

Dated

12 day of MARCH

2015  
~~2014~~

**Secretary of the Department of Planning and Environment  
for and on behalf of the Crown in right of the State of New  
South Wales**

ABN 38 755 709 681

and

**SH Camden Valley Pty Limited**

ACN 137 331 376

**as trustee for the SH Camden Valley Unit Trust**

ABN 46 767 052 801

**Special Infrastructure Contributions  
Works-in-Kind Agreement**

**Gledswood Hills School Site**



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## **EXECUTED AS A DEED**

### **SCHEDULE 1 - Address for Service (clause 10.15)**

### **ANNEXURE A – Deed of Covenant**

**THIS Deed is dated**

**2014**

**PARTIES:**

**SECRETARY OF THE DEPARTMENT OF PLANNING AND ENVIRONMENT FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF NEW SOUTH WALES** (ABN 38 755 709 681) of 23-33 Bridge Street, Sydney, New South Wales, 2000 (**Secretary**); and

**SH CAMDEN VALLEY PTY LIMITED** (ACN 137 331 376) (**AS TRUSTEE FOR THE SH CAMDEN VALLEY UNIT TRUST** (ABN 46 767 052 801) of 68 Waterloo Road Macquarie Park NSW 2113 (**Developer**))

**INTRODUCTION:**

- A** The Developer proposes to carry out the Development within the WSGA Special Contributions Area.
- B** The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* provides for the making of special infrastructure contributions for development on certain land within the WSGA Special Contributions Area.
- C** The *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Direction 2011* requires councils for the local government areas that lie within the WSGA Special Contributions Area to impose a condition (in the terms set out in the Direction) for the making of a special infrastructure contribution on the grant of development consent for any development for which a special infrastructure contribution is required to be made under the Ministerial Determination.
- D** The Ministerial Determination provides that a special infrastructure contribution may be made as a monetary contribution or a contribution of a kind specified in a special infrastructure contribution works-in-kind agreement.
- E** The Developer has entered into a Deed of Covenant with the Minister for Education dated 26 March 2014 and proposes to dedicate the School Site to the Minister for Education for the purpose of a public primary school in accordance with the Deed of Covenant by the Dedication Date, and in doing so discharge its liability to make special infrastructure contributions imposed under development consents, in lieu of making monetary contributions to the extent of the value of the School Site and works associated with the School Site, on terms as set out in this Deed.
- F** The Parties have agreed to enter into this Deed to give effect to the above proposal.
- G** This Deed is the works in kind agreement envisaged in clause 2.1(a) of the Deed of Covenant.

- H** For the avoidance of doubt, the parties intend this Deed to constitute the entire agreement and understanding between them in relation to the subject matter of this Deed and have agreed that any prior arrangements between them relating to the subject matter of this Deed are rescinded and have no further force or effect.
- I** For the avoidance of doubt, it is not intended that this Deed will override the Deed of Covenant.

**IT IS AGREED:**

**1 DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

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

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

**Address for Service** means the address of each party appearing in Schedule 1 or any new address notified by any party to all other parties as its new Address for Service;

**Bank Guarantee** means an irrevocable and unconditional undertaking that is:

- (a) given by a financial institution which is an eligible financial institution for the purposes of Treasury Circular NSW TC 14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time;
- (b) on terms acceptable to the Secretary, in the Secretary's absolute discretion; and
- (c) made out to a person nominated by the Secretary,

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

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

**Construction Certificate** has the same meaning as in the Act;

**Credit Value of the Remediation Works** means the amount of \$500,000 (GST exclusive), indexed in accordance with clause 3.2(b) of this Deed;

**Credit Value of the Road Works** means the amount of \$250,000 (GST exclusive), indexed in accordance with clause 3.2(b) of this Deed;

**Credit Value of the School Site** means the amount of \$4,150,000 (GST exclusive), indexed in accordance with clause 3.2(b) of this Deed;

**Credit Value of the Services Works** means the amount of \$250,000 (GST exclusive), indexed in accordance with clause 3.2(b) of this Deed;

