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Minister for Planning

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Hazcorp Developments Pty Ltd

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Taurus Development Company Pty Ltd trading as  
Emerald Hills Estate

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D & AI Pty Ltd as Trustee for the D & AI Unit Trust

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# Planning Agreement - Environmental Planning and Assessment Act 1979

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Date 4 MAY 2015

## Parties

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

**Hazcorp Developments Pty Ltd** ACN 153 042 981 of PO Box 373, Narellan, New South Wales, 2567 (**Hazcorp**)

**Taurus Development Company Pty Ltd trading as Emerald Hills Estate** ACN 153 004 123 of PO Box 373, Narellan, New South Wales, 2567 (**Taurus**)

(Hazcorp and Taurus together, known as the **Developer**)

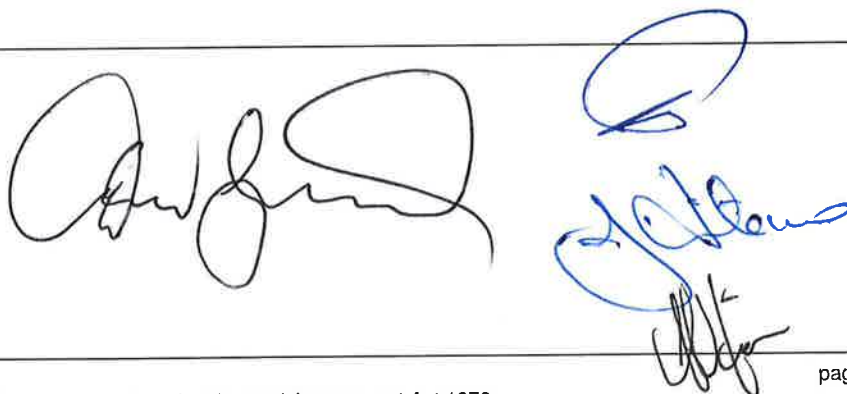
**D & AI Pty Ltd as Trustee for the D & AI Unit Trust** ACN 136 122 220 of PO Box 373, Narellan, New South Wales, 2567 (**Landowner**)

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## Background

- A The Landowner owns the Land.
- B The Developer proposes to carry out the Development on the Land.
- C The Developer lodged the Planning Proposal in respect of the Land.
- D The Gateway Determination for the Planning Proposal required the Land to be mapped as an Urban Release Area under the LEP.
- E On 19 September 2014, the Amending LEP was published, giving effect to the Planning Proposal and the requirement under the Gateway Determination that the Land be mapped as an Urban Release Area under the LEP.
- F The Developer now proposes to make a Development Application to the Consent Authority in respect of the Land.
- G Clause 6.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has issued a Satisfactory Arrangements Certificate to the Consent Authority.
- H The Developer has offered to enter into this deed with the Minister to secure the provision of the Development Contribution in order to enable the Secretary to provide the Satisfactory Arrangements Certificate required by the LEP.

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## Agreed terms

### 1 Definitions

In this document these terms have the following meanings:

<b>Act</b>	The <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Actual Cost</b>	<p>In relation to the Road Works, means:</p> <ul style="list-style-type: none"><li>(a) the final certified contract cost inclusive of variations at completion of the Road Works Agreement;</li><li>(b) in relation to the land upon which the Road Works are to be constructed, any reasonably incurred:<ul style="list-style-type: none"><li>(i) land acquisition costs borne by the Developer in respect of the acquisition of land from third parties and for the value of any of the Land or any other land owned by the Landowner required to be dedicated to the Minister under this Agreement for the purpose of the Road Widening Land; and</li><li>(ii) Remediation costs associated with the land including, but not limited to, Remediation of any Contamination;</li></ul></li><li>(c) utility service adjustments (including relocation of any pylons); and</li><li>(d) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred and paid by the Developer to third parties for the following:<ul style="list-style-type: none"><li>(i) design of the Road Works, project management, fees, investigations, consultant fees, studies or reports specifically required for the Road Works; and</li><li>(ii) any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Works.</li></ul></li></ul>
<b>Address for Service</b>	The address of each party appearing in <b>schedule 2</b> of this deed or any new address notified in writing by any party to all other parties as its new address for service.
<b>Amending LEP</b>	The <i>Camden Local Environmental Plan 2010</i>

	(Amendment No. 36), published on 19 September 2014.
<b>Authority</b>	Any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
<b>Bank Guarantee</b>	<p>An irrevocable and unconditional undertaking:</p> <p>(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</p> <p>(b) on terms acceptable to the Minister, in the Minister's absolute discretion,</p> <p>to pay the face value of that undertaking (being such amount as is required under this deed) on demand.</p>
<b>Base CPI</b>	The CPI number for the quarter ending 31 March 2014.
<b>Business Day</b>	Any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5.00pm on that day.
<b>Claim</b>	Any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise, including (without limitation), any claim for compensation arising under or pursuant to the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Complying Development Certificate</b>	Has the meaning given to it in the Act.
<b>Consent Authority</b>	Has the meaning given to it in the Act.
<b>Construction Certificate</b>	Has the meaning given to it in the Act.
<b>Contamination</b>	Has the meaning given to in the <i>Contaminated Land Management Act 1997</i> (NSW) and includes asbestos and lead.
<b>Contribution Amount</b>	The amount of the monetary contribution to be paid by the Developer as described in <b>schedule 4</b> , except where <b>clause 4.2</b> applies.
<b>Costs</b>	Include costs, charges and expenses, including those incurred in connection with advisers.

<b>CPI</b>	The Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister determines in its sole discretion.
<b>CPI Adjustment Date</b>	1 July 2015 and each anniversary of 1 July thereafter.
<b>Credit Documentation</b>	Has the meaning given to it in <b>clause 4.4(a)</b> of <b>schedule 4</b> of this deed.
<b>Current CPI</b>	The CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.
<b>Dealing</b>	Without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.
<b>Designated State Public Infrastructure</b>	<p>Means public facilities or services that are provided or financed by the State government (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State government) of the following kinds:</p> <ul style="list-style-type: none"><li>(a) State and regional roads;</li><li>(b) bus interchanges and bus lanes;</li><li>(c) land required for regional open space; and</li><li>(d) land required for social infrastructure and facilities (such as land for schools, hospitals, emergency services and justice purposes).</li></ul>
<b>Determination</b>	The Environmental Planning and Assessment (Special Infrastructure Contribution –Western Sydney Growth Areas) Determination 2011 as set out in <b>schedule 7</b> of this deed.
<b>Development</b>	The subdivision of the Land into approximately 1280 residential lots with associated retail, education, community and open space uses generally in accordance with the Planning Proposal.
<b>Development Application</b>	Has the same meaning as in the Act.
<b>Development Consent</b>	Has the same meaning as in the Act.
<b>Development Contribution</b>	The contributions to be provided by the Developer in accordance with <b>schedule 4</b> of this deed.
<b>Education Land</b>	A fully serviced site, connected to sewer, power, gas, communications and water and suitable for use as a school site, comprising approximately 2.75 hectares of the



	Land identified as the "School Site" on the plan at <b>Annexure D</b> to this deed or as otherwise agreed in writing between the Developer and the Minister.
<b>Education Land Credit</b>	Has the meaning given to it in <b>clause 6.6(a)(i)</b> of <b>schedule 4</b> of this deed.
<b>Estimated Cost</b>	Has the meaning given to it in <b>clause 4.2(b)</b> of <b>schedule 4</b> of this deed.
<b>Explanatory Note</b>	The note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.
<b>Final Reconciliation</b>	Has the meaning given to it in <b>clause 7(a)</b> of <b>schedule 4</b> of this deed.
<b>Gateway Determination</b>	The gateway determination process pursuant to section 56 of the Act.
<b>General Register of Deeds</b>	The land register maintained under the <i>Conveyancing Act 1919</i> (NSW) and so titled.
<b>Growth Centre</b>	Has the meaning given to it in clause 3 of <i>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</i> .
<b>GST</b>	Any form of goods and services tax payable under the GST Legislation.
<b>GST Legislation</b>	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Land</b>	The land described in <b>schedule 3</b> of this deed owned by the Landowner.
<b>LEP</b>	The <i>Camden Local Environmental Plan 2010</i> .
<b>Net Developable Area</b>	Has the meaning given to it in <b>schedule 6</b> of this deed.
<b>Planning Agreement</b>	Means a planning agreement under section 93F of the Act.
<b>Planning Application</b>	(a) a Development Application; or (b) any other application required under the Act, which seeks approval for the subdivision of the Land.
<b>Planning Proposal</b>	The planning proposal lodged by the Developer with Camden Council as amended prior to the making of the Amending LEP to:  (a) rezone the Land under the LEP from RU2 – Rural Landscape to primarily R2 – Low Density Residential, B1 – Neighbourhood Centre, E2 –

	Environmental Conservation and those parts of the Land comprising the Road Widening Land to SP2 - Infrastructure;
	(b) allow the additional permitted use of part of Lot 10 in DP 1173819 for the development of exhibition homes; and
	(c) release the Land for the development of approximately 1280 residential lots with associated retail, education, community and open space,
	which was the subject of a Gateway Determination on 7 July 2014.
<b>Plan of Subdivision</b>	A plan of subdivision within the meaning of the section 195 of the <i>Conveyancing Act 1919</i> (NSW).
<b>Practical Completion</b>	Has the same meaning given to that term in the Road Works Agreement.
<b>Real Property Act</b>	The <i>Real Property Act 1900</i> (NSW).
<b>Register</b>	The Torrens title register maintained under the Real Property Act.
<b>Regulation</b>	The <i>Environmental Planning and Assessment Regulation 2000</i> (NSW).
<b>Related Body Corporate</b>	Has the meaning given to that term in the <i>Corporations Act 2001</i> (Cth).
<b>Remediation</b>	Has the meaning given to that term in <i>State Environmental Planning Policy No. 55 – Remediation of Land</i> . <b>Remediate</b> has a corresponding meaning.
<b>RMS</b>	Roads and Maritime Services constituted under the <i>Transport Administration Act 1988</i> (NSW).
<b>Road Widening Land</b>	The land to be dedicated for the Road Works with an approximate area of 1.399 hectares as depicted by grey shading on the plan at <b>Annexure C</b> to this deed.
<b>Road Widening Land Credit</b>	Has the meaning given to it in <b>clause 5.6(a)(i)</b> of <b>schedule 4</b> of this deed.
<b>Road Works</b>	Works to upgrade approximately 0.7 kilometres of Raby Road, Raby, to dual carriageway adjoining Lot 10 in DP 117389 that is listed in Appendix 1 of the Determination as "R11 Raby Road – Camden Valley Way to Thunderbolt Drive", including a signalised intersection and dedication of the Road Widening Land, as depicted in Road Works Sheets 1 – 3 at <b>Annexure B</b> to this deed and subject to any conditions of Development Consent and the terms of

	the Road Works Agreement.
<b>Road Works Agreement</b>	A works authorisation deed or other legally binding agreement between the Developer and RMS which: <ul style="list-style-type: none"> <li>(a) governs the carrying out and completion of the Road Works;</li> <li>(b) includes a date upon which the Road Works must reach practical completion; and</li> <li>(c) includes a mechanism for appropriate security to be provided by the Developer to guarantee the carrying out of the Road Works.</li> </ul>
<b>Road Works Credit</b>	Has the meaning given to it in <b>clause 4.4(b)(i)</b> of <b>schedule 4</b> of this deed.
<b>Satisfactory Arrangements Certificate</b>	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.
<b>Secretary</b>	The Secretary of the Department of Planning and Environment from time to time.
<b>Site Audit Statement</b>	Has the meaning given to in the <i>Contaminated Land Management Act 1997</i> (NSW).
<b>Special Infrastructure Contribution</b>	A contribution determined in accordance with section 94EE of the Act with respect to the Land.
<b>Stage and Staging Plan</b>	Each stage of the Development, including the development of that part of the Land zoned B1 – Neighbourhood Centre, as set out in the staging plan at <b>Annexure A</b> to this deed.
<b>Strata Certificate</b>	A strata certificate within the meaning of the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or the <i>Strata Schemes (Leasehold Development) Act 1986</i> (NSW), as applicable.
<b>Strata Plan and Strata Plan of Subdivision</b>	A strata plan and strata plan of subdivision under the <i>Strata Schemes (Freehold Development) Act 1973</i> (NSW) or the <i>Strata Schemes (Leasehold Development) Act 1986</i> (NSW), as applicable.
<b>Subdivision Certificate</b>	Has the same meaning as in the Act.
<b>Tax</b>	A tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Urban Release Area** Has the meaning given to that term under the LEP.

## 2 Operation and Application of this Deed

### 2.1 Operation

This deed will commence from the date this deed is signed by all the parties.

### 2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

### 2.3 Application

This deed applies to:

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

## 3 Application of Sections 94, 94A and 94EF of the Act

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

## 4 Development Contribution

### 4.1 Developer to provide Development Contribution

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

### 4.2 Special Infrastructure Contribution

- (a) This **clause 4.2** applies where:
  - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
  - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for a Stage of the subdivision authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that Stage, then:
  - (i) the Developer is required to pay only the SIC Amount; and
  - (ii) that SIC Amount is to be treated as the relevant Contribution Amount for the purposes of **clauses 1** and **2** of **schedule 4**.

- (c) This **clause 4.2** applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this **clause 4.2**, a reference to the "SIC Amount" for a Stage of the subdivision authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for that Stage calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

#### **4.3 Acknowledgement**

The Developer and the Landowner acknowledge and agree that the Minister:

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

## **5 Interest**

### **5.1 Interest for late payment**

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

## **6 Enforcement**

### **6.1 Developer to provide security**

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

## 7 Registration

### 7.1 Registration of deed

Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense will take all practical steps and otherwise do all things necessary to procure:

- (a) the consent of each person who:
  - (i) has an estate or interest in the Land registered under the Real Property Act; or
  - (ii) is seized or possessed of an estate or interest in the Land;
- (b) the execution of any documents;
- (c) the production of the relevant certificates of title; and
- (d) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register relating to the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

### 7.2 Evidence of registration

The Developer will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed on the title of the Land.

### 7.3 Right to lodge caveat

- (a) Subject to **clause 7.3(b)**, until such time as this deed is registered on the title of the Land in accordance with **clause 7.1(d)**, the Developer and Landowner acknowledge that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with **clause 7.3(a)**, then the Minister will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
  - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with **clause 7.1**.
- (c) If after 10 Business Days, the Developer and Landowner have failed or have been unable to achieve the registration of this deed in accordance with **clause 7.1**, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under **clause 7.3(a)**.

### 7.4 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the

Developer satisfying all of its obligations under this deed in respect of that part of the Land.

## **7.5 Landowner's interest in Land**

The Landowner represents and warrants separately that it is:

- (a) the owner of the Land; and
- (b) legally entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by **clause 7.1(a)** to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 7**.

## **8 Dispute Resolution**

### **8.1 Not commence**

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

### **8.2 Written notice of dispute**

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

### **8.3 Attempt to resolve**

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

### **8.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under **clause 8.2** (or any further period agreed in writing by them) as to:

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

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

### **8.5 Court proceedings**

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

## **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 8** is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 8** for any purpose other than in an attempt to settle the dispute.

## **8.7 No prejudice**

This **clause 8** does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

# **9 GST**

## **9.1 Definitions**

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

## **9.2 Intention of the parties**

The parties intend that:

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

## **9.3 Reimbursement**

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

## **9.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this **clause 9**.

## **9.5 Additional Amounts for GST**

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

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



- (b) the Developer provides a Tax Invoice to the Minister.

## **9.6 Non monetary consideration**

**Clause 9.5** applies to non-monetary consideration.

## **9.7 Assumptions**

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

## **9.8 No merger**

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

# **10 Assignment**

- (a) Neither the Developer nor the Landowner may assign the rights or benefits of this deed to any person except:
  - (i) to a Related Body Corporate, after obtaining the consent of the Minister, which the Minister must not withhold if she is reasonably satisfied that the Related Body Corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
  - (ii) to any other person, with the prior consent of the Minister, which the Minister must not unreasonably condition or withhold.
- (b) The Minister may require, as a condition of any consent given under **clause 10(a)** that the proposed assignor and assignee of rights or benefits of this deed enter into a deed with the Minister giving the Minister such assurance of ongoing satisfaction of the proposed assignor's obligations under this deed as the Minister (acting reasonably) considers appropriate.
- (c) That assurance may include provisions under which the proposed assignee agrees to comply with the proposed assignor's obligations as if the proposed assignee were the proposed assignor (including the provision of appropriate security in accordance with **clause 6.1** and **schedule 5** and other obligations which arose before the date of assignment) and to indemnify the Minister in respect of any breach of this deed by the proposed assignor.
- (d) The Minister may assign the rights and benefits of this deed in her absolute discretion, without the need for consent from the Developer or the Landowner.

