

- A. do not impede use of the Road Improvement Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
  - B. will not prejudice the convenient and safe use of the Road Improvement Works during rectification; and
  - C. the RTA's authorised representative determines that the Land Owners have reasonable grounds for not rectifying prior to public use and occupation;
- (ii) the Inspection and Testing Plan has been complied with and any other tests necessary to be carried out and passed before the Road Improvement Works, or a part thereof, is used and occupied by the public have been carried and passed and all test results and conformance data identified in the Inspection and Testing Plan has been provided to the RTA;
  - (iii) all relevant Legislative Requirements in respect of the Road Improvement Works have been carried out or satisfied;
  - (iv) all documents, certifications and information required under the relevant Road Works Agreement which, in the opinion of the RTA, are essential for the use, operation and maintenance of the Road Improvement Works have been supplied, including all shop drawings and draft As-Built Drawings, all original manufacturers' or suppliers' warranties required by the Road Works Agreement, all Approvals required to be obtained have been obtained from relevant Authorities and all other material as requested by the RTA; and
  - (v) with the approval of the RTA, the Land Owners have commissioned into operation the Road Improvement Works, including all plant incorporated into the Road Improvement Works and any traffic signalling equipment and demonstrated to the RTA that the commissioning has been successful,

on the basis that any expression used in this paragraph (b) that is not otherwise defined in this deed shall have that meaning usually given to that expression by the RTA in a Road Works Agreement.

**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).

**Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act.

**Release and Discharge Terms** means the obligations imposed on the relevant Parties under, and by virtue of, [Schedule 6](#) ~~Schedule 6~~.

**Review or Replacement Procedures** means the procedures set out in [Schedule 7](#) ~~Schedule 7~~.

**Road Improvement Works** means ~~each of~~ the Dora Creek Road Improvement Works, ~~and~~ the Morisset Road Improvement Works or any other road works agreed by the Land Owners.

the Minister and the RTA which may include any of the works listed in Appendix 1 of the Draft Determination.

**Road Works Agreement** means a works authorisation deed or other legally binding agreement between the Land Owners (or, if the RTA agrees, the Developer) and the RTA which governs the carrying out of the Road Improvement Works or any other road works agreed by the Land Owners, the Minister and the RTA which may include any of the works listed in Appendix 1 of the Draft Determination.

**RTA** means Roads & Maritime Services~~the Roads and Traffic Authority of NSW~~ or any similar department that may be established from time to time.

**Satisfactory Arrangements Certificate** means a certificate issued by the Director-General that satisfactory arrangements have been made to contribute to the provision of designated state public infrastructure in accordance with clause 62 of the Lake Macquarie Local Environmental Plan 2004.

**Security Arrangements** means those security arrangements set out in Schedule 9~~Schedule 9.~~

**SEPP (Major Projects - North Cooranbong) Amendment 2008** means the amendment to the Lake Macquarie LEP, such amendment known as the "*State Environmental Planning Policy (Major Projects - North Cooranbong) Amendment 2008*".

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

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

## 1.2 Interpretation

In the Documents:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Minister, that expression refers to them, and the obligations of the Minister under this deed bind them, jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this

deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation;
- (k) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (l) the Schedules and Annexures to this deed form part of this deed; and
- (m) if a party to this deed is made up of more than one person:
  - (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held by each of them severally; and
  - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

---

## **2. Status of this Agreement**

- (a) This deed applies to the Development.
- (b) Until the Planning Agreement operates, this deed constitutes an irrevocable offer from the Land Owners to enter into the Planning Agreement if:
  - (i) Concept Plan Approval is granted; and
  - (ii) the Lake Macquarie LEP is amended by the SEPP (Major Projects - North Cooranbong) Amendment 2008.
- (c) The Planning Agreement operates only if:
  - (i) the Concept Plan Approval is subject to a satisfactory arrangements provision as contemplated by section 75O(5) of the Act;
  - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
  - (iii) the Minister executes this deed.
- (d) The Minister must notify the Land Owners immediately after the Minister executes this deed and promptly provide the Land Owners with the deed as executed by the Minister.

---

## **3. Planning Agreement under the Act**

The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

---

## **4. Application of the Planning Agreement**

The Planning Agreement applies to:



- (a) the Land; ~~and~~
- (b) the Development; and
- (c) Other Land where the Developer acquires Other Land and has notified the Director-General in writing of the acquisition.

---

## 5. Development Contributions

The Land Owners will provide, or procure the provision of, the Development Contributions in accordance with:

- (a) the Development Contributions Schedule;
- (b) the Development Contributions Timetable; and
- (c) the terms of this deed.

---

### 5.1A Part Payment of Environmental Contribution

The Minister acknowledges and agrees the Land Owners have paid part of the Environmental Contribution in the aggregate amount of \$105,600, being the amount required to be paid prior to the date of issue of a Subdivision Certificate which relates to the 1st Allotment in respect of the Land.

