

**WARNING TO PURCHASERS:**

Before completing the purchase of any land to which this planning agreement relates, be sure that you understand the rights and obligations of the Developer under the *Environmental Planning & Assessment Act 1979*, including section 93H(3).

Section 93H(3) provides that: "A planning agreement that has been registered by the Registrar-General under [section 93H] is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement."

## Planning Agreement

Dated 16 JUNE 2008

The Minister for Planning ("Minister")  
AV Jennings Properties Limited ABN 50 004 601 503 ("Developer")  
Orlit Proprietary Limited ABN 57 007 535 435 ("Orlit")  
Minister for Disability Services ("Minister for Disability Services")

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# Planning Agreement

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# Planning Agreement

## Operative Provisions

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### 1 Planning Agreement under the Act

The parties agree that this deed is a planning agreement within the meaning of section 93F of the Act.

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### 2 Application of this planning agreement

This planning agreement applies to:

- (a) the Land; and
- (b) the Development.

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### 3 Operation of this planning agreement

Clauses 8 and 14 of this planning agreement operate immediately. The parties each agree that the other terms of this planning agreement will operate and be effective from the date the LEP is gazetted after it has been made by the Minister pursuant to section 70 of the Act.

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### 4 Definitions and Interpretation

#### 4.1 Definitions

Terms used in this planning agreement which are defined in Schedule 3 ("Interpretation") shall have the same meaning as ascribed to them by that Schedule and such meanings apply unless the contrary intention appears.

#### 4.2 General

In this planning agreement unless the contrary intention appears:

- (a) a reference to this planning agreement or another instrument includes any variation or replacement of any of them;
- (b) 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;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;

- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a party is prohibited from doing anything, it is also prohibited from:
  - (i) allowing or causing it to be done; and
  - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this planning agreement;
- (n) any capitalised term used, but not defined in this planning agreement, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules and Annexures form part of this planning agreement.

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## **5 Contributions**

### **5.1 Development Contributions to be made under this planning agreement**

The Developer will for the purpose of providing amenities or services to the public at its risk and expense carry out and deliver the Contributions in accordance with this planning agreement.

## **5.2 Application of the Development Contributions**

The Developer will carry out and deliver the Contributions at the time or times and in the manner set out in the Contributions and requirements Schedule.

## **5.3 Purchase by the Minister for Disability Services**

The parties acknowledge that the Minister for Disability Services is (pursuant to section 93F(1)(c) of the Act) a person associated with the Developer and has entered into an agreement to purchase Lot 1 DP 432827 and Lots A and B 31271 ("the Excised Land" and "the Excised Land Contract"). The parties agree that notwithstanding anything in this Planning Agreement Schedule 4A of this Planning Agreement shall operate to vary the terms of this Planning Agreement. However, if the Excised Land Contract shall be terminated for any reason then those provisions in Schedule 4A will cease to operate.

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## **6 Adequate provision of Contributions**

- (a) It is anticipated that the LEP will provide that the Consent Authority must not consent to any subdivision of the Land that will create a residential lot otherwise than as permitted by the Wyong Local Environment Plan 1991 in effect immediately before the coming into force of the LEP unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made for the Contributions.
- (b) The Developer must (at its cost):
  - (i) use reasonable endeavours to liaise with, and must provide sufficient information to the Minister (or must provide to the Minister such information as the Minister requests (acting reasonably)) to allow the Minister to be satisfied that the terms of this planning agreement have been complied with (which are appropriate for performance at that time) and to allow the Director-General to give the certification referred to in paragraph (a); and
  - (ii) without limiting sub-paragraph (i), the material to be provided by the Developer must include a certification by the Developer addressed to the Minister that the relevant terms of this planning agreement have been complied with, to enable the Director-General to provide the certificate under paragraph (a).

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## **7 Application of s94 and s94A of the Act to the Development**

### **7.1 Application of sections 94 and 94A of the Act**

Sections 94 and 94A of the Act apply to the Development.

## **7.2 Benefits under this planning agreement**

Benefits under this planning agreement are excluded from being taken into consideration under section 94 of the Act in its application to development of the Land.

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# **8 Registration of this planning agreement**

## **8.1 Developer**

The Developer and Orlit (as appropriate) agrees to procure that this planning agreement is registered on the relevant folios of the Register pertaining to the Land which owned by each of them respectively as soon as practicable (and within 10 Business Days after execution of this planning agreement) in accordance with this clause 8 including obtaining the consent of any mortgagee or other person with an interest in those lots to such registration.

