

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

SH Camden Lakeside Pty Limited
ABN 41 137 331 394

Planning Agreement

Environmental Planning and Assessment Act 1979

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THIS DEED IS DATED

26 April 2012

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PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

SH CAMDEN LAKESIDE PTY LIMITED (ABN 41 137 331 394) of Ground Floor, 68 Waterloo Road, Macquarie Park, New South Wales, 2113 (**Developer**)

INTRODUCTION:

- A** The Developer owns the Land.
- B** The Developer intends to develop the Land.
- C** The Developer proposes to make Development Applications to the Consent Authority in respect of the Land.
- D** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 6.1 of the LEP.
- E** The Developer has offered to enter into this Deed with the Minister to secure the Development Contribution in order to enable the Director-General to provide the certification required by the LEP.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **Deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in **Schedule 2** or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

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

Base CPI means the CPI number for the quarter ending 30 March in the 12 months prior to which this Deed was entered into.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

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

Contribution Credit means an amount to be applied as a credit against the Development Contribution Amount calculated in accordance with the arrangements in **clause 4.2**;

Contribution Works means the works to be undertaken by the Developer pursuant to one or more Works Agreements in lieu of paying the whole or any part of the Development Contribution Amount as contemplated by **clause 4.2**.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

CPI Adjustment Date means 1 July in the 12 months prior to which this Deed was entered into and each anniversary of 1 July thereafter.

Current CPI means the CPI number for the quarter ending immediately before 30 March 2011 and each anniversary of 30 March 2011 thereafter.

Development means the subdivision of the Urban Release Area Land into Residential Lots, in accordance with a consent or approval granted under the Act.

Development Application has the same meaning as in the Act

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions referred to in **clause 4** and **Schedule 4**.

Development Contribution Amount means the monetary amount of \$213,989 per hectare of Net Developable Area.

Director-General means the Director-General of the NSW Department of Planning and Infrastructure.

Explanatory Note means the explanatory note required by the Regulation.

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

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).

Land means the land described in **Schedule 3** to this Deed.

LEP means *Camden Local Environmental Plan 2010*

Net Developable Area has the same meaning as in the Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011 ("Determination") as it appeared in the NSW Government Gazette No 6 on 21 January 2011 and clauses 10-14 of the Determination are incorporated as terms of this Deed.

Party means a party to this Deed.

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

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

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

Residential Lot means a lot created in the Development for separate occupation and disposition for residential or other urban purposes to the exclusion of a Super Lot.

Special Infrastructure Contribution means has the same meaning as in the Act;

Subdivision Certificate has the same meaning as in the Act.

Super Lot means a lot created on the Land which following registration of a plan of subdivision is intended for further subdivision for residential housing or other urban uses.

Urban Release Area Land means so much of the Land that is within an *urban release area* within the meaning of the LEP.

Works Agreement means any works authorisation, deed or agreement entered into by the Developer and a public authority, requiring the Developer to carry out all or any part of the Contribution Works and which must include relevant provisions to the satisfaction of the Director-General including but not limited to, variations to the

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Contribution Works, compliance with all applicable laws and relevant standards and rectification of any defects.

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body or authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **schedules** form part of this Deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an **obligation or warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;

- (m) **including and includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This Deed will commence from the date this Deed is signed by all the parties.

2.2 Notice

Upon executing this Deed, the Minister will provide written notice to the Developer that this Deed has been executed by all of the parties and will provide a copy of the executed Deed to the Developer.

2.3 Planning agreement under the Act

This Deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.4 Application

This Deed applies to:

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

2.5 Development Contributions

- (a) The Developer agrees that the Minister:
 - (i) 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

(ii) 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 by that Authority.

(b) The Minister agrees that the Development Contribution will be used for designated State public infrastructure within the meaning of the LEP which serves the south west region of Sydney.

