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## Voluntary Planning Agreement

The Trust Company Limited

GGGAIF JV No. 3 Pty Limited

GGGAIF JV No. 4 Pty Limited

The Minister administering the  
Environmental Planning and Assessment  
Act 1979

Blacktown City Council

Western Sydney Parklands Trust

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*Calley*  
*S. Fitzgerald*  
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Date

2013

**Parties**

**GGGAIF JV No. 3 Pty Limited** (ACN 131 830 843), as trustee of the GGGAIF Moorebank Trust, Level 17, 60 Castlereagh Street, Sydney NSW 2000

**GGGAIF JV No. 4 Pty Limited** (ACN 157 924 662), as trustee of the GGGAIF Bungaribee Trust No. 2, Level 17, 60 Castlereagh Street, Sydney NSW 2000

together, the *Developer* and the *Trustees*.

**The Trust Company Limited** (ACN 004 027 749) of 35 Clarence Street, Sydney NSW 2000

**The Minister administering the Environmental Planning and Assessment Act 1979** of 1 Farrer Place, Sydney NSW 2000 (*Minister*)

**Blacktown City Council** (ABN 18 153 831 768) of 62 Flushcombe Road, Blacktown NSW 2148 (*Council*)

**Western Sydney Parklands Trust** (ABN 85 202 544 800) of Level 4, 10 Valentine Street, Parramatta NSW 2124 (*Parklands Trust*)

**Recitals**

- A On 25 September 2006, Landcom, on behalf of the then owner, lodged an application for the Development of the Land. The Minister granted approval to this application on 9 December 2006.
- B On 9 December 2006, Concept Plan Approval was granted by the Minister for the development of the Land for employment generating uses, associated roads, services and infrastructure and public open space.
- C The Trust Company Limited, as custodian of the GGGAIF Huntingwood West Trust, the trustee of which is GGGAIF JV No. 2 Pty Limited, subsequently acquired part of the Land, being the land known as lot 3 in DP 1127100 and lot 20 in DP 1158955. These lots were subsequently consolidated into Lot 34 in DP 1169557.
- D The Trust Company Limited, as custodian of the GGGAIF Moorebank Trust, the trustee of which is GGGAIF JV No.3 Pty Limited, subsequently acquired part of the Land, being the land known as lot ~~32 in DP 1161771~~. 332 in DP 1193105. *TR C3 QSF*
- E The Trust Company Limited, as custodian of the GGGAIF Bungaribee Trust No. 2, the trustee of which is GGGAIF JV No.4 Pty Limited, subsequently acquired part of the Land, being the land known as lot 30 in DP 1161771.

- F The Minister Administering the Environmental Planning and Assessment Act 1979 is the registered proprietor of that part of the Land known as Lots 5 and 6 in DP 1127100 ~~and Lots 31 and 33 in DP 1161771~~. The Developer holds an option to purchase all of these lots under the Contract for the Sale of Land entered into by the Minister and The Trust Company Limited dated 29 September 2008.
- G The Developer intends on exercising its option to purchase all of the lots owned by the Minister in accordance with the Contract for the Sale of Land referred to in paragraph F.
- H Goodman Property Services (Aust) Pty Ltd, on behalf of the Developer, made the application (application number MP 08\_0225) under Part 3A of the Act in October 2008 for approval to subdivide the Land to create development lots, estate road lots and drainage lots, to construct a new intersection to the Great Western Highway and internal estate roads, to carry out bulk earth works, stormwater management works, cycle path works and associated landscaping works, estate landscaping works and offsite stormwater detention works and to make some modifications to the development design controls.
- I As part of that project application referred to in paragraph H, the Developer offered to enter into a planning agreement to provide the Development Contributions.
- J The Undertaken Development Contributions have already been provided as at the date of this Deed but have not yet been certified as having reached Practical Completion in accordance with the provisions of this Deed.
- K Some of the Development Contributions are to be provided on land owned by the Parklands Trust and some of the Undertaken Development Contributions have been provided on land owned by the Parklands Trust as at the date of this Deed.
- L The Minister granted Project Approval on 25 January 2011, subject to conditions 13 and 14 requiring a voluntary planning agreement to be entered into. Condition B2 of the Concept Plan Approval also requires the Developer to enter into a planning agreement. This Deed is being entered into in compliance with those conditions.
- M Lot 1 in DP 1103025, which forms part of the land the subject of the Concept Plan Approval, has been subsequently sold. The sale of this land does not touch and concern the Development Contributions the subject of this Deed.

## Operative provisions

### 1 Application and Operation of Deed

#### Planning agreement

- 1.1 The parties agree that this Deed is a planning agreement for the purposes of Division 6 of Part 4 of the Act.

#### Application

- 1.2 This Deed applies to the Land and the Development.

#### Application of sections 94, 94A and 94EF

- 1.3 This Deed excludes the application of sections 94, 94A and 94EF of the Act to the Development.

## 2 Status of this Deed

- 2.1 Until the Planning Agreement operates, this Deed constitutes an irrevocable offer from the Developer to enter into the Planning Agreement if the conditions referred to in clause 2.3 are met.
- 2.2 The parties note that the Minister granted Project Approval on 25 January 2011, subject to conditions imposed under section 93I(3) of the Act requiring a Planning Agreement to be entered into and that this Deed is being entered into in compliance with those conditions.
- 2.3 The Planning Agreement operates and becomes legally binding on the parties only if the:
- (a) Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and
  - (b) Minister executes this Planning Agreement.
- 2.4 Notwithstanding any other provision of this Deed (including clause 2.1), upon execution of this Deed by the Developer (and before execution by the Minister, the Council and the Parklands Trust ), this Deed will operate, in relation to clause 2.1 and clause 4, as a Deed Poll and the provisions of clause 2.1 and clause 4 will be binding on the Developer, and will be taken to be given for the benefit of the Minister, the Council and Parklands Trust, notwithstanding the fact that the Minister, the Council or Parklands Trust has not signed this Deed.

## 3 Provision of contributions

### The Contributions

- 3A The parties agree that the Works must be completed in the time and manner set out in this clause 3 notwithstanding anything to the contrary in any other agreement in respect of the Works.
- 3.1 Subject to clause 3.42, except to the extent that a Work relates to an Undertaken Development Contribution, where a particular Work will be constructed on land owned by, or land the beneficiary of which is a Recipient Authority, the Developer will prepare designs and plans for each of those Works to the satisfaction of the Recipient Authority and submit those documents to the Recipient Authority for their approval. Those designs and plans shall be in accordance with the specifications referred to for each item in schedule 2.

### Process for approval by the Council or the Parklands Trust of designs and plans for Works

- 3.2 Draft designs and plans
- (a) Except to the extent that a Work relates to an Undertaken Development Contribution, the Developer must submit any draft designs and plans prepared in accordance with clause 3.1 to the Recipient Authority for approval having regard to whom of the Council or the Parklands Trust is the owner of the Land upon which the relevant Works the subject of the draft designs and plans will be completed.
  - (b) The Developer and the relevant Recipient Authority must consult in good faith in relation to the designs and plans required to be submitted pursuant to clause 3.2(a) and, acting reasonably, will discuss and co-operate with each other prior to the Developer submitting the relevant designs and plans to the relevant Recipient Authority in accordance with clause 3.2(a) to enable the Recipient Authority to have

input on the designs and plans prior to the Developer requesting approval of the designs and plans from the relevant Recipient Authority.

- (c) The Recipient Authority must act reasonably in reviewing the relevant designs and plans and provide its approval or rejection of such relevant designs and plans within 60 Business Days of receiving the relevant designs and plans from the Developer.
  - (d) To the extent that the Developer amends or modifies the relevant designs and plans (including at the request of the Council or the Parklands Trust (as the case may be)) or otherwise seeks to amend or modify the relevant designs and plans, the Developer must comply with the process prescribed in this clause 3.2 in respect of such amendments or modifications.
  - (e) The Developer must complete the relevant Works in accordance with any designs and plans approved by the Council or the Parklands Trust (as the case may be) under this clause 3.2.
- 3.3 The Developer will provide or will procure Practical Completion of the Works by the time specified in the 7th column of schedule 2 corresponding to the Work and in the manner set out for each item in schedule 2.
- 3.4 The Developer will provide or will procure the provision of the RMS Works, or works that have a similar effect as agreed to between the Developer and the RMS, in accordance with the WAD.

### **Completion of Work**

#### **3.5 Construction phase**

The Developer must:

- (a) procure the execution and completion of the Works in accordance with:
  - (i) the specifications referred to for each of the Works as set out in the fifth column in the table in schedule 2; and
  - (ii) the designs and plans approved by the Council or the Parklands Trust (as the case may be) in accordance with clause 3.2; and
  - (iii) this Deed; and
- (b) ensure that the Works do not encroach onto any part of the land adjoining the Land, except as otherwise provided in this Deed.

#### **3.6 Review of Works and Construction Documents**

The Developer acknowledges and agrees that:

- (a) the Minister, the Council or the Parklands Trust (as the case may be) is not obliged to critically analyse the designs and plans or any specifications of the Works;
- (b) the Minister, the Council or the Parklands Trust (as the case may be) is not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to designs and plans or any specifications of the Works;

- (c) the Minister, the Council or the Parklands Trust (as the case may be) is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Works; and
- (d) no comment, review or information supplied to the Developer by the Minister, the Council or the Parklands Trust (as the case may be) alters or alleviates the Developer from its obligation to construct and complete the Works in accordance with this Deed.

### 3.7 Developer responsibilities

- (a) The Developer is responsible for:
  - (i) the care of the Works at all times until the latter of:
    - (A) the time when a Certificate of Practical Completion is issued for the relevant Works; or
    - (B) in respect of that Land upon which Works are constructed that are required to be dedicated to the Council or the RMS under the Concept Plan Approval, dedication of that Land to the Council or the RMS (as the case may be);
  - (ii) providing all things and taking all measures reasonably within its control to protect the Works on the Land and people and property in relation to the site comprising the Land, where failure to do so may render the Minister, the Council, the Parklands Trust or the Developer liable under the Law, until the later of:
    - (A) the time when a Certificate of Practical Completion is issued for the relevant Work; or
    - (B) in respect of that Land upon which Works are to be constructed that are required to be dedicated to the Council or the RMS under the Concept Plan Approval, dedication of that Land to the Council or the RMS (as the case may be); and
  - (iii) until the later of:
    - (A) the time when a Certificate of Practical Completion is issued for the relevant Work; or
    - (B) in respect of that Land upon which Works are to be constructed that are required to be dedicated to the Council or the RMS under the Concept Plan Approval, dedication of that Land to the Council or the RMS (as the case may be),

taking any urgent action in relation to the Land, necessary to protect people and the Works and the consequences of any failure to take such action where failure to do so may render the vendor or the Developer liable under the Law.
- (b) In addition to any other remedies of the Minister, the Council or the Parklands Trust (as the case may be), the Minister, the Council or the Parklands Trust (as the case may be) may take urgent action in the case of an emergency to protect people or property until the time when a Certificate of Practical Completion is issued for the relevant Works, or in respect of that Land upon which Works are constructed that are required to be dedicated to the Council or the RMS under the Concept Plan Approval, their



dedication to the Council or the RMS, and all Costs, expenses, losses, liabilities or claims incurred or suffered by the Minister, the Council or the Parklands Trust (as the case may be) in taking such urgent action constitutes a debt due from the Developer to the Minister, the Council or the Parklands Trust (as the case may be) payable on demand and the Developer will keep the Minister, the Council or the Parklands Trust (as the case may be) indemnified in respect of all such costs and liabilities.