## **8.2 The LEP**

The Minister reserves its right to delay gazettal of the LEP, amongst other considerations, until after:

- (a) this planning agreement is registered on the folios of the Register for the Land; and
- (b) the Developer has complied with clause 14 of this planning agreement.

## **8.3 Effect of registration**

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all the obligations in this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of the land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

## **8.4 Release and discharge of this planning agreement**

The Minister agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a partial release and discharge of this planning agreement:

- (a) upon full satisfaction of the Developer's obligations under this planning agreement; or
- (b) to effect a transfer of subdivided residential allotments created from the Land where the Developer has, at the time of the request complied with the relevant terms of this planning agreement.

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# **9 Review of this planning agreement**

This planning agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.



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## **10 Dispute Resolution**

If a dispute between any of the parties arises in connection with this planning agreement or its subject matter, then the process and procedures set out in Schedule 5 ("Dispute Resolution") will apply.

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## **11 Notices**

### **11.1 Form**

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### **11.2 Delivery**

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

### **11.3 When effective**

They take effect from the time they are received unless a later time is specified.

### **11.4 Receipt - post**

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

### **11.5 Receipt - fax**

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

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## **12 Approvals and Consent**

The parties acknowledge that:

- (a) except as otherwise set out in this planning agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;
- (b) a party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions; and
- (c) this planning agreement does not impose any obligation on a Consent Authority to:
  - (i) grant development consent; or
  - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

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## **13 Assignment and dealings**

### **13.1 Developer dealing with interests**

The Developer may not sell, transfer, assign or novate or similarly deal with ("**Dealing**") its right, title or interest in the Land (if any) or its rights or obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without the Minister's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) gives the Minister no less than 10 Business Days notice in writing of the proposed Dealing; and
- (b) procures that the transferee, assignee or novatee executes and delivers to the Minister prior to any such Dealing taking effect, a deed in favour of the Minister in form and substance acceptable to the Minister (acting reasonably) whereby:
  - (i) the transferee, assignee or novatee becomes contractually bound with the Minister to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this deed; and
  - (ii) the Developer is released from its Future Obligations under this deed.

### **13.2 Dealings by the Minister**

- (a) If another Authority takes over the functions of the Minister under this planning agreement, or if the Minister determines that it is desirable for this to happen, then the Minister may assign or novate or otherwise deal with its rights and obligations under this planning agreement to give effect to this change, and each of the Developer and Orlit Pty Ltd agrees to enter into such documentation, at the cost

of the Minister, as may be necessary to confer on the new Authority the rights and obligations of the Minister under this planning agreement.

- (b) Normally any such action would take place by a statutory novation or delegation. However, this clause applies to the extent that it is necessary.
- (c) Without restricting clause 19 ("No fetter"), the Minister must not otherwise deal with its rights and obligations under this planning agreement.

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## **14 Costs**

The Developer agrees to pay or reimburse the Costs of the Minister in connection with:

- (a) the negotiation, preparation and execution of this planning agreement; and
- (b) advertising and exhibiting this planning agreement in accordance with the Act,

within 3 Business Days after receipt of a tax invoice from the Minister.

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## **15 Entire agreement**

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

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## **16 Further Acts**

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 planning agreement and all transactions incidental to it.

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## **17 Governing Law and Jurisdiction**

### **17.1 Governing law**

This planning agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

### **17.2 Serving documents**

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

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## **18 Joint and individual liability and benefits**

Except as otherwise set out in this planning agreement, any agreement, covenant, representation or warranty under this planning agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

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## **19 No fetter**

### **19.1 Discretion**

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- (a) the sovereignty of the Parliament of the State to make any Law;
- (b) the power of the Executive Government of the State to make any statutory rule; or
- (c) the exercise of any statutory power or discretion of any minister of the State or any Authority.

(all referred to in this planning agreement as a “Discretion”).

