

CLAYTON UTZ

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## Planning Agreement

### Marsden Park Industrial Precinct

#### **The Minister for Planning**

Minister

#### **Marsden Park Developments Pty Ltd**

Developer

#### **Ganian Pty Limited**

Land Owner

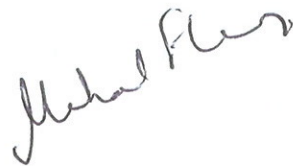
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Deed made at Sydney on TENTH NOVEMBER 2010

**Parties**                    **The Minister for Planning** of 1 Farrer Place, Sydney NSW 2000 (**Minister**)  
**Marsden Park Developments Pty Ltd ACN 123 238 282** of 920 Richmond Road Marsden Park 2765 (**Developer**)  
**Ganian Pty Limited ACN 079 625 835** of *[insert details]* (**Land Owner**)

## Background

- A.        The Developer owns the Land which is located in a Special Contributions Area.
- B.        The Developer intends to develop the Land.
- C.        The Developer has sought a change to the SEPP in the form of the Draft SEPP.
- D.        The Developer is or may become liable to pay the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres.
- E.        The Developer proposes to provide certain of the Contributions, in lieu of paying the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres and the parties have entered into this Deed to give effect to this arrangement.
- F.        The Developer has also agreed to provide other Contributions for which it will not be entitled to a SIC Offset Amount including the provision of essential services and infrastructure to meet the needs created by the future urban development of the Precinct.
- G.        The Developer's proposal for the Land includes the making of Development Applications for the Development.
- H.        By this Deed, the Developer enters into the First Planning Agreement, and offers to enter into the Second Planning Agreement, to provide the Contributions specified in this Deed.
- I.        From the Date of this Deed (in respect of the First Planning Agreement Contributions) and from the date the Second Planning Agreement commences to operate (pursuant to clause 2.2) (in respect of the Second Planning Agreement Contributions), this Deed constitutes an agreement between the Developer and the Minister that the Developer will provide material public benefits in connection with the SEPP on the terms and conditions of this Deed.

## Operative provisions

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### 1.        Interpretation

#### 1.1       Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

**Additional Contribution** means the commitments made by the Developer under clause 18.3.

**Agreed Financial Arrangements** has the meaning given to that term in clause 17D.2(b)(i).

**Agreed Substation Site** means that part of the Land comprised in proposed lots 2911 and 2913, Fulton Road, Marsden Park or such other lot as agreed between Integral Energy and the Developer.

**Application For Approval** means an application for any Approval.

**Apply, Applied** and **Application** each mean, in relation to a SIC Offset Amount, the application of that SIC Offset Amount pursuant to clause 3.5(c)(ii).

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the works the subject of this Deed or the Development generally and includes a Part 3A Approval (if relevant), and includes without limitation any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Sydney Water and Integral Energy for the construction and delivery of the Services Infrastructure.

**Approved Precinct Planning Costs** mean those costs incurred by the Developer in relation to the Precinct Planning Process prior to the date of gazettal of the SEPP (as amended consistent with the Draft SEPP) determined by the Minister to be 'Approved Precinct Planning Costs' for the purposes of this Deed in accordance with clause 3.8 which costs must not exceed the Relevant Cap.

**ASIC** means the Australian Securities and Investments Commission.

**Authorised Progress Claim Certificate** means a certificate addressed to the Minister signed by a director of the Developer confirming that the Developer has paid the amount specified in that Certificate (providing that such confirmation is only made if the amount has actually been paid or otherwise where the amount has not been paid but rather set-off against obligations owed to the Developer by the relevant third party contractor, those set-off arrangements have been accepted by the Minister) to the third party contractor for work performed under the Construction Contract.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes, without limitation, an accredited certifier accredited under section 109T of the EP&A Act, Sydney Water and Integral Energy.

**Available SIC Offset Amount** means each SIC Offset Amount to which the Developer has become Entitled under this Deed that has not at the relevant time been previously Applied.

**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 Minister 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 Minister 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 Minister 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 Minister 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 Minister 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 Minister under paragraph (a) or (b).

**Bank Guarantee** means an irrevocable and unconditional undertaking:

(a) by an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008; and

(b) on terms,

acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this Deed) on demand.

**Bill** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

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

**Concept Design Plans** means those concept design plans comprising Annexure E.

**Consent Authority** means, in relation to an Application For Approval, the Authority having the function to determine the Application For Approval.

**Contributions** means the provision of the following:

(a) the RTA Works Portions;

(b) the Precinct Planning Contribution;

(c) the Essential Services Contribution; and

(d) the Additional Contribution..

**Contributions Schedule** means the table and notes included in Schedule 3.

**Construction Contract** means a contract between the Developer and a third party for the carrying out of one or more of the RTA Works Portions by that third party.

**Costs** includes all costs, charges and expenses, including those incurred in connection with advisers and legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

**Council** means Blacktown City Council.

**Date of this Deed** means the date this deed is dated on page 1 of this Deed.

**Deed** means:

(a) the First Planning Agreement (which is entered into, and which is operative with effect from, the Date of this Deed); and

- (b) the Second Planning Agreement as and when the Second Planning Agreement becomes operative as a 'planning agreement' under and by virtue of clause 2.2.

**Department** means, and includes where relevant, the NSW Department of Planning, the Director General of the NSW Department of Planning and the Minister.

**Developable Land** means the land located within the Precinct and zoned for urban purposes following the amendment to the Growth Centres State Environment Planning Policy which makes the Precinct Plan.

**Developer Charge** has the meaning given to that term in clause 17D.4(a)(ii).

**Developer Secured Liabilities** has the meaning given to that term in clause 17D.4(a).

**Development** means the development described in item 2 of Schedule 2.

**Development Application** means:

- (a) each Part 4 Application; and
- (b) each Part 3A Application.

**Development Consent** means:

- (a) each 'Development Consent' as that term is defined in the EP&A Act; and
- (b) each Modification,

which is determined by the Consent Authority in response to a Part 4 Application.

**Development Contributions Procedures** means the procedures set out in Schedule 4 of this Deed.

**Draft SEPP** means the draft instrument proposed to amend the SEPP (following its gazettal) which the parties acknowledge comprises Exhibit A to this deed.

**Entitle, Entitled and Entitlement** means the entitlement of the Developer to certain SIC Offset Amounts pursuant to clauses 3.2(d)(ii), 3.3(b)(ii) and 18.3(d)(ii) to the SIC Offset Amounts as provided for in those clauses.

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

**EP&A Regulation** means the Environmental Planning and Assessment Regulation 2000 (NSW).

**Explanatory Note** means the explanatory note relating to this Planning Agreement, as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (NSW), being Annexure A.

**First Planning Agreement** means all clauses in this Deed excluding:

- (a) clause 2.6
- (b) clauses 3.1 to 3.5;
- (c) clause 18.1;

- (d) clause 18.3;
- (e) clauses 17A to 17F;
- (f) Schedule 3;
- (g) Schedule 4; and
- (h) Schedule 12.

For the avoidance of doubt, the clauses referred to in paragraphs (a) to (g) above do not form part of, and have no force or effect pursuant to, the First Planning Agreement.

**First Planning Agreement Contributions** means the Precinct Planning Contributions.

**Growth Centres** means each and any of:

- (a) the North West or South West Growth Centres of Sydney; and
- (b) any area to which the Interim Land Release Contribution Policy applies.

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

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

**Infrastructure Delivery Report** means the report prepared by APP Corporation for the delivery of infrastructure at the Precinct dated 22 June 2009, as annexed to this Deed at Annexure G.

**Integral Energy** means Integral Energy Australia ABN 59 253 130 878.

**Integral Energy Services Infrastructure** means the Services Infrastructure for, and in connection with, the provision of electricity.

**Integral Energy Services Infrastructure Land** means that part of the Land:

- (a) upon which the Integral Energy Services Infrastructure is constructed;
- (b) in which Interim Energy requires an interest, including without limitation as easement; or
- (c) which is reasonably required by Integral Energy in connection with its legal and beneficial ownership of the Integral Energy Services Infrastructure.

**Intellectual Property** means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and all other rights of intellectual property as recognised by New South Wales and Australian law.

**Interest Rate** in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

**Interim Integral Energy Services Infrastructure** means such of the Services Infrastructure identified as the Interim Integral Energy Services Infrastructure in the Services Infrastructure Implementation Plan.

**Interim Integral Energy Services Infrastructure Land** means that part of the Land:

- a) upon which the Interim Integral Energy Services Infrastructure is constructed;
- b) in which Integral Energy requires an interest, including without limitation as easement; or
- c) which is reasonably required by Integral Energy in connection with its legal and beneficial ownership of the Interim Integral Energy Services Infrastructure.

**Interim Land Release Contribution Policy** has the meaning given to that term in the publication entitled:

“Interim Land Release Contribution Policy  
Metropolitan Development Program  
Managing Sydney’s Urban Growth  
October 2005”

published by the Department and the Roads and Traffic Authority of New South Wales, a copy of which is available from the Office of Strategic Lands, Department.

**Interim Sydney Water Licence** has the meaning given to that term in clause 17D.1(c)(ii).

**Interim Sydney Water Services Infrastructure** means such of the Services Infrastructure identified as the Interim Sydney Water Services Infrastructure in the Services Infrastructure Implementation Plan.

**Interim Sydney Water Services Infrastructure Land** means that part of the Land:

- a) upon which the Interim Sydney Water Services Infrastructure is constructed;
- b) in which Sydney Water requires an interest, including without limitation as easement; or
- c) which is reasonably required by Sydney Water in connection with its legal and beneficial ownership of the Interim Sydney Water Services Infrastructure.

**Land** means the land described in item 1 of Schedule 2 (or any part or parts of it) which is identified and delineated by heavy dark blue ink in the plan comprising Annexure F.

**Law** means:

- (a) the common law including principles of equity; and
- (b) the requirements and principles of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

**Marsden Park Sydney Water Reservoir Site** means that part of the Sydney Water Services Infrastructure Land which is comprised in the indicative site labelled "Proposed Sydney Water Site" on the plan attached to this Deed at Annexure B.

**Milestone** means, in respect of each 'Construction Milestone' identified in column 3 of the table in paragraph 1.4 of Schedule 3, the Developer:

- (a) spending no less in monetary terms as is equivalent to the percentage of the Construction Contract value; and

- (b) such other works or activities,

specified in column 2 of that table relevant to that Milestone in carrying out the relevant RTA Works Portion.

**Ministerial Determination** means a determination by the Minister pursuant to either:

- (a) section 94EE of the EP&A Act; or
- (b) section 116O of the EP&A Act (once it commences),

that development contributions are to be made for the provision of public infrastructure in relation to development or a class of development in relation to, inter alia, the Land.

**Modification** means a "modification" of the Development Consent within the meaning of section 96 of the EP&A Act.

**North West Growth Centre** means the area in New South Wales comprising approximately 10,000 hectares and comprising 16 precincts to the north west of Sydney defined by the NSW Government as a growth centre, and which includes the Precinct.

**Occupation Certificate** has the meaning given to that term in the EP&A Act.

**Operation and Maintenance Contract** has the meaning given to that term in clause 17C.2(a).

**Other Development** means development or potential development on land within the Precinct where that land is not owned by the Developer.

**Other Development Contract** has the meaning given to that term in clause 17D.3(c).

**Other Development Request** has the meaning given to that term in clause 17D.3(a).

**Part 3A Application** means:

- (a) each Application For Approval made to the Minister pursuant to section 75E of the EP&A Act;
  - (b) each environmental assessment and any other document required to be submitted to the Director-General of the Department pursuant to section 75H of the EP&A Act; and
  - (c) each Application For Approval made to the Minister for a Part 3A Modification,
- which relates to any part of the Development.

**Part 4 Application** means:

- (a) each 'Development Application' as that term is defined in the EP&A Act; and
  - (b) each Application For Approval for a Modification,
- which relates to any part of the Development.

**Part 3A Approval** means each and any (as the case requires):

- (a) Project Approval; and



(b) any Part 3A Modification,

determined by the Minister in response to a Part 3A Application.

**Part 3A Modification** means a "modification" of a Project Approval within the meaning of section 75W of the EP& A Act.

**PCG** means the project control group referred to in clause 18.5(a)(ii).

**PWG** means the project working group referred to in clause 18.5(b).

**Planning Agreement** means each and any of (as the case may be):

- (a) the First Planning Agreement with effect from the Date of this Deed; and
- (b) the Second Planning Agreement as and when it is entered into and is operative under and by virtue of clause 2.2.

**Planning Consent** means:

- (a) each Development Consent; and
- (b) each Part 3A Approval.

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

**Precinct** means the Marsden Park Industrial Precinct which is shown on the Precinct Plan comprising Annexure B.

**Precinct Acceleration Costs** means those costs of the Department specifically related to the management of the Stage 2 Precinct Acceleration Protocol Process.

**Precinct Acceleration Protocol** means the document entitled "the NorthWest and SouthWest Growth Centres Precinct Acceleration Protocol" prepared by the NSW Department of Planning.

**Precinct Plan** means the precinct plan for the Marsden Park Industrial Precinct, a copy of which is attached to this Deed at Annexure B.

**Precinct Plan Date** means the date of publication of the amendment to the Growth Centres State Environment Planning Policy which makes the Precinct Plan.

**Precinct Planning** means the planning associated with the acceleration of the development of the Precinct.

**Precinct Planning Budget** means the total amount spent in connection with Precinct Planning.

**Precinct Planning Contribution** means the costs incurred by the Developer in relation to the Precinct Planning Process generally described in clause 3.8.

**Precinct Planning Costs** means those costs of the Department specifically related to the Precinct Planning Process.

**Precinct Planning Package** means the technical planning studies and statutory planning documents (SEPP, DCP, S94 plan and this Planning Agreement) which will be placed on

public exhibition and amended following exhibition to achieve gazettal of the SEPP (as amended).

**Precinct Planning Post Rezoning Costs** means those costs of the Department for Precinct Planning incurred following gazettal of the of the SEPP (as amended consistent with the Draft SEPP).

**Precinct Planning Process** means the activities ordinarily associated with the preparation and adoption of an amendment to the SEPP (consistent with the Draft SEPP) including:

- (a) design development with a master planner, interpretation of the opportunities and constraints described in the specialist technical studies, preparation of statutory controls such as zoning maps, land use tables, and preparation of the development control plan
- (b) interaction with the Council and assistance with the preparation of that Council's Section 94 plan;
- (c) consultation with other State agencies to ensure legislative and technical requirements are complied with. Precinct planning includes landowner and broader community consultation and responding to issues that arise from this process;
- (d) publication of the SEPP (as amended consistent with the Draft SEPP).

**Project Approval** means the approval of the Minister to carry out a project pursuant to Part 3A of the EP&A Act

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

**Real Property Charge** has the meaning given to that term in clause 17D.4(a)(i).

**Register** means the Torrens title register maintained under the Real Property Act.

**Relevant Authority** means any, or all, of the Minister, Sydney Water and Integral Energy as the context requires and to the extent the context refers to the Sydney Water Services Infrastructure, Sydney Water and to the extent the context refers to the Integral Energy Services Infrastructure, Integral Energy. Where there is any dispute, Relevant Authority means such of the Minister, Sydney Water and Integral Energy as is certified by the Minister.

**Relevant Cap** means \$1.93M as indexed from 1 April 2008 in accordance with clause 3.7

**RTA** means the NSW Roads and Traffic Authority.

**RTA Works Portion** means each and any (as the case may be) of the five stages of work described in paragraphs (a) to (f) in paragraph 1.2 of Schedule 3.

**Sale Contract** means the draft sale contract between the Land Owner and Integral Energy for the sale and purchase of the Agreed Substation Site as annexed to this Deed at Annexure H.

**Second Planning Agreement** means all clauses in this Deed excluding:

- (a) clause 2.1
- (b) clause 2.5
- (c) clauses 3.8 to 3.11;

- (d) clause 12;
- (e) clause 18.4 to 18.7; and
- (f) Schedule 13.

For the avoidance of doubt, the clauses referred to in paragraphs (a) to (g) above do not form part of, and have no force or effect pursuant to the Second Planning Agreement.

**Second Planning Agreement Contributions** means each of:

- (a) the RTA Works Portions;
- (b) the Services infrastructure Contribution; and
- (c) the Additional Contribution.

**Scope** means the scope of the RTA Works Portions as described in paragraph 1.1 of Schedule 3.

**SEPP** means the State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

**Services** means the water, sewerage and electricity required to adequately serve the whole Precinct (once developed) .

**Services Infrastructure** means the infrastructure described or referred to in the Services Infrastructure Strategy and Servicing Infrastructure Implementation Plan.

**Services Infrastructure Construction Contract** has the meaning given to that term in clause 17B.4(a).

**Services Infrastructure Contract** has the meaning given to that term in clause 17A.4(b)(iii)D1.

**Services Infrastructure Contributions** means those obligations of the Developer in relation to the provision of the Services Infrastructure pursuant to clauses 17A, 17B, 17C, 17D and 17E.

**Services Infrastructure Design Documents** has the meaning given to that term in clause 17B.2(b).

**Services Infrastructure Implementation Plan** means the services infrastructure implementation plan relating to the Precinct prepared by the Developer and approved by the Minister pursuant to clause 17A.4 (as may be updated from time to time).

**Services Infrastructure Implementation Plan Date** means 1 July in each Year.

**Services Infrastructure Land Contract** has the meaning given to that term in clause 17A.4(b)(iii)D2.

**Services Infrastructure Strategy** means the services infrastructure strategy relating to the Precinct prepared by the Developer and approved by the Minister pursuant to clause 17A.2 (as updated from time to time). **Services Infrastructure Works** means the works to be carried out by the Developer to provide the Services Infrastructure.

**SIC Practice Note** means the document entitled *Growth Centres Special Infrastructure Contribution Practice Note, December 2006* published by the Growth Centres Commission as amended, supplemented or substituted from time to time.

**SIC Offset Amount** means:

- (a) in respect of a Milestone, the amount specified in column 2 of the table in paragraph 1.4 of Schedule 3 corresponding to that Milestone as indexed in accordance with clause 3.7; and
- (b) in respect of any other event contemplated in this deed in relation to which the Developer may become Entitled to a SIC Offset Amount, the amount specified in this Deed as being the appropriate SIC Offset Amount for that event.

**SIC Offset Certificate** means a certificate in the form of Annexure C specifying:

- (a) the aggregate of all SIC Offset Amount Entitlements as at the date of the certificate;
- (b) the aggregate of all SIC Offset Amounts Applied as at the date of the certificate; and
- (c) the aggregate of all Available SIC Offset Amounts to which the Developer is Entitled, but which have not been Applied as at the date of the certificate.

**Special Contributions Area** means has the same meaning given to that term in section 93C of the EP&A Act.

**Special Infrastructure Contribution** means a contribution towards the provision of infrastructure determined in accordance with the Ministerial Determination and the SIC Practice Note as indexed from time to time in accordance with the SIC Practice Note.

**Specified Amount** means an amount of no less than the then current Special Infrastructure Contribution payable for 10 hectares or where the area of the relevant land the subject of the relevant SIC Offset Amount exceeds 10 hectares a total amount determined at the rate for the then current Special Infrastructure Contribution applied to the whole of that land.

**Stage 2 Precinct Acceleration Protocol Process** means the process of managing Stage 2 of the Precinct Acceleration Process.

**Staging** means the staging of all the RTA Works Portions as generally indicated in paragraph 1.2 of Schedule 3 and the Staging Plan.

**Staging Plan** means the staging plan comprising Annexure D.

**Subdivision Certificate** has the same meaning given to that term in the EP&A Act.

**Sydney Water** means Sydney Water Corporation ABN 49 776 225 038. **Sydney Water Contract** has the meaning given to that term in clause 17C.1.

**Sydney Water Services Infrastructure** means the Services Infrastructure for, and in connection with, the provision of water and sewerage.

**Sydney Water Services Infrastructure Land** means each of the Interim Sydney Water Services Infrastructure Land and the Ultimate Sydney Water Services Infrastructure Land.

**Sydney Water Services Infrastructure Works** means those Services Infrastructure Works relating to the construction of the Sydney Water Services Infrastructure.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

**Ultimate Sydney Water Services Infrastructure** means such of the Services Infrastructure identified as the ultimate Sydney Water Services Infrastructure in the Services Infrastructure Implementation Plan and which includes, without limitation, Sydney Water Services Infrastructure intended to ultimately also service land outside the Precinct.

**Ultimate Sydney Water Services Infrastructure Land** means that part of the Land:

- a) upon which the Ultimate Sydney Water Services Infrastructure is constructed;
- b) in which Sydney Water requires an interest, including without limitation as easement; or
- c) which is reasonably required by Sydney Water in connection with its legal and beneficial ownership of the Ultimate Sydney Water Services Infrastructure.

**Works Authorisation Deed** means a works authorisation deed or other legally binding agreement with the RTA which governs the carrying out of the RTA Works Portions by or on behalf of the Developer.

**Year** means each period of 12 months commencing on 1 July and ending on 30 June.

## 1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) "**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;
  - (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
  - (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
  - (e) 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;
  - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
  - (g) 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;

- (h) 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;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to "\$" or **"dollar"** is to Australian currency;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed;
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act;
- (m) an approval by Sydney Water or Integral Energy pursuant to clauses 17A, 17B, 17C, 17D and 17E will be deemed to be the approval of the Minister for the purposes of this Deed. If there is any dispute between the Developer and Sydney Water or Integral Energy in relation to any approval, that dispute will be deemed to be between the Developer and the Minister and will be resolved in accordance with the dispute resolution procedures in Schedule 5.

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## **2. Planning Agreements**

### **2.1 First Planning Agreement**

- (a) On and from the Date of this Deed, the Developer and the Minister agree that the First Planning Agreement is entered into and is operative.
- (b) On and from the date that the First Planning Agreement is entered into, all clauses of this Deed operate and apply other than the clauses and schedules of this Deed referred to in paragraphs (a) to (h) of the definition of 'First Planning Agreement'.
- (c) For the avoidance of doubt, the clauses and schedules of this Deed referred to in paragraphs (a) to (h) of the definition of 'First Planning Agreement' do not form part of, and have no force or effect pursuant to, the First Planning Agreement.

### **2.2 Offer to enter into Second Planning Agreement**

- (a) Until the Second Planning Agreement is entered into and is operative pursuant to clause 2.2(b), this Deed (other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement') constitutes an irrevocable offer to the Minister from the Developer to enter into the Second Planning Agreement (on the terms of this Deed (other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement')).
- (b) The Second Planning Agreement operates and becomes legally binding on both parties, and the parties will be taken to have entered into the Second Planning Agreement if, and only if:
  - (i) a condition of a Planning Consent (granted to any part of the Development) is imposed pursuant to Section 93I(3) of the EP&A Act requiring a planning agreement, on the terms of the Second Planning Agreement, to be entered into and the Minister accepts the offer made by the Developer pursuant to clause 2.2(a) to enter into the Second Planning Agreement (such acceptance to be by way of notice in writing to the

Developer in or to the effect of the form of the notice set out in Schedule 14); or

- (ii) if no Planning Consent in relation to any part of the Development which imposes an obligation pursuant to Section 93I(3) of the EP&A Act requiring a planning agreement on the terms of the Second Planning Agreement to be entered into, has been issued by the first anniversary of the Date of this Deed, the Minister may accept the offer made by the Developer pursuant to clause 2.2(a) to enter into the Second Planning Agreement (such acceptance to be by way of notice in writing to the Developer in or to the effect of the form of the notice set out in Schedule 14).
- (c) On and from the date that the parties are taken to have entered into the Second Planning Agreement pursuant to clause 2.2(b), the Developer agrees to provide the Second Planning Agreement Contributions to the Minister on the terms of the Second Planning Agreement.
- (d) The parties acknowledge that the Second Planning Agreement comprises all clauses of this Deed other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement'.
- (e) For the avoidance of doubt, the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement' do not form part of, and have no force or effect pursuant to, the Second Planning Agreement.
- (f) The Developer must notify the Minister in writing promptly after becoming aware that the first Planning Consent is granted to any part of the Development (and at the same time, provide a copy of that Planning Consent to the Minister).

## **2.3 Planning agreements under the EP&A Act**

This Deed constitutes two planning agreements within the meaning of section 93F of the EP&A Act.

## **2.4 Application of the Planning Agreements**

The Planning Agreements constituted by this Deed apply to:

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

## **2.5 First Planning Agreement Contributions**

The Developer agrees to provide the Precinct Planning Contributions in accordance with clause 3.8.

## **2.6 Second Planning Agreement Contributions**

The Developer agrees:

- (a) to provide the RTA Works Portions in accordance with clause 3.1;
- (b) to provide the Services Infrastructure Contributions in accordance with clauses 17A, 17B, 17C, 17D and 17E; and

- (c) to provide the Additional Contributions in accordance with clause 18.3.

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### **3. Contributions and Special Infrastructure Contribution Offsets**

#### **3.1 Delivery of RTA Works Portions**

- (a) Subject to clauses 3.1(b) to 3.1(d), the Developer must undertake the RTA Works Portions and achieve the Milestones (to the satisfaction of the Minister) in accordance with Schedule 3 and Schedule 4 .
- (b) At any time before the Developer commences work in respect of any Milestone, the Minister may give notice to the Developer that the Minister no longer requires the Developer to achieve that Milestone.
- (c) With effect from the date of any notice by the Minister to the Developer pursuant to clause 3.1(b), the Developer's obligation to achieve any Milestone referred to in that notice shall cease and this deed (and the table in paragraph 1.4 of Schedule 3 shall be read as if the Developer has no obligation to achieve that Milestone).
- (d) The Developer acknowledges that any potential Entitlement to a SIC Offset Amount that the Developer would have received had it achieved that Milestone will no longer apply.

#### **3.2 Entitlement to SIC Offset Amounts**

- (a) The parties agree that if the NSW Government introduces a scheme which entitles the Developer to SIC Offset Amounts as a result of the Developer having achieved a Milestone or which enables the Developer to apply those SIC Offset Amounts towards the partial or full satisfaction of Developer's obligations to make a Special Infrastructure Contribution, the provisions of clause 3 shall not apply to the extent those provisions are inconsistent with the scheme introduced by the NSW Government.
- (b) If the Developer achieves a Milestone (to the satisfaction of the Minister) the Developer will be entitled to SIC Offset Amounts in relation to that Milestone in accordance with this clause 3.2. The works to be carried out to achieve that Milestone must be subject to a construction or other contract which separately identifies those works, whether through a separate bill of quantities or separate contract. That contract must be provided to the Minister prior to commencing the works required to achieve that Milestone and if satisfactory to the Minister (in his sole and unfettered discretion), the Minister must confirm his satisfaction within 90 days of receipt of the contract from the Developer.
- (c) The Developer may request from the Minister an Entitlement to SIC Offset Amounts in relation to a Milestone upon achievement of that Milestone (to the satisfaction of the Minister) if the Developer provides to the Minister:
  - (i) a written request requesting such Entitlement together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether that Milestone has been achieved;
  - (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such Entitlement; and



- (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (d) If a Milestone is achieved to the satisfaction of the Minister and the Minister has received a request for an Entitlement from the Developer in relation to that Milestone, then:
  - (i) within 90 days of the Minister receiving all the information required under clause 3.2(c), the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts to which the Developer is Entitled following the achievement of that Milestone (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
  - (ii) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amount which corresponds to that Milestone.
- (e) If a Milestone is not achieved to the satisfaction of the Minister and the Minister has received a request for Entitlement from the Developer in relation to that Milestone, then within 90 days of the Minister receiving all the information required under clause 3.2(c), the Minister will notify the Developer in writing that its request for Entitlement has not been approved and will, at the same time, return any SIC Offset Certificate which had been provided to the Minister by the Developer pursuant to clause 3.2(c) to the Developer and provide the Developer with details as to why the Minister is of the opinion that the relevant Milestone has not been achieved.

### **3.3 Provision of a Bank Guarantee**

- (a) If at any time a Milestone has not been achieved, but the Developer wishes to become Entitled to SIC Offset Amounts in relation to the whole of that Milestone and Apply the whole or any part of those SIC Offset Amounts, then the Developer may provide to the Minister:
  - (i) a Bank Guarantee with a face value equivalent to the SIC Offset Amount to which the Developer wishes to become so Entitled which must be for an amount no less than the Specified Amount, together with a request for Entitlement in relation to such requested Entitlements; and
  - (ii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister,

provided that in no circumstance is the Developer entitled to a SIC Offset Amount under this clause (and provide a Bank Guarantee under this clause 3.3(a) in respect of that SIC Offset Amount) in excess of \$3,375,000.

- (b) If the Minister has received a request for Entitlement from the Developer pursuant to clause 3.3(a) and the Minister is satisfied with the Bank Guarantee that the Developer has provided pursuant to that clause then:
  - (i) within 90 days of the Minister receiving the Bank Guarantee and the Developer's request, the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts for which the Developer is Entitled (being amounts equivalent to the face value of the Bank Guarantee) (in addition to all previous

Entitlements) and all other updates to that certificate as are appropriate; and

- (ii) on and from the date of the Minister's notice, the Developer is to be Entitled to the SIC Offset Amount referred to in clause 3.3(b)(i).
- (c) If the Developer provides to the Minister:
  - (i) a written request that that Bank Guarantee be returned together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether the Developer had achieved the Milestone for which the Bank Guarantee had been provided; and
  - (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for the Bank Guarantee to be returned,then if the Minister is satisfied that that Milestone has actually be achieved, the Minister is to release and return that Bank Guarantee to the Developer within 90 days of any such request.
- (d) For the avoidance of doubt, the Developer acknowledges and agrees that:
  - (i) if the Developer receives an Entitlement for SIC Offset Amounts in relation to a Milestone pursuant to this clause 3.3, it will not receive any further Entitlements upon actual achievement of that Milestone pursuant to clause 3.2 ; and
  - (ii) the provision of one or more Bank Guarantees to the Minister pursuant to this clause 3.3 does not in any way release the Developer from its obligations to undertake the RTA Works Portions and achieve the Milestones in accordance with this Deed.
- (e) In the event that the Developer fails to achieve the Milestone to which the Bank Guarantee relates to the satisfaction of the Minister by the date which is two years after the date the relevant Bank Guarantee is provided (**Proposed Achievement Date**), then the Developer agrees to pay to the Minister an amount equivalent to the face value of that Bank Guarantee within 14 days of the Proposed Achievement Date and if the Developer fails to make such payment within this period, then the Minister may call upon that Bank Guarantee and retain the proceeds of such claim for use in connection with the achievement of that Milestone.
- (f) Payment of an amount by Developer to the Minister pursuant to clause 3.3(e) and any amount called upon (and retained) from a Bank Guarantee by the Minister pursuant to clause 3.3(e), will be taken to constitute achievement of the relevant Milestone to which the payment relates, and the provisions of clause 3.3(d)(i) apply in relation to the achievement of that Milestone..

### 3.4 Actual Costs of achieving a Milestone

The Developer acknowledges that if the actual Cost of achieving a Milestone (or completing the whole or any party of the RTA Works Portions) exceeds the SIC Offset Amount relevant to that Milestone the Developer must bear any excess Cost and will not receive any Entitlements for further SIC Offset Amounts in relation to that Milestone nor will it be entitled to may any claim against the Minister or any other person for reimbursement of such excess Cost.

### 3.5 Application of Available SIC Offset Amounts

- (a) If the Developer:
  - (i) has an Entitlement to an Available SIC Offset Amount; and
  - (ii) becomes liable to make Special Infrastructure Contributions in respect of the Development or any other development undertaken by the Developer within the Growth Centres (**Relevant Development**),

the Developer may issue to the Minister a request for Application of the Available SIC Offset Amount nominated by the Developer in that request to be applied towards the partial or full (as nominated by the Developer) satisfaction of Developer's obligations to make those Special Infrastructure Contributions (**SIC Obligations**).
- (b) At the same time as issuing any request for Application to the Minister, the Developer must provide to the Minister any SIC Offset Certificate current at the time the Developer makes that request.
- (c) If the Minister is satisfied with a request for Application from the Developer, then
  - (i) within 90 days of the Minister receiving that request, the Minister will notify the Developer in writing that its request for Application has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to reflect the Application of the Available SIC Offset Amounts the subject of that request and all other updates to that certificate as are appropriate; and
  - (ii) on and from the date of the Minister's notice, the Developer will be deemed to have satisfied the SIC Obligations to the extent of the dollar value of the Available SIC Offset Amount so Applied.

### 3.6 Tradeable Credits

If and when the NSW Government introduces a scheme which enables the Developer to utilise SIC Offset Amounts as an offset to obligations of another person to pay any Special Infrastructure Contribution, then promptly after any request from the Developer, the Minister and the Developer will meet to discuss how the Developer might utilise its SIC Offset Amounts under that scheme and the Minister will take reasonable steps to enable the Developer to do so (to the extent that it is within the Minister's power to take those steps).

### 3.7 Indexation of SIC Offset Amounts and the Relevant Cap

The parties acknowledge and agree that:

- (a) the Relevant Cap will be indexed; and
- (b) each SIC Offset Amount will be indexed (until such time as each such SIC Offset Amount no longer constitutes an Available SIC Offset Amount),

in a manner determined and confirmed from time to time in writing by the Minister to the Developer, on a basis consistent with the manner in which the Special Infrastructure Contributions are indexed in accordance with paragraph 2.7 of the SIC Practice Note as amended from time to time.

### **3.8 Precinct Planning Contributions**

The Precinct Planning Contributions are costs incurred by the Developer in connection with the Precinct Planning Process both before and after the Date of this Deed. Those costs include:

- (a) costs relating to planning studies which the Developer commissions as part of the Precinct Planning Process;
- (b) costs incurred by the Developer as a result of its reimbursement to the Department for:
  - (i) the Precinct Acceleration Costs;
  - (ii) the Precinct Planning Costs;
  - (iii) the Precinct Planning Post Rezoning Costs;
  - (iv) costs associated with the Precinct Project Manager, Council, the urban designer and statutory planner;
  - (v) costs associated with reviews or additional planning studies;
  - (vi) community consultation costs in relation to the hire of venues, printing and other communications;
  - (vii) costs associated with drainage and urban design; and
  - (viii) those costs related to the tasks detailed in clause 18.5 and Schedule 13; and
- (c) any other costs the Developer is required to fund (or reimburse to the Department) in relation to the Precinct Planning Process as contemplated or referred to in this Deed.

