

CLAYTON UTZ

## Planning Agreement

The Minister for Planning and Infrastructure

ABN 38 755 709 681

Minister

Huntlee Pty Ltd in its capacity as bare trustee of the Relevant Partnership

ABN 73 143 744 745

Land Owner

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Our reference 15266/17338/80134115

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## Agreement made at \_\_\_\_\_ on \_\_\_\_\_

**Parties**                    **The Minister for Planning and Infrastructure ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 ("Minister")

**Huntlee Pty Ltd ACN 143 744 745** in its capacity as bare trustee of the Relevant Partnership c/- LWP Property Group, 34 Main Street, Ellenbrook WA 6069 (the "**Land Owner**")

### Background

- A.            The Land Owner is or will be the owner of the Land.
- B.            The Land Owner intends to develop the Land.
- C.            The gazettal of the Major Projects SEPP Amendment occurred on 21 December 2010 and had the effect of rezoning the Land and other land for development, subject to Approval. A separate planning agreement between the Minister, the Minister for Climate Change and the Environment and the Land Owner has been entered into in relation to the Major Projects SEPP Amendment.
- D.            The Land Owner now seeks Project Approval for the development of the Land in accordance with the Stage 1 Project Approval Application.
- E.            By way of this deed, the Land Owner offers to enter into a Planning Agreement on the terms and conditions of this deed.
- F.            Part 3A of the Act continues to apply to the Development notwithstanding its repeal by virtue of the savings and transitional provisions in Schedule 6A of the Act.

### Operative provisions

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## 1.        **Definitions and Interpretation**

### 1.1       **Definitions**

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

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

**Agreed Road Works Amount** means, in respect of the Road Improvement Works the subject of a Road Works Agreement:

- (a)            the amount of the estimated cost to carry out and achieve Practical Completion of those Road Improvement Works as specified in the Road Works Agreement; or
- (b)            if no such amount is specified in the Road Works Agreement, the amount determined by the Minister (acting reasonably) as being the estimated cost of carrying out and achieving Practical Completion of the Road Improvement Works pursuant to paragraph 4.2(a)(i)B of Schedule 4.

**Appeal** means an appeal (including an application for any kind of leave to appeal) in a Court of competent jurisdiction against the decision of a lower court.

**Appeal Notice** means:

- (a) in proceedings in the Court of Appeal:
  - (i) an application for leave to Appeal;
  - (ii) a Notice of Intention to Appeal; or
  - (iii) if a valid Notice of Intention to Appeal has been lodged, a Notice of Appeal; and
- (b) in proceedings in the High Court, an application for Special Leave to Appeal.

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

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

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

**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.

**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.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**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 approved by the Minister, in a form and in substance acceptable to the Minister (acting reasonably), to pay the face value of that undertaking on demand.

**Bank Guarantee Trigger Date** means the date on which this deed is executed by the Land Owner.

**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 Deposit** has the meaning given to that term in paragraph 1.4 in Schedule 9.

**Cash Deposit Account** has the meaning given to that term in paragraph 1.4 in Schedule 9.

**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*.

**Combined Contribution** has the meaning given to that term in paragraph 5 of Schedule 4.

**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.

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

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

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

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

**Court** means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

**DET Guidelines** means those guidelines issued from time to time by the NSW Department of Education and Training (a copy of such guidelines existing as at the date of this deed are attached in Annexure E).

**Development** means the development described in the Stage 1 Project Approval Application.

**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 provision of the Regional Road Contribution, the Road Improvement Works and the transfer of the Education Contribution Land as 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 Column 3 in each table in Schedule 3 of this deed.

**DG Certificate** means, in respect of an Application for subdivision of the Land, the certificate to be provided by the Director-General to the Minister as contemplated in the Major Projects SEPP Amendment.

**Director-General** means the Director-General of the Department of Planning and Infrastructure from time to time.

**Dispute Resolution Procedures** means the procedures imposed on the relevant Parties under Schedule 8 of this deed.

**Draft Special Infrastructure Contribution Determination** means the “Public Consultation Draft” of the *Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011*, a copy of which is provided at Annexure D to this deed.

**Dwelling** means a room or suite of rooms occupied or used or so developed or adapted as to be capable of being occupied or used as a separate residential domicile.

**Education Contribution Land** means that part of the Land for use as “Education Contribution Land” on the plan attached to this deed as Annexure B, as varied in accordance with paragraph 3.3 of Schedule 43.3.

**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*.

**Financier** means any chargee and/or financier of the Land Owner, including without limitation of a financier who holds a mortgage over any part of the land.

**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).

**GST Amount** has the meaning given to that term in clause 12.5(a).

**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.

**Lot 241** has the meaning given to that term in clause 9.1(a)(i).

**Lot 241 Sale Contract** has the meaning given to that term in clause 9.1(a)(ii)B.

**Lower Hunter** means the area to which the *Lower Hunter Regional Strategy 2006 – 31* applies.

**LPI** means Land and Property Information within the NSW Department of Finance and Services or any similar department that may be established from time to time.

**Major Projects SEPP** means State Environmental Planning Policy (Major Development) 2005.

**Major Projects SEPP Amendment** means State Environmental Planning Policy (Major Development) Amendment No. 765 made by the Minister on 21 December 2010.

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

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

**Net Developable Hectare** means each hectare of the Land comprised in the NDA.

**NDA** means the net developable area for the Development being the area of the Land, in hectares, to which the Development Consent for the Development relates. The net developable area for the Development includes the area of the Land that the Development Consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road (other than a road referred to in sub-clauses (l) and (m) of this definition). The net developable area does not include the area of any existing road in respect of which the Development Consent authorises, or requires, road work (such as road widening) to be carried out. For the avoidance of doubt, the net developable area does not include the area of the Land that the Development Consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or the purpose of, any of the following:

- (a) government school (within the meaning of the *Education Act 1990*);
- (b) TAFE establishment;
- (c) emergency services facility;
- (d) health services facility owned or operated by a public authority;
- (e) golf course;
- (f) passenger transport facility;
- (g) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*);
- (h) public transport corridor (other than a road corridor);
- (i) public utility undertaking;



- (j) bus depot, whether or not owned or operated by a public authority;
- (k) recreation area;
- (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act;
- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with the Draft Special Infrastructure Contribution Determination.

The following areas of the Land are not to be included in the calculation of the net developable area for the Development:

- (a) any part of the Land to which the Development Consent for the Development relates that is at or below the level a 1:100 ARI (average recurrent interval) flood event, if that part of the Land is unsuitable for the Development by virtue of it being at or below that level;
- (b) any part of the Land to which the Development Consent for the Development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.

The net developable area includes any residue lot or super lot. The Director-General may make any determination required to be made for the purpose of calculating the net developable area for the Development in accordance with the Draft Special Infrastructure Contribution Determination and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a Surveyor of the Land.

**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.

**Offset Entitlement** has the meaning given to that term in paragraph 4.2 of Schedule 4.

**Partial Offset Entitlement** has the meaning given to that term in paragraph 4.2(f) of Schedule 4.

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

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

**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(a), comprising the form and content of this deed.

**Practical Completion** means, in respect of the Road Improvement Works, completion of those works in accordance with the Road Works Agreement.

**Project Approval** means Approval by the Minister pursuant to section 75J of the Act, in response to the Stage 1 Project Approval Application, including any Modification of it.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Recipient** has the meaning given to that term in clause 12.5(a).

**Recipient Supply** has the meaning given to that term in clause 12.7(a).

**Regional Road Contribution** means the Development Contribution set out at Item 1 of Table 1 in Schedule 3.

**Register** means the Torrens Title register maintained under the Real Property Act.

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

**Release and Discharge Terms** means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 6.

**Relevant Legal Challenge** means proceedings in a Court in which a declaration that the Project Approval is invalid is sought, and includes, but is not limited to, any proceedings in which such a declaration is sought which are heard on remitter from another Court following an Appeal.

**Relevant Partnership** means the partnership of which Huntlee is the bare trustee (and in that capacity has entered into the Planning Agreement), details of which were supplied to the Minister's solicitors before Huntlee signed this Planning Agreement.

**Relevant Partnership Deed** means the deed which establishes the Relevant Partnership, a true copy of which was supplied to the Minister's solicitors before Huntlee signed this Planning Agreement.

**Required Contribution** has the meaning given to that term in paragraph 5 of Schedule 4.

**Required Obligations** has the meaning given to that term in paragraph 1(a)(i) of Schedule 10.

**Residential Lot** means each lot forming part of the Land identified in any Application for subdivision of the whole, or any part of the Land (including a stratum) which lot is intended to be developed for residential purposes.

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

**RMS** means Roads and Maritime Services, Transport for NSW or any similar department that may be established from time to time.

**Road Improvement Works** means carrying out of road works to MR220 (also known as Wine Country Drive), the Hunter Expressway Link Road (Hex Link Road) and associated works as are agreed by the Land Owner and RMS, it being acknowledged those road works include those road works to be delivered as set out in Annexure F or, if no such agreement is made with RMS and the Land Owner in respect of such road works, then as determined by the Minister.

**Road Works Agreement** means a works authorisation deed or other legally binding agreement (in a form approved by the Minister (acting reasonably)) between Huntlee Pty Ltd (or another entity nominated by the Land Owner) and RMS which governs the carrying out of the Road Improvement Works.

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

**Special Infrastructure Contribution** means a contribution under section 94EF of the Act in accordance with a Special Infrastructure Contribution Determination.

**Special Infrastructure Contribution Determination** means a Special Infrastructure Contribution Determination issued by the Minister under section 94EE of the Act including any variation to that Determination.

**Stage 1** means that Development comprising up to 2345 Dwellings, and identified on the plan attached as Annexure C.

**Stage 1 Project Approval** means Approval by the Minister pursuant to section 75J of the Act, in response to the Stage 1 Project Approval Application.

**Stage 1 Project Approval Application** means an Application pursuant to section 75E of the Act made or to be made by or on behalf of the Land Owner to the Minister for approval to develop Stage 1.

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

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

**Supplier** has the meaning given to that term in clause 12.5.

**Surveyor** means an appropriately experienced, qualified and registered surveyor engaged by the Land Owner and who is acceptable to the Minister (acting reasonably).

**Suspension Expiry Date** means the date on which the Suspension Period ends.

**Suspension Period** means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on the Minister and the Land Owner and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
  - (i) the Relevant Legal Challenge is discontinued in respect of all parties to it;
  - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
  - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that the Project Approval is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Relevant Legal Challenge or an Appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:

- (i) the Appeal is discontinued in respect of all parties to it;
- (ii) final orders (apart from any orders as to costs) are made in the Appeal; or
- (iii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Project Approval whichever is earlier,

unless the orders in the Appeal require the Relevant Legal Challenge to be remitted to another Court in relation to the validity of the Project Approval, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date.

For the avoidance of doubt, the Suspension Period continues if paragraph (b) applies.

**Transferee** has the meaning given to that term in paragraph 1(a) of Schedule 10.

## 1.2 Interpretation

In this Planning Agreement:

- (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 Planning Agreement 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 Planning Agreement 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 Planning Agreement form part of this Planning Agreement; 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.

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

- (a) Until the Planning Agreement operates, this deed constitutes an irrevocable offer from the Land Owner to enter into the Planning Agreement if the Stage 1 Project Approval is granted to any part of the Development on the Land which contains a condition referred to in clause 2(b)(i).
- (b) The Planning Agreement operates only if the:
  - (i) carrying out of the Development is subject to a condition imposed under section 93I(3) of the Act requiring the Planning Agreement to be entered into;
  - (ii) Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
  - (iii) Minister executes this Planning Agreement.
- (c) The Minister must notify the Land Owner immediately after the Minister executes this Planning Agreement and promptly provide the Land Owner with the Planning Agreement as executed by the Minister.

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

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

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

The Planning Agreement applies to:

- (a) the Land; and
- (b) the Development.

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## **5. Development Contributions**

The Land Owner 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 Planning Agreement.

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## **6. Acknowledgements**

The Parties agree that:

- (a) the Minister may have regard to the Development Contributions required to be provided by the Land Owner pursuant to this Planning Agreement when assessing

the monetary contributions, land to be dedicated and works to be undertaken by any developer in connection with the development of the Land;

- (b) the Land Owner intends to make appropriate provision for local contributions as detailed in its statement of commitments in the Stage 1 Project Approval Application; and
- (c) to the extent that a Development Contribution may be described in, or implied by this Planning Agreement, as having a particular use (intended or otherwise), the Land Owner acknowledges and agrees 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 by any Authority to which the Minister transmits a Development Contribution; and
  - (ii) has no obligation to use or expend a Development Contribution for a particular purpose; and
  - (iii) has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Minister transmits a Development Contribution to any Authority.

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## **7. Security and enforcement**

### **7.1 Security**

The Land Owner has agreed to:

- (a) register this Planning Agreement in accordance with clause 9; and
- (b) provide other security to the Minister for performance of the Land Owner's obligations under this Planning Agreement on the terms and conditions of the Security Arrangements.

### **7.2 Enforcement**

This Planning Agreement may be enforced by either Party in any Court of competent jurisdiction.

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

For the avoidance of doubt, nothing in this Planning Agreement prevents:

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

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## 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.

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## 9. Interests in the Land

### 9.1 Ownership

- (a) The Land Owner represents and warrants to the Minister that:
- (i) on the date of this Planning Agreement, it is the legal owner of the Land, other than Lot 241 in Deposited Plan 1105591 (**Lot 241**) that is included within the Land;
  - (ii) in respect of Lot 241:
    - A. Les Russell & Son Pty Limited is the current registered proprietor;
    - B. Les Russell & Son Pty Limited and Hardie Ayrefield Pty Limited are parties to a conditional contract for sale for Lot 241 (**Lot 241 Sale Contract**); and
    - C. Hardie Ayrefield Pty Ltd entered into a conditional call option agreement for the sale of Lot 241 which is conditional on the completion of the Lot 241 Sale Contract whereby Hardie Ayrefield would become the registered proprietor of Lot 241; and
    - D. pursuant to a Deed of Assignment dated 14 July 2010, Hardie Ayrefield Pty Ltd assigned its rights under the Lot 241 Sale Contract and conditional call option agreement to Huntlee Pty Ltd, whereby Huntlee will now become the registered proprietor of Lot 241.
- (b) The Land Owner must notify the Minister promptly after it becomes the legal owner of Lot 241.
- (c) The representations and warranties in this clause 9.1 are given by the Land Owner as at the date of this Planning Agreement.

