
Minister for Planning and Public Spaces

Roads and Maritime Services

Kingshill Development No 1 Pty Ltd

Kingshill Development No 2 Pty Ltd

Planning Agreement

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Date

25 October 2019

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Parties

Minister for Planning and Public Spaces ABN 20 770 707 468 of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

and

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation incorporated under the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point NSW 2061 (**RMS**)

and

Kingshill Development No 1 Pty Ltd ACN 158 129 652 of Suite 605, 321 Pitt Street, Sydney NSW 2000

Kingshill Development No 2 Pty Ltd ACN 158 127 041 of Suite 605, 321 Pitt Street, Sydney NSW 2000

(together, the **Developer**)

Background

- A The Developer owns the Land which, apart from Lot 31 in Deposited Plan 1185385 at Ferodale, New South Wales, is located within the Kings Hill Urban Release Area.
- B The Developer proposes to carry out the Development on the Land.
- C Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent for certain land subdivision in an Urban Release Area unless the Secretary has issued a Satisfactory Arrangements Certificate regarding the provision of Designated State Public Infrastructure.
- D The Developer has offered to enter into this deed with the Minister and RMS to provide Development Contributions to:
 - (a) facilitate the development of the Kings Hill Urban Release Area; and
 - (b) enable the Secretary to provide the certification required under the LEP for the Development,subject to the terms of this deed.
- E The Developer acknowledges that it will be able to obtain:
 - (a) Construction Certificates and Subdivision Certificates for Development Units up to and including the Initial Development Cap in the



Development, with access only off Newline Road, following entry into this deed and subject to the terms of this deed; and

- (b) for the subdivision of any part of the Land which would result in the Initial Development Cap being exceeded:
 - (i) Construction Certificates for residential building works on any proposed residential lot on the Land, from the date that is 9 months prior to any scheduled date of practical completion of the Road Works as notified by RMS in accordance with this deed, and subject to provision of a satisfactory Construction Management Plan to RMS; and
 - (ii) Subdivision Certificates, upon confirmation by RMS of the opening of the Interchange to traffic,

subject to the terms of this deed.

Agreed terms

1 Definitions

In this document these terms have the following meanings:

Act	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Approval	Any consent, approval, authorisation, determination, licence, registration, order, permission or concurrence required by Law, including those under the deed, and includes a Development Consent.
Authority	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	<p>An irrevocable and unconditional undertaking:</p> <ul style="list-style-type: none">(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, <p>to pay the face value of that undertaking (being such amount as is required under this deed) on demand.</p>
Base CPI	In relation to any amount which is to be indexed under this deed, the CPI Number for the quarter ending 31 March

	immediately before the date of this deed.
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Claim	Any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, including any claim for compensation arising under the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Complying Development Certificate	Has the meaning given to that expression in the Act.
Concept Access Road Plan	The plan attached at Annexure G .
Consent Authority	Has the meaning given to that expression in the Act.
Construction Agreement	An agreement substantially in the form of that attached at Annexure E .
Construction Area	The area indicatively shown in the plan attached to the Construction Agreement.
Construction Certificate	Has the meaning given to that expression in the Act and includes, where applicable, a Subdivision Works Certificate.
Contamination	Has the meaning given to that expression in the <i>Contaminated Land Management Act 1997</i> (NSW).
Contribution Amount	An amount calculated in accordance with clause 2.3 of Schedule 2 .
CoRD Holder Consent	An electronic document lodged through Property Exchange Australia Ltd or another ELNO to provide consent of the party with control of the right to deal with a land title, to the Registration of instruments, dealings and plans with respect to that land title.
Costs	Includes any liability, loss, cost, fee, charge, expense, tax, rate, charge, fine, penalty or debt including those incurred in connection with advisors and any compensation payable to any person in accordance with the Law.
CPI Adjustment Date	1 July immediately after the date on which this deed is executed by all parties and each anniversary of 1 July thereafter.
CPI Number	The Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the parties agree, acting reasonably, will apply.

Current CPI	The CPI Number for the quarter ending immediately before 1 March in the relevant adjustment year.
Dealing	In relation to the Land, means sell, transfer, assign or dispose of the Land, in whole or in part, but excludes the entry by the Developer into a contract for the sale of a Development Unit or a Dwelling (including a contract for an "off the plan" sale) and any transfer or dedication of land to an Authority.
Department	The NSW Department of Planning, Industry and Environment.
Designated State Public Infrastructure	Has the meaning given to that expression in the LEP.
Development	The development of the Land (apart from Lot 31 in Deposited Plan 1185385) for predominantly residential purposes and, at the date of this deed, includes the subdivision of the Land (apart from Lot 31 in Deposited Plan 1185385) into Urban Lots to enable the erection of a maximum of 2,300 Dwellings on the Land, an indicative plan for which is attached at Annexure A .
Development Application and Development Consent	Have the meanings given to those expressions in the Act.
Development Contribution	The development contributions to be provided by the Developer in accordance with Schedule 2 .
Development Unit	Means either: (a) an Urban Lot; or (b) for any Urban Lot which has more than one Dwelling, each additional Dwelling on that Urban Lot.
Disclosure Statement	The disclosure statement agreed by the Department for the purposes of clause 14.4 following good faith negotiations with the Developer, as revised from time to time in accordance with clause 14.4 .
Drainage Channel Land	That part of the Land to be transferred and associated easement(s) to be granted by the Developer under this deed for the purpose of a drainage channel, as determined in accordance with this deed and subject to an options analysis and environmental assessment, and as indicatively shown in the Road Works and Drainage Channel Land Plan.
Drainage Channel	The transfer of the Drainage Channel Land by the Developer to the Minister (or the Nominated Transferee) in

Land Contribution	accordance with Schedule 2 and subject to the terms of this deed.
Drainage Channel Works	The proposed design and construction by the Relevant Authority of a drainage channel and ancillary works, including, without limitation, investigation works required to inform the design and environmental assessment (such as geotechnical investigations, environmental studies and monitoring and surveys), modifications to existing drainage culverts and other drainage infrastructure and the relocation of public utilities, in order to provide drainage diversion works associated with the development of the Kings Hill Urban Release Area, subject to Planning Approval and funding approval, including any Restart NSW Funding Approval.
Dwelling	Has the meaning given to that expression in the Standard LEP.
Eastern Catchment	The land within the Kings Hill Urban Release Area which lies east of the blue line shown on the plan of the Kings Hill Urban Release Area in Annexure F .
Eastern Catchment Development Contribution Rate	The amount determined in accordance with clause 2.1(e) of Schedule 2 .
Eastern Catchment Infrastructure Contribution	The Drainage Channel Works.
Eastern Catchment Infrastructure Value	The estimated cost of delivering the Drainage Channel Works, as amended in accordance with this deed. As at the date of this deed, the estimated cost is \$25,000,000 (inclusive of GST).
Education Land	The area within the Land proposed for use as a School, which will comprise one of the areas as indicatively shown on the plan at Annexure B , as determined in accordance with Schedule 2 .
Education Land Contribution	The transfer of the Education Land by the Developer to the Minister (or the Nominated Transferee) in accordance with Schedule 2 .
ELNO	Has the meaning given to that expression in the <i>Electronic Conveyancing National Law</i> (NSW).
Explanatory Note	The explanatory note included at Schedule 4 of this deed.
GST	Has the meaning given to that expression in the GST Law.
GST Act	<i>A New Tax System (Goods and Services Tax) Act 1999</i>

	(Cth)
GST Law	Has the same meaning given to that expression in the GST Act or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.
Initial Development Cap	250 Development Units.
Intellectual Property	Any plans, drawings, designs, reports, documents or other material prepared or issued in connection with the Road Works and Drainage Channel Works or otherwise necessary to complete the Road Works and the Drainage Channel Works.
Interchange	The proposed design and construction of an above-grade interchange, including on and off ramp connections to the surrounding road network, providing access from the Pacific Highway to the Kings Hill Urban Release Area as generally described in the Draft Review of Environmental Factors, prepared by Arcadis Australia Pacific Pty Limited for RMS and dated 30 October 2017.
Kings Hill Urban Release Area	The Urban Release Area identified as "Kings Hill" on the Precinct Areas Map in the LEP.
Land	Lot 41 in Deposited Plan 1037411 and Lot 4821 in Deposited Plan 852073 at Kings Hill, New South Wales and Lot 31 in Deposited Plan 1185385 at Ferodale, New South Wales.
Land Contribution	A Development Contribution item comprising land which is required to be dedicated or transferred by the Developer under this deed.
Law	Any statute, regulation, rule, proclamation, order, ordinance or by law, whether present or future and whether Commonwealth, State, territorial or local, and the common law.
LEP	The Port Stephens Local Environmental Plan 2013.
LRS	NSW Land Registry Services.
Monetary Contribution	The monetary payment required to be made by the Developer under Schedule 2 towards Designated State Public Infrastructure.
Nominated Transferee	In respect of each Land Contribution, the Authority or person nominated by the Minister to whom the Land Contribution is to be dedicated or transferred under this deed.

Novation Deed	The deed attached as Annexure D .
Offset Credits	The value, as specified in clause 1.1 of Schedule 2 , of any Development Contribution item which the Developer has delivered in accordance with this deed, which has not been applied to discharge the Developer's obligation to provide the Monetary Contribution.
Offset Credits Schedule	A schedule issued by the Minister under clause 6 of Schedule 2 , identifying the value of any Offset Credits at the time at which the schedule is issued.
Personnel	In relation to a person, means that person's employees, agents, officers, contractors, suppliers and consultants.
Plan of Subdivision	A plan of subdivision as defined in section 195 of the <i>Conveyancing Act 1919</i> and includes, where applicable, a Strata Plan and a Strata Plan of Subdivision.
Planning Approval	A Development Consent or a determination under Part 5 of the Act and any approval which may be required under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth).
Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW). Registration and Registrable have corresponding meanings.
Regulation	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
Relevant Authority	Any Authority that may become responsible for the carrying out and completion of the Drainage Channel Works, which may, having regard to clause 10.3 , be RMS, Port Stephens Council or such other Authority as may be identified by RMS and the Minister to be the Authority responsible for the carrying out and completion of the Drainage Channel Works.
Remediation	Has the meaning given to that expression in the <i>Contaminated Land Management Act 1997</i> (NSW). Remediate has a corresponding meaning.
Residential Accommodation	Has the meaning given to that expression in the Standard LEP.
Restart NSW Funding Approval	The completion of all assessment and recommendation processes and the granting of all approvals under the <i>Restart NSW Fund Act 2011</i> (NSW) to enable the payment of money from the Restart NSW Fund towards the Road Works and the Drainage Channel Works.
Road Works	The proposed design and construction by RMS of the Interchange, and any associated investigations, ancillary road works and relocation of public utilities as required to

facilitate construction of the Interchange, subject to Planning Approval and funding approval, including any Restart NSW Funding Approval.

Road Works and Drainage Channel Land Plan	The plan at Annexure C .
Road Works Land	That part of the Land to be transferred and associated easement(s) to be granted by the Developer under this deed for road purposes, as determined in accordance with this deed, specifically to allow construction and operation of the Interchange, and as indicatively shown on the Road Works and Drainage Channel Land Plan.
Road Works Land Contribution	The transfer of the Road Works Land by the Developer to the Minister (or the Nominated Transferee) in accordance with Schedule 2 .
Satisfactory Arrangements Certificate	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.
School	Has the meaning given to that expression in the LEP.
School Site Selection Criteria	The criteria specified in Schedule 5 .
Secretary	The Secretary of the Department or any replacement position carrying out the same or similar role.
Service Lot	<p>A registered lot that is created for one or more of the following purposes:</p> <ul style="list-style-type: none"> (a) to be dedicated or otherwise transferred to an Authority; (b) any public utility undertaking (within the meaning of the Standard LEP); (c) roads, open space, recreation, environmental conservation, water cycle management or riparian land management; (d) for avoidance of doubt - association property within the meaning of the <i>Community Land Development Act 1989</i> (NSW) that is to be used for any one or more of the purposes set out in (c) above.
SIC Determination	A Special Infrastructure Contribution Determination made by the Minister under section 7.23 of the Act, including any variation to that Determination.
Site Audit Statement	Has the meaning given to that expression in the <i>Contaminated Land Management Act 1997</i> (NSW) and, for

	the purpose of this deed, must be unconditional or on conditions which are satisfactory to the Minister, acting reasonably.
Special Infrastructure Contribution	A development contribution determined by the Minister in accordance with section 7.24 of the Act.
Standard LEP	The Standard Instrument Principal Local Environmental Plan.
Strata Certificate	Has the meaning given to that expression in the <i>Strata Schemes Development Act 2015</i> (NSW).
Strata Plan and Strata Plan of Subdivision	Have the meanings given to those expressions in the <i>Strata Schemes Development Act 2015</i> (NSW).
Subdivision Certificate	Has the meaning given to that expression in the Act and includes, where applicable, a Strata Certificate.
Subdivision Works Certificate	Has the meaning given to that expression in the Act.
Transfer Notice	Has the meaning given in clause 5.2 of Schedule 2 .
Unit Factor	For a particular area of land, means the number of Development Units in that area.
URA Development Contribution Rate	The amount determined from time to time in accordance with clause 2.1(d) of Schedule 2 .
URA Infrastructure Contribution	The Road Works and the Education Land.
URA Infrastructure Value	The estimated cost of delivering the Road Works and the Education Land, as amended in accordance with this deed. As at the date of this deed, the estimated cost is \$56,620,000 (inclusive of GST).
Urban Lot	<p>A lot within the Land which is created for separate residential occupation and disposition and which is:</p> <ul style="list-style-type: none"> (a) not a Service Lot or a lot of a kind created for a purpose that is otherwise agreed by the Minister and the Developer; (b) not intended to be dedicated or otherwise transferred to the Minister, RMS or the Nominated Transferee; (c) created by the registration of a Plan of Subdivision; (d) not intended to be further subdivided (including to create a strata or community lot); and

- (e) not a lot on which a dwelling house is situated that was in existence at the date of this deed.

Urban Release Area Has the meaning given in the LEP.

2 Operation and application of this deed

2.1 Operation

This deed will operate only if:

- (a) it is signed by all parties; and
- (b) a Development Consent has been granted for the Development.

2.2 Planning agreement under the Act

This deed is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act.

