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Wagga Wagga City Council

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New South Wales Land and Housing Corporation

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# Voluntary Planning Agreement

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Date

## Parties

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

**New South Wales Land and Housing Corporation** ABN 24 960 729 253 a statutory corporation constituted by section 6 of the *Housing Act 2001* (NSW) of C/- Homes NSW of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**Developer**)

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## Background

- A. Homes NSW, of which the Developer forms part, owns, or will own, the Developer Land and is in the process of compulsorily acquiring the Acquisition Land from Council. The Developer Land and Acquisition Land comprise, together, the Land.
  - B. The Developer intends to deliver the Development on the Land. To facilitate the Development, the Developer lodged the Planning Proposal on 14 September 2023.
  - C. The Tolland Estate renewal proposal seeks to deliver approximately 300 residential lots on the Land, approximately 40% of which will be social and affordable housing. The Planning Proposal was selected by the Department for inclusion in a pilot State-assessed planning proposal pathway.
  - D. The indicative yield of the Development as set out in the Planning Proposal is 210 residential dwellings. If section 7.11 of the Act applied to the construction of these dwellings, the Developer would be required to pay Council approximately \$3,500,000 (indexed annually by CPI on 1 July) in contributions under section 7.11 of the Act in connection with the Development. In lieu of providing contributions to Council under section 7.11 of the Act to Council, the Developer intends to deliver the Development Contributions in accordance with the terms of this Agreement. The Development Contributions are valued at approximately \$7,150,000 (indexed annually by CPI on 1 July).
  - E. The Developer offers to enter into this Agreement with Council for the provision of Development Contributions in connection with the Planning Proposal and the future Development of the Land, in accordance with section 7.4 of the Act.
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# Agreed terms

## 1 Definitions and interpretation

### 1.1 Definitions

Terms used in this Agreement have the following meanings:

<b>Acquisition Land</b>	those parts of the Land that the Developer intends to compulsorily acquire from Council, in accordance with an agreement entered into under section 29 of the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> , in order to facilitate the Development and provide the Development Contributions, being Lots 1 and 2 DP1217153, Lot 178 DP235331, part Lot 12 DP1187387, Lot 322 DP705939, Lot 40 DP250082 and all existing land that is public road under the <i>Roads Act 1993</i> within the Tolland Estate.
<b>Act</b>	the <i>Environmental Planning and Assessment Act 1979</i> .
<b>Agreement</b>	this planning agreement, including any schedules and annexures.
<b>Approval</b>	an approval that authorises the Development or any part thereof, including a Development Consent or determination issued by the Developer under Part 5 of the Act.
<b>Business Day</b>	a day on which banks are open for business generally in Sydney, and which is not a Saturday, Sunday or bank or public holiday in Sydney and specifically excluding 27, 28, 29, 30 and 31 December.
<b>Certificate of Practical Completion</b>	means the notice provided by Council to the Developer that Practical Completion has been reached for the relevant Developer Works stating the date when Practical Completion was reached, issued pursuant to <b>clause 6.3(c)(i)</b> .
<b>Dedication</b>	means the transfer to Council for no cost in accordance with this Agreement. <b>Dedicate</b> and <b>dedicated</b> have the same meaning.
<b>Dedication Land</b>	means the land proposed to be Dedicated to Council, as identified in <b>Part B of Schedule 3</b> and depicted in the Dedication Plan.
<b>Dedication Plan</b>	the plan showing the Dedication Land at <b>Annexure B</b> .

<b>Defect</b>	means a material defect contained in a relevant part of the Developer Works which: <ul style="list-style-type: none"> <li>(a) adversely affects the ordinary use and/or enjoyment of the relevant part of the Developer Works; or</li> <li>(b) will require maintenance or rectification works to be performed on the Developer Works as a result of the existence of the defect.</li> </ul>
<b>Defects Liability Period</b>	with respect to: <ul style="list-style-type: none"> <li>(a) any part of the Developer Works that involves landscaping and tree works – 6 months; and</li> <li>(b) any other part of the Developer Works – 12 months,</li> </ul> from the date the particular Developer Works is subject to a Certificate of Practical Completion issued in accordance with <b>clause 6.3(c)(i)</b> .
<b>Defects Notice</b>	means a notice issued in accordance with <b>clause 7.1(a)</b> .
<b>Department</b>	the Department of Planning, Housing and Infrastructure or its successor.
<b>Developer Land</b>	that part of the Tolland Estate that is owned by Homes NSW, of which the Developer forms part, as identified in <b>Schedule 2</b> , plus any additional land that may be acquired by the Developer for the purpose of the Development, which, together with the Acquisition Land, will be developed by the Developer including for the Developer Works.
<b>Developer Works</b>	each of the works to be carried out as specified in <b>Part A of Schedule 3</b> .
<b>Development</b>	the development of the Land for residential and public recreation purposes, which forms part of the Tolland Estate renewal project the subject of the Planning Proposal.
<b>Development Consent</b>	has the same meaning given to that expression in the Act.
<b>Development Contributions</b>	the contributions to be provided by the Developer in accordance with <b>clause 5</b> and <b>Schedule 3</b> .
<b>Draft Design</b>	has the meaning given to that expression in <b>clause 6.1(a)(i)</b> .
<b>Dwelling</b>	has the same meaning given to that expression in the Act.

