

Calabria Community Club Prairiewood Open Space Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Fairfield City Council

Calabria Community Club Limited

**Calabria Community Club Prairiewood Open Space
Planning Agreement**

Table of Contents

Summary Sheet..... 4

Parties 6

Background 6

Operative provisions 6

 Part 1 - Preliminary..... 6

 1 Definitions & Interpretation 6

 2 Application of this Agreement..... 10

 3 Further Agreements Relating to this Agreement..... 10

 Part 2 – Provisions relating to Dedication Land 10

 4 Provision relating to dedication of the Dedication Land 10

 5 Procedures relating to the dedication of land 10

 Part 3 – Embellishment of Dedication Land 11

 6 Carrying out of Work..... 11

 7 Application of s94, s94A and s94EF of the Act to the Development..... 11

 8 Protection of people and property 12

 9 Works-As-Executed-Plan 12

 10 Access to land 12

 Part 3 – Other Provisions 12

 11 Enforcement in a court of competent jurisdiction 12

 12 Dispute Resolution - mediation..... 13

 13 Registration of this Agreement 13

 14 Assignment, Sale of Land, etc..... 14

 15 Notices..... 15

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

16	Approvals and Consent	15
17	Costs.....	16
18	Entire Agreement.....	16
19	Further Acts	16
20	Notations on section 149(2) Planning Certificates	16
21	Governing Law and Jurisdiction	16
22	Joint and Individual Liability and Benefits.....	17
23	No Fetter.....	17
24	Representations and Warranties	17
25	Severability	17
26	Modification.....	17
27	Waiver.....	18
28	GST	18
29	Explanatory Note Relating to this Agreement	19
	Schedule 1	20
	Execution	21
	Appendix	22

Calabria Community Club Prairiewood Open Space Planning Agreement

Summary Sheet

Council:

Name: Fairfield City Council

Address: Administration Centre, 86 Avoca Road WAKELEY NSW 2176

Telephone: (02) 9725 0222

Facsimile: (02) 9757 4720

Email: mail@fairfieldcity.nsw.gov.au

Representative: Executive Manager – City Services, City Services Department

Proponent:

Name: Calabria Community Club Limited

Address: 184-192 Restwell Road PRAIRIEWOOD NSW 2176

Telephone: TBA

Facsimile: TBA

Email: TBA

Representative: Rocco Leonello

Development Contributions:

See Parts 2 and 3.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

Registration:

Yes. See clause 13.

Restriction on dealings:

See clause 14.

Dispute Resolution:

Mediation. See clause 12.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

Calabria Community Club Prairiewood Open Space Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Fairfield City Council ABN 83 140 439 239 of Administration Centre, 86 Avoca Road Wakeley NSW 2176 (**Council**)

and

Calabria Community Club Limited ABN 42 002 228 604 of 184-192 Restwell Road Prairiewood NSW 2176 (**Proponent**)

Background

- A The Council owns the Council Land and the Proponent owns the Calabria Land.
- B The Council Land adjoins the Calabria Land.
- C The Council and the Proponent have sought the Instrument Change.
- D The Parties have agreed to make Development Contributions in accordance with this Agreement in the event that the Instrument Change occurs.

Operative provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

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

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

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

Calabria Land means Lot 7 Section E in Deposited Plan 6934 (known as 184-192 Restwell Road, Prairiewood).

Council Land means Lot 100 in Deposited Plan 806884 (known as 178 Restwell Road, Prairiewood).

Dedication Land means part of the Calabria Land marked as "*Dedication Land*" on the plan shown as **Schedule 1**.

Development means development facilitated by the Instrument Change

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose.

Embellishment Work means the embellishment of the Dedication Land by the Council as specified in clause 6.

Establishment in relation to Embellishment Work means the survival of at least 85% of the amount of each kind of vegetation required to be planted during Revegetation and the maturation of new ground cover to the extent that it will be difficult, in the opinion of the Council, for airborne seeds to establish as new weeds on the Dedication Land.

Establishment Period in relation to the Embellishment Work, means a period (not less than 12 months) commencing on the completion of Revegetation and ending when Establishment is achieved.

GST has the same meaning as in the GST Law.

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

Instrument Change means the making of the LEP.

