

Planning Agreement

The Minister for Planning
Minister

Lensworth Glenmore Park Limited
Lensworth

Mulpha FKP Pty Limited trading as Norwest Land
Norwest Land

Holicombe Pty. Limited in its capacity as trustee of the Wearn Quarry Trust
Holicombe

Sergio & Assunta Vianello
Vianello

Mint Holdings Pty. Limited
Mint Holdings

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X *Tony Kelly*

A. Vianello

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Philippa

Philippa

Bill Hearn

Bill Hearn

J.W.

[Signature]

Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	9
2.	Status of this deed.....	10
2.1	Status.....	10
2.2	Not used.....	11
3.	Planning Agreement under the Act	11
4.	Application of the Planning Agreement	11
5.	Development Contributions	11
6.	Minister Acknowledgements and requirements	11
7.	Application of s94, s94A and s94EF of the Act to the Development	11
7.1	Application of sections 94, 94A and 94EF of the Act.....	11
8.	Interests in the Land.....	12
8.1	Ownership	12
8.2	Registration of the Planning Agreement	12
8.3	Release and discharge of this deed.....	13
9.	Review or Replacement of this deed	13
10.	Dispute Resolution	13
11.	GST	13
11.1	Interpretation	13
11.2	Intention of the parties	13
11.3	Reimbursement	13
11.4	Consideration GST exclusive	14
11.5	Additional amount of GST payable	14
11.6	Variation	14
11.7	Exchange of non-monetary consideration.....	15
11.8	No merger	15
12.	Overdue payments.....	15
13.	Explanatory Note	15
14.	Effect of Scheduled terms and conditions.....	15
15.	Several liability of Landowner.....	16
16.	General provisions	16
	Schedule 1 - Section 93F Requirements.....	17
	Schedule 2 - Land.....	19
	Schedule 3 - Development Contributions Schedule	20

Schedule 4 - Release and Discharge Terms	44
Schedule 5 - Review or Replacement Procedures	45
Schedule 6 - Dispute resolution	46
Schedule 7 - Security Arrangements	50
Schedule 8 - Assignment and Dealing Terms	52
Schedule 9 - Costs	54
Schedule 10 - General terms	55
Annexure A - Plan of the Land	60
Annexure B - Notice of Exercise of Put Option	62
Annexure C - Notice of Exercise of Call Option	63
Annexure D - Nominee Notice of Exercise of Call Option	64
Annexure E - Accession Deed	65
1. Definitions and interpretation	69
1.1 Definitions	69
1.2 References to certain general terms.....	70
1.3 Headings	70
2. Novation	70
2.1 Original Agreement.....	70
2.2 Liability before Effective Date	71
3. Affirmation of the Original Agreement	71
4. GST	71
5. Notices.....	71
6. Further acts	71
7. Governing law	71
8. Counterparts deemed originals	72

Planning Agreement made at

Sydney
~~46/9/2010~~ on *16 September 2010*

Parties

The Minister for Planning ABN 38 755 709 681 of Level 34
Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW
2000

(Minister)

Lensworth Glenmore Park Limited ABN 59 007 533 888 of
133 Castlereagh Street, SYDNEY NSW 2000

(Lensworth)

**Mulpha FKP Pty Limited trading as Norwest Land ABN 27
000 004 633** of FKP House, Level 4, 17-19 Bridge Street,
SYDNEY NSW 2000

(Norwest Land)

Holicombe Pty. Limited ABN 76 691 030 709 in its capacity
as trustee of the Wearn Quarry Trust of 2091 Castlereagh Road,
PENRITH NSW 2150

(Holicombe)

Sergio & Assunta Vianello ABN 27 709 051 547 of "Hills of
Home" 2183 The Northern Road, MULGOA NSW 2748

(Vianello)

Mint Holdings Pty. Limited ABN 20 002 055 165 of 36 South
Street RYDALMERE NSW 2166

(Mint Holdings)

Background

- A. Each Landowner owns that part of the Land as nominated to be owned by it in Schedule 2.
- B. The Landowners have made, or proposes to make, the Development Application.
- C. Each Landowner seeks a change to an environmental planning instrument to carry out Development on that part of the Land owned by it.
- D. By way of this deed, each Landowner offers to enter into a planning agreement in connection with the LEP and the Development Application on the terms and conditions of this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Definitions

The meaning of capitalised terms in this deed is as follows (unless otherwise specified):

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

"Agreed Road Works Amount" means the amount agreed between the Landowners and the RTA as the anticipated amount of all costs, fees and charges incurred by any one or more of the Landowners in carrying out the Road Works including, without limitation:

- (a) construction costs, including utility service installation and relocation costs, traffic signal costs and traffic signal maintenance costs;
- (b) costs incurred by the RTA, including design checking, surveillance and RTA project management costs;
- (c) design, project management and supervision costs;
- (d) costs associated with traffic control plans, road safety audits, design amendments and environmental assessments;
- (e) legal fees; and
- (f) contingency costs up to a value of 20% of all costs, fees and charges incurred by any one or more of the Landowners in carrying out any of the Road Works.

"Allotment" means a lot forming part of the Land identified in any Application for subdivision of the whole, or any part, of the Land which lot is intended to be developed, subject to development consent, by construction of a single Dwelling.

"Alternative School Site" has the meaning given to that term in paragraph 4.2(e) of Schedule 3.

"Alternative Residual School Site" has the meaning given to that term in paragraph 4.5(f) of Schedule 3.

"Application" means an application for any Approval, and includes the Development Application.

"Approval" means any approval, consent, Modification, Part 4A Certificate, Part 3A of the Act approval, certificate, Construction Certificate, Occupation Certificate, Complying Development Certificate, permit, endorsement, licence (including licences under the *Liquor Act 1982* (NSW)), condition or requirement (and any variations to them) which may be required by law or by adjoining owners for the payment, or for the commencement and carrying out, or for the transfer of the Development Contribution.

"Assignment and Dealing Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 8.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 109T of the Act.

"Bank Bill Rate" means, the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate

is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the payee calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the payee which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the payee is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the payee in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The payee may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the **Bank Bill Rate** under this deed despite any calculation by the payee under paragraph (a) or (b).

"Bank Guarantee" means an irrevocable and unconditional undertaking from an Australian bank, or other financial institution approved by the Minister, in a form and in substance acceptable to the Minister (acting reasonably).

"Business Day" means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

"Call Option" means the option under paragraph 5.4 of Schedule 3 whereby the Minister (or Nominee) has the right to require Holicombe to transfer its right, title and interest in the DECCW Land to the Minister (or Nominee) at any time during the Call Option Period.

"Call Option Expiry Date" means the date which is the eleventh anniversary of the DECCW Dedication Trigger Date.

"Call Option Fee" means \$1 (plus GST).

"Call Option Period" means the period commencing on the date which is the tenth anniversary of the DECCW Dedication Trigger Date and ending on the Call Option Expiry Date.

"Commencement Date" means the date on which the Planning Agreement comes into operation.

"Compliance Certificate" means a certificate referred to in section 109C(1)(a) of the Act.

"Complying Development Certificate" means a certificate referred to in section 85 of the Act.

"Consent" means the approval of a Consent Authority to an Application.

"Consent Authority" means, in relation to an Application, the Authority having the function to determine the Application.

"Contribution Amounts" means, collectively and individually, each of the amounts set out in Table 1 of Schedule 3.

"Conveyancing Act" means the *Conveyancing Act 1919* (NSW).

"Corporations Act" means the *Corporations Act 2001* (Cth).

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

"Council" means Penrith City Council.

"Credit Scheme" means the provision of credits by the Government for New South Wales for infrastructure contributions as referred to in DOP Circular PS 08-017 dated 23 December 2008 as extended from time to time or some other scheme that substantially replaces that scheme which credits may be used for any of the following purposes:

- (a) future Development Contributions payable under this deed;
- (b) any Special Infrastructure Contributions under Part 4 Division 6 of the Act (or State Infrastructure Contributions under Part 5B Division 3 of the Environmental Planning and Assessment Amendment Act 2008); or
- (c) future State infrastructure contributions payable under a Planning Agreement where the Minister is a party to that agreement.

"DECCW" means the New South Wales Department of Environment, Climate Change and Water.

"DECCW Dedication Trigger Date" means the earlier of:

- (a) the date on which a total of 100 Residential Lots have been created in respect of that part of the Land owned by Lensworth;
- (b) the date on which a total of 20 Residential Lots have been created in respect of that part of the Land owned by Norwest Land;
- (c) the date on which a total of 20 Residential Lots have been created in respect of that part of the Land owned by Mint Holdings; and
- (d) the date on which a total of 20 Residential Lots have been created in respect of that part of the Land owned by Vianello.

"DECCW Land" means that part of the Land comprising 62.43 hectares owned by Holicombe and proposed to be transferred to the Minister (or such other Authority as the Minister may nominate in writing from time to time) for the purpose described in clause 6(a)(iii), which is identified as the "Holicombe Conservation Area 62.43ha" in the plan attached to this deed as Annexure A.

"DECCW Land Contribution" means the contribution made by Holicombe under Item 5 (DECCW Land Contribution) in Table 2 of Schedule 3.

"DET" means the New South Wales Department of Education and Training.

"DET Dedication Date" means the date on which a total of 600 Residential Lots have been created in respect of the Land.

"DET Land Contribution" means each contribution made by each Landowner under Item 4 (DET Land Contribution) in Table 2 of Schedule 3.

"Development" means the process of planning, obtaining all necessary approvals, creating and selling residential or other parts of the Land including without limitation, the carrying out of subdivision, infrastructure works and improvements to the Land.

"Development Application" means a development application for bulk earthworks in relation to part of the Land.

"Development Consent" means approval by the Council to the Development Application.

"Development Contributions" means those contributions referred to in the Development Contributions Schedule and includes Contribution Amounts, DECCW Land Contribution and DET Land Contribution.

"Development Contributions Schedule" means the Development Contributions set out in Table 1, Table 1 and Table 2 of Schedule 3.

"DG Certificate" means, in respect of an Application for subdivision of the Land, the certificate to be provided by the Director-General to the Council as contemplated by the proposed LEP.

"Director-General" means the Director-General of DOP from time to time.

"Dispute Resolution Procedures" means the procedures imposed on the relevant Parties under Schedule 6.

"DOP" means the New South Wales Department of Planning.

"DOP Contribution" means each contribution made by each Landowner under Item 3 (DOP Contribution) in Table 1 of Schedule 3.

"Dwelling" means a building or part of a building that is designed, constructed or adapted for use as a single residence (including a detached or semi-detached house, terrace or town house, duplex, villa-home, home unit or residential flat).

Entitle, Entitled and Entitlement means the entitlement of a Landowner to a Road Works Credit Offset pursuant to paragraph 33.7 of Schedule 3.

"Explanatory Note" means the explanatory note relating to this deed, as required by clause 25E of the Regulation.

"First Landowner" has the meaning given to that term in paragraph 13(a) of Schedule 10.

"First Year of Instalments" means the amount of all instalments to be made by the relevant Landowner in respect of its part of the Road Contribution during the first 12 months of the relevant Suspension Period.

"Gazettal Date" means the date of gazettal of the LEP, being 8 May 2009.

"General Register of Deeds" means the land registry so entitled and maintained under the Conveyancing Act.

"Glenmore Park Stage 2" means the Land the subject of the Development.

"Integral Energy" means Integral Energy Australia, a state owned corporation established under the *Energy Services Corporations Act 1995* (NSW).

"Land" that land identified in the plan attached as Annexure A, being the land described in Schedule 2.

"Landowners" means each of Lensworth, Norwest Land, Holicombe, Vianello and Mint Holdings and their successors and assigns.

"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.

"LEADR" means Lawyers Engaged in Alternative Dispute Resolution or, if no such organisation exists, a similar organisation reasonably selected by the Parties to a dispute.

"LEP" means the environmental planning instrument known as the "Penrith Local Environment Plan (Glenmore Park Stage 2) 2009".

"Modification" means a "modification" of a Consent within the meaning of section 96 of the Act.

