

Planning Agreement

Precinct Planning Contribution

East Leppington Precinct

The Minister for Planning and Infrastructure

Minister

Stockland Development Pty Limited

Developer

A handwritten signature in black ink, consisting of a stylized 'M' followed by a large, sweeping flourish.

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THIS Deed is dated

8/1/13

2012

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)

Stockland Development Pty Limited ABN 71 000 064 835 of Level 25, 133
Castlereagh Street, Sydney NSW 2000 (Developer)

Background

- A. The Developer owns part of the Land which is located in the Western Sydney Growth Areas Special Contributions Area.
- B. The Developer has a commercial agreement with the Landowner with respect to part of the Land and intends to develop the Land for Urban Development.
- C. The Developer has sought a change to the SEPP in the form of the Draft SEPP.
- D. The Developer has offered to enter into a planning agreement with the Minister in order to provide the Precinct Planning Contribution in connection with the preparation of the Draft SEPP.
- E. The Developer will or may become liable to pay the Special Infrastructure Contribution in connection with the Development if and when the SEPP is amended or with other developments within the Growth Centres.
- F. The Developer proposes to provide the Precinct Planning Contribution, in lieu of paying part of the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres and the parties have entered into this Deed to give effect to this arrangement.
- G. The Developer's proposal for the Land includes the making of Development Applications for the Development if and when the SEPP is amended.
- H. From the Date of this Deed, this Deed constitutes an agreement between the Developer and the Minister that the Developer will provide material public benefits on the terms and conditions of this Deed.

Operative provisions

1. Interpretation

1.1 Definitions

In this Deed, unless the context clearly indicates otherwise:

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

Application For Approval means an application for any Approval.

Apply, Applied and Application each mean, in relation to a SIC Discharge Amount, the application of that SIC Discharge Amount pursuant to clause 3.5.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be

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required by Law or by adjoining owners for the commencement and carrying out of the works the subject of this Deed or the Development generally.

Approved Precinct Planning Costs mean those costs incurred by the Developer in relation to the Precinct Planning Process prior to the date of publication of the SEPP (as amended consistent with the Draft SEPP) determined by the Minister to be 'Approved Precinct Planning Costs' for the purposes of this Deed in accordance with clause 3 which costs must not exceed the Relevant Cap.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier:

Available SIC Discharge Amount means each SIC Discharge Amount to which the Developer has become Entitled under this Deed that has not at the relevant time been previously Applied.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms, acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such an amount as is required under paragraph 1.1(a) of Schedule 2 of this Deed) on demand.

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

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

Costs includes all costs, charges and expenses, including those incurred in connection with advisers and legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

Date of this Deed means the date this Deed is signed by all the parties.

Deed means this planning agreement.

Department means, the NSW Department of Planning and Infrastructure and includes, where relevant the Director-General of the NSW Department of Planning and Infrastructure and the Minister.

Developer Related Entity means:

- (a) a body corporate which is a related body corporate under section 50 of the *Corporations Act 2001* (Cth);
- (b) a body corporate which is a related body corporate of a body corporate described in paragraph (a) under section 50 of the *Corporations Act 2001* (Cth); or
- (c) (in respect of any related body corporate under paragraphs (a) and (b) above) a body corporate or unit trust, the shares or units of which that body corporate is trustee and which are required by the relevant constitutions to be held and transferred together with the shares or units of the body corporate or trust of which that body corporate is trustee (commonly referred to as "stapled" entities).

Development means the proposed development described in item 1.2 of Schedule 1.

Development Application means:

- (a) each Part 4 Application; and
- (b) any other application to carry out development for which consent is required under the Act.

Development Consent means:

- (a) each 'Development Consent' as that term is defined in the Act; and
- (b) each Modification,

which is determined by the Consent Authority in response to a Part 4 Application.

Director-General means the Director-General of the Department.

Draft SEPP means the draft instrument proposed to amend the SEPP (following its publication) to allow the development of the Precinct.