**Current Development Site** means:

- (a) the land known as 'stage 4' under Camden Council development consent 1182/2011;
- (b) the land known as 'stage 5' under Camden Council development consent 406/2012;
- (c) the land known as 'stage 7' and 'stage 8' under Camden Council development consent 1226/2012;
- (d) the land known as 'stage 9' under Camden Council development consent 1226/2012;
- (e) the land known as 'stage 20' under Camden Council development consent 667/2013;
- (f) the land known as 'stage 15' under Camden Council development consent 1065/2013;
- (g) the land known as 'The Hermitage Link Road' under Camden Council development consent 727/2013;
- (h) Lot 6 DP 1175488;
- (i) Lot 1 DP 1175488;
- (j) Lot 5 DP 1175488;
- (k) Lot 2076 DP 1161618;
- (l) Lot 3 DP 1175488;
- (m) Lot 300 DP 1166622;
- (n) Lot 2 DP 1193179;
- (o) Lot 3 DP 1193179; and
- (p) Lot 966 DP 1185517.

**DEC** means the Department of Education and Communities or successor body;

**Dedication Date** means the point in time by which the School Site is to be transferred as determined under clause 4.7 of the Deed of Covenant;

**Deed of Covenant** means the deed of covenant between the Developer and the Minister for Education annexed to this Deed and marked "A";

**Department** means the NSW Department of Planning and Environment;

**Development** means the development of the Current Development Site;

**Development Consent** has the same meaning as in the Act;

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

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

**Indexed Bank Guarantee Amount** means the amount stipulated in a Bank Guarantee adjusted by multiplying that amount by the following fraction:

**Latest Sydney CPI number/X**

where:

**latest Sydney CPI number** is the Sydney CPI number for the March quarter in the financial year immediately preceding the date on 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); and

**"X"** is the Sydney CPI number for the March quarter in the financial year immediately preceding the date on which the Bank Guarantee was provided.

**Insolvent**, in relation to a party means:

- (a) the party is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) the party has a Controller appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) the party is subject to any agreement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party); or
- (d) an application or order had been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) the party has taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or

- (f) the party is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the other party reasonably deduces it is so subject); or
- (g) the party is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that party under the law of any jurisdiction.

**Minister** means the Minister for Planning;

**Ministerial Determination** means the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011*, made under section 94EE of the Act and dated 14 January 2011;

**Nominated Officer** means the officer of the Department for the time being holding the position nominated by the Secretary for the purpose of this Deed;

**Relevant Obligation** means the obligation of the Developer to do all things necessary to:

- (a) dedicate the School Site; or
  - (b) carry out the Remediation Works, the Road Works or the Services Works,
- as the case may be,

**Remediation Works** means the works needed, under the Deed of Covenant, to carry out remediation of the School Site as contemplated by clause 4.6 of the Deed of Covenant including obtaining a Site Audit Statement and providing it to the Minister for Education as contemplated by clause 4.6(c) of the Deed of Covenant;

**Road Works** means the works needed, under the Deed of Covenant, to service the School Site by roads (including three road frontages) as contemplated by clause 4.5 of the Deed of Covenant;

**School Site** means the School Land to be dedicated to the Minister for Education under the Deed of Covenant;

**Secretary** means the Secretary of the Department or a Nominated Officer;

**Services Works** means the works needed, under the Deed of Covenant, to service the School Site with sewer, water, electricity, gas and communications as contemplated by clause 4.5 of the Deed of Covenant;

**SH Camden Valley Unit Trust** means the SH Camden Valley Unit Trust (ABN 46 767 052 801);



**SIC** means special infrastructure contribution being a development contribution determined under section 94EE of the Act for the WSGA Special Contributions Area or any part of that Area;

**SIC Discharge Balance** means the amount shown on the SIC Discharge Certificate as the final or unapplied SIC Discharge Balance, being either “zero” amount or the amount that remains available for the discharge of SIC obligations for development that is not listed on the certificate for the time being;

**SIC Discharge Certificate** means a certificate referred to in clause 3.4(f)(ii) as amended from time to time under clause 3.5;

**Subdivision Certificate** has the same meaning as in the Act;

**Sydney CPI number** means the consumer price index published by the Australian Statistician for the area and group in Sydney- All Groups, and in the event that this number ceases to be published the index number nominated by the President of the Australian Property Institute Incorporated (NSW Division) which is published quarterly and which reflects the rate of price change in the area and group in Sydney- All Groups.

