

# Riverstone Landowners Voluntary Contributions Agreement

under the  
Environmental Planning and Assessment Act 1979

Landcom (t/a UrbanGrowth NSW)

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Representative: George Popovic

and

[Insert Name of landowner]

Address: [Insert Details]

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Land:

[insert title details]

# Riverstone Landowner's Voluntary Contributions Agreement

Under clause 17 of Schedule 5 of the *Environmental Planning and Assessment Act 1979*

## parties

**Landcom (t/a UrbanGrowth NSW)** ABN 79 268 260 688 Level 14, 60 Station Street  
Parramatta, NSW 2150 (**UrbanGrowth NSW**)

and

**[Insert Name of landowner]** ABN **[Insert details]** of **[Insert details]** (**landowner**)

## Background

- A UrbanGrowth NSW is established as a corporation under s5(1) of the *Landcom Corporation Act 2001* with the corporate name of Landcom and trades under the name of *UrbanGrowth NSW*.
- B UrbanGrowth NSW is designated in the **subdivision order** as the relevant authority in respect of the **land**.
- C The **landowner** is the owner of the **land**.
- D UrbanGrowth NSW has issued the **landowner** a **contribution notice** requiring the **landowner** to make a **contribution** towards the **costs** of **subdivision works** and **development plan costs**.
- E The landowner has elected to make a voluntary contribution.
- F This **agreement** sets out the manner in which that **contribution** is to be made.
- G UrbanGrowth NSW is authorised to enter into this **agreement** pursuant to clause 13(a) of Schedule 5 of the **Act** and the functions conferred on it by the **subdivision order**.

## Operative provisions

### PART 1 - PRELIMINARY

#### 1 Status of this agreement

- 1.1 This **agreement** is a voluntary contributions agreement within the meaning of clause 17(1) of Schedule 5 of the **Act**.
- 1.2 This **agreement** is also an agreement between the parties pursuant to section 30 of the **Just Terms Act** in respect of the **monetary contribution, land trade** or acquisition of the whole or any part of the **land** or an **interest** in the **land** contemplated by or permitted under this **agreement**.

#### 2 Commencement of this agreement

- 2.1 This **agreement** commences on the date on which it has been executed by all **parties**.
- 2.2 The **party** who executes this **agreement** last is to insert on the front page the date they did so and provide a copy of the fully executed and dated **agreement** to any other person who is a **party**.

#### 3 Warranties

- 3.1 The **landowner** warrants that it is the legal and beneficial owner of the **land** and:
  - 3.1.1 has full capacity to enter into this **agreement**, and
  - 3.1.2 is able to fully comply with his or her obligations under this **agreement**.

#### 4 Modification of the plan of subdivision

- 4.1 The **plan of subdivision** may be varied by UrbanGrowth NSW if:
  - 4.1.1 the variation is minor within the meaning of clause 268ZL(5) of the **Regulation**; or
  - 4.1.2 the **development plan** is amended in accordance with the **Act** and **Regulation** to contain a modified plan of subdivision, to reflect the changes to the **plan of subdivision** which forms part of the amended **development plan**.

#### 5 Landowner's Consent and Execution of Documents

- 5.1 The **landowner** consents to the lodgement by UrbanGrowth NSW of applications for **subdivision certificates** in respect of the **plan of subdivision**.
- 5.2 The **landowner** also consents to the creation of any easements or covenants which affect the **land** which are either:
  - 5.2.1 shown on the **plan of subdivision**; or
  - 5.2.2 required by the local council or other authority as a condition of issuing the **subdivision certificates**; or

- 5.2.3 otherwise reasonably necessary to effect the **subdivision works**.
- 5.3 The **landowner** must sign, and must procure all persons with a **registered interest** whose signature is required to sign, all documents reasonably necessary to:
- 5.3.1 register plans to give effect to the **plan of subdivision**;
- 5.3.2 create any easements or covenants referred to in clause 5.2; and
- 5.3.3 give effect to the **plan of subdivision** and those easements or covenants,
- and deliver the signed documents to UrbanGrowth NSW on execution of this **agreement**, or within 14 days of being requested to do so by UrbanGrowth NSW, .
- 5.4 The **landowner** must, by the **final date**, either produce to UrbanGrowth NSW written evidence (including any title production number given to the **landowner** or its **mortgagee** by **LPI**) that the certificate of title to the **land** has been lodged with **LPI** for the purpose of this **agreement**, or provide (or procure the provision of) the certificate of title to the **land** to UrbanGrowth NSW to hold in escrow to be produced to **LPI** for the purposes of this **agreement**. The **landowner** may not (and may not permit any other person to) uplift any title documents so produced without the consent of UrbanGrowth NSW.
- 5.5 If the **landowner** or any other **interest holder** does not comply with clause 5.3 or 5.4, then UrbanGrowth NSW may apply to the Registrar-General under the Real Property Act 1900 for a dispensation of the requirement to produce the certificate of title to the **land** or any other document when registering plans or dealings for the purposes of this **agreement**.
- 5.6 If the **landowner** or any other **interest holder** does not comply on time with a requirement in this clause 5, UrbanGrowth NSW is not required to give the **landowner** or any other person a notice under clause 18.1 before UrbanGrowth NSW exercises any of its rights under this clause or any other clause of this **agreement**.

