

Land Owners the area and location of the land to comprise the Environmental Contribution Land.

- (c) The Land Owners acknowledge that the Minister may make its approval of the area and location of the land to comprise the Environmental Contribution Land conditional on certain conditions.
- (d) Where:
 - (i) the Minister makes its approval of the area and location of the land to comprise the Environmental Contribution Land conditional on certain conditions; and
 - (ii) the Land Owners notify 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,

then the Land Owners are taken to have agreed to the conditions of the Minister's approval of the area and location of the land to comprise the Environmental Contribution Land.

- (e) The Land Owners agree to provide the Minister and its contractors and agents access to the land they propose to comprise the Environmental Contribution Land after the date of this deed for the purpose of determining whether or not the location of that part of the ~~Developer Controlled~~ Land is suitable to dedicate to the Minister (or, if the Minister directs, to the Minister for the Environment-and-Climate Change).

3.3 Transfer of the Environmental Contribution Land

- (a) As soon as reasonably possible after the Minister has approved the location for the Environmental Contribution Land, the Land Owners must (at their cost and risk) prepare and register a Plan of Subdivision to create a separate lot or lots for the Environmental Contribution Land.
- (b) If the Land Owners elect 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 3.13.1(a)(ii)(iii) of this Schedule, no later than the date of issue of a Subdivision Certificate which relates to the 101st Allotment in respect of the Land, the Land Owners and the Minister must:
 - (i) agree the terms upon which the Environmental Contribution Land will be transferred to the Minister (or, if the Minister directs, to the Minister for the Environment-and-Climate Change); and
 - (ii) agree the terms of, and enter into, the contract in respect of the transfer of the Environmental Contribution Land to the Minister (or, if the Minister directs, to the Minister for the Environment-and-Climate Change).

4. Road Contributions

4.1 Dora Creek Road Improvement Works

If the Land Owners agree with the Minister and the RTA all arrangements to carry out the Dora Creek Road Improvement Works:

- (a) The Land Owners must:
- (i) enter into a Road Works Agreement with the RTA, or such other legally binding agreement, the terms and conditions of which:
 - A. each of the RTA and the Land Owners have agreed; and
 - B. the Minister has approved in her absolute and unfettered discretion,
 in respect of the carrying out and completion of the Dora Creek Road Improvement Works; and
 - (ii) achieve Practical Completion of the Dora Creek Road Improvement Works,
- by the date of issue of a Subdivision Certificate which relates to the 300th Allotment in respect of the Land. The Land Owners must notify the Minister promptly following entry into an agreement as contemplated by paragraph [4.1\(a\)\(i\)](#) ~~4.1(a)(i)~~ of this Schedule, and provide the Minister with a copy of that agreement.
- (b) The Land Owners must comply with the terms and conditions of that agreement, including any requirements to provide security and achieve Practical Completion of the Dora Creek Road Improvement Works.
- (c) If the Land Owners have not achieved Practical Completion of the Dora Creek Road Improvement Works by the date specified in paragraph [4.1\(a\)\(i\)](#) ~~4.1(a)~~ of this Schedule, the Land Owners are deemed to be in default of this deed, without the need for the Minister to issue a notice of default on each of the Land Owners.

4.2 Morisset Road Improvement Works

If the Land Owners agree with the Minister and the RTA all arrangements to carry out the Morisset Road Improvement Works:

- (a) The Land Owners must:
- (i) enter into a Road Works Agreement with the RTA, or such other legally binding agreement, the terms and conditions of which:
 - A. each of the RTA and the Land Owners have agreed; and
 - B. the Minister has approved in her absolute and unfettered discretion,
 in respect of the carrying out and completion of the Morisset Road Improvement Works; and
 - (ii) achieve Practical Completion of the Morisset Road Improvement Works,
- by the date of issue of a Subdivision Certificate which relates to the 1,000th Allotment in respect of the Land.
- (b) The Land Owners must notify the Minister promptly following entry into an agreement as contemplated by paragraph [4.2\(a\)\(i\)](#) ~~4.2(a)(i)~~ of this Schedule, and provide the Minister with a copy of that agreement.