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## 6. Acknowledgements

The Parties agree that:

- (a) the Minister acknowledges to the Land Owners that it is the Minister's present intention that those parts of the Development Contributions which the Land Owners pay to the Minister in cash will be made available for use or expenditure for the purposes set out in Column 2 of Table 1 of Schedule 3 ~~Schedule 3~~; and
- (b) to the extent that a Development Contribution may be described in, or implied by this deed, including clause 6(a) ~~6(a)~~, as having a particular use (intended or otherwise), the Land Owners acknowledge and agree that the Minister:
  - (i) has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose;
  - (ii) has no obligation to use or expend a Development Contribution for a particular purpose;
  - (iii) is not required to repay to the Land Owners, and the Land Owners are not entitled to a repayment of, any Development Contribution;
  - (iv) has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Minister transmits a Development Contribution to any Authority.



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## **7. Security and enforcement**

### **7.1 Security**

The Land Owners have agreed to provide security to the Minister for performance of the Land Owners' obligations under this deed on the terms and conditions of the Security Arrangements.

### **7.2 Enforcement**

- (a) This deed may be enforced by any Party in any court of competent jurisdiction.
- (b) The Land Owners covenant with the Minister that no Land Owner will rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because the Concept Plan Approval is subject to a satisfactory arrangements provision as contemplated by section 75O(5) of the Act.
- (c) The Land Owners indemnify the Minister against any liability, loss, Claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with any breach of the Land Owners' obligations under clause ~~7.2(b)~~ **7.2(b)**.
- (d) This indemnity is a continuing obligation, separate and independent from the Land Owners' other obligations and survives completion, rescission or termination of this deed.
- (e) It is not necessary for the Minister to incur expense or to make any payment before enforcing this indemnity.
- (f) The Land Owners must pay on demand any amount they must pay under this indemnity.

### **7.3 No prevention to enforcement**

For the avoidance of doubt, nothing in this deed prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
- (b) the Minister from exercising any function under any Legislation, including the Act, or any other Act or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

---

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

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

---

## **9. Interests in the ~~Developer-Controlled~~ Land**

### **9.1 Ownership**

The Land Owners represent and warrant to the Minister that, on the date of this deed, one or more of them is the legal and beneficial owner of the ~~Developer-Controlled~~ Land.

## 9.2 Registration of the Planning Agreement

- (a) The Land Owners agree to procure the registration of the Planning Agreement entered into pursuant to clause [2\(c\)2\(e\) and the Deed of Amendment \(2011\)](#), under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the ~~Developer-Controlled~~ Land in accordance with section 93H of the Act;
- (b) The Land Owners, at their own expense, will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
  - (i) the consent of each person who:
    - A. has an estate or interest in the ~~Developer-Controlled~~ Land registered under the *Real Property Act 1900* (NSW); or
    - B. is seized or possessed of an estate or interest in the ~~Developer-Controlled~~ Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,to enable the registration of the Planning Agreement [and the Deed of Amendment \(2011\)](#) under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the ~~Developer-Controlled~~ Land in accordance with section 93H of the Act;
- (c) The Land Owners, at their own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
  - (i) to procure the lodgement of the Planning Agreement with the Registrar-General as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 60 Business Days after that date; and
  - (ii) to procure the registration of the Planning Agreement [and the Deed of Amendment \(2011\)](#) by the Registrar-General either in the relevant folios of the register for the ~~Developer-Controlled~~ Land (or in the General Register of Deeds if the Planning Agreement relates to land not under the *Real Property Act 1900* (NSW)) as soon as reasonably practicable after the Planning Agreement [or the Deed of Amendment \(2011\)](#), [as the case may be](#), is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Land Owners procure the lodgement of the Planning Agreement [or the Deed of Amendment \(2011\)](#), [as the case may be](#), with the Registrar-General.

## 9.3 Release and discharge of this deed

The Minister agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.

## 9.4 Caveat

The Land Owners acknowledge and agree that:



- (a) when this deed is executed by the Land Owners, the Minister is deemed to have acquired, and the Land Owners are deemed to have granted, an equitable estate and interest in the ~~Developer Controlled~~ Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Minister has a sufficient interest in the ~~Developer Controlled~~ Land in respect of which to lodge with the LPI a caveat notifying that interest;
- (b) they will not object to the Minister lodging a caveat in the relevant folio of the Register for the ~~Developer Controlled~~ Land nor will it seek to remove any caveat lodged by the Minister, except following registration of the Planning Agreement in the relevant folios of the Register for the ~~Developer Controlled~~ Land; and
- (c) they will indemnify and keep indemnified the Minister against all Claims made against the Minister (including, without limitation, Claims made by the Land Owners or any other person who has an estate or interest in any part of the ~~Developer Controlled~~ Land registered under the Real Property Act), by virtue of or in connection to the Minister lodging a caveat in the relevant folio of the Register for the ~~Developer Controlled~~ Land prior to the registration of the Planning Agreement in the relevant folios of the Register for the ~~Developer Controlled~~ Land.