## 11 Dealings with Land

- (a) This **clause 11** applies to any part of the Land where there has not been a release and discharge of this Deed under **clause 7.4**. The Landowner must not sell, transfer, assign or dispose of the whole or any part of the Land (**Dealing**) unless, before the Landowner enters into a Dealing with another person (**Land Transferee**), the following has occurred:
- (i) The Land Transferee signs a deed in favour of the Minister under which the Land Transferee agrees to comply with those obligations of the Landowner and the Developer under this deed which relate to the relevant part of the Land subject to the Dealing (**Required Obligations**) as if the Land Transferee were the Landowner and/or the Developer, as appropriate (including the provision of appropriate security in accordance with **clause 6.1** and **schedule 5** of this deed and other obligations which arose before the Dealing), and to indemnify the Minister in respect of any breach of the Required Obligations by the Landowner or the Developer.
  - (ii) The Minister (acting reasonably) is satisfied that the proposed Land Transferee is financially capable of complying with the Required Obligations.
  - (iii) Any default by the Landowner or the Developer has been remedied by the Landowner or the Developer (as appropriate), unless that default has been waived expressly by the Minister.
  - (iv) The Developer, the Landowner and the Land Transferee pay the Minister's reasonable costs in relation to that Dealing.
- (b) If the Landowner and/or the Developer enters into a Dealing and fully satisfies the requirements of **clause 11(a)** with respect to that Dealing, the Landowner and/or the Developer (as appropriate) will be released from its obligations under this deed with respect to the Land the subject of that Dealing.

## 12 Capacity

### 12.1 General warranties

Each party warrants to each other party that:

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

### 12.2 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.

## 13 Reporting Requirement

- (a) The Developer must provide at least 20 Business Days notice to the Minister of any application for a Subdivision Certificate, Strata Certificate or a Construction 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, Strata Certificate or a Construction Certificate, and which triggers any obligation under this deed, then the Developer must provide at least 20 Business Days notice to the Minister of the date of:
  - (i) the proposed commencement of that Development; and
  - (ii) the date of any application for a Complying Development Certificate in respect of that Development.
- (c) On each anniversary of the date of this deed or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report which must include those matters set out in **paragraphs (d) and (e)** of this **clause 13**, as applicable.
- (d) If the Developer has not provided a Contribution Amount in the 12 month period immediately preceding the relevant anniversary of this deed, the report must include:
  - (i) a description of the status of the Development;
  - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
  - (iii) an estimated date for when the Developer expects to lodge the first Planning Application.
- (e) If the Developer has provided one or more Contribution Amounts under this deed, the report must include:
  - (i) details of all Development Consents granted in relation to the Development;
  - (ii) a schedule that details all Contribution Amounts provided under this deed as at the date of the report; and
  - (iii) an estimated date for when the Developer expects to lodge the next Planning Application.
- (f) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development.

## 14 Landowner's Limitation of Liability

### 14.1 Definitions

In this **clause 14**:

**Assets** includes all assets, property and rights real and personal of any value whatsoever of the Trust, including the Land.

**Trust** means the D & AI Unit Trust created pursuant to the Unit Trust Deed dated 26 March 2009 between the Landowner, Hazcorp Pty Limited and D Vitocco Constructions Pty Limited.

**Trustee** means the Landowner.

**Trustee's Capacity** means as Trustee of the Trust.

### 14.2 Capacity

The Trustee's liability under this deed is limited to the Trustee's Capacity and the Trustee is not liable in any other capacity.

### 14.3 Limitation

Subject to **clause 14.5** of this clause, the liability of the Trustee in respect of any cause of action, claim or loss arising:

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

(each, a **Trust Claim**), is limited to the Assets. The right of the parties other than the Trustee to recover any amount in respect of any (and all) Trust Claims is limited to a right to recover an amount not exceeding the amount which the Trustee is entitled and able to recover from the Assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Trustee personally.

### 14.4 Acknowledgment of limitations

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

- (a) subject to **clause 14.5** of this clause, bring proceedings against the Trustee in its personal capacity;
  - (b) seek to appoint an administrator or liquidator to the Trustee;
  - (c) commence the winding-up, dissolution or administration of the Trustee;
- or

- (d) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the assets of the Trustee,

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

#### **14.5 Exception**

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

- (a) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (b) the actual amount recoverable by the Trustee in exercise of those rights, is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Trustee may be personally liable.

## **15 General Provisions**

### **15.1 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.

### **15.2 Variation**

- (a) This deed must not be varied except by a later written document executed by all parties.
- (b) Subject to **clause 15.2(c)**, the parties agree that the requirements of **clause 15.2(a)** will be satisfied where the Minister, in the Minister's absolute discretion, agrees to:
  - (i) the Developer making minor amendments to the Staging Plan; or
  - (ii) any other minor amendments relating to the delivery of the Development,and those amendments, and the consequences of those amendments under this deed, have been agreed by the parties through an exchange of letters signed by or on behalf of the contact for each party specified in **schedule 2** of this deed.
- (c) **Clause 15.2(b):**
  - (i) does not apply where the Act requires public notification of any amendment to this deed;
  - (ii) is subject to the Developer obtaining all required approvals including any Development Consent or modification to a Development Consent; and
  - (iii) is subject to **clause 15.13** of this deed.

### **15.3 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.

### **15.4 Further assurances**

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

### **15.5 Time for doing acts**

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

### **15.6 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.

### **15.7 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.

### **15.8 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.

### **15.9 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.

#### **15.10 Counterparts**

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

#### **15.11 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.

#### **15.12 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.

#### **15.13 No fetter**

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

#### **15.14 Explanatory Note**

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

#### **15.15 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 for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including, but not limited to, stamp duty and registration fees, if applicable, on any transfer of the Road Widening Land or the Education Land).
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to **clauses 15.15(a) and (b)**:
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

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

#### 15.16 Notices

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

#### 15.17 Interpretation

In this deed unless the context clearly indicates otherwise:

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



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

# 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 the deed complying with the Act.

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

Requirement under the Act	This Deed
<b>Planning instrument and/or development application</b> – (section 93F(2)) The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) Yes</li> <li>(b) Yes</li> <li>(c) N/A</li> </ul>
<b>Description of land to which this deed applies</b> – (section 93F(3)(a))	See <b>schedule 3</b>
<b>Description of change to the environmental planning instrument to which this deed applies</b> – (section 93F(3)(b))	The amendments to the LEP effected by the Amending LEP which rezoned the Land from RU2 – Rural Landscape to primarily R2 – Low Density Residential, B1 – Neighbourhood Centre, E2 – Environmental Conservation and SP2 – Infrastructure.
<b>The scope, timing and manner of delivery of contribution required by this deed</b> – (section 93F(3)(c))	See <b>schedule 4</b>
<b>Applicability of sections 94 and 94A of the Act</b> – (section 93F(3)(d))	The application of sections 94 and 94A of the Act are not excluded in

<b>Requirement under the Act</b>	<b>This Deed</b>
	respect of the Development.
<b>Applicability of section 94EF of the Act</b> – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies</b> – (section 93F(5))	The Development Contributions to be 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 94.
<b>Mechanism for Dispute Resolution</b> – (section 93F(3)(f))	See <b>clause 8</b>
<b>Enforcement of this deed</b> – (sections 93F(3)(g) and 93H)	See <b>clauses 6 and 7</b>
<b>No obligation to grant consent or exercise functions</b> – (section 93F(10))	See <b>clause 15.13</b>

**Table 2 – Other Matters**

<b>Requirement under the Act or Regulation</b>	<b>This Deed</b>
<b>Registration of the Planning Agreement</b> – (section 93H of the Act)	Yes (see <b>clause 7.1</b> )
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued</b> – (clause 25E(2)(g) of the Regulation)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued</b> – (clause 25E(2)(g) of the	No

Requirement under the Act or Regulation	This Deed
Regulation)	
<b>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)</b>	Yes

## Schedule 2

### Address for Service (clause 1)

**Minister**

**Contact:** The Secretary  
**Address:** Department of Planning and Environment  
23-33 Bridge Street  
SYDNEY NSW 2000  
**Facsimile No:** (02) 9228 6191

**Developer**

**Contact:** Stephen McMahon  
**Address:** The General Manager  
Macarthur Developments Pty Ltd  
975 The Northern Road  
BRINGELLY NSW 2567  
**Facsimile No:** (02) 4774 9932

**Landowner**

**Contact:** Stephen McMahon  
**Address:** The General Manager  
Macarthur Developments Pty Ltd  
975 The Northern Road  
BRINGELLY NSW 2567  
**Facsimile No:** (02) 4774 9932

## Schedule 3

### Land (clause 1)

Lot	Deposited Plan	Folio Identifier
10	1173819	10/1173819
10	1161557	10/1161557
1	301830	1/301830

## Schedule 4

### Development Contributions (clause 4)

#### 1 Contribution Amounts

Except where **clauses 4, 5 or 6** of this **schedule 4** apply in whole or part to offset the requirement to pay a Contribution Amount, the Developer undertakes to provide the Contribution Amounts in respect of the Development in the manner set out in the table below:

Nature of Development Contribution	Contribution Amount	Timing
A monetary contribution towards Designated State Public Infrastructure	\$158,244 per hectare of Net Developable Area calculated in accordance with <b>clause 2</b> of this <b>schedule 4</b> .	Pursuant to <b>clause 3</b> of this <b>schedule 4</b>

#### 2 Calculation of the Value of a Contribution Amount

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

$$X = N \times \$158,244$$

"N" means the number of hectares comprised in the Net Developable Area of the Land to which a Subdivision Certificate application, Strata Certificate application or Construction Certificate application for each Stage of the Development relates. If any part of the Development is to be carried out without the need for a Construction Certificate, Subdivision Certificate or a Strata Certificate, then the number of hectares comprised in the Net Developable Area of the Land the subject of that particular component of the Development.

- (b) Notwithstanding anything to the contrary in **schedule 6**, Net Developable Area is not to include any land that is to be dedicated under this deed.
- (c) On each CPI Adjustment Date, the value of X in **clause 2(a)** of this **schedule 4** will be adjusted by multiplying X by an amount equal to the Current CPI divided by the Base CPI.

### 3 Payment of Contribution Amounts

- (a) Subject to where **clauses 4, 5 or 6** of this **schedule 4** apply in whole or part to offset the obligation to pay a Contribution Amount, the Developer must pay to the Minister or the Minister's nominee each Contribution Amount:
- (i) prior to the issue of the first relevant Subdivision Certificate, Strata Certificate or Construction Certificate for each Stage of the Development; or
  - (ii) if any part of the Development is to be carried out without the need for a Subdivision Certificate, Strata Certificate or a Construction Certificate, then both:
    - A. before that Development is commenced; and
    - B. before any application for a Complying Development Certificate is made in respect of that Development,whichever is the earliest.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of any relevant Subdivision Certificate within the meaning of section 109J(1)(c1) of the Act and on the issue of a Construction Certificate within the meaning of section 109F(1)(a) of the Act and clause 146A of the Regulation.

### 4 Works in Kind

#### 4.1 Road Works in lieu of a Contribution Amount(s)

- (a) The Developer must make an election as to whether it wishes to carry out the Road Works in lieu of payment of a Contribution Amount(s):
- (i) prior to the application for any Construction Certificate that relates to any part of the Land;
  - (ii) prior to the application for any Subdivision Certificate that relates to any part of the Land;
  - (iii) prior to the application for any Strata Certificate that relates to any part of the Land; or
  - (iv) if any part of the Development is to be carried out without the need for a Subdivision Certificate or a Strata Certificate, then both:
    - A. before that development is commenced; and
    - B. before any application for a Complying Development Certificate is made in respect of that development,whichever is the earliest.
- (b) The Developer may only make its election under **clause 4.1(a)** of this **schedule 4** by:



- (i) notifying the Minister in writing that it seeks to rely on the Road Works to discharge its liability in whole or in part to provide a Contribution Amount(s) under this deed;
  - (ii) providing the Minister with an estimate of the remaining Net Developable Area of the Land for which a Subdivision Certificate or Strata Certificate has not yet been issued;
  - (iii) providing the Minister with evidence that the owners of any land required to enable the construction or operation of the Road Works have provided written consent to their land being used for such purposes;
  - (iv) providing the Minister with a copy of the proposed Road Works Agreement for the Minister's review and comment; and
  - (v) providing the Minister with the estimated cost of the Road Works, having regard to the matters that comprise the Actual Cost and the provisions of the proposed Road Works Agreement.
- (c) Following the Minister's consideration of the matters notified in **clause 4.1(b)** of this **schedule 4**, the Minister may, in the Minister's absolute discretion, agree to accept the carrying out of the Road Works in full or partial discharge of the Developer's liability to provide a Contribution Amount(s) under this deed.
- (d) Where the Developer seeks a discharge of the obligation to pay a Contribution Amount(s) in whole or in part under this **clause 4.1** of **schedule 4**, the Minister must be satisfied that the Roads Works value as determined in accordance with **clause 4.4** of this **schedule 4** is sufficient to give that discharge.

#### **4.2 Conditions to Commencement of Road Works**

- (a) If the Minister agrees under **clause 4.1(c)** of this **schedule 4** to accept the Road Works in full or partial discharge of the Developer's liability to provide a Contribution Amount(s) under this deed, then, prior to commencement of the Road Works, the Developer must provide:
- (i) evidence to the Minister that it has obtained Development Consent for the Road Works;
  - (ii) a copy of the executed Road Works Agreement to carry out the Road Works; and
  - (iii) evidence of the security provided for the Road Works under the Road Works Agreement having regard to the requirements of **clause 2** of **schedule 5** of this deed.
- (b) The parties must agree on a final estimate of the cost of the Road Works (**Estimated Cost**) which must have regard to the matters that comprise the likely Actual Cost and the executed Road Works Agreement.

### 4.3 Timing of Road Works

Where the Developer elects to undertake the Road Works, the Developer must commence the Road Works prior to the application for any Subdivision Certificate for the first lot on the Land and complete the Road Works in accordance with the Road Works Agreement and before the issue of a Subdivision Certificate for the creation of the 268<sup>th</sup> lot on the Land.

### 4.4 Road Works Credit

- (a) Unless otherwise agreed with the Minister, within 3 months of the Road Works achieving Practical Completion under the Roads Works Agreement, the Developer must provide to the Minister documentation that evidences the Actual Cost of the Road Works (**Credit Documentation**). The Credit Documentation is to include an independent certification of the Actual Cost from a quantity surveyor who is a member of the Australian Institute of Quantity Surveyors.
- (b) Within 2 months of the Credit Documentation being provided to the Minister, the Minister, acting reasonably, is to notify the Developer of:
  - (i) the amount of the credit against the Developer's liability to pay outstanding Contribution Amounts (**Road Works Credit**) under this deed having regard to the Actual Cost of the Road Works;
  - (ii) any Contribution Amount which remains outstanding under this deed;
  - (iii) if any Contribution Amount remains outstanding, the time period within which the Developer's obligation to provide the outstanding Contribution Amount in accordance with **clauses 2 and 3** of this **schedule 4** may be suspended due to the issuing of the Road Works Credit; or
  - (iv) the lot number of the Land by which the Developer must resume providing any outstanding Contribution Amount in accordance with **clauses 2 and 3** of this **schedule 4**, having regard to the Road Works Credit.
- (c) The parties agree that where:
  - (i) the Actual Cost is greater than the Estimated Cost, the Minister will only give a Road Works Credit for the value of the Estimated Cost; and
  - (ii) the Actual Cost is lower than the Estimated Cost, the Minister will only give a Road Works Credit for the value of the Actual Cost.
- (d) If the Developer does not provide the Credit Documentation to the Minister in accordance with **clause 4.4(a)** of this **schedule 4**, its obligation to pay any outstanding Contribution Amounts under this deed continues as if the Road Works had not been undertaken.
- (e) If, on the date that the Developer receives the notice under **clause 4.4(b)** of this **schedule 4**:

- (i) there is no outstanding Contribution Amount payable, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;
  - (ii) the Road Works Credit exceeds the value of any outstanding Contribution Amount, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;
  - (iii) there is an outstanding Contribution Amount payable and one or more Subdivision Certificates or Strata Certificates are required for any Stage of the Development, the Developer's obligations to provide the Contribution Amount in accordance with clauses **2** and **3** of this **schedule 4** are suspended in respect of any Subdivision Certificates or Strata Certificates to be issued within the time period (if any) stated in the notice in **clause 4.4(b)(iii)** of this **schedule 4** and resume prior to the lot number being created as referred to in the notice in **clause 4.4(b)(iv)** of this **schedule 4**; and
  - (iv) there is an outstanding Contribution Amount payable and no further Subdivision Certificates or Strata Certificates are required for any Stage of the Development, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**.
- (f) For the purpose of **clauses 4.4(e)(iii)** of this **schedule 4**, the parties agree an interim reconciliation may occur to calculate the anticipated final Contribution Amount payable in respect of the Development.
- (g) The Developer acknowledges and agrees that it will not be entitled to any Road Works Credit in circumstances where RMS has exercised its step in rights under the Road Works Agreement.