LEP means draft *Fairfield Local Environmental 1994 (Amendment No.126)* that will rezone the Council Land and part of the Calabria Land to Zone 3(b) District Business Centre and the Dedication Land to Zone 6(a) Open Space.

Maintenance in relation to Embellishment Work means inclusion of the Dedication Land in the Council's Creek Care Program for ongoing maintenance.

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

Public Infrastructure has the same meaning as in the Act

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

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

Revegetation in relation to the Embellishment Work means the removal of all weeds from the Dedication Land and the revegetation of that land with endemic species of local provenance, all within 12 months of the dedication of the Dedication Land.

Work means the physical result of any building, engineering or construction work in, on, over or under land required to be carried out under this Agreement.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 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.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.5 A reference in this Agreement to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
 - 1.2.6 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.
 - 1.2.7 A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.14 A 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.
- 1.2.15 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.16 Notes appearing in this Agreement are operative provisions of this Agreement.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

2 Application of this Agreement

- 2.1 This Agreement applies to the Calabria Land, the Council Land, the Instrument Change and the Development.

3 Further Agreements Relating to this Agreement

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

Part 2 – Provisions relating to Dedication Land

4 Provision relating to dedication of the Dedication Land

- 4.1 The Proponent is to dedicate the Dedication Land to the Council for public open space within 90 days of the Instrument Change.

5 Procedures relating to the dedication of land

- 5.1 For the purpose of this Agreement, the Dedication Land will be dedicated to Council when the Dedication Land is vested in Council (either by way of registration of a transfer of that land, or by dedication in a registered plan).
- 5.2 Both Council and the Proponent must do all things reasonably necessary to ensure that the Dedication Land is dedicated to Council as soon as reasonably practicable after the Dedication Land is created as a separate lot.
- 5.3 The Council is to apply each Development Contribution made by the Proponent under this Agreement towards the public purpose for which it is made and otherwise in accordance with this Agreement.
- 5.4 Despite clause 5.3, the Council may apply a Development Contribution made under this Agreement towards a public purpose other than the public purpose specified in this Agreement if the Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

Part 3 – Embellishment of Dedication Land

6 Carrying out of Work

6.1 Following dedication of the Dedication Land, the Council is to embellish the Dedication Land in accordance with this clause.

6.2 Embellishment of the Dedication Land is to comprise the following Works:

6.2.1 Revegetation with a density of new plantings no less than as set out in the table below.

Trees / 50 m2	Sub Dominant Tree / 50m2	Shrubs / 50m2	Grasses / ground cover / 50m2
2	2	4	50

6.2.2 Establishment during the Establishment Period; and

6.2.3 Maintenance.

7 Application of s94, s94A and s94EF of the Act to the Development

7.1 This Agreement does not exclude the application of s94 of the Act to the Development.

7.2 Any benefits under this Agreement are not to be taken into consideration when determining a development contribution under s94 of the Act in relation to the Development.

7.3 This Agreement does not exclude the application of s94A of the Act to the Council Land or the Calabria Land.

7.4 This Agreement does not exclude the application of s94EF of the Act to the Council Land or the Calabria Land.

7.5 The Proponent further acknowledges that it is not entitled to any compensation from the Council in respect of the dedication of the Dedication Land in accordance with this Agreement.

8 Protection of people and property

- 8.1 The Council is to ensure, to the fullest extent reasonably practicable in relation to the carrying out of any Embellishment Work that:
- 8.1.1 all necessary measures are taken to protect people and property, and
 - 8.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 8.1.3 nuisances and unreasonable noise and disturbances are prevented.

9 Works-As-Executed-Plan

- 9.1 No later than 60 days after the Embellishment Work is completed in accordance with this Agreement, the Council is provide the Proponent with a full works-as-executed-plan in respect of the Embellishment Work.

10 Access to land

- 10.1 Prior to its dedication, the Proponent is to permit the Council, its officers, employees, agents and contractors to enter the Dedication Land at any time, upon giving reasonable prior notice.