### **19.2 No fetter**

No provision of this planning agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this planning agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 19.1 (“Discretion”) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

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## **20 Representations and warranties**

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

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## 21 Severability

- (a) The parties acknowledge that under and by virtue of Section 93F(4) of the Act, any provision of this planning agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.
- (b) The parties acknowledge that under and by virtue of Section 93F(10) of the Act, any provision of this planning agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
  - (i) any provision of the Act; or
  - (ii) the provisions of an environmental planning instrument; or
  - (iii) a development consent applying to the relevant land.
- (c) The parties agree that to the extent permitted by Law, this planning agreement prevails to the extent it is inconsistent with any Law.
- (d) If a clause or part of a clause of this planning 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.
- (e) If any clause or part of a clause is illegal, enforceable or invalid, that clause or part is to be treated as removed from this planning agreement, but the rest of this planning agreement is not affected.

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## 22 Modification

No modification of this planning agreement will be of any force or effect unless it is in writing and signed by the parties.

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## 23 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this planning agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of 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.

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## **24 GST**

### **24.1 Construction**

In this clause 24:

- (a) words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and
- (b) GST Law has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999*.

### **24.2 Consideration GST exclusive**

Unless expressly stated, all prices or other sums payable or consideration to be provided under this document are exclusive of GST.

### **24.3 Payment of GST**

If GST is payable on any supply made under this document, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

### **24.4 Timing of GST payment**

The recipient will pay the amount referred to in **clause 24.3** in addition to and at the same time that the consideration for the supply is to be provided under this document.

### **24.5 Tax Invoice**

The supplier must deliver a tax invoice or an adjustment note to the recipient before the supplier is entitled to payment of an amount under **clause 24.3**. The recipient can withhold payment of the amount until the supplier provides a tax invoice or adjustment note as appropriate.

### **24.6 Adjustment event**

If an adjustment event arises in respect of a taxable supply made by a supplier under this document, the amount payable by the recipient under **clause 24.3** will be recalculated to reflect the adjustment event and a payment will be made by the recipient to the supplier or by the supplier to the recipient as the case requires.

### **24.7 Reimbursements**

Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing 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; and

- (b) if the payment or reimbursement is subject to GST, an amount equal to that GST.

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## **25 Effect of Schedulised terms and conditions**

The parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this planning agreement.

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## **26 New Laws**

If the Developer is obliged by a New Law to do something or pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

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## **27 Confidentiality**

### **27.1 This deed not confidential**

The parties agree that the terms of this planning agreement are not confidential and this planning agreement may be treated as a public document and exhibited or reported without restriction by any party.

### **27.2 Other confidential information**

The parties agree, and must procure that any mediator or expert appointed under Schedule 6 ("Dispute Resolution") agrees as a condition of their appointment:

- (a) Confidential Information has been supplied to some or all of the parties in the negotiations leading up to the making of this planning agreement; and
- (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this planning agreement; and
- (c) subject to paragraphs (d) and (e) below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- (d) a party may disclose Confidential Information in the following circumstance:
  - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause 27 ("Confidentiality"); or

- (ii) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
- (e) for a purpose necessary in connection with an expert determination or mediation.

### **27.3 Proceedings**

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

**EXECUTED** as a deed



# Planning Agreement

## Schedule 1 - s93F Requirements

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
<b>Planning instrument and/or Development Application - (Section 93F(1))</b>  The Developer has <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument;</li> <li>(b) made, or proposes to make, a Development Application;</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) Yes</li> </ul>
<b>The Land affected by this planning agreement - (Section 93F(3)(a))</b>	The Land described in Schedule 2.
<b>The environmental planning instrument or the development affected by this planning agreement - (Section 93F(3)(b))</b>  Describe: <ul style="list-style-type: none"> <li>(a) the proposed change to the environmental planning instrument to which the agreement applies;</li> <li>OR</li> <li>(b) the development to which the agreement applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Draft Wyong Local Environmental Plan 1991 (Amendment No. 163)</li> <li>OR</li> </ul>

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))	See Schedule 4 to this planning agreement.
<b>Applicability of Sections 94 or 94A of the Act - (Section 93F(3)(d))</b>  Section 94 of the Act  (a) applies wholly to the development;  (b) does not apply to the development;  (c) parts (insert sections) apply to the development.	See clause 7 of this planning agreement.
Section 94A of the Act  (a) applies wholly to the development;  (b) does not apply to the development;  (c) parts (insert sections) apply to the development.  Application of s93F(5) of the Act	See clause 7 of this planning agreement.
<b>Consideration of benefits if under this planning agreement if Section 94 applies - (Section 93F(3)(e))</b>  Are the benefits under this planning agreement to be taken into consideration if Section 94 of the Act applies?	See clause 7 of this planning agreement.
<b>Dispute resolution - (Section 93F(3)(f))</b>  This planning agreement provides a mechanism for the resolution of disputes under the agreement.	Clause 10 ("Dispute resolution") and Schedule 5 ("Dispute resolution") provide a mechanism for the resolution of disputes under this planning agreement.