"Net Developable Hectare" or **"NDH"** means Land proposed to be used for residential purposes within the land zoned Residential R1 or R2 in the LEP, but excluding:

- (a) land set aside for publicly-owned community facilities and community services provided under section 94 of the Act;
- (b) land set aside for public schools;
- (c) land set aside for publicly-owned health facilities;
- (d) land set aside for ambulance stations, fire stations and police stations;
- (e) roads to be provided under the provision of section 94 of the Act;
- (f) half the width of any road fronting:
 - (i) the Mulgoa Nature Reserve referred to in the LEP;
 - (ii) land zoned E1 in the LEP;
 - (iii) land zoned E2 in the LEP;
 - (iv) land zoned RE1 in the LEP; and

(g) areas for facilities provided by, or for, Sydney Water or Integral Energy.

"Nominated School Site" means that part of the Land with an area of not less than 2.25 hectares nominated by the Landowners as the proposed School Site, which is identified as the "Proposed School Site" in the plan attached to this deed as Annexure A.

"Nominee" means the Authority nominated by the Minister from time to time to take transfer of the DECCW Land or the School Site (as the case may be).

"Nominated Residual School Site" means that part of the Land with an area of approximately 0.75 hectares of Land nominated by the Landowners as the proposed Residual School Site, provided that that area is in close proximity to the School Site.

"Occupation Certificate" means a certificate referred to in section 109C(1)(c) of the Act.

"Other Landowner" has the meaning given to that term in paragraph 13(a) of Schedule 10.

"Party" means a party to this deed, including their respective successors and assigns.

"Plan of Subdivision" means a registered plan of subdivision within the meaning of section 195 of the Conveyancing Act.

"Planning Agreement" means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2.1(c), comprising the form and content of this deed.

"Put Option" means the option under paragraph 5.2 of Schedule 3 whereby Holicombe has the right to require the Minister (or Nominee) to acquire Holicombe's right, title and interest in the DECCW Land at any time after the creation of a separate lot or lots for the DECCW Land pursuant to paragraph 5.1 of Schedule 3.

"Put Option Fee" means \$1 (plus GST).

"R&BCI" means the published index for road and bridge construction for New South Wales as determined by the Australian Bureau of Statistics each quarter which, at the date of this agreement, is set out at table 16 catalogue number 6427 - known as "Output of the General Construction Industry - Producer Price Indexes" and noted as index number 4121 of series id of A2333685A, or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.

"Real Property Act" means the *Real Property Act 1900* (NSW).

"Regulation" means the Environmental Planning and Assessment Regulation 2000 (NSW).

"Release and Discharge Terms" means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 4.

"Residential Lot" means any lot which is to be created by the registration of a Plan of Subdivision at the Land and Property Information New South Wales

and which is to be improved by the construction of not more than one Dwelling thereon.

"Residual School Site" means the proposed site to form part of a primary school nominated by the Landowners in consultation with, and as approved by, the Minister in accordance with paragraph 4.5 of Schedule 3, such site to be contiguous with the School Site and to comprise approximately 0.75 hectares of Land and, for the avoidance of doubt, may be the Alternative Residual School Site, as the context requires.

"Review or Replacement Procedures" means the procedures set out in Schedule 5.

"Road Contribution" means each contribution made by each Landowner under Item 1 (Road Contribution) of Table 1 in Schedule 3.

"Road Works" means:

- (a) undertaking the upgrade works to the intersection located at The Northern Road and Bradley Street; and
- (b) the installation of traffic signals and associated road works.

"Road Works Credit Offset" has the meaning given to that term in paragraph Schedule 33.7 of Schedule 3.

"RTA" means the Roads and Traffic Authority of New South Wales constituted under the *Transport Administration Act 1988* (NSW).

"RTA Agreement" has the meaning given to that term in paragraph 3.6(a) of Schedule 3.

"School Site" means land to be used for the purposes of a primary school with an area of not less than 2.25 hectares located at a site that meets the Site Selection Criteria within the Land nominated by the Landowners in consultation with, and as approved by, the Minister in accordance with paragraph 4.2 of Schedule 3, and, for the avoidance of doubt, such site may be the Alternative School Site, as the context requires.

"Site Selection Criteria" means the following criteria used to select the Nominated School Site or the Alternative School Site (as the case may be) and the Nominated Residual School Site or the Alternative Residual School Site (as the case may be) pursuant to paragraph 4.2 or 4.5 of Schedule 3 (as the case may be):

- (a) the location of the site must be central to the development area;
- (b) the shape of the site must be substantially regular;
- (c) the gradient of the site must be no greater than 1 in 10;
- (d) the site must be located above 1 in 100 year flood level;
- (e) the site must be well drained;
- (f) a site audit statement must be available in respect of the site confirming the site is able to be used as a primary school;

- (g) the site must be located on a distributor or collector loop road;
- (h) the site must have a minimum road frontage of 200 metres with road frontage ideally on two sides; and
- (i) where fill has been used on the site, the filled part of the site must be compacted to meet AS3798-2000 compaction requirements.

"Subdivision Certificate" means a certificate issued under section 109C(1)(d) of the Act for a plan creating residential Allotments.

"Sunset Date" means 31 December 2009.

"Suspension Period" has the meaning given to that term in paragraph 3.6(f) of Schedule 3.

"Surveyor" means an appropriately experienced, qualified and registered surveyor engaged by any of the Landowners.

"Sydney Water" means Sydney Water Corporation Limited ACN 063 279 649.

"Valuation Brief" means, for the purpose of paragraph 4.6 of Schedule 3, the set of guidelines to be followed in assessing the value of the Nominated Residual School Site having regard to the principles that would apply in determining the amount of compensation payable under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) if the Nominated Residual School Site had been compulsorily acquired by the Minister under the *Education Act 1900* (NSW).

"Valuer" means a valuer who is a full member of the Australian Property Institute (NSW Division) with not less than 10 years of active engagement and experience in valuing properties which are used for purposes similar to the purpose for which the land the subject of the valuation is to be proposed to be used.

"Works Authorisation Deed" means any deed entered into by the RTA and any one or more of the Landowners after the date of this deed for the purpose of carrying out any part of the Road Works.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) if more than one person is identified as the Landowners, that expression refers to each Landowner separately, and the obligations of the Landowners under this deed bind them severally only. In respect of Vianello, Sergio Vianello and Assunta Vianello are jointly and severally bound in relation to the obligations of Vianello under this deed;
- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "includes" in any form is not a word of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency; and
- (l) the Schedules and Annexures form part of this deed.

2. Status of this deed

2.1 Status

- (a) This deed applies to all Development of the Land.
- (b) Until the Planning Agreement operates, this deed constitutes an irrevocable offer from each Landowner to enter into the Planning Agreement if Development Consent is granted to any part of the Development on the Land.
- (c) The Planning Agreement operates only if:
 - (i) the carrying out of the Development is subject to a condition imposed under section 93I(3) of the Act requiring the Planning Agreement to be entered into; and
 - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation.
- (d) The Minister must notify the Landowners immediately after the Minister executes this deed and promptly provide the Landowners with the deed as executed by the Minister.

2.2 Not used

3. Planning Agreement under the Act

The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

4. Application of the Planning Agreement

The Planning Agreement applies to:

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

5. Development Contributions

Each Landowner will provide its Development Contributions in accordance with the Development Contributions Schedule and otherwise on the terms of this Planning Agreement.

6. Minister Acknowledgements and requirements

- (a) The Minister agrees to use reasonable endeavours to procure:
 - (i) the RTA to use the Road Contribution for the sole purpose of constructing and maintaining roads on, and immediately adjacent to, the Land, including, without limitation, the installation of traffic signals, upgrading existing roads and intersections and associated road works;
 - (ii) DET to use the DET Land Contribution for the sole purpose of developing a primary school on the Land; and
 - (iii) DECCW to use the DECCW Land Contribution for the sole purpose of obtaining an environmental outcome, in particular, the conservation or enhancement of the natural environment.
- (b) The Minister agrees to use the DOP Contribution for the sole purpose of paying DOP's reasonable costs in connection with this deed.

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

7.1 Application of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

8. Interests in the Land

8.1 Ownership

- (a) Each Landowner (other than Holicombe) separately represents and warrants to the Minister that as at the date of this deed, it is the legal and beneficial owner of that part of the Land which is nominated as being owned by it in Schedule 2.
- (b) Holicombe represents and warrants to the Minister that as at the date of this deed, it is the legal owner of that part of the Land as is nominated as being owned by it in Schedule 2 and enters into this deed in its capacity as trustee of the Wearn Quarry Trust.

8.2 Registration of the Planning Agreement

- (a) Each Landowner agrees that it will procure the registration of the Planning Agreement under the Real Property Act in the relevant folios of the register for the Land for which it is the legal owner in accordance with section 93H of the Act.
- (b) Each Landowner at its own expense will, promptly after the Planning Agreement is entered into, take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:

- (i) the consent of each person who:

- A. has an estate or interest in that part of the Land which it is the legal owner registered under the Real Property Act; or
- B. is seized or possessed of an estate or interest in that part of the Land for which it is the legal owner; and

- (ii) the execution of any documents; and

- (iii) the production of the relevant duplicate certificates of title,

to enable the registration of the Planning Agreement under the Real Property Act in the relevant folios of the register for that part of the Land for which it is the legal owner in accordance with section 93H of the Act.

- (c) Each Landowner, at its own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
 - (i) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement is entered into but in any event, no later than 20 Business Days after that date; and
 - (ii) to procure the registration of the Planning Agreement by the Registrar-General either in the relevant folios of the

register for the Land or in the General Register of Deeds if the Planning Agreement relates to land not under the Real Property Act as soon as reasonably practicable after the Planning Agreement is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Landowners lodge the Planning Agreement with the Registrar-General.

8.3 Release and discharge of this deed

The Minister agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.

9. Review or Replacement of this deed

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

10. Dispute Resolution

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

11. GST

11.1 Interpretation

In this clause 11:

- (a) except where the context suggests otherwise, terms used in this clause 11 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 11; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

11.2 Intention of the parties

Without limiting the operation of this clause 11, the parties intend that:

- (a) Divisions 81 and 82 of the GST Act apply to the supplies made under and in respect of this deed;
- (b) no tax invoices will be exchanged between the parties; and
- (c) no additional amounts will be payable on account of GST.

11.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred

will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

11.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 11.

11.5 Additional amount of GST payable

Subject to clause 11.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this deed:

- (a) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply (**GST Amount**), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11.5(a).

11.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 11.5 and clause 11.7), varies from the additional amount paid by the Recipient under clause 11.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 11.5(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 11.5.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

11.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 11.5 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 11.5 shall:
 - (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
 - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 11.5 (or the time at which such GST Amount would have been payable in accordance with clause 11.5 but for the operation of clause 11.7(a)).

11.8 No merger

This clause will not merge on completion or termination of the deed.

12. Overdue payments

- (a) Each Landowner separately agrees to pay the Minister interest on any amount payable by it under the Planning Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Landowner, calculated on daily balances. The rate to be applied to each daily balance is the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised annually by the Minister. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 12.
- (c) Each Landowner's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of the Planning Agreement.

13. Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

14. 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 deed.

15. Several liability of Landowner

Unless expressly provided to the contrary in this deed, the Parties acknowledge and agree that:

- (a) the obligations of each Landowner under this deed are several to the obligations of each other Landowner under this deed;
- (b) a Landowner does not guarantee the performance by any other Landowner in respect of that other Landowner's obligations under this deed;
- (c) a breach by one Landowner of its obligations under this deed, does not constitute a breach by any other Landowner of its obligations under this deed; and
- (d) any failure by one Landowner to comply with any of its obligations under this deed will not be relied upon by the Director-General as a reason for withholding his or her certification that satisfactory arrangements have been made for the contribution to the provision of designated public state infrastructure for the benefit of any other Landowner.

16. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 10.

Executed as a deed.

Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Planning instrument and/or development application - (Section 93F(1)) The Landowners have: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a development application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) No
Description of the land to which this deed applies- (Section 93F(3)(a))	The whole of the land described in Schedule 2.
Description of change to the environmental planning instrument to which this deed applies- (Section 93F(3)(b))	The gazettal of a new environmental planning instrument (being the LEP) relating to the Land.
The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))	See Schedule 3.
Applicability of Section 94 of the Act - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded.
Applicability of Section 94A of the Act - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded.
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is excluded.
Consideration of contributions - (Section 93F(3)(c))	Benefits under this deed are not to be taken into consideration in determining a development contribution under section 94.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 10 and Schedule 6.
Enforcement of the Planning Agreement - (Section 93F(3)(g))	See clause 8.2, paragraphs 4.9 and 5.7 of Schedule 3 and Schedule 7 .