<b>Final Lot</b>	means a lot created in the Development for separate residential occupation and disposition, including a strata lot created by registration of a strata plan within the meaning of the <i>Strata Schemes Development Act 2015</i> , or a lot of a kind or created for a purpose that is otherwise agreed by the Parties, not being a lot created by a subdivision of the Land that is to be dedicated or otherwise transferred to Council.
<b>Instrument Change</b>	means an amendment to the LEP as a consequence of the Planning Proposal, which is given effect by the publication of an environmental planning instrument in the NSW Government Gazette.
<b>Land</b>	the Developer Land and the Acquisition Land.
<b>Landscape Masterplan</b>	the plan by the same name in the Planning Proposal and extracted at <b>Annexure C</b> .
<b>LEP</b>	means the <i>Wagga Wagga Local Environmental Plan 2010</i> .
<b>LRS</b>	NSW Land Registry Services.
<b>Monetary Contribution</b>	the monetary payment required to be made by the Developer to Council as specified in <b>Part C</b> of <b>Schedule 3</b> .
<b>Notice</b>	means a written notice given by a Party claiming that a dispute has arisen, in accordance with <b>clause 12.2</b> .
<b>Party</b>	a party to this Agreement, including their successors and assigns.
<b>Planning Proposal</b>	the planning proposal lodged with the Department on 14 September 2023 to amend the LEP to rezone the whole of the Tolland Estate to R1 General Residential.
<b>Practical Completion</b>	the stage in the carrying out and completion of the Developer Works when construction is complete, except for minor omissions and defects: <ul style="list-style-type: none"> <li>(a) which do not prevent the Developer Works from being reasonably capable of being used for their intended purpose; and</li> <li>(b) the rectification of which will not prejudice the convenient use of the Developer Works.</li> </ul>
<b>Real Property Act</b>	the <i>Real Property Act 1900</i> .
<b>Register</b>	the Torrens title register maintained under the Real Property Act.
<b>Registrar General</b>	the Registrar General of NSW.

<b>Registration Land</b>	means the land proposed to be Dedicated to Council over which this Agreement will be registered, comprising Lots 1 and 2 DP1217153.
<b>Regulation</b>	the <i>Environmental Planning and Assessment Regulation 2021</i> .
<b>Subdivision Certificate</b>	has the same meaning given to that expression in the Act.
<b>Stage</b>	a stage identified on the Staging Plan.
<b>Staging Plan</b>	the plan showing the proposed stages of the Development at <b>Annexure A</b> .
<b>Tolland Estate</b>	the Tolland housing estate area, Wagga Wagga, which is the subject of the Planning Proposal and includes the Land, as indicatively shown on the Landscape Masterplan.

## 1.2 Interpretation

In this Agreement, unless the context clearly indicates otherwise:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) the singular includes the plural and vice versa;
- (c) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (e) a reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (f) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (g) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (h) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement;



- (i) any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (j) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (k) 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;
- (l) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (m) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced; and
- (n) a reference to a clause, part schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.

## 2 Planning agreement under the Act

- (a) The Parties agree that this Agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this Agreement summarises the requirements for planning agreements under section 7.4 of the Act and the ways in which this Agreement addresses those requirements.

## 3 Application of this Agreement

This Agreement applies to the:

- (a) Land;
- (b) Instrument Change; and
- (c) Development.

## 4 Operation of this Agreement

- (a) **Clauses 1, 2, 3, 4, 12, 13, 14, 15 and 18.1** operate and are effective and binding on the Parties on and from the date of this Agreement.
- (b) The Parties agree that the balance of the terms of this Agreement operate and are effective and binding on the Parties on and from the date the Instrument Change is made.
- (c) Notwithstanding **clause 4(b)**, the Parties agree that the Developer is not bound by this Agreement to deliver the Development Contributions unless:

- (i) the Instrument Change is made;
- (ii) an Approval is granted for the Development; and
- (iii) the Development is physically commenced in accordance with section 4.53 of the Act.

## 5 Contributions to be made under this Agreement

Subject to this Agreement and in accordance with **Schedule 3**, the Developer is to deliver the Development Contributions, comprising the:

- (a) carrying out, completion and maintenance of the Developer Works; and
- (b) Dedication of the Dedication Land.

