



lindsaytaylorlawyers

planning • environment • local government

Tesrol Eastern Creek Stage 2 Planning Agreement

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

Blacktown City Council

Sumy Pty Limited

Dated:

lindsaytaylorlawyers

Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia

T 02 8235 9700 • **F** 02 8235 9799 • **W** www.lindsaytaylorlawyers.com.au • **E** mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

Liability limited by a scheme approved under Professional Standards Legislation

Tesrol Eastern Creek Stage 2 Planning Agreement

Table of Contents

Summary Sheet.....	4
Parties	6
Background	6
Operative provisions	6
1 Definitions & Interpretation	6
2 Application of this Agreement	9
3 Status of this Agreement	9
4 Further Agreements Relating to this Agreement	9
5 Application of s94, s94A and s94EF of the Act to the Development	10
6 Effect of Development Consents on the Development	10
7 Contributions towards Internal Road Work & Stormwater Drainage Work	10
8 Payments towards regional road upgrades and stormwater drainage	11
9 Offsets against payments required under clause 8 relating to Stormwater Drainage Work	11
10 Determination of Value	12
11 Application of Development Contributions by the Council	13
12 Procedures relating to Monetary Contributions	13
13 Procedures relating to the Dedication of Land	13
14 Carrying out of Work	14
15 Access to the Land	14
16 Protection of people and property	14
17 Damage and repairs to Work	15
18 Variation of Work	15
19 Procedures relating to the completion of Work	15
20 Procedures relating to the rectification of defects	16
21 Failure to carry out Work	16
22 Works-As-Executed-Plan	17
23 Indemnity and Insurance	17
24 Provision of Security	17
25 Enforcement	19
26 No Registration of this Agreement	19
27 Sale of the Stage 2 Land	19
28 Review of this Agreement	19

29	Dispute Resolution – Expert Determination	20
30	Dispute Resolution – Mediation	20
31	Notices	21
32	Approvals and Consent.....	21
33	Costs	21
34	Entire Agreement	22
35	Further Acts.....	22
36	Governing Law and Jurisdiction	22
37	Joint and Individual Liability and Benefits	22
38	No Fetter	22
39	Representations and Warranties	22
40	Severability.....	23
41	Modification	23
42	Waiver	23
43	GST	23
44	Explanatory Note Relating to this Agreement.....	24
Schedule 1		25
Schedule 2		27
Schedule 3		28
Schedule 4		30
Schedule 5		31
Schedule 6		33
Execution.....		36
Appendix		37

Tesrol Eastern Creek Stage 2 Planning Agreement

Summary Sheet

Council:

Name: Blacktown City Council
Address: 62 Flushcombe Road, BLACKTOWN NSW 2148
Telephone: 9839 6000
Facsimile: 9831 1961
Email: council@blacktown.nsw.gov.au
Representative: Ron Moore – General Manager

Developer:

Name: Sumy Pty Limited
Address: Suite 1501, Level 15, 1 Alfred Street, SYDNEY NSW 2000
Telephone: (02) 9252 6888
Facsimile: (02) 9252 3303
Email: nigelfox@tesrol.com.au
Representative: Nigel Fox – Development Director

Land:

See definition of *Stage 2 Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clauses 7 and 8.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clause 24.

Registration:

Not to be registered. See clause 26.

Restriction on dealings:

See clause 27.

Dispute Resolution:

Mediation and expert determination. See clauses 29 and 30.

Tesrol Eastern Creek Stage 2 Planning Agreement

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

Parties

Sumy Pty Limited ABN 43 003 405 981 of Suite 1501, Level 15, 1 Alfred Street, Sydney, New South Wales (**Developer**)

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales 2148 (**Council**)

Background

- A The Developer has lodged with the Council a Development Application relating to the Development.
- B The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement.
- C Until the Planning Agreement operates, this document 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).

Archbold Road Upgrade means the acquisition of land and the carrying out of Work for the purpose of upgrading Archbold Road to a main collector road standard to meet development in the Eastern Creek Precinct Stage 3 as provided for in the Precinct Plan, and the Contributions Plan referred to in clause 8 of this Agreement.

Contributions Plan means a contributions plan made pursuant to s94EA of the Act.

Defects Liability Period means the period commencing on the date on which the Developer provides notice to Council that it considers that Work to be complete, and ending 12 months after that date.

Development means the development of the Stage 2 Land including subdivision, the carrying out of Stormwater Drainage Works and the Internal Road Works described in more detail in Schedule 2, for which a Development Consent, as modified from time to time in accordance with the Act, is in force under the Act.

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, 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.

Eastern Creek Precinct (Stage 3) means the land to which the Precinct Plan applies.

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

- (i) a lot created by a subdivision of the Stage 2 Land that is to be dedicated or otherwise transferred to the Council, or
- (ii) a residue lot created by a subdivision of the Stage 2 Land which may be further subdivided.

Internal Road Work means the road shown on the Site Detail Plan as 'Proposed Road' in so far as it is located on the Stage 2 Land.

Old Wallgrove Road Upgrade means the acquisition of land and the carrying out of Work for the purpose of upgrading Old Wallgrove Road to a sub-arterial road standard to meet development in the Eastern Creek Precinct Stage 3 as provided for in the Precinct Plan, and the Contributions Plan referred to in clause 8 of this Agreement.

