



lindsaytaylorlawyers

planning • environment • local government

Sovereign Views Planning Agreement

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

**Minister for Planning and Infrastructure for the
State of New South Wales**

Sovereign Hills Project Pty Ltd

**Taisei Oncho Australia Pty Limited and NT Australia
Pty Limited**

Date:

lindsaytaylorlawyers

Level 7, 1 O'Connell Street, Sydney NSW 2000, Australia

T 02 8235 9700 • **F** 02 8235 9799 • **W** www.lindsaytaylorlawyers.com.au • **E** mail@lindsaytaylorlawyers.com.au
ABN 15 695 894 345

Liability limited by a scheme approved under Professional Standards Legislation

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Sovereign Views Planning Agreement

Table of Contents

Summary Sheet.....	3
Parties.....	5
Background.....	5
Part 1 - Preliminary	5
1 Definitions & Interpretation	5
2 Application of this Agreement.....	8
3 Further Agreements Relating to this Agreement	8
4 Surrender of right of appeal, etc.	8
5 Application of s94, s94A and s94EF of the Act to the Development.....	8
Part 2 – Development Contributions.....	8
6 Payment of State Infrastructure Levy	8
7 Procedures relating to payment of State Infrastructure Levy	9
8 Certification.....	9
Part 3 – Other Provisions.....	9
9 Security.....	9
10 Repayment of SIL	10
11 Enforcement in a court of competent jurisdiction	11
12 Costs.....	11
13 Registration of this Agreement	11
14 Review of this Agreement.....	12
15 Dispute Resolution - mediation.....	13
16 Entire Agreement.....	13
17 Further Acts	13
18 Governing Law and Jurisdiction	13
19 Joint and Individual Liability and Benefits.....	13
20 Representation and Warranties.....	14
21 Modification.....	14
22 Counterparts	14
23 Notices	14
24 GST	15
25 Waiver.....	16
Execution.....	17

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Sovereign Views Planning Agreement

Summary Sheet

Minister:

Name: Minister for Planning and Infrastructure for the State of New South Wales

Address: 23-33 Bridge Street, SYDNEY NSW 2000

Telephone: (02) 9228 6111

Facsimile: (02) 9228 6455

Email: information@planning.nsw.gov.au

Representative: Sam Haddad, Director-General of Planning and Infrastructure

Developer

Name: Sovereign Hills Project Pty Limited c/-Hopkins Consultants Pty Ltd

Address: Suite 1, 109 William Street, Port Macquarie, NSW 2444

Telephone: (02) 6583 6722

Facsimile: (02) 6584 9009

Email: michael@hopcon.com.au

Representative: Michael Mowle

Owner:

Name: Taisei Oncho Australia Pty Limited and NT Australia Pty Limited c/-Hopkins Consultants Pty Ltd

Address: Suite 1, 109 William Street, Port Macquarie, NSW 2444

Telephone: (02) 6583 6722

Facsimile: (02) 6584 9009

Email: michael@hopcon.com.au

Representative: Michael Mowle

Land:

See definition of *Land* in clause 1.1.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 6.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clauses 9.

Registration:

Yes. See clause 13.

Dispute Resolution:

Mediation. See clause 15.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Sovereign Views Development Planning Agreement

Parties

Minister for Planning and Infrastructure for the State of New South Wales 23-33 Bridge Street, Sydney NSW 2000 (**Minister**)

and

Sovereign Hills Project Pty Ltd ACN 003 823 274 c/-Hopkins Consultants Pty Ltd, Suite 1, 109 William Street, Port Macquarie, NSW 2444 (**Developer**)

and

Taisei Oncho Australia Pty Limited ACN 010 715 625 and **NT Australia Pty Limited** ACN 003 725 442 c/- Hopkins Consultants Pty Ltd, Suite 1, 109 William Street, Port Macquarie, NSW 2444 (**Owner**)

Background

- A The Owner is the registered proprietor of the Land.
- B The Developer has lodged the Development Application with the Council.
- C The Council can only grant Development Consent to the Development Application if the Director-General of Planning and Infrastructure has provided the certification required by clause 6.1(3) of the LEP.
- D The Minister, Developer and Owner have agreed to enter into this Agreement to secure the payment of the State Infrastructure Levy in relation to the Development in order to enable the Director-General of Planning and Infrastructure to provide the certification required by the LEP.

