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## **Googong Urban Development State Planning Agreement**

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

The Minister for Planning and Infrastructure ("Minister")  
Googong Development Corporation Pty Ltd ("Developer")

Date: 15/9/2011

  
  
  
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## Googong Urban Development State Planning Agreement

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## Googong Urban Development State Planning Agreement

### Summary Sheet

#### Minister:

**Name:** The Minister for Planning and Infrastructure  
**Address:** c/-, Department of Planning and Infrastructure, 23-33 Bridge Street,  
Sydney NSW 2000  
**Telephone:** (02) 9228 6111  
**Facsimile:** (02) 9228 6455  
**Email:** [wollongong@planning.nsw.gov.au](mailto:wollongong@planning.nsw.gov.au)  
**Representative:** Director-General

#### Developer:

**Name:** Googong Development Corporation Pty Ltd  
**Address:** Level 3, 64 Allara St, Canberra ACT 2061  
**Telephone:** (02) 6230 0800  
**Facsimile:** (02) 6230 0811  
**Email:** [mark.attiwill@cicaustralia.com.au](mailto:mark.attiwill@cicaustralia.com.au)  
**Representative:** Mark Attiwill, Googong Project Director

#### Land:

See clause 3, the definition of Land in clause 1 and the Map in Appendix 1.

#### Development:

See definition of Development in clause 1 and Schedule 2.

#### Development Contributions:

See clauses 6, 7, 8 and 9.

#### Application of s94, s94A and s94EF of the Act:



See clause 13.

**Security:**

See clauses 9, 10 and 14.

**Registration:**

See clause 16.

**Dispute Resolution:**

See clause 17 and Schedule 1.



## Googong Urban Development State Planning Agreement

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

### Parties

**The Minister for Planning and Infrastructure** of ABN 38 755 709 681  
of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)  
and

**Googong Development Corporation Pty Ltd** ABN 83104332523 of Level  
3, 64 Allara Street, Canberra ACT 2601 (**Developer**)

### Background

- A The Developer proposes to carry out the Development on the Land.
- B The Developer owns the Developer's Land and has a right to purchase the Option Land.
- C The Developer has made a Development Application in respect of the Development, and proposes to make further Development Applications in respect of the Development.
- D The Developer is prepared to make Development Contributions in connection with the carrying out of the Development in accordance with this Agreement, and the Development Contributions are to be monetary contributions, but may comprise the dedication of land.
- E Clause 6.1(2) of the LEP has the effect that Development Consent must not be granted to the Development unless the DG has certified in writing that satisfactory arrangements have been made to contribute to the provision of designated State and Territory public infrastructure as defined by the LEP.
- F The Developer has offered to enter into this Agreement with the Minister to secure the Development Contribution in order to enable the DG to provide the certification as to satisfactory arrangements required by the LEP.

### Operative provisions

### Part 1 - Preliminary



## 1 Definitions and Interpretation

1.1 In this Agreement, the following definitions apply:

**9ha Site** means the larger sized site hatched pink in the Map, or such other site as determined in accordance with clause 8.

**Act** means the *Environmental Planning and Assessment Act 1979*.

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

**ABS** means the Australian Bureau of Statistics.

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

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

**Bank Guarantee** means an irrevocable and unconditional undertaking to pay the face value of that undertaking (being such an amount as is required under this Agreement) on demand:

- (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 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, acting reasonably.

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

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

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



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

**Council** means Queanbeyan City Council.

**CPI** means the Consumer Price Index (All Groups Index) for Sydney as issued by the ABS.

**Developable Hectare** means the area of any part of the Land excluding those parts of the Land zoned E2 or SP2 under the LEP or any land comprising State Infrastructure.

**Developer's Land** means the land shown in grey on the Map and described as Googong Development Corporation Pty Limited (GDC) being land in certificates of title:

Part 11/1164687 being that part formerly comprised in 1/1135074

12/1164687

14/1164687

6/255492

12-15/754881

1/1149329

**Development** means any development carried out by the Developer on the Land, including development within the Googong Urban Release Area in accordance with the documents contained in Schedule 2 of this Agreement and the development of up to 5,550 dwellings.

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

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

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

**DG** means the Director-General of the Department of Planning and Infrastructure.

**Environmental Planning Instrument** has the same meaning as that term has in the Act.

**First School Site** means the smaller sized site hatched pink in the Map.

**FS Site** means the smallest of the sites coloured orange in the Map, or such other site as determined in accordance with clause 8.

**General Register of Deeds** means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.





**Googong Urban Release Area** means the area shown as included in the *Queanbeyan Local Environmental Plan (Googong) 2009 – Land Application Map*.

**GST** means any form of goods and services tax payable under the GST Legislation.

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

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Land** means any land in the Googong Urban Release Area owned by the Developer.

**Law** means:

- a) the common law including principles of equity; and
- b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority, presently applying or as they may apply in the future.

**LEP** means the *Queanbeyan Local Environmental Plan (Googong) 2009*.

**LPMA** means the Land & Property Management Authority or any other body exercising the functions of that authority.

**Map** means the map which is Appendix 1 to this Agreement.

**Monetary Contribution** means a monetary Development Contribution calculated in accordance with clause 7.2.

**Option Land** means the land shown in blue on the Map and described as Under Option to GDC being land in certificates of title:

Part 11/1164687 being that part formerly comprised in 3/255492

Pt 15/1164687

10-11/754881

3/1149329

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

**Plan of Subdivision** means a plan to subdivide land into one or more lots, by any means including strata subdivision.

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



**Recoupment Contribution** means a monetary Development Contribution or other amount paid to the Minister by developers other than the Developer to meet the costs of State Infrastructure.

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

**Satisfied Plan** means a Plan of Subdivision in respect of which Development Contributions have been made under this Agreement.

**Security** means a Bank Guarantee.

**Site Report** means a written report in relation to any parcel of land comprising State Infrastructure (*Parcel*), including information as to

- (a) the item of State Infrastructure the subject of the report;
- (b) the boundaries of the Parcel;
- (c) details of:
  - (i) whether the Parcel is contaminated (and if so the extent of any contamination);
  - (ii) whether the Parcel is bushfire prone to any extent;
  - (iii) the probable maximum flood levels applicable to Parcel and any restrictions arising there from;
  - (iv) the topography of the Parcel;
  - (v) any significant ecological items located on the Parcel;
  - (vi) any riparian corridors located on the Parcel; and
  - (vii) the servicing which will be provided to the Parcel to make it suitable for its use as a school or fire station (as the case may be);
- (d) an elementary concept of how the school or fire station (as the case may be) might operate on the Parcel; and
- (e) the proposed timing of dedication of the Parcel to the Minister under this Agreement.