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.

Precinct Plan means the document titled *State Environmental Planning Policy No.59 – Central Western Sydney Economic and Employment Area, Employment Lands Precinct Plan, Eastern Creek Precinct (Stage 3)*, adopted by the Council on 7 December 2005, and which came into effect on 14 December 2005.

Provision means the sum of the values of all Development Contributions required to be made by the Developer 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 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, which period must not be less than 20 Business Days or such longer period of time as is reasonable in the circumstances.

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

Section 94 Offset Amount means a \$ amount calculated in accordance with the following formula:

$$S = A - B$$

where

S means the Section 94 Offset Amount;

A means the estimated cost of the Stormwater Drainage Work specified in or determined in accordance with the Contributions Plan referred to in clause 8.1, plus the estimated value of the land on which the Stormwater Drainage Work is, or is intended to be located (being land required to be dedicated to Council under clause 7.2), specified in or determined in accordance with the Contributions Plan referred to in clause 8.1; and

B means any contribution payable by the Developer under clause 8.2 for a Work specified in Item 2 or 3 of Column 1 of Schedule 4.

Security means the Security to be provided under clause 24 of the Agreement.

Site Detail Plan means the plan contained in Schedule 3.

Stage 1 Land means the land described as the "Stage 1 Land" on the plan contained in Schedule 3.

Stage 2 Land means the land specified or described in Schedule 1.

Stormwater Drainage Work means the Work specified in Column 1 of Schedule 4 that is required in relation to the Development in Item 1 of that Schedule on the Stage 2 Land as more particularly described in the Precinct Plan.

Work means the physical result of any building, engineering or construction work in, on, over or under land.

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

- 2.1 This Agreement applies to the Development on the Stage 2 Land.

3 Status of this Agreement

- 3.1 This Agreement, except for the Planning Agreement, operates on the date on which it is executed by all of the Parties.
- 3.2 Until the Planning Agreement operates, this Agreement is taken to contain the Developer's irrevocable offer to enter into the Planning Agreement if Development Consent is granted to the Development.
- 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 into as required by clause 25C(1) of the Regulation, and
 - 3.3.3 the Developer gives the Council 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 Parties may, at any time, enter into such other agreements relating to the subject-matter of this Agreement that they consider are necessary or desirable in order to give effect to this Agreement.
- 4.2 An agreement referred to in clause 4.1 is not to be inconsistent with this Agreement.

- 4.3 Without limiting clause 4.1, an agreement may relate to:
- 4.3.1 the particulars of any Public Facility required by this Agreement to be made available for a Public Purpose,
 - 4.3.2 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,
 - 4.3.3 the particulars of any work required by this Agreement to be undertaken by the Developer, and
 - 4.3.4 the time at which and the manner in which a Work is to be handed over to the Council.

5 Application of s94, s94A and s94EF of the Act to the Development

- 5.1 This Agreement excludes the application of s94 and s94A of the Act to the Development.
- 5.2 This Agreement does not exclude the application of s94EF of the Act to the Development.

6 Effect of Development Consents 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 those required to be made under this Agreement.
- 6.2 If Development Consent is granted to the Development subject to a condition imposed under s80A(1) 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 such Work.
- 6.3 For the purpose of clause 6.2, the value of the Developer's Provision under this Agreement and the value of the relevant Work is the value determined in accordance with clause 10 of this Agreement as if the Work was a Development Contribution.
- 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 clause 6.2.
- 6.5 In this clause, *Work* does not include Work for the purposes of the Internal Road Work or Stormwater Drainage Work or any Work specified in the Table to Schedule 4.

7 Contributions towards Internal Road Work & Stormwater Drainage Work

- 7.1 The Developer is to carry out and complete the Internal Road Work and Stormwater Drainage Work in accordance with:
- 7.1.1 Schedule 4 of this Agreement, and
 - 7.1.2 any applicable Development Consent.

- 7.2 Subject to clause 9, the Developer is to dedicate to the Council free of cost the land on which the Internal Road Work and Stormwater Drainage Work is located upon completion of that Work.

8 Payments towards regional road upgrades and stormwater drainage

- 8.1 The Developer acknowledges that, following the commencement of this Agreement, the Council may adopt a Contributions Plan that applies to the Stage 2 Land under which the Council may impose, as a condition of Development Consent, a requirement that an applicant for Development Consent makes a monetary Development Contribution to the Council under s94 of the Act in respect of:
- 8.1.1 the Old Wallgrove Road Upgrade, unless the Roads and Traffic Authority becomes the roads authority for that road within the meaning of the Roads Act 1993 and assumes responsibility for the cost of the Upgrade; and
 - 8.1.2 the Archbold Road Upgrade, unless the Roads and Traffic Authority becomes the roads authority for that road within the meaning of the Roads Act 1993 and assumes responsibility for the cost of the Upgrade; and
 - 8.1.3 Stormwater Drainage Work.
- 8.2 Subject to clauses 8.3, 8.4, 9 and 24, by not later than the date of the issuing of the first subdivision certificate for the Development, the Developer is to pay to the Council a monetary Development Contribution of a kind referred to in clause 8.1 but only if, before that date, the Council has done all of the following:
- 8.2.1 adopted the Contributions Plan referred to in clause 8.1, and
 - 8.2.2 determined the Development Contribution that would (but for clause 5.1) relate to the Development in accordance with that Plan, and
 - 8.2.3 notified the Developer in writing of the amount of that Development Contribution.
- 8.3 In calculating the monetary Development Contribution payable under clause 8.2, the Council is to deduct from the full amount of the monetary Development Contribution required to be made by the Developer under clause 8.2, that amount the Developer has paid or is required to pay towards the Stormwater Drainage Work determined in accordance with the Contributions Plan referred to in clause 8.1
- 8.4 Clause 19 applies to a dispute between the Parties relating to the amount of a Development Contribution payable by the Developer under clause 8.2 if, within 30 days receipt of the notice referred to in clause 8.2.3, the Developer serves on the Council a notice in writing disputing the relevant amount.