### 9.2 Registration of the Planning Agreement

- (a) The Land Owner agrees it will procure the registration of the Planning Agreement entered into pursuant to clause 2(a), 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 Owner at its own expense will, promptly after the Planning Agreement comes into operation (and in respect of Lot 241, promptly after completion of the purchase of Lot 241 by the Land Owner), 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 certificates of title,
- to enable the registration of the Planning Agreement 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 Owner, at its 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 90 Business Days after that date (and in respect of Lot 241, promptly after completion of the purchase of Lot 241 by the Land Owner); and
    - (ii) to procure the registration of the Planning Agreement by the Registrar-General 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 is lodged for registration.

### **9.3 Release and discharge of this Planning Agreement**

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

### **9.4 Caveat**

- (a) The Land Owner acknowledges and agrees that:
  - (i) when this Planning Agreement comes into operation, the Minister is deemed to have acquired, and the Land Owner is deemed to have granted, an equitable estate and interest in the Land (excluding Lot 241) 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 (excluding Lot 241) in respect of which to lodge with the LPI a caveat notifying that interest;
  - (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land (excluding Lot 241) nor will it seek to remove any caveat lodged by the Minister provided the caveat does not prevent registration of any dealing or plan (including a Plan of Subdivision) other than a transfer; and
  - (iii) it will use all reasonable endeavours to obtain the consent to the lodgement of the caveat of each person who has an estate or interest in the Land (excluding Lot 241) registered under the *Real Property Act 1900* (NSW).
- (b) The Land Owner acknowledges and agrees that:



- (i) when the Land Owner becomes the legal owner of Lot 241, the Minister is deemed to have acquired, and the Land Owner is deemed to have granted, an equitable estate and interest in Lot 241 for the purposes of section 74F(1) of the *Real Property Act* 1900 (NSW) and consequently the Minister has a sufficient interest in Lot 241 in respect of which to lodge with the LPI a caveat notifying that interest;
  - (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for Lot 241 nor will it seek to remove any caveat lodged by the Minister provided the caveat does not prevent registration of any dealing or plan (including a Plan of Subdivision) other than a transfer; and
  - (iii) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in Lot 241 registered under the *Real Property Act* 1900 (NSW).
- (c) The Minister must, at the Land Owner's cost (with any such cost to be reimbursed to the Minister promptly on demand), register at the LPI a withdrawal of caveat in respect of all the Land within 20 Business Days after the Land Owner complies with clause 9.2(a) and the Minister must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of the caveat will only apply in respect of such parts of the Land in respect of which registration of the Planning Agreement has been procured in accordance with clause 9.2(a), it being acknowledged by the Parties that registration of the Planning Agreement in respect of Lot 241 may be delayed.

## 9.5 Consent of Financier

The Land Owner represents and warrants to the Minister that it has obtained, and is in possession of a written consent from the Financier in which the Financier:

- (a) consents to:
  - (i) the Land Owner entering into and performing its obligations under this Planning Agreement;
  - (ii) the registration of the Planning Agreement in the relevant folio of the Register for the Land registered under the *Real Property Act* 1900 (NSW); and
  - (iii) the lodgement by the Minister of a caveat (in a form agreed by the Financier) notifying its interest in the Planning Agreement in the relevant folio of the Register for the Land registered under the *Real Property Act* 1900 (NSW); and
- (b) agrees:
  - (i) that it will only exercise its rights under any mortgage, charge, lien, pledge, trust, power or title retention or deposit arrangement in relation to the Land subject to the rights of the Minister under this Planning Agreement; and
  - (ii) promptly upon request, to lodge at the LPI the relevant certificates of title to enable the registration of the Planning Agreement under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for the Land.

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## **10. Review or replacement of this Planning Agreement**

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

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## **11. Dispute resolution**

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

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## **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. For the avoidance of any doubt, a supply or acquisition made by the Minister includes a supply or acquisition made by a government entity through which the Minister 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 Planning Agreement;
- (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 Planning Agreement 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 (or to which the representative member for a GST group of which the entity is a member) 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 Planning Agreement 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 Planning Agreement:

- (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 20 Business Days after the Minister, in any capacity, 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 (taking into account any previous adjustment under this clause), 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 Planning Agreement 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 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 Planning Agreement.

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## **13. Obligations under this Planning Agreement and Re-Transfer of the Education Land**

### **13.1 Obligations under this Planning Agreement**

- (a) Notwithstanding anything else in this Planning Agreement, and subject to clause 13.1(b), the Minister agrees that in the event that a Relevant Legal Challenge is commenced:
- (i) the Land Owner's obligation under this Planning Agreement to pay the Regional Road Contribution in Item 1 of Column 1 of Table 1 of Schedule 3 is suspended and the Minister can not require the Land Owner to make these Development Contributions;
  - (ii) the Land Owner's obligation under this Planning Agreement to undertake the Road Improvement Works in Item 2 of Column 1 of Table 1 of Schedule 3 is suspended and the Minister can not require the Land Owner to make these Development Contributions;
  - (iii) the Land Owner's obligation under this Planning Agreement to transfer or dedicate the Education Contribution Land is suspended and the Minister cannot require the Land Owner to transfer or dedicate the Education Contribution Land pursuant to Item 1 of Column 1 of Table 2 of Schedule 3; and
  - (iv) the consent provided under this Planning Agreement by the Land Owner to the compulsory acquisition of the Education Contribution Land under paragraph 3.5 of Schedule 4 is withdrawn, is of no effect and the Minister cannot compulsorily acquire the Education Contribution Land pursuant to paragraph 3.5 of Schedule 4.

For the avoidance of doubt, where the Land Owner has paid part of the Regional Road Contribution pursuant to Item 1 of Column 1 of Table 1 of Schedule 3 or undertaken part of the Road Improvement Works pursuant to Item 2 of Column 1 of Table 1 of Schedule 3 before the commencement of the Suspension Period, the Land Owner's obligation to pay any outstanding amount towards the Regional Road Contribution and to continue or complete the Road Improvement Works will be suspended at the commencement of the Suspension Period.

- (b) Clause 13.1(a) will have effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that the Stage 1 Project Approval is invalid, the Parties agree that notwithstanding clause 13.1(a), from (and including) the Suspension Expiry Date:
- (i) the Land Owner's obligation under this Planning Agreement to pay the Regional Road Contribution in Column 1 of Item 1 of Table 1 of Schedule 3 has full legal force and effect and where the Land Owner has not paid the whole or any part of the Regional Road Contribution by the

Suspension Expiry Date, the Land Owner must pay the whole or that part of the Regional Road Contribution by the date referred to in Column 3 of Item 1 of Table 1 of Schedule 3;

- (ii) the Land Owner's obligation under this Planning Agreement to undertake the Road Improvement Works in Column 1 of Item 2 of Table 1 of Schedule 3 has full legal force and effect and where the Land Owner has not undertaken the whole or any part of the Road Improvement Works by the Suspension Expiry Date, the Land Owner must undertake the whole or that part of the Road Improvement Works by the date referred to in Column 3 of Item 1 of Table 1 of Schedule 3;
  - (iii) the Land Owner's obligation under this Planning Agreement to transfer or dedicate the Education Contribution Land to the Minister has full legal force and effect and where the Land Owner has not transferred or dedicated the whole or any part of the Education Contribution Land to the Minister by the Suspension Expiry Date, the Land Owner must transfer or dedicate the whole of or that part of the Education Contribution Land to the Minister by the date referred to in Column 3 of Item 1 of Table 2 of Schedule 3; and
  - (iv) the Land Owner gives its consent to the Minister compulsorily acquiring the Education Contribution Land pursuant to paragraph 3.5 of Schedule 4.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that the Stage 1 Project Approval is invalid, the Parties agree that from (and including) the Suspension Expiry Date:
- (i) where the Land Owner has:

    - A. not paid the whole or any part of the Regional Road Contribution to the Minister by the Suspension Expiry Date, the Land Owner has no obligation to pay the whole or that part of the Regional Road Contribution to the Minister under this Planning Agreement;
    - B. not undertaken the whole or any part of the Road Improvement Works by the Suspension Expiry Date, the Land Owner has no obligation to undertake the whole or that part of the Road Improvement Works under this Planning Agreement;
    - C. not transferred or dedicated the whole or any part of the Education Contribution Land to the Minister by the Suspension Expiry Date, the Land Owner has no obligation to transfer or dedicate the whole or that part of the Education Contribution Land to the Minister under this Planning Agreement and the Minister has no right to compulsorily acquire the Education Contribution Land pursuant to paragraph 3 of Schedule 4;
  - (ii) the Land Owner has no obligation to register the Planning Agreement in the relevant folios of the register for the Land under clause 9.2 and the Release and Discharge Terms will apply; and

- (iii) the Minister has no right to lodge a caveat over the Land and in the event a caveat or caveats have been lodged over the Land under clause 9.4, the Minister must proceed to register at the LPI a withdrawal of that caveat in respect of that Land within 20 Business Days of that Court declaration or order.

## **13.2 Not used**

## **13.3 Land Owner and the Minister to meet**

- (a) Subject to clause 13.3(b), where any Relevant Legal Challenge is commenced and/or where the Court declares or orders the Stage 1 Project Approval to be invalid, the Minister and the Land Owner agree to:
  - (i) meet, no later than 5 Business Days after the date of service of commencement of the Relevant Legal Challenge and after any declaration or order that the Stage 1 Project Approval is invalid to discuss in good faith their intentions in relation to that declaration or order, including without limitation any intention to Appeal that declaration; and
  - (ii) consult regularly with the other in relation to any Appeal and must respond within a reasonable period to each other's questions, queries and enquiries and generally keep each other informed regarding the progress of any such Appeal.
- (b) Neither the Minister nor the Land Owner will be required to meet, or consult, with the other Parties pursuant to clause 13.3(a) in circumstances where either the Minister or the Land Owner receives legal advice that it should not so meet or consult with the other Party in connection with any such declaration or Appeal.
- (c) The Parties agree that any discussions held between the Parties under this clause 13.3 are confidential and that a common interest between them exists for the purposes of legal professional privilege in connection with those discussions.

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## **14. Release and indemnity**

- (a) Subject to this Planning Agreement, the Land Owner agrees that the obligation to provide the Development Contributions is at the risk of the Land Owner. Subject to clause 14(c), the Land Owner releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Land Owner's obligation to provide the Development Contributions.
- (b) The Land Owner indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Land Owner's obligation to provide the Development Contributions in accordance with this Planning Agreement and/or the Minister exercising the Minister's rights under or by virtue of this Planning Agreement.
- (c) The Land Owner's release in clause 14(a) excludes any Claim, liability or loss arising from and Costs incurred in connection with:
  - (i) the Minister reimbursing the Land Owner the Development Contributions or re-transferring the Transferred Lands pursuant to clause 13;

- (ii) the enforcement of this Planning Agreement by the Land Owner; or
- (iii) any Claim against the Minister or the Land Owner relating to or concerning the validity of the Stage 1 Project Approval.

The indemnity in clause 14(b) is a continuing obligation, independent of the Land Owner's other obligations under this Planning Agreement and continues after this Planning Agreement ends.

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## **15. Breaches to be rectified**

- (a) If the Minister considers that the Land Owner has defaulted on the performance of any of its respective obligations under this Deed, then the Minister may give written notice to the Land Owner which:
  - (i) identifies the nature of the breach; and
  - (ii) provides a reasonable time with which the Land Owner must rectify that breach and what action must be taken to rectify that breach.
- (b) In accordance with sections 109H and 109J of the Act and section 146A of the Regulation, all breaches of this Deed for which the Minister has provided a notice requiring rectification of that breach to the Land Owner must be rectified prior to the issue (following the date that such notice is provided to the Land Owner) of any Construction Certificate, Subdivision Certificate or Occupation Certificate relating to the Land.

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## **16. Overdue payments**

- (a) The Land Owner agrees to pay the Minister interest on any amount payable by it under this Planning Agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Land Owner, calculated on daily balances. The rate to be applied to each daily balance is the rate 2% 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 16.
- (c) The Land Owner's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this Planning Agreement.
- (d) If a liability under this Planning Agreement becomes merged in a judgment or order, then the Land Owner 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 judgment or order and the rate referred to in this clause 16.

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## **17. Explanatory Note**

The Explanatory Note must not be used to assist in construing the Planning Agreement.

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**18. Effect of Scheduled 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 Planning Agreement.

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**19. General provisions**

The Parties agree to the miscellaneous and general provisions set out in Schedule 11.



## Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p><b>Planning instrument and/or Development Application - (Section 93F(1))</b></p> <p>The Land Owner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Project Approval 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) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of the land to which the Planning Agreement applies - (Section 93F(3)(a))</b></p>	<p>The whole of the Land.</p>
<p><b>Description of change to the environmental planning instrument to which the Planning Agreement applies - (Section 93F(3)(b)(i))</b></p>	<p>N/A</p>
<p><b>Description of development to which this Planning Agreement applies - (Section 93F(3)(b)(ii))</b></p>	<p>The development described in the Stage 1 Project Approval Application</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement - (Section 93F(3)(c))</b></p>	<p>See Schedule 3 to Schedule 5 inclusive.</p>
<p><b>Applicability of section 94 of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94 of the Act is not excluded.</p>
<p><b>Applicability of section 94A of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94A of the Act is not excluded.</p>
<p><b>Applicability of section 94EF of the Act - (Section 93F(3)(d))</b></p>	<p>The application of section 94EF of the Act is excluded.</p>
<p><b>Benefits under the agreement are or are not to be taken into consideration in determining a development contribution under section 94 - (Section 93F(3)(e))</b></p>	<p>Clause 6 and paragraphs 4 and 5 of Schedule 4</p>
<p><b>Mechanism for dispute resolution - (Section 93F(3)(f))</b></p>	<p>See clause 11 and Schedule 8.</p>

<b>SUBJECT and SUB-SECTION OF THE ACT</b>	<b>THE PLANNING AGREEMENT</b>
<b>Enforcement of the Planning Agreement -</b> (Section 93F(3)(g))	See clause 7, paragraph 3.5 of Schedule 4 and Schedule 9.
<b>Registration of the Planning Agreement</b> (Section 93F(3)(g))  The Parties agree that the Planning Agreement will be registered in accordance with clause 9.2.	Yes
<b>No obligation to grant consent or exercise functions -</b> (Section 93F(9))	No obligation. See paragraph 8 of Schedule 11.