**Total Credit Value** means the sum of the Credit Value of the School Site, the Credit Value of the Remediation Works, the Credit Value of the Services Works and the Credit Value of the Road Works

**Works Delivery Date** means:

- (a) in relation to the Credit Value of the Remediation Works, the date of commencement of construction of the public primary school by the Minister for Education (being consistent with clause 4.6 of the Deed of Covenant); and
- (b) in relation to the Credit Value of the Road Works and the Credit Value of the Services Works, the date the school to be constructed on the School Land is operational (being consistent with clause 4.5 of the Deed of Covenant).

**Works SIC Discharge Amount** means the Credit Value of the School Site Works;

**WSGA 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”.

## **1.2 Interpretation**

In this Deed unless the context clearly indicates otherwise:

- (a) a reference to **this Deed** or another document means this Deed or that other document and any document which varies, supplements, replaces, assigns or novates this Deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this Deed;
- (f) the **schedules** form part of this Deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;

- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing;
- (s) any paragraph marked "note" is not to be used in the interpretation of this Deed; and
- (t) neither this Deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2 OPERATION OF THIS DEED**

### **2.1 Operation**

- (a) The parties agree that this Deed will commence from the date this Deed is signed by all the parties.
- (b) No provision of this Deed is intended to be a condition precedent of the kind referred to in clause 2.1(b) or (c) of the Deed of Covenant.

## **3 AGREEMENT BETWEEN THE PARTIES**

### **3.1 The Site**

The parties acknowledge that:

- (a) the Developer will, as a condition of any Development Consent granted or to be granted for the Development within the WSGA Special Contributions Area, be required to make a SIC in relation to the Development;
- (b) the Developer may elect to discharge its SIC liability imposed under a Development Consent(s) granted for the Development within the WSGA Special Contributions Area by meeting its obligations with respect to the School Site under the Deed of Covenant, in lieu of a paying a monetary contribution;
- (c) the School Site forms part of the Education Land Acquisitions for Primary Schools in the South West Sector and the attributable cost shown for that item in Appendix 1 is \$126,886,000 as at 31 March 2010;
- (d) the amount of the liability to make a SIC for the Development within the WSGA Special Contributions Area that may be discharged by the Developer meeting its obligations with respect to the School Site is the Total Credit Value;
- (e) the Secretary will, on the terms set out in this Deed, accept the Developer meeting its obligations with respect to the School Site under the Deed of Covenant in discharge of all or part of the liability of the Developer to make a SIC imposed under any Development Consent(s) granted to the

Developer for the Development within the WSGA Special Contributions Area; and

- (f) this Deed constitutes a SIC works-in-kind agreement within the meaning of the Ministerial Determination.

### **3.2 Credit Value of the School Site and the School Site works**

- (a) The parties agree that the amount of the liability to make a SIC for the Development on land within the WSGA Special Contributions Area that the Developer may discharge by meeting its obligations with respect to the School Site is the Total Credit Value.
- (b) The parties agree that where the Secretary is satisfied that the Developer has met the Relevant Obligation under clause 3.4, the amount of (as relevant):
- (i) \$4,150,000 (being the initial Credit Value of the School Site); and
  - (ii) \$500,000 (being the initial Credit Value of the Remediation Works);
  - (iii) \$250,000 (being the initial Credit Value of the Services Works); and
  - (iv) \$250,000 (being the initial Credit Value of the Road Works);

is to be adjusted by multiplying that amount by the following fraction:

**latest Sydney CPI number / 102.7**

where:

**latest Sydney CPI number** is the Sydney CPI number for the March quarter in the financial year immediately preceding the date on 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 102.7 is the Sydney CPI number for the March quarter in 2013.