The parties acknowledge that the Developer has incurred certain costs comprising a substantial part of the Precinct Planning Contribution prior to the Date of this Deed.

### **3.9 Approved Precinct Planning Costs**

- (a) The Minister will determine the Approved Precinct Planning Costs within 60 days of the gazettal of the SEPP (as amended consistent with the Draft SEPP) providing that he has received all information necessary to do so from the Developer.
- (b) The Developer must submit all invoices it receives from third parties and otherwise must submit such other information the Developer determines relevant or requested by the Minister to enable the Minister to determine the actual costs incurred by the Developer in relation to the Precinct Planning Process, for the purposes of determining the Approved Precinct Planning Costs.
- (c) The costs incurred by the Developer in relation to planning studies which it commissions as part of the Precinct Planning Process, will only form part of the Approved Precinct Planning Costs if they comply with the criteria contained in clause 3.10.

- (d) Once the Approved Precinct Planning Costs are determined by the Minister, the Minister will advise the Developer in writing of the amount of the Approved Precinct Planning Costs.
- (e) The Developer may, within 30 days of receipt of the Minister's notice referred to in clause 3.9(d), request that the Minister review his determination of the Approved Precinct Planning Costs, and the Minister will do so and provide his final determination within 30 days of the date of the request for a review.
- (f) The Developer acknowledges that the Approved Precinct Planning Costs determined by the Minister:
  - (i) must not exceed the Relevant Cap;
  - (ii) will not include the Precinct Acceleration Costs;
  - (iii) will not include the Precinct Planning Post Rezoning Costs; and
  - (iv) will not include any costs incurred by the Developer after the date of gazettal of the SEPP (as amended consistent with the Draft SEPP).

### **3.10 Criteria for Planning Studies**

- (a) Prior to commissioning the carrying out of any planning studies as part of the Precinct Planning Process, the Developer must provide the Minister with the proposed brief and scope of services for the study, and obtain the Minister's written agreement that:
  - (i) the study is necessary and relevant to the Precinct Planning Process; and
  - (ii) the proposed brief and scope of services is appropriate and complies with the Precinct Planning Process.
- (b) The Developer will make any amendments to the proposed brief and scope of services reasonably requested by the Minister.
- (c) If any amendment is proposed by the Developer to the proposed brief or scope of services for any planning study, then the written agreement of the Minister to that amendment must be obtained.
- (d) All planning studies must comply with the Precinct Planning Process which includes compliance with the following:
  - (i) planning studies and any future Precinct planning will be undertaken, except as otherwise directed by the Department, consistent with the NSW Government's Metropolitan Strategy; the SEPP (including the relevant Growth Centre Structure Plan); GCC Development Code; Precinct Development Parameters approved by the Department; all other relevant State Environmental Planning Policies; Regional Environmental Plans; and Directions under Section 117 of the EP&A Act;
  - (ii) planning studies are to be commissioned to facilitate precinct level approvals required (as relevant) by:
    - A. the Water Act 2000 Regulation Amendment;
    - B. National Parks and Wildlife Act (S.87,90);

- C. Heritage Act;
  - D. Rural Fires Act; and
  - E. Threatened Species Conservation Act; and
- (iii) planning studies are to be undertaken consistent with the relevant requirements of:
  - A. the biodiversity certification of the SEPP; and
  - B. the GCC's Precinct Assessment Method for Aboriginal Cultural Heritage and Protocol for Aboriginal Stakeholder involvement.
- (e) Copies of all completed planning studies and supporting information must be provided to the Minister.
- (f) All technical studies commissioned and managed by the Developer can be subject to a peer review by the Minister, with the costs of this peer review being incurred by the Developer.

### **3.11 Entitlement to SIC Offset Amount - Approved Precinct Planning Costs**

- (a) Upon the determination by the Minister of the Approved Precinct Planning Costs pursuant to clauses 3.9(d) or 3.9(e), the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the Approved Precinct Planning Costs (up to a maximum of the Relevant Cap) if the Developer provides to the Minister:
  - (i) a written request requesting such Entitlement;
  - (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such Entitlement; and
  - (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (b) If Minister has received a request for an Entitlement from the Developer pursuant to clause 3.11(a) (and the Minister is satisfied with the content of the information provided with that request), then:
  - (i) within 90 days of the Minister receiving all the information required under clause 3.11(a), the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts to which the Developer is Entitled (which will be equivalent to the Approved Precinct Planning Costs) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
  - (ii) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amounts approved by the Minister as confirmed in his notice pursuant to clause 3.11(b)(i).

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#### **4. Application of s94, 94A and 94EF of the EP&A Act**

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

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#### **5. Interests in the Land**

##### **5.1 Ownership**

- (a) The Land Owner represents and warrants to the Minister that it is the legal and beneficial owner of the Land.
- (b) The representation and warranty in this clause 5.1 is given by the Land Owner as at the date:
  - (i) the Land Owner signs this Deed;
  - (ii) the Minister signs this Deed; and
  - (iii) on which the Land Owner is required to deal with the Required Land or do anything under this Deed in relation to the Required Land. (in respect of so much of the Land as is required to permit performance by the Developer of relevant obligations under this Deed ("Required Land")),

##### **5.2 Land Owner obligations**

To the extent any obligation imposed on the Developer under this Deed requires anything to be done by the owner of the Land:

- (a) the Land Owner will do that thing and otherwise comply with those obligations; and
- (b) the Developer will procure the Land Owner do that thing and otherwise comply with those obligations.

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#### **6. Caveat**

The Developer acknowledges and agrees that:

- (a) when this Deed is executed by the Developer (whether or not the Minister has executed this Deed), the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act 1900 (NSW) and consequently the Minister has a sufficient interest in the Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest; and
- (b) the Minister may lodge a caveat on the Land to protect his rights under this Deed and the Developer will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Minister.

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#### **7. Registration of this Deed**

The Developer agrees to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and in accordance with Schedule 6.

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## **8. Release and Discharge**

The Minister agrees to release and discharge this Deed and remove any caveat lodged by the Minister pursuant to clause 6 on the release and discharge terms contained in Schedule 7.

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## **9. Assignment and other dealings**

The parties agree that provisions of Schedule 9 apply in relation to any proposed assignment or dealing in relation to the Land or of a party's interest in this Deed.

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## **10. Review of Deed**

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.

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## **11. Dispute resolution**

The parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 5.

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## **12. Department costs**

- (a) The Department will invoice the Developer for all those costs incurred by it in relation to the Precinct Planning Process which are costs arising as a result of services provided by third parties engaged or commissioned by the Department as soon as possible after the Department is invoiced by that third party.
- (b) The Department will invoice the Developer monthly for all other costs which the Developer is required to meet under this Deed.
- (c) The Developer must pay to the Department all amounts invoiced in accordance with this clause 12 within 28 days of the date of the invoice.
- (d) Without limiting the Developer's obligations under clause 12(c), the Minister agrees to consult with the Developer regarding any expenditure which is not consistent with Precinct Planning Budget.
- (e) Costs that have been incurred by the Department as at the Date of this Deed or that are anticipated to be incurred by the Department after the Date of this Deed in connection with the Precinct Planning Process are generally described in Schedule 13.
- (f) The Developer agrees to comply with all of its obligations under and pursuant to Schedule 13.

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## **13. Overdue payments**

### **13.1 Interest on overdue money**

The Developer agrees to pay interest to the Minister on any amount payable by it under this Deed from 28 days after it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Minister, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.



## 13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Minister on the first day of each calendar month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

## 13.3 Interest on liability merged in judgment or order

The Developer's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Deed.

## 13.4 Tender after termination

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Minister on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgement or order and the rate referred to in this clause 13.

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## 14. GST

### 14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.
- (b) In this clause 14, "**monetary consideration**" means any consideration expressed as an amount of money, "**non-monetary consideration**" means any consideration that is not monetary consideration, and "**non taxable supply**" means a supply that is not a taxable supply.
- (c) 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 14.
- (d) 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.

### 14.2 Reimbursements

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 an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 14.3 Additional amount of GST payable

Subject to clause 14.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 14), for that supply is exclusive of GST;
- (b) 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 the 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 (or the representative member of any GST group of which 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
- (c) 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 14.3(b).

#### **14.4 Variation**

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, 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 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (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.

#### **14.5 Exchange of non-monetary consideration**

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall 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 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

#### **14.6 No merger**

This clause will not merge on completion or termination of this Deed.

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### **15. Explanatory Note**

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

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## **16. Notices**

### **16.1 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 delivered or posted to that party at its address set out below or faxed to that party at its fax number set out below:

#### **Minister**

Name: The Minister for Planning  
Address: 23-33 Bridge Street  
Sydney NSW 2000  
Fax: (02) 9228 6455  
For the attention of: Director General

#### **Developer**

Name: Marsden Park Developments  
c/o APP Corporation  
Address: Level 6, 53 Berry Street  
North Sydney NSW 2060  
Fax: 02 9954 1951  
For the attention of: Owen Walsh

### **16.2 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 given in accordance with this clause 15.2.

### **16.3 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 delivered to 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.

### **16.4 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.

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## **17. General provisions**

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

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## **18. Additional Developer Obligations**

### **18.1 Delivery of certain Milestones**

- (a) The Developer acknowledges and agrees that, in respect of each stage specified in column 1 of the table in paragraph 1.3 in Schedule 3 (each such stage being more fully described in paragraph 1.2 of Schedule 3), it must achieve that stage prior to the issue of a Subdivision Certificate for the proposed subdivision of so much of the Land as is specified in each corresponding column 2 of the table in paragraph 1.3 in Schedule 3 and that it must not apply for a Subdivision Certificate for that proposed subdivision until it has achieved the corresponding stage (and provided evidence of such achievement to the Minister (to the Minister's satisfaction)).
- (b) The Developer acknowledges that (and agrees not to make any objection if) any Planning Consent for subdivision of the whole or any part of the Land may include as a condition that prior to the issue of any Subdivision Certificate for the whole or any part of the Land the Developer must submit to the Consent Authority written evidence from the Minister (or the Director General of the Department) that the Developer is not in breach at that time of its obligations under this Deed.
- (c) The Minister agrees that if:
  - (i) such a condition is imposed;
  - (ii) that a condition requires written evidence from the Minister;
  - (iii) immediately prior to the issue of any Subdivision Certificate for the whole or any part of the Land, the Developer requests in writing to the Minister that he provide written evidence that the Developer is not in breach at that time of its obligations under this Deed; and
  - (iv) the Minister is of the opinion (in his sole and unfettered discretion) that at the time of the Developer's request, the Developer is not in breach of its obligations under this Deed,then Minister will provide written confirmation to the Consent Authority that the Developer is not in breach at that time of its obligations under this Deed.
- (d) If the events described in paragraphs (i), (iii) and (iv) of clause 18.1(c) occur, but the condition of consent requires written evidence from the Director-General of the Department, then the Minister will confirm to the Director-General of the Department (promptly after any request from the Developer) that at that time the Developer was not in breach of its obligations under this Deed and request the Director-General to consider providing written confirmation to the Consent Authority that the Developer was not in breach at that time of its obligations under this Deed.

### **18.2 Not used**

### **18.3 Minimum requirements to subdivide Land.**

- (a) Following release of the Land for 'urban' development under the Precinct Acceleration Protocol, the Developer undertakes to subdivide the Land and create lots which may be used (after obtaining the necessary Planning Consents) for uses and purposes specified within the SEPP (as amended consistent with the Draft

SEPP) with areas not less than those specified in the table in Schedule 12 (**Prescribed Area**) within the timeframe specified in the table relevant to that area (**Prescribed Timeframe**). To secure this undertaking, the Developer makes the promises outlined in clause 18.3(b) to the Minister.

- (b) In the event the Developer fails to subdivide the Land and create lots pursuant to clause 18.3(a) in respect of any Prescribed Area within the relevant Prescribed Timeframe the Developer must, within 14 days of written demand from the Minister, pay to the Minister such amount determined by the Minister as his reasonable estimate of the Special Infrastructure Contributions that would have otherwise been payable by the Developer in respect of that Prescribed Area if Special Infrastructure Contributions were due and payable in respect of that Prescribed Area (**Prescribed Payment**).
- (c) If, in respect of a Prescribed Area, a Prescribed Payment is made and the Developer subsequently pays to the Minister any Special Infrastructure Contributions in accordance with the Ministerial Determination and the SIC Practice Note in respect of that Prescribed Area, the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the amount of Special Infrastructure Contributions so paid if the Developer provides to the Minister:
  - (i) a written request requesting such Entitlement together with evidence that such Special Infrastructure Contributions have been paid in relation to that Prescribed Area;
  - (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such Entitlement; and
  - (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (d) If the Minister has received a request for an Entitlement from the Developer pursuant to clause 18.3(c) (and the Minister is satisfied with the content of the information provided with that request), then:
  - (i) within 90 days of the Minister receiving all the information required under clause 18.3(c), the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts to which the Developer is Entitled (which will be equivalent to the relevant Prescribed Payment) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
  - (ii) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amounts approved by the Minister as confirmed in his notice pursuant to clause 18.3(d)(i).
- (e) The amounts payable by the Developer to the Minister under clause 18.3(b) are intended to be used for substantially the same purposes for which any Special Infrastructure Contribution for that Prescribed Area was intended to be used (as if that contribution was actually paid by the Developer to the Minister at that time for the Prescribed Area).

#### **18.4 Intellectual Property and use of Information**

- (a) The Developer agrees, at its own cost, to ensure that the Minister and all other authorities which may need to use studies brought into existence for the purposes of the Precinct Planning Process are irrevocably licensed to use the Intellectual Property in the studies.
- (b) The Developer agrees to ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adoption or use of any documents brought into existence as a result of this Deed.
- (c) The Developer agrees to indemnify and keep indemnified the Minister from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against, made upon or incurred by the Minister in relation to the use by the Minister of any material brought into existence as part of the Precinct Planning Process by the Developer or any other person.

#### **18.5 Governance of the Precinct Process**

- (a) The parties agree that:
  - (i) the Department is ultimately responsible for precinct planning, including endorsement of Precinct "Development Parameters", draft Precinct plans for exhibition and draft Precinct plans for submission to the Minister for Planning;
  - (ii) a project control group comprising representatives from the Department (Chair) and Council will oversee precinct planning and related studies, including the review of contractor briefs to ensure they are appropriate to deliver the Minister's planning objectives. The Developer will not be represented on the PCG. The administration of the PCG will be coordinated by the Department.
- (b) A project working group comprising representatives of the Department, Council and the Developer will oversee the day to day planning studies. The PWG will be guided by a plan which addresses potential probity risks.
- (c) As at the Date of this Deed, the representatives of the Department, and the Developer on the PWG are Bruce Colman and Owen Walsh of APP Corporation. Any alternation by a party to its representatives on the PCG and PWG shall be notified to the other party in writing.
- (d) The Developer can only change its representative on the PWG with the prior written approval of the PCG, which shall not be unreasonably withheld.
- (e) In addition to the roles and functions of the PCG and PWG under clauses 18.5(a) to 18.5(d), the parties agree that:
  - (i) the PWG will monitor proposed expenditure against the Precinct Planning Budget to manage cost control;
  - (ii) the Developer will facilitate the Minister having direct access to third parties engaged by the Developer to provide planning studies;

- (iii) the Developer agrees to consult, cooperate and confer with others (subject to commercial-in-confidence constraints) where so directed by the Minister;
- (iv) the Minister can commission peer reviews and additional investigations as required and these will be paid in full by the Developer;
- (v) the Developer agrees to obtain all necessary approvals, licences and permits, which may be required for the provision of services contemplated by this Deed;
- (vi) the Developer will not, without the prior written consent of the Minister, disclose any information in connection with the services contemplated by this Deed to any person not a party to this Deed other than:
  - A. as necessary to perform those services; or
  - B. with respect to any matter already within public knowledge; or
  - C. as may be required by law, and

it is agreed this clause 18.5(e)(vi) does not merge on completion.

- (f) The Developer represents and warrants that no conflict of interest exists in the performance of the services contemplated by this Deed at the date the Developer signs this Deed. Immediately upon becoming aware of the existence, or possibility of a conflict of interest, the Developer must advise the Minister in writing.

## **18.6 Consultation**

- (a) Monthly, and at other times on request of a representative of the Department, the Developer will provide information on the progress of planning studies and other issues related to the Precinct to enable the Department to provide regular and ad hoc reports to the Minister. This information will be provided in the form and within timeframes requested by a representative from the Department.
- (b) The Department will prepare a draft consultation strategy for approval by the PCG that will outline the program of consultations to be undertaken to engage Council / community and interest groups / agencies and other landowners in the Precinct. The strategy will be prepared in consultation with the Council.
- (c) The Developer and the Department will each nominate a single point of contact for all matters related to planning studies. It is expected that this person will be the primary source of input to the PCG and the PWG from each organisation.

## **18.7 Financials**

- (a) The Developer will fund in a timely manner (upon invoice) all the Department's costs associated with planning studies. These costs will include reasonable contributions to Council agreed by the Department.
- (b) The Developer will fund costs associated with any independent review or advice related to planning studies considered necessary by the PCG.

- (c) The Developer will fund all costs associated with the production of documentation associated with planning studies and community consultation.
- (d) The Developer will meet all administrative and other related costs associated with PCG and PWG meetings.

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## **17A Provision of Services**

### **17A.1 Developer to provide Services**

- (a) The Developer must provide the Services Infrastructure for the whole Precinct (once developed):
  - (i) in accordance with the provisions of this Deed; and
  - (ii) at no cost to the Minister or the NSW Government.
- (b) The parties acknowledge and agree that the Developer must ensure the Services Infrastructure:
  - (i) support orderly development of the Precinct; and
  - (ii) have adequate capacity to serve Other Developments

as reasonably determined by the Minister.

### **17A.2 Developer to prepare Services Infrastructure Strategy**

- (a) Within 6 months of the Precinct Plan Date, the Developer must prepare a draft Services Infrastructure Strategy.
- (b) In preparing the draft Services Infrastructure Strategy, the Developer:
  - (i) acknowledges that the development of the Services Infrastructure Strategy will be part of a consultative and cooperative process between the Developer and the Relevant Authorities;
  - (ii) must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities make in respect of the draft Services Infrastructure Strategy;
  - (iii) must ensure that the draft Services Infrastructure Strategy:
    - A. details the staged provision by the Developer of the Services Infrastructure necessary for orderly and efficient delivery of servicing to the whole Precinct (once developed), comprising:
      - 1) sewerage systems;
      - 2) potable water systems;
      - 3) recycled water systems to meet future urban development of the Precinct as required by clause 18 of the SEPP; and
      - 4) electricity; and



B. specifies:

- 1) the Services Infrastructure required to be constructed and transferred to the Relevant Authorities, including any Interim Sydney Water Services Infrastructure, Ultimate Sydney Water Services Infrastructure and Integral Energy Services Infrastructure;
- 2) the timetable for the construction and transfer of the Services Infrastructure including the sequence of the stages of the Services Infrastructure to be constructed and transferred and the targeted timeframes for each stage;
- 3) how the Developer will:
  - a) provide the Services Infrastructure at no cost to the NSW Government; and
  - b) comply with the "*No Cost to Government Criteria*" contained in the Precinct Acceleration Protocol;
- 4) the requirements of the Relevant Authorities in relation to the construction of the Services Infrastructure, including the construction standards for the Services Infrastructure and how the Developer will comply with those requirements; and
- 5) that the Relevant Authorities have endorsed the Services Infrastructure Strategy and contain evidence of that endorsement; and

C. is consistent with the provisions of the Infrastructure Delivery Report.

- (c) Within 6 months of the Precinct Plan Date, the Developer must submit the draft Services Infrastructure Strategy to the Minister.
- (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Strategy.
- (e) The Minister will not unreasonably withhold its approval to the draft Services Infrastructure Strategy where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have approved the draft Services Infrastructure Strategy.
- (f) If the Minister notifies the Developer that it has not approved the draft Services Infrastructure Strategy, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Minister pursuant to clause 17A.2(f), prepare and submit to the Minister a revised draft Services Infrastructure Strategy. Clause 17A.2(b) and clauses 17A.2(d) to

17A.2(h) (inclusive) apply to the revised draft Services Infrastructure Strategy in the same manner they apply to the draft Services Infrastructure Strategy.

- (h) If the Minister approves the revised draft Services Infrastructure Strategy, it must promptly give the Developer written notice of that approval.

### **17A.3 Developer to update Servicing Infrastructure Strategy**

- (a) Subject to clause 17A.3(b), the Developer will promptly update (at its expense) the Servicing Infrastructure Strategy upon written request by a Relevant Authority.
- (b) The parties acknowledge and agree that the Developer will not be required to update the Services Infrastructure Strategy more than once a Year.
- (c) Clauses 17A.2(b) to 17A.2(h) (inclusive) (except in respect of the reference to the time period in clause 17A.2(c)) apply to any update of the Services Infrastructure Strategy in the same manner they apply to the draft Services Infrastructure Strategy.

### **17A.4 Developer to prepare Services Infrastructure Implementation Plan**

- (a) Within 12 months of the date on which the Minister approves the Services Infrastructure Strategy, the Developer must prepare a draft Services Infrastructure Implementation Plan.
- (b) In preparing the draft Services Infrastructure Strategy, the Developer:
  - (i) acknowledges that the development of the draft Services Infrastructure Implementation Plan will be part of a consultative and cooperative process between the Developer and the Relevant Authorities for the orderly and efficient staged delivery of infrastructure to the Precinct; and
  - (ii) must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities make in respect of the draft Services Infrastructure Implementation Plan, including without limitation in respect of any acceleration of the construction and transfer of the Services Infrastructure reasonably required by the Relevant Authorities where:
    - A. an Other Development is proposed to be undertaken in the Precinct by a developer;
    - B. that Other Development proposes to increase the area of Developable Land within the Precinct;
  - (iii) ensure that the draft Services Infrastructure Implementation Plan:
    - A. is consistent with:
      - 1) the Services Infrastructure Strategy; and
      - 2) the servicing plans of each of the Relevant Authorities relating to the North West Growth Centre;
    - B. specifies:

- 1) how the Developer will implement the Services Infrastructure Strategy, including without limitation a timetable for the construction of the Services Infrastructure and the transfer of the Services Infrastructure to the Relevant Authorities in each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan;
  - 2) the proposed costs for the construction of the Services Infrastructure including the cost for the construction of the Services Infrastructure in each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan; and
  - 3) the areas to be serviced by the Services Infrastructure, and where those areas have not been determined by the date of the Services Infrastructure Implementation Plan a mechanism to determine the areas to be serviced by the Services Infrastructure;
- C. confirms that the Relevant Authorities have endorsed the Services Infrastructure Implementation Plan and contain evidence of that endorsement; and
- D. contains the pro forma contracts required by the Relevant Authorities to effect the transfer of:
- 1) the Services Infrastructure (**Services Infrastructure Contract**); and
  - 2) the Services Infrastructure Land (**Services Infrastructure Land Contract**)
- from the Developer to the Relevant Authorities.
- (c) Within 12 months of the date on which the Minister approves the draft Services Infrastructure Strategy, the Developer must submit the draft Services Infrastructure Implementation Plan to the Minister.
- (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Implementation Plan.
- (e) The Minister will not unreasonably withhold its approval to the Services Infrastructure Implementation Plan where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have:
- (i) confirmed that the Services Infrastructure contemplated by the Services Infrastructure Implementation Plan is to be constructed and transferred to the Relevant Authorities to a standard required by the Relevant Authorities; and
  - (ii) approved the Services Infrastructure Implementation Plan.

- (f) If the Minister notifies the Developer that it has not approved the draft Services Infrastructure Implementation Plan, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Minister pursuant to clause 17A.4(f), prepare and submit to the Minister a revised draft Services Infrastructure Implementation Plan. Clause 17A.4(b) and clauses 17A.4(d) to 17A.4(h) (inclusive) apply to the revised draft Services Infrastructure Implementation Plan in the same manner that they apply to the draft Services Infrastructure Implementation Plan.
- (h) If the Minister approves the revised draft Services Infrastructure Strategy, it must promptly give the Developer written notice of that approval.

#### **17A.5 Developer to update Servicing Infrastructure Implementation Plan**

- (a) Subject to clause 17A.5(b) Developer must (at its expense) update the Servicing Infrastructure Implementation Plan every Year on the Services Infrastructure Implementation Plan Date.
- (b) Clauses 17A.4(b) to 17A.4(h) (inclusive) (except in respect of the reference to the time period in clause 17A.4(c)) apply to any update of the Services Infrastructure Implementation Plan in the same manner they apply to the draft Services Infrastructure Implementation Plan.

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### **17B Approvals, design and construction of Services Infrastructure Works**

#### **17B.1 Developer to obtain all Approvals**

- (a) The Developer must, at its risk and expense, prepare all Applications For Approval and take all steps which are reasonably necessary to obtain the Approvals in accordance with the timetable specified for the Services Infrastructure in the Services Infrastructure Implementation Plan.
- (b) The Developer must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities may make in respect of:
  - (i) the proposed terms and conditions of an Application For Approval;
  - (ii) terms and conditions which a Relevant Authority indicates may be imposed on any consent; and
  - (iii) terms and conditions which a Relevant Authority indicates are required as a matter of standard policy or as a matter of the Relevant Authority's standard practice.
- (c) If, during the consultation process referred to in clause 17B.1(b), the Developer receives advice, comments or recommendations from a Relevant Authority in relation to matters which ought to be taken into account when preparing an Application For Approval, the Developer must pay all due regard to any such advice, comments or recommendations in its Application For Approval.

- (d) The Developer must, in the identical form it is proposed to be lodged with the Consent Authority, lodge with the Relevant Authority for its approval the proposed Application For Approval.
- (e) The Relevant Authority must approve, or otherwise withhold its approval to, the proposed Application For Approval in its sole discretion.
- (f) If a Relevant Authority does not approve the proposed Application For Approval, it will promptly notify the Developer of its reasons.
- (g) Upon receipt by the Developer of any notice referred to in clause 17B.1(f), the Developer must amend the proposed Application For Approval taking the Relevant Authority's reasons into account and re-submit the amended proposed Application For Approval to the Relevant Authority.
- (h) The Developer must comply with all conditions of all Approvals.

## **17B.2 Design responsibility**

- (a) The Developer agrees to:
  - (i) design the Services Infrastructure with the skill, care and diligence expected of a professional designer experienced in works of a similar nature to the Services Infrastructure; and
  - (ii) ensure that each member appointed to the Developer's design team performs its design responsibilities with the skill, care and diligence expected of a professional designer experienced in carrying out those responsibilities.
- (b) The Developer agrees to develop the design of the Services Infrastructure Works (**Services Infrastructure Design Documents**):
  - (i) in accordance with:
    - A. this Deed;
    - B. the requirements of the Relevant Authorities;
    - C. the Services Infrastructure Strategy; and
    - D. the Services Infrastructure Implementation Plan; and
  - (ii) to a level of detail:
    - A. required by the Relevant Authorities; and
    - B. necessary to support an Application For Approval for the relevant Approval.

## **17B.3 Construction phase**

- (a) The Developer must at its risk and expense carry out, complete, commission, and where required by the Services Infrastructure Implementation Plan or otherwise as directed in writing by the Relevant Authority, decommission the Services Infrastructure in accordance with:

- (i) the Services Infrastructure Strategy;
  - (ii) the Services Infrastructure Implementation Plan;
  - (iii) the relevant Approvals;
  - (iv) the Services Infrastructure Design Documents;
  - (v) the requirements of the Relevant Authorities; and
  - (vi) its other obligations under this Deed.
- (b) The parties acknowledge and agree that where the Developer
- (i) is required to update the Services Infrastructure Implementation Plan because of an acceleration of the construction and transfer of the Services Infrastructure in accordance with a timetable which differs to that contemplated in the Servicing Infrastructure Implementation Plan; and
  - (ii) updates the Services Infrastructure Implementation Plan to take account of that acceleration of the construction and transfer of the Services Infrastructure,

the scope and methodology governing the construction and transfer of the Services Infrastructure in the Services Infrastructure Implementation Plan will not be changed except to the extent that it is necessary because of that acceleration.

#### **17B.4 Services Infrastructure Construction Contracts**

- (a) The parties acknowledge that the Developer may enter into a contract with a third party contractor for the carrying out, completion, commissioning and where required by the Services Infrastructure Implementation Plan, decommissioning of the whole or any part of the Services Infrastructure Works (**Services Infrastructure Construction Contracts**).
- (b) The Developer agrees with the Minister that it will not enter into a Services Infrastructure Construction Contract without the prior approval of the Relevant Authority.
- (c) In requesting the Relevant Authority's approval, the Developer must:
  - (i) provide to the Relevant Authority a copy of the draft Services Infrastructure Construction Contract;
  - (ii) provide to the Relevant Authority all details and information relating to the proposed contractor and the Services Infrastructure Works to be undertaken by that contractor;
  - (iii) certify in writing to the Relevant Authority that the Services Infrastructure Construction Contract:
    - A. complies with the provisions of:
      - 1) this Deed;
      - 2) the Services Infrastructure Strategy; and

- 3) the Services Infrastructure Implementation Plan;  
and

B. includes provisions which adequately provide for the practical completion, final completion, commissioning and, if relevant, the decommissioning of the Services Infrastructure Works.

- (d) The Developer warrants to the Relevant Authority that the contractor which is party to the Services Infrastructure Construction Contract will be a person that the Developer is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Developer's obligations under this Deed in relation to the carrying out of the Services Contribution Works.
- (e) The Relevant Authority must approve or otherwise withhold its approval to, the draft Services Infrastructure Construction Contract.
- (f) If the Relevant Authority notifies the Developer that it has not approved the draft Services Infrastructure Construction Contract, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Relevant Authority pursuant to clause 17B.4(f), prepare and submit to the Relevant Authority a revised draft Services Infrastructure Construction Contract. Clause 17B.4(c) applies to the revised draft Services Infrastructure Construction Contract in the same manner that it applies to the draft Services Infrastructure Construction Contract.
- (h) If the Relevant Authority approves the revised draft Services Infrastructure Construction Contract, it must promptly give the Developer written notice of that approval.

#### **17B.5 Developer to provide Relevant Authority with copy of Services Infrastructure Construction Contract**

- (a) Promptly following execution of any Services Infrastructure Construction Contract the Developer must provide a copy of that contract to the Relevant Authority.
- (b) The Developer must comply with all its obligations under any Services Infrastructure Construction Contract.

#### **17B.6 Developer liable for acts of contractors**

A Services Infrastructure Construction Contract does not relieve the Developer from any liability or obligation under this Deed. The Developer is liable to the Relevant Authority for the acts and omissions of any contractor or person engaged by the Developer in connection with the Services Infrastructure Works.

#### **17B.7 Application of clauses 17B.4 to 17B.6**

Where the Developer enters into more than one Services Infrastructure Construction Contract in respect of the Services Infrastructure Works, the Developer must comply with clauses 17B.4 to 17B.6 for each such Services Infrastructure Construction Contract.

## **17B.8 Review of Services Infrastructure Works and Services Infrastructure Construction Contracts**

The Developer acknowledges and agrees that:

- (a) the Relevant Authorities are not obliged to critically analyse the plans and specifications of the Services Infrastructure Works;
- (b) the Relevant Authorities are not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Services Infrastructure Works;
- (c) the Relevant Authorities are not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Services Infrastructure Works; and
- (d) no comment, review or information supplied to the Developer by the Relevant Authorities alters or alleviates the Developer from its obligation to construct and complete the Services Infrastructure Works in accordance with this Deed.

## **17B.9 Providing documents to Relevant Authority**

If a Relevant Authority reasonably so requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Relevant Authority of copies of the following items (as may be relevant) in relation to the Services Infrastructure Works:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Services Infrastructure Works; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Services Infrastructure Works which have not previously been delivered to the Relevant Authority, including any certificates of practical completion relating to the Services Infrastructure Works

promptly, and in any event within 20 Business Days, after request by the Relevant Authority.

## **17B.10 Developer responsibilities**

The Developer is responsible for:

- (a) the care of the Services Infrastructure;
- (b) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Relevant Authorities or the Developer liable under the Law; and
- (c) taking any urgent action in relation to the Land described in clause 17B.10(b) necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Relevant Authorities or the Developer liable under the Law

at all times prior to the transfer of (or transfer of control of) the Services Infrastructure to the Relevant Authority;



### **17B.11 Damage**

If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

### **17B.12 Insurance**

- (a) The Developer must ensure that there is effected and maintained an insurance policy covering such risks, and on terms, reasonably acceptable to the Relevant Authorities including physical loss, damage or destruction of the Services Infrastructure Works (including any associated temporary works), third party liability, contractors, workers compensation, motor vehicle and professional indemnity insurance. The policies must provide cover for the period from the date of the commencement of construction of the relevant Services Infrastructure Works until the end of any relevant defects liability period for those Services Infrastructure Works and in the case of professional indemnity insurance, to a date not earlier than 6 years after the end of any such defects liability period.
- (b) If the Relevant Authorities reasonably determine that a Services Infrastructure Construction Contract for the whole or any part of the Services Infrastructure Works does not contain adequate insurance provisions, the Developer must comply with clauses 17B.12 and 17B.13 in relation to those Services Infrastructure Works.

