

Planning Agreement

Environmental Planning and Assessment Act 1979

813-913 Wallgrove Road

Horsley Park

Minister for Planning (ABN 38 755 709 681)

Gazcorp Pty Limited (ACN 001 696 073)

Wallgrove Road Industrial Investments Pty Limited (ACN 620 789 675) in its capacity as trustee for **Wallgrove Road Unit Trust**



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This deed is dated

25 June 2019 

2019

Parties:

Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney NSW 2000
(Minister)

AND

Gazcorp Pty Limited (ACN 001 696 073) of 10/60 Park Street, Sydney NSW 2000 (**Gazcorp**)

AND

Wallgrove Road Industrial Investments Pty Limited (ACN 620 789 675) in its capacity as trustee for
Wallgrove Road Unit Trust of 10/60 Park Street, Sydney, NSW 2000 (**Landowner**)

Introduction:

- A The Landowner owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C The Developer has made one or more Development Applications to the Consent Authority in respect of the Development on the Land.
- D Clause 29 of the WSEA SEPP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services referred to in clause 29 of the WSEA SEPP.
- E The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the WSEA SEPP for all stages of the Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Acceptable Contractor means a Construction Contractor which:

- (a) is appointed pursuant to an arm's length competitive tender process which is overseen by and which meets the requirements of the Roads Authority and the Minister; and
- (b) satisfies the requirements of the Roads Authority and RMS for a contractor to construct regional public roads.

Actual Costs means:

- (a) the final certified contract cost paid by the Developer to the Construction Contractor following compliance with all of the Developer's obligations under the relevant Road Works Agreement in respect of the construction of the works comprising the WIK Contribution; and



- (b) the following costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the delivery of the WIK Contribution and paid by the Developer to third parties for:
- (i) design of road works, project management, investigations, consultant fees, studies or reports specifically required for the road works;
 - (ii) other matters where the approval of the Minister to the inclusion of such costs has been given in writing to the Developer,
- to the extent that they are reasonable in quantum and do not exceed the Maximum WIK Value.

Acquisition Cost means any loss, cost, expense, fee, charge, tax, rate, fine, Liability or penalty in connection with the acquisition by any person or the transfer to the Minister or to the Nominated Transferee (including any other transfers which occur prior to that transfer) of any land.

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

Actual Costs Determination has the meaning given to that expression in clause 4.5 of Schedule 4 of this deed.

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.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or by any Authority in order to carry out a WIK Contribution or the Development.

Associates means all consultants and contractors engaged by or on behalf of the Developer and involved in the Wallgrove Road Upgrade and Intersection Works.

Austral Brick Site means 780 Wallgrove Road, Horsley Park.

Authorisations means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements which may be required by law for the carrying out of the works the subject of this deed.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

- (c) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (d) on terms acceptable to the Minister, in the Minister's absolute discretion,

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

Base CPI means the CPI number for the quarter ending 31 March 2018.

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

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2019 and each anniversary of 1 July 2019

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Construction Contractor means a contractor engaged to deliver the works comprising a WIK Contribution to which this deed relates.

Contamination has the same meaning as in the CLM Act.

Contribution Amount means the amount of a monetary contribution to be paid by the Developer, calculated in accordance with Schedule 4.

Council means Fairfield City Council.

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

Developer means Gazcorp and the Landowner, unless otherwise specified in this deed.

Developer's Offer means the Developer's offer to enter into a planning agreement with the Minister made on behalf of the Developer dated March 2018.

Development means the staged development of the Land for the purposes of an industrial estate containing warehouse and distribution related facilities, including as contemplated by:

- a) State Significant Development Application SSD5248; and
- b) any future development applications for that development 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 total contributions payable by the Developer in relation to the Land under this deed, calculated in accordance with Schedule 4.

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.

Final Trigger Event has the meaning given to that expression in clause 5.2 of Schedule 4 of this deed.

Final Trigger Event Notice has the meaning given to that expression in clause 5.2 of Schedule 4 of this deed.

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).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

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

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and who is subject to prudential supervision by Australian Prudential Regulatory Authority.

Interim Contribution Amount has the meaning given to that expression in clause 5.2 of Schedule 4 of this deed.

Just Terms Act means the *Land Acquisition (Just Terms Compensation) Act 1991*.

Key Road Work Terms has the meaning given to that expression in clause 4.1(d) of Schedule 4 of this deed.

Land means the land described in Schedule 3.

Liabilities means claims, actions, demands, proceedings, losses, costs, expenses, fines, penalties and other liabilities (including legal costs on an indemnity basis).

Maximum WIK Value means the sum of five million three hundred thousand dollars (\$5,300,000).

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and includes the Secretary and the Secretary's nominee.

Monetary Contribution means the monetary contribution towards regional transport infrastructure and services to be made by the Developer.

Net Developable Area or NDA means the net developable area of the Land or the relevant part of the Land calculated in accordance with Schedule 6 or, in the event of a dispute or ambiguity, as determined by the Secretary.

Offset Credits means the value, as determined in accordance with this deed, of any of the Contribution Amounts which the Developer has delivered in accordance with this deed, which have not been applied to discharge the Developer's obligation to provide a Contribution Amount under clause 2 of Schedule 4

Offset Credits Schedule means a schedule which the Minister has issued under Schedule 4, identifying the value of any Offset Credits at the time at which the schedule is issued.

Other WSEA Obligation means an obligation to make a development contribution relating to the provision of regional transport infrastructure and services on other land (not being the Land) to which the WSEA SEPP applies.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision of the Land for an Urban Lot.

Practical Completion for a WIK Contribution means the point in time in the process of delivering a WIK Contribution at which:

- (a) the works comprising the WIK Contribution (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation or handover to the Roads Authority, as the case may be, except for minor omissions and minor defects which:
 - (i) have been so identified on a list issued to the Developer by the Roads Authority,
 - (ii) do not impede use of the WIK Contribution by the public for the continuous safe passage of vehicular traffic and pedestrians;
 - (iii) will not prejudice the convenient and safe use of the WIK Contribution during rectification; and
 - (iv) the Roads Authority determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;
- (b) any inspection and testing requirements of the Roads Authority have been complied with and any other tests necessary to be carried out and passed before the WIK Contribution, or a part of it, is used and occupied by the public or handed over to the Roads Authority have been carried and passed and all test results and conformance data identified by the Roads Authority have been provided to the Roads Authority;
- (c) all relevant requirements of the Roads Authority in respect of the WIK Contribution have been carried out or satisfied;
- (d) all documents, certifications and information required by the Roads Authority, which the Roads Authority considers necessary for the use, operation and maintenance of the WIK Contribution have been provided to the Roads Authority, including all "As- Built" and other drawings, and all original manufacturers' or suppliers' warranties required by the Roads Authority;
- (e) with the approval of the Roads Authority, the Developer has commissioned into operation all plant incorporated into the WIK Contribution and any traffic signalling equipment and has demonstrated to the satisfaction of the Roads Authority that the commissioning has been successful; and
- (f) the Roads Authority has certified in writing that practical completion of the WIK Contribution has been achieved,

unless that expression has been given a different meaning by the Key Road Work Terms, in which case the meaning given by the Key Road Works Terms shall apply.

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).

Relevant Land has the meaning given to that expression in clause 4 of Schedule 4 of this deed.

