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Agreement made at Sydney

on 12 January 2010

**Parties**

**The Minister for Planning and Infrastructure** ABN 38 755 709 681 of Level 3<sup>4</sup> Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ("Minister")

**Australasian Conference Association Ltd** ACN 000 003 930 of 148 Fox Valley Road Wahroonga NSW 2076

**AND**

**Avondale Greens Pty Ltd** ABN 33 099 742 542 of Level 3, 338 Kent Street Sydney NSW 2000

**AND**

**Avondale Greens Developments Pty Ltd** ABN 27 106 910 598 of Level 3, 338 Kent Street Sydney NSW 2000

**AND**

**Johnson Property Group Pty Limited** ABN 58 102 465 814 of Level 3, 338 Kent Street Sydney NSW 2000 ("Developer"),

(Collectively, the "Land Owners")

**Background**

- A. The Land Owners (other than the Developer and Avondale Greens Developments Pty Ltd) are ~~or will be~~ the owners of the ~~Developer Controlled~~ Land.
- B. The Developer and Avondale Greens Developments Pty Ltd control the ~~Developer Controlled~~ Land ~~and have certain arrangements in place with most of the owners of the balance of the Land that is not Developer Controlled Land.~~
- C. The Land Owners intend to develop the ~~Developer Controlled~~ Land.
- D. The Land Owners have sought a change to an environmental planning instrument (being the Lake Macquarie LEP) in respect of the Land.
- E. The Concept Plan Approval and certain Development Consents relating to the Development have been obtained.
- ~~lication has been lodged on behalf of the Land Owners in relation to the Developer Controlled Land.~~
- E. By way of this deed, the Land Owners offer to enter into a planning agreement on the terms and conditions of this deed.
- G. The Draft Determination was placed on public exhibition in January 2011.
- H. The parties agreed to amend the Planning Agreement on \_\_\_\_\_ to give effect to the revised government policy for levying contributions in relation to land in the Lower Hunter.

**Operative provisions**

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**1. Definitions and Interpretation**

**1.1 Definitions**

The meaning of capitalised terms and the provisions relating to the interpretation of the Documents are as follows:



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

**Allotment** means a lot in a Plan of Subdivision where that plan comprises the whole or any part of the Land (~~whether or not that land is Developer Controlled Land~~) which lot is intended to be developed, subject to Development Consent, by construction of residential premises.

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

**Approval** means any approvals, consents, ~~M~~modifications, Part 4A Certificates, ~~Part 3A of the Act approvals~~, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by Law for the Development or for the commencement or carrying out of works contemplated by this deed.

**ASX Listing Rules** means the listing rules established by ASX Limited ACN 008 624 691 to, inter alia, govern the admission of entities to the official list, quotation of securities, suspension of securities from quotation and removal of entities from the official list.

**Assignment and Dealing Terms** means the obligations imposed on the relevant Parties under, and by virtue of ~~Schedule 10~~Schedule 10.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 109T of the Act.

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

**Avondale School Site** means, for the purposes of paragraph 1.2 of Schedule 6, the area of land ~~that is comprised in Lot 1 in the unregistered plan of subdivision of Folio Identifier 21/DP1165277~~ hatched (in black ink) and identified as the "Avondale School Site" in the plan attached to the Deed of Amendment (2011) ~~is deed~~ at Annexure CB.

**Bank Bill Rate** means, the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Minister calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Minister which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Minister is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Minister in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Minister may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious



error in it, the "BBSY" page rate applies as the Bank Bill Rate under this deed despite any calculation by the payee under paragraph (a) or (b).

**Bank Guarantee** means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to the Minister, in the Minister's absolute and unfettered discretion, to pay the face value of that undertaking on demand.

**Bank Guarantee Delivery Date (Environmental Contribution)** means any day prior to the date of issue of a Subdivision Certificate which relates to the 101st Allotment in respect of the Land.

Base CPI means the CPI number for the quarter ending 31 March 2011.

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

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

Cash Contribution means the amount payable as determined in accordance with Item 3 in Column 1 in Table 1 in Schedule 3.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Compliance Certificate** means a certificate referred to in section 109C(1)(a) of the Act.