### **17B.13 Developer's insurance obligations**

- (a) The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the relevant Services Infrastructure Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).
- (b) All insurances which the Developer is required by this Deed to effect and maintain must:
  - (i) be with reputable insurers reasonably acceptable to the Relevant Authorities;
  - (ii) note the rights and interests of the Relevant Authorities; and
  - (iii) not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.
- (c) Upon demand by the Relevant Authorities, the Developer must give the Relevant Authorities:
  - (i) copies of all policies, cover notes, renewal certificates and endorsements slips; and
  - (ii) evidence satisfactory to the Relevant Authorities of the insurance policies which the Developer is required by this Deed to effect and maintain.
- (d) The Developer must punctually pay all premiums and excesses in respect of all insurances.
- (e) The Developer must:

- (i) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
  - (ii) if necessary, rectify anything which might prejudice any insurance policy;
  - (iii) reinstate an insurance policy if it lapses;
  - (iv) immediately notify the Relevant Authorities in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
  - (v) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (f) If all or any part of the Services Infrastructure Works are damaged or destroyed prior to the practical completion of those works:
- (i) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Services Infrastructure Works;
  - (ii) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Services Infrastructure Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Services Infrastructure Works using its own funds; and
  - (iii) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Services Infrastructure Works, the Developer will be entitled to keep that excess.
- (g) Where the Developer has effected any insurance policy referred to in this Deed before the date of this Deed, the Developer:
- (i) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
  - (ii) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Developer effects any insurance policy referred to in this Deed after the date of this Deed, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

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## 17C Operation and Maintenance

### 17C.1 Operation and Maintenance Contract

- (a) The parties acknowledge that the Developer must enter into a contract with Sydney Water or a third party operator for the operation and maintenance of the whole or any part of the Sydney Water Services Infrastructure no later than practical completion of the whole or that part of the Sydney Water Services Infrastructure (**Operation and Maintenance Contract**).
- (b) The parties acknowledge that any third party operator (other than Sydney Water) that is a party to an Operation and Maintenance Contract must:
  - (i) be experienced in the operation and maintenance of water related assets; and
  - (ii) procure all licences in connection with the operation and maintenance of the whole or any part of the Sydney Water Services Infrastructure as required by the *Water Industry Competition Act* 2006 (NSW) or as required by any Law.
- (a) The Developer agrees with the Minister that it will not enter into a Operation and Maintenance Contract without the prior approval of the Relevant Authority, except where it enters into an Operation and Maintenance Contract with Sydney Water.
- (b) In requesting the Relevant Authority's approval, the Developer must:
  - (i) provide to the relevant Authority a copy of the draft Operation and Maintenance Contract;
  - (ii) provide to the relevant Authority all details and information relating to the proposed third party operator and the Sydney Water Services Infrastructure to be operated and maintained by that operator;
  - (iii) certify in writing to the Relevant Authority that the Operation and Maintenance Contract:
    - A. complies with the provisions of:
      - 1) this Deed;
      - 2) the Services Infrastructure Strategy; and
      - 3) the Services Infrastructure Implementation Plan; and
    - B. expressly permits:
      - 1) the Developer to transfer the Sydney Water Infrastructure to Sydney Water in accordance with the terms of this Deed; and
      - 2) Sydney Water to solely operate and maintain the Sydney Water Services Infrastructure immediately upon completion of the transfer of the Sydney Water Services Infrastructure and Sydney Water

Services Infrastructure Land from the Developer to Sydney Water.

- (c) The Developer warrants to the Relevant Authority that any third party operator that is party to an Operation and Maintenance Contract (other than Sydney Water) will be a person that the Developer is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Developer's obligations under this Deed in relation to the operation and maintenance of the Sydney Water Services Infrastructure until such time as the Sydney Water Services Infrastructure is transferred from the Developer to Sydney Water.
- (d) The Relevant Authority must approve or otherwise withhold its approval to, the draft Operation and Maintenance Contract.
- (e) If the Relevant Authority notifies the Developer that it has not approved the draft Operation and Maintenance Contract, it must promptly provide the Developer with written notice of its reasons.
- (f) The Developer must within 30 Business Days of receipt of any notice from the Relevant Authority pursuant to clause 17C.2(e), prepare and submit to the Relevant Authority a revised draft Operation and Maintenance Contract. Clauses 17C.2(b) to 17C.2(g) apply to the revised draft Operation and Maintenance Contract in the same manner that they apply to the draft Operation and Maintenance Contract.
- (g) If the Relevant Authority approves the revised draft Operation and Maintenance Contract, it must promptly give the Developer written notice of that approval.

#### **17C.2 Developer to provide Relevant Authority with copy of Operation and Maintenance Services Contract**

- (h) Promptly following execution of any Operation and Maintenance Contract the Developer must provide a copy of that contract to the Relevant Authority.
- (i) The Developer must comply with all its obligations under the Operation and Maintenance Contract.

#### **17C.3 Developer liable for acts of contractors**

The entry into a Operation and Maintenance Contract does not relieve the Developer from any liability or obligation under this Deed. The Developer is liable to the Relevant Authority for the acts and omissions of any contractor, operator or person engaged by the Developer in connection with the Services Infrastructure Works.

#### **17C.4 Application of clauses 17C.1 to 17C.2**

Where the Developer enters into more than one Operation and Maintenance Contract in respect of the Sydney Water Services Infrastructure, the Developer must comply with clauses 17C.1 to 17C.3 for each such Operation and Maintenance Contract.

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## **17D Transfer of Sydney Water Infrastructure**

### **17D.1 Sydney Water to access and use Interim Sydney Water Services Infrastructure**

- (a) The Developer grants to Sydney Water the right to access, use and licence the Interim Sydney Water Services Infrastructure and the Interim Sydney Water Services Infrastructure Land for the purposes contemplated by this Deed.
- (b) Rights granted to Sydney Water by virtue of clause 17D.1(a) are intended to give Sydney Water control of the Interim Sydney Water Services Infrastructure and the Interim Sydney Water Services Land in accordance with Sydney Water standard practice.
- (c) Notwithstanding clause 17D.1(b), the Developer must (at the Developer's risk and expense):
  - (i) within [*insert*] Business Days of request by Sydney Water, meet with Sydney Water to agree terms (reasonably acceptable to Sydney Water) for the access to and use of the Interim Sydney Water Services Infrastructure and Interim Sydney Water Services Infrastructure Land by Sydney Water; and
  - (ii) promptly enter into a form of contract with Sydney Water (on terms reasonably acceptable to Sydney Water) documenting such terms of access and use (**Interim Sydney Water Licence**).
- (d) The Developer must act reasonably, in good faith and take into account the reasonable requirements of Sydney Water when negotiating, consulting and agreeing the terms of access, use and licence of the Interim Sydney Water Services Infrastructure and Interim Sydney Water Services Infrastructure Land by Sydney Water and the form of the Interim Sydney Water Licence.
- (e) The rights granted to Sydney Water in clause 17D.1(a) are intended to be legally fully effective and binding unless and until, the Developer and Sydney Water enter into the Interim Sydney Water Licence, the terms of which are intended to replace the rights granted to Sydney Water under clause 17D.1(a).

### **17D.2 Developer to transfer Ultimate Sydney Water Services Infrastructure**

- (a) Upon demand by Sydney Water the Developer must (at the Developer's risk and expense) transfer:
  - (i) the Ultimate Sydney Water Services Infrastructure; and
  - (ii) the Ultimate Sydney Water Services Infrastructure Landto Sydney Water.
- (b) The Developer must within 120 Business Days of the demand made by Sydney Water referred to in clause 17D.2(a):
  - (i) the Developer must agree financial arrangements (on terms reasonably acceptable to Sydney Water) with Sydney Water for the transfer of the

Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water (**Agreed Financial Arrangements**);

- (ii) agree a form of contract with Sydney Water (on terms reasonably acceptable to Sydney Water) documenting the terms of the Agreed Financial Arrangements and sign that contract promptly after it has been agreed;
- (iii) in respect of the transfer of the Ultimate Sydney Water Services Infrastructure:
  - A. deliver to Sydney Water the Services Infrastructure Contract, on terms satisfactory to Sydney Water in its sole discretion, as executed by the Developer;
  - B. give to Sydney Water all documents and certificates for the relevant Ultimate Sydney Water Services Infrastructure as may be necessary in the opinion of Sydney Water to effect the transfer of the relevant Ultimate Sydney Water Services Infrastructure to Sydney Water free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges); and
  - C. procure the assignment upon completion of the transfer of any component of the relevant Ultimate Sydney Water Services Infrastructure to Sydney Water of all collateral warranties, guarantees, covenants and other agreements (if any) relating in any way whatsoever to the relevant Ultimate Sydney Water Services Infrastructure; and
- (iv) in respect of the transfer of the Ultimate Sydney Water Services Infrastructure Land:
  - A. deliver to Sydney Water:
    - 1) the Services Infrastructure Land Contract, on terms satisfactory to Sydney Water in its sole discretion, as executed by the Developer; and
    - 2) a transfer of land in respect of the Ultimate Sydney Water Services Infrastructure Land in registrable form except for acceptance by Sydney Water and marking by the Office of State Revenue and as executed by the Developer and;
  - B. give to Sydney Water the certificate or certificates of title for the Ultimate Sydney Water Services Infrastructure Land; and
  - C. take any other necessary action to give effect to the transfer of the title of the Ultimate Sydney Water Services Infrastructure Land to Sydney Water free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

- (c) Upon the transfer of the Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water, the Minister will procure Sydney Water to pay such monies to the Developer as is required to be paid in accordance with the contract documenting the terms of the Agreed Financial Arrangements.
- (d) The parties must:
  - (i) act reasonably and in good faith when negotiating, consulting and agreeing the Agreed Financial Arrangements and the form of contract documenting such Agreed Financial Arrangements with Sydney Water; and
  - (ii) pay all due regard to any reasonable comments or suggestions each may make in respect of the Agreed Financial Arrangements and the form of contract documenting such Agreed Financial Arrangements.
- (e) If the Developer and Sydney Water fail to agree the Agreed Financial Arrangements within 120 Business Days of demand by Sydney Water as referred to in clause 17D.2(a), the Developer must immediately transfer to Sydney Water:
  - (i) the Ultimate Sydney Water Services Infrastructure; and
  - (ii) the Ultimate Sydney Water Services Infrastructure Land.
- (f) Upon the transfer of the Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water pursuant to clause 17D.2(e), the Minister will procure Sydney Water to pay an amount which is equivalent to the lowest consideration that has been offered by one party to the other party in discussions between Sydney Water and the Developer relating to the financial arrangements for the transfer of the Ultimate Sydney Water Services Infrastructure and Ultimate Sydney Water Services Infrastructure Land from the Developer to Sydney Water in relation to that transfer.

The Developer and Sydney Water will be deemed to be in dispute in respect of the financial arrangements relating to the transfer of the Ultimate Sydney Water Services Infrastructure and Ultimate Sydney Water Services Infrastructure Land and that dispute will be resolved in accordance with the dispute resolution procedures in Schedule 5.

### 17D.3 Contracts relating to Other Developments

- (a) The Developer acknowledges that, before the Developer transfers the whole or any part of the Sydney Water Services Infrastructure to Sydney Water, a developer of an Other Development may request to connect into or use that Sydney Water Services Infrastructure so that Other Development has that access to the Sydney Water Services Infrastructure and the associated supply of Services (**Other Development Request**).
- (b) If, prior to the transfer of the whole or any part of the Sydney Water Services Infrastructure to Sydney Water, the Developer receives an Other Development Request, the Developer must act in accordance with the written directions of Sydney Water in responding to that Other Development Request.
- (c) Following receipt of an Other Development Request, the Developer must enter into a contract with the developer of that Other Development for the provision of water

and/or sewerage from the Sydney Water Services Infrastructure to that Other Development (**Other Development Contract**), if, and only if, so directed by Sydney Water in accordance with the Services Infrastructure Strategy. The Developer shall not charge any fee, cost or expense in relation to any Other Development, contract (including without limitation any Other Development Contract) or complying with any such directions from Sydney Water.

#### **17D.4 Developer to mortgage Land and charge Services Infrastructure**

- (a) Upon demand by Sydney Water, the Developer must grant to Sydney Water:
  - (i) a Real Property charge over the Marsden Park Sydney Water Reservoir Site (**Real Property Charge**); and
  - (ii) a fixed and floating charge over:
    - A. the Sydney Water Services Infrastructure located on the Marsden Park Sydney Water Reservoir Site; and
    - B. the Marsden Park Sydney Water Reservoir Site (**Developer Charge**)

to secure the Developer's obligations to construct so much of the Sydney Water Services Infrastructure that is located on the Marsden Park Sydney Water Reservoir Site and transfer to Sydney Water so much of the Sydney Water Services Infrastructure Land that is comprised in the Marsden Park Sydney Water Reservoir Site in accordance with clauses 17A, 17B, 17C and 17D (**Developer Secured Liabilities**).

- (b) The Developer at its own expense will, promptly after the Real Property Charge and Developer Charge are entered into, take all practical steps, and otherwise do anything that Sydney Water reasonably requires to procure:
  - (i) the consent of each person who has an estate or interest in:
    - A. the Sydney Water Services Infrastructure that is located on the Marsden Park Sydney Water Reservoir Site; and
    - B. the Marsden Park Sydney Water Reservoir Site;
  - (ii) the execution of any documents reasonably requested by Sydney Water for registration of the Real Property Charge and the Developer Charge as a first ranking security

to enable the registration of the Real Property Charge and the Developer Charge as a first ranking security (free of all encumbrances and affectations including any charge or liability for rates, taxes and charges) by either the Land and Property Management Authority NSW under the Real Property Act in the relevant folios of the register for the Marsden Park Sydney Water Reservoir Site or by ASIC (as the case may be).

#### **17D.5 Discharge of Developer Mortgage and Developer Charge**

- (a) The parties acknowledge that the Real Property Charge and Developer Charge will be released following the satisfaction by the Developer of the Developer Secured Liabilities.



- (b) The Minister will procure Sydney Water to, promptly after the Developer discharges the Developer Secured Liabilities, take all steps, and otherwise do anything that the Developer reasonably requires, to discharge the Developer Mortgage and the Developer Charge.

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## **17E Integral Energy Services Infrastructure**

### **17E.1 Agreed Substation Site**

- (a) The Developer agrees to enter into the Sale Contract for the sale of the Agreed Substation Site to Integral Energy in accordance with the provisions of this clause 17E.1.
- (b) Within six months of a request from Integral Energy the Developer must deliver to Integral Energy the Sale Contract, on terms satisfactory to Integral Energy, as executed by the Developer.
- (c) The Developer must:
  - (i) comply with its obligations in the Sale Contract in accordance with that contract;
  - (ii) do all things reasonably required by Integral Energy to create a separate registered lot or lots for the Agreed Substation Site;
  - (iii) pay all costs in connection with the preparation and registration of the Plan of Subdivision creating a separate registered lot or lots for the Agreed Substation Site; and
  - (iv) complete the Sale Contract in accordance with the terms of the Sale Contract.

### **17E.2 Developer to transfer Agreed Substation Site**

Within 10 Business Days of satisfaction of the conditions to effect completion of the Sale Contract (as contained in the clause entitled "Completion" in the Sale Contract, the Developer must (at its risk and expense) deliver to Integral Energy:

- (a) a form of transfer in respect of the land comprising the Agreed Substation Site in favour of Integral Energy for a consideration of \$1, executed by the Developer and in registrable form except for acceptance by Integral Energy and marking by the Office of State Revenue; and
- (b) the certificate or certificates of title for the Agreed Substation Site,

and must take any other necessary action to give effect to the transfer of the title of the Agreed Substation Site to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

### 17E.3 Developer to transfer Interim Integral Energy infrastructure

- (a) Subject to clause 17E.3(b), the Developer must transfer (at the Developer's risk and expense) to Integral Energy by the dates specified in the Services Infrastructure Implementation Plan:
  - (i) the Interim Integral Energy Services Infrastructure; and
  - (ii) the Interim Integral Energy Services Infrastructure Land.
- (b) The Developer must:
  - (i) in respect of the transfer of the Integral Energy Services Infrastructure:
    - A. deliver to Integral Energy the Services Infrastructure Contract, on terms satisfactory to Integral Energy, as executed by the Developer;
    - B. give to Integral Energy all documents and certificates for the relevant Integral Energy Services Infrastructure as may be necessary in the opinion of Integral Energy to effect the transfer of the relevant Interim Integral Energy Services Infrastructure to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges); and
    - C. procure the assignment upon completion of the transfer of any component of the relevant Interim Integral Energy Services Infrastructure to Integral Energy of all collateral warranties, guarantees, covenants and other agreements (if any) relating in any way whatsoever to the relevant Interim Integral Energy Services Infrastructure; and
  - (ii) in respect of the transfer of the Interim Integral Energy Services Infrastructure Land:
    - A. deliver to Integral Energy :
      - 1) the Integral Energy Services Infrastructure Land Contract, on terms satisfactory to Integral Energy, as executed by the Developer; and
      - 2) a transfer of land in respect of the Interim Integral Energy Services Infrastructure Land in registrable form except for acceptance by Integral Energy and marking by the Office of State Revenue and as executed by the Developer;
    - B. give to Integral Energy the certificate or certificates of title for the Interim Integral Energy Services Infrastructure Land; and
    - C. take any other necessary action to give effect to the transfer of the title of the Interim Integral Energy Services Infrastructure Land to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

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**17F Subdivision of the Land****17F.1 Issue of Subdivision Certificate and Occupation Certificate**

No Subdivision Certificate or Occupation Certificate in respect of the Land may issue unless the relevant Consent Authority has received a notice from:

- (a) Sydney Water that the Developer has complied with those requirements of this Deed relating to the provision of Services Infrastructure in connection with water and sewerage that are required by the Services Infrastructure Implementation Plan to be complied with by the time of the issue of that Subdivision Certificate or Occupation Certificate; and
- (b) Integral Energy that the Developer has complied with those requirements of this Deed relating to the provision of Services Infrastructure in connection with electricity that are required by the Services Infrastructure Implementation Plan to be complied with by the time of the issue of that Subdivision Certificate or Occupation Certificate.

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**19. Commonwealth EPBC Act**

Following completion of the strategic assessment of the Growth Centres under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), the parties agree to meet and discuss in good faith any variation required to be made to this deed having regard to such arrangements.

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**20. Special Infrastructure Contributions**

- (a) The Developer acknowledges that it will be required to make a Special Infrastructure Contribution in relation to any development it proposes to carry out within the Precinct.
- (b) The Developer acknowledges that any condition imposed on a development consent granted to the Developer in relation to development within the Precinct is likely to require the Developer to obtain a certificate from the Minister stating that the Special Infrastructure Contribution has been satisfied in respect of the development.

## Schedule 1 - Section 93F Requirements

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
Description of land to which this Deed applies - (Section 93F(3)(a))	The Land described in item 1 of Schedule 2.
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environment plan to which this Deed applies; OR</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) An amendment of the SEPP in accordance with the Draft SEPP</p> <p>(b) The Development described in item 2 of Schedule 2.</p>
The scope, timing and manner of delivery of Contribution required by this Planning Agreement - (Section 93F(3)(c))	As set out in the Contributions Schedule
Applicability of Section 94 of the EP&A Act to the Development - (Section 93F(3)(d))	The application of section 94 of the EP&A Act is not excluded in respect of the Development.
Applicability of Section 94A of the EP&A Act to the Development - (Section 93F(3)(d))	The application of section 94A of the EP&A Act is not excluded in respect of the Development.
Applicability of Section 94EF of the EP&A Act to the Development - (Section 93F(3)(d))	The application of section 94EF of the EP&A Act is not excluded in respect of the Development.

<b>Requirement under the EP&amp;A Act</b>	<b>This Planning Agreement</b>
<p>Consideration of benefits under this Deed if section 94 applies to the Development- (Section 93F(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&amp;A Act is not excluded?</p>	<p>No. The Development Contributions to be provided by the Developer under this Deed must not be taken into consideration in determining a contribution under section 94 in respect of the Development or any other development (as that term is defined in the EP&amp;A Act) in relation to the Land.</p>
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 11 and Schedule 5.</p>
<p>Enforcement of this Deed (Section 93F(3)(g))</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 5, 7 and 13</p>
<p>Registration of this Deed</p> <p>The parties agree that this Deed will be registered in accordance with clause 7.</p>	<p>Yes</p>
<p>No obligation to grant consent or exercise functions - (Section 93F(9))</p> <p>The parties acknowledge that this Deed does not impose an obligation on a Consent Authority to grant a Development Consent, Part 3A Approval or to exercise any function under the EP&amp;A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to paragraph 1.8 of Schedule 10.</p>

## **Schedule 2 - Description of the Land and the Development**

### **1. Title**

Those parts of the land comprised in:

- (a) Lot 8 in Deposited Plan 262886 being folio identifier 8/262886;
  - (b) Lot 9 in Deposited Plan 262886 being folio identifier 9/262886;
  - (c) Lot 10 in Deposited Plan 262886 being folio identifier 10/262886;
  - (d) Lot 11 in Deposited Plan 262886 being folio identifier 11/262886;
  - (e) Lot 12 in Deposited Plan 262886 being folio identifier 12/262886;
  - (f) Lot 13 in Deposited Plan 262886 being folio identifier 13/262886;
  - (g) Lot 14 in Deposited Plan 262886 being folio identifier 14/262886;
  - (h) Lot 15 in Deposited Plan 262886 being folio identifier 15/262886;
  - (i) Lot 16 in Deposited Plan 262886 being folio identifier 16/262886;
  - (j) Lot 26 in Deposited Plan 262886 being folio identifier 26/262886;
  - (k) Lot 27 in Deposited Plan 262886 being folio identifier 27/262886;
  - (l) Lot 32 in Deposited Plan 262886 being folio identifier 32/262886;
  - (m) Lot 33 in Deposited Plan 262886 being folio identifier 33/262886;
  - (n) Lot 34 in Deposited Plan 262886 being folio identifier 34/262886;
  - (o) Lot 35 in Deposited Plan 262886 being folio identifier 35/262886;
  - (p) Lot 36 in Deposited Plan 262886 being folio identifier 36/262886;
  - (q) Lot 47 in Deposited Plan 262886 being folio identifier 47/262886;
  - (r) Lot 291 in Deposited Plan 1076555 being folio identifier 291/1076555; and
  - (s) Lot 292 in Deposited Plan 1076555 being folio identifier 292/1076555,
- which is identified and delineated by heavy dark blue ink in the plan comprising Annexure F.

### **2. Proposed Development**

The development of the Land into a business park.

## **Schedule 3 - Contributions Schedule**

### **1.1 RTA Works Portion - Scope**

The Scope of the RTA Works Portions is generally an upgrade of the section of Richmond Road from Townson Road to Grange Avenue generally in accordance with the Concept Design Plans contained in Annexure E, including the following:

- (a) The western leg of the four-way signalised intersection upgrade at the Townson Road intersection to the extent necessary to transition into other works to be undertaken by others, being the remaining three legs of the signalised intersection, to provide an entrance into the Precinct;
- (b) signalised four-way intersection at South Street (including transitions);
- (c) left-in / left-out non-signalised intersection at Grange Avenue (including transitions);
- (d) the road cross section to be in accordance with the RTA Route Strategic Master Plan for Richmond Road Corridor (figures 3.2 1.3 & 3.2 1.4) and consistent with the cross section for the adjacent road works to be built by other developers; and
- (e) the design and construction of bus stop(s) as determined by the Department and RTA.

The Developer must use its best endeavours and work collaboratively with the RTA to acquire and/or dedicate any land required for the provision of the RTA Works Portions.

### **1.2 RTA Works Portion - Staging**

The staging of the RTA Road Works Portions is to be acceptable to the RTA and be generally in accordance with the staging shown in the Staging Plan at Annexure D and the indicative staging arrangement as follows:

- (a) Stage 0: In the event that the three legs of the Townson Road signalised intersection to be carried out by others is not in place at the appropriate time, a temporary safe access, acceptable to the RTA, must be constructed.
- (b) Stage 1: Construction of the western leg of the four-way signalised intersection upgrade at the Townson Road intersection to the extent necessary to transition into other works to be undertaken by others, being the remaining three legs of the signalised intersection, to provide an entrance into the Precinct. Stage 1 is to be constructed generally in conjunction and completed no later than the remainder of the Townson Road signalised intersection upgrade.
- (c) Stage 2: The upgrade of the South Street Intersection to a four way signalised intersection, including transitions.
- (d) Stage 3: Construction of the North bound lanes of Richmond Road from Townson Road to South Street Intersections.
- (e) Stage 4: Construction of the North bound lanes of Richmond Road from South Street to Grange Avenue with transitions to marry into the existing construction of

Richmond Road. These works to include the upgrade of the Grange Avenue Intersection to a left in left out intersection.

- (f) Stage 5: Reconstruction of the South Bound Lanes of Richmond Road from Townson Road to Grange Avenue.

### 1.3 RTA Road Works Portion Delivery Timetable

Infrastructure Stage	Milestone
0	Prior to seeking the release of any subdivision certificate or occupation certificate the first land release.
1	To be constructed generally in conjunction and completed no later than the remainder of the Townson Road signalised intersection upgrade to be undertaken in that area by others.
2	Prior to release of the 65 <sup>th</sup> Ha of the Land.
3	Prior to release of the 100 <sup>th</sup> Ha of the Land
4	Prior to release of the 150 <sup>th</sup> Ha of the Land
5	Prior to release of the 180 <sup>th</sup> Ha of the Land

The RTA Works Portions described in Infrastructure Stages 2 to 5 inclusive, are to be constructed and practical completion attained prior to seeking the release of any subdivision certificate or occupation certificate that seeks to release the portion of the Land over the prescribed Milestone.

### 1.4 RTA Works Portion Table

Column 1	Column 2	Column 3	
Stage	SIC Offset Amount per Construction Milestone \$ (See Note**) )	Construction Milestone	
		No.	Description
<b>Total for Stage 0</b> (as referred to in paragraph 1.2(a) of Schedule 3)	<b>Nil</b>		



1	\$210,300	1	Expenditure of 25% of the value of the Construction Contract
1	\$210,300	2	Expenditure of 50% of the value of the Construction Contract
1	\$210,300	3	Expenditure of 75% of the value of the Construction Contract
1	\$210,300	4	Expenditure of 100% of the value of the Construction Contract
1	\$210,300	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
<b>Total for Stage 1</b>	<b>\$1,051,500</b>		
2	\$2,103,800	1	<b>Expenditure of 25% of the value of the Construction Contract</b>
2	\$2,103,800	2	Expenditure of 50% of the value of the Construction Contract
2	\$2,103,800	3	Expenditure of 75% of the value of the Construction Contract
2	\$2,103,800	4	Expenditure of 100% of the value of the Construction Contract
2	\$2,103,800	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
<b>Total for Stage 2</b>	<b>\$10,519,000</b>		
3	\$1,067,700	1	Expenditure of 25% of the value of the Construction Contract
3	\$1,067,700	2	Expenditure of 50% of the value of the Construction Contract
3	\$1,067,700	3	Expenditure of 75% of the value of the Construction Contract
3	\$1,067,700	4	Expenditure of 100% of the value of the Construction Contract
3	\$1,067,700	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works

<b>Total for Stage 3</b>	<b>\$5,338,500</b>		
4	\$1,443,000	1	Expenditure of 25% of the value of the Construction Contract
4	\$1,443,000	2	Expenditure of 50% of the value of the Construction Contract
4	\$1,443,000	3	Expenditure of 75% of the value of the Construction Contract
4	\$1,443,000	4	Expenditure of 100% of the value of the Construction Contract
4	\$1,443,000	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
<b>Total for Stage 4</b>	<b>\$7,215,000</b>		
5	\$938,100	1	Expenditure of 25% of the value of the Construction Contract
5	\$938,100	2	Expenditure of 50% of the value of the Construction Contract
5	\$938,100	3	Expenditure of 75% of the value of the Construction Contract
5	\$938,100	4	Expenditure of 100% of the value of the Construction Contract
5	\$938,100	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
<b>Total for Stage 5</b>	<b>\$4,690,500</b>		
<b>Total for all Stages</b>	<b>\$28,814,500</b>		

Note\*\*: These figures are indexed to December 2008.

## **Schedule 4 - RTA Works Portions Procedures**

This Schedule 4 applies to all RTA Works Portions.

Subject to any other provision in this deed to the contrary, in respect of each RTA Works Portion, the Developer must:

- (a) enter into a Works Authorisation Deed with the RTA for those works prior to commencement of any construction works;
- (b) promptly following execution of the Works Authorisation Deed relevant to those works, provide a copy of that deed to the Minister and the RTA;
- (c) promptly following execution of any Construction Contract with a third party relating to those works, provide a copy of that deed to the Minister;
- (d) comply with all its obligations under the Construction Contract and Works Authorisation Deed relevant to those works;
- (e) design that works portion consistent with the Concept Design Plans; and
- (f) construct and attain practical completion of the RTA Works Portions for Infrastructure Stages 2 to 5 inclusive, in accordance with the requirements of Schedule 3.

## **Schedule 5 - Dispute Resolution**

- (a) This Schedule 5 applies to any dispute under this Deed.
- (b) A dispute is taken to have arisen under this Deed if one party gives another party a notice in writing specifying particulars of the dispute.
- (c) If a notice is given under paragraph (b) of this Schedule, the parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within a further 28 days, the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of that Law Society, or the President's nominee, to select the mediator.
- (e) If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the parties may exercise their legal rights in relation to the dispute, including the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

## **Schedule 6 - Registration of Deed**

### **1.1 Registration**

- (a) The Developer agrees to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and this Schedule 6.
- (b) The Developer, at its expense and risk, as soon as reasonably practicable (but in any event no later than 30 days after the Date of this Deed) take all practical steps and otherwise do anything that the Minister reasonably requires:
  - (i) to procure
    - A. the consent of each person who:
      - 1) has an estate or interest in the Land registered under the Real Property Act; or
      - 2) is seized or possessed of an estate or interest in the Land; and
    - B. the execution of any documents; and
    - C. the production of the relevant duplicate certificates of title, to enable the registration of this Deed under the Real Property Act 1900 (NSW) by the Registrar-General in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act; and
  - (ii) to procure registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act.

## Schedule 7 - Release and Discharge Terms

- (a) If the Developer has paid all Special Infrastructure Contributions payable in connection with any part of the Land to the satisfaction of the Minister (either by paying the relevant proportion of Special Infrastructure Contribution or by the Application of an Available SIC Offset Amount pursuant to clause 3.5(c)(ii)), then at the Developer's request, the Minister agrees to:
  - (i) provide a full release and discharge of this Deed with respect to that part of the Land;
  - (ii) sign all documentation as is necessary to remove this Deed from the title of that part of the Land; and
  - (iii) sign such documentation as is necessary to remove any caveat lodged by the Minister in relation to that part of the Land pursuant to clause 6.
- (b) Progressively as the Minister is satisfied that
  - (i) the Developer has fully complied with or otherwise secured such of its obligations under this Deed, as are applicable to a part of the Land; and
  - (ii) the relevant part of the Land ("the Released Land") is able to be dealt with, without thereby preventing the Developer from discharging of its remaining obligations under this Deed; thenat the Developer's request, the Minister agrees to:
  - (iii) provide a full release and discharge of this Deed with respect to the whole of the Released Land;
  - (iv) sign all documentation as is necessary to remove this Deed from the title of the Released Land; and
  - (v) sign such documentation as is necessary to remove any caveat lodged by the Minister in relation to the Released Land pursuant to clause 6.
- (c) The Developer must, promptly following written demand from the Minister, reimburse the Minister for any Costs the Minister incurs in connection with doing anything required or contemplated by this Schedule 7.

## **Schedule 8 - Bank Guarantees**

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### **1. Bank Guarantees Required**

If the Developer provides one or more Bank Guarantees to the Minister pursuant to clause 3.3(a)(i), then the terms and conditions of this Schedule 8 apply in relation to those Bank Guarantees.

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### **2. Face value of Bank Guarantee**

If a Bank Guarantee is required to be provided by the Developer to the Minister under this Deed, then the Developer must procure and give to the Minister a Bank Guarantee with a face value of an amount equivalent the amount and at the time specified in this Deed.

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### **3. Expiry of Bank Guarantees**

- (a) If any Bank Guarantee provided by the Developer is expressed as expiring on a certain date, the Developer must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 4 of this Schedule 8.
  - (b) The provision of the Bank Guarantee does not:
    - (i) relieve the Developer from any of its obligations under any other provision of this Deed; or
    - (ii) limit the right of the Minister to recover from the Developer 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 the Developer fails to provide the Minister with a replacement Bank Guarantee in accordance with paragraph 3 of this Schedule 8, the Minister may call on the full amount of such Bank Guarantee after giving 10 Business Days prior written notice to the Developer.

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### **5. Cash deposit**

- (a) If the Minister makes demand under any Bank Guarantee pursuant to paragraph 4 of this Schedule 8, 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 ("Cash Deposit Account"). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bank Guarantee secured.
- (b) The Minister may only withdraw the proceeds from the account to the extent, if any, that it becomes entitled to call on the relevant Bank Guarantee under this Deed (other than for the Developer's failure to provide a replacement Bank Guarantee pursuant to paragraph 4 of this Schedule 8).
- (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 Deed in connection with the obligations under this Deed secured by the relevant Bank Guarantee and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bank Guarantee, 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 the Developer.
- (e) Subject to paragraph 6 of this Schedule 8, for the avoidance of doubt, the Developer has 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 in relation to obligations secured by the relevant Bank Guarantee.

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## **6. Release of Cash Deposit**

The Minister must release the Cash Deposit to the Developer if the Developer provides the Minister with a replacement Bank Guarantee complying with the requirements of paragraph 3 of this Schedule 8.



## Schedule 9 - Assignment and Dealing

### 1.1 Developer may not alienate

- (a) The Developer must not mortgage, charge or otherwise encumber the whole or any part of the Land which is, or may reasonably be, the Marsden Park Sydney Water Reservoir Site and/or the Agreed Substation Site..
- (b) The Developer must not assign, transfer, novate, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest in any Services Infrastructure or any Services Infrastructure Works otherwise than in accordance with this Deed.

### 1.2 Developer's proposed assignment of rights

- (a) Unless the matters specified in paragraph 1.1 of this Schedule 9 are satisfied, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The matters required to be satisfied for the purposes of paragraphs 1.1(a) and 1.2(b) of this Schedule 9 are as follows:
  - (i) the Developer has, at no cost to the Minister, first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of an agreement in favour of the Minister on terms satisfactory to the Minister;
  - (ii) the Minister, by notice in writing to the Developer, has stated that evidence satisfactory to the Minister has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Deed;
  - (iii) the Developer is not in breach of this Deed; and
  - (iv) the Developer has, at no cost to the Minister or the RTA, first procured the execution by the person to whom the Developer proposes to assign or novate rights or obligations under this Deed, of an agreement in favour of the RTA on terms satisfactory to the RTA whereby that person agrees to perform those obligations being performed by the Developer under the Works Authorisation Deeds.

