

MEMORANDUM OF UNDERSTANDING

Lot 11 DP 1092788 (FP) / Lot 12 DP 1092788 (FP) / Lot 5 DP 736961 (PC) / Lot 13 1092788 (FP)

1	Parties Identity	Pittwater Council (PC) and Fraser's Property Limited (FP)
2	Form of Contract	Land Swap Agreement relating to land in Sector 9 within the Warriewood Valley Release Area, between Pittwater Council and FP. The lot details are identified in Item 3.
3	Properties	Land owned by FP to be acquired by PC: That part of Lot 11 DP 1092788, part of Lot 12 DP 1092788 and part of Lot 13 DP 1092788, each currently owned by FP and identified as being acquired by PC in Annexure A Land owned by PC to be acquired by FP: That part of Lot 5 DP 736961 currently owned by PC and identified as being acquired by FP in Annexure A.
4	Terms of Memorandum of Understanding (MOU)	The intent of this MOU is to set out and identify the terms of the proposed future deed of agreement between PC and FP. This MOU should not be construed by either party as being legally binding. The parties agree to work together in good faith to address and incorporate the items identified in the Council resolution of 18 May 2015 (Item C12.4) and in this MOU in any future deed of agreement.
5	Valuation and Negotiations	Each party agrees to undertake an independent valuation of the proposed land swap identified in Item 3 above. Each valuation is to be based on an agreed brief that values the land at its highest and best use. Specifically, part of Lot 5 DP 736961 currently owned by PC and identified to be acquired by FP in Annexure A is to be valued on the basis of it having a dwelling yield of 32 dwellings per developable hectare. The valuer must have current NSW registration, be a member of the Australian Property Institute with the appropriate classification and have at least 5 years of experience. Both parties are to pay their own costs in relation to the services of an independent valuer. The parties are to come to a negotiated outcome in relation to any financial adjustment as a result of the overall land swap transaction. Any financial adjustment is to take place on settlement.
6	Creek line Corridor	The transfer of creek-line corridor land owned by FP identified to be acquired by PC in Annexure A is to be completed as a separate financial transaction in accordance with the Warriewood Valley Section 94 Contributions Plan. The value of the creek line corridor land is to be based on the value specified in the Warriewood Valley Section 94 Contribution Plan in force at the date signing of the deed of agreement. The financial transaction is to be a separate item in the deed of agreement but is to be consolidated in the overall land swap transaction. Following any financial adjustment that is to be undertaken as outlined in item 5 above, the parties agree that the compensation set out in this item 6 is to be paid to FP. This compensation can be used to offset any amount FP owes to PC.
7	Undergrounding of Overhead Power	PC to provide Ausgrid's approved design and costings to FP for the undergrounding of the existing High Voltage (HV) overhead cabling. The undergrounding of the overhead power where practical will be in

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		<p>accordance with Ausgrid requirements.</p> <p>The parties agree to share the cost of the undergrounding of the existing overhead HV cabling and if required based on Ausgrid's advice, the cost of any associated infrastructure requirements within the properties proposed to be swapped on a 50/50 basis.</p> <p>If there are any additional electrical undergrounding or upgrading required by Ausgrid outside of the land-swap proposed area, these costs will be the to be borne by PC.</p>
8	Road works	<p>The full road width construction, including stormwater infrastructure, are to be completed by FP at its sole cost. These roads are to be dedicated to PC as part of the future residential subdivision of the land.</p> <p>The parties are to consult in good faith in relation to whether a Planning Agreement under section 93F of the Environmental Planning & Assessment Act will be required to affect this aspect of the transaction.</p> <p>Note:</p> <p>Northern extension of Fern Creek Road: This road is only required to be 16m wide as per a "Local Road" under Warriewood Valley Roads Masterplan. In accordance with the Warriewood Valley Landscape Masterplan a 2.1m shared path is to be provided along the eastern side of this road, in lieu of the 1.5m footpath required by the Warriewood Valley Roads Masterplan. The 2.1m wide shared path is all inclusive of the 16m wide road reserve requirement for Fern Creek Road extension.</p> <p>New east-west road: This road is required to comply with the requirements of a "Local Road" under the Warriewood Valley Roads Masterplan. FP is required to construct a dish drain to the edge of the road treatment, however is not required to construct the parking bays and verge on the reserve side of the road.</p>
9	Pittwater LEP Amendment	<p>PC agrees to prepare and lodge a Planning Proposal to amend Pittwater LEP 2014 as follows:</p> <ul style="list-style-type: none"> (a) The part of Lot 5 DP 736961 owned by PC and identified in Annexure A to be acquired by FP will be allocated a maximum building height of 10.5 metres and a maximum yield of 17 dwellings based on a density of 32 dwellings per developable hectare; (b) The Lot 13 DP 1092788 and the part of Lot 11 DP 1092788 and part of Lot 12 DP 1092788 owned by FP and identified in Annexure A to be acquired by PC will have no dwelling yield allocated to it and will be rezoned to RE1 Public Recreation; and (c) The part of Lot 11 DP 1092788 owned by FP and identified in Annexure A to be retained by FP is to be allocated a yield of 3 dwellings based on a density of 10 dwellings per developable hectare; and (d) The part of Lot 12 DP 1092788 owned by FP and identified in Annexure A to be retained by FP is to be allocated a yield of 13 dwellings based on a density of 32 dwellings per developable