## PART 2 – URBANGROWTH NSW'S OBLIGATIONS

### 6 Implementation of Development Plan and Carrying out of Subdivision Works

- 6.1 Subject to all **landowners** making their **contributions**, UrbanGrowth NSW will:
- 6.1.1 carry out the **subdivision works**; and
- 6.1.2 subdivide the **subdivision land** in accordance with the **plan of subdivision**, in accordance with the **development plan**.
- 6.2 To give effect to UrbanGrowth NSW's obligations under clause 6.1, UrbanGrowth NSW may take any action UrbanGrowth NSW is permitted to undertake under the **development plan**, the **subdivision order**, any laws, or as UrbanGrowth NSW determines are required in its absolute discretion, including:
- 6.2.1 causing the **subdivision works** to be undertaken on the **subdivision land**, including:
- (a) works for the purpose of roads, as shown on the **plan of subdivision**,
  - (b) works for the purpose of water supply, as shown on the water servicing figure in Schedule 3 of the **development plan**,
  - (c) works for the purpose of sewerage services, as shown on the sewerage servicing figure in Schedule 3 of the **development plan**,
  - (d) works for the purpose of drainage, as shown on the drainage figure in Schedule 3 of the **development plan**,

- (e) works for the purpose of electricity supply, as shown on the electricity reticulation figure in Schedule 3 of the **development plan**,
  - (f) works for the purpose of gas supply,
  - (g) works for the purpose of telecommunications,
  - (h) works for the purpose of site remediation, in accordance with the Remediation Action Plan from DLA Environmental dated September 2016,
  - (i) works for the purpose of demolition as shown in RPS Survey Plan dated 28 April 2014, and
  - (j) works required for the purposes of, or ancillary to, the above works, and
- 6.2.2 subject to the terms of this **agreement** and the **development plan**, procuring lodgement of all plans and documents necessary to subdivide the **subdivision land** in accordance with the **plan of subdivision**, or as permitted by the **subdivision order**, the **development plan**, by law or under this **agreement**.

## PART 3 - LANDOWNER'S CONTRIBUTION

### 7 Contribution Liability

- 7.1 This **agreement**, for so long as it remains on foot, overrides any **contribution notice** issued to the **landowner**.
- 7.2 The **landowner** must provide the **contribution** in accordance with the provisions of this **agreement**.

### 8 Landowner's Election

- 8.1 The **landowner** elects to meet its **contribution** by way of:
- 8.1.1 a monetary contribution; or
  - 8.1.2 a **land trade**; or
  - 8.1.3 partly a **monetary contribution** and partly a **land trade**,
- as specified in the **reference schedule**.

### 9 Land Trade

- 9.1 The **landowner** agrees to UrbanGrowth NSW compulsorily acquiring the **traded land** on the terms and conditions set out in the **development plan** and this **agreement**.

### 10 Road land

- 10.1 The **landowner** agrees to UrbanGrowth NSW compulsorily acquiring the **road land** owned by the **landowner** (or an **interest** in that land) if UrbanGrowth determines to do so in accordance with the **development plan**.
- 10.2 The **landowner** agrees that the compensation to which it is entitled for the acquisition of the **road land** is the carrying out of the **subdivision works**, and the performance of functions by UrbanGrowth NSW to achieve the **planning purpose**.

- 10.3 The **landowner** agrees that it will not be entitled to any monetary compensation for the acquisition of the **road land** or an **interest** in the **road land**.
- 10.4 If UrbanGrowth NSW determines that it will not compulsorily acquire the **road land** owned by the **landowner**, the **landowner** must do all things necessary or required by UrbanGrowth NSW to dedicate that **road land** as a public road, including by executing the **plan of subdivision** or another plan giving effect to the dedication of the **road land** as a public road.

## 11 Additional individual costs

- 11.1 The **landowner** acknowledges that the **contribution** includes a component for **individual costs**, based on an estimate of costs in accordance with the **development plan**, and a component for **shared costs**.
- 11.2 UrbanGrowth NSW is entitled to issue notices under the **development plan** to require the landowner to pay additional amounts to reflect the amount by which the actual **individual costs** incurred by UrbanGrowth NSW exceed the estimated amounts shown in the **development plan**.
- 11.3 Despite the provisions of the **development plan**, UrbanGrowth NSW agrees that it will not increase the component of the contribution for **shared costs**, nor the component of the **individual costs** described in the **development plan** as 'cost of funds', except as permitted under clause 11.4.
- 11.4 If UrbanGrowth NSW exercises a right contemplated under 17.6, UrbanGrowth NSW may include in the calculation of **individual costs** described in the **development plan** as 'cost of funds' an amount calculated as follows:

$$C = \frac{D \times I \times N}{365}$$

where

- C is the amount by which the estimate of the cost of funds component of **individual costs** will be increased from the estimated amount specified in Schedule 6 of the **development plan** as 'cost of funds'
- D is the amount paid to the mortgagee and any other costs or expenses incurred by UrbanGrowth in connection with the **mortgage**
- I is the **interest rate**
- N is the number of days in the period commencing on the date UrbanGrowth NSW pays the amount 'D' and ending on the date on which "completion of this plan" (as defined in the **development plan**) occurs.

