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Deed

Genista Place Planning Agreement Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Wagga Wagga City Council
Watsons Hill Pty Limited**

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Genista Place Planning Agreement

Planning Agreement

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Summary Sheet

Council:

Name: Wagga Wagga City Council
Address: 243 Baylis Street, Wagga Wagga NSW 2650
Telephone: 1300 292 442
Facsimile: n/a
Email: Thompson.Peter@wagga.nsw.gov.au
Representative: Peter Thompson, General Manager

Developer:

Name: Watsons Hill Pty Limited
Address: 60 – 62 Hovell Street, Wodonga VIC 3690
Telephone: 02 6055 0180
Facsimile: n/a
Email: paul@alatalobros.com.au
Representative: Paul Edey

Land:

See definition of *Land* in clause 1.1.

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 9 and the Schedule.

Application of s7.11, s7.12 and s7.24 of the Act:

See clause 8.

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Registration:

See clause 15.

Restriction on dealings:

See clause 16.

Dispute Resolution:

See Part 3.

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Genista Place Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Wagga Wagga City Council ABN 56 044 159 537 of 243 Baylis Street, Wagga Wagga NSW 2650 (**Council**)

and

Watsons Hill Pty Limited ABN 74 060 695 007 of 60 – 62 Hovell Street, Wodonga VIC 3690 (**Developer**)

Background

- A The Developer is the owner of the Land.
- B The Developer has made the Development Application for the Development of the Land.
- C The Developer is prepared to dedicate the Dedication Land in accordance with this Deed in connection with the carrying out of the Development.

Operative provisions

Part 1 - Preliminary

1 Interpretation

- 1.1 In this Deed the following definitions apply:

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

Approval includes approval, consent, licence, permission or the like.

Authority means the Commonwealth or New South Wales government, a Minister of the Crown, a government department, a public authority established by or under any Act, a council or county council constituted under the *Local Government Act 1993*, or a person or body exercising functions under any Act including a commission, panel, court, tribunal and the like.

Claim includes a claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

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Dedication Land means land with an area of not less than 8.332ha shown as Lot 9 in the Development Plan.

Deed means this Deed and includes any schedules, annexures and appendices to this Deed.

Development means the development described in Development Application DA17/0572 involving subdivision of the Land to create 9 lots generally as shown on the Development Plan.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, but does not include any Security or other benefit provided by a Party to the Council to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

Development Plan means the plan in the Schedule.

Dispute means a dispute or difference between the Parties under or in relation to this Deed.

GST has the same meaning as in the GST Law.

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

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Land means Lot 39 DP1085747 known as Genista Place, Springvale and any lot created by the subdivision of that lot.

Party means a party to this Deed.

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

- 1.2 In the interpretation of this Deed, 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 Deed.
 - 1.2.2 A reference in this Deed 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 Deed 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 Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
 - 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and

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- any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.

2 Status of this Deed

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.

3 Commencement

- 3.1 This Deed commences and has force and effect on and from the date when the Parties have:
- 3.1.1 both executed the same copy of this Deed, or
- 3.1.2 each executed separate counterparts of this Deed and exchanged the counterparts.
- 3.2 The Parties are to insert the date when this Deed commences on the front page and on the execution page.

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4 Application of this Deed

- 4.1 This Deed applies to the Land and to the Development.

5 Warranties

- 5.1 The Parties warrant to each other that they:
- 5.1.1 have full capacity to enter into this Deed, and
 - 5.1.2 are able to fully comply with their obligations under this Deed.

6 Further agreements

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

7 Surrender of right of appeal, etc.

- 7.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.

8 Application of s7.11, s7.12 and s7.24 of the Act to the Development

- 8.1 This Deed excludes the application of s7.11 and s7.12 of the Act to the Development.
- 8.2 This Deed does not exclude the application of s7.24 of the Act to the Development.

Part 2 – Development Contributions

9 Dedication of land

- 9.1 The Developer is to dedicate the Dedication Land to the Council free of cost to the Council for the purpose of open space.
- 9.2 The Dedication Land is to be dedicated on registration of the first plan of subdivision for the Development.
- 9.3 A Development Contribution comprising the dedication of land is made for the purposes of this Deed when:

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- 9.3.1 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* or creates a public reserve or drainage reserve under the *Local Government Act 1993*, or
- 9.3.2 the Council is given:
- (a) an instrument in registrable form under the *Real Property Act 1900* duly executed by the Developer as transferor that is effective to transfer the title to the land to the Council when executed by the Council as transferee and registered,
 - (b) the written consent to the registration of the transfer of any person whose consent is required to that registration, and
 - (c) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- 9.4 The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- 9.5 The Developer is to ensure that land dedicated to the Council under this Deed is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except as otherwise agreed in writing by the Council.
- 9.6 If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this Deed is free from all encumbrances and affectations, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.