---

## 10. Review or replacement of this deed

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

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## 11. Dispute resolution

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

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## 12. GST

### 12.1 Interpretation

In this clause ~~12.12~~:

- (a) except where the context suggests otherwise, terms used in this clause ~~12.12~~ have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause ~~12.12~~; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

### 12.2 Intention of the parties

Without limiting the operation of this clause ~~12.12~~, the parties intend that:

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



### 12.3 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.

### 12.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. 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 ~~12.4.2~~.

### 12.5 Additional amount of GST payable

Subject to clause ~~12.7.1~~~~12.7~~, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this deed:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
  - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
  - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause ~~12.5.1~~~~12.5(a)~~~~(a)~~.

### 12.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause ~~12.5.1~~~~12.5~~ and clause ~~12.7.1~~~~12.7~~), varies from the additional amount paid by the Recipient under clause ~~12.5.1~~~~12.5~~, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause ~~12.6.1~~~~12.6(a)~~~~(a)~~ is deemed to be a payment, credit or refund of the GST Amount payable under clause ~~12.5.1~~~~12.5~~.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

### 12.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause ~~12.5.1~~~~12.5~~ applies is a taxable supply made by the Recipient (the

"**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause ~~12.5~~~~12.5~~ shall:

- (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
  - (ii) in any other case, be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause ~~12.5~~~~12.5~~ (or the time at which such GST Amount would have been payable in accordance with clause ~~12.5~~~~12.5~~ but for the operation of clause ~~12.7~~~~12.7(a)~~~~(a)~~).

## **12.8 No merger**

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

---

## **13. Overdue payments**

- (a) The Land Owners agree to pay the Minister interest on any amount payable by it under this deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Minister, calculated on daily balances. The rate to be applied to each daily balance is the rate 3% per annum above the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised by the Minister at intervals which the Minister determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause ~~13~~~~13~~.
- (c) The Land Owners' obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this deed.
- (d) If a liability under this deed becomes merged in a judgment or order, then the Land Owners agree to pay interest to the Minister on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause ~~13~~~~13~~.

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## **14. Release and indemnity**

- (a) The Land Owners agree that the obligation to provide the Development Contributions is at the risk of the Land Owners. The Land Owners release the Minister from any claim, liability or loss arising from, and Costs incurred in connection with, the Land Owners' obligation to provide the Development Contributions.
- (b) The Land Owners indemnify the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Land Owners'



obligations to provide the Development Contributions in accordance with this deed and/or the Minister exercising the Minister's rights under or by virtue of this deed.

- (c) The indemnity in clause ~~14(b)~~<sup>14(b)</sup> is a continuing obligation, independent of the Land Owners' other obligations under this deed and continues after this deed ends.

---

**15. Explanatory Note and Further Explanatory Note**

- (a) The Explanatory Note must not be used to assist in construing the Planning Agreement.

- (b) The Further Explanatory Note must not be used to assist in construing the Deed of Amendment (2011).

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**16. Effect of Schedulised terms and conditions**

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

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**17. General provisions**

The Parties agree to the miscellaneous and general provisions set out in ~~Schedule 12~~<sup>Schedule 12</sup>.

**Executed** as a deed.



## Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<b>Planning instrument and/or Development Application</b> - (Section 93F(1))  The Land Owners have: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Concept Plan Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of the land to which the Planning Agreement applies</b> - (Section 93F(3)(a))	The whole of the Land.
<b>Description of change to the environmental planning instrument to which the Planning Agreement deed applies</b> - (Section 93F(3)(b))	SEPP (Major Projects - North Cooranbong) Amendment 2008.
<b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> - (Section 93F(3)(c))	See <a href="#">Schedule 3</a> <del>Schedule-3</del> to <a href="#">Schedule 5</a> <del>Schedule-5</del> inclusive.
<b>Applicability of section 94 of the Act</b> - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded.
<b>Applicability of section 94A of the Act</b> - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded.
<b>Applicability of section 94EF of the Act</b> - (Section 93F(3)(d))	The application of section 94EF of the Act is <del>not</del> excluded.
<b>Mechanism for dispute resolution</b> - (Section 93F(3)(f))	See clause <a href="#">11</a> <del>11</del> and <a href="#">Schedule 8</a> <del>Schedule-8</del> .
<b>Enforcement of the Planning Agreement</b> - (Section 93F(3)(g))	See clause <a href="#">7</a> <del>7</del> and <a href="#">Schedule 9</a> <del>Schedule-9</del> .
<b>Registration of the Planning Agreement</b> (Section 93F(3)(g))  The Parties agree that the Planning Agreement will be registered in accordance with clause <a href="#">9.2</a> <del>9.2</del> .	Yes, in respect of the <del>Developer Controlled</del> Land
<b>No obligation to grant consent or exercise functions</b> - (Section 93F(9))	No obligation. See paragraph <a href="#">9</a> <del>9</del> of <a href="#">Schedule 12</a> <del>Schedule-12</del> .