2.3 Application

This deed applies to the Land and 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 is excluded to the extent stated in **Schedule 1**.

4 Development Contributions

4.1 Developer to provide Development Contributions

The Developer agrees to provide, or procure the provision of, the Development Contributions to the Minister or the Nominated Transferee in accordance with **Schedule 2**.

4.2 Acknowledgement

The Developer acknowledges and agrees that:

- (a) neither the Minister nor RMS have any obligation to use or expend, or to require the Nominated Transferee or the Relevant Authority to use or expend, the Development Contribution for any particular purpose (such as the Road Works or the Drainage Channel Works);
- (b) neither the Minister nor RMS have any obligation to repay or provide any compensation or payment for the Development Contribution, except as provided for in this deed; and

- (c) neither the Minister nor RMS have made any representation or warranty that, if any part of the Development Contribution is transferred or provided to another Authority, the Development Contribution will or must be used for any particular purpose by that or any other Authority.

5 Interest for late provision of Monetary Contribution

- (a) If the Developer is required to pay a portion of the Monetary Contribution under this deed and fails to do so on the due date for provision of that portion of the Monetary Contribution, the Developer must also pay to the Minister interest on the overdue amount at a rate 2% above the overdraft index rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for provision of those amounts until those 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 obligation to provide the Development Contribution under this deed by:

- (a) agreeing to restrictions on the issue of Subdivision Certificates under **clause 7**;
- (b) Registering this deed on title to the Land in accordance with **clause 9**; and
- (c) providing security in accordance with **Schedule 3**.

7 Restrictions on issue of Development Consents, Construction Certificates and Subdivision Certificates

- (a) The parties acknowledge that the Developer may apply for Construction Certificates and Subdivision Certificates for the subdivision of Land to effect the erection of Dwellings and creation of Urban Lots in the Development up to the Initial Development Cap, with access only off Newline Road, following entry into this deed and subject to the terms of this deed.
- (b) In relation to the subdivision of any part of the Land which would result in the Initial Development Cap being exceeded, the Developer must not apply for:
 - (i) any Construction Certificate for residential building works on any proposed residential lot on the Land, until the date that is 9 months

prior to any scheduled date for practical completion of the Road Works as notified by RMS, subject to provision by the Developer of a Construction Management Plan that is satisfactory to RMS, in its absolute discretion, having regard to the Road Works, the Drainage Channel Works, and any other works being carried out by RMS or the Relevant Authority in the vicinity of the Development; and

- (ii) any Subdivision Certificate, until RMS has provided written notification to the Developer confirming the opening of the Interchange to traffic.
- (c) **Clause 7(b)** does not apply to any preliminary site preparation works (including clearing and harvesting timber, earthworks, stormwater management works, haul roads and infrastructure delivery works).
- (d) RMS must notify the Developer at least 1 month, and no more than 2 months, before the date on which RMS, acting reasonably, anticipates that the Interchange will be opened to traffic.
- (e) RMS must notify the Developer as soon as reasonably practicable following the opening of the Interchange to traffic.
- (f) The Developer must specify in any application for a Subdivision Certificate the number of Development Units which the Developer anticipates, having regard to the Plan of the Development attached at **Annexure A**, will be developed following Registration of the relevant Plan of Subdivision.
- (g) The restrictions on the issue of Development Consents, Construction Certificates and Subdivision Certificates under **clause 7(b)** may be varied, but only with written consent of the Developer, the Minister and RMS.
- (h) The parties agree that:
 - (i) **clause 7(b)(i)** provides a restriction on the issue of a Construction Certificate within the meaning of sections 6.8 and 6.14 of the Act (or, if still in force as at the date of issue of the relevant Construction Certificate, section 109F of the Act prior to its amendment on 1 March 2018); and
 - (ii) **clause 7(b)(ii)** provides a restriction on the issue of a Subdivision Certificate within the meaning of section 6.15 of the Act (or, if still in force as at the date of issue of the relevant Subdivision Certificate, section 109J of the Act prior to its amendment on 1 March 2018).

8 Access roads and infrastructure delivery

- (a) The Developer acknowledges and agrees that:

- (i) RMS is under no obligation to deliver the Road Works or the Drainage Channel Works, nor is RMS or the Minister required to spend any contributions collected under this deed towards these items of infrastructure, as any delivery of these items will be funded by a different funding source; and
- (ii) subject to **clause 8(b)**, no later than 12 months prior to the anticipated date of practical completion for the Road Works as notified by RMS on entry into this deed (or such later date as the parties may agree in writing), the Developer must provide evidence satisfactory to RMS, acting reasonably, that it has:
 - (A) to the satisfaction of the relevant roads authority under an appropriate arrangement with that authority, dedicated or transferred land for the purpose of a public road to the relevant roads authority under the *Roads Act 1993* (NSW) to enable the future construction of a public road running east-west from the Interchange with suitable access to Newline Road, generally in accordance with the Concept Access Road Plan, unless otherwise agreed with the relevant roads authority;
 - (B) to the satisfaction of the relevant roads authority under an appropriate arrangement with that authority, dedicated or transferred land for the purpose of a public road to the relevant roads authority under the *Roads Act 1993* (NSW) to enable the future construction of a public road running north-south from the Interchange up to the southern boundary of Lot 481 in DP804971 – being the land currently owned by Gwynvill Trading Pty Limited (**Gwynvill**), generally in accordance with the Concept Access Road Plan, unless otherwise agreed with the relevant roads authority;
 - (C) dedicated or transferred land for the purpose of a public road to the relevant roads authority under the *Roads Act 1993* (NSW) to enable the future construction of a public road running generally north-south through Lot 4821 in DP852073 up to the southern boundary of Lot 4822 in DP852073 – being the land currently owned by Gwynvill, subject to appropriate arrangements being made with Gwynvill for the location of that land,for the purpose of allowing owners of the current land holdings adjoining the Land within the Kings Hill Urban Release Area to access the Interchange; and
- (iii) subject to **clause 8(b)** and immediately prior to the opening of the Interchange, to the satisfaction of the relevant roads authority, procured the closure of all accesses to the Pacific Highway from Lot 42 in DP1037411, being the land currently owned by Riding for

the Disabled Association NSW, and made provision for alternative access for this lot owner to the Interchange.

- (b) The Developer may propose alternative arrangements to those described in **clause 8(a)(ii)** for RMS and the Minister's consideration. Any such alternative arrangements must provide satisfactory arrangements for the dedication or transfer of land for the purpose of a public road to provide access to the Interchange as determined by RMS and the Minister and must be agreed in writing by both RMS and the Minister.

9 Registration

9.1 Warranty

The Developer represents and warrants that for each part of the Land, one of the Developers is:

- (a) the registered proprietor of the Land; and
- (b) legally and beneficially entitled to obtain all Approvals and to compel any person referred to or contemplated by **clause 9.2(a)(i)** to assist, cooperate and otherwise do all things necessary for the Developer to comply with its obligations under this **clause 9**.

9.2 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister and RMS, the Developer must, at its Cost, take all practical steps and otherwise do anything necessary to procure:
 - (i) the consent of each person who has:
 - (A) a Registered estate or interest in the Land; or
 - (B) 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;
 - (ii) the execution of any documents required to enable Registration of this deed on title to the Land;
 - (iii) the production of the certificates of title (or electronic lodgement of CoRD Holder Consent) for the Land; and
 - (iv) the lodgement of this deed for Registration on the relevant folios of the Register for the Land.
- (b) The Developer must, at its Cost, take all practical steps and otherwise do anything necessary to procure Registration of this deed on the relevant folios of the Register for the Land as soon as practicable after lodging this deed for Registration.

9.3 Evidence of Registration

The Developer must provide the Minister and RMS with:

- (a) evidence of the lodgement of this deed under **clause 9.2(a)(iv)** within 10 Business Days of such lodgement at LRS; and
- (b) a copy of the relevant folios of the Register and a copy of all Registered dealings for the Land within 10 Business Days of Registration of this deed.

9.4 Right to lodge caveat

- (a) Subject to **clause 9.4(b)**, until such time as this deed is Registered on the title of the Land in accordance with **clause 9.2**, 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 9.4(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 9.2**.
- (c) If, after 10 Business Days, the Developer has failed or has been unable to achieve the registration of this deed in accordance with **clause 9.2**, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under **clause 9.4(a)** to lodge and withdraw a caveat(s) (as applicable).

9.5 Release and discharge of deed

- (a) Following the Developer's satisfaction of its obligations under this deed, the Minister will do all things reasonably required by the Developer to have this deed released and removed from the relevant folio(s) of the Register for the Land.
- (b) From time to time, the Developer may request that the Minister facilitate the progressive release and removal of this deed from the relevant folio(s) of the Register for any part of the Land (except any part of the Land on which a Land Contribution is located) for which at the date of the request either:
 - (i) a Subdivision Certificate has been issued; or
 - (ii) an application for a Subdivision Certificate has been lodged by the Developer.
- (c) Within 30 Business Days of receipt of a request from the Developer under **clause 9.5(b)** (or any longer period reasonably required by the Minister where the Minister, acting reasonably, has requested further information from the Developer relating to the Developer's request and

the Developer has not provided that information), the Minister must facilitate the release and removal of this deed from the relevant folio(s) of the Register for the part(s) of the Land forming the subject of the request, subject to the Developer satisfying the Minister that it:

- (i) has fulfilled its Development Contribution obligations in accordance with **Schedule 2** insofar as they relate to the part(s) of the Land forming the subject of the request, whether by means of the payment of a Monetary Contribution or the surrender of Offset Credits;
 - (ii) is not otherwise in material default of any of its obligations under this deed.
- (d) The Minister agrees to facilitate the release and removal of this deed from the relevant folio(s) of the Register for any part of Lot 31 in Deposited Plan 1185385 which the Developer owns at that time either:
- (i) to enable the Developer to transfer or dedicate that part of the Land free of encumbrances, in accordance with this deed; or
 - (ii) following delivery of the Road Works Land Contribution and the Drainage Channel Land Contribution.

10 Works

10.1 Intellectual Property

The Developer hereby grants to the Minister and RMS a freely assignable licence to use and sub-licence to the Relevant Authority the use of any Intellectual Property, sufficient to enable the carrying out and completion and use of the Road Works and the Drainage Channel Works by RMS and the Relevant Authority respectively.

10.2 Construction licence or lease

- (a) Within 20 Business Days after RMS confirms:
- (i) receipt of funding approval; and
 - (ii) satisfactory determination of the Review of Environmental Factors, for each of the Road Works and the Drainage Channel Works (as applicable) or such later time as may be agreed in writing by RMS, the Developer must enter into a licence or lease, as determined by RMS, in respect of the Road Works or the Drainage Channel Works (as applicable) on substantially the terms of the Construction Agreement.
- (b) The lease or licence will commence on execution by the Developer and RMS and continue until such time as the:
- (i) Road Works Land is transferred to the Minister (or the Nominated Transferee) by the Developer or compulsorily acquired by the Minister (or the Nominated Transferee); and

- (ii) if applicable, the Drainage Channel Land is transferred to the Minister (or the Nominated Transferee) by the Developer or compulsorily acquired by the Minister (or the Nominated Transferee),

in accordance with this deed.

- (c) The Developer must grant to RMS and its Personnel exclusive access to use and occupy the Construction Area, for the purposes of conducting surveys and investigations and carrying out the Road Works and, if applicable, the Drainage Channel Works.
- (d) The Developer must ensure that no land is sold and that no Dwellings or any other structures are constructed or authorised to be constructed within the Construction Area for the term of the lease or licence.
- (e) If any part of the land comprising the Construction Area is sold to a third party and either the Road Works or the Drainage Channel Works have not yet been completed, then the Developer must procure entry into the same lease or licence, as required by RMS from that third party to secure continued access, use and occupation for RMS to that part of the Construction Area which is required by RMS to carry out and complete the Road Works and to facilitate the carrying out and completion of the Drainage Channel Works (as the case may be), in accordance with the terms of the lease or licence entered into under this **clause 10.2**.
- (f) RMS must (and must ensure that its Personnel must) at all times when accessing the Construction Area:
 - (i) comply with all relevant Laws and Approvals;
 - (ii) obtain and maintain appropriate levels of insurance; and
 - (iii) take all reasonable steps to prevent damage to any property or harm or nuisance to any persons in or near the Construction Area.

10.3 Best endeavours

- (a) The Developer acknowledges that RMS is not the infrastructure provider for a drainage channel that is not associated with road works and that the Relevant Authority for the Drainage Channel Works must be identified by RMS and the Minister having regard to RMS' statutory powers and functions and those of other Authorities who may deliver the Drainage Channel Works.
- (b) Despite **clause 10.3(a)**, but subject to **clause 10.3(c)**:
 - (i) RMS agrees to use best endeavours to liaise with the Relevant Authority and assist in project managing delivery of the Drainage Channel Works on behalf of the Relevant Authority; and
 - (ii) RMS agrees to use best endeavours to facilitate the construction of the Drainage Channel Works for completion as near as practicable with the Road Works.

- (c) **Clause 10.3(b)** is subject to all necessary Approvals being obtained, including funding approvals and satisfactory determination of the Review of Environmental Factors, for the Road Works and the Drainage Channel Works.

11 Dispute Resolution

11.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 11**.

11.2 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 and requiring the dispute be addressed in accordance with this **clause 11**.

11.3 Attempt to resolve

On receipt of a notice under **clause 11.2**, the parties to dispute must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

11.4 Mediation

If the parties to the dispute do not agree within 20 Business Days of receipt of a notice under **clause 11.2** (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 material steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

then, subject to **clause 11.5**, the parties to the dispute must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The parties to the dispute must, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 11.2** (or any other period agreed in writing by the parties) then any party to the dispute which has complied with the provisions of this **clause 11** may, by written notice to the other party or parties to the dispute, terminate any dispute resolution process undertaken under this clause and any party to the dispute may then commence court proceedings in relation to the dispute.

11.6 Use of information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 11** is to attempt to resolve the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 11** for any purpose other than in an attempt to resolve the dispute.

11.7 No prejudice

This **clause 11** 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.

11.8 Continued performance of obligations

Despite the existence of a dispute under this **clause 11**, but subject to any order of a court or the agreement of the parties, the parties must continue to perform their obligations under this deed.