## 6 Carrying out and delivery of Developer Works

### 6.1 Design of Developer Works

- (a) The Developer must, promptly after the date of the Approval applicable to the relevant Developer Works, prepare plans and specifications for the Developer Works (**Draft Design**) having regard to:
  - (i) applicable Council standards;
  - (ii) the relevant Approval; and
  - (iii) applicable Australian standards,
 and submit them to Council for approval, such approval not to be unreasonably withheld.
- (b) Council must promptly review the Draft Design and either confirm the Draft Design is acceptable or provide comments (acting reasonably, having regard to the requirements of **clause 6.1(a)** and the costs associated with amendments to the Draft Design) to the Developer within 20 Business Days. The Developer must within 20 Business Days amend the Draft Design to take into account the comments made by Council and re-submit the Draft Design if required by Council.
- (c) When Council is of the opinion that the Draft Design is satisfactory, then Council must (in its capacity as a party to this Agreement, not as a consent authority) notify the Developer that the Draft Design is acceptable and this will be the approved design.

### 6.2 Carrying out of Developer Works

The Developer must:

- (a) carry out the Developer Works:
  - (i) in a proper and workmanlike manner; and
  - (ii) in accordance with the plans and specifications approved under **clause 6.1**;

- (b) bring the Developer Works to Practical Completion by the time specified in **Column 3 of Schedule 3**; and
- (c) provide access to Council to the Land for the purposes of undertaking inspections of the Developer Works prior to their Practical Completion upon the provision of reasonable notice by Council to the Developer (not less than 5 Business Days) and provided that Council agrees to comply with all directions of the Developer while it is on the Land, including in relation to work health and safety procedures.

### **6.3 Completion of Developer Works**

- (a) When the Developer is of the reasonable opinion that Developer Works are near Practical Completion, the Developer must notify Council in writing of the date Practical Completion is expected to be reached.
- (b) Council must inspect the Developer Works promptly following, and within 10 Business Days of Council receiving, the notice under **clause 6.3(a)**.
- (c) Council must, within 10 Business Days of completing its inspection of the Developer Works (and in any event, no later than 20 Business Days after receipt of the notice under **clause 6.3(a)**), provide either:
  - (i) Developer Works a Certificate of Practical Completion; or
  - (ii) notice to the Developer specifying that it is of the opinion that Practical Completion has not been reached, in which case it must set out all the matters that Council reasonably considers must be completed in order for Practical Completion to be reached.
- (d) If the Council does not provide the Developer with a notice under **clause 6.3(c)** within the time prescribed by that clause, Council will be deemed to have issued a Certificate of Practical Completion in respect of the Developer Works the subject of the Developer's notice under **clause 6.3(a)** on the date nominated in the Developer's notice.
- (e) The Developer:
  - (i) must correct any defects or finalise any incomplete work specified by Council under **clause 6.3(c)(ii)**, within the agreed time as reasonably nominated by the Developer, or if no time is nominated and agreed, within 10 Business Days after the Developer receives the notice issued under **clause 6.3(c)(ii)** from Council. Once complete, the provisions of **clauses 6.3(a) – (d)** will apply; or
  - (ii) if it does not agree with the matters set out in Council's notice issued under **clause 6.3(c)(ii)**, must notify Council that a dispute has arisen and **clause 10** of this Agreement will apply.
- (f) Council takes possession of the Developer Works at 4pm on the earlier of:
  - (i) the date Council issues a Certificate of Practical Completion in accordance with **clause 6.3(c)(i)**; or

- (ii) if the Developer Works was carried out on any Dedication Land, the date the relevant part of the Dedication Land is dedicated to Council in accordance with **clause 8**.

#### **6.4 Failure to deliver Developer Works**

- (a) If the Developer fails to complete all or any part of the Developer Works as required by this Agreement by the time required by **clause 6.2(b)** and **Column 3 of Schedule 3** for that item of Developer Works, Council may elect to complete that item or such part or parts of that item as are outstanding, or as otherwise agreed, or appoint a contractor to carry out the relevant Developer Works on Council's behalf.
- (b) If **clause 6.4(a)** applies, the Developer authorises, following at least 5 Business Days' notice provided by Council to the Developer, Council, its officers, employees, agents and contractors to enter the Land for the purposes of completing the relevant Developer Works.

### **7 Defects Liability**

#### **7.1 Defects Notice**

- (a) Where a Certificate of Practical Completion has been issued for all or any part of the Developer Works pursuant to **clause 6.3(c)(i)**, but the relevant part of the Developer Works contains a Defect, Council may issue a Defects Notice to the Developer concerning that part of the Developer Works, but only within the Defects Liability Period.
- (b) A Defects Notice must specify the:
  - (i) nature and extent of the Defect;
  - (ii) details of the work Council requires the Developer to carry out in order to rectify the Defect; and
  - (iii) time within which the Defect must be rectified (which must be a reasonable time and not less than 10 Business Days).

#### **7.2 Developer to rectify Defects**

- (a) The Developer must:
  - (i) procure the performance of the work required to rectify the Defects contained within a Defects Notice after receipt of the Defects Notice; or
  - (ii) serve a notice on Council that it disputes the matters set out in the Defects Notice.
- (b) The Developer must follow the procedure set out in **clauses 6.3(a) – (d)** in respect of the satisfaction of the Defects Notice.
- (c) Where the Developer serves notice on Council in accordance with **clause 7.2(a)(ii)**, **clause 12** of this Agreement will apply.

