

Planning Agreement

Dubbo Regional Council

and

Andorra Developments Pty Ltd

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Planning Agreement

Date

Parties

Dubbo Regional Council

ABN 53 539 070 928 of Cnr Church and Darling Streets, Dubbo NSW
2830
(Council)

Andorra Developments Pty Ltd

ACN 150 862 570 of 10 Mountbatten Drive, Dubbo NSW 2830
(Developer)

Recitals

- A. The Developer owns the Land and intends to develop it in accordance with the Project Consent.
- B. The Developer has offered to enter this Agreement with Council to provide the Public Benefits on the terms of this Agreement.
-

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

1. Planning Agreement under the Act

- (a) The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 7.1 of Part 7 of the Act.
- (b) The parties acknowledge that this Agreement also provides for works by the Developer to be provided to satisfy payment of Contributions.
- (c) The parties acknowledge that the credits calculated as part of this Agreement may not match the total cost of the infrastructure item/s required to be delivered by the Development Proponent.
- (d) The parties acknowledge through this Agreement that the Contributions referred to in Part X may not be the total Developer Contributions to be calculated and paid pursuant to Council for the ultimate development of this land.

2. Application of Section 7.11, 7.12 and 7.24 of the Act to the Development

2.1 Open Space and Recreation Facilities, Roads and Stormwater Drainage Contributions

Section 7.11 and 7.12 of the Act are not excluded to the extent that future contributions may be payable pursuant to:

- (a) Western Plains Regional Council Section 94 Development Contributions Plan for Dubbo Open Space and Recreation Facilities - 2016-2026;
- (b) Dubbo City Council Amended Section 94 Contributions Plan -Roads, Traffic Management and Car Parking;
- (c) Dubbo City Council Section 94 Contributions Plan - Urban Stormwater Drainage Headworks Contributions; and
- (d) Section 7.11 Developer Contributions Plan - Dubbo South-East Stormwater Drainage Headworks Contributions,

Depending on the number of credits used and/or left remaining on the land pursuant to this agreement.

Pursuant to Section 7.11 and Section 7.12 of the Act, Council as the consent authority can impose a condition of development consent under section 7.11 for contributions in the following circumstances:

- (a) Where the applicable credit contribution has been exhausted; and
- (b) Where there is shown to be an impact on Council infrastructure in accordance with the principles and infrastructure requirements.

Section 7.12 and 7.24 of the Act

Except as provided in clause 2.1, sections 7.11 and 7.12 of the Act are not excluded by this Agreement.

2.2 Section 7.24

Section 7.24 is not excluded as the Land is not within a special contributions area.

2.3 Not account of Public Benefits to be taken by Council

To the extent that section 7.11 and 7.12 are not excluded, the provision of the Public Benefits under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11.

2.4 Contributions satisfied by Public Benefits

- (a) The Developer can by an Attribution Notice estimate a Contribution to be satisfied (in whole or in part) by the provision of a Public Benefit.
- (b) Council agrees that a Contribution is satisfied by the provision of a Public Benefit to the extent nominated in the Attribution Notice.
- (c) A Public Benefit is provided when:
 - (i) for the Developer's Works a Completion Notice is served for the relevant Developer's Works;
 - (ii) for the dedication of Dedicated Land when the requirement to dedicate the Dedicated Land is satisfied under clause 4 of Schedule 3; and
 - (iii) for the Maintenance Works when the Developer has commenced the maintenance of Lot 10 for the Maintenance Period.
- (d) Council acknowledges and agrees that:
 - (i) an Attribution Notice may only be given by the Developer and not by a subsequent owner of a Residue Lot;
 - (ii) a Contribution will not be reduced, satisfied or offset as a result of a Public Benefit except as provided in an Attribution Notice;
 - (iii) the Developer may apply the Attribution Value for the Public Benefits in such proportions as it considers appropriate in its absolute discretion for the Residue Lots and may not apply any Attribution Value to some Residue Lots; and
 - (iv) if no Attribution Notice is given the Contributions payable are not reduced or satisfied by the Public Benefit provided by the Developer.