## Schedule 2 - Land

### 1. Title

The whole of the land described in the following table:

Lot	Deposited Plan	Registered Proprietor
36	755211	Huntlee Pty Ltd
37	755211	Huntlee Pty Ltd
38	755211	Huntlee Pty Ltd
43	755211	Huntlee Pty Ltd
9	729973	Huntlee Pty Ltd
10	729973	Huntlee Pty Ltd
11	729973	Huntlee Pty Ltd
12 (part)	729973	Huntlee Pty Ltd
211 (part)	828787	Huntlee Pty Ltd
7	729973	Huntlee Pty Ltd
39	755211	Huntlee Pty Ltd
33	755211	Huntlee Pty Ltd
10	1105639	Huntlee Pty Ltd
21 (part)	1050597	Huntlee Pty Ltd
230 (part)	879198	Huntlee Pty Ltd
241 (part)	1105591	Les Russell & Son Pty Ltd
221 (part)	1064738	Huntlee Pty Ltd
201	828486	Huntlee Pty Ltd
200 (part)	828486	Huntlee Pty Ltd
8	729973	Huntlee Pty Ltd
6	729973	Huntlee Pty Ltd
231	879198	Huntlee Pty Ltd

## Schedule 3 - Development Contributions Schedule

### 1. Development Contributions

The Land Owner undertakes to pay, make or provide the following Development Contributions as set out and provided for in the Tables below.

**Table 1**

Column 1	Column 2	Column 3
Development Contribution	Intended use	Date Development Contribution is due
<p><b>Item 1. Regional Road Contribution</b></p> <p>A Regional Road Contribution of \$105,340 per Net Developable Hectare (as adjusted for CPI in accordance with this Schedule 3)</p>	Regional Road Contribution	To be paid progressively in instalments in relation to each Net Developable Hectare (or any part thereof) comprised in a proposed Plan of Subdivision for any part of the Land the subject of an Application prior to the issue of the Subdivision Certificate relating to that Land
<p><b>Item 2. Road Improvement Works</b></p> <p>Road Improvement Works to be undertaken in accordance with a Road Works Agreement, as contemplated by paragraph 4.1 of Schedule 4.</p>	Road Improvement Works	To be completed in accordance with the timing set out in Annexure F.

**Table 2**

Column 1	Column 2	Column 3
Development Contribution	Intended use	Date for the transfer or dedication of the Education Contribution Land
<p><b>Item 1. Transfer of Education Contribution Land</b></p>	Primary school	To be transferred or dedicated prior to the issue of a Subdivision Certificate in respect of that part of the Land comprising land on which the 800th Dwelling is to be developed within Stage 1 (consistent with the Stage 1 Project Approval Application)

#### In respect of indexation by CPI the following applies:

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

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

**CPIA** means the amount determined in accordance with the following formula (which may be a negative amount where D is greater than C):

$$\text{CPIA} = \left[ \frac{A \times C}{D} - A \right] \times \frac{ND - NDSP}{ND}$$

where:

C = the most recent CPI prior to the date of actual payment of the relevant part of the Regional Road Contribution (including without limitation the date of actual payment of the Regional Road Contribution pursuant to clause 13.1(c)(i));

D = the most recent CPI before the date of operation of this Planning Agreement;

ND = for any application of the above formula to determine the indexation to apply to any part of "A", the number of days in the period during which that part of "A" is to be indexed; and

NDSP = the number of days in the Suspension Period

provided that, at all times, the Contribution Amount is never less than its nominal dollar value as at the date of this Planning Agreement.

## Schedule 4 - Development Contribution Procedures

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### 1. Land Owner's undertakings

The Land Owner undertakes to:

- (a) pay the Regional Road Contribution set out in Column 1 of Item 1 of Table 1 in Schedule 3 to the Minister (or as the Minister directs) and as contemplated by, and in accordance with, the Development Contributions Timetable;
- (b) carry out the Road Improvement Works and comply with all its obligations under or pursuant to a Road Works Agreement, as provided in paragraph 4.1 of this Schedule 4;
- (c) transfer to the Minister (or his nominee) the Education Contribution Land and its improvements as contemplated by, and in accordance with, Column 1 of Item 1 of Table 2 in Schedule 3, paragraph 3 of this Schedule 4 and the Development Contributions Timetable; and
- (d) consult regularly with the Minister and respond within a reasonable period to the Minister's reasonable questions, queries and enquiries regarding the progress of the Development to the extent such matters relate to the payment, or provision, of a Development Contribution and, in this regard, the Minister agrees to take all reasonable steps to ensure that any confidential information in the nature of commercial-in-confidence information which is so identified by the Land Owner in such response is not used or disclosed by it or any of its officers, employees, agents or consultants, except for the purposes of this Planning Agreement.

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### 2. Regional Road Contribution

#### 2.1 Payment by instalments

- (a) The Land Owner must pay the Regional Road Contribution described in Item 1 of Table 1 of Schedule 3 progressively in instalments in respect of each Net Developable Hectare (or any part thereof) comprised in a proposed Plan of Subdivision for any part of the Land the subject of an Application prior to the issue of the Subdivision Certificate relating to that Land.

- (b) Each such instalment is to be paid in accordance with the following formula:

$$A = N \times \$105,340$$

Where:

"A" is the amount of any instalment to be paid by the Land Owner as part of the Regional Road Contribution; and

"N" is the number (which may include fractions) of Net Developable Hectares comprised in the proposed Plan of Subdivision for any part of the Land the subject of an Application.

- (c) Prior to the Land Owner paying an instalment of the Regional Road Contribution before the issue of a Subdivision Certificate relating to part of the Land comprised in a proposed Plan of Subdivision the subject of an Application pursuant to this paragraph 2.1 of this Schedule 2, the Land Owner must provide to the Minister a certification (acceptable to the Minister, acting reasonably) signed by the Surveyor

which confirms the number of Net Developable Hectares comprised in the proposed Plan of Subdivision the subject of the Application relevant to that instalment of the Regional Road Contribution.

- (d) Within 10 Business Days of receiving such certification, the Minister must notify the Land Owner of its acceptance (or otherwise) of such certification.
- (e) If the Minister notifies the Land Owner that it does not accept such certification or otherwise fails to notify the Land Owner within the 10 Business Day period referred to in paragraph 2.1(d) of this Schedule 4, then such action will be deemed to be a dispute for the purposes of this deed and will be resolved in accordance with Schedule 8.
- (f) The Minister agrees that where the Regional Road Contribution has been paid in respect of the creation of a residue lot or a super lot, the Land Owner will not be required to pay a further Regional Road Contribution in respect of subsequent Subdivision Certificates as they apply to any such residue lots or super lots.

## **2.2 Variation of Regional Road Contribution amount**

- (a) The Parties acknowledge and agree that the contribution rate for each Net Developable Hectare specified in Column 1 of Item 1 of Table 1 in Schedule 3 is equal in value to the contribution rate for each Net Developable Hectare specified in the Draft Special Infrastructure Contribution Determination.
- (b) If:
  - (i) a Special Infrastructure Contribution Determination commences and applies to the Land;
  - (ii) that Special Infrastructure Contribution Determination specifies a contribution rate for each Net Developable Hectare which is less than the contribution rate in respect of each Net Developable Hectare of the Land specified in Column 1 of Item 1 of Table 1 in Schedule 3; and
  - (iii) the Land Owner has not paid the whole or any part of the Regional Road Contribution under this Planning Agreement as at the date on which that Special Infrastructure Contribution Determination comes into effect,then:
  - A. the Parties agree to vary the Regional Road Contribution so that the whole or any part of the Regional Road Contribution still to be paid by the Land Owner as at the date on which that Special Infrastructure Contribution Determination comes into effect will be calculated using the contribution rate for each Net Developable Hectare specified in that Special Infrastructure Contribution Determination (and not at the contribution rate specified in Column 1 of Item 1 of Table 1 in Schedule 3);
  - B. from (and including) the date on which that Special Infrastructure Contribution Determination comes into effect, the Land Owner will be required to pay any outstanding part of the Regional Road Contribution:

- 1) as calculated using the contribution rate for each Net Developable Hectare specified in that Special Infrastructure Contribution Determination (and not at the contribution rate specified in Column 1 of Item 1 of Table 1 in Schedule 3); and
  - 2) in accordance with the dates specified in Column 3 of Table 1 in Schedule 3; and
- C. the Minister will not be required to pay or otherwise compensate the Land Owner for the whole or any part of the Regional Road Contribution paid by the Land Owner before the date on which that Special Infrastructure Contribution Determination came into effect.
- (c) The Parties acknowledge and agree that this Planning Agreement will not be varied, and the contribution rate for each Net Developable Hectare as specified in Column 1 of Item 1 in Table 1 of Schedule 3 will not be changed, where the contribution rate for each Net Developable Hectare specified in a Special Infrastructure Contribution Determination is greater than the contribution rate for each Net Developable Hectare specified in Column 1 of Item 1 of Table 1 in Schedule 3.

## 2.3 Finalisation of Regional Road Contribution

- (a) In respect of an instalment of the Regional Road Contribution paid by the Land Owner to the Minister pursuant to paragraph 2.1 of this Schedule 4, if:
- (i) the number (which may include fractions) of Net Developable Hectares comprised in that part of the Land the subject of the Subdivision Certificate which is issued in respect of the Application relevant to that instalment is greater than the number (which may include fractions) of Net Developable Hectares comprised in the proposed Plan of Subdivision the subject of the Application relevant to that instalment, then the Land Owner must, within 10 Business Days after any request from the Minister (which may be given at any time after the Minister's notice pursuant to paragraph 2.2(c) of this Schedule 4 or, if the Minister does not give any such notice, after the resolution of the dispute), pay to the Minister the amount determined in accordance with the following formula in respect of that instalment:

$$A = (N \times \$105,340) - I$$

Where:

"A" is the amount to be paid by the Land Owner;

"N" is the number (which may include fractions) of Net Developable Hectares comprised in the Subdivision Certificate for that part of the Land relevant to that instalment; and

"I" is the quantum of the instalment paid by the Land Owner pursuant to paragraph 2.1 of this Schedule 4; and

- (ii) the number (which may include fractions) of Net Developable Hectares comprised in that part of the Land the subject of the Subdivision Certificate which is issued in respect of the Application relevant to that instalment is less than the number (which may include fractions) of Net



Developable Hectares comprised in the proposed Plan of Subdivision relevant to that instalment, then the Minister must credit the Land Owner an amount determined in accordance with the following formula relevant to that instalment against the amount payable for future Subdivision Certificates:

$$A = I - (N \times \$105,340)$$

Where:

"A" is the amount to be paid by the Land Owner;

"I" is the quantum of the instalment paid by the Land Owner pursuant to paragraph 2.1 of this Schedule 4; and

"N" is the number (which may include fractions) of Net Developable Hectares comprised in the Subdivision Certificate for that part of the Land relevant to that instalment.

- (b) Within 10 Business Days of the issue of the Subdivision Certificate relating to part of the Land comprised in a proposed Plan of Subdivision the subject of an Application, the Land Owner must provide to the Minister a certification (acceptable to the Minister, acting reasonably) signed by the Surveyor which confirms the number of Net Developable Hectares comprised in the Plan of Subdivision the subject of the Subdivision Certificate which is relevant to an instalment of the Regional Road Contribution
- (c) Within 10 Business Days of receiving such certification, the Minister must notify the Land Owner of its acceptance (or otherwise) of such certification.
- (d) If the Minister notifies the Land Owner that it does not accept such certification or otherwise fails to notify the Land Owner within the 10 Business Day period referred to in paragraph 2.2(c) of this Schedule 4, then such action will be deemed to be a dispute for the purposes of this deed and will be resolved in accordance with Schedule 8.

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### **3. Education Contribution Land**

#### **3.1 Education Contribution Land**

The Minister and the Land Owner agree that the Land Owner must transfer the Education Contribution Land to the Minister (or his nominee) in accordance with the Development Contribution Timetable and paragraph 3.3 of this Schedule 4.

#### **3.2 Proposed subdivision of the Education Contribution Land**

- (a) In accordance with paragraph 3.3(a) of this Schedule 4, and on or before the date specified in Column 3 of Table 2 in Schedule 3, the Land Owner must (at its cost) prepare and register a Plan of Subdivision to create a separate lot or lots for the Education Contribution Land.
- (b) On or before the date specified in Column 3 of Table 2 in Schedule 3, the Land Owner must (at its risk and cost) apply for, and procure, all Approvals to create a separate lot or lots for the Education Contribution Land.

- (c) The Developer must keep the Minister reasonably informed in relation to the progress of obtaining the Approvals referred to in paragraph 3.3(a) of this Schedule 4.
- (d) Upon receipt by the Land Owner of the Approvals, the Land Owner must (at its risk and cost) do all that is reasonably required as soon as reasonably practicable to procure the LPI to register a Plan of Subdivision to create a separate lot or lots for the Education Contribution Land consistent with those Approvals.