Residential Accommodation has the same meaning as in the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed.

RMS means Roads and Maritime Services, a statutory corporation established under the Transport Administration Act 1988 (NSW).

Road Works means the works to be carried out by the Developer pursuant to the Road Works Agreement.

Road Works Agreement means:

- (a) a works authorisation deed (or WAD) or other legally binding agreement between the Developer, as the context requires, or other person acceptable to the Minister and RMS (or other relevant Roads Authority) which governs the delivery of road infrastructure; and
- (b) in the case of a Roads Authority other than RMS, includes an Authorisation granted by the Roads Authority under section 138 of the Roads Act 1993 (NSW) for that road infrastructure instead of such a deed or agreement, if the Secretary, in his or her absolute discretion, has certified that Authorisation in writing as a "Road Works Agreement".

Roads Authority means the Council unless the Minister notifies the Developer in writing otherwise.

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 29 of the WSEA SEPP.

Secretary means the Secretary of the Department of Planning and Environment.

Security means a Bank Guarantee for the amount and on the terms specified in Schedule 5.

Site Audit Statement means a site audit statement as defined under the CLM Act which:

- (a) states that the land to which the statement relates is suitable for use as an Educational Establishment; and
- (b) does not specify any conditions or restrictions on the use of the land as an Educational Establishment, unless otherwise agreed by the Minister, acting reasonably.

Southern Link Road means the future road known as the Southern Link Road shown on the Site Area Diagram Plan at Annexure A.

Subdivision Certificate has the same meaning as in the 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.

Wallgrove Road Upgrade and Intersection Works means:

- (a) widening of the approach roads on Wallgrove Road to provide two 3.5m wide through lanes in the northbound and southbound directions as shown in the hatched area on the Site Area Diagram Plan in Annexure A and detailed in the Concept Layout plans SK 201 to SK209 in Annexure B;
- (b) constructing 3.5m wide right turn lanes into the Austral Brick Site and the Development. The access road to the Development will comprise right out and through and left lanes for eastbound traffic and a single lane for westbound traffic. Existing shoulder provision will be replicated on the western road edge side of the widening works including 2.5m shoulder and 1m verge;
- (c) relocation of electrical over wiring to underground, street lighting around the junction and relocation of underground Telstra pits. The works will also include road widening works over the existing Warragamba water pipeline and associated protection works to the pipeline;
- (d) upgrading traffic light signals on Wallgrove Road at the location of the proposed Southern Link Road in the area identified by diagonal lines on the Site Area Diagram Plan in Annexure A;
- (e) upgrading the existing channelized right turn access to the Austral Brick Site underbridge below the M7.

WIK means works-in-kind.

WIK Actual Contribution Report has the meaning given to it in clause 4.5(a) of Schedule 4 of this deed.

WIK Contribution means the design, construction, completion and delivery to the Roads Authority of the Wallgrove Road Upgrade and Intersection Works the subject of a current WIK Notice.

WIK Estimate Notice has the meaning given to that expression in clause 4.3(a) of Schedule 4.

WIK Notice has the meaning given to it in clause 4.1(b) of Schedule 4.

WSEA SEPP means the State Environmental Planning Policy (Western Sydney Employment Area) 2009

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**, a **schedule** or an **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** and **annexures** 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

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Minister or the Minister's nominee in accordance with the provisions of Schedule 4 to this deed.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 7.24 of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the amount payable by the Developer pursuant to a SIC Determination (**SIC Amount**) for a stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clauses 1, 2 and 4.1 of Schedule 4.
- (c) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 4.2, a reference to the SIC Amount for a stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 7.24 of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

4.3 Acknowledgement by Developer

The Developer acknowledges and agrees that, subject to section 7.17 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. 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 providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything required to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant certificates of title;
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

7.3 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 all of the Land or any part of the Land as requested by the Developer from time to time upon the Developer satisfying its obligations to make the monetary contribution in accordance with the provisions of Schedule 4.

7.4 Landowner's interest in Land

- (a) The Landowner represents and warrants that it is:
 - (i) the owner of the Land identified in Schedule 3;
 - (ii) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7 in respect of the Land.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 10 business days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1 the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 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.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (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 Program. 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.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 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 8 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 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 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.

9. GST

9.1 Definitions

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

9.2 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.

9.3 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 must 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.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

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

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party

agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and

- (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Contingent on clause 10.2(a), the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 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.

11.2 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.

11.3 Trustee Landowner

- (a) Wallgrove Road Industrial Investments Pty Limited (ACN 620 789 675) (**Trustee**) enters into this deed in its capacity as the trustee for the Wallgrove Road Unit Trust (**Trust**) constituted by a trust deed (**Trust Deed**). The Trustee:
 - (i) warrants that:
 - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
 - (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 11.3(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;

- (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 11.3(e), liability arising under or in connection with this deed (except under or in connection with clause 11.3(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
- except under or in connection with clause 11.3(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 11.3(c) and 11.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 11.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Subdivision Certificates issued in relation to the Development;

- (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 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.

13.2 Variation

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

13.3 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.

13.4 Further assurances

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

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 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.

13.12 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.

13.13 No fetter

Nothing in this deed is to 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.

13.14 Explanatory note

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

13.15 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 for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) 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).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (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.

13.16 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; or
 - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iv) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;

- (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
- (C) on a day that it is not a Business Day, on the next Business Day after it is sent,
and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 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 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6 and clause 7
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
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)	Yes (see clause 3 of Schedule 4)
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)	Yes (see clause 3 of Schedule 4)

Schedule 2 Address for Service

(clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000

Email: PlanningAgreements@planning.nsw.gov.au

Gazcorp

Contact: The Directors

Address: Gazcorp Head Office, Level 10, 60 Park St, SYDNEY NSW 2000

Email: michaeld@gazcorp.com

Landowner

Contact: The Directors

Address: Gazcorp Head Office, Level 10, 60 Park St, SYDNEY NSW 2000

Email: michaeld@gazcorp.com

Schedule 3 Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier
5	24094	5/24094

Schedule 4 Development Contributions

(clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contribution to the Minister or their nominee in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount – monetary contribution towards regional transport infrastructure and services	As determined in accordance with clause 2 of this Schedule 4	Pursuant to clause 3 of this Schedule 4
WIK Contribution	As determined in accordance with clause 4 of this Schedule 4	Practical Completion must be achieved within eighteen (18) months of the date of issue of the first Construction Certificate in relation to the Development.

2. Calculation of the value of Development Contribution and Contribution Amounts

- (a) The total value of the Development Contribution (\$X) is the amount equal to the sum represented by "X" in the following formula:

$$X = TN \times D$$

"TN" means the total sum of all Net Developable Areas of the Land.

"D" = \$193,636 as indexed in accordance with (c) of this clause.

- (b) The value of any individual Contribution Amount is equal to the sum represented by "Y" in the following formula:

$$Y = N \times D$$

"N" means the Net Developable Area of the Land in respect of the relevant stage of the Development.

"D" = \$193,636 as indexed in accordance with (c) of this clause.

- (c) On each CPI Adjustment Date the amount represented by "D" in (a) and (b) of this clause is to be adjusted in accordance with the following formula:

"D" = E x the amount equal to the Current CPI divided by the Base CPI.

"E" on 1 July 2019 means the amount of \$193,636, and on each subsequent CPI Adjustment Date E, means the amount represented by D for the immediately preceding CPI Adjustment Date.

3. **Payment of Contribution Amounts**

- (a) The Developer must pay a Monetary Contribution in the amount of the Contribution Amount calculated in accordance with clause 2 (b) of this Schedule 4:
 - (i) prior to each time a Subdivision Certificate is issued or a Construction Certificate is issued (whichever occurs earlier in relation to the then-current stage of the Development); or
 - (ii) if any part of the Development may be carried out without the need for a Subdivision Certificate or Construction Certificate, then on the earlier of the following:
 - (A) commencement of that part of the Development;
 - (B) the issue of a Complying Development Certificate in respect of that part of the Development.
- (b) Where the value of the Offset Credits equals or exceeds the value of that Contribution Amount, the Developer must:
 - (i) satisfy the Minister of that fact; and
 - (ii) obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased by the value of that Contribution Amount; or
 - (iii) where the value of the Offset Credits is more than zero but is less than the value of that Contribution Amount:
 - (A) satisfy the Minister of that fact;
 - (B) pay a Monetary Contribution in the amount of the difference; and
 - (C) obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased to zero.
- (c) The parties agree that the requirement to make a payment under this clause is:
 - (i) where payment relates to a Subdivision Certificate, a restriction on the issue of the relevant Subdivision Certificate within the meaning of section 6.15 of the Act; and
 - (ii) where the payment relates to a Construction Certificate, a restriction on the issue of the relevant Construction Certificate within the meaning of section 6.4 of the Act.

4. **Works-in-Kind Contribution**

4.1 **WIK Notice**

- (a) The Developer agrees to provide the WIK Contribution in accordance with this deed.
- (b) The Developer must, by written notice to the Minister in accordance with this clause 4, set out the detail of the WIK Contribution that the Developer will carry out instead of providing some or all of the Monetary Contribution, in accordance with this Schedule 4 (**WIK Notice**).
- (c) The Developer must, in the WIK Notice:
 - (i) describe the WIK Contribution which the Developer shall provide, which is to be in accordance with the definition of Wallgrove Road Upgrade and Intersection Works in this deed;

- (ii) specify, for all of the land which is the subject of that WIK Contribution (**Relevant Land**):
 - (A) the title details of that land and a plan showing that land; and
 - (B) the registered proprietor of that land.
- (d) The Developer must, when providing the WIK Notice, also provide:
 - (i) a statement of the key terms which will be incorporated in the proposed Road Works Agreement for the relevant WIK Contribution, including:
 - (A) the nature and amount of security to be provided for the WIK Contribution;
 - (B) the definition of "Practical Completion" for the WIK Contribution, if proposed to be different to the definition given to that term in clause 1.1 of this deed;
 - (C) the process for achieving Practical Completion;

(Key Road Work Terms); and
 - (ii) written evidence:
 - (A) that the Relevant Roads Authority agrees in principle to the provision of the WIK Contribution described in the WIK Notice; and
 - (B) of the Relevant Roads Authority's comments on the Key Road Works Terms as described in the WIK Notice,
- (e) Once the material required under clause 4.1 (d) of Schedule 4 has been provided to the Minister, the following process will apply:
 - (i) the Minister must notify the Developer in writing, within 20 Business Days after receiving a WIK Notice and the material specified in clause 4.1(d)(i) and (ii) of Schedule 4, whether or not the Minister agrees with those Key Road Work Terms;
 - (ii) if the Minister notifies the Developer that the Minister does not agree with those Key Road Work Terms, then the parties must negotiate in good faith and use their best endeavours to agree the Key Road Work Terms; and
 - (iii) if:
 - (A) 40 Business Days (or such other period as the parties may agree in writing) have passed since the Developer provided to the Minister the WIK Notice, the statement of Key Road Work Terms and the material specified in clause 4.1(d)(ii) of Schedule 4;
 - (B) the parties have endeavoured to reach an agreement under clause 4.1(e)(ii) of this Schedule 4 but an agreement has not been reached on the Key Road Work Terms; and
 - (C) the Minister has consulted with the relevant Roads Authority in relation to the Key Road Works Terms and the proposed Road Works Agreement;

the Minister may, within a further 10 Business Days, determine the Key Road Work Terms which must be incorporated in the Road Works Agreement and notify the Developer of this determination in writing.

- (f) For the avoidance of doubt, in determining the Key Road Work Terms in accordance with clause 4.1(e)(iii) or otherwise pursuant to this deed, the Minister cannot require the Developer to provide any further works in addition to the Wallgrove Road Upgrade and Intersection Works.
- (g) The Developer must ensure that any Road Works Agreement with the relevant Roads Authority for that WIK Contribution incorporates the Key Road Work Terms agreed or determined in accordance with clause 4.1(e) of Schedule 4.

4.2 Provision of WIK Contribution

- (a) The delivery of the WIK Contribution and the determination of the value of the Offset Credits attributable to the WIK Contribution will follow a three step process, set out below in clauses 4.3 to 4.5 of this Schedule 4.

4.3 Step 1- Contributions Estimates

- (a) Prior to commencing work for a WIK Contribution and within 90 Business Days of the date on which the Key Road Work Terms are agreed under clause 4.1(e)(i) or clause 4.1(e)(ii), or determined under clause 4.1(e)(iii) of Schedule 4, the Developer must:
 - (i) obtain all necessary Authorisations to carry out the works for the WIK Contribution;
 - (ii) enter into a Road Works Agreement for the WIK Contribution containing the Key Road Work Terms as agreed or otherwise determined in accordance with clause 4.1(e) of Schedule 4;
 - (iii) provide the Minister with a notice (**WIK Estimate Notice**) which sets out:
 - (A) an estimate of the Actual Costs to complete the WIK Contribution including reasonable contingencies;
 - (B) details of:
 - 1. the Authorisations obtained to carry out the works for the WIK Contribution;
 - 2. any security which the relevant Roads Authority requires for the WIK Contribution under the Road Works Agreement; and
 - (iv) provide construction drawings for the WIK Contribution which have been certified and approved by the Roads Authority, RMS and any other relevant public authorities; and
 - (v) provide a copy of the executed Road Works Agreement to the Minister with the WIK Estimate Notice,

unless the Developer is unable to do so for reasons beyond its control, at which time an alternative deadline for the above actions is to be negotiated in good faith and agreed in writing between the parties.

4.4 Step 2 - Delivery - WIK Contribution

- (a) The Developer must:
 - (i) provide to the Minister (for the Minister's review) the proposed Construction Contract for the delivery of the WIK Contribution, which:

- (A) is to be executed by the Developer and an Acceptable Contractor;
- (B) identifies an independent superintendent to oversee the work;
- (C) identifies the terms and conditions applicable to carrying out the construction of the WIK Contribution;
- (D) identifies the proposed contract value for the WIK Contribution; and
- (ii) within 10 Business Days of receiving the Minister's comments on the Construction Contract, provide the Minister with a revised version of the Construction Contract incorporating those comments, for the Minister's approval;
- (iii) within 15 Business Days of receiving the Minister's approval to the proposed Construction Contract, provide the Minister with a copy of that Construction Contract as executed by the Developer and the Acceptable Contractor;
- (iv) comply in all respects with the Road Works Agreement and the Construction Contract;
- (v) notify the Minister if the Developer becomes aware that there has been, or is likely to be, a non-compliance with the Road Works Agreement or the Construction Contract, specifying:
 - (A) the nature of the non-compliance or likely non-compliance; and
 - (B) how and when the Developer will ensure that the non-compliance is rectified or the likely non-compliance is avoided (as the case may be); and
- (vi) give the Minister written notice at least 40 Business Days prior to the date of Practical Completion of the Road Works.

4.5 Step 3 - WIK Reconciliation

- (a) Within 10 Business Days of Practical Completion of a WIK Contribution, the Developer must submit:
 - (i) a report to the Minister (**WIK Actual Contribution Report**) which:
 - (A) provides an itemised breakdown and details of the Actual Costs incurred by the Developer, including accounts for the Actual Costs;
 - (B) shows that the Actual Costs have been reduced by the amount of any input tax credit which the Developer is entitled to claim; and
 - (C) provides a reconciliation of the Actual Costs with the Maximum WIK Value, together with a report by an independent quantity surveyor who is appointed with the consent of the Minister (acting reasonably), which supports that reconciliation and which confirms that it is the opinion of the quantity surveyor that each item of the proposed Actual Costs is reasonable in quantum and was reasonably incurred;
 - (D) a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each of the items which the Developer proposes as Actual Costs;
 - (E) such other information that the Minister requests to enable the Minister to determine the Actual Costs (**Actual Costs Determination**).

- (b) The Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the materials submitted by the Developer and to assist with the assessment of the Actual Costs Determination.
- (c) Once the Actual Costs are determined by the Minister, the Minister must advise the Developer in writing of the Actual Costs Determination.

4.6 **[deleted]**

4.7 **[deleted]**

4.8 **Offset Credits Schedule**

- (a) The Minister must prepare or update the Offset Credits Schedule:
 - (i) after a reconciliation for a WIK Contribution has been completed in accordance with this deed - increasing the value of the Offset Credits by the amount of that WIK Contribution as determined in accordance with this deed;
 - (ii) if it becomes apparent that there is an error or inaccuracy in the Offset Credits Schedule - to correct that error or inaccuracy;
 - (iii) after each CPI Adjustment Date, showing the indexed value of the Offset Credits; and
 - (iv) at such other times as the Minister may determine.
- (b) If the Minister prepares or updates the Offset Credits Schedule, the Minister will provide the Developer with a copy of the Offset Credit Schedule as prepared or updated, as soon as possible after it has been prepared or updated (as the case may be).

5. **Excess Contributions and Additional Payments**

5.1 **Use of Offset Credits at other WSEA SEPP land**

- (a) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, an amount of Offset Credits to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) The Minister may, in his or her absolute discretion, agree to allow the Developer to apply an amount of Offset Credits to discharge an Other WSEA Obligation.
- (c) If the Minister agrees to allow an amount of Offset Credits to be applied to discharge an Other WSEA Obligation:
 - (i) that amount of Offset Credits will be taken to have been surrendered to the Minister; and
 - (ii) the Minister will provide an updated Offset Credits Schedule to the Developer showing that the value of the Offset Credits has decreased by that amount.

5.2 **Final reconciliation**

- (a) The Developer must provide written notice to the Minister, at least 30 Business Days prior to the occurrence of the final Subdivision, Construction or Complying Development Certificate Application for the Development (**Final Trigger Event**), evidence which the

Minister (acting reasonably) requires to demonstrate that the Final Trigger Event will be the last to occur prior to completion of the Development (**Final Trigger Event Notice**).

- (b) As soon as practicable after receiving the Final Trigger Event Notice, the Minister will undertake a final reconciliation which will:
 - (i) determine the Development Contribution which would have been payable based on the actual NDA for the Land; and
 - (ii) reconcile the Development Contribution against the sum of:
 - (A) the value of any WIK Contribution in respect of which Practical Completion has been achieved; and
 - (B) the value of the Monetary Contributions which the Developer has paid;
- (c) if the Developer has achieved Practical Completion of a WIK Contribution, the lesser of the Actual Costs Determination and the Maximum WIK Value will be applied for the purposes of paragraph 8.2(b)(ii)(A).
- (d) Where the final reconciliation, carried out in accordance with Schedule 4 clause 5.2(b), indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 is less than the Development Contribution, then the Developer must pay the shortfall as an additional Monetary Contribution to the Minister within 10 Business Days of receiving a notice from the Minister notifying the Developer of the shortfall.
- (e) Where the final reconciliation, carried out in accordance with Schedule 4, clause 5.2(b), indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 exceeds the Development Contribution, then the Developer will be entitled to a credit for the amount that the value of the Interim Contribution Amount exceeds the Development Contribution (**Excess Contributions Credit**) in accordance with clauses 6.2(f) and (g) of this Schedule 4.
- (f) Subject to clause 8.2(h) of this Schedule 4, any Excess Contributions Credit which has been generated under this deed may be used by:
 - (i) the Developer;
 - (ii) a Related Body Corporate (within the meaning of the *Corporations Act 2001* (Cth)) of the Developer; or
 - (iii) any other person which the Minister determines to approve on written request by the Developer,

(**Contributions Credit Recipient**) to discharge an Other WSEA Obligation which relates to land which is owned by that Contributions Credit Recipient.

- (g) An Excess Contributions Credit is taken to have been used under a planning agreement for the purpose of this Schedule 4 when the planning agreement provides for the use of the Excess Contributions Credit.
- (h) The parties agree that any Excess Contributions Credit which has been generated under this deed must be used by the Contributions Credit Recipient in accordance with this clause 5.2 of Schedule 4 within 15 years of the date of the final reconciliation. After that time, it will

be taken to have been wholly surrendered and forfeited to the Minister and no Claim may be made against the Minister in respect of any such surrender or forfeiture.

6. Extension of time for payment of Contribution Amount

- (a) Where the Offset Credits on the Developer's Offset Credits Schedule are insufficient to satisfy the Developer's obligation to pay a Contribution Amount before the time for payment pursuant to clause 3 of this Schedule 4, the Developer may provide a Bank Guarantee, in terms acceptable to the Minister in the Minister's absolute discretion, for 110% of the value of the Contribution Amount.
- (b) The provision of a Bank Guarantee in accordance with clause 6(a) of this Schedule 4 is taken to satisfy the requirement to pay the Contribution Amount for the purposes of the issue of the Subdivision Certificate or Construction Certificate (as the case may be) for that development.
- (c) If the Developer achieves Offset Credits that are sufficient to discharge the liability to pay a Contribution Amount for which the Bank Guarantee has been provided, the Developer may request the Minister, in writing, to return the Bank Guarantee. The Developer must provide the Minister with such other supporting information that the Minister reasonably requests.
- (d) If the Minister is satisfied that the Offset Credits are sufficient to discharge the Developer's liability to pay a Contribution Amount, the Bank Guarantee is to be released and returned to the Developer within 90 days of the Developer's written request.
- (e) The Bank Guarantee may be called upon, and the proceeds of such claim retained, to facilitate the delivery of the items of State infrastructure, if the Bank Guarantee has not been released and returned to the Developer within 2 years of the date of its issue.

Schedule 5 Security terms

1.1 Developer to provide Security

- (a) Prior to the execution of this deed, the Developer must provide to the Minister the Security with a total face value of \$20,000.00.
- (b) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security in the form of a Bank Guarantee.
- (c) The Security must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

1.2 Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon any Security provided in accordance with this deed where the Developer has failed to provide a Development Contribution or the WIK Contribution to which the Security relates on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Development Contribution or the WIK Contribution and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
 - (iii) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (b) If the Minister:
 - (i) calls upon a Security;
 - (ii) applies all or part of such monies towards the Development Contribution and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 1.3(a)(iii) of this Schedule 5;

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 1.3 of this Schedule, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 1.1(a) of this Schedule 5.

1.3 Release of Security

- (a) If:
 - (i) the Developer has paid or satisfied all of its obligations under this deed; and
 - (ii) the whole of the Security has not been expended;

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable) to the Developer.

Schedule 6 Net Developable Area

1.1 Determination of Net Developable Area

- (a) The Net Developable Area of a part of the Land is the area of land, measured in hectares, comprising the allotments to which the relevant application for a Subdivision Certificate, Construction Certificate or Complying Development Certificate relates, subject to the other provisions of this Schedule 6.
- (b) The Net Developable Area includes the area of any land that a Development Consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road, but does not include:
 - (i) any existing road which was constructed before the date of this deed to which works are required to be carried out under a Development Consent; or
 - (ii) any road referred to in clauses 1.1 (c) (xii) or (xiii) of this Schedule 6.
- (c) The Net Developable Area does not include the area of any land that a Development Consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (i) government school (within the meaning of the *Education Act 1990*);
 - (ii) TAFE establishment;
 - (iii) emergency services facility;
 - (iv) health services facility owned or operated by a public authority;
 - (v) golf course;
 - (vi) passenger transport facility;
 - (vii) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*);
 - (viii) public transport corridor (other than a road corridor);
 - (ix) public utility undertaking;
 - (x) bus depot, whether or not owned or operated by a public authority;
 - (xi) recreation area;
 - (xii) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 7.11 or section 7.12 of the Act or may be imposed in accordance with a contributions plan approved under section 7.18 of the Act; or
 - (xiii) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with section 7.23 of the Act, including land proposed to be used for the Southern Link Road or any other road in the same location as the Southern Link Road.
- (d) The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:

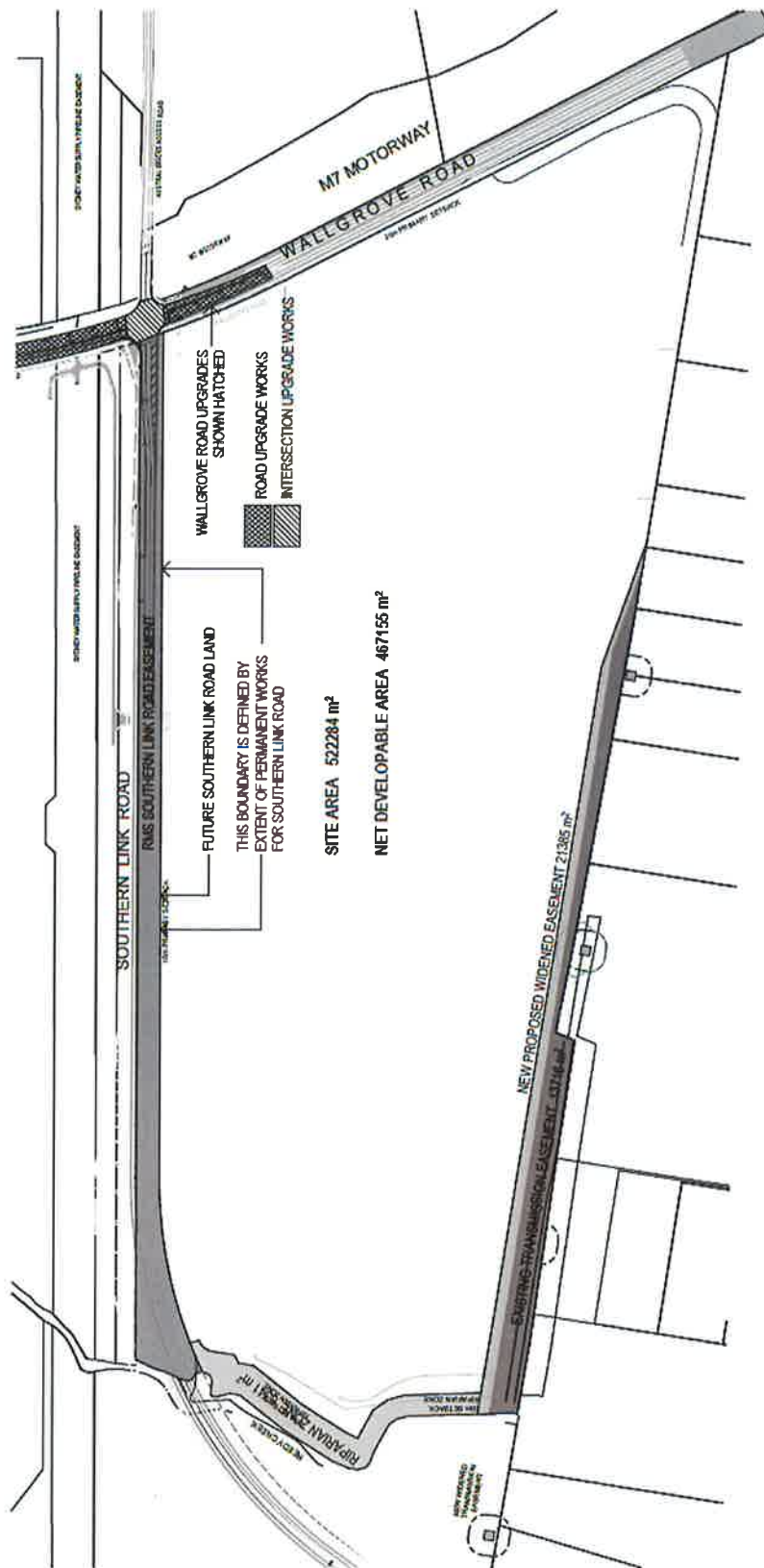
- (i) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;
- (ii) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 7.18 of the Act;
- (iii) any area of land that is within Zone E2 Environmental Conservation;
- (iv) any area of land within the curtilage of a building listed on the State Heritage Register;
- (v) any area of land this is within an asset protection zone:
 - (A) that is specified in a bush fire safety authority issued under the *Rural Fires Act 1997*; or
 - (B) that is required to be established by the development consent relating to the subdivision,

if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the subdivision by virtue of it being within that zone;

- (vi) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied the that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement; and
 - (vii) any area of land that is within a public transport corridor (other than a road corridor) as shown on a land zoning map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the subdivision by virtue of it being within the public transport corridor.
- (e) The Net Developable Area does not include the area of any lot in the proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
 - (f) The Net Developable Area does not include the area of any lot in the proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
 - (g) If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this deed commences) and:
 - (i) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (ii) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare,
 for the purpose of calculating the net developable area for the proposed subdivision.

- (h) If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.
- (i) The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
- (j) In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006 (**Standard Instrument**):
 - (i) emergency services facility;
 - (ii) health services facility;
 - (iii) passenger transport facility;
 - (iv) place of public worship;
 - (v) public utility undertaking;
 - (vi) recreation area; and
 - (vii) school.
- (k) In this Schedule, a reference to:
 - (i) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone; and
 - (ii) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the *Heritage Act 1977*; and
 - (iii) a "strata scheme" means a reference to a strata scheme as that term is defined in the *Strata Scheme (Freehold Development) Act 1973* or a leasehold strata scheme as that term is defined in the *Strata Scheme (Leasehold Development) Act 1986*.

Annexure A: Site Area Diagram



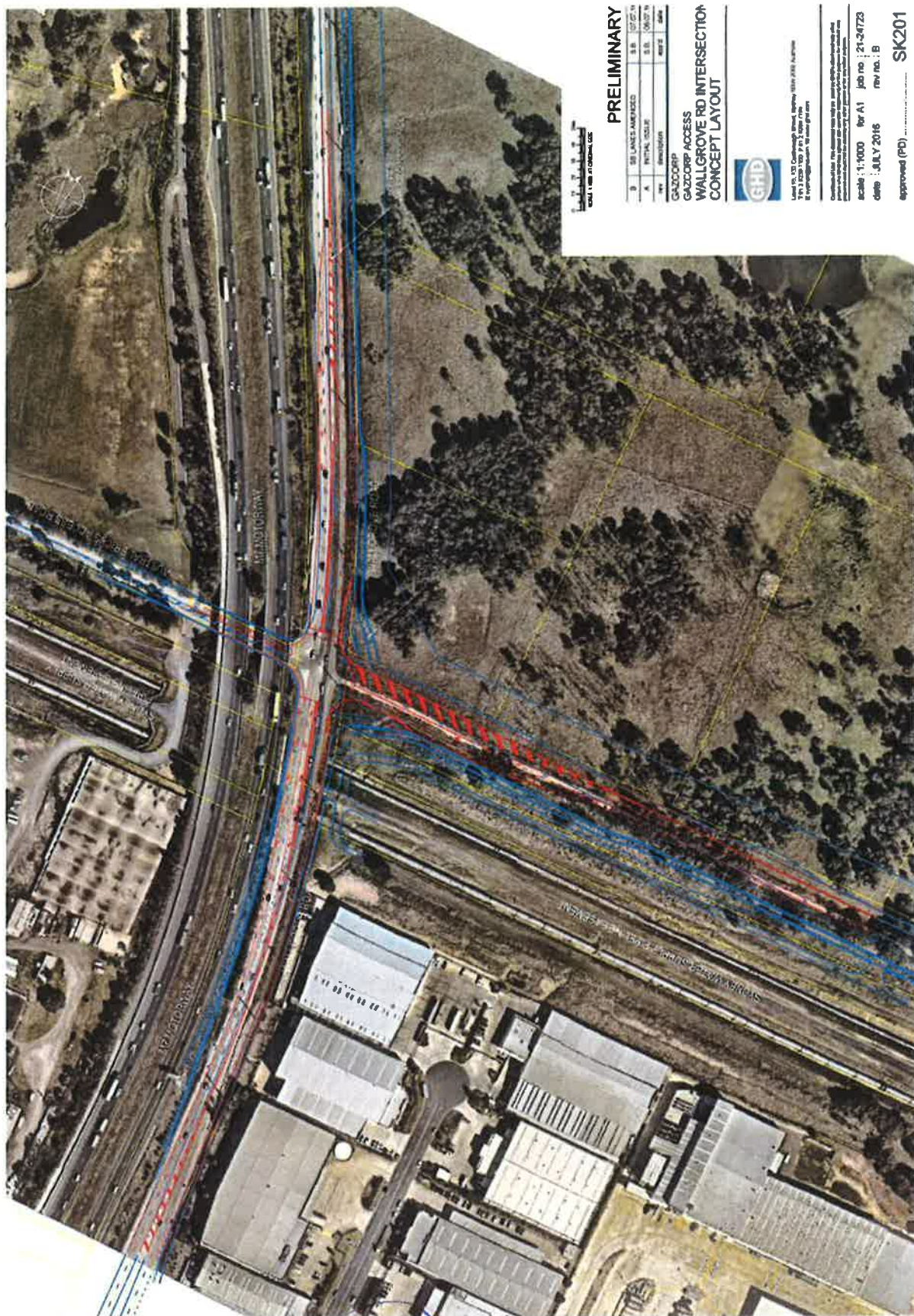
Brett Whitlock

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Annexure B: Wallgrove Road Intersection Concept Layout SK201



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PRELIMINARY

NO	DATE	DESCRIPTION	BY	CHKD
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2	10/10/2016	REVISED	SK	SK
3	10/10/2016	REVISED	SK	SK
4	10/10/2016	REVISED	SK	SK
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9	10/10/2016	REVISED	SK	SK
10	10/10/2016	REVISED	SK	SK

GAZCOORP
WALLGROVE RD INTERSECTION
CONCEPT LAYOUT



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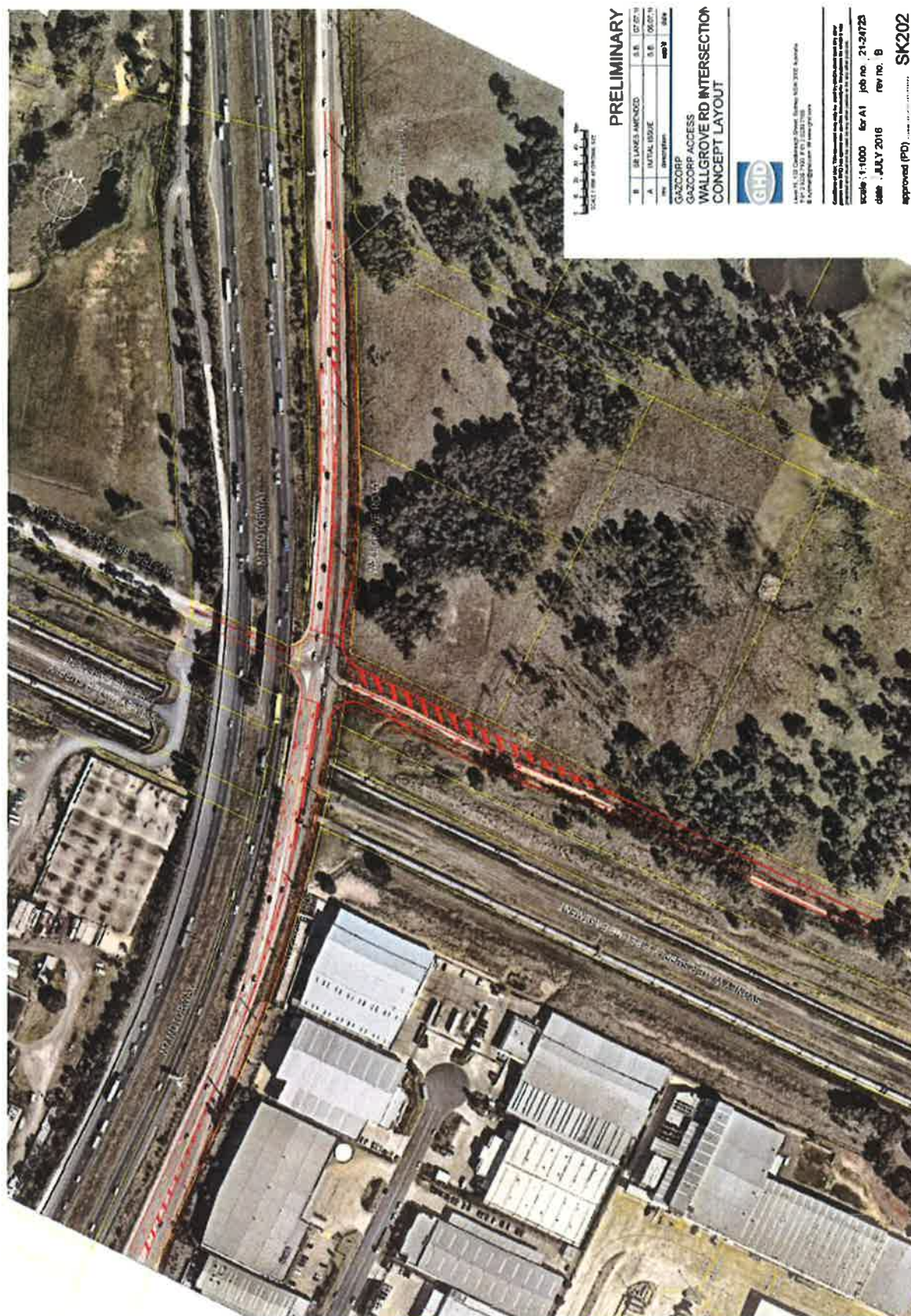
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Date: 10/10/2016
Job no: 21-24723
Rev no: B

Approved (PD) SK201

Brett Whitehead

42

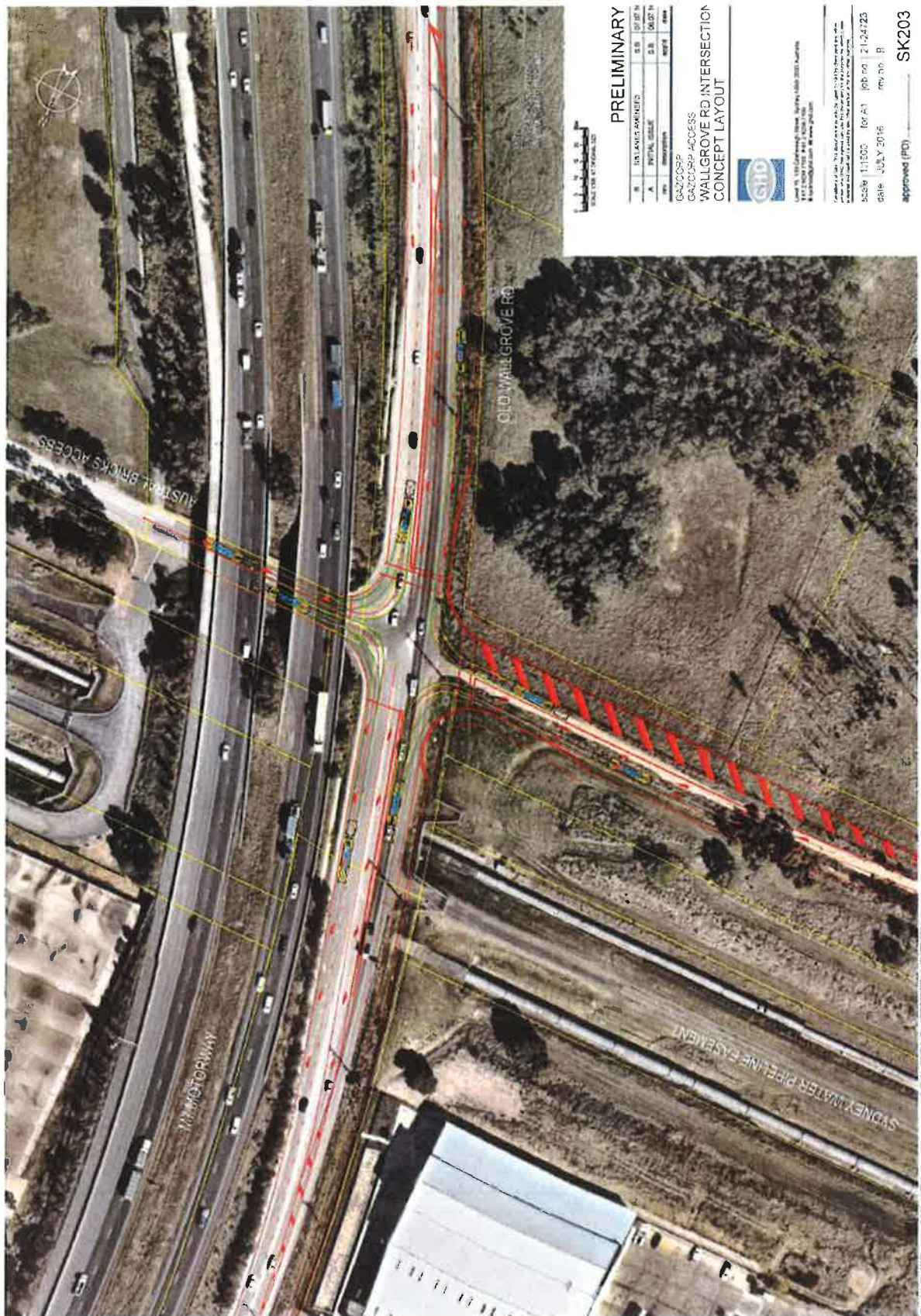
Annexure B: Wallgrove Road Intersection Concept Layout SK202



Brett Whitlock

4

Annexure B: Wallgrove Road Intersection Concept Layout SK203



PRELIMINARY

REV	DESCRIPTION	DATE	BY	CHKD
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2	REVISED	01/07/16	SK	SK

GAZ/COSE ACCESS
WALLGROVE RD INTERSECTION
CONCEPT LAYOUT



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Scale: 1:1000 for A1 job no: 21-24723
Date: JULY 2016 rev: 00 B

Approved (PD) SK203

Brett Whitford

Annexure B: Wallgrove Road Intersection Concept Layout SK204



Brett Whitlock

[Signature]

Annexure B: Wallgrove Road Intersection Concept Layout SK205



Brett Whitehead



Annexure B: Wallgrove Road Intersection Concept Layout SK206



SCALE 1:1000 AT CENTER

PRELIMINARY

B	18 LANE APPROVED	2.8	02/21/16
A	INITIAL ISSUE	2.8	02/21/16
REV	DESCRIPTION	DATE	DATE

GAZDORP
GAZDORP ACCESS
WALLGROVE RD INTERSECTION
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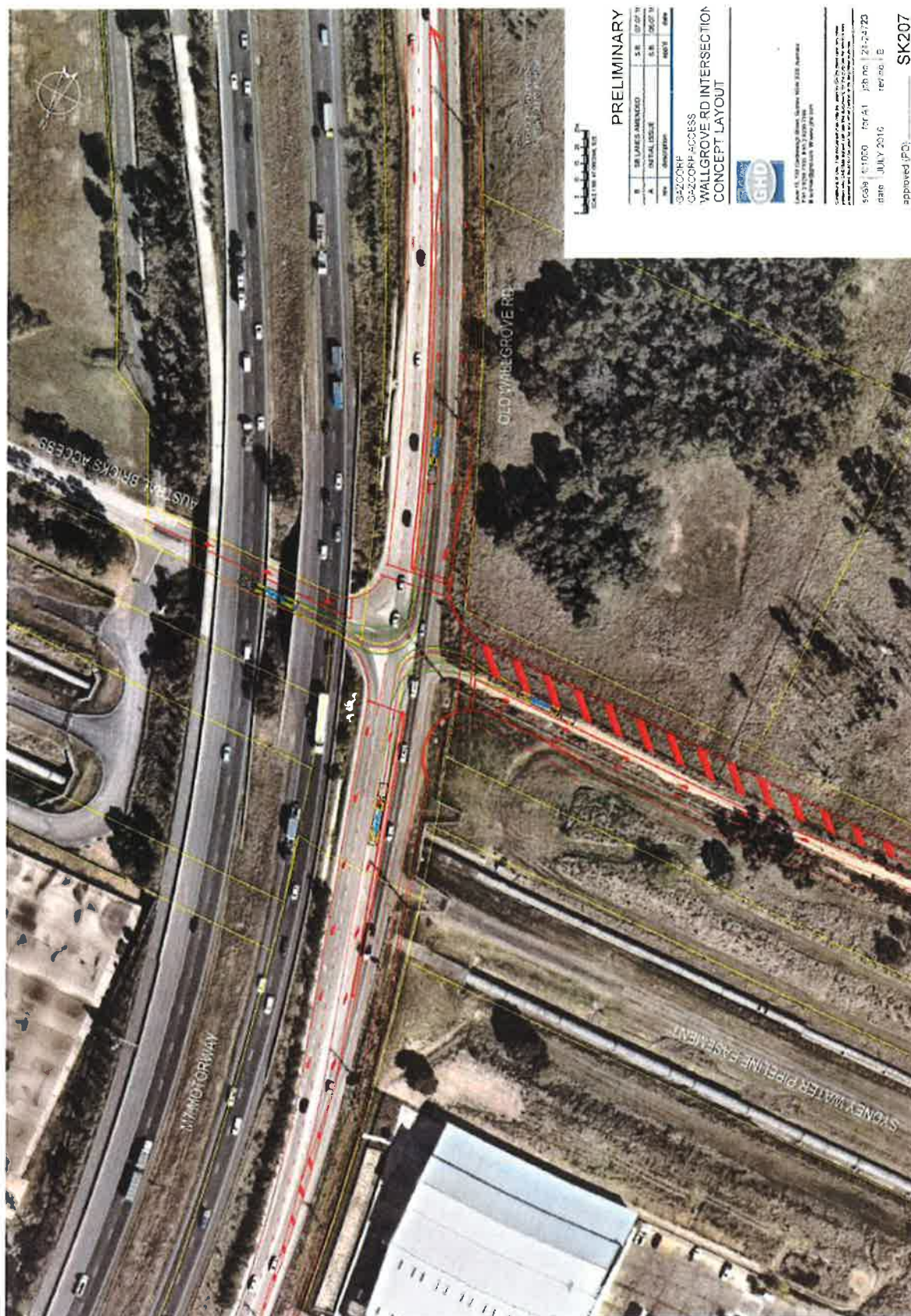
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date: JULY 2016 rev no: 8

approved (PD) SK206

Brett Whitlock

[Signature]

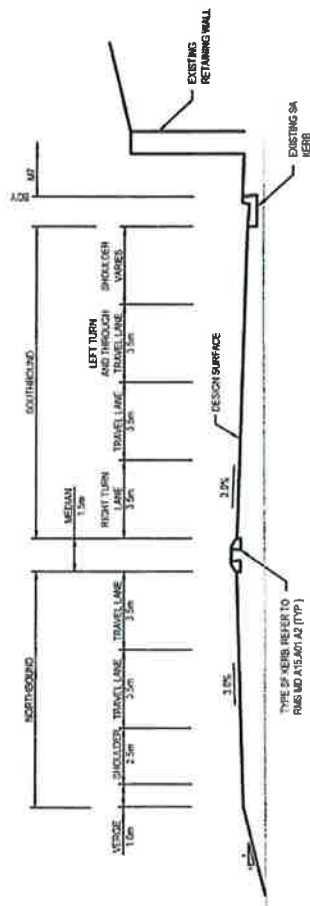
Annexure B: Wallgrove Road Intersection Concept Layout SK207



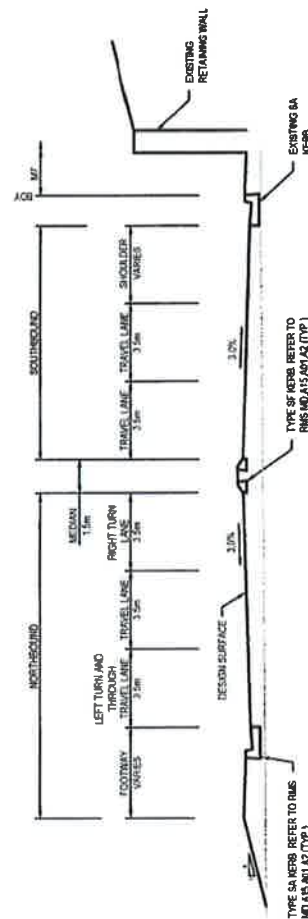
Brett Whitlock



Annexure B: Wallgrove Road Intersection Typical Sections SK209



TYPICAL SECTION - WALLGROVE ROAD (NORTH OF PROPOSED INTERSECTION)
SCALE 1:100



TYPICAL SECTION - WALLGROVE ROAD (SOUTH OF PROPOSED INTERSECTION)
SCALE 1:100



PRELIMINARY			
NO	ISSUES AMENDED	S.B.	DATE
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100	REVISION	DATE	06/07/16



Level 15, 131 Chalmers Street, Sydney NSW 2000 Australia
Tel: 2 9238 7100 Fax: 2 9238 7199
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Scale 1:1000 for A1 job no. 21-24723
date JULY 2016 rev no. B
approved (PC) SK209

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Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf of the **Minister for Planning** (ABN 38 755 709 681), in the presence of:

.....
Signature of witness

.....
John Borg

.....
Name of witness in full

.....
320 Pitt St Sydney 2000

.....
Address of witness

Signed, sealed and delivered by **Gazcorp Pty Limited** (ACN 41 001 696 073) in accordance with section 127(1) of the *Corporations Act 2001*:

.....
Signature of Director

.....
Nabil Guedes

.....
Name of Director in full

SIGNED by ~~BRENDAN NELSON~~ as delegate for the Minister for Planning administering the Environmental Planning and Assessment Act, 1979

.....
Signature of the Minister for Planning or delegate

.....
BRETT WHITWORTH

.....
Name of Minister for Planning or delegate

.....
Signature of Director/Secretary

.....
NICHOLAS CAZAL

.....
Name of Director/Secretary in full

Signed, sealed and delivered by Wallgrove
Road Industrial Investments Pty Limited
(ACN 620 789 675) in its capacity as trustee of
the **Wallgrove Road Unit Trust** in accordance
with section 127 of the *Corporations Act*
2001:



Signature of Director



Name of Director in full



Signature of Director/Secretary



Name of Director/Secretary in full