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

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

**State Infrastructure** means the following land:

- (a) the First School Site, being land suitable for a primary school of 2.81 hectares;
- (b) the 9ha Site, being land suitable for a primary school of 3 hectares adjacent to land suitable for a secondary school of 6 hectares; and



- (c) the FS Site, being land suitable for a fire station of 2,000m<sup>2</sup>.

Subdivision Certificate has the same meaning as in the Act.

Zone R1 means Zone R1 - General Residential under the LEP.

- 1.2 In this Agreement unless the contrary intention appears:

- 1.2.1 where any amount is expressed to be indexed in accordance with CPI it shall be adjusted on 1 July each year by reference to the following formula:

Latest CPI number / X, rounded up to the nearest dollar figure

where:

*Latest CPI number* is the CPI number for the March quarter in the year in which the adjustment is made (the March quarter being the quarter commencing on and including 1 January and ending on and including 31 March in that same year); and

X is the CPI number for the March quarter in the year immediately prior to the year in which the adjustment is made (it being noted that 170.5 is the CPI number for the March quarter in 2010).

- 1.2.2 a reference to this Agreement or another instrument includes any variation or replacement of any of them,
- 1.2.3 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,
- 1.2.4 the singular includes the plural and vice versa,
- 1.2.5 the word "person" includes a firm, a body corporate, an unincorporated association or an authority,
- 1.2.6 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,
- 1.2.7 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally,
- 1.2.8 an agreement, representation or warranty on the part of two or more persons binds them jointly and severally,
- 1.2.9 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,
- 1.2.10 "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,



- 1.2.11 If a Party is prohibited from doing anything, it is also prohibited from:
  - (a) allowing or causing it to be done; and
  - (b) doing or omitting to do anything which results in it happening,
- 1.2.12 a reference to a statute, ordinance, code or law includes a statute, ordinance, code or law of the Commonwealth of Australia,
- 1.2.13 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,
- 1.2.14 no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement,
- 1.2.15 any capitalised term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act, and
- 1.2.16 the Schedules form part of this Agreement.

## **2 Planning Agreement under the Act**

- 2.1 Subject to clause 2.2, this Agreement operates as a planning agreement within the meaning of section 93F of the Act.
- 2.2 Clauses 7, 8, 9, 10, 11 and 12 will not operate until Development Consent is granted to any part of the Development on the Land.
- 2.3 For the sake of clarity, this Agreement operates as a planning agreement within the meaning of section 93F of the Act even if the Development Consent referred to in clause 2.2 does not contain a condition imposed under section 93I(3) of the Act requiring the Agreement to be entered into.

## **3 Application of this Agreement**

- 3.1 This Agreement applies to the Development and:
  - 3.1.1 the Developer's Land from the date of this Agreement; and
  - 3.1.2 any other land the Developer acquires within the Googong Urban Release Area, from the date of its acquisition by the Developer.

## **4 Status of Developer's obligation to make Development Contributions**

- 4.1 The Developer's obligation to make Development Contributions only arises at the times specified in this Agreement.



- 4.2 The Minister agrees that no *designated State or Territory public infrastructure*, as defined in the LEP is required of the Developer in respect of the Development other than the State Infrastructure.
- 4.3 The Parties acknowledge that the DG will, if he or she determines to certify that satisfactory arrangements have been made for the purposes of clause 6.1(2) of the LEP, only provide that certification in stages and in respect of each separate Development Application made in respect of the Development.
- 4.4 Nothing in this Agreement requires the Developer to have paid the Monetary Contributions payable in respect of a Plan of Subdivision proposed in a Development Application made in respect of the Development, before the DG can issue his or her certification in respect of that Development Application in accordance with clause 4.3.
- 4.5 The Developer agrees that no certificate of satisfactory arrangements may be issued for the purposes of clause 6.1(2) of the LEP if the Developer is in breach of this Agreement.

## **5 Ownership of Land**

- 5.1 The Developer warrants that it has legally enforceable rights to purchase the Option Land on terms which enable it to comply with the provisions of clause 5.2.
- 5.2 The Developer will ensure that it becomes the registered proprietor of the Option Land, or any part thereof, prior to any obligations arising under this Agreement which require any part of the Option Land to be dedicated to the Minister, unless otherwise agreed with the Minister.

## **Part 2 - Development Contributions**

### **6 Provision of Development Contributions**

- 6.1 Subject to clause 6.2, the Developer must make the Development Contributions, for the provision of State Infrastructure at the times and in the manner specified in this Agreement.
- 6.2 The Developer agrees that the Minister:
  - 6.2.1 has no obligation to use or expend a Development Contribution for a particular public purpose and has no obligation to repay a Development Contribution; and
  - 6.2.2 in circumstances where a Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular public purpose.
- 6.3 Notwithstanding clause 6.2, the Minister must ensure that the Development Contributions are used for providing public amenities or public services which



the Minister considers service development within the Googong Urban Release Area.

## 7 Monetary Contributions

- 7.1 Prior to the issue of a Subdivision Certificate in respect of a Plan of Subdivision, the Developer must pay a Monetary Contribution.
- 7.2 For the purposes of calculating the amount of Monetary Contribution's payable under this clause, the parties agree that:
- 7.2.1 Monetary Contributions are to be paid at a rate of \$4,296.71 per Developable Hectare (excluding GST if applicable); and
- 7.2.2 the Monetary Contribution payable in respect of each Plan of Subdivision is to be calculated as follows:
- $$MC = \$4,296.71 \times PDH$$
- where:
- MC** is the Monetary Contribution payable (excluding GST if applicable); and
- PDH** means the number of Developable Hectares within the Plan of Subdivision to which the Subdivision Certificate relates.
- 7.3 The Monetary Contributions payable under clause 7.2 are to be indexed in accordance with CPI from the date of this Agreement.
- 7.4 Notwithstanding any other clause of this Agreement, the Developer is only obliged to pay 75% of the Monetary Contributions calculated in accordance with clause 7.2 in respect of each Plan of Subdivision.