3 APPLICATION OF SECTIONS 94, 94A and 94EF OF THE ACT

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

4 REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTION

4.1 Development Contribution Amount

(a) The Developer undertakes to provide or procure the provision of each Development Contribution Amount to the Minister or the Minister's nominee in accordance with **Schedule 4** to this Deed.

(b) Prior to providing or procuring the relevant Development Contribution Amount, the Developer must provide the Director-General with certification from an independent quantity surveyor or other qualified person as agreed with the Director-General confirming the Net Developable Area to which the Development Contribution Amount applies.

4.2 Works in kind

(a) At any time prior to the date on which a Development Contribution Amount is required to be paid by the Developer to the Minister in accordance with **Schedule 4** to this Deed, the Developer may, in writing, request the Director-General's approval, on behalf of the Minister (which is not to be unreasonably withheld) to enter into a Works Agreement to obtain a Contribution Credit by the carrying out of Contribution Works.

(b) The Director-General must agree in writing to the Contribution Credit prior to the Developer entering into a Works Agreement.

(c) The Director-General will determine at his reasonable discretion the Contribution Credit having regard to an estimate of the cost of the Contribution Works prepared by an independent quantity surveyor or other qualified person as agreed with the Director-General, at the Developer's cost and as submitted by the Developer.

(d) The Contribution Works and the Contribution Credit can be varied at any time by the Developer as long as the Director-General has given approval

to the varied Contribution Works and issued a revised Contribution Credit prior to the relevant works commencing.

- (e) The Contribution Credit only discharges the Developer's obligation to pay the Development Contribution Amount (to the value of the Contribution Credit) once the Developer provides satisfactory evidence to the Director-General that the Contribution Works have been completed.

4.3 Determination of Special Infrastructure Contribution

- (a) Despite anything else in this Deed, if the Minister determines a Special Infrastructure Contribution that applies to the Land, then the Developer must pay to the Minister the Special Infrastructure Contribution amount in lieu of the Development Contribution Amount in an amount not exceeding the Development Contribution Amount and no further payment will be required relating to any portion of the Land in respect of which a Development Contribution has been paid pursuant to this Deed.
- (b) In the event that a Special Infrastructure Contribution is determined which would result in a contribution payable in an amount less than the amount already paid as a Development Contribution under this Deed:
 - (i) the Developer is not entitled to a refund for the difference between those amounts; and
 - (ii) the Developer may request a credit from the Director-General for the difference between those amounts which must be applied towards future contributions required under this Deed.

5 SECURITY

5.1 Land ownership

The Developer represents and warrants that it is the owner of the Land.

5.2 Registration on Title

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this Deed under the Real Property Act in the relevant folio of the Register within 10 Business Days of the date of receipt of a notice in accordance with **clause 2.2** of this Deed.
- (b) The Developer, at its own expense, will take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or

(B) is seized or possessed of an estate or interest in the Land; and

(ii) the execution of any documents; and

(iii) the production of the relevant certificates of title; and

(iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.

5.3 Release and discharge of Deed

The Minister agrees to do all things reasonably required by a request from the Developer to release and discharge this Deed, in a timely fashion, with respect to any part of the Land upon the Developer satisfying all of its obligations under this Deed in respect of that part of the Land.

5.4 Bank guarantee

The Developer will provide Bank Guarantees to secure the Developer's obligations under this Deed as specified in Schedule 5.

6 DISPUTE RESOLUTION

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 6** will apply.

7 GST

7.1 Definitions

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

7.2 Intention of the parties

The parties intend that:

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

7.3 Reimbursement

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

7.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed 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 7**.

7.5 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 Deed (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:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

7.6 Non monetary consideration

Clause 7.5 applies to non-monetary consideration.

7.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 7.5** the Developer will assume the Minister is not entitled to any input tax credit.

7.8 No merger

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

8 ASSIGNMENT

8.1 Consent

This Deed is personal to each party and no party may assign the rights or benefits of this Deed to any person except:

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- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this Deed; or
- (b) to any other person, with the prior consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion.