9 Offsets against payments required under clause 8 relating to Stormwater Drainage Work

- 9.1 If the Developer carries out and completes a Work specified in Item 1 of Column 1 of the Table to Schedule 4, the following provisions apply:



- 9.1.1 The total amount the Developer is required to pay under clause 8 is to be reduced by the Section 94 Offset Amount.
- 9.1.2 If the Section 94 Offset Amount is greater than the amount referred to in clause 9.1.1, the Council is to pay to the Developer the difference.
- 9.1.3 Payments are required to be made by the Council under clause 9.1.2 as follows:
 - (a) Each time a monetary Development Contribution is paid to the Council in relation to a Work specified in Item 1 of Column 1 of the Table to Schedule 4 by a person other than the Developer, the Council is to pay to the Developer an amount equal to the amount received by the Council adjusted in accordance with clause 9.1.3(c).
 - (b) The Council is to make payments (if any) to the Developer 1 February and 1 August in each year following the first anniversary of the adoption of the contributions plan referred to in clause 8.1.
 - (c) Any amount payable by the Council under clause 9.1.2 is to be indexed quarterly in accordance with the method of indexation, if any, provided for in the Contributions Plan referred to in clause 8.1 between the date on the Council receives a payment as referred to in clause 9.1.3(a) and the date on which the Council makes the payment to the Developer referred to in clause 9.1.3(a).

10 Determination of Value

- 10.1 For the purposes of this Agreement, where a Contributions Plan has not been adopted by Council under clause 8.1 of this Agreement, the value of a Development Contribution is to be determined as follows:
 - 10.1.1 where the Development Contribution is in the form of a monetary Development Contribution - the dollar value of the monetary contribution on the date it is paid, and
 - 10.1.2 where the Development Contribution is in the form of the dedication of land - 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 on the date of its dedication, and
 - 10.1.3 where the Development Contribution is in the form of Works - the estimated value of the Works determined by the Council acting reasonably.
- 10.2 For the purposes of this Agreement if a Contributions Plan has been adopted by Council in accordance with clause 8.1, the value of a Development Contribution is to be the value specified by or determined in accordance with the Contributions Plan at the date of its adoption for the respective monetary contribution, dedication of land or carrying out of Works in the Plan, indexed in accordance with the method of indexation, if any, provided for in the Contributions Plan, from the date the Contributions Plan is adopted to the date on which the Development Contribution is made.

11 Application of Development Contributions by the Council

- 11.1 The Council must apply a Development Contribution made by the Developer under this Agreement 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.
- 11.2 The Council is to make each such Public Facility available for the Public Purpose relating to that Facility and in the manner that best meets the demand for the Facility created by the Development.

12 Procedures relating to Monetary Contributions

- 12.1 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.
- 12.2 The Developer is to give the Council not less than 2 business days written notice of:
 - 12.2.1 its intention to pay a monetary contribution,
 - 12.2.2 the Public Facility to which the monetary contribution relates, and
 - 12.2.3 the amount proposed to be paid.
- 12.3 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 12.2, has given to the Developer a tax invoice for the amount of the contribution that the Developer intends to pay and nominating the bank account into which the funds are to be deposited.
- 12.4 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.

13 Procedures relating to the Dedication of Land

- 13.1 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 title to the land to the Council when registered.
- 13.2 To allow for the registration of an instrument of transfer referred to in clause 13.1, the Developer is to:
 - 13.2.1 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
 - 13.2.2 give to the Council an undertaking to deliver to the Council the certificate of title to the land to be dedicated under this Agreement, if that certificate is released to the Developer by the Land Titles Office.

14 Carrying out of Work

- 14.1 Any Work that is to be carried out by the Developer under this Agreement is to be carried out in accordance with:
 - 14.1.1 any design or specification specified by the Council,
 - 14.1.2 any relevant development consent,
 - 14.1.3 any other applicable law, and
 - 14.1.4 otherwise to the satisfaction of the Council.
- 14.2 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 14.1, the Developer is to bear all costs relating to the preparation or modification and approval of the design and specification.