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
Registration of this deed (Section 93F(3)(g)) The parties agree that the Planning Agreement will be registered in accordance with clause 8.	Yes
No obligation to grant consent or exercise functions - (Section 93F(9))	See paragraph 7 of Schedule 10.

Schedule 2 - Land

1. Title

The Land comprises those parts of the land within the boundaries of the land shown outlined in Annexure A owned by each of the Landowners as described below:

(a) **Lensworth owns the whole of the land described in:**

Part of lot 8832 in Deposited Plan 1109846, being part of the land comprised in Folio Identifier 8832/1109846

(b) **Norwest Land owns the whole of the land described in:**

Lot 1 in Deposited Plan 541090, being the whole of the land comprised in Folio Identifier 1/541090

(c) **Vianello owns the whole of the land described in:**

Part of Lot 1 in Deposited Plan 224861, being part of the land comprised in Folio Identifier 1/224861

Part of Lot 4 in Deposited Plan 226490, being part of the land comprised in Folio Identifier 4/226490

(d) **Mint Holdings owns the whole of the land described in:**

Part of Lot 2 in Deposited Plan 541090, being part of the land comprised in Folio Identifier 2/541090

(e) **Holicombe owns the whole of the land described in:**

Lot 1 in Deposited Plan 222144, being the whole of the land comprised in Folio Identifier 1/222144

Schedule 3 - Development Contributions Schedule

1. Development Contributions - the Planning Agreement

Each Landowner undertakes to provide the Development Contributions as set out and provided for in Column 1 of the tables below no later than the date or event described in Column 2 of the tables below.

Table 1 Contribution Amounts

Column 1	Column 2
Development Contribution	Date Development Contribution is payable
<p>ITEM 1. ROAD CONTRIBUTION</p> <p>Subject to paragraph 3.1 and 3.6 of this Schedule, the Road Contribution is \$22,500,000 to be paid by the Landowners progressively by instalments (as provided in paragraph 3.1 of this Schedule) as follows:</p> <ul style="list-style-type: none"> • \$3,637,721 payable by Lensworth; • \$9,088,611 payable by Norwest Land; • \$8,779,361 payable by Vianello; • \$994,307 payable by Mint Holdings; and • \$0 payable by Holicombe. 	<p>Before the transfer of each Allotment comprised in a Plan of Subdivision in respect of any part of the Land owned by that Landowner where the Land the subject of that Subdivision Certificate is intended to be used for residential purposes.</p>
ITEM 2. NOT USED	
<p>ITEM 3. DOP CONTRIBUTION</p> <p>The DOP Contribution is an amount equal to the costs incurred by the Minister in connection with this deed up to a maximum of \$175,000 as determined by the Minister to be paid by the Landowners in the percentage proportions set out in paragraph 3.3 of this Schedule.</p>	<p>In respect of each Landowner, within 10 Business Days after receipt of the Minister's tax invoice, pursuant to paragraph 3.3 of this Schedule.</p>

Table 2 Land Contributions

Column 1	Column 2
Development Contribution	Date Development Contribution is to be dedicated

ITEM 4. DET LAND CONTRIBUTION	
The School Site and the Residual School Site, subject to paragraph 4 of this Schedule.	As soon as reasonably possible after the DET Dedication Date
ITEM 5. DECCW LAND CONTRIBUTION	
The DECCW Land.	<p>Subject to paragraph 5 of this Schedule 3, the earlier of:</p> <p>(a) any date nominated in writing by Holicombe; and</p> <p>(b) the date on which the Minister exercises the Call Option.</p>

2. Landowner undertakings

Each Landowner undertakes:

- (a) to pay, or effect payment of, each of the Contribution Amounts to the Minister (or Nominee) at the time specified in Column 2 of Table 1 of this Schedule;
- (b) to effect, or procure the effecting of, the transfer of the DET Land Contribution and DECCW Land Contribution (by way of Real Property Act transfers in registrable form) to the Minister (or such other Authority as the Minister may direct in writing from time to time) at the time specified in Column 2 of Table 2 of this Schedule;
- (c) to consult regularly with the Minister, respond within a reasonable period to the Minister's questions, queries and enquiries (acting reasonably) and generally keep the Minister informed regarding the progress of the Development to the extent such matters relate to the payment or, provision of, a Development Contribution; and
- (d) at least once every 12 months during the currency of this deed, to provide the Minister with a written report providing full particulars of the payments or provision of Development Contributions achieved during the preceding 12 months.

3. Contribution Amounts

3.1 Road Contribution

That part of the Road Contribution payable by each Landowner as described in Item 1 of Table 1 of this Schedule shall be payable progressively by instalments in respect of each Allotment comprised in a Plan of Subdivision in respect of any part of the Land owned by that Landowner before the transfer of each such Allotment. Each such instalment is to be determined in accordance with the following formula:

$$L = \frac{A}{N}$$

Where:

"L" means the amount of any instalment to be paid by a Landowner as part of the Road Contribution for each Allotment comprised in the relevant Plan of Subdivision.

"N" means the number of Allotments comprised in the relevant Plan of Subdivision.

"A" means the amount of the Road Contribution to be paid by a Landowner in respect of the NDHL (as defined below).

For the purposes of determining L, A is calculated in accordance with the following formula;

(a) Formula 1; or

$$A = \frac{NDHL}{X} \times T \times \frac{B}{C} \times \frac{2}{3}$$

(b) Formula 2

$$A = \frac{NDHL}{X} \times T \times \frac{B}{C}$$

Formula 1 applies if payments are made:

- (a) on or before 30 June 2011;
- (b) if and for such time as a Credit Scheme is operating; or
- (c) if and for such time that the Government of New South Wales extends beyond 30 June 2011 the reduction to infrastructure contributions as contemplated in the Premier's announcement in December 2008 and as confirmed in Circular PS08-017.

Formula 2 applies if payments are made:

- (a) on or after 1 July 2011; and
- (b) where a Credit Scheme is not operating.

If $B < C$ then $\frac{B}{C} = 1$

"NDHL" means the number of Net Developable Hectares comprised in the relevant Plan of Subdivision.

"T" means the total amount to be paid by that Landowner for the Road Contribution, as set out in Column 1 of Item 1 of this Schedule, as reduced under paragraph 3.6 and paragraph 3.7 of this Schedule.

"X" means:

- (a) for Lensworth, 33.35;
- (b) for Norwest Land, 48.26;
- (c) for Vianello, 20.74;
- (d) for Mint Holdings, 6.60; and
- (e) for Holicombe, 16.96.

"B" means the most recent R&BCI determined prior to the date of transfer of each relevant Allotment.

"C" means the most recent R&BCI determined before the Commencement Date.

3.2 Not used

3.3 DOP Contribution

- (a) The Minister agrees to provide to each Landowner a tax invoice setting out the Minister's reasonable costs incurred in connection with this deed.
- (b) The Landowners agree to pay to the Minister the costs incurred by the Minister in connection with this deed up to a maximum of \$175,000 as determined by the Minister, within 10 Business Days of receipt of the Minister's tax invoice, in the following percentage proportions:
 - (i) Lensworth: 26.49%;
 - (ii) Norwest Land: 38.33%;
 - (iii) Vianello: 16.47%;
 - (iv) Mint Holdings: 5.24%; and
 - (v) Holicombe: 13.47%.

3.4 Finalisation of Contribution Amounts

If, in respect of a Landowner, within 10 Business Days of the date of transfer of the last Allotment in respect of that Landowner's Land to be transferred (i.e. there are no further Allotments to be transferred in respect of that Landowner's Land), that Landowner:

- (a) has not paid to the Minister an amount equivalent to the total amount of Contribution Amounts payable by that Landowner for Item 1 as set out in Column 1 of Table 1 of this Schedule (as reduced by the operation of paragraph 3.6 of this Schedule) (**Contribution Amount Payable**), then that Landowner must, within 30 Business Days after any request from the Minister (which may be given at any time after the transfer of the last Allotment in respect of that Landowner's Land to be transferred), pay to the Minister any amount by which the Contribution Amount Payable for such Item is more than the aggregate of all instalments actually

paid by that Landowner in respect of that Contribution Amount Payable under this deed; or

- (b) has paid to the Minister an amount which is more than the Contribution Amount payable for Item 1 as set out in Column 1 of Table 1 of this Schedule (as reduced by the operation of paragraph 3.6 of this Schedule), then the Minister must, within 30 Business Days after any request from that Landowner (which may be given at any time after the transfer of the last Allotment in respect of that Landowner's Land to be transferred), pay to that Landowner any amount by which the aggregate of all instalments actually paid by that Landowner in respect of the Contribution Amount Payable for such Item exceeds the amount of the Contribution Amount Payable for such Item.

3.4A Further adjustments to finalisation of Contribution Amounts

- (a) For the purposes of paragraphs 3.4 and 3.6 of this Schedule, any Road Contribution determined in accordance with Formula 1 (referred to in paragraph 3.1 of this Schedule) prior to 30 June 2011 or during such period for which the Government of New South Wales extends beyond 30 June 2011 the reduction in infrastructure contributions as contemplated in the Premier's announcement in December 2008 and as confirmed in Circular PS08-017, shall be deemed to be an amount equivalent to IA where IA is determined in accordance with the following formula:

$$IA = A + \frac{A}{2} + B$$

where:

"A" means the amount of the Road Contribution paid in accordance with Formula 1 referred to in paragraph 3.1 of this Schedule in respect of the Road Works carried out prior to 30 June 2011 or during such period for which the Government of New South Wales extends beyond 30 June 2011 the reduction in infrastructure contributions as contemplated in the Premier's announcement in December 2008 and as confirmed in Circular PS08-017; and

"B" means any Agreed Road Works Amount in respect of any Road Works carried out by the Landowner pursuant to paragraph 3.6 of this Schedule,

- (b) For the purposes of paragraph 3.4 of this Schedule, where any Road Works Credit Offset to which one Landowner (**First Landowner**) has become Entitled is utilised by another Landowner (**Second Landowner**) pursuant to paragraph 3.7(e) of this Schedule, then the amount of that Road Works Credit Offset will be taken into account as follows:
 - (i) the Second Landowner will be taken to have paid an amount equivalent to the amount of that Road Works Credit Offset in respect of that part of the Road Contribution payable by it; and

- (ii) the First Landowner will be taken to have paid to the Minister in respect of the Contribution Amounts referred to in Item 1 of Column 1 of Table 1 an amount equivalent to Y where Y is determined in accordance with the following formula:

$$Y = RWCO - Z$$

where:

"RWCO" is the amount of the Road Works Credit Offset to which the First Landowner was first Entitled pursuant to paragraph 3.7(b) of this Schedule; and

"Z" is the amount of the Road Works Credit Amount to which the Second Landowner has become Entitled pursuant to paragraph 3.7(e) of this Schedule.

3.5 Certification - Net Developable Hectares

This paragraph 3.5 applies to any Contribution Amount which is payable progressively in relation to the number of Allotments comprised in a Plan of Subdivision in respect of the Land owned by a Landowner.

- (a) Prior to a Landowner making a Contribution Amount payment to the Minister before the transfer of any Allotment comprised in a Plan of Subdivision the subject of a Subdivision Certificate in accordance with Table 1 of this Schedule, that Landowner must provide to the Minister a certification (acceptable to the Minister (acting reasonably)) signed by the Surveyor which confirms the number of Net Developable Hectares comprised in the Plan of Subdivision the subject of that Subdivision Certificate (**Surveyor's Certification**).
- (b) Within 7 Business Days of receiving a Surveyor's Certification, the Minister must notify the relevant Landowner of its acceptance (or otherwise) of any such Surveyor's Certification.
- (c) If the Minister notifies the relevant Landowner that it does not accept a Surveyor's Certification or otherwise fails to notify the relevant Landowner within the 7 Business Day period referred to in paragraph (b), then such action will be deemed to be a dispute for the purposes of this deed and will be resolved in accordance with Schedule 6.