- (c) The Land Owners must comply with the terms and conditions of that agreement, including any requirements to provide security and achieve Practical Completion of the Morisset Road Improvement Works.
- (d) If the Land Owners have not achieved Practical Completion of the Morisset Road Improvement Works by the date specified in paragraph 4.2(a)~~4.2(a)~~ of this Schedule, the Land Owners are deemed to be in default of this deed, without the need for the Minister to issue a notice of default on each of the Land Owners.

4.3 Other Road Improvement Works

At any time prior to the creation of the 398th Allotment, the Land Owners may, in writing, request the Director-General's approval, on behalf of the Minister (which is not to be unreasonably withheld) to enter into a Road Works Agreement to undertake Road Improvement Works, not being the Dora Creek Road Improvement Works nor the Morisset Road Improvement Works.

4.4 Road Improvement Works Contribution Credit

- (a) At or about the time the Land Owners enter into any Road Works Agreement, the Land Owners and the Director-General must agree in writing, the Contribution Credit to be attributed to each Milestone relevant to that Road Works Agreement.
- (b) The Land Owners must provide an estimate of the cost of the relevant Road Improvement Works prepared by an independent quantity surveyor, at the Land Owners' cost. The parties will have regard to that estimate in determining the Contribution Credit to be attributed to achieving each Milestone of the relevant Road Improvement Works.
- (c) Any of the Road Improvement Works and the Contribution Credit may be varied at any time by the Land Owners so long as the Director-General has given written approval to the varied Road Improvement Works and revised Contribution Credit prior to the relevant Road Improvement Works commencing.

Schedule 5 - Development Contributions Timetable

Table 1 - Contribution Amount

Column 1	Column 2
Development Contribution	Date for payment of Contribution Amount
Item 1: Item 1 of Table 1 in Schedule 3 Schedule-3	<p>(a) \$105,600 (as that amount is increased by movements in the CPI pursuant to Schedule 3Schedule-3) prior to the date of issue of a Subdivision Certificate which relates to the 1st Allotment in respect of the Land; and</p> <p>(b) if the Land Owners elect not to transfer the Environmental Contribution Land pursuant to paragraph 33 of Schedule 4Schedule-4, \$2,534,400 (as that amount is increased by movements in the CPI pursuant to Schedule 3Schedule-3) prior to the date of issue of a Subdivision Certificate which relates to the 101st Allotment in respect of the Land.</p>
Item 2: Item 2 of Table 1 in Schedule 3 Schedule-3	<u>If a Road Works Agreement is entered into for Theany Road Improvement Works in accordance with paragraph 4 of Schedule 4, the Road Improvement Works will be undertaken by the Land Owners pursuant to the relevant Road Works Agreement and in the case of the Dora Creek Road Improvement Works and the Morisset Road Improvement Works pursuant to paragraphs 4.14.1 and 4.24.2 of Schedule 4Schedule-4, as is relevant.</u>
Item 3: Item 3 of Table 1 in Schedule 3	<u>To be paid, in relation to any Subdivision Certificate, progressively in instalments in relation to each hectare of Net Developable Area (or any part thereof) comprised in a proposed plan of subdivision for any part of the Land prior to the issue of the Subdivision Certificate which relates to that part of the Land.</u>

Table 2 - Education Contribution Land

Column 1	Column 2
Development Contribution	Date for transfer or dedication of the Education Contribution Land
Item 1: Item 1 of Table 2 in Schedule 3 Schedule-3	<u>At any time P</u> rior to the date of issue of a Subdivision Certificate which relates to the 300th Allotment in respect of the Land.