12 Media releases

Until such time as the Road Works and the Drainage Channel Works are completed, the Developer must not publish or make, or cause or allow to be published or made, any media release or public statement relating to delivery of the Road Works or the Drainage Channel Works (as the case may be), without first obtaining the prior written consent of the Minister and RMS.

13 GST

13.1 Construction

In this **clause 13**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this document but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

13.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and/or 82 of the GST Act 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.

13.3 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this document is exclusive of GST (**GST-exclusive consideration**). 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 **clause 13.4**.

13.4 Payment of GST

Notwithstanding **clause 13.2**, if GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this document, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

13.5 Timing of GST payment

The amount referred to in **clause 13.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

13.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 13.4**.

13.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under **clause 13.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

13.8 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or to indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed, contributed to or indemnified by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.

- (b) This **clause 13.8** does not limit the application of **clause 13.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 13.8(a)**.

13.9 No merger

This **clause 13** does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

14 Assignment and Dealings

14.1 Assignment or novation by Developer

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the Developer must seek the written consent of the Minister and RMS and:
 - (i) satisfy the Minister and RMS, acting reasonably, that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Developer's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) satisfy the Minister and RMS, acting reasonably, that the Developer is not in material breach of its obligations under this deed; and
 - (iii) procure the execution of an agreement with the Minister and RMS (if applicable), the Developer and the Incoming Party substantially in the form of the Novation Deed.
- (b) The Developer must pay all costs reasonably incurred by the Minister and RMS under this **clause 14.1**, including legal costs and disbursements.

14.2 Assignment by Minister or RMS

Either the Minister or RMS may assign their rights and benefits under this deed, in their absolute discretion, without the need for prior consent from the Developer.

14.3 Dealings with the Land

- (a) Subject to **clause 14.3(b)**, the Developer must not enter into any Dealing with a third party (**Transferee**) relating to the Developer's interests in any part of the Land (**Relevant Land**) unless before the Dealing is entered into with the Transferee:
 - (i) the Developer satisfies the Minister and RMS (acting reasonably) that the proposed Transferee is financially capable of complying with those of the Developer's obligations under this deed which relate to the Relevant Land (**Required Obligations**);

- (ii) the Transferee enters into a deed in favour of the Minister (and RMS, if appropriate) substantially in the form of the Novation Deed, under which the Transferee agrees to comply with the Required Obligations as if the Transferee were the Developer;
- (iii) any default by the Developer in relation to the Relevant Land has been remedied by the Developer, unless that default has been waived expressly by the Minister and RMS in writing; and
- (iv) the Developer and the Transferee pay all costs reasonably incurred by the Minister and RMS in relation to that Dealing, including legal costs and disbursements.

The Developer will be responsible for procuring execution of the Novation Deed by all required parties except any Authorities.

- (b) **Clause 14.3(a)** does not apply to any Dealing in respect of an actual or a proposed Dwelling or Urban Lot provided this deed has been released and discharged from the relevant folio(s) of the Register for that actual or proposed Dwelling or actual or proposed Urban Lot (as the case may be) in accordance with **clause 9.5**.

14.4 Disclosure Statement

- (a) Until such time as RMS has issued a notice to the Developer under **clause 7(e)**, in respect of a proposed sale of any part of the Land beyond the Initial Development Cap (except a proposed sale to an Authority), the Developer must attach to the relevant contract for sale a copy of a Disclosure Statement, unless the parties agree in writing otherwise.
- (b) The parties agree to negotiate the terms of a Disclosure Statement in good faith as soon as practicable following execution of this deed.
- (c) The parties agree to negotiate in good faith revisions to the terms of a Disclosure Statement which has been adopted in accordance with this **clause 14**, for use in future contracts for sale of Urban Lots, to take into account any new circumstances which affect the terms of the Disclosure Statement (including, if they occur, circumstances such as the grant of funding approval, the finalisation of the detailed design of the Interchange or the Drainage Channel, the execution of contracts for the construction of the Interchange and Drainage Channel).

15 Capacity

15.1 General warranties

- (a) Each party warrants to each other party that:
 - (i) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and

- (ii) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.
- (b) The Developer represents and warrants that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of this deed does not violate its constitution or any Law applying to it;
 - (iii) the execution, delivery and performance of this deed does not violate any Law, or any document or agreement to which it is a party or which is binding on it or the Land, including any matters or interests not registered on the title of the Land;
 - (iv) any document or agreement to which it is a party or which is binding on it or any of its assets, including any matters or interests not registered on the title of the Land, does not in any way limit its ability to perform its obligations under this deed; and
 - (v) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or the Land, which has not been advised in writing to both the Minister and RMS.

15.2 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.

16 Reporting Requirement

- (a) The Developer must provide at least 20 Business Days' written notice to the Minister and RMS of any Development Application or application for a Subdivision Certificate which triggers any obligation under this deed.
- (b) If any part of the Development is to be carried out without the need for a Subdivision Certificate and which triggers any obligation under this deed, then the Developer must provide at least 20 Business Days' written notice to the Minister and RMS of the date of:
 - (i) the proposed commencement of that part of the Development; and
 - (ii) the date of any application for a Construction Certificate or Complying Development Certificate in respect of that part of the Development.
- (c) On each anniversary of the date of this deed, or as otherwise agreed with the Secretary and RMS, the Developer must deliver to the Secretary and RMS a report which must include those matters set out below, as applicable:

- (i) a description of the status of the Development and the Development Contribution; and
 - (ii) a forecast in relation to the anticipated progression and completion of the Development and the Development Contribution; and
 - (iii) an estimated date for when the Developer expects to submit any application for a Subdivision Certificate in respect of any part of the Land.
- (d) Within 30 Business Days following receipt of a written request from the Secretary or RMS, the Developer must deliver to the Secretary and RMS all documents and other information which, in the reasonable opinion of the Secretary or RMS (as applicable), are necessary to assess the status of the Development.

17 General Provisions

17.1 Entire agreement

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.

17.2 Variation

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

17.3 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.

17.4 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.

17.5 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

17.6 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.

17.7 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.

17.8 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.

17.9 No merger

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

17.10 Counterparts

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

17.11 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.

17.12 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.

17.13 No fetter

Nothing in this deed shall be construed as requiring the Minister or RMS to do anything that would cause the Minister or RMS (respectively) to breach any of the Minister's or RMS' (respectively) 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 or RMS (respectively) in exercising any of the

Minister's or RMS' (respectively) statutory functions, powers, authorities or duties.

17.14 Explanatory Note

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

17.15 Costs, 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 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, on any transfer of the Education Land, the Road Works Land and the Drainage Channel Land).
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to **clauses 17.15(a) and (b)**:
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution of this deed, 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 10 Business Days of demand by the Minister for payment.

17.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and either;
 - (i) hand delivered to the address shown below;
 - (ii) sent by email to the email address shown below, but only if the relevant party has included an email address below; or
 - (iii) sent by prepaid ordinary mail within Australia to the address shown below:

Minister

Contact: The Secretary

Address: Department of Planning, Industry and Environment
GPO Box 39. Sydney NSW 2001

Email: planningagreements@planning.nsw.gov.au

RMS

Contact: Director, Hunter Region

Address: NSW Roads and Maritime Services
20-44 Ennis Road, Milsons Point NSW 2061

Developer

Contact: Wesley Chong
Address: Suite 1 / 3B Macquarie Street Sydney, NSW, 2000

- (b) A Notice may be sent by email only if:
- (i) it states (or any attachment states) the name of the sending party and a person duly authorised by the sending party;
 - (ii) it states (or any attachment states) that the email (or the attachment) is a communication either under this deed or in connection with this deed; and
 - (iii) for an email which contains attachments - the attachments are in a format which the receiving party can open, view and download at no additional cost,
- and communications sent by email are taken to be signed by the named sender.
- (c) A Notice is taken to be given if:
- (i) hand delivered, on the date of delivery; or
 - (ii) sent by email during any Business Day, on the date that the sending party's email records indicate the email was sent, unless the sender also receives a delivery failure notification or other information indicating that the email has not been delivered to the intended recipient; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 5 Business Days after the date of posting.
- (d) A party may change its address, email address or contact information as specified in **clause 17.16(a)** at any time by way of a Notice issued to the other parties.

17.17 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) A reference to the **Minister**, includes a reference to the Secretary and any person specifically nominated by the Minister for the purposes of this deed or for Planning Agreements generally to which the Minister is a party;
- (b) 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;
- (c) 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;

- (d) 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;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) 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;
- (m) a requirement for a person to do any thing includes a requirement for that person to ensure that its Personnel do that thing and a requirement for a person not to do any thing includes a requirement for that person to ensure that its Personnel prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) 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.

Schedule 1

Requirements under the Act

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

Table 1 – Requirements under section 7.4 of the Act

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (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. 	<ul style="list-style-type: none"> (a) N/A (b) Yes (c) N/A
Description of land to which this deed applies – (section 7.4(3)(a))	The Land as defined in clause 1 .
Description of development to which this deed applies – (section 7.4(3)(b))	The Development as defined in clause 1 .
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 2 .
Applicability of sections 7.11 and 7.12 of the Planning Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
Applicability of section 7.24 of the Planning 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	The Development Contribution to be

Requirement under the Act	This deed
deed if section 7.11 applies – (section 7.4(3)(e))	provided by the Developer under this deed must not be taken into consideration in determining a development contribution in respect of the Development under section 7.11 of the Planning Act.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 11 .
Enforcement of this deed – (sections 7.4(3)(g) and 7.6)	See clauses 6 and 7 .
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 17.13 .

Table 2 – Other Matters

Requirement under the Act or Regulation	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 9)
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
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

Requirement under the Act or Regulation	This deed
Regulation)	

Schedule 2

Development Contributions

1 Development Contribution

1.1 Provision of Development Contribution

The Developer must provide the following Development Contributions in accordance with this **Schedule 2**:

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Value	Timing
1	Monetary Contribution	Each Contribution Amount is to be calculated in accordance with clause 2.2 of this Schedule 2 .	In accordance with clause 2.6(a) of this Schedule 2 .
2	Education Land Contribution	The value of the Education Land Contribution is to be calculated by multiplying the area of the Education Land (measured in square metres) by \$54.	Prior to the issue of a Subdivision Certificate for the creation of the 900 th Dwelling in the Kings Hill Urban Release Area.
3	Road Works Land Contribution	The value of the Road Works Land Contribution is to be calculated by multiplying the area of the Road Works Land (measured in square metres) by \$54.	Within 3 months of the date of receipt of a Transfer Notice for the Road Works Land Contribution under clause 5.2(a) of this Schedule 2 .
4	Drainage Channel Land Contribution	The value of the Drainage Channel Land Contribution is to be calculated by	If required by RMS or the Relevant Authority following the outcome of an

Column 1	Column 2	Column 3	Column 4
Item	Development Contribution	Value	Timing
		multiplying the area of the Drainage Channel Land (measured in square metres) by \$54.	options analysis and environmental assessment, within 3 months of the date of receipt of a Transfer Notice for the Drainage Channel Land Contribution under clause 5.2(a) of this Schedule 2 .

2 Calculation of total value of Development Contribution and Contribution Amounts

2.1 Total value of Development Contribution

- (a) The Development Contribution is based on an apportionment for the Land (apart from Lot 31 in Deposited Plan 1185385) of:
- (i) the URA Infrastructure Value; and
 - (ii) the Eastern Catchment Infrastructure Value.
- (b) The Unit Factor for the URA Infrastructure Contribution at the date of this deed is 3500.
- (c) The Unit Factor for the Eastern Catchment Infrastructure Contribution at the date of this deed is 1200.
- (d) The URA Development Contribution Rate is the amount represented by "**UR**" in the following formula:

$$UR = UV \div UCF$$

Where:

- (i) **UV** is the URA Infrastructure Value; and
 - (ii) **UCF** is the Unit Factor for the URA Infrastructure Contribution.
- (e) The Eastern Catchment Development Contribution Rate is the amount represented by "**ECR**" in the following formula:

$$ECR = ECV \div ECCF$$

Where:

- (i) **ECV** is the Eastern Catchment Infrastructure Value; and

- (ii) **ECCF** is the Unit Factor for the Eastern Catchment Infrastructure Contribution.
- (f) The total value of the Development Contribution is the amount represented by “**CV**” in the following formula:
$$CV = (UR \times NDU) + (ECR \times NEC)$$

Where:

 - (i) **NDU** is the total number of Development Units in the Development; and
 - (ii) **NEC** is the total number of Development Units within the Eastern Catchment in the Development.

2.2 Adjustment of Development Contribution Rates

- (a) RMS must notify the Developer promptly after RMS has entered into:
 - (i) a contract for the construction of the Road Works; and
 - (ii) a contract for the construction of the Drainage Channel Works.
- (b) As soon as reasonably practicable and no later than 10 Business Days after RMS has provided a notification under **clause 2.2(a)** of this **Schedule 2** the Developer must provide RMS and the Minister with:
 - (i) an updated forecast of the Unit Factor for the URA Infrastructure Contribution (if the notification relates to the Road Works) and the Unit Factor for the Eastern Catchment Infrastructure Value (if the notification relates to the Drainage Channel Works); and
 - (ii) a final engineering drainage design for the Eastern Catchment.
- (c) As soon as reasonably practicable after the Developer provides RMS and the Minister with the information specified in **clause 2.2(b)** of this **Schedule 2**, RMS must:
 - (i) reassess the URA Infrastructure Value (if the notification relates to the Road Works) and the Eastern Catchment Infrastructure Value (if the notification relates to the Drainage Channel Works); and
 - (ii) provide a copy of the reassessment to the Minister and the Developer.
- (d) If the amount of the reassessed URA Infrastructure Value is less than the amount of the URA Infrastructure Value as at the date of the reassessment, then:
 - (i) on and from the date of the reassessment:
 - (A) the URA Infrastructure Value is revised to the amount in the reassessment; and
 - (B) the Unit Factor for the URA Infrastructure Contribution is revised to reflect the forecast Unit Factor for the URA

Infrastructure Contribution provided under **clause 2.2(b)** of this **Schedule 2**;

- (ii) the URA Development Contribution Rate will be recalculated on the basis of the revised items specified in **clause 2.2(d)(i)** of this **Schedule 2**;
 - (iii) all Contribution Amounts which have been paid (or for which Offset Credits have been allocated) on the basis of the previous amount of the URA Infrastructure Value will be recalculated in accordance with **clause 2.3** of this **Schedule 2**; and
 - (iv) the amount of the difference between the sum of the Contribution Amounts which have been paid (or for which Offset Credits have been allocated) as at the date of the recalculation and the sum of the Contribution Amounts as recalculated will be allocated to the Developer as an Offset Credit.
- (e) If the amount of the reassessed Eastern Catchment Infrastructure Value is less than the amount of the Eastern Catchment Infrastructure Value as at the date of the reassessment, then:
- (i) on and from the date of the reassessment:
 - (A) the Eastern Catchment Infrastructure Value is revised to the amount of the reassessment; and
 - (B) the Unit Factor for the Eastern Catchment Infrastructure Contribution is revised to reflect the forecast Unit Factor for the Eastern Catchment Infrastructure Contribution provided under **clause 2.2(b)** of this **Schedule 2**;
 - (ii) the Eastern Catchment Development Contribution Rate will be recalculated on the basis of the revised items specified in **clause 2.2(e)(i)** of this **Schedule 2**;
 - (iii) all Contribution Amounts which have been paid (or for which Offset Credits have been allocated) on the basis of the previous amount of the Eastern Catchment Infrastructure Value will be recalculated in accordance with **clause 2.3** of this **Schedule 2**; and
 - (iv) the amount of the difference between the sum of the Contribution Amounts which have been paid (or for which Offset Credits have been allocated) as at the date of the recalculation and the sum of the Contribution Amounts as recalculated will be allocated to the Developer as an Offset Credit.