## 8 Location of State Infrastructure

- 8.1 The Developer has nominated sites hatched pink and the site coloured orange in the Map as being the State Infrastructure.
- 8.2 The parties agree that:
- 8.2.1 the First School Site shall be located as shown on the Map and will be at least 2.81 hectares in area;
- 8.2.2 the 9ha Site will be at least 9 hectares in area;
- 8.2.3 the FS Site will be at least 2,000m<sup>2</sup> in area; and
- 8.2.4 the 9ha Site and the FS Site will be in Zone R1.
- 8.3 Within 6 months of the date of this Agreement, the Developer will provide a Site Report relating to the 9ha Site and the FS Site.



- 8.4 Upon providing the Minister with the Site Reports as required by clause 8.3, the parties will discuss the location and processes for dedication of the 9ha Site and the FS Site in good faith and acting reasonably, and the Developer, if requested by the Minister, will grant access to the 9ha Site and the FS Site to the Minister, his/her nominees and their contractors and agents to facilitate those discussions.
- 8.5 Subject to compliance with clause 8.4, the Minister agrees to use reasonable endeavours to provide written notice to the Developer, within 60 Business Days of receipt of the Site Report, describing whether or not the 9ha Site and the FS Site (as the case may be) are suitable for the provision of State Infrastructure in the Minister's reasonable opinion.
- 8.6 If the Minister:
- 8.6.1 provides a written notice to the Developer within the time contemplated by clause 8.5, stating that the 9ha Site and the FS Site (as the case may be) as described in the Site Report are suitable for the State Infrastructure (or as otherwise agreed in discussions pursuant to clause 8.4), then:
- (a) the locations of the 9ha Site and the FS Site (as the case may be) will be as described in the Site Report; and
  - (b) if clause 9 applies, the Developer will dedicate those sites within the time frames and in the manner set out in the Site Report (or as otherwise agreed in discussions pursuant to clause 8.4) and clause 9;
- 8.6.2 fails to provide a written notice to the Developer within the time contemplated by clause 8.5, the 9ha Site and the FS Site (as the case may be) will be deemed suitable for the State Infrastructure, and then:
- (a) the locations of the 9ha Site and the FS Site (as the case may be) will be as described in the Site Report; and
  - (b) if clause 9 applies, the Developer will dedicate those sites within the time frames and in the manner set out in the Site Report (or as otherwise agreed in discussions pursuant to clause 8.4) and clause 9;
- 8.6.3 provides a written notice to the Developer within the time contemplated by clause 8.5, stating that the 9ha Site and/or the FS Site (as the case may be) as described in the Site Report are not suitable for the provision of State Infrastructure, the Developer must, within 30 Business Days of the Minister's notification under this clause, nominate an alternative location for the 9ha Site and/or the FS Site (as the case may be) and provide a Site Report for that alternative location, in which case the provisions of clauses 8.4 to 8.6 will apply until a suitable location for the 9ha Site and the FS Site is determined.
- 8.7 If no final location for the 9ha Site and/or the FS Site (as the case may be) has been determined after the Developer has provided four different Site Reports in relation to the 9ha Site and/or the FS Site (as the case may be),



then the parties shall be in dispute and the provisions of clause 17 will apply in relation to the relevant site.

- 8.8 For the avoidance of doubt, if the location of the 9ha Site or FS Site alters from that shown on the Map, pursuant to this clause 8, then the 9ha Site and FS Site as at the date of this Agreement are no longer State Infrastructure.
- 8.9 If the Developer does not provide the Site Reports in the time required by clause 8.3 and clause 8.6.3, the Minister may decide in his discretion the location of the relevant items of State Infrastructure.

## **9 Dedication of Land**

- 9.1 This clause applies if the Developer gives the Minister a written notice advising that it elects to dedicate all the land comprising State Infrastructure to the Minister (or such other entity he nominates) before the date specified in clause 9.2.
- 9.2 The First School Site is to be dedicated no later than the date of issue of a Subdivision Certificate for a Plan of Subdivision which contains the 90th Developable Hectare.
- 9.3 Despite clauses 8.4 to 8.7:
- 9.3.1 the 9ha Site is to be dedicated by no later than the earlier of:
- (a) 30 June 2024; and
  - (b) the date of issue of a Subdivision Certificate for a Plan of Subdivision which contains the 400th Developable Hectare; and
- 9.3.2 the FS Site is to be dedicated by no later than the earlier of:
- (a) 30 June 2020; and
  - (b) the date of issue of a Subdivision Certificate for a Plan of Subdivision which contains the 250th Developable Hectare.
- 9.4 All the State Infrastructure must be dedicated as serviced land, with provision of water supply, sewerage, stormwater drainage, electricity, gas and telecommunications to a level which is in the Minister's reasonable opinion suitable for its intended use as a school or fire station (as the case may be).
- 9.5 The Developer must ensure that the lands when dedicated are free of all encumbrances, except those encumbrances which, in the Minister's reasonable opinion, do not impede the use of the land for the intended public purpose.
- 9.6 The Minister acknowledges that, if the Developer dedicates the State Infrastructure under clause 9, it will be providing Development Contributions under this Agreement that meet the demand, or part of the demand, for State Infrastructure created by development in the Googong Urban Release Area which is to be carried out by developers other than the Developer.