2.5 Attribution Values

- (a) The Attribution Values have been estimated based on the Cost Estimation - Review of Keswick Estate Trunk Drainage Scheme prepared by Cardno (NSW/ACT) Pty Ltd for Dubbo Regional Council dated 23 November 2018 Document No.59918128 and are accepted by Council and the Developer.
- (b) A party may not seek to adjust the Attribution Values or the amount applied to a Contribution or otherwise make a claim as a result of any difference between the Attribution Value and the Developer's actual cost of works or the value of land at the date of dedication.

2.6 Indexation of Attribution Values

On 1 July each year the Attribution Values will be increased by the percentage increase, if any, in the Consumer Price Index most recently published prior to 1 July. Where a

negative annual % change in this index occurs, Attribution Values shall be indexed at 0%.

3. Scope and application of this Agreement

3.1 This Agreement applies to:

- (a) the Land;
- (b) the Project; and
- (c) the Lot Development.

3.2 An explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this Agreement.

4. Operation of this Agreement

4.1 This Agreement will commence on the date of execution of this Agreement by all parties to this Agreement.

5. Definitions and interpretation clauses

5.1 Definitions

In this agreement the following definitions apply:

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

Agreement means this document entered into between the Parties including the schedules and annexures annexed hereto.

Attribution Value means the value the Council and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this Agreement, as set out in clause 1 of Schedule 3 of this Agreement as adjusted by indexation.

Attribution Notice means a notice by the Developer to Council setting out the following:

- a) the relevant Public Benefit and its Attribution Value;
- b) if the Attribution Value has been previously applied, the remaining amount;
- c) the relevant Contribution and its amount;
- d) the amount of the Attribution to be applied to the Contribution;
- e) the amount of the Contribution remaining to be paid after applying the amount of the Attribution Value nominated by the Developer.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

Completion means the point at which the Developer's Works are complete except for minor defects:

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purposes.

Completion Notice means a notice issued by the Developer in accordance with clause 7.2.

Construction Certificate has the same meaning as in the Act.

Contribution means either or both:

- (a) the dedication of land free of cost;
- (b) the payment of a monetary contribution,

as a condition of any development consent for the Land including the Project Consent and any Residue Lot Consent.

Council's Representative	means the person named in Schedule 1 of his/her delegate.
Consumer Price Index	means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.
Dedicated Land	means the land identified in Schedule 3 as Dedicated Land.
Defect	means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Developer's Works or any other matter which prevents the Developer's Works from complying with the terms of this Agreement.
Developer's Representative	means the person name in Schedule 1 or his/her delegate.
Developer's Works	means those items listed in Schedule 3 as Developer's Works .
Dispute	means any dispute or difference between the parties arising out of, relating to or in connection with this Agreement, including any dispute or difference as to the formation, validity, existence or termination of this Agreement.
Government Agency	means <ul style="list-style-type: none"> (a) a government or government department or other body; (b) a governmental, semi-governmental or judicial person; or (c) a person (whether autonomous or not) who is charged with the administration of a law.
GST	means the same as in the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Land	means Lot 11 DP1050240 (formerly known as the RAAF Base).

