

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 2(a), 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 2(a) (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 2 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 4, such expert to act in accordance with the requirements of this Schedule 8.

4. Choice of expert

- (a) A dispute to be referred to an expert in accordance with paragraph 3 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 3, 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 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 3, 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 2 or the expert determination required or agreed under paragraph 3 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) 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; 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 - 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 Environment and Climate Change) in accordance with paragraph 3.1(a)(ii) of 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 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(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 Environment and Climate Change) as contemplated by paragraph 3.3 of 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 Environment and Climate Change) as contemplated by paragraph 3.3 of Schedule 4.

1.2 Reduction or replacement

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 Contribution Amount secured by that Bank Guarantees and made by the Land Owners from time to time.

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.
- (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), 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, 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 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 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 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 and 1.2.

1.7 Claims under Bank Guarantee

The Parties agree that:

- (a) the Minister may make claims under the Bank Guarantee required to be provided under paragraph 1.1(a) of this Schedule 9, at any time and from time to time, if the Land Owners fail to comply with their obligations 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.

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 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 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) to secure the Land Owners' obligations 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) the Minister is satisfied that the Land Owners are performing their obligations under paragraph 4 of 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 of this 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 and registration of documents in relation to this deed.

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.

4. Costs

The costs regarding the negotiation, preparation, execution, stamping and registration of documents in relation to this deed are to be borne by the Land Owners as set out in 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

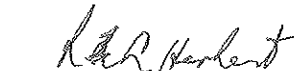
Executed by Australasian Conference Association Ltd in accordance with section 127 of the *Corporations Act* by or in the presence of:



Signature of Secretary/other Director

DAVID ROBERT POTTER

Name of Secretary/other Director in full



Signature of Director or Sole Director and Secretary

RONALD LESLIE HERBERT

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

KEITH JOHNSON

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

KEITH JOHNSON

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

KEITH JOHNSON

Name of Sole Director and Secretary

**Signed by The Honourable Kristina
Keneally M.P.**

Minister for Planning for the State of New South
Wales

Signature of Witness

Name of Witness in full

The Honourable Kristina Keneally M.P.
Minister for Planning

Annexure A - Deed