- 11.5 Subject to clause 11.3, if UrbanGrowth NSW issues a notice in accordance with the **development plan**, the **contribution** is increased by the amount of the additional **individual costs** so notified.
- 11.6 The landowner may elect to pay the additional **individual costs** the subject of a notice under the **development plan** by:
- 11.6.1 paying that amount within 20 business days of the date of the notice; or
- 11.6.2 if they have additional **land** to trade (in addition to any **traded land** or **road land**), by agreeing to include part or all of that additional **land** (in whole lot increments) in the **traded land** and the area of the **traded land** specified in the **reference schedule** and the **traded land** in schedule 4 are taken to have been amended accordingly.

## 12 Surplus

- 12.1 UrbanGrowth NSW will pay the **surplus** to the **landowner** as soon as practicable after **completion** in accordance with the **development plan**.

## PART 4 – ACCESS TO LAND

### 13 Access before Acquisition

- 13.1 The **landowner** agrees that UrbanGrowth NSW can access the **land** at any time prior to any part of the **land** being vested in UrbanGrowth NSW for the **planning purpose** in accordance with the conditions set out in Schedule 6.

### 14 Access after Acquisition

- 14.1 UrbanGrowth NSW must notify the **landowner** 7 days prior to the expected date of publication of any acquisition notice in respect of the **land** in the Government Gazette that it intends to publish that notice.
- 14.2 The **landowner** agrees that it will provide vacant possession of the whole of the **land** acquired under this **agreement** within 7 days after the publication of the acquisition notice in the Government Gazette.
- 14.3 The **landowner** releases UrbanGrowth NSW from and against any **claim** which the **landowner** or a person who makes a **claim** through the **landowner** may have against UrbanGrowth NSW in connection with the exercise of UrbanGrowth NSW's rights under this clause.

## PART 5 – SECURITY AND ENFORCEMENT

### 15 Registration of this agreement

- 15.1 The **parties** agree to register this **agreement** for the purposes of clause 17(2) of Schedule 5 of the Act.
- 15.2 On execution of this **agreement**, the **landowner** is to give UrbanGrowth NSW:
- 15.2.1 the 'Request' form contained in Schedule 7, completed and executed by:
- (a) the landowner; and
  - (b) if, at the time the **landowner** enters into this **agreement**, the **landowner's land** is subject to a registered mortgage, the landowner's **mortgagee**,  
in registrable form;
- 15.2.2 the written irrevocable consent of each person who has a **registered interest** in the **land** to the registration of this **agreement**, in the form contained in Schedule 9, completed with details of the person who has the **registered interest** and signed by or on behalf of that person; and
- 15.2.3 either:
- (a) written evidence (including any title production number issued by **LPI**) that the certificate of title to the **land** has been lodged with **LPI** for the purposes of this **agreement**; or
  - (b) the certificate of title to the **land**, which is then to be held in escrow and to be produced to **LPI** by UrbanGrowth NSW for the purposes of this **agreement**.
- 15.3 The **landowner** may not (and may not permit any other person to) uplift any title documents produced in accordance with clause 15.2.3(a) without the consent of UrbanGrowth NSW.

- 15.4 If the **landowner** does not comply with clause 15.2.3, then UrbanGrowth NSW may apply to the Registrar-General under the *Real Property Act 1900* for a dispensation of the requirement to produce the certificate of title to the **land** for the purposes of registering this **agreement** on the title to the **land**.
- 15.5 The **landowner** is to do such other things as are reasonably necessary to enable registration of this **agreement** to occur, including assisting UrbanGrowth NSW with replying to and complying with any requisitions raised by **LPI** in relation to the registration of this **agreement**.
- 15.6 The **parties** are to do such things as are reasonably necessary to remove any notation relating to this **agreement** from the title to the **land** once the **landowner** has completed its obligations under this **agreement** to the reasonable satisfaction of UrbanGrowth NSW or this **agreement** is terminated or otherwise comes to an end for any other reason.