Schedule 6 - Release and Discharge Terms

1.1 Release and Discharge Terms

- (a) Once the Land Owners have:
- (i) paid the Contribution Amount;
 - (ii) ~~paid the Cash Contribution~~ achieved Practical Completion of the Dora Creek Road Improvement Works pursuant to a Road Works Agreement (or such other legally binding agreement) entered into by the Land Owners in respect of the Dora Creek Road Improvement Works;
 - (iii) if applicable, achieved Practical Completion of the ~~Morisset~~ Road Improvement Works pursuant to each Road Works Agreement ~~(or such other legally binding agreement)~~ entered into by the Land Owners and the RTA in respect of the Morisset Road Improvement Works;
 - (iv) transferred the Education Contribution Land; and
 - (v) transferred the Environmental Contribution Land (if the Land Owners so elect pursuant to paragraph ~~3.13-1(a)~~ of ~~Schedule 4~~ Schedule 4),

all as required by this deed, and any default by the Land Owners under the Planning Agreement has been remedied by the Land Owners or waived by the Minister, the Minister must promptly, at the request and cost of the Land Owners:

- A. provide a release and discharge of the Planning Agreement and the Deed of Amendment (2011) to the extent that the Planning Agreement affects the ~~Developer Controlled Land owned by the Land Owner~~; and
 - B. do all things necessary to enable the extinguishment of the Planning Agreement and the Deed of Amendment (2011) from title of that ~~Developer Controlled Land~~.
- (b) From time to time, the Land Owners may request the Minister to provide a release and discharge of the Planning Agreement and the Deed of Amendment (2011) to the extent the Planning Agreement and the Deed of Amendment (2011) affects an Allotment where the Land Owners have fully satisfied its obligations under this deed (including paying the Contribution Amount and Cash Contribution due and payable) in respect of that Allotment, and where the Land Owners are not otherwise in default of any of their obligations under this deed, at the time of the Land Owners' request.
- (c) The Minister is required to provide a release and discharge of the Planning Agreement and the Deed of Amendment (2011) in respect of any Allotment (or procure the removal of registration of the Planning Agreement and the Deed of Amendment (2011) from title of that Allotment) if the Minister is satisfied that the Land Owners are not otherwise in default of their obligations under this deed at the time of the Land Owners' request.

1.2 Release and Discharge of Avondale School Site

The Land Owners and the Minister each acknowledge and agree that:

- (a) the Avondale School Site is not intended to form part of the ~~Developer-Controlled~~ Land;
- (b) the Land Owners must (at their cost and risk) prepare and register a Plan of Subdivision to create a separate lot for the Avondale School Site;
- (c) following the creation of that separate lot for the Avondale School Site, the Minister must promptly, at the request and cost of the Land Owners:
 - (i) provide a release and discharge of the Planning Agreement and the Deed of Amendment (2011) to the extent that each of the Planning Agreement and the Deed of Amendment (2011) affects the Avondale School Site; and
 - (ii) do all things necessary to enable the extinguishment of the Planning Agreement and the Deed of Amendment (2011) from the title of the Avondale School Site.

Schedule 7 - Review or Replacement Procedures

- (a) The Parties may agree to review this deed.
- (b) Any review or modification will be conducted in the circumstances and in the manner determined by the Parties.
- (c) For clarity:
 - (i) no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the Parties; and
 - (ii) any modification must be made pursuant to paragraph 12.12 of Schedule 12.

Schedule 8 - Dispute resolution

1. Notice of Dispute

If a dispute between any of the Parties arises in connection with this deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.

The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

2. Further steps required before proceedings

- (a) Any dispute between the Parties arising in connection with this deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation by a mediator agreed from time to time by each Party to the dispute.
- (b) If the Parties to the dispute cannot agree on a mediator within 10 Business Days of receipt by the relevant Party of the notice referred to in paragraph ~~22(u)(ii)~~, any Party may request LEADR (or, if LEADR does not exist, an equivalent replacement organisation to that of LEADR) to appoint a mediator.
- (c) Each party must use its best efforts to resolve the dispute by a mediation procedure to be agreed upon by each Party to the dispute.
- (d) If mediation does not result in the resolution of the dispute within 30 Business Days of the notice referred to in paragraph ~~22(u)(ii)~~ (or such longer period as the Parties agree in writing), then any Party is entitled to commence litigation in respect of that dispute.

3. Disputes for expert determination

If the mediation referred to in paragraph ~~22~~ has not resulted in settlement of the dispute, any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph ~~44~~, such expert to act in accordance with the requirements of this ~~Schedule 8~~ Schedule 8.