### **7.3 Right of Council to step-in**

If the Developer fails to rectify a Defect which it is obliged to rectify, then Council may have the rectification carried out by others without prejudice to any other rights and remedies Council may have, but only after giving the Developer 5 Business Days' written notice of its intention to do so.

### **7.4 Consequence of step-in**

If Council elects to exercise the step-in rights granted to it under **clause 7.3**, then:

- (a) Council may:
  - (i) enter upon any part of the Land that it requires to access in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
  - (ii) rectify the relevant Defects in accordance with the Defects Notice; and
- (b) the Developer must not impede or interfere with Council in undertaking that work.

### **7.5 Costs of Council**

Where Council exercises its step-in rights granted to it under **clause 7.3**, all reasonable costs incurred by Council in rectifying the relevant Defects may be claimed by Council as a liquidated debt owed by the Developer. The Developer is entitled to dispute the costs, in which case **clause 10** of this Agreement will apply.

## **8 Dedication of Land**

### **8.1 Delivery of the Dedication Land**

The Developer must take all relevant steps to, as part of the Development:

- (a) provide for the Dedication of the Dedication Land to Council; and
- (b) dedicate the Dedication Land, including any embellishments and Developer Works contained on the Dedication Land, in accordance with **clause 8.2, Schedule 3** and the Dedication Plan, or at such other time period as is agreed in writing between the Parties.

### **8.2 Dedication process**

- (a) The Developer must take all steps necessary to register at LRS the Dedication of the Dedication Land to Council in accordance with the timing specified in **clause 8.1(b)** by:
  - (i) either delivering to Council:
    - (A) a form of transfer in respect of the relevant part of the Dedication Land executed by the owner of that Land in registrable form transferring that land for \$1.00; or

- (B) a deposited plan which indicates that the relevant part of the Dedication Land is intended to be dedicated to Council.
- (ii) lodging all necessary executed documents with LRS and responding to any enquiries or requisitions made by LRS; and
- (iii) taking any other necessary action to give effect to the transfer of the title of the relevant part of the Dedication Land to Council.
- (b) Subject to the requirements under this **clause 8.2**, Council agrees that it will accept the Dedication of the Dedication Land:
  - (i) free of all encumbrances and interests, other than any easements or interests required by any authority or utility service provider or required under any Development Consent; and
  - (ii) in a condition such that the Dedication Land is suitable for use for its intended purpose, unless a higher standard of environmental condition of the Dedication Land is agreed between the parties.
- (c) The Developer is responsible for paying any costs associated with the Dedication of the Dedication Land to Council.

## 9 Application of s7.11, s7.12 and Division 7.1, Subdivision 4 of the Act to the Development

- (a) This Agreement excludes the application of sections 7.11 and 7.12 of the Act to the Land and the Development.
- (b) This Agreement does not exclude the application of Division 7.1, Subdivision 4 of the Act to the Land and the Development.

## 10 Security and enforcement

### 10.1 Compulsory Acquisition

- (a) If the Developer does not procure the Dedication of the Dedication Land in accordance with **clause 8**, the Developer agrees that Council may compulsorily acquire all or part of the Dedication Land that has not been dedicated in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* for the amount of \$1.00.
- (b) The Parties acknowledge and agree that:
  - (i) **clause 10.1(a)** is an agreement between the Developer and Council for the purpose of section 29 or 30 (as applicable) of the *Land Acquisition (Just Terms Compensation) Act 1991*; and
  - (ii) all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition are agreed.

## 11 Registration of this Deed

### 11.1 Registration of Deed

- (a) The Parties agree to register this Agreement for the purposes of section 7.6(1) of the Act.
- (b) Within 20 Business Days of Council notifying the Developer of the Instrument Change, the Developer is to deliver to Council in registrable form:
  - (i) an instrument requesting registration of this Agreement on the title to the Registration Land duly executed by the Developer, and every person required by the Registrar-General to execute such instrument; and
  - (ii) the written irrevocable consent of each person referred to in section 7.6(1) of the Act to that registration.
- (c) The Developer is to do such other things as are reasonably necessary to enable registration of this Agreement to occur.
- (d) The Parties are to do such things as are reasonably necessary to remove any notation relating to this Agreement from the title to the Registration Land:
  - (i) in so far as the part of the Land concerned is a Final Lot; and
  - (ii) in relation to any other part of the Land, once the Developer has completed its obligations under this Agreement to the reasonable satisfaction of Council or this Agreement is terminated or otherwise comes to an end for any reason.

## 12 Dispute Resolution

### 12.1 Dispute

If any dispute arises out of this Agreement, then the Parties must resolve that dispute in accordance with this **clause 12** and a Party to the Agreement must not commence any court or arbitration proceedings, except where a Party seeks urgent interlocutory relief, without having first complied with this **clause 12**. Any referral or undertaking of the dispute resolution process as set out in this **clause 12** does not suspend any other obligations of the Parties under this Agreement.

### 12.2 Notice of Dispute

A Party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give Notice to the other Party to this Agreement specifying the nature of the dispute.