## 16 Restriction on dealings

- 16.1 The **landowner** is not to:
- 16.1.1 sell or transfer the **land**, or
  - 16.1.2 assign the **landowner's** rights or obligations under this **agreement**, or novate this **agreement**,  
to any person unless:
    - 16.1.3 the **landowner** has, at no cost to UrbanGrowth NSW, first procured the execution by the person to whom the **land** or part is to be sold or transferred or the **landowner's** rights or obligations under this **agreement** are to be assigned or novated, of a deed or other agreement in favour of UrbanGrowth NSW on terms reasonably satisfactory to UrbanGrowth NSW, and
    - 16.1.4 UrbanGrowth NSW has given written notice to the **landowner** stating that it reasonably considers that the purchaser, transferee, assignee or novatee, is reasonably capable of performing the **landowner's** obligations under this **agreement**, and
    - 16.1.5 the **landowner** is not in breach of this **agreement**, and
    - 16.1.6 UrbanGrowth NSW otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 16.2 The **landowner** must not grant any new lease, licence or any other occupancy rights in respect of the **land** after the date of this **agreement** without the prior written approval of UrbanGrowth NSW, which approval shall not be unreasonably withheld.

## 17 Mortgage interests in the land

- 17.1 If, at the time the **landowner** enters into this **agreement**, the **landowner's land** is subject to a registered **mortgage**, the **landowner** must procure the execution by the **mortgagee** of a **financier's consent deed** on or prior to the date of this **agreement**.
- 17.2 The **landowner** warrants that there is no unregistered **mortgage** or other **interest** in the **land** as at the date of this **agreement**.
- 17.3 The **landowner** must not create any **mortgage** over the **land** or grant any other **interest** in the **land** after the date of this agreement without the prior written approval of UrbanGrowth NSW, which approval shall not be unreasonably withheld and may be granted subject to any reasonable conditions required by UrbanGrowth NSW.
- 17.4 Without limiting the generality of this clause, UrbanGrowth NSW may require as a condition of its approval to the creation of any **mortgage** that the proposed **mortgagee** executes a **financier's consent deed** prior to the **mortgage** being created.

- 17.5 If:
- 17.5.1 the **mortgagee** does not enter into the **financier's consent deed** when it is required to do so under this agreement; or
  - 17.5.2 the **mortgagee** breaches the **financier's consent deed**,  
UrbanGrowth NSW may request the **landowner** to:
    - 17.5.3 provide information to UrbanGrowth NSW in relation to the **landowner's mortgage** (including the principal outstanding under the **mortgage**) for the purposes of determining whether or not UrbanGrowth NSW wishes to take any of the actions referred to in clauses 17.6.1 to 17.6.5; and
    - 17.5.4 consent to UrbanGrowth NSW taking any of the actions referred to in clauses 17.6.1 to 17.6.5.
- 17.6 If the **landowner** consents, UrbanGrowth NSW may (but is not obliged to):
- 17.6.1 compulsorily acquire the **mortgage** in accordance with the **Just Terms Act**;
  - 17.6.2 pay the **mortgagee** compensation and other amounts in accordance with:
    - (a) if the **financier's consent deed** or some other agreement under section 30 of the **Just Terms Act** has been entered into, that deed or agreement; or
    - (b) otherwise, in accordance with the provisions of the **Just Terms Act**;
  - 17.6.3 discharge the **mortgage** at any time after it has been acquired (or require the **mortgagee** to do so);
  - 17.6.4 include any amounts paid by UrbanGrowth NSW in connection with the acquisition or discharge as part of the **specific costs** for that **landowner**; and
  - 17.6.5 increase the **individual costs** for that **landowner** in accordance with clause 11.4,
- 17.7 The **landowner** acknowledges that clause 6.1 of the **development plan** will not apply to any **mortgage** which has been discharged in accordance with clause 17.6.3.
- 17.8 Nothing in this clause 17 limits or otherwise affects the power of UrbanGrowth NSW to compulsorily acquire the **land** in accordance with the Act.

## 18 Breach of obligations

- 18.1 If UrbanGrowth NSW considers that the **landowner** is in breach of any obligation under this **agreement**, it may give a written notice to the **landowner**:
- 18.1.1 specifying the nature and extent of the breach, and
  - 18.1.2 requiring the **landowner** to rectify the breach within a specified period if UrbanGrowth NSW reasonably considers the breach is capable of rectification.
- 18.2 If the **landowner** fails to comply with a notice issued under this clause, or if clause 5.6 applies, UrbanGrowth NSW may, without further notice to the **landowner**, and despite any other rights UrbanGrowth NSW may have under this **agreement** or at law or in equity:
- 18.2.1 recover any **contribution** outstanding under this agreement, by compulsorily acquiring the whole or such part of the **land** (in whole lot increments) at the rate per square metre specified for **traded land rate** in the **reference schedule** as sufficient to recover the **contribution** outstanding; and
  - 18.2.2 in relation to any other breach, remedy the breach (if it can be remedied) and recover its costs of doing so by including those costs in the calculation of specific costs.