4. Choice of expert

- (a) A dispute to be referred to an expert in accordance with paragraph ~~33~~ must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph ~~33~~, appointed by the President or other senior officer for the time being of the body administering the relevant field.

- (b) If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

5. Requirements for expert

- (a) The expert appointed to determine a dispute:
- (i) must have a technical understanding of the issues in contest;
 - (ii) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
 - (iii) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (b) The Parties must enter into an agreement with the expert appointed under this ~~Schedule 8~~ Schedule 8 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

6. Directions to expert

In reaching a determination in respect of a dispute under paragraph 33, the independent expert must give effect to the intent of the Parties entering into the Planning Agreement.

7. Expert not arbitrator

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

8. Compliance with directions

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

9. Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

10. Expert may convene meetings

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (d) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

11. Final determination of expert

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

12. Other courses of action

If the mediation referred to in paragraph 22 or the expert determination required or agreed under paragraph 33 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

13. Confidentiality of information

- (a) The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (i) subject to paragraph ~~(ii)~~(iii) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
 - (ii) not to disclose any confidential documents, information and other material except:
 - A. to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph ~~13.1.3~~; or
 - B. if required by Law or the ASX Listing Rules to do so; or
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
 - (ii) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
 - (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

Schedule 9 - Security Arrangements

1. Bank Guarantee and Cash Deposit

1.1 Face value of Bank Guarantees - Environmental Contribution Land Development Contributions

- (a) Where the Land Owners elect to transfer the Environmental Contribution Land to the Minister (or, if the Minister directs, to the Minister for the Environment and Climate Change) in accordance with paragraph 3.13.1(a)(ii)(iii) of Schedule 4~~Schedule 4~~, prior to the Bank Guarantee Delivery Date (Environmental Contribution), the Land Owners must procure and provide to the Minister one or more Bank Guarantees having a (or an aggregate) face value of an amount equivalent to \$2,640,000 unless the Environmental Contribution Land has been transferred to the Minister (or, if the Minister directs, to the Minister for the Environment and Climate Change) prior to the Bank Guarantee Delivery Date (Environmental Contribution).
- (b) The Land Owners and the Minister acknowledge and agree that any Bank Guarantee required to be provided by the Land Owners under paragraph 1.1.1(a)~~1.1.1(a)~~:
- (i) secures the Land Owners' obligations to 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 Schedule 4~~Schedule 4~~; and
 - (ii) will be returned to the Land Owners once the Land Owners have transferred 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 Schedule 4~~Schedule 4~~.

1.1A Face value of Bank Guarantee - Cash Contribution

- (a) The Bank Guarantees to be provided under this paragraph 1.1A of Schedule 9 must name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 861" as the relevant beneficiaries.
- (b) At any one time, the Land Owners must ensure the Minister is in receipt of Bank Guarantees that equal the amount of security determined under paragraph 1.1A(e) of this Schedule 9.
- (c) The Land Owners must procure and provide to the Minister one or more Bank Guarantees having a (or an aggregate) face value of an amount equivalent to \$428,414.67 (Base Security Bank Guarantee) prior to the date of issue of a Subdivision Certificate which relates to the 48th Allotment as security for the Land Owner's obligations under this deed.
- (d) The Land Owners must procure and provide one or more Bank Guarantees (other than the Base Security Bank Guarantee) to the Minister in respect of each relevant Planning Application to be lodged after the date of this deed, either:
- (i) prior to the issue of a Satisfactory Arrangements Certificate in relation to that Planning Application; or

(ii) where such a Satisfactory Arrangements Certificate is not required, within 10 Business Days of lodging that Planning Application with the relevant consent authority.

That additional Bank Guarantee or Bank Guarantees will further secure the Land Owners' obligations to pay the Cash Contribution in relation to the proposed Allotments the subject of that Planning Application.