15 Access to the Land

- 15.1 The Developer is to permit the Council, its officers, employees, agents and contractors to enter the Stage 2 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.
- 15.2 If the Council or its officers, employees, agents or contractors enter the Stage 2 Land for the purposes contemplated by clause 15.1, the Council must abide (and must procure its officers, employees, agents and contractors to abide) by the Developer's reasonable occupational health and safety requirements at all times.
- 15.3 The Council indemnifies the Developer, its employees, officers, agents and contractors from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges and expenses incurred in connection with damage, loss, injury or death arising from any act or omission caused or contributed to by Council or its officers, employees, agents or contractors when entering on the Stage 2 Land as contemplated by clause 15.1, except to the extent caused or contributed to by the Developer or its officers, employees, agents or contractors.
- 15.4 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 carrying 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.

16 Protection of people and property

- 16.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 16.1.1 all necessary measures are taken to protect people and property, and
 - 16.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 16.1.3 nuisances and unreasonable noise and disturbances are prevented.

17 Damage and repairs to Work

- 17.1 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, except to the extent such loss or damage is caused or contributed to by Council or its officers, employees, agents or contractors.

18 Variation of Work

- 18.1 A Work is not to be varied by the Developer, unless:
- 18.1.1 the Parties agree in writing to the variation, and
 - 18.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 18.1.3 the Developer bears all of the Council's costs of and incidental to agreeing to and approving the variation.
- 18.2 For the purposes of clause 18.1 a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

19 Procedures relating to the completion of Work

- 19.1 A Development Contribution comprising the carrying out of a Work is made for the purposes of this Agreement when the Council accepts the completion of the Work in accordance with this clause.
- 19.2 Subject to this Agreement, when the Developer considers that a Work required to be carried out by the Developer under this Agreement is complete, the Developer is to give to the Council a notice in writing to that effect.
- 19.3 The Council is taken to have accepted the completion of a Work that is the subject of a notice referred to in clause 19.2:
- 19.3.1 where the Council has not given the Developer a Rectification Notice under clause 20.1 – at the expiration of the Defects Liability Period, or
 - 19.3.2 where the Council has given the Developer a Rectification Notice under clause 20.1 – 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, and in this regard, if the Developer notifies the Council that it considers that a defect the subject of a Rectification Notice has been rectified, Council must give the Developer a written notice stating whether or not that defect has been rectified to the Council's satisfaction within 20 Business Days of receipt of the Developer's notice.
- 19.4 On completion of the Work, the Council accepts responsibility for the Work subject to anything to the contrary in this Agreement.

20 Procedures relating to the rectification of defects

- 20.1 During the Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 20.2 The Developer is to comply with a Rectification Notice at its own cost according to its terms and to the satisfaction of the Council.
- 20.3 If the Developer breaches clause 20.2, 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.

21 Failure to carry out Work

- 21.1 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:
 - 21.1.1 the carrying out of further work relating to the Work to immediately cease except in relation to the rectification of the breach, and
 - 21.1.2 the breach to be rectified to the Council's satisfaction.
- 21.2 The Council is not required to give the Developer a notice under clause 21.1 as a pre-condition to calling-up any Security referred to in clause 24 in relation to the Developer's breach.
- 21.3 A notice given under clause 21.1 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.
- 21.4 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 21.1:
 - 21.4.1 call upon any Security referred to in clause 24, and
 - 21.4.2 carry out and complete the Work the subject of the Developer's breach.
- 21.5 Clauses 29 and 30 do not prevent a notice being given under clause 21.1 and do not apply to such a notice or the circumstances relating to the giving of that notice, and any procedure commenced under clause 29 or clause 30 ceases to apply when such a notice is given.
- 21.6 If the Council incurs a cost in carrying out, completing or rectifying a defect in a Work that is not met by the Security referred to in clause 24, the Council may recover the cost from the Developer in a court of competent jurisdiction.
- 21.7 For the purpose of clause 21.6, the Council's costs of carrying out, completing or rectifying a defect in a Work includes, but is not limited to:
 - 21.7.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 21.7.2 all fees and charges reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 21.7.3 without limiting clause 21.7.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's failure to comply with this Agreement.

22 Works-As-Executed-Plan

- 22.1 A notice given under clause 19.2 must be accompanied by a full works-as-executed-plan in respect of the Work the subject of the notice.

23 Indemnity and Insurance

- 23.1 The Developer 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 Developer of any Work and the performance by the Developer of any other obligation under this Agreement, except to the extent caused or contributed to by Council or its officers, employees, agents or contractors.
- 23.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 23.2.1 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 Developer's liability in respect of damage to or destruction of the Works,
- 23.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 23.2.3 workers compensation insurance as required by law, and
- 23.2.4 any other insurance required by law.
- 23.3 If the Developer fails to comply with clause 23.2, 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 Developer to the Council and may be recovered by the Council as it deems appropriate including:
- 23.3.1 by calling upon the Security provided by the Developer to the Council under this Agreement, or
- 23.3.2 recovery as a debt due in a court of competent jurisdiction.
- 23.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 23.2.

24 Provision of Security

- 24.1 In this clause **Security** means an unconditional bond or bank guarantee in a form reasonably acceptable to the Council relating to compliance by the Developer with its obligations to carry out any Work under clause 7 and to make payments to the Council under clauses 7 and 8.