2.3 Calculation of Contribution Amounts

The value of any individual Contribution Amount is equal to the sum represented by "CA" in the following formula:

$$CA = (UR \times N1) + (ECR \times N2)$$

Where:

- (a) **UR** is the URA Development Contribution Rate;
- (b) **ECR** is the Eastern Catchment Development Contribution Rate;
- (c) **N1** is the number of Development Units which are identified in a proposed Plan of Subdivision in respect of which the Developer has lodged an application for a Subdivision Certificate; and
- (d) **N2** is the number of Development Units within the within the Eastern Catchment which are identified in a proposed Plan of Subdivision in respect of which the Developer has lodged an application for a Subdivision Certificate.

2.4 Application of a SIC rate

- (a) Notwithstanding anything else in this **clause 2** of this **Schedule 2**, if:
 - (i) a SIC Determination commences and applies to the Land (apart from Lot 31 in Deposited Plan 1185385);
 - (ii) that SIC Determination specifies a contribution rate for an Urban Lot or Dwelling, which is less than the Contribution Amount in respect of each Urban Lot or Dwelling determined in accordance with **clause 2** of this **Schedule 2**; and
 - (iii) the Developer has not paid the whole or any part of the Contribution Amount under this deed as at the date on which that SIC Determination comes into effect,then:
 - (iv) the parties agree to vary the Contribution Amount so that the whole or any part of the Monetary Contribution still to be paid by the Developer as at the date on which that SIC Determination comes into effect will be calculated using the contribution rate specified in that SIC Determination (and not at the Contribution Amount specified in **clause 2** of this **Schedule 2**);
 - (v) on and from the date on which that SIC Determination comes into effect, the Developer will be required to pay any outstanding part of the Monetary Contribution:
 - (A) as calculated using the contribution rate for each Urban Lot or Dwelling specified in that SIC Determination (and not at the Contribution Amount specified in **clause 2** of this **Schedule 2**); and
 - (B) otherwise in accordance with item 1 of the Table in **clause 1.1** of this **Schedule 2**; and
 - (vi) the Minister will not be required to pay or otherwise compensate the Developer for the whole or any part of the Monetary Contribution paid by the Developer before the date on which that SIC Determination came into effect.

- (b) The parties acknowledge and agree that this deed will not be varied, and the Contribution Amount for each Urban Lot or Dwelling as specified in **clause 2** of this **Schedule 2** will not be changed, where the contribution rate for each Urban Lot or Dwelling specified in the SIC Determination is greater than the Contribution Amount for each Urban Lot or Dwelling determined in accordance with **clause 2** of this **Schedule 2**.

2.5 Indexation of amounts

If this deed contemplates that an amount is to be indexed, then that amount will be adjusted by using the following formula:

$$AA = PC \times \frac{\text{Current CPI}}{\text{Base CPI}}$$

Where:

- (a) **AA** is the newly adjusted amount;
- (b) **PC** means the amount prior to the first CPI Adjustment Date; and
- (c) **Current CPI** and **Base CPI** are defined in **clause 1**.

2.6 Payment of Contribution Amounts

- (a) The Developer must pay a portion of the Monetary Contribution in the amount of the Contribution Amount calculated in accordance with **clause 2.2** of this **Schedule 2**, by the payment of money or the use of Offset Credits in accordance with this **clause 2.6** of this **Schedule 2** or a combination of both, prior to the issue of a Subdivision Certificate for the number of Development Units specified in the relevant application for a Subdivision Certificate.
- (b) Where the value of the Offset Credits equals or exceeds the value of the relevant 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 been decreased by the value of the required Contribution Amount.
- (c) Where the value of the Offset Credits is more than zero but is less than the value of the relevant Contribution Amount, the Developer must:
 - (i) satisfy the Minister of that fact;
 - (ii) pay money in the amount of the difference; and
 - (iii) obtain an update Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased to zero.
- (d) The parties agree that the requirement to pay Contribution Amounts under this clause is a restriction on the issue of a Subdivision Certificate within the meaning of section 6.15 of the Act.

2.7 Calculation of Urban Lots and Dwellings

For the purpose of this **clause 2** of this **Schedule 2**, there is to be no double counting of Urban Lots and Dwellings where Dwellings are proposed to be erected on Urban Lots, assuming one Dwelling per Urban Lot. For the avoidance of doubt, only proposed additional Dwellings on Urban Lots are to be counted.

3 Transfer of land

3.1 Subdivision of Land Contributions

Before transferring any Land Contribution as required under this **Schedule 2**, and where a separate lot is required for the transfer of the Land Contribution, the Developer must (at its Cost):

- (a) obtain Development Consent and all other Approvals necessary to create a separate lot for the Land Contribution; and
- (b) in accordance with the applicable Development Consent and all other necessary approvals, prepare and Register a Plan of Subdivision or other plan as required by law to create one or more separate lots for the Land Contribution.

3.2 Transfer of Land Contributions

- (a) The Developer must transfer or procure the transfer of each Land Contribution to the Minister (or the Nominated Transferee) for consideration of \$1 by the time specified for the transfer of that Land Contribution in Column 4 of the Table in **clause 1.1** of this **Schedule 2**.
- (b) In order to satisfy its obligation under **clause 3.2(a)** of this **Schedule 2**, the Developer must, subject to **clauses 3.2(f)** and **3.2(g)** of this **Schedule 2**:
 - (i) deliver to the Minister (or the Nominated Transferee):
 - (A) a form of transfer in respect of the land comprising the Land Contribution in favour of the Minister (or the Nominated Transferee), executed by the Developer and in Registrable form (except for acceptance by the transferee and marking by the Office of State Revenue); or
 - (B) evidence that a transfer of the Land Contribution has been effected in favour of the Minister (or the Nominated Transferee) by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO;
 - (ii) provide or procure all such documents, signatures and consents as are reasonably required to enable transfer of the Land Contribution, including:
 - (A) producing the certificate of title for the Land Contribution, where one has been issued at that time, at LRS or providing

- a direction to LRS allowing the certificate of title to be used for the requisite purpose; or
- (B) lodging a CoRD Holder Consent for the Land Contribution through Property Exchange Australia Ltd or another ELNO; and
- (iii) deliver to the Minister (or the Nominated Transferee) a Request form to release and discharge this deed from the relevant folio(s) of the Register for the land comprising the Land Contribution executed by the Developer and in Registrable form.
- (c) The Developer must:
- (i) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Land Contribution; and
- (ii) take any other necessary action to give effect to the transfer of the Land Contribution to the Minister (or the Nominated Transferee) free of all encumbrances (including any mortgages, easements, covenants and planning agreements) and affectations (including any charge or liability for rates, taxes and charges) other than service easements or such other encumbrances as agreed by the Minister in writing.
- (d) The Developer is liable for and must pay all rates and taxes owing in respect of each Land Contribution up to and including the date that the Developer fulfils all of its obligations under **clauses 3.1 and 3.2** of this **Schedule 2** (or, if the Minister exercises the Minister's compulsory acquisition right under **clause 3.3** of this **Schedule 2**, the date on which the Land Contribution is acquired), after which time the Minister (or the Nominated Transferee) will be responsible for any rates and taxes in relation to the land comprising the Land Contribution.
- (e) The Developer indemnifies and keeps indemnified the Minister (or the Nominated Transferee) in relation to any Costs which the Minister (or the Nominated Transferee, as the case may be) reasonably incurs as a result of any failure of the Developer to comply with **clauses 3.1 and 3.2** of this **Schedule 2**.
- (f) To the extent that a Land Contribution comprises an easement:
- (i) any provision of this deed referring to or requiring the transfer or dedication of that Land Contribution is taken to refer to or require (as appropriate) the grant of that easement;
- (ii) **clause 3.2(b)(i)** of this **Schedule 2** is to be read as requiring the Developer to deliver to the Minister or the Nominated Transferee:
- (A) a form of transfer granting easement in respect of the Land Contribution specifying the Minister (or the Nominated Transferee) as the Authority benefited by the easement,

- executed by the Developer and in Registrable form (except for acceptance by the transferee); or
- (B) evidence that a transfer granting easement for the Land Contribution has been Registered on title to the land burdened, specifying the Minister (or the Nominated Transferee) as the benefited Authority, by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO; and
- (iii) **clause 3.2(b)(iii)** of this **Schedule 2** does not apply and, following Registration of the easement, this deed is to remain Registered on title to that part of the Land which is burdened by the easement.
- (g) Either the Minister or the Nominated Transferee may direct the Developer to dedicate (rather than transfer) the Drainage Channel Land, in which case:
- (i) **clause 3.1** of this **Schedule 2** will not apply;
- (ii) **clause 3.2(b)(i)** of this **Schedule 2** will not apply, and instead the Developer must procure the Registration of a Plan of Subdivision that dedicates the Drainage Channel Land as a public reserve or drainage reserve under the *Local Government Act 1993* (NSW); and
- (iii) the balance of **clause 3.2** of this **Schedule 2** will continue to apply insofar as they are applicable to a dedication of land.

3.3 Compulsory Acquisition

- (a) If the Developer does not transfer or dedicate any of the land required for a Land Contribution to the Minister or the Nominated Transferee by the time specified for the relevant Land Contribution item in Column 4 of the Table in **clause 1.1** of this **Schedule 2**, the Minister may compulsorily acquire the whole or any part of that land which has not been dedicated or transferred (**Relevant Land**) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Minister (or the Nominated Transferee, as appropriate) agree that:
- (i) this **clause 3.3** of **Schedule 2** is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
- (ii) in this **clause 3.3** of **Schedule 2** they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Relevant Land to be acquired by the Minister (or the Nominated Transferee) is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) other than service easements or such other encumbrances as agreed by

the Minister (or the Nominated Transferee) in writing, on the date that the Minister (or the Nominated Transferee) will compulsorily acquire the Relevant Land pursuant to this clause. The Developer indemnifies and keeps indemnified the Minister (or the Nominated Transferee, as appropriate) against all Claims for compensation under the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) made against the Minister (or the Nominated Transferee) as a result of any acquisition by the Minister of the whole or any part of the Relevant Land under this clause.

- (d) The Developer must pay the Minister (or the Nominated Transferee, as appropriate), within 20 Business Days of a valid written demand, an amount equivalent to all Costs reasonably incurred by the Minister (or the Nominated Transferee) in acquiring the whole or any part of the Relevant Land under this **clause 3.3** of this **Schedule 2** and the quantum of all determined Claims against the Minister (or the Nominated Transferee) in exercising acquisition rights.
- (e) The parties agree that this deed operates as a deed poll in favour of the Nominated Transferee (where applicable), insofar as this deed relates to the transfer or dedication of land to the Nominated Transferee.

4 Additional provisions for Education Land Contribution

- (a) No later than 6 months before the time specified in Column 4 of Item 2 of the Table in **clause 1.1** of this **Schedule 2**, the Developer must give written notice to the Minister:
 - (i) identifying the site for the Education Land which the Developer proposes to transfer or dedicate in accordance with this deed (**Nominated Site**);
 - (ii) attaching a plan showing the precise boundaries of the Nominated Site;
 - (iii) attaching certification from an appropriately qualified expert previously approved by the Minister (such approval not to be unreasonably withheld) confirming that each of the Site Selection Criteria have been satisfied in respect of the Nominated Site and providing to the Minister all documents in support of that certification, including a Site Audit Statement; and
 - (iv) attaching confirmation from the NSW Department of Education that each of the School Site Selection Criteria have been either satisfied or waived in respect of the Nominated Site and that the NSW Department of Education is otherwise satisfied with the Nominated Site comprising the Education Land Contribution for the purposes of this deed.

- (b) The Nominated Site must be located at one of the sites indicatively shown in the plan at **Annexure B**, unless otherwise agreed in writing by the Minister.
- (c) For the avoidance of doubt, neither the Minister nor the Nominated Transferee is under any obligation to accept the transfer or dedication of the Education Land unless the Developer has complied with **clauses 4(a) and 4(b)** of this **Schedule 2**.
- (d) The Developer indemnifies and agrees to keep indemnified the Minister (and the Nominated Transferee, where applicable) against all Costs incurred by and all Claims made against the Minister (and the Nominated Transferee, where applicable) as a result of any Contamination that is required to be Remediated by the Minister (or the Nominated Transferee) or any Authority over the whole or any part of the Education Land in order to make the Education Land suitable for use as a School, but only in relation to Contamination that existed on or before the date that the Education Land is:
 - (i) transferred to the Minister (or the Nominated Transferee); or
 - (ii) compulsorily acquired by the Minister (or the Nominated Transferee).
- (e) The rate per square metre for the Education Land as specified in the table in **clause 1.1** of this **Schedule 2** will be indexed in accordance with this deed.
- (f) The value of an Education Land Contribution as calculated in accordance with the table in **clause 1.1** of this **Schedule 2** will be indexed in accordance with this deed.