## Schedule 2 - Land and Developer Controlled Land

### Part A - Land

The Land comprises the whole of the land described in the following table:

Lot	Deposited Plan	Registered Proprietor
<del>21</del>	<del>1165277595941</del>	Australasian Conference Association Ltd
11	129156	Australasian Conference Association Ltd
<del>12</del>	<del>129157</del>	<del>Australasian Conference Association Ltd</del>
<del>20</del>	<del>129159</del>	<del>Australasian Conference Association Ltd</del>
1-13	7352	Australasian Conference Association Ltd
1 to <del>4, 7, 8</del> and 10 Section 6	3533	Australasian Conference Association Ltd
1	825266	Australasian Conference Association Ltd
34	736908	Australasian Conference Association Ltd
2	517245	Australasian Conference Association Ltd
1	170378	Avondale Greens Pty Ltd
1	182756	Avondale Greens Pty Ltd
212	1037011	Avondale Greens Pty Ltd
1	348173	Avondale Greens Pty Ltd
219	755218	Avondale Greens Pty Ltd
<del>2</del>	<del>825266</del>	<del>John Raymond Dabson, Inkeri Dabson, Michael David Dabson and Andra Maree Dabson</del>
<del>+</del>	<del>329367</del>	<del>Simon Bruce Dodson and Priscilla Ruth Dodson</del>
<del>14</del>	<del>129157</del>	<del>John Raymond Dabson, Inkeri Dabson, Michael David Dabson and Andra Maree Dabson</del>
<del>+</del>	<del>301305</del>	<del>Phillip John Hitchcock and Rebecca Jane Hitchcock</del>
<del>B</del>	<del>306673</del>	<del>Frances Isabell Bryen</del>
<del>A</del>	<del>306673</del>	<del>Daryl Laurence Sheedy</del>
<del>13</del>	<del>129157</del>	<del>Ian Bruce Iselin and Cheryl Ann Iselin</del>
<del>+</del>	<del>346776</del>	<del>Lewis Volk and Debbie Ann Volk</del>
<del>2</del>	<del>346776</del>	<del>Gloria Fay Ferguson</del>
<del>21</del>	<del>129159</del>	<del>Dennis Ronald and Marilyn Dorothy Batey</del>
<del>+</del>	<del>360725</del>	<del>John Stephen Vosper</del>



Lot	Deposited Plan	Registered Proprietor
<del>1</del>	<del>363639</del>	<del>Anthony Donald Roy</del>
<del>22</del>	<del>129159</del>	<del>Kathryn Delphine Dixon</del>
<del>3</del>	<del>1029952</del>	<del>Ian George Wheatley and Valda Lorraine Wheatley</del>
<del>2</del>	<del>663728</del>	<del>Ankica Doncevie</del>
Land identified as "Unformed Council Road Reserve" in the diagram attached to this deed at Annexure C		Australasian Conference Association Ltd

### **Part B - Developer Controlled Land**

The Developer Controlled Land comprises the whole of the land described in the following table:

Lot	Deposited Plan	Registered Proprietor
<del>1</del>	<del>595941</del>	<del>Australasian Conference Association Ltd</del>
<del>11</del>	<del>129156</del>	<del>Australasian Conference Association Ltd</del>
<del>12</del>	<del>129157</del>	<del>Australasian Conference Association Ltd</del>
<del>20</del>	<del>129159</del>	<del>Australasian Conference Association Ltd</del>
<del>1-13</del>	<del>7352</del>	<del>Australasian Conference Association Ltd</del>
<del>1 to 8 and 10 Section 6</del>	<del>3353</del>	<del>Australasian Conference Association Ltd</del>
<del>1</del>	<del>825266</del>	<del>Australasian Conference Association Ltd</del>
<del>34</del>	<del>736908</del>	<del>Australasian Conference Association Ltd</del>
<del>2</del>	<del>517245</del>	<del>Australasian Conference Association Ltd</del>
<del>1</del>	<del>170378</del>	<del>Avondale Greens Pty Ltd</del>
<del>1</del>	<del>182756</del>	<del>Avondale Greens Pty Ltd</del>
<del>212</del>	<del>1037011</del>	<del>Avondale Greens Pty Ltd</del>
<del>1</del>	<del>348173</del>	<del>Avondale Greens Pty Ltd</del>
<del>219</del>	<del>755218</del>	<del>Avondale Greens Pty Ltd</del>
Land identified as "Unformed Council Road Reserve" in the diagram attached to this deed at Annexure C		Australasian Conference Association Ltd



## Schedule 3 - Development Contributions Schedule

### 1. Development Contributions

The Land Owners undertake to pay, make or provide the following Development Contributions as set out and provided for in the Table below.