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		<p>hectare.</p> <p>PC will engage an independent consultant to prepare and progress the LEP amendment. All costs and relevant application fees in connection with the LEP amendment are to be borne equally by both parties.</p> <p>In the event that the proposed LEP amendment is not successful, the parties agree that the land swap contemplated by this MOU cannot occur and the proposed land swap arrangements will be at an end. In this event, all costs incurred, except as otherwise specified in Item 16, will be borne equally by both parties.</p>
10	Subdivision	<p>Following gazettal of the LEP amendment by Department of Planning & Environment, PC agrees to prepare and lodge a development application to subdivide the land to reflect the change in ownership proposed by this MOU.</p> <p>PC will engage a consultant to prepare and progress the development application. All costs and relevant application fees in connection with the development application are to be borne equally by both parties.</p>
11	Settlement	<p>Settlement of the land swap is conditional on the following:</p> <ul style="list-style-type: none"> (a) Registration of subdivision certificate in accordance with the development application described in Item 10; and (b) Gazettal of the LEP Amendment identified in Item 9. <p>Settlement will occur within 30 days of the successful completion of both (a) and (b) above.</p>
12	Storm-water infrastructure	<p>An underground stormwater pipe is to be provided from the existing cul-de-sac in Fern Creek Road to Fern Creek. This pipe is to be constructed along the alignment of the existing drainage easement and is to be constructed to a standard specified by PC. The construction of this stormwater pipe is to be undertaken concurrent with the road construction. Each party is responsible for costs associated with undergrounding the section of stormwater infrastructure within their own land.</p> <p>The existing drainage easement is to be extinguished and replaced by a new easement along the same alignment and is to be of a suitable width specified by Council.</p> <p>All stormwater infrastructure required to service the future residential development is to comply with Pittwater 21 DCP, Control C6.21 Provision of Infrastructure.</p>
13	Probity	PC to appoint probity advisor to oversee and report on this transaction.
14	Other Issues: Contamination	<p>Both parties agree that as at the date of agreement of this MOU neither party is aware of any contamination affecting the properties identified in Item 3 which would make that property unsuitable for their intended use.</p> <p>FP and PC must not bring any materials or land fill onto their properties during the land swap transaction period which may cause contamination and will not allow any materials to be located on the properties which may cause contamination or detrimentally affect the land for its intended use.</p>
15	Other Issues: Legal Documentation	<p>PC is to prepare all legal documentation associated with this land swap.</p> <p>All reasonable costs associated with drafting and amending the legal</p>

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		documents leading to their signing are to be borne equally by both parties.
16	Other Issues: Other Costs and Invoicing	Both parties to pay their own respective legal costs, except as otherwise outlined in Item 15 above. All other costs, except as otherwise outlined in this MOU, are to be borne equally by both parties. In relation to these costs, PC agrees to pay these costs and invoice FP monthly. FP will be consulted prior to PC accepting any quotes for services for which the costs are to be borne equally.
17	Other Issues: Council endorsement	The parties acknowledge that the future land swap contemplated by this MOU is subject to endorsement by the elected Council and Board approval by FP.

Agreed by Frasers Property Ltd



Date:

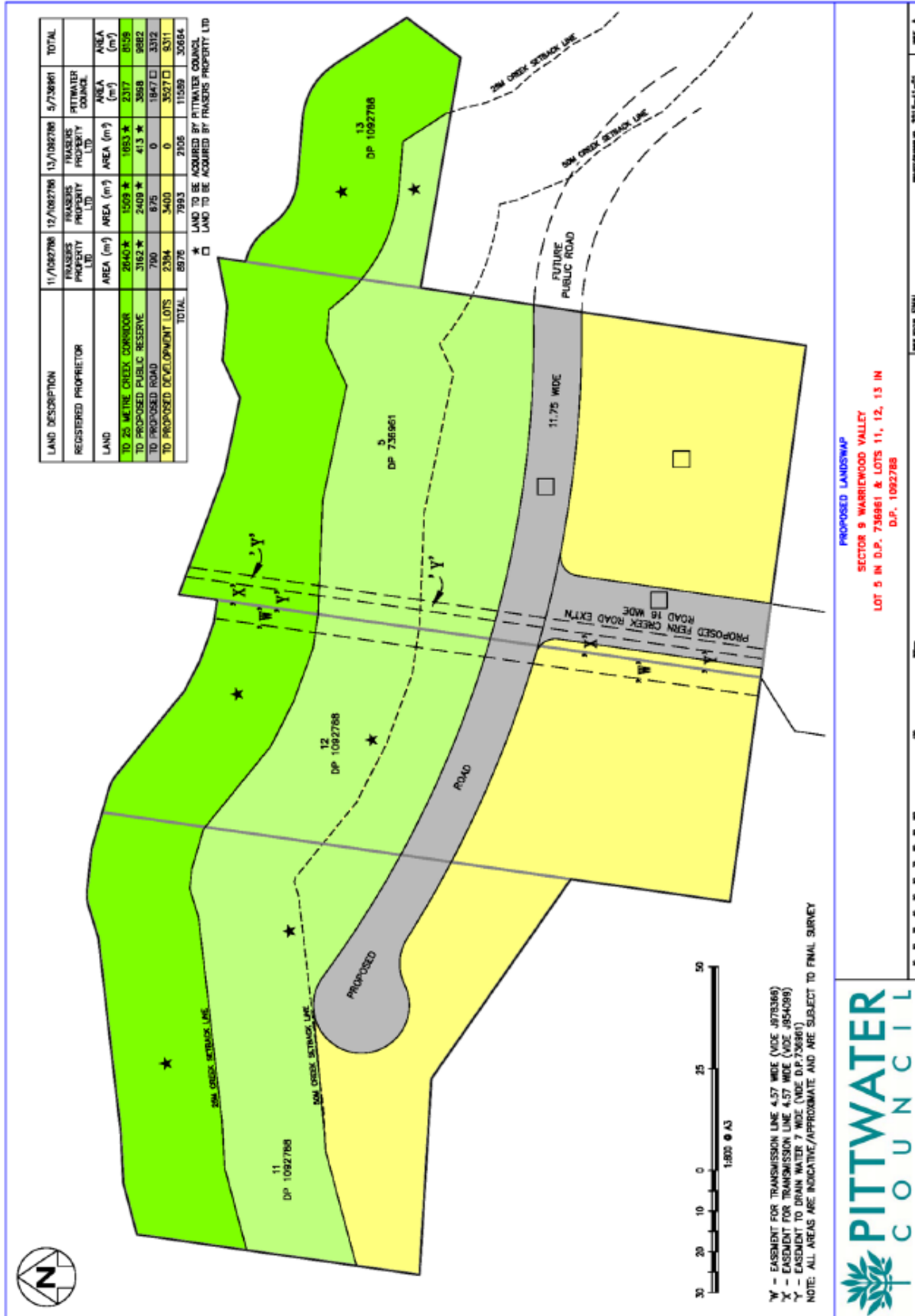
1/10/15

Agreed by Pittwater Council



Date: 29/9/15

ANNEXURE A



LAND SWAP DEED

PITTWATER COUNCIL

("Council")

and

FRASERS PROPERTY LIMITED

("FP")

MatthewsFolbigg

Lawyers

Matthews Folbigg Pty Ltd
"The Barrington" Level 7
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8 March 2016

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LAND SWAP DEED

Deed dated

19 April 2016

~~2015~~

PARTIES

PITTWATER COUNCIL (ABN 61 340 837 871) of 1 Park Street, Mona Vale NSW 2103

("Council")

FRASERS PROPERTY LIMITED (ACN 008 443 696) of 1 Homebush Bay Drive, Rhodes NSW 2138

("FP")

RECITALS AND BACKGROUND

- A Due to the population increase associated with the Warriewood Valley and in order to deliver greater open space by the provision of a 2 hectare Central Local Park, Council acquired an existing 1.15 hectare parcel of land (9 Fern Creek Road) in order to facilitate the southern half of the Central Local Park.
- B Due to the shape and location of such lot not matching the preferred layout for the open space land, it has been agreed that in order to better reflect and facilitate the final layout plan for such open space, that Council and FP transact a land exchange and for such acquired land by Council to be rezoned RE 1 Public Recreation by the amendment of Council's Local Environmental Plan ("**LEP**").
- C Council owns the Council Land and FP the FP Land.
- D Subject to the amendment of Council's LEP, Council and FP have agreed to subdivide the Council Land and FP Land respectively owned by them so as to enable:
 - (a) Council to transfer the Council Development Land to FP, being an area measuring approximately 5,374.4 square metres; and
 - (b) FP to transfer to Council the FP Public Reserve Land and the FP Creek Line Corridor Land, being an area measuring approximately 11,825.5 square metres, as shown in the plan attached at Annexure A.
- E To enable the transaction contemplated by these Recitals, Council and FP have agreed to enter into this deed.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following meanings apply unless the contrary intention appears:

Business Days means a day on which banks are open for general banking business in Sydney, New South Wales (not being a Saturday, Sunday or public holiday in that place).

Completion Date means the date which is on or before the date which is 30 Business Days after Council issues the notice to FP under clause 2.1(b).

Council Development Land means that part of the Development Land comprised in Lot 5 in Deposited Plan 736961.

Conditions Precedent has the meaning given to it in clause 2.1 of this deed.

Council Land means Lot 5 Deposited Plan 736961 (folio identifier 5/736961).

Creek Line Corridor Land means the land shown in dark green and marked "To 25 Metre Creek Corridor" on the plan attached to this deed as Annexure A.

Creek Line Corridor Purchase Price means an amount equal to [REDACTED] per square metre of the FP Creek Line Corridor Land (being approximately [REDACTED]).

Creek Line Corridor Transfer means a transfer of land in a registerable form in relation to the transfer of the FP Creek Line Corridor Land from FP to Council.

