

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

Cornish Group Spring Farm Pty Ltd
ACN 120 837 381

Spring Farm Planning Agreement

Environmental Planning and Assessment Act 1979

TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION	6
1.1	Definitions	6
1.2	Interpretation	9
2	OPERATION AND APPLICATION OF THIS DEED	10
2.1	Operation	10
2.2	Planning agreement under the Act	10
2.3	Irrevocable power of attorney to transfer the Contribution Land	10
2.4	Application	11
2.5	Revocation of Five Existing Deeds	11
2.6	Consequences of revocation	11
2.7	Further Acknowledgments	11
3	APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT	11
4	DEVELOPMENT CONTRIBUTION	11
4.1	Developer to provide Development Contribution	11
4.2	Acknowledgement	12
5	SIC DISCHARGE AMOUNT	12
6	SECURITY AND ENFORCEMENT	12
6.1	Developer to provide security	12
6.2	Developer's interest in the Land and the Contribution Land	12
6.3	Caveat and charge	13
6.4	Registration of this deed	13
6.5	Evidence of registration	14
6.6	Release and discharge of deed	14
6.7	Compulsory Acquisition	14
7	DISPUTE RESOLUTION	15
7.1	Not commence	15
7.2	Written notice of dispute	15
7.3	Attempt to resolve	15
7.4	Mediation	15
7.5	Court proceedings	16
7.6	Not use information	16

7.7	No prejudice	16	
8	GST		16
8.1	Definitions	16	
8.2	Intention of the parties	16	
8.3	Reimbursement	16	
8.4	Consideration GST exclusive	17	
8.5	Additional Amounts for GST	17	
8.6	Non monetary consideration	17	
8.7	Assumptions	17	
8.8	No merger	17	
9	ASSIGNMENT		17
9.1	Consent	17	
10	CAPACITY		18
10.1	General warranties	18	
10.2	Power of attorney	18	
11	GENERAL PROVISIONS		18
11.1	Entire deed	18	
11.2	Variation	18	
11.3	Waiver	18	
11.4	Further assurances	18	
11.5	Time for doing acts	19	
11.6	Governing law and jurisdiction	19	
11.7	Severance	19	
11.8	Preservation of existing rights	19	
11.9	No merger	19	
11.10	Counterparts	19	
11.11	Relationship of parties	20	
11.12	Good faith	20	
11.13	No fetter	20	
11.14	Explanatory note	20	
11.15	Expenses and stamp duty	20	
11.16	Notices	21	
SCHEDULE 1			22
SCHEDULE 2			24

SCHEDULE 3	25
SCHEDULE 4	26
SCHEDULE 5	27

THIS deed is dated

17 July 2013

2013

PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

CORNISH GROUP SPRING FARM PTY LTD (ACN 120 837 381) of 7 Ferncreek Court, Kellyville, New South Wales, 2155 (the **Developer**).

INTRODUCTION:

- A** The Developer owns or has rights to acquire the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer has made several Development Applications to the Consent Authority in respect of the Land.
- D** The Developer intends to make future Development Applications to the Consent Authority in respect of the Land.
- E** Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.1 of the LEP.
- F** Prior to 2011 the Developer entered into the Five Existing Deeds with the Minister to make provision for the payment of the Land Release Contributions to the Minister in respect of Stages 1 to 5 of the Development and to enable the Director-General to certify that satisfactory arrangements were in place under clause 6.1 of the LEP. The Developer has not provided the Land Release Contributions in respect of Stages 1 to 5 of the Development under the Five Existing Deeds.
- G** The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* (**the Determination**) provides for the making of a Special Infrastructure Contributions for development on certain land within the Western Sydney Growth Areas Special Contributions Area (**WSGA Special Contributions Area**).
- H** On 14 January 2011 the Minister issued the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011* (**the Direction**). The Direction requires the Consent Authority to impose a condition (in the terms set out in the Direction) for the making of a Special Infrastructure Contribution on the grant of Development Consent for any

development for which a Special Infrastructure Contribution is required to be made under the Determination.

- I** The Land is within the WSGA Special Contributions Area and is now subject to the Determination and the Direction.
- J** The Developer has offered to enter into this deed with the Minister to dedicate the Contribution Land to the Minister at no cost to the Minister.
- K** The parties agree that this deed will secure the Developer's obligation to provide the Land Release Contributions in respect of Stages 1 to 5 of the Development under the Five Existing Deeds. This deed will also allow the Developer to claim the SIC Discharge Amount (which is the difference between the Market Value of the Contribution Land and the Land Release Contributions in respect of Stages 1 to 5 of the Development under the Five Existing Deeds) from the Director-General to discharge the Developer's obligations to make Special Infrastructure Contributions for development within the WSGA Special Contributions Area.
- L** This deed revokes the Five Existing Deeds with the Minister that pre-date this deed and that apply to the Land.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Base CPI means the CPI number for the quarter ending 31 March 2012.

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

Claim means any allegation, debt, cause of action, claim, proceeding, suit, demand or obligation of any nature whatsoever however arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under

statute or other arising out of or in conjunction with the Five Existing Deeds that apply to the Land.

Consent Authority means Camden Council.

Contribution Land means the Land to be dedicated by the Developer as described in Schedule 4.

Cost includes costs, charges, expenses, including those incurred in connection with advisers.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.

CPI Adjustment Date means 1 July 2012 and each anniversary of 1 July 2012 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Determination means the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*.

Development means development for residential purposes on the Land.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

Direction means the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011*.

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

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

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

Five Existing Deeds means

- (a) ILRC Deed – PROP82M between the Minister for Planning and Cornish Group Pty Ltd (ABN 21 003 872 400) undated;

- (b) ILRC Deed – PROP83M between the Minister for Planning and Cornish Group Pty Ltd (ABN 21 003 872 400) undated;
- (c) ILRC Deed – PROP81M between the Minister for Planning and Cornish Group Pty Ltd (ABN 21 003 872 400) undated;
- (d) ILRC Deed – PROP78M between the Minister for Planning and Cornish Group Pty Ltd (ABN 21 003 872 400) undated; and
- (e) ILRC Deed – PROP77M between the Minister for Planning and Cornish Group Pty Ltd (ABN 21 003 872 400) undated.

Future Obligations means any obligations under or by virtue of the Five Existing Deeds that apply to the Land which at the time of the commencement of this deed are required to be performed or satisfied by the Developer.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

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

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

Land means the land described in Schedule 3 of this deed.

Land Release Contributions means the Land Release Contributions defined under the Five Existing Deed.

LEP means *Camden Local Environmental Plan 2010*.

Market Value means \$908,084.45 (GST exclusive).

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

Register means the Torrens title register maintained under the Real Property Act.

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

Satisfactory Arrangements Certificate means a certificate issued by the Director-General that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.1 of the LEP.

SIC Discharge Amount has the meaning given to it in clause 5 of this deed.

Special Infrastructure Contribution means a contribution determined in accordance with section 94EE of the Act with respect to the Land.

Subdivision Certificate has the meaning given to it in the EP&A Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transfer means a transfer (presently known as Form 01T) of the Contribution Land to the Minister under the *Real Property Act 1900*.

WSGA Special Contributions Area means the Western Sydney Growth Areas Special Contributions Area.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;

- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

- (a) This deed will commence from the date this deed is signed by all the parties.
- (b) Until this deed operates, this deed constitutes an irrevocable offer within the meaning of section 93I of the Act by the Developer to enter into this deed.

2.2 Planning agreement under the Act

This deed constitutes:

- (a) a planning agreement within the meaning of section 93F of the Act; and
- (b) an irrevocable offer within the meaning of section 93I of the Act.

2.3 Irrevocable power of attorney to transfer the Contribution Land

On execution of this deed by the Developer, the Developer grants an irrevocable power of attorney to the Minister to do all things and execute all such documents as may be necessary to register the Transfer of the Contribution Land (irrespective of whether this deed is executed by the Minister).

2.4 Application

This deed applies to:

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

2.5 Revocation of Five Existing Deeds

Upon and by virtue of this deed commencing, the Five Existing Deeds that apply to the Land between the Minister and the Developer are revoked with the consequences specified in clause 2.6.

2.6 Consequences of revocation

On and from the commencement of this deed the Minister releases the Developer from any Future Obligations arising under the Five Existing Deeds that apply to the Land.

2.7 Further Acknowledgments

The parties acknowledge and agree that each of them enter into this deed fully and voluntarily upon their own information and having received legal advice in respect of this deed and that each of them does not rely on any warranties, representations or statements other than as set out in this deed.

3 Application of sections 94, 94A and 94EF of the Act

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

4 DEVELOPMENT CONTRIBUTION

4.1 Developer to provide Development Contribution

- (a) The Developer undertakes to provide to the Minister or the Minister's nominee, the Development Contribution entirely at its cost and risk in accordance with the provisions of Schedule 4 to this deed.
- (b) The Developer indemnifies and will keep the Minister indemnified for all Costs incurred by the Minister as a result of the failure of the Developer to comply with this clause 4 and Schedule 4 and the Developer must pay the Minister promptly on demand, an amount equivalent to all Costs incurred by the Minister as a result of any failure by the Developer to comply with this clause 4 and Schedule 4 or in the exercise of the Minister's rights under clause 6 or under the Act.

4.2 Acknowledgement

The Developer acknowledges and agrees that the Minister:

- (a) has no obligation to use the Development Contribution for a particular purpose; and
- (b) in circumstances where the Development Contribution is transferred to any third party or Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that third party or Authority.

5 SIC DISCHARGE AMOUNT

- (a) The Developer will be required from time to time, under the terms of Development Consents granted in relation to land within the WSGA Special Contributions Area, to make Special Infrastructure Contributions. The SIC Discharge Amount represents the value of the Contribution Land which the Director-General agrees to accept in discharge of the Developer's obligations to make Special Infrastructure Contributions for development within the WSGA Special Contributions Area (**SIC Discharge Amount**).
- (b) The SIC Discharge Amount for the dedication of the Contribution Land is equal to \$124,695.45.

6 SECURITY AND ENFORCEMENT

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by:

- (a) delivery of the certificate of title to the Contribution Land and a signed Transfer to the Minister in accordance with the terms and procedures set out in Schedule 5; and
- (b) in accordance with this clause 6.

6.2 Developer's interest in the Land and the Contribution Land

The Developer represents and warrants that:

- (a) it is the legal and beneficial owner of the Contribution Land and the Land;
- (b) it will use all reasonable endeavours to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6 to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under this clause 6; and

- (c) if necessary, it will do all things necessary to achieve registration of the Transfer, including to re-execute the Transfer and deliver it to the Minister within 5 Business Days of request by the Minister.

6.3 Caveat and charge

- (a) The Developer acknowledges and agrees that:
 - (i) upon execution of this deed by the Developer, the Developer grants a charge over the Land and the Contribution Land to secure performance of the Developer's obligation under this deed, in particular, clause 4.1 and:
 - (A) the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land and the Contribution Land for the purposes of section 74(1) of the *Real Property Act 1900* (NSW); and
 - (B) consequently, the Minister has sufficient interest in the Land and the Contribution Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest; and
 - (ii) the Minister may lodge a caveat on the Land and the Contribution Land to protect his rights under this deed and the Developer will not object to the Minister lodging a caveat in the relevant folios of the Register for the Land and the Contribution Land, nor will it seek to remove any caveat lodged by the Minister.

6.4 Registration of this deed

- (a) This clause only applies in circumstances where for any reason the Developer has been unable to provide the Development Contribution in the time referred to in Schedule 4 or the Minister has been unable to achieve registration of the Transfer for the Contribution Land within 25 Business Days of the Minister's execution of this deed.
- (b) On receipt of written request by the Minister, the Developer must immediately, at its own cost and expense, take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land and the Contribution Land registered under the *Real Property Act*; or
 - (B) is seized or possessed or an estate or interest in the Land and the Contribution Land;

- (ii) the execution of any documents; and
- (iii) the production of the relevant certificates of title;
- (c) to achieve registration of this deed, by the Registrar-General in the relevant folio of the Register.

6.5 Evidence of registration

The Developer will provide the Minister with a copy of the relevant folios of the Register and copies of the registered dealings within 10 Business Days of a request by the Minister under clause 6.4 to register this deed on the titles to the Land and the Contribution Land.

6.6 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon which this deed is registered when the Developer has fully satisfied all of its obligations under this deed.

6.7 Compulsory Acquisition

- (a) If the Developer does not transfer the Contribution Land as required by this Planning Agreement, the Developer consents to the Minister compulsorily acquiring the Contribution Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Minister agree that:
 - (i) this clause 6.7 is an agreement between the Minister and the Developer for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 6.7, the Minister 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 Developer and the Minister and subject to any caveat lodged by the Minister under clause 6.3, the Developer must ensure that the Contribution Land is 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 Contribution Land to the Minister in accordance with clause 4.1 and Schedule 4 and the date on which the Minister compulsorily acquires the whole or any part of the Contribution Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

- (d) The Developer indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Contribution Land under this clause 6.7.
- (e) The Developer must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Contribution Land as contemplated by this clause 6.7.

7 Dispute Resolution

7.1 Not commence

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

7.2 Written notice of dispute

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

7.3 Attempt to resolve

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

7.4 Mediation

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

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

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

7.5 Court proceedings

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

7.6 Not use information

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

7.7 No prejudice

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

8 GST

8.1 Definitions

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

8.2 Intention of the parties

The parties intend that:

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

8.3 Reimbursement

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

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the recipient will pay to the supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer will ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax invoice to the Minister.

8.6 Non monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

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

8.8 No merger

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

9 ASSIGNMENT

9.1 Consent

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

- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or

- (b) to any other person, with the prior written consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion.

10 CAPACITY

10.1 General warranties

Each party warrants to each other party that:

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

10.2 Power of attorney

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

11 GENERAL PROVISIONS

11.1 Entire deed

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

11.2 Variation

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

11.3 Waiver

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

11.4 Further assurances

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

11.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

11.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

11.7 Severance

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

11.8 Preservation of existing rights

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

11.9 No merger

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

11.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

11.11 Relationship of parties

Unless otherwise stated:

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

11.12 Good faith

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

11.13 No fetter

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

11.14 Explanatory note

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

11.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay the Minister's costs and disbursements in connection with the valuation of the Contribution Land.
- (c) The Developer must pay for all Costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (d) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (e) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 11.15(a) and (c).

- (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

11.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

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

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(2)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 7
Enforcement of this deed – (section 93F(3)(g) and section 93H)	See clause 6
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 11.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes, only where the Development Contribution is not provided to the Minister in accordance with Schedule 4 (see clause 6.4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: The Director-General,

Address: Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Developer

Contact: Managing Director, Cornish Group

Address: Cornish Group Pty Ltd
PO Box 1175
DRUMMOYNE NSW 2047

Facsimile No: (02) 9819 6977

SCHEDULE 3**Land (clause 1.1)**

Lot	Deposited Plan
1701	1167189
1702	1167189
1703	1167189
1704	1167189
1705	1167189
1706	1167189
1707	1167189
1708	1167189
1709	1167189
1710	1167189
1711	1167189
1712	1167189
1713	1167189
1716	1167189
1718	1167189
1901	1167191
1616	1142286
1	1132985
2	1132985

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contributions

The Developer must without cost to the Minister:

- (a) Do all things necessary to facilitate the transfer and registration of the Contribution Land, being Lot 5 in DP 1173362, to the Minister (or his nominee) free from all encumbrances and affectations, interests, restrictions on use, charges (including any charge or liability for rates and taxes), caveats or covenants (except for any service easements) as soon as possible following execution of this deed by the Developer and, in any event, within 10 Business Days of that date.

SCHEDULE 5**Security terms (clause 6)****1 Developer to provide certificate of title and executed Transfer**

Prior to entry into this deed, the Developer must provide the Minister with the certificate of title to the Contribution Land and a Transfer signed by the Developer, along with a bank cheque for the cost of registration of the Transfer and all associated registration expenses.

The Developer irrevocably authorises the Minister to register the Transfer in accordance with this deed.

EXECUTED as a deed

Signed sealed and delivered for and on behalf of the **Minister for Planning and Infrastructure** in the presence of:

J. Monaco
Signature of Witness

Alex *under delegation*
Signature of the Minister for Planning and Infrastructure

Jesse Monaco
Name of Witness in full

Minister for Planning and Infrastructure

Signed sealed and delivered by **Cornish Group Pty Ltd** ACN 003 872 400 in accordance with section 127 of the Corporations Act:

N/A *me* *BL*

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

Signed sealed and delivered by **Cornish Group Spring Farm Pty Ltd** ACN 120 837 381 in accordance with section 127 of the Corporations Act:

Brett Cornish
Signature of Director

Tania Cornish
Signature of Director/Secretary

Brett Cornish
Name of Director

TANIA CORNISH
Name of Director/Secretary