Table 1 of ~~Schedule 3~~ **Schedule-3**

Column 1	Column 2
Development Contribution	Intended use
<p>Item 1. Environmental Contribution</p> <p>\$2,640,000 (as that amount is increased by movements in the CPI as provided for in <a href="#">paragraph 2.1 of this Schedule 3</a> <del>Schedule-3</del>) payable by the Land Owners in accordance with Column 2 of Item 1, Table 1 in <a href="#">Schedule 5</a> <del>Schedule-5</del> or, where the Land Owners make the election referred to in paragraph <a href="#">3.13.1(a)(a)</a> of <a href="#">Schedule 4</a> <del>Schedule-4</del>, the transfer of the Environmental Contribution Land as contemplated by paragraph 3.3 of <a href="#">Schedule 4</a> <del>Schedule-4</del>.</p>	<p><b>Environmental Contribution</b></p>
<p>Item 2. <del>Road Works</del> <b>Road Improvement</b> Contribution</p> <p><a href="#">If a Road Works Agreement is entered into for the relevant Road Improvement Works in accordance with paragraph 4 of Schedule 4, the Road Improvement Works are to be undertaken in accordance with that a Road Works Agreement with the RTA (or such other legally binding agreement), the terms and conditions of which each of the RTA and the Land Owners have agreed and the Minister has approved in her absolute and unfettered discretion, as contemplated by paragraph 4.4.1 and 4.2 of Schedule 4</a> <del>Schedule-4</del>.</p>	<p><b>Road-Improvement-<del>Road Works</del> Contribution</b></p>

<u>Item 3. Cash Contribution</u> <u>\$108,676 per hectare of Net Developable Area as provided for in paragraph 2.2 of this Schedule 3, adjusted in accordance with paragraph 2.3 of this Schedule 3 and subject to the Land Owners' rights to offset any of the Contribution Credit and the Market Valuation against its obligation to pay the Cash Contribution (or any part of it) as provided for in paragraph 2.4 in this Schedule 3.</u>	<u>Cash Contribution towards the provision of roads and other infrastructure</u>
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Table 2 of Schedule 3~~Schedule-3~~

Column 1	Column 2
Development Contribution	Intended use
Item 1. Transfer of Education Contribution Land	Land to be transferred to the Minister (or, if the Minister directs, to the Minister for Education <del>and Training</del> ) for education purposes pursuant to paragraph <u>2</u> 2 of <u>Schedule 4</u> <del>Schedule 4</del> .

## 2. Adjustment and Offset

### 2.1 Indexation

In respect of indexation by CPI in Item 1 of Column 1 of Table 1 in this Schedule 3 the following applies:

A means the dollar (\$) amount specified in Item 1 of Column 1 of ~~the~~ Table 1 in this Schedule 3~~Schedule 3~~ payable prior to indexation by CPI.

CPI means the published Consumer Price Index (Sydney - All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.

CPIA means the amount determined in accordance with the following formula:

$$\text{CPIA} = \frac{A \times C}{D} - A$$

where:

C = the most recent CPI prior to the date that payment is due to be made; and

D = the most recent CPI before the Gazettal Date,

where C is greater than D.



## **2.2 Payment**

**In respect of Item 3 of Column 1 of Table 1 in this Schedule 3 the following applies:**

- (a) Each instalment of the Cash Contribution must be paid in accordance with Item 3 of Table 1 in Schedule 5.
- (b) The amount of each instalment of the Cash Contribution is to be determined in accordance with the following formula:  
$$X = N \times \$108,676$$

Where:

X means the amount required to be paid

N means the number of hectares (including any part of a hectare) comprised in the Net Developable Area in any proposed plan of subdivision for any part of the Land
- (c) Prior to paying any instalment of the Cash Contribution, the Land Owners must provide the Director-General with certification from an independent surveyor (or other qualified person as agreed with the Director-General), confirming the Net Developable Area to which the Cash Contribution relates.
- (d) Subject to paragraphs 2.2(e) and 2.2(f) of this Schedule 3, for the purposes of the calculation and determination of the Net Developable Area, clauses 9, 10, 11 and 13 of the Draft Determination apply to this deed as if they were fully set out in this deed.
- (e) Clause 9(3)(l) of the Draft Determination applies with the following words inserted at the end of the clause:  
  
*"or may be imposed in accordance with a planning agreement within the meaning of the Act with the relevant council."*
- (f) The parties acknowledge and agree the application of clauses 9, 10, 11 and 13 of the Draft Determination to this deed are intended for the sole purpose of calculating and determining the Net Developable Area and in all other respects the Draft Determination does not apply to the Land.