Development Land means the land shown in yellow and grey and marked "To Proposed Road" and "To Proposed Development Lots" on the plan attached to this deed as Annexure A.

Development Land Transfer means a registrable transfer of land form in relation to the transfer of the Council Development Land from Council to FP.

Development Land Purchase Price means [REDACTED]

Duty means any stamp, transaction or registration duty or similar charge which is imposed by the New South Wales Office of State Revenue and includes any interest, fine, penalty, charge or other amount which is imposed in relation to that duty or charge.

FP Creek Line Corridor Land means that part of the Creek Line Corridor Land comprised in Lots 11, 12 and 13 in Deposited Plan 109278.

FP Land means Lots 11, 12 and 13 in Deposited Plan 1092788 (folio identifiers 11/1092788, 12/1092788 and 13/1092788).

FP Public Reserve Land means that part of the Public Reserve Land comprised in Lots 11, 12 and 13 in Deposited Plan 109278.

GST has the meaning given to it in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

GST Law has the meaning given in the GST Act.

LPI means Land & Property Information, New South Wales.

Plan of Subdivision means the proposed plan to subdivide the FP Land and the Council Land prepared by Council and approved by FP in accordance with clause 3.2.

Planning Agreement means a planning agreement between Council and FP on terms acceptable to the parties (acting reasonably) and in accordance with section 93F of the *Environmental Planning & Assessment Act 1979 (NSW)* in relation to the future residential subdivision of the Development Land which includes the provisions of the MOU made and agreed to between the parties dated 1 October 2015.

- (a) construction of stormwater infrastructure in relation to the land;
- (b) extension of Fern Creek Road; and
- (c) construction of New East-West Road.

Planning Proposal means the planning proposal to the Department of Planning and Environment to amend Council's LEP prepared by Council and approved by FP in accordance with clause 3.1.

Public Reserve Land means the land shown in light green and marked "To Proposed Public Reserve" on the plan attached to this deed as Annexure A.

Public Reserve Transfer Form means a registrable transfer of land form in relation to the transfer of the FP Public Reserve Land from FP to Council.

Sunset Date means 31 December 2018.

Undergrounding Works means the works associated with the undergrounding of the overhead power cables and lines along Council and FP's common boundary between Lot 5 in Deposited Plan 736961 and Lot 12 in Deposited Plan 1092788.

1.2 References to certain general terms

Unless the contrary intention appears, in this deed:

- (a) a reference to a document (including this contract) includes any variation or replacement of it;
- (b) a reference to a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this contract;
- (c) 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;
- (d) the word "law" includes common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;

- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any authority;
- (g) a reference to a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) a reference to a body or authority includes a reference, if that body or authority ceases to exist, to the body or authority which has substantially the same functions and objects as the first body or authority;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) a reference to a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) a reference to Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) a reference to accounting standards is a reference to the accounting standards as defined in the Corporations Act, and a reference to an accounting term is a reference to that term as it is used in those accounting standards, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (p) the words, "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (q) if an act under this contract to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (r) a reference to time is a reference to time in New South Wales; and
- (s) a reference to any thing (including any amount) is a reference to the whole and each part of it.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

2. CONDITIONS PRECEDENT

2.1 Completion conditions

- (a) Both parties agree that their respective obligations to transfer the FP Public Reserve Land, the Council Development Land and FP Creek Line Corridor Land are subject to and conditional upon:
 - (i) the Department of Planning and Environment approving the Planning Proposal;
 - (ii) registration of the Plan of Subdivision at the LPI;
 - (iii) the parties entering into the Planning Agreement; and
 - (iv) registration of the Planning Agreement at the LPI,(together the "**Conditions Precedent**").
- (b) Council must notify FP in writing within ten 10 Business Days after the Conditions Precedent have been satisfied.

2.2 Date for Completion

The parties must complete the transfers of the FP Public Reserve Land, the Council Development Land and the FP Creek Line Corridor Land on the Completion Date.

2.3 Sunset Date

The parties agree that if the Condition Precedent at 2.1(a)(i) is not satisfied by the Sunset Date, then either party may rescind this deed by serving a notice on the other.

2.4 Release

If this deed is rescinded under clause 2.3 then each party releases other party from any liability or loss arising in connection with the rescission of this deed, except in relation to prior breaches and the sharing of costs contemplated under clauses 4(a), 4(b) and 4(c).