Entitle, Entitled and Entitlement means the entitlement of the Developer to certain SIC Discharge Amounts pursuant to clause 3.4 to the SIC Discharge Amounts as provided for in that clause.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation 2000 (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).

Intellectual Property means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and all other rights of intellectual property as recognised by New South Wales and Australian law.

Interest Rate in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

Land means the land described in item 1.1 of Schedule 1 (or any part or parts of it).

Landowner means Leppington Park Pastoral Pty Limited ACN 080 266 048.

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements and principles of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority.

Minister means the Minister for Planning and Infrastructure, or an officer or position holder within the Department nominated by the Minister or the Director-General of the Department.

Ministerial Determination means the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*, made under section 94EE of the Act and dated 14 January 2011.

Modification means a "modification" of the Development Consent within the meaning of section 96 of the Act.

Part 4 Application means:

- (a) each 'Development Application' as that term is defined in the Act; and
- (b) each Application For Approval for a Modification,

which relates to any part of the Development.

Parties means the parties to this Deed.

PCG means the project control group referred to in clause 14.2(a).

PWG means the project working group referred to in clause 14.2(b).

Planning Consent means each Development Consent.

Precinct means the East Leppington Precinct which is shown on the plan entitled "East Leppington Precinct Boundary" comprising Annexure A.

Precinct Plan means the precinct plan for the East Leppington Precinct.

Precinct Planning means the planning associated with the planning for the Precinct.

Precinct Planning Contribution means the costs incurred by the Developer in relation to the matters described in clause 3.

Precinct Planning Process means the activities ordinarily associated with the preparation adoption and exhibition of the Draft SEPP including:

- (a) design development with a master planner, interpretation of the opportunities and constraints described in the specialist technical studies, preparation of statutory controls such as zoning maps, land use tables, and preparation of the development control plan;
- (b) interaction with the Relevant Councils and assistance with the preparation of the Relevant Councils' Section 94 plans;
- (c) consultation with other State agencies to ensure legislative and technical requirements are complied with. Precinct planning includes landowner and broader community consultation and responding to issues that arise from this process; and
- (d) exhibition of the Draft SEPP.

Relevant Cap means \$3,000,000.00 as indexed from 1 July 2011 in accordance with clause 3.9.

Relevant Councils means the councils of the local government area in which the Development is situated.

SEPP means the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

SIC Discharge Amount means the amount specified in this Deed as being the appropriate amount for that event.

SIC Discharge Certificate means a certificate referred to in clause 3.5(b)(i) as amended from time to time under clause 3.6.

SIC Discharge Balance means the amount shown on the SIC Discharge Certificate as the final or unapplied SIC Discharge Balance, being either “zero” amount or the amount the remains available for the discharge of SIC obligations.

Special Contributions Area means the same meaning given to that term in section 93C of the Act.

Special Infrastructure Contribution means a development contribution determined under section 94EE of the Act for the WSGA Special Contributions Area or any part of that Area.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

Urban Development includes:

- (a) development for residential purposes;
- (b) community facilities and services, including schools;
- (c) retail centres;
- (d) parks and open space; and
- (e) infrastructure.

Western Sydney Growth Areas Special Contributions Area (WSGA Special Contributions Area) means the land described in Schedule 5A to the Act as the land shown edged heavy black on the map marked “*Western Sydney Growth Areas – Special Contributions Area*”.

Year means each period of 12 months commencing on 1 July and ending of 30 June.

1.2 General

In this Deed, unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **schedules** form part of this Deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Planning Agreements

2.1 Commencement

The parties agree that this Deed will commence from the date this Deed is signed by all the parties.

2.2 Planning agreements under the Act

This Deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application of the Planning Agreements

This Deed applies to:

- (a) the Land; and

- (b) the Development.

2.4 The Contributions

The Developer agrees to provide the Precinct Planning Contributions in accordance with clause 3.