(e) The face value of the Bank Guarantees required under paragraph 1.1A(d) of this Schedule 9 is to be calculated in accordance with the following formula (but after taking into account any offsets to which the Land Owners have become entitled under paragraph 2.5 of Schedule 3):

$$\text{\$BCA} = (\$20,974,468 \times A) - \$428,414.67$$

Where:

\\$BCA is the face value of all relevant Bank Guarantees

A is the percentage of the area of Net Developable Area of the Land the subject of the relevant Planning Applications as a proportion of the area of the Net Developable Area of the Land

If \\$BCA is less than 0 then the \\$BCA is deemed to be \$428,414.67

Note: the Land Owners may provide separate Bank Guarantees in circumstances where multiple Planning Applications have been lodged.

(f) The Land Owners and the Minister acknowledge and agree that any Bank Guarantee required to be provided by the Land Owners under this paragraph 1.1A of Schedule 9 will be returned to the Land Owners:

(i) once the Land Owners have paid the whole of the relevant Cash Contribution to which the Bank Guarantee relates; or

(ii) where the Land Owners have entered into a Road Works Agreement and the security provided by the Land Owners under the relevant Road Works Agreement is equal to or exceeds the outstanding relevant Cash Contribution.

(g) The Minister agrees that it will request the Director-General to act reasonably and issue more than one Satisfactory Arrangement Certificate in respect of any Planning Application where the Land Owners agree with Council that the land the subject of that Planning Application may be developed in stages, upon the basis that a Satisfactory Arrangement Certificate may be issued, and found acceptable to the Council, in relation to the development of different stages or different parts of the Land the subject of that Planning Application.

1.2 Reduction or replacement

At the request of the Land Owner, ~~the~~ the Minister agrees that the face value of any Bank Guarantee provided by the Land Owners will reduce in amount, or be replaced by Bank Guarantees with face values of reduced amounts, as determined by the Minister, acting reasonably, having regard to payments of the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed ~~the Contribution Amount secured by that Bank Guarantees and~~ made by the Land Owners from time to time and in the case of Bank

Guarantees provided pursuant to paragraph 1.1A of this Schedule 9, having regard the security provided by the Land Owners under the relevant Road Works Agreement.

1.3 Expiry of Bank Guarantees

- (a) If any Bank Guarantees provided by the Land Owners are expressed as expiring on a certain date, the Land Owners must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph ~~1.4~~ 1.4.
- (b) The provision of the Bank Guarantee does not:
 - (i) relieve the Land Owners from any of the obligations to be complied with on its part under any other provision of this deed;
 - (ii) limit the right of the Minister to recover from the Land Owners in full all money payable to the Minister under this deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister.

1.4 Failure to replace expired Bank Guarantee

If the Land Owners fail to provide the Minister with a replacement Bank Guarantee in accordance with paragraph ~~1.3(a)~~ 1.3(a), the Minister may call on the full amount of any Bank Guarantee held by the Minister after giving 20 Business Days prior written notice to the Land Owners.

1.5 Cash deposit

- (a) If the Minister makes demand under any Bank Guarantee pursuant to paragraph ~~1.4~~ 1.4, the Minister must hold the full amount so paid to the Minister as a cash deposit ("**Cash Deposit**") in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 (Cth) in the name of the Minister and with beneficial ownership vesting at all times in the Minister ("**Cash Deposit Account**"). The Cash Deposit will operate to secure all the obligations of the Land Owners in respect of the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed.
- (b) As beneficial owner of the Cash Deposit, the Minister may, at any time and without notice to the Land Owners, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Minister for any liability, loss, cost, charge or expense incurred by the Minister because of failure by the Land Owners to comply with their obligations in relation to the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed~~under paragraph 4.1 of Schedule 4.~~
- (c) All costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Minister withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Minister under this deed and the Land Owners have satisfied all of their obligations under this deed to comply with their obligations in relation to the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed~~under paragraph 4.1 of Schedule 4,~~ the Minister must pay the balance of the Cash Deposit Account, less all costs,

charges, duties and taxes payable in connection with such payment, to the Land Owners.