5 Additional provisions for Road Works and Drainage Channel Land Contributions

5.1 Application of clause

This **clause 5** of this **Schedule 2** applies to those Land Contributions comprising the Road Works Land Contribution and the Drainage Channel Land Contribution, but does not apply to the Education Land Contribution.

5.2 Transfer Notice

- (a) No later than 3 months before the relevant Land Contribution is required to be transferred by the Developer under this deed, the Minister (or the Nominated Transferee) must give written notice to the Developer identifying the precise location and area of the Land Contribution, as required by:
 - (i) RMS, in respect of the Road Works Land Contribution; and
 - (ii) the Relevant Authority, in respect of the Drainage Channel Land Contribution, if required under this deed,

(Transfer Notice).

- (b) If the Relevant Authority does not require any part of the Drainage Channel Land, this determination is to be notified to the Developer as soon as reasonably practicable following this determination.
- (c) Subject to **clause 5.3** of **Schedule 2**, a Transfer Notice is invalid to the extent that it identifies a Land Contribution which falls outside of the areas shown on the Road Works and Drainage Channel Land Plan as being required for the Road Works Land Contribution and the Drainage Channel Land Contribution, unless the Developer and either RMS (for the Road Works Land Contribution) or RMS or the Relevant Authority (for the Drainage Channel Land Contribution) agree otherwise.

5.3 Additional land

- (a) The Developer acknowledges that the Road Works and Drainage Channel Land Plan is indicative and that either RMS or the Relevant Authority may request:
 - (i) the dedication or transfer of additional parts of the Land; or
 - (ii) the grant of further access rights over the Land,to facilitate the construction and operation of the Road Works and the Drainage Channel Works.
- (b) Should RMS or the Relevant Authority identify, acting reasonably, that any additional areas of Land are required to be dedicated or transferred or any access rights are required to be granted by the Developer to facilitate construction and operation of the Road Works and the Drainage Channel Works, the Developer must cooperate in good faith with RMS and the Relevant Authority (as the case may be) to determine whether appropriate amendments to the Road Works and Drainage Channel Land Plan to include additional land in the relevant Land Contribution will be made and, if so, to dedicate or transfer the additional land or grant the access rights identified.
- (c) The dedication or transfer of any additional land by the Developer under this **clause 5.3** is taken to be a Road Works Land Contribution (if related to the Road Works) or a Drainage Channel Land Contribution (if related to the Drainage Channel works) on and from the date of dedication or transfer.

5.4 Value of Road Works Land Contribution

If the Developer dedicates or transfers any Road Works Land, the value of that Road Works Land Contribution is to be calculated in accordance with the Table in **clause 1.1** of this **Schedule 2**.

5.5 Value of Drainage Channel Land Contribution

If the Developer dedicates or transfers any Drainage Channel Land, the value of that Drainage Channel Land Contribution is to be calculated in accordance with the Table in **clause 1.1** of this **Schedule 2**.

5.6 Indexation

- (a) The rates per square metre for the Road Works Land and the Drainage Channel Land as specified in the table in **clause 1.1** of this **Schedule 2** will be indexed in accordance with this deed.
- (b) The value of the Road Works Land Contribution and the Drainage Channel Land Contribution as calculated in accordance with the table in **clause 1.1** of this **Schedule 2** will be indexed in accordance with this deed.

6 Offset Credits Schedule

- (a) The Minister will prepare or update the Offset Credits Schedule:
 - (i) after any Land Contribution has been transferred or dedicated under this **Schedule 2**, to increase the value of any Offset Credits by the Land Contribution value as specified in Column 3 of the Table in **clause 1.1** of this **Schedule 2**;
 - (ii) if, after any recalculation under **clause 2.2** of this **Schedule 2**, Offset Credits arise or there is an increase in Offset Credits;
 - (iii) after any Offset Credits are applied by the Developer to discharge (wholly or in part) its obligation to pay a Contribution Amount;
 - (iv) if it becomes apparent that there is an error or inaccuracy in the Offset Credits Schedule, to correct that error or inaccuracy;
 - (v) after each CPI Adjustment Date, to show the indexed value of the Offset Credits; and
 - (vi) 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 Credits Schedule as prepared or updated, as soon as possible after it has been prepared or updated (as the case may be).

7 Final reconciliation

- (a) The Developer must provide written notice to the Minister at least 30 Business Days prior to lodgement of the final Subdivision Certificate application for the Development.
- (b) As soon as practicable after receipt of the notice under **clause 7(a)**, the Minister must update and provide a copy the Offset Credit Schedule to the Developer by way of final reconciliation.
- (c) The Developer acknowledges and agrees that there will be no refund or credit towards a Special Infrastructure Contribution associated with the development of other Land arising from any residual Offset Credit under

this deed on the basis that all Offset Credits will be applied against the Contribution Amounts under this deed for the Land.

Schedule 3

Security

1 Provision of Security

- (a) Upon execution of this deed, the Developer must provide a Bank Guarantee to the Minister having a face value amount of \$200,000 in order to secure provision of the Development Contribution.
- (b) The Bank Guarantee must:
 - (i) name the "Minister for Planning and Public Spaces", the "Department of Planning, Industry and Environment ABN 20 770 707 468" and "Roads and Maritime Services ABN 76 236 371 088" as the relevant beneficiaries; and
 - (ii) not have an expiry date.
- (c) The parties agree that the obligation of the Developer to transfer each Land Contribution in accordance with **Schedule 2** is secured by **clause 9** of this deed and **clause 3.3** of **Schedule 2**.

2 Claims under the Bank Guarantee

- (a) Either the Minister or RMS may:
 - (i) call upon any Bank Guarantee provided under this deed where the Developer has failed to provide a Development Contribution to which the security relates on or after the date for provision under this deed; and
 - (ii) retain and apply such money towards achieving performance of the Development Contribution and any Costs incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee, the Minister or RMS (as applicable) must give the Developer not less than 10 Business Days written notice of the intention to do so.
- (c) If the Minister or RMS:
 - (i) calls upon a Bank Guarantee; and
 - (ii) applies all or part of such money towards achieving performance of the Development Contribution and any Costs incurred 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 3**,

then the Developer must provide the Minister with a replacement Bank Guarantee to ensure that, at all times, until the date the Bank Guarantees are released in accordance with **clause 3** of this **Schedule 3**, the Minister is in possession of Bank Guarantees for a face value equivalent to the amount required to be provided in accordance with **clause 1** of this **Schedule 3**.

3 Release of Security

If:

- (a) the Developer has paid or satisfied all of its obligations under this deed;
and
- (b) the whole of the Bank Guarantee(s) has not been expended and the money accounted for in accordance with **clause 2** of this **Schedule 3**;

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

Schedule 4

Explanatory Note

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW)

1 Parties

The Minister for Planning and Public Spaces ABN 20 770 707 468 of Level 15, 52 Martin Place, Sydney NSW 2000

(Minister)

and

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation incorporated under the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point NSW 2061

(RMS)

and

Kingshill Development No 1 Pty Ltd ACN 158 129 652 of Suite 605, 321 Pitt Street, Sydney NSW 2000

Kingshill Development No 2 Pty Ltd ACN 158 127 041 of Suite 605, 321 Pitt Street, Sydney NSW 2000

(together, the **Developer**)

2 Description of subject land

Lot 41 in Deposited Plan 1037411 and Lot 4821 in Deposited Plan 852073 at Kings Hill, New South Wales (**Land**).

3 Description of proposed development

The development of the Land for predominantly residential purposes and, at the date of this deed, includes the subdivision of the Land into Urban Lots to enable the erection of a maximum of 2,300 Dwellings on the Land (**Development**).

4 Summary of objectives, nature and effect of the draft planning agreement

4.1 Objectives of Planning Agreement

The objective of the Planning Agreement is to facilitate the provision of Development Contributions by the Developer towards Designated State Public Infrastructure within the Kings Hill Urban Release Area.

Specifically, the Developer has offered to enter into the Planning Agreement to provide Development Contributions to:

- (a) facilitate the development of the Kings Hill Urban Release Area; and
- (b) enable the Secretary to provide the certification required under the LEP for the Development.

Development Contributions to be provided by the Developer under the Planning Agreement include:

- (a) payment of Contribution Amounts to be paid progressively at the rate(s) determined in accordance with this deed (subject to CPI indexation), payable prior to each time a Subdivision Certificate is issued;
- (b) transfer of the Education Land for the purpose of a School;
- (c) transfer of the Road Works Land for road purposes, specifically to enable the construction of an interchange providing access from the Pacific Highway to the Kings Hill Urban Release Area; and
- (d) transfer of the Drainage Channel Land for the purpose of a drainage channel.

4.2 Nature of Planning Agreement

The Planning Agreement constitutes a planning agreement under section 7.4 of the Act. The Planning Agreement will be registered on the title to the Land.

5 Assessment of the merits of the draft planning agreement

5.1 The planning purposes served by the Planning Agreement

The Planning Agreement:

- (a) promotes the orderly and economic use and development of the Land to which the Planning Agreement applies;

- (b) promotes good design and amenity of the built environment by facilitating the development of the Land in accordance with the Planning Agreement;
- (c) promotes the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State; and
- (d) promotes increased opportunity for the public in environmental planning and assessment.

5.2 How the Planning Agreement promotes the public interest

The Planning Agreement will promote the public interest by promoting the objects of the Act as set out in sections 1.3(c), (g), (i) and (j) of the Act.

5.3 For Planning Authorities:

Development Corporations – How the Planning Agreement promotes its statutory responsibilities

Not Applicable

Other Public Authorities – How the Planning Agreement promotes the objects (if any) of the Act under which it is constituted

Not Applicable

Councils – How the Planning Agreement promotes the elements of the Council's Charter

Not Applicable

All Planning Authorities – Whether the Planning Agreement conforms with the Authority's Capital Works Program

Not applicable

5.4 Certain requirements of the Planning Agreement to be complied with before issue of Planning Approval or issue of a Complying Development Certificate, Construction Certificate or Subdivision Certificate

In relation to the subdivision of any part of the Land which would result in the Initial Development Cap being exceeded, the Developer must not apply for:

- (a) any Construction Certificate for residential building works on any proposed residential lot on the Land, until the date that is 9 months prior to the scheduled date of practical completion for the Road Works as notified by RMS, subject to provision by the Developer of a Construction Management Plan that is satisfactory to RMS, in its absolute discretion, having regard to the Road Works, the Drainage Channel Works and any other works being carried out by RMS or the Relevant Authority in the vicinity of the Development; and
- (b) any Subdivision Certificate, until RMS has provided written notification to the Developer confirming the opening of the Interchange to traffic.

The Developer will be required to:

- (a) pay Contribution Amounts progressively at the rate(s) determined in accordance with this deed (subject to CPI indexation), payable prior to each time a Subdivision Certificate for Development Units is issued;
- (b) transfer the Education Land prior to the issue of a Subdivision Certificate for the creation of the 900th Dwelling in the Kings Hill Urban Release Area;
- (c) transfer the Road Works Land within 3 months of receipt of a notice identifying the precise location and area of the land required; and
- (d) transfer the Drainage Channel Land within 3 months of receipt of a notice identifying the precise location and area of the land required.

The provision of the Development Contributions is secured through:

- (a) the requirement for a Bank Guarantee in respect of RMS and the Minister's enforcement costs;
- (b) registration of the Planning Agreement on title including the ability for the Minister and RMS to register a caveat on title to the Land until the Planning Agreement is registered on the title to the Land;
- (c) the ability for the Education Land, the Road Works Land and the Drainage Channel Land to be compulsorily acquired in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* if that land is not dedicated or transferred in accordance with the Planning Agreement; and
- (d) restrictions on the issue of Subdivision Certificates.

Schedule 5

School Site Selection Criteria

The following criteria, as amended by written notice from the Minister to the Developer:

- (a) the site must be a single lot with a minimum area of 2 hectares and a maximum area of 3 hectares;
- (b) the site must have a zoning which is a "prescribed zone" under Part 3, Division 3 of *State Environmental Planning Policy (Infrastructure) 2007* (NSW);
- (c) the site must not adjoin any land which is developed or proposed to be developed for a use which is incompatible with a School;
- (d) the site must be located near land to be used for open space / recreation;
- (e) the site must allow for the provision of appropriate access arrangements for a School;
- (f) the site must be fully serviced with water, sewer, power, telecommunications, local traffic infrastructure (such as kerb, gutter, footpath, roundabout, crossings, pedestrian pathways) and such other utilities and service infrastructure as is necessary for a School;
- (g) the shape of the site must be substantially regular;
- (h) the gradient of the site must be no greater than 1 in 10 being relatively flat and of a consistent topography;
- (i) the site must not be on mapped bushfire prone land or the Developer must provide other measures to manage bushfire risk for the site, to the reasonable satisfaction of the Department of Education;
- (j) the site must be cleared of vegetation in accordance with any Approval;
- (k) the site must be well drained;
- (l) the site must be located above the 1 in 100 year flood level;
- (m) the site must be free of Contamination which would make the site unsuitable for use as a School;
- (n) a Site Audit Statement must be available in respect of the site confirming the site is suitable for use as a School;
- (o) the site must have a minimum road frontage of 200 metres with road frontage ideally on 3, but not less than 2 sides; and
- (p) the site must not be traversed by a road.

Execution

Executed as a deed.

