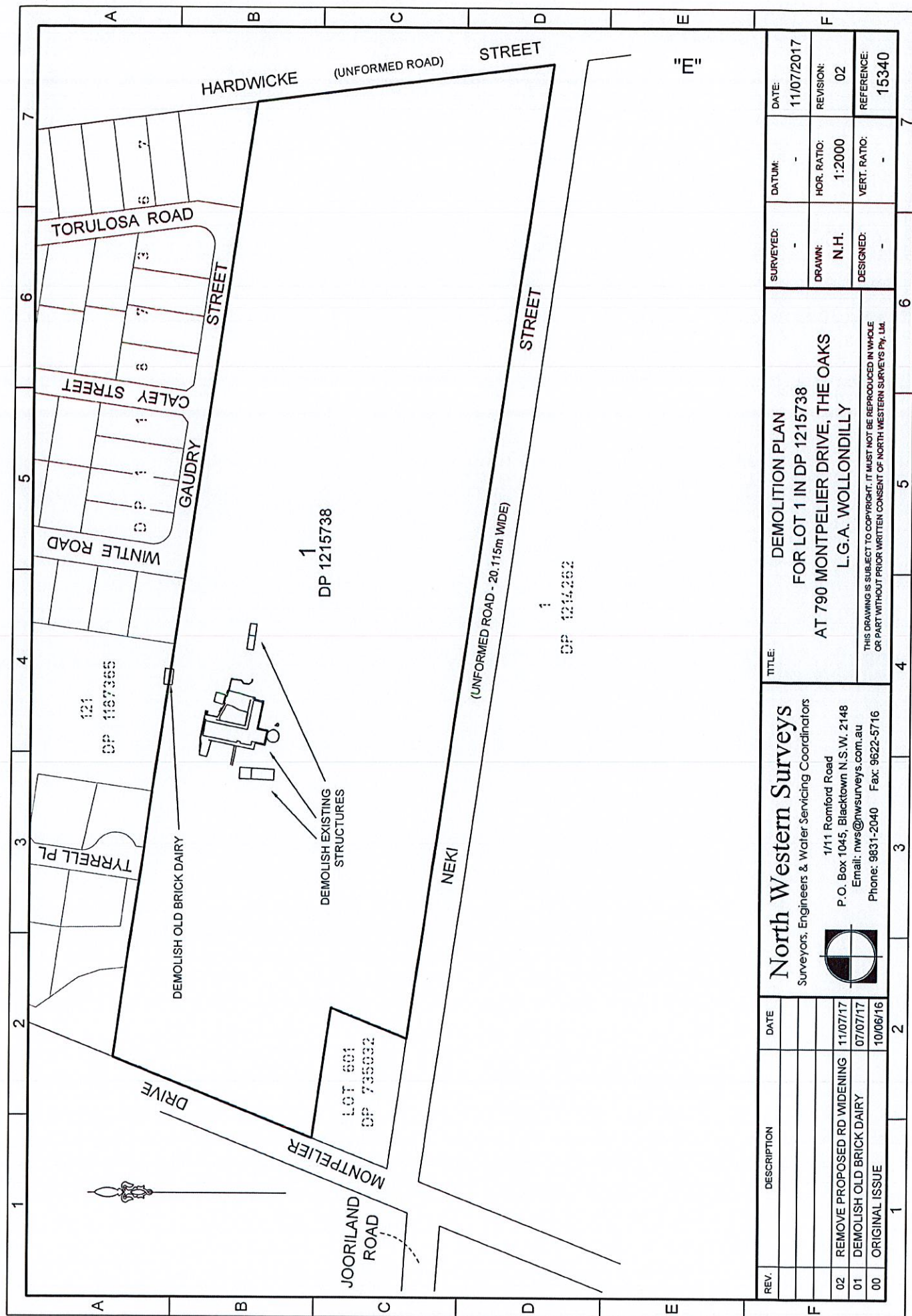
**Annexure C – Indicative Costs for Maintenance of Stormwater Basins as per Attachment 1
of Draft Dedication of Land Policy – PLA0036**