### 1.3 Right of Developer to sell Land

The Developer must not sell or transfer the whole or any part of the Land for which a Special Infrastructure Contribution has not been paid or for which an Available SIC Offset Amount has not been Applied pursuant to clause 3.5(c)(ii) in respect of that Land, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- (a) it satisfies the Minister acting reasonably that the proposed Transferee is respectable and financially capable of complying with such of the Developer's obligations under this Deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Minister acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
- (b) the requirements specified in paragraph 1.1 of this Schedule 9 are satisfied; and

- (c) the rights of the Minister under this Deed are not diminished or fettered in any way.

#### **1.4 Minister's Costs**

The Developer must pay to the Minister (or reimburse the Minister on demand) for all the Costs incurred by the Minister in connection with any assignment or dealing proposed under paragraphs 1.1 or 1.2 of this Schedule 9.

#### **1.5 Minister's assignment of rights**

The Minister:

- (a) may assign its rights under this Deed to another Minister of the State of New South Wales or to a statutory body representing the Crown without the Developer's consent;
- (b) must require the transferee and the Developer to enter into a deed in form and substance acceptable to the Minister and the Developer each acting reasonably containing provisions under which the transferee and the Developer agree to comply with the terms and conditions of this Deed; and
- (c) will pay the Developer's reasonable Costs in relation to that assignment.

## **Schedule 10 - General Provisions**

### **1.1 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 his 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.

### **1.2 Costs**

- (a) Unless otherwise specified in this Deed, all Costs relating to this Deed are to be borne by the parties in the proportions specified in Schedule 11 and are payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 10, the Developer agrees to pay or reimburse the Minister on demand for:
  - (i) Costs of the Minister in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and
  - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

### **1.3 Effect of terms and conditions in Schedules**

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

### **1.4 Entire agreement**

The parties intend the First Planning Agreement and the Second Planning Agreement (once it is entered into and is operative pursuant to clause 2.2(b)) to constitute the entire agreement and understanding between them in relation to the subject matters of each of the First Planning Agreement and the Second Planning Agreement respectively and agree that any prior agreements or arrangements between them relating to the subject matter of the First Planning Agreement and the Second Planning Agreement are rescinded and have no further force or effect. No party can rely on an earlier document, anything said or done by another party, or by an officer, agent or employee of that party, before the Date of this Deed, except as permitted by law.

### **1.5 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.

## **1.6 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.

## **1.7 Enforcement**

- (a) This Deed may be enforced by either party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
  - (ii) an Authority or the Minister from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates; and
- (c) The Developer covenants with the Minister that the Developer will not rescind or terminate this Deed or make a claim that this Deed is void, voidable, illegal or unenforceable because a condition in a Planning Consent requires the Developer to enter into the Planning Agreement.
- (d) The Developer indemnifies the Minister against any liability, loss, claim, damages, 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) arising from or incurred in connection with the Developer's breach of any of its obligations under paragraph 1.7(c) of this Schedule 10.
- (e) The indemnity in paragraph 1.7(d) of this Schedule 10 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed.
- (f) It is not necessary for the Minister to incur expense or to make any payment before enforcing the indemnity in clause paragraph 1.7(d) of this Schedule 10.
- (g) The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.7(d) of this Schedule 10.

## **1.8 No fetter**

Nothing in this Deed is to be construed as requiring an Authority (including the Minister) 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 an Authority to:
  - (i) grant any Planning Consent; or

- (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

## **1.9 Joint and individual liability and benefits**

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

## **1.10 Representations and warranties**

The Developer represents and warrants that:

- (a) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
- (b) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (d) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (e) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
- (f) **(benefit)** it benefits by entering into this Deed to which it is a party; and
- (g) **(capacity)** it does not enter this Deed as an agent for any other person or as trustee of any trust or on behalf or for the benefit of any other person.

The Developer acknowledges that the Minister has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.10 of this Schedule 10.

## **1.11 Severability**

- (a) If a clause or part of a clause 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 clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **1.12 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.

### **1.13 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.

### **1.14 Confidentiality**

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

### **1.15 Release and indemnity**

- (a) The Developer agrees that the obligation to provide the Development Contributions is at the risk of the Developer. The Developer releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Developer's obligation to provide the Development Contributions.
- (b) The Developer indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Development Contributions in accordance with this Deed and/or the Minister exercising the Minister's rights under or by virtue of this Deed.
- (c) The indemnity in paragraph 1.15(b) of this Schedule 10 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

## **Schedule 11 - Costs**

Developer - 100% of all Costs including the Minister's legal and advertising costs in connection with this Deed.

## Schedule 12 - Minimum Annual Production of Subdivided Land

The minimum annual (cumulative) production of subdivided land to be created in the first five years after the date of gazettal of the SEPP (as amended consistent with the Draft SEPP) (**Amended SEPP**) is as set out in the following table:

<b>Prescribed Timeframe</b>	<b>Annual Production (Prescribed Area)</b>	<b>Cumulative Totals (Area)</b>
Within 12 months after the date of gazettal of the Amended SEPP	0 hectares	0 hectares
Within 24 months after the date of gazettal of the Amended SEPP	0 hectares	0 hectares
Within 36 months after the date of gazettal of the Amended SEPP	5 hectares	5 hectares
Within 48 months after the date of gazettal of the Amended SEPP	5 hectares	10 hectares
Within 60 months after the date of gazettal of the Amended SEPP	10 hectares	20 hectares



## Schedule 13 – Department Costs

- (a) In accordance with the Precinct Acceleration Protocol (**PAP**) including the requirement that precinct acceleration result in “no cost to Government”, the Developer (being the proponent for the accelerated release of the Precinct) agrees to cover the associated basic costs of the Department including payment for:
- (i) an infrastructure analyst and any legal advice needed in the planning for the Precinct;
  - (ii) master planning and statutory planning costs which will be independently commissioned and managed by the Department;
  - (iii) Precinct project manager costs; and
  - (iv) Council and Precinct Planning co-ordinator costs.

The tables below list the types of activities to be paid for (or that have been paid for) by the Developer. Costs will be paid by the Developer on a monthly basis to the Department upon receipt of a consolidated tax invoice issued by the Department.

- (b) The basic costs of the Department (relating to the management of the Stage 2 Precinct Acceleration Protocol Application “Precinct Acceleration”) will be reimbursed by the Developer.
- (c) The basic costs of the Department relating to Precinct Planning will be paid monthly. Costs for external services engaged by the Department will be reimbursed at cost upon presentation of an invoice. The total monthly cost will be invoiced plus GST and paid monthly to the Department.
- (d) In order to account for the different resources, activities, commencement and conclusion dates for acceleration of the Precinct and Precinct Planning activities the costs of the Department have been split into the following categories:
- (i) **“Precinct Acceleration”** are those Department costs specifically related to the management of the Stage 2 Precinct Acceleration Protocol Application.
  - (ii) **“Precinct Planning”** are those Department costs specifically related to the Precinct Planning Process and will be paid as a monthly cost from the date of gazettal of the release of the Precinct to the date of gazettal of the SEPP (as amended consistent with the Draft SEPP).
  - (iii) **“Precinct Planning Post Rezoning”** The Department costs for Precinct Planning incurred following gazettal of the SEPP (as amended consistent with the Draft SEPP) i.e. rezoning (e.g. completion of deferred items or areas) will be charged on a direct hourly cost basis to the stated hourly rates and paid monthly by the Developer upon invoice.
- (e) The above costs will be identified separately in a combined monthly invoice, plus GST and must be paid by the Developer on a monthly basis. (The first month’s invoice will be proportioned to reflect any part month). The basic activities of the Department which have or will general a cost for the Developer are set out in the following tables:

## Precinct Acceleration

These costs were incurred by the Department, and have been paid by the Developer, prior to the Date of this Deed

Resource/Activity	Monthly Cost
<b>Department – Precinct Acceleration</b>	
<b>Infrastructure Analyst</b>  Overall coordination of Department activities in relation to the Stage 2 Precinct Acceleration Protocol Process for the acceleration of the Precinct. Management of communications between the Department, the Developer, Council, agencies and all other stakeholders. Internal and external reporting including Department Briefing updates and presentations. Preparation and distribution of agendas and minutes as required. Records management.	\$6,000  (Estimate based on an average of 15 hours/week charged to this project)
<b>Deputy General Manager – Strategy</b>  Executive management of the Stage 2 Precinct Acceleration Protocol Process. Direction, review and sign-off of all PAP activities. Executive liaison, reporting and presentations. Interpretation and overview of Department protocols and procedures.	\$3,000  (Estimate based on an average of 6 hours/week charged to this project)
<b>Department Executive</b>  Involvement of the senior Department executive comprising the General Manager – Operations, the General Manager - Finance and Administration and the Chief Executive Officer. Executive overview and direction including reporting to the Board.	\$Nil Charge  (Estimate based on a combined average of 2 hours/week charged to this project)
<b>External Expert Adviser – Infrastructure</b>  Expert advice in relation to aspects of infrastructure including interpretation and implementation of the business plan, identification of costs and the assessment of variations and alternative proposals that may arise during the Stage 2 planning process.	(All costs have been reimbursed upon presentation of invoice by the Department)
<b>Legal Advice</b>  Interpretation and adherence with the EP&A Act and all other regulatory instruments. Input and review of this Deed. Review of Developer/Agency contracts and agreements.	(All costs have been reimbursed upon presentation of invoice by the Department)
<b>Additional Investigations (as required)</b>  Additional investigations as required in order for the Department to manage and implement the Stage 2 Precinct Acceleration Protocol Application including but not limited to; road and traffic engineering, geological, heritage and/or archaeological, demographic, ecological and identification of existing services. Further studies, for example, may be required in order to assess or attribute costs to variations and alternative proposals that may arise during the Stage 2 planning process.	(All costs have been reimbursed upon presentation of invoice)

<b>Total “One-off” Cost for Precinct Acceleration (4 x months)</b>	<b>\$36,000 + GST</b>  (plus payment of invoices for External Adviser, Legal Advice & Additional Investigations)  (one-off cost has been paid in full in first monthly invoice)
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<b>PACG – Precinct Acceleration “One-off Cost”</b>	
<b>PACG Members</b>  Overview of GCC management of the Stage 2 application. Review of recommendation for release of Precinct for planning. Review and approval of final Stage 2 application including review of this Planning Agreement, review of agency contracts and agreements and subsequent reporting to Cabinet.	\$3,000
<b>Secretariat</b>  Executive management of the Stage 2 application. Direction, review and sign-off on all PAP activities. Executive liaison, reporting and presentations. Interpretation and overview of GCC and PACG protocols and procedures.	\$6,000
<b>Expert Adviser</b>  Expert advice as required by the PACG in order to oversee, assess and make recommendations on the Stage 2 application throughout the precinct planning phase.	\$3,000
<b>Legal &amp;/or other Advice</b>  Note. PACG expect any Legal or other advice required will be provided via GCC.	\$Nil
<b>Total “One-off” Cost for PACG</b>	<b>\$12,000 + GST</b>  (one-off cost has been paid in full in first monthly invoice)

## Precinct Planning

<b>Department – Precinct Planning</b>	
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<b>Project Manager, Planning</b>  Overall coordination and management of the precinct planning process including implementation of the precinct planning protocol. Participation in the Project Control Group (PCG) and Precinct Working Group (PWG). Liaison with relevant Councils, infrastructure providers and statutory bodies. Review and report on all precinct planning activities being undertaken by the Developer.	<b>\$5,750</b>  (Estimate based on 40% full-time engagement charged to this project)
<b>Precinct Project Co-ordinator</b>  Overall coordination and management of the precinct planning process including implementation of the precinct planning protocol. Participation in the Project Control Group (PCG) and Precinct Working Group (PWG). Liaison with relevant Councils, infrastructure providers and statutory bodies. Review and report on all precinct planning activities being undertaken by the Developer.	<b>\$19,715 + Disbursements*</b>  (Estimate based on supply contract. Monthly invoices to be reimbursed in-full)
<b>Deputy General Manager – Land Release</b>  Executive management of the precinct planning process including review and direction of the Project Manager. Participation in Project Control Group (PCG) as deemed necessary. Executive liaison, reporting and presentations. Interpretation and overview of GCC planning protocol and procedures.	<b>\$2,000</b>  (Estimate based on an average of 4 hours/week charged to this project)
<b>Community Liaison Manager</b>  Interaction, review and reporting on Developer community liaison activities. Participation in the Project Control Group (PCG) and Precinct Working Group (PWG) as deemed necessary. Provide input and support to the Project Manager as required.	<b>\$1,000</b>  (Estimate based on an average of 2 hours/week charged to this project)
<b>Additional Investigations &amp; Planning Studies (as required)</b>  Additional investigations and planning studies as required by the Department in order for it to manage and implement the precinct planning process being undertaken by the Developer. These costs will also include reasonable contributions to Council agreed by the Department as well as costs associated with any independent review for advice related to planning studies considered necessary by the PCG.	(All costs to be reimbursed upon presentation of invoice by the Department)
<b>Total Monthly Cost for Precinct Planning</b>	<b>\$28,465 + GST</b>  (plus payment of invoices for Planning Studies & Additional Investigations)

\* The amount shown for the Project Co-ordinator resource reflects a minimum rate per month based on 35 hours per week inclusive of basic overheads such as travel etc. (Any additional costs relating to contract conditions such as termination etc will be paid in full by the Developer. A draft copy of the contract will be provided). Where additional hours and/or additional costs such as approved disbursements are to be incurred, these costs will be subject to prior approval from the Developer and will be paid in full by the Developer.

Note: The abovementioned functional bodies and titles may have changed with the merging of the Government departments but have been retained in this deed as the tasks remain unchanged and were relevant when the relevant costs were incurred.

## Schedule 14 – Acceptance of Developer's Offer

TO: Marsden Park Developments Pty Limited (**Developer**)

The Minister for Planning (**Minister**) accepts the offer granted by the Developer under clause 2.2(a) of the 'Planning Agreement - Marsden Park Industrial Precinct' (**Deed**) dated ***[insert]*** between the Minister and the Developer to enter into the Second Planning Agreement (as that term is defined in the Deed).

In accepting the Developer's offer referred to above, the Second Planning Agreement operates and becomes legally binding on both parties, and the parties will be taken to have entered into the Second Planning Agreement on and from the date of this notice.

Dated:

Signed by the Minister

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**Executed** as a deed

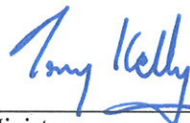
**Signed sealed and delivered by The Minister for Planning, in the presence of:**



Signature of Witness

MICHAEL FLEMING

Name of Witness in full




Signature of Minister

Name of Minister

TONY KELLY

**Executed by Marsden Park Developments Pty Ltd ACN 123 238 282 in accordance with section 127 of the Corporations Act:**



Signature Director

William Walter Wearn

Full name of director



Signature of company secretary/director

BRYAN KEITH SINGH

Full name of company secretary/director

**Executed by Ganian Pty Limited ACN 079 625 835 in accordance with section 127 of the Corporations Act 2001 (Cth):**



Signature of director

ROBERT JOHN WEARN.

Full name of director



Signature of company secretary/director

BRYAN KEITH SINGH.

Full name of company secretary/director

## **Annexure A - Explanatory Note**



# Marsden Park Industrial Precinct Planning Agreement

## Introduction

The Marsden Park Industrial Precinct is the first Precinct to be released under the Government's Precinct Acceleration Protocol (**PAP**). The PAP has been developed by Government to allow the early release of land within the Growth Centres for development. The VPA addresses the key condition of the PAP in that the early release of these precincts are to be at no cost to Government.

The Marsden Park Industrial Precinct Planning Agreement is a contractual arrangement between the Minister for Planning (the "**Minister**") representing the NSW Government and Marsden Park Developments Pty Ltd (the "**Developer**") that is expressly authorised by statute. Planning Agreements are the creation of Division 6 of Part 4 of the Environmental Planning and Assessment Act (Act). The Marsden Park Industrial Precinct Planning Agreement outlines the conditions under which the Minister will consider amending the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the "**SEPP**")

The effect of the amendment to the SEPP, would be to rezone the Land for urban purposes to, as indicated by the Marsden Park Industrial Precinct Indicative Layout Plan.

Stage 2 (Approval and Implementation) of the PAP requires the Developer to accept a Government prepared Requirements Package. The Requirements Package requires the Developer to fund the Precinct Planning process as well as fund and deliver essential infrastructure to support the precinct, including regional transport infrastructure and services infrastructure. The Marsden Park Industrial Precinct Planning Agreement formally commits the Developer to the delivery of the Requirements Package.

The Marsden Park Industrial Precinct Planning Agreement contains two Planning Agreements.

The first Planning Agreement will be operative and entered into following execution of that document by the Minister and the Developer (**First Planning Agreement**). The First Planning Agreement provides that the Developer will fund the planning process for the Precinct (at an estimated cost of \$1,930,000) (**Precinct Planning Contribution**) and will prepare a Servicing Strategy and Implementation Plan.

Within this document is an irrevocable offer by the developer to enter into a second Planning Agreement, which will be taken to be operative on and from the date that the Minister accepts the Developer's offer following issue of the first planning consent within the Precinct but no later than one year after the execution of the First Planning Agreement (**Second Planning Agreement**). This offer and acceptance mechanism is to utilise provisions within the Goods and Services Tax legislation (A NEW TAX SYSTEM (GOODS AND SERVICES TAX) ACT 1999) for the provision of infrastructure to be exempt from GST.

The Second Planning Agreement provides that the Developer will fund or provide the road works infrastructure (**Road Works**) and **Servicing Infrastructure** given the demands created by the development of the Precinct.

The Road Works to be provided under the Marsden Park Industrial Precinct Planning Agreement generally comprise the upgrade of a 1.7km section of Richmond Road between Townson Road and Grange Avenue to a four lane principal arterial road including intersections. The staged delivery of the Richmond Road upgrade is linked to development milestones of the Precinct.

The Marsden Park Industrial Precinct Planning Agreement defines an orderly process by which the Developer will plan and deliver infrastructure as required in consultation with the relevant service authorities to support the orderly development of the whole of the precinct. The Marsden

Park Industrial Precinct Planning Agreement requires that appropriate contracts be entered into with the relevant authorities as components of services infrastructure are planned and delivered.

The Marsden Park Industrial Precinct Planning Agreement requires the Developer:

1. to prepare a Services Infrastructure Strategy within six months of the SEPP Amendment;
2. to prepare a Services Infrastructure Implementation Strategy within eighteen months of the SEPP Amendment;
3. to enter fund, construct and provide for the ultimate handover of all services related land and services infrastructure to the relevant service authority.

### **Summary of Objectives, Nature and Effect of the Planning Agreements**

A key objective of the NSW Government is the supply of land for urban development to the market as quickly as possible consistent with the most efficient use of government funds.

The Road Works will be undertaken in accordance with the Second Planning Agreement and on a staged basis (and in separate work portions known as "**Milestones**").

The Road Works generally comprise the upgrade of Richmond Road between Townson Road and Grange Avenue to a four lane principal arterial road. These works are to include:

1. construction of the western spur of a four-way signalised intersection proposed at Townson Road to provide an entrance into the Precinct;
2. signalised four-way intersection at South Street;
3. left-in / left-out non-signalised intersection at Grange Avenue;
4. the road cross section to be in accordance with the RTA Route Strategic Master Plan for Richmond Road Corridor; and
5. the design and construction of bus stop(s) as determined by the Department of Planning and NSW Roads and Traffic Authority.

The Second Planning Agreement also provides that the Developer must provide services infrastructure to the Precinct to meet the needs created by the future development of the entire Precinct at no cost to Government. The provision of the services infrastructure must be timed to support the orderly development of the Precinct in that adequate services capacity is to be provided for use by other developers within the Precinct

In addition, the Second Planning Agreement includes obligations designed to encourage the Developer to subdivide and develop the Land for uses and purposes specified within the SEPP Amendment in accordance with certain nominated Milestones.

The Developer may become liable to pay the Special Infrastructure Contribution in connection with the Development or other developments within the Sydney Region Growth Centres.

- The Second Planning Agreement provides that the Developer may be entitled to 'offset amounts' (**SIC Offset Amounts**) which could be applied towards its Special Infrastructure Contribution obligations (in part or in whole) as a result of the Developer having achieved a Milestone (or which enables the Developer to apply those SIC Offset Amounts towards the partial or full satisfaction of the Developer's obligations to make a Special Infrastructure Contribution). Accordingly, if the Developer achieves a

Milestone to the satisfaction of the Minister, the Developer will be entitled to SIC Offset Amounts for a value attributable to that Milestone; and

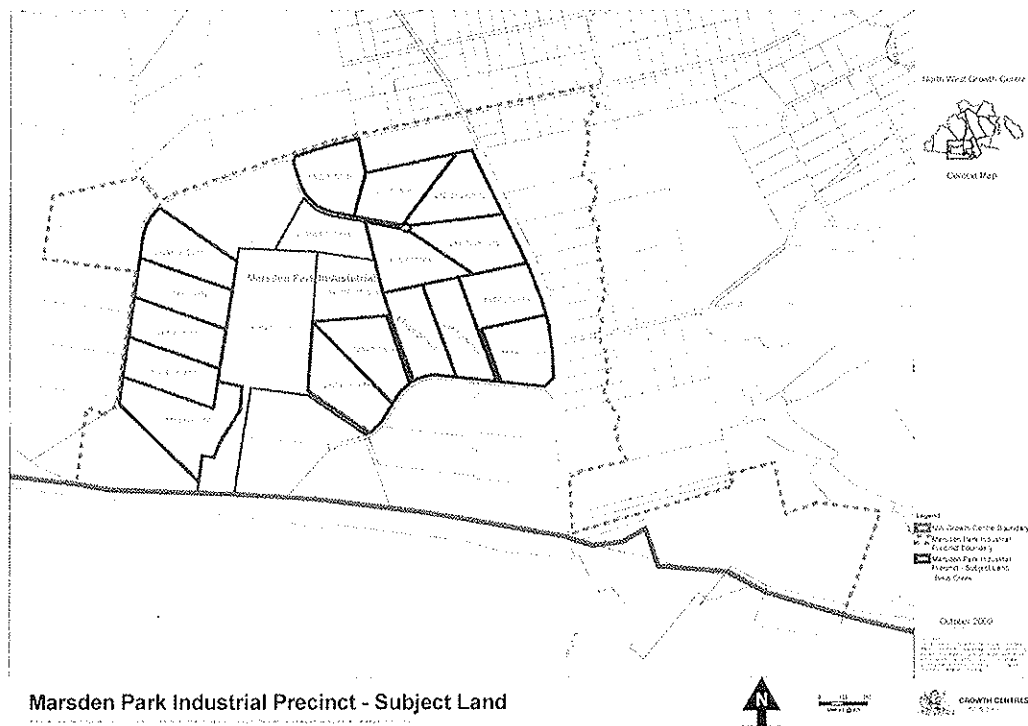
- if the Developer becomes liable to make Special Infrastructure Contributions in respect of the Development or any other development undertaken by the Developer within the Sydney Region Growth Centres, the Developer will be entitled to apply those SIC Offset Amounts towards the partial or full satisfaction of the Developer's obligations to make those Special Infrastructure Contributions.

The Developer will also be entitled to SIC Offset Amounts for a portion of its Precinct Planning Contribution (as determined by the Minister). Such entitlement will not exceed \$1,930,000.

All of the SIC Offset Amounts are subject to indexation.

### Description of the Subject Land

The Planning Agreements apply to those parcels of land owned by the Developer within the Marsden Park Industrial Precinct, shown edged in dark blue ink on the Subject Land Map below:



If the SEPP Amendment is made, the Developer intends to make development applications under the Act to develop the Land consistent with the gazetted Marsden Park Industrial Precinct, Indicative Layout Plan (the "**Development**").

It is noted that Section 93F(9) of the Act states that:

*A Planning Agreement cannot impose an obligation on a planning authority:*

*(a) to grant development consent, or*

*(b) to exercise any function under this Act in relation to a change to an environmental planning instrument.*

As such, the Planning Agreements have no bearing on whether the SEPP Amendment is made. Rather many of the commitments made in the Second Planning Agreement are made subject to the SEPP Amendment.

The Planning Agreements provide for the Developer to register the Planning Agreements on title to the Land in accordance with section 93H of the Act.

## **Assessment of Merits of Planning Agreements**

### **The Planning Purpose of the Planning Agreements**

In accordance with section 93F(2) of the Act, the Planning Agreements have the following planning purposes.

The Planning Agreements provide for the provision of infrastructure to meet the demands generated by the Development for new State public infrastructure.

The Planning Agreements will:

- enable the Land to be developed in a timely and efficient manner to promote economic development;
- enable the provision of public road improvements; and
- enable the provision of the essential services infrastructure to service the Precinct at no cost to Government.

The Minister and Developer have assessed the Planning Agreements and both hold the view that the provisions of the Planning Agreements provide a reasonable means of achieving the public purposes set out above. This is because the Planning Agreements describe an appropriate mechanism by which planning outcomes can be achieved without causing additional costs to Government due to the early release of the Land.

### **How the Planning Agreements Promote the Public Interest and the Objects of the *Environmental Planning and Assessment Act 1979***

The Planning Agreements promotes the public interest and following objects of the *Environmental Planning and Assessment Act 1979* as contained in section 5 of that Act:

- Section 5(a) (i) *"the proper management, development and conservation of natural and artificial resources ..... for the purpose of promoting the social and economic welfare of the community and a better environment."* by providing the resources needed for proper co-ordinated planning of the precinct and the essential upgrades needed for the State road system;
- Section 5(a)(ii) *"the promotion and co-ordination of the orderly and economic use and development of the land"* by ensuring that the land use planning and infrastructure co-ordination occurs prior to rezoning and that the delivery of the State road network is tied to key milestones in the urban development of the Precinct;
- Section 5(a)(iii) *"the protection, provision and co-ordination of communication and utility services"* by setting aside the land needed for State and local level infrastructure delivery;

- Section 5(a)(iv) *"the provision of land for public purposes"* by undertaking preliminary designs for Richmond Road to ensure that the land needed for widening and upgrading is available.
- Section 5(b) *"to promote the sharing of the responsibility for environmental planning between the different levels of Government in the State"* by creating a transparent and permanent means of obligating the Developer to contribute to State transport infrastructure in the same way that Blacktown City Council's Section 94 plan creates obligations in relation to local transport and drainage infrastructure; and
- Section 5( c) *"to provide increased opportunity for public involvement and participation in environmental planning and assessment"* by making drafts of the proposed Planning Agreements publicly available for inspection at the same time that the explanation of intended effect of the SEPP Amendment is placed on exhibition. This means that the relationship between the scale of the development proposed by the rezoning in the SEPP Amendment and the infrastructure to be provided under the Planning Agreements can be appreciated by the community. This process allows for more informed public submissions to be made to the Department of Planning about the SEPP Amendment.

The Planning Agreements promote the objects of the Act set out above by requiring the Developer to provide the contribution works set out in this explanatory note under the heading *"Summary of Objectives, Nature and Effect of the Planning Agreements"* for the following purposes:

- Funding for the planning process for the Precinct by the Department of Planning;
- The Richmond Road upgrade; and
- The staged provision of services and infrastructure necessary to service the whole Precinct.

Each of these purposes represents an important public benefit, and the Developer's offer to contribute towards these purposes will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

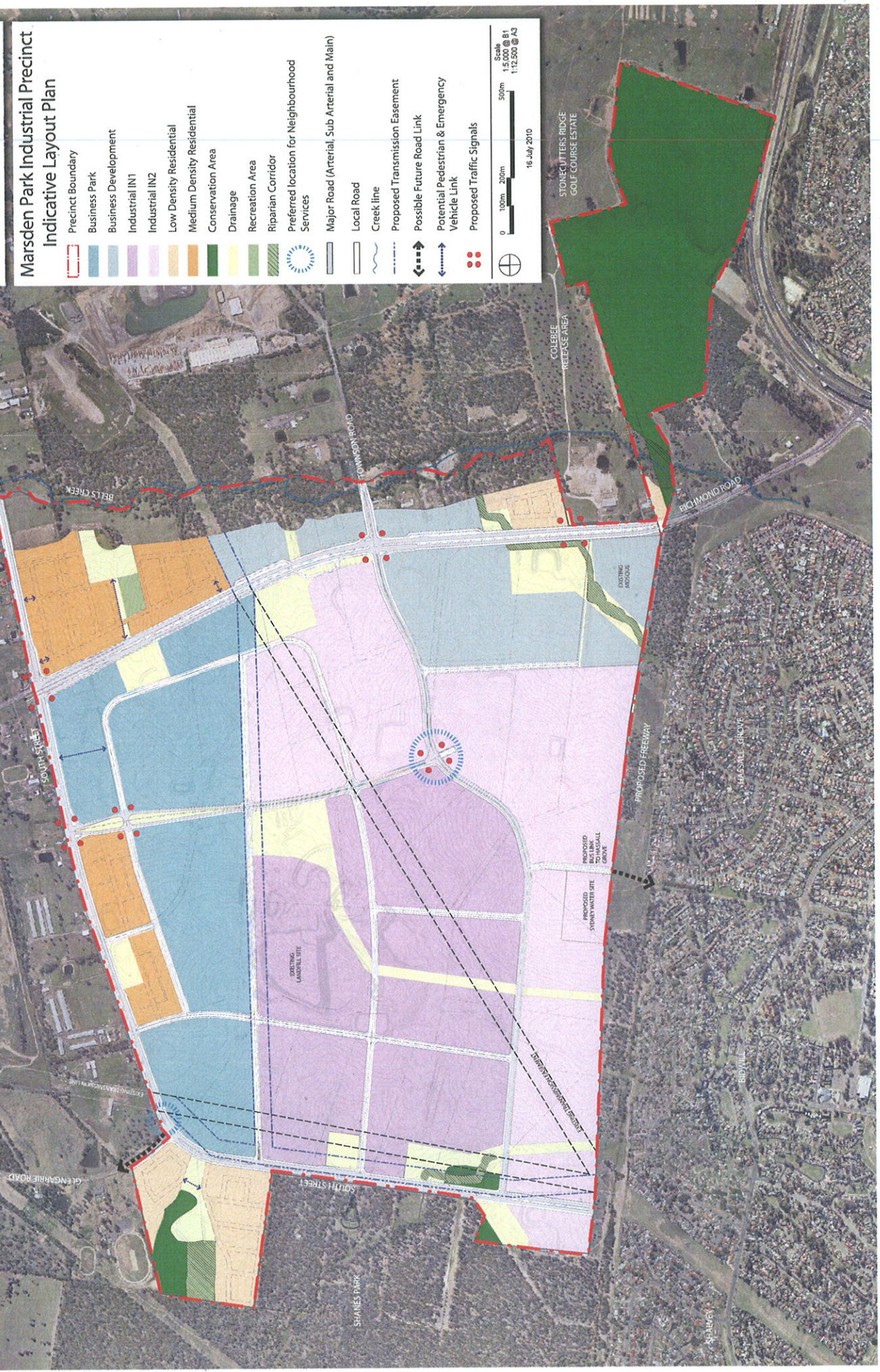
## **Annexure B - Marsden Park Industrial Draft Indicative Layout Plan**





# Marsden Park Industrial Precinct Indicative Layout Plan

- Precinct Boundary
- Business Park
- Business Development
- Industrial IN1
- Industrial IN2
- Low Density Residential
- Medium Density Residential
- Conservation Area
- Drainage
- Recreation Area
- Riparian Corridor
- Preferred location for Neighbourhood Services
- Major Road (Arterial, Sub Arterial and Main)
- Local Road
- Creek line
- Proposed Transmission Easement
- Possible Future Road Link
- Potential Pedestrian & Emergency Vehicle Link
- Proposed Traffic Signals





## **Annexure C - SIC Offset Certificate**





Planning

*date*

*file number*

# Special Infrastructure Contribution Offset Certificate

This Certificate certifies that the NSW Department of Planning has agreed that the Beneficial Owner of this Certificate has Special Infrastructure Contribution (SIC) entitlements as follows:

Beneficial owner of credits:

SIC offset account number:

Total number SIC Offset Entitlements:

Total number SIC Offsets Applied:

Available SIC Offset Amounts:

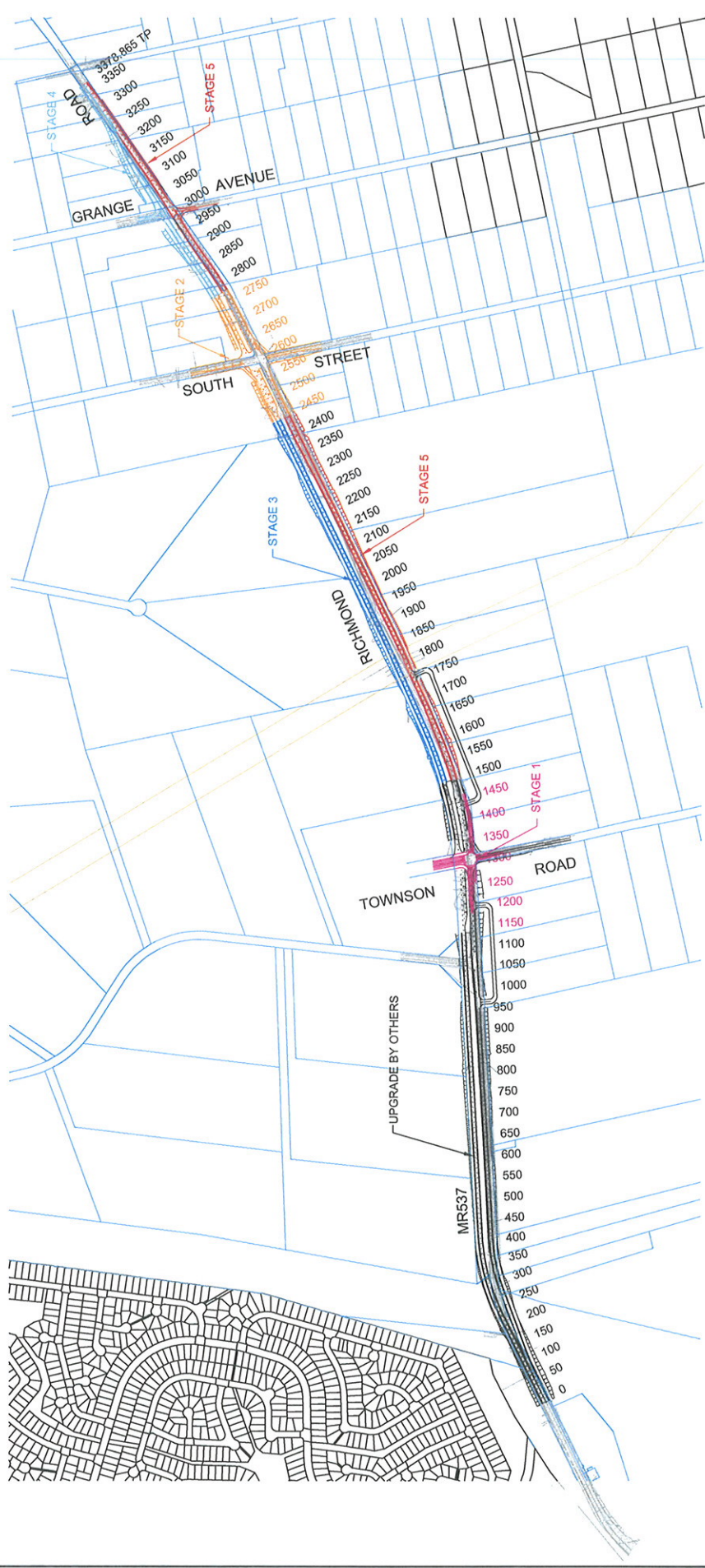
Deputy Director General

*Electronic signature*

Dated this ..... day of..... 200

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## **Annexure D - Staging Plan**