## **5 Dedication of Road Widening Land**

### **5.1 Road Widening Land as a Development Contribution**

- (a) The Developer may elect to dedicate the Road Widening Land in full or partial discharge of the Developer's liability to provide a Contribution Amount under this deed. Any such election by the Developer must be notified to the Minister in writing:
- (i) prior to the application for any Construction Certificate that relates to any part of the Land;
  - (ii) prior to the application for any Subdivision Certificate that relates to any part of the Land;
  - (iii) prior to the application for any Strata Certificate that relates to any part of the Land; or
  - (iv) if any part of the Development is to be carried out without the need for a Subdivision Certificate or a Strata Certificate, then both:
    - A. before that development is commenced; and

- B. before any application for a Complying Development Certificate is made in respect of that development,

whichever is the earliest.

- (b) If the Developer has elected to carry out the Road Works in accordance with **clause 4.1(a)** of this **schedule 4**, the Developer must dedicate the Road Widening Land in accordance with the requirements of this **clause 5**.

## **5.2 Valuation of the Road Widening Land**

- (a) The amount to be applied against the Developer's liability to provide a Contribution Amount as a monetary contribution under this deed will equal the market value of the Road Widening Land calculated in accordance with this **clause 5.2**.
- (b) If the Developer has elected to or is required to dedicate the Road Widening Land under **clause 5.1** of this **schedule 4**, the Developer must:
  - (i) provide the Minister with a valuation of the Road Widening Land at the time of election under **clause 5.1(a)**; and
  - (ii) ensure the valuation has been carried out:
    - (A) by a valuer appointed in accordance with **clause 5.2(c)** of this **schedule 4**; and
    - (B) in accordance with **clause 5.2(d)** of this **schedule 4**.
- (c) Where the Developer has provided the Minister with a valuation of the Road Widening Land in accordance with **clause 5.2(b)** of this **schedule 4**, the Minister, within 20 Business Days of receiving the valuation, must appoint a valuer who:
  - (i) is a registered valuer under the *Valuers Act 2003* (NSW) and is not restricted under that Act from valuing the Road Widening Land;
  - (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
  - (iii) is then practising as a valuer;
  - (iv) is independent and not related to any party to this deed;
  - (v) has at least 5 years' experience in valuations; and
  - (vi) has a practical understanding of the development and planning process to prepare a valuation for the Road Widening Land.
- (d) Any valuation provided by the Minister's and the Developer's respective valuers must comply with the following:

- (i) The valuation report prepared by the valuer must confirm that the valuer satisfies each of the requirements set out in **clause 5.2(c)** of this **schedule 4**.
- (ii) The valuer is required to determine the market value of the Road Widening Land as a freehold lot with vacant possession as at the date of inspection.
- (iii) In determining the market value of the Road Widening Land, the valuer must assume that the land:
  - (A) is free of all encumbrances;
  - (B) is or can be fully serviced to its boundary; and
  - (C) has appropriate public road frontage and access.
- (iv) In determining the market value of the Road Widening Land, the valuer must comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this **clause 5.2**, in which case this **clause 5.2** prevails.
- (v) The valuer must provide a comprehensive valuation report which must include the following matters:
  - (A) confirmation of instructions;
  - (B) identification of the subject land being valued;
  - (C) date of inspection and valuation;
  - (D) registered proprietor;
  - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title;
  - (F) services and amenities;
  - (G) site identification;
  - (H) location description, including any external factors that influence the desirability of the Road Widening Land, either positively or negatively;
  - (I) current zoning and town planning considerations;
  - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
  - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation; and
  - (L) the valuation amount.

- (e) If two or more of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each valuer must undertake a feasibility or residual land value approach to the valuation.
- (f) In the event that the valuations prepared by each valuer vary by less than 10%, the average of the valuation amounts will be adopted as the value for the Road Widening Land.
- (g) In the event that the valuations vary by more than 10%, then the valuers must meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the valuers must review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the Road Widening Land will be determined by a further valuer appointed by the President of the Australian Property Institute (NSW Division). That further valuer must act as an expert whose decision is final and binding on the parties, in the absence of manifest error. The Developer and the Minister must pay the costs associated with the appointment of any further valuer in equal proportions.
- (h) Where the Minister exercises the compulsory acquisition right under **clause 5.5** of this **schedule 4**, the valuation process set out in **clause 5.2** of this **schedule 4** will apply.

### **5.3 Subdivision of Road Widening land**

On or before the issue of a Subdivision Certificate to create the 268<sup>th</sup> lot on the Land, the Developer must (at its cost):

- (a) obtain Development Consent and all other approvals necessary to create a separate lot for the Road Widening Land; and
- (b) in accordance with the applicable Development Consent and all other necessary approvals, prepare and register a plan of subdivision to create a separate lot for the Road Widening Land.

### **5.4 Transfer of Road Widening Land**

- (a) The Developer must procure the transfer of the Road Widening Land to the Minister (or the Minister's nominee) in accordance with this **schedule 4** before the issue of Subdivision Certificate for the creation of the 268<sup>th</sup> lot on the Land. At that time, the Landowner must deliver to the Minister (or the Minister's nominee):
  - (i) a form of transfer in respect of the land comprising the Road Widening Land in favour of the Minister (or the Minister's nominee) for a consideration of \$1, executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
  - (ii) the certificate(s) of title for the Road Widening Land,

and must take any other necessary action to give effect to the transfer of the title of the Road Widening Land to the Minister (or the Minister's nominee) free of all encumbrances (including any mortgages, easements, covenants and voluntary planning agreements, but excluding statutory easements) and affectations (including any charge or liability for rates, taxes and charges) other than service easements or such other encumbrances as agreed with the Minister.

- (b) Subject to **clause 5.4(c)** of this **schedule 4**, the Minister agrees to do all things reasonably necessary to facilitate the release and discharge of any voluntary planning agreements to which the Minister is a party, including this deed, from the title to the Road Widening Land, subject to the Developer being in compliance with its obligations under this deed.
- (c) To facilitate the release and discharge of this deed or any other voluntary planning agreement registered on the title to the Road Widening Land, to which the Minister is a party, the Minister may require the Developer to provide alternative security, acting reasonably, to secure any outstanding obligations in respect of the Development Contribution.
- (d) The Landowner indemnifies and agrees to keep indemnified the Minister (or the Minister's nominee) against all Claims made against the Minister (or the Minister's nominee) as a result of any Contamination that is required to be cleaned up by an Authority over the whole or any part of the Road Widening Land but only in relation to Contamination that existed on or before the date that the Road Widening Land is transferred to the Minister (or the Minister's nominee).
- (e) The Landowner will pay all rates and taxes owing in respect of the Road Widening Land up to and including the date that the Landowner delivers the form of transfer and certificates of title for the Road Widening Land pursuant to **clause 5.4(a)** of this **schedule 4**, after which time the Minister (or the Minister's nominee) will be responsible for any rates and taxes in relation to the Road Widening Land.

## **5.5 Compulsory Acquisition**

- (a) If the Landowner does not transfer the Road Widening Land as required by this deed, the Minister may elect to, and the Landowner consents to, the Minister compulsorily acquiring the whole or any part of the Road Widening Land and any other land required to complete the Road Works in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Landowner and the Minister agree that:
  - (i) this **clause 5.5** 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 5.5** they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner must ensure that the Road Widening Land is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges), on the date that the Landowner is liable to transfer the Road Widening Land to the Minister in accordance with this clause.
- (d) The Landowner indemnifies and keeps indemnified the Minister against all Claims made against the Minister as a result of any acquisition by the Minister of the whole or any part of the Road Widening Land and any other land required to complete the Road Works under this clause.
- (e) The Landowner must pay the Minister, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Road Widening Land and any other land required to complete the Road Works as contemplated by this clause.

## **5.6 Road Widening Land Credit**

- (a) Upon the transfer of the Road Widening Land to the Minister in accordance with **clause 5.4** of this **schedule 4** or the compulsory acquisition of the Road Widening Land in accordance with **clause 5.5** of this **schedule 4**, the Minister must, within 20 Business Days, issue a notice to the Developer stating:
  - (i) the discharge amount that has been credited to the Development Contribution (**Road Widening Land Credit**), being the value of the Road Widening Land calculated in accordance with **clause 5.2** of this **schedule 4**;
  - (ii) any Contribution Amount which remains outstanding under the deed;
  - (iii) if any Contribution Amount remains outstanding, the time period within which the Developer's obligation to provide the outstanding Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4** may be suspended due to the issuing of the Road Widening Land Credit; and
  - (iv) the lot number of the Land by which the Developer must resume providing any outstanding Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4**, having regard to the Road Widening Land Credit.
- (b) If, on the date that the Developer receives the notice under **clause 5.6(a)** of this **schedule 4**:
  - (i) there is no outstanding Contribution Amount payable, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;



- (ii) the Road Widening Land Credit exceeds the value of any outstanding Contribution Amount, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;
  - (iii) there is an outstanding Contribution Amount payable and one or more Construction Certificates, Subdivision Certificates or Strata Certificates are required for any Stage of the Development, the Developer's obligations to provide the Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4** are suspended in respect of any Construction Certificates, Subdivision Certificates or Strata Certificates to be issued within the time period (if any) stated in the notice in **clause 5.6(a)(iii)** of this **schedule 4** and resume prior to the lot number being created as referred to in the notice in **clause 5.6(a)(iv)**; or
  - (iv) there is an outstanding Contribution Amount payable and no further Subdivision Certificates or Strata Certificates are required for any Stage of the Development, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**.
- (c) For the purpose of **clauses 5.6(b)(iii)** of this **schedule 4**, the parties agree an interim reconciliation may occur to calculate the anticipated final Contribution Amount payable in respect of the Development.

## **6 Dedication of Education Land**

### **6.1 Education Land as a Development Contribution**

- (a) The Developer must transfer the Education Land in full or partial discharge of the Developer's liability to provide a Contribution Amount(s) under this deed.
- (b) The Minister agrees to accept the Education Land Contribution in full or partial discharge of the Developer's liability to provide a Contribution Amount(s) under this deed.

### **6.2 Valuation of Education Land**

- (a) The amount to be applied against the Developer's liability to provide a Contribution Amount(s) as a monetary contribution under this deed will equal the market value of the Education Land calculated in accordance with this **clause 6.2**.
- (b) The Developer must:
  - (i) provide the Minister with a valuation of the Education Land before the issue of a Subdivision Certificate for the creation of the 507<sup>th</sup> lot on the Land; and
  - (ii) ensure the valuation has been carried out:
    - (A) by a valuer appointed in accordance with **clause 6.2(c)** of this **schedule 4**; and

- (B) in accordance with **clause 6.2(d)** of this **schedule 4**.
- (c) Where the Developer has provided the Minister with a valuation of the Education Land in accordance with **clause 6.2(b)** of this **schedule 4**, the Minister, within 20 Business Days of receiving the valuation, must appoint a valuer who:
  - (i) is a registered valuer under the *Valuers Act 2003* (NSW) and is not restricted under that Act from valuing the Education Land;
  - (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
  - (iii) is then practising as a valuer;
  - (iv) is independent and not related to any party to this deed;
  - (v) has at least 5 years' experience in valuations; and
  - (vi) has a practical understanding of the development and planning process to prepare a valuation for the Education Land.
- (d) Any valuation provided by each valuer must comply with the following:
  - (i) The valuation report prepared by the valuer must confirm that the valuer satisfies each of the requirements set out in **clause 6.2(c)** of this **schedule 4**.
  - (ii) The valuer is required to determine the market value of the Education Land as a freehold lot with vacant possession as at the date of inspection.
  - (iii) In determining the market value of the Education Land, the valuer must assume that the land:
    - (A) is free of all encumbrances;
    - (B) is or can be fully serviced to its boundary; and
    - (C) has appropriate public road frontage and access.
  - (iv) In determining the market value of the Education Land, the valuer must comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this **clause 6.2**, in which case this **clause 6.2** prevails.
  - (v) The valuer must provide a comprehensive valuation report which must include the following matters:
    - (A) confirmation of instructions;
    - (B) identification of the subject land being valued;
    - (C) date of inspection and valuation;

- (D) registered proprietor;
  - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title;
  - (F) services and amenities;
  - (G) site identification;
  - (H) location description, including any external factors that influence the desirability of the Education Land, either positively or negatively;
  - (I) current zoning and town planning considerations;
  - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
  - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation; and
  - (L) the valuation amount.
- (e) If two or more of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each valuer must undertake a feasibility or residual land value approach to the valuation.
- (f) In the event that the valuations prepared by each valuer vary by less than 10%, the average of the valuation amounts will be adopted as the value for the Education Land.
- (g) In the event that the valuations vary by more than 10%, then the valuers must meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the valuers must review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the Education Land will be determined by a further valuer appointed by the President of the Australian Property Institute (NSW Division). That further valuer must act as an expert whose decision is final and binding on the parties, in the absence of manifest error. The Developer and the Minister must pay the costs associated with the appointment of any further valuer in equal proportions.
- (h) Where the Minister exercises the compulsory acquisition right under **clause 6.5** of this **schedule 4**, the valuation process set out in **clause 6.2** of this **schedule 4** will apply.

### 6.3 Subdivision of Education Land

On or before the issue of a Subdivision Certificate for the creation of the 507<sup>th</sup> lot on the Land, the Developer must (at its cost):

- (a) obtain Development Consent and all other approvals necessary to create a separate lot for the Education Land; and
- (b) in accordance with the applicable Development Consent and all other necessary approvals, prepare and register a Plan of Subdivision to create a separate lot for the Education Land.

### 6.4 Transfer of Education Land

- (a) The Developer must procure the transfer of the Education Land to the Minister (or the Minister's nominee) in accordance with this **schedule 4** before the issue of Subdivision Certificate for the creation of the 507<sup>th</sup> lot on the Land. At that time, the Landowner must deliver to the Minister (or the Minister's nominee):

- (i) a form of transfer in respect of the land comprising the Education Land in favour of the Minister (or the Minister's nominee) for a consideration of \$1, executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and

- (ii) the certificate(s) of title for the Education Land,

and must take any other necessary action to give effect to the transfer of the title of the Education Land to the Minister (or the Minister's nominee) free of all encumbrances (including any mortgages, easements, covenants and voluntary planning agreements) and affectations (including any charge or liability for rates, taxes and charges) other than service easements or such other encumbrances as agreed with the Minister.

- (b) Prior to the transfer of the Education Land to the Minister (or the Minister's nominee), the Developer must:
    - (i) undertake sufficient Contamination investigations to ensure the Education Land is suitable for use as a school;
    - (ii) if any Contamination is identified on, in, under or migrating from or onto the Education Land, Remediate such Contamination as necessary to ensure the Education Land is suitable for use as a school; and
    - (iii) whether or not Contamination is identified on the Education Land following the investigations in **clause 6.4(b)(i)**, provide the Minister with a Site Audit Statement from an auditor accredited by the Environment Protection Authority under the *Contaminated Land Management Act 1997* (NSW) that confirms the Education Land is suitable for use as a school.

- (c) Subject to **clause 6.4(d)** of this **schedule 4**, the Minister agrees to do all things reasonably necessary to facilitate the release and discharge of any voluntary planning agreements to which the Minister is a party, including this deed, from the title to the Education Land, subject to the Developer being in compliance with its obligations under this deed to provide the Development Contribution.
- (d) To facilitate the release and discharge of this deed or any other voluntary planning agreement registered on the title to the Education Land, to which the Minister is a party, the Minister may require the Developer to provide alternative security, acting reasonably, to secure any outstanding obligations in respect of the Development Contribution.
- (e) The Landowner indemnifies and agrees to keep indemnified the Minister (or the Minister's nominee) against all Claims made against the Minister (or the Minister's nominee) as a result of any Contamination that is required to be cleaned up by an Authority over the whole or any part of the Education Land but only in relation to Contamination that existed on or before the date that the Education Land is transferred to the Minister (or the Minister's nominee).
- (f) The Landowner will pay all rates and taxes owing in respect of the Education Land up to and including the date that the Landowner delivers the form of transfer and certificates of title for the Education Land pursuant to **clause 6.4(a)** of this **schedule 4**, after which time the Minister (or the Minister's nominee) will be responsible for any rates and taxes in relation to the Education Land.

## **6.5 Compulsory Acquisition**

- (a) If the Landowner does not transfer the Education Land as required by **clauses 6.1** and **6.4** of this **schedule 4**, the Minister may elect to, and the Landowner consents to, the Minister compulsorily acquiring the whole or any part of the Education Land and any other land required in connection with the Education Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Landowner and the Minister agree that:
  - (i) this **clause 6.5** 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 6.5** they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Landowner must ensure that the Education Land is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges), on the date that the Landowner is liable to transfer the Education Land to the Minister in accordance with this clause.