3. COUNCIL'S OBLIGATIONS

3.1 Planning Proposal

The Council must:

- (a) procure the preparation of the Planning Proposal to achieve the following:
 - (i) that the Council Development Land be allocated a maximum building height of 10.5 metres and a maximum yield of 17 dwellings based upon a density of 32 dwellings per developable hectare;
 - (ii) that the Public Reserve Land be rezoned RE 1 Public Recreation;
 - (iii) that the part of the Development Land currently contained within Lot 11

DP 1092788 be allocated a development yield of 3 dwellings based on a density of 10 dwellings per developable hectare; and

- (iv) that the part of Development Land currently contained within Lot 12 DP 1092788 be allocated a development yield of 13 dwellings based upon a density of 32 dwellings per developable hectare; and
- (b) give FP a copy of the Planning Proposal at least 10 Business Days before Council lodges the Planning Proposal with Council's planning and assessment department; and
- (c) consult with FP in connection with any comments, suggestions or objections which FP makes or seeks to make in connection with the Planning Proposal prior to lodgement with Council's planning and assessment department; and
- (d) not lodge the Planning Proposal with Council's planning and assessment department without FP's written consent (which may be withheld until Council has complied with clauses 3.1(b) and (c), but otherwise must not be unreasonably withheld if the application is consistent with the requirements set out in clauses 3.1(a)(i) – 3.1(a)(iv)); and
- (e) lodge the Planning Proposal with Council's planning and assessment department for approval within 5 Business Days after FP consents to the Planning Proposal; and
- (f) must not seek to amend the Planning Proposal after it has been lodged with Council's planning and assessment department without FP's written consent (which must not be unreasonably withheld if the amendment is consistent with the requirements set out in clauses 3.1(a)(i) – 3.1(a)(iv));

3.2 Plan of Subdivision

The Council must:

- (a) prepare the Plan of Subdivision in a form suitable for registration at the LPI to achieve the following:
 - (i) create separate lots comprising the Council Development Land, the FP Public Reserve Land and the FP Creek Line Corridor Land to allow the transfers contemplated under this deed; and
 - (ii) create the easements for transmission and draining shown on the Plan; and
- (b) prepare a development application in connection with the Plan of Subdivision and provide a copy of the Plan of Subdivision and any supporting documents (including any appropriate instrument under Section 88B of the *Conveyancing Act 1919 (NSW)* to FP and consult with FP in connection with the terms of such application and documentation.
- (c) not lodge the Plan of Subdivision or any supporting documents with the LPI without FP's written consent (which may be withheld until Council has complied with clauses 3.2 (b) but otherwise must not be unreasonably withheld if the application is consistent with the requirements set out in clauses 3.2(a)(i) – 3.2(a)(ii));

- (d) lodge the Plan of Subdivision with the LPI within 5 Business Days after FP consents in writing to the Plan of Subdivision;

4. FP'S OBLIGATIONS

FP must:

- (a) provide its consent to the lodgement in relation to the development application for the Plan of Subdivision once the Council's obligations in 3.2(b) have been satisfied and simultaneously submit the Planning Agreement to Council.
- (b) contribute 50% towards Council's reasonable and properly incurred costs of preparation and submission (including application fees) of the Planning Proposal to amend Council's LEP within 5 Business Days of receipt of a valid tax invoice from Council;
- (c) contribute 50% towards Council's reasonable and properly incurred legal costs associated with the drafting, negotiations and execution of this deed (plus GST and disbursements) and Council's surveyors costs.
- (d) contribute 50% towards Council's reasonable and properly incurred costs of engaging a consultant to prepare and progress a development application with respect to the subdivision of Council's and FP's Land within 5 Business Days of receipt of a valid tax invoice from Council;
- (e) contribute 50% towards the reasonable and properly incurred costs of the approved design and construction (including any associated infrastructure required by Ausgrid) of the Undergrounding Works within 5 Business Days of receipt of a valid tax invoice from Council;
- (f) provided that Council have complied with clause 3.2 of this deed, execute any documents necessary to facilitate registration of the Plan of Subdivision within 5 Business Days of receipt from Council or its solicitors and return such executed documents to Council or its solicitor;
- (g) procure the consent of any mortgagee of the FP Land to the Plan of Subdivision and arrange for the execution by any such mortgagee of any documents necessary to facilitate registration of the Plan of Subdivision;
- (h) produce, or procure production by any mortgagee of the certificates of Title for the FP Land at LPI NSW to facilitate the registration of the Plan of Subdivision;
- (i) remove at FP's cost any caveat or other encumbrance on the land being transferred by it which may prohibit registration of the Plan of Subdivision; and
- (j) do anything reasonably required of it to assist the Council in the obtaining of any necessary approval for registration of the Plan of Subdivision, including compliance with any requisition raised by LPI NSW relating to the Plan of Subdivision.

5. LAND SWAP

5.1 Transfers of the Development and Public Reserve Land

Subject to the satisfaction of the Conditions Precedent, the parties agree that FP will transfer all its estate and interest in the FP Public Reserve Land to Council and pay the Development Land Purchase Price (less any applicable credits that FP receives under clause 5.2 below) to Council on the Completion Date in exchange for the Council simultaneously transferring its estate and interest in the Council Development Land to FP in accordance with the procedures set out in this deed.

5.2 Acquisition of the Creek Line Corridor Land

- (a) Subject to satisfaction of the Conditions Precedent, Council agrees to acquire the FP Creek Line Corridor Land from FP on the Completion Date at a value of the Creek Line Corridor Price in accordance with the Warriewood Valley Section 94 Contributions Plan (Plan 15) (Amendment 16) (Revision 1).
- (b) The parties agree that the Creek Line Corridor Price payable by Council for the acquisition of the FP Creek Line Corridor Land must be utilised by FP by way of an offset against the Development Land Purchase Price payable by FP to Council under clause 5.1.