- 18.3 For the purpose of clause 18.2, UrbanGrowth NSW's costs of remedying a breach the subject of a notice given under clause 18.1 include:
- 18.3.1 the costs of UrbanGrowth NSW's servants, agents and contractors reasonably incurred for that purpose,
  - 18.3.2 all fees and charges necessarily or reasonably incurred by UrbanGrowth NSW in remedying the breach, and
  - 18.3.3 all legal costs and expenses reasonably incurred by UrbanGrowth NSW, by reason of the breach.
- 18.4 The **landowner** agrees that any compulsory acquisition of the **land** or any part of it by UrbanGrowth NSW under this clause constitutes a section 30 agreement under the **Just Terms Act** in relation to that compulsory acquisition.
- 18.5 If, as a result of the acquisition of any part of the **land** owned by the **landowner** or an **interest** in that land, UrbanGrowth NSW is required to pay compensation under the **Just Terms Act** to any person other than the **landowner**, that compensation will form part of the **specific costs**.

## PART 6 – INDEMNITIES & INSURANCE

### 19 Indemnity

- 19.1 The **landowner** indemnifies UrbanGrowth NSW against all **claims** that may be made by any person with an **interest** in the **land** (as defined in the **Just Terms Act**) against UrbanGrowth NSW as a result of the acquisition pursuant to this **agreement** by UrbanGrowth NSW of the whole or any part of the **land** or any **interest** in the **land**.

### 20 Insurance

- 20.1 UrbanGrowth NSW is to, or is to ensure its contractors, take out and keep current all insurances required by law in relation to the carrying out of the **subdivision work**.

### 21 Work Health & Safety

- 21.1 For the purposes of the **WHS laws**, to the extent that this **agreement** involves the **landowner** commissioning a construction project within the meaning of the **WHS laws**, the **landowner**:
- 21.1.1 engages UrbanGrowth NSW as the principal contractor for that construction project;
  - 21.1.2 authorises UrbanGrowth NSW to have management or control of the workplace and to discharge the duties of a principal contractor under Chapter 6 of the *Work Health and Safety Regulation 2011* in respect of that construction project; and
  - 21.1.3 agrees that UrbanGrowth NSW may engage a third party as the principal contractor for that construction project under another contract.

## PART 7 - OTHER PROVISIONS

### 22 Amendments to development plan

- 22.1 If the **development plan** is amended other than by way of a minor amendment as defined in clause 268ZL of the **Regulation**, the **parties** must use all reasonable endeavours to agree on and implement appropriate amendments to this **agreement** to give effect to the changes to the **development plan**.
- 22.2 A failure to reach agreement pursuant to this clause entitles either party to terminate this agreement and clause 23.3 applies.

### 23 Termination

- 23.1 If at any time, the **development plan** is declared invalid, then UrbanGrowth NSW may, in its absolute discretion, either:
- 23.1.1 terminate this **agreement**; or
  - 23.1.2 advise the **landowner** that the **agreement** is suspended until such time as a new development plan within the meaning of Schedule 5 of the **Act** is made, following which the parties must negotiate on any consequential amendments required to this **agreement** and clause 22 applies, as though the new development plan was an amendment to the **development plan**.
- 23.2 UrbanGrowth NSW may terminate this **agreement** if it is of the opinion that any material change of circumstance has occurred, or is imminent, including:
- 23.2.1 any change to a law that restricts or prohibits or enables any planning authority to restrict or prohibit any aspect of the subdivision proposed in the **plan of subdivision**;
  - 23.2.2 anything which materially affects the **development plan costs** or the costs of the provision, extension and augmentation of **subdivision works**; and
  - 23.2.3 a failure to obtain the consent of owners of the **land** the subject of the **plan of subdivision** to a major amendment to the **development plan**, within the meaning of clause 268ZL of the **Regulation**, which UrbanGrowth NSW considers to be necessary or desirable.
- 23.3 If the **agreement** is terminated pursuant to this clause, the **parties** are to co-operate and do all things reasonably practicable to return the **parties** to the position they were in before any obligations were performed under this **agreement**.

### 24 Notices

- 24.1 A notice, consent, information, application or request (**notification**) given or made to a **party** under this **agreement** may only be given or made if it is in writing and sent in one of the following ways:
- 24.1.1 delivered or posted to that **party** at its address set out on the front page of this **agreement**,
  - 24.1.2 faxed to that **party** at its fax number set out on the front page of this **agreement**, or
  - 24.1.3 emailed to that **party** at its email address set out on the front page of this **agreement**.
- 24.2 A **party** may change its address or fax number by giving the other **party** 3 business days' notice of the change, in which case the new address or fax number is treated as the address or number on the front page of this **agreement**.

- 24.3 A **notification** is to be treated as given or made if it is:
- 24.3.1 delivered, when it is left at the relevant address,
  - 24.3.2 sent by post, 2 business days after it is posted,
  - 24.3.3 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
  - 24.3.4 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.
- 24.4 If a **notification** is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the **party** to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## 25 Costs

- 25.1 The **landowner** must pay its own costs of preparing, negotiating, executing and stamping this **agreement** and any document related to this **agreement**.

## 26 Entire agreement

- 26.1 This **agreement** and the **development plan** contain everything to which the **parties** have agreed in relation to the matters dealt with in those documents.