## **2.3 Adjustment**

**In respect of Item 3 of Column 1 of Table 1 in this Schedule 3 the following applies:**

The amount in Item 3 of Column 1 of Table 1 in this Schedule 3 is to be adjusted on each CPI Adjustment Date, in respect of instalments of the Cash Contribution payable after that date, by multiplying that amount by the Current CPI and dividing by the Base CPI.

## **2.4 Ministerial Determination**

- (a) If a Ministerial Determination specifies a rate or method of calculation for a contribution that results in a contribution amount that is less than the amount that would have been payable under the Draft Determination, then the amount of the contribution calculated pursuant to the Ministerial Determination will be deemed to be the Cash Contribution for the purpose of this deed.



- (b) If a Ministerial Determination specifies a rate or method of calculation for a contribution that results in a contribution amount that is equal to or greater than the amount that would have been payable under the Draft Determination, then the amount of the Cash Contribution will be the amount required under this deed.

## **2.5 Cash Contribution Offset**

**In respect of Item 3 of Column 1 of Table 1 in this Schedule 3 the following applies:**

- (c) The Land Owners will be entitled to offset the:
- (i) Market Valuation; and
  - (ii) Contribution Credit,
- against the obligation to pay the Cash Contribution (or any part of it) up to the aggregate of the Market Valuation and the Contribution Credit.
- (d) The Market Valuation and the Contribution Credit are to be applied towards the Land Owners' obligation to pay any part of the Cash Contribution next payable after:
- (i) in the case of the Market Valuation, the dedication of the Education Contribution Land; and
  - (ii) in the case of the Contribution Credit relating to a certain Milestone, as from the date that relevant Milestone is satisfied in the reasonable opinion of the Minister.
- (e) Prior to application of any part of the Market Valuation and the Contribution Credit (as contemplated by this paragraph 2.5 in this Schedule 3) (**Partial Offset Amount**), that Partial Offset Amount must be increased to reflect any increase in the CPI since:
- (i) in the case of part of the Market Valuation, the date of that Market Valuation; and
  - (ii) in the case of part of the Contribution Credit relating to a certain Milestone, the date of signing of the Road Works Agreement relevant to the Road Improvement Works the subject of that Milestone,
- with the relevant amount being adjusted in accordance with paragraph 2.3 in this Schedule 3.

## Schedule 4 - Development Contribution Procedures

### 1. Land Owners' undertakings

The Land Owners:

- (a) subject to any election by the Land Owners to transfer the Environmental Contribution Land to the Minister, as contemplated by paragraph 3.1(a) of [Schedule 4](#), undertake to pay the Contribution Amount set out in Item 1 of Column 1 of Table 1 in [Schedule 3](#) to the Minister (or as the Minister directs) as contemplated by, and in accordance with, the Development Contributions Timetable;
- (b) undertake to carry out the Road Improvement Works, and comply with all its obligations under or pursuant to [the terms of any a Road Works Agreement, if it elects to carry out the Road Improvement Works, pursuant to paragraph 4 of this Schedule 4 - with the RTA \(or such other legally binding agreement\), the terms and conditions of which each of the RTA and the Land Owners have agreed and the Minister has approved in her absolute and unfettered discretion, as provided in paragraphs 4.1 and 4.2 of this Schedule 4;](#)
- (c) undertake to transfer to the Minister (or, if the Minister directs, to the Minister for Education ~~and Training~~) the Education Contribution Land and its improvements as contemplated by, and in accordance with, Item 1 of Column 1 of Table 2 in [Schedule 3](#), paragraph 22 of this [Schedule 4](#) and the Development Contributions Timetable;
- (d) if the Land Owners so elect pursuant to paragraph 3.1(a) of [Schedule 4](#), undertake to transfer to the Minister (or, if the Minister directs, to the Minister for [the Environment and Climate Change](#)) the Environmental Contribution Land and its improvements as contemplated by, and in accordance with, paragraph 33 of [Schedule 4](#);
- (e) undertake to consult regularly with the Minister, respond within a reasonable period to the Minister's questions, queries and enquiries (acting reasonably) and generally keep the Minister informed regarding the progress of the Development to the extent such matters relate to the payment, or provision, of a Development Contribution.

### 2. Education Contribution Land

#### 2.1 Education Contribution Land

The Minister and the Land Owners agree that the Land Owners must transfer the Education Contribution Land to the Minister (or, if the Minister directs, to the Minister for Education ~~and Training~~) in accordance with the Development Contribution Timetable and paragraph 2.2 of this [Schedule 4](#).