- (e) For the avoidance of doubt, the Land Owners have no right to require the Minister to release the Cash Deposit until the Minister is reasonably satisfied that the Land Owners have complied with all their obligations in relation to the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed~~under paragraph 4.1 of Schedule 4.~~

1.6 Release of Cash Deposit

The Minister must release the Cash Deposit to the Land Owners if the Land Owners provide the Minister with a replacement Bank Guarantee complying with the requirements of paragraphs 1.1~~1.1~~ and 1.2~~1.2~~.

1.7 Claims under Bank Guarantees

The Parties agree that:

- (a) the Minister may make claims under each of the Bank Guarantees required to be provided under paragraphs 1.1(a)~~1.1(a)~~ and 1.1A of this Schedule 9~~Schedule 9~~, at any time and from time to time, if the Land Owners fail to comply with their obligations in relation to the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed~~under paragraph 3.1(a) of Schedule 4~~; and
- (b) the Minister agrees not to make any claim under any Bank Guarantee without providing at least 3 Business Days' prior written notice to the Land Owners of their intention to do so.

1.8 Base Security Bank Guarantee

Despite anything else in this schedule, the Base Security Bank Guarantee will only be released once the Land Owners have complied with all of their obligation under this deed, which may include the provision of security under a Road Works Agreement.

Schedule 10 - Assignment and Dealing Terms

1.1 Land Owners' right to sell ~~Developer-Controlled~~ Land

- (a) The Land Owners must not sell, transfer or dispose of the whole or any part of the ~~Developer-Controlled~~ Land otherwise than in circumstances where paragraph ~~1.2+2~~ applies, unless before it sells, transfers or disposes of any such part of the ~~Developer-Controlled~~ Land to another person ("**Transferee**"):
- (i) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable of complying with such of the Land Owners' obligations under this deed (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
 - (ii) the rights of the Minister under this deed are not diminished or fettered in any way;
 - (iii) the Transferee signs a deed in the form set out in Annexure ~~F to the Deed of Amendment (2011)~~^A to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Land Owners (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
 - (iv) the Minister is satisfied that it holds appropriate security (by way of Bank Guarantees as contemplated by ~~Schedule 9~~^{Schedule 9}) to secure the Land Owners' obligations in relation to the relevant Development Contribution to which the relevant Bank Guarantee relates under this deed~~to transfer the Environmental Contribution Land or to pay the Environmental Contribution in the manner set out in Item 1 of Table 1 of Schedule 5 (as the case may be);~~
 - (v) if applicable, the Minister is satisfied that the Land Owners are performing their obligations under paragraph ~~44~~ of ~~Schedule 4~~^{Schedule 4} in respect of the carrying out and completion of the Road Improvement Works as required by this deed;
 - (vi) any default by the Land Owners have been remedied by the Land Owners or waived by the Minister; and
 - (vii) the Land Owners and the Transferee pay the Minister's reasonable Costs in relation to that assignment.

1.2 Release

If the Land Owners sell, transfer or dispose of the whole or any part of the ~~Developer-Controlled~~ Land and fully satisfy the requirements of paragraph ~~1.1+1~~ of this ~~Schedule 10~~^{Schedule 10}, the Land Owners will be released from their obligations under this deed with respect to that ~~Developer-Controlled~~ Land being sold, transferred or disposed of.

Schedule 11 - Costs

The Land Owners to pay their own Costs and the Minister's Costs in connection with the negotiation, preparation, execution, stamping, notification and registration of documents in relation to this deed and the Deed of Amendment (2011).

Schedule 12 - General terms

1. Notices

1.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under the Planning Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

Minister

Address: 22-33 Bridge Street
Sydney, NSW, 2000

Telephone: (02) 9228 6111

Fax: (02) 9228 6195

Attention: Director-General

Land Owners

Australasian Conference Association Ltd:

Address: 148 Fox Valley Road Wahroonga NSW 2076

Telephone: (02) 9847 3383

Fax: (02) ~~fax:~~ 9489 0943

Attention: Company Secretary

Avondale Greens Pty Ltd:

Address: Level 3, 338 Kent Street Sydney NSW 2000

Telephone: (02) 8023 8888

Fax: (02) 8023 8800

Attention: Managing Director

Avondale Greens Developments Pty Ltd:

Address: Level 3, 338 Kent Street Sydney NSW 2000

Telephone: (02) 8023 8888

Fax: (02) 8023 8800

Attention: Managing Director

Johnson Property Group Pty Limited:

Address: Level 3, 338 Kent Street Sydney NSW 2000
Telephone: (02) 8023 8888
Fax: (02) 8023 8800
Attention: Managing Director

1.2 Change of address

If a Party gives another Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

1.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; or
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

1.4 Receipt - next Business Day

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

2. Approvals and Consent

Except as otherwise set out in this deed, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this deed in her absolute and unfettered discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

3. Assignment and dealings

None of the Parties to this deed may assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied in each case unless stated otherwise in [Schedule 10](#)~~Schedule 10~~.

4. Costs

The costs regarding the negotiation, preparation, execution, stamping, [notification](#) and registration of documents in relation to this deed [and the Deed of Amendment \(2011\)](#) are to be borne by the Land Owners as set out in [Schedule 11](#)~~Schedule 11~~.

5. Entire Agreement

This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before the Planning Agreement was executed, except as permitted by Law.

6. Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this deed and all transactions incidental to it.

7. Governing Law and Jurisdiction

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

8. Joint and individual liability and benefits

Except as otherwise set out in this deed, any agreement, covenant, representation or warranty under this deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

9. No fetter

Nothing in this deed is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing this deed imposes any obligation on a Consent Authority to:
 - (i) grant Development Consent or Concept Plan Approval; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

10. Representations and warranties

- (a) The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any Law.
- (b) The Parties agree that the Minister enters into this deed for and on behalf of the State of New South Wales and for the benefit of the State Government as a juristic entity.

11. Severability

- (a) If any part of this deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (b) If any part of the Planning Agreement is illegal, unenforceable or invalid, that part is to be treated as removed from this deed, but the rest of this deed is not affected.

12. Modification

No modification of this deed will be of any force or effect unless it is in writing and signed by the Parties as a deed.

13. Waiver

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

14. The Planning Agreement not confidential

The Parties agree that the terms of this deed and the Planning Agreement are not confidential and this deed and the Planning Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

Executed as a deed

Executed by Australasian Conference Association Ltd in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Executed by Avondale Greens Pty Ltd in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Sole Director and Secretary

Name of Sole Director and Secretary

Executed by Avondale Greens Developments Pty Ltd in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Sole Director and Secretary

Name of Sole Director and Secretary

Executed by Johnson Property Group Pty Ltd in accordance with section 127 of the *Corporations Act* by or in the presence of:

Signature of Sole Director and Secretary

Name of Sole Director and Secretary

Signed by The Honourable Brad Hazzard~~Kristina Keneally~~ M.P.

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

Signature of Witness

Name of Witness in full

The Honourable Brad Hazzard~~Kristina Keneally~~ M.P.
Minister for Planning and Infrastructure

| **Annexure A - Deed**

Annexure B - Education Contribution Land and Avondale School Site

Annexure C - Unformed Council Road Reserve

As delegate of Minister
for Planning and
Infrastructure



[Signature]
Sole Director



[Signature]
Sole Director

[Signature]
Sole Director

Arondale Greens Pty Ltd

[Signature] DIRECTOR ACA Ltd

For AUSTRALASIAN CONFERENCE ASSOCIATION LTD

[Signature]
John Stilinovic Secretary

Annexure B - Planning Agreement (Clean)

CLAYTON UTZ

Planning Agreement

The Minister for Planning and Infrastructure
ABN 38 755 709 681

Minister

*As delegate of the
Minister for
Planning and
Infrastructure*

Australasian Conference Association Ltd
ACN 000 003 930

and

Avondale Greens Pty Ltd
ABN 33 099 742 542

and

Avondale Greens Developments Pty Ltd
ABN 27 106 910 598

and

Johnson Property Group Pty Limited
ABN 58 102 465 814

Collectively, the Land Owners



[Signature]
Sole Director

[Signature]
Sole Director

[Signature]
Sole Director
Avondale Greens Pty Ltd

The Clayton Utz contact for this document is
Gary Best on +61 2 9353 4000

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T +61 2 9353 4000 F +61 2 8220 6700