3. Precinct Planning Contributions and Special Infrastructure Contribution Discharge Amounts

3.1 Summary of Precinct Planning Contributions

The Precinct Planning Contributions are costs incurred by the Developer in connection with the Precinct Planning Process both before and after the Date of this Deed. Those costs include:

- (a) costs relating to planning studies which the Minister commissions as part of the Precinct Planning Process (or that were commissioned by the Developer prior to the commencement of the Precinct Planning Process); and
- (b) costs incurred by the Developer as a result of its reimbursement to the Department for:
 - (i) the costs associated with any review of environmental factors, any environmental impact statements required under the Act for the provision of water, sewerage or road infrastructure within the precinct;
 - (ii) the costs associated with the Department's management responsibilities for Precinct Planning, including but not limited to the Relevant Councils' co-ordinator;
 - (iii) the costs associated with reviews or additional planning studies;
 - (iv) the costs of peer reviews of technical studies as contemplated in clause 3.4(f); and
 - (v) costs associated with community consultation, including but not limited to hire of venues, printing and other communication.

The parties acknowledge that the Developer has incurred certain costs comprising part of the Precinct Planning Contribution prior to the Date of this Deed.

3.2 Approved Precinct Planning Costs

- (a) If and when the SEPP (as amended consistent with the Draft SEPP) is published, the Director-General will determine the Approved Precinct Planning Costs within 60 days of the publication of the SEPP (as amended consistent with the Draft SEPP) providing that he has received all information necessary to do so from the Developer.
- (b) The Developer must submit all invoices it receives from third parties and otherwise must submit such other information the Developer determines relevant or requested by the Director-General to enable the Director-General to determine the actual costs incurred by the Developer in relation to the Precinct Planning Process, for the purposes of determining the Approved Precinct Planning Costs.
- (c) The costs incurred by the Developer in relation to planning studies which the Minister commissions as part of the Precinct Planning Process (or that were

commissioned by the Developer prior to the commencement of the Precinct Planning Process) will only form part of the Approved Precinct Planning Costs if they comply with the criteria contained in clause 3.4.

- (d) Once the Approved Precinct Planning Costs are determined by the Director-General, the Director-General will advise the Developer in writing of the amount of the Approved Precinct Planning Costs.
- (e) The Developer may, within 30 days of receipt of the Director-General's notice referred to in clause 3.2(d), request that the Director-General review his determination of the Approved Precinct Planning Costs, and the Director-General will do so and provide his final determination within 30 days of the date of the request for a review.
- (f) The Developer acknowledges that the Approved Precinct Planning Costs determined by the Director-General:
 - (i) must not exceed the Relevant Cap; and
 - (ii) will not include any costs incurred by the Developer after the date of publication of the SEPP (as amended consistent with the Draft SEPP).

3.3 Provision of a Bank Guarantee

Security for the Precinct Planning Contributions that the Developer is required to reimburse to the Department is to be provided by way of a bank guarantee in accordance with Schedule 2.

3.4 Criteria for Planning Studies

- (a) The Developer must provide the Minister with the brief and scope of services prepared for the studies commissioned prior to the commencement of the Precinct Planning Process.
- (b) The Minister must provide his written agreement that:
 - (i) the studies were necessary and relevant to the Precinct Planning Process; and
 - (ii) the briefs and scope of services was appropriate and complied with the Precinct Planning Process.
- (c) The parties agree that the Minister has the sole discretion to commission any planning studies. However the Developer may commission those studies on behalf of the Minister subject to satisfying the terms of this clause 3.4 and subject to the Minister retaining control over the direction of the planning studies and their content.
- (d) All planning studies must comply with the Precinct Planning Process which includes compliance with the following:
 - (i) planning studies and any future Precinct planning will be undertaken, except as otherwise directed by the Department, consistent with the NSW Government's Metropolitan Strategy; the SEPP (including the relevant Growth Centre Structure Plan); Growth Centres Commission Development Code; Precinct Development Parameters approved by the Department; all other relevant environmental planning instruments; and

Directions under Section 117 of the Act as if they apply to the Precinct Planning Process;