5.3 Interdependence

The transactions described in clauses 5.1 and 5.2 are interdependent. If one party defaults in respect of its obligation in clause 5.1 or 5.2, the other party need not comply with its obligation unless and until the first party remedies its default. If the transactions described in clause 5.1 or 5.2 do not proceed, any party which has carried out an action in anticipation of those transactions proceeding may undo such action.

5.4 Instruments of transfer

In respect of:

- (a) the transfer contemplated under clause 5.1, Council must deliver the stamped Development Land Transfer duly executed by Council to FP at least 5 Business Days before the Completion Date;
- (b) the transfer contemplated under clause 5.1, FP must deliver the stamped Public Reserve Transfer duly executed by FP to Council at least 5 Business Days before the Completion Date; and
- (c) the transfer contemplated under clause 5.2, Council must deliver the stamped Creek Line Corridor Transfer duly executed by Council to FP at least 5 Business Days before the Completion Date.

5.5 Acknowledgement

For the purposes of Section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* it is acknowledged that the agreement contained in this deed is an agreement on all relevant matters relating to the acquisition by the Council of FP Public Reserve Land and the FP Creek Line Corridor Land and that no other compensation whatsoever will be payable by the Council to FP.

5.6 No adjustments

No adjustment will take place between the Council and FP in relation to any council rates or charges, water and sewer rates and charges or any land tax that may be charged upon the FP Public Reserve Land or the FP Creek Line Corridor Land provided that FP must pay all such outgoings in respect of the FP Public Reserve Land or the FP Creek Line Corridor Land owned by it for the rate periods current as at the Completion Date.

6. COMPLETION

6.1 Completion

On the Completion Date:

- (a) Council must:
 - (ii) deliver the stamped and fully executed Development Land Transfer to FP along with a direction addressed to LPI in favour of FP authorising the issuing of the resultant Certificate of Title directly to FP; and
 - (iii) ensure that the certificate of title for the Council Development Land is placed on deposit at LPI; and
- (b) FP must:
 - (i) deliver the stamped and fully executed Public Reserve Land Transfer and the Corridor Creek Transfer to Council along with a direction addressed to LPI in favour of Council authorising the issuing of the resultant Certificate of Title directly to Council;
 - (ii) ensure that the certificates of title for the FP Public Reserve Land and the FP Corridor Creek Transfer are placed on deposit with LPI; and
 - (iii) subject to clause 5.2(b), a Settlement Cheque for an amount equal to the Development Land Purchase Price less the Creek Line Corridor Purchase Price.

7. UNDERGROUNDING OF OVERHEAD POWER

- (a) Council must procure Ausgrid's approved design and construction estimates in relation to the Undergrounding Works and provide them to FP as soon as reasonably practicable.
- (b) The parties agree that the Undergrounding Works will be undertaken by a third party contractor appointed by Council (and approved by FP acting reasonably). The costs of the Undergrounding Works will be paid for directly by Council. FP will contribute to those costs in accordance with clause 4(e).

8. DUTY AND LEGAL COSTS

8.1 Duty

In relation to Duty chargeable, payable or assessed in relation to this agreement or any transaction contemplated by this agreement:

- (a) FP agrees to pay the Duty in relation to the transfer of the Council Development Land and indemnifies and must keep indemnified Council against any liability to Duty which is the responsibility of FP pursuant to this clause 8.1(a); and
- (b) Council agrees to pay the Duty in relation to the transfer of the FP Public Reserve Land and the FP Creek Line Corridor Land and indemnifies and must keep indemnified FP against any liability to Duty which is the responsibility of Council pursuant to this clause 8.1(b).

8.2 Except as otherwise provided for in this agreement, each party will be responsible for its own legal fees in relation to:

- (a) the negotiation and execution of this agreement; and
- (b) otherwise in relation to the transfer of the Council Land and FP Land.

9. GST

9.1 Consideration GST inclusive

Aside from the consideration payable for the transfers contemplated in clause 5.1, all amounts payable or consideration to be provided under this agreement are exclusive of GST.

9.2 Payment of GST

Subject to clause 9.3, if GST is payable on any supply made under this agreement, for which the consideration is not expressly stated to include GST, the recipient agrees to pay to the supplier an additional amount equal to the GST payable at the same time that the consideration for the supply, or the first part of the consideration for the supply (as the case may be), is to be provided.

9.3 Tax invoice

The supplier must issue a tax invoice to the recipient of a taxable supply at the same time that the supplier makes a taxable supply.

9.4 Adjustments

If the amount of GST payable in relation to a taxable supply varies from the amount paid, or set off by, by the recipient in accordance with this clause agreement, then the supplier will provide a corresponding refund or credit to, or will be entitled to receive an additional amount of GST from, the recipient and the supplier will issue an adjustment note.

9.5 Reimbursements

If a party is required under this agreement to indemnify another party, or pay or reimburse costs of another party, that party agrees to pay the relevant amount less any input tax credits to which the other party (or to which the representative member for a GST group of which the other party is a member) is entitled.

