

Dated

19th day of

September 2012

**Director-General of the Department of Planning and
Infrastructure for and on behalf of the Crown in right of the
State of New South Wales**

ABN 38 755 709 681

and

Landcom

ABN 79 268 260 688

**Special Infrastructure Contributions
Works-in-Kind Agreement**

**Portion of The Northern Road Upgrade
(intersection of Peter Brock Drive)**

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a smaller, less distinct mark.

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EXECUTED AS A DEED

SCHEDULE 1 - SIC Discharge Amounts – Table (clauses 3.5 and 3.6)

SCHEDULE 2 - Plans (clause 1.1)

SCHEDULE 3 - The Road Work (clause 1.1)

SCHEDULE 4- Address for Service (clause 11.15)

THIS Deed is dated

2012

PARTIES:

DIRECTOR-GENERAL OF THE DEPARTMENT OF PLANNING AND INFRASTRUCTURE FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF NEW SOUTH WALES (ABN 38 755 709 681) of 23-33 Bridge Street, Sydney, New South Wales, 2000 (**Director-General**); and

LANDCOM (ABN 79 268 260 688) of Level 2, 330 Church Street, New South Wales Parramatta 2150 (**Developer**)

INTRODUCTION:

- A** The Developer proposes to carry out Development within the Western Sydney Growth Areas Special Contributions Area.
- B** The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* provides for the making of special infrastructure contributions for development on certain land within the WSGA Special Contributions Area.
- C** The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011* requires councils for the local government areas that lie within the WSGA Special Contributions Area to impose a condition (in the terms set out in the Direction) for the making of a special infrastructure contribution on the grant of Development Consent for any development for which a special infrastructure contribution is required to be made under the Ministerial Determination.
- D** The Ministerial Determination provides that a special infrastructure contribution may be made as a monetary contribution or a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement.
- E** The Developer proposes to construct and provide certain items of infrastructure to discharge its liability to make special infrastructure contributions imposed under Development Consents, in lieu of making monetary contributions.
- F** The Parties have agreed to enter into this Deed to give effect to the above proposal.
- G** For the avoidance of doubt, the parties intend this Deed to constitute the entire agreement and understanding between them in relation to the subject matter of this Deed and have agreed that any prior arrangements between them relating to the subject matter of this Deed are rescinded and have no further force or effect.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **Deed**, unless the context clearly indicates otherwise:

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

Actual Cost, in relation to the Road Work, means the Final Certified Contract Cost at completion of the Construction Contract, together with:

- (a) the costs of acquiring and transferring the Road Work Land, and
- (b) other costs (not exceeding in total an amount that is 15% of the Final Certified Contract Cost) incurred and paid by the Developer to third parties for the following:
 - (i) design of the Road Work, project management, investigations, studies or reports specifically required for the Road Work;
 - (ii) any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Work.

Address for Service means the address of each party appearing in Schedule 4 or any new address notified by any party to all other parties as its new Address for Service;

Authorised Progress Claim Certificate means a certificate signed by the superintendent for the Road Work confirming that the Developer has paid the amount specified in that Certificate to the third party contractor for work performed under the Construction Contract;

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this Deed) on demand;

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;

Construction Contract means a contract between the Developer and a third party,

meeting the requirements of clause 3.4, for the carrying out of the Road Work by that third party;

Construction Certificate has the same meaning as in the Act;

Department means the NSW Department of Planning and Infrastructure;

Development Consent has the same meaning as in the Act, and includes a development consent granted before the date of this Deed;

Director-General means the Director-General of the Department or a Nominated Officer;

Estimated Cost, in relation to the Road Work, means the estimated cost of the Road Work set out in column 1 of the Table, and, from 1 July 2012 that cost as indexed in accordance with clause 9 of the Ministerial Determination, as if the cost were an adjustable amount within the meaning of that clause;

Final Certified Contract Cost, in relation to the Construction Contract, has the same meaning as in the Construction Contract;

GST means any form of goods and services tax payable under the GST Legislation;