- (ii) commissioned planning studies are to facilitate precinct level approvals required (as relevant) by:
 - A. the *Water Management Act 2000* (NSW);
 - B. *National Parks and Wildlife Act 1974* (NSW) (S.87, 90);
 - C. *Heritage Act 1977* (NSW);
 - D. *Rural Fires Act 1997* (NSW); and
 - E. *Threatened Species Conservation Act 1995* (NSW);
 - F. *Environment Protection and Biodiversity Act 1999* (Cth); and
- (iii) planning studies are to be consistent with the relevant requirements of:
 - A. the biodiversity certification of the SEPP; and
 - B. the Growth Centres Commission's Precinct Assessment Method for Aboriginal Cultural Heritage and Protocol for Aboriginal Stakeholder involvement; and
 - C. the strategic approval of the Growth Centres under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).
- (e) Copies of all completed planning studies and supporting information must be provided to the Minister.
- (f) All technical studies can be subject to a peer review by the Minister, with the costs of this peer review being incurred by the Developer.

3.5 Entitlement to SIC Discharge Amount - Approved Precinct Planning Costs

- (a) Upon the determination by the Director-General of the Approved Precinct Planning Costs pursuant to clauses 3.2(d) or 3.2(e), the Developer may request from the Director-General an Entitlement to SIC Discharge Amounts equivalent to the Approved Precinct Planning Costs (up to a maximum of the Relevant Cap) if the Developer provides to the Director-General:
 - (i) a written request requesting such Entitlement;
 - (ii) such other information as is reasonably requested by the Director-General (promptly after any such request) in order for the Director-General to assess the Developer's request for such Entitlement; and
 - (iii) any SIC Discharge Certificate current at the time the Developer makes its request to the Director-General.
- (b) If the Director-General has received a request for an Entitlement from the Developer pursuant to clause 3.5(a) (and the Director-General is satisfied with the content of the information provided with that request), then:

- (i) within 90 days of the Director-General receiving all the information required under clause 3.5(a), the Director-General will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Discharge Certificate to the Developer which will set out the SIC Discharge Amount (which will be equivalent to the Approved Precinct Planning Costs), all previous Entitlements and all other updates to that certificate as are appropriate; and
- (ii) on and from the date of the Director-General's notice, the Developer is Entitled to the SIC Discharge Amounts approved by the Director-General as confirmed in his notice pursuant to clause 3.5(b)(i).
- (c) The Developer acknowledges that it may only request an Entitlement to SIC Discharge Amounts in the event that the SEPP (as amended by the Draft SEPP) is published.

3.6 Application of SIC Discharge Amounts

- (a) The Developer is or will be required, from time to time, under the terms of any Development Consent granted in relation to land within the WSGA Special Contributions Area, to make Special Infrastructure Contributions.
- (b) The SIC Discharge Amount represents the value allocated to the Approved Precinct Planning Costs which the Director-General agrees to accept in discharge or partial discharge of the Developer's obligations to make Special Infrastructure Contributions for development within the WSGA Special Contributions Area.
- (c) The Developer may request that the Director-General amend and reissue the SIC Discharge Certificate in lieu of making the relevant monetary payment(s) in relation to Development Consents within the WSGA Special Contributions Area. Where the amount of the SIC for development does not exceed the SIC Discharge Amount stated on the SIC Discharge Certificate, the Director-General will issue a new SIC Discharge Certificate specifying the unapplied SIC Discharge Balance.

3.7 Developer not to apply for subdivision certificate or construction certificate for development unless relevant certificate issued for that development

The Developer may not apply for a subdivision certificate or construction certificate (as the case may be) in relation to any development on land within the WSGA Special Contributions Area for which a SIC is required to be made unless the Developer has obtained from the Director-General a certificate to the effect that the SIC for the value or amount shown on the certificate has been made.

3.8 Tradeable Credits

If and when the NSW Government introduces a scheme which enables the Developer to utilise SIC Discharge Amounts to discharge the obligations of another person to pay any Special Infrastructure Contribution, then promptly after any request from the Developer, the Minister and the Developer will meet to discuss how the Developer might utilise its SIC Discharge Amounts under that scheme and the Minister will take reasonable steps to enable the Developer to do so in accordance with that scheme (to the extent that it is within the Minister's power to take those steps).