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- = Stage 1 - Townson Rd Intersection
- = Stage 2 - South Street Intersection
- = Stage 3 - New Carriageway - Townson Rd to South St
- = Stage 4 - New Carriageway - South St to End
- = Stage 5 - Construct Carriageway - Townson Rd to South St

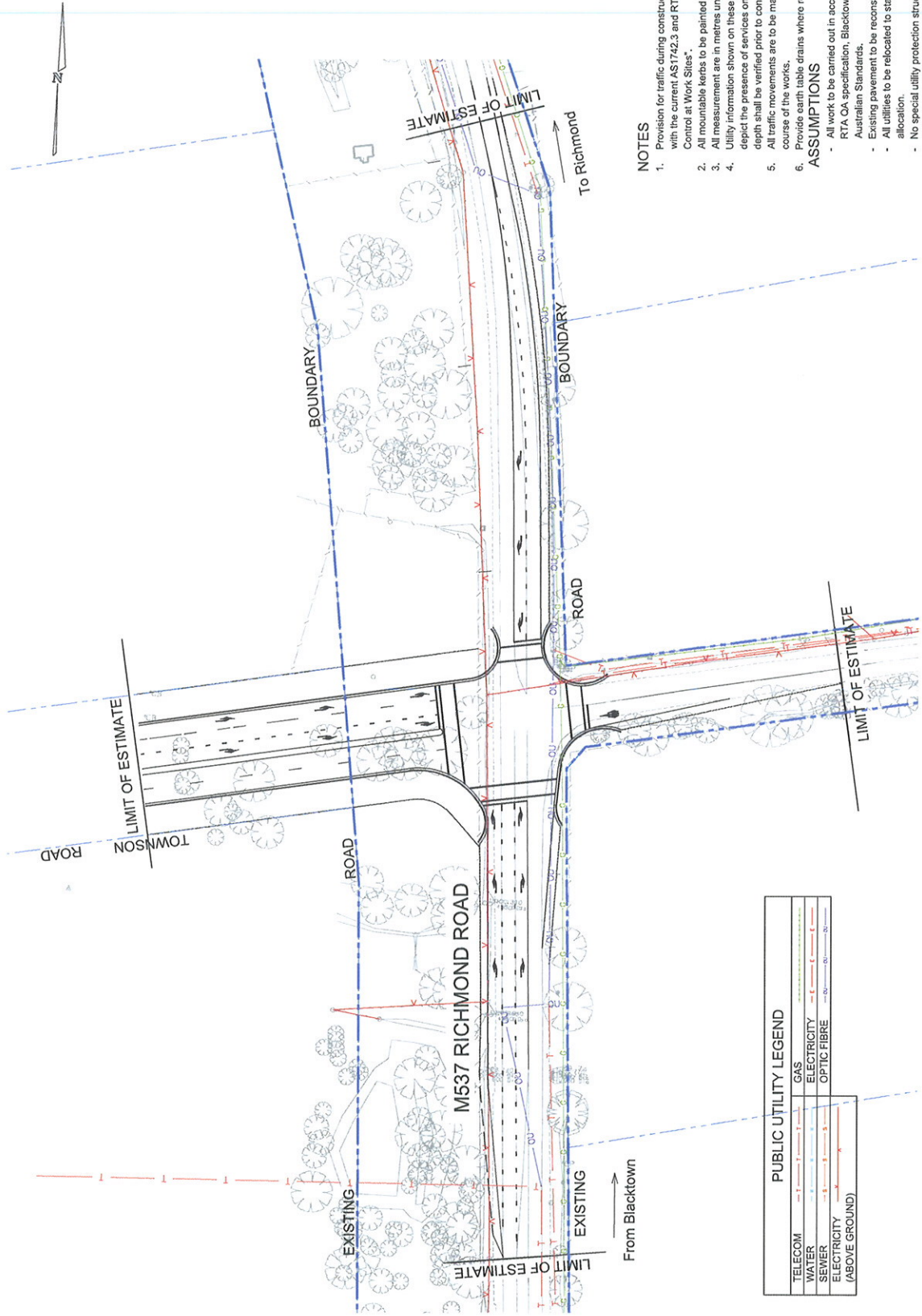
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NOT FOR CONSTRUCTION**

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<b>J. WYNDHAM PRINCE</b>		CONSULTING CIVIL INFRASTRUCTURE ENGINEERS 8 PROJECT MANAGERS		DESIGNED: J.K. DRAWN: J.K. CHECKED: J.H.	DATE: A.H.D. ORIGIN: M.O.A.	CLIENT:  <b>Urban Pacific</b> 	BLACKTOWN CITY COUNCIL MR 537 RICHMOND ROAD RECONSTRUCTION AND INTERSECTION WORKS BETWEEN ROOTY HILL RD NORTH AND GRANGE AVE, MARSDEN PARK MARSDEN PARK EMPLOYMENT VPA STAGING ARRANGEMENT	PLAN No. <b>8475/SKR13</b> FILE No. <b>8475/SKR13</b> SHEET 1 OF 1 SHEETS
PO Box 4564 MURTHA WESTFIELD NSW 2750 PH 02 4932 8941 P 02 4932 3300 F 02 4721 7638 W <a href="http://www.jwyndham.com.au">www.jwyndham.com.au</a> E <a href="mailto:jwyndham@jwyndham.com.au">jwyndham@jwyndham.com.au</a>								
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APPENDIX C



PUBLIC UTILITY LEGEND	
TELECOM	— T —
WATER	— W —
SEWER	— S —
ELECTRICITY	— E —
OPTIC FIBRE	— O —
(ABOVE GROUND)	

- NOTES**
- Provision for traffic during construction to be in accordance with the current AS1742.3 and RTA publication "Traffic Control at Work Sites".
  - All mountable kerbs to be painted reflective white.
  - All measurement are in metres unless otherwise shown.
  - Utility information shown on these plans is intended to depict the presence of services only. Actual location and depth shall be verified prior to construction.
  - All traffic movements are to be maintained throughout the course of the works.
  - Provide earth table drains where required.
- ASSUMPTIONS**
- All work to be carried out in accordance with current RTA OA specification, Blacktown City Council and Australian Standards.
  - Existing pavement to be reconstructed where required.
  - All utilities to be relocated to standard footway allocation.
  - No special utility protection structures required.
  - Assumed pavement configuration
  - All land required for construction to be acquired prior to commencement of construction.
  - Property adjustment details to be determined.

PLAN  
SCALE 1:1000

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J. WYNDHAM PRINCE CONSULTING CIVIL INFRASTRUCTURE ENGINEERS & PROJECT MANAGERS		REGISTRATION NUMBER 0537.040.CD.0011			
DESIGNED ..... SW ..... DRAWN ..... SW ..... REVIEWED ..... PS .....		A. ISSUED FOR REVIEW Amendment Description No. Date A3 original 09/09/10 This sheet may be prepared using colour and may be incomplete if copied			
SCALES 0 20 40 60 80 100 SCALE 1:1000m (A1 Sheet)		Coordinate System: MGA Zone 56 Height Datum: A.H.D.			

## Annexure E - Concept Design Plans



# NOTES

- See sheet 8475/DAR2 for general notes.
- All mountable kerbs to be painted reflective white.
- All measurements are in metres unless otherwise shown.
- For site regrading of the Colebee Release Precinct refer to plans by J Wyndham Prince
- For site regrading of the Marsden Park Precinct refer to plans No DA8806 by J Wyndham Prince
- For Drainage Basin Details refer to plans by No 8955 J Wyndham Prince

## LEGEND

- PROPOSED BOUNDARY
- EXISTING ROAD BOUNDARY
- CONSTRUCTION BOUNDARY
- PROPOSED MARSDEN PARK SITE REGRADING CONTOUR
- EXISTING ROAD

33.0

168.092 TP

100

50

500

400

350

300

250

200

150

100

50

0

From Blacktown

MR537 RICHMOND ROAD

EXISTING

BOUNDARY

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SITE REGRADING  
(See Note 5)

PROPOSED DRAINAGE BASIN  
(See Note 6)

FUTURE WIDENING

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PROPOSED SITE REGRADING  
(See Note 4)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

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PROPOSED DRAINAGE BASIN  
(See Note 6)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

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PROPOSED SITE REGRADING  
(See Note 4)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

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PROPOSED SITE REGRADING  
(See Note 4)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

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PROPOSED SITE REGRADING  
(See Note 4)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

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PROPOSED SITE REGRADING  
(See Note 4)

SMITH LAND PROPOSED  
SIGNALISED INTERSECTION  
WORKS, SUBJECT TO FUNDING  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

BOUNDARY



# NOTES

- See sheet 8475DAR2 for general notes.
- All mountable kerbs to be painted reflective white.
- All measurement are in metres unless otherwise shown.
- For site regrading of the Colebee Release Precinct refer to plans by Others No DA8806 by J Wyndham Prince
- For Drainage Basin Details refer to plans by No 8955 J Wyndham Prince

SMITH LAND PROPOSED  
SITE REGRADING  
WORKS INCLUDING  
DRAINAGE BASIN  
BY DEVELOPERS OF THE  
COLEBEE PRECINCT RELEASE

PROPOSED  
DRAINAGE BASIN  
(See Note 6)

SITE REGRADING  
(See Note 5)

HOLLINSWORTH ROAD TO BE CLOSED AS  
PART OF STAGE ONE WORKS  
SEE SHEET No 18

875.544 TP  
854.268 TP  
850  
800  
750  
700  
650

1050  
1100  
1150  
1200  
1250

1251.385 TP  
1250

ADJOINS SHEET 8475/DAR6

EXISTING  
ROAD

BOUNDARY

ROAD

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ROAD

ROAD

ROAD

MR537 RICHMOND

CONTROL MC01

CONTROL MC02

ROAD

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ROAD

ROAD

ADJOINS SHEET 8475/DAR8

EXISTING  
ROAD

BOUNDARY

ROAD

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ROAD

BASED ON YR 2016 TRAFFIC  
MODELLING REPORT  
(RICHMOND ROAD UPGRADE  
ref 28059) BY TRANSPORT &  
URBAN PLANNING - April 2009

SPILL BASIN NO.1

POSSIBLE SERVICE ROAD  
FINAL LOCATION INCLUDING ENTRY / EXIT  
POINTS & CONFIGURATION TO BE DETERMINED

POSSIBLE LOCATION OF BUS  
BAY & OPTION TO EXTEND  
BUS LANE TO BUS BAY

PROPOSED  
TRAFFIC SIGNALS

TOWNSON ROAD (East)  
CONTINUATION  
(See Note 7)

- LEGEND
- PROPOSED BOUNDARY
  - EXISTING ROAD BOUNDARY
  - CONSTRUCTION BOUNDARY
  - PROPOSED MARSDEN PARK SITE REGRADING CONTOUR
  - EXISTING ROAD

Note: This is a preliminary concept design  
and for information only. Road alignments,  
widths, intersection configurations,  
drainage details and road boundaries are  
subject to change pending detail design  
and acceptance by approval authorities.

PLAN  
SCALE 1:1000

STN 848.399  
RL 31.744  
Existing  
Cutvert  
STN 848.399  
RL 31.744  
Flood Level  
Gutter Invert  
Northbound  
carriageway

STN 1 162.531  
RL 33.086  
1270.511  
33.488

DATUM RL 24.000  
VERTICAL ALIGNMENT  
HORIZONTAL ALIGNMENT

P=1.895% L=320.888  
R=1000.000

R=3558.710  
L=85.000

P=0.495% L=225.551  
R=1000.000

STRAIGHT  
R=13581.678 L=230.000  
R=1130.000

STRAIGHT

STRAIGHT

STRAIGHT

DESIGN LEVELS  
EXISTING LEVELS  
STATION

STATION	EXISTING LEVELS	DESIGN LEVELS
650.000	33.970	34.855
660.000	33.689	34.676
670.000	33.516	34.486
680.000	33.310	34.297
690.000	32.981	34.107
700.000	32.791	33.918
710.000	32.631	33.728
720.000	32.482	33.539
730.000	32.336	33.349
740.000	32.205	33.160
750.000	32.020	32.970
760.000	31.876	32.781
770.000	31.760	32.591
780.000	31.597	32.402
790.000	31.475	32.224
800.000	31.393	32.074
810.000	31.317	31.952
820.000	31.196	31.858
830.000	31.099	31.792
840.000	30.780	31.754
850.000	30.131	31.745
860.000	30.631	31.763
870.000	30.618	31.808
880.000	30.629	31.857
890.000	30.674	31.906
900.000	30.678	31.956
910.000	30.654	32.005
920.000	30.708	32.054
930.000	30.757	32.104
940.000	30.833	32.153
950.000	30.917	32.202
960.000	30.992	32.252
970.000	31.069	32.301
980.000	31.174	32.350
990.000	31.228	32.400
1000.000	31.327	32.449
1010.000	31.518	32.498
1020.000	31.725	32.548
1030.000	31.900	32.597
1040.000	32.071	32.647
1050.000	32.176	32.696
1060.000	32.389	32.745
1070.000	32.409	32.795
1080.000	32.266	32.844
1090.000	32.128	32.893
1100.000	32.050	32.942
1110.000	32.121	32.994
1120.000	32.024	33.043
1130.000	31.806	33.094
1140.000	31.587	33.147
1150.000	31.349	33.200
1160.000	31.059	33.253
1170.000	30.801	33.306
1180.000	30.511	33.359
1190.000	30.286	33.412
1200.000	30.144	33.465
1210.000	30.002	33.518
1220.000	29.872	33.571
1230.000	29.799	33.624
1240.000	29.835	33.677
1250.000	30.674	33.730
1260.000	30.744	33.783
1270.000	30.827	33.836
1280.000	31.019	33.889
1290.000	31.261	33.942
1300.000	31.529	33.995

## LONGITUDINAL SECTION - RICHMOND ROAD - (MC02)

SCALE 1:1000(H) 1:200(V)

No.	Amendment Description	Initials	Date	Co-ordinate System	MGA Zone 56	Height Datum	A.M.D.
A3 original	This sheet may be prepared using colour and may be incomplete if copied						

ISSUED FOR REVIEW	SW	09/09/10
ISSUED FOR REVIEW	SW	12/09/10
REVISED CONCEPT DESIGN	SW	30/07/10
FINAL CONCEPT DESIGN	JK	23/12/09
ISSUED FOR REVIEW	JK	29/07/09

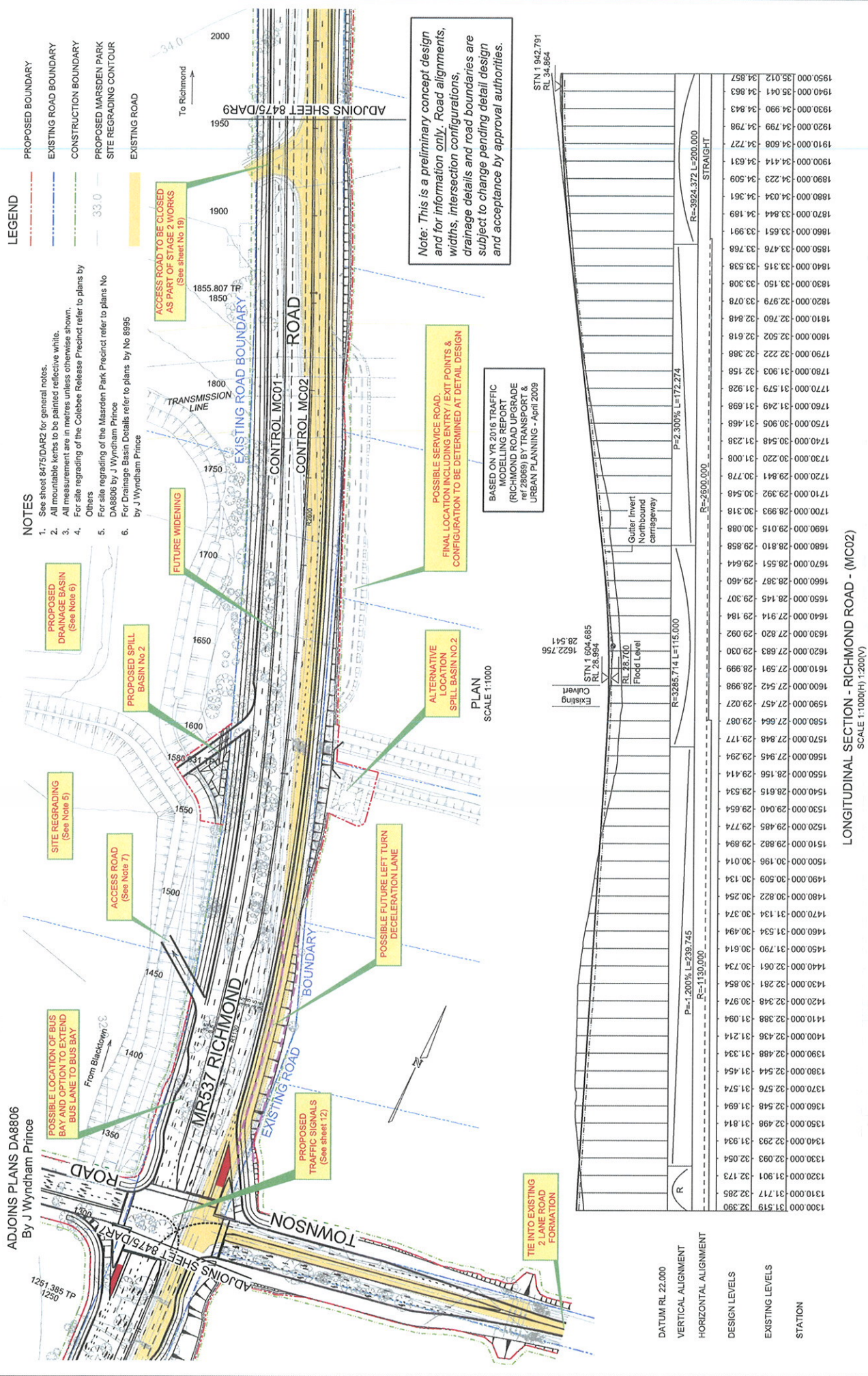
PREPARED BY	
J. J. WYNDHAM PRINCE	
CONSULTING CIVIL INFRASTRUCTURE ENGINEERS & PROJECT MANAGERS	
DESIGNED	JK / SW
DRAWN	JK / SW
REVIEWED	PS / JH

ROADS AND TRAFFIC AUTHORITY OF NSW	BLACKTOWN CITY COUNCIL
MR 537 RICHMOND ROAD	
BELLS CREEK AND GRANGE AVE. MARSDEN PARK	
PLAN & LONGITUDINAL SECTION	

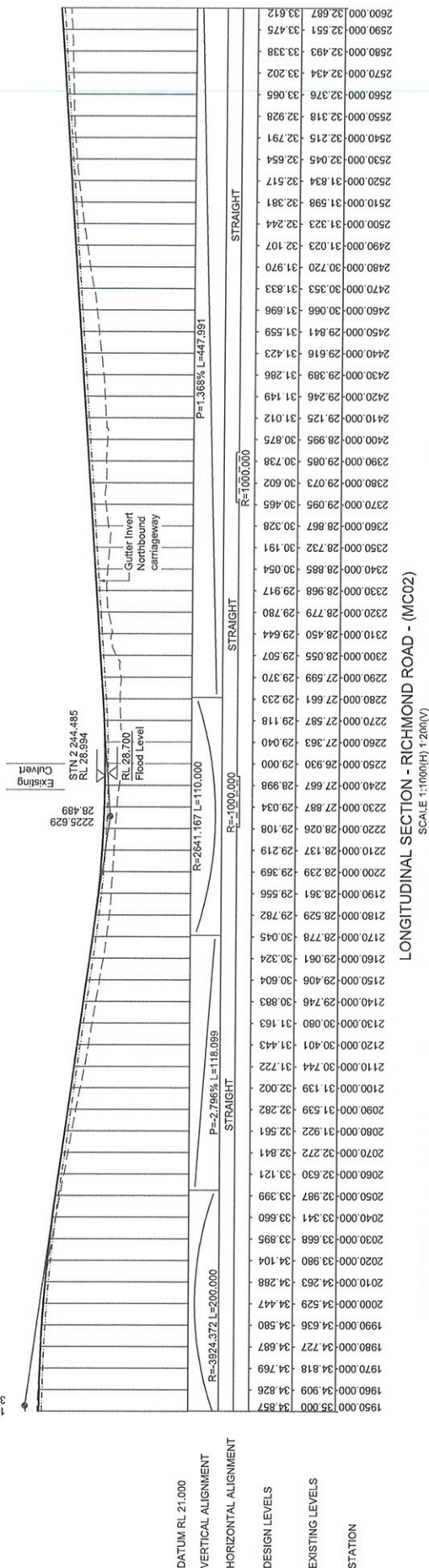
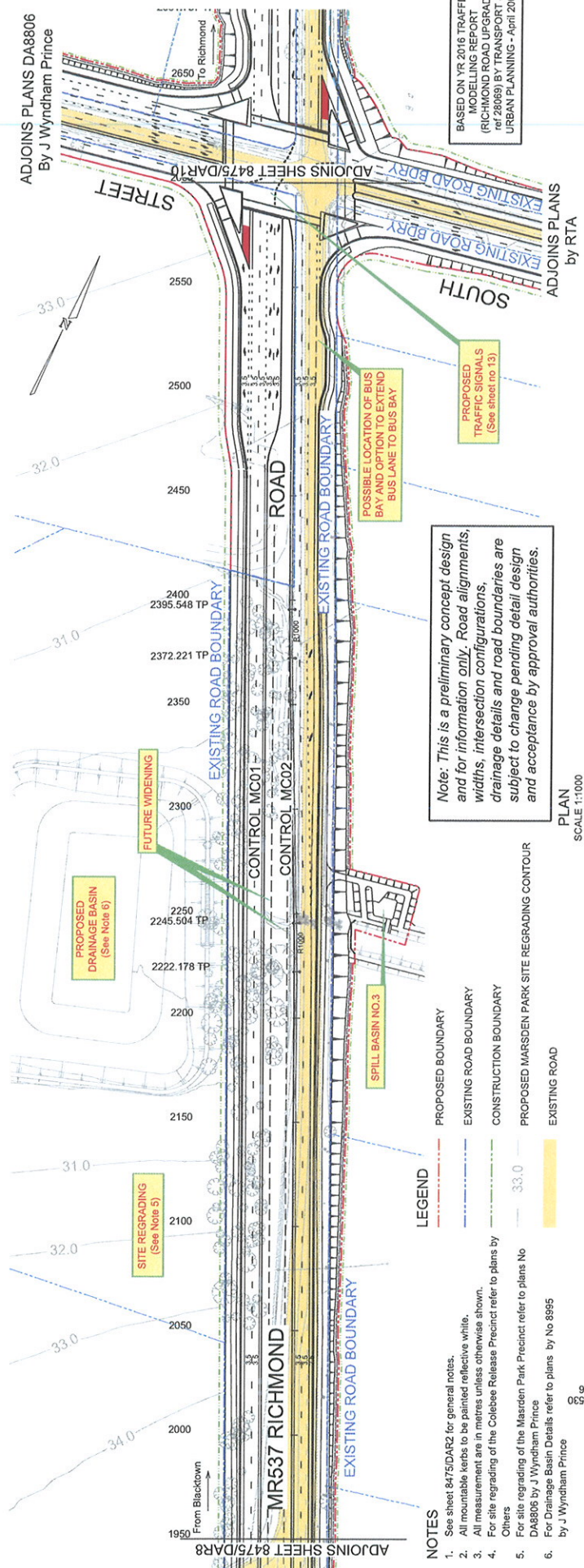
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DRAWING	8475dar7.dwg
PRINTED DATE	10/09/2010
SHEET No.	7

0537.040.CD.0011

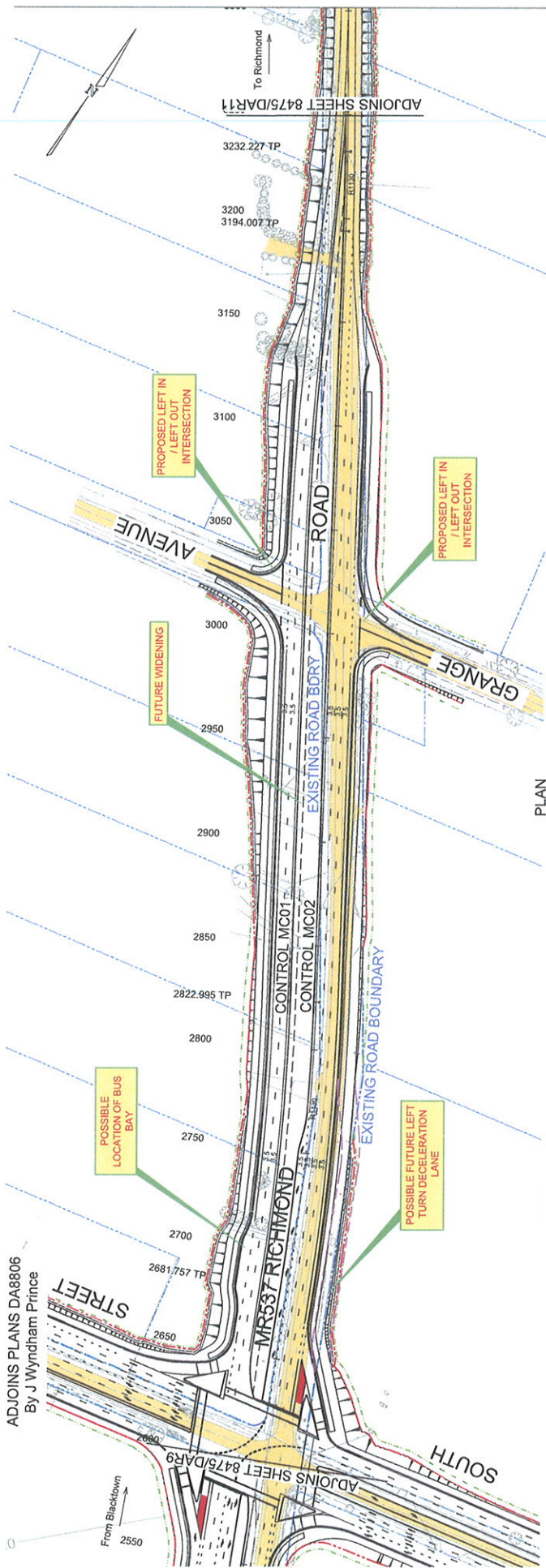












PLAN  
SCALE 1:1000

LEGEND

- PROPOSED BOUNDARY
- EXISTING ROAD BOUNDARY
- CONSTRUCTION BOUNDARY
- EXISTING ROAD

NOTES

- See sheet 8475DAR2 for general notes.
- All mountable kerbs to be painted reflective white.
- All measurements are in metres unless otherwise shown.
- For site regrading of the Colebee Release Precinct refer to plans by Others
- For site regrading of the Maarden Park Precinct refer to plans No DA8806 by J Wyndham Prince
- For Drainage Basin Details refer to plans by No 8895 by J Wyndham Prince

Note: This is a preliminary concept design and for information only. Road alignments, widths, intersection configurations, drainage details and road boundaries are subject to change pending detail design and acceptance by approval authorities.

BASED ON YR 2016 TRAFFIC MODELLING REPORT (RICHMOND) S TRANSPORT & URBAN PLANNING - April 2009

STN 2 840.528  
RT 36.138  
2878.620  
37.425

Gutter Invert  
Northbound  
carriageway

DATUM RL 23.000

VERTICAL ALIGNMENT

HORIZONTAL ALIGNMENT

DESIGN LEVELS

EXISTING LEVELS

STATION

STATION	EXISTING LEVELS	DESIGN LEVELS	HORIZONTAL ALIGNMENT	VERTICAL ALIGNMENT
2600.000	32.687	32.687	STRAIGHT	P=1.388% L=447.991
2610.000	32.709	32.709	STRAIGHT	
2620.000	32.858	32.858	STRAIGHT	
2630.000	33.024	33.024	STRAIGHT	
2640.000	33.180	33.180	STRAIGHT	
2650.000	33.335	33.335	STRAIGHT	
2660.000	33.491	33.491	STRAIGHT	
2670.000	33.647	33.647	STRAIGHT	
2680.000	33.727	33.727	STRAIGHT	
2690.000	34.058	34.058	STRAIGHT	
2700.000	34.196	34.196	STRAIGHT	
2710.000	34.351	34.351	STRAIGHT	
2720.000	34.500	34.500	STRAIGHT	
2730.000	34.696	34.696	STRAIGHT	
2740.000	35.044	35.044	STRAIGHT	
2750.000	35.283	35.283	STRAIGHT	
2760.000	35.436	35.436	STRAIGHT	
2770.000	35.629	35.629	STRAIGHT	
2780.000	35.861	35.861	STRAIGHT	
2790.000	36.132	36.132	STRAIGHT	
2800.000	36.157	36.157	STRAIGHT	
2810.000	36.236	36.236	STRAIGHT	
2820.000	36.328	36.328	STRAIGHT	
2830.000	36.420	36.420	STRAIGHT	
2840.000	36.513	36.513	STRAIGHT	
2850.000	36.613	36.613	STRAIGHT	
2860.000	36.700	36.700	STRAIGHT	
2870.000	36.780	36.780	STRAIGHT	
2880.000	36.860	36.860	STRAIGHT	
2890.000	36.940	36.940	STRAIGHT	
2900.000	37.020	37.020	STRAIGHT	
2910.000	37.100	37.100	STRAIGHT	
2920.000	37.180	37.180	STRAIGHT	
2930.000	37.260	37.260	STRAIGHT	
2940.000	37.340	37.340	STRAIGHT	
2950.000	37.420	37.420	STRAIGHT	
2960.000	37.500	37.500	STRAIGHT	
2970.000	37.580	37.580	STRAIGHT	
2980.000	37.660	37.660	STRAIGHT	
2990.000	37.740	37.740	STRAIGHT	
3000.000	37.820	37.820	STRAIGHT	
3010.000	37.900	37.900	STRAIGHT	
3020.000	37.980	37.980	STRAIGHT	
3030.000	38.060	38.060	STRAIGHT	
3040.000	38.140	38.140	STRAIGHT	
3050.000	38.220	38.220	STRAIGHT	
3060.000	38.300	38.300	STRAIGHT	
3070.000	38.380	38.380	STRAIGHT	
3080.000	38.460	38.460	STRAIGHT	
3090.000	38.540	38.540	STRAIGHT	
3100.000	38.620	38.620	STRAIGHT	
3110.000	38.700	38.700	STRAIGHT	
3120.000	38.780	38.780	STRAIGHT	
3130.000	38.860	38.860	STRAIGHT	
3140.000	38.940	38.940	STRAIGHT	
3150.000	39.020	39.020	STRAIGHT	
3160.000	39.100	39.100	STRAIGHT	
3170.000	39.180	39.180	STRAIGHT	
3180.000	39.260	39.260	STRAIGHT	
3190.000	39.340	39.340	STRAIGHT	
3200.000	39.420	39.420	STRAIGHT	
3210.000	39.500	39.500	STRAIGHT	
3220.000	39.580	39.580	STRAIGHT	
3230.000	39.660	39.660	STRAIGHT	
3240.000	39.740	39.740	STRAIGHT	
3250.000	39.820	39.820	STRAIGHT	

LONGITUDINAL SECTION - RICHMOND ROAD - (MC02)  
SCALE 1:1000(H) 1:200(V)

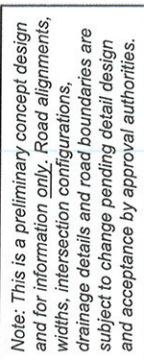
No.	Amendment Description	Initials	Date	Height Datum: A.H.D.
A3 original	This sheet may be prepared using colour and may be incomplete if copied			

PREPARED BY  
**J. WYNDHAM PRINCE**  
CONSULTING CIVIL ENGINEERING & PROJECT MANAGERS

ROADS AND TRAFFIC AUTHORITY OF NSW  
BLACKTOWN CITY COUNCIL  
MR 537 RICHMOND ROAD  
RECONSTRUCTION AND INTERSECTION WORKS BETWEEN  
BELLS CREEK AND GRANGE AVE, MARSDEN PARK  
PLAN & LONGITUDINAL SECTION

FILE No. 8475DAR10  
DRAWING 8475dar10.dwg  
PRINTED DATE 10/09/2010  
SHEET No. 10  
REGISTRATION NUMBER 0537.040.CD.0011