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

## **6.6 Education Land Credit**

- (a) Upon the transfer of the Education Land to the Minister in accordance with **clause 6.4** of this **schedule 4** or the compulsory acquisition of the Education Land in accordance with **clause 6.5** of this **schedule 4**, the Minister must, within 20 Business Days, issue a notice to the Developer stating:
  - (i) the discharge amount that has been credited to the Development Contribution (**Education Land Credit**), being the value of the Education Land calculated in accordance with **clause 6.2** of this **schedule 4**;
  - (ii) any Contribution Amount which remains outstanding under the deed;
  - (iii) if any Contribution Amount remains outstanding, the time period within which the Developer's obligation to provide the outstanding Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4** may be suspended due to the issuing of the Education Land Credit; and
  - (iv) the lot number of the Land by which the Developer must resume providing the outstanding Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4**, having regard to the Education Land Credit.
- (b) If, on the date that the Developer receives the notice under **clause 6.6(a)** of this **schedule 4**:
  - (i) there is no outstanding Contribution Amount payable, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;
  - (ii) the Education Land Credit exceeds the value of any outstanding Contribution Amount, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**;
  - (iii) there is an outstanding Contribution Amount payable and one or more Subdivision Certificates or Strata Certificates are required for any Stage of the Development, the Developer's obligations to provide the Contribution Amount in accordance with **clauses 2** and **3** of this **schedule 4** are suspended in respect of any Subdivision

Certificates or Strata Certificates to be issued within the time period (if any) stated in the notice in **clause 6.6(a)(iii)** of this **schedule 4** and resume prior to the lot number being created as referred to in the notice in **clause 6.6(a)(iv)**; or

- (iv) there is an outstanding Contribution Amount payable and no further Subdivision Certificates or Strata Certificates are required for any Stage of the Development, then a Final Reconciliation must be undertaken in accordance with **clause 7** of this **schedule 4**.
- (c) For the purpose of **clauses 6.6(b)(iii)** of this **schedule 4**, the parties agree an interim reconciliation may occur to calculate the anticipated final Contribution Amount payable in respect of the Development.

## 7 Excess Contributions Credit and Additional Payments

- (a) Where the Minister has issued a notice(s) to the Developer under:

- (i) **clause 4.4(b)** of this **schedule 4** in respect of the Road Works Credit;
- (ii) **clause 5.6(a)** of this **schedule 4** in respect of the Road Widening Land Credit; and/or
- (iii) **clause 6.6(a)** of this **schedule 4** in respect of the Education Land Credit,

the parties agree that following completion of the final Stage of the Development, including the satisfaction of the Developer's obligations under all Development Consents granted for the Development:

- (iv) the Developer will provide written notification to the Minister of the completion of the final Stage of the Development within three months of completion and will provide any evidence, reasonably required by the Minister, to demonstrate that such completion has occurred; and
- (v) the Minister will undertake a final reconciliation to calculate the final Contribution Amount payable by the Developer under this deed based on the total Net Developable Area of the Development completed on the Land (**Final Reconciliation**).
- (b) Where the Final Reconciliation indicates that the Development Contributions provided by the Developer in accordance with **clauses 4, 5 or 6** of this **schedule 4** exceed the Contribution Amounts otherwise payable by the Developer under **clauses 1 to 3** of this **schedule 4**, then the Developer will be entitled to a credit for the amount that the Development Contributions provided exceed the Contribution Amounts otherwise payable under this deed (**Excess Contributions Credit**).

- (c) Subject to **clause 7(d)** of this **schedule 4**, any Excess Contributions Credit which has been generated under this deed:
- (i) may be used by:
    - (A) the Developer,
    - (B) a Related Body Corporate of either or both of Taurus and Hazcorp or a partnership of those related entities, or
    - (C) any other entity that the Minister might approve on request by the Developer from time to time,
  - (ii) to satisfy any obligation to make a development contribution relating to the provision of Designated State Public Infrastructure on any land in a Growth Centre owned by the Developer or a Related Body Corporate of either or both of Taurus and Hazcorp, or a partnership of those related entities, or any other entity that the Minister might approve on request by the Developer from time to time; and
  - (iii) will be adjusted on each CPI Adjustment Date until the Excess Contributions Credit has been used, in accordance with the following formula:

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

Where

**CC** is the newly adjusted Excess Contributions Credit.

**PC** means the amount of the Excess Contributions Credit prior to the CPI Adjustment Date.

**Current CPI** is defined in **clause 1** of this deed.

**Base CPI** is defined in **clause 1** of this deed.

An Excess Contributions Credit is taken to have been used under a Planning Agreement for the purpose of this **clause 7(c)** when the Planning Agreement provides for the use of the Excess Contributions Credit.

- (d) The parties agree that any Excess Contributions Credit which has been generated under this deed must be used in accordance with **clause 7(c)(i)** within ten (10) years of the date of the Final Reconciliation after which time it will be considered to have been wholly surrendered or forfeited to the Minister by the Developer and no Claim may be made by the Developer against the Minister in respect of any such surrender or forfeiture.
- (e) Where the Final Reconciliation indicates that the Development Contributions provided by the Developer in accordance with this **schedule 4** are less than the Contribution Amounts otherwise payable by the Developer under **clauses 1 to 3** of this **schedule 4**, then the



Developer must provide the balance of the Contributions Amounts within 10 Business Days of receiving a notice from the Minister notifying the Developer of the outstanding Contribution Amount.

## Schedule 5

### Security Terms

#### 1 Developer to provide Security

(a) In order to secure the:

- (i) payment of each Contribution Amount payable as a monetary contribution; and
- (ii) the carrying out of the Road Works (if applicable) in accordance with **clause 4 of schedule 4** of this deed; and
- (iii) any costs associated with the Minister exercising any rights under this deed to secure the transfer of the Education Land and Road Widening Land,

the Developer has agreed to provide security in accordance with this **schedule 5**.

(b) The parties agree that:

- (i) if the Developer elects to or is required to transfer the Road Widening Land in accordance with **clauses 5.1 and 5.4 of schedule 4** of this deed; and/or
- (ii) when the Developer transfers the Education Land in accordance with **clauses 6.1 and 6.4 of schedule 4** of this deed,

these components of the Development Contribution are also secured by **clause 7** of this deed and **clause 5.5** and **clause 6.5** respectively of **schedule 4** of this deed.

(c) Any Bank Guarantee(s) required to be provided under this **schedule 5** must:

- (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiary; and
- (ii) not have an expiry date.

## 2 Security Requirements

- (a) If, upon execution of this deed, the Developer has:
- (i) entered into a Road Works Agreement with RMS in relation to the Road Works;
  - (ii) provided security to RMS for the Estimated Cost of the Road Works under the Road Works Agreement; and
  - (iii) satisfied the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to RMS for the Road Works,
- the Minister will accept the security provided under the Road Works Agreement as security for the performance of the Developer's obligation under **schedule 4** of this deed to:
- (iv) pay any Contribution Amount; and
  - (v) carry out of the Road Works,
- and will provide written notification to the Developer of the Minister's position under this **clause 2(a)** within 20 Business Days of receiving all information reasonably requested from the Developer in relation to the security provided under the Road Works Agreement.
- (b) If, upon execution of this deed, the Developer:
- (i) has not entered into a Road Works Agreement with RMS in relation to the Road Works; or
  - (ii) has not notified the Minister of its election to carry out the Road Works in accordance with **clause 4.1 of schedule 4** of this deed;
- the Developer must provide a Bank Guarantee to the Minister for the Contribution Amount payable for the first Stage of the Development, as determined in accordance with **clause 2 of schedule 4** of this deed, to secure its obligation to pay the Contribution Amount for that Stage.
- (c) If, following execution of this deed, the Developer;
- (i) elects to carry out the Road Works in accordance with **clause 4.1 of schedule 4** of this deed;
  - (ii) enters into a Road Works Agreement with RMS in relation to the Road Works;
  - (iii) provides security to RMS for the Estimated Cost of the Road Works under the Road Works Agreement; and
  - (iv) satisfies the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to RMS for the Road Works,
- the Minister may accept the security provided under the Road Works Agreement as securing the performance of the Developer's obligation under **schedule 4** of this deed to:

- (v) pay any Contribution Amount; and
- (vi) carry out of the Road Works,

and will provide written notification to the Developer of the Minister's position under this **clause 2(c)** within 20 Business Days of receiving all information reasonably requested from the Developer in relation to the security provided under the Road Works Agreement.

- (d) Where **clause 2(c)** of this **schedule 5** applies, the Minister will return the Bank Guarantee provided by the Developer under **clause 2(b)** of this **schedule 5** within 20 Business Days of the Minister notifying the Developer of the Minister's acceptance of the security provided under the Road Works Agreement.
- (e) If the Developer does not elect to carry out the Road Works in accordance with **clause 4.1** of **schedule 4** of this deed, then prior to the Developer applying for a Subdivision Certificate, Strata Certificate or Construction Certificate or commencing any part of the Development, whichever is the earliest, for each subsequent Stage of the Development, the Developer must provide a Bank Guarantee to the Minister for the Contribution Amount payable for the relevant Stage of the Development, as determined in accordance with **clause 2** of **schedule 4** of this deed, to secure its obligation to pay the Contribution Amount for that Stage.
- (f) Where **clause 2(e)** of this **schedule 5** applies:
  - (i) the Developer must ensure that, at all times, the Minister holds a Bank Guarantee for at least the value of the Contribution Amount payable in respect of each subsequent Stage of the Development it proposes to commence, or with respect to which it has applied for a Subdivision Certification, a Strata Certificate or a Construction Certificate; and
  - (ii) any Bank Guarantee(s) provided to the Minister by the Developer in relation to earlier Stages of the Development will be returned to the Developer within 20 Business Days of the date of confirmation of payment (to the Minister's satisfaction) of the Contribution Amount for the Stage of the Development for which each Bank Guarantee was provided.
- (g) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Roads Works under the Road Works Agreement in accordance with **clause 2(a)** or **clause 2(c)** of this **schedule 5**, then:
  - (i) the Developer will be required to provide a Bank Guarantee for the difference between the amount of the security provided under the Road Works Agreement and the Estimated Costs of the Road Works; and

- (ii) upon receipt of the Bank Guarantee required by the Minister under **clause 2(g)(i)** of this **schedule 5**, the Minister will accept the security provided under the Road Works Agreement as securing the performance of the Developer's obligation under **schedule 4** of this deed to:
  - (A) pay each Contribution Amount; and
  - (B) carry out of the Road Works.

### 3 Claims under a Bank Guarantee

- (a) The Minister may call upon a Bank Guarantee(s) provided in accordance with **clause 2** of this **schedule 5**:
  - (i) where the Developer has failed to pay a Contribution Amount on or before the date for payment under this deed; or
  - (ii) where the Developer has failed to complete the Road Works in accordance with **clause 4.3** of **schedule 4** of this deed where the Bank Guarantee has been provided under **clause 2(g)** of this **schedule 5**; or
  - (iii) where the Developer is in default of its obligations to transfer the Education Land or the Road Widening Land to the Minister in accordance with this deed; and
- (b) retain and apply such monies towards:
  - (i) recouping and payment of the relevant Development Contribution;
  - (ii) achieving performance of the Road Works (where applicable); and
  - (iii) the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (c) Prior to calling upon a Bank Guarantee(s) the Minister must give the Developer not less than 10 Business Days written notice.
- (d) If:
  - (i) the Minister calls upon a Bank Guarantee(s); and
  - (ii) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Bank Guarantee(s) in accordance with **clause 3(c)** of this **schedule 5**,then the Developer must provide to the Minister a replacement Bank Guarantee(s) to ensure that at all times until the date that the Developer has provided the relevant Development Contribution in accordance with this deed, the:

- (iv) Minister is in possession of a base Bank Guarantee(s) for a face value equivalent to the Contribution Amount payable for the next Stage of the Development; or
- (v) Minister or RMS is in possession of a Bank Guarantee(s) for a face value equivalent to the agreed Estimated Cost of the Road Works.

#### 4 Right to Call for Additional Security

Notwithstanding **clause 2** of this **schedule 5**, if the Minister, acting reasonably, at any time considers that an additional Bank Guarantee(s) is required to secure the Developer's obligations under this deed, the Developer must provide such additional Bank Guarantee(s) for the amount specified by the Minister within 10 Business Days of a written request by the Minister and **clauses 3** and **5** of this **schedule 5** will apply.

#### 5 Release of Bank Guarantee(s)

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by a Bank Guarantee(s); and
- (b) the whole of the monies secured by the Bank Guarantee(s) have not been expended and the monies accounted for in accordance with **clause 3** of this **schedule 5**,

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

## Schedule 6

### Net Developable Area

#### 1 Definition of Net Developable Area

Note: A reference to a proposed Plan of Subdivision in this **schedule 6** includes a reference to a proposed Strata Plan and Strata Plan of Subdivision.

- (a) The net developable area of a part of the Land (the net developable area for a proposed subdivision) is the area of land, in hectares, shown in the proposed Plan of Subdivision (that is, the area to which the relevant application for a Subdivision Certificate for that part of the Land relates), subject to the other provisions of this schedule.
- (b) The net developable area does not include the area of any part of the Land that the Development Consent relating to the proposed subdivision authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
  - (i) school,
  - (ii) TAFE establishment,
  - (iii) emergency services facility,
  - (iv) health services facility owned or operated by a public authority,
  - (v) golf course,
  - (vi) passenger transport facility,
  - (vii) place of public worship,
  - (viii) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (ix) public transport corridor (other than a road corridor),
  - (x) public utility undertaking,
  - (xi) bus depot,
  - (xii) recreation area,
  - (xiii) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act.

- (c) The following areas of the Land are not to be included in the calculation of the net developable area for the proposed subdivision:
  - (i) any area of the Land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the area is unsuitable for developing for the purposes of the subdivision by virtue of it being at or below that level;
  - (ii) any area of the Land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act, which applies to the Land; and
  - (iii) any other area of Land or the development on any area of Land to which clauses 6.1(3), 6.1(4) or 6.2(2) of the LEP apply.
- (d) The net developable area does not include the area of any lot in the proposed Plan of Subdivision that may be further subdivided in accordance with the Development Consent relating to the subdivision.
- (e) The net developable area does not include any lot in the proposed Plan of Subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to relevant planning controls, will be further subdivided in accordance with a future development consent for the purpose of the orderly development of the Land for urban purposes in the future.
- (f) If the proposed subdivision includes the creation of a lot that is more than 0.1 hectare in area for the purpose only of containing an existing lawful habitable dwelling, the area of the lot is taken to be reduced by 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision.
- (g) If the proposed subdivision includes any lot that is more than 0.1 hectare in area and contains part of the Land that is within the curtilage of a building listed on the State Heritage Register, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area for the proposed subdivision. "Curtilage" in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.
- (h) The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area for the proposed subdivision in accordance with this schedule and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of that part of the Land concerned.
- (i) In this **schedule 6**, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*):
  - (i) emergency services facility,



- (ii) health services facility,
- (iii) passenger transport facility,
- (iv) place of public worship,
- (v) public utility undertaking,
- (vi) recreation area,
- (vii) school.

## Schedule 7

### Determination

## Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, in pursuance of section 94EE of the *Environmental Planning and Assessment Act 1979*, make the following Determination.



Minister for Planning

Dated: 14 JAN 2011

### 1 Name of Determination

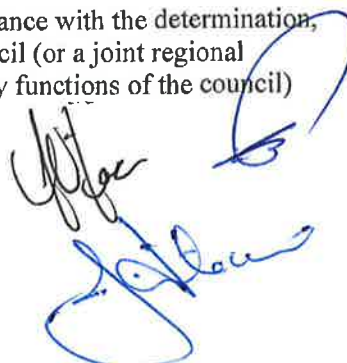
This Determination is the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*.

### 2 Commencement

This Determination takes effect on 24 January 2011.

### 3 Revocation of previous Determinations

- (1) Any determination that was made before this Determination takes effect, under section 94EE of the Act, in relation to development in the special contributions area for the North West Growth Centre and South West Growth Centre is revoked.
- (2) The revocation of any such determination does not affect:
  - (a) the operation of any condition of a development consent, or approval under Part 3A of the Act, imposed in accordance with the determination, and
  - (b) anything done in accordance with the determination or any such condition, and
  - (c) the power of the Minister to impose, in accordance with the determination, a condition under section 94EF (3) that a council (or a joint regional planning panel exercising the consent authority functions of the council)



or other consent authority has failed to impose as required by a direction under section 94EF (1) of the Act.

- (3) Section 94EF of the Act, and any other provision of the Act, continue to apply with respect to a condition of a development consent (or approval under Part 3A of the Act) imposed in accordance with a determination that is revoked.

#### **4 Definitions**

- (1) In this Determination:

**Balmoral Road Area** means the area identified as Balmoral Road on the map marked "Western Sydney Growth Areas – Special Contributions Area".

**contribution rate** – see clauses 8 and 9.

**deferred payment arrangement** – see clause 18.

**developer** means the person having the benefit of a development consent for the time being.

**Elderslie Area** means the area identified as Elderslie on the map marked "Western Sydney Growth Areas – Special Contributions Area".