3.9 Indexation of SIC Discharge Amounts and the Relevant Cap

The parties acknowledge and agree that:

- (a) the Relevant Cap will be indexed; and
- (b) each SIC Discharge Amount will be indexed (until such time as each such SIC Discharge Amount no longer constitutes an Available SIC Discharge Amount),

in accordance with clause 9 of the Ministerial Determination, as if those amounts were an adjustable amount within the meaning of that clause.

4. Application of s94, 94A and 94EF of the Act

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

5. Termination by Developer

- (a) The Developer may give the Minister notice to terminate this Deed at any time, and the Minister will not unreasonably withhold his agreement to terminate this Deed, provided the Minister is satisfied that:
 - (i) the Developer is not in breach of this Deed; and
 - (ii) the Developer has first discharged any of its outstanding obligations under this Deed in relation to the payment of any Costs incurred before the date this Deed is terminated in accordance with clauses 3, 8, 9 and Schedule 5.

6. Review of Deed

The parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the parties.

7. Dispute resolution

A dispute is taken to have arisen under this Deed if one party gives another party a notice in writing specifying particulars of the dispute.

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this Deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Mediation

If the parties do not agree within 21 days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of NSW. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 days after notice is given under clause 7.2 then any party that has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 7 for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This clause 7 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this Deed.

8. Departmental costs and Costs under this Deed

- (a) The Department will invoice the Developer for all those costs incurred by it for the matters referred to in clause 3 which are costs arising as a result of services provided by third parties engaged or commissioned by the Department as soon as possible after the Department is invoiced by that third party.
- (b) The Department will invoice the Developer for all other costs which the Developer is required to meet under this Deed.
- (c) The Developer must pay to the Department all amounts invoiced in accordance with this clause 8 within 28 days of the date of the invoice.
- (d) The amounts invoiced by the Department will be at the cost charged to the Department and the Developer will be entitled seek assessment of any legal costs, as a third party payer under section 350(2) of the *Legal Profession Act 2004* (NSW).

- (e) The Developer agrees to comply with all of its obligations under and pursuant paragraph 1.2 of Schedule 4 to this Deed.

9. Overdue payments

9.1 Interest on overdue money

The Developer agrees to pay interest to the Minister on any amount payable by it under this Deed from 28 days after 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 Interest Rate.

9.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Minister on the first day of each calendar month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 9.

9.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees 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 judgement or order and the rate referred to in this clause 9.

The Developer's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Deed.

10. GST

10.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 10 have the meanings given to those terms by the GST Act.
- (b) In this clause 10, "**monetary consideration**" means any consideration expressed as an amount of money, "**non-monetary consideration**" means any consideration that is not monetary consideration, and "**non taxable supply**" means a supply that is not a taxable supply.
- (c) 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 10.
- (d) 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.

10.2 Reimbursements

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 an entity is entitled for the acquisition to which the cost, expense or amount relates.

10.3 Additional amount of GST payable

Subject to clause 10.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 10), for that supply is exclusive of GST;
- (b) 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 the 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 (or the representative member of any GST group of which 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
- (c) 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 10.3(b).

10.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 10.3 and clause 10.5), varies from the additional amount paid by the Recipient under clause 10.3, 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 10.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 10.3.
- (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.

10.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 10.3 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 10.3 shall 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 10.3 (or the time at which such GST Amount would have been payable in accordance with clause 10.3 but for the operation of clause 10.5(a)).

10.6 No merger

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

11. Explanatory Note

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

12. Notices

12.1 Form

Any notice, consent, information, application or request that must or may be given or made to a party under this Deed is only given or made if it is in writing and delivered or posted to that party at its address set out below or faxed to that party at its fax number set out below:

Minister

Name: **The Minister for Planning and Infrastructure**

Address: 23-33 Bridge Street
Sydney NSW 2000

Fax: (02) 9228 6455
For the attention of: Director-General

Developer

Name: **Stockland Development Pty Limited**

Address: Level 25, 133 Castlereagh Street, Sydney NSW 2000
Sydney NSW 2000

Fax: (02) 8988 2755
For the attention of: Michael Gilligan

12.2 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 given in accordance with this clause 12.2.