Operative Provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

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

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

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Area 13 means the land to which the LEP applies.

Bank Guarantee means an irrevocable and unconditional undertaking without any expiry or end date in favour of the Minister to pay an amount or amounts of money to the Minister on demand issued by:

- (a) one of the following trading banks:
 - (i) Australia and New Zealand Banking Group Limited,
 - (ii) Commonwealth Bank of Australia,
 - (iii) Macquarie Bank,
 - (iv) National Australia Bank Limited,
 - (iv) St George Bank Limited,
 - (v) Westpac Banking Corporation, or
- (b) any other financial institution approved by the Minister in its absolute discretion.

Council means Port Macquarie-Hastings Shire Council.

CPI means the Consumer Price Index (All Groups – Sydney) published by the Australian Bureau of Statistics.

Developer means a person who has carried out or is carrying out the Development on the Land.

Development means the 109 residential lot subdivision of the Land proposed in the Development Application.

Development Application means DA 2007/520 lodged with the Council, as amended.

Development Consent has the same meaning as in the Act.

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

GST has the same meaning as in the GST Law.

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

Land means Lot 31 in DP 1132313.

LEP means the *Port Macquarie-Hastings (Area 13 Thrumster) Local Environmental Plan 2008*.

Parties means the parties to this Agreement.

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

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

Registrar-General means the Registrar-General of New South Wales.

Residential Lot means a lot created on the Land as part of the Development, to be used for residential purposes.

Security means a Bank Guarantee.

State Infrastructure Levy or **SIL** means:

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- a. \$1,365.00 per Residential Lot if the SIL is paid in relation to that Residential Lot on or prior to 30 June 2011, and
 - b. \$2,047.00 per Residential Lot if the SIL in relation to that Residential Lot is paid after 30 June 2011.
- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.5 A reference in this Agreement to a \$ value is a reference to the value exclusive of GST.
 - 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.7 A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.
 - 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.9 A reference to the Minister in relation to the exercise of a power, authority or duty includes a reference to a delegate of the Minister or any other person duly authorised by the Minister.
 - 1.2.10 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.13 References to the word 'include' or 'including' are to be construed without limitation.
 - 1.2.14 A reference to this Agreement includes the agreement recorded in this Agreement.
 - 1.2.15 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

1.2.16 Any schedules, appendices and attachments form part of this Agreement.

1.2.17 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

2.1 This Agreement applies to the Land and to the Development.

3 Further Agreements Relating to this Agreement

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

4 Surrender of right of appeal, etc.

4.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

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

5.1 This Agreement does not exclude the application of s94 and s94A to the Development, and payments made under this Agreement are not to be taken into consideration when determining a development contribution under s94 of the Act in relation to the Development.

5.2 This Agreement does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

6 Payment of State Infrastructure Levy

6.1 The Owner agrees to pay the State Infrastructure Levy, if Development Consent is granted to the Development, but may elect to pay the State Infrastructure Levy prior to the grant of Development Consent to the Development.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- 6.2 The SIL may be paid in a lump sum, or on a per lot basis in connection with each Residential Lot.
- 6.3 The SIL must be paid at a time nominated by, or agreed to by the Director-General of Planning and Infrastructure or his nominee, and, in relation to each Residential Lot, must be paid no later than the completion of the sale of that Residential Lot.
- 6.4 The Owner must provide the Minister with details of any contract for sale which the Owner enters into in relation to the Land or any Residential Lot, including the anticipated completion date for that contract, and must give the Minister 10 business days notice of the date on which completion of that contract is to occur.
- 6.5 The Owner must give the Minister 10 business days prior notice of the transfer of a Residential Lot if there is no contract for sale of that Residential Lot.
- 6.6 Any SIL that is paid after 30 June 2011 is to be indexed in accordance with CPI between 1 July 2011 and the date the SIL is paid under this Agreement.