### **3.3 Amount of SIC if paid as monetary contributions**

- (a) At the time of entering into this Deed, the parties estimate that the monetary contribution that would otherwise be payable for the Development (but not including any SIC that has already been paid in full) is approximately \$13,238,161 (if the contributions were paid before 1 July 2014).

Note: The purpose of this provision is to comply with clause 26(4)(a) of the Ministerial Determination.

- (b) However, the amount of the liability to make a SIC for a particular part of the Development that may be discharged by the Developer meeting its obligations with respect to the School Site is the amount of the monetary contribution that would otherwise be payable in accordance with the Ministerial Determination as at the date on which the SIC Discharge Certificate is issued or amended to include an entry in relation to that part of the development.

### 3.4 SIC Discharge Certificate - Satisfaction of Developer obligations

- (a) If the Developer considers that it has met its obligation to dedicate the School Site to the Minister for Education in accordance with the Deed of Covenant (including dedication by the Dedication Date), the Developer may forward the following to the Secretary:
  - (i) a written request to issue a SIC Discharge Certificate as referred to in clause 3.4(f)(ii) (**a Request**) relating to the Credit Value of the School Site; and
  - (ii) a written statement by the Secretary of DEC that the Developer has fulfilled its obligation to dedicate the School Site to the Minister for Education in accordance with the Deed of Covenant; and
  - (iii) such other supporting documentation as is necessary for the Secretary to determine that the Developer has met its obligation to dedicate the School Site to the Minister for Education in accordance with the Deed of Covenant.

The Developer must promptly provide any additional information requested by the Secretary.

- (b) If, before the relevant Works Delivery Date (or such other date as proposed by the Developer and agreed by the Secretary in writing in his or her absolute discretion), the Developer considers that it has met its obligation to carry out the Remediation Works in accordance with the Deed of Covenant, the Developer may forward the following to the Secretary:
  - (i) a Request relating to the Credit Value of the Remediation Works; and
  - (ii) a written statement by the Secretary of DEC that the Developer has fulfilled its obligation to carry out the Remediation Works in accordance with the Deed of Covenant; and
  - (iii) such other supporting documentation as is necessary for the Secretary to determine that the Developer has met its obligation to carry out the Remediation Works in accordance with the Deed of Covenant.

The Developer must promptly provide any additional information requested by the Secretary.

- (c) If, before the relevant Works Delivery Date (or such other date as proposed by the Developer and agreed by the Secretary in writing in his or her absolute discretion), the Developer considers that it has met its obligation to carry out the Road Works, in accordance with the Deed of Covenant, the Developer may forward the following to the Secretary:
  - (i) a Request relating to the Credit Value of the Road Works; and
  - (ii) a written statement by the Secretary of DEC that the Developer has fulfilled its obligation to carry out the Road Works in accordance with the Deed of Covenant; and
  - (iii) such other supporting documentation as is necessary for the Secretary to determine that the Developer has met its obligation to carry out the Road Works in accordance with the Deed of Covenant.
  - (iv) The Developer must promptly provide any additional information requested by the Secretary.
- (d) If, before the relevant Works Delivery Date (or such other date as proposed by the Developer and agreed by the Secretary in writing in his or her absolute discretion), the Developer considers that it has met its obligation to carry out the Services Works in accordance with the Deed of Covenant, the Developer may forward the following to the Secretary:
  - (i) a Request relating to the Credit Value of the Services Works; and
  - (ii) a written statement by the Secretary of DEC that the Developer has fulfilled its obligation to carry out the Services Works in accordance with the Deed of Covenant; and
  - (iii) such other supporting documentation as is necessary for the Secretary to determine that the Developer has met its obligation to carry out the Services Works in accordance with the Deed of Covenant.

The Developer must promptly provide any additional information requested by the Secretary.