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
<p><b>Security - (Section 93F(3)(g))</b></p> <p>The Developer has provided suitable security for its obligations under this planning agreement such as a security bond or guarantee.</p>	<p>See Schedule 4 to this planning agreement which provide for delivery of Contributions secured by registration and controls on the release of the Land for the Development</p>
<p><b>No obligation - (Section 93F(9))</b></p> <p>The parties acknowledgement that this planning agreement does not impose an obligation on a planning authority to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.</p>	<p>See clause 12 of this planning agreement.</p>

# Planning Agreement

## Schedule 2 - Land (clause 2)

**Land means** the land comprising the following folio identifiers:

Lots 43 and 47 in Deposited Plan 7091

Lot 4 in Deposited Plan 208596

Lot A in Deposited Plan 381268

Lots 1 and 2 in Deposited Plan 514442

Lot 2 in Deposited Plan 208596

Lot 1 in Deposited Plan 432827

Lots A and B in Deposited Plan 31271

# Planning Agreement

## Schedule 3 - Interpretation (clause 4)

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### 1 Definitions and Interpretations

Capitalised terms used in this planning agreement which are defined in this Schedule 3 ("Interpretation") shall have the meaning ascribed to them as set out below.

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

**Authorised Officer** means in the case of any party, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this planning agreement.

**Authority** means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier accredited under section 109T of the Act.

**Bank Guarantee** means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of the Minister and which does not have an expiry date and is otherwise in form and substance acceptable to the Minister, to pay on demand to the Minister each Guarantee Amount.

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

**Certificate** means a certificate issued by the Director-General to the Consent Authority as contemplated in clause 6(a) of this planning agreement.

**Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

**Consent Authority** means, in relation to a Development Application, the Authority having the function to determine the Development Application.

**Contributions** means the obligations imposed on the Developer under, and by virtue of, Schedule 4 ("Contributions and requirements Schedule").

**Contributions and requirements Schedule** means the terms and conditions imposed on the relevant parties under Schedule 4 ("Contributions and requirements Schedule").

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**CPI** means the Consumer Price Index All Groups Sydney, as published by the Australian Bureau of Statistics.

**Department** means the Department of Planning.

**Details** means the section of this planning agreement entitled "Details".

**Developer** means the party described as such in the Details.

**Development** means the development of the Land proposed to be carried out or procured by the Developer in accordance with the LEP.

**Development Application** has the same meaning as that term has in the Act.

**Director-General** means the Director-General from time to time of the Department.

**Further Payment Sum** means a sum of \$5,000 for each lot to be created by the subdivision of the Land in excess of 331 lots.

**Future Obligations** means any obligations under or by virtue of this deed which at the time of any proposed assignment or novation contemplated by clause 13.1 ("Developer dealing with interests") are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect.

**Guarantee Amounts** means (as applicable):

- (a) \$1,870,000.00; and
- (b) a sum or sums equal to the Further Payment Sum.

**GST** has the meaning it has in the GST Act.

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

**Land** means the whole of the land comprised in the titles described in Schedule 2 ("Land").

**Law** means:

- (a) the common law including principles of equity; and

- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

**LEP** means the Local Environmental Plan substantially in accordance with the Draft Wyong Local Environmental Plan 1991 (Amendment No. 163).

**Minister** means the Minister for the time being administering the Act.

**New Law** means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

**Register** means the Torrens title register held by the New South Wales office of Land and Property Information.

**State** means the State of New South Wales.

**State Government** means the government of New South Wales.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them.

# Planning Agreement

## Schedule 4 - Contributions and requirements Schedule (clause 5.2)

The Developer agrees to provide the Contributions and satisfy the relevant requirements at its cost and risk in the time and manner specified below.