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Milestone means works or other activities specified in Column 3 of the Table in Schedule 1 relating to the carrying out of the Road Work;

Milestone Notice means a written notice from the Developer to the Director-General notifying the Director-General that the Developer has achieved the Milestone specified in the notice;

Minister means the Minister for Planning and Infrastructure;

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

Nominated Officer means the officer of the Department for the time being holding the position nominated by the Director-General for the purpose of this Deed;

Plans means the plans listed in Schedule 2;

Road has the same meaning as in the *Roads Act 1993*;

Roads Authority has the same meaning as in the *Roads Act 1993*;

Road Work means those works described in Schedule 3 to be transferred to the

relevant Roads Authority in accordance with clause 3.9;

Road Work Land means the land on which the Road Work is to be constructed including adequate provision for verges and intersections;

SIC Discharge Amount means an amount specified in Column 2 of the Table for a Milestone specified in Column 3 of the Table, and, from 1 July 2012, means that amount, if it is the amount for Milestone 1, 2 or 3, indexed in accordance with clause 9 of the Ministerial Determination, as if the amount were an adjustable amount within the meaning of that clause;

SIC Discharge Balance means the amount shown on the SIC Discharge Certificate as the final or unapplied SIC Discharge Balance, being either "zero" amount or the amount that remains available for the discharge of SIC obligations for development that is not listed on the certificate for the time being;

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

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

Subdivision Certificate has the same meaning as in the Act;

Table means the Table in Schedule 1 relating to the Road Work;

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

1.2 Interpretation

In this Deed unless the context clearly indicates otherwise:

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

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

2 OPERATION OF THIS DEED

2.1 Operation

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

3 AGREEMENT BETWEEN THE PARTIES

3.1 The Road Work

The parties acknowledge that:

- (a) the Developer will, as a condition of any Development Consent granted or to be granted for a Development on certain land within the WSGA Special Contributions Area, be required to make a SIC in relation to the Development;
- (b) the Developer may elect to carry out the Road Work in accordance with clause 3 of this Deed in lieu of a paying a monetary contribution to discharge its SIC obligations imposed under any Development Consent(s) granted within the WSGA Special Contributions Area;
- (c) the Road Work forms part of the Item R16 The Northern Road Part 1: Fairwater Drive to Oran Park Link Road and the attributable cost shown for that item of infrastructure in Appendix 1 to the Ministerial Determination is \$36,124,000 as at 31 March 2010.
- (d) the maximum liability to make special infrastructure contributions for development within the WSGA Special Contributions Area that may be discharged by the carrying out of the Road Work, and transferring the Road Work Land, is the Estimated Cost of the Road Work,
- (e) the Director-General will, on the terms set out in this Deed, accept the Road Work and the transfer of the Road Work to a Roads Authority in discharge of all or part of the liability of the Developer to make a SIC imposed under any Development Consent(s) granted to the Developer within the WSGA Special Contributions Area; and
- (f) this Deed constitutes a special infrastructure contribution works-in-kind agreement within the meaning of the Ministerial Determination.

3.2 Estimated Cost and Actual Cost of Road Work

- (a) The parties agree that the maximum amount of the liability to make special infrastructure contributions for development on land within the WSGA Special Contributions Area that the Developer may discharge by carrying out the Road Work (and transferring the Road Work Land) is the Actual Cost of the Road Work.
- (b) However, if the Actual Cost of the Road Work is more than the Estimated Cost of the Road Work, then, notwithstanding the text in Column 2 of the Table, the maximum amount of the liability to make those contributions that the Developer discharges by carrying out the Road Work (and transferring the Road Work Land) is the Estimated Cost of the Road Work.

- (c) The parties agree that the Director-General may make any determination required to be made for the purpose of calculating the Actual Cost of the Road Work, following consultation with the Developer.