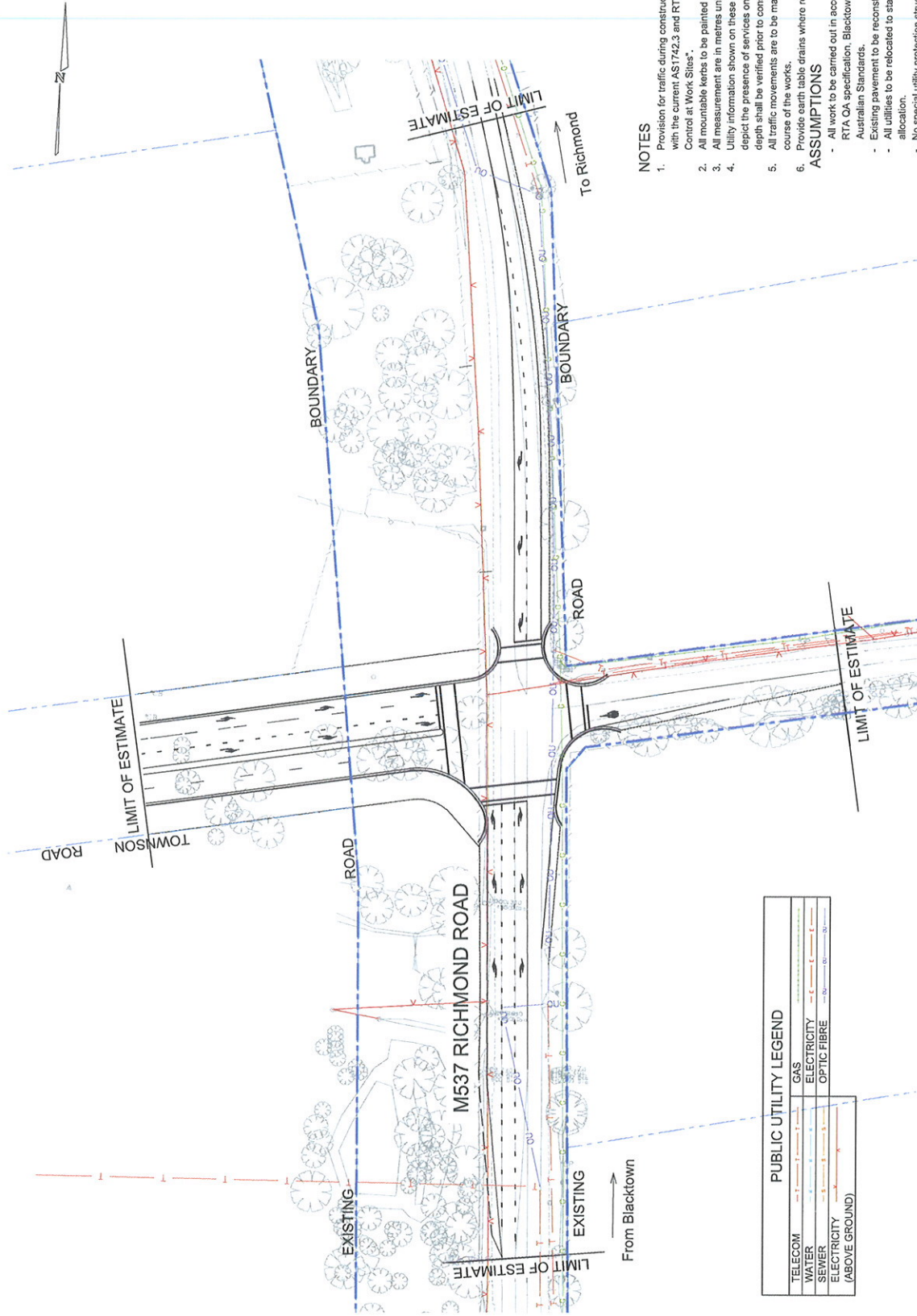
**NOTES**

1. See sheet 8475DAR2 for general notes.
2. All mountable kerbs to be painted reflective white.
3. All measurement are in metres unless otherwise shown.
4. For site regrading of the Cobbease Release Precinct refer to plans by Others
5. For site regrading of the Maarden Park Precinct refer to plans No DA8906 by J Wyndham Price
6. For Drainage Basin Details refer to plans No 8895 by J Wyndham Price

LONGITUDINAL SECTION - RICHMOND ROAD - (MC02)  
SCALE 1:1000(H) 1:200(V)

E		ISSUED FOR REVIEW	SIW	05/05/10	SCALES										0		20	40	60	80	100
B		ISSUED FOR REVIEW	SIW	12/09/10	SCALE 1:100m (A1 Sheet)										0		20	40	60	80	100
C		ISSUED FOR REVIEW	SIW	30/07/10	SCALE 1:100m (A1 Sheet)										0		20	40	60	80	100
D		FINAL CONCEPT DESIGN	J/C	23/07/09	SCALE 1:100m (A1 Sheet)										0		20	40	60	80	100
A		ISSUED FOR REVIEW	J/C	22/07/09	SCALE 1:100m (A1 Sheet)										0		20	40	60	80	100
No.		Amendment Description	Issued	Date																	
3		No.																			
A3		This sheet may be prepared using colour and may be incomplete if copied																			

J. WYNDHAM PRINCE CONSULTING CIVIL INFRASTRUCTURE ENGINEERS 600/100	
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NOTES

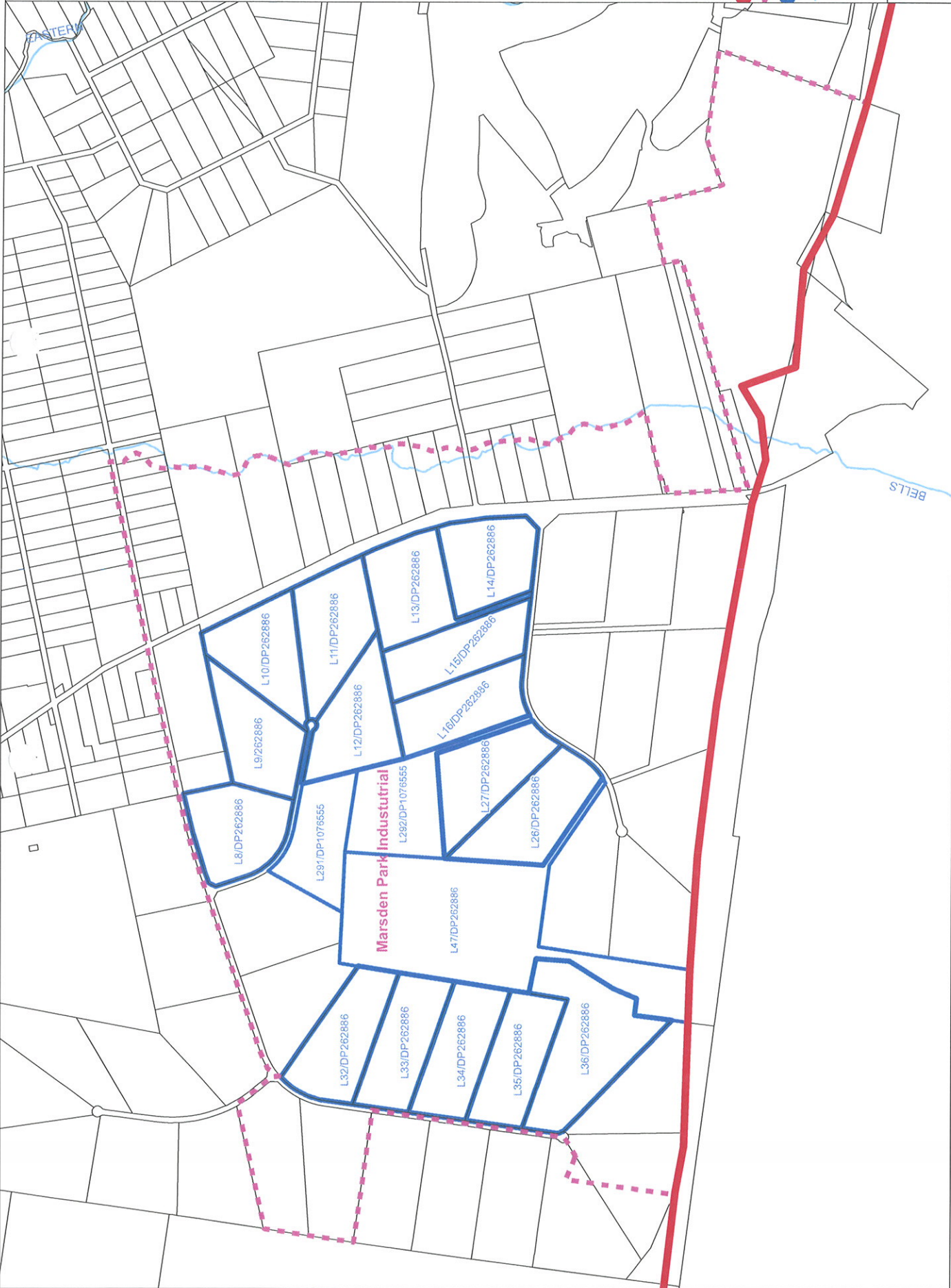
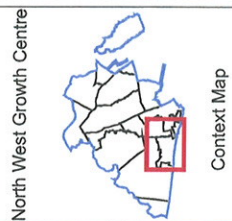
- Provision for traffic during construction to be in accordance with the current AS1742.3 and RTA publication "Traffic Control at Work Sites".
  - All mountable kerbs to be painted reflective white.
  - All measurement are in metres unless otherwise shown.
  - Utility information shown on these plans is intended to depict the presence of services only. Actual location and depth shall be verified prior to construction.
  - All traffic movements are to be maintained throughout the course of the works.
  - Provide earth table drains where required.
- ASSUMPTIONS**
- All work to be carried out in accordance with current RTA OA specification, Blacktown City Council and Australian Standards.
  - Existing pavement to be reconstructed where required.
  - All utilities to be relocated to standard footway allocation.
  - No special utility protection structures required.
  - Assumed pavement configuration
  - All land required for construction to be acquired prior to commencement of construction.
  - Property adjustment details to be determined.

PLAN  
SCALE 1:1000

ROADS AND TRAFFIC AUTHORITY OF NSW		FILE No.	DRAWING	PRINTED DATE	SHEET No.
BLACKTOWN CITY COUNCIL MR 537 RICHMOND ROAD RECONSTRUCTION AND INTERSECTION WORKS BETWEEN BELLS CREEK AND GRANGE AVE. MARSDEN PARK TOWNSON ROAD INTERIM INTERSECTION CONCEPT - STAGE 0		8475DARC1	8475darc1.dwg	10/09/2010	C1
PREPARED BY <b>J. WYNDHAM PRINCE</b> CONSULTING CIVIL INFRASTRUCTURE ENGINEER & PROJECT MANAGER		DESIGNED DRAWN REVIEWED			REGISTRATION NUMBER
SCALE 1:1000m (A1 Sheet)		DESIGNED DRAWN REVIEWED			0537.040.CD.0011
Co-ordinate System: MGA Zone 56		Height Datum: A.H.D.			
A3 original		This sheet may be prepared using colour and may be incomplete if copied			

## **Annexure F - Plan of the Land**





Legend

- NW Growth Centre Boundary
- Marsden Park Industrial Precinct Boundary
- Marsden Park Industrial Precinct - Subject Land
- Bells Creek

October 2009

Disclaimer  
The information contained on this map is, to the best of the Government's knowledge correct, however, no warranty is made by the Government as to the accuracy, completeness or reliability of the information, and no liability is accepted for any loss or damage resulting from any person relying upon or using the information contained in the map.

0 125 250  
Metres @ A3



# Marsden Park Industrial Precinct - Subject Land

Printing Date: September 9, 2008 File: G:\CDD\GDC - INDEX\COMMUNICATIONS\Resourcent15 GIS\PROJECTS\Marsden Park Industrial\MPIndustrial\_Precinct\_Subject\_Land\_20091013.mxd



GROWTH CENTRES  
COMMISSION

## **Annexure G - Infrastructure Delivery Report**



- Project Management
- Management Consulting
- Property
- Events
- Technology

## MARSDEN PARK INDUSTRIAL PRECINCT

### INFRASTRUCTURE DELIVERY REPORT

15 SEPTEMBER 2010

APP Corporation





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## TABLE OF CONTENTS

1.	INTRODUCTION.....	3
2.	SITE DESCRIPTION.....	4
3.	INFRASTRUCTURE ASSESSMENT.....	5
3.1.	Overview & Servicing Arrangements.....	5
3.2.	Water.....	5
3.3.	Sewer Supply.....	7
3.4.	Recycled Water.....	8
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## 1. INTRODUCTION

This services report has been prepared as part of the Precinct Planning for the Marsden Park Industrial Precinct. The report summarises the servicing strategy for the primary services required to service the Marsden Park Industrial Precinct. Furthermore, the possible servicing arrangements for each of the primary utilities is addressed which shows how the Precinct can be best serviced to ensure the Precinct is developed in accordance with the requirements of the Indicative Layout Plan (ILP) and the Department of Planning.

The servicing strategy and planning has been completed in consultation with key utilities agencies, Blacktown Council and the Department of Planning. The Department of Planning has required that the following items of infrastructure are to be provided to the Precinct:

- Sewer;
- Water;
- Recycled Water;
- Electricity; and
- Telecommunications.

In addition to the above, we have also included review of the supply of natural gas to the Precinct.

Key Stakeholders and Agencies for the Precinct are:

- |                      |                          |
|----------------------|--------------------------|
| • Water              | Sydney Water Corporation |
| • Sewer              | Sydney Water Corporation |
| • Recycled Water     | Sydney Water Corporation |
| • Electricity;       | Integral Energy          |
| • Telecommunications | Telstra                  |
| • Natural Gas        | Alinta                   |

## 2. SITE DESCRIPTION

The Marsden Park Industrial Precinct is located within the North West Growth Centre in the Blacktown Local Government Area. The Precinct is located off Richmond Road approximately 1km north of the M7 Richmond Rd exits and is bounded by Bells Creek to the east, South Street to the north and west and Castlereagh Freeway corridor to the south.

The Precinct is surrounded by the existing suburbs of Hassell Grove and Bidwell to the south, the Colebee residential Precinct to the east and Marsden Park residential precinct to the north. The existing Precinct currently includes a waste disposal facility, caravan park, Mosque, agricultural and farming properties and mixed business along Richmond Road.

The total area of the precinct is approximately 550.3 hectares of land as shown in Table 1.

Land Use Zone	Area (Hectares)
R2	15.1
R3	29.8
B7	67.4
B5	36.5
IN2	205.0
Drainage	51.9
Conservation, Riparian & Open Space	93.1
Road Reserves	51.5
<b>Total</b>	<b>550.3</b>

*Table 1: Area Schedule*

### **3. INFRASTRUCTURE ASSESSMENT**

#### **3.1. Overview & Servicing Arrangements**

The Marsden Park Industrial Precinct presently has very limited infrastructure servicing capacity. This is due to its proximity to major infrastructure services and the historically low demand for service given its rural land use. The infrastructure services assessment has been prepared for the following services:

- Water;
- Sewer;
- Recycled Water;
- Electricity;
- Telecommunications; and
- Natural Gas.

#### **3.2. Water**

##### **3.2.1. Existing Infrastructure, Operations and Capacity**

With the exception of a short length of 100mm water main in South Street and Richmond Road there is no potable water infrastructure available to service the Precinct. Capacity to service the Precinct with bulk water has recently been provided for with the recent upgrade of storage capacity at Minchinbury Reservoir.

##### **3.2.2. Servicing Strategy**

The Sydney Water Corporation (SWC) Ultimate Servicing Strategy for water supply to the Marsden Park area involves servicing from the Minchinbury system via the existing Mt Druitt reservoirs shown in Figure 1. It is proposed ultimately to service the Precinct via a 3.8km long 600mm diameter outlet main from Mt Druitt. This main will deliver bulk water to future surface and elevated storages to be located at Marsden Park.

Water supply to the first stages of development will see the extension of water supply mains to the precinct. These supply mains will be laid within the precinct road network providing access for development to improved water supply. It may be necessary to locally boost supply rates and pressures by providing booster pump stations, prior to the construction of reservoirs. The need for booster pump stations in the early stages of development will be assessed as the nature and location of development is known.

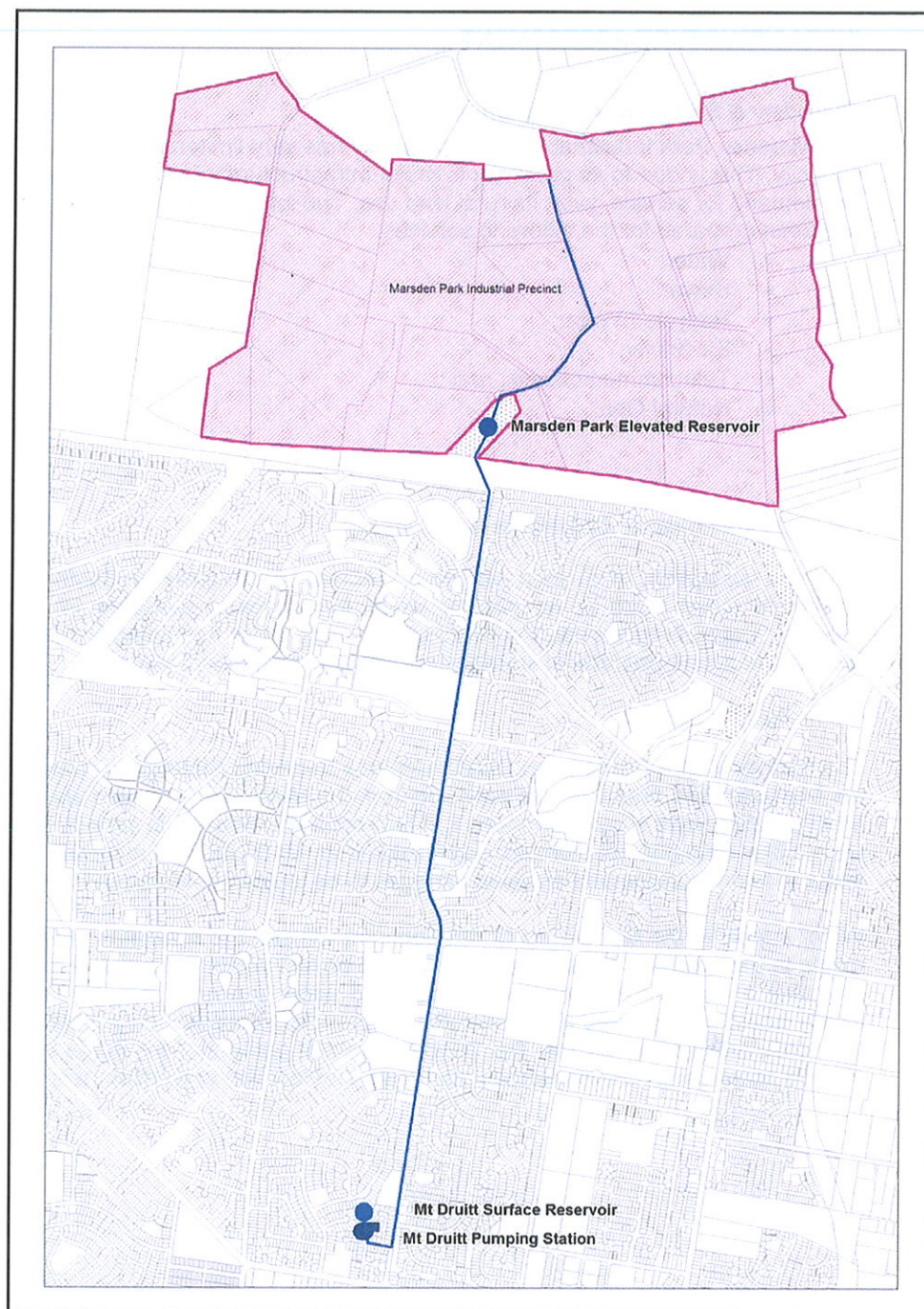


Figure 1: Proposed Water Servicing Strategy (Source: Sydney Water Corporation)



### 3.3. Sewer Supply

#### 3.3.1. Existing Infrastructure, Operations and Capacity

The site has three separate catchment areas which all drain to the north. There is currently no suitable existing sewerage infrastructure near the site.

#### 3.3.2. Servicing Strategy

The SWC Ultimate Servicing Strategy is for the Precinct to be serviced by gravity sewers to Riverstone STP as shown in Figure 2. This requires the construction of four carrier mains together with two Sewage Pumping Stations (SPS's). Final location and delivery of these trunk mains will require extensive negotiation with Marsden Park (Residential) Precinct landowners. The total length of carriers required is approximately 18km and the length of rising main required is 3.2km. There are significant cost and operational limitations with this option as an initial sewerage service solution.

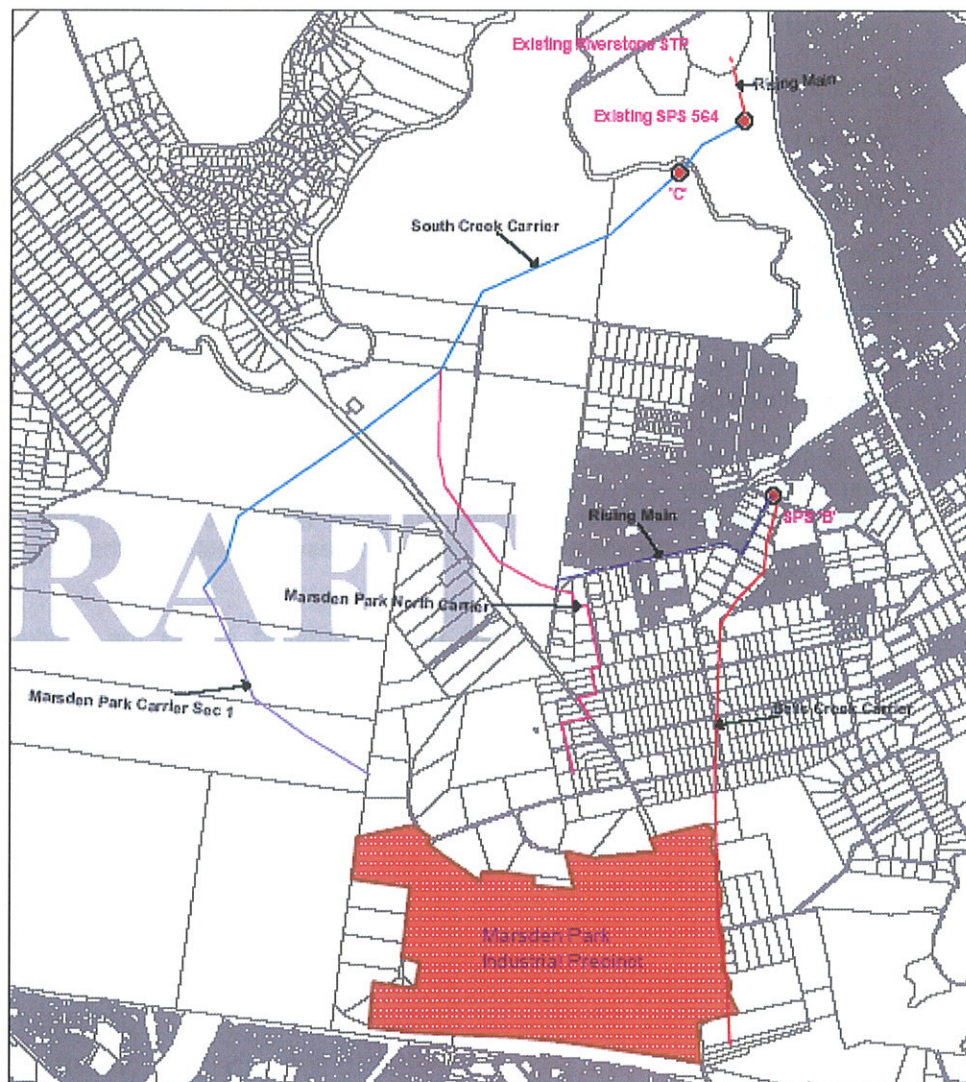


Figure 2: Proposed ultimate Sewer servicing strategy plan (Source: Sydney Water Corporation)

Given the constraints associated with the ultimate servicing strategy, an interim strategy will be adopted which can be integrated into the final. A preferred option has been identified which would see flows from the Precinct transferred to St Marys STP. This will involve construction of two SPS's within the Precinct to pump to St Marys STP via a rising main. Flows from the precinct would be discharged to an existing pump station located within the treatment plant and upstream of the inlet works. At 9.8 kilometres long, the rising main will be approximately half the length of the Riverstone gravity mains proposed. Operation and maintenance requirements in the interim are considered comparable to the ultimate servicing strategy. Capital costs and easement negotiation delays will be significantly reduced, resulting in a more reasonable and efficient provision of sewer services to the precinct. Other options still under consideration include transfer of flows via pump stations and rising mains to the Riverstone Carrier or on site treatment of sewerage.

Once development proceeds in the downstream catchments and gravity sewer systems are extended upstream towards the development the interim pump stations or treatment facilities would be decommissioned and flows would be transferred to the Riverstone sewer system.

### **3.4. Recycled Water**

#### **3.4.1. Existing Infrastructure, Operations and Capacity**

There is no existing infrastructure for recycled water.

#### **3.4.2. Servicing Strategy**

The SWC Ultimate Servicing Strategy for the Precinct is for recycled water to be serviced by a new trunk main to be constructed from the corner of Railway Terrace and Schofields Road. This will involve the construction of a 6.5km trunk main varying in size from 600-900mm and new 30ML surface and 4ML elevated reservoirs to be located within the Marsden Park Industrial Precinct. A new recycled water pumping station will also be built within the Precinct.

Due to the uncertainty surrounding the planning and priority for providing this recycled water infrastructure, it is proposed that in the interim irrigation needs would be met by stormwater harvesting for the Precinct. Recycled Water distribution mains would be provided within the development to facilitate the easy connection to the recycled water system once it is in place.

A dual pipe reticulation system will be implemented across the residential and commercial areas of the Precinct to cater for the Recycled Water supply to the site, with the industrial area to be supplied where demand warrants. This system would serve for the distribution of Recycled Water in line with Sydney Water servicing strategy objectives. Recycled Water distribution mains provided as development proceeds will be sized to meet the capacity requirements of the future downstream users.

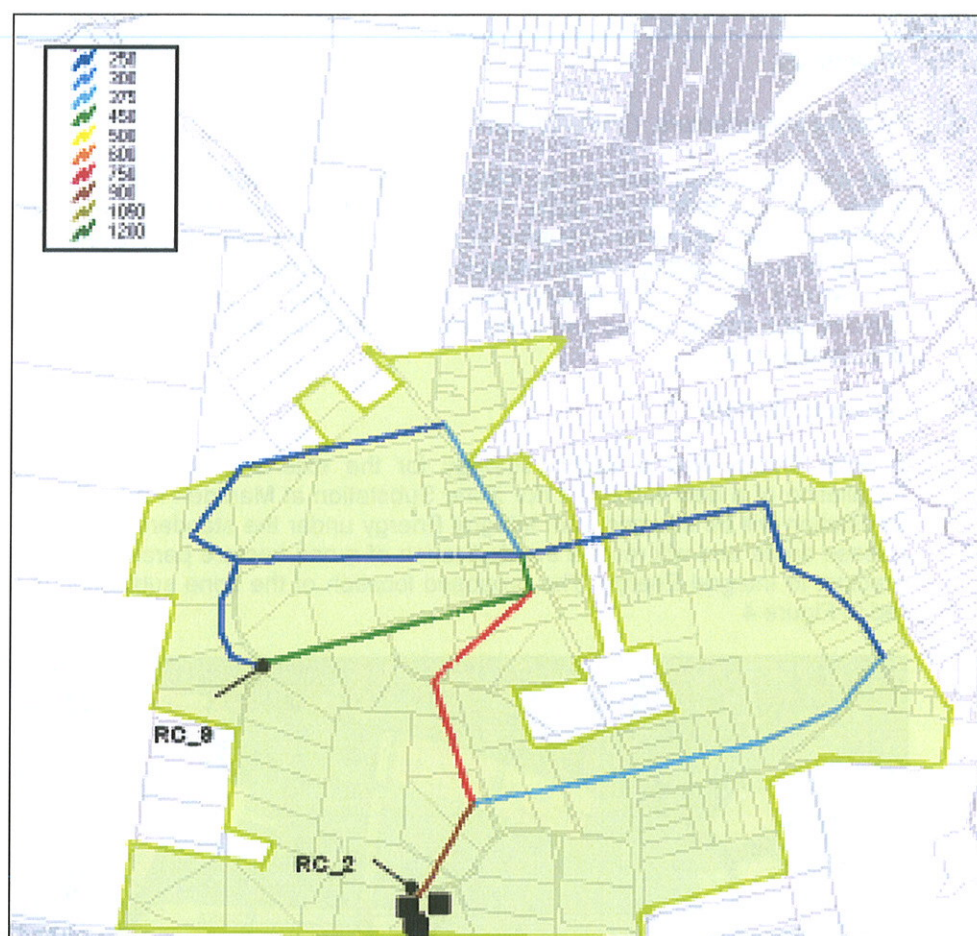


Figure 3: Recycled Water Servicing Strategy Map (source: Sydney Water)



### 3.5. Electricity

#### 3.5.1. Existing Infrastructure, Operations and Capacity

The existing area is serviced by Integral Energy's high voltage 11kV distribution from Rooty Hill and Riverstone Zone Substations. Both Rooty Hill and Riverstone Zone Substations are currently operating at or above design capacity. There is no capacity available in the existing infrastructure to supply the Precinct.

An existing 330kV transmission line traverses land to the north of the site. This transmission line is owned and operated by Transgrid and cannot be utilised to supply this development.

#### 3.5.2. Servicing Strategy

Integral Energy has a supply strategy for the extended area which includes the installation of a new 132kV / 11kV Zone Substation at Marsden Park. This new Zone Substation will be sourced from Integral Energy under the standard conditions for new release areas and will require the dedication of a one-hectare parcel of land within the precinct to Integral Energy. The proposed location of the zone substation is shown in red in Figure 4.

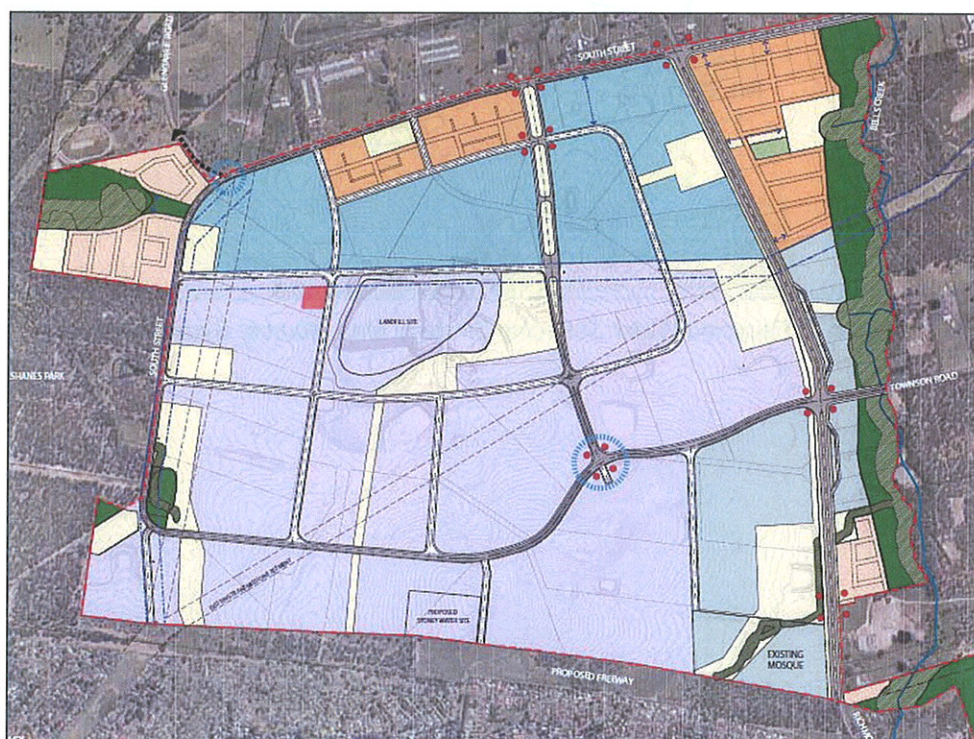


Figure 4: Proposed Zone Substation Location

The capacity of the system including the Zone Substation and feeder cables will be designed to supply the entire Precinct and surrounding area. The new Marsden Park Zone Substation will be linked into Integral Energy's North West Sector 132kV supply system via an extension from the proposed Schofields zone substation to create a ringed network supply.

### **3.5.3. 330kv Transmission Line relocation**

There are two 330kV single circuit steel tower transmission line feeders owned by TransGrid that traverse the Precinct as shown in Figure 5. One is known as feeder 20 Sydney West to Sydney North, and the other is known as feeder 13 Sydney West to Sydney North. The ILP proposes to relocate the existing transmission lines and associated easements including shifting the east-west feeder 20 towards the north to align the feeder with the proposed road and lot pattern.

The purpose of the proposed relocation of the easements is to facilitate an efficient and effective ILP layout to maximise the developable area of the Precinct. The proposed relocation will provide for lots that allow for the maximum developable area and building footprint.

### **3.6. Telecommunications**

Telecommunications supply to the Precinct would be provided by Telstra and distributed within the Precinct using Telstra's standard shared trench arrangement.

### **3.7. Natural Gas**

A high-pressure steel natural gas main is currently located in Richmond Road. Gas infrastructure could be provided to service the Precinct by extension of this main by Alinta. Alinta would provide gas infrastructure under their standard conditions and agreements dependent on demand within the Precinct and negotiations of supply agreements with the end users.



#### 4. INDICATIVE LAYOUT PLAN STATEMENT

The ILP has been prepared in consultation with the infrastructure agencies. The ILP is consistent with the servicing strategy presented in this report and there are no amendments required to this report to address the ILP.

#### 5. STAGING

The staging of the Precinct will commence around the Townson Road intersection and then be delivered from east to west, as generally defined by the three sewer catchments.