### **12.3 Representatives of Parties to meet**

- (a) The representatives of the Parties must promptly (and in any event within 10 Business Days of receipt of a Notice) meet in good faith to attempt to resolve the notified dispute.
- (b) The Parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting;
  - (ii) agree that further material or consideration is needed to effectively resolve the dispute (in which event the Parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the Parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### **12.4 Mediation**

- (a) If the Parties do not agree within 10 Business Days of a meeting held under **clause 12.3** (or any further period agreed in writing by the Parties) as to:
  - (i) the dispute resolution technique and procedures to be adopted;
  - (ii) the timetable for all material steps in those procedures; or
  - (iii) the selection and compensation of the independent person required for such technique,then the Parties must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The Parties must, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.
- (b) The mediator appointed pursuant to this **clause 12.4** must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment.
- (c) The mediator must undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties.
- (d) The Parties must within 15 Business Days after appointment of the mediator notify each other of their representatives who will be involved in the mediation.
- (e) The Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of



a mediation settlement for the purpose of enforcing that mediation settlement.

- (f) Either Party may terminate the mediation process if:
  - (i) at least 60 Business Days have expired since the process commenced;
  - (ii) at least one meeting has been held, with the mediator;
  - (iii) any of the Parties, acting in good faith, forms the view that the dispute is unlikely to be resolved through mediation; and
  - (iv) the Party provides 15 Business Days written notice to the other Party of its intention to terminate the dispute resolution process in respect of that dispute, during which time the Parties must continue to attempt to resolve the dispute.
- (g) In relation to costs and expenses:
  - (i) each Party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) the costs of the mediator will be shared equally by the parties unless the mediator determines that a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that Party.

## 13 Notices

### 13.1 Delivery

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:

- (a) delivered or posted to that Party at its address set out below; or
- (b) emailed to that Party at its email address set out below.

#### **Wagga Wagga City Council**

Attention:	General Manager
Address:	Wagga Wagga City Council 243 Baylis Street Wagga Wagga NSW 2650
Phone Number:	1300 292 442
Email Address	<a href="mailto:council@wagga.nsw.gov.au">council@wagga.nsw.gov.au</a> and <a href="mailto:maclure.belinda@wagga.nsw.gov.au">maclure.belinda@wagga.nsw.gov.au</a>

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**Developer**

Attention: Adam Bower  
Address: C/- Homes NSW  
4 Parramatta Square  
12 Darcy Street  
Parramatta NSW 2150  
Phone Number: 0437 267 557  
Email Address [Adam.Bower@homes.nsw.gov.au](mailto:Adam.Bower@homes.nsw.gov.au)

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**13.2 Change of details**

If a Party gives the other Party 10 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or electronically sent to the latest address or email address.

**13.3 Giving of notice**

Subject to **clause 13.4**, any notice, consent, invoice, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered by process server, when it is served at the relevant address; or
- (b) if it is sent by registered post, seven Business Days after it is posted; or
- (c) if it is sent by email, as soon as the email has been sent to the correct email address and the recipient has received the email without error.

**13.4 Delivery outside of business hours**

If any notice, consent, information, application or request is delivered 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.

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**14 Approvals and consent**

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

**15 Assignment and dealings**

The Developer may not sell, transfer, assign or novate or similarly deal with its right, title or interest in the Land (if any), other than a Final Lot, or rights or obligations under the terms of this Agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to

any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) at no cost to Council, first procures the execution by that person of an agreement in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement;
- (b) satisfies Council that the purchaser, transferee, assignee or novatee, is reasonably capable of performing its obligations under this Agreement; and
- (c) satisfies Council that the Developer is not in material breach of this Agreement.

## **16 Release and discharge**

The Developer may request Council provide a release and discharge of the obligations under this Agreement to the extent that this Agreement affects any part of the Land in respect of which the:

- (a) Development has been completed; or
- (b) Developer proposes to sell to a third party; or
- (c) Land is to be dedicated to another Authority, other than Council, and the Developer is not in breach of this Agreement.

## **17 Termination of this Agreement**

This Agreement terminates when the Developer satisfies all its obligations under the Agreement.

## **18 General**

### **18.1 Legal Costs**

The Developer agrees to pay Council's reasonable costs associated with reviewing, preparing, negotiating, amending, executing and stamping this Agreement and any document related to this Agreement.

### **18.2 Entire Agreement**

This Agreement constitutes the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

### **18.3 Further Acts**

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

#### **18.4 Governing law and jurisdiction**

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. The Parties will not object to the exercise of jurisdiction by those Courts on any basis.

#### **18.5 No Fetter**

Nothing in this Agreement shall be construed as requiring Council or the Developer 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.

#### **18.6 Representations and warranties**

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.

#### **18.7 Severability**

- (a) The Parties acknowledge that under and by virtue of section 7.4(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- (b) The Parties agree that to the extent permitted by law, this Agreement prevails to the extent of its inconsistency with any law.
- (c) 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.
- (d) 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.

#### **18.8 Modification**

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 and is in accordance with the provisions of the Act.