3.3 Amount of SICs if paid as monetary contributions

- (a) It is anticipated that Development Consents granted to the Developer for development on land within the Oran Park Precinct will impose conditions requiring the making of special infrastructure contributions that, if made as monetary contributions, would total approximately \$54 million (if the contributions were paid before 1 July 2012).
- (b) However, the amount of the liability to make a special infrastructure contribution for a particular development that may be discharged by carrying out the Road Work (and by transferring the Road Work Land) is the amount of the monetary contribution that would otherwise be payable in accordance with the Ministerial Determination as at the date on which the SIC Discharge Certificate is issued or amended to include an entry for that development.

3.4 Construction Contract for the Road Work

- (a) The Developer may provide written notice to the Director-General which confirms that it intends to commence the Road Work ("**the Notice**").
- (b) The Notice must be accompanied by a copy of the proposed Construction Contract for the Road Work.
- (c) The Construction Contract must:
 - (i) identify a superintendent for the Road Work;
 - (ii) separately identify those works comprising the Road Work, whether through a separate bill of quantities or separate contract;
 - (iii) identify the proposed contract value for each item of the Road Work; and
 - (iv) identify the terms and conditions applicable to the carrying out of the Road Work.

3.5 Attainment of Milestones relating to the Road Work

- (a) If the Developer considers that it has achieved a Milestone, the Developer will forward the following to the Director-General:
 - (i) a Milestone Notice;
 - (ii) an Authorised Progress Claim Certificate (or in the case of the fourth Milestone Notice, a certificate from each relevant Roads Authority confirming that Road Work or relevant portions thereof

have been transferred to the Roads Authority);

- (iii) a statement by the third party contractor under the Construction Contract confirming that the Developer has paid the amount specified in the Authorised Progress Claim Certificate and that the third party contractor has paid all subcontractors; and
- (iv) such other supporting documentation as is necessary for the Director-General to determine whether that Milestone has been achieved.

The Developer must promptly provide any additional information requested by the Director-General.

- (b) The Director-General will, within 45 days of receiving the Milestone Notice and all the certificates and information required under clause 3.5(a), determine whether the Milestone specified in the Milestone Notice has been achieved.
- (c) If the Director-General, in his or her absolute discretion, is satisfied that the Milestone has been achieved, the Director-General will:
 - (i) accept that portion of the Road Work undertaken that is directly referable to the Milestone in lieu of the Developer paying monetary contributions equal to the SIC Discharge Amount for that Milestone; and
 - (ii) in respect of each Milestone achieved, issue a SIC Discharge Certificate to the Developer which will set out the SIC Discharge Amount that has been credited for that Milestone.
- (d) If the Director-General, in his or her absolute discretion, is not satisfied that the Milestone has been achieved, the Director-General will notify the Developer and provide an explanation as to why he or she considered that the Milestone had not been achieved and, if applicable, provide details of:
 - (i) any additional work or tasks which must be undertaken; and/or
 - (ii) any information or documents which must be provided,by the Developer, in order to achieve the Milestone. The Developer may, after taking into account the Director-General's explanation and undertaking the work or providing the information or documents required, re-submit a Milestone Notice together with any necessary documentation.

3.6 Application of SIC Discharge Amounts

- (a) The Developer is or will be required, from time to time, under the terms of Development Consents granted in relation to land within the WSGA Special

Contributions Area, to make special infrastructure contributions. The SIC Discharge Amount represents the value allocated to the portion of the Road Work which the Director-General agrees to accept in discharge or partial discharge of the Developer's obligation to make special infrastructure contributions for development within the WSGA Special Contributions Area.

- (b) The Developer may request that the Director-General amend and reissue the SIC Discharge Certificate in lieu of making the relevant monetary payment(s) in relation to Development Consents within the WSGA Special Contributions Area. Where the amount of the SIC for a development does not exceed the SIC Discharge Balance stated on the SIC Discharge Certificate, the Director-General will reissue an updated SIC Discharge Certificate specifying the new SIC Discharge Balance.
- (c) For the purposes of paragraph (b), the amount of the SIC for a development is the amount of the SIC that would otherwise be payable as a monetary contribution for the development under the Ministerial Determination if paid on the date of issuing the updated SIC Discharge Certificate. Accordingly, the monetary contribution is to be calculated by applying the contribution rate under the Ministerial Determination as at that date.