9.6 Interpretation

For the purposes of this clause 9

- (a) a term which has a defined meaning in the GST Act has the same meaning when used in this clause 9; and
- (b) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as though it is a separate supply.

10. MISCELLANEOUS PROVISIONS

10.1 Governing Law

This Deed shall be governed by and construed in accordance with the laws of the State of New South Wales.

10.2 Jurisdiction

Any legal action or proceedings with respect to this Deed against any party or any of its property and assets may be brought in the Courts of the State of New South Wales and, by execution and delivery of this Deed that party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that State.

10.3 Variations

Any amendments, variation or modification to or of, or consent to departure by any party from the terms of this Deed shall have no force or effect unless effected by a document executed by the parties.

10.4 Third Parties

This Deed shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

10.5 Assignment

A party shall not transfer or assign its rights or obligations under this Deed without the prior consent in writing of the other party.

10.6 Waivers

The failure to exercise or delay in exercising by any party of any right conferred by this Deed shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

10.7 Remedies

The rights of a party conferred by this Deed are cumulative and are not exclusive of any rights provided by law.

10.8 Entire agreement

This deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter except for the provisions related to and to be contained within the Planning Agreement.

10.9 Further Assistance

Each party shall execute all documents and perform all acts necessary to give full effect to this deed.

10.10 Severability

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

10.11 Counterparts

This deed may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

11. DISPUTE RESOLUTION

11.1 All disputes or differences arising out of this deed will be resolved in accordance with this clause 10, unless:

- (a) a party is seeking urgent interlocutory relief or a remedy where a delay in commencing proceedings in Court could prejudice the party's entitlement to seek that remedy;
- (b) an incident has arisen that requires urgent resolution which mediation might not resolve; or
- (c) the process in the remainder of this clause 10 has been exhausted.

11.2 Notice of Dispute

Either party may at any time notify the other party in writing that there is a dispute or difference concerning any matter in this deed (**Notice of Dispute**). That Notice of Dispute must:

- (a) identify the subject matter of the dispute;
- (b) identify the relevant provisions of this deed;
- (c) annex copies of any correspondence, or background material and information relevant to that dispute; and

- (d) contain any particulars of quantification of the dispute.

11.3 Parties to Confer

The parties must, within twenty-one (21) days of the service of the Notice of Dispute, meet in an attempt to discuss, and to reach a mutually acceptable decision, on the matter of the dispute.

11.4 Referral to Mediation

If:

- (a) the matter in dispute is not settled within ten (10) business days of the meeting referred to in the preceding paragraph, or such later date as the parties may agree; or
- (b) either party refuses to attend a meeting in accordance with clause 11.3; then
- (c) the difference or dispute must be the subject of a mediation administered by the Australian Commercial Dispute Centre (**ACDC**) conducted and held in accordance with the mediation rules of the ACDC in force at the time of the appointment of a mediator.

11.5 The mediator will be appointed:

- (a) by the parties, from a panel suggested by the ACDC within twenty-eight (28) days of the referral of the difference or dispute for mediation; or
- (b) if a mediator is not appointed by agreement within that period, by the Secretary-General of the ACDC at the request of either party.

10.6 The costs of and associated with formal mediation before a mediator under this clause are to be paid by the parties to the mediation in such proportions as they may agree among themselves or, failing agreement, in equal shares.