- 24.2 Before the date of commencement of any Work under this Agreement by the Developer, the Developer is to provide the Council with Security in the amount of \$4,300,00.00.
- 24.3 More than one Security can be provided to the Council by the Developer for the purposes of clause 24.
- 24.4 If the amount of the Security to be held by the Council is to be varied in accordance with this clause 24, either Party must give written notice of the proposed variation to the other Party nominating the new amount for any substitute Security, and within 30 business days of such notice the Developer is to provide the Council with the substitute Security in the nominated amount in exchange for the Council's release and return to the Developer of the existing Security.
- 24.5 The Council must progressively release and return the Security to the Developer as and when the Developer performs its obligations under this Agreement to the satisfaction of the Council but may only do so if:
 - 24.5.1 the Council considers that the remaining amount of the Security is adequate having regard to the Developer's remaining obligations under this Agreement, and
 - 24.5.2 the Developer is not in breach of this Agreement at the time the Security is to be returned.
- 24.6 The Council is to return the Security or any remaining part of it to the Developer within 28 days of the completion by the Developer of all of its obligations under this Agreement to the satisfaction of the Council.
- 24.7 At any time following the provision of the Security, the Developer may provide the Council with a replacement Security in the amount of the Security required to be provided under this clause 24.
- 24.8 On receipt of a replacement Security, the Council is to release and return to the Developer as directed, the Security it holds which has been replaced.
- 24.9 The Council may call-up the Security if it considers that the Developer has breached this Agreement.
- 24.10 The Council is not to call-up the Security unless it has given the Developer not less than 7 days written notice of its intention to do so.
- 24.11 If the Council calls on the Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Developer's breach being:
 - 24.11.1 the reasonable costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 24.11.2 all fees and charges necessarily or reasonably incurred by the Council in order to have the Work carried out, completed or rectified, and
 - 24.11.3 without limiting clause 24.11.2, all legal costs and expenses reasonably incurred by the Council, by reason of the Developer's breach.
- 24.12 If the Council calls on the Security in accordance with this Agreement, the Council may, by notice in writing to the Developer, require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Council is entitled to hold under clause 24.

25 Enforcement

- 25.1 Without limiting any other remedies available to the Parties, this Agreement may be enforced by either Party 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 No Registration of this Agreement

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

27 Sale of the Stage 2 Land

- 27.1 The Developer agrees not to sell the Stage 2 Land or part of the Stage 2 Land, other than a Final Lot created pursuant to the any consent granted to the Development Application, unless:
 - 27.1.1 it has, at no cost to the Council, first procured the execution by the person with whom it is dealing of a Deed in favour of the Council in the form set out in Schedule 5, and
 - 27.1.2 the Developer is not in breach of this Agreement.
- 27.2 The Developer is not obliged to procure the agreement referred to in clause 27.1.1 if that part of the Stage 2 Land being sold is a Final Lot.
- 27.3 Once the Developer has fulfilled its obligations to make Development Contributions under this Agreement, the Council must promptly provide a release and discharge of the Planning Agreement provided that the Developer has first provided written notice to the Council that the Developer is of the view that it has fulfilled its obligations to make Development Contributions under this Agreement.

28 Review of this Agreement

- 28.1 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.
- 28.2 For the purposes of clause 28.1, 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.

- 28.3 The parties acknowledge that this Agreement will be reviewed once the requirements of the Department of Planning for regional infrastructure in the area covered by the Precinct Plan are known.
- 28.4 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 28.1 is taken to be a dispute for the purposes of clause 29.

29 Dispute Resolution – Expert Determination

- 29.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 29.2 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.
- 29.3 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 29.4 If a notice is given under clause 29.1.1(b), the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 29.5 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.
- 29.6 The Expert Determination is binding on the Parties except in the case of fraud or misfeasance by the Expert.
- 29.7 The Parties are to bear the costs of the Expert equally unless the Expert determines otherwise.
- 29.8 The Parties are to bear their own costs arising from or in connection with the appointment of the Expert and the Expert Determination.

30 Dispute Resolution – Mediation

- 30.1 This clause applies to any dispute under this Agreement other than a dispute to which clause 29 applies.
- 30.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 30.3 If a notice is given under clause 30.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 30.4 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 as set out in Schedule 6 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.
- 30.5 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.

31 Notices

- 31.1 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:
 - 31.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
 - 31.1.2 faxed to that Party at its fax number set out in the Summary sheet.
- 31.2 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.
- 31.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 31.3.1 delivered, when it is left at the relevant address.
 - 31.3.2 sent by post, 2 business days after it is posted.
 - 31.3.3 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.
- 31.4 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.

32 Approvals and Consent

- 32.1 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.

33 Costs

- 33.1 The Developer must bear the Council's reasonable legal costs arising from preparing, negotiating and executing the following documents:
 - 33.1.1 this Agreement; and
 - 33.1.2 the Explanatory Note to accompany this Agreement on public exhibition.
- 33.2 Council must produce evidence, to the reasonable satisfaction of the Developer, of any costs claimed in accordance with this clause.

- 33.3 The Developer is to pay the costs of Council in accordance with this clause 33 within 30 business days of its receipt of Council's tax invoice and supporting information.

34 Entire Agreement

- 34.1 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.

35 Further Acts

- 35.1 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.

36 Governing Law and Jurisdiction

- 36.1 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.

37 Joint and Individual Liability and Benefits

- 37.1 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.

38 No Fetter

- 38.1 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.