12.3 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 delivered to the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (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.

12.4 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, after 5pm on that 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.

13. General provisions

The parties agree to the miscellaneous and general provisions set out in Schedule 4 apply.

14. Additional Developer Obligations

14.1 Intellectual Property and use of Information

- (a) The Developer agrees (to the extent that it is legally able to), at its own cost, to ensure that the Minister and all other authorities which may need to use studies brought into existence for the purposes of the Precinct Planning Process by the Developer are irrevocably licensed to use the Intellectual Property in those studies.
- (b) The Developer agrees (to the extent that it is legally able to) to ensure all licence fees and/or consents required in respect of the licence referred to in clause 14.1(a) are paid and/or obtained as a result of any reproduction, adoption or use of the Intellectual Property in the studies referred to in clause 14.1(a).
- (c) The Developer agrees to indemnify and keep indemnified the Minister from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against, made upon or incurred by the Minister in relation to the Minister exercising his rights under clause 14.1(a).

14.2 Governance of the Precinct Planning Process

- (a) The parties agree that:
 - (i) the Department is ultimately responsible for precinct planning, including endorsement of Precinct "Development Parameters", draft Precinct plans for exhibition and draft Precinct plans for submission to the Minister for Planning;
 - (ii) a project control group comprising representatives from the Department (Chair) and the Relevant Councils will oversee precinct planning and related studies, including the review of contractor briefs to ensure they are appropriate to deliver the Minister's planning objectives. The Developer will not be represented on the PCG. The administration of the PCG will be coordinated by the Department.
- (b) A project working group comprising representatives of the Department and the Relevant Councils will oversee the day to day planning studies. The Developer, in keeping with the project plan prepared for the Precinct, will participate in the PWG. The extent of the Developer's involvement will be guided by independent probity advice. The PWG and the application of the Precinct Planning Contribution will be guided by a plan which addresses potential risks to the project, including probity risks.

- (c) The Department will nominate its representatives on the PWG. Any alteration by the Department to its representatives on the PWG shall be notified to the Developer in writing.
- (d) The Developer will nominate 2 representatives to attend the PWG. Any alteration by the Developer to its representatives shall be notified to the Department in writing. The Developer can only change its representatives to attend the PWG with the prior written approval of the PCG, which shall not be unreasonably withheld.
- (e) In addition to the roles and functions of the PCG and PWG under clauses 14.2(a) to 14.2(d), the parties agree that:
 - (i) the Developer will facilitate the Minister having sole direct access to third parties engaged to provide planning studies;
 - (ii) the Developer agrees to consult, cooperate and confer with others (subject to commercial-in-confidence constraints) where so directed by the Minister;
 - (iii) the Minister can commission peer reviews and additional investigations as required and these will be paid in full by the Developer;
 - (iv) the Developer agrees to obtain all necessary approvals, licences and permits, which may be required for the provision of services contemplated by this Deed;
 - (v) the Developer will not, without the prior written consent of the Minister, disclose any information in connection with the services contemplated by this Deed to any person not a party to this Deed other than:
 - A. as necessary to perform those services; or
 - B. with respect to any matter already within public knowledge; or
 - C. as may be required by law or a requirement of a regulatory body including any relevant stock exchange, and

it is agreed this clause 14.2(e) (v) does not merge on completion.
- (f) The Developer represents and warrants that no conflict of interest exists in the performance of the services contemplated by this Deed at the date the Developer signs this Deed. Immediately upon becoming aware of the existence, or possibility of a conflict of interest, the Developer must advise the Minister in writing.

14.3 Consultation

- (a) On the request of a representative of the Department, the Developer will provide information on issues related to the Precinct to enable the Department to provide regular and *ad hoc* reports to the Minister. This information will be provided in the form and within timeframes requested by a representative from the Department.
- (b) The Department will prepare a draft consultation strategy for approval by the PCG that will outline the program of consultations to be undertaken to engage the

Relevant Councils / community and interest groups / agencies and other landowners in the Precinct. The strategy will be prepared in consultation with the Relevant Councils.