#### **18.9 Waiver**

- (a) 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 or exercise of a right of, or breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation, right or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation, right or breach or as

an implied waiver of that obligation, right or breach in relation to any other occasion.

- (d) A single or partial exercise or waiver by a Party of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- (e) A Party is not liable for any loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

#### **18.10 Relationship of Parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between Council and the Developer.

#### **18.11 Further Steps**

Each Party must promptly do whatever any other Party reasonably requires of it to give effect to this Agreement and to perform its obligations under it.

#### **18.12 Explanatory Note**

The explanatory note prepared in connection with this Agreement pursuant to the Regulation is not to be used to interpret this Agreement. ***[Drafting Note: To be prepared following public exhibition of the draft Agreement.]***

#### **18.13 Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

#### **18.14 Rights cumulative**

Except as expressly stated otherwise in this Agreement, the rights of a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

# Schedule 1

## Section 7.4 Requirements

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of this Agreement complying with the Act.

**Table 1 – Requirements under section 7.4 of the Act**

<b>Requirement under the Act</b>	<b>This Agreement</b>
<b>Planning instrument and/or development application – (section 7.4(1))</b> The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this Agreement applies – (section 7.4(3)(a))</b>	See Schedule 2.
<b>Description of development to which this Agreement applies – (section 7.4(3)(b))</b>	The Development as defined in clause 1.1.
<b>The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4(3)(c))</b>	See Schedule 3.
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act are wholly excluded in respect of the Land and the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act is not excluded in respect of the Development.

<b>Requirement under the Act</b>	<b>This Agreement</b>
<b>Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4(3)(e))</b>	Not applicable.
<b>Mechanism for dispute resolution – (section 7.4(3)(f))</b>	See clause 12.
<b>Enforcement of this Agreement – (section 7.4(3)(g))</b>	See clause 10.
<b>No obligation to grant consent or exercise functions – (section 7.4(10))</b>	See clauses 14 and 18.5.

## Schedule 2

### Developer Land

Lot	Deposited Plan
1	1187385
68	705938
70	705938
71	705938
72	705938
73	705938
74	705938
76	705938
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324	705938
325	705938
332	705938
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336	815404
337	815404
338	815404
339	819959
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342	819959
343	819959
344	819959
345	819959
346	819959
347	819959
348	819959
349	819959
350	819959
353	819959
718	819961
719	819961
720	819961
1	1182775
2	1182775

1	866911
1	1187387
2	1187387
3	1187387
4	1187387
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6	1187387
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293	705938
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318	705938
4	705939
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19	705939
42	705939
43	705939
51	705939
99	705940
106	705940
114	705940
142	705940
144	705940

226	705940
234	705940

## Schedule 3

### Development Contributions

Column 1	Column 2	Column 3	Column 5
Item No.	Description	Timing	Estimated Cost to Complete
<b>A. Developer Works</b>			
1.	<p><b>Upgrade existing park to embellished through park</b></p> <p>Embellishment of new public open space with an approximate area of 1,513m<sup>2</sup> and generally in the location indicated by item 6 on the Landscape Masterplan, comprising:</p> <ul style="list-style-type: none"> <li>- turfing disturbed areas;</li> <li>- mass planting;</li> <li>- irrigation;</li> <li>- additional trees;</li> <li>- 2.5m wide shared pathway;</li> <li>- fitness equipment;</li> <li>- bench seats; and</li> <li>- lighting.</li> </ul>	<p>Within 18 months of the date of issue of the first Subdivision Certificate in Stage 1A.</p>	\$184,874
2.	<p><b>Upgrade existing central park</b></p> <p>Embellishment of new public open space with an approximate area of 15,146m<sup>2</sup> and generally in the</p>	<p>Within 18 months of the date of issue of the first Subdivision Certificate in Stage 1B.</p>	\$156,454

Column 1	Column 2	Column 3	Column 5
Item No.	Description	Timing	Estimated Cost to Complete
	<p>locations indicated by items 2, 3, 4 and 5 on the Landscape Masterplan, comprising:</p> <ul style="list-style-type: none"> <li>- BBQ facilities;</li> <li>- shade structures for play equipment;</li> <li>- Irrigation;</li> <li>- picnic tables with roofs;</li> <li>- bench seats; and</li> <li>- water bubbler.</li> </ul>		
3.	<p><b>New through park and activity hub</b></p> <p>Embellishment of new public open space with an approximate area of 15,542m<sup>2</sup> and generally in the locations indicated by items 7, 8 and 9 on the Landscape Masterplan, comprising:</p> <ul style="list-style-type: none"> <li>- clearing debris;</li> <li>- turfing;</li> <li>- new play equipment including softfall and shade sails;</li> <li>- irrigation;</li> <li>- fitness equipment;</li> <li>- mass planting, including additional trees;</li> <li>- 2.5m wide shared pathway;</li> <li>- decomposed granite and seating for a learning space;</li> <li>- bridge over swale;</li> <li>- BBQ facilities;</li> </ul>	<p>Within 18 months of the date of issue of the first Subdivision Certificate in Stage 2A.</p>	\$2,422,580