3.6 Works Authorisation Deed

- (a) The Parties acknowledge that after the date that the Planning Agreement operates, any one or more of the Landowners may agree to enter into a legally binding agreement or agreements with the RTA (including, if required by the RTA, entering into a Works Authorisation Deed or other necessary documentation as required by the RTA) (**RTA Agreement**) to carry out any of the Road Works.
- (b) Where any one or more of the Landowners enters into a RTA Agreement to carry out any of the Road Works, the Parties agree

that the portion of Road Contribution payable by that Landowner or Landowners will be reduced by the Agreed Road Works Amount for those Road Works, it being acknowledged by the Minister that the Landowner's or Landowners' obligations to pay their portion of the Road Contribution shall be subject to any such reduction.

- (c) Any reduction in a Landowner's or Landowners' portion of the Road Contribution under paragraph 3.6(b) or 3.7 above shall only occur after:
 - (i) the Minister is satisfied, acting reasonably, that a RTA Agreement (including, if required by the RTA, entering into a Works Authorisation Deed or other necessary documentation as required by the RTA and a Landowner to provide to the RTA all security which the RTA requires to secure the performance of that Landowner of such Works Authorisation Deed or other necessary documentation) has been entered into between the RTA and any one or more of the Landowners in relation to the relevant Road Works; and
 - (ii) the Minister has received evidence reasonably satisfactory to the Minister in relation to the quantum of the Agreed Road Works Amount relevant to the Road Works the subject of that RTA Agreement.
- (d) Any Landowner may give written notice to the Minister if it anticipates entering into, within 3 years of the date of that notice, a RTA Agreement to carry out the whole or any part of the Road Works.
- (e) The notice referred to in paragraph 3.6(d) of this Schedule must specify the Landowner's reasonable estimate of the Agreed Road Works Amount relevant to those Road Works.
- (f) The Minister agrees that any obligations of the Landowner to pay any part of the Road Contribution under paragraph 3.1 of this Schedule 3 which otherwise becomes payable at any time during the 3 year period referred to in any notice under paragraph 3.6(d) of this Schedule 3 (**Suspension Period**) is suspended, providing the total amount of all such payments on account of the Road Contribution, payable by that Landowner and which are suspended by operation of this paragraph, must never exceed:
 - (i) the Agreed Road Works Amount in respect of those Road Works as estimated by the Landowner in the notice given by that Landowner under paragraph 3.6(d) of this Schedule 3; or
 - (ii) the Agreed Road Works Amount for those Road Works once agreed between that Landowner and the RTA.

The Minister and the Landowners agree that where a Landowner's obligation to pay any part of the Road Contribution under paragraph 3.1 of this Schedule 3 is suspended under this paragraph 3.6(f), the obligation of that Landowner to make that payment is delayed and postponed, and the Landowner is under no obligation

to make that payment for the duration of the Suspension Period. At the end of the Suspension Period, if:

- A. paragraph 3.6(g) of this Schedule operates, then the Landowner is relieved from all and any obligation under paragraph 3.1 of this Schedule 3 to pay that part of the Road Contribution payable by it; or
 - B. paragraph 3.6(g) of this Schedule does not operate, then the Landowner is obliged to make all such payments in respect of the relevant parts of the Road Contribution to the Minister within 5 Business Days of the end of the Suspension Period.
- (g) The Minister acknowledges that once the Landowner enters into a RTA Agreement, the amount of the Road Contribution which that Landowner is obliged to pay (under paragraph 3.1 of this Schedule 3) is reduced by an amount equivalent to the Agreed Road Works Amount relevant to that RTA Agreement and any obligation by that Landowner to pay any part of the Road Contribution under paragraph 3.1 of this Schedule 3 which has been suspended under paragraph 3.6(f) above is taken to be fully satisfied and discharged by that Landowner entering into that RTA Agreement.
- (h) Once a Landowner enters into a RTA Agreement, its obligation to make payments in respect of its part of the Road Contribution will not recommence until, and to the extent that, the aggregate of all instalments payable by that Landowner in respect of its part of the Road Contributions exceeds:
- (i) the amount of all instalments on account of its part of the Road Contribution paid by the Landowner prior to giving a notice under paragraph 3.6(d);
 - (ii) the amount of all instalments in respect of its part of the Road Contribution taken to be fully satisfied and discharged by that Landowner entering into a RTA Agreement (as provided for in paragraph 3.6(g) of this Schedule 3); and
 - (iii) the amount by which the Agreed Road Works Amount in respect of that RTA Agreement exceeds the amount referred to in paragraph (ii) above.
- (i) Once the relevant Landowner enters into a RTA Agreement and provides to the RTA a Bank Guarantee to secure that Landowner's obligations under that RTA Agreement, assuming the Agreed Road Works Amount is equal to or greater than the quantum of the suspended payments of the Road Contribution by operation of paragraph 3.6(f) of this Schedule 3, the Minister agrees to return to that Landowner the Bank Guarantees provided by that Landowner to the Minister in respect of the Road Contributions (the payment of which have been suspended during the Suspension Period).
- (j) For the purpose of securing the obligations of a Landowner under a RTA Agreement to carry out any of the Road Works, the Minister and the Landowners acknowledge that the RTA may require a Bank

Guarantee from the Landowner or Landowners entering into that RTA Agreement.

- (k) Notwithstanding paragraph 3.6(f) of this Schedule 3 and notwithstanding the suspension of the obligation of the relevant Landowner to make payments of instalments in respect of the Road Contribution under paragraph 3.1 of this Schedule 3, the Landowner must provide to the Minister, in accordance with paragraph 1 of Schedule 7, Bank Guarantees securing its obligations to pay all such instalments of the Road Contribution.
- (l) Once the relevant Landowner enters into a RTA Agreement and provides to the RTA a Bank Guarantee to secure that Landowner's obligations under the RTA Agreement, the obligations of that Landowner under paragraph 1 of Schedule 7 to provide Bank Guarantees to the Minister having a face value of a specified amount to secure its obligations to pay instalments in respect of the Road Contributions are waived to the extent that paragraphs 3.6(g) or 3.7 of this Schedule operate to deem the Landowner as having satisfied its obligations to pay instalments (totalling the same amount) in respect of its part of the Road Contribution by virtue of having entered into a RTA Agreement.
- (m) Where any Landowner provides to the Minister the notice referred to in paragraph 3.6(d) of this Schedule 3, but does not enter into within 3 years from the date of that notice a RTA Agreement to carry out any of the Road Works, that Landowner must pay to the Minister an amount equivalent to the First Year of Instalments on account of its part of the Road Contribution the payment of which have been suspended under paragraph 3.6(f) of this Schedule 3 within 5 Business Days of the end of that 3 year period, failing which the Minister may make claims under the Bank Guarantees provided by that Landowner during the Suspension Period for amounts which total the amount of all such payments which have not been made by that Landowner.
- (n) Once payment of the amount the Landowner is obliged to make to the Minister is made under paragraph 3.6(m) of this Schedule, whether by the Landowner making that payment or by the Minister making claims under Bank Guarantees for amounts not less than that amount, then paragraphs 3.6(d) to 3.6(m) of this Schedule will continue to operate on the basis that the Suspension Period commences on the first anniversary of the original commencement date of the Suspension Period pursuant to the first notice given by the Landowner under paragraph 3.6(d) and those paragraphs 3.6(d) to 3.6(m) of this Schedule will apply *mutatis mutandis* to the obligations of that Landowner to pay instalments on account of its part of the Road Contribution and to provide Bank Guarantees pursuant to paragraph 1 of Schedule 7.

3.7 Road Contribution and Road Credit Offset

- (a) The parties agree that:
 - (i) if any one or more of the Landowners enters into an RTA Agreement to carry out any of the Road Works pursuant to paragraph 3.6 of this Schedule;

- (ii) the Agreed Road Works Amount in respect of those Road Works is greater than that part of the Road Contribution payable by the relevant Landowner pursuant to paragraph 3.1 of this Schedule; and
- (iii) the relevant Landowner carries out those Road Works pursuant to that RTA Agreement,

then that Landowner is relieved from all and any obligation under paragraph 3.1 of this Schedule to pay that part of the Road Contribution payable by it.

- (b) Where paragraph 3.7(a) of this Schedule applies, the amount of any credit to which the relevant Landowner may become Entitled pursuant to this paragraph 3.7 (**Road Works Credit Offset**) will be C, where C is determined in accordance with the following formula:

$$C = A - B$$

Where:

"C" means the amount of the Road Works Credit Offset.

"A" means the Agreed Road Works Amount.

"B" means that part of the Road Contribution payable by the relevant Landowner.

- (c) The relevant Landowner may request from the Minister an Entitlement to Road Works Credit Offset upon completion of the Road Works pursuant to an RTA Agreement if the relevant Landowner provides to the Minister:
 - (i) a written request requesting such Entitlement together with confirmation that practical completion of the Road Works has been achieved; and such other supporting documentation as is necessary for the Minister to determine whether practical completion of the Road Works has been achieved; and
 - (ii) such other information as is reasonably required by the Minister (promptly after any such request) in order for the Minister to assess the relevant Landowner's request for such Entitlement.
- (d) If the Road Works have reached practical completion and the Minister has received a request for an Entitlement from the relevant Landowner in relation to those Road Works, then:
 - (i) within 90 days of the Minister receiving all the information required under paragraph 3.7(c) of this Schedule, the Minister will notify the relevant Landowner in writing that its request has been approved and will, at the same time, issue a Road Works Credit Offset to that Landowner; and
 - (ii) on and from the date of the Minister's notice, the relevant Landowner is Entitled to the Road Works Credit Offset

for an amount determined in accordance with paragraph 3.7(b).

(e) If a Landowner:

- (i) has an Entitlement to a Road Works Credit Offset;
- (ii) provides a notice to the Minister that its Road Works Credit Offset should be made available to a specified amount to another Landowner; and
- (iii) that other Landowner issues a notice to the Minister requesting that its obligations to make Road Contributions be reduced by that specified amount,

then the Minister shall:

- (i) reduce the Road Works Credit Offset of the first Landowner by the specified amount; and
- (ii) issue to the other Landowner (or the second Landowner) a notice confirming that its obligations to make Road Contributions under paragraph 3.1 of this Schedule will be taken to have been satisfied by an amount equivalent to the specified amount.

3.8 Acknowledgements

(a) Each of the Landowners acknowledge and agree that in the event:

- (i) an RTA Agreement is entered into between any one or more of the Landowners and the RTA pursuant to paragraph 3.6 of this Schedule; and
- (ii) the Landowner(s) carry out any of the Road Works pursuant to that RTA Agreement:

then:

- A. the interim intersection at Bradley Street and The Northern Road must be designed and constructed in a manner suitable to accommodate up to 300 Residential Lots;
- B. the final intersection at Bradley Street and The Northern Road will be constructed no later than the date on which a total of 1,000 Residential Lots have been created in respect of the Land; and
- C. the Landowner(s) may undertake additional interim intersection works if that work is agreed in writing by that Landowner(s) and the RTA.

(b) Each of the Landowners acknowledge that in the event it is necessary to acquire land to widen Bradley Street at its approach to

The Northern Road intersection for the purpose of carrying out the Road Works:

- (i) the Landowners will agree with the RTA that such acquisition will be at the Cost and responsibility of the Landowners and not the RTA; and
- (ii) any Cost incurred by the Landowners in connection with that acquisition will not reduce the amount of the Road Contribution payable by the Landowners pursuant to Item 1 of paragraph 1 in this Schedule.

4. DET Land Contribution

4.1 Contribution to education

The Minister and each Landowner agrees that the Landowners must transfer their respective rights, titles and interests in the School Site to the Minister (or Nominee) in accordance with paragraph 4.3 of this Schedule.