The staging is shown below as follows:

- Stage 1 Green
- Stage 2 Yellow
- Stage 3 Red
- Stage 4 Blue

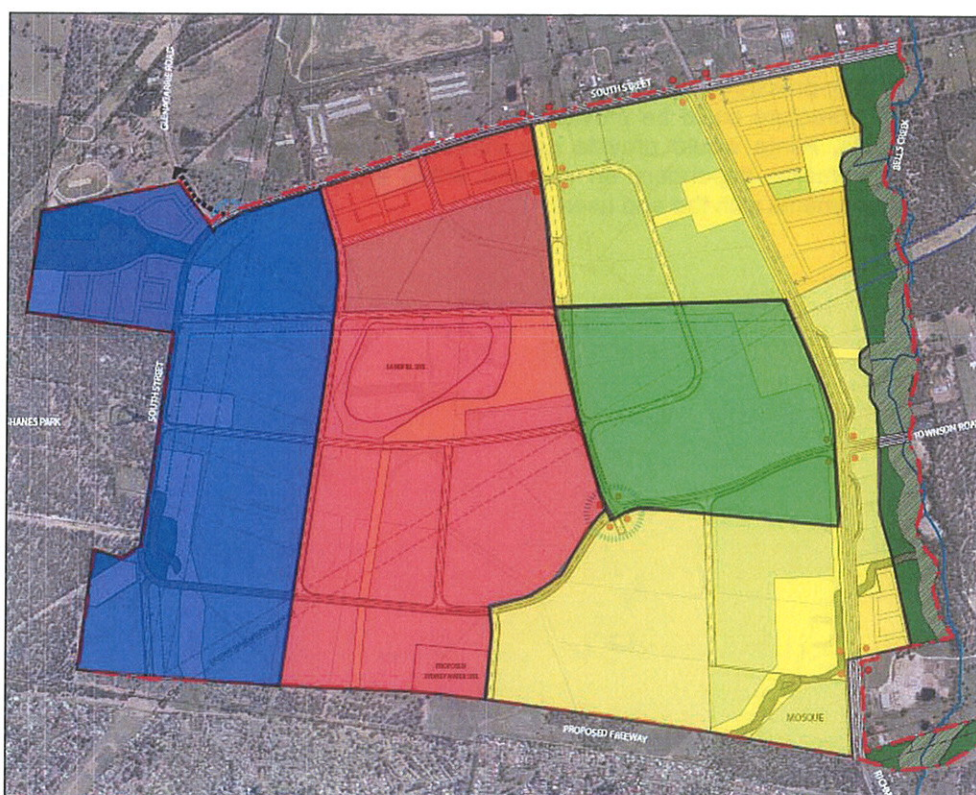


Figure 5: Indicative Staging Plan

## 6. CONCLUSION

An infrastructure servicing report has been prepared as part of the Precinct Planning for the Marsden Park Industrial Precinct. The report summarises the servicing strategy for the primary services required to service the Precinct and has been completed in consultation with key utilities agencies, Blacktown Council and the Department of Planning.

The Marsden Park Industrial Precinct presently has very limited infrastructure servicing capacity due to the existing rural land use. The infrastructure services assessment includes the following services:

- Water;
- Sewer;
- Recycled Water;
- Electricity;
- Telecommunications; and
- Natural Gas.

Ultimately water will be supplied to the Precinct from the Mt Druitt Reservoir via a new 6.8km long 600mm diameter trunk main and a new 4ML elevated reservoir to be located within the Precinct.

The final sewer servicing strategy involves the construction of a gravity sewer system to Riverstone STP including four new mains and two new pump stations.

Recycled water will ultimately be supplied from a new trunk main from the corner of Railway Terrace and Schofields Road and new elevated and surface reservoirs, and a pumping station to be located within the Precinct.

Integral Energy's supply strategy for the extended area includes the installation of a new 132kV / 11kV Zone Substation at Marsden Park. This new Zone Substation will be located within the Precinct and sourced from Integral Energy under the standard conditions for new release areas and will require the dedication of a one-hectare parcel of land to Integral Energy.

Telecommunications will be extended to the Precinct under Telstra's standard shared trench arrangement. Some minor upgrading of local exchanges may be required.

Natural gas can be supplied to the Precinct by Alinta from the extension of an existing gas main located in Richmond Road.

## **Annexure H - Sale Contract**

**Draft 3**

Date:

# Contract for the Sale of Land

## Marsden Park

---

Ganian Pty Limited (**Vendor**)

Integral Energy Australia (**Purchaser**)

# Contract for the sale of land - 2005 edition

## TERM

## MEANING OF TERM

Vendor's agent Name **NOT APPLICABLE** Phone  
Address Fax  
Ref

Co-agent **NOT APPLICABLE**

Vendor Name Galian Pty Limited ACN/ARBN 079 625 835  
Address c/- APP Corporation Pty Ltd ABN  
APP House, Level 1, 53 Berry Street  
NORTH SYDNEY NSW 2060

Vendor's solicitor Name **MINTER ELLISON** Phone (02) 9921 4858  
Address and DX 88 Phillip Street, Sydney 2000 Fax (02) 9921 8193  
DX 117, SYDNEY Ref 20-5731194

Completion date See special condition 38 day after the contract date (clause 15)

Land Address:  
(Address, plan details Title reference: Part 291/1076555 being Lot 2911 and 2913 in the Plan  
and title reference) Lot and plan: Lot 2911 and 2913 in the Plan (copy attached) which is part of Lot 291  
Deposited Plan 1076555.

Improvements ☐ VACANT POSSESSION ☐ subject to existing tenancies  
☐ HOUSE ☐ garage ☐ carport ☐ home unit ☐ carspace ☐ none  
☐ other: Vacant Land

Attached copies ☒ Documents in the List of Documents as marked.  
☐ Other documents: see Annexure A

**A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.**

Inclusions ☐ blinds ☐ curtains ☐ insect screens ☐ stove  
☐ built-in wardrobes ☐ dishwasher ☐ light fittings ☐ pool equipment  
☐ clothes line ☐ fixed floor coverings ☐ range hood ☐ TV antenna  
☐ other:

Exclusions

Purchaser Name Integral Energy Australia ACN/ARBN  
Address 51 Huntingwood Drive ABN 59 253130 878  
Huntingwood NSW 2148

Purchaser's solicitor Name **BARTIER PERRY** Phone (02) 8281 7872  
Address and DX Level 18, 133 Castlereagh Street Fax (02) 8281 7838  
Sydney NSW 2000 or DX 109 Sydney Ref HEH:082853

Price **\$1.00**  
Deposit **\$0.10** (10% of the price, unless otherwise stated)  
Balance **\$0.90**  
Contract date (if not stated, the date this contract was made)

See Execution Page

Vendor

Witness

See Execution Page

~~GST AMOUNT (optional)~~  
The price includes  
GST of: \$

Purchaser

☐ JOINT TENANTS ☐ tenants in common ☐ in unequal shares

Witness

**Tax information (the parties promise this is correct as far as each party is aware)**

Vendor duty is payable ☐ NO ☐ yes in full ☐ yes to an extent  
Deposit can be used to pay vendor duty ☐ NO ☐ yes  
Land tax is adjustable ☐ NO ☒ yes  
GST: Taxable supply ☐ NO ☒ yes in full ☐ yes to an extent  
Margin scheme will be used in making the taxable supply ☐ NO ☐ yes  
This sale is not a taxable supply because (one or more of the following may apply) the sale is:  
☐ not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))

- ☐ by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- ☐ GST-free because the sale is the supply of a going concern under section 38-325
- ☐ GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- ☐ input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

**HOLDER OF STRATA OR COMMUNITY TITLE RECORDS - Name, address and telephone number**

Not applicable

RECEIVED



## List of Documents

General	Strata or community title (clause 23 of the contract)
<input checked="" type="checkbox"/> property certificate for the land	<input type="checkbox"/> property certificate for strata common property
<input type="checkbox"/> plan of the land	<input type="checkbox"/> plan creating strata common property
<input checked="" type="checkbox"/> unregistered plan of the land	<input type="checkbox"/> strata by-laws not set out in <i>legislation</i>
<input checked="" type="checkbox"/> plan of land to be subdivided	<input type="checkbox"/> strata development contract or statement
<input type="checkbox"/> document that is to be lodged with a relevant plan	<input type="checkbox"/> strata management statement
<input checked="" type="checkbox"/> section 149(2) certificate (Environmental Planning and Assessment Act 1979)	<input type="checkbox"/> leasehold strata - lease of lot and common property
<input checked="" type="checkbox"/> section 149(5) information included in that certificate	<input type="checkbox"/> property certificate for neighbourhood property
<input checked="" type="checkbox"/> sewerage connections diagram	<input type="checkbox"/> plan creating neighbourhood property
<input checked="" type="checkbox"/> sewer mains diagram	<input type="checkbox"/> neighbourhood development contract
<input type="checkbox"/> document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract	<input type="checkbox"/> neighbourhood management statement
<input type="checkbox"/> building management statement	<input type="checkbox"/> property certificate for precinct property
<input type="checkbox"/> section 88G certificate (positive covenant)	<input type="checkbox"/> plan creating precinct property
<input type="checkbox"/> survey report	<input type="checkbox"/> precinct development contract
<input type="checkbox"/> section 317A certificate (certificate of compliance)	<input type="checkbox"/> precinct management statement
<input type="checkbox"/> building certificate given under <i>legislation</i>	<input type="checkbox"/> property certificate for community property
<input type="checkbox"/> insurance certificate (Home Building Act 1989)	<input type="checkbox"/> plan creating community property
<input type="checkbox"/> brochure or note (Home Building Act 1989)	<input type="checkbox"/> community development contract
<input type="checkbox"/> section 24 certificate (Swimming Pools Act 1992)	<input type="checkbox"/> community management statement
<input type="checkbox"/> lease (with every relevant memorandum or variation)	<input type="checkbox"/> document disclosing a change of by-laws
<input type="checkbox"/> other document relevant to tenancies	<input type="checkbox"/> document disclosing a change in a development or management contract or statement
<input type="checkbox"/> old system document	<input type="checkbox"/> document disclosing a change in boundaries
<input type="checkbox"/> Crown tenure card	<input type="checkbox"/> certificate under Management Act - section 109(Strata Schemes) or section 26 (Community Land)
<input type="checkbox"/> Crown purchase statement of account	
<input type="checkbox"/> Statutory declaration regarding <i>vendor duty</i>	
<input checked="" type="checkbox"/> Smoke alarms warning	

## WARNINGS

- Various Acts of Parliament and other matters can affect the rights of the parties to this contract. Some important matters are actions, claims, decisions, licences, notices, orders, proposals or rights of way involving
 

AGL Gas Networks Limited	Government Business & Government Procurement	Public Works Dept
Council	Heritage Office	Roads & Traffic Authority
County council	Infrastructure Planning and Natural Resources	Rural Lands Protection Board
East Australian Pipeline Limited	Land & Housing Corporation	Sustainable Energy Department
Education & Training Dept	Mine Subsidence Board	Telecommunications authority
Electricity authority	Owner of adjoining land	Water, sewerage or drainage
Electricity authority		
Environment & Conservation Dept	Primary Industries Department	
Fair Trading	RailCorp	

 If you think that any of these matters affects the property, tell your solicitor.
- A lease may be affected by the Agricultural Tenancies Act 1990, the Residential Tenancies Act 1987 or the Retail Leases Act 1994.

# MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
 TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)

- 3 If any purchase money is owing to the Crown, it may become payable when the transfer is registered.
- 4 If a consent to transfer is required under legislation, see clause 27 as to the obligations of the parties.
- 5 The vendor should continue the vendor's insurance until completion. If the vendor wants to give the purchaser possession before completion, the vendor should first ask the insurer to confirm this will not affect the insurance.
- 6 The purchaser will usually have to pay stamp duty on this contract. The sale will also usually be a vendor duty transaction. If duty is not paid on time, a party may incur penalties.
- 7 If the purchaser agrees to the release of deposit any rights in relation to the land (for example, the rights mentioned in clause 2.8) may be subject to the rights of other persons such as the vendor's mortgagee.
- 8 The purchaser should arrange insurance as appropriate.

#### **DISPUTES**

If you get into a dispute with the other party, the Law Society and Real Estate Institute encourage you to use informal procedures such as negotiation, independent expert appraisal or mediation (for example mediation under the Law Society Mediation Guidelines).

#### **AUCTIONS**

Regulations made under the Property Stock and Business Agents Act 2002 prescribe a number of conditions applying to sales by auction.

# Contract for the Sale of Land

Lots 2911 and 2913, Fulton Road, Marsden Park

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<b>Special conditions to the contract for the sale of land dated</b>	<b>7</b>
<b>30. Definitions and Interpretation</b>	<b>7</b>
<b>31. Amendments to printed form of contract</b>	<b>11</b>
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<b>43. Environmental Assessment and Contamination</b>	<b>20</b>
<b>44. Releases and Indemnities</b>	<b>20</b>
<b>45. Adjustments</b>	<b>21</b>
<b>46. Entire agreement</b>	<b>21</b>
<b>47. Stamp duty costs etc</b>	<b>21</b>
<b>48. Consequences of rescission</b>	<b>21</b>
<b>49. Dispute Resolution</b>	<b>22</b>
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# Special conditions to the contract for the sale of land dated

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## 30. Definitions and Interpretation

### 30.1 Definitions

**Acquisition Approval** means any approval, consent, agreement, permission, licence or authority required by Law or an Authority (including the Purchaser in its capacity as Determining Authority) relating to the subdivision of the Original Land and the Plan.

**Application** means an application for any Approval or any Acquisition Approval made by the Purchaser.

**Approval** means any approval, consent, agreement, permission, licence or authority required by Law or an Authority (including the Purchaser in its capacity as Determining Authority) relating to the Purchaser's Works and the Infrastructure Proposal.

**Authority** means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

**Business Day** means a day other than a Saturday, Sunday, bank or public holiday in the State of New South Wales.

**Claim** means a claim, action, proceeding, damage, loss, expense, cost or liability, immediate, future or contingent and includes a claim for compensation.

**Completion Date** means the date calculated in accordance with clause 38.

**Contamination** of land, air or water means the presence in, on or under that land, air or water of a substance (whether a solid, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present in, on or under (respectively, land, air or water) in the same locality being a presence that presents a risk of harm to human health or the Environment, or could otherwise give rise to a risk of non-compliance or breach of any Environmental Law or Environmental Authorisation.

**Council** means Blacktown City Council.

**Critical Habitat** means habitat declared to be critical habitat under Part 3 of the *Threatened Species Conservation Act 1995* (NSW) or for a listed threatened species or a listed threatened ecological community has the meaning given by subsection 207A(4) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

**Determining Authority** means, in relation to an Application, the Authority responsible for determining the Application.

**Developable Land Area** means the area within the Precinct appropriately zoned by Council or the relevant consent Authority and capable of development to be undertaken for residential or employment use.

**Disclosure Materials** means all information and documentation in relation to the Property, provided to the Purchaser or any employee, agent, consultant or advisor to the Purchaser including the Reports and the materials contained in Annexure 'A'.

**Easements** means the easements for transmission and distribution of electricity.

**Effective Date** means the date that is 10 Business Days after the Rescission Date.

**Environment** means components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in (a) - (d).

**Environmental Authorisation** means a licence, consent, approval, permit, authorisation, certificate of registration or other concession issued by an Authority and any agreement, which is required obtained or entered into in respect of the Land pursuant to an Environmental Law.

**Environmental Law** means a Law relating to the Environment, including but not limited to relating to the use of land; planning; environmental assessment; the environmental water; water catchments; pollution of air, soil, ground water or water; noise; soil; chemicals; pesticides; hazardous substances; radioactive substances; the ozone layer; waste; dangerous goods; building regulation; the occupation of buildings; public health; environmental hazard; any aspect of protection of the Environment; or the enforcement or administration of any such Law.

**ESA** means a Phase 1 environmental site assessment.

**Estimated Works Completion Date** means the date that is 36 months after the date of this contract as varied in accordance with this contract.

**Indicative Layout** means the preliminary plan for the construction of the Substation, a copy of which is annexed to this contract as Annexure 'B'.

**Infrastructure Proposal** means the Purchaser's proposal to construct the Purchaser's Works.

**Law** means in a given circumstance or context, all statutes, rules, regulations, proclamations, ordinances, by-laws and applicable standards and policies of an Authority, whether federal, state, local or otherwise, relevant to that circumstance or context.

**Memorandum** means the document which has been registered at the office of Land and Property Information, NSW under dealing number 9262884 and 9262885, a copy of which is annexed to this contract as Annexure 'C'.

**Option Contract** means the contract attached to the Option Deed.

**Option Deed** means the call option to purchase the Land between Integral Energy as Grantor and Ganian Pty Limited as Grantee dated the same date as this contract.

**Original Land** means the land comprised in Certificate of Title 291/1076555 of which the Land forms part.

**Plan** means a plan of acquisition subdividing the Original Land to create the Land generally in the form of the plan annexed to this contract as Annexure 'D'..

**Precinct** means the whole of the land identified by the Growth Centres Commission of NSW as the Marsden Park Industrial Precinct as gazetted from time to time and which at the date of this contract consists of the land comprised in:

- (a) Lots 1-7 (inclusive) in Deposited Plan 17048;
- (b) Lots 8-39, 43, 44 & 47 in Deposited Plan 262886;
- (c) Lots 1-4 Deposited Plan 27536;
- (d) Lot 22 Deposited Plan 584915;
- (e) Lot 1 Deposited Plan 88530;
- (f) Lots 291-292 Deposited Plan 1076555;
- (g) Lot 1 Deposited Plan 747184;
- (h) Lot 8 Deposited Plan 193074;
- (i) Lot 9 Deposited Plan 976148;
- (j) Lot 86 Deposited Plan 952030;
- (k) Lot 30 Deposited Plan 1076671; and
- (l) Lots 41 & 42 Deposited Plan 1100854.

**Proposed Lot** means the proposed Lot for the Substation in the Plan.

**Purchaser's Works** means the works necessary for the construction of the Substation on the Land.

**Reports** means the:

- (a) Historical Culture Heritage Assessment prepared by Comber Consultants Pty Limited and dated July 2008;
- (b) Flora and Fauna Assessment prepared by Eco Logical Australia Pty Limited dated June 2008;
- (c) Aboriginal Cultural Heritage Assessment Marsden Park Zone Substation Subdivision prepared by Comber Consultants Pty Limited dated June 2008;
- (d) Bushfire Hazard and Threat Assessment prepared by R. A. Free on 16 June 2008;
- (e) Phase 1 Contamination Assessment – Proposed Integral Energy substation for Marsden Park Employment Precinct prepared by GHD Pty Limited dated August 2008; and
- (f) Phase 2 Contamination Assessment – Proposed Integral Energy Substation for Marsden Park Industrial Precinct prepared by GHD Pty Limited dated November 2008.

**Rescission Date** means the date which is 12 months after the date of this contract.

**Residual Lot** means the land to be comprised in Lot 2912 on registration of the Plan.

**Restricted Lot** means that part of the Land to be comprised in lot 2913.

**Restricted Period** means the period of 10 years commencing from the date of completion of this contract.

**Restrictive Covenant** means the restrictive covenant

- (a) benefiting the Residual Lot and burdening the Restricted Lot; and
- (b) created on the terms set out in the Transfer Including Covenant.

**Review of Environmental Factors** means a review of environmental factors required to be undertaken with respect to the Infrastructure Proposal in accordance with the provisions of SEPP (Infrastructure).

**SEPP (Infrastructure)** means State Environmental Planning Policy (Infrastructure) 2007.

**Service Provider** means a provider of mains water, sewerage and drainage or telephone services.

**Substantial Commencement of Construction** means, in relation to the Purchaser's Works, the stage in the administration of the building contract for the Purchaser's Works when the Purchaser has provided access to and possession of the Land to its building contractor for the purposes of construction of an electricity substation and other Purchaser's Works on the Land.

**Substation** means a 132 to 11 kV zone substation shown in the Indicative Layout.

**Transfer Including Covenant** means the Transfer Including Covenant creating the Restrictive Covenant over the Restricted Lot.

**Vendor Precinct** means that part of the land comprised in the Precinct and owned by the Vendor, being the land comprised in lots 8 to 16 (inclusive), 26, 27, 32 to 36 (inclusive) and 47 in Deposited Plan 262886 and lots 291 and 292 in Deposited Plan 1076555.

**Vendor's Works** means the works to be carried out by the Vendor in accordance with clauses 35 (Plan of Subdivision), 38 (Services), 41 (Plan of Easements) and 43 (Environmental Assessment and Contamination).

## 30.2 Interpretation

In this contract:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the Precinct of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;



- (c) 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;
- (d) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (e) a reference to a clause, schedule, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of this contract, and a reference to this contract includes all schedules, exhibits, attachments and annexures to it;
- (f) 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;
- (g) **includes** in any form is not a word of limitation; and
- (h) a reference to \$ or **dollar** is to Australian currency.

## 31. Amendments to printed form of contract

### 31.1 GST amendments

The printed form of contract is amended as follows:

- (a) on page 1 of the printed form of contract, delete '**Subject to clause 13, the price INCLUDES goods and services tax (if any) payable by the Vendor.**'
- (b) on page 2 of the printed form of contract, delete the heading '**GST information (A New Tax System (Goods and Services Tax) Act 1999) (clause 13)**' and all choices below it;
- (c) Clause 1 – delete the definition of '*GST Act*';
- (d) Clause 13 – replace with:

#### **'13. GST**

##### **13.1 Definitions and interpretation**

In this clause 13:

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

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

**GST exclusive market value** has the meaning it has in the GST Act.

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

**Input Tax Credit** has the meaning it has in the GST Act.

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

### **13.2 Consideration does not include GST**

The consideration specified in this agreement does not include any amount for GST.

### **13.3 Recovery of GST**

If a supply under this agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

### **13.4 Time of payment**

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

### **13.5 Adjustment of additional amount**

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

### **13.6 Reimbursement**

If a party is entitled to be reimbursed or indemnified under this agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## **31.2 Amendments to other clauses**

Clauses 1 to 29 are amended as follows:

- (a) Clause 5.1 – delete 'or it is a general question about the property or the title';
- (b) Clause 13 – delete the clause;
- (c) Clause 16.5 – delete the words 'plus another 20% of that fee';
- (d) Clause 16.6 – delete the clause;
- (e) Clause 16.8 – delete the clause;
- (f) Clause 20.6 – replace 'A' at the beginning of the clause with 'Normally a';
  - delete 'and' at the end of clause 20.6.6;
  - replace the full stop at the end of clause 20.6.7 with a '; and';
  - add a new clause 20.6.8 which says 'not served if it is sent by electronic mail.';
- (g) Clause 28 – delete the clause.
- (h) Clause 29 – delete the clause.

## **32. Disclosure Materials**

### **32.1 Acknowledgement**

The Purchaser acknowledges that it has been provided with the Disclosure Materials.

### **32.2 No Warranty**

The Vendor gives no warranty as to the accuracy or completeness of the Disclosure Material.

### **32.3 No Claim by Purchaser**

The Purchaser acknowledges that, to the extent permitted by Law, it may not make any objection or requisition, Claim or attempt to delay completion on any grounds relating to or arising out of any matter which was disclosed to the Purchaser in the Disclosure Materials or was otherwise publicly available.

## **33. Vendor's Works**

### **33.1 Conduct of the Vendor's Works**

The Vendor will use its best endeavours and take all reasonable steps to cause the Vendor's Works and do, or cause to be done, all other things reasonably required by the Purchaser to facilitate the carrying out of the Purchaser's Works, to be carried out and completed:

- (a) at the cost and expense of the Vendor; and
- (b) in compliance with all relevant Approvals and Acquisition Approvals and with the requirements of all Authorities and all relevant Laws.

## **34. Acquisition Approvals**

### **34.1 Approvals**

This contract and completion is subject to and conditional upon the Purchaser obtaining or granting (where the Purchaser is the Determining Authority) all Acquisition Approvals prior to the Rescission Date.

### **34.2 Rescission**

If the Subdivision Approvals are not obtained and a certified copy of each Acquisition Approval provided to the Vendor on or before the Rescission Date, either party may rescind this contract within five days of the Rescission Date, whereupon the provisions of clause 19 will apply.

### **34.3 Qualification to Rescission**

Despite clause 34.2 above, if the Acquisition Approvals are obtained after the Rescission Date and the Purchaser has notified the Vendor of such Acquisition Approval prior to the Vendor exercising its right to rescind under clause 34.2 then upon service of such notice, the Vendor's right of rescission shall cease.

## **35. Plan**

### **35.1 Purchaser's requirements**

The Vendor must consult with the Purchaser and have regard to all reasonable requirements of the Purchaser in preparation of the Plan required for the Acquisition Approvals.

## **35.2 Plan alterations**

Provided the land in the Proposed Lot is substantially the same and is sufficient in dimension and area to permit the construction, operation, maintenance and repair of the Substation in the reasonable opinion of the Purchaser, the Purchaser will not object if the dimensions and area of the Proposed Lot are altered to comply with the requirements of all relevant Authorities and/or the reasonable requirements of the Vendor having regard to its subdivision of the Original Land. The Purchaser acknowledges, that as far as it is currently aware, the Proposed Lot shown in the Plan is adequate and acceptable for these purposes.

## **35.3 Registration of Plan**

The Vendor will meet and discharge all costs in connection with the preparation and registration of the Plan and the instruments under section 88B of the *Conveyancing Act 1919* for the easements and covenants identified in clause 35.1.

## **35.4 Purchaser's Obligations**

The Purchaser agrees to do all things reasonably required by the Vendor to facilitate the registration of the Plan including approving and executing the Plan in a timely fashion.

## **35.5 Notification of Plan Number**

The Vendor must promptly upon receipt of details of the Plan from Land and Property Information, NSW notify the Purchaser in writing of the deposited plan number allocated to the Plan.

# **36. Development Consent**

## **36.1 Acknowledgement**

The Purchaser understands that the Infrastructure Proposal is subject to the application of State Environmental Planning Policy (Infrastructure) 2007 and that Council development consent is not required for the Infrastructure Proposal.

## **36.2 Contract conditional**

Completion of this contract is subject to and conditional on the Purchaser obtaining or granting (where the Purchaser is the Determining Authority) the Approvals on or before the Rescission Date or such other date as may be agreed between the parties acting reasonably from time to time.

## **36.3 Compliance with provisions of SEPP (Infrastructure)**

The Purchaser as the Determining Authority agrees that it will comply with the provisions of SEPP (Infrastructure) in respect of the Infrastructure Proposal including;

- (a) obtaining any Approvals required under SEPP (Infrastructure);
- (b) preparing a Review of Environmental Factors to examine and take into account to the fullest extent possible, all matters affecting or likely to affect the Environment by reason of completion or the carrying out of the Purchaser's Works;
- (c) providing written notification of the Infrastructure Proposal and the Purchaser's intention to carry out the Purchaser's Works to the Council and any occupiers of adjoining land;
- (d) take into consideration any response to the notice referred to in clause 36.3(c) submitted by the Council and occupiers of adjoining land within 21 days of the said notice.

### **36.4 Application**

An Application must:

- (a) be a bona fide attempt by the Purchaser to obtain the Approval ; and
- (b) be reasonably capable of being approved by a Determining Authority having regard to the current zoning and other restrictions affecting the Land and a Determining Authority's requirements in regard to applications for Approval.

### **36.5 Rescission rights**

- (a) If either:
  - (i) a Determining Authority:
    - (A) notifies the Purchaser in writing that it refuses to grant the Approval; or
    - (B) issues an Approval on conditions which are not acceptable to the Purchaser acting reasonably; or
  - (ii) the Purchaser as Determining Authority acting reasonably determines through the review of Environmental Factors that the matters affecting or likely to affect the Environment are such that it can not carry out, or grant an Approval,

the Purchaser may rescind this contract within 5 Business Days of the date of the Determining Authority's determination by service of notice on the provisions of clause 19 of this contract will apply.
- (b) If the Approval has not been granted by the Rescission Date then the Purchaser is entitled either:
  - (i) to rescind this contract by notice in writing given to the Vendor's solicitors by the Effective Date but not otherwise, and the provisions of clause 19 will apply; or
  - (ii) to elect to treat this contract as being free from the requirement to obtain the Approval but an election must be made by the Purchaser in writing to the Vendor on or before the Effective Date and not otherwise.

### **36.6 Vendor to assist**

The Vendor will at all times execute documents and do all other acts as the Purchaser or the Determining Authority may reasonably require in connection with an Application, and this will be without cost to the Vendor and at the Purchaser's expense.

## **37. Not Used.**

## **38. Services**

### **38.1 Services**

- (a) The Vendor warrants that at no cost to the Purchaser:

- (i) the Land will be connected to mains water, sewerage and drainage, and telephone services of a suitable design and capacity for the operation of the Substation and as required by the Service Provider;
  - (ii) it will use its reasonable endeavours to connect the water and sewer mains services referred to in clause 38.1(a)(i) to the Land by no later than the Estimated Works Completion Date;
  - (iii) if a connection to the sewer mains is not available to the Land by the Estimated Works Completion Date, the Vendor will by no later than the Estimated Works Completion Date provide a septic system on the Land of a suitable design and capacity as reasonably required by the Purchaser for the operation of the Substation; and
  - (iv) if a connection to the water mains is not available to the Land by the Estimated Works Completion Date, the Vendor will by no later than the Estimated Works Completion Date provide a system of tanks and pumps on the Land to provide water supply of a suitable design and capacity as reasonably required by the Purchaser for the operation of the Substation.
- (b) If the Vendor installs a system on the Land as referred to in clause 38.1(a)(iii) and 38.1(a)(iv), the Vendor warrants that at no cost to the Purchaser:
- (i) the required sewerage and water mains connection will be provided by the Vendor no later than 12 months after the completion of the Purchaser's Works;
  - (ii) the Vendor will enter into service contracts for the maintenance and repair of the systems as reasonably required by the Purchaser; and
  - (iii) once the required sewerage and water mains connections are provided, if requested by the Purchaser, the Vendor must remove the systems from the Land and to restore the Land to a suitable condition as reasonably required by the Purchaser.

### **38.2 Temporary water and sewer services for Purchaser's Works**

- (a) The Vendor warrants that at no cost to the Purchaser that:
- (i) if at the Purchaser's intended date for the Substantial Commencement of Construction in relation to the Purchaser's Works, the Land is not yet connected to mains water and sewerage services, the Vendor will provide temporary water and sewerage services to the Land;
  - (ii) the temporary water and sewerage services will be provided to the Land by no later than one month before the Purchaser's intended date for the Substantial Commencement of Construction; and
  - (iii) the temporary water and sewerage services must be of a suitable design and capacity as reasonably required by the Purchaser for the completion of the Purchaser's Works.
- (b) The Purchaser will provide the Vendor with not less than six months notice of the planned date for the Substantial Commencement of Construction in relation to the Purchaser's

Works and the design and capacity of the temporary water and sewerage services to the Land.

- (c) If the Vendor does not comply with its obligations under clause 38.2 the Purchaser may delay the Estimated Works Completion Date by the same period that the Vendor delays compliance with clause 38.2.

## 39. Completion

Completion will take place on the date being 10 Business Days after the last to occur of:

- (a) the date of issue of the certificates of title for the two lots comprising the Land;
- (b) the date of issue of the Approvals in accordance with clause 36 (Development Consent);
- (c) the date that the Purchaser complies with its obligations under clause 34 (Acquisition Approvals); and
- (d) the date that the Vendor complies with its obligations under clause 35 (Plan of Subdivision) and 30 (Environmental Site Assessment).

## 40. Purchaser's Works

### 40.1 Intention of the parties

- (a) The parties acknowledge that the Vendor has agreed to sell the Land and the Purchaser has agreed to purchase the Land so that the Purchaser will own land upon which it will build the Substation to supply power to the Vendor Precinct.
- (b) The Purchaser must ensure that the Substation, once completed, will supply electricity at a requirement of no less than 45 MVA in the initial stages, and that this electricity will be made available to the Vendor Precinct.
- (c) The Purchaser will be responsible for all costs associated with the design and installation of all 132kV and high voltage distribution works to reticulate electricity supply to the Substation.

### 40.2 Power requirements of the Precinct

The Vendor acknowledges that:

- (a) it has provided the Purchaser with information regarding the estimated power requirements of the Precinct and based on the information provided by the Vendor, the Purchaser has determined that the total electricity load of the Precinct will be approximately 96 MVA which is based on a gross Developable Land Area of the Precinct of approximately 525 hectares with a demand of 40 VA per square metre;
- (b) the Purchaser has designed and will construct the Substation to meet the electricity load requirement set out in clause 40.2(a);
- (c) the Vendor will not have any Claim against the Purchaser if the actual electricity requirements of the Vendor Precinct exceed the load requirement set out in clause 40.2(a);

- (d) the Vendor will be responsible for all costs associated with the design and installation of the 11kV low voltage underground feeder cables and associated distribution works set out in clause 40.2(d); and
- (e) the Vendor will be responsible for all costs associated with the design and installation of all 11kV and low voltage distribution works including cabling, padmounted substations and street lighting to reticulate electricity supply from the Substation to and throughout the Vendor Precinct only.

#### **40.3 Conduct of the Purchaser's Works**

The Purchaser will use its reasonable endeavours and take all reasonable steps to:

- (a) obtain the Approvals; and
- (b) cause the Purchaser's Works to be carried out and completed:
- (c) at the cost and expense of the Purchaser; and
- (d) in compliance with all relevant Approvals and with the requirements of all Authorities and all relevant Laws.

#### **40.4 Design of Purchaser's Works**

- (a) The Purchaser must, in consultation with the Vendor, use its best endeavours to design and locate the Substation and Purchaser's Works in accordance with:
  - (i) all Approvals;
  - (ii) development principles and guidelines for the Precinct and Developable Land as notified by the Vendor to the Purchaser from time to time;
  - (iii) the Restriction on Use; and
  - (iv) any other reasonable requirements of the Landlord.
- (b) The parties agree that the intention of clause 40.4(a) is to ensure that the Substation and Purchaser's Works:
  - (i) do not have an adverse affect on the Vendor's proposed use of the adjoining land including the ability to access or provide points of connection to utility services to such adjoining land; and
  - (ii) to maximise flexibility in determining the location and alignment of the road contemplated by clause 50.

#### **40.5 Estimated Works Completion Date**

- (a) The Purchaser acknowledges that the Vendor has agreed to enter into this contract on the basis that the Purchaser will use its reasonable endeavours to complete the Purchaser's Works by the Estimated Works Completion Date.
- (b) The Purchaser shall consult with and keep the Vendor regularly informed about the progress of the Purchaser's Works.