Lot 8 Development Consent	means the approval for the development and subdivision of the Residue Lot being Lot 8 permitted under the Project Consent for Stage 3.
Lot 10	means a lot substantially similar to Lot 10 in Sheet TP17 "Stage 2 Twelve Lot Subdivision - Vegetation Retained" prepared by Geolyse and referred to in clause 2 of the Project Consent a copy of which is attached as Annexure C.
Lot Development	means the development and subdivision of each of the Residue Lots.
Maintenance Period	means the period of 10 years from the time that Lot 10 is dedicated to Council in accordance with this Agreement.
Maintenance Works	means the maintenance of Lot 10 in accordance with the Project Consent for the Maintenance Period.
Occupation Certificate	has the same meaning as in the Act.
Project	means the development of the Land including dismantling Igloo No 5, relocation of the Bellman's Hangers, road works and infrastructure to create 13 residue lots (Lots 3-15) in accordance with the Project Consent.
Project Consent	means development consent no. 10.2017.199.1 granted by the Land and Environment Court on 8 August 2018.
Public Benefits	means the provision of benefits to the community by the Developer being the Developer's Works, Maintenance Works and dedication of the Dedicated Land in the form and at the times specified in Schedule 3 of this Agreement.
Regulation	means the <i>Environmental Planning and Assessment Regulation 2000 (NSW)</i> .
Residue Lot Consent	means each development consent for the subdivision and development of each Residue Lot including the Lot 8 Development Consent.

Residue Lots	means each of the lots (Lots 3 - 15) created by the subdivision of the Land in accordance with the Project Consent.
Subdivision Certificate	means a certificate that authorises the registration of a plan of subdivision under Part 23 of the <i>Conveyancing Act 1919</i> issued pursuant to Part 6 of the Act.
Subdivision of Land	has the same meaning as in the Act.
Tax	means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

5.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) 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.
- (c) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) 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.
- (e) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) References to the word 'include' or 'including' are to be construed without limitation.
- (h) 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.
- (i) Any schedules and attachments form part of this Agreement.

- (j) A word defined in the Act has the same meaning in this Agreement.

6. Contributions to be made under this Agreement

The Developer must deliver the following Public Benefits in accordance with Schedule 3 of this Agreement:

- (a) Developer's Works;
- (b) Maintenance Works; and
- (c) dedication or transfer to Council of the Dedicated Land.

7. Completion

7.1 Date of Completion

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this Agreement.

7.2 Developer completion notice

- (a) When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the Council's Representative in writing and must include in that notice a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion (**Completion Notice**).
- (b) For the avoidance of doubt, the Developer can issue separate Completion Notices under clause 7.2(a) at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for the Developer's Works before the due date specified in clause 1 of Schedule 3 of this Agreement.

8. Enforcement

This Agreement may be enforced by either party in any Court of competent jurisdiction.

9. Registration

- 9.1 As the Public Benefits will be provided for Stage 2 of the Project no registration of this Agreement is required by Council under section 7.4 of the Act.

10. Dispute Resolution

10.1 Reference to dispute

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 9.

10.2 Notice of dispute

- (a) The party wishing to commence dispute resolution processes must notify the other of:
- (i) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 9;
 - (ii) the intent to involve this clause 9;
 - (iii) (if practicable) the outcomes which the notifying party wishes to achieve; and
 - (iv) any material impact which the dispute has upon the completion of the Developer's Works or the transfer of the Dedicated Land in accordance with clause 7 (and in particular the completion of the remainder of the Development).
- (b) The contents of a notice issued under the clause 10.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

10.3 Principals of parties to meet

The principals of the parties (and in the case of the Council, the principal may include the person acting in the role of General Manager as defined in the *Local Government Act 1993*, or such person as is nominated by that officer in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution); and
- (c) 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.

10.4 Neither party may constrain

If:

- (a) at least one meeting has been held in accordance with clause 10.3;
- (b) the parties have been unable to reach an outcome identified in clause 10.2(a)(i) to 10.2(a)(iii); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 10.3,

then that party may, by 14 days' notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 9 does not of itself amount to a breach of the Agreement.

11. Notices

11.1 Service of Notice

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; or
- (b) emailed to that Party at its email address,

set out in Items 3 and 4 of Schedule 1.

11.2 Change of address

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 emailed to the latest address or email address.

11.3 Time of service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two business days after it is posted; and
- (c) if it is sent by email, as soon the email is sent (unless an error or malfunction, for example the email bounces otherwise fails to be delivered).

11.4 Service after hours, on weekends and holidays

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 5:00 pm 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.

