

**Minister for Planning and Infrastructure**

ABN 38 755 709 681  
(Minister)

**Grindley Properties Pty Ltd**  
(formerly known as Wallgrove Properties Pty Ltd)

ACN 003 884 704  
(Developer)

**Planning Agreement**

**Environmental Planning and Assessment Act 1979 (NSW)**

**Contact**

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Level 65, MLC Centre  
19 Martin Place  
SYDNEY NSW 2000  
RCM:11640081

*Robert Moses*  
21/12/11

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THIS PLANNING AGREEMENT is dated

2011

**PARTIES:**

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

**GRINDLEY PROPERTIES PTY LTD** (ACN 003 884 704) (formerly known as Wallgrove Properties Pty Ltd) of 6-8 Regent Street, Wollongong 2500 (**Developer**)

**INTRODUCTION:**

- A The Developer owns the Land and intends to develop the Land.
- B The Developer has made the Development Application for the Proposed Development.
- C Clause 6.1 of the *Wollongong Local Environmental Plan (West Dapto) 2010 (LEP)* provides that the Council must not grant Development Consent unless the Director-General has certified in writing to the Council that satisfactory arrangements have been made to contribute to the provision of infrastructure, facilities and services referred to in clause 6.1 of the LEP.
- D The Developer has offered to enter into this deed with the Minister to provide the Development Contribution in order to enable the Director-General to issue 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** of this deed 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 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, 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 31 March 2011;

**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;

**Council** means Wollongong City Council (ABN 63 139 525 939);

**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 2012 and each anniversary of 1 July 2012 thereafter;

**Current CPI** means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year;

**Development Application** means development application number DA-2010/1350 lodged on behalf of the Developer with the Council for the Proposed Development;

**Development Consent** means any development consent granted by the Council under section 80 of the Act in response to all or part of the Development Application;

**Development Contributions** means the contributions provided for in **clause 3**;

**Director-General** means the Director-General of the 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);

**GST** means any form of goods and services tax payable under the GST Law;

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

**Land** means the land described in **Schedule 3**;

**Proposed Development** means the proposed subdivision of the Land into approximately 116 lots, the construction of public roads and demolition of existing structures;

**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);

**Security Terms** mean the terms and arrangements set out in **clause 7**;

**Special Infrastructure Contribution** means a contribution determined in accordance with section 94EE of the Act with respect to the Land;

## 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**, or **schedule** is a reference to the introduction, a clause or schedule to or of this deed;
- (e) **clause headings** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **introduction**, **schedules** (if any) and **annexures** (if any) form part of this deed;
- (g) the **introduction** accurately sets out the circumstances in which the parties have entered into this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;

- (k) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (l) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (m) 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;
- (n) **including** and **includes** are not words of limitation;
- (o) the words **at any time** mean at any time and from time to time;
- (p) a reference to a time is to that time in New South Wales;
- (q) a word that is derived from a defined word has a corresponding meaning;
- (r) the singular includes the plural and vice-versa;
- (s) words importing one gender include all other genders; and
- (t) a reference to a thing includes each part of that thing.

### 1.3 Construction

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 Status of deed

- (a) Until this deed comes into operation, this deed constitutes an irrevocable offer from the Developer to enter into a planning agreement.
- (b) Subject to **clause 2.1(a)**, this deed constitutes a planning agreement within the meaning of section 93F of the Act.

### 2.2 Operation

- (a) This deed operates when it is entered into as required by clause 25C(1) of the Regulation.
- (b) This deed is terminated when the Developer provides all of the contributions required by this deed to the Minister.
- (c) Despite anything else in this deed, the Developer agrees to be bound by and acknowledges that **clauses 3.1, 6 and 7** and **Schedules 4 and 5** commence when this deed is signed by the Developer.

## 2.3 Application

This deed applies to:

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

## 3 CONTRIBUTIONS

### 3.1 Requirement to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contributions in the manner and at the times set out in **Schedule 4** and the parties agree to abide by the procedures and obligations set out in **Schedule 4**.

### 3.2 Use of Development Contribution

The Developer agrees that the Minister:

- (a) has no obligation to use or expend a Development Contribution for a particular purpose and has no obligation to repay a Development Contribution; and
- (b) 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 purpose by that Authority.