Item	Details	Unit Cost	Recurrence	Annualised cost*
Council Inspection	Testing of bio-retention basins Check attachment of orifice plate to wall of pit and check attachment of screen to wall of pit Check screen for corrosion/damage Inspect DCP walls/headwall structure for cracks and spalling Inspect DCP sump (if present (for sediment/sludge) Inspect bioretention basins structures for sediment and debris accumulation, vegetation, weed growth, erosion, scour, excessive ponding, vandalism	\$440	2/year	\$880
Insurance	Council to assess and renew insurance policy annually	\$100	1/year	\$100
Repair of OSD Structures	Replace/repair corroded or damaged componentry (grates, screens concrete structures etc) as necessary	\$3,000	0.1/yr	\$300
Mowing and Debris/ sediment removal	Mow basin, clear debris from headwall and screen, overflow weir, grates and outlet pipes. Clear sediment, debris, weeds and dead/dying vegetation. Replace plants as necessary	\$750	8/yr	\$6000
Fence Repair	Repair/replace damaged fence components as required	\$1500	0.1/yr	\$150
Filter media replacement	Replace rejuvenate filter media to 0.05 m for bioretention structures as per manufacturer's spec	\$3000	0.2/yr	\$600
GPT Cleanout		\$300	3/yr	\$900
TOTAL				\$8,930
35 YEAR TOTAL	Before CPI indexing and Net Present Value			\$312,550
35 YEAR TOTAL	CPI indexed as per clause 4.5.1(a) of Council's Dedication of Land Policy and Net Present Value (as advised by Council).			\$244,608.76



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REV.	DESCRIPTION	DATE
02	REMOVE PROPOSED RD WIDENING	11/07/17
01	DEMOLISH OLD BRICK DAIRY	07/07/17
00	ORIGINAL ISSUE	10/06/16

TITLE: DEMOLITION PLAN
FOR LOT 1 IN DP 1215738
AT 790 MONTEPIER DRIVE, THE OAKS
L.G.A. WOLLONDILLY

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SURVEYED:	DATUM:	DATE:
-	-	11/07/2017
DRAWN:	HOR. RATIO:	REVISION:
N.H.	1:2000	02
DESIGNED:	VERT. RATIO:	REFERENCE:
-	-	15340

"F"

Schedule 4

Dispute Resolution

1. Notice of Dispute

Except for a dispute arising, in or as a consequence of a review under Schedule 3, if a dispute between any of the Parties arises in connection with this Deed or its subject matter, then any Party may give to the other Parties a Notice of Dispute in Writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this Deed. If there is a dispute but will not be required to complete the matter the subject of the dispute, unless each Party indemnifies the other Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further Steps Required Before Proceedings

Any dispute between the Parties arising in connection with this Deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

3. Disputes for Expert Determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, Cove or any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with paragraph 6.

4. Choice of Expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) Agreed between and appointed jointly by the Parties; or
- (b) In the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as bias or a conflict of interest;

- (c) must inform the Parties before being appointed to the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 4 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. **Directions to Expert**

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this Deed.

7. **Expert not Arbitrator**

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept oral submissions unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other party;
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 business days to make further submissions;
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. **Compliance with Directions**

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

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

9. **Expert may convene Meetings**

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

- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

10. **Final Determination of Expert**

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

11. **Other Courses of Action**

If the mediation referred to in paragraph 2, or the expert determination required or agreed under paragraph 3, has not resulted in resolution of the dispute, any one Party may take whatever course of action is deemed appropriate for the purpose of resolving the dispute.

12. **Confidentiality of Information**

The Parties agree, and must obtain the written agreement of the mediator/expert, as a condition of his/her appointment:

- (a) subject to paragraph 12(b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who had signed a confidentiality undertaking to the same effect as this paragraph 12; or
 - (ii) if required by Law to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.