39 Representations and Warranties

- 39.1 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.

40 Severability

- 40.1 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. 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.

41 Modification

- 41.1 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.

42 Waiver

- 42.1 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. 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.

43 GST

- 43.1 In this clause:
- Adjustment Event, Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply, Tax Invoice and Taxable Supply** 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.
- 43.2 Subject to clause 43.4, if GST is payable on a Taxable Supply made by a party (**Supplier**) under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply (**Recipient**) must also pay to the Supplier the GST Amount as additional Consideration at the same time as any other consideration is to be first provided for that Supply. The Supplier must provide a Tax Invoice to the Recipient for that Supply no later than the time at which the GST Amount for that Supply is to be paid under this clause 43.2.
- 43.3 Clause 43.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

- 43.4 No additional amount shall be payable by the Council under clause 43.2 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.
- 43.5 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:
- 43.5.1 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;
- 43.5.2 that any amounts payable by the Parties in accordance with clause 43.2 (as limited by clause 43.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 43.6 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.
- 43.7 If the GST Amount properly payable in relation to a Supply (as determined in accordance with clauses 43.2 and 43.5) varies from the additional amount paid by the Recipient under clause 43.2, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 43.7 is deemed to be a payment, credit or refund of the GST Amount payable under clause 43.2. The Supplier must issue an Adjustment Note to the Recipient in respect of any Adjustment Event occurring in relation to a Supply made under or in connection with this Agreement as soon as reasonably practicable after the Supplier becomes aware of this Adjustment Event.
- 43.8 This clause continues to apply after expiration or termination of this Agreement.

44 Explanatory Note Relating to this Agreement

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

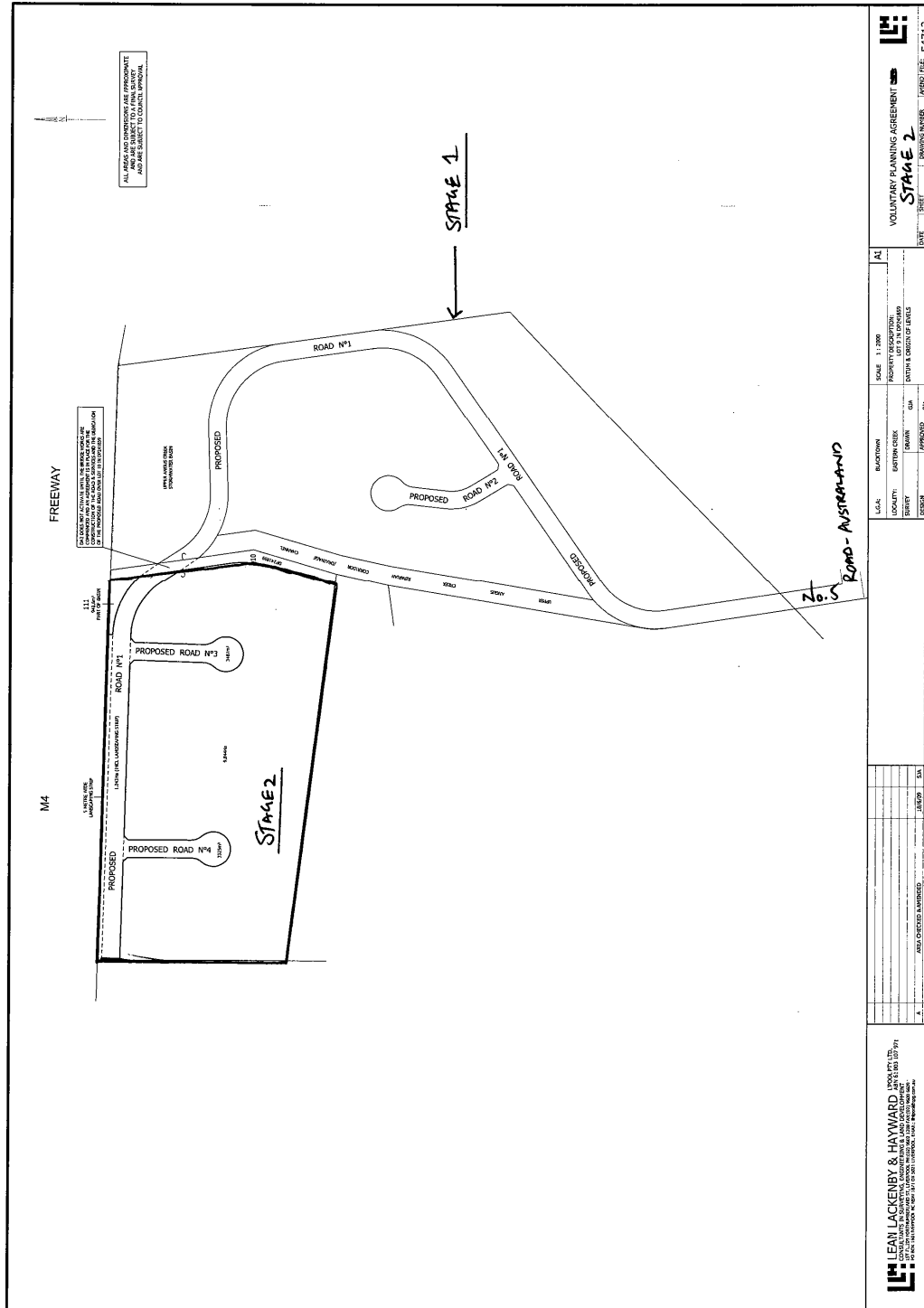
Schedule 1

(Clause 1.1)

The Stage 2 Land

The Stage 2 Land is the land shown black and heavy edged on the plan on the following page.