## 4 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.

## 5 APPLICATION OF SECTION 94, SECTION 94A, SECTION 94EF OF THE ACT

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

## 6 REGISTRATION ON TITLE

### 6.1 Land ownership

The Developer represents and warrants that it is:

- (a) the owner of the Land; or



- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under **clause 6.2** of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 6.2(c)(i)** to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 6.2**.

## **6.2 Registration of deed**

- (a) This clause only applies in circumstances where the Developer does not provide the Development Contribution to the Minister on the date that the Developer executes this deed.
- (b) 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 not later than 10 Business Days after the Minister provides to the Developer this deed duly executed by the Minister.
- (c) 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.
- (d) The Developer will provide the Minister with a copy of the relevant folio of the Register within 10 Business Days of registration of this deed in accordance with this **clause 6.2**.

## **6.3 Release and discharge of deed**

The Minister agrees to do all things reasonably required by 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.

## **7 SECURITY**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by:

- (a) registering this deed on the title to the Land; and
- (b) providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in **Schedule 5**.

## **8 DISPUTE RESOLUTION**

### **8.1 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.

### **8.2 Attempt to resolve**

On receipt of notice under **clause 8.1**, 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.

### **8.3 Referral to Director-General**

Should the matter not be resolved under **clause 8.2**, the matter shall be referred to the Director-General whose determination of the disagreement shall be final and binding on the parties.

## **9 GST**

### **9.1 Definitions**

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

### **9.2 Intention of the parties**

The parties intend that:

- (a) Divisions 81 and 82 of the GST Law 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.

### 9.3 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.

### 9.4 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 9**.

### 9.5 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 (**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.

### 9.6 Non monetary consideration

**Clause 9.5** applies to non-monetary consideration.

### 9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 9.5** the Developer will assume the Minister, is not entitled to any input tax credit.

### 9.8 No merger

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

## 10 ASSIGNMENT

This deed is personal to each party and neither party may assign the rights or benefits of this deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other party, which the other party 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 party, which the other party may give, give conditionally or withhold in its absolute discretion.

## **11 WARRANTIES OF CAPACITY**

### **11.1 General warranties**

The Developer warrants that:

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

### **11.2 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.

## **12 GENERAL PROVISIONS**

### **12.1 Entire agreement**

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.

### **12.2 Variation**

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

### **12.3 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.

### **12.4 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.

**12.5 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.

**12.6 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.

**12.7 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.

**12.8 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.

**12.9 Counterparts**

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

**12.10 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.

**12.11 No fetter**

Nothing in this deed will be construed as requiring the Minister, to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

**12.12 Explanatory note**

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

**12.13 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 clauses (a) and (b) above which have been notified to the Developer in writing.

**12.14 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;
- (b) sent by facsimile transmission;

A notice is given if:

- (c) hand delivered, on the date of delivery;
- (d) 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;

### SCHEDULE 1 - REQUIREMENTS UNDER SECTION 93F

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
<p><b>Planning instrument and/or development application – (section 93F(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a development/ project application</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies</p>	<p>No</p> <p>No</p> <p>Yes</p>
<p><b>Description of land to which this deed applies – (section 93F(3)(a))</b></p>	<p>See <b>Schedule 3</b></p>
<p><b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</b></p>	<p>Not applicable</p>
<p><b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b></p>	<p>See <b>clause 3.1</b> and <b>Schedule 4</b></p>
<p><b>Applicability of section 94 of the Act – (section 93F(3)(d))</b></p>	<p>Not Excluded</p>
<p><b>Applicability of section 94A of the Act – (section 93F(3)(d))</b></p>	<p>Not Excluded</p>
<p><b>Applicability of section 94EF of the Act – (section 93F(3)(d))</b></p>	<p>Excluded</p>
<p><b>Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))</b></p>	<p>No</p>
<p><b>Mechanism for Dispute Resolution - (Section 93F(3)(f))</b></p>	<p>See <b>clause 7</b></p>
<p><b>Enforcement of this deed – (section 93F(3)(g))</b></p>	<p>See <b>clause 6</b></p>
<p><b>No obligation to grant consent or exercise functions – (section 93F(9))</b></p>	<p>See <b>clause 12.11</b></p>

**SCHEDULE 2 - ADDRESS FOR SERVICE**

**Minister for Planning and Infrastructure**

**Contact:** The Director-General

**Address:** Department of Planning and Infrastructure, 23-33 Bridge Street,  
Sydney NSW 2000

**Facsimile No:** (02) 9228 6191

**Grindley Properties Pty Ltd**

**Contact:** Luke Rollinson

**Address:** 6-8 Regent Street, Wollongong NSW 2500

**Facsimile No:** (02) 4226 5741



## SCHEDULE 3 - LAND

Folio Identifiers
3/33650
5/33650
6/33650
9/33650
4/661032
N/103642

## SCHEDULE 4- DEVELOPMENT CONTRIBUTIONS

### 1 Development Contributions

The Developer undertakes to make the following Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution towards designated state public infrastructure	\$608,080.00	On the date that the Developer executes this deed.