**Growth Centres SEPP** means *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*.

**industrial land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
- (i) Zone B5 Business Development,
  - (ii) Zone B7 Business Park,
  - (iii) Zone IN1 General Industrial,
  - (iv) Zone IN2 Light Industrial,
  - (v) Zone IN3 Heavy Industrial, and
- (b) land within a land use zone that is equivalent to any such land use zone, and
- (c) land within any land use zone:
- (i) that adjoins industrial land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining industrial land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental

planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

Note. See, for example, clause 5.3 (Development near zone boundaries) in the Precinct Plans set out in the Appendices to the *Growth Centres SEPP*.

**infrastructure** has the same meaning as it has in Subdivision 4 of Division 6 of Part 4 of the Act.

**relevant development** means development for which a special infrastructure contribution must be made under this Determination.

**residential land** means:

- (a) land within any of the following land use zones specified in the Standard Instrument:
  - (i) Zone R1 General Residential,
  - (ii) Zone R2 Low Density Residential,
  - (iii) Zone R3 Medium Density Residential,
  - (iv) Zone R4 High Density Residential,
  - (v) Zone R5 Large Lot Residential,
  - (vi) Zone RE2 Private Recreation,
  - (vii) Zone E4 Environmental Living, and
- (b) land within a land use zone that is equivalent to any such land use zone, and

Note. Examples of land use zones equivalent to those specified in the Standard Instrument are Zone 2 (c) Higher Density Residential and Zone 6 (c) Private Open Space, as provided by *Campbelltown (Urban Area) Local Environmental Plan 2002*. Certain land within Edmondson Park precinct is zoned under that instrument.

- (c) land within any land use zone:
  - (i) that adjoins residential land described in paragraph (a) or (b), and
  - (ii) on which development for a purpose permitted on the adjoining residential land is authorised to be carried out under a development consent that is granted pursuant to a provision of an environmental planning instrument that is in the same terms, or substantially the same terms, as clause 5.3 (Development near zone boundaries) of the Standard Instrument.

**special infrastructure contribution** means a development contribution that is determined under section 94EE of the Act.

**special infrastructure contribution works-in-kind agreement** - see clause 26.

**Spring Farm Area** means the area identified as Spring Farm on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**Standard Instrument** means the standard instrument for a principal local environmental plan prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006*.

**strata certificate** means a strata certificate within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*.

**strata lot** means a lot within the meaning of section 5 (1) of the *Strata Schemes (Freehold Development) Act 1973* or section 4 (1) of the *Strata Schemes (Leasehold Development) Act 1986*.

**Sydney CPI number** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

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

**the map marked “Western Sydney Growth Areas – Special Contributions Area”** means the map marked “Western Sydney Growth Areas – Special Contributions Area” referred to in Schedule 5A to the Act.

**Western Sydney Growth Areas Special Contributions Area** means the land described in Schedule 5A to the Act as the land shown edged heavy black on the map marked “Western Sydney Growth Areas – Special Contributions Area”.

**Western Sydney growth centre** means a growth centre within the meaning of the *Growth Centres SEPP* (being the North West Growth Centre and the South West Growth Centre).

**Western Sydney growth centre precinct not subject to a precinct plan** means a precinct in a Western Sydney growth centre other than a Western Sydney growth centre precinct subject to a precinct plan.

**Western Sydney growth centre precinct subject to a precinct plan** means either of the following precincts:

- (a) a precinct to which a precinct plan set out in an appendix to the *Growth Centres SEPP* applies,
- (b) a precinct referred to in clause 7A of the *Growth Centres SEPP*.

- (2) A word or expression used in this Determination has the same meaning as it has in the Act, unless otherwise defined.

Note. See section 4B of the *Environmental Planning and Assessment Act 1979* for the meaning of **subdivision of land**. Subdivision of land includes community title subdivision under the *Community Land Development Act 1989*.

- (3) The following words or expressions have the same meanings as they have in the Standard Instrument:
- (a) dual occupancy,
  - (b) dwelling house,
  - (c) emergency services facility,
  - (d) health services facility,
  - (e) neighbourhood shop,
  - (f) passenger transport facility,
  - (g) public utility undertaking,
  - (h) recreation area,
  - (i) shop top housing.
- (4) A reference in this Determination to the Minister in relation to a deferred payment arrangement or special infrastructure contribution works-in-kind agreement includes a reference to the Director-General, or other officer of the Department of Planning, acting for and on behalf of the Crown in right of the State of New South Wales.
- (5) Notes in this Determination are provided for guidance only.

## **5 Development for which SIC must be made**

- (1) Subject to this clause, a special infrastructure contribution must be made for development on the following land within the Western Sydney Growth Areas Special Contributions Area:
- (a) residential land within a Western Sydney growth centre precinct subject to a precinct plan,
  - (b) residential land within Balmoral Road Area, Elderslie Area or Spring Farm Area,
  - (c) industrial land within a Western Sydney growth centre precinct subject to a precinct plan,
  - (d) any land within a Western Sydney growth centre precinct not subject to a precinct plan.

Note. A special infrastructure contribution may be imposed only as a condition of development consent. Accordingly, such a contribution can be required only in respect of development that may be carried out with development consent. A special infrastructure contribution cannot be imposed as a condition of consent if a planning agreement made in accordance with section 93F of the *Environmental Planning and Assessment Act 1979* excludes the application of section 94EF.

- (2) A special infrastructure contribution is not required to be made for development for the purpose of any of the following:

- (a) government school (within the meaning of the *Education Act 1990*),
- (b) TAFE establishment,
- (c) emergency services facility,
- (d) health services facility owned or operated by a public authority,
- (e) golf course (but not including any associated building such as a club house),
- (f) neighbourhood shop,
- (g) passenger transport facility,
- (h) public utility undertaking,
- (i) bus depot, whether or not owned or operated by a public authority,
- (j) recreation area,
- (k) shop top housing,
- (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Act.

Note. See Appendix 1 to this Determination for the items of infrastructure in connection with which a special infrastructure contribution is required to be made under this Determination.

- (3) If a special infrastructure contribution has been required to be made for development on land (whether in accordance with this Determination or an earlier determination under section 94EE), a further special infrastructure contribution is not required to be made for other development on that land.
- (4) A special infrastructure contribution is not required to be made for development on land within a Western Sydney growth centre (other than land within Colebee precinct or Edmonson Park precinct) that was zoned for residential, business, commercial or industrial purposes immediately before 28 July 2006 (being the date on which the *Growth Centres SEPP* commenced).
- (5) A special infrastructure contribution is not required to be made for any of the following kinds of development:
  - (a) subdivision for the purpose only of creating a lot (no more than 0.1 hectare in area) to contain an existing lawful habitable dwelling,
  - (b) subdivision for the purpose only of rectifying an encroachment on any existing lot,
  - (c) development on land in relation to which the Director-General has certified to the consent authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services ("interim transport levy").



- (6) A special infrastructure contribution is not required to be made for development that satisfies both of the following:
- (a) the development comprises the subdivision of land (other than a strata subdivision or a subdivision that is only for the purpose of creating a lot to contain an existing habitable dwelling),
  - (b) the Director-General has, having regard to relevant planning controls, certified to the consent authority that each lot resulting from the subdivision is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

Note. A lot referred to in paragraph (b) is commonly referred to as a super lot.

- (7) A special infrastructure contribution is not required to be made for any of the following kinds of development on land within a Western Sydney growth centre precinct not subject to a precinct plan:
- (a) development for the purpose of a single dwelling house or dual occupancy,
  - (b) development that is ancillary to an existing development for a lawful purpose (that is, development that is subordinate or subservient to that existing development and would not, but for the existing development, be carried out),
  - (c) development that the Director-General has, having regard to the following matters, certified to the consent authority to be development that is not for an urban purpose and will not adversely affect the potential of the land concerned (or surrounding land) to be developed (in an orderly manner) for urban purposes in the future:
    - (i) whether the proposed development is of a kind that is unlikely to be carried out in an urban area,
    - (ii) whether the period during which the development is to be carried out is limited,
    - (iii) whether the development has a limited capital investment value,
    - (iv) whether the development will compromise the future urban development of the land (or surrounding land) for the uses generally identified in the relevant growth centre structure plan (within the meaning of the *Growth Centres SEPP*),
    - (v) any other consideration the Director-General considers relevant.
- (8) A special infrastructure contribution is not required to be made in respect of complying development for which a complying development certificate is issued.
- (9) To avoid doubt, a special infrastructure contribution is required to be made:

- (a) for any part of the land to which a development consent relates within the Western Sydney Growth Areas Special Contributions Area, even if the same development consent authorises development on land outside the Special Contributions Area, and
  - (b) for any part of the land on which relevant development is authorised to be carried out by a development consent, even if the same development consent also authorises development that is not relevant development (because, for example, of land use zoning) on another part of the land.
- (10) An exclusion from the requirement to make a special infrastructure contribution provided by a subclause of this clause is not limited by the terms of an exclusion provided by any other subclause of this clause.

Note. See section 75R (4) of the *Environmental Planning and Assessment Act 1979* for the application of this Determination to a project under Part 3A of that Act.

## **6 Nature of contribution**

- (1) The special infrastructure contribution that must be made for relevant development is:
- (a) a monetary contribution, or
  - (b) a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement that is in force in relation to the relevant development (being the carrying out of works for the provision of infrastructure or the dedication or other provision of land).
- (2) The special infrastructure contribution may comprise part of the amount of the monetary contribution otherwise payable and the balance as a contribution provided by a special infrastructure contribution works-in-kind agreement.

## **7 Amount of monetary contribution**

The monetary contribution that is payable as a special infrastructure contribution for a relevant development is the amount calculated by applying the contribution rate for the relevant development, as at the date of payment, to the net developable area for the development, that is, the monetary contribution is an amount calculated as follows:

$$SC_p = NDA \times SC_R$$

where:

**$SC_p$**  is the monetary contribution payable  
 **$NDA$**  is the net developable area, in hectares, for the relevant development (determined in accordance with clauses 10 to 14)

$\$C_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the relevant development (as provided by clauses 8 and 9).

## 8 Contribution rates

- (1) The contribution rate that is to be used in the calculation of the monetary contribution for a relevant development is the rate specified in the table to subclause (2) for development of the class to which the relevant development belongs.
- (2) Each amount specified in the table to this subclause applies to the determination of the relevant contribution rate at any time before 1 July 2011.

**Table**

Class of development	Contribution rate
1. Development on <b>residential land</b> that is within a Western Sydney growth centre precinct subject to a precinct plan (as referred to in clause 5 (1) (a))	\$269, 649 per hectare of net developable area
2. Development on <b>residential land</b> within Balmoral Road Area, Elderslie Area or Spring Farm Area (as referred to in clause 5 (1) (b))	\$213, 989 per hectare of net developable area
3. Development on <b>industrial land</b> that is within a Western Sydney growth centre precinct subject to a precinct plan (as referred to in clause 5 (1) (c))	\$116, 899 per hectare of net developable area
4. Development on <b>any land</b> that is within a Western Sydney growth centre precinct <b>not</b> subject to a precinct plan (as referred to in clause 5 (1) (d))	\$269, 649 per hectare of net developable area

- (3) The amounts that apply to the determination of the contribution rates at any time during the 12 month period commencing 1 July 2011, and during each subsequent 12 month period, are the amounts as adjusted in accordance with clause 9.

## 9 Annual adjustment of amounts used in contribution rates

- (1) For the purposes of this clause, each of the amounts of \$269, 649, \$213, 989 and \$116, 899 specified in the table to clause 8 (2) is an adjustable amount.
- (2) On 1 July 2011 and on 1 July in each subsequent year, each adjustable amount is to be adjusted by multiplying the amount by the following fraction:

**latest Sydney CPI number / 170.5**

where:

*latest Sydney CPI number* is the Sydney CPI number for the March quarter in the year in which the adjustment is made (the March quarter being the quarter commencing on and including 1 January and ending on and including 31 March in that same year).

Note. The figure **170.5** is the Sydney CPI number for the March quarter in 2010.

- (3) If an adjustable amount, as adjusted in accordance with subclause (2), is not a multiple of \$1, the amount is to be rounded to the nearest \$1.

**10 Net developable area**

- (1) The net developable area for a relevant development is the area of land, in hectares, to which the development consent for the development relates, subject to this Determination.
- (2) The net developable area for a relevant development includes the area of any land that the development consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road (other than a road referred to in subclause (3)). The net developable area does not, however, include the area of any existing road in respect of which the development consent authorises, or requires, road work (such as road widening) to be carried out.
- (3) To avoid doubt, the net developable area does not include the area of any land that the development consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
- (a) government school (within the meaning of the *Education Act 1990*),
  - (b) TAFE establishment,
  - (c) emergency services facility,
  - (d) health services facility owned or operated by a public authority,
  - (e) golf course,
  - (f) passenger transport facility,
  - (g) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (h) public transport corridor (other than a road corridor),
  - (i) public utility undertaking,
  - (j) bus depot, whether or not owned or operated by a public authority,
  - (k) recreation area,
  - (l) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or

- section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
- (m) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Act.

(4) The following areas of land are also not to be included in the calculation of the net developable area for the relevant development:

- (a) any part of the land to which the development consent for the relevant development relates that is at or below the level of a 1:100 ARJ (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,
- (b) any part of the land to which the development consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act.

#### **11 Net developable area where large lot created to contain an existing habitable dwelling**

The net developable area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.

Note. See also clause 5 (5) (a) which provides that a SIC is not required to be made for a subdivision of land the only purpose of which is to create a lot that is no more than 0.1 hectare in area so as to contain an existing habitable dwelling.

#### **12 Net developable area not to include any residue lot or super lot**

The net developable area for a relevant development comprising subdivision of land does not include any lot that the Director-General has, having regard to relevant planning controls, certified to the consent authority is a lot that will be further subdivided in accordance with a further development consent (or approval under Part 3A of the Act) for the purpose of the orderly development of the land for urban purposes in the future.

#### **13 Reduction of net developable area where land within heritage curtilage or Environmental Living Zone**

- (1) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
  - (a) land that is within the curtilage of a building listed on the State Heritage Register, or
  - (b) land that is within Zone E4 Environmental Living.

- (2) For the purpose of calculating the net developable area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (3) In this clause, *curtilage*, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.

#### **14 Final determination of net developable area by Director-General**

The Director-General may make any determination required to be made for the purpose of calculating the net developable area for a relevant development in accordance with this Determination and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

#### **15 When a monetary contribution for development other than subdivision is to be paid**

If a special infrastructure contribution is made as a monetary contribution, the monetary contribution must be paid for relevant development (other than subdivision):

- (a) before a construction certificate is issued in relation to a building to which the development consent for the relevant development relates, and
- (b) if a construction certificate is not required for the relevant development, before any work that the development consent authorises to be carried out is physically commenced on the land.

#### **16 When a monetary contribution for subdivision (other than strata subdivision) is to be paid**

- (1) If a special infrastructure contribution for a subdivision (other than strata subdivision) is made as a monetary contribution, the monetary contribution must be paid:
  - (a) before a subdivision certificate is issued for the subdivision, or
  - (b) in accordance with clause 19 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the subdivision certificate is issued for the subdivision.
- (2) For the purpose of subclause (1) (a), if a subdivision certificate is sought for a plan of subdivision that would, on registration, create only some of the lots authorised to be created by the relevant development consent, the monetary contribution for the subdivision authorised by the development consent may be paid progressively, with an amount being paid before the issue of each subdivision certificate for a plan of subdivision authorised by that consent (a *subdivision certificate for a staged subdivision*).

- (3) The amount that must be paid before the issue of each subdivision certificate for a staged subdivision is to be calculated:
- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision for which the subdivision certificate is sought.

A “*transitional lot*” is a lot in the plan of subdivision for which the subdivision certificate is sought that may be further subdivided in accordance with the relevant development consent.

#### **17 When a monetary contribution for strata subdivision is to be paid**

If a special infrastructure contribution for a strata subdivision is made as a monetary contribution, the monetary contribution must be paid:

- (a) before a strata certificate for the strata subdivision is issued, or
- (b) in accordance with clause 19 if a deferred payment arrangement is in force in relation to the monetary contribution at the time the strata certificate is issued.

#### **18 Deferred payment arrangement for subdivision**

- (1) For the purposes of this Determination, a deferred payment arrangement in relation to the payment of a monetary contribution for a subdivision is an arrangement described in this clause.
- (2) A deferred payment arrangement is made, in relation to a subdivision, if a deed of charge is executed by the owner of the land and the Minister, and that deed:
  - (a) grants the Minister a charge over the land to which the development consent for the subdivision relates, and
  - (b) is generally in accordance with the Memorandum of Deed of Charge Standard Terms and Conditions, executed by the Minister and registered by the Registrar-General, and
  - (c) is registered on the title to the land.

Note. A caveat may be lodged by or on behalf of the Minister to protect the interest created by the Deed of Charge over the land concerned.