#### 2.2 Transfer of the Education Contribution Land

- (a) As soon as practicable after this deed commences to operate as provided for in clause 22, the Land Owners must (at their cost) prepare and register a Plan of Subdivision to create a separate lot or lots for the Education Contribution Land.



(b) No later than the date that the event identified in Column 2 of Table 2 of Schedule 5 occurs, the Land Owners must deliver to the Minister (or, if the Minister directs, to the Minister for Education ~~and Training~~):

- A. a form of transfer in respect of the land comprising the Education Contribution Land in favour of the Minister or, if the Minister directs in writing, to the Minister for Education ~~and Training~~, for a consideration of the Market Valuation of \$1, executed by the Land Owners and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
- B. the certificate or certificates of title for the Education Contribution Land,

and must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the Education Contribution Land to the Minister (or, where appropriate, the Minister for Education ~~and Training~~) free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

## 2.2A Land Valuation Process

(a) At least 2 months before the date that the event identified in Column 2 of Table 2 of Schedule 5 occurs, the Minister and the Land Owners must each appoint a valuer who:

- (i) is a registered valuer under the *Valuers Act 2003* (NSW) and is not restricted under that act from valuing the Education Contribution Land;
- (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
- (iii) is then practising as a valuer;
- (iv) is independent and not related to any party to this deed;
- (v) has at least 5 years experience in valuing land of a similar nature to the Education Contribution Land; and
- (vi) who has a practical understanding of the development and planning process to prepare a valuation for the Education Contribution Land,

(the Valuer).

(b) Each Valuer must prepare a valuation in accordance with this paragraph 2.2A.

(c) Any valuation provided by the Valuer must be prepared as though the Education Contribution Land was being compulsorily acquired pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

(d) In the event that the valuations vary by less than 5%, the average of the valuation amounts shall be adopted as the value for the subject land.

(e) In the event that the valuations vary by more than 5%, then the Valuers shall meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation

drivers, methodologies or inputs). Following this meeting, the Valuers shall review their valuations. If the valuations continue to vary by more than 5%, the valuation to apply to the subject land will be determined by a further Valuer appointed by the President of the Australian Property Institute (NSW Division). That further Valuer shall act as an expert and not as an arbitrator, in compliance with paragraph 2.2A(c) of this Schedule 4 and whose decision is final and binding, in the absence of manifest error.

- (f) The Land Owners must pay all costs incurred by the Minister in respect of the appointment and determination of the Valuer and, if applicable, the further Valuer who acts as an expert appointed in accordance with paragraph 2.2A(e) of this Schedule 4.

## **2.3 Servicing of Education Contribution Land**

- (a) Prior to the date of issue of a Subdivision Certificate which relates to the 700th Allotment in respect of the Land, the Land Owners must ensure that the Education Contribution Land is serviced (to the reasonable satisfaction of the Minister (or, where appropriate, the Minister for Education ~~and Training~~), in respect of water, sewer, power, telephone and kerb, gutter, footpath and sealed road to the frontage of the Education Contribution Land, to a standard appropriate for a primary school.
- (b) Once the Land Owners are of the opinion that the Education Contribution Land is serviced pursuant to paragraph 2.3(a) of this Schedule, the Land Owners must notify the Minister in writing that the Education Contribution Land is serviced to a standard appropriate for a primary school.
- (c) Within 10 Business Days of receipt by the Minister of the notice referred to in paragraph 2.3(b) of this Schedule, the Minister agrees to (or agrees to procure DET to) issue a notice in writing to the Land Owners confirming whether or not the Minister or DET is reasonably satisfied that the Education Contribution Land has been adequately serviced by the Land Owners to a standard appropriate for a primary school.
- (d) If the Land Owners:
- (i) believe the Minister (or DET, as the case may be) has acted unreasonably in breach of this paragraph 2.3; or
  - (ii) disputes the opinion of the Minister (or DET, as the case may be) set out in the notice referred to in paragraph 2.3(c) of this Schedule,
- the Land Owners must give a notice to that effect to the Minister within 5 Business Days of the notice given under and by virtue of paragraph 2.3(c) of this Schedule, and the provisions of Schedule 8 ~~Schedule 8~~ will apply to that dispute.
- (e) If the Minister (or DET, as the case may be) is not reasonably satisfied that the Education Contribution Land has been adequately serviced by the Land Owners to a standard appropriate for a primary school, the Minister agrees to (or agrees to procure DET to) promptly notify the Land Owners of the reasons for its opinion.
- (f) Upon receipt by the Land Owners of any notice referred to in paragraph 2.3(e) of this Schedule, the Land Owners must either:
- (i) as soon as practicable, service the Education Contribution Land in respect of water, sewer, power, telephone and kerb, gutter, footpath and



sealed road to the frontage of the Education Contribution Land, to a standard appropriate for a primary school; or