### 3.8 Damage

Where in carrying out the Works, the Developer, or its employees or agents, damages any property, including public utilities, services or property on or adjacent to Land, the Developer must make good all such damage promptly after being notified of such damage. If the Developer fails to make good any such damage, then the Minister, the Council or the Parklands Trust (as the case may be) may, at its discretion, but after providing the Developer with reasonable notice to make good such damage, elect to carry out all such works to repair such damages in which case the Developer hereby agrees to indemnify the Minister, the Council or the Parklands Trust (as the case may be) against all claims, liabilities and losses arising from and all costs, charges and expenses incurred in connection with the Minister, the Council or the Parklands Trust (as the case may be) carrying out any such work.

### 3.9 Good Industry Practice

The Developer must ensure that the Works are designed and carried out according to Good Industry Practice.

### 3.10 Quality of Material and Work

The Developer must procure the Works to be carried out:

- (a) using good quality materials, which must be suitable for the purpose for which they are required under this Deed;
- (b) without the use of asbestos in any form;
- (c) in compliance with relevant standards determined by Australian Standards Limited, the Building Code of Australia as determined by the Commonwealth of Australia and any relevant manufacturers' standards;
- (d) so that the Works, when completed, are suitable for the purpose for which they are required.

### 3.11 Insurance

The Developer must ensure that there is effected and maintained insurance policies covering such risks, and on terms, reasonably acceptable to the Minister and the Council including physical loss, damage or destruction of the Works (including any associated temporary works), third party liability, contractors and professional indemnity insurance. The policies must provide cover for the period from the date of the commencement of construction of the Works until the later of:

- (a) the end of any relevant Defects Liability Period for the Works; and
- (b) in respect of that land upon which Works are constructed that is required to be dedicated to the Council or the RMS under the Concept Plan Approval, dedication of that land to the Council or the RMS (as the case may be).

### 3.12 Amount of property insurance



The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).

### 3.13 Insurance generally

All insurances which the Developer is required by this Deed to effect and maintain:

- (a) must be with insurers and on terms consistent with good construction industry practice;
- (b) must note the rights and interests of the Developer and the Minister, the Council and the Parklands Trust; and
- (c) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.

### 3.14 Providing proof of insurance

Whenever reasonably requested in writing by the Minister, the Council and/ or the Parklands Trust the Developer must give the Minister, the Council or the Parklands Trust certificates of the insurance policies which the Developer is required by this Deed to effect and maintain.

### 3.15 Premiums

The Developer must punctually pay all premiums in respect of all insurances.

### 3.16 Additional Obligations

The Developer must:

- (a) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy; and
- (b) if necessary, rectify anything which might prejudice any insurance policy; and
- (c) reinstate an insurance policy if it lapses; and
- (d) immediately notify the Minister, the Council and the Parklands Trust in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (e) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

### 3.17 Application of insurance proceeds

If all or any part of a Work is damaged or destroyed prior to Practical Completion thereof or (where required under the Concept Plan Approval) dedication of land upon which a Work is constructed to the Council or the RMS (as the case may be):

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the relevant Work; and
- (b) if the insurance proceeds received under the Insurances in respect of the damage or destruction are less than the cost of repairing or replacing the relevant Work (or those

insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the relevant Work using its own funds; and

- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Works, the Developer will be entitled to keep that excess.

### 3.18 Input tax credits

Where the Developer has effected any insurance policy referred to in this Deed before the date of this contract, the Developer:

- (a) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
- (b) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Developer effects any insurance policy referred to in this contract after the date of this contract, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

### 3.19 Undertaken Development Contributions

The parties agree that the Developer is not obliged to comply with clauses 3.1, 3.2, 3.9 and 3.10 in respect of any Work which relates to an Undertaken Development Contribution other than a modification of an Undertaken Development Contribution under clause 3.42.

## Certification of Practical Completion

### 3.20 Application of this regime

For the avoidance of doubt clauses 3.21 - 3.28 apply to all Works including Works which relate to an Undertaken Development Contribution.

### 3.21 Certification

- (a) Prior to Practical Completion, in respect of each of the Works, the Developer must nominate to either the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work, in writing three possible appointees for the position of Certifier. In consultation with the Developer, the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work will choose the Certifier from those appointees (unless, acting reasonably, they object to each of them in which case the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work may choose another appropriately qualified person to act as Certifier).
- (b) The Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work will appoint and keep engaged (at the cost of the Developer) the Certifier in connection with the Works. If the Certifier is dismissed then the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work will appoint another Certifier as soon as possible after that

dismissal and the process referred to in clause 3.21(a) will be repeated for the replacement Certifier.

- (c) When the Developer is of the opinion that a Work has reached Practical Completion, the Developer must:
  - (i) request the Certifier to issue a Certificate of Practical Completion; and
  - (ii) at the same time give the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work (as the case may be) a copy of that request.

### 3.22 Certifier to respond

Within 10 Business Days after the receipt of the Developer's request, the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work will use reasonable endeavours to procure that the Certifier either:

- (a) gives the Developer (with a copy to the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work at the same time) a Certificate of Practical Completion certifying that a Work has reached Practical Completion; or
- (b) gives the Developer (with a copy to the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work at the same time) the reasons for not issuing that certificate and provide a detailed list of work required to be completed in order for that certificate to be issued.

### 3.23 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request the Certifier does not either issue the Certificate of Practical Completion of the Work or give the Developer reasons for not issuing the certificate, then the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work or the Developer may regard the circumstances as constituting a dispute between the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work and the Developer.

### 3.24 Carrying out required work

On receipt of the detailed list referred to in paragraph 3.22(b), the Developer must carry out the work referred to in that list and, on completion of that work, request the Certifier to issue a Certificate of Practical Completion. If the Certifier is satisfied that all such work has been completed in accordance with this Deed then the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work will use reasonable endeavours to procure that the Certifier issue the Certificate of Practical Completion in respect of the relevant Works within 10 Business Days after receipt of the Developer's request. Otherwise the provision of paragraphs 3.22 - 3.24 inclusive re-apply.

### 3.25 Prerequisites for Certificate of Practical Completion

Despite paragraph 3.21, the Developer may not request the Certifier to issue a Certificate of Practical Completion unless and until:

- (a) the Developer has given the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work a draft plan of subdivision or a draft survey of works prepared by a licensed surveyor showing the location of the relevant Work and the location of the relevant Work as shown in that survey is acceptable to the Council or the Parklands Trust (as the case may be), acting reasonably;
- (b) where relevant, copies of all necessary documents and approvals issued by the consent Authority or relevant accredited certifier acknowledging completion of the Work, other than the Certificate of Practical Completion, and if appropriate permitting use and occupation of the Work, including a Compliance Certificate and an Occupation Certificate (if required) have been delivered to the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work; and
- (c) copies of all other certificates, consents and approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of each relevant part of the Works have been delivered to the Council or the Parkland Trust (as the case may be) having regard to whom of the Council or the Parkland Trust is the beneficiary of a relevant Work .

### 3.26 Providing documents to the Council or the Parklands Trust (as the case may be)

If and to the extent reasonably required (and not otherwise previously delivered to the Council or the Parklands Trust (as the case may be)) the Developer must promptly, and in any event within 30 Business Days, after the date of issue of Certificate of Practical Completion, do all things required to procure the issue and delivery to the Council or the Parklands Trust (as the case may be) of copies of the following items in relation to each Work:

- (a) a final registrable plan of subdivision and survey of works;
- (b) a copy of as-built drawings and all warranties and operations manuals given in connection with the Work; and
- (c) all certificates issued by any Authority in relation to any part of the Work which has not previously been delivered to the Council or the Parklands Trust (as the case may be).
- (d) a copy of a building certificate under Part 8 of the EP&A Act in respect of the Works.

### 3.27 Routine Maintenance Manual

- (a) Prior to requesting the Certifier to issue a Certificate of Practical Completion In relation to each Work in accordance with clause 3.21(c), the Developer must provide a draft Routine Maintenance Manual in respect of the relevant Work (including any modification to an Undertaken Development Contribution approved pursuant to clause 3.42) to the Council or the Parklands Trust (as the case may be) for its approval.
- (b) Within 30 Business Days from receiving the draft Routine Maintenance Manual, the Council or the Parklands Trust (as the case may be) agrees to either:
  - (i) approve the Routine Maintenance Manual prepared by the Developer; or
  - (ii) issue to the Developer a notice containing amendments reasonably required to be made to the Routine Maintenance Manual provided by the Developer.

- (c) If the Council or the Parklands Trust (as the case may be) issues a notice under clause 3.27(b)(ii), the Developer must accommodate the amendments required by the Council or the Parklands Trust (as the case may be) in the draft Routine Maintenance Manual and re-submit that plan to the Council or the Parklands Trust (as the case may be) for its approval under clause 3.27(a).

### 3.28 Effect of Certificates

The issue of a Certificate of Practical Completion is evidence that Practical Completion has been achieved, but not an acknowledgment that otherwise the Developer has complied with its obligations under this Deed.

## Dedication of lands

### 3.29 Transfer

In accordance with the timing identified in the seventh column of the table in Schedule 2, and in any event within 30 days of receipt of the Certificate of Practical Completion for the Park-Edge Road or Central Spine Road and Internal Estate Roads, the Developer must (at its risk and Cost):

- (a) lodge for registration at the LPI a deposited plan in the register of plans held with the Registrar-General that dedicates the land on which those Works are located as a public road (including a temporary public road) under the Roads Act 1993; or
- (b) deliver to the Council:
  - (i) a form of transfer in respect of the land comprising each of the:
    - (A) Park-Edge Road; and
    - (B) Central Spine Road and Internal Estate Roads,
 in favour of the Council for a consideration of \$1, executed by the legal owner, that part of the Land which comprises Park- Edge Road and the Central Spine Road and Internal Estate Roads and in registrable form except for acceptance by the Council and marking by the Office of State Revenue;
  - (ii) the certificate or certificates of title for Park- Edge Road and the Central Spine Road and Internal Estate Roads;
  - (iii) any consents and other documentation in registrable form required for the transfer (and registration) of the Park- Edge Road and the Central Spine Road and Internal Estate Roads including without limitation any consents and other documentation necessary, or otherwise required by the Council;
  - (iv) any permits in connection with the Park- Edge Road and the Central Spine Road and Internal Estate Roads including, without limitation, any enclosure permits, and any consents and other documentation in a registrable form necessary, or otherwise required by the Council, for the transfer (and registration) of those permits; and
- (c) take any other necessary action (other than paying stamp duty) to give effect to the transfer of the title of the Park- Edge Road and the Central Spine Road and Internal Estate Roads to the Council free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except any caveat lodged over the



Park- Edge Road and the Central Spine Road and Internal Estate Roads by the Minister in accordance with clause 4.