- 9.7 The Minister, to the extent permitted by law, is to give consideration to the measures under the Act by which it may collect Recoupment Contributions and, if he/she determines to adopt such measures, he/she must use reasonable endeavours to do so expeditiously.
- 9.8 Each time a Recoupment Contribution is paid to the Minister pursuant to any measures adopted under clause 9.7, the Minister is to pay that Recoupment Contribution to the Developer.
- 9.9 Each time the Developer is due to pay a Monetary Contribution under clause 7, the Minister may, in his/her discretion and if requested by the Developer, accept the provision of a Bank Guarantee in lieu of payment of the amount of the relevant Monetary Contribution.
- 9.10 When a parcel of land comprising State Infrastructure has been dedicated in accordance with this Agreement, the Minister will as soon as practicable at the Developer's request return to the Developer Monetary Contributions or Bank Guarantees received equal in value to 75% of the value of the parcel of land that has been dedicated (calculated at a rate of \$250,000 per hectare).
- 9.11 Where the 75% of the value of the parcel of land that has been dedicated exceeds the amount of Monetary Contributions or Bank Guarantees that are to be returned to the Developer under clause 9.10, then:
- 9.11.1 the Minister will, as soon as practicable at the Developer's request, return all Monetary Contributions or Bank Guarantees it holds to the Developer, except for the Security held under clause 14; and
- 9.11.2 the Developer will not be obliged to pay Monetary Contributions under clause 7 or provide Bank Guarantees under clause 9.9 until the amount of Monetary Contributions that would otherwise be payable under clause 7 equals the balance of the amount of Monetary Contributions or Bank Guarantees that the Minister was to return to the Developer, calculated at the date the Monetary Contributions or Bank Guarantees were to be returned.
- 9.12 When all the State Infrastructure has been dedicated to the Minister, the Minister will, as soon as practicable at the Developer's request, return to the Developer all Monetary Contributions or Bank Guarantees it holds pursuant to this clause to the Developer.
- 9.13 If the Developer fails to dedicate the relevant item of State Infrastructure by the times set out in clauses 9.2 and 9.3:
- 9.13.1 the Minister may call upon all or part of the Security held pursuant to clause 9.9 and clause 14 for the purpose of acquiring the relevant item of State Infrastructure in accordance with this clause and meeting the Minister's costs incurred because of the failure by the Developer to dedicate the relevant item of State Infrastructure;
- 9.13.2 the Developer consents to the Minister compulsorily acquiring the relevant item of State Infrastructure for an amount equal to the lesser of:
- (a) the sum of value of the Security called upon and Monetary Contributions paid pursuant to clause 7 (less any additional



amounts reasonably incurred by the Minister because of the failure by the Developer to dedicate the relevant item of State Infrastructure by the requisite time);

- (b) an amount equal to the area of the relevant item of State Infrastructure in hectares multiplied by \$250,000;
- 9.13.3 the acquisition pursuant to clause 9.13.2 will constitute an agreement for the purposes of section 30 of the Just Terms Act as to Part 2 and Part 3 of the Just Terms Act, including the amount of compensation and the gazettal of an acquisition notice under s.19 of the Just Terms Act;
- 9.13.4 the Developer indemnifies the Minister for any additional costs associated with the acquisition relating to interests in the relevant item of State Infrastructure, and
- 9.13.5 the Developer must ensure that the relevant item of State Infrastructure is free of all encumbrances, except those encumbrances which, in the Minister's reasonable opinion, do not impede the use of the land for the intended public purpose.
- 9.14 If the Minister calls on the Security given pursuant to this clause, the Developer must, for the purposes of clause 14, provide the Minister with a replacement guarantee so that the Minister holds the full amount of Security required under clause 14.1 (or such greater amount as calculated under clause 14.2 or 14.3) before it lodges any further Development Applications for the subdivision of land or carries out any further Development, and the DG will be entitled to refuse to issue any certificate of satisfactory arrangements under clause 6.1(2) of the LEP until the replacement guarantee is provided.

## 10 Compulsory Acquisition

- 10.1 This clause 10 will apply if:
  - 10.1.1 the Minister or another Authority seeks to compulsorily acquire any part of the Land for the purposes of the State Infrastructure (**Acquisition Lands**);
  - 10.1.2 the Developer does not elect to dedicate land pursuant to clause 9 of this Agreement;
  - 10.1.3 the Acquisition Lands do not exceed 12.01 hectares in total area;
  - 10.1.4 the Acquisition Lands include the First School Site;
  - 10.1.5 the Acquisition Lands include the 9ha Site or the FS Site or both (as the case may be), if the location of the 9ha Site or the FS Site, or both, have been determined pursuant to clause 8 (whether or not the location of the 9ha Site or FS Site have changed from that shown on the Map); and
  - 10.1.6 the Acquisition Lands (other than the First School Site) are within Zone R1.



- 10.2 The Developer consents to the Minister compulsorily acquiring the Acquisition Land for compensation in the amount of \$250,000 per hectare, indexed from the date of this Agreement in accordance with CPI without having to go through the pre-acquisition procedure under the Just Terms Act.
- 10.3 Clause 10.2 constitutes an agreement for the purposes of section 30 of the Just Terms Act as to Part 2 and Part 3 of the Just Terms Act, including the amount of compensation and the gazettal of an acquisition notice under s.19 of the Just Terms Act.
- 10.4 The Developer must ensure that the Acquisition Lands are free of all encumbrances, except those encumbrances which, in the Minister's reasonable opinion, do not impede the use of the land for the intended public purpose, and the Developer indemnifies the Minister for any additional costs associated with the acquisition relating to interests in the relevant parcel of Acquisition Land.
- 10.5 The Developer will promptly do all things necessary, and agrees to the Minister doing all things necessary on its behalf, to give effect to this clause 10, including without limit:
  - 10.5.1 signing any documents or forms;
  - 10.5.2 giving land owner's consent for lodgement of any development application;
  - 10.5.3 producing certificates of title to the Registrar-General under the Real Property Act; and
  - 10.5.4 paying the Minister's costs arising from clause 10.

## **11 Procedures relating to the dedication of land**

- 11.1 A Development Contribution comprising the dedication of land is made for the purposes of this Agreement upon registration of a dealing which vests the land to be dedicated in the Minister (or other entity he nominates in writing).
- 11.2 For the purposes of clause 11.1, but without limiting the means by which the transfer may be effected under clause 11.1:
  - 11.2.1 the Developer may give the Minister, for execution by the Minister as transferee, an instrument of transfer under the Real Property Act relating to the land to be dedicated;
  - 11.2.2 if so, the Minister is to execute the instrument of transfer and return it to the Developer within 7 days of receiving it from the Developer;
  - 11.2.3 if so, the Developer is to lodge the instrument of transfer for registration at the Department of Lands within 7 days of receiving it from the Minister duly executed; and
  - 11.2.4 if so, the Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.



## **12 Procedures relating to the making of Monetary Contributions**

- 12.1 A Monetary Contribution is made for the purposes of this Agreement when the Minister receives the full amount of the contribution payable under this Agreement in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Minister.
- 12.2 The Developer is to give the Minister not less than 21 business days written notice of its intention to pay a Monetary Contribution, and include in that notice:
  - 12.2.1 The number of Developable Hectares the subject of the Monetary Contribution; and
  - 12.2.2 The amount of the Monetary Contribution.
- 12.3 If the Minister issues tax invoices relating to the payment of Monetary Contributions, then he/she must issue a tax invoice referable to the relevant Monetary Contribution within 20 business days of receipt of the notice under clause 12.2.