- (c) The Developer and the Department will each nominate a single point of contact for all matters related to planning studies. It is expected that this person will be the primary source of input to the PWG from each organisation.

Schedule 1 Section 93F Requirements

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the Act.

Requirement under the Act	This Planning Agreement
Planning instrument and/or development application - (Section 93F(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) No
Description of land to which this Deed applies - (Section 93F(3)(a))	The Land described in paragraph 1.1 of Schedule 1.
Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b)) Describe: (a) the proposed change to the environment plan to which this Deed applies; OR (b) the development to which this Deed applies.	(a) An amendment of the SEPP in accordance with the Draft SEPP (b) The Development described in paragraph 1.2 of Schedule 1.
The scope, timing and manner of delivery of Contribution required by this Planning Agreement - (Section 93F(3)(c))	Refer to clause 3.
Applicability of Section 94 of the Act to the Development - (Section 93F(3)(d))	The application of section 94 of the Act is not excluded in respect of the Development.
Applicability of Section 94A of the Act to the Development - (Section 93F(3)(d))	The application of section 94A of the Act is not excluded in respect of the Development.
Applicability of Section 94EF of the Act to the Development - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this Deed if section	No. The Development Contributions to be

Requirement under the Act	This Planning Agreement
94 applies to the Development- (Section 93F(3)(e)) Are the benefits under this Deed to be taken into consideration if Section 94 of the Act is not excluded?	provided by the Developer under this Deed must not be taken into consideration in determining a contribution under section 94 in respect of the Development or any other development (as that term is defined in the Act) in relation to the Land.
Mechanism for Dispute resolution - (Section 93F(3)(f)) This Deed provides a mechanism for the resolution of disputes under the agreement?	Refer to clause 7.
Enforcement of this Deed (Section 93F(3)(g)) This Deed provides for enforcement by a suitable means in the event of a breach.	Refer to clause 3.
Registration of this Deed The parties agree that this Deed will not be required to be registered.	This Deed is not required to be registered.
No obligation to grant consent or exercise functions - (Section 93F(9)) The parties acknowledge that this Deed does not impose an obligation on a Consent Authority to grant a Development Consent or to exercise any function under the Act in relation to a change to an environmental planning instrument.	Refer to paragraph 1.8 of Schedule 4.

Schedule 1 - Description of the Land and the Development

1.1 Title

Those parts of the land comprised in:

Lot	Deposited Plan	Owner
40	1174145	Developer
41	1174145	Landowner
32	1439	Landowner
33	1439	Landowner
34	1439	Landowner

1.2 Proposed Development

The development of the Land to be undertaken by the Developer for Urban Development.

Schedule 2 - Bank Guarantee

1.1 Bank Guarantee Required

- (a) The Developer has agreed to provide security to the Minister in the form of a Bank Guarantee for a face value equivalent to \$26,000 to secure the Developer's obligations to pay the Precinct Planning Contribution pursuant to clause 3.1 and the terms and conditions of this Schedule apply in relation to those security arrangements.
- (b) The security referred to in paragraph 1.1(a) of this Schedule 2 is required within 10 Business Days of the execution of this Deed.

1.2 Claims under Bank Guarantee

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

- (a) in relation to the Bank Guarantee securing the Developer's obligations to pay the Precinct Planning Contribution pursuant to clause 3.1, the Minister may, subject to paragraph 1.2(b) of this Schedule, call upon that Bank Guarantee (in full or in part) in the event that the Developer breaches those obligations and retain and use such monies in his discretion to compensate the Minister for the Developer's breach of those obligations;
- (b) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of its intention to do so and allowing the Developer at least 10 Business Days' to remedy the breach claimed by the Minister; and
- (c) the amount appropriated by the Minister under paragraph 1.2(a) must be applied towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this Deed.