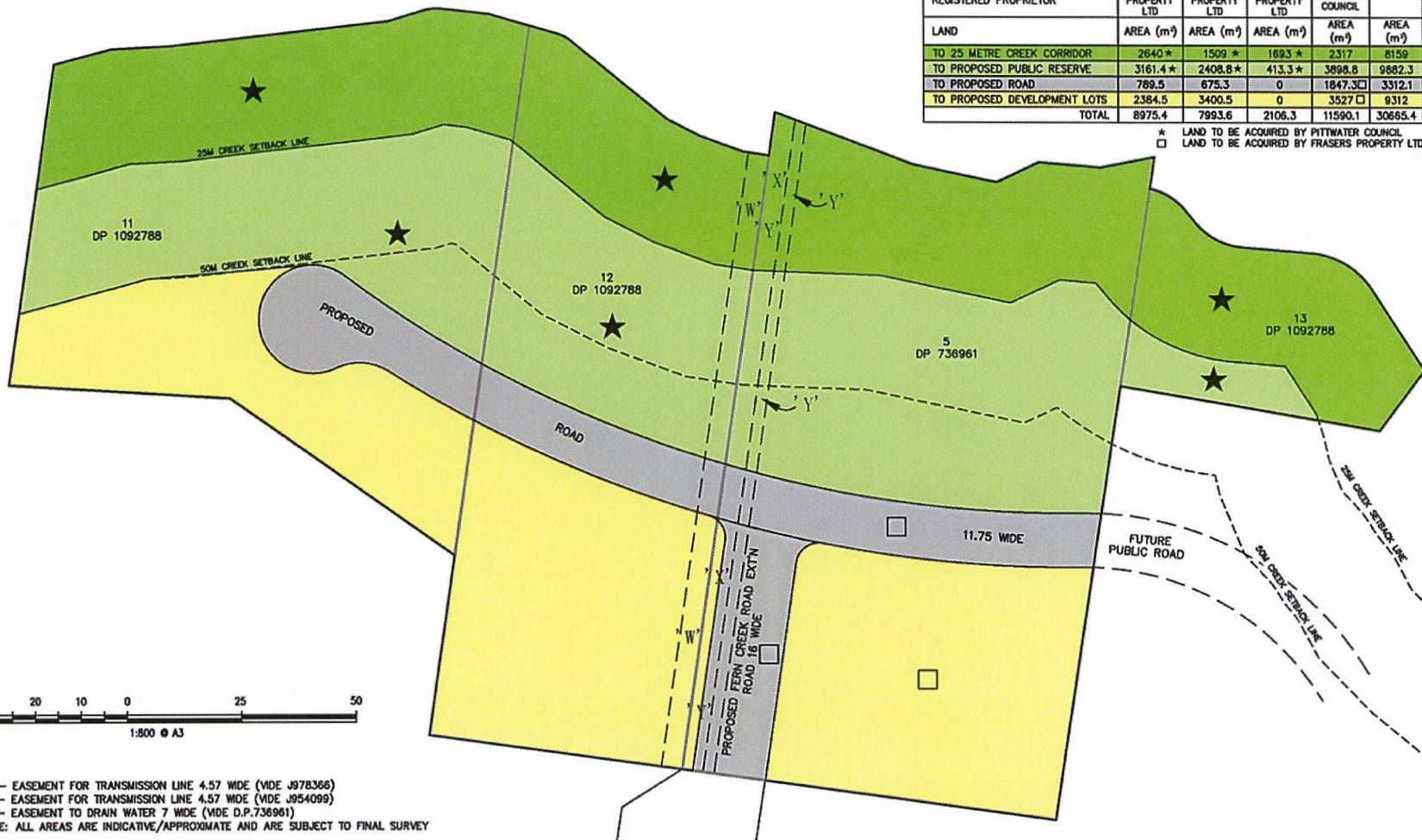
12. NOTICES

Any notice given under this deed:

- (a) must be in writing addressed to the intended recipient at the address shown in the Deed or at the address last notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender;
- (c) will be taken to have been given when delivered, received or left at the address shown in this deed.

If delivery or receipt occurs on a date when business is not generally carried on in the place to which the notice is sent, or is sent later than 4.00pm (local time), it will be taken to have been duly given at the commencement of business on the next day when business is generally carried on in that place.

ANNEXURE "A"



LAND DESCRIPTION	11/1092788	12/1092788	13/1092788	5/736961	TOTAL
REGISTERED PROPRIETOR	FRASERS PROPERTY LTD	FRASERS PROPERTY LTD	FRASERS PROPERTY LTD	PITTWATER COUNCIL	
LAND	AREA (m ²)	AREA (m ²)	AREA (m ²)	AREA (m ²)	AREA (m ²)
TO 25 METRE CREEK CORRIDOR	2640 *	1509 *	1693 *	2317	8159
TO PROPOSED PUBLIC RESERVE	3161.4 *	2408.8 *	413.3 *	3898.8	9882.3
TO PROPOSED ROAD	789.5	675.3	0	1847.3 □	3312.1
TO PROPOSED DEVELOPMENT LOTS	2384.5	3400.5	0	3527 □	9312
TOTAL	8975.4	7993.6	2106.3	11590.1	30665.4

* LAND TO BE ACQUIRED BY PITTWATER COUNCIL
□ LAND TO BE ACQUIRED BY FRASERS PROPERTY LTD



W - EASEMENT FOR TRANSMISSION LINE 4.57 WIDE (VIDE J978366)
 X - EASEMENT FOR TRANSMISSION LINE 4.57 WIDE (VIDE J954099)
 Y - EASEMENT TO DRAIN WATER 7 WIDE (VIDE D.P.736961)
 NOTE: ALL AREAS ARE INDICATIVE/APPROXIMATE AND ARE SUBJECT TO FINAL SURVEY



PROPOSED LANDSWAP
 SECTOR 9 WARRIEWOOD VALLEY
 LOT 5 IN D.P. 736961 & LOTS 11, 12, 13 IN
 D.P. 1092788

EXECUTION

Executed as Deed

Executed by the General Manager on behalf of **PITTWATER COUNCIL (ABN 61 340 837 871)** pursuant to a delegation dated under section 377 of the *Local Government Act 1993* (NSW):



[Handwritten Signature]

Signature of Witness

FIONA GARRITY
Name of Witness [BLOCK LETTERS]

[Handwritten Signature]

General Manager

MARK FERGUSON
Name of General Manager [BLOCK LETTERS]

5 VUKO PLACE WARRIEWOOD
Address of Witness NSW 2102

29/3/2016.

EXECUTED by **FRASERS PROPERTY LIMITED (ACN 008 443 696)** in accordance with the requirements of section 127(1) of the *Corporations Act, 2001* by:

[Handwritten Signature]

Signature
RODNEY VAUGHAN FEHRING
Name of Director

[Handwritten Signature]

Signature
JANIS SHARON WOOD
Name of Secretary