12. Variation of Agreement

The parties may agree to vary the terms of this Agreement. Any such variation shall be evidenced by a written variation and must comply with the provisions of Section 7.5 of the *Environmental Planning and Assessment Act 1979*.

13. Costs

Each party must pay their own legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement;
- (b) the giving effect to this Agreement; and
- (c) any enforcement of the rights under this Agreement.

14. GST

- 14.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (**GST Act**).
- 14.2 If a party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 14.3 If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 14.4 If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (indemnified cost) under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.

- 14.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 14.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

15. Entire Agreement

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.

16. 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.

17. Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

18. Joint and several liability

Any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually.

19. No fetter

Nothing in this Agreement will be construed as limiting or fettering in any way the exercise by Council of any statutory discretion or duty.

20. Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and that entry into this Agreement will not result in the breach of any law.

21. Severability

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 remainder of this Agreement is not affected.

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Schedule 1 Reference Schedule

Item	Term	Description
1.	Council's Representative	[To be inserted]
2.	Developer's Representative	<p>Mark Stanford</p> <p>Andorra Developments Pty Ltd</p> <p>PO Box 151</p> <p>Dubbo NSW 2830</p> <p>Email: ms@hcon.com.au</p>

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Schedule 2 Requirements under the Act and the Regulation

The table below summarises how this document complies with the Act and Regulation.

Item	Section of Act or Regulation	Clause of this Agreement
1.	<p>Planning Instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make a development application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with a person to whom paragraph (a) or (b) applies</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	3.1(a) and 5.1
3.	Description of the development to which this document applies (section 7.4(3)(b) of the Act)	3.1(b) and (c) and 5.1
4.	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	6 and Schedule 3.
5.	Whether this document excludes (wholly or in part) the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	2.1- 2.3
6.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	2.4
7.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 10

8. Enforcement of this document (section 7.4(3)(g) of the Act) Clause 8

9. Registration of this document (section 7.6 of the Act) Clause 9

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Schedule 3 Public Benefits (clause 6)

1. Public Benefits - Overview

The Developer must provide the Public Benefits in accordance with Schedule 3 and this Agreement. The Attribution Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below.

Item	Public Benefit	Attribution Value	Due Date	Additional Specifications
1.	Developer's Works - Stage 2	You sought \$3,753,451.00 Applicable credit \$2,360,200	Prior to release of the Subdivision Certificate for Stage 2 of the Project Consent.	Construction of stormwater detention basins and landscaping in accordance with condition 69 of the Project Consent and the Stage 2 Landscaping Plan (Sheet Number TO18 dated 25 June 2018 - Revision J) and Environmental Management Zone Master Plan which is attached at Annexure A and Construction Certificate C2017-199 with approved Engineering Plans 111111 Set 72G C001-C082 dated 14/10/2019 REV G.
2.	Developer's Works - Stage 3	\$18,000	Prior to release of the Subdivision Certificate for Stage 3 of the Project Consent.	Landscaping in accordance with condition 93 of the Project Consent and the Stage 3 Landscaping Plan (Sheet Number T29 dated 25 June 2018 - revision J) which is

attached at
Annexure B.

3.	Developer's Works Lot 10	You sought \$800,000 Applicable credit \$800,000	Prior to dedication of Lot 10	Works in respect to land to be dedicated for public visitation in accordance with condition 53A of the Project Consent and Construction Certificate C2017-199 with approved Engineering Plans 111111 Set 72G C001-C082 dated 14/10/2019 REV G.
4.	Developer's Works Cobra Street	You sought \$2,037,922 Applicable credit \$611,000	Prior to release of the Subdivision Certificate for Stage 2 of the Project Consent.	Construction of the signalised intersection on Cobra Street (and other associated road works) in accordance with conditions 55 to 59 of the Project Consent and Construction Certificate C2017-199 with approved Engineering Plans 111111 Set 72G C001-C082 dated 14/10/2019 REV G.
5.	Dedicated Land – Lot 10	You sought \$1,084,000 Applicable credit \$1,084,000	Within 10 Business Days of the registration of a subdivision plan creating the Dedicated Land.	The land shown as Lot 10 in Sheet TP17 a copy of which is attached in Annexure C.
6.	Maintenance Lot 10	You sought \$300,000 Applicable credit = \$300,000	For a 10 year period commencing from the date	Land to be maintained in accordance with condition 53B of the

Lot 10 is dedicated to Council in accordance with clause 4 of this Schedule 3. Development Consent.