**Complying Development Certificate** means a complying development certificate referred to in section 85 of the Act.

**Construction Certificate** means a certificate issued under section 109C(1)(b) of the Act.

**Concept Plan Approval** means ~~the~~an Approval by the Minister to the Concept Plan dated 15 December 2008 pursuant to section 75O of the Act, in respect of the Concept Plan Application, including any ~~M~~modification of it.

**Concept Plan Application** means ~~an~~Application number 07 0147 pursuant to section 75M of the Act made by the Land Owners on 16 August 2007 to the Minister for Approval.

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

**Contribution Amount** means the amount set out in Item 1 in Column 1 in Table 1 in Schedule 3~~Schedule 3~~.

Contribution Credit means, for any Milestone, the amount agreed as the value of the Road Improvement Works to be completed as part of that Milestone as agreed by the Director-General, the Land Owners and the RTA.

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

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**Council** means the Lake Macquarie Council.

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 performs the same function and which the Minister determines, acting reasonably.

CPI Adjustment Date means 1 July 2012 and each anniversary of 1 July 2012.

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

DECC means the NSW Office of Environment and Heritage, NSW Department of Premier and Cabinet, ~~NSW Department of Environment and Climate Change~~ or any similar office or department that may be established from time to time.

Deed of Amendment (2011) means the document entitled Deed of Amendment dated between the Minister and the Land Owners.

DET means the NSW Department of Education and ~~Communities~~ Training or any similar department that may be established from time to time.

Designated State Public Infrastructure has the same meaning given to that term in clause 62 of the Lake Macquarie Local Environmental Plan 2004.

Developer means Johnson Property Group Pty Limited ABN 58 102 465 814.

~~Developer Controlled Land means the land described in Part B of Schedule 2 and, for the avoidance of doubt, forms part of the Land.~~

Development means the development of the Land for (approximately) 2,350~~500~~ Allotments pursuant to an approval to carry out that development to be granted under the Act.

Development Application has the meaning given to that term in the Act.

Development Consent has the meaning given to that term in the Act.

Development Contributions means the ~~payment of the Contribution Amount and the provision of those other~~ contributions specified in Tables 1 and 2 of ~~Schedule 3~~ Schedule 3.

Development Contributions Procedures means the development contribution procedures set out in ~~Schedule 4~~ Schedule 4 of this deed.

Development Contributions Schedule means the schedule for the Development Contributions set out in ~~Schedule 3~~ Schedule 3 of this deed.

Development Contributions Timetable means the timetable and milestones for each Development Contribution described in the table in ~~Schedule 5~~ Schedule 5 of this deed.

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

Dispute Resolution Procedures means the procedures imposed on the relevant Parties under ~~Schedule 8~~ Schedule 8.

Dora Creek Road Improvement Works means an upgrade of the Newport Road connection to Macquarie Street/Wangi Road (MR 217) at Dora Creek to provide for the additional North Cooranbong traffic generated through the area. As a minimum, this upgrade must incorporate the following design requirements:



- (a) safe and efficient access from Newport Road to and from MR217;
- (b) construction of traffic control signals or roundabout at the intersection on MR217;
- (c) adequate dual approach and departure lanes to the MR217 intersection; and
- (d) provision for pedestrians and on road cyclists,

and such other road works as may be agreed by the RTA and the Land Owners, such road works to be expressly detailed in a Road Works Agreement, and where the RTA and the Land Owners are unable to agree in respect of such other road works then such other road works as determined by the Minister.

**Draft Determination** means the draft Environmental Planning and Assessment (Special Infrastructure Contribution - Lower Hunter) Determination 2011 attached to the Deed of Amendment (2011) at Annexure E.

**Education Contribution Land** means the site comprising approximately 2.893 hectares of ~~Developer Controlled~~ Land and identified as the "~~Lot 1 Proposed Primary School Location~~" in the plan attached to the Deed of Amendment (2011) ~~is deed at~~ Annexure DB.

**Environmental Contribution** means either:

- (a) the Development Contribution set out at Item 1 of Table 1 in Schedule 3 ~~Schedule 3~~; or
- (b) if the Land Owners so elect pursuant to paragraph 3.13.1(a)(ii) of Schedule 4 ~~Schedule 4~~, the dedication of the Environmental Contribution Land to the Minister (or, if the Minister so directs, to the Minister of Environment and Climate Change) for environmental purposes.