3.6A SIC liability of third party

- (a) The Developer may request, in writing, the Director-General to allow the SIC liability of a third party in relation to development within the WSGA Special Contributions Area to be discharged or partially discharged against the SIC Discharge Amounts of the Developer.
- (b) The request must include details of the development consent(s) under which the SIC liability of the third party arises.
- (c) The Director-General has an absolute discretion to agree to or refuse the request.
- (d) If the Director-General agrees to the request, the Director-General is to amend and reissue the SIC Discharge Certificate to the Developer, with a new SIC Discharge Balance calculated by debiting the amount (or part of the amount) of the SIC that would otherwise be payable as a monetary contribution by the third party in accordance with the development consent(s) as at the date of the issue of the updated Certificate.
- (e) Despite clause 3.2, the parties agree that the maximum amount of the liability to make special infrastructure contributions that the Developer may discharge as referred to in that clause is reduced by the total amount of the liability of third parties for contributions that is discharged against

the Developer's SIC Discharge Amounts, as set out in the SIC Discharge Certificate.

3.7 Reconciliation clause

- (a) The parties agree that in the event that the Actual Cost of the Road Work is less than the sum of the SIC Discharge Amounts credited for Milestones 1, 2 and 3 as shown on the SIC Discharge Certificate:
 - (i) the Director-General may amend and re-issue the SIC Discharge Certificate to reflect the Actual Cost of the Road Work; and
 - (ii) if such an amendment results in a negative SIC Discharge Balance, the Developer must pay the amount necessary to bring the SIC Discharge Balance to a "zero" amount, within the period of time notified in writing by the Director-General and in the manner so notified.
- (b) If the SIC Discharge Certificate is amended as referred to in clause 3.7(a), the Director-General is not required, under clause 3.6, to issue an updated SIC Discharge Certificate for the achievement of Milestones 4 and 5.

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

The Developer may not apply for a Subdivision Certificate or Construction Certificate (as the case may be) in relation to any development on land within the WSGA Special Contributions Area for which a SIC is required to be made unless the Developer:

- (a) has obtained from the Director-General a certificate to the effect that the SIC for the development of the value or amount shown on the certificate has been made; or
- (b) has entered into a deferred payment arrangement as referred to in the Ministerial Determination in relation to that contribution; or
- (c) has obtained from the Director-General written advice that the Developer has provided a Bank Guarantee for the amount of the SIC that would otherwise be payable for the development.

3.9 Transfer of the Road Work Land

The Developer must transfer the Road Work Land to the relevant Roads Authority as soon as practicable following completion of the Road Work.

4 LAND OWNERSHIP

4.1 Land ownership

The Developer warrants that it has a legally enforceable right to complete the Road Work to enable it to comply with all of its obligations under this Deed as and when they arise.

5 SECURITY RELATING TO CERTAIN MILESTONES

5.1 Security relating to certain Milestones

- (a) If the Developer is unable to obtain, because of a failure to achieve a Milestone, a certificate referred to in clause 3.5(c) for Development in respect of which the Developer wishes to seek a Subdivision Certificate or Construction Certificate, the Developer may provide a Bank Guarantee, in terms agreed to by the Director-General, for the amount of the SIC that would otherwise be payable for the Development.
- (b) If the Developer provides to the Director-General:
 - (i) a written request that the Bank Guarantee be returned together with supporting documentation as is necessary for the Director General to determine whether the Developer has achieved the relevant Milestone; and
 - (ii) such other information as is reasonably requested by the Director-General in order for the Director-General to assess the Developer's request for the Bank Guarantee to be returned,then if the Director-General is satisfied that that Milestone has actually been achieved, the Bank Guarantee is to be released and returned to the Developer within 90 days of any such request.
- (c) In the event that the Developer fails to achieve the Milestone to which the Bank Guarantee relates to the satisfaction of the Director-General by the date which is two years after the date the relevant Bank Guarantee is provided then the Minister may call upon that Bank Guarantee and retain the proceeds of such claim to facilitate the achievement of that Milestone.