### **3.3 Variation of Education Contribution Land**

- (a) If the Approval for the Plan of Subdivision for the Education Contribution Land (**Subdivision Approval**) requires the indicative location or configuration of the Education Contribution Land to materially change from that part of the Land shown in Annexure B, then:
  - (i) the Developer must propose to the Director-General details in writing of the proposed alternative location and configuration of the Education Contribution Land, consistent with the Subdivision Approval;
  - (ii) the Minister must procure that the Director-General determine the actual location and configuration of the Education Contribution Land consistent with the Subdivision Approval, having regard to:
    - A. the impositions and requirements of the Development applying at the time of the determination;
    - B. the Stage 1 Project Application (as varied by any conditions of the Stage 1 Project Approval);
    - C. the DET Guidelines at the time of the determination; and
    - D. the detail and reasoning incorporated in the Developer's proposal referred to in paragraph 3.3(a)(i) of this Schedule 4;and in determining the actual location and configuration of the Education Contribution Land, the Director-General must (unless the parties otherwise agree) nominate that part of the Land which will be the Education Contribution Land under this deed; and
- (i) the Minister must notify the Developer promptly after the determination is made of the actual location and configuration of the Education Contribution Land so that the Developer can prepare the Plan of Subdivision for the Education Contribution Land.

### **3.4 Transfer of Education Contribution Land**

- (a) No later than the date specified in Column 3 of Table 2 in Schedule 3, the Land Owner must deliver to the Minister (or his nominee):
  - (i) a form of transfer in respect of the land comprising the Education Contribution Land in favour of the Minister for a consideration of \$1, executed by the Land Owner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
  - (ii) the certificate or certificates of title for the Education Contribution Land,

and must take any other necessary action (other than paying stamp duty associated with the transfer) to give effect to the transfer of the title of the Education Contribution Land to the Minister (or his nominee) free of all encumbrances (including any mortgages, easements, covenants and voluntary planning agreements) and affectations (including any charge or liability for rates, taxes and charges).

- (b) Subject to paragraph (c), the Minister agrees to do all things reasonably necessary to facilitate the release and discharge of any voluntary planning agreements to which he is a party, including this Planning Agreement, from the title to the Education Contribution Land, subject to:
  - (i) satisfaction of the Land Owner's obligations in respect of the Education Contribution Land under this Planning Agreement; and
  - (ii) satisfaction of the Land Owner's obligations under any other voluntary planning agreements as those obligations relate to the Education Contribution Land.
- (c) To facilitate the release and discharge of this Planning Agreement or any other voluntary planning agreement registered on the title to the Education Contribution Land, to which the Minister is a party, the Minister may require the Land Owner to provide alternative security, acting reasonably, to secure any outstanding obligations in respect of the Education Contribution Land.

### **3.5 Servicing of Education Contribution Land**

No later than the date specified in Column 3 of Item 1 in the table in Schedule 3, the Land Owner must ensure that the Education Contribution Land is serviced to the reasonable satisfaction of the Minister, in respect of water, sewer, power, telephone and kerb, gutter, footpath and sealed road to the frontage of the Education Contribution Land, to a standard appropriate for a public primary school.

### **3.6 Compulsory Acquisition**

- (a) If the Land Owner does not transfer the Education Contribution Land as required by this Planning Agreement, the Land Owner consents to the Minister compulsorily acquiring the whole or any part of the Education Contribution Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Land Owner and the Minister agree that:
  - (i) this paragraph 3.6 of this Schedule 4 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) in this paragraph 3.6 of this Schedule 4 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Land Owner must ensure that the Education Contribution Land is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges), on the date that the Land Owner is liable to transfer the Education Contribution Land to the Minister in accordance with paragraph 3.1 of this Schedule 4.

- (d) The Land Owner indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Education Contribution Land under paragraph 3.6 of this Schedule 4.
- (e) The Land Owner must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister acquiring the whole or any part of the Education Contribution Land as contemplated by this paragraph 3.6 of this Schedule 4.

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## **4. Road Improvement Works and Offset**

### **4.1 Road Improvement Works**

- (a) The Land Owner must:
  - (i) enter into a Road Works Agreement(s) in respect of the carrying out and completion of the Road Improvement Works for each element(s) of the Road Improvement Works set out in column 1 of the table in Annexure F before the issue of a Construction Certificate for the relevant element(s) of the Road Improvement Works; and
  - (ii) achieve Practical Completion of each element of the Road Improvement Works set out in column 1 of the table in Annexure F within the timing set out in column 2 of the table in Annexure F for that element of the Road Improvement Works.
- (b) The Land Owner must comply with the terms and conditions of the Road Works Agreement, including any requirements to provide security.
- (c) The Land Owner must notify the Minister that Practical Completion of the Road Improvement Works has been achieved within 10 Business Days of Practical Completion of those works and must provide a copy of the certificate of Practical Completion of those works to the Minister.

### **4.2 Offset for the Road Improvement Works**

- (a) Promptly after the Land Owner enters into a Road Works Agreement, to carry out any of the Road Improvement Works as contemplated by paragraph 4.1(a)(i) of this Schedule 4:
  - (i) the Land Owner must notify the Minister that such agreement has been entered into and such notice must either:
    - A. specify the estimated costs to carry out and achieve Practical Completion of the Road Improvement Works the subject of the Road Works Agreement as specified in that agreement (and provide evidence to the Minister of such amount being specified in that agreement); or
    - B. if no amount is specified in the Road Works Agreement, request the Minister to determine (acting reasonably) the estimated costs to carry out and achieve Practical Completion of the Road Improvement Works the subject of the Road Works Agreement; and

- (ii) provide the Minister with a copy of such agreement with the notice referred to in paragraph 4.2(a)(i) of this Schedule 4.
- (b) Within 20 Business Days of receiving a notice referred to in paragraph 4.2(a)(i)B of this Schedule 4, the Minister must notify the Land Owner of his determination (acting reasonably) of the estimated costs to carry out and achieve Practical Completion of the Road Improvement Works the subject of the Road Works Agreement. The Land Owner may make a submission to the Minister regarding the value of the Road Improvement Works and the Minister must reasonably consider that submission.
- (c) Subject to clause 4.2(f) of this Schedule 4, the Minister acknowledges and agrees that the Developer is entitled to offset the Agreed Road Works Amount against its obligation to pay any part of the Regional Road Contributions (up to, and capped at, the Agreed Road Works Amount) (**Offset Entitlement**).
- (d) The Offset Entitlement is to be applied towards the Land Owner's obligation to pay the instalment of the Regional Road Contribution (or any part of it) next payable after the Road Works Agreement is entered into. If the quantum of the Offset Entitlement is greater than the quantum of that instalment of the Regional Road Contribution, the Offset Entitlement is to be applied towards the Land Owner's obligation to pay each subsequent instalment of the Regional Road Contribution until such time as Offset Entitlement has been applied in full.
- (e) The Minister acknowledges and agrees that where the Land Owner applies the Offset Entitlement to any part of the Regional Road Contribution, the Land Owner will be deemed to have paid the Minister that part of the Regional Road Contribution.
- (f) Prior to application of any part of the Offset Entitlement (as contemplated in paragraph 4.2(c) of this Schedule 4) (**Partial Offset Entitlement**), that Partial Offset Entitlement must be increased to reflect any increase in the CPI since the date of this deed with the relevant amount being calculated in accordance with the following formula:

**A** means the dollar (\$) amount of the Partial Offset Entitlement payable prior to indexation by CPI.

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

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

$$\text{CPIA} = \left[ \frac{A \times C}{D} - A \right] \times \frac{ND - NDSP}{ND}$$

where:

C = the most recent CPI prior to the application of any Partial Offset Entitlement;

D = the most recent CPI before the date of operation of this Planning Agreement;

ND = for any application of the above formula to determine the indexation to apply to any part of "A", the number of days in the period during which that part of "A" is to be indexed; and

NDSP = the number of days in the Suspension Period

- (g) The Land Owner acknowledges that if the actual costs of carrying out and achieving Practical Completion of the Road Improvement Works exceed the Agreed Road Works Amount, the Land Owner accepts the risk for those additional costs and will not be entitled to offset those additional costs against its obligation to pay any part of the Regional Road Contributions.
- (h) The Land Owner must provide the Minister with evidence of the actual costs of carrying out and achieving Practical Completion of the Road Improvement Works.

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## 5. Other offsets

If the aggregate of the:

- (a) Agreed Road Works Amount; and
- (b) quantum of payments made under this agreement in respect of the Regional Road Contribution

**(Combined Contribution),**

exceeds the total Regional Road Contribution paid or payable by the Land Owner as determined in accordance with Item 1 of Table 1 in Schedule 3 (**Required Contribution**), the Land Owner may request the Minister to approve the Land Owner offsetting the amount by which the Combined Contribution exceeds the Required Contribution against any obligation the Land Owner may have to make any future contributions in respect of regional infrastructure in the Lower Hunter. The Minister agrees to act reasonably in considering any such request, taking into account any Government policies in relation to contributions, offsets and credits at the time, or which are contemplated at the time, the Land Owner makes such a request.

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## 6. Subdivision of the Land

- (a) In accordance with section 109J of the Act, no Subdivision Certificate in respect of the Land may issue unless the Consent Authority has received a notice from the Minister that the Land Owner has complied with the requirements of this Planning Agreement relating to:
  - (i) the payment of each instalment of the Regional Road Contribution in accordance with paragraph 2.1 of this Schedule 4 by the dates specified in Column 3 of Item 1 of Table 1 in Schedule 3;
  - (ii) Practical Completion of the Road Improvement Works in accordance with paragraph 4.1 of this Schedule 4 by the date specified in Column 3 of Item 2 of Table 1 in Schedule 3.
  - (iii) the servicing of the Education Contribution land in respect of water, sewer, power, telephone, kerb, gutter, footpath and sealed road to the frontage of the Education Contribution Land in accordance with paragraph 3.5 of this Schedule 4 by the date specified in Column 3 of Item 1 of Table 2 in Schedule 3; and
  - (iv) the transfer of the Education Contribution Land in accordance with paragraph 3 of this Schedule 4 by the date specified in Column 3 of Item 1 of Table 2 in Schedule 3.

- (b) For the purposes of section 109J of the Act, in addition to the Developer's obligation to provide the Bank Guarantees, the requirements of this deed will be satisfied if the Minister has called on the Bank Guarantees in relation to the contribution identified in clause 6.1(a)(i).

---

## **7. Confirmation of satisfactory arrangements**

- (a) The Parties acknowledge that the Major Projects SEPP Amendment requires the Director-General to certify whether certain satisfactory arrangements for the provision of designated State public infrastructure have been made in relation to the Land.
- (b) The Land Owner must, at its Cost, use reasonable endeavours to liaise with, and must provide sufficient information to, the Minister (or must provide the Minister with such information as the Minister requests) to allow the Director-General to determine whether to issue the DG Certificate.
- (c) Promptly following receipt of a written request from the Land Owner for a DG Certificate, the Minister must use reasonable endeavours to procure that the Director-General, as soon as reasonably practicable, considers whether and, if appropriate, certifies in writing to the Minister (with a copy to the Land Owner) that satisfactory arrangements have been made for the contribution to the provision of designated State public infrastructure in relation to Land the subject of the Application for subdivision.

**Schedule 5 - Not used**



## Schedule 6 - Release and Discharge Terms

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### 1. Release and Discharge Terms

- (a) If:
- (i) the Land Owner has:
    - A. paid the Regional Road Contribution (as may be reduced pursuant to paragraph 2.2 of Schedule 4 and paragraph 4 of Schedule 4);
    - B. achieved Practical Completion of the Road Improvement Works under a Road Works Agreement entered into by the Land Owner in respect of the Road Improvement Works; and
    - C. transferred the Education Contribution Land,as required by this Planning Agreement;
  - (ii) any default by the Land Owner under the Planning Agreement has been remedied by the Land Owner (to the reasonable satisfaction of the Minister) or waived by the Minister under this Planning Agreement; and
  - (iii) the Suspension Expiry Date has occurred,
- the Minister must promptly, at the request and Cost of the Land Owner:
- A. provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Land owned by the Land Owner; and
  - B. do all things necessary to enable the extinguishment of the Planning Agreement from the title of that Land.
- (b) From time to time, the Land Owner may request the Minister and, subject to paragraph 1(c) of this Schedule 6, the Minister must consent to and to provide a release and discharge of the Planning Agreement within 5 Business Days of request by the Land Owner to the extent the Planning Agreement affects any part of the Land in respect of which a Subdivision Certificate has been issued and where the Land Owner has fully satisfied its obligations under this Planning Agreement:
- (i) in respect of that part of the Land; or
  - (ii) otherwise provided any additional security that may be required to the Minister's satisfaction (in his sole and unfettered discretion) to secure performance of any outstanding obligations under this Planning Agreement in respect of that part of the Land,
- and where the Land Owner is not otherwise in material default of any of its obligations under this Planning Agreement, at the time of the Land Owner's request.
- (c) For the avoidance of doubt, the Minister is not required to provide a release and discharge of the Planning Agreement in respect of any part of the Land (or procure the removal of registration of the Planning Agreement from title of that part of the Land) unless the Minister is satisfied that the Land Owner is not in material default

of its obligations under this Planning Agreement at the time of the Land Owner's request.

- (d) If at the end of the Suspension Period, there is an effective Court declaration or order that the Stage 1 Project Approval is invalid, notwithstanding anything in this Agreement, the Parties agree that, 1 year and 1 month after the Suspension Expiry Date, the Minister must promptly, at the request and Cost of the Land Owner:
  - (i) provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects the Land owned by the Land Owner; and
  - (ii) do all things necessary to enable the extinguishment of the Planning Agreement from title of that Land.

## **Schedule 7 - Review or Replacement Procedures**

The Parties may agree to review this Planning Agreement. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. For clarity, no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the Parties.

## Schedule 8 - Dispute resolution

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### 1. Notice of Dispute

- (a) If a dispute between any of the Parties arises in connection with this Planning Agreement 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.
- (b) The Parties must continue to perform their respective obligations under this Planning Agreement 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.