- (3) A deferred payment arrangement is also made, in relation to a subdivision, if a bank guarantee is provided to the Minister and:
  - (a) the Minister has agreed in writing to the terms of the bank guarantee, and

- (b) the bank guarantee:
  - (i) secures the payment of the monetary contribution (including the payment of any contribution amount referred to in clause 20, 21 or 22), and
  - (ii) is for 100% of the monetary contribution (or any contribution amount referred to in clause 20, 21 or 22) at the time it becomes due, and
  - (iii) the bank guarantee provides that the Minister may call upon the bank guarantee (in full or in part) in the event of a failure to pay the monetary contribution, or any contribution amount, at the time it becomes due.

**19 When a monetary contribution must be paid if deferred payment arrangement in place**

If a deferred payment arrangement in relation to a monetary contribution for subdivision is in force, a separate amount is payable in respect of each lot or strata lot in the subdivision (the *contribution amount* calculated in accordance with clause 20, 21 or 22) and must be paid:

- (a) before the end of 3 years from the date of issue of the subdivision certificate or strata certificate that relates to that lot or strata lot, or
- (b) at least 21 working days before the lot or strata lot is first transferred (following its creation),

whichever is the earlier.

**20 Amount payable in respect of each lot in subdivision – deferred payment arrangement**

- (1) The contribution amount that is payable in respect of a lot in a subdivision (other than a subdivision to which clause 21 or 22 applies) for which a subdivision certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$SCA_P = L / LT \times NDA \times SC_R$$

where:

- $SCA_P$  is the contribution amount payable for the lot
- $L$  is the area (in hectares) of the lot
- $LT$  is the total area (in hectares) of the lots to which the subdivision certificate relates
- $NDA$  is the net developable area for the subdivision
- $SC_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 8 and 9)



- (2) If the subdivision certificate referred to in subclause (1) is a subdivision certificate for a staged subdivision (as referred to in clause 16 (2)), the net developable area for the subdivision is to be calculated:
- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and
  - (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (1) does not include a reference to a transitional lot).

A “*transitional lot*” is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

- (3) A separate contribution amount is not payable in respect of a lot comprising a road, even though the area of the road is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of other lots in the subdivision. (Accordingly, a reference to a lot in subclause (1) does not include a reference to a lot comprising a road.)

**21 Amount payable in respect of each strata lot in a strata subdivision – deferred payment arrangement**

The contribution amount that is payable in respect of a strata lot in a strata subdivision for which a strata certificate has been issued is to be calculated, as at the date of payment, in accordance with the following formula:

$$SCA_P = U/UT \times NDA \times SC_R$$

where:

- SCA<sub>P</sub>** is the contribution amount payable for the strata lot
- U** is the unit entitlements of the strata lot
- UT** is the total (aggregate) unit entitlements of all strata lots in the strata subdivision
- NDA** is the net developable area for the strata subdivision
- SC<sub>R</sub>** is the amount in dollars of the contribution rate, applicable at the date of payment, for the strata subdivision (as provided by clauses 8 and 9)

**22 Amount payable in respect of a lot in a community title subdivision – deferred payment arrangement**

- (1) This clause applies to a lot in a subdivision of land procured by the registration of any of the following plans of subdivision within the meaning of the *Community*

*Land Development Act 1989* (and in respect of which there is a deferred payment arrangement in force):

- (a) community plan,
- (b) community plan of subdivision,
- (c) neighbourhood plan,
- (d) neighbourhood plan of subdivision,
- (e) precinct plan,
- (f) precinct plan of subdivision.

- (2) The contribution amount that is payable in respect of a lot in a subdivision of land to which this clause applies (and for which a subdivision certificate has been issued) is to be calculated, as at the date of payment, in accordance with the following formula:

$$SCA_P = U / UT \times NDA \times \$C_R$$

where:

$SCA_P$  is the contribution amount payable for the lot

$U$  is the unit entitlements of the lot

$UT$  is the total (aggregate) unit entitlements of the lots in the subdivision

$NDA$  is the net developable area for the subdivision

$\$C_R$  is the amount in dollars of the contribution rate, applicable at the date of payment, for the subdivision (as provided by clauses 8 and 9)

- (3) A separate contribution amount is not payable:

- (a) in respect of a lot shown in a community plan as community property, a lot shown in a neighbourhood plan as neighbourhood property and a lot shown in a precinct plan as precinct property, or
- (b) in respect of a lot comprising a road,

even though the area of such a lot is included in the calculation of the net developable area for the subdivision and is taken into account in calculating the contribution amounts that must be paid in respect of the other lots in the subdivision. (Accordingly, a reference to a lot in subclause (2) does not include a reference to lot referred to in paragraph (a) or (b)).

- (4) If the subdivision certificate referred to in subclause (2) is a subdivision certificate for a staged subdivision (as referred to in clause 16 (2)), the net developable area for the subdivision is to be calculated:

- (a) as if the subdivision of land to which the subdivision certificate relates comprised the entire subdivision authorised by the relevant development consent, and

- (b) on the basis that the net developable area does not include the area of any “transitional lot” in the plan of subdivision to which the subdivision certificate relates (in which case a reference to a lot in subclause (2) does not include a reference to a transitional lot).

A “*transitional lot*” is a lot in the plan of subdivision to which the subdivision certificate relates that may be further subdivided in accordance with the relevant development consent.

**23 Payment of monetary contribution where subdivision and other development on same land**

If a single development consent authorises both the subdivision of land and the carrying out of subdivision work on that land, the monetary contribution is required to be paid before the issue of the subdivision or strata certificate (or in accordance with clause 19), rather than before the issue of a construction certificate in relation to the work (even if that occurs first).

**24 Payment of monetary contribution where different kinds of development on different parts of land**

- (1) This clause applies if:
  - (a) a single development consent authorises different kinds of relevant development on different parts of the land to which the development consent relates, and
  - (b) this Determination would otherwise require a monetary contribution to be paid at different times in respect of each kind of development.
- (2) The special infrastructure contribution for relevant development in any such case (if made as a monetary contribution) is to be paid:
  - (a) at the earliest time by which payment would be required to be made for any of the different kinds of development, or
  - (b) as provided by subclause (3).
- (3) Separate monetary contributions may be made for each kind of relevant development as if, instead of a single development consent, a separate development consent had been granted for each kind of development. Accordingly, the monetary contributions are payable at the various times provided by this Determination in relation to the different kinds of development concerned.

**25 Reduction in contribution if made by 1 July 2011**

If a special infrastructure contribution is made as a monetary contribution that is paid before 1 July 2011, then the amount that would otherwise be payable under this Determination is reduced by one third.

## **26 Special infrastructure contribution works-in-kind agreement**

- (1) For the purposes of this Determination, a special infrastructure contribution works-in-kind agreement is an agreement that meets the requirements set out in this clause.
- (2) A special infrastructure contribution works-in-kind agreement is an agreement between the Minister and the developer for the carrying out of works to provide an item of infrastructure specified in Appendix 1 to this Determination, or for the dedication or other provision of land for the purpose of any such infrastructure, in lieu (in part or in whole) of the payment of a monetary contribution for the development concerned.
- (3) A special infrastructure contribution works-in-kind agreement, in relation to the carrying out of works, is to:
  - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) describe the works that are to be carried out by or on behalf of the developer to contribute to the provision of a specified item or items of infrastructure, and
  - (c) specify the attributable cost of the item or items of infrastructure and provide for the adjustment of that cost due to inflation or deflation, and
  - (d) provide that the maximum amount of the liability to make the special infrastructure contribution that may be discharged by the carrying out of the works is not to exceed the attributable cost of the item or items of the infrastructure, and
  - (e) specify times by which specified stages of the works involved must be completed ("key project milestones"), and
  - (f) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (4) A special infrastructure contribution works-in-kind agreement, in relation to the dedication or other provision of land, is to:
  - (a) specify or acknowledge the monetary contribution that would otherwise be payable for the relevant development, and
  - (b) specify the time by which the land is to be dedicated or otherwise provided, and
  - (c) specify the manner in which the value of that land is to be calculated, and

- (d) provide for the nature or form of security to be provided by the developer for a failure to meet obligations with respect to the special infrastructure contribution.
- (5) In this clause, *attributable cost*, in relation to an item of infrastructure, means the amount specified in Appendix 1 to this Determination for that item.

**27 Part of special infrastructure contribution is for matters referred to in section 94ED (1) (d) of Act**

For the purpose of section 94EE (3A) of the Act:

- (a) no part of the special infrastructure contribution required to be made by this Determination is for the provision of infrastructure by a council, and
- (b) 2% of the special infrastructure contribution required to be made by this Determination is for matters specified in section 94ED (1) (d) of the Act.

Note. The matters specified in section 94ED (1) (d) of the *Environmental Planning and Assessment Act 1979* are the carrying out of any research or investigation, preparing any report, study or instrument, and doing any other matter or thing in connection with the exercise of any statutory function under the Act, by the Minister, the corporation, the Director-General or the Department.

**28 Reasons for the level and nature of the special infrastructure contribution**

For the purpose of section 94EE (5) of the Act, the reasons for the level and nature of the special infrastructure contribution required to be made by this Determination are as follows:

- (a) to assist in providing adequate funding for regional public infrastructure (described in Appendix 1 to this Determination) in the Western Sydney Growth Areas Special Contributions Area,
- (b) to ensure that future development bears a share of the cost of the provision of such infrastructure,
- (c) to provide for the adjustment of the special infrastructure contribution to reflect changes in economic conditions between the time of imposing the contribution and the time at which the contribution is made,
- (d) to provide flexibility as to the manner in which the special infrastructure contribution may be made,
- (e) to ensure that the special infrastructure contribution reflects a reasonable apportionment between the demand for infrastructure generated by existing development and the demand for that infrastructure that is likely to be generated by new development for which the contribution must be paid.

# APPENDIX 1

AS AT 31 MARCH 2010

INFRASTRUCTURE ITEM	75% ATTRIBUTABLE COST		100% ATTRIBUTABLE COST
Roads	2,339,078,000		3,118,770,000
Rail	0		0
Bus	147,130,000		196,173,000
Education	290,834,000		387,779,000
Health	13,965,000		18,620,000
Emergency	5,177,000		6,903,000
Open Space and Conservation	447,206,000		596,274,000
Planning and Delivery	280,106,000		373,475,000
<b>TOTAL</b>	<b>3,523,495,000</b>		<b>4,697,894,000</b>

NET DEVELOPABLE AREA			
Estimated N D A	12,835		12,835
Allow 7% undeveloped	11,936		11,936
Employment Land ( Ha )	2608	#Employment as Proportion of Residential Levy *	2608
Equivalent N D A ( employment ) #	1,131	43.35%	1,131
<b>TOTAL EQUIV N D A</b>	<b>15,067</b>		<b>13,067</b>
\$269.649			

EDUCATION			
Description	Quantity ( sites )		100% ATTRIBUTABLE COST
<b>CAPITAL WORKS</b>			
<b>LAND ACQUISITION</b>			
South West Sector			
Primary Schools	37		126,866,000
Secondary Schols	6		75,446,000
Special Schools	1		2,288,000
Tote	1		25,720,000
Subtotal			230,338,000
North West Sector			
Primary Schools	22		106,032,000
Secondary Schols	5		40,196,000
Special Schools	1		3,213,000
Tote	0		0
Subtotal			157,441,000
<b>TOTAL</b>			<b>387,779,000</b>
			Land Component
			Other
			387,779,000
			0

EMERGENCY SERVICES AND JUSTICE			
Description	Quantity ( sites )		100% ATTRIBUTABLE COST
<b>CAPITAL WORKS</b>			
<b>LAND ACQUISITION</b>			
South West Sector			
Land for Ambulance Services	6		1,509,000
Land for Fire Services	5.3		1,212,000
Land for Police Services	3		1,097,000
Land for Justice Services	0		0
Subtotal			3,818,000
North West Sector			
Land for Ambulance Services	4		1,414,000
Land for Fire Services	3.6		1,157,000
Land for Police Services	1		514,000
Land for Justice Services	0		0
Subtotal			3,085,000
<b>TOTAL</b>			<b>6,903,000</b>
			Land Component
			Other
			6,903,000
			0

South West Sector -Major Roads			
Identifier	Description	Section	100% ATTRIBUTABLE COST
R1	Camden Valley Way Pt 1	Cowpasture Road to Berners Road	74,375,000
R2	Camden Valley Way Pt 2	Narellan Road to Cowpasture Road	334,724,000
R3	Cowpasture Road	M7 In Green Valley Road	106,896,000
R4	Bringley Road Pt 1	Fourth Avenue to Camden Valley Way	61,357,000
R5	Bringley Road Pt 2	Fourth Avenue to Western Road	57,966,000
R6	Bringley Road Pt 3	Western Road to The Northern Road	64,911,000
R7	Hoxton Park Road	Cowpasture Road to Joadja Road	71,806,000
R8	Fifteenth Avenue Pt 1	Cowpasture Road to Kempe Creek	96,248,000
R9	Fifteenth Avenue Pt 2	Kempe Creek to Western Road	32,208,000
R10	Dentham Court Road	Camden Valley Way to Campbelltown Road	6,202,000
R11	Raby Road	Camden Valley Way to Thunderbolt Drive	38,238,000
R12	Badgely Road	Camden Valley Way to Eagle Vale Road	46,493,000
R13	Campbelltown Road	M5 to St Andrews Road	146,034,000
R14	Narellan Road	Camden Valley Way to M5	41,780,000
R15	Narellan Road Extension		24,238,000
R16	The Northern Road Pt 1	Fairwater Drive to Orian Park Link Road	36,124,000
R17	The Northern Road Pt 2	Orian Park Link Road to Marylands Estate	42,148,000
R18	The Northern Road Pt 3	Marylands Estate to Bringley Road	46,436,000
R19	Elizabeth Drive Pt 1	M7 to Edmondson Avenue	34,777,000
R20	Elizabeth Drive Pt 2	Edmondson Avenue to Western Road	64,712,000
R21	Elizabeth Drive Pt 3	Western Road to Badgerys Creek	42,944,000
R22	Edmondson Avenue Pt 1	Bringley Road to Fifteenth Avenue	44,668,000
R23	Edmondson Avenue Pt 2	Fifteenth Avenue to Elizabeth Drive	56,973,000
R24	Western Road Pt 1	Elizabeth Drive to Watts Road	38,905,000
R25	Western Road Pt 2	Watts Road to Bringley Road	61,946,000
R26	Rickard Road Pt 1	Bringley Road to Heath Road	31,040,000
R27	Rickard Road Pt 2	Heath Road to Orian Park Link Road	81,142,000
R28	Eastwood Road	Eastwood Road to south of Bringley Road	39,136,000
R29	Ingleburn Road	Camden Valley Way to Eastwood Road	33,406,000
R30	Orian Park Link Road	The Northern Road to Camden Valley Way	61,263,000
R31	Bringley Link Road Pt 1	Orian Park Link Road to Greenway Estate	40,069,000
R32	Bringley Link Road Pt 2	Greenway Estate to Bringley Road	41,284,000
R33	Brooks Road	Campbelltown Road to M5	3,979,000
	Miscellaneous and Offsite Works		339,649,000
	Roads and Transport attributable to former I T L Areas		151,549,000
	LESS Funding from other sources ( Direct Govt, S 84, VPAs)		-353,222,000
TOTAL			2,142,406,000
			Land Component 305,478,000
			Other 1,836,928,000

North West Sector -Major Roads			
Identifier	Description	Section	100% ATTRIBUTABLE COST
NR 1.1	Widene Road	Mt End Road to Annangrove Road	5,542,000
NR 1.2	The Water Lane	Nelson Road to Annangrove Road	8,465,000
NR 1.3	Annangrove Road	Windsor Road to The Water Lane	5,612,000
NR 1.4	Nelson Road	Windsor Road to The Water Lane	5,648,000
NR 2	Hambleton Road	Schofields Road to Burdekin Road	22,353,000
NR 3	Stanfords Parkway	Hambleton Road to Conrad Road	29,387,000
NR 4	Burdekin Road	Unbund Section Walker Street to Railway Terrace	2,198,000
NR 5	Townson Road	Meadow Road east from Richmond Road	22,859,000
NR 6	Townson Road Extension	East of PGH Boundary to Burdekin Road	34,698,000
NR 7.1	Riverstone Central		36,086,000
NR 7.2	Riverstone Central		2,965,000
NR 7.3	Riverstone Central		2,039,000
NR 8.1	Richmond Road	Bell Creek to Townson Road	26,729,000
NR 8.2	Richmond Road	Townson Road to Flood Plain	56,260,000
NR 9	Quakers Hill Parkway		30,102,000
NR 10	Schofields Road	Railway Terrace to Windsor Road	131,262,000
NR 11.1	New Shanes Park Road		32,468,000
NR 11.2	New Shanes Park Road		17,050,000
NR 11.3	New Shanes Park Road		6,621,000
NR 12	Grange Avenue	East from Richmond Road to Carnarvon Road	22,081,000
NR 13	Grange Avenue Extension	Carnarvon Road to Railway Line	26,638,000
NR 14.1	Garfield Road East	Outside of Riverstone Central	44,875,000
NR 14.2	Garfield Road East	Within Riverstone Central	2,860,000
NR 15	Garfield Road West		14,893,000
NR 16	Terry Road	Windsor Road to Mason Road	12,814,000
NR 17	Underpass	Burdekin Road Underpass at Nymba Centre South	33,534,000
NR 18	Underpass	Schofields Road Rail Crossing	33,534,000
NR 19	Underpass	Riverstone Rail Crossing at Railway Terrace / Garfield Rd	54,143,000
NR 20.1	Railway Terrace Duplication		21,885,000
NR 20.2	Railway Terrace Duplication		15,135,000
NR 21.1	Quakers Road Link		15,923,000
NR 21.2	Quakers Road Link		4,245,000
NR 22	Lotus Street Overpass		38,647,000
	Miscellaneous and Offsite Works		137,732,000
	Roads and Transport attributable to former I T L Areas		159,624,000
	LESS Funding from other sources ( Direct Govt, S 84, VPAs)		-143,564,000
TOTAL			976,362,000
			Land Component 252,777,000
			Other 713,585,000