## **13 Application of sections 94, 94A and 94EF of the Act to the Development**

- 13.1 This Agreement does not exclude the application of sections 94 and 94A of the Act to the Development.
- 13.2 Any Development Contributions under this Agreement are not to be taken into consideration in determining a development contribution under section 94.
- 13.3 This Agreement excludes the application of section 94EF of the Act to the Development in relation to the Land.

## **Part 4 – Other Provisions**

### **14 Security**

- 14.1 Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Minister with, and maintain, the Security in the amount of \$105,000, indexed in accordance with CPI from the date of this Agreement.
- 14.2 If the Developer lodges a Development Application for the subdivision of land which will incur a Monetary Contribution greater than \$105,000 (as indexed in accordance with CPI) then it must provide the Minister with a further Bank Guarantee, which, when combined with the Bank Guarantee provided under clause 14.1, equals the amount of Monetary Contribution referable to that Development Application.
- 14.3 If the Developer has lodged Development Applications for the subdivision of land which collectively give rise to the obligation to pay a Monetary



Contribution greater than \$105,000 (as indexed in accordance with CPI) then it must provide the Minister with a further Bank Guarantee, which, when combined with the Security provided under clause 14.1 equals the total amount of Monetary Contribution referable to the Development Applications.

- 14.4 Where the obligation to pay a Monetary Contribution to which clauses 14.2 or 14.3 apply has been satisfied, or a Bank Guarantee has been provided under clause 9.9 in respect of that Monetary Contribution, the Minister agrees that the Security may be reduced to \$105,000, indexed in accordance with CPI from the date of this Agreement.
- 14.5 The Minister may call-up the Security if he/she reasonably considers that the Developer has breached this Agreement.
- 14.6 If the Minister calls on the Security given pursuant to this clause, he/she may use the amount so paid to him/her in satisfaction of the Developer's obligations under this Agreement which have been breached and additionally for any liability, loss, cost, charge or expense reasonably incurred by the Minister because of the failure by the Developer to comply with this Agreement.
- 14.7 If the Minister calls on the Security given pursuant to this clause, the Developer must provide the Minister with a replacement Security in the amount of \$105,000 (or such greater amount as calculated under clause 14.2 or 14.3) before it lodges any further Development Applications for the subdivision of land or carries out any further Development, and the DG will be entitled to refuse to issue any certificate of satisfactory arrangements under clause 6.1(2) of the LEP until the replacement guarantee is provided.
- 14.8 The Minister is to release and return the Security upon the completion by the Developer of all of its obligations under this Agreement.
- 14.9 At any time following the provision of the Security, the Developer may provide the Minister with a replacement Security totalling the amount of the Security required to be provided under subclause 14.1 or such greater amounts as calculated under clause 14.2 or 14.3.
- 14.10 On receipt of a replacement Security, the Minister is to release and return to the Developer as directed, the Security it holds which has been replaced.

## **15 Provision of Guarantee**

- 15.1 Upon the execution of this Agreement by all of the Parties, the Developer is to provide the Minister with a deed of guarantee between the Minister, the Developer, and the Developer's parent company which, at the date of this Agreement is CIC Australia Limited (**Parent Company**), in terms reasonably satisfactory to the Minister, under which the Parent Company undertakes to meet the obligations of the Developer under this Agreement.

## **16 Registration of this Agreement**

- 16.1 The Developer represents and warrants that it is the owner of the Developer's Land and is legally and beneficially entitled to become the owner of the Option



Land, and, will notify the Minister in writing of the title particulars of the Option Land or any other land within the Googong Urban Release Area which the Developer acquires as soon as practicable after it becomes the owner of such land after the date of this Agreement.

- 16.2 The Developer warrants that it is legally and beneficially entitled to obtain all consents and approvals and to compel any person to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 16.4 in relation to the Land.
- 16.3 As contemplated by section 93H of the Act, the Developer agrees to deliver to the LPMA all documents in registrable form necessary for registration of this Agreement under the Real Property Act in all relevant folios of the Register of:
- 16.3.1 the Developer's Land within 10 business days after execution of this Agreement; and
- 16.3.2 the Option Land and any other part of the Land acquired after the date of this Agreement, within 10 business days after the Developer becomes the owner of the Option Land or other part of the Land.
- 16.4 The Developer, at its own expense, will take all practical steps and otherwise do anything to procure:
- 16.4.1 the consent of each person to the registration of this Agreement pursuant to this clause who:
- (a) has an estate or interest in the Land; or
- (b) is seized or possessed of an estate or interest in the Land; and
- 16.4.2 the execution of any documents; and
- 16.4.3 the production of the relevant certificates of title; and
- 16.4.4 the lodgement and registration of this Agreement, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Agreement relates to land not under the Real Property Act.
- 16.5 The Developer must not sell any part of the Land or carry out any Development until registration of this Agreement has been effected under this clause.
- 16.6 The Developer will provide the Minister with a copy of the relevant folios of the Register and a copy of the registered dealing referable to this Agreement within 10 Business Days of registration of this Agreement on the title of each part of the Land.
- 16.7 This Agreement is not to be removed from the relevant folios of the title to any part of the Land which is State Infrastructure until that part of the Land is transferred to the Minister or his/her nominee, or until that part of the Land ceases to be State Infrastructure pursuant to clause 8, and the Developer otherwise satisfies its obligations in relation to that part of the Land.



- 16.8 If the Developer so requests, the Minister agrees to sign any document and provide any consents necessary to effect the release and discharge of this Agreement with respect to any part of the Land within a Satisfied Plan, other than the State Infrastructure.
- 16.9 Subject to clause 16.7, the Minister agrees to sign any document and provide any consents necessary to effect the release and discharge of this Agreement with respect to all of the Land upon full satisfaction of the Developer's obligations under this Agreement.
- 16.10 Each party agrees to act in good faith and to promptly do all things necessary (and in any event within 15 business days) to meet any request or requirement of the other party or the LPMA arising from the operation of clause 16.

## **17 Dispute resolution**

- 17.1 If a dispute between any of the Parties arises in connection with this Agreement or its subject matter, then the process and procedures set out in Schedule 1 will apply.

## **18 Reporting**

- 18.1 The Developer must at least once every 6 months during the currency of this Agreement, provide the Minister with a written report providing full particulars on the progress of the Subdivision of the Land and must include particulars about the number of Developable Hectares for which:
  - 18.1.1 Development Consent has been obtained; and
  - 18.1.2 Plans of Subdivision have been registered.
- 18.2 If the Minister requests, the Developer must provide the Minister with copies of any Development Consent issued or Plan of Subdivision registered in the Register in relation to the Development.