1.3 Release of Bank Guarantee

The parties agree that:

- (a) if the Developer has satisfied all of its obligations under this Deed which were secured by the Bank Guarantee; or
- (b) this Deed is terminated or assigned,

the Minister will promptly return the Bank Guarantee or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

Schedule 3 - Not used

Schedule 4 - General Provisions

1.1 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 the Minister's absolute 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.

1.2 Costs

- (a) Unless otherwise specified in this Deed, all reasonable Costs relating to this Deed are to be borne by the parties in the proportions specified in Schedule 5 and are payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 4, the Developer agrees to pay or reimburse the Minister within 14 days of receipt by the Developer of a valid tax invoice for:
 - (i) Costs of the Minister in connection with any exercise of rights (including, without limitation, in connection with the enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed, except to the extent that such taxes and fees arise as a result of an act, omission or negligence of the Minister.

1.3 Effect of terms and conditions in Schedules

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

1.4 Entire agreement

The parties intend this Deed to constitute the entire agreement and understanding between them in relation to the subject matters of this Deed and agree that any prior agreements or arrangements between them relating to the subject matter of this Deed are rescinded and have no further force or effect. No party can rely on an earlier document, anything said or done by another party, or by an officer, agent or employee of that party, before the Date of this Deed, except as permitted by law.

1.5 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.

1.6 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.

1.7 Enforcement

- (a) This Deed may be enforced by either party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) 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
 - (ii) an Authority or the Minister from exercising any function under the Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Minister) 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 in this Deed imposes any obligation on an Authority to:
 - (i) grant any Planning Consent; or
 - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 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.

1.10 Representations and warranties

The Developer represents and warrants that:

- (a) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
- (b) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (d) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (e) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;

- (f) **(benefit)** it benefits by entering into this Deed to which it is a party; and
- (g) **(capacity)** it does not enter this Deed as an agent for any other person or as trustee of any trust or on behalf or for the benefit of any other person.

The Developer acknowledges that the Minister has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.10 of this Schedule 4.

1.11 Severability

- (a) If a clause or part of a clause 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 clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

1.12 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.

1.13 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.

1.14 Confidentiality

The parties agree that the terms of this Deed are not confidential and this Deed may be treated as a public Deed and exhibited or reported without restriction by any party.

1.15 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Precinct Planning Contributions is at the risk of the Developer. The Developer releases the Minister from any claim, liability or loss arising from, and Costs incurred in connection with, the Developer's obligation to provide the Precinct Planning Contributions.
- (b) The Developer indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Precinct Planning 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 paragraph 1.15(b) of this Schedule 4 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

1.16 Assignment

- (a) The Developer may assign its rights and obligations under this Deed:
 - (i) to a Developer Related Entity with the prior written consent of the Minister (such consent is not to be unreasonably withheld); or
 - (ii) to any other person with the prior written consent of the Minister.
- (b) Upon assignment of this Deed by the Developer, the Developer is released from all its obligations under this Deed.

Schedule 5 – Costs

Developer - 100% of all reasonable Costs including the Minister's legal and notification costs in connection with this Deed.

Executed as a deed

Signed sealed and delivered by The Minister for Planning and Infrastructure,
in the presence of:



Signature of Witness



Signature of Minister

Lisa Chan

Name of Witness in full

Name of Minister's delegate

23 - 33 Bridge St.
Sydney 2000

Michael Connors
Acting Executive Director
Strategy and Infrastructure

8/1/13

Executed by Stockland Development Pty Ltd ABN 71 000 064 835 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 sole Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary in full

Executed on behalf of Stockland Development Pty Limited
ACN 000 064 835 by its attorney
under Power of Attorney Book 4570 No. 755
who states that he/she has received no notice of
revocation of the Power of Attorney in the presence of:



Signature of Witness



Signature of Attorney

JULIE THU-HUONG LE HA

Name of Witness in full

Level 25, 133 Castlereagh St
Sydney, NSW, 2000

MARK ANTHONY HUNTER

Name of Attorney

Annexure A - East Leppington Precinct Boundary



[Signature]