## 27 Further acts

- 27.1 Each **party** must promptly execute all documents and do all things that another **party** from time to time reasonably requests to effect, perfect or complete this **agreement** and all transactions incidental to it.

## 28 Governing law and jurisdiction

- 28.1 This **agreement** is governed by the law of New South Wales.
- 28.2 The **parties** submit to the non-exclusive jurisdiction of its courts and courts of appeal from them, and are not to object to the exercise of jurisdiction by those courts on any basis

## 29 Joint and individual liability and benefits

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

## 30 No Fetter

- 30.1 Nothing in this **agreement** shall be construed as requiring UrbanGrowth NSW 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.

## 31 Illegality

- 31.1 If this **agreement** 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 **agreement** is entered into.

## 32 Severability

- 32.1 If a clause or part of a clause 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.
- 32.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this **agreement**, but the rest of this **agreement** is not affected.

## 33 Amendment

- 33.1 No amendment of this **agreement** has any force or effect unless it is in writing and signed by the **parties** to this **agreement**.

## 34 Waiver

- 34.1 A **party** does not waive any of the other **party**'s obligation or breach of obligation merely by failing to do, or delaying in doing, something under this **agreement**.
- 34.2 A waiver by a **party** is effective only if it is in writing.
- 34.3 A written waiver by a **party** is effective only in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

## 35 GST

- 35.1 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 for the **taxable supply**.

**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.

**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 for which the supplier chooses to apply the **margin scheme** in working out the amount of **GST** on that supply.

- 35.2 Subject to clause 35.4, if **GST** is payable on a **taxable supply** made under, by reference to or in connection with this **agreement**, the **party** providing the **consideration** for that **taxable supply** must also pay the **GST amount** as additional **consideration**.
- 35.3 Clause 35.2 does not apply to the extent that the **consideration** for the **taxable supply** is expressly stated in this **agreement** to be **GST** inclusive.
- 35.4 No additional amount is payable by UrbanGrowth NSW under clause 35.2 unless, and only to the extent that, UrbanGrowth NSW (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**.
- 35.5 If there are **supplies** for **consideration** which is not **consideration** expressed as an amount of **money** under this **agreement** by one **party** to the other **party** that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the **parties** agree:
- 35.5.1 to negotiate in good faith to agree the **GST** inclusive market value of those **Supplies** before issuing **tax invoices** for those **supplies**;
- 35.5.2 that any amounts payable by the **parties** in accordance with clause 35.2 (as limited by clause 35.4) to each other for those **supplies** will be set off against each other to the extent that they are equivalent in amount.
- 35.6 No payment of any amount under this clause, 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 the recipient with a **tax invoice** or **adjustment note** as the case may be.
- 35.7 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.
- 35.8 This clause continues to apply after expiration or termination of this **agreement**.
- 35.9 To the extent that the acquisition of any part of the **land** under this **agreement** is a **taxable supply**, the **parties** agree to apply, if possible, the **margin scheme**.

## 36 Dictionary & Interpretation

- 36.1 The dictionary contained in Schedule 1 defines words and expressions which appear in bold in this **agreement** for the purposes of this **agreement**.
- 36.2 In the interpretation of this **agreement**, the following provisions apply unless the context otherwise requires:
- 36.2.1 Headings are inserted for convenience only and do not affect the interpretation of this **agreement**.
- 36.2.2 A reference to a business day means a day, other than a Saturday or Sunday, on which banks are open for business generally in Sydney.
- 36.2.3 If the day on which something is to be done under this **agreement** is not a business day, then it must be done on the next business day.
- 36.2.4 A reference to dollars or \$ means Australian dollars and all amounts payable under this **agreement** are payable in Australian dollars.
- 36.2.5 A reference in this **agreement** to a \$ value relating to a development **contribution** is a reference to the value exclusive of **GST**, unless otherwise indicated in this **agreement** or the **development plan**.

- 36.2.6 A reference to any 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.
- 36.2.7 A reference to any agreement, **agreement** or document is to that agreement, **agreement** or document as amended, novated, supplemented or replaced.
- 36.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this **agreement**.
- 36.2.9 A reference to a person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 36.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 36.2.11 The singular includes the plural, and the plural includes the singular.
- 36.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 36.2.13 A reference to a **party** to this **agreement** includes a reference to the **party's** employees, agents and contractors, and the **party's** successors and assigns.
- 36.2.14 Any schedules, appendices and attachments form part of this **agreement**.

## 37 Special Conditions

- 37.1 The special conditions referred to in Schedule 10 (if any) form part of this **agreement**.

# Schedule 1

## Dictionary

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

**agreement** means this **agreement** and includes any schedules, annexures and appendices to this **agreement**.

**claim** includes a claim, demand, remedy, suit, injury, damage, loss, **cost**, liability, action, proceeding or right of action but does not include proceedings to enforce this **agreement** in the Land and Environment Court or any Court on appeal from that Court.