- (e) The Secretary will, within 45 days of receiving the material referred to in clause 3.4(a), (b), (c) or (d), determine whether the Developer has met the Relevant Obligation.
- (f) If the Secretary, in his or her absolute discretion, is satisfied that the Developer has met the Relevant Obligation, the Secretary will:

- (i) accept the Developer meeting the Relevant Obligation, in lieu of the Developer paying a monetary contribution equal to the Credit Value of the School Site, the Credit Value of the Remediation Works, the Credit Value of the Road Works or the Credit Value of the Services Works (as relevant); and
  - (ii) issue a SIC Discharge Certificate to the Developer that sets out the Credit Value of the School Site, the Credit Value of the Remediation Works, the Credit Value of the Road Works or the Credit Value of the Services Works (as the case may be).
- (g) If the Secretary, in his or her absolute discretion, is not satisfied that the Developer has met the Relevant Obligation, the Secretary will notify the Developer and provide an explanation as to why he or she considered that the Developer has not met the Relevant Obligation and, if applicable, provide details of:
- (i) any additional work or tasks which must be undertaken; and/or
  - (ii) any information or documents which must be provided,
- by the Developer, in order to meet the Relevant Obligation. The Developer may, after taking into account the Secretary's explanation and undertaking the work or providing the information or documents required, re-submit a Request together with any necessary documentation.

### 3.5 Application of SIC Discharge Balance

- (a) The parties agree that on 1 July 2015 and on 1 July in each subsequent year, the SIC Discharge Balance (if it is an amount greater than zero) is to be adjusted by multiplying that amount by the following fraction:

**Latest Sydney CPI number/Previous Sydney CPI number**

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).

**previous Sydney CPI number** is the Sydney CPI number for the March quarter in the year prior to 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).

- (b) Where the Developer is required to pay SIC's under the terms of a Development Consent for any part of the Development, the Developer may

request the Secretary to amend the SIC Discharge Certificate in lieu of (or in addition to) paying the relevant SIC's as follows:

- (i) where the SIC Discharge Balance is equal to or exceeds the amount of SIC required by the Development Consent, the SIC Discharge Balance in the amended SIC Discharge Certificate will be calculated by subtracting the amount of the SIC payable under the Development Consent from the existing SIC Discharge Balance; and
  - (ii) where the SIC Discharge Balance is less than the amount of SIC required by the Development Consent, the SIC Discharge Balance in the amended SIC Discharge Certificate will be reduced to zero and the Developer will pay an amount of SIC equal to the SIC required by the Development Consent less the existing SIC Discharge Balance.
- (c) The parties acknowledge that the Developer has, pursuant to clause 18 of the Ministerial Determination, provided the Minister with Bank Guarantees as security for payment of SIC's required by Development Consents issued for part of the Development.

Note. At the date of this Deed the Developer had provided Bank Guarantees in the amount of (being the total face value of the Bank Guarantees unindexed):

- In the 2012/2013 financial year - \$537,042;
- In the 2013/2014 financial year - \$2,523,195; and
- In the 2014/2015 financial year - \$1,631,276.

- (d) Where, pursuant to clause 3.4(e), the Secretary has determined that the Developer has met the Relevant Obligation, and the Developer has provided Bank Guarantee(s) to the Minister as noted in clause 3.5(c) or under clause 4.1(a) then:
- (i) where the SIC Discharge Balance is equal to or exceeds the amount of the sum of the Indexed Bank Guarantee Amounts of Bank Guarantees held by the Secretary at the time the adjustment is made to the SIC Discharge Balance under this clause, the Secretary will:
    - (A) amend the SIC Discharge Certificate by inserting a new SIC Discharge Balance which is calculated by subtracting the relevant sum of the Indexed Bank Guarantee Amounts from the existing SIC Discharge Balance; and
    - (B) return the Bank Guarantee(s) to the Developer; and
  - (ii) where the SIC Discharge Balance is less than the amount of the sum of the Indexed Bank Guarantee Amounts of Bank Guarantees



held by the Secretary at the time the adjustment is made to the SIC Discharge Balance under this clause, the Secretary will:

- (A) issue a SIC Discharge Certificate with the SIC Discharge Balance reduced to zero; and
  - (B) upon prior receipt from the Developer of a Bank Guarantee equal to the Shortfall Amount, return the Bank Guarantees to the Developer.
- (e) For the purposes of clause 3.5(d)(ii) **Shortfall Amount** means the difference between the sum of the Indexed Bank Guarantee Amounts of Bank Guarantees held by the Secretary at the time the adjustment is made under this clause and the SIC Discharge Balance.
- (f) Upon issue of the amended SIC Discharge Certificate the Developer will be deemed to have satisfied its obligation to pay the SIC to the extent of the reduction in the SIC Discharge Balance.
- (g) For the purposes of amending the SIC Discharge Certificate under clauses 3.5(b), the amount of the SIC for the Development, or part of the Development, is the amount of the SIC that would otherwise be payable as a monetary contribution for the Development under the Ministerial Determination if paid on the date that the SIC Discharge Certificate is amended.

### **3.6 Secretary certification of SIC payment before Subdivision Certificate or Construction Certificate**

The Developer may not apply for a Subdivision Certificate or Construction Certificate (as the case may be) in relation to any part of the Development for which a SIC is required to be made unless the Developer:

- (a) has obtained from the Secretary a certificate to the effect that the SIC for the development of the value or amount shown on the certificate has been made; or
- (b) has entered into a deferred payment arrangement as referred to in the Ministerial Determination in relation to that SIC; or
- (c) has obtained from the Secretary written advice that the Developer has provided a Bank Guarantee for the amount of the SIC that would otherwise be payable for the Development.

## **4 SECURITY RELATING TO THE AGREEMENT**

### **4.1 Security relating to the Deed**

- (a) Subject to clause 4.1(b), if the Developer is required by a Development Consent to pay a SIC before obtaining a Subdivision Certificate or Construction Certificate and the Developer has not fulfilled its obligations with respect to the School Site under the Deed of Covenant, the Developer may either pay the relevant SIC amount or provide a Bank Guarantee to the Secretary for the SIC amount.
- (b) The maximum value of all Bank Guarantees that may be provided in relation to the Development from the date of this Deed is calculated by:
  - (i) the Total Credit Value, less
  - (ii) the sum of the Indexed Bank Guarantee Amounts for each and all of the Bank Guarantees provided to the Minister as acknowledged in clause 3.5(c).
- (c) If the Developer has not fulfilled its obligations with respect to the School Site under the Deed of Covenant by 1 January 2019, the Secretary (or the person to whom the Bank Guarantee was provided) may:
  - (i) if the Secretary has informed the Developer in writing of his/her intention to invoke this clause 4.1(c) and the reasons for that intention; and
  - (ii) if the Secretary has not received a response the Secretary considers satisfactory in his/her absolute discretion from the Developer within 28 days,

call upon any of the Bank Guarantees that have been provided (including a Bank Guarantee referred to in clause 3.5(c)) and retain the proceeds of such claim to satisfy the SIC liability that would otherwise have been payable.

- (d) If the Developer becomes Insolvent, the Secretary (or the person to whom the Bank Guarantee was provided) may call upon any of the Bank Guarantees that have been provided (including a Bank Guarantee referred to in clause 3.5(c)) and retain the proceeds of such claim to satisfy the SIC liability that would otherwise have been payable.