Signed sealed and delivered
by **Minister for Planning and Public
Spaces** in the presence of:

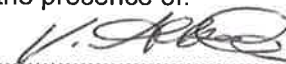

.....
Witness

AMANDA BEAUMONT
.....
Name of Witness (print)


)
)
)

.....
BRETT WHITWORTH
DELEGATE OF THE MINISTER FOR
PLANNING AND PUBLIC SPACES

**Executed by Roads and Maritime
Services** by its duly appointed officer
in the presence of:


.....
Witness

VALERIE ALBERT
.....
Name of Witness (print)

)
)
)

.....
Officer
Roy Wakelin-King
.....
Name of Officer (print)

Executed by Kingshill Development No)
1 Pty Ltd)

Sole

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
~~Director~~

.....
~~Name of Director (print)~~

Executed by Kingshill Development No)
2 Pty Ltd)

Sole

.....
Company Secretary/Director

.....
Name of Company Secretary/Director
(print)

.....
Director

.....
~~Name of Director (print)~~

Annexure A

Development

BW Rf
OK

PHASE	PRECINCT	LOTS RELEASED	CUMULATIVE LOTS RELEASED	APPROXIMATE DWELLINGS	CUMULATIVE DWELLINGS
1	4	561	561	561	561
2	3	322	883	322	883
3	5	353	1236	353	1236
4	6	215	1451	215	1451
5	2	64	1515	64	1515
6	2	353	1868	353	1868
7	1	100	1968	100	1968
8	3	189	2157	189	2157
9	1	105	2262	105	2262
10	4	1	2263	1	2263
11	2	1	2264	1	2264
12	5	1	2265	1	2265
13	6	1	2266	1	2266
14	1	1	2267	1	2267
15	1	1	2268	1	2268
16	1	1	2269	1	2269
17	1	1	2270	1	2270
18	1	1	2271	1	2271
19	1	1	2272	1	2272
20	1	1	2273	1	2273
21	1	1	2274	1	2274
22	1	1	2275	1	2275
23	1	1	2276	1	2276
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26	1	1	2279	1	2279
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28	1	1	2281	1	2281
29	1	1	2282	1	2282
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33	1	1	2286	1	2286
34	1	1	2287	1	2287
35	1	1	2288	1	2288
36	1	1	2289	1	2289
37	1	1	2290	1	2290
38	1	1	2291	1	2291
39	1	1	2292	1	2292
40	1	1	2293	1	2293
41	1	1	2294	1	2294
42	1	1	2295	1	2295
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253	1				

Annexure B

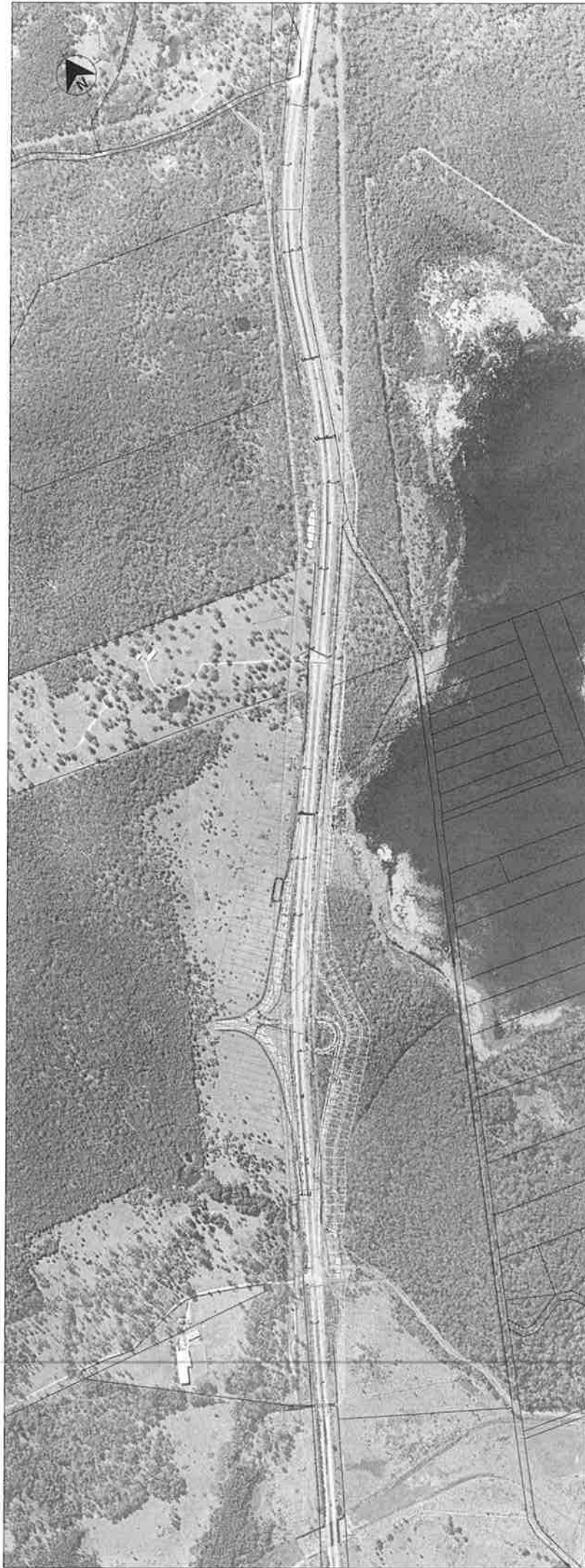
Education Land

BW
RF
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Annexure C

Road Works and Drainage Channel Land

BW RF
OV



LEGEND

- Existing Utilities
- Interchange and Current Proposed Channel Design
- Boundary and Easements
- Roadworks and Drainage Channel Land

Annexure D

Novation Deed

BW
OV

Minister for Planning and Public Spaces

Roads and Maritime Services

Kingshill Development No 1 Pty Ltd

Kingshill Development No 2 Pty Ltd

[New Developer]

Novation Deed for Voluntary Planning Agreement

BN AP
OV

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Date

Parties

Minister for Planning and Public Spaces ABN 20 770 707 468 of Level 15, 52 Martin Place, Sydney, New South Wales, 2000 (**Minister**)

and

Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation incorporated under the *Transport Administration Act 1988* (NSW) of 20-44 Ennis Road, Milsons Point, New South Wales 2061 (**RMS**)

and

Kingshill Development No 1 Pty Ltd ACN 158 129 652 of Suite 605, 321 Pitt Street, Sydney, New South Wales, 2000

Kingshill Development No 2 Pty Ltd ACN 158 127 041 of Suite 605, 321 Pitt Street, Sydney, New South Wales, 2000

(collectively, the **Original Developer**)

and

[New Developer] ACN [#] [Address] (**New Developer**)

Background

- A The Minister, RMS and the Original Developer are parties to the Original Agreement.
 - B The Original Agreement relates to the whole of the Land.
 - C The Original Developer proposes to transfer the [whole/part] of the Land to the New Developer and wishes to novate all of its rights and obligations under the Original Agreement to the New Developer [in respect of the Novated Rights and Obligations].
 - D [Insert any other appropriate recitals]
-

Agreed terms

1 Definitions

In this deed these terms have the following meanings:

Effective Date	[X]
Land	Has the meaning given to that term in the Original Agreement.
Novated Rights and Obligations	[Insert those rights and obligations under the Original Agreement which relate to the Land to be transferred to the New Developer]
Original Agreement	The voluntary planning agreement dated [X] and made between the Minister, RMS and the Original Developer.

2 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Original Developer as a party to the Original Agreement [in so far as the Original Agreement relates to the Novated Rights and Obligations and the New Developer agrees to perform the Novated Rights and Obligations];
- (b) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Original Developer [in so far as the Original Agreement relates to the Novated Rights and Obligations]; and
- (c) the Original Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement [in so far as it relates to the Novated Rights and Obligations], except in respect of any obligation, liability or claim that arose prior to the Effective Date.

2.2 Reference in Original Agreement

All references to the Original Developer in the Original Agreement are to be construed as references to the New Developer [in so far as the Original Agreement relates to the Novated Rights and Obligations].

2.3 Address for notices

The Minister and RMS must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: [X]

Fax: [X]

Contact Person: [X]

Email: [X]

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Indemnities

The New Developer indemnifies the Original Developer on demand against all liabilities, claims, damages and loss which the Original Developer suffers or incurs in relation to the Original Agreement [in so far as the Original Agreement relates to the Novated Rights and Obligations] including those which arise or relate to acts or omissions occurring on or after the Effective Date.

5 Warranties and representations

5.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed;
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this deed do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

5.2 Survival of warranties

The warranties and representations in **clause 5.1** survive the execution of this deed and the novation of the Original Agreement.

6 GST

6.1 Construction

In this **clause 6**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

6.2 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this deed is exclusive of GST (**GST-exclusive consideration**).

6.3 Payment of GST

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

6.4 Timing of GST payment

The amount referred to in **clause 6.3** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

6.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 6.3**.

6.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this deed, any amount that is payable under **clause 6.3** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

6.7 Reimbursements

- (a) Where a party is required under or in connection with this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 6.7** does not limit the application of **clause 6.3**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 6.7(a)**.

6.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this deed is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

6.9 No merger

This **clause 6** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

7 Stamp duty and costs

The New Developer will pay all stamp duty arising directly or indirectly from this deed.

8 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

- (b) This deed binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

9 Amendment

This deed may only be varied or replaced by a deed executed by the parties.

10 Governing law and jurisdiction

- (a) This deed and the transactions contemplated by this deed are governed by and are to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

11 Counterparts

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

12 General

12.1 Construction

Unless expressed to the contrary, in this deed:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;

- (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation.

12.2 Headings

Headings do not affect the interpretation of this deed.

draft

Execution

Executed as a deed.

Signed, sealed and delivered by the)
Minister for Planning and Public)
Spaces in the presence of:)

.....
Signature of Witness

.....
Signature of Minister or delegate

.....
Name of Witness (print)

.....
Name of Minister or delegate

Executed by Roads and Maritime)
Services by its duly appointed officer)
in the presence of:)

.....
Witness

.....
Officer

.....
Name of Witness (print)

.....
Name of Officer (print)

Executed by Kingshill Development No)
1 Pty Ltd ACN 158 129 652 in)
accordance with s127(1) of the)
Corporations Act 2001 (Cth):)

.....
Company Secretary / Director

.....
Director

.....
Name of Company Secretary / Director
(print)

.....
Name of Director (print)

Executed by Kingshill Development No 2)
Pty Ltd ACN 158 127 041 in accordance)
with s127(1) of the *Corporations Act 2001*)
(Cth):)

.....
Company Secretary / Director

.....
Director

.....
Name of Company Secretary / Director
(print)

.....
Name of Director (print)

Executed by [New Developer] ACN [X] in)
accordance with s127(1) of the *Corporations*)
Act 2001 (Cth):)
)

.....
Company Secretary / Director

.....
Director

.....
Name of Company Secretary / Director
(print)

.....
Name of Director (print)

BW
AK
OK

Annexure E

Construction Agreement

BW PJ
OK



Transport
Roads & Maritime
Services

***DEED OF AGREEMENT TO GRANT AN EXCLUSIVE
CONSTRUCTION LICENCE***

BETWEEN

ROADS AND MARITIME SERVICES

AND

KINGSHILL DEVELOPMENT NO 1 PTY LTD

AND

KINGSHILL DEVELOPMENT NO 2 PTY LTD

AK
OK

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Deed of Agreement to Grant an Exclusive Construction Licence

Date	
Parties	<p>Roads and Maritime Services (ABN 76 236 371 088) a NSW Government agency and corporation incorporated under section 46 of the <i>Transport Administration Act 1988</i> (NSW) of 44 Ennis Road, Milsons Point, New South Wales</p> <p>(Licensee)</p> <p>Kingshill Development No 1 Pty Ltd (ACN 158 129 652) of Suite 605, 321 Pitt Street, Sydney NSW 2000</p> <p>Kingshill Development No 2 Pty Ltd (ACN 158 127 041) of Suite 605, 321 Pitt Street, Sydney NSW 2000</p> <p>(together, Licensor)</p>
Background	<p>A. The Licensor is the registered proprietor of the Land.</p> <p>B. The Licensee wishes to carry out the Works.</p> <p>C. Under the VPA, the Licensor has agreed to grant the Licensee an exclusive licence to occupy the Licensed Area to carry out the Works and to use the Licensed Area for public purposes, subject to the terms and conditions of this Deed.</p>

Agreement

1. Definitions and Interpretation

1.1 Definitions

In this Deed:

Address for Service means:

- (a) in the case of the Licensor, the address and email address specified in part 1 of Item 1 of the Schedule; and
- (b) in the case of the Licensee, the address and email address specified in part 2 of Item 1 of the Schedule,

Deed of Agreement to Grant an Exclusive Construction Licence

or if the addressee notifies another address, then that address.

Approval means any consent, approval, authorisation, licence, registration, order, permission or concurrence required by Law.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney.

Commencement Date means the date set out in Item 2 of the Schedule.

Consequential Loss means any:

- (a) loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of any business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production, loss of value to the Licensor or the Licensor's business (whether that loss is direct or indirect);
- (a) indirect or consequential loss, howsoever arising; or
- (b) failure to realise anticipated savings, reduced costs or other benefits,

in each case whether present or future, fixed or unascertained, actual or contingent.

Deed means this licence, including any schedules and annexures.

Drainage Channel Land has the same meaning given to that expression in the VPA.

Drainage Channel Works has the same meaning given to that expression in the VPA.

Employees and Agents means each of the employees, officers, agents, contractors, service suppliers and licensees of a party.

Environment means the components of the earth, including:

- (a) land, air and water; and
- (b) any layer of the atmosphere; and
- (c) any organic or inorganic matter and any living organism; and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(c).

Environmental Law means any Law relating to the Environment or the protection of the Environment and any other law relating to contamination or pollution.

Hazardous Material means material that, because it is toxic, corrosive, flammable, explosive, or infectious or possesses some other characteristic, has the potential to present a risk of harm to people, including their health or to any other aspect of the Environment.

Land means the land in Lot 41 in Deposited Plan 1037411, Lot 4821 in Deposited Plan 852073 and Lot 31 in Deposited Plan 1185385 at Kings Hill, New South Wales.

Law means:

- (a) the common law;
- (b) all statutes; and

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- (c) all rules, regulations, proclamations, ordinances, by-laws, instruments, orders, consents or approvals made or issued under any statute or by any Relevant Authority.

Licence End Date means the later of the date that the Licensee notifies the Licensors that:

- (a) the Road Works Land has been transferred to the Minister (or the Minister's nominee) or compulsorily acquired in accordance with the VPA; and
- (b) the Drainage Channel Land has been transferred to the Minister (or the Minister's Transferee) or compulsorily acquired in accordance with the VPA.

Licence Fee means the amount of \$1 inclusive of GST payable on demand by the Licensee to the Licensors.

Licensed Area means the part of the Land shown in the Licensed Area Plan.

Licensed Area Plan means the plan contained in Annexure A.

Licensee means the person or entity referred to as such on page 1 of this Deed and the successors and permitted assigns of that person and includes, where relevant, the Licensee's Employees and Agents.

Licensors means the person or entity referred to as such on page 1 of this Deed and the successors and assigns of that person or entity and includes, where relevant, the Licensors' Employees and Agents.