2. Final Design of the Developer's Works

2.1 Scope of Developer's Works

As at the date of this Agreement, the nature and extent of the required Developer's Works is set out in the Project Consent. Council acknowledges that further design refinement of the Developer's Works may be necessary, having regard to:

- (a) the extent to which the design of the Developer's Works has been approved by the Council;
- (b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this Agreement;
- (c) any modification to the Project Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works;
- (d) the reasonable requirements of the Developer; and
- (e) any modifications required by any approved Construction Certificate.

The Developer may provide Council with a copy of the further design where this is significantly different from the plans attached. Unless Council objects to the further design within 7 days of receipt, Council is taken to have accepted the further design for the purposes of this Agreement.

3. Construction of Developer's Works

3.1 Insurance

- (a) From commencement of the Developer's Works until Completion, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:

- (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the Council:
- (i) prior to commencing construction of the Developer's Works; and
 - (ii) promptly following a written request by the Council, provided that such a request is not made more than twice in any 12 month period.

3.2 Approvals and consents

The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the Council or from any other relevant Government Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works, other than the Project Consent.

3.3 Construction work

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the Council under this Agreement; and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this Agreement so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use.

3.4 Inspections by the Council

The Council, as a party to this Agreement and not in its role as a Government Agency, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of an inspection. Any failure by the Council to

identify a Defect, error or omission will not be construed as amounting to an acceptance by the Council of the Defect, error or omission.

4. Land Dedication

- (a) The Developer must dedicate to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements (except those currently on the Land, permitted or as required by the Project Consent), rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The requirement for the Developer to dedicate the Dedicated Land to the Council is satisfied where 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 (NSW)* or creates a public reserve or drainage reserve under the *Local Government Act 1993 (NSW)* (whichever is relevant).
- (c) The requirement for the Developer to dedicate the Dedicated Land is also satisfied when the Dedicated Land is transferred to Council. The Developer must notify Council of the proposed transfer and Council must accept the transfer and co-operate to enable the stamping and registration of the transfer of the Dedicated Land.
- (d) The Dedication Land must be dedicated or transferred to Council prior to the due date specified in clause 1 of this Schedule 3.
- (e) Despite clause 4(a), if having used its best endeavours, the Developer cannot ensure that the Dedication Land is free from any relevant encumbrance and affectation, then:
 - (i) the Developer may request that the Council agree to accept the Dedicated Land and subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the Dedication Land for the public purpose for which it is to be dedicated under this Agreement; and
 - (B) is not a charge against the Dedication Land, and
 - (C) is an encumbrance or charge that Council would not be restricted from granting or extinguishing over public road under the *Roads Act 1993*, the Council must not withhold its agreement unreasonably and otherwise, the Council may withhold its agreement at its absolute discretion.

5. Maintenance of Lot 10

- (a) The Developer must maintain Lot 10 for a period of 10 years from the date of the dedication of Lot 10 to Council.
- (b) Maintenance of Lot 10 must be carried out in accordance with the Project Consent and at the sole cost of the Developer (Condition 53B).