Part 3 – Dispute Resolution

10 Dispute resolution – expert determination

- 10.1 This clause applies to a Dispute between any of the Parties to this Deed concerning a matter arising in connection with this Deed that can be determined by an appropriately qualified expert if:
- 10.1.1 the Parties to the Dispute agree that it can be so determined, or
 - 10.1.2 the Chief Executive Officer of the professional body that represents persons who appear to have the relevant expertise to determine the Dispute gives a written opinion that the Dispute can be determined by a member of that body.
- 10.2 A Dispute to which this clause applies is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 10.3 If a notice is given under clause 10.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 10.4 If the Dispute is not resolved within a further 28 days, the Dispute is to be referred to the President of the NSW Law Society to appoint an expert for expert determination.

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- 10.5 The expert determination is binding on the Parties except in the case of fraud or misfeasance by the expert.
- 10.6 Each Party is to bear its own costs arising from or in connection with the appointment of the expert and the expert determination.
- 10.7 The Parties are to share equally the costs of the President, the expert, and the expert determination.

11 Dispute Resolution - mediation

- 11.1 This clause applies to any Dispute arising in connection with this Deed other than a Dispute to which clause 10 applies.
- 11.2 Such a Dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the Dispute.
- 11.3 If a notice is given under clause 11.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the Dispute.
- 11.4 If the Dispute is not resolved within a further 28 days, the Parties are to mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society to select a mediator.
- 11.5 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.
- 11.6 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 11.7 The Parties are to share equally the costs of the President, the mediator, and the mediation.

Part 4 - Enforcement

12 Acquisition of land required to be dedicated

- 12.1 If the Developer does not dedicate land required to be dedicated under this Deed at the time at which it is required to be dedicated, the Developer consents to the Council compulsorily acquiring the land for compensation in the amount of \$1 without having to follow the pre-acquisition procedure under the Just Terms Act.
- 12.2 Clause 12.1 constitutes an agreement for the purposes of s30 of the Just Terms Act.
- 12.3 If, as a result of the acquisition referred to in clause 12.1, the Council is required to pay compensation to any person other than the Developer, the Developer is to reimburse the Council that amount, upon a written request being made by the Council.

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- 12.4 The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the land concerned except if, and to the extent that, the Claim arises because of the Council's negligence or default.
- 12.5 The Developer is to promptly do all things necessary, and consents to the Council doing all things necessary, to give effect to this clause 12, including without limitation:
 - 12.5.1 signing any documents or forms,
 - 12.5.2 giving land owner's consent for lodgement of any Development Application,
 - 12.5.3 producing certificates of title to the Registrar-General under the *Real Property Act 1900*, and
 - 12.5.4 paying the Council's costs arising under this clause 12.

13 Breach of obligations

- 13.1 If the Council reasonably considers that the Developer is in breach of any obligation under this Deed, it may give a written notice to the Developer:
 - 13.1.1 specifying the nature and extent of the breach,
 - 13.1.2 requiring the Developer to:
 - (a) rectify the breach if it reasonably considers it is capable of rectification, or
 - (b) pay compensation to the reasonable satisfaction of the Council in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification,
 - 13.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 13.2 Any costs incurred by the Council in remedying a breach in accordance with clause 13.1 may be recovered by the Council as a debt due in a court of competent jurisdiction.
- 13.3 For the purpose of clause 13.2, the Council's costs of remedying a breach the subject of a notice given under clause 13.1 include, but are not limited to:
 - 13.3.1 the costs of the Council's servants, agents and contractors reasonably incurred for that purpose,
 - 13.3.2 all fees and charges necessarily or reasonably incurred by the Council in remedying the breach, and
 - 13.3.3 all legal costs and expenses reasonably incurred by the Council, by reason of the breach.
- 13.4 Nothing in this clause 13 prevents the Council from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.



14 Enforcement in a court of competent jurisdiction

- 14.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 14.2 For the avoidance of doubt, nothing in this Deed prevents:
 - 14.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
 - 14.2.2 the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

Part 5 – Registration & Restriction on Dealings

15 Registration of this Deed

- 15.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 15.2 Upon commencement of this Deed, the Developer is to deliver to the Council in registrable form:
 - 15.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer, and every person required by the Registrar-General to execute such instrument, and
 - 15.2.2 the written irrevocable consent of each person referred to in s7.6(1) of the Act to that registration.
- 15.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 15.4 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land:
 - 15.4.1 in so far as the part of the Land concerned is a Final Lot,
 - 15.4.2 in relation to any other part of the Land, once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Council or this Deed is terminated or otherwise comes to an end for any other reason.

16 Restriction on dealings

- 16.1 The Developer is not to:
 - 16.1.1 sell or transfer any part of the Land, or
 - 16.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
 - 16.1.3 the Developer has, at no cost to the Council, first procured the execution by the person to whom the Land or part is to be sold or

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- transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Council on terms reasonably satisfactory to the Council, and
- 16.1.4 the Council has given written notice to the Developer stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Deed, and
- 16.1.5 the Developer is not in breach of this Deed, and
- 16.1.6 the Council otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 16.2 Subject to clause 16.3, the Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 16.1.
- 16.3 Clause 16.1 does not apply in relation to any sale or transfer of the Land if this Deed is registered on the title to the Land at the time of the sale.