## **19 Notices**

- 19.1 Unless expressly stated otherwise in this Agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this Agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Summary Sheet to this Agreement or, if the recipient has notified otherwise, then marked for attention in the way last notified.
- 19.2 They must be:
  - 19.2.1 left at the address set out or referred to in the Summary Sheet to this Agreement;
  - 19.2.2 sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Summary Sheet to this Agreement;



19.2.3 sent by fax to the fax number set out or referred to in the Summary Sheet to this Agreement.

19.3 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.

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

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

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

## **20 Approvals and Consent**

20.1 The Parties acknowledge that this Agreement does not impose any obligation on a Consent Authority to:

20.1.1 grant Development Consent; or

20.1.2 exercise any function under the Act in relation to a change in an Environmental Planning Instrument.

## **21 Entire agreement**

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

## **22 Further Acts**

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

## **23 Governing Law and Jurisdiction**

23.1 This Agreement is governed by the law of New South Wales.

23.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

23.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **24 Joint and individual liability and benefits**





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

## **25 No fetter**

- 25.1 This Agreement is not intended to operate to fetter, in any unlawful manner:
- 25.1.1 the sovereignty of the Parliament of the State to make any Law;
  - 25.1.2 the power of the Executive Government of the State to make any statutory rule; or
  - 25.1.3 the exercise of any statutory power or discretion of any minister of the State or any Authority.
- (all referred to in this clause as *Discretion*).
- 25.2 No provision of this Agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:
- 25.2.1 they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
  - 25.2.2 in the event that clause 25.1 cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
  - 25.2.3 to endeavour to satisfy the common objectives of the Parties in relation to the provision of this Agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

## **26 Representations and warranties**

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

## **27 Severability**

- 27.1 The Parties acknowledge that under and by virtue of section 93F(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any Development Contribution required to be made by that provision.



- 27.2 The Parties acknowledge that under and by virtue of section 93F(10) of the Act, any provision of this Agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
- 27.2.1 any provision of the Act,
  - 27.2.2 the provisions of an Environmental Planning Instrument, or
  - 27.2.3 a Development Consent applying to the relevant land.
- 27.3 The Parties agree that to the extent permitted by Law, this Agreement prevails to the extent it is inconsistent with any Law.
- 27.4 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 27.5 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

## **28 Review and Modification**

- 28.1 If either Party requests a review of the whole or any part of this Agreement then the parties must, acting in good faith, review the Agreement in accordance with that request, but this clause does not oblige any Party to agree to amend the Agreement.
- 28.2 No modification of this Agreement will be of any force or effect unless it is in writing, signed by the Parties.
- 28.3 Any modification of this Agreement must be registered under the Real Property Act in all relevant folios of the Register of the Land, in accordance with this clause, as contemplated by section 93H of the Act.
- 28.4 Clause 16 of this Agreement applies to the registration of an agreement to modify this Agreement, in the same way as it applies to the registration of this Agreement.
- 28.5 A dispute arising under clause 28 is not a dispute to which clause 17 applies.

## **29 Waiver**

- 29.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- 29.2 No waiver of this Agreement will be of any force or effect unless it is in writing, signed by the Parties.
- 29.3 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.

- 29.4 If a waiver results in a change to the scope, timing or value of a Development Contribution required to be made under this Agreement, or the type, timing or value of any Security required under this Agreement, then the waiver can only be effected by a modification of this Agreement in accordance with clause 28.

### **30 GST**

#### **30.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

#### **30.2 Intention of the parties**

The parties intend that:

30.2.1 Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this Agreement; and

30.2.2 no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

#### **30.3 Reimbursement**

Any payment or reimbursement required to be made under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

#### **30.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 30.

#### **30.5 Additional Amounts for GST**

To the extent an amount of GST is payable on a supply made by a Party under or in connection with this Agreement (the GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

30.5.1 the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and

30.5.2 the Developer provides a Tax Invoice to the Minister.



**30.6 Non monetary consideration**

Clause 30.5 applies to non-monetary consideration.

**30.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 30.5 the Developer will assume the Minister is not entitled to any input tax credit.

**30.8 No merger**

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

**31 Effect of Schedulised terms and conditions**

- 31.1 The Parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this Agreement.

**32 New Laws**

- 32.1 If the Developer is obliged by a new law to do something or pay an amount regarding State Infrastructure which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the new law and this Agreement, compliance with the new law will constitute compliance with the relevant obligation under this Agreement.

**33 Confidentiality**

- 33.1 The Parties agree that the terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.
- 33.2 The Parties agree, and must procure that any mediator or expert appointed under Schedule 1 agrees as a condition of their appointment:
- 33.2.1 Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement; and
- 33.2.2 the Parties may disclose to each other further Confidential Information in connection with the subject matter of this Agreement; and
- 33.2.3 subject to clause 33.2.4 below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- 33.2.4 a Party may disclose Confidential Information in the following circumstance:



- (a) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause; or
- (b) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
- (c) for a purpose necessary in connection with an expert determination or mediation.

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

33.3.1 views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and

33.3.2 admissions or concessions made by a Party during the expert determination or mediation in relation to the dispute; and

33.3.3 information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

## **34 Explanatory Note relating to this Agreement**

34.1 Appendix 2 to this Agreement contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.

34.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.

## **35 Costs**

35.1 The Developer is to pay to the Minister the Minister's reasonable costs of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement, and any costs associated with public notification of this Agreement, within 7 days of a written demand by the Minister for such payment.

## **36 Statement of Compliance**

36.1 Subject to clause 36.3, the Developer may at any time submit to the Minister a notice setting out as at the date of the notice:

36.1.1 the Development Contributions due to be made under this Agreement; and



- 36.1.2 the Development Contributions that the Developer has made under this Agreement.
- 36.2 Within 14 days of receiving a notice under clause 36.1, the Minister is to notify the Developer whether it agrees with the amounts specified in the Developer's notice.
- 36.3 The Developer may not submit more than 4 notices under clause 36.1 within any 12 month period.