DRAFT

Signing page

Executed as an agreement

Executed by Dubbo Regional Council in under seal in accordance with a resolution of the Council on **[insert date]**:

Signature of **[insert position]**

Signature of **[insert position]**

Full name (print)

Full name (print)

Executed by Andorra Developments Pty Ltd ACN 150 862 570 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

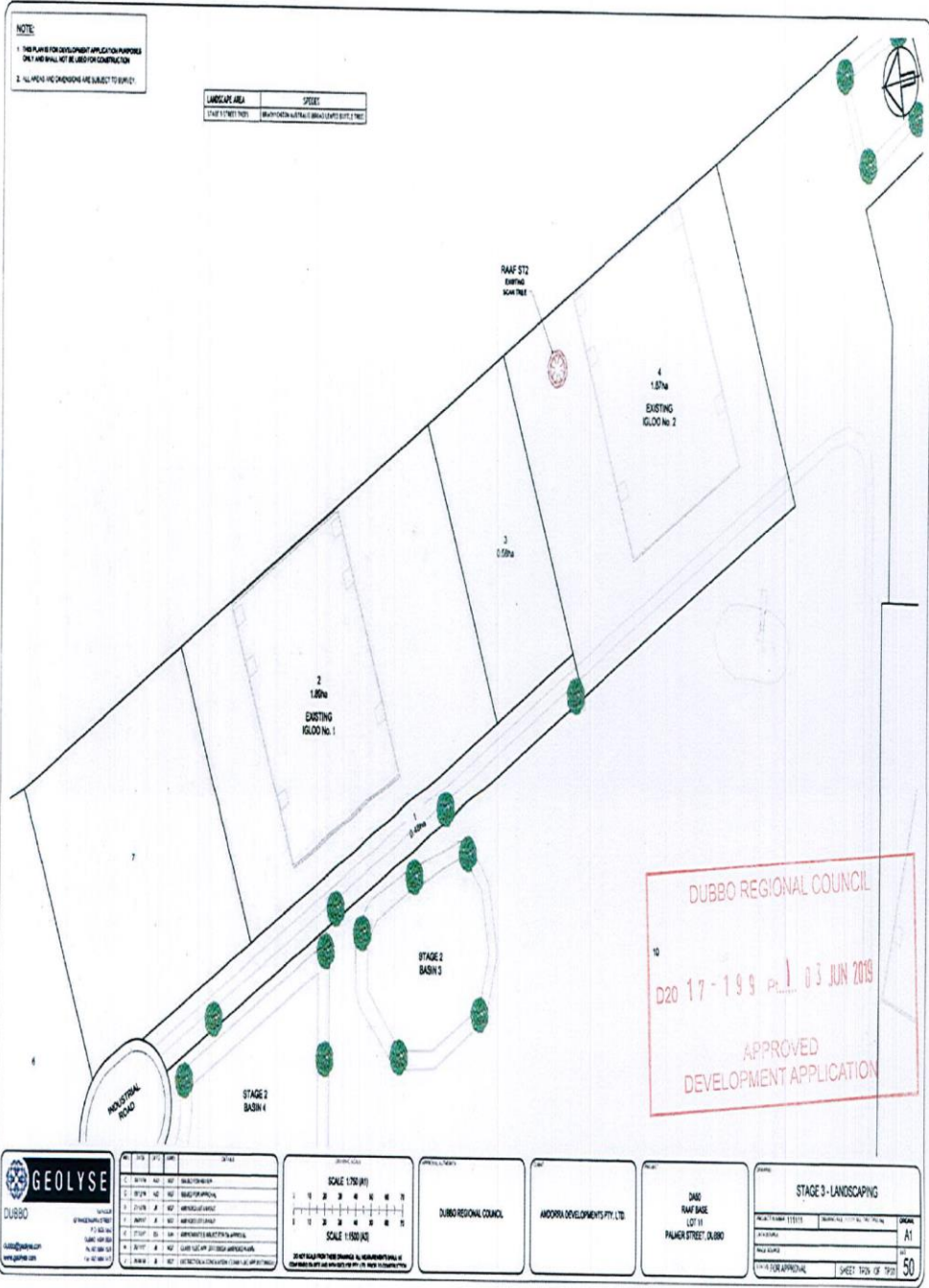
Signature of Director

Signature of Director/Company Secretary

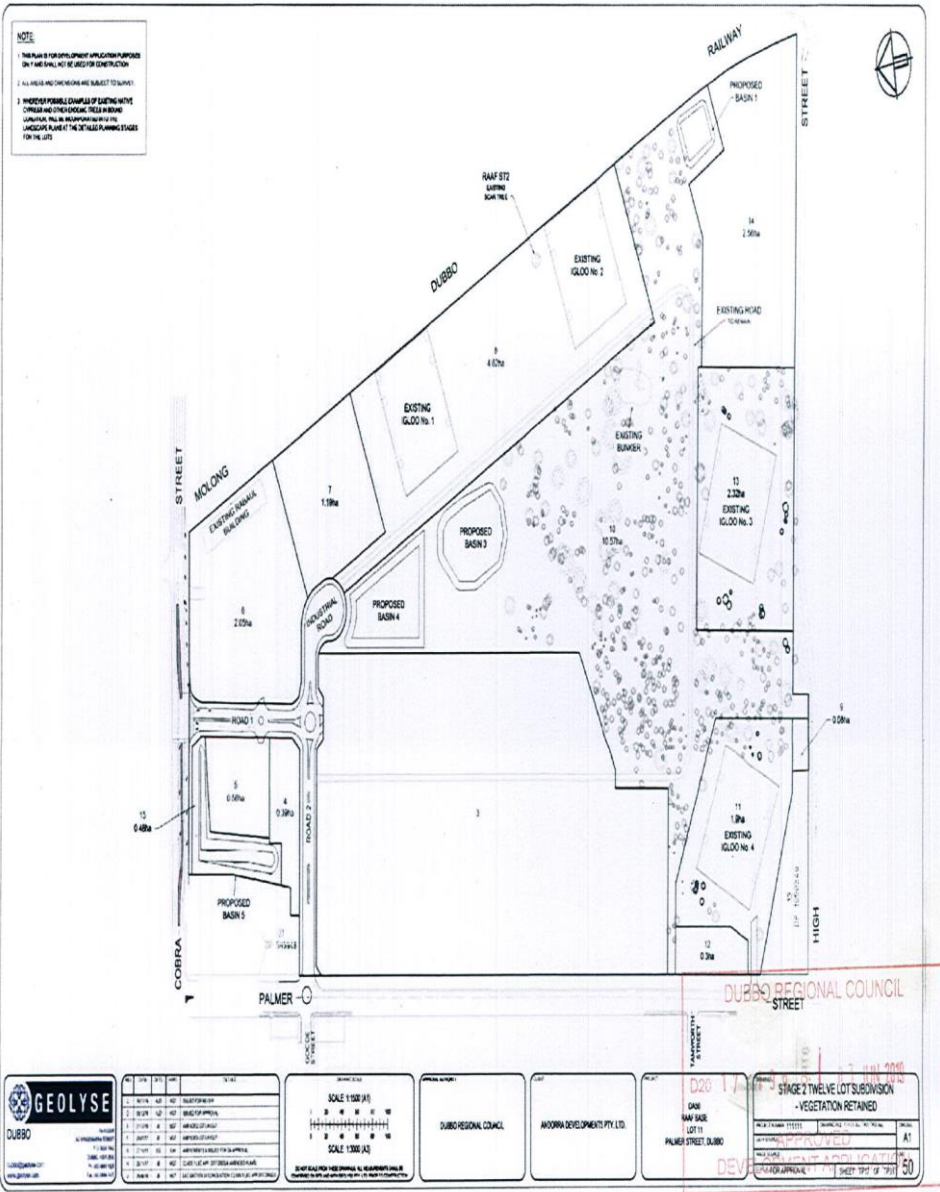
Full name (print)

Full name (print)

Annexure B Stage 3 Landscaping Plan



Annexure C Showing 'Lot 10' to be dedicated to Council



Annexure D Plan showing internal roads to be dedicated to Council