**completion** means the date of completion of the **development plan**, determined in accordance with the **development plan**.

**contribution** means the **landowner's** contribution specified in the **reference schedule**, as varied by clause 11.

**contribution notice** means a notice issued on the **landowner** under clause 9(1) of Schedule 5 of the **Act**.

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

**council** means Blacktown City Council.

**development plan** means the plan prepared by UrbanGrowth NSW under clause 6 of Schedule 5 of the **Act** and adopted in accordance with clause 268ZJ of the **Regulation** on 8 February 2016, which is the subject of the **subdivision order** a copy of which is contained in Schedule 5.

**development plan costs** has the same meaning as in the **Act**.

**final date** means the dates specified as such in the **reference schedule** in relation to each of the **traded land** and the **monetary contribution**.

**financier's consent deed** means the deed between any **mortgagee** of the land, the **landowner** and UrbanGrowth NSW, substantially in the form contained in Schedule 8 or in some other form reasonably acceptable to UrbanGrowth, pursuant to which the **mortgagee** consents to this **agreement** and agrees to comply with and be bound by the provisions of this **agreement**.

**individual costs** has the same meaning as in the **development plan**.

**interest** means an estate or interest in the **land** within the meaning of the **Just Terms Act**.

**interest holder** means any person, other than the **landowner**, who owns or claims to own an **interest**.

**interest rate** means the rate of interest specified in the reference schedule.

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

**land** means the land specified on the front page of this **agreement**.

**landowner** has the same meaning as in the **development plan**.

**land trade** has the same meaning as in the **development plan**.

**LPI** means Land and Property Information.

**monetary contribution** has the same meaning as in the **development plan**.

**mortgage** includes a mortgage, charge, lien or other security right or **interest** in the **land**.

**mortgagee** means a person who has, claims to have or proposes to be granted a registered mortgage, charge, lien or other security right or interest over or with respect to the **land** or any plant, equipment, fixtures or chattels in or on the **land**.

**party** means a party to this **agreement**, including their successors and assigns.

**plan of subdivision** means the plan contained in Schedule 3 as modified in accordance with clause 4.

**planning purpose** has the same meaning as in the **development plan**.

**reference schedule** means Schedule 2.

**registered interest** means an estate or interest in the **land** which is registered under the *Real Property Act 1900*.

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

**road land** means those parts of the **land** coloured grey on the **plan of subdivision** and the plan in Schedule 3.

**shared costs** has the same meaning as in the **development plan**.

**specific costs** has the same meaning as in the **development plan**.

**subdivision certificate** has the same meaning as in the **Act**.

**subdivision order** means the order contained in schedule 5.

**subdivision land** means the **land** the subject of the **subdivision order**.

**subdivision works** has the same meaning as in the **development plan**.

**surplus** means the amount calculated in accordance with the formula in clause 8 of the **development plan**.

**traded land** means the proposed lot or lots on the **plan of subdivision** which are so specified in the **reference schedule** and which are shown on the plan in Schedule 4.

**traded land rate** comprises:

- (a) the rate per square metre of the value of the land determined in accordance with regulation 268ZM(2) of the Regulation; and
- (b) any additional amount agreed between the parties,

the sum of which is specified in the **reference schedule**.

**WHS laws** means the *Work Health and Safety Act 2011* and the *Work Health and Safety Regulation 2011*.

## Schedule 2

### Reference Schedule

A. contribution (Schedule 1)	<input type="checkbox"/> \$ _____ monetary contribution <input type="checkbox"/> \$ _____ land trade <input type="checkbox"/> \$ _____ combination of land trade and monetary contribution
B. landowner's election (clause 8.1)	<input type="checkbox"/> monetary contribution <input type="checkbox"/> land trade <input type="checkbox"/> combination of land trade and monetary contribution <i>(tick whichever is applicable)</i>
C. amount of monetary contribution (if any)	<input type="checkbox"/> Not applicable <input type="checkbox"/> \$ _____ monetary contribution
D. traded land (Schedule 1)	<input type="checkbox"/> Not applicable <input type="checkbox"/> As shown on the plan in Schedule 4
E. area of traded land	<input type="checkbox"/> Not applicable <input type="checkbox"/> _____ square metres
F. traded land rate (Schedule 1)	\$      psm
G. final date (Schedule 1)	The date which is thirty (30) days after UrbanGrowth NSW serves notice on the <b>landowner</b> that UrbanGrowth NSW intends to lodge the <b>plan of subdivision</b> with LPI.
H. interest rate (Schedule 1)	5% per annum