Loss means any loss, claim, demand, action, suit, proceeding, cost, expense, penalty, payment, damage, liability or deficiency but excludes any Consequential Loss.

Minister means the Minister for Planning and Public Spaces ABN 20 770 707 468.

Notice of Completion means a notice from the Licensee stating that the Works are complete.

Outgoings means all rates, taxes, charges, duties and insurances of any description that are assessed, levied, imposed or charged in respect of the Licensed Area or the Licensee's use or occupation of the Licensed Area.

Relevant Authority means any federal, state or local government, semi-government, quasi-government, administrative, fiscal or judicial department, or any entity agency, or other body, statutory or otherwise, and any court or tribunal having jurisdiction or power in relation to the Licensed Area or activities on or use made of the Licensed Area.

Road Works has the same meaning given to that expression in the VPA.

Road Works Land has the same meaning given to that expression in the VPA.

Senior Management Representative means the senior management representative of each party as specified in Item 3 of the Schedule.

Service Charges means the total of all charges paid or payable in connection with the supply of services and systems provided to the Licensed Area or available for use including electricity, light, gas, oil, water, air conditioning, power, fuel, sewage, telephone services, cleaning and all other services furnished or supplied to the Licensed Area.

Schedule means the schedule to this Deed.

Term means the period commencing on the Commencement Date and ending on the Licence End Date.

Deed of Agreement to Grant an Exclusive Construction Licence

VPA means the voluntary planning agreement between the Minister, the Licensee and the Licensor in relation to the Licensor's development of land within the Kings Hill Urban Release Area.

WH & S Legislation means any Law that relates to the health and safety of employees, contractors or other persons at work places including the *Work Health and Safety Act 2011* and its regulation.

Works means:

- (a) the Road Works;
 - (b) the Drainage Channel Works; and
 - (c) ancillary works, including survey works and investigations,
- carried out within the Licensed Area.

1.2 Interpretation

In this Deed unless the contrary intention appears:

- (a) a reference to a party includes, as the context requires, the party's respective executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (b) a reference to a person includes any other entity recognised by law and vice versa;
- (c) headings, underlinings, marginal notes and indexes are only included for ease of reference and do not affect interpretation;
- (d) a reference to any legislation or legislative provision includes any modifying, consolidating or replacing legislation or legislative provisions from time to time, and includes all regulations, rules and other statutory instruments issued under the legislation;
- (e) a reference to a document (including this Deed) are to that document as varied, novated, ratified or replaced from time to time;
- (f) references to parties, clauses, schedules, annexures or exhibits are references to parties, clauses, schedules, annexures or exhibits to this Deed unless otherwise stated;
- (g) references to months and years means calendar months and years;
- (h) words denoting the singular number include the plural, and vice versa;
- (i) words denoting one gender include the other gender or neuter, as the context requires;
- (j) **including** and **includes** are not words of limitation;
- (k) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- (l) delivery of this Deed will be taken to have been given on the date it bears;
- (m) a reference to "\$" or "dollar" is to Australian currency; and

Deed of Agreement to Grant an Exclusive Construction Licence

- (n) if the day on which any act, matter or thing is to be done under or pursuant to this Deed is not a Business Day, that act, matter or thing may be done on the next Business Day.

1.3 Meaning of Terms

Capitalised terms used but not defined in this Deed will have the same meanings as they have in the VPA unless a contrary intention appears.

2. Exclusive Licence

2.1 Grant of Licence

The Licensor grants to the Licensee an exclusive licence to occupy and use the Licensed Area in accordance with this Deed for the purpose of undertaking the Works, and to continue to use and occupy the Licensed Area for public purposes following completion of the Works, for the Term.

2.2 Payment of Licence Fee

The Licensee acknowledges that it must pay the Licence Fee on demand.

2.3 Payment of Outgoings

- (a) For the Term, the Licensee is liable for and must pay all Service Charges and Outgoings payable in connection with the ownership, occupation, use, management and maintenance of the Licensed Area on or before the due date for payment to the relevant persons or the Relevant Authorities or, if required, to the Licensor.
- (b) If any Service Charges or Outgoings are payable in relation to other land in addition to the Licensed Area, the Licensee is liable for and must pay such Service Charges or Outgoings in respect of the Licensed Area only, on a proportional area basis.
- (c) Where the Licensee has failed to pay any Service Charges or Outgoings payable under this clause by the due date for payment, the Licensor may, in its absolute discretion, elect to pay the amount due in respect of the Service Charges or Outgoings to the relevant person or the Relevant Authority, and that amount will constitute a debt payable to the Licensor and the Licensee must reimburse the Licensor for the debt within 10 Business Days of written demand from the Licensor, provided that the Licensor has provided a valid tax invoice, supporting information and evidence of payment.

2.4 Notice of Intention

The Licensee must give the Licensor written notice of its intention to commence the Works at least 5 Business Days before commencement of the Works.

2.5 Compliance with Law

The Licensee must comply and must ensure compliance with the Law, including all relevant Approvals, and the requirements of any Relevant Authority.

2.6 Insurance

The Licensee must obtain and maintain for the Term appropriate levels of insurance having regard to the nature of the Works.

Deed of Agreement to Grant an Exclusive Construction Licence

2.7 Environmental obligations

The Licensee must:

- (a) comply with all relevant Environmental Laws;
- (b) promptly remove any waste material, including rubbish, refuse, debris and other materials, resulting from the construction of the Works;
- (c) not contaminate the Licensed Area with any Hazardous Materials;
- (d) take reasonable steps to prevent the spillage or escape of Hazardous Materials or other materials onto, from or into the Licensed Area;
- (e) immediately notify the Licensor of any event or incident which may result in the pollution or contamination of the Licensed Area or involves the spillage or escape of Hazardous Materials or injury or damage to persons or property; and
- (f) take immediate steps to stop, control, and clean up any spillage or escape of any Hazardous Materials.

2.8 Indemnity for property damage or injury

The Licensee must indemnify the Licensor against:

- (a) any loss of or damage to property of the Licensor; and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, the Licensee's occupation of the Licensed Area or anything that the Licensee or its invitees do or omit to do in accessing the Licensed Area. The liability of the Licensee is reduced to the extent that the loss, damage or liability arises out of any negligent act or omission of the Licensor or any of its contractors, subcontractor or authorised persons.

2.9 Notice of Completion

Following completion of the Road Works or the Drainage Channel Works (as the case may be), the Licensee must provide to the Licensor a Notice of Completion for the Road Works or the Drainage Channel Works (as the case may be).

2.10 Assignment by Licensee

The Licensee may on giving notice to the Licensor assign, transfer, mortgage, dispose of, or otherwise deal with this Deed in respect of the whole or any part of the Licensed Area.

3. Obligations of Licensor

3.1 Restriction on development

The Licensor must ensure that no dwellings or any other structures are constructed or authorised to be constructed within the Licensed Area during the Term.

3.2 Restriction on dealings

- (a) Subject to clause 3.2(b), the Licensor must not sell any land within the Licensed Area during the Term.

Deed of Agreement to Grant an Exclusive Construction Licence

- (b) If the Licenser proposes to sell any land within the Licensed Area to a third party (**Incoming Party**) at any time during the Term, then prior to completing such sale, the Licenser must procure entry into a licence between the Licensee, the Incoming Party and subsequent owners of the land on the terms of this Deed (or on such similar terms as are acceptable to the Licensee, acting reasonably), to ensure continued access, use and occupation of the land by the Licensee.

4. WH & S Legislation

4.1 Licensee's Acknowledgments

The Licensee acknowledges that:

- (a) as the owner of the Licensed Area, the Licenser has obligations under the WH& S Legislation; and
- (b) as occupier of the Licensed Area, the Licensee has obligations under the WH & S Legislation and, in particular, the Licensee may have control or management in part of:
 - (i) the Licensed Area; and
 - (ii) plant and substances at the Licensed Area,for the purposes of the *Work Health and Safety Act 2011* (NSW).

4.2 Licensee to Perform Obligations

The Licensee must:

- (a) perform all the Licensee's obligations under the WH & S Legislation; and
- (b) ensure that the Licensee does not by any act or omission cause the Licenser to be in breach of the Licenser's obligations under the WH & S Legislation; and
- (c) ensure that emergency procedures are put in place for invitees, licensees and employees of the Licensee and adequate provisions with regard to:
 - (i) information for invitees and licensees of the Licensee; and
 - (ii) information and training for employees of the Licensee,in relation to the emergency procedures; and
- (d) ensure so far as is reasonably practicable that risks to the health and safety of any person are minimised.

4.3 Consultation

- (a) The Licensee and Licenser will consult, cooperate and coordinate with each, so far as is reasonably practicable, in respect of matters to which they both owe an obligation under the WH & S Legislation.
- (b) The Licenser must:
 - (i) advise the Licensee of any matters it is aware of that could affect the health and safety of any persons at, or near, the Licensed Area; and

Deed of Agreement to Grant an Exclusive Construction Licence

- (ii) not do anything that could create a risk to health and safety of persons at, or near, the Licenced Area.

4.4 Principal Contractor

- (a) In this clause 4.4, "workplace", "construction project", "construction work" and "principal contractor" have the same meanings assigned to those terms in the WH & S Legislation.

- (b) If the Works, Road Works or Drainage Channel Works constitute a construction project:

- (i) the Licensee; or

- (ii) another person,

will be the principal contractor for the construction project and both parties agree that the principal contractor will have management or control of the workplaces in connection with the construction project and will discharge the responsibilities imposed on a principal contractor for the construction project under the WH & S Legislation.

- (c) Without limiting the Licensee's obligations under any other provision of this Deed, if the Licensee is not the principal contractor for the Works, the Road Works or the Drainage Channel Works, it must require the principal contractor for the Works, the Road Works or the Drainage Channel Works, to comply with the obligations imposed on the Licensee in relation to work, health and safety under this Deed.

5. Release by Licensee

5.1 Licensee uses Licensed Area at own Risk

Except to the extent any Loss is caused or contributed to by the Licensor or the Licensor's Employees and Agents and subject to the provisions of this Deed, the Licensee uses and occupies the Licensed Area at the Licensee's own risk.

5.2 Licensee's Release of Licensor

The Licensor is not liable to the Licensee for and the Licensee releases the Licensor from any Loss, including in connection with death or injury:

- (a) paid, suffered or incurred by the Licensor, the Licensor's Employees and Agents; or

- (b) for which the Licensor may be or become liable,

that is wholly or partly due to or arising out of the Licensee's occupation and use of the Licensed Area.

5.3 Extent of Release

The release under clause 5.2 is full and absolute except to the extent that the Loss is caused or contributed to by the Licensor or the Licensor's Employees and Agents.

6. Costs and Expenses

6.1 Costs

Except as expressly stated otherwise in this Deed, each party must pay its own legal and other costs and expenses in connection with the preparation, negotiation and execution of this Deed and of performing its obligations under this Deed.

6.2 Duty

- (a) The Licensee as between the parties is liable for and must pay any stamp duty (including any penalty or interest, except where it arises from default by another party) payable or assessed in respect of this Deed and any document executed under this Deed.
- (b) If the Licensor pays any stamp duty (including any penalty or interest) referred to in clause 6.2(a), in whole or in part, the Licensee must reimburse the Licensor without set-off or deduction promptly on demand, subject to the Licensor providing supporting information and evidence of payment.
- (c) To the extent that any stamp duty or any other costs associated with the preparation and registration at NSW Land Registry Services of plans and other documents are payable in relation to the transfer or acquisition of the Road Works Land and the Drainage Channel Land, such amounts are to be paid in accordance with the VPA.

7. GST

7.1 Construction

In this clause:

- (a) unless there is a contrary indication, words and expressions which are not defined in this Deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- (b) **GST Law** has the same meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of goods and services tax in Australia and any regulation made under that Act; and
- (c) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

7.2 Payments exclude GST

All consideration, whether monetary or non-monetary, payable or to be provided in connection with this Deed do not (unless otherwise expressly stated) include GST (**GST-exclusive consideration**).

7.3 Recipient to pay GST

Deed of Agreement to Grant an Exclusive Construction Licence

If GST is payable on any supply made by:

- (a) a party; or
- (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,

(**Supplier**) under or in connection with this Deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

7.4 Timing of GST payment

The amount referred to in clause 7.3 must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

7.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under clause 7.3.

7.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this Deed, any amount that is payable under clause 7.3 will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

7.7 Reimbursements

- (a) Where a party is required under or in connection with this Deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This clause 7.7 does not limit the application of clause 7.3, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 7.7(a).

7.8 Calculations based on other amounts

If an amount of consideration payable or to be provided under or in connection with this Deed is to be calculated by reference to:

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and
- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

7.9 No merger

This clause 7 does not merge on completion, rescission or termination of this Deed or the transfer of any property supplied under this Deed.

8. Termination Rights

8.1 Termination on Licence End Date

This Deed will automatically terminate on the Licence End Date.

8.2 No termination by Licensor

The Licensor cannot terminate this Deed prior to the Licence End Date.

8.3 Termination by Licensee

The Licensee may terminate this Deed prior to the Licence End Date:

- (a) at any time by agreement with the Licensor; or
- (b) by giving the Licensor no less than 5 Business Days' written notice.

8.4 Certain rights not affected

Termination of this Deed does not affect the parties' obligations under clauses 6 and 7.

8.5 After Termination

After termination of this Deed:

- (a) the Licensee must vacate the Licensed Area; and
- (b) subject to clauses 8.4 and 12.2, the parties are absolutely discharged from their obligations under this Deed and from any action, claim or demand arising in respect of this Deed.

9. Right to enter

- (a) The Licensor, including any of its Employees and Agents, must not enter the Licensed Area unless:
 - (i) the Licensor has given reasonable prior notice to the Licensee, including by specifying the proposed time and purpose for access, the person or persons who are proposed to enter the Licensed Area and whether any vehicles, plant or equipment are proposed to be taken onto the Licensed Area; and
 - (ii) the Licensee has provided its consent to the Licensor entering the Licensed Area, which may be withheld or granted subject to such conditions as the Licensee determines in its absolute discretion.
- (b) When exercising any right specified in this clause, the Licensor must, and must ensure that its Employees and Agents:
 - (i) take all reasonable steps to minimise any disruption to the Works and to the Licensee's use and occupation of the Licensed Area; and
 - (ii) comply with all reasonable directions of the Licensee.