### 2 Payment

- (a) The Development Contribution must be paid in accordance with **clause 2(b)** of this **Schedule 4**.
- (b) Upon the date of execution of this deed, the Developer must pay to the Minister the amount shown in column 2 of the table in **clause 1** of this **Schedule 4 (Development Contribution Amount)** and deliver to the Minister two executed copies of this deed.
- (c) The Minister and Developer acknowledge and agree that the Development Contribution Amount is taken to be Development Contribution and it has been calculated on the basis that the net developable area comprised in the Proposed Development is 8.05ha.
- (d) If the Development Contribution has not been paid prior to each CPI Adjustment Date, then on each CPI Adjustment Date the value of the Development Contribution Amount will be adjusted by multiplying the Development Contribution Amount by an amount equal to the Current CPI divided by the Base CPI.

### 3 Reduction for early payment

Any payments made by the Developer to the Minister prior to 1 January 2012 under **clause 2** of this **Schedule** are to be calculated with a reduction of one third of the relevant amount.

### 4 Determination of Special Infrastructure Contribution

Despite anything else in this deed, if the Minister determines a Special Infrastructure Contribution, then the Developer must pay to the Minister the Special Infrastructure Contribution amount in lieu of the Development Contribution and make such payment in accordance with **clause 2** of this **Schedule** although no further payment will be required relating to land where Development Contributions have been paid pursuant to this deed.

## SCHEDULE 5 - SECURITY TERMS

### 1 Bank Guarantee Required

- (a) The Developer has agreed to provide security to the Minister in the form of a Bank Guarantee for a face value equivalent to \$608,080.00 to secure the Developer's obligations to pay the Development Contribution pursuant to **clause 3.1** and the terms and conditions of this Schedule apply in relation to those security arrangements.
- (b) The security referred to in **clause 1(a)** of this **Schedule 5** is required within 10 Business Days of the execution of this deed in circumstances where the Developer does not provide the Development Contribution on the date the Developer executes this deed.

### 2 Claims under Bank Guarantee

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

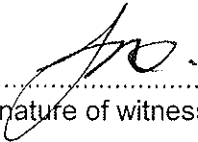
- (a) in relation to the Bank Guarantee securing the Developer's obligations to pay the Development Contribution pursuant to **clause 3.1**, the Minister may call upon that Bank Guarantee (in full or in part) in the event that the Developer breaches those obligations and retain and use such monies in 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 subclause (a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.

### 3 Release of Bank Guarantee

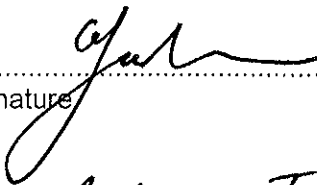
If the Developer has satisfied all of its obligations under this deed which were secured by the Bank Guarantee and the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with **clause 2(c)** of this **Schedule**, then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

Executed as a deed.

SIGNED SEALED AND DELIVERED )  
By the MINISTER FOR PLANNING AND )  
INFRASTRUCTURE in the presence of: )

  
.....  
Signature of witness

*Felicity No*  
.....  
Name of witness

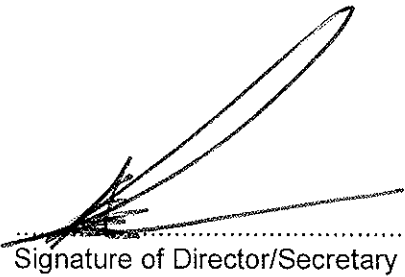
  
.....  
Signature

*Andrew Jackson*  
.....  
Name of signatory

SIGNED SEALED AND DELIVERED by )  
GRINDLEY PROPERTIES PTY LTD in )  
accordance with section 127 of the )  
Corporations Act: )

  
.....  
Signature of Director

*MW A CARSTENS*  
.....  
Name of Director

  
.....  
Signature of Director/Secretary

*ROBERT G. SOUTHGTON*  
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Name of Director/Secretary