## Schedule 3

### Plan of subdivision

## Schedule 4

### Plan showing traded land

- Not applicable
- See attached Plan

## Schedule 5

### Subdivision Order

## Schedule 6

### Access

#### 1 UrbanGrowth's access and construction rights

- 1.1 For the purposes of clause 13 of Schedule 5 to the **Act**, the **landowner** irrevocably consents to UrbanGrowth NSW and its authorised persons:
  - 1.1.1 entering, occupying and using the **land** 24 hours per day, 7 days per week, to carry out the **planning purpose**, the **subdivision works**, research or investigation relating to proposed **subdivision works**, and all matters ancillary to the carrying out of the **planning purpose** or the **subdivision works**;
  - 1.1.2 installing fencing, barriers or other security devices on any part of the **land**, including any fencing, barriers or other security devices necessary to secure the site of any current or proposed **subdivision works** from unauthorised entry by any person (including the **landowner** or any occupier of the **land**);
  - 1.1.3 erecting and using temporary structures on any part of the **land**;
  - 1.1.4 erecting or placing signs or notices on any part of the **land** or any buildings, structures, improvements or other items on the **land**;
  - 1.1.5 making or causing to be made noise, vibration, disturbance and the emission of dust or other materials;
  - 1.1.6 restricting access (including access by persons or vehicles) to any part of the **land** or altering the means of access (including access by persons or vehicles) to any part of the **land**;
  - 1.1.7 excluding persons (including the **landowner** and any occupier of the **land**) from the **land** or any part of it;
  - 1.1.8 interrupting or disabling the supply of any existing services (including electricity, gas, sewerage, water and telecommunications services) to any part of the **land** or any buildings, structures or improvements in, on or about the **land**;
  - 1.1.9 demolishing any buildings, structures, improvements or other items in, on or about the **land** that are required to be demolished (in UrbanGrowth NSW's opinion) for the purposes of the **subdivision works**;
  - 1.1.10 removing or disposing of any goods, materials, chattels or other property in, on or about the **land** that is not owned by UrbanGrowth NSW;
  - 1.1.11 taking any action necessary to ensure the health and safety of persons who are or may be at any time on or about the **land**;
  - 1.1.12 entering, occupying and using the land for any other lawful purpose in accordance with the **development plan**, the **Act** or any other law; and
  - 1.1.13 taking onto the **land** and removing from the **land** any plant, equipment, machinery, tools, vehicles, equipment, utilities, goods, materials, chattels and other things UrbanGrowth NSW considers necessary for the purposes described in this clause 1.1.
- 1.2 In exercising its rights under clause 1.1, UrbanGrowth NSW or its authorised persons must:
  - 1.2.1 use reasonable endeavours to minimise disturbance to the **landowner** and any occupier of the **land**;
  - 1.2.2 where reasonably practicable, consult with the **landowner** and any occupier of the **land** in relation to any restrictions on access to the **land** or the alteration of access to the **land**;

- 1.2.3 give at least 24 hours' notice to the **landowner** or the occupier of the **land** of UrbanGrowth NSW's or the authorised person's intention to enter the **land**;
  - 1.2.4 not allow an authorised person to enter any part of the **land** being used for residential premises without the consent of the **landowner** or the occupier;
- 1.3 The **landowner** must:
- 1.3.1 not, and must not allow any other person to, hinder, impede, obstruct or intentionally delay UrbanGrowth NSW or any of its authorised persons from exercising any of UrbanGrowth NSW's rights under or in connection with clause 1.1;
  - 1.3.2 co-operate and consult with UrbanGrowth NSW in good faith in connection with the exercise of UrbanGrowth NSW's rights under clause 1.1;
  - 1.3.3 not damage or allow any person to damage any property owned or managed by UrbanGrowth NSW or its authorised persons; and
  - 1.3.4 promptly notify UrbanGrowth NSW of any damage to or defects in the land of which the **landowner** is or ought to be aware.

## Schedule 7

### Request Form

## Schedule 8

### Financier's consent deed

## Schedule 9

Pro forma consent from person with registered interest

**Schedule 10**

**Nil**

# Execution

Executed as an agreement

Dated:

Signed for and on behalf of Landcom by its attorneys jointly under power of attorney dated 25 September 2015.  
By signing this document, each attorney certifies that they have no notice of revocation of such powers and authorities.

Signed in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of attorney

Level 14, 60 Station Street, Parramatta  
Address of witness

\_\_\_\_\_  
Position of attorney

I certify that I am an eligible witness and the transferor's attorney signed this dealing in my presence:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness

\_\_\_\_\_  
Name of attorney

Level 14, 60 Station Street, Parramatta  
Address of witness

\_\_\_\_\_  
Position of attorney

Signed for and on behalf of Landcom  
Power of attorney      **Book: 4695**  
   **No.: 858**

**EXECUTION BY LANDOWNER**

*Delete inapplicable execution provision(s)*

**Individual(s)**

**Signed by** \_\_\_\_\_ **in the**  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Address

**Signed by** \_\_\_\_\_ **in the**  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name:

\_\_\_\_\_  
Address



**Signed** on behalf of  
by [his/her/its] attorney under power of  
attorney dated

Book      No      in the presence of:

By executing this instrument the attorney  
states that they have received no notice of  
the revocation of the power of attorney.

---

Witness (signature)

---

Attorney (signature)

---

Witness (print name)

---

Attorney (print name)