## **5 TRUSTEE DEVELOPER**

- (a) The Developer enters into this deed in its capacity as the trustee for the SH Camden Valley Unit Trust.
- (b) The Developer warrants that:

- (i) it is the sole trustee of the SH Camden Valley Unit Trust and no action has been taken to remove or replace it;
  - (ii) it is authorised under the trust deed of the SH Camden Valley Unit Trust to enter into this deed;
  - (iii) it is not in breach of the trust deed of the SH Camden Valley Unit Trust; and
  - (iv) it has the power under the deed constituting the SH Camden Valley Unit Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting the SH Camden Valley Unit Trust.
- (c) If the trustee of SH Camden Valley Unit Trust is replaced in accordance with the trust deed of the SH Camden Valley Unit Trust, then:
- (i) the Secretary and the replacement trustee will enter into a new deed on the same terms as this deed; and
  - (ii) the Secretary and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
  - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Secretary in relation to the replacement of a trustee under this clause and the costs and expenses of registering any new deed on the title to the Land.

## **6 DISPUTE RESOLUTION**

### **6.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 6.

### **6.2 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.

### **6.3 Attempt to resolve**

On receipt of notice under clause 6.2, 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.

#### **6.4 Mediation**

If the parties do not agree within 21 days of receipt of notice under clause 6.2 (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.

#### **6.5 Court proceedings**

If the dispute is not resolved within 60 days after notice is given under clause 6.2 then any party which has complied with the provisions of this clause 6 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

#### **6.6 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 6 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 6 for any purpose other than in an attempt to settle the dispute.

#### **6.7 No prejudice**

This clause 6 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.

### **7 GST**

#### **7.1 Definitions**

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

#### **7.2 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.

### **7.3 Reimbursement**

- (a) 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.
- (b) For avoidance of doubt, a payment or reimbursement that is required to be made under the Deed of Covenant is not required to be made under this Deed.

### **7.4 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 7.

### **7.5 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 Secretary as Recipient of the supply, the Developer will ensure that:

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

### **7.6 Non-monetary consideration**

Clause 7.5 applies to non-monetary consideration.

### **7.7 Assumptions**

The Developer acknowledges and agrees that in calculating any amounts payable under clause 7.5 the Developer will assume the Secretary and the Minister is not entitled to any input tax credit.

### **7.8 No merger**

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

## **8 ASSIGNMENT**

### **8.1 Consent**

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

- (a) to a related body corporate, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this Deed; or
- (b) to any other person, with the prior consent of the other parties, which the other parties may give, give conditionally or withhold in its absolute discretion.

## **9 WARRANTIES OF CAPACITY**

### **9.1 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.

### **9.2 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.

## **10 GENERAL PROVISIONS**

### **10.1 Entire Deed**

- (a) 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.
- (b) For the avoidance of doubt, it is not intended that this Deed will override the Deed of Covenant.

### **10.2 Variation**

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

### **10.3 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.

### **10.4 Further assurances**

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

### **10.5 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.

### **10.6 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.

### **10.7 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.

### **10.8 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.

#### **10.9 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.

#### **10.10 Costs**

The Developer is to pay the Secretary's and the Minister's reasonable costs of preparing, negotiating, and executing this Deed including legal costs.

#### **10.11 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.

#### **10.12 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.

#### **10.13 No fetter**

Nothing in this Deed shall be construed as requiring the Secretary to do anything that would cause the Secretary to breach any of the Secretary'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 Secretary in exercising any of the Secretary's statutory functions, powers, authorities or duties.

#### **10.14 Expenses and stamp duty**

The Developer must pay all stamp duty assessed on or in respect of this Deed and any instrument or transaction required by or necessary to give effect to this Deed.

#### **10.15 Notices**

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:

- (a) hand delivered; or
- (b) sent by facsimile transmission.




A notice is given if:

- (c) hand delivered, on the date of delivery; or
- (d) 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.