BUS SERVICES		
Description	Quantity ( sites )	100% ATTRIBUTABLE COST
<b>South West Sector</b>		
Capital Works		
Depot at Austral	1	21,028,000
Depot at Badgally Road	1	21,028,000
Interchange - Macarthur	1	20,040,000
Interchange - Ingleburn	1	20,040,000
Interchange - Bardia	1	20,040,000
Interchange - Leppington	1	26,872,000
Land for Depots and Interchanges	Item	3,658,000
Fare Box Subsidies	0	0
Subtotal		132,706,000
<b>North West Sector</b>		
Capital Works		
Depot at Box Hill	1	20,413,000
Interchange - Schofields	1	40,966,000
Land for Depots and Interchanges	Item	2,088,000
Fare Box Subsidies	0	0
Subtotal		63,467,000
TOTAL		196,173,000
Land Component		5,746,000
Other		190,427,000

HEALTH SERVICES		
Description	Quantity ( sites )	100% ATTRIBUTABLE COST
<b>South West Sector</b>		
Capital Works		
Leppington Integrated Health Care Centre Stage 1		0
Leppington Integrated Health Care Centre Stage 2		0
Oran Park Integrated Primary Health Care Centre		0
Integrated Primary Health Care Centres ( 4 )		0
Land Acquisition	Item	9,945,000
Subtotal		9,945,000
<b>North West Sector</b>		
Capital Works		
Rouse Hill Stage 1 - Ambulatory Services ( shop front rental )		0
Rouse Hill Stage 2 - Integrated Health Care		0
Rouse Hill Stage 3 - IHC & Procedural & Diagnostic Services		0
Rouse Hill Stage 4 - Overnight Inpatient Services		0
Land Acquisition	Item	8,675,000
Subtotal		8,675,000
TOTAL		18,620,000
Land Component		18,620,000
Other		0

OPEN SPACE AND CONSERVATION		
Description	Quantity ( sites )	100% ATTRIBUTABLE COST
<b>South West and North West Sectors</b>		
Land Acquisition within the Growth Centres		119,976,000
<b>Outside Growth Centres Precincts</b>		
Land Acquisition - Outside Growth Centres		409,359,000
Land Acquisition - Western Sydney Parklands		16,477,000
Land Acquisition - Part Rouse Hill Regional Park Stage 2		50,462,000
TOTAL		596,274,000
Land Component		596,274,000
Other		0

PLANNING AND DELIVERY		
Description	Quantity ( sites )	100% ATTRIBUTABLE COST
<b>South West Sector</b>		
Precinct Planning Costs		50,725,000
<b>North West Sector</b>		
Precinct Planning Costs		43,040,000
<b>South West and North West Sectors</b>		
Delivery Costs		279,710,000
TOTAL		373,475,000
Land Component		0
Other		373,475,000



## Execution

**Executed** as a deed.

**Executed by Minister for Planning** )  
)

  
.....  
Signature of Witness

CLAIR YEE  
.....  
Name of Witness (print)

  
.....  
Signature of Minister for Planning  
DELEGATE  
SIMON OFFICER  
.....  
Name of Minister for Planning (print)  
DELEGATE  
4 MAY 2015

**Executed by Hazcorp Developments** )  
**Pty Ltd** )

  
.....  
Company Secretary/Director

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

.....  
Director

.....  
Name of Director (print)


**Executed by Taurus Development** )  
**Company Pty Ltd trading as Emerald** )  
**Hills Estate**

.....  
Company Secretary/Director

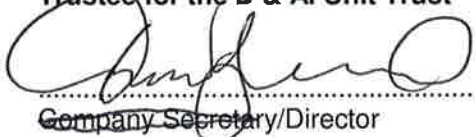
.....  
Name of Company Secretary/Director  
(print)

  
.....  
Director

IRENE VITOCCO  
.....  
Name of Director (print)

  
Almond Vitocco  
Director

Executed by D & AI Pty Ltd as  
Trustee for the D & AI Unit Trust



Company Secretary/Director

DAVID LAZAREK

Name of Company Secretary/Director  
(print)

Director

Name of Director (print)

  
ARNOLD VITOCO  
Director.

# Annexure A

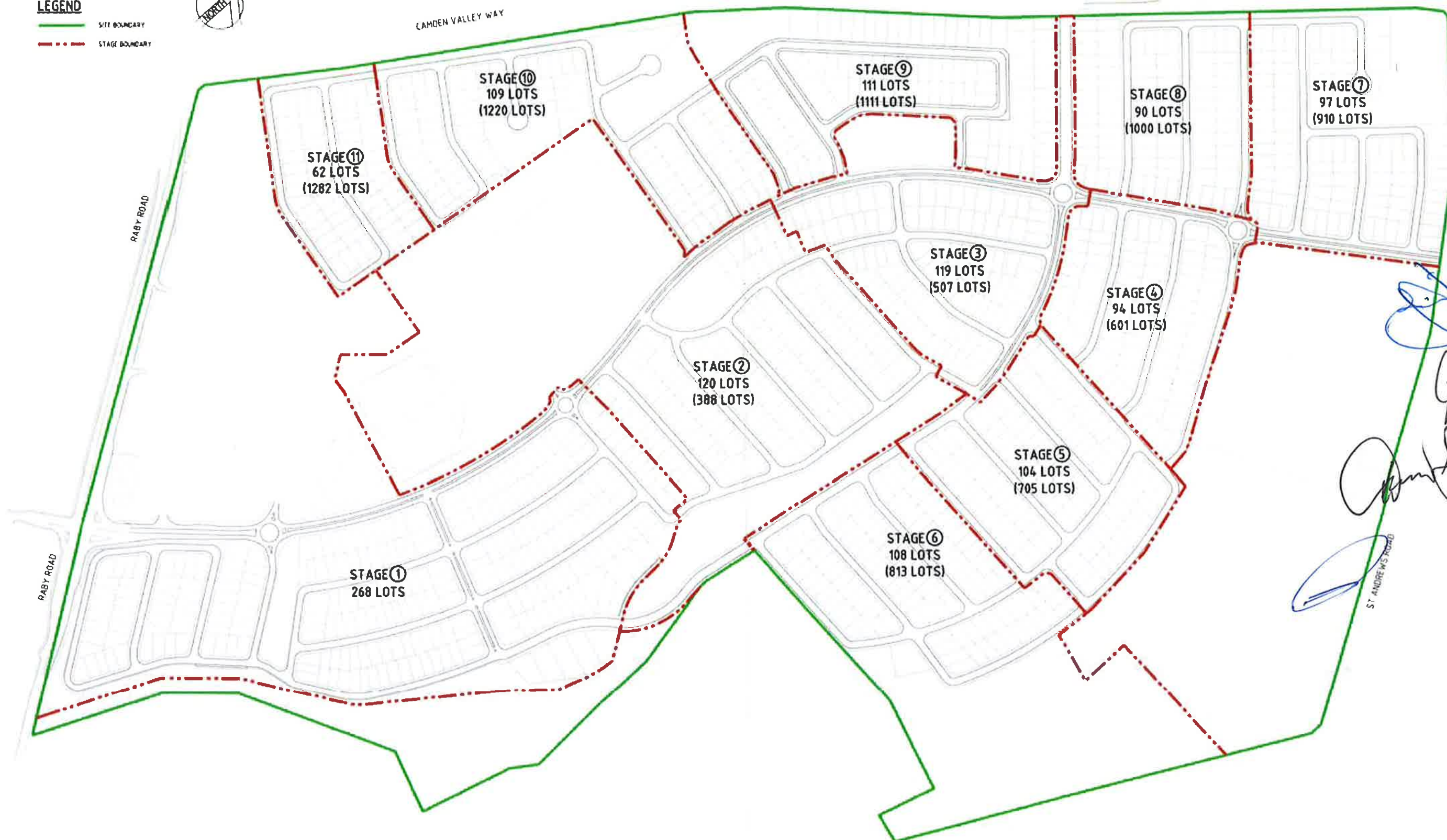
## Staging Plan

# ANNEXURE A: STAGING PLAN

CAMDEN VALLEY WAY

## LEGEND

- SITE BOUNDARY
- STAGE BOUNDARY



*[Handwritten signatures and initials in blue ink]*

Rev	Date	Description	Des	Issd	Acad
1	27/11/2014	ISSUE FOR INFORMATION			
2	26/12/2014	ISSUE FOR INFORMATION			
3	12/12/2014	ISSUE FOR INFORMATION			



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Shaping the Future

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Open	Date	Client
DB	12/12/2014	MACARTHUR DEVELOPMENTS
Checked	Date	Project
Designed	Date	EMERALD HILLS ESTATE
Verified	Date	Title
Approved	Date	CUMULATIVE STAGING PLAN

FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Author	Scale	Size	Revision
AHD	NTS	A1	
Drawing Number	NA50613004-000-SK-0001		3

## Annexure B

### Road Works

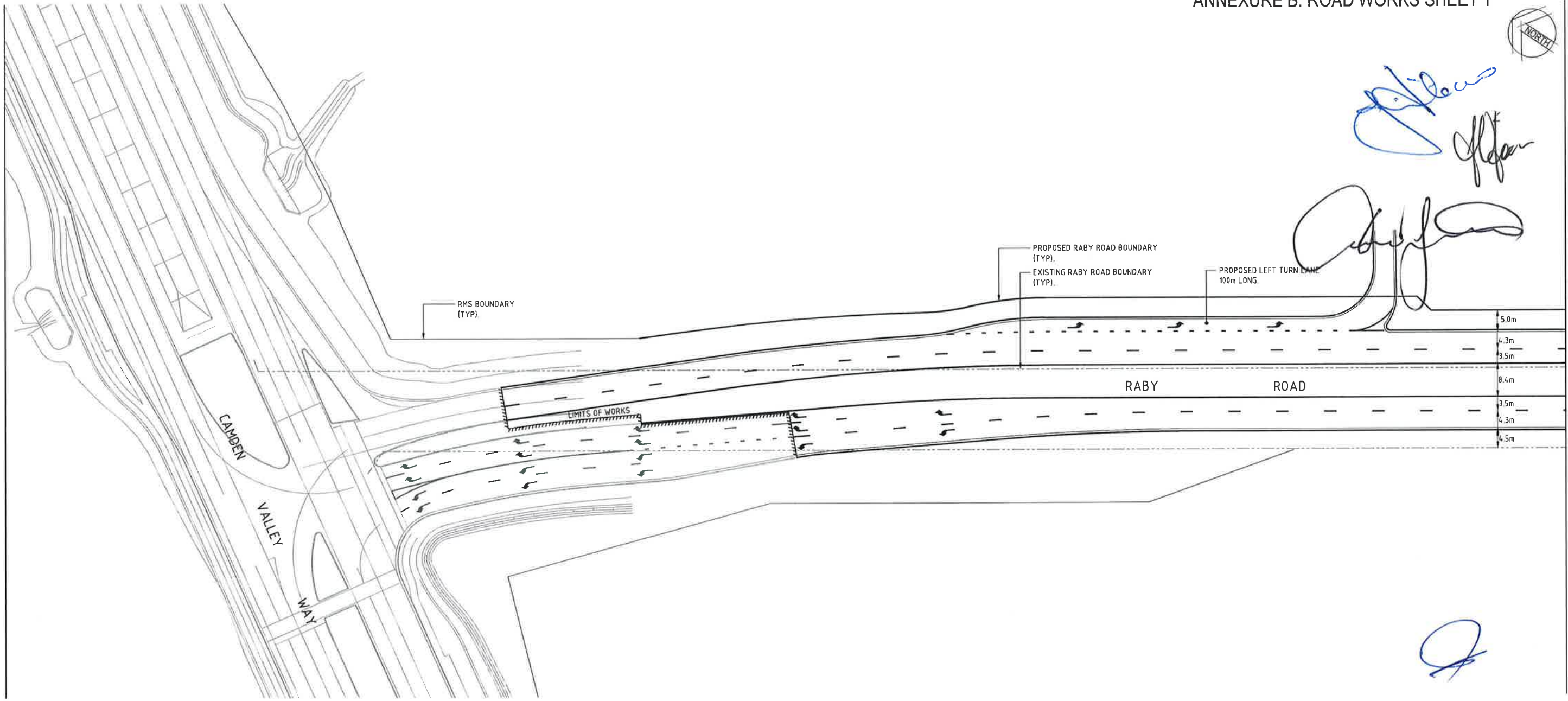


ANNEXURE B: ROAD WORKS SHEET 1

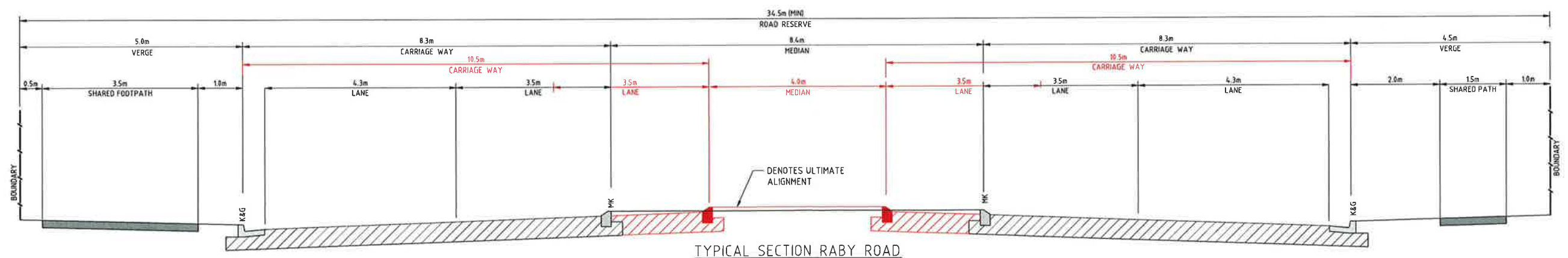


*[Handwritten signature]*  
*[Handwritten signature]*

*[Handwritten signature]*



*[Handwritten mark]*



TYPICAL SECTION RABY ROAD  
INTERIM LAYOUT

SCALE 1:50



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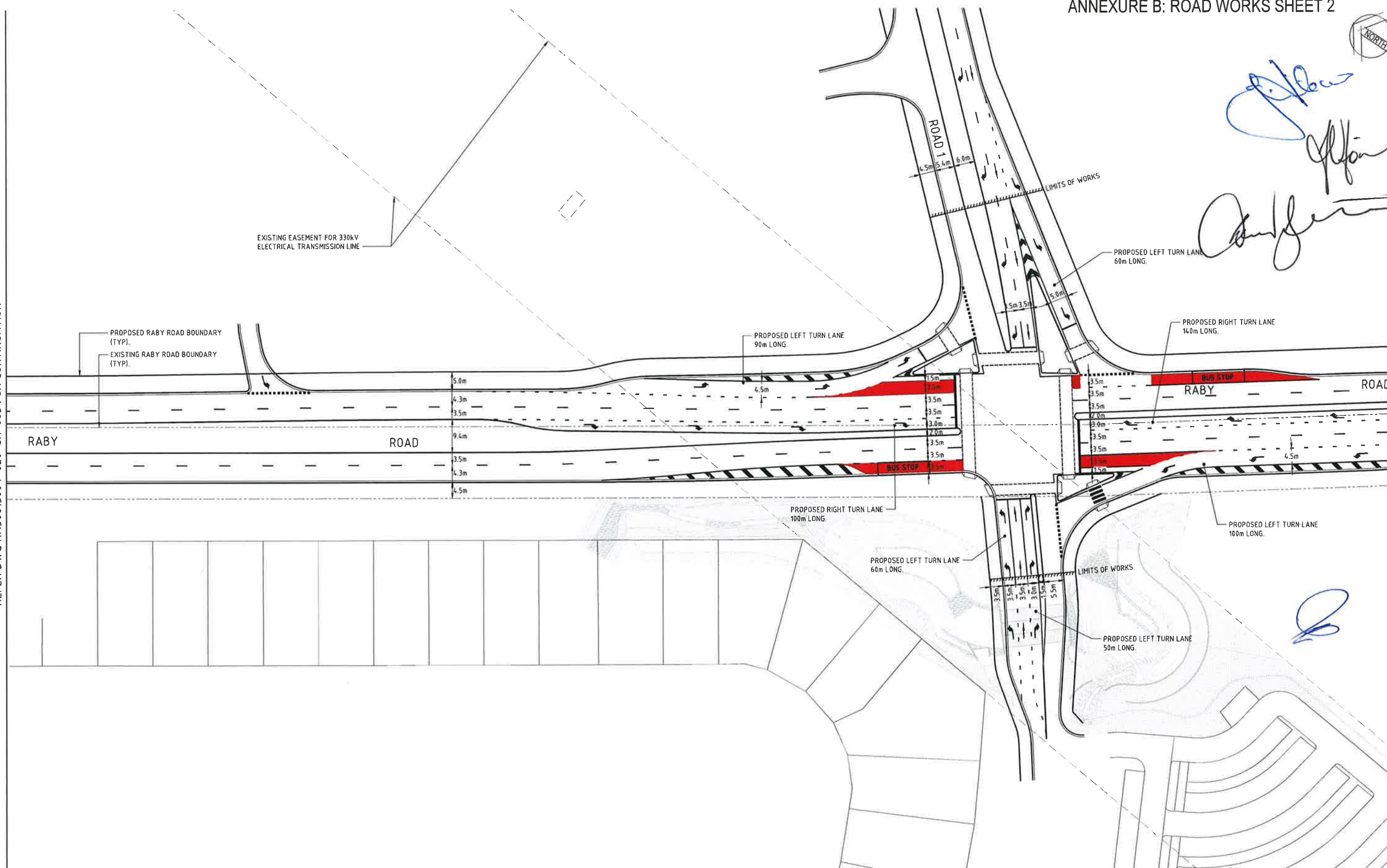
Drawn	CP	Date	17.09.14
Checked	CO	Date	17.09.14
Designed	CP	Date	17.09.14
Verified		Date	
Approved		Date	