6 CHANGE IN LAW

6.1 Change in law regarding payment of SICs

In the event that a change of law occurs to the effect that a SIC is no longer payable in respect of development within the WSGA Special Contributions Area, but some other payment is required to be made by the Developer in respect of development in relation to the provision of state or regional infrastructure, then the Parties will meet and negotiate in good faith a variation to this Deed to ensure that the Deed

continues to operate, if legally possible, to permit the Developer to meet its obligation to make that payment through the provision of the Road Work.

7 DISPUTE RESOLUTION

7.1 Not commence

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

7.2 Written notice of dispute

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

7.3 Attempt to resolve

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

7.4 Mediation

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

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

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

7.5 Court proceedings

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

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 7** is to attempt to settle the dispute. No party may use any information or documents obtained through any

dispute resolution process undertaken under this **clause 7** for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

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

8 GST

8.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

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

8.3 Reimbursement

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Deed are GST Exclusive. 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 8**.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this Deed (the GST Amount), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Director-General as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Director-

General, including any gross up that may be required; and

- (b) the Developer provides a Tax Invoice to the Director-General.

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under **clause 8.5** the Developer will assume the Director-General is not entitled to any input tax credit.

8.8 No merger

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

9 ASSIGNMENT

9.1 Consent

This Deed is personal to each party and no party may assign the rights or benefits of this Deed to any person except:

- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this Deed; or
- (b) to any other person, with the prior consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion.

10 WARRANTIES OF CAPACITY

10.1 General warranties

Each party warrants to each other party that:

- (a) this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this Deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 GENERAL PROVISIONS

11.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

11.2 Variation

This Deed must not be varied except by a later written document executed by all parties.

11.3 Waiver

A right created by this Deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

11.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Deed.

11.5 Time for doing acts

(a) If:

(i) the time for doing any act or thing required to be done; or

(ii) a notice period specified in this Deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

(a) The laws applicable in New South Wales govern this Deed.

(b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is

to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

11.8 Preservation of existing rights

The expiration or termination of this Deed does not affect any right that has accrued to a party before the expiration or termination date.

11.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

11.10 Costs

The Developer is to pay the Director-General's reasonable costs of preparing, negotiating, and executing this Deed.

11.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

11.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this Deed.

11.13 No fetter

Nothing in this Deed shall be construed as requiring the Director-General to do anything that would cause the Director-General to breach any of the Director-General's obligations at law and without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Director-General in exercising any of the Director-General's statutory functions, powers, authorities or duties.

11.14 Expenses and stamp duty

The Developer must pay all stamp duty assessed on or in respect of this Deed and

any instrument or transaction required by or necessary to give effect to this Deed.

11.15 Notices

Any notice, demand, consent, approval, request or other communication (notice) to be given under this Deed must be in writing and must be given to the recipient at its Address for Service by being:

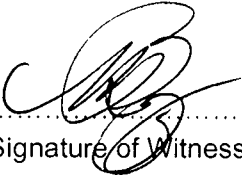
- (a) hand delivered; or
- (b) sent by facsimile transmission.

A notice is given if:

- (a) hand delivered, on the date of delivery; or
- (b) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted.

EXECUTED as a Deed

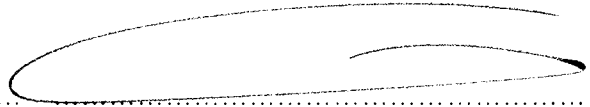
Signed sealed and delivered by the
Director-General of the **Department of
Planning and Infrastructure** for and on
behalf of the **Crown in right of the State of
New South Wales**, in the presence of:



Signature of Witness

MARLENE BEZZINA

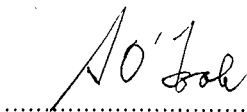
Name of Witness in full



Signature of the Director-General

*on behalf of the
Director-General*

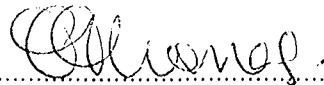
Signed by me Sean O'Toole Managing)
Director as delegate of **Landcom (ABN 79)
268 260 688)** and I hereby certify that I)
have no notice of revocation of such
delegation.