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### 2. Further steps required before proceedings

- (a) Any dispute between the Parties arising in connection with this Planning Agreement 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), either Party may request LEADR – Association of Dispute Resolvers 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 either 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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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 13(a)(ii) of this Schedule 8, 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 (clause 7)

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### 1. Bank Guarantee and Cash Deposit for Regional Road Contributions and Road Improvement Works

#### 1.1 Face value of Bank Guarantee

- (a) No later than the Bank Guarantee Trigger Date, the Land Owner must provide to the Minister one or more Bank Guarantees having a (or an aggregate) face value equivalent to \$307,214.
- (b) Upon:
  - (i) payment to the Minister by the Land Owner of the full Regional Road Contribution set out in Item 1 of Table 1 in Schedule 3 (as indexed in accordance with Schedule 3) after applying all Offset Entitlements or as varied in accordance with clause 2.2 of schedule 3; and
  - (ii) Practical Completion of the Road Improvement Works as set out in Item 2 of Table 1 in Schedule 3 or as otherwise agreed in writing between the parties,

the Minister agrees to return to the Land Owner the Bank Guarantee then held by the Minister within 10 Business Days of the last payment being made by the Land Owner in respect of the Regional Road Contribution or Practical Completion of the Road Improvement Works, whichever is the later.

#### 1.2 Expiry of Bank Guarantee

- (a) If any Bank Guarantees provided by the Land Owner are expressed as expiring on a certain date, the Land Owner must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 1.3 of this Schedule 9.
- (b) The provision of the Bank Guarantee does not:
  - (i) relieve the Land Owner from any of the obligations to be complied with on its part under any other provision of this Planning Agreement; or
  - (ii) limit the right of the Minister to recover from the Land Owner in full all money payable to the Minister or works to be completed under this Planning Agreement, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister.

#### 1.3 Failure to replace expired Bank Guarantee

If the Land Owner fails to provide the Minister with a replacement Bank Guarantee in accordance with paragraph 1.2 of this Schedule 9, the Minister may call on the full amount of any Bank Guarantee held by the Minister after giving 10 Business Days prior written notice to the Land Owner.

#### 1.4 Cash Deposit

- (a) If the Minister makes a demand under any Bank Guarantee pursuant to paragraph 1.3 of this Schedule 9, 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 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 the Land Owner's obligations to pay the Regional Road Contribution and to achieve Practical Completion of the Road Improvement Works under this Planning Agreement.

- (b) As beneficial owner of the Cash Deposit, the Minister may, at any time and without notice to the Land Owner, 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 Owner to comply with the relevant obligations under this Planning Agreement.
- (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 Planning Agreement and the Land Owner has satisfied all of its obligations under this Planning Agreement, 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 Owner.
- (e) For the avoidance of doubt, the Land Owner has no right to require the Minister to release the Cash Deposit until the Minister is reasonably satisfied that no monies are, or may become, payable to the Minister under this Planning Agreement.

## **1.5 Release of Cash Deposit**

The Minister must release the Cash Deposit to the Land Owner if the Land Owner provides the Minister with a replacement Bank Guarantee complying with the requirements of paragraph 1.1 of this Schedule 9.

## **1.6 Claims under Bank Guarantee**

- (a) The Parties agree that the Minister may make claims under any Bank Guarantee in relation to any failure by the Developer to satisfy its obligations with respect to the Regional Road Contribution and the Road Improvement Works under this Planning Agreement.
- (b) If the Minister makes any claims under any Bank Guarantee, the Land Owner must promptly provide the Minister with one or more Bank Guarantees so that the face value of the Bank Guarantee, or aggregate face value of Bank Guarantees, held by the Minister equals \$307,214.

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## **2. Security for Road Improvement Works**

The Land Owner's obligations to undertake the Road Improvement Works must also be secured under the Road Works Agreement.

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## **3. Security for the transfer of the Education Contribution Land**

The Parties agree that the Land Owner's obligation to transfer the Education Contribution Land is secured by clause 9 of this Planning Agreement and paragraph 3.3 of Schedule 4.

## Schedule 10 - Assignment and Dealing Terms

---

### 1. Land Owner's right to sell Land

- (a) Except in respect of any part of the Land where the Planning Agreement has been released and discharged under paragraph 1 of Schedule 6, the Land Owner must not sell, transfer or dispose of the whole or any part of the Land in excess of 10 hectares in aggregate otherwise than in circumstances where paragraph 1(b) of this Schedule 10 applies, unless before it sells, transfers or disposes of any such part of the 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 Owner's obligations under this Planning Agreement (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) except as provided in the deed set out in Annexure A which is signed in accordance with paragraph 1(a)(iii) of this Schedule 10, the rights of the Minister under this Planning Agreement 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 Owner (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of;
  - (iv) any default by the Land Owner (other than a material default constituted by the appointment of a Controller of the Land Owner by a Financier) has been remedied by the Land Owner or that Financier (as the case may be), unless that default has been waived by the Minister; and
  - (v) the Land Owner and the Transferee pay the Minister's reasonable Costs in relation to that assignment.
- (b) The Land Owner acknowledges that if it sells, transfers or disposes of any Land which is not in excess of 10 hectares in aggregate, nothing in this Planning Agreement requires the Minister to release the Planning Agreement insofar as it relates to that Land unless and until the requirements of paragraph 1 of Schedule 6 have been complied with.
- (c) For the purposes of paragraphs 1(a) and 1(b) of this Schedule 10, the following will be taken to be the sale, transfer or disposal of the whole or any part of the Land in excess of 10 hectares in aggregate:
- (i) one transaction where that transaction results in the sale, transfer or disposal of Land in excess of 10 hectares;
  - (ii) two or more transactions where the purchaser, transferee or donee are different people and those transactions result in the sale, transfer or disposal of Land in excess of 10 hectares in aggregate, but excluding the area of any Land:

- A. comprised in any Residential Lot which has been sold, transferred or disposed to a purchaser, transferee or disponent;
  - B. which has been subject to the release and discharge of the Planning Agreement pursuant to paragraph 1(b) of Schedule 6; and
- (iii) two or more transactions where the purchaser, transferee or disponent is the same person (or persons) where the Minister, acting reasonably, determines that those separate transactions should be regarded as, in substance, one transaction.
- (d) Notwithstanding anything to the contrary in this Schedule 10, the Minister may waive compliance with the requirements under paragraph 1 of Schedule 10.

---

## **2. Land Owner's right to sell Education Contribution Land**

The Land Owner must not sell, transfer or dispose of the whole or any part of the Education Contribution Land other than to the Minister in accordance with the provisions of this Planning Agreement.

---

## **3. Release**

If the Land Owner sells, transfers or disposes of the whole or any part of the Land in excess of 10 hectares in aggregate and fully satisfies the requirements of paragraph 1 of this Schedule 10, the Land Owner will be released from its obligations under this Planning Agreement with respect to that Land being sold, transferred or disposed of.

---

## **4. Land Owner to retain obligations**

If the Land Owner sells, transfers or disposes of the whole or any part of the Land in the manner identified in paragraph 1 of this Schedule 10 to a Transferee:

- (a) the Land Owner may elect, by way of notice to the Minister, to continue to be bound by the obligations under the Planning Agreement in respect of the Land in lieu of the Transferee;
- (b) the Minister agrees to release the Transferee from the requirement to comply with the obligations under the Planning Agreement in respect of that Land; and
- (c) the Minister will do all things reasonably necessary to effect the release included in paragraph 4(b) of this Schedule 10 including entering into a further agreement if necessary with the Transferee and Land Owner.

## Schedule 11 - 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 this 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 Owner

Address: c/ - LWP Property Group (NSW) Pty Ltd  
34 Main Street  
Ellenbrook Town Centre  
ELLENBROOK WA 6069

Telephone: (08) 9297 9900

Fax: (08) 9296 9100

Attention: Danny Murphy

#### 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 Planning Agreement, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this Planning Agreement in his 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.

---

## **3. Assignment and dealings**

None of the Parties to this Planning Agreement may assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case unless stated otherwise in Schedule 10.

---

## **4. Entire Agreement**

This Planning Agreement 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.

---

## **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 Planning Agreement and all transactions incidental to it.

---

## **6. Governing Law and Jurisdiction**

This Planning Agreement 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.

---

## **7. Joint and individual liability and benefits**

Except as otherwise set out in this Planning Agreement, any agreement, covenant, representation or warranty under this Planning Agreement 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.

---

## **8. No fetter**

Nothing in this Planning Agreement 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 Planning Agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and

- (b) nothing this Planning Agreement imposes any obligation on a Consent Authority to:
  - (i) grant Development Consent or Stage 1 Project Application 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.

---

## 9. Representations and warranties

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

---

## 10. Additional representations and warranties

Huntlee in its capacity as bare trustee of the Relevant Partnership represents and warrants to the other Parties that as at the date of this Planning Agreement:

- (a) **(Trustee)**: it has power to enter into this Planning Agreement in its capacity as bare trustee of the Relevant Partnership;
- (b) **(Trustee has authority)**: it has the power to perform its obligations under this Planning Agreement as Land Owner in its capacity as bare trustee of the Relevant Partnership, including the power to pay the Regional Road Contribution, carry out the Road Improvement Works and transfer the Education Contribution Land to the Minister;
- (c) **(Partnership validly created)**: the Relevant Partnership has been validly created and is in existence at the date Huntlee signs this Planning Agreement;
- (d) **(Trustee validly appointed)**: Huntlee has been validly appointed as bare trustee of the Relevant Partnership and is presently the sole trustee of the Relevant Partnership;
- (e) **(Partnership Deed)**: the Relevant Partnership is solely constituted by the Relevant Partnership Deed, a true copy of which was provided to the Minister's solicitors before Huntlee signed this Planning Agreement;
- (f) **(Reliance)**: any act or omission of Huntlee can be relied upon by the Minister as if that act or omission had been done by the partners of the Relevant Partnership;
- (g) **(Commercial benefit)**: it is to the commercial benefit of the Relevant Partnership that Huntlee, as Land Owner, enters into this Planning Agreement in its capacity, inter alia, as bare trustee of the Relevant Partnership; and
- (h) **(Rights of indemnity and exoneration against Partnership assets)**: Except in the case of its own fraud, wilful violation of law, gross negligence, breach of trust or breach of duty, Huntlee as bare trustee of the Relevant Partnership has valid rights of indemnity and exoneration pursuant to the terms of the Relevant Partnership Deed.

---

**11. Severability**

- (a) If any part of this Planning Agreement 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 Planning Agreement, but the rest of this deed is not affected.

---

**12. Modification**

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

---

**13. Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Planning Agreement, 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. Planning Agreement not confidential**

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

Executed as a deed on

2012

**Executed** by **Huntlee Pty Ltd** in its capacity as )  
bare trustee of the Relevant Partnership (ABN 73 )  
143 744 745) in accordance with section 127 of )  
the Corporations Act by or in the presence of: )  
)  
)  
)  
)  
)

.....  
Company Secretary/Director

.....  
Director

.....  
Name of Company Secretary/Director (print)

.....  
Name of Director (print)

**Signed** by **The Honourable Bradley Hazzard**  
**M.P.**

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
The Honourable Bradley Hazzard M.P.  
Minister for Planning and Infrastructure

\_\_\_\_\_  
Name of Witness in full



**Annexure A - Novation Deed**

CLAYTON UTZ

**Novation Deed**

**The Minister for Planning and Infrastructure**

Minister

**Huntlee Pty Ltd**

Land Owner

**[Insert Land Owner's name]**

Transferor

**[Insert Transferee's name]**

Transferee

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

**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 15266/15992/80074328

**Novation Deed made at** \_\_\_\_\_ **on** \_\_\_\_\_

**Parties**                    **The Minister for Planning and Infrastructure ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000 (**Minister**)

**Huntlee Pty Limited ABN 73 143 744 745**

[Insert Land Owner's name] of [insert] (**Transferor**)

[Insert Transferee's name] of [insert] (**Transferee**)

**Recitals**

- A            The Minister and the Land Owner are parties to the Original Agreement.
- B            The Original Agreement relates to the whole of the Land.
- C            The Transferor wishes to transfer [the whole of] [part or parts of] the Land comprising Lot [insert Lot number] in DP [insert Deposited Plan number] to the Transferee.

**This deed provides**

---

**1. Definitions and interpretation**

**1.1 Definitions**

**Effective Date** means [insert].

**Land** has the meaning given to that term in the Original Agreement.

**Original Agreement** means the voluntary planning agreement dated [insert] and made between the Minister and the Land Owner.

**Required Obligations** means [insert the obligations nominated by the Minister pursuant to paragraph 1.1(a)(i) of Schedule 10 of the Original Agreement].

**1.2 References to certain general terms**

In this deed unless the contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;

- (d) the word person includes a firm, body corporate, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to anyone or mote of them; and
- (h) "include" in any form when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar nature.

### **1.3 Headings**

Headings are inserted for convenience and do not affect the interpretation of this deed.

---

## **2. Novation**

### **2.1 Original Agreement**

Subject to clause 2.2 and with effect from the Effective Date:

- (a) the Transferee is substituted for the Transferor as a party to the Original Agreement, and agrees to perform the Required Obligations;
- (b) the Transferee will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the Transferee was a party to the Original Agreement instead of the Transferor insofar as the Original Agreement relates to the Required Obligations; and
- (c) the Transferor is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement insofar as the Original Agreement relates to the Required Obligations.

### **2.2 Liability before Effective Date**

Notwithstanding clause 2.1, the Transferor is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Transferor occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) insofar as the Original Agreement relates to the Required Obligations.

---

## **3. Affirmation of the Original Agreement**

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

---

## **4. GST**

Where a supply made under this deed gives rise to a liability for GST, the consideration to be provided for that supply (other than under this clause) shall be increased by an additional amount equal to the GST payable on the supply. The additional amount must be paid, and the supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause have the meanings in the *A New Tax System (Goods and Services Tax) Act 1999*.

---

## **5. Stamp duty and costs**

- (a) The Transferor and the Transferee are jointly and severally liable for the Minister's legal costs of and incidental to the negotiation, preparation and execution of this deed, and must reimburse the Minister for such legal costs promptly on demand.
- (b) The Transferee will pay all stamp duty arising directly or indirectly from this deed.

---

## **6. Further acts**

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.
- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

---

## **7. Governing law**

This deed is governed by the law in force in the place specified in the New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that place.