### **37 Assignment and dealings**

- 37.1 The Developer may not sell, transfer, assign or novate or similarly deal with (**Dealing**) its right, title or interest in the Land (if any) other than land in a Satisfied Plan, or its rights or obligations under this Agreement, or allow any interest in them to arise or be varied, in each case, without the Minister's consent (which shall not be unreasonably withheld).
- 37.2 The Minister shall not withhold his/her consent under clause 37.1 if:
  - 37.2.1 the Developer is not in breach of this Agreement, and
  - 37.2.2 the Minister, acting reasonably, is satisfied, based on evidence procured by the Developer and any other considerations the Minister considers relevant, that the proposed transferee, assignee or novatee has the financial capacity and experience necessary to meet the Developer's obligations under this Agreement.
- 37.3 The Developer must give the Minister no less than 40 Business Days notice in writing of the proposed Dealing and the Minister must advise the Developer within 20 Business Days whether it will consent to the Dealing, subject to clause 37.4, provided that once the Minister has granted his or her consent to the Dealing, and clause 37.4 is satisfied, the Dealing can take effect notwithstanding that 40 Business Days may not have passed since the Developer notified the Minister of the proposed Dealing.
- 37.4 Prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer must procure that the transferee, assignee or novatee executes and delivers to the Minister prior to any such Dealing taking effect, a deed in favour of the Minister in form and substance acceptable to the Minister (acting reasonably) whereby, subject to clauses 37.5 and 37.6:
  - 37.4.1 the transferee, assignee or novatee becomes contractually bound with the Minister to perform all of the Developer's obligations under this Agreement (including obligations which may have arisen before the transfer, assignment or novation takes effect), or on such other terms as agreed by the Parties;
  - 37.4.2 the transferee, assignee or novatee has the benefit of all the Developer's rights under this Agreement, or on such other terms as agreed by the Parties; and
  - 37.4.3 subject to clause 37.6, the Developer is released from the obligations to make Development Contributions relating to future Plans of Subdivision under this Agreement insofar as such Plans of Subdivision relate directly to the land the subject of the Dealing.
- 37.5 The Parties agree that a transferee, assignee or novatee in a Dealing under this clause of part only of the Land, shall be contractually bound with the



Minister under clause 37.4.1 only in relation to those future obligations that relate to that part of the Land in which the transferee, assignee or novatee receives a right, title or interest from the Developer, and the Developer shall remain liable for the remainder of the future obligations.

- 37.6 If the Developer, in its absolute discretion, provides the Minister with a deed of guarantee or an agreement between the Developer and the transferee, assignee or novatee in terms reasonably satisfactory to the Minister, under which the Developer undertakes to meet the future obligations of the transferee, assignee or novatee, the Parties agree that the Minister may either seek recourse under the Developer's guarantee and/or enforce the terms of any deed executed under clause 37.4 against the transferee, assignee or novatee.
- 37.7 Subject to any vesting order or like statutory instrument, then, to the extent that it is necessary, if another Authority takes over the functions of the Minister under this Agreement, or if the Minister determines that it is desirable for this to happen, then the Minister may assign or novate or otherwise deal with its rights and obligations under this Agreement to give effect to this change, and the Developer agrees to enter into such documentation, at the cost of the Minister, as may be necessary to confer on the new Authority the rights and obligations of the Minister under this Agreement.



## **Schedule 1 – Dispute Resolution**

(Clause 16)

### **1. Not commence**

A Party must not commence any court proceedings relating to a dispute unless it complies with clauses 1 to 4.

### **2. Written notice of dispute**

A Party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other Party specifying the nature of the dispute.

### **3. Attempt to resolve**

On receipt of notice under clause 2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

### **4. Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### **5. Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 2 then any Party which has complied with the provisions of clauses 1 to 4 may in writing terminate any dispute resolution process undertaken under clauses 1 to 4 and may then commence court proceedings in relation to the dispute.

### **6. Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clauses 1 to 4 is to attempt to settle the dispute. No Party may use any information or documents obtained through any dispute resolution process undertaken under clauses 1 to 4 for any purpose other than in an attempt to settle the dispute.





**7. No prejudice**

The provisions of this Schedule 1 do not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

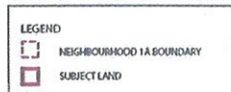
## Schedule 2 - Development

(Clause 1.1)

### GOOGONG TOWNSHIP MASTER PLAN



NOTE: INDICATIVE ONLY. SUBJECT TO DETAILED DESIGN AND FINAL SURVEY





## Execution

Executed as a Deed

Dated:

15 September 2011

Executed on behalf of the Minister

Name/Position *The Hon. Brad Hazzard MP  
Minister for Planning and Infrastructure*

Signed by the Minister in the presence of:

Name/Position of witness: *Simon Mansell*  
Address of witness: *1 Farrer Pl. Sutherland NSW 2200*

Executed on behalf of the Googong Development Corporation  
Pty Ltd in accordance with s127(1) of the Corporations Act (Cth) 2001