9 WARRANTIES OF CAPACITY

9.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

9.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

10 INTEREST

If the Developer fails to pay any amount due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time. That interest will be payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

11 GENERAL PROVISIONS

11.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This Deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Deed.

11.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this Deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

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11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.10 Counterparts

This Deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

11.13 No fetter

Nothing in this Deed shall be construed as requiring either the Ministers to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Ministers in exercising any of the Minister's statutory functions, powers, authorities or duties.

11.14 Explanatory note

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

11.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.
- (d) On execution of this Deed, the Developer must provide the Minister with a bank cheque in respect of the Minister's costs pursuant to paragraphs (a) and (b) above which have been notified to the Developer in writing.

11.16 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

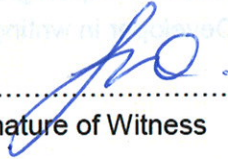
- (a) hand delivered; or
- (b) sent by prepaid ordinary post (airmail if appropriate); or
- (c) sent by facsimile transmission; or
- (d) given in any other way permitted by law.

A notice is given if:

- (a) hand delivered, on the date of delivery; or
- (b) sent by post, three days after posting (or seven days after posting if sent to or from a place outside Australia); or
- (c) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted.

EXECUTED as a Deed

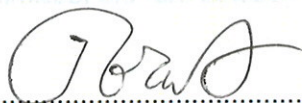
**Signed sealed and delivered for and on
behalf of the Minister for Planning and
Infrastructure, in the presence of:**

X 
Signature of Witness

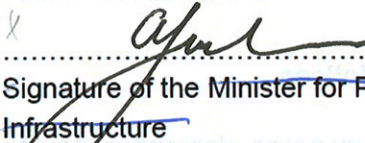
X *Felicity No*
Name of Witness in full

*23-33 Bridge Street,
Sydney NSW 2001*
Address of Witness

**Signed sealed and delivered by SH
Camden Lakeside Pty Limited
ABN 41 137 331 394
in accordance with section 127 of the
Corporations Act:**



Signature of Director

Toru Abe
Name of Director

X 
Signature of the Minister for Planning and
Infrastructure

X *Andrew Jackson*
Minister for Planning and Infrastructure

*Signed by Andrew Jackson,
Executive Director, Strategy
and Infrastructure Planning
under delegation from the
Minister for Planning and
Infrastructure.*


Signature of Director/Secretary

Kohji Fukano
Name of Director/Secretary

SCHEDULE 1

Requirements under section 93F of the Act

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

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) N/A
Description of land to which this Deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this Deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this Deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this Deed if section 94 applies – (section 93F(5))	N/A
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 6
Enforcement of this Deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 11.13

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: Director-General, Department of Planning and Infrastructure

Address: 23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Developer

Contact: Company Secretary

Address: Ground Floor, 68 Waterloo Road
MACQUARIE PARK NSW 2113

Facsimile No: (02) 8817 4801

SCHEDULE 3

Land (clause 1.1)

Lots proposed for development

Lot	Deposited Plan
2	1142394

SCHEDULE 4

Development Contribution (clause 4)

1 Development Contribution

The Developer must provide or procure to the Minister, or the Minister's nominee, each Development Contribution Amount in instalments in the manner and at the times set out in this **Schedule 4**.

2 Timing of payment of instalments

Subject to **clauses 4.2 and 4.3** of this Deed, the Developer must pay each Development Contribution Amount calculated in accordance with **clause 3** of this **Schedule 4**, in respect of the Net Developable Area for that part of the Land the subject of a subdivision certificate application, in full to the Minister or the Minister's nominee prior to the issue of the Subdivision Certificate that authorises the creation of a Residential Lot.