---

## **8. Counterparts**

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

**Executed** as a deed.

**Signed** by **The Honourable Bradley Hazzard M.P.**

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

---

Signature of Witness

---

The Honourable Bradley Hazzard M.P.  
Minister for Planning and Infrastructure

---

Name of Witness in full

**Executed by Huntlee Pty Ltd** (ABN 73 143 744 745) in its capacity as bare trustee of the Relevant Partnership in accordance with section 127 of the Corporations Act by or in the presence of:

.....  
Company Secretary/Director

.....  
Director

.....  
Company Secretary/Director (print)

.....  
Name of Director (print)

**Executed by [insert Transferor]** in accordance with section 127 of the *Corporations Act* by or in the presence of:

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Name of Director in full

**Executed by [insert Transferee]** in accordance with section 127 of the *Corporations Act* by or in the presence of:

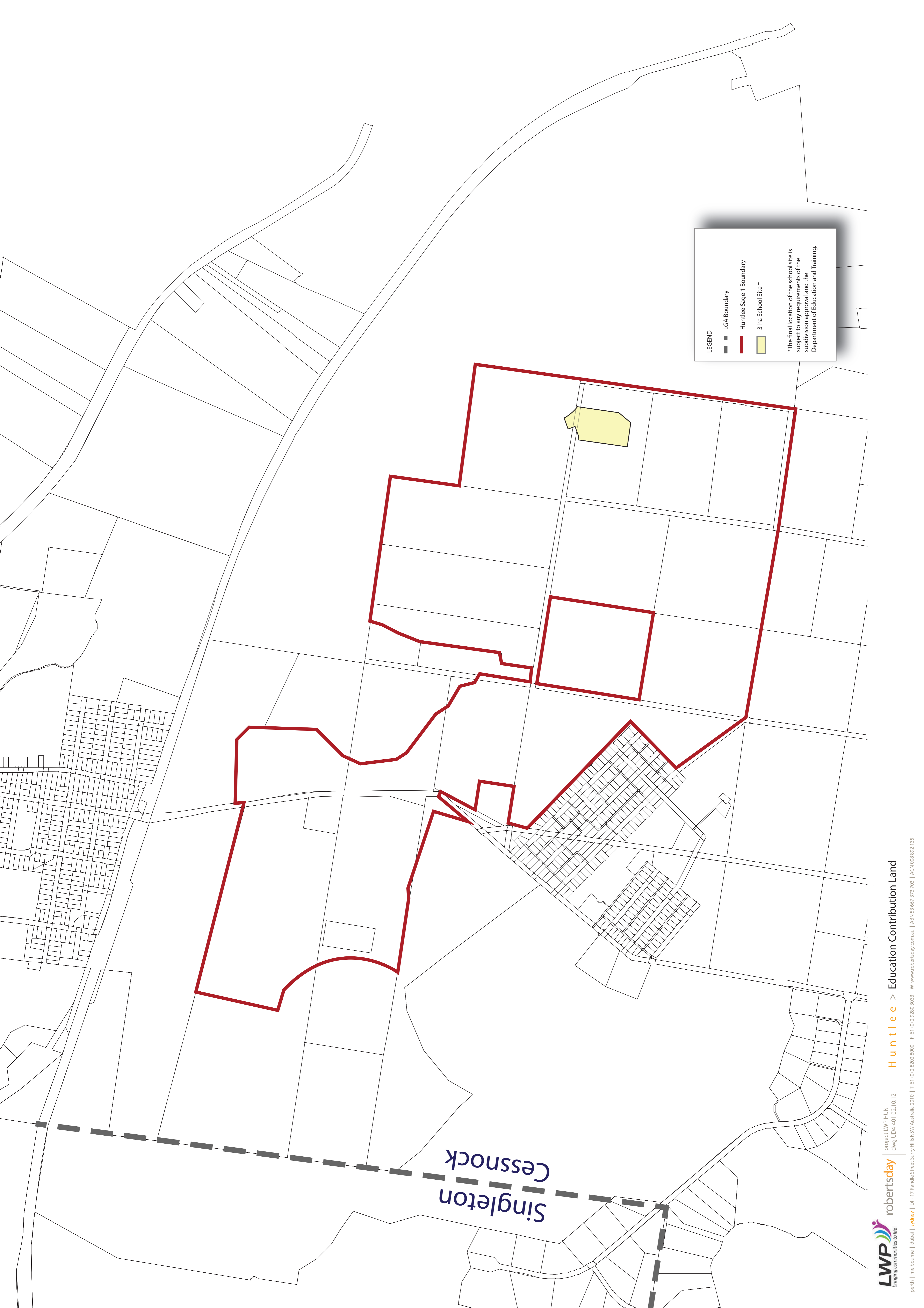
\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Secretary/other Director in full

\_\_\_\_\_  
Name of Director in full

## **Annexure B –Education Contribution Land**



**LEGEND**

- LGA Boundary
- Huntlee Sage 1 Boundary
- 3 ha School Site \*

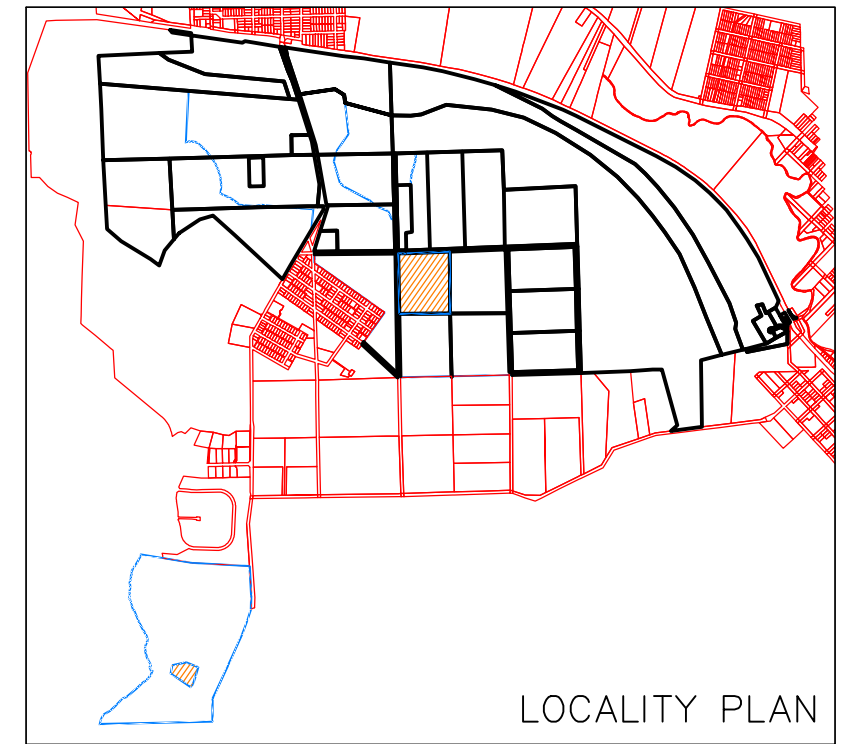
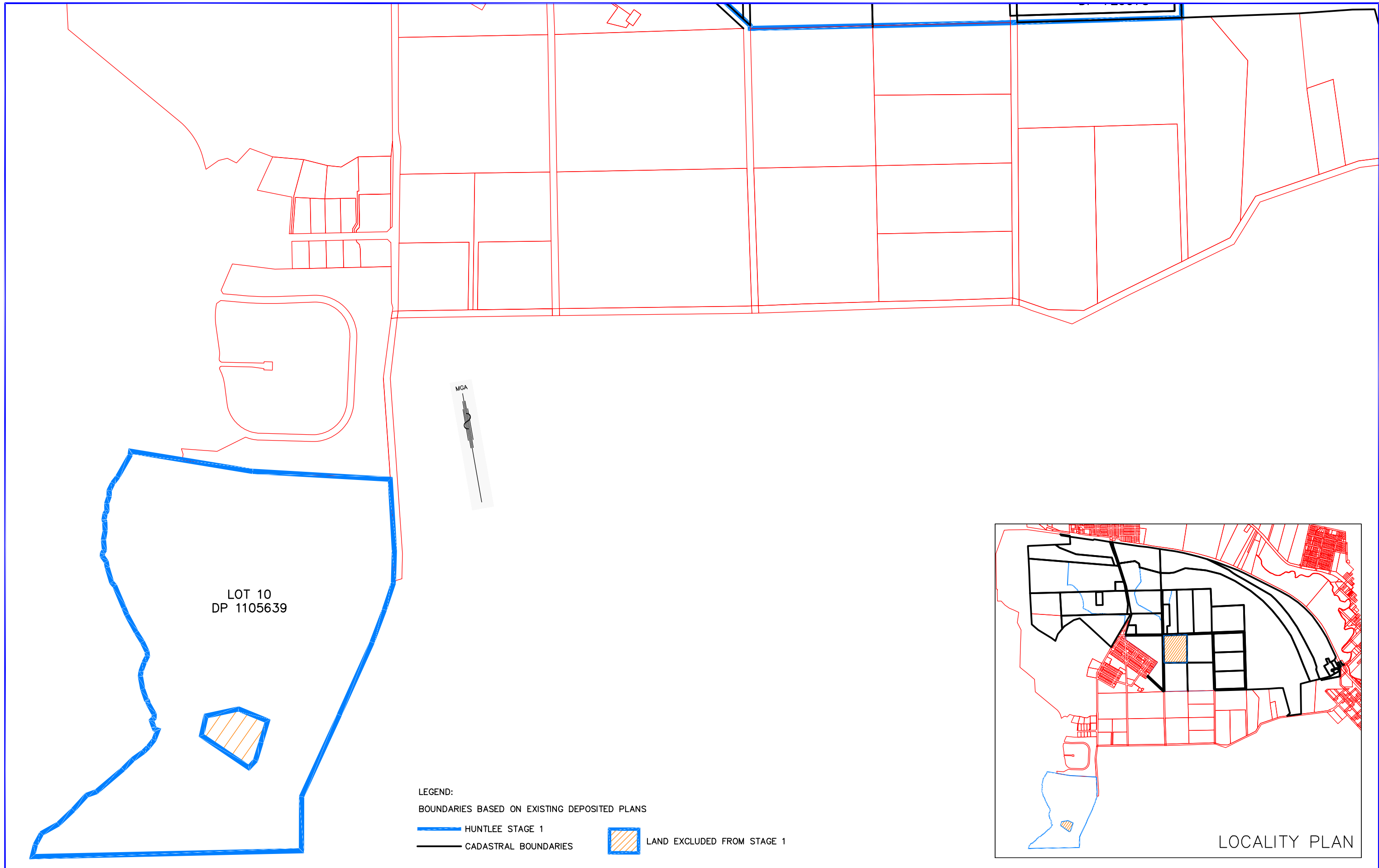
\*The final location of the school site is subject to any requirements of the subdivision approval and the Department of Education and Training.

Singleton  
Cessnock



## **Annexure C – Plan of Stage 1 Development**





No	REVISION	SVY	DFT	CHK	DATE
3	CHANGES TO PROPOSED LOT BOUNDARIES	SW	MAK	SB	23/05/12
2	PUBLIC ROAD WITHIN STAGE 1 HATCHED IN SOLID GREY	SW	JJW	SB	14/05/12
1	CHANGES AS PER CLIENT REQUEST	SW	MAK	SB	24/02/12

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 ACN 000 861 110

SURVEYING  
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 ENGINEERING DESIGN  
 PROJECT MANAGEMENT

125 Bull Street Newcastle NSW 2300  
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 E survey@monteathpowys.com.au  
 W www.monteathpowys.com.au

Surveyed	Drafted	Checked
SW	MAK	SB
REGISTERED SURVEYOR		
Scale @A1 : 1:5000	Original Size	
@A3 : 1:10000	A1	
DO NOT SCALE		

Client	<b>HUNTLEE Pty Ltd</b>	
Title	<b>PLAN OF EXISTING LOTS STAGE 1 HUNTLEE</b>	
CAD File:	10200G_03	Ref No: 10/200
Date:	03/02/2012	

Sheet No.	<b>2/2</b>
Revision	<b>3</b>

LHM 6/11 23/05/2012

**Annexure D – Draft Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011**

## Public Consultation Draft

### Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94EE of the *Environmental Planning and Assessment Act 1979*, make the following Determination.

Minister for Planning

Dated:

#### 1 Name of Determination

This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Lower Hunter) Determination 2011*.

#### 2 Commencement

This Determination takes effect on [insert date].

#### 3 Definitions

(1) In this Determination:

***contribution rate*** – see clauses 7 and 8.

***deferred payment arrangement*** – see clause 17.

***developer*** means the person having the benefit of a development consent for the time being.

***industrial land*** means:

(a) land within any of the following land use zones specified in the Standard Instrument:

(i) Zone B5 Business Development,

- (ii) Zone B7 Business Park,
  - (iii) Zone IN1 General Industrial,
  - (iv) Zone IN2 Light Industrial,
  - (v) Zone IN3 Heavy Industrial, and
- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
- (i) that adjoins industrial land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining industrial land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

**infrastructure** has the same meaning as it has in Subdivision 4 of Division 6 of Part 4 of the Act.

**relevant development** means development for which a special infrastructure contribution must be made under this Determination.

**residential land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
- (i) Zone R1 General Residential,
  - (ii) Zone R2 Low Density Residential,
  - (iii) Zone R3 Medium Density Residential,
  - (iv) Zone R4 High Density Residential,
  - (v) Zone R5 Large Lot Residential,
  - (vi) Zone RE2 Private Recreation,
  - (vii) Zone E4 Environmental Living, and

Note. Examples of land uses zones equivalent to those specified in the Standard Instrument are Zone 2 (Residential Zone) and Zone 6(b) (Private Open Space and Recreation Zone), as provided by *Singleton Local Environmental Plan 1996*.

- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
- (i) that adjoins residential land described in paragraph (a) or (b), and

- (ii) on which development for a purpose permitted on the adjoining residential land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

***special infrastructure contribution*** means a development contribution that is determined under section 94EE of the Act.