4.2 Suitability of the School Site

- (a) The Landowners have nominated as the proposed School Site the Nominated School Site.
- (b) In determining whether the location of the Nominated School Site is suitable for the purposes of a primary school, the Minister will have reasonable regard to the Site Selection Criteria.
- (c) Subject to paragraph 4.2(d) of this Schedule, the relevant Landowner agrees to provide the Minister and its contractors and agents access to the Nominated School Site after the date of this deed for the purpose of determining whether or not the location of that site meets the requirements of the Site Selection Criteria.
- (d) The Landowners will grant access to the Nominated School Site to the Minister and its contractors and agents pursuant to paragraph 4.2(c) of this Schedule 3 Business Days after receipt by the Landowners of written notice from the person requiring access to the Nominated School Site that it requires access to the Nominated School Site.
- (e) The Minister agrees to use reasonable endeavours to provide written notice to each Landowner, within 60 Business Days of the date this deed is signed by the Minister, describing:
 - (i) whether or not the Nominated School Site meets the requirements of the Site Selection Criteria; and
 - (ii) if applicable, the reasons why the Nominated School Site does not meet the requirements of the Site Selection Criteria.
- (f) If the Minister fails to provide a written notice to each Landowner within 60 Business Days of it signing this deed as contemplated by paragraph 4.2(e) of this Schedule, or if the written notice so provided by the Minister states that the Nominated School Site does

not meet the requirements of the Site Selection Criteria, the Landowners may notify the Minister in writing:

- (i) within 5 Business Days of the date which is 60 Business Days after the Minister signs this deed, in the event the Minister fails to provide a written notice to each Landowner pursuant to paragraph 4.2(e) of this Schedule; or
- (ii) within 5 Business Days of receipt of the notice referred to in paragraph 4.2(e) of this Schedule,

that the Parties are deemed to be in dispute as to whether the Nominated School Site meets the requirements of the Site Selection Criteria in which event that dispute must be determined pursuant to the provisions of Schedule 6.

- (g) Where the Landowners accept the Minister's assessment that the Nominated School Site does not meet the requirements of the Site Selection Criteria, or it is determined pursuant to the provisions of Schedule 6 that the Nominated School Site does not meet the requirements of the Site Selection Criteria:

- (i) the Landowners agree to:
 - A. liaise with the Minister or DET, where necessary, to discuss the concerns of the Minister or DET as to why the Nominated School Site does not meet the requirements of the Site Selection Criteria;
 - B. take into account the reasonable concerns of the Minister or DET and its reasons as to why the Nominated School Site does not meet the requirements of the Site Selection Criteria; and
 - C. provide a notice, in writing, to the Minister, as soon as reasonably practicable after the date on which the last Landowner receives the notice referred to in paragraph 4.2(e) of this Schedule, nominating an alternative location within the Land for the School Site (**Alternative School Site**); and
- (ii) the Minister agrees to liaise with (and agrees to procure DET to liaise with) the Landowners, where necessary, to discuss the concerns of the Minister or DET as to why the Nominated School Site does not meet the requirements of the Site Selection Criteria.

- (h) The parties agree that where paragraph 4.2(f) of this Schedule applies, paragraphs 4.2(b) to 4.2(f) of this Schedule apply *mutatis mutandis* to the Alternative School Site on the basis that:

- (i) all references to "Nominated School Site" are replaced with "Alternative School Site"; and

- (ii) all references to "the Gazettal Date" are replaced with "the date of the notice referred to in paragraph 4.2(g)(i)C of this Schedule",

until, subject to paragraphs 4.2(i) and 4.2(j) of this Schedule, the date on which a suitable location for the School Site is approved by the Minister (acting reasonably).

- (i) If by the earlier of:

- (i) the date on which a total of 150 Residential Lots have been created in respect of that part of the Land owned by Lensworth;
- (ii) the date on which a total of 250 Residential Lots have been created in respect of the Land; or
- (iii) any later date that may be nominated by the Landowners in writing to the Minister,

the Landowners have nominated two Alternative School Sites in addition to the Nominated School Site and:

- A. the Minister has given the Landowners written notice pursuant to paragraph 4.2(e) of this Schedule that each of those sites do not meet the requirements of the Site Selection Criteria; or
- B. the determination of any dispute between the Parties pursuant to Schedule 6 has been determined in favour of the Minister, namely that those sites do not meet the Site Selection Criteria,

the Landowners must notify the Minister in writing that the Minister must nominate one of those sites as the School Site and, within 30 Business Days of that notice, the Minister must nominate one of those sites as the School Site.

- (j) If the Minister fails to nominate one of the sites referred to in paragraph 4.2(i) of this Schedule as the School Site within the period specified in paragraph 4.2(i) of this Schedule, the Parties are deemed to be in dispute as to the location of the School Site in which event that dispute must be determined pursuant to the provisions of paragraphs 4 to 11 of Schedule 6. In determining the location of the School Site, the appointed expert must nominate either:

- (i) any one of the sites referred to in paragraph 4.2 of this Schedule; or
- (ii) a different site to any of those previously nominated under paragraph 4.2 of this Schedule on a joint brief from the Parties.

- (k) For the purposes of paragraph 4.2(j)(ii) of this Schedule, any joint brief from the Parties must specify:

- (i) that the appointed expert must nominate a site that forms part of the Land with an area of not less than 2.25 hectares;
- (ii) that the appointed expert must:
 - A. have regard to the Site Selection Criteria; and
 - B. otherwise have regard to the provisions of paragraph 4.2 of this Schedule,
 in determining the location of the School Site; and
- (iii) any other issues that the Parties (acting reasonably) agree should be taken into account by the appointed expert in determining the location of the School Site.

4.3 Transfer of School Site

- (a) The Parties agree that, at any time prior to the DET Dedication Date, the relevant Landowner must notify the Minister that it intends to dedicate the School Site on the DET Dedication Date.
- (b) As soon as reasonably possible after the DET Dedication Date, the relevant Landowner (at their cost) must prepare and register a Plan of Subdivision to create a separate lot or lots for the School Site and must then deliver to the Minister (or Nominee):
 - (i) a form of transfer in respect of the Land comprising the School Site in favour of the Minister (or, in the Minister's discretion, to the Nominee) for a consideration of \$1, executed by the relevant Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (ii) the certificate or certificates of title for the School Site,
 and must take any other necessary action (other than paying stamp duty on the transfer in respect of the School Site) to give effect to the transfer of the title of the School Site to the Minister (or Nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this deed or easements or covenants which have been agreed by the Minister. The Minister agrees to act reasonably in relation to requests concerning the creation of such reservations, easements or other affectation and agrees not to unreasonably withhold consent where the relevant reservation, easement or other affectation does not impose a cost on the Minister.
- (c) All fees, charges and reasonable costs incurred by the Minister in relation to the registration of the transfer are to be met by the Landowners.

4.4 Registered Plans of Subdivision

- (a) Each of the Landowners agree to notify the Minister on an annual basis of the anticipated program for registering Plans of Subdivision in relation to that part of the Land each owns.
- (b) The Landowners will notify the Minister, in writing, when:
 - (i) a total of 250 Residential Lots have been registered in respect of the Land; or
 - (ii) a total of 150 Residential Lots have been registered in respect of that part of the Land owned by Lensworth,whichever is first to occur, within 20 Business Days of that event occurring.

4.5 Residual School Site

- (a) The Minister will use reasonable endeavours to provide written notice to each Landowner, within 20 Business Days of receiving the Landowners' notice referred to in paragraph 4.4(b) of this Schedule, of the need for the Residual School Site.
- (b) Within 20 Business Days of receipt of the notice referred to in paragraph 4.5(a) of this Schedule, the Landowners must notify the Minister, in writing, of the Nominated Residual School Site.
- (c) In determining whether the location of the Nominated Residual School Site is suitable for the purposes of a primary school, the Minister will have reasonable regard to the Site Selection Criteria.
- (d) The relevant Landowners agree to provide the Minister and its contractors and agents access to the Nominated Residual School Site after the date of the notice referred to in paragraph 4.5(b) of this Schedule for the purpose of determining whether or not the location of that site meets the requirements of the Site Selection Criteria.
- (e) The Minister agrees to use reasonable endeavours to notify the Landowners and the Minister, in writing, within 60 Business Days of receipt by the Minister of the notice referred to in paragraph 4.5(b) of this Schedule, describing:
 - (i) whether or not the Nominated Residual School Site meets the requirements of the Site Selection Criteria; and
 - (ii) if applicable, the reasons why the Nominated Residual School Site does not meet the requirements of the Site Selection Criteria.
- (f) If the Nominated Residual School Site meets the requirements of the Site Selection Criteria, the Minister agrees to:
 - (i) acquire the Nominated Residual School Site from the relevant Landowners in accordance with paragraph 4.7 of this Schedule; and

- (ii) pay to the relevant Landowners the value of the Nominated Residual School Site, as determined pursuant to paragraph 4.6 of this Schedule, as consideration for the transfer of the Nominated Residual School Site to the Minister (or Nominee),

within 40 Business Days of the date on which the relevant Landowner notifies the Minister pursuant to paragraph 4.3(a) of this Schedule 3.

- (g) Where the Nominated Residual School Site does not meet the requirements of the Site Selection Criteria and the Landowners receive the notice referred to in paragraph 4.5(e) of this Schedule to this effect:

- (i) the Landowners agree to:
 - A. liaise with the Minister or DET, where necessary, to discuss the concerns of the Minister or DET as to why the Nominated Residual School Site does not meet the requirements of the Site Selection Criteria;
 - B. take into account the reasonable concerns of the Minister or DET and its reasons as to why the Nominated Residual School Site does not meet the requirements of the Site Selection Criteria; and
 - C. provide a notice, in writing, to the Minister, as soon as reasonably practicable after the date on which the last Landowner receives the notice referred to in paragraph 4.5(e) of this Schedule, nominating an alternative location within the Land for the Residual School Site (**Alternative Residual School Site**); and
- (ii) the Minister agrees to liaise with (and agrees to procure DET to liaise with) the Landowners, where necessary, to discuss the concerns of the Minister or DET as to why the Nominated Residual School Site does not meet the requirements of the Site Selection Criteria.

- (h) The parties agree that where paragraph 4.5(g) of this Schedule applies, paragraphs 4.5(c) to 4.5(g) and paragraph 4.6 of this Schedule apply *mutatis mutandis* to the Alternative Residual School Site on the basis that all references to "Nominated Residual School Site" are replaced with "Alternative Residual School Site", until the date on which a suitable location for the Residual School Site is approved by the Minister (acting reasonably).

4.6 Valuation of the Residual School Site

- (a) The relevant Landowners and the Minister must, prior to the relevant Landowners transferring the Residual School Site to the Minister (or Nominee) in accordance with paragraph 4.7 of this Schedule, jointly appoint a Valuer to determine the valuation of the

Nominated Residual School Site in accordance with the Valuation Brief.

- (b) In the event that the relevant Landowners and the Minister fail to appoint a Valuer within 10 Business Days, those Landowners and the Minister must ask the president of the New South Wales division of the Australian Property Institute Incorporated to appoint the Valuer within a further 5 Business Days.
- (c) The Valuer must be instructed by the relevant Landowners and the Minister to:
 - (i) complete the valuation of the Nominated Residual School Site within 20 Business Days of the Valuer's appointment;
 - (ii) determine the value of the Nominated Residual School Site in accordance with the Valuation Brief; and
 - (iii) provide the relevant Landowners and the Minister with a copy of the valuation of the Nominated Residual School Site within 5 Business Days of its determination.
- (d) The Landowners and the Minister agree that the value of the Nominated Residual School Site as determined by the Valuer will be the value of the Nominated Residual School Site for the purpose of paragraph 4.5(f)(ii) of this Schedule.
- (e) The costs and expenses incurred in determining the value of the Nominated Residual School Site pursuant to paragraph 4.6 of this Schedule shall be borne by the relevant Landowners and the Minister in equal shares.

4.7 Transfer of Residual School Site

As soon as reasonably possible after the Minister has reasonably approved the location for the Residual School Site, the relevant Landowner (at their cost) must prepare and register a Plan of Subdivision to create a separate lot or lots for the Residual School Site and must then deliver to the Minister (or Nominee):

- (a) a form of transfer in respect of the Land comprising the Residual School Site in favour of the Minister (or, in the Minister's discretion, to the Nominee) for a consideration of the amount determined by the Valuer, payable on the date of transfer, executed by the relevant Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (b) the certificate or certificates of title for the Residual School Site,
- and must take any other necessary action (other than paying stamp duty on the transfer in respect of the Residual School Site) to give effect to the transfer of the title of the Residual School Site to the Minister (or Nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this

deed or easements or covenants which have been agreed by the Minister. The Minister agrees to act reasonably in relation to requests concerning the creation of such reservations, easements or other affectation and agrees not to unreasonably withhold consent where the relevant reservation, easement or other affectation does not impose a cost on the Minister.

All fees, charges and reasonable costs incurred by the Minister in relation to the registration of the transfer are to be met by the relevant Landowner.

4.8 Access to School Site and Residual School Site

Where:

- (a) the relevant Landowners have not yet dedicated their respective portion of the Land to the Minister pursuant to paragraphs 4.1 and 4.3 of this Schedule; or
- (b) the Minister has not yet acquired the Residual School Site from the relevant Landowners pursuant to paragraph 4.7 of this Schedule,

the relevant Landowners agree that they will:

- (i) provide the Minister and its contractors and agents access to the School Site and the Residual School Site for the purpose of planning for the construction of the primary school; and
- (ii) where applicable and if required by the Minister, provide its consent as owner of the School Site and the Residual School Site to the lodgement of an Application for the construction of the primary school.

4.9 Security for the transfer of Land to the Minister

Security for the transfer of the relevant Land to the Minister will be achieved by registration of this deed pursuant to clause 8.2.

5. DECCW Land Contribution

5.1 Creation of a separate lot(s) for the DECCW Land

- (a) As soon as reasonably practicable after the date of this deed, Holcombe (at its cost) must apply for, and procure, all Approvals to create a separate lot or lots for the DECCW Land.
- (b) Holcombe must keep the Minister reasonably informed in relation to the progress of obtaining the Approvals referred to in paragraph 5.1(a) of this Schedule.
- (c) Upon receipt by Holcombe of the Approvals, Holcombe (at its cost) must do all that is reasonably required to procure the Land and Property Information New South Wales to register a Plan of Subdivision to create a separate lot of lots for the DECCW Land consistent with those Approvals.
- (d) The Minister agrees to act reasonably in relation to requests concerning the creation of such reservations, easements or other affectation and agrees not to unreasonably withhold consent where

the relevant reservation, easement or other affectation does not impose a cost on the Minister. The Minister must not withhold its consent if the reservations, easements or other affectation are created in accordance with the Approvals.

- (e) The Landowners (other than Holicombe) agree to liaise and co-operate with, and to assist, Holicombe and do all things necessary to enable Holicombe to satisfy its obligations under this paragraph 5.1 of this Schedule.

5.2 Put Option

In consideration of the payment of the Put Option Fee by Holicombe to the Minister, the Minister grants to Holicombe the option to require the Minister (or Nominee) to acquire Holicombe's right, title and interest in the DECCW Land on the terms set out in paragraph 5.3 of this Schedule.

5.3 Exercise of Put Option

- (a) The Put Option may be exercised by Holicombe if Holicombe delivers to the Minister:
 - (i) a notice of exercise of Put Option in the form of annexure "B" signed by Holicombe;
 - (ii) a form of transfer in respect of the DECCW Land with the name of the transferee left blank for a consideration of \$1, executed by Holicombe and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue;
 - (iii) the certificate or certificates of title for the DECCW Land; and
 - (iv) such other documents as may be necessary to effect to the transfer of the DECCW Land to the Minister (or Nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this deed or easements or covenants which have been agreed by the Minister.
- (b) The Minister agrees to:
 - (i) sign the transfer in respect of the DECCW Land promptly upon receipt of that transfer from Holicombe; or
 - (ii) procure the Nominee to sign the transfer in respect of the DECCW Land promptly upon receipt of that transfer from Holicombe,and register (or procure the registration of) the transfer in respect of the DECCW Land promptly after the exercise of the Put Option.
- (c) By exercising the Put Option in accordance with paragraph 5.3(a) of this Schedule, Holicombe will be deemed to have transferred its

right, title and interest in the DECCW Land to the Minister (or Nominee).

- (d) The Minister and Holicombe agree to do whatever is necessary, in good faith and without delay, to give effect to:
 - (i) the Put Option set out in paragraph 5.2 of this Schedule; and
 - (ii) the transfer of the DECCW Land to the Minister (or Nominee).
- (e) For the avoidance of doubt, the Put Option may be exercised at any time after the date on which the Planning Agreement commences to operate under clause 2.1(c).
- (f) All fees, charges and reasonable costs incurred by the Minister in relation to the exercise of the Put Option and registration of the transfer are to be met by Holicombe.

5.4 Call Option

In consideration of the payment of the Call Option Fee by the Minister to Holicombe, Holicombe grants to the Minister (or Nominee) the option to require Holicombe to transfer its right, title and interest in the DECCW Land to the Minister (or Nominee) on the terms set out in paragraph 5.5 of this Schedule.

5.5 Exercise of Call Option

- (a) The Call Option may be exercised by the Minister (or Nominee) if during the Call Option Period the Minister delivers to Holicombe:
 - (i) a notice of exercise of Call Option in the form of annexure "C" signed by the Minister together with a form of transfer in respect of the DECCW Land in favour of the Minister for a consideration of \$1, executed by the Minister and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; or
 - (ii) a notice of exercise of Call Option in the form of annexure "D" signed by the Minister and the Nominee, together with a transfer in respect of the DECCW Land in favour of the Nominee for a consideration of \$1, executed by the Minister and the Nominee in registrable form except for acceptance by the transferee and marking by the Office of State Revenue.
- (b) Holicombe agrees to:
 - (i) sign the transfer in respect of the DECCW Land promptly upon receipt of that transfer from the Minister (or Nominee); and
 - (ii) give to the Minister (or Nominee) the certificate or certificates of title for the DECCW Land and such other documents as may be necessary to effect to the transfer

of the DECCW Land to the Minister (or Nominee) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this deed or easements or covenants which have been agreed by the Minister.

- (c) By the Minister (or Nominee) exercising the Call Option in accordance with paragraph 5.5(a) of this Schedule, Holicombe will be deemed to have transferred its right, title and interest in the DECCW Land to the Minister (or Nominee).
- (d) The Minister and Holicombe agree to do whatever is necessary, in good faith and without delay, to give effect to:
 - (i) the Call Option set out in paragraph 5.4 of this Schedule; and
 - (ii) the transfer of the DECCW Land to the Minister (or Nominee).
- (e) If the Call Option is not exercised by the Call Option Expiry Date, the Call Option lapses.
- (f) All fees, charges and reasonable costs incurred by the Minister in relation to the exercise of the Call Option and registration of the transfer are to be met by Holicombe.

5.6 Registered Right of Way

- (a) The parties acknowledge that the Land owned by Holicombe is subject to a registered right of way number G60452, as set out in Annexure A.
- (b) The Parties agree that any dedication or transfer of the DECCW Land to the Minister will be subject to the existing registered right of way referred to in paragraph 5.6(a) of this Schedule.
- (c) The Parties agree that the registered right of way referred to in paragraph 5.6(a) of this Schedule may, at any time by written agreement between Holicombe and the Minister, be released and discharged.

5.7 Security for the transfer of Land to the Minister

Security for the transfer of the DECCW Land to the Minister will be achieved by registration of this deed pursuant to clause 8.2.

5.8 Biodiversity Certification

If, at any time prior to dedication of the DECCW Land, a biodiversity agreement for the purposes of Part 7A of the *Threatened Species Conservation Act* 1955 (NSW) is entered into, the benefit of all biodiversity credits (as defined in that Act) that arise consequent upon entry into that biodiversity agreement shall accrue to Holicombe and Holicombe shall be entitled to retain, for its sole and absolute benefit, the benefit of all such credits.

5.9 Management of the DECCW Land

- (a) Until such time as the Minister (or Nominee) has acquired Holicombe's right, title and interest in the DECCW Land, Holicombe agrees, subject to compliance with all relevant Laws, to Manage the DECCW Land so that the DECCW Land, subject to paragraph 5.9(c) of this Schedule, remains in substantially the same condition as it was on the date that this deed is entered into.
- (b) Holicombe agrees that subject to Managing the DECCW Land, the DECCW Land:
 - (i) will only be used for cattle grazing; and
 - (ii) the use of the land or development on the land is not intensified beyond the levels existing on the date this deed is entered into.
- (c) The Minister may agree to development being carried out on the DECCW Land but only where:
 - (i) the Minister considers in her absolute discretion that the proposed development is consistent with environmental conservation of the land;
 - (ii) the Minister has consulted with the DECCW; and
 - (iii) where necessary, relevant Approvals are obtained by Holicombe.
- (d) For the purposes of this clause, **Manage** and **Managing** mean:
 - (i) construction, maintenance (including regular inspections) and repair of external boundary fences;
 - (ii) limiting access to the DECCW Land to those persons with legitimate business on the land;
 - (iii) the maintenance of public utilities;
 - (iv) any activity reasonably considered necessary to remove or reduce an imminent risk of serious personal injury or damage to property (including appropriate fire control measures); and
 - (v) removing, preventing and restricting the spread of noxious weeds under the Noxious Weeds Act 1993 (NSW).

6. Confirmation of satisfactory arrangements

- (a) The LEP provides that the Council must not consent to any subdivision of the Land for residential purposes in an urban release area that would create a lot smaller than the minimum lot size permitted on that Land immediately before it became, or became part of, an urban release area, unless the Director-General has certified in writing to the Council that satisfactory arrangements have been made for contributions to the provision of designated

State public infrastructure in relation to that part of the Land comprising that lot.

- (b) A Landowner must, at its Cost, 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 Director-General to determine whether to issue the DG Certificate.
- (c) Promptly following receipt of a written request from any Landowner for a DG Certificate and in reliance of the relevant Landowner's obligations in paragraph 6(d) of this Schedule, the Minister must use reasonable endeavours to procure that the Director-General, as soon as reasonably practicable, consider whether and, if appropriate, certify in writing to the Council (with a copy to the Landowners) that satisfactory arrangements have been made for the contribution to the provision of designated State public infrastructure in relation to the land the subject of the Application for subdivision of the Land.
- (d) Prior to the issue of any Subdivision Certificate in respect of any part of the Land, each relevant Landowner must give to the Minister a Bank Guarantee to secure that Landowner's obligation under paragraph 1 of Schedule 7 as required by paragraph 1 of Schedule 7.
- (e) Upon payment by each Landowner to the Minister of such parts of the Contribution Amounts payable by that Landowner in respect of the Land comprised in any Plan of Subdivision, the Minister agrees to return to that Landowner the Bank Guarantee in respect of that Plan of Subdivision, which the Landowner provided to the Minister pursuant to Schedule 7.

Schedule 4 - Release and Discharge Terms

- (a) Once a Landowner has paid such parts of the Contribution Amounts payable by that Landowner in respect of any part of the Land comprised in any Plan of Subdivision, the Minister must promptly:
 - (i) provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects that part of the Land owned by that Landowner comprised in that Plan of Subdivision; and
 - (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of that Land.
- (b) If the whole or any part of the Land is sold, transferred or disposed by a Landowner (**Transfer Land**) and the requirements of Schedule 8 have been satisfied in respect of that sale, transfer or disposal, then the Minister must promptly provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Transfer Land.
- (c) If the Planning Agreement is at any time registered in the relevant folio of the register of a separate allotment of land owned by a Landowner which does not form part of the Land, then at the request of that Landowner, the Minister must promptly:
 - (i) provide a release and discharge of the Planning Agreement from title of that land; and
 - (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of that land.

Schedule 5 - Review or Replacement Procedures

The Parties may agree to review this deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. For clarity, no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the parties.

Schedule 6 - Dispute resolution

1. Notice of Dispute

If a dispute between any of the Parties arises in connection with this deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

- (a) Any dispute between the Parties arising in connection with this deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation by a mediator agreed from time to time by each Party to the dispute.
- (b) If the Parties to the dispute cannot agree on a mediator within 10 Business Days of receipt by the relevant Party of the notice referred to in paragraph 1 of this Schedule, either Party may request LEADR to appoint a mediator.
- (c) Each party must use its best efforts to resolve the dispute by a mediation procedure to be agreed upon by each Party to the dispute.
- (d) If mediation does not result in the resolution of the dispute within 30 Business Days of the notice referred to in paragraph 1 of this Schedule (or such longer period as the Parties agree in writing), then either Party is entitled to commence litigation in respect of that dispute.

3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute within 30 Business Days of the notice referred to in paragraph 1 of this Schedule, any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with the requirements of this Schedule 6.

4. Choice of expert

A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
- (c) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.

The Parties must enter into an agreement with the expert appointed under this Schedule 6 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this deed.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and

- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.
- (d) If any expert does not award costs, the disputing Parties must each pay an equal share of the expert's costs in making the determination.

12. Other courses of action

If the mediation referred to in paragraph 2 does not result in resolution of the dispute and one of the Parties does not agree to refer the matter to expert determination in accordance with paragraph 3, any Party may take whatever

course of action it deems appropriate for the purpose of resolving the dispute, including (without limitation) by commencing proceedings in any Court of competent jurisdiction.

13. Confidentiality of information

The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (a) subject to paragraph (b) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
 - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

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:

- (d) 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
- (e) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (f) information, documents or other material 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.

Schedule 7 - Security Arrangements

1. Face value of Bank Guarantee

Prior to the issue of a Subdivision Certificate in respect of any part of the Land under paragraph 6 of Schedule 3, the Landowner who owns that part of the Land must procure and give to the Minister a Bank Guarantee with a face value of an amount equivalent to such parts of the Contribution Amounts to be paid by that Landowner in respect of the Land owned by that Landowner, being Land proposed to be subdivided and used for residential purposes pursuant to that Application.

2. Reduction or replacement

The Minister agrees that the face value of any Bank Guarantee provided by a Landowner will reduce in amount, or be replaced by Bank Guarantees with face values of reduced amounts, as determined by the Minister, acting reasonably, having regard to payments of the Contribution Amounts secured by that Bank Guarantee and made by that Landowner from time to time.

3. Expiry of Bank Guarantees

- (a) If any Bank Guarantee provided by a Landowner is expressed as expiring on a certain date, that Landowner must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 4.
- (b) The provision of the Bank Guarantee does not:
 - (i) relieve that Landowner from any of its obligations under any other provision of this deed; and
 - (ii) limit the right of the Minister to recover from that Landowner in full all money payable to the Minister under this deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister.

4. Failure to replace expired Bank Guarantee

If any Landowner fails to provide the Minister with a replacement Bank Guarantee in accordance with paragraph 3, the Minister may call on the full amount of such Bank Guarantee after giving 10 Business Days prior written notice to that Landowner.

5. Cash deposit

- (a) If the Minister makes demand under any Bank Guarantee pursuant to paragraph 4, the Minister must hold the full amount so paid to the Minister as a cash deposit ("Cash Deposit") in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Minister and with beneficial ownership vesting at all times in the Minister ("Cash Deposit Account"). The

Cash Deposit will operate to secure all the obligations under this deed of the Landowner that provided the relevant Bank Guarantee.

- (b) As beneficial owner of the Cash Deposit, the Minister may, at any time and without notice to the Landowners, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Minister for any liability, loss, cost, charge or expense incurred by the Minister because of failure by any Landowner to comply with all of its obligations under this deed.
- (c) All costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Minister withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Minister under this Planning Agreement and each Landowner has satisfied all of its obligations under this Planning Agreement, the Minister must pay the balance of the Cash Deposit Account, less all costs, charges, duties and taxes payable in connection with such payment, to each of the Landowners.
- (e) For the avoidance of doubt, the Landowners have no right to require the Minister to release the Cash Deposit until the Minister is reasonably satisfied that no moneys are, or may become, payable to the Minister under this deed.

6. Release of Cash Deposit

The Minister must release the Cash Deposit to the Landowners if each of the Landowners provide the Minister with a replacement Bank Guarantee complying with the requirements of paragraph 3.

7. Claims under Bank Guarantee

Each Landowner agrees that the Minister may make claims under a Bank Guarantee provided by them on the following basis:

- (a) in relation to that Landowner's obligations set out in Table 1 in Schedule 3; and
- (b) the Minister agrees not to make any claim under that Bank Guarantee without providing at least 10 Business Days' prior written notice to that Landowner of its intention to do so.

Schedule 8 - Assignment and Dealing Terms

1.1 Landowner rights to sell the whole of its interest in the Land

- (a) Each Landowner must not sell, transfer or dispose of the whole of its interest in the Land (other than a Residential Lot) (**Transfer Land**) unless before it sells, transfers or disposes of the Transfer Land to another person (**Transferee**):
 - (i) the Transferee delivers to the Minister and each other Landowner a deed signed by the Transferee in a form substantially the same as the Accession Deed set out in Annexure E, such deed to contain provisions under which the Transferee agrees to comply with so many of the obligations of the relevant Landowner under this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 as the Transferee and the relevant Landowner agree must be adopted by the Transferee (**Transferred Obligations**) as if it were joined as a party to this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 in the place of the relevant Landowner (including obligations which arose before the transfer, assignment or disposition) in relation to the Transferred Obligations only; and
 - (ii) the Minister is satisfied (acting reasonably) that the Transferee has provided security to the same extent of the security that has been provided by the relevant Landowner to ensure compliance with any obligations under this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 which remain to be performed, in respect of the relevant part of the Land to be transferred; and
 - (iii) the relevant Landowner and the Transferee pay the Minister's and the other Landowners' reasonable Costs in relation to that assignment.
- (b) If a Landowner sells, transfers or disposes of the whole of its interest in the Land and fully satisfies the requirements of paragraph 1.1(a) of this Schedule 8, the Landowner will be fully released from its obligations under this deed to the extent that such sale, transfer or disposal relates to the Transferred Obligations.

1.2 Landowner rights to sell any part of its interest in the Land

- (a) Each Landowner must not sell, transfer or dispose of any part (but not the whole) of its interest in the Land (other than a Residential Lot) unless before it sells, transfers or disposes of any such part of the Land to another person (**Proposed Transferee**):
 - (i) the Proposed Transferee delivers to the Minister and each other Landowner a deed signed by the Proposed Transferee in a form substantially the same as the

Accession Deed set out in Annexure E, such deed to contain provisions under which the Proposed Transferee agrees to comply with so many of the obligations of the relevant Landowner under this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 as the Proposed Transferee and the relevant Landowner agree (**Transferred Obligations**) as if it were joined as a party to this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 in the place of the relevant Landowner (including obligations which arose before the transfer, assignment or disposition) in relation to the Transferred Obligations only; and

- (ii) the Minister is satisfied (acting reasonably) that the Transferee has provided security to the same extent of the security that has been provided by the relevant Landowner to ensure compliance with any obligations under this deed and any Works Authorisation Deed or other legally binding agreement contemplated by paragraph 3.6 of Schedule 3 which remain to be performed, in respect of the relevant part of the Land to be transferred; and
 - (iii) the relevant Landowner and the Proposed Transferee pay the Minister's and the other Landowners' reasonable Costs in relation to that assignment.
- (b) If a Landowner sells, transfers or disposes of any part of its interest in the Land and fully satisfies the requirements of paragraph 1.2(a) of this Schedule 8, the Landowner will be released from its obligations under this deed to the extent that such sale, transfer or disposal relates to the Transferred Obligations.

Schedule 9 - Costs

Not used.

Schedule 10 - General terms

1. Notices

1.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below;

Minister

Address: 23-33 Bridge Street, SYDNEY NSW 2000
Telephone: (02) 9228 6111
Fax: (02) 9228 6455
Attention: Director of Legal Services Branch

Lensworth

Address: 133 Castlereagh Street, SYDNEY NSW 2000
Telephone: (02) 9035 2871
Fax: (02) 8988 2871
Attention: Andrew Boyd

Norwest Land

Address: FKP House, Level 4, 17-19 Bridge Street, SYDNEY NSW 2000
Telephone: (02) 9270 6100
Fax: (02) 9270 6199
Attention: Cameron Lamb

S & A Vianello

Address: "Hills of Home" 2183 The Northern Road, MULGOA NSW 2745
Telephone: (02) 4736 6838
Fax: (02) 4736 6838
Attention: Emilio Vianello

Mint Holdings

Address: 36 South Street RYDALMERE NSW 2166

Telephone: (02) 9898 8625

Fax: (02) 9898 1877

Attention: Bee Hong Leo

Holicombe

Address: 2091 Castlereagh Road, PENRITH NSW
2570

Telephone: (02) 4723 9900

Fax: (02) 4721 1809

Attention: Scott Jameson

1.2 Change of address

If a Party gives another 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.

1.3 Receipt

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (c) if it is 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.

1.4 Receipt - next Business Day

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, 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.

2. Approvals and Consent

Except as otherwise set out in this deed, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this deed in its absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

3. Assignment and dealings

None of the Parties to this deed may assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case unless stated otherwise in Schedule 8.

4. Costs

The costs regarding the negotiation, preparation, execution, stamping and registration of documents in relation to this deed are to be borne by the Parties and in the proportions as set out in the Schedule 9.

5. Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this deed and all transactions incidental to it.

6. Governing Law and Jurisdiction

This deed is governed by the Law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

7. No fetter

Nothing in this deed is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this deed imposes any obligation on a Consent Authority to:
 - (i) grant development consent or project approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

8. Representations and warranties

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

9. Severability

- (a) If any part of this deed 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.

- (b) If any part of this deed is illegal, enforceable or invalid, that part is to be treated as removed from this deed, but the rest of this deed is not affected.

10. Modification

No modification of this deed will be of any force or effect unless it is in writing and signed by the Parties as a deed.

11. Waiver

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this deed, 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.

12. Confidentiality

12.1 This deed not confidential

The Parties agree that the terms of this deed are not confidential and this deed may be treated as a public document and notified or exhibited or reported without restriction by any Party.

13. Indemnity

- (a) Each Landowner (**First Landowner**) indemnifies each other Landowner (**Other Landowner**) against all liability, loss, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis determined without taxation, assessment, or similar process and whether incurred by or awarded against the Landowner) arising from or incurred by an Other Landowner in connection with the First Landowner's failure to fully perform and satisfy any of its obligations under the Planning Agreement.
- (b) The indemnity in paragraph 13(a) of this Schedule 10 is a continuing obligation, separate and independent from the other obligations of the Landowners, and survives termination of the Planning Agreement.
- (c) It is not necessary for a Landowner to incur expense or to make any payment before enforcing a right of indemnity conferred by paragraph 13(a) of this Schedule 10.
- (d) A Landowner must pay on demand any amount it must pay under the indemnity in paragraph 13(a) of this Schedule 10.

14. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Annexure A - Plan of the Land

X Tony Kelly

A' Nianello

Scion
Cherry
Pink

Bill Moran
Stygon
K. H.

MULGOA
NATURE RESERVE

EXISTING RIGHT OF CARRIAGEWAY 10.058 WIDE
(G60452)

HOLICOMBE

PROPOSED WESTERN
SPS AREA

HOLICOMBE

NORWEST

**HOLICOMBE
CONSERVATION AREA
62.43ha**

J. Wyndham Prince Pty. Ltd.



CONSULTING CIVIL ENGINEERS

EMAIL: jwp@jwprince.com.au

PH: (02) 4732 3385
FAX: (02) 4721 7638

7633/VPA1-A

GLENMORE P

Annexure B - Notice of Exercise of Put Option

TO: The Minister for Planning (**Minister**)

Holicombe Pty. Limited in its capacity as trustee of the Wearn Quarry Trust (**Holicombe**) exercises the put option granted in the Voluntary Planning Agreement between the Minister, Holicombe in its capacity as trustee of the Wearn Quarry Trust, Lensworth Glenmore Park Limited, Mulpha FKP Pty Limited, Sergio Vianello, Assunta Vianello and Mint Holdings Pty. Limited dated [*insert date*] (**VPA**) requiring the Minister (or such Authority as the Minister may nominate in writing from time to time) to acquire Holicombe's right, title and interest in the DECCW Land (as defined in the VPA).

A blank form of transfer of the DECCW Land signed by Holicombe is attached together with other documents required under paragraph 5.3 of Schedule 3 in the VPA.

Dated:

Executed by Holicombe Pty. Limited in
accordance with section 127 of the *Corporations*
Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and
Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and
Secretary in full

Annexure C - Notice of Exercise of Call Option

TO: Holicombe Pty. Limited in its capacity as trustee of the Wearn Quarry Trust (**Holicombe**)

The Minister for Planning (**Minister**) exercises the call option granted in the Voluntary Planning Agreement between the Minister, Holicombe in its capacity as trustee of the Wearn Quarry Trust, Lensworth Glenmore Park Limited, Mulpha FKP Pty Limited, Sergio Vianello, Assunta Vianello and Mint Holdings Pty. Limited dated [*insert date*] (**VPA**) requiring Holicombe to transfer its right, title and interest in the DECCW Land (as defined in the VPA) to the Minister (or to such Authority as the Minister may nominate in writing from time to time).

A blank form of transfer of the DECCW Land signed by the Minister is attached together with other documents required under paragraph 5.5 of Schedule 3 in the VPA.

Dated:

Signed sealed and delivered for and on behalf of **The Minister for Planning** by [*insert name of delegate*], its delegate under a delegation dated [*insert date*] and the delegate declares that the delegate has not received any notice of the revocation of such delegation, in the presence of:

Signature of delegate

Signature of Witness

Name of delegate in full

Name of Witness in full

Annexure D - Nominee Notice of Exercise of Call Option

TO: Holicombe Pty. Limited in its capacity as trustee of the Wearn Quarry Trust (**Holicombe**)

The Minister for Planning (**Minister**) nominates the party named in Item 1 of the Schedule as the Nominee under the Voluntary Planning Agreement specified in Item 2 of the Schedule.

A blank form of transfer of the DECCW Land signed by the Nominee is attached together with other documents required under paragraph 5.5 of Schedule 3 in the VPA.

Schedule

Item 1: *[Insert name, ACN and address of the Nominee]*

Item 2: Voluntary Planning Agreement between the Minister, Holicombe in its capacity as trustee of the Wearn Quarry Trust, Lensworth Glenmore Park Limited, Mulpha FKP Pty Limited, Sergio Vianello, Assunta Vianello and Mint Holdings Pty. Limited dated *[insert date]*.

The Nominee:

- (a) accepts its nomination as Nominee; and
- (b) exercises the option granted under paragraph 5.5 of the VPA.

Dated:

[insert execution clause relevant to the Nominee]

Signed sealed and delivered for and on behalf of **The Minister for Planning** by *[insert name of delegate]*, its delegate under a delegation dated *[insert date]* and the delegate declares that the delegate has not received any notice of the revocation of such delegation, in the presence of:

Signature of delegate

Signature of Witness

Name of delegate in full

Name of Witness in full

Annexure E - Accession Deed

CLAYTON UTZ

Accession Deed

The Minister for Planning

Minister

Lensworth Glenmore Park Limited

Lensworth

Mulpha FKP Pty Limited trading as Norwest Land

Norwest Land

Holicombe Pty. Limited in its capacity as trustee of the Wearn Quarry Trust

Holicombe

Sergio & Assunta Vianello

Vianello

Mint Holdings Pty. Limited

Mint Holdings

[Insert Transferor's name]

Transferor

[Insert Transferee's name]

Transferee

Contents

1.	Definitions and Interpretation	1
1.1	Definitions	1
1.2	Interpretation	9
2.	Status of this deed	10
2.1	Status	10
2.2	Not used	11
3.	Planning Agreement under the Act	11
4.	Application of the Planning Agreement	11
5.	Development Contributions	11
6.	Minister Acknowledgements and requirements	11
7.	Application of s94, s94A and s94EF of the Act to the Development	11
7.1	Application of sections 94, 94A and 94EF of the Act	11
8.	Interests in the Land	12
8.1	Ownership	12
8.2	Registration of the Planning Agreement	12
8.3	Release and discharge of this deed	13
9.	Review or Replacement of this deed	13
10.	Dispute Resolution	13
11.	GST	13
11.1	Interpretation	13
11.2	Intention of the parties	13
11.3	Reimbursement	13
11.4	Consideration GST exclusive	14
11.5	Additional amount of GST payable	14
11.6	Variation	14
11.7	Exchange of non-monetary consideration	15
11.8	No merger	15
12.	Overdue payments	15
13.	Explanatory Note	15
14.	Effect of Scheduled terms and conditions	15
15.	Several liability of Landowner	16
16.	General provisions	16
1.	Definitions and interpretation	69
1.1	Definitions	69
1.2	References to certain general terms	70
1.3	Headings	70
2.	Novation	70

2.1	Original Agreement.....	70
2.2	Liability before Effective Date	71
3.	Affirmation of the Original Agreement	71
4.	GST	71
5.	Notices.....	71
6.	Further acts	71
7.	Governing law	71
8.	Counterparts deemed originals	72

Deed dated

Parties

The Minister for Planning ABN 38 755 709 681 of Level 34 Governor Macquarie Tower, 1 Farrer Place, SYDNEY NSW 2000

(Minister)

Lensworth Glenmore Park Limited ABN 59 007 533 888 of 133 Castlereagh Street, SYDNEY NSW 2000

(Lensworth)

Mulpha FKP Pty Limited trading as Norwest Land ABN 27 000 004 633 of FKP House, Level 4, 17-19 Bridge Street, SYDNEY NSW 2000

(Norwest Land)

Holicombe Pty. Limited ABN 76 691 030 709 in its capacity as trustee of the Wearn Quarry Trust of 2091 Castlereagh Road, PENRITH NSW 2150

(Holicombe)

Sergio & Assunta Vianello ABN 27 709 051 547 of "Hills of Home" 2183 The Northern Road, MULGOA NSW 2748

(Vianello)

Mint Holdings Pty. Limited ABN 20 002 055 165 of 36 South Street RYDALMERE NSW 2166

(Mint Holdings)

(Collectively, the Landowners)

[Insert Transferor's name] of *[insert]* (Transferor)

[Insert Transferee's name] of *[insert]* (Transferee)

Background

- A. The Minister and the Landowners are parties to the Original Agreement.
- B. The Original Agreement relates to the Land.
- C. The Transferor wants to transfer [the whole of] [part or parts of] the Land comprising Lot *[insert Lot number]* in DP *[insert Deposited Plan number]*.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Effective Date means *[insert]*.

Land has the meaning given to that term in the Original Agreement.

Original Agreement means the voluntary planning agreement dated [*insert*] and made between the Minister and the Landowners.

Transferred Obligations means [*insert the obligations agreed by the Transferee and the Transferor pursuant to paragraph 1.1(a)(i) or 1.2(a)(i) of Schedule 8 (as the case may be) of the Original Agreement*].

1.2 References to certain general terms

In this Deed unless the contrary intention appears:

- (a) a reference to this Deed or another instrument includes any variation or replacement 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, 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 on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or more of them; and
- (h) "include" in any form 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 nature.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this Deed.

2. Novation

2.1 Original Agreement

Subject to clause 2.2 and with effect from the Effective Date:

- (a) the Transferee:
 - (i) is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Transferred Obligations; and
 - (ii) will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Transferred Obligations;

- (b) the Transferor:
 - (i) ceases to be a party to the Voluntary Planning Agreement; and
 - (ii) is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Transferred Obligations.

2.2 Liability before Effective Date

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach which the Transferor may have committed before the Effective Date of any provision of the Original Agreement insofar as the Original Agreement relates to the Transferred Obligations.

3. Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this Deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this Deed, the Original Agreement will continue in full force and effect.

4. GST

Where a supply made under this Deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this Deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

5. Notices

For the purposes of the Original Agreement, the address of the Transferee to which all notices, consents, requests and other documents required to be given or sent is as follows:

[insert Transferee's notice details].

6. Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this Deed.
- (b) This Deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

7. Governing law

This Deed is governed by and construed in accordance with the laws for the time being of New South Wales and the Landowners, including the Transferee, expressly submit to the jurisdiction of the Courts of New South Wales.

8. Counterparts deemed originals

This Deed may be executed in any number of counterparts, each of which will be deemed an original but all of which constitute one and the same instrument.

Executed as a deed.

Signed sealed and delivered for and on behalf of **The Minister for Planning** by [*insert name of delegate*], its delegate under a delegation dated [*insert date*] and the delegate declares that the delegate has not received any notice of the revocation of such delegation, in the presence of:

Signature of delegate

Signature of Witness

Name of delegate in full

Name of Witness in full

Executed by **Lensworth Glenmore Park Limited** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Executed by **Mulpha FKP Pty Limited** in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Executed by Holicombe Pty. Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full

Signed sealed and delivered by Sergio Vianello in the presence of:

Signature of Witness

Name of Witness in full

Signature

Signed sealed and delivered by Assunta Vianello in the presence of:

Signature of Witness

Name of Witness in full

Signature

Executed by Mint Holdings Pty. Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and Secretary

Name of Director or Sole Director and Secretary in full

Executed by *[Insert name of Transferor]* in
accordance with section 127 of the *Corporations*
Act by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and
Secretary

Name of Director or Sole Director and
Secretary in full

Executed by *[Insert name of Transferee]* in
accordance with section 127 of the *Corporations*
Act by or in the presence of:

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Director or Sole Director and
Secretary

Name of Director or Sole Director and
Secretary in full

Executed as a deed

Signed sealed and delivered for and on behalf of **The Minister for Planning** by

its delegate under a delegation dated

and the delegate declares that the delegate has not received any notice of the revocation of such delegation, in the presence of:

X Michael Fleming

Signature of Witness

X Michael Fleming

Name of Witness in full

X Tony Kelly

Signature of delegate

X Tom Kelly

Name of delegate in full

Signed, sealed and delivered for and on behalf of **Lensworth Glenmore Park Limited** by its attorney under a power of attorney dated 30 June 2009 registered in New South Wales with Book 4570 No. 748 in the presence of:

X CS

Signature of witness

X Phillip Hepburn

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

X CLAYTON JOHN SEVERINO

Full name of witness

133 CASTLEBRACH STREET, SYDNEY, NSW

X PHILLIP HEPBURN

Full name of attorney

Executed by Mulpha FKP Pty Limited in accordance with section 127 of the *Corporations Act* by or in the presence of:

X [Signature]

Signature of Secretary/other Director

X John Wooff

Name of Secretary/other Director in full

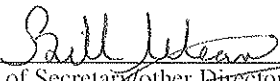
X [Signature]


Signature of Director or Sole Director and Secretary

X GREGORY DYER

Name of Director or Sole Director and Secretary in full

Executed by Holicombe Pty. Limited in
accordance with section 127 of the *Corporations*
Act by or in the presence of:

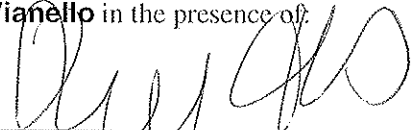
x 
Signature of Secretary/other Director



Signature of Director or Sole Director and
Secretary

x William Walter Wearn
Name of Secretary/other Director in full

ROBERT JOHN WEARN
Name of Director or Sole Director and
Secretary in full

Signed sealed and delivered by Sergio
Vianello in the presence of:

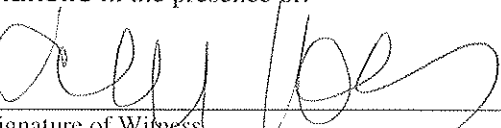
x 
Signature of Witness

x 
Signature

v Jennifer Harris
Name of Witness in full

Level 19, 1 O'Connell St Sydney

Signed sealed and delivered by Assunta
Vianello in the presence of:

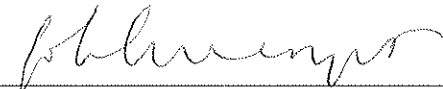
v 
Signature of Witness

A. Vianello
Signature

v Jennifer Harris
Name of Witness in full

Level 19, 1 O'Connell St Sydney

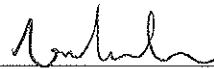
Executed by **Mint Holdings Pty. Limited** in
accordance with section 127 of the *Corporations*
Act by or in the presence of:

X 

Signature of Secretary/other Director

X BOHA SWEET NEE TANEE

Name of Secretary/other Director in full



Signature of Director or Sole Director and
Secretary

X SOON SINN Goh.

Name of Director or Sole Director and
Secretary in full