3 Payment of instalments

- (a) Subject to **clause 3(b)**, each instalment is to be paid in accordance with the following formula:

$$\text{\$Ip} = \text{NDA} \times \text{\$DCA}$$

Where:

\\$Ip is the installment payable

NDA is the Net Developable Area, in hectares, of that part of the Land the subject of the subdivision certificate application

\\$DCA is the Development Contribution Amount

- (b) On each CPI Adjustment Date, the value of Development Contribution Amount in **clause 3(a)** will be adjusted by multiplying the Development Contribution Amount by an amount equal to the Current CPI divided by the Base CPI.
- (c) Any instalments paid to the Minister prior to 31 December 2011 are to be calculated with a reduction of one third of the amount payable under **clause 3(a)** of this **Schedule 4**.

SCHEDULE 5

Bank guarantee (clause 5)

1 Bank Guarantees Required

The Developer has agreed to provide security to the Minister in the form of a Bank Guarantee:

- (i) for the values; and
- (ii) at the times,

set out in this Schedule 5.

The terms and conditions of this Schedule apply in relation to those security arrangements.

2 Bank Guarantee Requirements

- (a) The Bank Guarantees to the Minister must name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 681" as the relevant beneficiaries.
- (b) At any one time, the Developer must ensure that:
 - (i) the Minister is in receipt of Bank Guarantees that equal the amount of security determined under paragraph (d); and
 - (ii) each Bank Guarantee is provided to the Minister within 10 Business Days of the Developer lodging a Development Application which seeks development consent for the subdivision of any part of the Land into Residential Lots.
- (c) Despite anything else set out in this Schedule, the Developer must provide a Bank Guarantee in the amount of \$100,000 within 10 Business Days of the date that this deed is returned to the Developer for registration as:
 - (i) security for the Developer's obligations relating to any Residential Lots that may be approved under any Development Consent issued by the Council of Camden in response to development application number 1206/2010; and
 - (ii) as a base amount of security for the Developer's obligations under this Deed.
- (d) The face value of the Bank Guarantees required under this Schedule is to be calculated in accordance with the following formula:

$$\text{\$BCA} = (\text{\$X} \times \text{A}) - \$100,000$$

Where:

\\$BCA is the face value of all relevant Bank Guarantee(s).

\\$X is the agreed approximation of the total security required for the Development.

A is the percentage of land area the subject of all relevant Development Applications as a proportion of the whole of the Land area.

Note: The developer may determine to provide separate Bank Guarantees in circumstances where multiple Development Applications have been lodged.

3 Claims under Bank Guarantee

The Developer agrees that the Minister may make claims under a Bank Guarantee provided by it on the following basis:

- (a) the Minister may call upon a Bank Guarantee (in full or in part) in the event that the Developer breaches the Developer's obligations for which the Bank Guarantee relates and retain and use such monies in her discretion to compensate the Minister for the Developer's breach of those obligations;
- (b) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so;
- (c) the amount appropriated by the Minister under paragraph (a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this Deed.

4 Release of Bank Guarantee

- (a) Subject to clauses 4(b) of this Schedule 5, upon satisfaction of the obligations for which the Bank Guarantee relates, the Minister will promptly return the Bank Guarantee to the Developer.
- (b) If the Minister has called upon the relevant Bank Guarantee, then upon satisfaction of the secured obligations the Minister will return to the Landowner the Bank Guarantee amount less any monies appropriated by the Minister under clause 3 (a) of this Schedule 5.

SCHEDULE 6

Dispute resolution (clause 6)

1 Notice of Dispute

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

2 Response to Notice

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

3 Negotiation

The nominated representatives must:

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

4 Further Notice if not Settled

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

5 Mediation

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

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator; the Mediator appointed pursuant to this clause of this Schedule must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (c) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

- (d) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (e) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (f) in relation to costs and expenses:
- (g) each party will bear their own professional and expert costs incurred in connection with the mediation;
- (h) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

6 Litigation

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

7 Continue to perform obligations

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