[Signature]
DIRECTOR ACA Ltd
www.claytonutz.com
Our reference 15266/15992/80083482

For AUSTRALASIAN CONFERENCE ASSOCIATION LTD

[Signature]
John Stilianovic Secretary

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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 33 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 the owners of the Land.
- B. The Developer and Avondale Greens Developments Pty Ltd control the Land.
- C. The Land Owners intend to develop the 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.
- F.
- G.
- H. By way of this deed, the Land Owners offer to enter into a planning agreement on the terms and conditions of this deed.
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Operative provisions

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 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, modifications, Part 4A Certificates, 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.

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 comprised in Lot 1 in the unregistered plan of subdivision of Folio Identifier 21/DP1165277 attached to the Deed of Amendment (2011) at Annexure C.

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 Approval by the Minister to the Concept Plan dated 15 December 2008, in respect of the Concept Plan Application, including any modification of it.

Concept Plan Application means Application number 07_0147 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.

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 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 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.

Development means the development of the Land for (approximately) 2,350 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 contributions specified in Tables 1 and 2 of Schedule 3.

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

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

Development Contributions Timetable means the timetable and milestones for each Development Contribution described in the table in 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.

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 Land and identified as "Lot 1" in the plan attached to the Deed of Amendment (2011) at Annexure D.

Environmental Contribution means either:

- (a) the Development Contribution set out at Item 1 of Table 1 in Schedule 3; or
- (b) if the Land Owners so elect pursuant to paragraph 3.1(a) of 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 of 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 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.

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), 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:
 - 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.

Review or Replacement Procedures means the procedures set out in Schedule 7.

Road Improvement Works means the Dora Creek Road Improvement Works, 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 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.

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;
- (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.

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; and
- (b) to the extent that a Development Contribution may be described in, or implied by this deed, including clause 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.

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).

- (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.

9. Interests in the 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 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) and the Deed of Amendment (2011), under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the 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 Land registered under the *Real Property Act 1900* (NSW); 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 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 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 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 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 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 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 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 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 Land prior to the registration of the Planning Agreement in the relevant folios of the Register for the 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.

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.

12. GST

12.1 Interpretation

In this clause 12:

- (a) except where the context suggests otherwise, terms used in this clause 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; 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, 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.

12.5 Additional amount of GST payable

Subject to clause 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(a).

12.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.5 and clause 12.7), varies from the additional amount paid by the Recipient under clause 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(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 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 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 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 (or the time at which such GST Amount would have been payable in accordance with clause 12.5 but for the operation of clause 12.7(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.
- (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.

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) 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).

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.

17. General provisions

The Parties agree to the miscellaneous and general provisions set out in Schedule 12.

Executed as a deed.

Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p>Planning instrument and/or Development Application - (Section 93F(1))</p> <p>The Land Owners have:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Concept Plan 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>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p>Description of change to the environmental planning instrument to which the Planning Agreement deed applies - (Section 93F(3)(b))</p>	<p>SEPP (Major Projects - North Cooranbong) Amendment 2008.</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</p>	<p>See Schedule 3 to Schedule 5 inclusive.</p>
<p>Applicability of section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is not excluded.</p>
<p>Applicability of section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is not excluded.</p>
<p>Applicability of section 94EF of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is excluded.</p>
<p>Mechanism for dispute resolution - (Section 93F(3)(f))</p>	<p>See clause 11 and Schedule 8.</p>
<p>Enforcement of the Planning Agreement - (Section 93F(3)(g))</p>	<p>See clause 7 and Schedule 9.</p>
<p>Registration of the Planning Agreement (Section 93F(3)(g))</p> <p>The Parties agree that the Planning Agreement will be registered in accordance with clause 9.2.</p>	<p>Yes, in respect of the Land</p>
<p>No obligation to grant consent or exercise functions - (Section 93F(9))</p>	<p>No obligation. See paragraph 9 of Schedule 12.</p>

Schedule 2 - Land

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

[illegible]