Part 7 – Other Provisions

17 Notices

- 17.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 17.1.1 delivered or posted to that Party at its address set out in the Summary Sheet,
- 17.1.2 faxed to that Party at its fax number set out in the Summary Sheet, or
- 17.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 17.2 If a Party gives the other Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 17.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 17.3.1 delivered, when it is left at the relevant address,
- 17.3.2 sent by post, 2 business days after it is posted,
- 17.3.3 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, or
- 17.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 17.4 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

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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.

18 Approvals and Consent

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

19 Costs

- 19.1 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing and stamping this Deed, incurred since the date that the first draft of this Deed was provided to the Developer.
- 19.2 The Developer is to pay to the Council the Council's costs of preparing, negotiating, executing, stamping and registering any document related to this Deed within 7 days of a written demand by the Council for such payment.
- 19.3 The Developer is also to pay to the Council the Council's reasonable costs of enforcing this Deed within 7 days of a written demand by the Council for such payment.

20 Entire Deed

- 20.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 20.2 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 Deed was executed, except as permitted by law.

21 Further Acts

- 21.1 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 Deed and all transactions incidental to it.

22 Governing Law and Jurisdiction

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

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23 Joint and Individual Liability and Benefits

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

24 No Fetter

- 24.1 Nothing in this Deed 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.

25 Illegality

- 25.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

26 Severability

- 26.1 If a clause or part of a clause of this Deed 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.
- 26.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

27 Amendment

- 27.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

28 Waiver

- 28.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 28.2 A waiver by a Party is only effective if it:
- 28.2.1 is in writing,

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- 28.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
- 28.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
- 28.2.4 is signed and dated by the Party giving the waiver.
- 28.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 28.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and 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.
- 28.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

29 GST

- 29.1 In this clause:
- Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.
- GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
- GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.
- Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.
- 29.2 Subject to clause 29.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 29.3 Clause 29.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 29.4 No additional amount shall be payable by the Council under clause 29.2 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.
- 29.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Deed by one Party to the other Party that

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are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

- 29.5.1 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;
- 29.5.2 that any amounts payable by the Parties in accordance with clause 29.2 (as limited by clause 29.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 29.6 No payment of any amount pursuant to this clause 29, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 29.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 29.8 This clause continues to apply after expiration or termination of this Deed.

30 Explanatory Note

- 30.1 The Appendix contains the Explanatory Note relating to this Deed required by clause 25E of the Regulation.
- 30.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Planning Deed.



Schedule

(Clause 1.1)

Development Plan

The Plan showing the Development Plan is contained in the following page

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Execution

Executed as a Deed

Dated: 1/7/19




Executed on behalf of the Council



General Manager



Witness



Mayor



Witness

Executed on behalf of the Developer in accordance with s127(1) of the Corporations Act (Cth) 2001



Name/Position



Name/Position

**Genista Place Planning Agreement
Wagga Wagga City Council
Watsons Hill Pty Limited**



Appendix

(Clause 20)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

Parties

Wagga Wagga City Council ABN 56 044 159 537 of 243 Baylis Street, Wagga Wagga NSW 2650 (**Council**)

Watsons Hill Pty Limited ABN 74 060 695 007 of 60 – 62 Hovell Street, Wodonga VIC 3690 (**Developer**)

Description of the Land to which the Draft Planning Agreement Applies

Lot 39 DP1085747 known as Genista Place, Springvale

Description of Proposed Development

The subdivision of the Land to create 9 lots, 8 lots of residential land and 1 lot of open space land as described in DA17/0572.

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

Objectives of Draft Planning Agreement

The Draft Planning Agreement provides for the Developer to dedicate part of the Land, being the Dedication Land. Having regard to the value of the Dedication Land the Deed excludes the application of s7.11 and s7.12 of the Act to the Development.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are to be made by the Developer for the public purpose of open space (as defined in s7.4 of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the dedication of the Dedication Land by the Developer,
- excludes the application of s7.11 and s7.12 of the Act to the Development,
- does not exclude the application of s7.24 of the Act,
- is to be registered on the title to the Land,
- imposes restrictions on the Developer transferring the Land or part of the Land or assigning an interest under the agreement unless the agreement is registered on the Land,
- provides two dispute resolution methods for a dispute under the agreement, being expert determination and mediation,
- provides that the agreement is governed by the law of New South Wales, and
- provides that the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* applies to the agreement
- provides for other matters of detail.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The draft Planning Agreement

- promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- promotes and co-ordinates the orderly and economic use and development of the Land to which the agreement applies,
- provides and co-ordinates the provision of public facilities in connection with the Development, and

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- provides increased opportunity for public involvement and participation in environmental planning and assessment of the Development.

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 s1.3(a), (c) and (j) 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 elements of the Principles for Local Government (formerly the Council's Charter) in the Local Government Act 1993

The Draft Planning Agreement promotes the Principles for Local Government by:

- enabling the Council to work with others to secure appropriate services, being the open space, for local community needs,
- enabling the Council to obtain lands so that current and future local community needs can be met in an affordable way,
- enabling Council to actively engage with the local community and ensure Council's decision-making is transparent through the public notification of this Draft Planning Agreement.

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

The Draft Planning Agreement conforms with the Council's Capital Works Program.

All Planning Authorities – Whether the Draft Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

N/A