***special infrastructure contribution works-in-kind agreement*** – see clause 25.

***Standard Instrument*** means the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

***strata certificate*** means a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

***strata lot*** means a lot within the meaning of section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

***Sydney CPI number*** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

***the Act*** means the *Environmental Planning and Assessment Act 1979*.

***the map marked “Lower Hunter – Special Contributions Area”*** means the map marked “Lower Hunter – Special Contributions Area” referred to in Schedule 5A to the Act.

***Lower Hunter Special Contributions Area*** means the land described in Schedule 5A to the Act as the land shown edged heavy black on the map marked “Lower Hunter – Special Contributions Area”.

- (2) A word or expression used in this Determination has the same meaning as it has in the Act, unless otherwise defined.

Note. See section 4B of the *Environmental Planning and Assessment Act 1979* for the meaning of ***subdivision of land***. Subdivision of land includes community title subdivision under the *Community Land Development Act 1989*.

- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:

- (a) emergency services facility,

- (b) health services facility,
  - (c) neighbourhood shop,
  - (d) passenger transport facility,
  - (e) public utility undertaking,
  - (f) recreation area,
  - (g) shop top housing.
- (4) A reference in this Determination to the Minister in relation to a deferred payment arrangement or special infrastructure contribution works-in-kind agreement includes a reference to the Director-General, or other officer of the Department of Planning, acting for and on behalf of the Crown in right of the State of New South Wales.
- (5) Notes in this Determination are provided for guidance only.

#### **4 Development for which SIC must be made**

- (1) Subject to this clause, a special infrastructure contribution must be made for development on the following land within the Lower Hunter Special Contributions Area:
- (a) residential land within the Lower Hunter Special Contributions Area,
  - (b) industrial land within the Lower Hunter Special Contributions Area.

Note. A special infrastructure contribution may be imposed only as a condition of development consent. Accordingly, such a contribution can be required only in respect of development that may be carried out with development consent. A special infrastructure contribution cannot be imposed as a condition of consent if a planning agreement made in accordance with section 93F of the *Environmental Planning and Assessment Act 1979* excludes the application of section 94EF.

- (2) A special infrastructure contribution is not required to be made for development for the purpose of any of the following:
- (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course (but not including any associated building such as a club house),
  - (f) neighbourhood shop,
  - (g) passenger transport facility,
  - (h) public utility undertaking,
  - (i) bus depot, whether or not owned or operated by a public authority,
  - (j) recreation area,
  - (k) shop top housing,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or



- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination.

Note. See Appendix 1 to this Determination for the items of infrastructure in connection with which a special infrastructure contribution is required to be made under this Determination.

- (3) If a special infrastructure contribution has been required to be made for development on land in accordance with this Determination, a further special infrastructure contribution is not required to be made for other development on that land.
- (4) A special infrastructure contribution is not required to be made for any of the following kinds of development:
  - (a) subdivision for the purpose only of creating a lot (no more than 0.1 hectare in area) to contain an existing lawful habitable dwelling,
  - (b) subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (c) development on land in relation to which the Director-General has certified to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.
- (5) A special infrastructure contribution is not required to be made for development that satisfies both of the following:
  - (a) the development comprises the subdivision of land (other than a strata subdivision or a subdivision that is only for the purpose of a creating a lot to contain an existing habitable dwelling),
  - (b) the Director-General has, having regard to relevant planning controls, certified to the consent authority that each lot resulting from the subdivision is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

Note. A lot referred to in paragraph (b) is commonly referred to as a super lot.

- (6) A special infrastructure contribution is not required to be made in respect of complying development for which a complying development certificate is issued.
- (7) To avoid doubt, a special infrastructure contribution is required to be made:

- (a) for any part of the land to which a development consent relates within the Lower Hunter Special Contributions Area, even if the same development consent authorises development on land outside the Special Contributions Area, and
  - (b) for any part of the land on which relevant development is authorised to be carried out by a development consent, even if the same development consent also authorises development that is not relevant development (because, for example, of land use zoning) on another part of the land.
- (8) An exclusion from the requirement to make a special infrastructure contribution provided by a subclause of this clause is not limited by the terms of an exclusion provided by any other subclause of this clause.

Note. See section 75R (4) of the *Environmental Planning and Assessment Act 1979* for the application of this Determination to a project under Part 3A of that Act.

## 5 Nature of contribution

- (1) The special infrastructure contribution that must be made for relevant development is:
- (a) a monetary contribution, or
  - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the relevant development (being the carrying out of works for the provision of infrastructure or the dedication or other provision of land).
- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement.

## 6 Amount of monetary contribution

The monetary contribution that is payable as a special infrastructure contribution for a relevant development is the amount calculated by applying the contribution rate for the relevant development, as at the date of payment, to the net developable area for the development, that is, the monetary contribution is an amount calculated as follows:

$$\text{\$C}_p = \text{NDA} \times \text{\$C}_R$$

where:

- $\text{\$C}_p$  is the monetary contribution payable
- $\text{NDA}$  is the net developable area, in hectares, for the relevant development (determined in accordance with clauses 9 to 13)
- $\text{\$C}_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the relevant development (as provided by clauses 7 and 8).

## 7 Contribution rates

- (1) The contribution rate that is to be used in the calculation of the monetary contribution for a relevant development is the rate specified in the table to subclause (2) for development of the class to which the relevant development belongs.
- (2) Each amount specified in the table to this subclause applies to the determination of the relevant contribution rate at any time before 1 July 2011.

**Table**

<b>Class of development</b>	<b>Contribution rate</b>
1. Development on <b>residential land</b> that is within the Lower Hunter Special Contributions Area (as referred to in clause 4 (1) (a))	\$105,340 per hectare of net developable area
2. Development on <b>industrial land</b> within the Lower Hunter Special Contributions Area (as referred to in clause 4 (1) (b))	\$42,134 per hectare of net developable area

- (3) The amounts that apply to the determination of the contribution rates at any time during the 12 month period commencing 1 July 2011, and during each subsequent 12 month period, are the amounts as adjusted in accordance with clause 8.

## 8 Annual adjustment of amounts used in contribution rates

- (1) For the purposes of this clause, each of the amounts of \$105,340 and \$42,134 specified in the table to clause 7 (2) is an adjustable amount.
- (2) On 1 July 2011 and on 1 July in each subsequent year, each adjustable amount is to be adjusted by multiplying the amount by the following fraction:

$$\frac{\text{latest Sydney CPI number}}{170.5}$$

where:

*latest Sydney CPI number* is the Sydney 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).

Note. The figure **170.5** is the Sydney CPI number for the March quarter in 2010.

- (3) If an adjustable amount, as adjusted in accordance with subclause (2), is not a multiple of \$1, the amount is to be rounded to the nearest \$1.

## **9 Net developable area**

- (1) The net developable area for a relevant development is the area of land, in hectares, to which the development consent for the development relates, subject to this Determination.
- (2) The net developable area for a relevant development includes the area of any land that the development consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road (other than a road referred to in subclause (3)). The net developable area does not, however, include the area of any existing road in respect of which the development consent authorises, or requires, road work (such as road widening) to be carried out.
- (3) To avoid doubt, the net developable area does not include the area of any land that the development consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
- (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course,
  - (f) passenger transport facility,
  - (g) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (h) public transport corridor (other than a road corridor),
  - (i) public utility undertaking,
  - (j) bus depot, whether or not owned or operated by a public authority,
  - (k) recreation area,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
  - (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination.
- (4) The following areas of land are also not to be included in the calculation of the net developable area for the relevant development:
- (a) any part of the land to which the development consent for the relevant development relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,

- (b) any part of the land to which the development consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.

**10 Net developable area where large lot created to contain an existing habitable dwelling**

The net developable area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.

Note. See also clause 4 (4) (a) which provides that a SIC is not required to be made for a subdivision of land the only purpose of which is to create a lot that is no more than 0.1 hectare in area so as to contain an existing habitable dwelling.

**11 Net developable area not to include any residue lot or super lot**

The net developable area for a relevant development comprising subdivision of land does not include any lot that the Director-General has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

**12 Reduction of net developable area where land within heritage curtilage or Environmental Living Zone**

- (1) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
  - (a) land that is within the curtilage of a building listed on the State Heritage Register, or
  - (b) land that is within Zone E4 Environmental Living.
- (2) For the purpose of calculating the net developable area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (3) In this clause, *curtilage*, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.

**13 Final determination of net developable area by Director-General**

The Director-General may make any determination required to be made for the purpose of calculating the net developable area for a relevant development in accordance with this Determination and, for that purpose, may have regard to any information available at the

time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

**14 When a monetary contribution for development other than subdivision is to be paid**

If a special infrastructure contribution is made as a monetary contribution, the monetary contribution must be paid for relevant development (other than subdivision):

- (a) before a construction certificate is issued in relation to a building to which the development consent for the relevant development relates, and
- (b) if a construction certificate is not required for the relevant development, before any work that the development consent authorises to be carried out is physically commenced on the land.

**15 When a monetary contribution for subdivision (other than strata subdivision) is to be paid**

- (1) If a special infrastructure contribution for a subdivision (other than strata subdivision) is made as a monetary contribution, the monetary contribution must be paid:
  - (a) before a subdivision certificate is issued for the subdivision, or
  - (b) in accordance with clause 18 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the subdivision certificate is issued for the subdivision.
- (2) For the purpose of subclause (1) (a), if a subdivision certificate is sought for a plan of subdivision that would, on registration, create only some of the lots authorised to be created by the relevant development consent, the monetary contribution for the subdivision authorised by the development consent may be paid progressively, with an amount being paid before the issue of each subdivision certificate for a plan of subdivision authorised by that consent (a *subdivision certificate for a staged subdivision*).
- (3) The amount that must be paid before the issue of each subdivision certificate for a staged subdivision is to be calculated:
  - (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision for which the subdivision certificate is sought.

A “*transitional lot*” is a lot in the plan of subdivision for which the subdivision certificate is sought that may be further subdivided in accordance with the relevant development consent.

**16 When a monetary contribution for strata subdivision is to be paid**

If a special infrastructure contribution for a strata subdivision is made as a monetary contribution, the monetary contribution must be paid:

- (a) before a strata certificate for the strata subdivision is issued, or
- (b) in accordance with clause 18 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the strata certificate is issued.

**17 Deferred payment arrangement for subdivision**

- (1) For the purposes of this Determination, a deferred payment arrangement in relation to the payment of a monetary contribution for a subdivision is an arrangement described in this clause.
- (2) A deferred payment arrangement is made, in relation to a subdivision, if a deed of charge is executed by the owner of the land and the Minister, and that deed:
  - (a) grants the Minister a charge over the land to which the development consent for the subdivision relates, and
  - (b) is generally in accordance with the Memorandum of Deed of Charge Standard Terms and Conditions, executed by the Minister and registered by the Registrar-General, and
  - (c) is registered on the title to the land.
- (3) A deferred payment arrangement is also made, in relation to a subdivision, if a bank guarantee is provided to the Minister and:
  - (a) the Minister has agreed in writing to the terms of the bank guarantee, and
  - (b) the bank guarantee:
    - (i) secures the payment of the monetary contribution (including the payment of any contribution amount referred to in clause 19, 20 or 21), and
    - (ii) is for 100% of the monetary contribution (or any contribution amount referred to in clause 19, 20 or 21) at the time it becomes due, and
    - (iii) the bank guarantee provides that the Minister may call upon the bank guarantee (in full or in part) in the event of a failure to pay the monetary contribution, or any contribution amount, at the time it becomes due.

**18 When a monetary contribution must be paid if deferred payment arrangement in place**

If a deferred payment arrangement in relation to a monetary contribution for subdivision is in force, a separate amount is payable in respect of each lot or strata lot in the subdivision (the *contribution amount* calculated in accordance with clause 19, 20 or 21) and must be paid:

- (a) before the end of 3 years from the date of issue of the subdivision certificate or strata certificate that relates to that lot or strata lot, or
- (b) at least 21 working days before the lot or strata lot is first transferred (following its creation),

whichever is the earlier.

**19 Amount payable in respect of each lot in subdivision – deferred payment arrangement**

- (1) The contribution amount that is payable in respect of a lot in a subdivision (other than a subdivision to which clause 20 or 21 applies) for which a subdivision certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_P = L / \text{LT} \times \text{NDA} \times \text{\$C}_R$$

where:

- \\$CA<sub>P</sub>** is the contribution amount payable for the lot
- L** is the area (in hectares) of the lot
- LT** is the total area (in hectares) of the lots to which the subdivision certificate relates
- NDA** is the net developable area for the subdivision
- \\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 7 and 8)

- (2) If the subdivision certificate referred to in subclause (1) is a subdivision certificate for a staged subdivision (as referred to in clause 15 (2)), the net developable area for the subdivision is to be calculated:
  - (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (1) does not include a reference to a transitional lot).



A “*transitional lot*” is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

- (3) A separate contribution amount is not payable in respect of a lot comprising a road, even though the area of the road is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of other lots in the subdivision. (Accordingly, a reference to a lot in subclause (1) does not include a reference to a lot comprising a road.)

**20 Amount payable in respect of each strata lot in a strata subdivision – deferred payment arrangement**

The contribution amount that is payable in respect of a strata lot in a strata subdivision for which a strata certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_P = U / \text{UT} \times \text{NDA} \times \text{\$C}_R$$

where:

- \\$CA<sub>P</sub>** is the contribution amount payable for the strata lot  
**U** is the unit entitlements of the strata lot  
**UT** is the total (aggregate) unit entitlements of all strata lots in the strata subdivision  
**NDA** is the net developable area for the strata subdivision  
**\\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the strata subdivision (as provided by clauses 7 and 8)

**21 Amount payable in respect of a lot in a community title subdivision – deferred payment arrangement**

- (1) This clause applies to a lot in a subdivision of land procured by the registration of any of the following plans of subdivision within the meaning of the *Community Land Development Act 1989* (and in respect of which there is a deferred payment arrangement in force):
- (a) community plan,
  - (b) community plan of subdivision,
  - (c) neighbourhood plan,
  - (d) neighbourhood plan of subdivision,
  - (e) precinct plan,
  - (f) precinct plan of subdivision.
- (2) The contribution amount that is payable in respect of a lot in a subdivision of land to which this clause applies (and for which a subdivision certificate has been

issued) is to be calculated, as at the date of payment, in accordance with the following formula:

$$\text{\$CA}_P = U / \text{UT} \times \text{NDA} \times \text{\$C}_R$$

where:

**\\$CA<sub>P</sub>** is the contribution amount payable for the lot

**U** is the unit entitlements of the lot

**UT** is the total (aggregate) unit entitlements of the lots in the subdivision

**NDA** is the net developable area for the subdivision

**\\$C<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 7 and 8)

- (3) A separate contribution amount is not payable:
- (a) in respect of a lot shown in a community plan as community property, a lot shown in a neighbourhood plan as neighbourhood property and a lot shown in a precinct plan as precinct property, or
  - (b) in respect of a lot comprising a road,

even though the area of such a lot is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of the other lots in the subdivision. (Accordingly, a reference to a lot in subclause (2) does not include a reference to lot referred to in paragraph (a) or (b)).