### 3.30 Compulsory acquisition

- (a) If the Developer does not transfer the Park- Edge Road and the Central Spine Road and Internal Estate Roads as required by this Deed, the Developer consents to the Council compulsorily acquiring the whole or any part of the Park- Edge Road and the Central Spine Road and Internal Estate Roads in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Council agree that:
  - (i) this clause 3.30 of this Deed is an agreement between the Council and the Developer for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
  - (ii) in this clause 3.30 of this Deed is the Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) Except as otherwise agreed between the Council and the Developer and subject to any caveat lodged by the Minister under clause 4, the Developer must ensure that the Park- Edge Road and the Central Spine Road and Internal Estate Roads are free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges), on both the date that the Developer is liable to transfer the Park- Edge Road and the Central Spine Road and Internal Estate Roads to the Council in accordance with the seventh column of the table in Schedule 2 and the date on which the Council compulsorily acquires the whole or any part of the Park- Edge Road and the Central Spine Road and Internal Estate Roads in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of Park- Edge Road and the Central Spine Road and Internal Estate Roads under this clause 3.30.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all Costs incurred by the Council in acquiring the whole or any part of the Park- Edge Road and the Central Spine Road and Internal Estate Roads as contemplated by clause 3.30(a).

### Defects rectification

- 3.31 As soon as possible after the date on which the issue of a Certificate of Practical Completion occurs, the Developer must rectify any defects or omissions in the relevant Work.
- 3.32 At any time during the Defects Liability Period the Developer must allow the Minister, the Council or the Parklands Trust (as the case may be) to inspect the Works for the purpose of ascertaining what defects and omissions (if any) in the Works are required to be made good by the Developer.
- 3.33 Having regard to who will receive the benefit of a relevant Work, the Minister, the Council or the Parklands Trust (as the case may be) may give notice to the Developer:

- (a) that part of the Work is defective, giving details; and
  - (b) of the works required to rectify the defect; and
  - (c) that provides an estimate of the Costs to rectify such works; and
  - (d) that allows the Developer a reasonable period to rectify such works.
- 3.34 If the Minister, the Council or the Parklands Trust (as the case may be) gives notice to the Developer that part of the Works are defective, the Developer must complete or rectify those works within the period required by the Minister, the Council or the Parklands Trust (as the case may be).
- 3.35 If the Developer fails to complete or rectify such works within the period required by a notice issued under clauses 3.33 and 3.34 then the Minister, the Council or the Parklands Trust (as the case may be) may have such works completed or rectified at the Developer's expense.
- 3.36 The estimated amount will be a debt due from the Developer to the Minister, the Council or the Parklands Trust (as the case may be) payable on demand and amounts so paid must be applied by the Minister, the Council or the Parklands Trust (as the case may be) in completing or rectifying such works.
- 3.37 If the amount estimated is less than the actual Costs incurred by the Minister, the Council or the Parklands Trust (as the case may be) in completing or rectifying such works the shortfall will be a debt due by the Developer to the Minister, the Council or the Parklands Trust (as the case may be) payable on demand.
- 3.38 If the amount estimated (and that amount has been paid by the Developer to the Minister, the Council or the Parklands Trust (as the case may be) is greater than the actual Costs incurred by the Minister, the Council or the Parklands Trust (as the case may be) in completing or rectifying such works the excess will be a debt due by the Minister, the Council or the Parklands Trust (as the case may be) to the Developer payable on demand, in which regard such demand may be made at any time after such works have been completed or rectified.

### **Routine Maintenance**

- 3.39 The Developer will, at its own cost, carry out Routine Maintenance for each Work (including any modification to an Undertaken Development Contribution approved pursuant to clause 3.42) in accordance with the relevant Routine Maintenance Manual for each Work for the period of time referred to in relation to that item of Work in the column headed "Maintenance" in schedule 2.

### **Developer's failure to deliver Work**

- 3.40 In the event the Developer fails to obtain a Certificate of Practical Completion for a Work by the time due as set out in this Deed, then the Minister, the Council or the Parklands Trust (as the case may be) may elect to carry out such of the relevant Work as is required to achieve Practical Completion of the relevant Work.
- 3.41 In the event the Minister, the Council or the Parklands Trust (as the case may be) elects to carry out the whole or any part of a Work required to achieve Practical Completion of that Work as contemplated by clause 3.40:
- (a) the Developer agrees to pay to the Minister, the Council or the Parklands Trust on demand and without set-off or deduction, all costs, expenses, losses, claims and liabilities incurred or suffered by the Minister, the Council or the Parklands Trust (as



the case may be) in carrying out any works required to achieve Practical Completion of the relevant Work;

- (b) if the Developer fails to pay such amounts required in accordance with clause 3.41(a) above, then the Developer hereby irrevocably acknowledges and agrees that the Council or the Minister may claim upon the Council Works Guarantee, the Road Works Bank Guarantee or the Wetlands Works Bank Guarantee (as the case may be) for such amounts as the Developer has failed to pay the under or by virtue of clause 3.41(a); and
- (c) the Developer indemnifies the Minister, the Council or the Parklands Trust against all claims, liabilities and losses arising from, and all costs, charges and expenses incurred in connection with, the Minister and/or the Council and/or the Parklands Trust (as the case may be) carrying out any works required to achieve Practical Completion of the relevant Work.

#### 3.42 Modifications to Undertaken Development Contributions

- (a) The Developer must not modify an Undertaken Development Contribution without the written consent of the Council or the Parklands Trust (as the case may be) having regard to whom of the Council or the Parklands Trust is the beneficiary of the relevant Undertaken Development Contribution which the Developer seeks to modify.
- (b) Despite any other provision in this Deed, any modification to an Undertaken Development Contribution which the Developer seeks to make will be subject to clauses 3A - 3.41. Where a modification to an Undertaken Development Contribution is approved by the Council or the Parklands Trust (as the case may be) having regard to whom of the Council or the Parklands Trust is the beneficiary of the relevant Undertaken Development Contribution the parties must agree in writing any the following details :
  - (i) the description of the modification to the Undertaken Development Contribution;
  - (ii) the specification of the modification to the Undertaken Development Contribution;
  - (iii) the commencement and completion dates for the modification to the Undertaken Development Contribution;
  - (iv) the completion documents required for the modification to the Undertaken Development Contribution;
  - (v) the maintenance required for the modification to the Undertaken Development Contribution; and
  - (vi) the ownership of the modification to the Undertaken Development Contribution.

## 4 Caveat

### 4.1 The Developer acknowledges and agrees that:

- (a) when this Planning Agreement comes into operation, the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land (excluding lots 31 and 33 in DP 1161771 and lots 5 and 6 in DP 1127100)

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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 ~~lots 31 and 33 in DP 1161771~~ and lots 5 and 6 in DP 1127100) in respect of which to lodge with the LPI a caveat notifying that interest; TF CB R SF

- (b) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land (excluding ~~lots 31 and 33 in DP 1161771~~ and lots 5 and 6 in DP 1127100)) 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 TF CB R SF
- (c) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in the Land (excluding ~~lots 31 and 33 in DP 1161771~~ and lots 5 and 6 in DP 1127100) registered under the *Real Property Act* 1900 (NSW). TF CB R SF

4.2 The Developer acknowledges and agrees that:

- (a) when the Developer becomes the legal owner of any of the land in lots 5 and 6 in DP 1127100), the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in lots 5 and 6 in DP 1127100) (as the case may be) for the purposes of section 74F(1) of the *Real Property Act* 1900 (NSW) and consequently the Minister has a sufficient interest in lots 5 and 6 in DP 1127100) (as the case may be) in respect of which to lodge with the LPI a caveat notifying that interest;
- (b) it will not object to the Minister lodging a caveat in the relevant folio of the Register for each of lots 5 and 6 in DP 1127100) 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
- (c) it will obtain the consent to the lodgement of the caveat of each person who has an estate or interest in each of lots 5 and 6 in DP 1127100) registered under the *Real Property Act* 1900 (NSW).

4.3 The Minister must, at the Developer'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:

- (a) within 60 Business Days after the Developer complies with clause 6.2(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 6.2(a); and
- (b) if applicable, at the same time the transfer or dedication of the Park- Edge Road and the Central Spine Road and Internal Estate Roads is registered at the LPI.

## 5 Registration of Deed

### Registration

#### 5.1 Ownership

- (a) On the date of this Deed, the parties acknowledge that the Developer is not the owner of all the Land on which the Park-Edge Road and the Central Spine Road and Internal Estate Roads are located.

- (b) The Developer represents and warrants to the Minister, the Council and the Parklands Trust that:
- (i) on the date of this Deed, it is the legal owner of the Land, other than ~~lots 31 and 33 in DP 1161771 and~~ lots 5 and 6 in DP 1127100 that is included within the Land;
  - (ii) in respect of ~~lots 31 and 33 in DP 1161771 and~~ lots 5 and 6 in DP 1127100 the Minister is the current registered proprietor; and
  - (iii) it can comply with its obligations under this Deed to carry out the Works and dedicate the land on which those Works are located.
- (c) The representations and warranties in this clause 5.1 are given by the Developer as at the date of this Deed and are repeated by the Developer as at the date that the Developer:
- (i) is required to transfer or dedicate to (or consent to the compulsory acquisition by) the Council of the Park- Edge Road and/ or the Central Spine Road and Internal Estate Roads; and
  - (ii) transfers or dedicates (or the Council compulsorily acquires) the Park- Edge Road and/or the Central Spine Road and Internal Estate Roads pursuant to this Deed.

## 5.2 Registration of the Planning Agreement

- (a) The Developer agrees it will procure the registration of the Planning Agreement entered into pursuant to clause 2.3 under the *Real Property Act* 1900 (NSW) in the relevant folios of the register for the Land that it owns in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Minister or the Council 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;
  - (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 and the and the Park- Edge Road and/ or the Central Spine Road and Internal Estate Roads in accordance with section 93H of the Act.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Minister or the Council 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

- (ii) to procure the registration of the Planning Agreement by the Registrar-General either in the relevant folios of the Register for the Land and the and the Park-Edge Road and/ or the Central Spine Road and Internal Estate Roads as soon as reasonably practicable after the Planning Agreement is lodged for registration.

## **Release and discharge**

5.3 Once the Minister is satisfied that the Developer has fully complied with all of its obligations under this Deed, including with respect to the Defects Liability Period, at the Developer's request (and Cost), the Minister agrees to:

- (a) provide a full release and discharge of this Deed with respect to the whole of the Land; and
- (b) sign such documentation as is necessary to remove any caveat lodged by the Minister in relation to the Land pursuant to clause 4.

## **6 Security**

6.1 Face value of Bank Guarantee - Development Contributions

- (a) On commencement of this Deed, the Developer is to provide security to:
  - (i) the Council; and
  - (ii) the Minister, under the terms of the sale of land agreement referred to in paragraph F of the Recitals to this Deed,
 in the form of the Bank Guarantees.
- (b) The Developer agrees that the Bank Guarantees are security for all of the Developer's obligations under this Deed in addition to its obligations under the sale of land agreement referred to in paragraph F of the Recitals to this Deed.
- (c) The Developer must procure the Certifier to certify when each Work has achieved Practical Completion in accordance with clauses 3.21 and 3.22.
- (d) Subject to the Developer satisfying its obligations under, or by virtue of clauses 3.31 - 3.39, and subject to clause 6.6, as soon as reasonably practicable after receipt of the Certifier's Certificate of Practical Completion in respect of the Works the subject of the Road Works Bank Guarantee, the Minister agrees to return to the Developer the Road Works Bank Guarantee.
- (e) Subject to the Developer satisfying its obligations under, or by virtue of, clauses 3.31 - 3.39 and subject to clause 6.6, as soon as reasonably practicable after receipt of the Certifier's Certificate of Practical Completion in respect of the Works the subject of the Wetlands Works Bank Guarantee, the Minister agrees to return to the Developer the Wetlands Works Bank Guarantee.
- (f) Subject to the Developer satisfying its obligations under, or by virtue of, clauses 3.31 - 3.39 and subject to clause 6.6, as soon as reasonably practicable after receipt of the Certifier's Certificate of Practical Completion in respect of the Works the subject of

the Council Works Bank Guarantee, the Council agrees to return to the Developer the Council Works Bank Guarantee.

## 6.2 Expiry of Bank Guarantees

- (a) If any Bank Guarantees provided by the Developer are expressed as expiring on a certain date, the Developer must provide the Minister or the Council (as the case may be) with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to clause 6.3.
- (b) The provision of the Bank Guarantees does not:
  - (i) relieve the Developer from any of the obligations to be complied with on its part under any other provision of this Deed;
  - (ii) limit the right of the Minister or the Council (as the case may be) to recover from the Developer in full all money payable to the Minister of the Council (as the case may be) under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister or the Council (as the case may be).

## 6.3 Failure to replace expired Bank Guarantee

If the Developer fails to provide the Minister or the Council (as the case may be) with a replacement Bank Guarantee in accordance with paragraph 6.2, the Minister or the Council (as the case may be) may call on the full amount of any Bank Guarantee held by the Minister or the Council (as the case may be) after giving 3 Business Days prior written notice to the Developer.

## 6.4 Cash deposit

- (a) If the Minister or the Council (as the case may be) makes demand under any Bank Guarantee pursuant to paragraph 6.3 the Minister or the Council (as the case may be) must hold the full amount so paid to the Minister or the Council (as the case may be) 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 or the Council (as the case may be) and with beneficial ownership vesting at all times in the Minister or the Council (as the case may be) ("**Cash Deposit Account**"). The Cash Deposit will operate to secure all the obligations of the Developer in respect of the relevant Works to which the relevant Bank Guarantee relates under this Deed.
- (b) As beneficial owner of the Cash Deposit, the Minister or the Council (as the case may be) may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Minister or the Council (as the case may be) for any liability, loss, Cost, charge or expense incurred by the Minister or the Council (as the case may be) because of failure by the Developer to comply with the relevant obligations under this Deed.
- (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 or the Council (as the case may be) 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 or the Council (as the case may be) under this Deed and the Developer has satisfied all of its obligations under clause 3 of this Deed, the Minister or the Council (as the case may be) must pay the balance of the Cash Deposit Account, less all costs, charges, duties and taxes payable in connection with such payment to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Minister or the Council (as the case may be) to release the Cash Deposit until the Minister or the Council (as the case may be) is reasonably satisfied that no moneys are, or may become, payable to the Minister or the Council (as the case may be) under clause 3 of this Deed.

#### 6.5 Release of Cash Deposit

The Minister or the Council (as the case may be) must release the Cash Deposit to the Developer if the Developer provides the Minister or the Council (as the case may be) with a replacement Bank Guarantee complying with the requirements of clause 6.1.

#### 6.6 Claims under Bank Guarantee

- (a) The Minister or the Council (as the case may be) may make claims under Bank Guarantees so provided on the following basis:
  - (i) in relation to the Works the subject of the Road Works Bank Guarantee, the Road Works Bank Guarantee provided by the Developer as security for those works;
  - (ii) in relation to the Works the subject of the Wetlands Works Bank Guarantee, the Wetlands Works Bank Guarantee provided by the Developer as security for those works; and
  - (iii) in relation to the Works the subject of the Council Works Bank Guarantee, the Council Works Bank Guarantee provided by the Developer as security for those works.

## 7 Dispute Resolution

### Meeting to attempt to resolve disputes

- 7.1 If a dispute arises under this Deed or concerning its subject matter, any party may at any time give written notice to the other requesting that a meeting take place to seek to resolve the dispute. The nominated senior representatives of both parties must meet within five business days of the notice and try to resolve the dispute in good faith.
- 7.2 If the process referred to in clause 7.1 has not resulted in settlement of the dispute within 25 Business Days after commencement of the process (or such longer period as the parties may agree), then:
  - (a) if all parties agree that the matter should be determined by an expert, the matter must be referred to expert determination in accordance with clause 7.3; or
  - (b) if the parties do not agree within 10 Business Days that the matter should be determined by an expert in accordance with 7.2(a), any party may commence litigation.

- 7.3 If the dispute has not been resolved under clause 7.1 either party may immediately refer the Dispute to the IAMA for expert determination in accordance with the IAMA Guidelines. For the avoidance of doubt, the parties agree to the appointment of the expert on the terms of the Expert Determination Appointment Agreement contained in the IAMA Guidelines, the terms of which are incorporated into this Deed.
- 7.4 Each party must pay its own costs in relation to complying with clause 7.3, except that the costs and expenses of the expert determination will be borne by the parties equally.
- 7.5 If the dispute remains unresolved after the procedures set out in clauses 7.1 and 7.3 have been completed, any party may pursue its rights at law.

### **Performance of obligations**

- 7.6 Despite the existence of a dispute, each party must continue to perform its obligations under this Deed.

### **Interlocutory relief and right to terminate**

- 7.7 Clauses 7.1 and 7.6 do not restrict or limit the right of a party to seek interlocutory relief, or to immediately terminate this Deed where this Deed provides such a right.

## **8 Assignment and Dealing**

### **8.1 Developer's proposed assignment of rights**

- (a) Unless the matters specified in clause 8.1(b) are satisfied, the Developer is not to assign or novate to any person the Developer's rights or obligations under this Deed.
- (b) The matters required to be satisfied for the purposes of clause 8.1(a) are as follows:
  - (i) the Developer has, at no cost to the Minister, the Council or Parklands Trust first procured the execution by the person to whom the Developer's rights or obligations under this Deed are to be assigned or novated, of an agreement in favour of the Minister, the Council and Parklands Trust on terms satisfactory to the Minister, the Council and Parklands Trust, and
  - (ii) the Minister, the Council and Parklands Trust, by notice in writing to the Developer, has stated that evidence satisfactory to the Minister, the Council or Parklands Trust has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Deed; and
  - (iii) the Developer is not in breach of this Deed.

### **8.2 Right of Developer to sell Land**

The Developer must not sell or transfer the whole or any part of the Land, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- (a) it satisfies the Minister, the Council and Parklands Trust acting reasonably that the proposed Transferee is respectable and financially capable of complying with such of the Developer's obligations under this Deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Minister, the Council and Parklands Trust acting reasonably shall nominate must be adopted by the Transferee (**Required Obligations**);
- (b) the requirements specified in clause 8.1 are satisfied; and



- (c) the rights of the Minister, the Council and Parklands Trust under this Deed are not diminished or fettered in any way;

### 8.3 The Minister, the Council and Parklands Trust Costs

The Developer must pay to the Minister, the Council and Parklands Trust (or the Minister, the Council and Parklands Trust on demand) for all the Costs incurred by the Minister, the Council and Parklands Trust in connection with any assignment or dealing proposed under clauses 8.1 and 8.2.

### 8.4 Minister's assignment of rights

The Minister:

- (a) may assign its rights under this Deed to another Minister of the State of New South Wales or to a statutory body representing the Crown without the Developer's consent;
- (b) must require the transferee and the Developer to enter into a deed in form and substance acceptable to the Minister and the Developer each acting reasonably containing provisions under which the transferee and the Developer agree to comply with the terms and conditions of this Deed; and
- (c) will pay the Developer's reasonable Costs in relation to that assignment.

## 9 Enforcement

9.1 Without limiting any other remedies available to the parties, this Deed may be enforced by any Party in any court of competent jurisdiction.

9.2 For the avoidance of doubt, nothing in this Deed prevents:

- (a) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any other matter to which this Deed relates; or
- (b) the Minister, Council or the Parklands Trust from exercising any function under the Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## 10 Goods and services tax

10.1 In this clause 10:

- (a) words and phrases used in this clause 10 that are defined in the GST Act have the same meaning as in that Act except that:
  - (i) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
  - (ii) **Recipient** means a party who provides or is liable to provide consideration under this Deed for a supply;
- (b) a reference to a supply is to a supply made under or in connection with this Deed;
- (c) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 10;

- (d) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (e) a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

### Recovery of GST on supplies and adjustments under this Deed

- 10.2 All consideration provided under this Deed (other than under this clause 9) is exclusive of GST, unless it is expressed to be GST-inclusive. 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 10.
- 10.3 Subject to clauses 10.5 and 10.6, if the Supplier is or becomes liable to pay GST in respect of any supply, the Recipient must pay to the Supplier an additional amount equal to the GST payable on that supply (**GST Amount**). The Supplier must issue a valid tax invoice to the Recipient in respect of that supply. The GST Amount must be paid by the Recipient at the later of the following:
- (a) The date when any consideration for the taxable supply is first paid or provided.
  - (b) The date when the Supplier issues a tax invoice to the Recipient.
- 10.4 If, the GST Amount recovered by the Supplier from the Recipient under clause 10.3 for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient within 28 days of becoming aware of the adjustment.

### Exchange of non-monetary consideration

- 10.5 To the extent that the consideration provided for the Supplier's taxable supply to which clause 10.3 applies is a taxable supply made by the Recipient (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 10.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- 10.6 The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 10.3 (or the time at which such GST Amount would have been payable in accordance with clause 10.3 but for the operation of clause 10.5).

### Other GST matters

- 10.7 If a party is entitled to be reimbursed or indemnified under this Deed, the amount to be reimbursed or indemnified is reduced by the amount of GST for which there is an entitlement to claim an input tax credit on an acquisition associated with the reimbursement or indemnity. The reduction is to be made before any increase under clause 10.3. An entity is assumed to be entitled to a full input tax credit on an acquisition associated with the reimbursement or indemnity unless it demonstrates otherwise before the date the reimbursement or indemnity is made.

- 10.8 This clause will not merge on completion and will survive the termination of this Deed by any party.
- 10.9 Terms used in this clause that are not otherwise defined in this Deed have the meanings given to them in the GST Act.

## **11 Limitation of liability - Custodian**

### **Capacity and scope**

- 11.1 The Trust Company Limited enters into this contract as custodian and agent of the Trustees and the GGGAIF Huntingwood West Trust only and in no other capacity.
- 11.2 Notwithstanding anything in this clause 11, the Trust Company Limited will do all things necessary to:
- (a) allow the Developer to carry out the Works in accordance with the provisions of this Deed; and
  - (b) transfer or dedicate the Land on which those Works are located in accordance with clause 3.

### **Obligations incurred as custodian and agent**

- 11.3 The parties other than the Trust Company Limited acknowledge that the Obligations are incurred by the Trust Company Limited solely in its capacity as custodian of the Assets and as agent of the Trustees or the GGGAIF Huntingwood West Trust and that the Trust Company Limited will cease to have any Obligation or liability under this contract if the Trust Company Limited ceases for any reason to be the owner of the Assets.

### **Performance subject to indemnity**

- 11.4 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Trust Company Limited under its custody agreement with the Trustees or the GGGAIF Huntingwood West Trust, the Trust Company Limited will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified by the Trustees or the GGGAIF Huntingwood West Trust or except out of the Assets against which it is entitled to be indemnified in respect of any liability incurred by it. The obligation of the Trustees or the GGGAIF Huntingwood West Trust to indemnify the Trust Company Limited and the right of the Trust Company Limited to be indemnified out of the Assets are limited.

### **Parties rights of enforcement limited**

- 11.5 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Trust Company Limited under its custody agreement with the Trustees or the GGGAIF Huntingwood West Trust, the parties other than the Trust Company Limited may enforce their rights against the Trust Company Limited arising from non-performance of the Obligations only to the extent of the Trust Company Limited indemnity as provided under clause 11.4.

### **Limitation on recovery**

- 11.6 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Trust Company Limited under its custody agreement with the Trustees or the GGGAIF Huntingwood West Trust, if any party other than the Trust Company Limited does not recover all money owing to it arising from the non-performance of the Obligations it may not seek to recover the shortfall by:

- (a) bringing proceedings against the Trust Company Limited in its personal capacity; or
- (b) applying to have the Trust Company Limited wound up or providing in the winding up of the Trust Company Limited.

### Qualified release

11.7 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Trust Company Limited under its custody agreement with the Trustees or the GGGAIF Huntingwood West Trust, the parties other than the Trust Company Limited waive their rights and release the Trust Company Limited from any personal liability whatsoever, in respect of any loss or damage:

- (a) which they may suffer as a result of any:
  - (i) breach by the Trust Company Limited of any of its Obligations; or
  - (ii) non-performance by the Trust Company Limited of the Obligations; and
- (b) which cannot be paid or satisfied from the indemnity set out above in clause 11.4 in respect of any liability incurred by it.

### Access to assets

11.8 The parties other than the Trust Company Limited acknowledge that the whole of this contract is subject to this clause and subject to clause 11.7, the Trust Company Limited shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this contract or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this contract requires satisfaction out of the Assets under the Trust Company Limited's control and in its possession as and when they are available to the Trust Company Limited to be applied in exoneration for such liability.

## 12 Limitation of liability - Trustees

### Capacity

12.1 A Trustee's liability under this contract is limited to that Trustee's capacity as a trustee and a Trustee is not liable in any other capacity.

### Limitation

12.2 Subject to clause 12.4, the liability of a Trustee in respect of any cause of action, claim or loss arising:

- (a) under or in connection with this contract;
- (b) in connection with any transaction, conduct or any other agreement contemplated by this contract; or
- (c) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this contract,

(each, a **Trust Claim**), is limited to the Assets of that Trustee. The right of the parties other than that Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which that Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity

or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against that Trustee personally.

### **Acknowledgment of limitations**

12.3 The parties other than the Trustees agree and acknowledge that they must not, in respect of any Trust Claim:

- (a) subject to clause 12.4, bring proceedings against any Trustee in its personal capacity;
- (b) seek to appoint an administrator or liquidator to any Trustee;
- (c) commence the winding-up, dissolution or administration of any Trustee; or
- (d) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of any Trustee,

except to the extent that the steps taken affect any Assets of the Trustee or a Trustee's right of recourse against, and indemnity from, the Assets of that Trustee and nothing else.

### **Exception**

12.4 If a Trustee acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (a) that Trustee's right of indemnity, exoneration or recoupment of that Trustee's Assets; or
- (b) the actual amount recoverable by that Trustee in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, that Trustee may be personally liable.

## **13 Notices**

### **Giving notices**

13.1 Any notice or communication given to a party under this Deed is only given if it is in writing and sent in one of the following ways:

- (a) Delivered or posted to that party at its address and marked for the attention of the relevant department or officer (if any) set out below.
- (b) Faxed to that party at its fax number and marked for the attention of the relevant department or officer (if any) set out below.

#### **Developer**

Name: General Manager, Goodman Australia  
 Address: 60 Castlereagh St, Sydney NSW 2000  
 Fax number: 02 9230 7444  
 Attention: Jason Little

#### **Minister**

Name: Minister for Planning administering the Environmental Planning and Assessment Act 1979  
 Address: c/- Level 4, 10 Valentine Street, Parramatta NSW 2124

Fax number: 02 9687 6610  
 Attention: Carl Malmberg

#### **Council**

Name: Blacktown City Council  
 Address: 62 Flushcombe Road, Blacktown NSW 2148  
 Fax number: 02 9839 6000  
 Attention: General Manager

#### **Parklands Trust**

Name: Western Sydney Parklands Trust  
 Address: Level 4, 10 Valentine Street, Parramatta NSW 2124  
 Fax number: 02 9895 7580  
 Attention: Suellen Fitzgerald

### **Change of address or fax number**

- 13.2 If a party gives the other party three business days notice of a change of its address or fax number, any notice or communication is only given by that other party if it is delivered, posted or faxed to the latest address or fax number.

### **Time notice is given**

- 13.3 Any notice or communication is to be treated as given at the following time:
- (a) If it is delivered, when it is left at the relevant address.
  - (b) If it is sent by post, two (or, in the case of a notice or communication posted to another country, nine) business days after it is posted.
  - (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.
- 13.4 However, if any notice or communication is given, on a day that is not a business day or after 5pm on a business day, in the place of the party to whom it is sent it is to be treated as having been given at the beginning of the next business day.

## **14 Explanatory Note**

- 14.1 The appendix contains the Explanatory Note relating to this Deed, as required by clause 25E of the Regulation.
- 14.2 Pursuant to clause 25E(7) of the Regulation, the parties agree that the Explanatory Note in the appendix is not to be used to assist in construing this Deed.

## **15 Miscellaneous**

### **Approvals and consents**

- 15.1 Unless this Deed expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by the



party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.

- 15.2 Where this Deed refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

### **Costs**

- 15.3 The Developer will pay the Council's and the Parkland Trust's reasonable costs and expenses for preparing, negotiating, executing and completing this Deed and any document related to this Deed, up to an amount of:

- (a) \$20,000 for the Council; and
- (b) \$20,000 for the Parklands Trust.

### **Entire agreement**

- 15.4 This Deed contains everything the parties have agreed in relation to the subject matter it deals with. No party can rely on an earlier written document or anything said or done by or on behalf of another party before this Deed was executed.

### **Further acts**

- 15.5 Each party must at its own expense promptly execute all documents and do or use reasonable endeavours to cause a third party to do all things that another party from time to time may reasonably request in order to give effect to, perfect or complete this Deed and all transactions incidental to it.

### **Governing law and jurisdiction**

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

### **Joint and individual liability and benefits**

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

### **Severability**

- 15.8 Each provision of this Deed is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this Deed in the relevant jurisdiction, but the rest of this Deed will not be affected. The legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

### **Variation**

- 15.9 No variation of this Deed will be of any force or effect unless it is in writing and signed by each party to this Deed.

### **Waivers**

- 15.10 A waiver of any right, power or remedy under this Deed must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is



not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.

- 15.11 The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed does not amount to a waiver.

#### **No fetter**

- 15.12 Nothing in this Deed shall be construed as requiring the Minister or Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

#### **Representations and warranties**

- 15.13 The parties represent and warrant that they have the power to enter into this Deed and comply with their obligations under this Deed and that entry into this Deed will not result in the breach of any law.

#### **New law**

- 15.14 If a Law is changed or a new Law comes into force (both referred to as a *New Law*) and the Developer is obliged to do something that it is already obliged to do under this Deed, or to pay an amount for the provision of a work that it is already obliged to provide under this Deed, then, to the extent that the relevant obligation is required under both the New Law and this Deed, compliance with the New Law will constitute compliance with the obligation under this Deed.

#### **Review and amendment**

- 15.15 If any party requests a review of the whole or any part of this Deed then the parties must use their best endeavours, acting in good faith, to review the Deed in accordance with that request.

### **16 Definitions and interpretation**

#### **Definitions**

- 16.1 In this Deed the following definitions apply:

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

*Assets*, in relation to a Trustee, means all assets, property and rights real and personal of any value whatsoever of the trust in relation to which that Trustee is a trustee, as identified under the heading 'Parties' on page one of this contract.

*Authority* means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other agency or body with relevant power.

*Bank Guarantee* means each irrevocable and unconditional undertakings by an Australian-owned bank appearing on the Australian Prudential Regulation Authority's list of authorised Deposit-taking institutions as published from time to time providing for payment of the sum of:

- (a) \$3,993,777 being the Council Works Bank Guarantee in favour of the Council;

- (b) \$300,000 being the Wetlands Works Bank Guarantee in favour of the Minister administering the Environmental Planning and Assessment Act 1979 as Corporation Sole; and
- (c) \$500,000 being the Road Works Bank Guarantee in favour of the Minister administering the Environmental Planning and Assessment Act 1979 as Corporation Sole,

to the Minister or the Council (as the case may be) on demand.

**Central Spine Road and Internal Estate Roads** means the roads to be constructed as described in item 5 in Schedule 2.

**Certificate of Practical Completion** means a certificate issued by the Certifier certifying Practical Completion.

**Certifier** means an expert appointed under clause 3.21(a) and any replacement appointed under clause 3.21(b). The parties acknowledge that this Certifier is not a certifier appointed by the Developer for the purposes of section 109C(1)(a) of the EP&A Act but is a certifier appointed by the relevant parties to govern the process of validating that the works satisfy the relevant provisions of this Deed.

**Completion Notice** is a notice in writing issued by the Developer in relation to a Work stating that the Developer considers that Practical Completion has been achieved in relation to that Work.

**Compliance Certificate** means a certificate referred to in section 109C(1)(a) of the EP&A Act.

**Complying Development Certificate** means a certificate referred to in section 85(1) of the EP&A Act.

**Concept Plan Approval** means the approval by the Minister to the plan described as the "Huntingwood West Concept Plan 06-0203" dated 9 December 2006.

**Construction Certificate** means a certificate referred to in section 109C(1)(b) of the EP&A Act.

**Costs** includes cost, charges and expenses including those incurred in connection with advisors.

**Council Works Bank Guarantee** means the Bank Guarantee with a face value of \$3,993,777 provided by the Developer as security for the performance of the Developer's obligation to carry out the Works comprised of Park-Edge Road and Central Spine Road and Internal Estate Roads (as more particularly described in Schedule 2).

**Defects Liability Period** in relation to an item of Work means the 12 month period commencing on:

- (a) the date a Certificate of Practical Completion is issued in accordance with clause 3.22 of this Deed; or
- (b) (if applicable) the date a Certificate of Practical Completion is issued in respect of any Rectification Works.

**Development** means the subdivision of the Land generally in accordance with the Concept Plan Approval and the Project Approval, as modified as at the date of this Deed and the initial development of the Land and Lot 1 in DP 1103025 for industrial and ancillary purposes.

**Development Contributions** means:

- (a) the Works,
- (b) the dedication of the land on which certain of the Works are located to the Council (as identified in schedule 2);
- (c) the RMS Works;
- (d) the RMS Contribution; and
- (e) any modification to an Undertaken Development Contribution.

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

**Good Industry Practice** means the exercise of that degree of professional skill, diligence, and prudence that reasonably would be expected from competent persons performing tasks and functions similar in nature to the Works and the Development consistent with the Law.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**IAMA** means the Institute of Arbitrators & Mediators Australia or, if that organisation ceases to exist, a similar organisation nominated by the Law Society of NSW.

**IAMA Guidelines** means the IAMA Guidelines for Expert Determination (or, if the IAMA ceases to exist, the guidelines for expert determination of any similar organisation nominated by the Law Society of NSW) in force from time to time, the terms of which are incorporated into this Deed.

**Land** means the land known as Lots 30, 31, ~~32 and 33~~ in DP 1161771, Lot 34 in DP 1169557, ~~and Lots 5 and 6 in DP 1127100- and Lots 332 and 333 in DP 1193405.~~

**Law** means a requirement of any statute, regulation, rule, ordinance, code, policy, proclamation, by-law, planning instrument, or consent issued by an Authority, present or future.

**LPI** means Land and Property Information NSW or any similar department that may be established from time to time.

**Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trust Company Limited under or in respect of this contract.

**Occupation Certificate** means either an interim or final occupation certificate under Part 4A of the EP&A Act.

**Park-Edge Road** means the roads to be constructed as described in item 2 in Schedule 2.

**Planning Agreement** means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2.3, comprising the form and content of this Deed

**Project Approval** means approval by the Minister of the project approval application number MP 08\_0225 under Part 3A of the EP&A Act, including any modification of it.

**Practical Completion** means, in relation to a Work, the point of time at which the Certifier is satisfied that:

- (a) that Work has been completed in accordance with all relevant approvals and this Deed; and
  - (b) that Work is fit for use and (if relevant) occupation, and capable of being lawfully used and (if relevant) occupied for its intended purpose; and
  - (c) (if relevant) a Compliance Certificate for that Work has issued; and
  - (d) (if relevant) an Occupation Certificate for that Work has issued; and
  - (e) (if relevant) a Complying Development Certificate for that Work has issued; and
  - (f) to the extent that the Works are Works to which clause 3.1 applies, the Work has been completed in accordance with designs and plans approved by the Council or the Parklands Trust (as appropriate) in accordance with clause 3.2; and
  - (g) a Routine Maintenance Manual in relation to that Work has been approved by the Council or the Parklands Trust (as the case may be) in accordance with clause 3.27,
- and **Practically Complete** has a corresponding meaning.

**Recipient Authority** means the authority which is to take ownership of Works under the Deed or the Concept Plan Approval, being either the Council or the Parklands Trust.

**Rectification Works** means those works to be carried out pursuant to a notice issued under clause 3.33.

**Regulation** means the Environmental Planning and Assessment Regulation 2000.

**Road Works Bank Guarantee** means the Bank Guarantee with a face value of \$500,000 provided by the Developer as security for the performance of the Developer's obligation to carry out the Works comprised of intersection Works and roundabout Works (as more particularly described in Schedule 2).

**Routine Maintenance** in relation to a Work means the maintenance required to be carried out in accordance with a Routine Maintenance Manual.

**Routine Maintenance Manual** means a manual prepared by the Developer and approved by the Council or the Parklands Trust (as the case may be) from time to time pursuant to clause 3.27 which addresses the way in which a relevant Work will be cared for, managed and maintained to the standard required by the Council or the Parklands Trust (as the case may be) both during any period during which the relevant Work is to be maintained by the Developer in accordance with this deed, and also during any subsequent period during which maintenance is to be the responsibility of the Council or the Parklands Trust (as the case may be).

**RMS** means the Roads and Maritime Services agency that brings together the former Roads and Traffic Authority constituted under the *Transport Administration Act 1988* (NSW) and NSW Maritime.

**RMS Contribution** means the payment referred to in item 7 in schedule 2.

**RMS Works** means items 1 and 3 in schedule 2.

**Subdivision Certificate** means a certificate referred to in section 109C (1) (d) of the EP&A Act.

**Trustees** means GGAIF JV No. 3 Pty Limited and GGAIF JV No. 4 Pty Limited.

**Undertaken Development Contributions** means those Development Contributions identified in the fourth column headed "Description" in the table in Schedule 2 and shaded green which the parties agree have been provided by the Developer on the Land as at the date of this Deed, although they have not yet been certified as having reached Practical Completion in accordance with this Deed.

**WAD** means the Works Authorisation Deed dated entered into by the Developer and RMS in relation to the RMS Contribution, as amended by those parties from time to time.

**Wetlands Works Bank Guarantee** means a Bank Guarantee with a face value of \$300,000 provided by the Developer as security for the performance of the Developer's obligation to carry out the Works comprised of wetlands Works (as more particularly described in Schedule 2).

**Works** means items 2, 4, 5 and 6 in schedule 2 and includes any Rectification Works carried out in respect of those items.

## Interpretation

16.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to 'dollars' or '\$' means Australian dollars and all amounts payable under this Deed are payable in Australian dollars.
- (e) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (f) A reference in this Deed to any document or agreement is to that document or agreement as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other genders.
- (k) A reference to the word 'include' or 'including' is to be interpreted without limitation.

- (l) Any schedules and attachments form part of this Deed.

## Execution

**Executed** as an Deed.

**Signed** for and on behalf of

**GGGAIF JV NO.3 PTY LIMITED (ACN  
131 830 843), AS TRUSTEE OF THE  
GGGAIF MOOREBANK TRUST**

by its Attorney pursuant to power of  
attorney

registered Book: 4547 No: 697

I certify that I have no notice of revocation  
of the power of attorney in the presence of:

Signature of witness

Hannah Ens

Name of witness (please print)

Signature of attorney

Carl Bicego

Name of attorney (please print)



Signed for and on behalf of

**GGAIF JV NO.4 PTY LIMITED (ACN 157 924 662), AS TRUSTEE OF THE GGAIF BUNGARRIBEE TRUST NO.2**

by its Attorney pursuant to power of attorney

registered Book: 4632 No: 699

I certify that I have no notice of revocation of the power of attorney in the presence of:

Signature of witness

Hannah Ens

Name of witness (please print)

Signature of attorney

Carl Bicego

Name of attorney (please print)

Signed for and on behalf of

**THE TRUST COMPANY LIMITED (ACN 004 027 749), AS CUSTODIAN IN REPECT OF THE GGAIF HUNTINGWOOD WEST TRUST**

by its Attorney pursuant to power of attorney

registered Book: 4594 No: 26

I certify that I have no notice of revocation of the power of attorney in the presence of:

Signature of witness

Zoe Clare Peers

Name of witness (please print)

Signature of attorney

Trent Franklin  
Manager Property and Infrastructure Custody Services

Name of attorney (please print)

Signed for and on behalf of

**THE TRUST COMPANY LIMITED (ACN 004 027 749), AS CUSTODIAN IN RESPECT OF GGGAIF JV NO.3 PTY LIMITED (ACN 131 830 843)**

by its Attorney pursuant to power of attorney

registered Book: 4594 No: 26

I certify that I have no notice of revocation of the power of attorney in the presence of:

Signature of witness

**Zoe Clare Peers**

Name of witness (please print)

Signature of attorney

**Trent Franklin**

**Manager Property and Infrastructure Custody Services**

Name of attorney (please print)

Signed for and on behalf of

**THE TRUST COMPANY LIMITED (ACN 004 027 749), AS CUSTODIAN IN RESPECT OF THE GGGAIF JV NO.4 PTY LIMITED (ACN 157 924 662)**

by its Attorney pursuant to power of attorney

registered Book: 4594 No: 26

I certify that I have no notice of revocation of the power of attorney in the presence of:

Signature of witness

**Zoe Clare Peers**

Name of witness (please print)

Signature of attorney

**Trent Franklin**

**Manager Property and Infrastructure Custody Services**

Name of delegate (please print)

Signed sealed and delivered for and on behalf of


**MINISTER ADMINISTERING THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

by its delegate pursuant to instrument of delegation dated:

I certify that I have no notice of revocation of the delegation in the presence of:

  
Signature of witness

STEPHEN DEWICK  
Name of witness (please print)

  
Signature of delegate

SIGNED by me CARL ANDERS STEVEN MALMBERG as delegate of the Minister administering the Environmental Planning and Assessment Act, 1979, and I hereby certify that I have no notice of the revocation of such delegation.

Name of delegate (please print)

Signed sealed and delivered for and on behalf of

**WESTERN SYDNEY PARKLANDS TRUST (ABN 85 202 544 800)**

by its Director, **Suellen Fitzgerald** pursuant to Section 8 of the Western Sydney Parklands Act 2006 in the presence of:

  
Signature of witness

YOLANDA CIL  
Name of witness (please print)

  
Signature of Suellen Fitzgerald  
Director of the Western Sydney Parklands Trust

Signed for and on behalf of

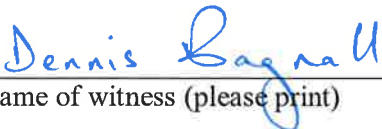
**BLACKTOWN CITY COUNCIL (ABN 18 153 831 768)**


by its Attorney pursuant to power of attorney

registered Book: No:

I certify that I have no notice of revocation of the power of attorney in the presence of:

  
Signature of witness

  
Name of witness (please print)

  
Blacktown City Council by its Attorney  
Wayne Trevor Rogers  
pursuant to power of attorney  
Registered Book 4603 No. 454

Signature of attorney

Name of attorney (please print)

## Schedule 1 – Requirements under the Act

REQUIREMENTS UNDER THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application – (Section 93F(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a development application, or project application (section 75R(4)).</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) Not applicable</p>
<b>Description of land to which this Deed applies – (Section 93F(3)(a))</b>	The whole of the Land (see clause 16.1).
<b>Description of development to which Deed applies – (Section 93F(3)(b))</b>	The Development (see clause 14.1)
<b>Nature and extent, timing and manner by which provision to be made – (Section 94F(5)(c))</b>	See clause 3 and Schedule 2.
<b>Application of section 94, 94A and 94EF of the Act – (Section 93F(3)(d))</b>	The application of section 94, 94A and 94EF is excluded.
<b>Mechanism for Dispute resolution – (Section 93F(3)(f))</b>	See clause 7.
<b>Enforcement of this deed – (Section 93F(3)(g))</b>	See clause 6.

## Schedule 2 – Development Contributions

### TOTAL LIST OF INFRASTRUCTURE CONTRIBUTIONS WORKS IN KIND OFFERED AS COMMITMENTS IN THE CP 06\_0203

No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
1	GWH New Intersection Works	Means all works required to carry out the construction of an intersection on the Great Western Highway as contemplated by, and in accordance with, the Concept Plan Approval and governed by the WAD;	Part 1.1 (Brabham Drive / GWH Modifications)	<ul style="list-style-type: none"> <li>RTA Road Design Guide</li> <li>RTA Works Specifications</li> <li>Concept Plan Approval</li> </ul>	Prior to Occupation Certificate	Completed		Goodman responsible for maintenance during Defects Liability Period (12 months from Practical Completion on a staged basis)	This intersection is currently and will remain under the control of the RMS
		<ul style="list-style-type: none"> <li>to provide access to the site comprising the property and the properties adjoining the Land, the wetlands land and the parklands located to the north and south of the Great Western Highway;</li> <li>to improve performance of the existing Great Western Highway / Brabham Drive intersection; and</li> <li>to provide a safe and convenient pedestrian and cycle crossing connecting the parklands areas located north and south of the Great Western Highway.</li> </ul>	Part 1.2 (Signalised Intersection)  Note: the detailed design of this intersection will be prepared in consultation with and to the satisfaction of the Western Sydney Parklands Trust.	<ul style="list-style-type: none"> <li>RTA Traffic Signal Design Manual</li> <li>RTA Works Specifications</li> <li>Concept Plan Approval</li> </ul>		31 December 2013	Subject to WAD	Goodman responsible for maintenance during Defects Liability Period (12 months from Practical Completion on a staged basis)	The area relating to this intersection within the Great Western Highway Road Reservation is currently and will remain under the control of the RMS



No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
2	Park-Edge Road Works	<p>Means all works required to carry out the construction of the park edge road as contemplated by, and in accordance with, the Concept Plan Approval;</p> <ul style="list-style-type: none"> <li>to provide a transition between an active employment environment and more natural and contemplative surroundings; and</li> <li>which will be limited to cars and light vehicles only, thus creating an appropriate interface with the Parklands.</li> </ul>	<p>Part 2.1 (South – Approx. 300m in length)</p> <p>Note: the detailed design of this road and in particular the landscape, fencing, street furniture and signage will be prepared in consultation with and to the satisfaction of the Western Sydney Parklands Trust. The final design is to be referred to Council for their consideration.</p>	<ul style="list-style-type: none"> <li>Blacktown City Council Guide for Development 2005</li> <li>Blacktown City Council Works Specification 2005</li> <li>Concept Plan Approval</li> <li>Project Approval</li> </ul>		Completed subject to WSPT and Council Certification	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate WAE Plans</li> </ul>	<p>Goodman responsible for maintenance during Defects Liability Period (12 months from Practical Completion on a staged basis)</p>	<p>Park-Edge Road to be transferred or dedicated to Blacktown City Council</p>

No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
			<p>Part 2.2 (North – Approx. 250m in length)</p> <p>Note: subject to the provisions of this Deed, the detailed design of this road and in particular the landscape, fencing, street furniture and signage will be prepared in consultation with and to the satisfaction of the Western Sydney Parklands Trust. The final design is to be referred to Council for their consideration.</p>	<ul style="list-style-type: none"> <li>Blacktown City Council Guide for Development 2005</li> <li>Blacktown City Council Works Specification 2005</li> <li>Concept Plan Approval</li> <li>Project Approval</li> </ul>		<p>30 June 2013 and prior to the issue of a Subdivision Certificate for the Development</p>	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate WAE Plans</li> </ul>		
3	Roundabout Works	<p>Means all works required to carry out the construction of the upgrade of the roundabout at Brabham Drive and Huntingwood Drive (as contemplated by, and in accordance with, the Concept Plan Approval);</p> <p>a) to provide accessibility and connectivity to and from the existing Industrial zone and the Development;</p>	<p>Part 3.1 – Construct to standard suitable for the commencement of Metcash operations.</p>	<ul style="list-style-type: none"> <li>RTA Road Design Guide</li> <li>RTA Works Specifications</li> <li>Blacktown City Council Guide for Development 2005</li> <li>Blacktown City Council Works Specification 2005</li> <li>Concept Plan Approval</li> </ul>		Completed	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate WAE Plans</li> </ul>	<p>Goodman responsible for maintenance during Defects Liability Period (12 months from Practical Completion on a staged basis)</p>	<p>This intersection is currently and will remain under the control of the RMS</p>



No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
		<p>b) in conjunction with the new intersection on the Great Western Highway, to reduce the traffic impacts on the existing intersection;</p> <p>c) to feature an eco-median that incorporates stormwater management with a landscape setting;</p> <p>d) to create green streetscapes with strong visual identity, retaining existing trees and supporting an integrated network of access links catering for pedestrian and cycle links; and</p> <p>e) to create a visual corridor to the Parklands.</p>		<ul style="list-style-type: none"> <li>Project Approval</li> </ul>					
4	Wetland and Bioretention Works	Means all works required to carry out the construction of a wetland and bioretention landscape feature for the Parklands that incorporates a pedestrian access link between the Parklands and Huntingwood West on the Wetlands Land and site comprising the <i>property</i> and the Other Properties (as contemplated by, and in accordance with, the Concept Plan Approval);	<p>Part 4.1 – Area of Wetlands marked on Plan which services the North Metcash Catchment, Estate Road and part of Lot 34 in DP1169557 and Lots 30 &amp; 31 in DP1161771 will be constructed to a standard suitable for water quality and quantity requirements to be achieved.</p>	<ul style="list-style-type: none"> <li>EDAW / AECOM WSUD Strategy dated 27 October 2009</li> <li>Landcom's WSUD Policy (2005)</li> <li>Blacktown City Council Stormwater Management Policy (2000)</li> <li>Western Sydney Parklands Guidelines</li> </ul>		Completed subject to WSP and Council Certification	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate</li> <li>WAE Plans</li> <li>Consultant Design Certification</li> </ul>	<p>The Developer is responsible for a maintenance period of 2 years following Practical Completion of Final Planting Works. Practical Completion of the Final Planting Works cannot occur until after the date that the Parklands Trust is</p>	<p>The Wetlands area is currently and will remain within land owned by the Western Sydney Parklands Trust.</p>

No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
		quality and flood storage; b) to overcome the higher risk of damage to on-site measures such as street bio-retention systems in an industrial precinct; c) to provide a cost effective way to meet flood storage requirements; d) to provide the potential to treat stormwater runoff from the site and adjoining industrial upstream catchments that drain through the site; and e) to provide passive recreation opportunities for employees.	Note: the detailed design of the entire Wetlands and in particular the landscape elements will be prepared in consultation with and to the satisfaction of the Western Sydney Parklands Trust  Part 4.2 – Area of Wetlands marked on Plan which services the South Metcosh Catchment and part of Lot 34 in DP1169557 and Lot 30 in DP1161771 will be constructed to a standard suitable for water quality and quantity requirements to be achieved.  Part 4.3 – Area of Wetlands and Bioretention marked on Plan which services Lots 5 & 6 of DP1127100 and of DP1127100 and Lots 32, 33 & 34 of DP1161771 will be constructed to a standard suitable for water quality and quantity	<ul style="list-style-type: none"> <li>EDAW / AECOM WSUD Strategy dated 27 October 2009</li> <li>Landcom's WSUD Policy (2005)</li> <li>Blacktown City Council Stormwater Management Policy (2000)</li> <li>Western Sydney Parklands Guidelines</li> </ul>				<p>satisfied (acting reasonably that the estate is 80% developed.</p> <p>The Routine Maintenance Plan to be prepared by the Developer and approved under clause 3.27 for these works is to be developed based on the approach within Landcom's WSUD Book 4 – operation &amp; maintenance, and must also include details in relation to the establishment, design and construction of these works. The plan will be prepared in consultation with and to the satisfaction of the Parklands Trust, acting reasonably.</p>	
						Completed	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate</li> <li>WAE Plans Consultant Design Certification</li> </ul>		
					<p>To be commenced prior to Development on Lots 5 &amp; 6 in DP1127100 and Lots 32, 33 &amp; 34 in DP1161771 and continued during development.</p>	<p>To be completed within 90 days of the date upon which an Occupation Certificate is issued in respect of any Development carried out on any of Lots 5</p>	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate</li> <li>WAE Plans Consultant Design Certification</li> </ul>		

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No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
			<p>requirements to be achieved.</p> <p>Note: Staging of the wetland and bioretention areas will be integrated with temporary sedimentation control requirements and broader objectives to protect the receiving environment and established water quality treatment areas.</p>	<ul style="list-style-type: none"> <li>FAWB Guidelines</li> <li>Western Sydney Parklands Guidelines</li> </ul>		<p>&amp; 6 m DP1127100 and Lonsdale 533 in DP1461724 10/3/05</p> <p><i>Handwritten: m, g, l, 45</i></p>			
5	Central Spine Road & internal estate roads	Construction and dedication of land for internal estate road	<p>Part 5.1 – Construct to a suitable standard for the commencement of Metcash Operations the portion marked on the Plan which is from Brabham Drive to the extent of the Metcash entry.</p> <p>Part 5.2 – Construct to a suitable standard the remaining length of the Huntingwood Drive extension which is marked on the Plan.</p>	<ul style="list-style-type: none"> <li>Blacktown City Council Guide for Development 2005</li> <li>Blacktown City Council Works Specification 2005</li> <li>Concept Plan Approval</li> <li>Project Approval</li> <li>Blacktown City Council Guide for Development 2005</li> <li>Blacktown City Council Works Specification 2005</li> </ul>		Completed	<ul style="list-style-type: none"> <li>Private Certifier Completion Certificate WAE Plans</li> <li>Private Certifier Completion Certificate WAE Plans</li> </ul>	<p>Goodman responsible for maintenance during Defects Liability Period (12 months from Practical Completion on a staged basis). Goodman is to undertake a Road Safety Audit 12 months after the “t” intersection (junction of Part 5.4 and Part 5.1 identified in</p> <p>All estate roads are to be transferred or dedicated to Blacktown City Council</p>	

No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
				<ul style="list-style-type: none"> <li>• Concept Plan Approval</li> <li>• Project Approval</li> </ul>				Schedule 3) becoming operable.	
			Part 5.3 – Construct to a suitable standard the estate access road from the GWH as marked on Plan	<ul style="list-style-type: none"> <li>• Blacktown City Council Guide for Development 2005</li> <li>• Blacktown City Council Works Specification 2005</li> <li>• Concept Plan Approval</li> <li>• Project Approval</li> </ul>	30 June 2013	Prior to the issue of a Subdivision Certificate for the Development	<ul style="list-style-type: none"> <li>• Private Certifier Completion Certificate WAE Plans</li> </ul>		
			Part 5.4 – Construct to a suitable standard the estate access road linking Part 5.3 with the Huntingwood Drive extension as marked on Plan.	<ul style="list-style-type: none"> <li>• Blacktown City Council Guide for Development 2005</li> <li>• Blacktown City Council Works Specification 2005</li> <li>• Concept Plan Approval</li> <li>• Project Approval</li> </ul>	30 June 2013	Prior to the issue of a Subdivision Certificate for the Development	<ul style="list-style-type: none"> <li>• Private Certifier Completion Certificate WAE Plans</li> </ul>		
6	Cyclepath (N/S)	Construction of approximately 700m long, 3m wide pedestrian / cycle path on Western Sydney Parklands land	Part 6.1 (and as more particularly described in Schedule 4: Infrastructure Pavement Plan) – to a design prepared in consultation with and to the satisfaction of the	<ul style="list-style-type: none"> <li>• Western Sydney Parklands Guidelines</li> <li>• Blacktown City Council Guide for Development 2005</li> <li>• Blacktown City Council Works Specification 2005</li> <li>• Concept Plan</li> </ul>	30 June 2013		<ul style="list-style-type: none"> <li>• Private Certifier Completion Certificate WAE Plans</li> </ul>	The Developer is responsible for maintenance during the period of 12 months from Practical Completion of the last stage of the cycle path works, and for the	Western Sydney Parklands Trust



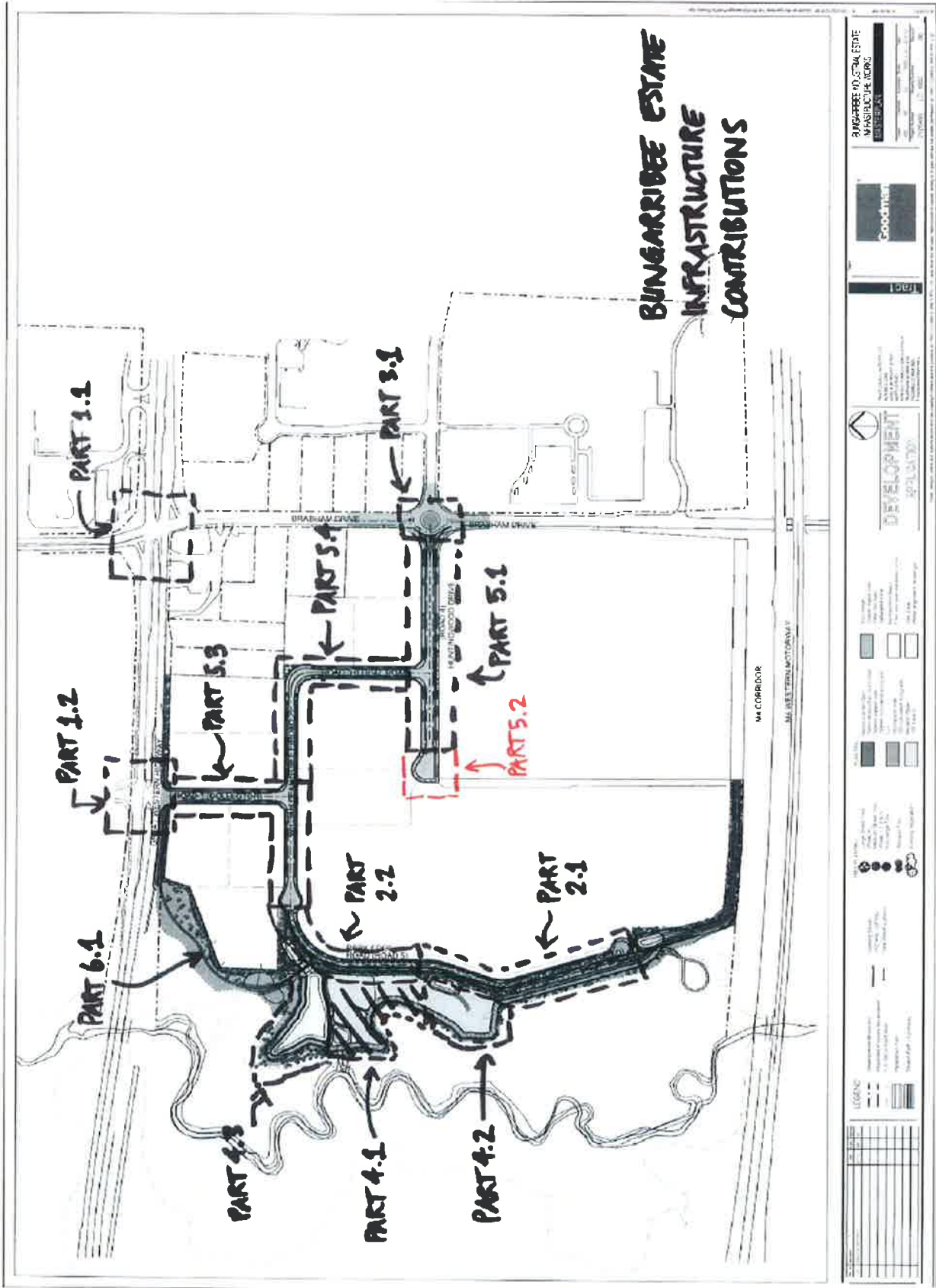
No.	Item	Detail	Description	Specification	Commencement	Completion	Completion Documents	Maintenance	Ownership
			Western Sydney Parklands Trust and subject to confirmation of maintenance and ownership details.	Approval				purposes of clause 3.32, the period during which the Developer must rectify all defects or omissions in these works will commence on Practical Completion of any stage of those works, and end on the date being 12 months after Practical Completion of the last stage of the cycle path works.	
7	RMS Contributions	Cash contribution in accordance with RMS Infrastructure Deed. RMS agreement to provide works to same value instead.	Works described in the WAD.	WAD	Subject to WAD	31 December 2013	WAD		

Note: A restriction is to be placed on the Metcash lot (Lot 34 of DP1127100 and Lot 20 of DP1158955) preventing any new access point being proposed from the land into the T intersection.

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## Appendix – Explanatory Note

### Explanatory Note

#### Bungarribee Industrial Estate Draft Voluntary Planning Agreement

#### 1 Introduction

- 1.1 The purposes of this explanatory note is to provide a plain English summary to support the notification of the draft planning agreement (the **Planning Agreement**) prepared under Part 4, Division 6, Subdivision 2 of the *Environmental Planning and Assessment Act 1979* (the **Act**).
- 1.2 This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000*.

#### 2 Parties to the Planning Agreement

- 2.1 The parties to the Planning Agreement are GGAIF JV No. 3 Pty Limited (ACN 131 830 843) and GGAIF JV No. 4 Pty Limited (ACN 157 924 662) (together the "**Developer**" and "**Trustees**"), The Trust Company Limited (ACN 004 027 749), The Minister administering the Environmental Planning and Assessment Act 1979 ("**Minister**"), Blacktown City Council (ABN 18 153 831 768) ("**Council**") and Western Sydney Parklands Trust (ABN 85 202 544 800) ("**Parklands Trust**").
- 2.2 The Developer has made an offer to enter into the Planning Agreement in connection with the proposed Bungarribee Estate development.

#### 3 Description of subject land

- 3.1 The draft Planning Agreement applies to the land known as Lots 30, 31, 32 and 33 in DP 1161771, Lot 34 in DP 1169557, Lots 5 and 6 in DP 1127100, ~~(the Land)~~ and Lots 332 and 333 in DP 1193405 ~~(the Land)~~. *TF 03 R SF.*
- 3.2 A plan of the Land is in Schedule 3 to the Planning Agreement.

#### 4 Description of proposed development

- 4.1 The Developer intends to subdivide the Land to create development lots, estate road lots and drainage lots, to construct a new intersection to the Great Western Highway and internal estate roads, to carry out bulk earth works, stormwater management works, cycle path works and associated landscaping works, estate landscaping works and offsite stormwater detention works and to make some modifications to the development design controls.
- 4.2 The Planning Agreement is to be entered into to support:
  - (a) the subdivision of the Land generally in accordance with the concept plan approved by the Minister on 9 December 2006; and
  - (b) the subsequent development of the Land for industrial and ancillary purposes.

#### 5 Summary of objectives, nature and effect of the draft Planning Agreement

- 5.1 The objective of the Planning Agreement is to facilitate the delivery of the certain infrastructure and other works by the Developer required as a result of the carrying out of the Development.



- 5.2 The Planning Agreement is a voluntary planning agreement for the purposes of the Act, under which the Developer will be required to carry out certain public works associated with the development of the Bungarribee Estate.
- 5.3 The Planning Agreement:
- (a) relates to the carrying out by the Developer of the development on the Land generally in accordance with the concept plan approved by the Minister on 9 December 2006;
  - (b) excludes the application of sections 94, 94A and 94EF of the Act to the Development;
  - (c) requires the carrying out of specified Works by the Developer for the purposes of the construction or upgrade of roads, a roundabout, pedestrian and cycle paths and crossings, and a wetland and bioretention landscape feature;
  - (d) requires the dedication by the Developer of specified land on which certain of the works are located to the Council;
  - (e) imposes obligations on the Developer in relation to the carrying out of specified Works, the handing over of those Works to the Council and the rectification of defects in those Works; and
  - (f) requires the Developer to provide a security of the Developer's obligations under the Planning Agreement by way of a Bank Guarantee.
- 5.4 The obligations under the Planning Agreement are required to run with the land. For this reason the Developer is required to register the Planning Agreement on the title to the Land.
- 5.5 No relevant capital works program by the Minister is associated with the Planning Agreement.

## **6 Assessment of the merits of the Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

- 6.1 In accordance with section 93F(2) of the Act, the Planning Agreement promotes the following purposes:
- (a) the provision of public amenities;
  - (b) the provision of infrastructure relating to land; and
  - (c) the conservation or enhancement of the natural environment.
- 6.2 The parties have assessed the Planning Agreement and hold the view that the Planning Agreement provides a reasonable means of achieving the public purposes set out above by ensuring that the Developer will make an appropriate contribution by carrying out certain works.

### **How the Planning Agreement Promotes the Public Interest**

- 6.3 The Planning Agreement promotes the public interest by ensuring that an appropriate contribution is made towards the provision of infrastructure and facilities to satisfy needs that arise as a result of the development of the land.

### **How the Planning Agreement Promotes the Objects of the Act**

- 6.4 The Planning Agreement promotes the objects of the Act by encouraging

- (a) the proper management, development and conservation of natural resources, by the carrying out of the wetland and bioretention works;
- (b) the promotion and co-ordination of the orderly and economic use and development of the Land the subject of the draft Planning Agreement, by the carrying out of road and other works and the wetland and bioretention works;
- (c) the provision of land for public purposes, by dedicating certain land to the Council once works constructed on that land have been completed;
- (d) the provision and co-ordination of community facilities by the carrying out of road and other works and the wetland and bioretention works; and
- (e) the protection of the environment, including the protection and conservation of native animals and plants, by the carrying out of the wetland and bioretention works.

#### **Requirements relating to Construction, Occupation and Subdivision Certificates**

- 6.5 The Planning Agreement specifies requirements that must be complied with prior to the issue of a subdivision certificate and requires that each of the works to be carried out under the Planning Agreement be completed by certain times.

#### **Development Corporations - How the Draft Planning Agreement Promotes its Statutory Responsibilities**

- 6.6 N/A

#### **Other Public Authorities – How the Draft Planning Agreement Promotes the Objects (if any) of the Act under which it is Constituted**

- 6.7 The Minister for Planning and Infrastructure is constituted under the Act. Therefore paragraph 6.4 satisfies this requirement.

#### **Councils – How the Draft Planning Agreement Promotes the Elements of the Council's Charter**

- 6.8 The Draft Planning Agreement promotes the elements of the Council's charter by:
- (a) Ensuring that adequate, equitable and appropriate services and facilities are provided for the community and to ensure that those services and facilities are managed efficiently and effectively,
  - (b) keeping the local community and the State government (and through it, the wider community) informed about its activities

#### **All Planning Authorities – Whether the Draft Planning Agreement Conforms with the Authority's Capital Works Program**

- 6.9 The Draft Planning Agreement conforms with the Council's Capital Works Program.
- 6.10 N/A in respect of the other Planning Authorities.

## **7 Use of this explanatory note**

This explanatory note is not to be used to assist in construing the Planning Agreement.