Tesrol Eastern Creek Stage 2 Planning Agreement
Blacktown City Council
Sumy Pty Limited



Schedule 2

(Clause 1.1)

The Development

The Development described in Development Application 06-3415, to the extent that
Development is located on the Stage 2 Land

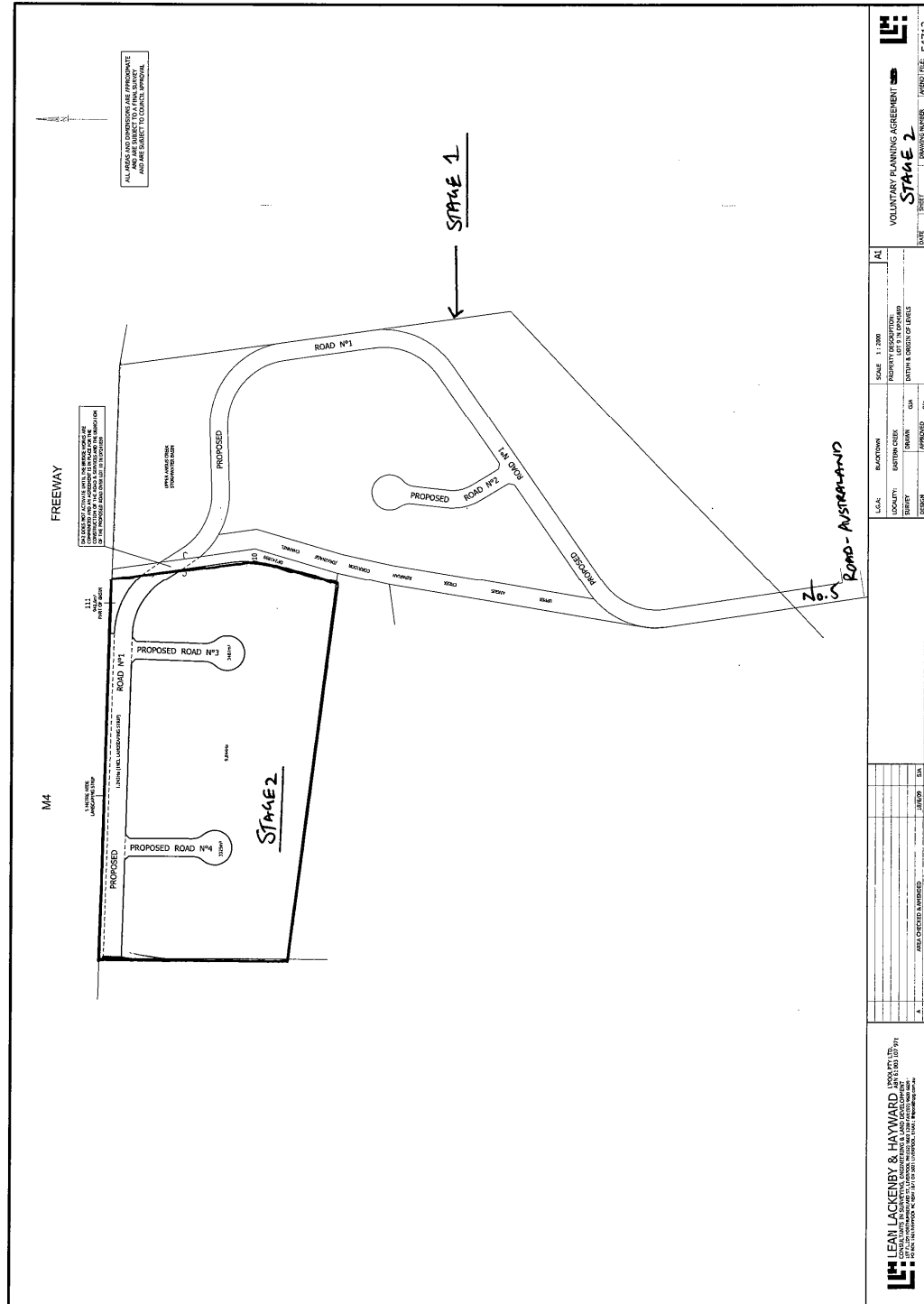
Schedule 3

(Clause 1.1)

Site Detail Plan

The Site Detail Plan is the plan on the following page.