**Environmental Contribution Land** means the site that may be dedicated to the Minister (or, if the Minister so directs, to the Minister of Environment and Climate Change) pursuant to paragraph 4.4 of Schedule 4 ~~Schedule 4~~.

**Explanatory Note** means the note exhibited with a copy of this deed, when this deed is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the *Environmental Planning & Assessment Regulation 2000* (NSW).

**Further Explanatory Note** means the note exhibited with the Deed of Amendment (2011).

**Gazettal Date** means the date that SEPP (Major Projects - North Cooranbong) Amendment 2008 was gazetted being 5 December 2008..

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

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

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

**Lake Macquarie LEP** means the Lake Macquarie Local Environmental Plan 2004.

**Land** means the land described in ~~Part A of~~ Schedule 2 ~~Schedule 2~~.

**Law** means:

- (a) the common law including principles of equity; and



- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

**Legislation** means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

**LPI** means Land and Property Information NSW or any similar department that may be established from time to time.

**Market Valuation** means the value of the Education Contribution Land as determined in accordance with paragraph 2.2A of Schedule 4.

**Milestone** means, in respect of each Road Improvement Works the milestones agreed by the Minister, the Land Owners and the RTA being such works, or such events, as comprise part of the works for that Road Improvement Works.

**Minister** means the New South Wales Minister for Planning and Infrastructure.

**Ministerial Determination** means:

- (a) a determination by the Minister pursuant to section 94EE of the Act relating to; or
- (b) an instrument, or other announcement or publication that establishes the rates at which,

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

~~**Modification** means a "modification" of the Concept Plan Approval within the meaning of section 75W of the Act.~~

**Morisset Road Improvement Works** means each of the following road works:

- (a) an upgrade of the roundabout intersection of Mandalong Road/Freemans Drive/Wyee Road/Dora Street, Morisset to traffic control signals which, as a minimum, must incorporate the following design requirements:
- (i) adequate dual approach and departure through lanes on all legs, with the departure side of the eastern leg of the intersection (Dora Street) to be extended for a minimum length of 200 metres, excluding tapers;
  - (ii) dual separate right turn lanes on all legs;
  - (iii) separate left turn slip lanes on all legs;
  - (iv) pedestrian crossings on all legs;
  - (v) provision for on-road cyclists on all legs; and
  - (vi) allowance and provision for 'double diamond' signal phasing; and
- (b) the duplication of Mandalong Road between the F3 Freeway and Freemans Drive/Wyee Road, Morisset, to provide two lanes in both directions between the F3 Freeway and Dora Street,

and such other road works as may be agreed by the RTA and the Land Owners, such road works to be expressly detailed in a Road Works Agreement, and where the RTA and the Land Owners are unable to agree in respect of such other road works then such other road works as determined by the Minister.

Net Developable Area means the net developable area of the Land comprised in a proposed plan of subdivision calculated in accordance with paragraph 2.2 of Schedule 3.

North Cooranbong Release Area means certain land at North Cooranbong, as shown edged heavy red on the map marked "State Environmental Planning Policy (Major Projects—North Cooranbong) Amendment 2008—North Cooranbong Land Application Map" deposited in the office of the Council of the City of Lake Macquarie.

NSW means the State of New South Wales.

**Occupation Certificate** means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

Other Land means each parcel of land within the North Cooranbong Release Area which was included in Schedule 2 of the Planning Agreement prior to the date of the Deed of Amendment (2011).

**Part 4A Certificate** means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the Act.

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

**Plan of Subdivision** means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

**Planning Agreement** means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2(c)2(e), comprising the form and content of this deed as amended by the Deed of Amendment (2011).

Planning Application means:

(c) a Development Application; or

(d) any other application required under the Act,

which seeks approval for the subdivision of the Land for the purpose of an Allotment.

**Practical Completion** means either:

- (a) where the expression "Practical Completion" is defined in a Road Works Agreement, the definition of "Practical Completion" in that agreement; or
- (b) where the expression "Practical Completion" is not defined in a Road Works Agreement, that stage in the execution of the Road Improvement Works under the relevant Road Works Agreement when:
  - (i) the Road Improvement Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which: