

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

**SH Camden Valley Pty Limited (ACN 137 331 376) as trustee for the
SH Camden Valley Unit Trust (ABN 46 767 052 801)**

**SH Camden Lakeside Pty Limited (ACN 137 331 394) as trustee for the
SH Camden Lakeside Unit Trust (ABN 21 048 234 393)**

Table of contents

1.	Definitions and interpretation	5
1.1	Definitions.....	5
1.2	Interpretation	7
2.	Operation and application of this deed	8
2.1	Operation.....	8
2.2	Planning agreement under the Act	8
2.3	Application.....	8
2.4	Lakeside Planning Agreement	8
3.	Application of sections 94, 94A and 94EF of the Act	9
4.	Development Contribution.....	9
4.1	Developer to provide Development Contribution.....	9
4.2	Special Infrastructure Contribution	9
4.3	Acknowledgement.....	10
5.	Interest.....	10
6.	Enforcement	10
7.	Registration	10
7.1	Registration of deed	10
7.2	Evidence of registration.....	11
7.3	Release and discharge of deed.....	11
7.4	Landowner's interest in Land	11
8.	Dispute Resolution.....	11
8.1	Not commence	11
8.2	Written notice of dispute	11
8.3	Attempt to resolve.....	11
8.4	Mediation	11
8.5	Court proceedings	12
8.6	Not use information	12
8.7	No prejudice	12
9.	GST.....	12
9.1	Definitions.....	12
9.2	Intention of the parties.....	12
9.3	Reimbursement	12
9.4	Consideration GST exclusive.....	12
9.5	Additional Amounts for GST	13
9.6	Non monetary consideration.....	13
9.7	Assumptions	13
9.8	No merger.....	13
10.	Assignment and transfer	13
10.1	Right to assign or novate	13
10.2	Right to transfer Land.....	13

11. Capacity.....	14
11.1 General warranties	14
11.2 Power of attorney.....	14
11.3 Trustee Developer	14
12. Reporting requirement.....	16
13. General Provisions	16
13.1 Entire deed	16
13.2 Variation	16
13.3 Waiver.....	16
13.4 Further assurances	17
13.5 Time for doing acts	17
13.6 Governing law and jurisdiction.....	17
13.7 Severance.....	17
13.8 Preservation of existing rights	17
13.9 No merger.....	17
13.10 Counterparts.....	17
13.11 Relationship of parties.....	17
13.12 Good faith.....	18
13.13 No fetter	18
13.14 Explanatory note.....	18
13.15 Expenses and stamp duty	18
13.16 Notices	18
Schedule 1.....	20
Schedule 2.....	22
Schedule 3.....	23
Schedule 4.....	24
Schedule 5.....	25
Schedule 6.....	27
Schedule 7.....	30

This deed is dated 2016

Parties:

Minister

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

Developer

SH Camden Valley Pty Limited (ACN 137 331 376) as trustee for the SH Camden Valley Unit Trust (ABN 46 767 052 801) of G 68 Waterloo Road, Macquarie Park, New South Wales 2113

SH Camden Lakeside Pty Limited (ACN 137 331 394) as trustee for the SH Camden Lakeside Unit Trust (ABN 21 048 234 393) of G 68 Waterloo Road, Macquarie Park, New South Wales 2113

Introduction:

- A** The Developer owns the Land which includes the Lakeside Land.
- B** The Developer proposes to carry out the Development on the Land and proposes to lodge a Development Application for the Development with the Consent Authority in respect of the Land.
- C** The Land is not within a Special Contributions Area as defined by section 93C of the Act.
- D** The Land forms part of an Urban Release Area within the meaning of the LEP.
- E** Clause 6.1 of the LEP 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 designated State infrastructure referred to in clause 6.1 of the LEP.
- F** 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 LEP.
- G** The Lakeside Planning Agreement Parties entered into the Lakeside Planning Agreement in connection with the development of the Lakeside Land. This deed replaces the Lakeside Planning Agreement on the terms and conditions set out in this deed.

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.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW 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.

Base CPI means the CPI number for the quarter ending 31 March ~~2015~~ ²⁰¹⁴ 

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 includes actions, suits, causes of action, legal proceedings of any kind, alternative dispute resolution processes of any kind, debts, dues, costs, claims, demands, verdicts and judgments either at law or in equity or arising under statute.

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.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

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.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the financial year preceding the date of the relevant adjustment under clause 2(b) of Schedule 4.

Development means the staged residential subdivision of the Land, golf course development and associated infrastructure.

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.

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.

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).

Lakeside Bank Guarantee means the bank guarantee held by the Minister in accordance with the Lakeside Planning Agreement.

Lakeside Developer means SH Camden Lakeside Pty Limited (ABN 41 137 331 394) as trustee for the SH Camden Lakeside Unit Trust (ANB 21 048 234 393), being a party to this deed and to the Lakeside Planning Agreement.

Lakeside Land means that part of the Land comprising Lot 2 DP 1142394.

Lakeside Planning Agreement means the planning agreement within the meaning of section 94F of the Act entered into between the Minister for Planning and Infrastructure (ABN 38 755 709 681) and the Lakeside Developer dated 26 April 2012 in connection with the development of the Lakeside Land.

Lakeside Planning Agreement Parties means the parties to the Lakeside Planning Agreement.

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

LEP means *Camden Local Environmental Plan 2010*.

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

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.

Net Developable Area has the meaning given to that term in clause 1(a) of Schedule 4 to this deed.

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.

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 Secretary 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.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

SH Camden Valley Land means that part of the Land owned by SH Camden Valley being Lot 50 in DP 1175424 and Lot 1203 in DP 1187381.

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.

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

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 93F 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.

2.4 Lakeside Planning Agreement

- (a) The Lakeside Planning Agreement Parties acknowledge and agree that on and from the Commencement Date the Lakeside Planning Agreement is terminated and replaced by this deed (**Effective Date**).
- (b) On and from the Effective Date, the Lakeside Planning Agreement Parties are released and discharged from any obligations or undertakings arising under the Lakeside Planning Agreement.
- (c) On and from the Effective Date, the Lakeside Developer:
 - (i) acknowledges and agrees that it:
 - (A) will not be entitled to; and
 - (B) waives any entitlement it may now or in the future have to, make any Claim in relation to or arising under the Lakeside Planning Agreement even if that Claim relates to an entitlement that has accrued before termination of the Lakeside Planning Agreement (despite clauses 11.8 and 11.9 of the Lakeside Planning Agreement); and
 - (ii) indemnifies the Minister against all Claims which the Lakeside Developer or any third party has now or may in the future have against the Minister arising from or in any way connected with the Lakeside Planning Agreement.
- (d) The Minister agrees to:

- (i) return the Lakeside Bank Guarantee to the Lakeside Developer upon the Developer satisfying its obligations under clause 1 of Schedule 5 to this deed; and
- (ii) do all things reasonably required to release and discharge the Lakeside Planning Agreement with respect to the Lakeside Land, in accordance with the clause 7.2(b) of 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

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

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (SIC) under section 94EE 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 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 clause 5 and clauses 1(b), 2(b) and 4 of Schedule 4.
- (c) For the avoidance of doubt, if the SIC Amount is more than the Contribution Amount, the Developer is only required to pay the Contribution Amount.
- (d) 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.
- (e) 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 94EF 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

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose 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

- (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

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

Within 20 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 to procure:

- (a) the consent of each person, as required by the Registrar-General, who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on title to the Land and to the terms of this deed; and
- (b) the execution of any documents;
- (c) the production of the relevant certificates of title;
- (d) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, presentation of this deed for marking at the Office of State Revenue; and
- (e) the lodgement and registration of this deed, 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.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 20 Business Days of registration of this deed in accordance with clause 7.1 above.
- (b) On receipt of the registered dealing in accordance with sub-clause (a) above, the Minister agrees to do all things reasonably required by the Developer to release and discharge the Lakeside Planning Agreement with respect to the Lakeside Land.

7.3 Release and discharge of deed

The Minister agrees to promptly do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Landowner's interest in Land

SH Camden Valley Pty Limited in relation to the SH Camden Valley Land and the Lakeside Developer in relation to the Lakeside Land represent and warrant that it is:

- (a) the owner of the SH Camden Valley Land or the Lakeside Land (as the case may be); or
- (b) legally and beneficially entitled to become the owner of the SH Camden Valley Land or the Lakeside Land and will become the legal and beneficial owner of the SH Camden Valley Land or the Lakeside Land (as the case may be), prior to the date that this deed is required to be registered under clause 7.1 of this deed, and

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) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

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 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 9.4.

9.5 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 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 obligations (**Assigning Party**) must seek the consent of the Minister which will not be unreasonably withheld 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 the expertise and financial capability required to perform the Assigning Party's obligations under this deed insofar as those obligations have been novated to the Incoming Party;
 - (ii) procure the execution of an agreement generally in the form set out in Schedule 7 by the Incoming 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 on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding 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 the expertise and financial capability 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 generally in the form set out in Schedule 7 by the Transferee; 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.

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 Developer

- (a) In this clause 11.3:

Trustee means each of:

- (i) SH Camden Valley Pty Limited in its capacity as trustee of the SH Camden Valley Unit Trust; and
- (ii) SH Camden Lakeside Pty Limited in its capacity as trustee of the SH Camden Lakeside Unit Trust,

Trust means each of:

- (iii) the SH Camden Valley Unit Trust; and
- (iv) the SH Camden Lakeside Unit Trust, and

Trust Deed means the trust deed constituting each Trust.

- (b) Each Trustee enters into this deed in its capacity as the trustee of its Trust constituted by its Trust Deed, and in no other capacity.
- (c) Each Trustee warrant that:
 - (i) it is the sole trustee of its Trust and no action has been taken to remove or replace it;

- (ii) 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;
 - (iii) it is not in breach of its Trust Deed;
 - (iv) it is entitled under its Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (v) it is not aware of any reason why the assets of the Trust would be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (vi) it has the power under its 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 its Trust Deed.
- (d) If either Trustee is replaced as the trustee of its Trust in accordance with its Trust Deed, then:
- (i) the Trustee must procure the replacement trustee to enter into a new deed with the Minister on the same terms as this deed;
 - (ii) the Minister and the Trustee (as outgoing trustee) must release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) 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 and the costs and expenses of registering any new deed on the title to the Land.
- (e) Subject to sub-clause (g) of this clause 11.3, liability arising under or in connection with this deed is limited and can be enforced against each 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 its Trust. This limitation of each Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of each Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (f) 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 either Trustee in respect of any liability in any capacity other than as the Trustee of its 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 either Trustee, except in relation to the assets of its Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against either Trustee in any capacity other than as Trustee of its Trust.
- (g) Notwithstanding any other provision of this deed, sub-clauses (e) and (f) of this clause 11.3 do not apply to any obligation or liability of either Trustee to the extent to which there is, in respect of that obligation or liability, whether under its 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 its Trust as a result of the Trustee's negligence, fraud or breach of trust involving a failure to show the degree of care and diligence required of it.

- (h) Nothing in sub-clause (g) will make either Trustee liable to 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 Trustee's negligence, fraud or breach of trust involving a failure to show the degree of care and diligence required of it.
- (i) Neither Trustee is obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in sub-clauses (e) to (i) of this clause 11.3.

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 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 Development Contributions 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 every thing 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 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.

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 amendment of this deed, including in relation to the termination of the Lakeside Planning Agreement in accordance with clause 2.4 of this deed.
- (b) 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.
- (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 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
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application;</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	See Schedule 3
<p>Description of development to which this deed applies – (section 93F(3)(b))</p>	See definition of Development in clause 1.1
<p>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</p>	N/A
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is excluded in respect of the Development.
<p>Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))</p>	The Development Contributions to be provided by the Developer under this deed must not be taken into consideration in determining a contribution under section 94.
<p>Mechanism for Dispute Resolution – (section 93F(3)(f))</p>	See clause 8
<p>Enforcement of this deed – (section 93F(3)(g))</p>	See clause 6
<p>No obligation to grant consent or exercise functions – (section 93F(10))</p>	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H 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)	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)	Yes (see clause 3(a) of Schedule 4)

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary
Address: Department of Planning and Environment
23-33 Bridge Street
Sydney NSW 2000
Facsimile No: (02) 9228 6455

Developer

SH Camden Valley Pty Limited

Contact: Company Secretary
Address: Sekisui House Australia
Ground Floor, 68 Waterloo Road
Macquarie Park NSW 2113
Facsimile No: (02) 8817 4801
Email: Craig.DCosta@sekisuihouse.com.au

SH Camden Lakeside Pty Limited

Contact: Company Secretary
Address: Sekisui House Australia
Ground Floor, 68 Waterloo Road
Macquarie Park NSW 2113
Facsimile No: (02) 8817 4801
Email: Craig.DCosta@sekisuihouse.com.au

Schedule 3**Land (clause 1.1)**

Lot	Deposited Plan	Landowner
50	1175424	SH Camden Valley Pty Ltd
101	1206855	Lakeside Developer
1201	1187381	Lakeside Developer
1203	1187381	SH Camden Valley Pty Ltd

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) For the purposes of this Schedule, Net Developable Area means the net developable area of a part of the Land as defined and determined in accordance with Schedule 6.
- (b) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Cash contribution towards designated State public infrastructure	\$158,244.00 per hectare of Net Developable Area for any part of the Land to which each Subdivision Certificate application relates calculated in accordance with clause 2 of this Schedule 4	Pursuant to clause 3 of this Schedule 4

- (c) The Minister and Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

2. Calculation of the value of a Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$158,244.00$$

"N" means the number of hectares comprised in the Net Developable Area of the part of Land to which a Subdivision Certificate application relates.

- (b) Each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) Subject to the grant of a Development Consent for the Development, the Developer must pay to the Minister or the Minister's nominee each Contribution Amount prior to the issue of the relevant Subdivision Certificate for the Development.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Subdivision Certificate for the Development within the meaning of section 109J(1)(c1) of the Act.

Schedule 5

Security terms (clause 6)

1. Bank Guarantee

- (a) At the time the Developer signs this deed, the Developer undertakes to provide a Bank Guarantee to the Minister, having a face value amount of \$20,000 (**Bank Guarantee Amount**) in order to secure the payment of the Development Contribution.
- (b) The Bank Guarantee 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.
- (c) From the Commencement Date until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Bank Guarantee.

2. Claims under Bank Guarantee

- (a) The Minister may:
 - (i) call upon the Bank Guarantee where the Developer has failed to pay a Contribution Amount on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call on the Bank Guarantee.
- (c) Subject to clause 2(d) below, if:
 - (i) the Minister calls upon the Bank Guarantee; and
 - (ii) applies all or part of such monies towards the Contribution Amount 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 Bank Guarantee in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Bank Guarantee (**Replacement Guarantee**) to ensure that at all times until the date that the Bank Guarantee is released in accordance with clause 3 of this Schedule, the Minister is in possession of a Bank Guarantee for a face value equivalent to the Bank Guarantee Amount.
- (d) The Developer will not be required to provide a Replacement Guarantee in accordance with clause 2(c) above if:
 - (i) the Development Contribution to be secured by the Replacement Guarantee comprises the final Contribution Amount required to be paid under this deed (**Final Amount**);

- (ii) the Minister is satisfied that any amount remaining on the Bank Guarantee is more than the:
 - (A) Final Amount; and
 - (B) any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.

3. Release of Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

Schedule 6

Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. The net developable area of a part of the Land (*the net developable area for the proposed subdivision*) is the area of land, in hectares, shown on the proposed plan of subdivision (that is, the area to which the relevant application for a subdivision certificate for that part of the Land relates), subject to the other provisions of this Schedule 6.
2. The net developable area does not include the area of any land that the proposed subdivision reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school,
 - (b) TAFE establishment,
 - (c) emergency services facility,
 - (d) health services facility owned or operated by a public authority,
 - (e) golf course,
 - (f) passenger transport facility,
 - (g) place of public worship,
 - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*),
 - (i) drainage reserve (within the meaning of the *Local Government Act 1993*),
 - (j) public utility undertaking,
 - (k) bus depot,
 - (l) recreation area,
 - (m) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*),
 - (n) roads whether public or private,
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area for the proposed subdivision:
 - (a) 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,
 - (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act,
 - (c) any area of land that is within Zone E2 Environmental Conservation,
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
 - (e) any area of land this is within an asset protection zone:

- (i) that is specified in a bush fire safety authority issued under the Rural Fires Act 1997, or
- (ii) 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,

- (f) 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 that the area is unsuitable for developing for the purposes of the subdivision by virtue of the easement,
 - (g) 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,
 - (h) any area of the Land that is identified as being set aside for environment conservation or drainage and the Secretary is satisfied that it is appropriate to maintain this area as conservation and drainage in association with the subdivision,
 - (i) any area of land that is "community property" as that term is defined under the *Community Land Development Act 1989*.
4. 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.
 5. 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.
 6. 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:
 - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot,
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, or
 7. 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.
 8. 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.

9. 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*):
- (a) emergency services facility,
 - (b) health services facility,
 - (c) passenger transport facility,
 - (d) place of public worship,
 - (e) public utility undertaking,
 - (f) recreation area,
 - (g) school.
10. In this Schedule, a reference to:
- (a) 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
 - (b) 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
 - (c) 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*.

Schedule 7

Deed of Assignment/Novation

PARTIES

Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000 (**Minister**)

and

SH Camden Valley Pty Limited (ACN 137 331 376) (**As Trustee for the SH Camden Valley Unit Trust**) (ABN 46 767 052 801) of G 68 Waterloo Road, Macquarie Park, New South Wales 2113 (**SH Camden Valley**)

and

SH Camden Lakeside Pty Limited (ACN 137 331 394) (**As Trustee for the SH Camden Lakeside Unit Trust**) (ABN 21 048 234 393) of G 68 Waterloo Road, Macquarie Park, New South Wales 2113 (**SH Camden Lakeside**)

and

[InsertnameofNewParty] ACN ## of ## (**Incoming Party**)

Background

- A The Minister and the Assigning Parties are parties to the Planning Agreement. B The Planning Agreement relates to the whole of the Land.
- B The Assigning Parties own the Land and wish to transfer or sell [the whole of] [part or parts of] the Land comprising of Lot [insert Lot number] in DP [insert Deposited Plan number] to the Incoming Party. **[Drafting Note: Delete if the Deed does not relate to an assignment of Land]**

OR

- C The Assigning Parties wish to [assign all] [assign part of] the Assigning Parties' rights and obligations under the Planning Agreement to the Incoming Party. **[Drafting Note: Delete if the Deed relates to assignment of Land or novation]**
- D The Assigning Parties are corporations under the *Corporations Act 2001*.

Operative provisions

1. Definitions and Interpretation

1.1 In this Deed, the following definitions apply:

Assignment means the transfer or sale of the Land **[Drafting Note. Or Transfer Land if only part of the Land is being transferred]** by the Assigning Parties **[Drafting note. Or if only one of the Assigning Parties' are transferring the relevant land then reference to the relevant Assigning Party]**

should be included.] to the Incoming Party and the assignment of associated rights and obligations. [Drafting Note: Delete if the Deed does not relate to an assignment of Land]

OR

Assignment means the assignment of all the Assigning Parties' rights and obligations [Drafting Note. Or specify particular rights and obligations if not all of them are to be assigned] under the Planning Agreement to the Incoming Party in accordance with this Deed. [Drafting Note: Delete if the Deed relates to assignment of Land or novation].

Assigning Parties means SH Camden Valley and SH Camden Lakeside. [Drafting Note. Or if only one of the corporations are transferring/selling land or assigning its rights then corresponding changes need to be made to this clause.]

Claim includes a claim, demand, remedy, suit, injury, damage, Loss, liability, action, proceeding, right of action, of any kind including contingent claims.

Deed means this deed, and includes any schedules, annexures or appendices to this deed.

Effective Date means [Insert date]. [Drafting Note. Insert the date of settlement of the contract for sale of the Land (or relevant part) to the Incoming Party, or the date of assignment of the rights and obligations.]

Land has the meaning given to that term in the Planning Agreement [Drafting Note. Insert this definition only if relevant].

Loss means any loss (including loss of profit and loss of expected profit), cost, charge, expense, outgoing, payment, fee, diminution in value or deficiency of any kind or character which the indemnified party suffers or incurs or is liable of including:

- (a) all interest and other amounts payable by third parties; and
- (b) all legal costs (on a full indemnity basis) and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability and all amounts paid in settlement of any claim or action.

Novation means the novation by the Assigning Parties of the Planning Agreement to the Incoming Party in accordance with this Deed. [Drafting Note: delete if the Deed relates to an assignment]

Party means a party to this Deed.

Planning Agreement means the voluntary planning agreement titled Planning Agreement entered into between the Minister and the Assigning Parties pursuant to s93F of the *Environmental Planning and Assessment Act 1979* dated [insert date].

Transfer Land means the part of the Land being [Insert details] [Drafting Note. Insert this definition only if part of the Land is being transferred/sold].

[Drafting Note. Insert any other relevant definitions as required.]

- 1.2 All other capitalised words used in this Deed have the meanings given to those words in the Planning Agreement. [Drafting Note. Delete if inapplicable]
- 1.3 Clauses 1.2, [Drafting Note. Insert clause numbers for any planning agreement provisions which apply to this Deed] of the Planning Agreement apply as if they form part of this Deed with any necessary changes.

2. Consent to Assignment/Novation [Drafting Note: Delete whichever is inapplicable]

- 2.1 Pursuant to clause ## of the Planning Agreement, the Minister consents to the Assignment/Novation [Drafting Note: Delete whichever is applicable. Also delete this clause if the Planning Agreement does not require the consent of the Minister to the Assignment/Novation]

3. Assignment/Novation [Drafting Note: Delete whichever is inapplicable]

- 3.1 With effect on and from the Effective Date:

3.1.1 the Incoming Party is substituted for the Assigning Parties as a party to the Planning Agreement [Drafting Note: Delete if Deed relates to an assignment]; and

OR

3.1.2 the Assigning Parties assign to the Incoming Party absolutely all of the Assigning Parties' rights and obligations under the Planning Agreement [Drafting Note 1. Or specify particular rights and obligations if not all of them are to be assigned or specify what rights and obligations are assigned with the transfer of the Land; Drafting Note 2. Delete this text if the Deed relates to a novation]; and

AND

3.1.3 the Incoming Party accepts the Assignment/Novation [Drafting Note: Delete whichever is applicable]; and

3.1.4 the Incoming Party is to comply with the provisions of the Planning Agreement binding upon the Incoming Party.

4. Effect of Assignment/Novation [Drafting Note: Delete whichever is inapplicable]

- 4.1 The Incoming Party is bound by the Planning Agreement on and from the Effective Date as if the Incoming Party had originally been a party to the Planning Agreement instead of the Assigning Parties including obligations which have arisen before the Effective Date, and all references in the Planning Agreement to the Assigning Parties in any capacity must be read and construed as if they were references to the Incoming Party. [Drafting Note: Delete if Deed relates to an assignment]

OR

- 4.2 The Incoming Party is bound by the rights and obligations assigned to it by the Assigning Parties on and from the Effective Date. [Drafting Note: Delete this text if the Deed relates to a novation]

5. Indemnities

- 5.1 The Assigning Parties indemnify the Incoming Party against all Claims which the Incoming Party suffers or incurs in relation to the Planning Agreement which arise or relate to acts or omissions of the Assigning Parties occurring before the Effective Date [Drafting Note: This clause will need to change if not all rights and obligations are assigned].
- 5.2 The Incoming Party indemnifies the Assigning Parties against all Claims which the Incoming Party suffers or incurs in relation to the Planning Agreement which arise or relate to acts or omissions of the Incoming Party occurring on or after the Effective Date.

6. Release

- 6.1 On and from the Effective Date, the Minister and the Assigning Parties release each other in relation to their respective obligations under the Planning Agreement and all Claims that the parties may have or have had against each other under or in respect of the Planning Agreement except in relation to any breaches by the Assigning Parties prior to the Assignment/Novation of the Planning Agreement. **[Drafting Note: This clause will need to be modified if not all rights and obligations are assigned and the Assigning Parties retain obligations under the Planning Agreement].**

7. Affirmation of the Planning Agreement

- 7.1 The Planning Agreement is to be read and construed subject to this Deed, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation/assignment **[Drafting Note. Delete whichever is inapplicable]** contained in this Deed, the Planning Agreement will continue in full force and effect.

8. Address for notices

- 8.1 On and from the Effective Date, all notices and communications which are to be given or made by the Minister to the Incoming Party under the Planning Agreement are to be given or made to the following:

Incoming Party: [Insert details]

Address: [Insert details]

Fax: [Insert details]

Contact Person: [Insert details]

Email: [Insert details]

9. Warranties and Representations

- 9.1 Each Party represents and warrants that at the time of execution of this Deed, and at the Effective Date:
- 9.1.1 it has capacity unconditionally to execute, deliver and comply with its obligations under this Deed;
 - 9.1.2 it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this Deed;
 - 9.1.3 this Deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
 - 9.1.4 its unconditional execution and delivery of, and compliance with its obligations under this Deed do not contravene:
 - (a) any law or directive from a government entity;
 - (b) its constituent documents;
 - (c) any agreement or instrument to which it is a party; or
 - (d) any obligation of it to any other person.

9.2 The warranties and representations in clause 9.1 survive the execution of this Deed and the Assignment/Novation. [Drafting Note: Delete whichever is applicable]

10. Security under the Planning Agreement

10.1 On the Effective Date, the Minister is to return to the Assigning Parties any Security held by the Minister under the Planning Agreement, provided that a replacement Security, on the same terms as required under clause 6 of the Planning Agreement, is provided to the Minister by the Incoming Party. [Drafting Note. Delete if not relevant]

11. Costs

11.1 The Assigning Parties and the Incoming Party are to:

11.1.1 bear their own costs, and

11.1.2 each reimburse 50% of the Minister's reasonable costs,

of preparing, negotiating and executing this Deed. [Drafting Note. This clause may change depending on the arrangements between of the Assigning and Incoming Party.]

12. Stamp duty

12.1 The Incoming Party is to pay all stamp, transaction, registration, financial institution, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by this Deed.

13. Governing law

13.1 This Deed is governed by the law in force in New South Wales and the Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.

14. Counterparts

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

15. GST

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

Execution page

Executed as a Deed

Dated:

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

.....
Signature of Witness

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

.....
Name of Witness (in full)

.....
Address of Witness

Executed on behalf of SH Camden Valley Pty Limited (As Trustee for the SH Camden Valley Unit Trust) in accordance with s127(1) of the Corporations Act 2001 (Cth)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Executed on behalf of SH Camden Lakeside Pty Limited (As Trustee for the SH Camden Lakeside Unit Trust) in accordance with s127(1) of the Corporations Act 2001 (Cth)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Executed on behalf the Incoming Party
in accordance with s127(1) of the Corporations Act
2001 (Cth)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

Execution page

Executed as a deed

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

.....
Signature of witness

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

.....
Name of witness in full

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

.....
Address of witness

Executed by SH Camden Lakeside Pty Limited (ACN 137 331 394) as trustee for the SH Camden Lakeside Unit Trust (ABN 21 048 234 393) in accordance with section 127 of the Corporations Act:



.....
Signature of Director

Toru Abe

.....
Name of Director

Executed by SH Camden Valley Pty Limited (ACN 137 331 376) as trustee for the SH Camden Valley Unit Trust (ABN 46 767 052 801) in accordance with section 127 of the Corporations Act:



.....
Signature of Director

Toru Abe

.....
Name of Director



.....
Signature of Director/Secretary

Kohji Fukano

.....
Name of Director/Secretary



.....
Signature of Director/Secretary

Kohji Fukano

.....
Name of Director/Secretary