- (ii) promptly advise the Minister in writing that they dispute the reasons set out in the notice referred to in paragraph 2.3(e) of this Schedule, in which case the matter must be resolved in accordance with Schedule 8~~Schedule 8~~.
- (g) If, following referral of the matter to dispute resolution, it is determined that:
  - (i) the Minister (or DET, as the case may be) was entitled to be of the opinion that the Education Contribution Land has not been adequately serviced by the Land Owners to a standard appropriate for a primary school, then paragraph 2.3(f)(i) of this Schedule will apply; or
  - (ii) the Minister (or DET, as the case may be) was not entitled to be of the opinion that the Education Contribution Land has not been adequately serviced by the Land Owners to a standard appropriate for a primary school, then the Minister must (or must procure DET to) reconsider whether the Education Contribution Land has been adequately serviced by the Land Owners (to the reasonable satisfaction of the Minister (or, where appropriate, the Minister for Education and Training) to a standard appropriate for a primary school in accordance with the terms of this deed.

## 2.4 Compulsory Acquisition

- (a) If the Land Owners do not transfer the Education Contribution Land as required by this deed, the Land Owners consent to the Minister (or the Minister for Education and Training) compulsorily acquiring the whole or any part of the Education Contribution Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Land Owners and the Minister agree that:
  - (i) this paragraph 2.4 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) in this paragraph 2.4 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Except as otherwise agreed between the Land Owners and DET, the Land Owners must ensure that the Education Contribution Land is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges), on the date that the Land Owners are liable to transfer the Education Contribution Land to the Minister (or, if the Minister directs, to the Minister for Education and Training) in accordance with paragraph 2.2 of this Schedule 4~~Schedule 4~~.
- (d) The Land Owners indemnify and keep indemnified the Minister and the Minister for Education and Training against all Claims made against the Minister or the Minister for Education and Training as a result of any acquisition by the Minister or the Minister for Education and Training of the whole or any part of the Education Contributions Land under paragraph 2.4.

- (e) The Land Owners must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister or the Minister for Education ~~and Training~~ acquiring the whole or any part of the Education Contribution Land as contemplated by this paragraph 2.4.

### **3. Environmental Contribution Land**

#### **3.1 Environmental Contribution and Environmental Contribution Land**

- (a) Subject to paragraph 3.3(a) of this Schedule, at any time prior to the date of issue of a Subdivision Certificate which relates to the 101st Allotment in respect of the Land, the Land Owners must notify the Minister in writing whether they will:
- (i) pay the Environmental Contribution in the manner set out in Item 1 of Table 1 of ~~Schedule 5~~ Schedule 5; or
  - (ii) transfer the Environmental Contribution Land to the Minister (or, if the Minister directs, to the Minister for the Environment ~~and Climate Change~~) as contemplated by paragraph 3.3 of this ~~Schedule 4~~ Schedule 4.
- (b) If the Landowners have:
- (i) paid to the Minister that part of the Environmental Contribution set out in paragraph (a) of Item 1 in Column 2 of Table 1 in ~~Schedule 5~~ Schedule 5; and
  - (ii) elected to transfer the Environmental Contribution Land to the Minister (or, if the Minister directs, to the Minister for the Environment ~~and Climate Change~~) pursuant to paragraph 3.1(a),
- that amount paid by the Land Owners as part of the Environmental Contribution, which is held by the Minister, will be refunded to the Land Owners within 30 days of completion of the transfer of the Environmental Contribution Land.
- (c) If no notification is given by the Land Owners prior to the date referred to in paragraph 3.1(a) of this Schedule, the Land Owners will be deemed to have elected to pay the Environmental Contribution set out in Item 1 of Table 1 of ~~Schedule 5~~ Schedule 5, rather than transferring the Environmental Contribution Land to the Minister as contemplated by paragraph 3.3 of this Schedule.

#### **3.2 Location of the Environmental Contribution Land**

- (a) Prior to the Land Owners notifying the Minister that they will transfer the Environmental Contribution Land to the Minister (or, if the Minister directs, to the Minister for the Environment ~~and Climate Change~~) pursuant to paragraph 3.1(a)(ii) of this Schedule:
- (i) the Land Owners must nominate to the Minister the land they propose to comprise the Environmental Contribution Land; and
  - (ii) the Minister must notify the Land Owners, in writing, whether or not she agrees that the land so nominated by the Land Owners to comprise the proposed Environmental Contribution Land is accepted as the land to comprise the Environmental Contribution Land.
- (b) The Land Owners agree that they must not give any notification to the Minister as provided for in paragraph 3.1(a)(ii) unless and until the Minister has agreed with the