## **41. Plan of Easements**

### **41.1 Grant of Easements**

On the Completion Date, the Vendor must grant the Easements to the Purchaser on the terms set out in the Memorandum.

### **41.2 Changes to the location of the Easements**

- (a) If the Vendor wishes to change the proposed location (from the location centred on the Purchaser's Works shown on the Indicative Plan) or dimensions of the Easements, it must obtain the consent of the Purchaser.
- (b) The Purchaser agrees that it will not withhold consent to a change in the location of the Easements:
  - (i) if such change is requested prior to the commencement of the installation of cables for the underground transmission and distribution of electricity; or
  - (ii) if such change is required to comply with the requirements of any relevant Authority; or
  - (iii) if such change is required as a result of changes to the Vendor's plans for the subdivision of the Precinct,

provided that in the reasonable opinion of the Purchaser the change in location of the Easements will not have a material adverse impact upon the construction, operation, maintenance and repair of the Substation.

### **41.3 Grant of further easements**

The vendor acknowledges that after the Completion Date, the purchaser may acting reasonably require the grant of Easements at no cost to the Purchaser for the operation and maintenance of the Substation. Subject to this clause 41.3:

- (a) the vendor must do everything reasonably required by the purchaser to assist the purchaser to obtain such Easements; and
- (b) the vendor must grant such Easements.

### **41.4 Location of further Easements**

Except where the Purchaser demonstrates to the Vendor's reasonable satisfaction that another location is necessary for the efficient distribution of power from the Substation to the rest of the Vendor Precinct, the location of an Easement will be determined by the Vendor and the Purchaser such that the Easement is:

- (a) to the maximum extent possible, located within existing or proposed public roads within the Precinct;
- (b) to the extent that paragraph (a) cannot be satisfied, then to the maximum extent possible located on land within the Vendor Precinct which is proposed to be dedicated to the relevant local Council (prior to such dedication);

- (c) to the extent that paragraphs (a) and (b) cannot be satisfied, then to the maximum extent possible, co-located with other utility service easements, or proposed utility service easements, on land within the Vendor Precinct;
- (d) to the extent that paragraphs (a), (b) and (c) cannot be satisfied, then to the maximum extent possible, located on or along the boundaries of the Vendor Precinct or the proposed boundaries of subdivided lots within the Vendor Precinct; and
- (e) to the extent that paragraphs (a), (b), (c) and (d) cannot be satisfied, then to the maximum extent possible, located on or along the boundaries or proposed boundaries of driveways or pedestrian access routes which are outside the footprint of any existing or proposed buildings on land within the Vendor Precinct.

## **42. Access**

### **42.1 Enquiries and Investigations**

The Vendor authorises the Purchaser from the date of this contract to:

- (a) undertake investigations and enquiries with any relevant Authority in relation to the Land which are consistent with the intentions of the parties under this contract as set out in clause 40.1; and
- (b) to enter the Land, on the provision of 24 hours notice to the Vendor or its nominated representative, for the purpose of carrying out the Purchaser's investigations and enquiries

### **42.2 Consent**

The Vendor will give its consent to, and where necessary co-operate with the Purchaser in the implementation of

- (a) any application which the Purchaser wishes to make to an Authority; and
- (b) any agreement or arrangement negotiated by the Purchaser with an Authority;

in relation to the Land, provided that it is consistent with the intentions of the parties under this contract as set out in clause 40.1.

## **43. Not Used**

## **44. Releases and Indemnities**

### **44.1 Vendor's release and indemnity**

The Vendor shall and does hereby and will continue to indemnify, release and hold harmless the Purchaser against all Claims whatsoever arising from or incurred in connection with the carrying out of the Purchaser's Works:

- (a) on the Land; and
- (b) within the site of the Easements; or
- (c) on any such other areas within the Precinct that the Purchaser requires reasonable access to in order to complete the Purchaser's Works,

to the extent caused or contributed by the negligence or default of the Vendor or its employees, agents or contractors.

#### **44.2 Purchaser's release and indemnity**

The Purchaser shall and does hereby and will continue to indemnify, release and hold harmless the Vendor against all Claims whatsoever arising from or incurred in connection with the carrying out of the Purchaser's Works:

- (a) on the Land; and
- (b) within the site of the Easements; or
- (c) on any such other areas within the Precinct that the Purchaser requires reasonable access to in order to complete the Purchaser's Works,

except to the extent caused or contributed by the negligence or default of the Vendor or its employees, agents or contractors.

#### **45. Not Used.**

#### **46. Entire agreement**

To the extent permitted by law, in relation to its subject matter, this contract:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

#### **47. Stamp duty costs etc**

Each of the parties must pay their own legal Costs and expenses and the Purchaser must pay all stamp duty payable on this contract.

#### **48. Consequences of rescission**

##### **48.1 Alternative Site**

- (a) If a party exercises its rights to rescind this contract under clauses 34 (Approvals), 36 (Development Consent) or 43 (Environmental Assessment and Contamination), the Vendor and the Purchaser agree to negotiate in good faith in an attempt to agree on an alternative location for the Substation (**Alternative Site**).
- (b) The Vendor must propose an Alternative Site to the Purchaser.
- (c) If in the reasonable opinion of the Purchaser the Alternative Site proposed by the Vendor is sufficient in area to permit the construction, operation, maintenance and repair of the Substation and is substantially similar to the Land in all other respects, the Purchaser will enter into a contract for sale of the alternative site on the same terms (so far as relevant) to this contract.

## 48.2 Unsuitable site

- (a) In addition to the provisions of clause 48.1 concerning an Alternative Site, if either the Purchaser or the Vendor acting reasonably determines the Proposed Lot is unsuitable, the parties will meet with a view to agreeing on an 'Alternative Site'.
- (b) In the exercise of the Purchaser's right under clause 48.2(a), the Proposed Lot will only be unsuitable if in the reasonable opinion of the Purchaser:
  - (i) ground and/or site conditions unreasonably restrict the ability or increase the cost for the Purchaser to carry out the Works; or
  - (ii) the Acquisition Approvals or proposed easements or covenants required in the subdivision for the services needed for the future power requirements of the Land unreasonably restrict the ability or increase the cost for the Purchaser to carry out the Works; or
  - (iii) the unavailability of satisfactory permanent access road or points of connection to utility services required to permit the construction, operation, maintenance and repair of the Substation.
- (c) A party exercising a right under clause 48.2(a) is responsible for the other party's reasonable costs incurred in agreeing on an Alternative Site including the costs of rescinding this contract and preparing or executing the contract for sale of the Alternative Site.

## 49. Dispute Resolution

The parties agree that any dispute arising during the course of this contract will be dealt with as follows:

- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute;
- (b) secondly the parties will try to resolve the dispute by direct negotiation, including by referring the matter to persons who may have authority to intervene and direct some form of resolution;
- (c) thirdly, the parties have 10 Business Days from the sending of the notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure (and if they do not reach agreement or decide on whom to appoint during this time either party may then request a person be appointed by the president of the Institute of Arbitrators Australia (**President**));
- (d) any person appointed by the parties (or by the President) must be instructed to:
  - (i) give a written decision including reasons; and
  - (ii) give that decision within one month after receiving instructions;
  - (iii) decide who must pay the persons costs or the proportion in which costs are to be shared; and

- (e) the person appointed and referred to in clause 49(d) acts as an expert and not an arbitrator and unless there is an obvious error, the final determination of that person is final and binding on the parties.

## 50. Restrictive Covenant

### 50.1 Purchaser to create Restrictive Covenant

The Purchaser agrees to create the Restrictive Covenant over the Restricted

### 50.2 Lot Acknowledgement

The Purchaser acknowledges that in considering the design and location of the Substation, it considered the location of the Restrictive Covenant.

### 50.3 Agreement

- (a) The Purchaser acknowledges and agrees that the purpose of the Restrictive Covenant is to limit construction and development of the Restricted Lot for the duration of the Restricted Period so that the Restricted Lot may be dedicated for a public road.
- (b) The parties agree that for the duration of the Restricted Period, the vendor may give notice to the Purchaser advising that the whole or part of the Restricted Lot is required to be dedicated as a public road to Council or such other Authority as the Vendor may direct for a nominal consideration of \$1.00 (**Dedication Notice**).
- (c) the Purchaser covenants that it will at its own cost:
  - (i) do all things necessary to dedicate the Restricted Lot as set out in the Dedication Notice;
  - (ii) transfer any residual part of the Restricted Lot which is created on dedication of the public road set out in the Dedication Notice and which is non-contiguous with the Land, to the Vendor:
    - (A) for a nominal consideration of \$1.00; and
    - (B) on the terms set out in the Option Contract (except that each party will be responsible for its own legal costs ); and
  - (iii) until the earlier of:
    - (A) dedication of part or whole of the Restricted Lot as a public road; or
    - (B) expiration of the Restricted Period, procure any subsequent assignee, transferee or purchaser of the Restricted Lot to enter into a deed agreeing to the covenants set out in this clause 50.3 in favour of the Vendor.
- (d) The Purchaser agrees to indemnify and keep indemnified the Vendor against any cost, loss or damage suffered or incurred by the Vendor arising from or in consequence of a breach of this clause 50 by the Purchaser.
- (e) The Purchaser releases the Vendor from any claims or demands of every kind and from all liability that may arise in respect of any accident or damage to property or death or injury to any person from or in consequence of a breach of this clause 50 by the Purchaser.

## **50.4 Restriction on Purchaser's Rights**

The Purchaser must not make any requisition, Claim, delay completion, rescind or terminate by reason of any matter referred to in this clause 50.

## **50.5 No Merger**

This clause 50 will not merge on Completion of this contract but will enure for the benefit of the Vendor.

# **51. General**

## **51.1 Governing Law**

This contract is governed by and must be construed according to the laws of New South Wales.

## **51.2 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this contract; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 51.2(a).

## **51.3 Severance**

If at any time any provision of this contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this contract; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this contract.

## **51.4 No merger**

- (a) Any clause to which effect is not given by completion or registration of the transfer to the Purchaser and which is capable of taking effect after completion or registration does not merge on completion.
- (b) Each warranty and each indemnity in this contract survives completion or termination.

## **51.5 Notices**

Despite clause 20.6.5, a document is sufficiently served for the purpose of this contract if the document is sent by fax to any party whose fax number appears in this contract. If a document is served by fax, then service is taken to have taken place when transmission has been completed, unless:

- (a) the sender's machine indicates a malfunction in transmission or the recipient immediately notifies the sender of an incomplete transmission, in which case service is taken not to have taken place; or

(b) the time of dispatch:

- (i) is a bank or public holiday or a Saturday or Sunday in the place to which the document is sent; or
- (ii) is at or after 5.00pm (local time in the place to which the document is sent) on a day that is not a bank or public holiday or a Saturday or Sunday,

in which case the document is taken to be received at 9.00am on the next day that is not a bank or public holiday or a Saturday or Sunday.

#### **51.6 Indemnities**

- (a) Each indemnity in this contract is a continuing obligation, separate and independent from the party's other obligations and survives completion, rescission or termination of this contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this contract.

#### **51.7 Further assurances**

Each party to this contract must sign and execute all documents and do all things as may be reasonably required to be done by the party to give effect to this contract.

# WARNING

## SMOKE ALARMS

The owners of certain types of buildings and strata lots must have smoke alarms (or in certain cases heat alarms) installed in the building or lot in accordance with regulations under the *Environmental Planning and Assessment Act 1979*. It is an offence not to comply. It is also an offence to remove or interfere with a smoke alarm or heat alarm. Penalties apply.



# Signing page

---

**EXECUTED** as an agreement.

**Executed by Ganian Pty Limited** in  
accordance with Section 127 of the  
*Corporations Act 2001* in the presence of

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Name of director (print)

← \_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

← \_\_\_\_\_  
Name of director/company secretary (print)

# Annexure A

## Title Searches and Property Enquiries

---

Annexure to Contract for the Sale of Land

MinterEllison

---

L A W Y E R S

1.	Certificate under section 149 of the <i>Environmental Planning and Assessment Act 1979</i> dated 9 July 2008.
2.	Certificate of outstanding notices of intention and/or an order under section 735A of the <i>Local Government Act 1993</i> dated 9 July 2008.
3.	Certificate of outstanding notices of intention and/or an order under section 121ZP of the <i>Environmental Planning and Assessment Act 1979</i> dated 9 July 2008.
4.	Certificate under section 603 of the <i>Local Government Act 1993</i> dated 10 July 2008.
5.	Certificate under section 66 of the <i>Water Board (Corporation) Act 1994</i> dated 4 July 2008.
6.	Sewer reference sheet
7.	Certificate under section 47 of the <i>Land Tax Management Act 1956</i> dated 4 July 2008.
8.	Certificate issued by Integral Energy dated 9 July 2008.
9.	Certificate issued by Roads and Traffic Authority of NSW dated 7 July 2008.
10.	Certificate issued by RailCorp dated 8 July 2008
11.	Certificate issued by Ausearch dated 4 July 2008 in respect of: <ul style="list-style-type: none"> <li>(a) Alinta AGN Ltd;</li> <li>(b) Department of Defence;</li> <li>(c) Ministry of Energy and Utilities;</li> <li>(c) Department of School Education;</li> <li>(d) East Australian Pipeline;</li> <li>(e) Heritage Office of NSW; and</li> <li>(f) Transgrid.</li> </ul>
12.	Certificate issued by the Department of Mineral Resources under the <i>Mining Act 1992</i> dated 8 July 2008.
13.	Search of Australian Heritage Commission database.
14.	Soil and native vegetation search dated 11 August 2008.
15.	NSW National Parks and Wildlife Service search dated 14 July 2008.

MinterEllison

L A W Y E R S

# Annexure B

## Indicative Layout

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Annexure to Contract for Sale

**MinterEllison**

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L A W Y E R S

# Annexure C

## Memorandum

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Annexure to Contract for Sale

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L A W Y E R S

# Annexure D

## Plan

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Annexure to Contract for Sale

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L A W Y E R S

# Annexure E

## Transfer Including Easement

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Annexure to Contract for Sale



MinterEllison

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L A W Y E R S





**Draft 4**

Date:

# Option

## Marsden Park

---

Integral Energy Australia (**Grantor**)

Ganian Pty Limited (**Grantee**)

MinterEllison

---

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8888 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)



# Option

*[transaction details (if any)]*

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# Details

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## Date

## Parties

Name	<b>Integral Energy Australia</b>
ABN	59 253130 878
Short form name	<b>Grantor</b>
Role	Grantor
Notice details	51 Huntingwood Drive Huntingwood NSW 2148 Facsimile (02) 9853 6000 Attention Cornelius Duba

Name	<b>Ganian Pty Limited</b> ACN 079 625 835
ABN	[ABN of Grantee]
Short form name	<b>Grantee</b>
Role	Grantee
Notice details	[address of Grantee] Facsimile [facsimile of Grantee] Attention [attention of Grantee]

## Items

<b>Item 1</b>	<b>Property</b>  Part of the land comprised in Certificate of Title 291/1076555 and shown as Lot 2911 and Lot 2913 on the Plan and known as [#] Fulton Street, Marsden Park
<b>Item 2</b>	<b>Call Option Fee</b>  \$1 plus GST
<b>Item 3</b>	<b>Call Option Commencement Date</b>  The Estimated Works Completion Date which is no earlier than 36 months from the date of this deed.
<b>Item 4</b>	<b>Option Expiry Date</b>  The Call Option expires on the date which is 6 months after the Call Option Commencement Date.
<b>Item 5</b>	<b>Grantor's Solicitor</b>  Bartier Perry





	Level 18, 133 Castlereagh Street Sydney NSW 2000 DX 109 Sydney Facsimile: (02) 8281 7838 Attention: Hugh Halliday
<b>Item 6</b>	Grantee's Solicitor Minter Ellison Level 19, Aurora Place, 88 Phillip Street SYDNEY NSW 2000 Facsimile: (02) 9921 8277 Attention: David McElhone
<b>Item 7</b>	Business Day Place Sydney, New South Wales
<b>Item 8</b>	References to Time Sydney, New South Wales
<b>Item 9</b>	Governing Law New South Wales
<b>Item 10</b>	<b>Deposit</b> \$0.10 plus GST
<b>Item 11</b>	<b>Price</b> \$1.00 plus GST



## Background

- A The Grantor is or is entitled to be the registered proprietor of the Property.
- B The Grantor has agreed to grant to the Grantee an option to purchase the Property.



# Agreed terms

---

## 1. Definitions and Interpretation

### 1.1 Definitions

These meanings apply unless the contrary intention appears.

**Amount of the Consideration** means:

- (a) the amount of any payment in connection with a supply; and
- (b) in relation to non-monetary consideration in connection with a supply, the GST exclusive market value of that consideration as reasonably determined by the supplier.

**Authorised Officer** means:

- (a) in the case of the Grantor, a director, secretary or an officer whose title contains the word 'manager' or a person performing the functions of any of them; and
- (b) in the case of the Grantee, a person appointed by the Grantee to act as an Authorised Officer for the purpose of this deed.

**Business Day** means a day on which banks are open for general banking business in the place or places set out in the Details under 'Business Day place(s)' (not being a Saturday, Sunday or public holiday).

**Call Option** means the option granted under clause 3.1 ('Grant of Call Option').

**Call Option Expiry Date** means the date so described in the Details.

**Call Option Fee** means the amount so described in the Details.

**Caveat Period** means the period beginning on the date of this deed and ending at 3:00pm on the Option Expiry Date.

**Contract** means a document in the form of Annexure 'A' as varied under clause 10 ('Updated contract').

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

**Details** means the section of this deed headed 'Details'.

**Estimated Works Completion Date** has the same meaning it does in the Integral Energy Sale Contract.

**Grantee** means the person so described in the Details.

**Grantor** means the person so described in the Details.

**Grantor's Works** has the meaning that **Purchaser's Works** has in the Integral Energy Sale Contract.

**Grantee's Solicitor** means the firm of solicitors so described in the Details, or if the Grantee notifies the Grantor that another firm is its solicitor, then that firm.

**Grantor's Solicitor** means the firm of solicitors so described in the Details, or if the Grantor notifies the Grantee that another firm is its solicitor, then that firm.



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

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

**GST exclusive market value** has the meaning it has in the GST Act.

**Guarantee** means the guarantee and indemnity of the nominee's obligations under the Option and as purchaser under the Contract if the Option is exercised, in the form appearing in Annexure B.

**Input Tax Credit** has the meaning it has in the GST Act.

**Integral Energy Sale Contract** means the contract for sale of the Property between the Grantor (as purchaser) and the Grantee (as vendor) dated the same date as this deed.

**Nomination Notice** means a notice in the form appearing in Schedule 2.

**Option Period** means the period commencing on the Call Option Commencement Date and expiring on the Call Option Expiry Date.

**Plan** has the same meaning it has in the Integral Energy Sale Contract.

**Price** means the price so described in the Details.

**Property** means the property so described in the Details.

**Related Entity** means:

- (a) another entity which is related to the first within the meaning of section 50 of the Corporations Act; or
- (b) another entity which is in any economic entity (as defined in any approved accounting standard) which contains the first.

**Substantial Commencement of Construction** means, in relation to the Grantor's Works, the stage in the administration of the building contract for the Grantor's Works when the Grantor has provided access to and possession of the Property to its building contractor for the purposes of construction of an electricity substation and other Grantor Works on the Property.

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

## 1.2 Interpretation

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word 'person' includes a firm, a body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;





- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to an accounting term is to be interpreted in accordance with accounting standards under the Corporations Act, schedule 5 to the Corporations Regulations and, if not inconsistent with those accounting standards and that schedule, generally accepted principles and practices in Australia consistently applied by a body corporate or as between bodies corporate and over time;
- (i) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (j) **include** or **including** when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (k) if the parties are prohibited from doing anything, it is also prohibited from:
  - (i) allowing or causing it to be done; and
  - (ii) doing or omitting to do anything which results in it happening;
- (l) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (m) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (n) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed.
- (o) terms appearing in this deed which are defined in the GST Act shall have the same meaning as ascribed to them by the GST Act.

### 1.3 Headings

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

## 2. Grantor's Works

The parties acknowledge and agree that:

- (a) the Grantor is obliged under clause 40.5 of the Integral Energy Sale Contract to use reasonable endeavours to carry out the Grantor's Works by the Estimated Works Completion Date;
- (b) prior to the Call Option Commencement Date, the Grantor must achieve Substantial Commencement of Construction of the Grantor's Works;
- (c) at any time prior to the Call Option Commencement Date, the Grantor may give the Grantee notice that it has achieved Substantial Commencement of Construction of the Grantor's Works;



- (d) the Grantee may only exercise the Call Option if the Grantor has not achieved Substantial Commencement of Construction in relation to the Grantor's Works (as required under clause 2(b) of this deed) on or before the Call Option Commencement Date; and
- (e) if the Grantee exercises the Call Option the Grantee will reimburse the Grantor the reasonable non-recoverable costs incurred by the Grantor in relation to the Grantor's Works up to the date the Grantee exercises the Call Option.

### 3. Consideration and grant of options

#### 3.1 Grant of Call Option

In consideration of the payment of the Call Option Fee by the Grantee to the Grantor (receipt of which the Grantor acknowledges), the Grantor grants to the Grantee an option for the Grantee to purchase the Property for the Price and on the terms set out in the Contract.

#### 3.2 Irrevocable offer

The Option constitutes an irrevocable offer by the Grantor to enter into a binding agreement for the sale of the Property to the Grantee which, if accepted, must be accepted strictly in accordance with the provisions of this document, otherwise the Option will lapse.

### 4. Duration of options

The Call Option commences at 9.00am on the Call Option Commencement Date and ends on the Call Option Expiry Date.

### 5. Payment of Deposit under Contract

On the exercise of the Call Option, the Option Fee will be treated as payment of the Deposit under the Contract.

### 6. Nominee

#### 6.1 How a nomination is made

If the Grantee has not exercised the Call Option, and the Option Period has not ended, the Grantee may nominate another person to exercise the Call Option by delivering to the Grantor's solicitor:

- (a) a Nomination Notice completed and executed by the Grantee and the nominee;
- (b) a copy of the power of attorney as registered in the New South Wales General Register of Deeds, if the Nomination Notice is executed under a power of attorney;
- (c) the Guarantee, completed and executed by the Grantee as guarantor; and
- (d) a withdrawal of any caveat that the Grantee has lodged on the title to the Property.

#### 6.2 Effect of a nomination

If the Grantee nominates a nominee under clause 6.1, then from the date the Grantee delivers the items listed in that clause:

- (a) the nominee may exercise the Call Option and the Grantee may not;
- (b) this document is to be read as if:



- (i) 'the Grantee' or 'Grantee' are replaced by the name of the nominee whenever it appears in clauses 2(e) (Grantor's Works), 3 (**Consideration and Grant of Options**), 8 (**Binding Agreement**), 9 (**Exercise of Call Option**), 10 (Updated Contract), 12 (Stamp Duty) and 14 (Dealing with Interests) and a reference to a party in clauses 11 (GST), 13 (Notices) and 15 (General) where the context requires is a reference to the nominee instead of the Grantee;
- (ii) clause 7 is deleted;
- (iii) this clause 6 is deleted;
- (iv) Schedule 2 is deleted; and
- (c) this document is to be read as if the details of the nominee's solicitor as set out in the Nomination Notice replace those shown for the Grantee's solicitor in the Annexed Contract.

## 7. Caveat

### 7.1 Caveatable interest

The Grantor agrees that the Grantee may lodge and maintain a caveat on the title to the Property during the Caveat Period.

### 7.2 Consent to dealings and withdrawal of caveat

If the Grantee lodges a caveat on the title to the Property, the Grantee must:

- (a) promptly when the Grantor's solicitor asks it to do so, consent to the registration of any dealing which does not prejudice the Grantee's interests under this document; and
- (b) unless a withdrawal of that caveat has been delivered under clause 6.1, deliver to the Grantor's solicitor a withdrawal of that caveat in registrable form within seven days after the Option Period ends.

### 7.3 Power of attorney

For valuable consideration, the Grantee irrevocably nominates and appoints the Grantor to be the attorney of the Grantee to:

- (a) execute a withdrawal of any caveat referred to in clause 7.1; and
- (b) procure registration of the withdrawal of caveat;

if the Grantee does not comply with clause 7.2(b).

## 8. Binding agreement

### 8.1 Contract binding - exercise of Call Option

If the Grantee exercises the Call Option in accordance with clause 9 ("Exercise of Call Option"), then:

- (a) the Contract binds the Grantor and the Grantee from the time that the items in clause 9.1 ("What the Grantee must do") are delivered to the Grantor's Solicitor; and
- (b) the Grantor must date the Contract with the date on which the items in clause 9.1 are delivered to the Grantor's Solicitor; and



- (c) within ten Business Days after the items in clause 9.1 are delivered to the Grantor's Solicitor, the Grantor must deliver to the Grantee a counterpart of the Contract completed with particulars of the Grantee, signed by the Grantor and dated the date specified in clause 8.1(b).

## **8.2 Grantee's obligations**

The Contract binds the Grantor and the Grantee even if the Grantor does not comply with clause 8.1(b) or 8.1(c).

# **9. Exercise of Call Option**

## **9.1 What the Grantee must do**

If the Grantee wants to exercise the Call Option, the Grantee must after the occurrence of the Call Option Commencement Date and before the Call Option Expiry Date:

- (a) deliver to the Grantor's Solicitor a notice of exercise of Call Option in the form of Annexure 'A' signed by the Grantee; and
- (b) deliver to the Grantor's Solicitor within a further 5 Business Days of such notice, the Contract completed with particulars of  
the Grantee as purchaser and signed by the Grantee as purchaser.  
  
; and
- (c) if applicable, deliver to the Grantor's Solicitor a copy of the power of attorney, as registered, under which the notice of exercise of Call Option or the Contract or both are signed.

## **9.2 Signing notice of exercise of Call Option and Contract**

The Grantee must sign the notice of exercise of Call Option and the Contract either:

- (a) personally, if an individual, or as prescribed under section 127 of the Corporations Act if a company; or
- (b) by an attorney under a power of attorney registered by Land and Property Information New South Wales.

## **9.3 Delivery – exercise of Call Option**

The items in clause 9.1 ('What the Grantee must do') may be delivered by leaving them at the Grantor's Solicitor's address specified in the Details.

# **10. Updated Contract**

## **10.1 Grantor may update Contract**

If, before the Call Option is exercised, the Grantor's Solicitor gives the Grantee's Solicitor documents (including vendor's disclosure documents) to be attached to the Contract, an updated version of any of the documents attached to this deed or the Contract (or either of them) or an updated description of the title to the Property which is reasonably acceptable to the Grantee, then before the Grantee signs the Contract, the Grantee must ensure that:





- (a) the document is attached to the Contract or the updated version of the document replaces the version attached to this deed or the Contract (or either of them) when this deed was executed; and
- (b) the description of the title to the Property is amended so that it is the same as the updated description of the title.

## 11. GST

### 11.1 Consideration does not include GST

The consideration specified in this deed does not include any amount for GST.

### 11.2 Recovery of GST

If a supply under this deed is subject to GST, the recipient must pay to the supplier an additional amount equal to the Amount of the Consideration multiplied by the applicable GST rate.

### 11.3 Time of payment

The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a Tax Invoice.

### 11.4 Adjustment of additional amount

If the additional amount differs from the amount of GST payable by the supplier, the parties must adjust the additional amount.

### 11.5 Reimbursement

If a party is entitled to be reimbursed or indemnified under this deed, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

## 12. Stamp duty

The Grantee agrees to pay all stamp duties (including fines and penalties), fees, taxes and charges which are payable in connection with this deed and the Contract or a payment, receipt or other transaction contemplated by either of them.

## 13. Notices

### 13.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed (**Communications**) must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

### 13.2 Delivery

Communications must be:

- (a) left at the address set out or referred to in the Details; or
- (b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to in the Details; or



(c) sent by fax to the fax number set out or referred to in the Details.

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

### **13.3 When effective**

Communications take effect from the time they are received unless a later time is specified in them.

### **13.4 Deemed receipt – postal**

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

### **13.5 Deemed receipt – fax**

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

### **13.6 Deemed receipt – general**

Despite clauses 13.4 ('Deemed receipt – postal') and 13.5 ('Deemed receipt – fax'), if Communications are received after 5.00pm in the place of receipt or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day.

## **14. Dealing with interests**

### **14.1 Dealings by the Grantee**

The Grantee may assign, novate, sell, charge or otherwise deal with its rights or obligations under this deed or allow any interest in them to arise or be varied, in each case, without the Grantor's consent.

### **14.2 Dealings by the Grantor**

The Grantor may not sell or charge the Property or assign, novate, or otherwise deal with its rights or obligations under this deed or allow any interest in them to arise or be varied, in each case, without the consent of the Grantee.

## **15. General**

### **15.1 Prompt performance**

If this deed specifies when a party agrees to perform an obligation, that party agrees to perform it by the time specified. The Parties agree to perform all other obligations promptly.

### **15.2 Certificates**

Each party may give another party a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

### **15.3 Exercise of rights**

Each party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

### **15.4 Partial exercise of rights**

A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or an exercise of any other right, power or remedy by that party.



**15.5 Delay in exercising rights**

Subject to clause 9.1 failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

**15.6 Conflict of interest**

The Grantee's rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Grantee has a personal interest in their exercise.

**15.7 Remedies cumulative**

The rights and remedies of a party under this deed are in addition to other rights and remedies given by law independently of this deed.

**15.8 Rights and obligations are unaffected**

Rights given to a party under this deed and the liabilities of that party under it are not affected by anything which might otherwise affect them at law.

**15.9 Continuing breaches**

The expiry or termination of this deed does not affect the rights of the Parties to this deed for a breach of this deed by the other party or Parties before the expiry or termination.

**15.10 Antecedent obligations**

The expiry or termination of this deed does not affect a party's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to another party to enable it to calculate those payments.

**15.11 Inconsistent law**

To the extent permitted by law, this deed prevails to the extent it is inconsistent with any law.

**15.12 Supervening legislation**

Any present or future legislation which operates to vary the obligations of a party in connection with this deed with the result that the party's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**15.13 Variation and waiver**

A provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or Parties to be bound.

**15.14 Confidentiality**

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of this deed) except:

- (a) to any person in connection with an exercise of rights or a dealing with rights or obligations under this deed (including in connection with any legal proceedings); or
- (b) to officers, employees, legal and other advisers and auditors of the parties; or
- (c) to any party to this deed or any Related Entity of any party to this deed, provided the recipient agrees to act consistently with this clause 15.14 ('Confidentiality'); or
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or



(e) as required by any law or stock exchange or this deed.

Each party consents to disclosures made in accordance with this clause 15.14 ('Confidentiality').

Each party may only use the confidential information of the other for the purpose of exercising its rights and complying with its obligations under this deed.

### **15.15 Further steps**

The parties agree to do anything another party reasonably asks (such as obtaining consents, signing and producing documents and getting documents completed and signed) to bind the parties and any other person intended to be bound under this deed.

### **15.16 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:

- (a) it is severed for that jurisdiction;
- (b) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

This clause has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

### **15.17 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

### **15.18 Effect of moratorium**

To the extent permitted by law the application to this deed of any moratorium or other Act whether State or Federal having the effect of extending the term, reducing or postponing the payment of any moneys payable under this deed, or otherwise affecting the operation of the terms of this deed is expressly excluded and negated.

### **15.19 Counterparts**

This deed may consist of a number of copies, each signed by one or more Parties to this deed. If so, the signed copies are treated as making up the one document.

### **15.20 Applicable law**

This deed is governed by the law in force in the place specified in the Details and the Parties submit to the non-exclusive jurisdiction of the courts of that place.

### **15.21 Serving documents**

Without preventing any other method of service, any document in a court action may be served on a party by being delivered to or left at that party's address for service of notices under clause 13 ('Notices').

### **15.22 Legal Costs**

Each party shall be responsible for its own legal costs in connection with this deed and the Contract.





# Schedule 1 - Notice of Exercise of Call Option

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TO: Integral Energy (Grantor)

Notice is given that Ganian Pty Limited\* exercises the call option granted in the call option to purchase land between the Integral Energy as Grantor and Ganian Pty Limited as Grantee dated [#] to purchase the property being Lots 2911 and 2913 in Deposited Plan 1076555, being all of the land in folio identifier 2911/[#] and [#]/[#].

Dated

\*If a nomination notice has been served, insert name/execution clause of nominee



## Schedule 2– Nomination Notice

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TO: Integral Energy (Grantor)

Notice is given that Ganian Pty Limited nominates:

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(insert full name and address of Grantee's nominee) to be its nominee (the 'Nominee') to exercise the call option granted in the call option between Integral Energy as Grantor and Ganian Pty Limited as Grantee dated to purchase the property being Lots 2911 and 2913 Deposited Plan 1076555, being all of the land in folio identifier 2911/[#] and [#]/[#].

The Nominee's address for service is:

---

The Nominee's solicitors are (insert full name and address of nominee's solicitors):

---

Dated

The Nominee accepts this nomination and agrees to be bound by the terms of the option dated [#] and relating to the Property described as Lots 2911 and 2913 in Deposited Plan 1076555, being all of the land in folio identifier 2911/[#] and [#]/[#]. The Nominee agrees that it will not lodge a caveat on the title to the Property during the Option Period.

Dated

---

Executed by the Nominee



# Signing page

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**EXECUTED** as an agreement.

**Signed sealed and delivered by**  
as attorney for **Integral Energy Australia**  
under power of attorney dated  
registered number                      book  
number                                      in the  
presence of

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

← \_\_\_\_\_ ←  
Name of signatory

\_\_\_\_\_  
Name of witness (print)



# Annexure A

## Contract

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Fulton Road, Marsden Park  
Annexure to Option

MinterEllison

L A W Y E R S

AURORA PLACE, 88 PHILLIP STREET, SYDNEY NSW 2000, DX 117 SYDNEY  
TEL: +61 2 9921 8868 FAX: +61 2 9921 8123  
[www.minterellison.com](http://www.minterellison.com)





# Annexure B

## Guarantee

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Fulton Road, Marsden Park

Annexure to Option