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### 1 Contribution Payments

#### 1.1 Contributions

The Developer must pay to the Minister or his nominee:

- (a) a contribution of \$1,870,000.00 increased in accordance with clause 1.4 of this Schedule 4 ("**Main Contribution**"); and
- (b) a contribution or contributions of the Further Payment Sum increased in accordance with clause 1.4 of this Schedule 4.

#### 1.2 Main Contribution

The Developer must pay the Main Contribution in two instalments :

- (a) the first instalment of \$935,000.00 (together with any increase calculated pursuant to clause 1.4) to be paid on the release of the linen plan which creates the first allotment in the subdivided Land;
- (b) the second instalment of \$935,000.00 (together with any increase calculated pursuant to clause 1.4) is to be paid on the release of the linen plan which creates the 200th allotment.

#### 1.3 Further Payment Sums

If lots are to be created by subdivision of the Land in excess of 331 lots then the Developer must pay each Further Payment Sum:

- (a) prior to the issue of the Certificate in respect of each relevant proposed subdivision which will have the effect of creating more than 331 allotments from the Land; or
- (b) if the Developer elects to provide to the Minister the Bank Guarantee referred to in clause 2.2 of this schedule 4 in accordance with clause 2.2 of this schedule 4, then prior to the release of the first linen plans which will give effect to the relevant subdivision of the Land referred to in paragraph (a).



#### **1.4 CPI increase**

The amount of each Contribution referred to in clauses 1.2 and 1.3 must be increased to reflect any increase in the CPI since the LEP is gazetted with the relevant amount being calculated as at the date of payment.

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## **2 Bank Guarantees**

### **2.1 Delivery to the Minister - Main Contribution**

Prior to the issue of the first Certificate, the Developer must provide to the Minister two Bank Guarantees for \$935,000.00 each.

### **2.2 Delivery to the Minister - Further Payment Sum**

Prior to the issue of each Certificate in respect of any proposed subdivision which will have the effect of creating more than 331 allotments from the Land the Developer may elect to provide to the Minister a Bank Guarantee for the Further Payment Sum in respect of such additional lots.

### **2.3 New Authority**

Where:

- (a) the Developer has provided a Bank Guarantee; and
- (b) another Authority takes over the functions of the Minister under this planning agreement ("New Authority"),

then:

- (c) the Developer must deliver a replacement Bank Guarantee to the New Authority; and
- (d) the Minister will return to the Developer the Bank Guarantee at the same time the Developer delivers the replacement Bank Guarantee to the New Authority;

### **2.4 Minister may call on Bank Guarantee**

If the Developer does not, on or prior to the scheduled date for payment pay any amount payable under clause 1 of this Schedule 4, then:

- (a) the Developer is in breach of an essential obligation under this planning agreement; and
- (b) without limiting any other remedies available to the Minister, the Minister may call on the relevant Bank Guarantee without notice to the Developer.

### **2.5 Return of Bank Guarantees**

- (a) Within one month after the Developer satisfies its obligation to pay in full the first instalment of \$935,000.00 of the Main Contribution payable under this Planning Agreement the Minister must, if the

Minister has not called on the relevant Bank Guarantee under this clause 2, return the first Bank Guarantee of \$935,000.00 (or any remaining balance of it) to the Developer.

- (b) Within one month after the Developer satisfies its obligation to pay in full the second instalment of \$935,000.00 of the Main Contribution payable under this Planning Agreement the Minister must, if the Minister has not called on the relevant Bank Guarantee under this clause 2, return the second Bank Guarantee of \$935,000.00 (or any remaining balance of it) to the Developer.
- (c) Within one month after the Developer satisfies its obligation to pay any Further Payment Sum payable under this Planning Agreement the Minister must, if the Minister has not called on the relevant Bank Guarantee under this clause 2, return that Bank Guarantee (or any remaining balance of it) to the Developer.