Column 1	Column 2	Column 3	Column 5
Item No.	Description	Timing	Estimated Cost to Complete
	<ul style="list-style-type: none"> <li>- shelter;</li> <li>- picnic tables;</li> <li>- bench seats;</li> <li>- water bubbler;</li> <li>- garbage bins; and</li> <li>- lighting.</li> </ul>		
4.	Red Hill Road upgrade to existing crossing (Provisional Cost)	Within 18 months of the date of issue of the first Subdivision Certificate in the relevant Stage 2A	\$50,000
5.	<b>Chambers Park works</b> Additional embellishments of Chambers Park to improve passive surveillance, drainage and activation including: <ul style="list-style-type: none"> <li>- Turfing and mass planting for additional areas on Bruce and Awaba Street</li> <li>- Stabilisation of banks</li> <li>- 430m on new 2.5m wide shared path</li> <li>- Lighting for shared path.</li> </ul>	Within 18 months of the date of issue of the first Subdivision Certificate in Stage 3.	\$772,870
6.	<b>Chambers Park Toilet block</b> Repairs and upgrades to the existing toilet block within Chambers Park including: <ul style="list-style-type: none"> <li>- Demolish old amenities.</li> <li>- Remediate site.</li> </ul>	Within 18 months of the date of issue of the first Subdivision Certificate in Stage 3.	\$950,000

Column 1	Column 2	Column 3	Column 5
Item No.	Description	Timing	Estimated Cost to Complete
	<ul style="list-style-type: none"> <li>- Provision of three female toilets, three male toilets, urinals, and basins.</li> <li>- Three external wash basins.</li> <li>- Unisex accessible toilet.</li> </ul>		
7.	<b>Mobile library facilities</b> Repairs and upgrades to the existing mobile library facilities within Chambers Park including: <ul style="list-style-type: none"> <li>- Larger shelter structure</li> <li>- Concrete pad and accessible pathways</li> <li>- fixed tables and chairs</li> <li>- Relocation of existing facilities closer to community centre (if possible)</li> </ul>	Within 18 months of the date of issue of the first Subdivision Certificate in Stage 3.	\$150,000
8.	<b>Plug and play stage upgrades</b> Repairs and upgrades to the existing plug and play stage facilities within Chambers Park including: <ul style="list-style-type: none"> <li>- 3 Phase power</li> <li>- Potable Water</li> <li>- Fixed shade structure especially to protect from western sun in the afternoons.</li> <li>- Lighting – on stage as well as facing out externally to light up perimeter of stage + connecting accessible footpaths.</li> <li>- Lockable temporary storage area to secure supplies/equipment when a community event is being delivered on site.</li> </ul>	Within 18 months of the date of issue of the first Subdivision Certificate in Stage 3.	\$400,000

Column 1 Item No.	Column 2 Description	Column 3 Timing	Column 5 Estimated Cost to Complete
	<ul style="list-style-type: none"> <li>- Connecting accessible pathways to the car park for unloading sound equipment etc. to the stage area + accessible pathway connecting plug and play community stage to public toilet facility with good lighting coverage.</li> <li>- Works to include event facilities including water and power connections.</li> </ul>		
9.	<b>Footpath works</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Project A - 1km of 2.5m wide concrete shared way to Tolland Shops Via Bruce Street to be delivered with Stage 1B.</li> <li><input type="checkbox"/> Project B - 1.25km of 2.5m Wide asphalt active travel path to Fernleigh Road via Glenfield Road to be delivered with Stage 2A.</li> <li><input type="checkbox"/> Project C - 1km of 2.5m wide concrete shared way to South City Shopping Centre via Dalman Parkway to be delivered with Stage 3.</li> </ul>	<p>Within 18 months of the date of issue of the first Subdivision Certificate in the relevant Stage to which the footpath works relate, as indicated in <b>Column 2</b>.</p>	\$2,162,748
<b>B. Dedication of Land</b>			
10.	<b>Dedication of new public open space</b> Dedication of new public open space with a total area of approximately 90,707m <sup>2</sup> , comprising: <ul style="list-style-type: none"> <li>i. Chambers Park;</li> <li>ii. Emblem Park; and</li> <li>iii. Central Park,</li> </ul>	<p>Prior to the issue of an Occupation Certificate for the first dwelling that fronts the public open space.</p>	Nil

Column 1	Column 2	Column 3	Column 5
Item No.	Description	Timing	Estimated Cost to Complete
	indicatively shown on the plan at Annexure B.		
11.	<b>Dedication of road reserves</b> Dedication of new fully constructed public roads (including verges) with a total area of approximately 127,668m <sup>2</sup> .	Prior to the issue of an Occupation Certificate for the first dwelling that fronts the road.	Nil
Total estimated value = \$7,149,526(ex GST)			

# Execution

**Executed** as an agreement.

**Executed by Wagga Wagga City Council** by its duly appointed delegate pursuant to section 377/388 of the *Local Government Act 1993* (NSW) in the presence of:

) REFER TO ATTACHED  
) EXECUTION PAGE.  
)

.....  
Witness

.....  
Officer

.....  
Name of Witness (print)

.....  
Name of Officer (print)

**Executed by** ..... as )  
delegate of **New South Wales Land and** )  
**Housing Corporation** ABN 24 960 729 )  
253 and I hereby certify that I have no )  
notice of revocation of such delegation. )

*Carla Campos*  
.....  
Witness

.....  
Carol Campos

.....  
Name of Witness (print)

.....  
Delegate

Peter Brackenreg,

~~Executive Director, Delivery South~~.....