Tesrol Eastern Creek Stage 2 Planning Agreement
Blacktown City Council
Sumy Pty Limited



Schedule 4

(Clause 9)

Developer's Works

Column 1	Column 2	Column 3
Developer's Work (Item No.)	Public Purpose	Timing for Completion of Work
1. Stormwater Drainage Work – Bridge that will cross the riparian/trunk drainage channel from the end of the temporary cul de sac on the Stage 1 Land to the Stage 2 Land	To enable the crossing of the riparian/trunk drainage channel	In conjunction with the completion of development on the Stage 2 Land
2. Internal Road Work	Public road	In conjunction with the completion of development on the Stage 2 Land

Schedule 5

(Clause 27)

Deed of Adoption and Acknowledgment

Parties

Sumy Pty Limited ABN 43 003 405 981 of Suite 1501, Level 15, 1 Alfred Street, SYDNEY NSW 2000 (**Developer**)

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales 2148 (**Council**)

ABN ## of ## (**Purchaser**)

Recitals

- A The Developer and the Council are parties to the Agreement, under which the Developer is not to sell any of the land the subject of the Agreement without entering and procuring the Purchaser to enter into a deed in this form.
- B The Developer wishes to sell to the Purchaser the Sale Land.
- C The Purchaser wishes to acquire the Sale Land from the Developer, and agrees to adopt certain obligations of the Developer under this Agreement on the basis set out in this deed.

Operative Provisions

1 Interpretation

- 1.1 In this Deed the following definitions apply:

Agreement means the planning agreement dated ## 200## between the Developer and the Council made pursuant to s93F of the *Environmental Planning and Assessment Act 1979*.

Facilities means the Development Contributions to be provided by the Developer to the Council under the Agreement.

Sale Land means the land described in the first schedule to this Deed.

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

- 1.2.1 Words or expressions defined in the Agreement bear the same meaning in this deed.

1.2.2 Words importing the singular include the plural and vice versa.

1.2.3 Words importing a gender include the other gender.

2 Adoption of Agreement by Purchaser

2.1 The Purchaser has read the Agreement and agrees to be bound by it in so far as it applies to the Sale Land as if the Purchaser were named as a party to it in the place of the Developer.

3 Conditions of Consent for Sale Land

3.1 The Purchaser acknowledges and agrees that the Council will require, as a condition of any development consent with respect to the whole or part of the Sale Land, that the Agreement be complied with as regard to the land the subject of that consent.

SCHEDULE
The Sale Land
##

Executed as a Deed

[Drafting Note. Insert execution clauses of Parties]

Schedule 6

(Clause 30)

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.



Execution

Executed as an Agreement

Dated:

Executed on behalf of the Council by its Attorney who states
that he/she has no notice of revocation of Power of Attorney Book Number
pursuant to which this Agreement is executed

Attorney

Witness/Name/Position

Executed on behalf of the Developer in accordance with s127 of the
Corporations Act 2001 (Cth)

Director

Director/Secretary

Appendix

(Clause 44)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

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

Parties

Sumy Pty Limited ABN 43 003 405 981 of Suite 1501, Level 15, 1 Alfred Street, Sydney, New South Wales 2000 (**Developer**)

Blacktown City Council of 62 Flushcombe Road, Blacktown, New South Wales 2148 (**Council**)

Description of the Land to which the Draft Planning Agreement Applies

Land at Eastern Creek, being:

- Lots 9, 11, 12 and 13 in Deposited Plan 241859
- Lot Z in Deposited Plan 419949
- Lot 1 in Deposited Plan 650179,

to the extent of the Stage 2 Land (as that term is defined in the Planning Agreement).

This Stage 2 Land is referred to in this Explanatory note as the Land.

Description of Proposed Development

The development as described in the DA 06-3415 relating to the Land, as modified from time to time, being:

- the subdivision of the Land into approximately 10 industrial lots
- the construction of Internal Roads Works,

- the construction of stormwater drainage works, comprising the construction of a bridge,
 - bulk earthworks,
 - landscaping works
- as further shown on the approved plans,
to the extent located on the Land.

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

Objectives of Draft Planning Agreement

The objective of the Draft Planning Agreement is to provide for the carrying out of works and the provision of land for the provision of infrastructure, facilities and services to meet the Development on the Land.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the *Environmental Planning and Assessment Act 1979 (Act)*.

Effect of the Draft Planning Agreement

The draft planning agreement provides for the design, construction, landscaping and dedication to the Council of the roadworks identified, and (subject to clause 9 of the Planning Agreement) dedication to the Council free of cost of the Internal Roads to the extent located on the Land as shown on the Site Detail Plan.

The draft planning agreement also provides for the payment of monetary contributions towards the cost of the upgrading of Old Wallgrove Road and Archbold Road and certain stormwater drainage works in certain circumstances.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft planning agreement provides for the provision of infrastructure:

- to meet the demands generated by the Development for new public infrastructure, and
- to mitigate the potential impacts of the Development.

The draft planning agreement will:

- provide for appropriate management of potential environmental impacts arising from the Development,
- enable the subject land to be developed in a timely and efficient manner to promote economic development and employment opportunities, and

- provide for the dedication of land for public purposes.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by promoting the objects of the Act as set out in s5(a)(i), (ii) and (iv) of the Act.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

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

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The draft planning agreement promotes the following two elements of the Council's Charter under s8(1) of the *Local Government Act 1993*:

- *To provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively.*

This element of the Council's Charter is promoted through the provision of public roads for the precinct.

- *To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.*

This element of the Council's Charter is promoted by the Council's assessment of the development application associated with the draft planning agreement.

All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program

All Capital Works are as a consequence of the development and are to be provided by the Developer in-kind. As such, the Draft Planning Agreement conforms with Council's Capital Works Program