# Schedule 4A - Minister for Disability Services - Amended Contributions and requirements Schedule (clause 5.3)

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## 1 Minister for Disability Services Purchase

### 1.1 Amendments

It is agreed that notwithstanding anything in this Planning Agreement:

- (a) the Minister for Disability Services must pay to the Minister the sum of \$302,987.00 on or before 30 June, 2008;
- (b) on receipt of payment referred to in paragraph (a) this Agreement shall be deemed to be amended as follows:
  - (i) Schedule 2: The reference to "Lot 1 in Deposited Plan 432827" and "Lots A and B in Deposited Plan 31271" shall be deleted.
  - (ii) Schedule 3: The figure "\$1,870,000.00" in the definition of "Guarantee Amounts" shall be amended to "\$1,567,013.00".
  - (iii) Schedule 4: The figure of "\$1,870,000.00" in clause 1.1(a) shall be amended to "1,567,013.00".
  - (iv) Schedule 4: The figure "\$935,000.00" in clause 1.2(a) shall be amended to "\$632,013.00".
  - (v) Schedule 4: The words "two Bank Guarantees for \$935,000.00 each" in clause 2.1 should be replaced with "two Bank Guarantees one for \$632,013.00 and the other for \$935,000.00".
  - (vi) The figure \$935,000.00 where it appears twice in clause 2.5(a) shall be amended to \$632,013.00.
- (d) If this Planning Agreement is registered against the title to Lot 1 Deposited Plan 432827 or Lots A and B Deposited Plan 31271 prior to payment of the amount referred to in paragraph (a) then the Minister agrees to release the Planning Agreement from such titles upon receipt of payment and undertakes not to register the Planning Agreement over such titles if such monies have been received.

# Planning Agreement

## Schedule 5 - Dispute Resolution (clause 10)

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### **1 Dispute Resolution**

#### **1.1 Notice of Dispute**

If a party claims that a dispute has arisen under this Agreement (“**Claimant**”), it must give written notice to the other party (“**Respondent**”) stating the matters in dispute and designating as its representative a person to negotiate the dispute (“**Claim Notice**”).

#### **1.2 Response to Notice**

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

#### **1.3 Negotiation**

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

#### **1.4 Further Notice if not Settled**

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (“**Dispute Notice**”).

#### **1.5 Mediation**

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) the Mediator appointed pursuant to this clause 1.5 of Schedule 6 must:
  - (i) have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
  - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
  - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

## **1.6 Litigation**

If the dispute is not finally resolved in accordance with clause 1 of Schedule 5, either party is at liberty to litigate the dispute.

## **1.7 Continue to perform obligations**

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

# Planning Agreement

## Signing page

DATED: 16 JUNE 2008

SIGNED SEALED AND )  
DELIVERED by The MINISTER )  
FOR PLANNING in the presence  
of:

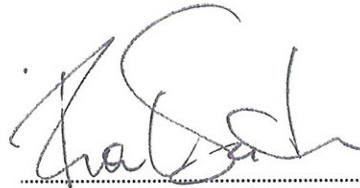


Signature of Witness

R. Baker

Name of Witness

[BLOCK LETTERS]



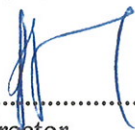
Signature of Minister

Fernk SARTON

Name

[BLOCK LETTERS]

EXECUTED by AV JENNINGS )  
PROPERTIES PTY LTD in )  
accordance with section 127(1) of the )  
Corporations Act 2001 (Cwlth) by )  
authority of its directors: )



Signature of director

PETER SUMMERS

Name of director (block letters)



Signature of director/company  
secretary\*

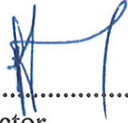
\*delete whichever is not applicable

HELGA LINDE

Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

EXECUTED by ORLIT PTY LTD )  
in accordance with section 127(1) of )  
the Corporations Act 2001 (Cwlth) by )  
authority of its directors: )



Signature of director )

*Peter Summers*

Name of director (block letters) )



Signature of director/company )  
secretary\* )

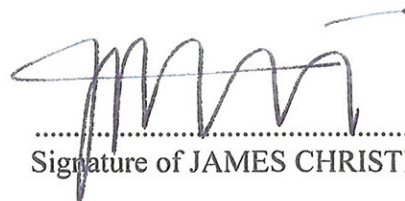
\*delete whichever is not applicable )

*Helen Lincorne*

Name of director/company secretary\* )  
(block letters) )

\*delete whichever is not applicable )

SIGNED, SEALED AND )  
DELIVERED by JAMES )  
CHRISTIAN, Acting Deputy )  
Director General of the Department )  
of Ageing, Disability and Home Care, )  
pursuant to the authority vested in )  
him under an instrument of delegation )  
executed by the Minister for )  
Disability Services, New South )  
Wales, in the presence of: )



Signature of JAMES CHRISTIAN )



Signature of witness )

*William Mervyn Brown*

Name of witness (block letters) )