Part 3 – Other Provisions

11 Enforcement in a court of competent jurisdiction

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

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

12 Dispute Resolution - mediation

- 12.1 This clause applies to any dispute under this Agreement.
- 12.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 12.3 If a notice is given under clause 12.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 12.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 12.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

13 Registration of this Agreement

- 13.1 The Parties agree to register this Agreement for the purposes of s93H of the Act.
- 13.2 On execution of this agreement, the Proponent is to provide the Council with a request by the Council for registration of this Agreement over the Calabria Land, duly executed by the Proponent and otherwise in registrable form together with the written and irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 13.3 The Council is to prepare a request for registration of this Agreement over the Council Land duly executed by the Council and otherwise in registrable form together with the written and irrevocable consent of each person referred to in s93H(1) of the Act to that registration.
- 13.4 The Council is to cause the request referred to in clause 13.2 and that referred to in clause 13.3 to be lodged for registration at the Land and Property Management Authority as soon as practicable after this Agreement is executed.
- 13.5 The Parties agree that registration of this Agreement is to be removed from the title of the Calabria Land over which it is registered following the dedication of the Dedication Land.
- 13.6 The Parties agree that registration of this Agreement is to be removed from the title of the Council Land over which it is registered following the completion of the Embellishment Work.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

14 Assignment, Sale of Land, etc

- 14.1 Unless the matters specified in clause 14.2 are satisfied, and prior to the dedication of the Dedication Land, the Proponent is not to do any of the following:
- 14.1.1 to transfer the Calabria Land to any person, or
 - 14.1.2 assign or novate to any person the Proponent's rights or obligations under this Agreement.
- 14.2 The matters required to be satisfied for the purposes of clause 14.1 are as follows:
- 14.2.1 the Proponent has, at no cost to the Council, first procured the execution by the person to whom the Proponent's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to the Council, and
 - 14.2.2 the Council, by notice in writing to the Proponent, has stated that evidence satisfactory to the Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 14.2.3 the Proponent is not in breach of this Agreement, and
 - 14.2.4 the Council otherwise consents to the transfer, assignment or novation.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

15 Notices

- 15.1 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:
- 15.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 15.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 15.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 15.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 15.3.1 delivered, when it is left at the relevant address,
 - 15.3.2 sent by post, 2 business days after it is posted, or
 - 15.3.3 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.
- 15.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a 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.

16 Approvals and Consent

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

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

17 Costs

- 17.1 The Council will pay the Proponent's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement.
- 17.2 The Proponent is to pay to the Council the Council's costs of enforcing this Agreement arising from any breach by the Proponent within 7 days of written demand by the Council for such payment.

18 Entire Agreement

- 18.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 18.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

19 Further Acts

- 19.1 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.

20 Notations on section 149(2) Planning Certificates

- 20.1 The Parties agree that the Council may, in its absolute discretion, make a notation under section 149(5) of the Act regarding this Agreement on any certificate issued under section 149(2) of the Act relating to the Land.

21 Governing Law and Jurisdiction

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

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

22 Joint and Individual Liability and Benefits

22.1 Except as otherwise set out in this Agreement:

22.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and

22.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

23 No Fetter

23.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 Representations and Warranties

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

25 Severability

25.1 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.

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

26 Modification

26.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

27 Waiver

- 27.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 27.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 27.3 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.

28 GST

- 28.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 28.2 Subject to clause 28.4, 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.
- 28.3 Clause 28.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 28.4 No additional amount shall be payable by the Council under clause 28.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

- 28.5 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:
- 28.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 28.5.2 that any amounts payable by the Parties in accordance with clause 27.2 (as limited by clause 27.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 28.6 No payment of any amount pursuant to this clause 28, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 28.7 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.
- 28.8 This clause continues to apply after expiration or termination of this Agreement.

29 Explanatory Note Relating to this Agreement

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

Schedule 1

(Clause 1)



Boundary of Dedication Land

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

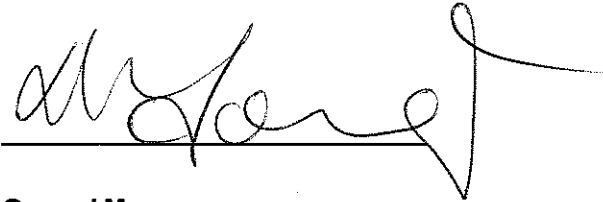
Calabria Community Club Limited

Execution

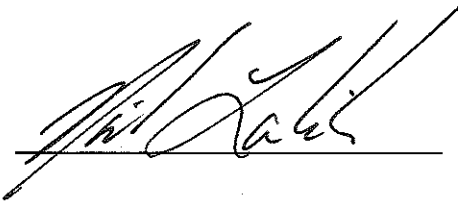
Executed as an Agreement

Dated:

Executed on behalf of the Council

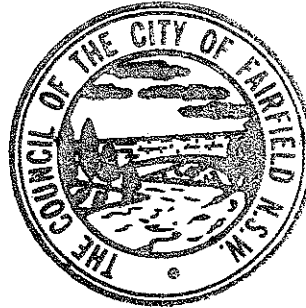


General Manager



Mayor

THE COMMON SEAL OF THE COUNCIL OF
THE CITY OF FAIRFIELD was hereunto affixed *se*
on the 25TH day of JANUARY 2000
pursuant to the resolution of the Council passed
on the 14TH day of DECEMBER 2000 *se*



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

Name/Position

Name/Position

Appendix

(Clause 29)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Parties

Fairfield City Council ABN 83 140 439 239 of Administration Centre, 86 Avoca Road
Wakeley NSW 2176 (Council)

Calabria Community Club ABN 42 002 228 604 of 184-192 Restwell Road
Prairiewood NSW 2176 (Proponent)

Description of the Land to which the Draft Planning Agreement Applies

The Calabria Land being Lot 7 in Section E in Deposited Plan 6934; and

The Council Land being Lot 100 in Deposited Plan 806884.

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

Description of Proposed Instrument Change

The proposed instrument change is the making of draft Fairfield Local Environmental Plan 1994 (Amendment No. 126) for the rezoning of:

- a. the Council Land and part of the Calabria Land to Zone 3(b) District Business Centre; and
- b. the Dedication Land to Zone 6(a) Open Space.

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

Objectives of Draft Planning Agreement

The Objective of the Draft Planning Agreement is to ensure that sufficient Public Open Space is maintained after the Instrument Change by providing for the dedication and embellishment of the Dedication Land in conjunction with it.

Nature of Draft Planning Agreement

The Draft Planning Agreement is a planning agreement under s93F of the Act. The Draft Planning Agreement is a voluntary agreement under which Development Contributions (as defined in clause 1.1 of the Draft Planning Agreement) are made by the Proponent for various public purposes (as defined in s93F(2) of the Act).

Effect of the Draft Planning Agreement

The Draft Planning Agreement:

- relates to the Calabria Land, the Council Land, the Instrument Change and development facilitated by the Instrument Change
- requires the dedication of the Dedication Land by the Proponent
- requires the embellishment of the Dedication Land after dedication by the Council including weeding, revegetation and establishment
- is to be registered on title of the Council Land and the Calabria Land and removed upon the dedication and transfer of the Dedication Land to the Council and the completion of the embellishment work
- does not exclude s94A, s94 or s94EF of the Act to the carrying out of development facilitated by the Instrument Change and provides that the

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

benefits provided by the Proponent under the Agreement are not to be taken into consideration when determining a development contribution under s94 of the Act in relation to that development.

- provides a dispute resolution method for any dispute under the agreement being mediation
- provides that the agreement is governed by the law of New South Wales
- provides that the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) applies to the agreement.

Assessment of the Merits of the Draft Planning Agreement

The Planning Purposes Served by the Draft Planning Agreement

The Draft Planning Agreement ensures that the supply of public open space will be maintained following the Instrument Change.

How the Draft Planning Agreement Promotes the Public Interest

The Draft Planning Agreement promotes the public interest by ensuring that there will be adequate public open space facilities and that the community of the City of the Fairfield is not burdened with the cost of providing such facilities.

For Planning Authorities:

Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities

N/A

Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted

N/A

Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter

The Draft Planning Agreement promotes the elements of the Council's charter by:

Calabria Community Club Prairiewood Open Space Planning Agreement

Fairfield City Council

Calabria Community Club Limited

- ensuring that public facilities provided by the Proponent under the agreement are transferred to and managed by the Council or are otherwise subject to the Council's control,
- providing a means that allows the wider community to make submissions to the Council in relation to the agreement.

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

The Draft Planning Agreement provides for replacement open space intended for environmental and drainage uses and conforms with the Council's Capital Works Program.