7 Procedures relating to payment of State Infrastructure Levy

- 7.1 The State Infrastructure Levy or part thereof, is paid for the purposes of this Agreement when the Minister receives the amount to be paid 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.
- 7.2 The Developer is to give the Minister not less than 2 business days written notice of its intention to pay the State Infrastructure Levy or part thereof.

8 Certification

- 8.1 The parties understand that the Director-General of Planning and Infrastructure will issue the certification required by clause 6.1(3) of the LEP in relation to each of the Residential Lots proposed in the Development on registration of this Agreement on the title to the Land or satisfaction of the Owner's obligations to pay the SIL, whichever is the earlier.

Part 3 – Other Provisions

9 Security

- 9.1 On execution of this Agreement, the Owner is to provide the Minister with Security in the amount of \$223,123.00 less \$2,047.00 for each Residential Lot in respect of which the Owner pays the SIL on execution of this Agreement.
- 9.2 The Minister is to release and return the Security or any unused part of it to the Owner within 14 days of compliance by the Owner with all of its

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

obligations under this Agreement to the reasonable satisfaction of the Minister.

- 9.3 The Owner may at any time provide the Minister with a replacement Security.
- 9.4 On receipt of a replacement Security, the Minister is to release and return to the Owner, as directed, the Security it holds that has been replaced.
- 9.5 The replacement Security provided by the Owner may be for an amount less than the Security provided on execution of this Agreement, provided that at all times the Minister holds Security in the amount of \$2,047.00 for each Residential Lot in respect of which a SIL has not been paid.
- 9.6 The Minister may call-up the Security if it considers, acting reasonably, that the Owner has not complied with its obligations under this Agreement.
- 9.7 However, the Minister is not to call-up the Security unless he has given the Owner not less than 30 days notice of his intention to do so and the Owner has not rectified the non-compliance to the Minister's reasonable satisfaction before that period has expired.
- 9.8 If the Minister calls-up the Security, he may use the amount paid to him in satisfaction of any costs incurred by him in remedying the non-compliance including but not limited to:
 - 9.8.1 the reasonable costs of the Minister's servants, agents and contractors reasonably incurred for that purpose,
 - 9.8.2 all fees and charges necessarily or reasonably incurred by the Minister in order to have the non-compliance carried out, completed or rectified, and
 - 9.8.3 all legal costs and expenses reasonably incurred by the Minister, by reason of the Owner's non-compliance.
- 9.9 If the Minister calls-up the Security, he may, by notice in writing to the Owner, require the Owner to provide a further or replacement Security in an amount that, when added to any unused portion of any existing Security, does not exceed the amount of the Security the Minister is entitled to hold under this Agreement.
- 9.10 The dispute resolution provisions of this Agreement do not apply to a matter the subject of this clause.

10 Repayment of SIL

- 10.1 If the Owner elects to pay the SIL prior to Development Consent being granted to the Development Application, and if Development Consent is not granted to the Development Application, or Development Consent is granted approving the creation of fewer than 109 Residential Lots, then:
 - 10.1.1 if Development Consent is not granted, the Minister will repay, without interest, all SIL paid by the Owner; and
 - 10.1.2 if Development Consent is granted for fewer than 109 Residential Lots, the Minister will repay, without interest, the SIL paid in respect of the number of Residential Lots for which Development Consent was not granted.
- 10.2 Any SIL which is to be repaid by the Minister under clause 10.1 is to be repaid within 12 months of the later of:

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- 10.2.1 a determination of the Development Application by the consent authority for that Development Application; or
- 10.2.2 if any review is sought, or appeal lodged in respect of the determination of the Development Application, within 12 months of the date on which that review or appeal is finalised..

11 Enforcement in a court of competent jurisdiction

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

12 Costs

- 12.1 The Owner is to pay the Minister's costs of preparing, negotiating and executing this Agreement and any document related to this Agreement.
- 12.2 The Owner is responsible for the payment of all registration fees payable in relation to this Agreement.
- 12.3 On execution, the Owner is to provide the Minister with a bank cheque in respect of the Minister's costs pursuant to clause 12.1 which have been notified in writing to the Owner.