10. Notices

10.1 Notices

Any notice, demand, consent, approval, request or other communication to be given or made under this Deed must be in writing and must be given or made to the recipient by being:

- (a) hand delivered to the recipient's Address for Service;
- (b) sent by prepaid ordinary mail within Australia to the recipient's Address for Service;
- (c) sent by prepaid express post international airmail if the Address for Service of the sender and the recipient are in different countries; or
- (d) sent by email to the recipient's email address specified in the Address for Service.

10.2 Giving of Notice

A notice is given:

- (a) if hand delivered, on the day of delivery;
- (b) if sent by prepaid ordinary mail within Australia, on the day that is two Business Days after the date of posting;
- (c) if sent by prepaid express post International airmail between countries, on the day that is 10 Business Days after the date of posting; or
- (d) If sent by email, at the time the email is sent, provided that the sender does not receive a "bounce back", notification of delivery failure or similar automated message from the recipient's email address.

10.3 After hours communications

If a communication is given:

- (a) after 4.00 pm on any Business Day in the place of receipt; or
- (b) on a day which is not a Business Day in the place of receipt,

it is taken as having been given at 9.00 am on the next Business Day in the place of receipt.

11. Dispute Resolution

11.1 Application

Any dispute, claim or difference between the parties arising out of, relating to or in connection with this Deed or its subject matter, including any dispute, claim or difference as to the formation, validity, interpretation, existence, termination or enforceability (including any non-contractual dispute or claim) of this lease (**Dispute**), must be determined in accordance with this clause 11,

11.2 Executive negotiation

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may, by giving notice to the other party or parties to the Dispute (**Dispute Notice**), refer the Dispute to the Senior Management Representatives for resolution. The Dispute Notice must:
 - (i) be in writing;

Deed of Agreement to Grant an Exclusive Construction Licence

- (ii) state that it is given in accordance with this clause 11.2;
 - (iii) include or be accompanied by reasonable particulars of the Dispute, including:
 - (A) a brief description of the circumstances in which the Dispute arose; and
 - (B) references to any:
 - (I) provisions of this Deed; and
 - (II) acts or omissions of any person,relevant to the Dispute.
- (b) Within 5 Business Days of the Referring Party giving the Dispute Notice, the Senior Management Representatives must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Senior Management Representative to any other person. A party may replace its Senior Management Representative by giving the other party a notice stating that it is replacing its Senior Management Representative and providing details of the replacement Senior Management Representative.
- (c) The Senior Management Representatives may meet more than once to resolve a Dispute during the period of 10 Business Days after service of the Dispute Notice (**Resolution Period**) and may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) If the Dispute is not resolved by the Senior Management Representatives within the Resolution Period, the matter must be referred to the chief executive officers of the parties, or suitably nominated representatives, to attempt to resolve the Dispute within 20 Business Days of the expiry of the 10 Business Day period referred to in clause 11.2(c).
- (e) The parties acknowledge and agree that the timeframes set out in this clause may be extended by mutual agreement (with the parties obliged to act reasonably in that regard).

11.3 Parties to continue to comply

If a party gives a Dispute Notice under clause 11.2(a), the parties will continue to meet their obligations under this Deed until the Dispute is resolved and, following resolution of the Dispute, meet their obligations under this Deed in accordance with the resolution of the Dispute.

11.4 Condition precedent to litigation

Subject to clause 11.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given under clause 11.2; and
- (b) the parties have failed to resolve the Dispute in accordance clause 11.2.

11.5 Summary or urgent relief

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

Deed of Agreement to Grant an Exclusive Construction Licence

11.6 Survives termination

This clause 11 survives expiry or termination of this Deed.

12. General

12.1 Law and Jurisdiction

This Deed is governed by the Law in force in New South Wales. The parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Deed.

12.2 Preservation of existing rights

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

12.3 Joint and Several Liability

Every covenant or provision in this Deed applying to or binding, or a right conferred on, more than one person will bind or benefit each of them jointly and severally.

12.4 Amendment

This Deed may only be amended, varied or supplemented in writing signed by the parties.

12.5 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

12.6 No Merger

Any right or obligation of any party that is intended to operate or have effect on or after the completion or termination of this Deed (as the case may be) for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12.7 Further Assurance

Each party will do, sign, execute and deliver and will procure that each of its employees, successors, agents or other relevant party does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it by notice from another party to effectively carry out and give full effect to this Deed and the rights and obligations of the parties under it.

12.8 Capacity

Each party warrants to each other party that this Deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms.

12.9 Entire Agreement

This Deed and any annexures and the VPA contains the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of this Deed and the VPA. Other than the VPA, all

Deed of Agreement to Grant an Exclusive Construction Licence

representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Deed.

12.10 Severability

If any part of this Deed is void or unenforceable and does not go to the essence of the Deed, that part will be severed from this Deed and the rest of this Deed will continue to have full force and effect.

12.11 Contra Proferentem

In the interpretation of this Deed, no rules of construction will apply to the disadvantage of one party on the basis that the party put forward the Deed or any part of it.

12.12 No fetter

Nothing in this Deed shall be construed as requiring the Licensee to do anything that would cause the Licensee to breach any obligation at Law and, without limitation, nothing in this Deed shall be construed as limiting or fettering in any way the discretion of the Licensee in exercising any of its statutory functions, powers, authorities or duties.

Deed of Agreement to Grant an Exclusive Construction Licence

Executed as a deed.

Executed for and on behalf of **Roads and Maritime Services (ABN 76 236 371 088)**)
by its delegate and I hereby certify that I)
have no notification as to the revocation of)
such delegation, in the presence of:)

Signature of witness

Signature of delegate

Name of witness (please print)

Name of delegate (please print)

Address of Witness

Title of delegate

Executed by Kingshill Development No 1 Pty Ltd in accordance with section 127 of the *Corporations Act 2001* (Cth):)
)
)
)
)

.....
*Signature
Director

.....
*Signature
Director/Secretary

.....
(print name)

.....
(print name)

Executed by Kingshill Development No 2 Pty Ltd in accordance with section 127 of the *Corporations Act 2001* (Cth):)
)
)
)
)

.....
*Signature
Director

.....
*Signature
Director/Secretary

.....
(print name)

.....
(print name)

Deed of Agreement to Grant an Exclusive Construction Licence

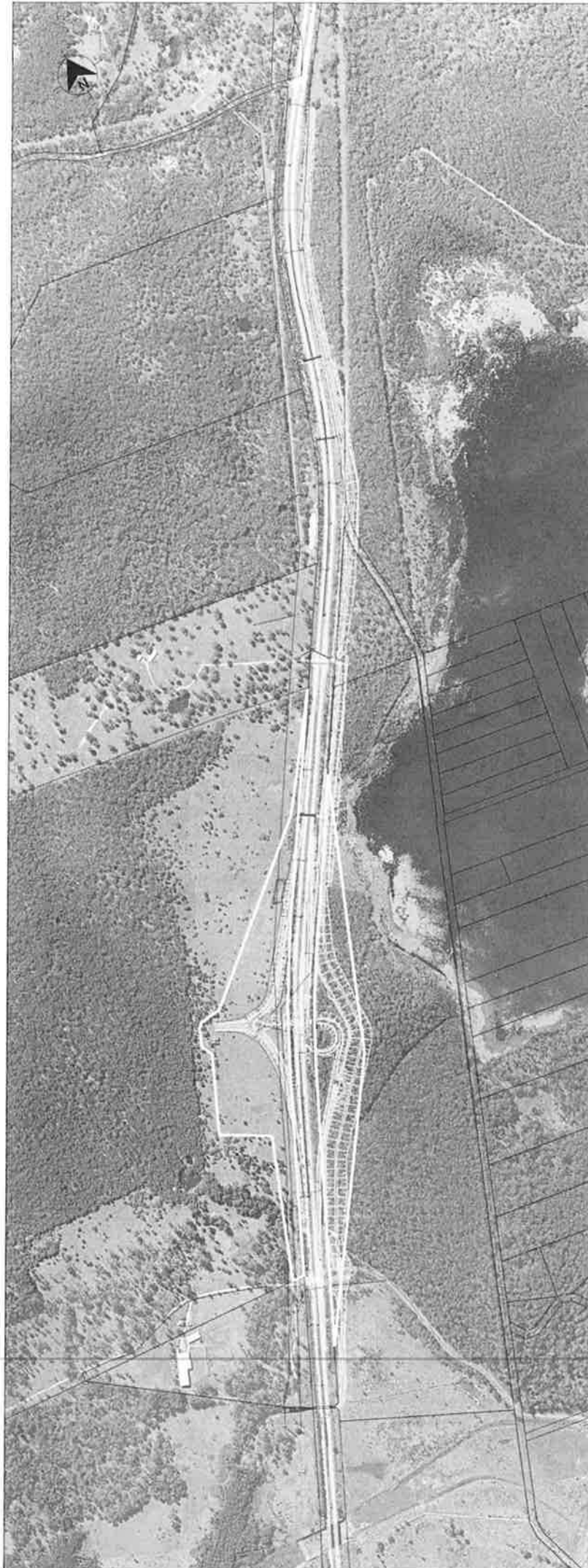
Schedule 1

Item 1	Address for Service
Part 1 Licensee	Roads and Maritime Services Locked Bag 928 North Sydney NSW 2059 Email: [insert] Attention: Principal Manager Property – Commercial Division
Part 2 Licensor:	Kingshill Development No 1 Pty Ltd and Kingshill Development No 2 Pty Ltd Suite 1 / 3B Macquarie Street Sydney, NSW, 2000 Email: [insert] Attention: Wesley Chong
Item 2	Commencement Date
	The date this Deed is executed by all parties.
Item 3	Senior Management Representative
Licensee	Principal Manager Property – Commercial Division
Licensor	[insert]

Annexure A

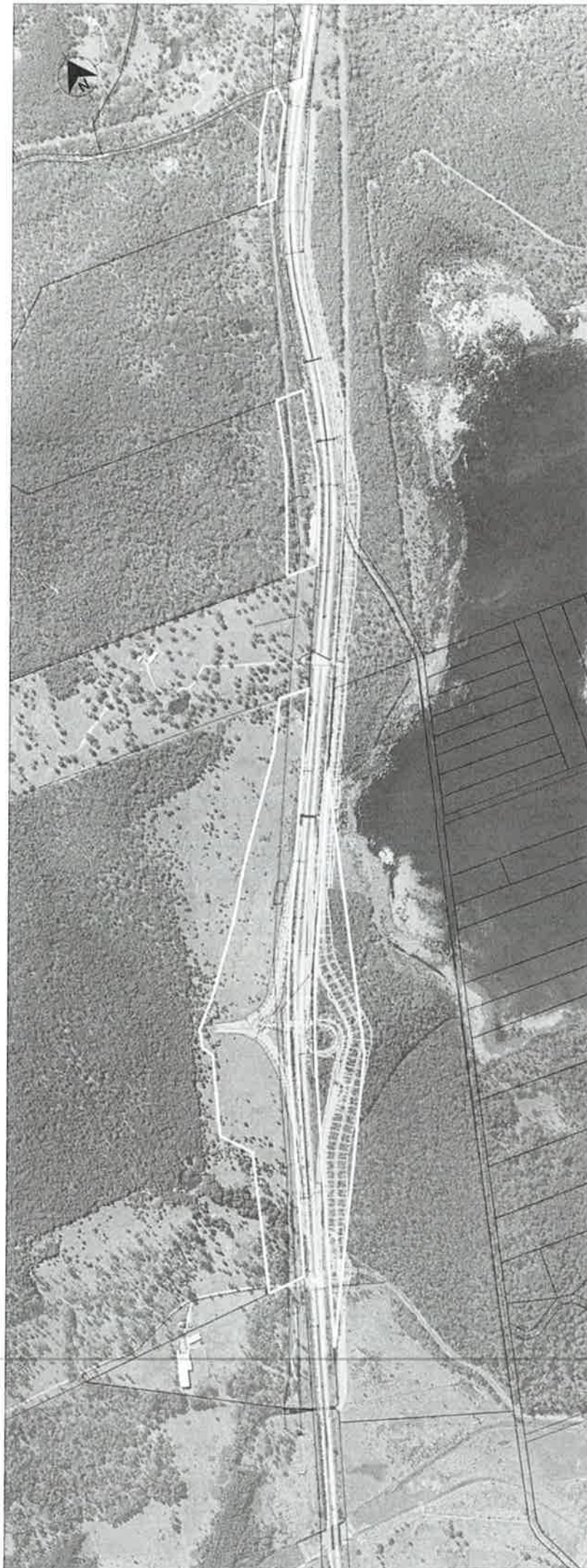
Licensed Area Plan

[Note: the parties are to remove whichever plan does not apply depending upon which side the Drainage Channel is ultimately to be constructed]



LEGEND

- Construction Boundary
- Existing Utilities
- Interchange and
- Current Proposed
- Boundary and Easements



LEGEND

- Construction Boundary
- Existing Utilities
- Interchange and
- Current Proposed Channel Design
- Boundary and Easements

BW Rf
OP

Annexure F

Eastern Catchment

A handwritten signature in black ink, appearing to be 'R. J. O' or similar, located in the bottom right corner of the page.

Annexure G

Concept Access Road Plan

BW
AK
OK

LEGEND

- PROPOSED COLLECTOR ROAD
- DEMOTES SITE BOUNDARY
- DEMOTES APPROXIMATE FOOTPRINT OF BOTH COLLECTOR ROADS



FOR INFORMATION JOB NUMBER: NL120526 DRAWING NUMBER: SK-28-C1.00 REVISION: 1 DRAWING SHEET 222 x 343		PROJECT: KINGS HILL DRAWING TITLE: COLLECTOR ROAD FOOTPRINT PLAN
NORTHROP Newcastle Suite 4, 115 Pacific Highway North, NSW 2200 P.O. Box 100, Newcastle NSW 2200 Tel: (08) 9291 1300 Fax: (08) 9291 1300 Email: northrop@northrop.com.au		PLANNER: JW PLANNING KINGS HILL DEVELOPMENTS THE UPTURN OF THE PACIFIC HIGHWAY AT THE INTERSECTION WITH NEWLINE ROAD.
SCALE: 1:10000 0 100 200 300 400m 0 100 200 300 400m 0 100 200 300 400m		DATE: 14.05.19 BY: [Signature] CHECKED: [Signature] APPROVED: [Signature]