  
Name/Position

Anthony Noel Carey  
Director

  
Name/Position

Colin John Alexander  
Director

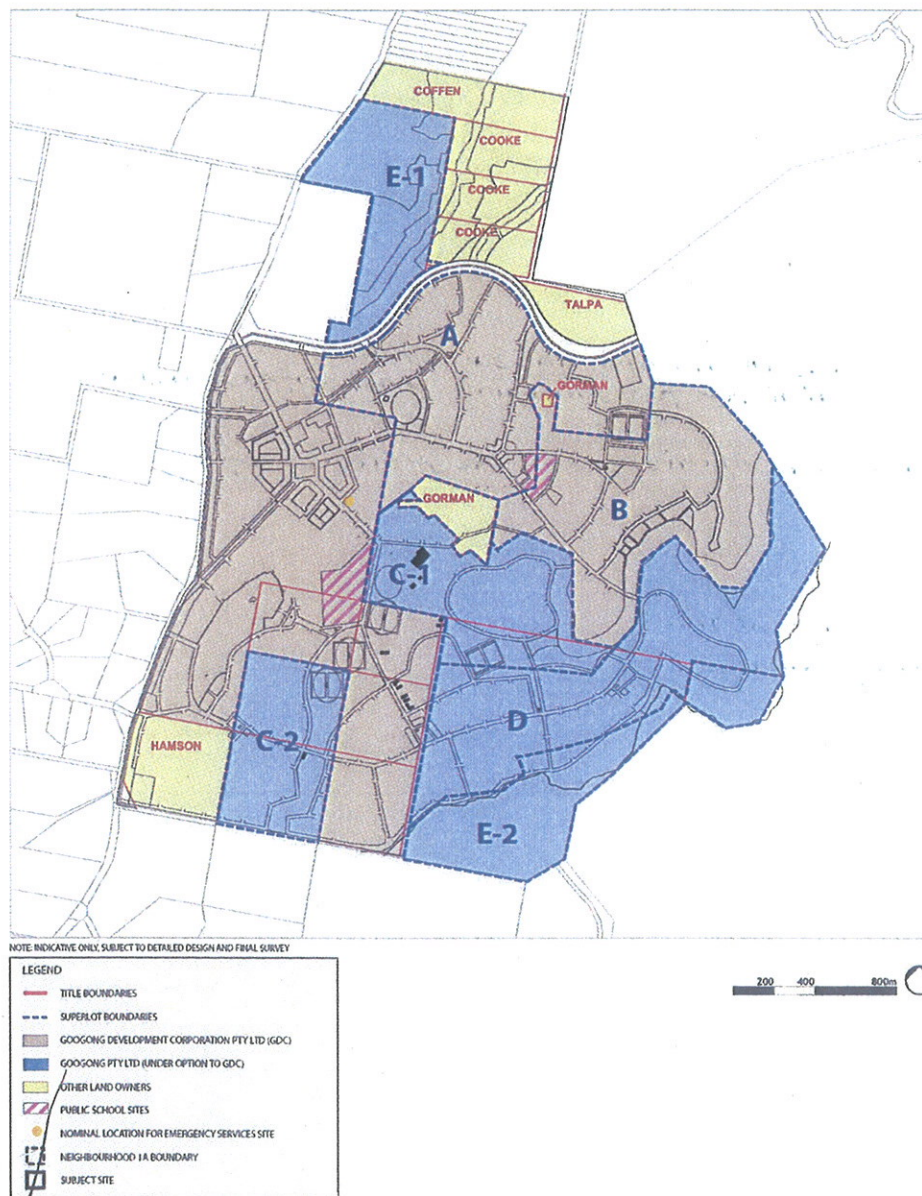


## Appendix 1 – Map

(Clause 1.1)

### GOOGONG TOWNSHIP

LAND OWNERSHIP, SUPERLOTS AND PUBLIC FACILITIES PLAN





## Appendix 2 – Explanatory Note

(Clause 34)

*Environmental Planning and Assessment Regulation 2000*

(Clause 25E)

### Proposed Planning Agreement

Minister for Planning and Infrastructure and  
Googong Development Corporation Pty Ltd

### Explanatory Note

#### Introduction

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement (the "**Planning Agreement**") prepared under Subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* ("the Act").

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

#### Parties to the Planning Agreement

The parties to the Planning Agreement are Googong Development Corporation Pty Ltd (the "**Developer**") and the Minister for Planning and Infrastructure ("**Minister**").

The Developer has made an offer to enter into the Planning Agreement in connection with a development application for subdivision within the Googong Urban Release Area. The Googong Urban Release Area is the area of land shown as "Included" on the *Queanbeyan Local Environmental Plan (Googong) 2009 – Land Application Map* (copy attached) and is located to the south of Queanbeyan on Googong Road.

#### Description of the Subject Land

The Planning Agreement applies to:

- those parts of the Googong Urban Release Area that the Developer currently owns, which are shown grey on the map in Appendix 1 to the VPA; and
- any other land the Developer acquires within the Googong Urban Release Area, from the date of its acquisition by the Developer.

#### Description of the Proposed Development and the Proposed Googong Urban Release Area

The Developer has lodged a development application (being DA41-2011) for a 337 lot subdivision under community title with Queanbeyan City Council ("**Proposed Development**"). The Proposed Development is the first stage of development which the Developer intends to undertake within the Googong Urban Release Area.

The Googong Urban Release Area is a new masterplanned township near Queanbeyan to be built on 780 hectares of former grazing land. It is anticipated that the development will take approximately 20 to 25 years to create and include approximately 5,550 homes of varying types and sizes to house about 16,000 people.



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

The Planning Agreement provides that the Developer will make monetary contributions of 75% of \$4,296.71 per Developable Hectare (subject to indexation) towards the costs of acquisition of land for the purposes of:

- a fire station (being a 2,000 square metre site);
- 2 primary schools (one site being 2.81 hectares and the other 3 hectares in size); and
- a high school (being a 6 hectare site).

Alternatively, the Developer may elect to dedicate all 12.01 hectares of land for the sites.

In the event that the Developer elects to dedicate the land, the Developer will be providing contributions that meet the demand, or part of the demand, for State infrastructure created by development in the Googong Urban Release Area which is to be carried out by other developers. The Minister will give consideration to the measures available under the Act to collect contributions towards the State infrastructure from other developers and to use contributions so collected to offset contributions made by the Developer under the Planning Agreement.

The Planning Agreement contains provisions which set out the timing for the provision of the Developer's contributions (see clauses 7 and 9 of the Planning Agreement). In this regard, the Planning Agreement provides that:

- monetary contributions must be made in respect of each Plan of Subdivision, prior to the issue of the Subdivision Certificate; and
- where the developer elects to dedicate land, the dedication of land must occur prior to the issue of subdivision certificates for certain Plans of Subdivision or certain dates as set out in clause 9 of the Planning Agreement.

The objective of the Planning Agreement is to facilitate the delivery of the Developer's contributions to meet the demand, or part of the demand, for State infrastructure created by development in the Googong Urban Release Area.

No relevant capital works program by the Minister is associated with this agreement.

### **Assessment of the Merits of the Planning Agreement**

#### The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following public purpose:

- the provision of (or the recoupment of the cost of providing) public amenities or public services.

The Minister and the Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purpose set out above. This is because it will ensure that the Developer makes appropriate contributions towards the provision of required State public infrastructure.

#### How the Planning Agreement Promotes the Public Interest

The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of State infrastructure to satisfy needs that arise from development of the Googong Urban Release Area.

#### How the Planning Agreement Promotes the Objects of the Act

The Planning Agreement promotes the objects of the Act by encouraging:

- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to make a contribution towards the provision of required State infrastructure.

The Developer's offer to contribute towards the provision of State infrastructure will have a positive public impact as funds contributed by the developer (or alternatively land, where the developer elects to dedicate land) will be available towards the provision of the State public infrastructure, the need for which is generated by the development of the Googong Urban Release Area.

#### **Interpretation of Planning Agreement**

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