13 Registration of this Agreement

- 13.1 The Owner represents and warrants that it is the owner of the Land.
- 13.2 The Owner 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 Owner to comply with its obligations under clause 13.4.
- 13.3 As contemplated by section 93H of the Act, the Owner agrees to procure the registration of this Agreement under the Real Property Act in all relevant folios of the Register of the Land within 10 business days of execution of this Agreement.
- 13.4 The Owner, at its own expense, will take all practical steps and otherwise do anything to procure:
 - 13.4.1 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

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- (b) is seized or possessed of an estate or interest in the Land;
and
- 13.4.2 the execution of any documents; and
- 13.4.3 the production of the relevant certificates of title; and
- 13.4.4 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.
- 13.5 The Owner will provide the Minister with a copy of the relevant folios of the Register within 10 business days of registration of this Agreement in accordance with this clause 13.3.
- 13.6 The Minister agrees to do all things reasonably required by the Owner to release and discharge this Agreement with respect to any part of the Land upon the Owner satisfying all of its obligations under this Agreement in respect of that part of the Land.
- 13.7 The Minister agrees to do all things necessary, within 5 business days, to meet any request or requirement of the Owner or the Registrar-General arising from the operation of clause 13.6.

14 Review of this Agreement

- 14.1 The Owner is to provide to the Minister by not later than each anniversary of the date on which this Agreement is entered into a report detailing the performance of its obligations under this Agreement.
- 14.2 The report referred is to be in such a form and to address such matters as may be notified by the Minister to the Owner from time to time.
- 14.3 The Parties agree to review this Agreement every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 14.4 For the purposes of clause 14.3, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Minister or any other planning authority to restrict or prohibit any aspect of the Development.
- 14.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 14.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 14.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 14.7 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 14.3 is not a dispute for the purposes of clause 15 and is not a breach of this Agreement.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

15 Dispute Resolution - mediation

- 15.1 This clause applies to any dispute under this Agreement.
- 15.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 15.3 If a notice is given under clause 15.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 15.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 15.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

16 Entire Agreement

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

17 Further Acts

- 17.1 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.

18 Governing Law and Jurisdiction

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

19 Joint and Individual Liability and Benefits

- 19.1 Except as otherwise set out in this Agreement:

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- 19.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
- 19.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 Representation and Warranties

- 20.1 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.

21 Modification

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

22 Counterparts

- 22.1 This Agreement is not to be executed in counterparts.

23 Notices

- 23.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - 23.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 23.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 23.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 23.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
 - 23.3.1 delivered, when it is left at the relevant address,
 - 23.3.2 sent by post, 2 business days after it is posted, or
 - 23.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 23.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

24 GST

24.1 In this clause:

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

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

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

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

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

24.2 Subject to clause 24.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

24.3 Clause 24.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.

24.4 No additional amount shall be payable by the Minister under clause 24.2 unless, and only to the extent that, the Minister (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

24.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:

24.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies,

24.5.2 that any amounts payable by the Parties in accordance with clause 24.2 (as limited by clause 24.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.

24.6 No payment of any amount pursuant to this clause 24, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.

24.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

- 24.8 This clause continues to apply after expiration or termination of this Agreement.

25 Waiver

- 25.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 25.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.
- 25.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

Sovereign Views Planning Agreement

Minister for Planning and Infrastructure for the State of New South Wales

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Execution

Executed as an Agreement

Dated:

Signed on behalf of the Developer:

In accordance with s127 of the Corporations Act 2001

.....

Director

Name of officer:

.....

Director/Company Secretary

Name of officer

Signed on behalf of Taisei Oncho Australia Pty Limited:

In accordance with s127 of the Corporations Act 2001

.....

Director

Name of officer:

.....

Director/Company Secretary

Name of officer

Signed on behalf of NT Australia Pty Limited:

In accordance with s127 of the Corporations Act 2001

.....

Director

Name of officer:

.....

Director/Company Secretary

Name of officer

Sovereign Views Planning Agreement

**Minister for Planning and Infrastructure for the State of New South
Wales**

Sovereign Hills Project Pty Limited

Taisei Oncho Australia Pty Limited and NT Australia Pty Limited

Signed by Minister

.....

Witness

.....

Minister

Name of Witness