Client: **EMERALD HILL ESTATE**  
EMERALD HILL ESTATE  
RABY ROAD  
RABY ROAD INTERIM DESIGN SHEET 1

Status	FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES			
Datum	A.H.D.	Register	Scale	Size
			1:500	A1
Drawing Number	NA50613004-020-SK-065			Revision
				02

Rev	Date	Description	Des	Verif	Appd
2	17.09.14	RE-ISSUED TO RMS FOR CONCEPT APPROVAL	CP		
1	22.07.14	ISSUED TO RMS FOR CONCEPT APPROVAL	CP		

REFER DWG NA50613004-020-SK-066 FOR CONTINUATION



2	17.09.14	RE-ISSUED TO RMS FOR CONCEPT APPROVAL	CP			
1	22.07.14	ISSUED TO RMS FOR CONCEPT APPROVAL	CP			
	<u>Date</u>	<u>Description</u>	<u>Type</u>	<u>Varif</u>	<u>Appd</u>	



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Drawn	Date
CP	17.09.14
Checked	Date
CO	17.09.14
Designed	Date
CP	17.09.14
Verified	Date
Approved	Date

Client **EMERALD HILL ESTATE**

EMERALD HILL ESTATE  
RABY ROAD

RABY ROAD INTERIM DESIGN SHEET 2

Status	FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES
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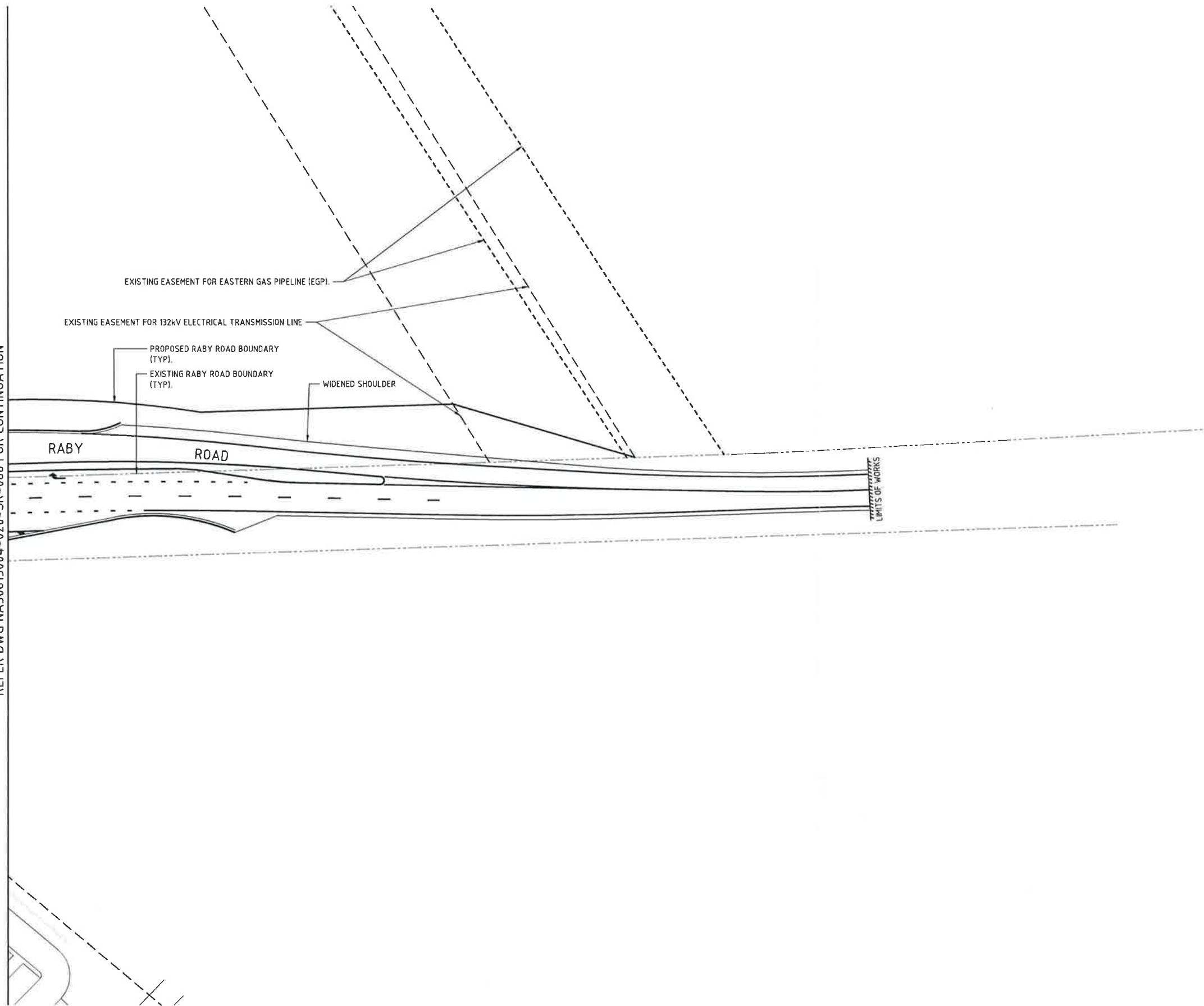
Datum A.H.D.	Register	Scale 1:500	Size A1
Drawing Number NA50613004-020-SK-066			Revision 02





CAD FILE: N:\Projects\506\FY13\NAS0613004 Emerald Hills Estate\01 - Masterplanning\020 - Raby Road\DRAWINGS\B

REFER DWG NA50613004-020-SK-066 FOR CONTINUATION



2	17 09 14	RE-ISSUED TO RMS FOR CONCEPT APPROVAL		CP	
1	22 07 14	ISSUED TO RMS FOR CONCEPT APPROVAL		CP	
Rev	Date	Description	Des.	Verif	Appr



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Drawn	Date
CP	17.09.14
Checked	Date
CO	17.09.14
Designed	Date
CP	17.09.14
Verified	Date
Approved	Date

14	Client	EMERALD HILL ESTATE
----	--------	---------------------

EMERALD HILL ESTATE  
RABY ROAD

RABY ROAD INTERIM DESIGN SHEET 3

Status	FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES
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Date A.H.D.	Register	Scale 1:500	Size A1
Drawing Number NA50613004-020-SK-067			Revision 02



## Annexure C

### Road Widening Land

## ANNEXURE C: ROAD WIDENING LAND

*Handwritten signatures and notes in blue ink.*

CAMDEN

VALLEY

DWYER ROAD

WAY

LOT 201  
(104.3ha)  
(1.318ha UNDER ROAD)  
TOTAL 105.6ha

LOT 200  
40.02ha

RABY

WORKS UNDER WAY BY  
OTHERS (NOT SURVEYED)

SENSITIVE VEGETATION

MAJOR TELECOMMUNICATION LINE

(BITUMEN SEALED) LINE

COUNTRY CLUB ENTRY

TELECOMMUNICATION

POLES

ENTRANCE

ROAD

BRIDGE OVER WATER SUPPLY CANAL

■ DENOTES PROPOSED ROAD WIDENING 1399ha  
(SUBJECT TO DESIGN AND CONSTRUCTION)

0.3 WIDE x 0.31 HIGH CONCRETE OPEN  
CULVERT OVER WATER SUPPLY CHANNEL

LOTS 100 & 101 IN DP(UNREGISTERED)  
BEING A FURTHER RESUBDIVISION OF  
LOT 10 IN DP1181567, LOT 1 IN DP301830  
& LOT 10 IN DP1173819

ALL DIMENSIONS & AREAS ARE APPROXIMATE  
& SUBJECT TO FINAL SURVEY & APPROVAL  
FROM CAMDEN/CAMPBELL TOWN COUNCIL

It should be noted that significant additional survey work has been undertaken by others in the vicinity of, and on this site since our initial boundary determination in 2010. This work may impact upon the subject site boundaries. The boundaries shown are subject to final survey and may be expected to change as a result of the incorporation of additional survey information into this calculation file. Any critical works in the vicinity of boundaries should be related to final fixed boundaries as they become available.

- ① EASEMENT FOR DRAINAGE OF WATER 38.07 WIDE (DP1178753)(AH425235)
- ② RIGHT OF ACCESS VARIABLE WIDTH (DP1173819)(AH425235)
- ③ EASEMENT FOR PIPELINE 4, 6, 8, 12, 20 WIDE & VARIABLE (DP106616)(B352310)
- ④ EASEMENT FOR TRANSMISSION LINE 30.48 WIDE (K135418) (DP34084)
- ⑤ EASEMENT FOR CATHODIC PROTECTION 1 WIDE, 3 WIDE & 10 WIDE (DP1016616)(B352310)

NOTE  
TREES GREATER THAN 100mm Ø SHOWN ON SUBJECT LAND  
TREES GREATER THAN 200mm Ø SHOWN IN ST ANDREW'S ROAD

BOUNDARIES SHOWN ON THIS PLAN MAY REQUIRE MINOR ADJUSTMENTS  
TO FACILITATE REGISTRATION OF THE REDEFINITION PLAN WITH L.P.M.A.

**LEAN LACKENBY & HAYWARD**  
CONSULTANTS IN SURVEYING, ENGINEERING & LAND DEVELOPMENT  
181 RL 200 NORTHUMBERLAND ST. LINDFIELD, NSW 2150  
PO BOX 1001 LINDFIELD, NSW 2150  
TEL: (02) 9500 8800 FAX: (02) 9500 8809  
WWW.LLH.COM.AU

L'POOL PTY LTD  
ABN 61 003 107 971

SUBDIVISION OF LOTS 100 & 101  
INTERNAL BOUNDARY ADJUSTED  
ADDITIONAL LOT  
BOUNDARY AMENDMENTS

7/8/2014  
03/06/2014  
13/11/2013  
11/11/2013

SJA  
SJA  
SJA  
SJA

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TABLE OF SCALES

LGA: CAMDEN/CAMPBELLTOWN  
LOCALITY: LEPPINGTON  
SURVEY: DJA  
DESIGN: APPROVED SJA

SCALE: 1:2000  
PROPERTY DESCRIPTION:  
SEE ABOVE  
DATUM & ORIGIN OF LEVELS  
A.H.D. PM22109 RL95.77

DATE: OCT 2013  
SHEET: 1 OF 2

PLAN OF PROPOSED SUBDIVISION

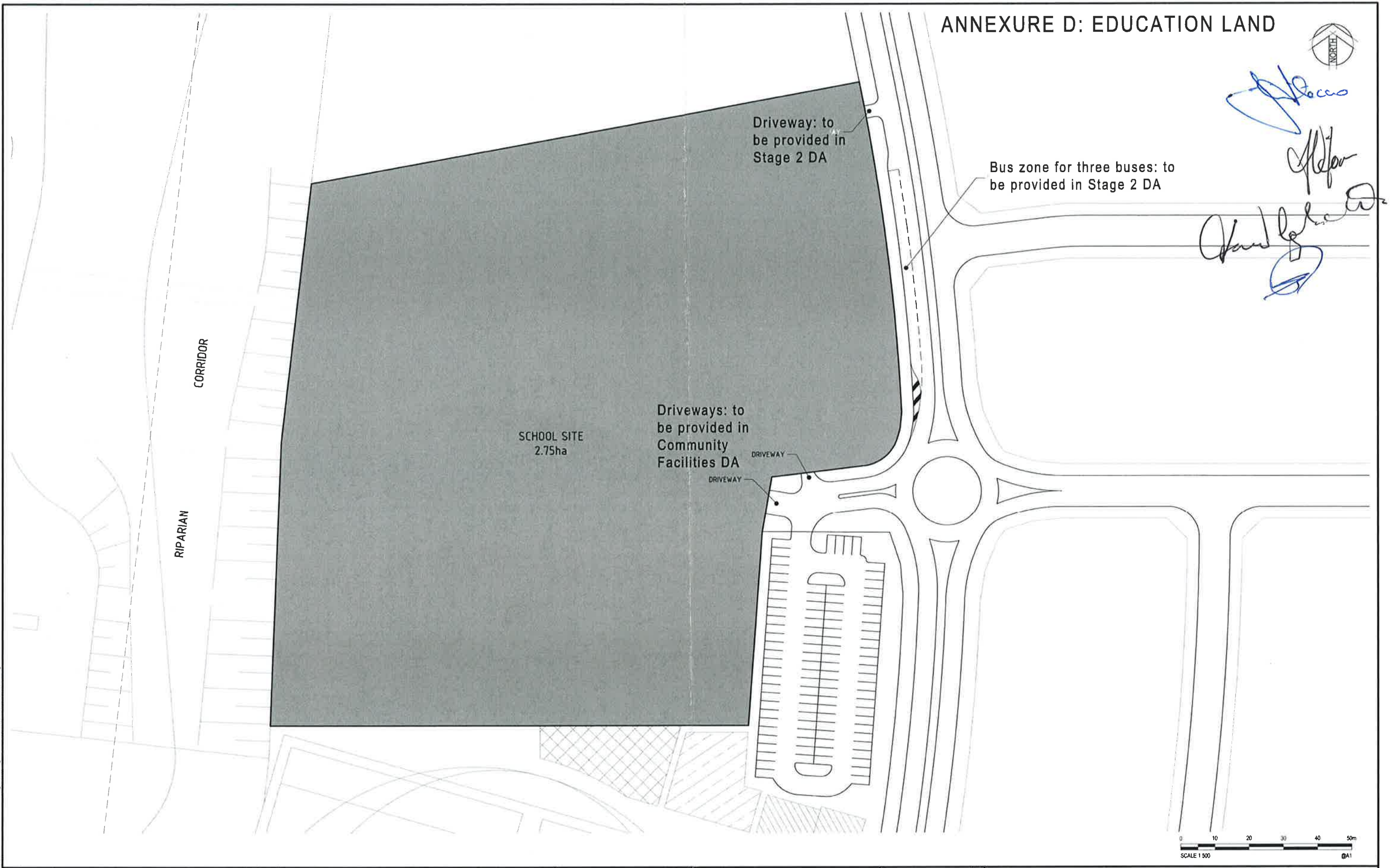
DRAWING NUMBER: 5902BSUB1  
AMEND: D  
FILE: No  
59028



# Annexure D

## Education Land





Rev	Date	Description	Des	Verif	Appd
2	20/10/2014	ISSUE FOR INFORMATION			
1	17/10/2014	ISSUE FOR INFORMATION			



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Drawn	Date
DB	17/10/2014
Checked	Date
Designed	Date
Verified	Date
Approved	Date

Client	MACARTHUR DEVELOPMENTS
Project	EMERALD HILLS ESTATE
Title	PRIMARY SCHOOL SITE PLAN

Status	FOR INFORMATION ONLY NOT TO BE USED FOR CONSTRUCTION PURPOSES		
Datum	AHD	Scale	1:500
Drawing Number	NA50613004-021-SK-0006	Size	A1
Revision			2