- (4) If the subdivision certificate referred to in subclause (2) is a subdivision certificate for a staged subdivision (as referred to in clause 15 (2)), the net developable area for the subdivision is to be calculated:
- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (2) does not include a reference to a transitional lot).

A “*transitional lot*” is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

## **22 Payment of monetary contribution where subdivision and other development on same land**

If a single development consent authorises both the subdivision of land and the carrying out of subdivision work on that land, the monetary contribution is required to be paid before the issue of the subdivision or strata certificate (or in accordance with clause 18), rather than before the issue of a construction certificate in relation to the work (even if that occurs first).

**23 Payment of monetary contribution where different kinds of development on different parts of land**

- (1) This clause applies if:
  - (a) a single development consent authorises different kinds of relevant development on different parts of the land to which the development consent relates, and
  - (b) this Determination would otherwise require a monetary contribution to be paid at different times in respect of each kind of development.
- (2) The special infrastructure contribution for relevant development in any such case (if made as a monetary contribution) is to be paid:
  - (a) at the earliest time by which payment would be required to be made for any of the different kinds of development, or
  - (b) as provided by subclause (3).
- (3) Separate monetary contributions may be made for each kind of relevant development as if, instead of a single development consent, a separate development consent had been granted for each kind of development. Accordingly, the monetary contributions are payable at the various times provided by this Determination in relation to the different kinds of development concerned.

**24 Reduction in contribution if made by 1 July 2011**

If a special infrastructure contribution is made as a monetary contribution that is paid before 1 July 2011, then the amount that would otherwise be payable under this Determination is reduced by one third.

**25 Special infrastructure contribution works-in-kind agreement**

- (1) For the purposes of this Determination, a special infrastructure contribution works-in-kind agreement is an agreement that meets the requirements set out in this clause.
- (2) A special infrastructure contribution works-in-kind agreement is an agreement between the Minister and the developer for the carrying out of works to provide an item of infrastructure specified in Appendix 1 to this Determination, or for the dedication or other provision of land for the purpose of any such infrastructure, in

lieu (in part or in whole) of the payment of a monetary contribution for the development concerned.

- (3) A special infrastructure contribution works-in-kind agreement, in relation to the carrying out of works, is to:
- (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) describe the works that are to be carried out by or on behalf of the developer to contribute to the provision of a specified item or items of infrastructure, and
  - (c) specify the attributable cost of the item or items of infrastructure and provide for the adjustment of that cost due to inflation or deflation, and
  - (d) provide that the maximum amount of the liability to make the special infrastructure contribution that may be discharged by the carrying out of the works is not to exceed the attributable cost of the item or items of the infrastructure, and
  - (e) specify times by which specified stages of the works involved must be completed (“key project milestones”), and
  - (f) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (4) A special infrastructure contribution works-in-kind agreement, in relation to the dedication or other provision of land, is to:
- (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) specify the time by which the land is to be dedicated or otherwise provided, and
  - (c) specify the manner in which the value of that land is to be calculated, and
  - (d) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (5) In this clause, *attributable cost*, in relation to an item of infrastructure, means the amount specified in Appendix 1 to this Determination for that item.

**26 Part of special infrastructure contribution is for matters referred to in section 94ED (1) (d) of Act**

For the purpose of section 94EE (3A) of the Act:

- (a) no part of the special infrastructure contribution required to be made by this Determination is for the provision of infrastructure by a council, and
- (b) no part of the special infrastructure contribution required to be made by this Determination is for matters specified in section 94ED (1) (d) of the Act.

Note. The matters specified in section 94ED (1) (d) of the *Environmental Planning and Assessment Act 1979* are the carrying out of any research or investigation, preparing any report, study or instrument, and doing any other matter or thing in connection with the exercise of any statutory function under the Act, by the Minister, the corporation, the Director-General or the Department.

## **27 Reasons for the level and nature of the special infrastructure contribution**

For the purpose of section 94EE (5) of the Act, the reasons for the level and nature of the special infrastructure contribution required to be made by this Determination are as follows:

- (a) to assist in providing adequate funding for regional public infrastructure (described in Appendix 1 to this Determination) in the Lower Hunter Special Contributions Area,
  - (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
  - (c) to provide for the adjustment of the special infrastructure contribution to reflect changes in economic conditions between the time of imposing the contribution and the time at which the contribution is made,
  - (d) to provide flexibility as to the manner in which the special infrastructure contribution may be made,
  - (e) to ensure that the special infrastructure contribution reflects a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which the contribution must be paid.
-

# APPENDIX 1

## LOWER HUNTER S I C CALCULATION SUMMARY

JANUARY 2011

### DEVELOPMENT PROJECTIONS

	Dwelling / Lot Forecast
<b>RESIDENTIAL RELEASE AREAS</b>	
<b>TOTAL Dwelling / Lot production Forecast</b>	66,000
Average Residential Dwelling Density ( Lots / Ha.)	12.0
<b>Developable Area N D Ha</b>	<b>5,500</b>
<b>EMPLOYMENT LAND</b>	
Developable Area ( Ha.)	1,365
<b>TOTAL EQUIVALENT DEVELOPABLE AREA ( N D Ha )</b>	<b>6,865</b>

### INFRASTRUCTURE

		ATTRIBUTABLE COST \$M
<b>ROADS</b>		
Hunter Expressway (State)		108,660
HW9 Weakleys Dr duplication		14,279
HW10 Pacific Highway - Newcastle Inner City Bypass to Hexham duplication		82,119
MR302 Tomago Rd - SH23 Connection to F3-Raymond Terrace Connection		12,470
MR302 Cabbage Tree Road (Sandgate -Tomago Connection to Williamtown)		29,392
MR108 Tourle Street/Cormorant Rd duplication		40,499
MR108 Nelson Bay Road - Fern Bay to Williamtown duplication		30,217
MR588 John Renshaw Drive duplication - Weakleys Drive to Cessnock LGA boundary		4,605
MR588 John Renshaw Dr Duplication, Cessnock LGA boundary to George Booth Dr		28,712
MR588 John Renshaw Drive duplication - George Booth Dr to Kurri		15,539
MR588 Cessnock Road duplication - Neath to Kurri		51,663
MR588 Weston Rail Crossing		13,582
MR588 Cessnock Rd duplication, Cessnock to Neath		35,392
MR195 Main Rd Duplication - Kurri to Maitland		29,813
MR82 Newcastle Link Road 6 lanes & intersection upgrades - F3 to Lake Rd		80,237
MR82 Lake Road to SH23 Jesmond Roundabout		17,898
MR82 six-lanes - Jesmond Roundabout to Croudace Street		8,492
MR82 six-lanes - Croudace Street to Turton Road		7,334
MR527 George Booth Drive, Edgeworth to West Wallsend		5,279
MR104 Raymond Terrace Road - Maitland to Thornton North		0,000
MR217 Lake Road - Glendale to Wallsend		17,075
MR217 duplication - Fennell Bay to Booragul		13,732
MR217 duplication - Boolaroo to Argenton		31,247
MR217 duplication - Toronto to Fennell Bay		53,533
MR217 - duplication Speers Point to Boolaroo		10,754
MR217 Morisset to F3 Freeway		60,806
MR674 Hillsborough Road duplication - Macquarie Road to West Charlestown Bypass		15,070
MR527 Main Road duplication, Glendale Drive to Lake Road		11,091
MR527 Macquarie Road, Hillsborough Road to Myall Road		15,717
Thornton Rail Bridge		16,299
<b>TOTAL ROADS</b>		<b>861,506</b>
<b>EDUCATION</b>		
Primary Schools - Land Only	UNITS 27.5	50,742
Secondary Schools - Land Only	9	33,213
TAFE - Land Only	1	3,690
<b>TOTAL EDUCATION</b>		<b>87,645</b>
<b>HEALTH</b>		
Minor	UNITS 5.0	0,615
Moderate	4.0	1,230
Major	1.0	4,920
<b>TOTAL HEALTH</b>		<b>6,765</b>
<b>EMERGENCY SERVICES</b>		
POLICE	UNITS 2	0,492
POLICE ( MINMI )	1	0,246
FIRE	7	1,292
AMBULANCE	3	0,369
<b>TOTAL EMERGENCY SERVICES</b>		<b>2,399</b>
<b>OPEN SPACE</b>		
		5,894
<b>TOTAL OPEN SPACE</b>		<b>5,894</b>
<b>Total Asset Costs ( 100% Costs ) ( Including Allowance for Finance Costs )</b>		<b>964,209</b>

### CONTRIBUTION RATES

RATE PER N D Ha. ( 100% )	\$140,453
RESIDENTIAL S I C RATE PER NET DEVELOPABLE Ha. ( 75 % )	\$105,340
EMPLOYMENT S I C RATE PER NET DEVELOPABLE Ha.	\$42,134

#### NOTE

The figures shown in this tables represent the amount allocated within the Special Infrastructure Contribution, which may differ from the actual cost of the item.

The figures will be updated every four years.

The Government's Commitments in relation to infrastructure are to be found in the State Infrastructure Strategy and Budget Paper 4.

## **Annexure E - DET Guidelines**

### **DET Guidelines**

#### **Requirements for New School Sites**

Requirements for new school sites as determined by the New South Wales Department of Education and Training are outlined below. These are only broad guidelines which may vary slightly with individual new developments.

#### **1) School Provision Thresholds - One primary school site per 2000-2500 new homes and one high school site per 6000-7500 new homes**

Consideration must be made with respect to:

- (a) possible diversion of some students in new areas to existing schools;
- (b) impact of existing or proposed non-government schools;
- (c) the type and speed of residential development;
- (d) the possible need for additional sites in large developments to cater for temporary enrolment peaks; and
- (e) the nature of the population.

#### **2) General Site Location Principles**

- (f) Primary school local catchment area should remain flexible over time.
- (g) The school should be located on a distributor or collector road (to alleviate noise and traffic problems).
- (h) As far as possible, a primary school should be within 1.6kms road distance of the bulk of its likely drawing area to minimise the demand for bus transport.
- (i) It is an advantage to locate a school adjacent to a community playing field.
- (j) Encourage opportunities for joint use of land, eg. for child care and open space.
- (k) High schools should be located away from commercial centres, especially where liquor outlets may be located.

#### **3) Specific Site Selection**

In general the following attributes are desired:

- (l) Primary school sites should be around 3 hectares in size, while 6.0 hectares is desirable for a high school.
- (m) Slope not greater than 1 in 10.
- (n) Site above the 1 in 100 year flood level and well drained.
- (o) Shape of the site should be substantially regular.

- (p) Site should be fully serviced with respect to water, sewer, power, telephone, kerb and gutter, footpath and sealed road.
- (q) Site should be free of possible restrictions to development, such as service and access easements (especially high tension electricity, mobile phone towers and drainage) through the site; free from environmental restraints and contamination.

The specific site should always be discussed with the Department of Education and Training's Asset Management Directorate personnel.



## Annexure F - Road Improvement Works

Item	Upgrade	Description	Timing
1	-	Upgrade Wine Country Drive to 4 through lanes (2 lanes in each direction with central median) on the proposed new alignment, through the town centre from the Hunter Expressway Link Road to the Village 1 access. The left and right turn auxiliary lanes shall be separate to the through lanes.	Prior to 500 Dwellings for which a Subdivision Certificate has been issued
2	A1	Upgrade Wine Country Drive / Hunter Expressway Link Road intersection to a 2 lane circulating roundabout or traffic signals.	Prior to 500 Dwellings for which a Subdivision Certificate has been issued.
3	A3	Wine Country Drive / Main Street intersection with traffic signal control.	Prior to the construction of any development west of Wine Country Drive, with the exception of any sales office and associated works.
4	A2	Wine Country Drive / Anvil Creek Regional Park intersection with Type CHR / CHL intersection (protected right and left turn bay) and restricted to left in / left out / right in movements.	Prior to opening of the park
5	A5	Wine Country Drive / Village 1 access with traffic signal control.	Prior to 500 Dwellings for which a Subdivision Certificate has been issued.
6	A9	Wine Country Drive / Large Lot access upgraded to an Austroads Type CHR / CHL intersection or seagull	Prior to any Dwelling in R5 zone west of Wine Country Drive
7	A6	Hunter Expressway Link Road / Village 1 North access intersection shall be a 2 lane circulating roundabout or traffic signals.	Prior to 1,500 Dwellings for which a Subdivision Certificate has been issued.
8	A11	Upgrade Hunter Expressway Branxton interchange to include: <ul style="list-style-type: none"> <li>• a continuous left turn slip lane / ramp from the northbound off ramp onto Hunter Expressway Link Road</li> <li>• a continuous left turn slip lane / ramp from the New England Highway extension to the Hunter Expressway southbound on ramp</li> <li>• extension of the Hunter Expressway southbound off ramp to cater for expected queuing</li> <li>• adjustments to line marking in stages to ensure appropriate operation of the interchange.</li> </ul>	Prior to 1,900 Dwellings for which a Subdivision Certificate has been issued.
9	A11	Upgrade Hunter Expressway Link Road to 4 lanes (2 in each	Prior to 1,500

		direction) between Wine Country Drive and the Hunter Expressway Interchange	Dwellings for which a Subdivision Certificate has been issued.
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