Name of Delegate (print)

# Annexure A

## Staging Plan

## EXECUTION PAGE

Agreement between

**WAGGA WAGGA CITY COUNCIL ABN 56 044 159 537**

and

**NEW SOUTH WALES LAND AND HOUSING CORPORATION ABN 24 960 729 253**

The Common Seal of Wagga Wagga City Council was affixed on the day of \_\_\_\_\_, 2025 pursuant to Regulation 400 of the Local Government Act (General) Regulation 2005, and in accordance with resolution of Council 25/025 dated 10 February 2025.



A handwritten signature in black ink, appearing to read "Dallas Tout", is written over a horizontal line.

Dallas Tout  
Mayor

A handwritten signature in blue ink, appearing to read "Peter Thompson", is written over a horizontal line.

Peter Thompson  
General Manager







# Annexure B

## Dedication Plan



# Annexure C

## Landscape Masterplan





## DESIGN PRINCIPLES

- 1. CONNECTIVITY**
  - Increased pedestrian circulation and connection
  - Linkages throughout green space
- 2. ENGAGEMENT & USE**
  - Healthy environment providing social interaction through active and passive recreation
  - Opportunities for social interaction
  - Availability of activities and services for everyone
  - Engaged for the community
- 3. CULTURE & COMMUNITY**
  - Develops place identity and sense of ownership of space
  - Enables access and respect for all
- 4. ENVIRONMENTAL**
  - Connection to water landscape
  - Appropriate plantings with local native species
  - Water Sensitive Urban Design - overland flow through green space

## LEGEND

- EXTENT OF WORKS
- EXISTING PLANT TO BE RETAINED
- PROPOSED ROAD
- OVERLAND FLOW PATH
- PROPOSED 2.0m PATHWAY
- EXISTING 1.5m PATHWAY
- PROPOSED 1.5m PATHWAY
- PROPOSED PLANT AREA
- EXERCISE CIRCUIT
- SEATING NICHES
- STREET TREES
- PARKLAND TREES
- TURF

## DESIGN NOTES

- CHANGING PLANT SPECIES AND TO BE REPLACED WITH BERM AND TREE PLANTING TO THE OUTSIDE ED TO PROVIDE DETENTION IN STORMWATER EVENTS TREES TO PROVIDE A NATURAL BARRIER TO THE SPACE
- 2.0m WIDE PATHWAY'S OPERATING CONNECTIONS AND LANE TRACKS FOR PEOPLE TRAVEL USE
- ACTIVITY HUB TO PROVIDE GREEN SPACE PROVIDING SHELTERS, SEATING, BBQ'S AND PLANT AREA OPPORTUNITY IN THIS SPACE TO PROVIDE AN OUTDOOR RECREATION
- EXISTING PUMP TRACK TO BE RETAINED AND INTEGRATED INTO PEDESTRIAN PATHWAYS AND SHELTER AREA
- OUTDOOR LEARNING SPACE LOCATED A SHORT DISTANCE FROM THE PUBLIC SCHOOL
- COMMUNITY GARDEN PROVIDING RAISED BEDS, FRUIT TREES, SHED AND SEATING LOCATED IN CLOSE PROXIMITY TO USED SPACE TO PROMOTE A SENSE OF OWNERSHIP AND PRIDE OF SPACE
- PARKING PROVISION ONLY THROUGH TREES WITHIN PARKER OF SEATING OPPORTUNITIES OFFERED ALONG THE PATHWAY
- EXERCISE CIRCUIT TO PROVIDE WITH SEATING AREAS AND OPEN SPACE TO ENJOY AND FITNESS CIRCUIT
- ACTIVITY HUB PROVIDING SHELTERS, BBQ STRUCTURE AND PLANTING ELEMENTS AND TREE PLANTING
- PROPOSED STREET TREES PROVIDED TO NEW STREET - PARKER AND SEATING PROVIDED TO NEW STREET - PARKER TREES ARE TO BE RETAINED WHERE POSSIBLE
- FEATURE TREE PLANTING TO SIGNIFY OUTCOMES INTO THE SITE CREATING A GATEWAY INTO THE SITE
- NORTH FACING SITES PROPOSED FOR SENIORS HOUSING

0 20 40 60 80 100 200m  
SCALE 1:2500 @ A1

landscape architecture  
urban design  
environmental management



# LANDSCAPE MASTERPLAN