Signature of Delegate

Sean O'Toole

Name of Delegate in full



Signature of Witness

ELIZABETH THOMAS

Name of Witness in full

SCHEDULE 1

SIC Discharge Amounts – Table (clause 3.3)

Notes relating to Schedule 1

Column 1 specifies, in dollars, the maximum amount of the Road Work as at 1 July 2012 which will be indexed in accordance with the Ministerial Determination.

Column 2 specifies, in dollars the SIC Discharge Amount to which the Developer will be entitled on completion of a Milestone as at 1 July 2012. For Milestones 1-3 this is 20% of the Estimated Cost of the Road Work. The SIC Discharge Amounts to which the Developer will be entitled on completion of Milestone 4 will be 80% of the Actual Cost of the Road Work less the sum of the SIC Discharge Amounts for Milestones 1-3. The SIC Discharge Amount to which the Developer will be entitled on the completion of Milestone 5 will be 100% of the Actual Cost less the sum of the SIC Discharge Amounts for Milestones 1-4. The Estimated Cost of the Road Works and the SIC Discharge Amounts for Milestones 1-3 will be indexed in accordance with the Ministerial Determination.

Column 3 describes a *Milestone*, as defined in clause 1.1

Column 1	Column 2	Column 3	
Estimated Cost	SIC Discharge Amount per Milestone	Milestones	
		No.	Description
\$12,000,000	\$2,400,000	1	Expenditure of 25% of the value of the Construction Contract.
	\$2,400,000	2	Expenditure of 50% of the value of the Construction Contract.
	\$2,400,000	3	Expenditure of 75% of the value of the Construction Contract.
	80% of the Actual Cost less the sum of the SIC Discharge Amounts for Milestones 1 to 3 (inclusive)	4	Expenditure of 100% of the value of the Construction Contract and the handover of the Road Work, including the Road Work Land and the acceptance of the Road Work by the relevant Roads Authority.
	100% of the Actual Cost less the sum of the SIC Discharge amounts for Milestones 1 to 4 (inclusive)	5	The later of satisfactory completion of any defects liability period for the Road Work or provision of evidence of satisfactory arrangements made with the Roads Authority to address the defect liability.

SCHEDULE 2

Plans (clause 1.1)

0154.075.RC.0005-1 PL00

0154.075.RC.0005-1 PL01

0154.075.RC.0005-1 PL02

0154.075.RC.0005-1 PL03

0154.075.RC.0005-1 PL04

0154.075.RC.0005-1 PL05

0154.075.RC.0005-1 PL06

0154.075.RC.0005-1 PL07

0154.075.RC.0005-1 PL08

0154.075.RC.0005-1 PL09

SCHEDULE 3

The Road Work (clause 1.1)

The upgrade of a portion The Northern Road to four lanes (approximately 0.5km in length plus transitions), including a four way signalised intersection and turn in lanes in accordance with the Plans.

The Road Works to be in accordance with the requirements of the Road and Maritime Services. The Road Work to include the dedication of any Road Work Land required for the safe operation of the intersection.

SCHEDULE 4

Address for Service (clause 11.15)

Director-General

Contact: Director-General, Department of Planning and Infrastructure
Attention: Executive Director, Strategy and Infrastructure Planning

Address: 23-33 Bridge Street
Sydney, New South Wales, 2000

Facsimile No: (02) 9228 6455

Landcom

Contact: Mick Owens, General Manager, Development

Address: Level 2, 330 Church Street,
Parramatta, New South Wales, 2150

Facsimile No: (02) 9841 8688