**EXECUTED** as a Deed

**Signed sealed and delivered** by the  
**Secretary of the Department of Planning  
and Environment** for and on behalf of the  
**Crown in right of the State of New South  
Wales**, in the presence of:



Signature of Witness



Signature of the Secretary

*CFOO as delegate*

*MARLENE BEZZINA*

Name of Witness in full

**Signed sealed and delivered by SH** )  
**Camden Valley Pty Limited** (ACN 137 331 )  
376) in accordance with section 127 of the )  
Corporations Act:



Signature of Director

**Toru Abe**

Name of Director



Signature of ~~Director~~/Secretary

**Kohji Fukano**

Name of ~~Director~~/Secretary

## **SCHEDULE 1**

### **Address for Service (clause 10.15)**

#### **Secretary**

**Contact:** Secretary, Department of Planning and Environment  
Attention: Chief Financial and Operating Officer

**Address:** 23-33 Bridge Street  
Sydney, New South Wales, 2000

**Facsimile No:** (02) 9228 6455

#### **Developer**

**Contact:** Attention: Brent Thompson, Development Manager, Development & Communities

**Address:** c/- Sekisui House Australia Pty Limited,  
Ground Floor 68 Waterloo Road  
Macquarie Park NSW 2113

**Facsimile No:** 8817 4801

**ANNEXURE A**  
**Deed of Covenant**

# **Deed of Covenant**

**Minister for Education**

**SH Camden Valley Pty Ltd**

**GADENS LAWYERS**  
77 Castlereagh Street  
SYDNEY NSW 2000

T +61 2 9931 4772  
F +61 2 9931 4888  
Ref Chris Fabiansson 33600451

*K.F.*

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## Deed of Covenant

Dated 26 March, 2014

### Parties

1. **Minister for Education** ABN 40 300 173 822 of 35 Bridge Street, Sydney (**Minister for Education**).
2. **SH Camden Valley Pty Ltd (as Trustee for the SH Camden Valley Unit Trust)** ABN 37 137 331 376 of 68 Waterloo Road, Macquarie Park NSW 2113 (**Owner**).

### Background

- A. The Owner is the registered proprietor of the land known as lot 3 in deposited plan 1175488 and lot 4117 in deposited plan 1173178 (the **Land**) and is intending to develop the Land for residential and commercial purposes (the **Development**).
- B. The Owner has agreed to dedicate part of the Land (the **School Land**) to the Minister for Education on the basis that a public primary school will be constructed on the School Land in accordance with the terms of this deed.

### Operative provisions

#### 1. Defined meanings

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The definitions and interpretation clause at the back of this document sets out and explains the defined terms used in this document and the rules of interpretation that apply.

#### 2. Conditions Precedent

---

- 2.1 The provisions of this deed (except clause 8) are subject to and conditional upon the following occurring:
  - (a) the Minister for Planning and Infrastructure and the Owner entering into a works in kind agreement under the *Environmental Planning and Assessment (Special Infrastructure Contribution – Western Sydney Growth Areas) Determination 2011* that provides for a special infrastructure contribution offset, or another kind of offset, equal to the market value of the School Land, calculated in accordance with, or fixed by, the works in kind agreement;
  - (b) all conditions precedent (if any) for the operation of the works in kind's offset provisions are satisfied;
  - (c) all conditions precedent (if any) for the operation of this deed, as expressly set out in the works in kind agreement, are satisfied;

K.F

- (d) the Owner registering a plan of subdivision of the Land in accordance with clause 3, which identifies the School Land to be dedicated to the Minister for Education under clause 4; and
  - (e) the Minister for Education executing the dealing regarding the restriction on use of the School Land in accordance with clause 5.
- 2.2 This deed (except clause 8) has no force or effect if these conditions precedent are not satisfied.

### 3. Subdivision of the Land

---

#### 3.1 Subdivision Plan

- (a) The Owner agrees, at its cost, to use all reasonable endeavours to arrange for a plan of subdivision to be registered at the Land and Property Information to create the School Land as a separate lot (**Subdivision Plan**).
- (b) The School Land must:
  - (i) be generally in accordance with the land so shown in the plan annexed to this deed at Annexure A (**Proposed Plan**);
  - (ii) not have an area of less than 2.5 hectares; and
  - (iii) have 3 street frontages.

#### 3.2 Variation to the Proposed Plan

The Minister for Education agrees that the Owner may make changes to the Proposed Plan, subject to the Minister for Education's approval, not to be unreasonably withheld, including changes to the:

- (a) location of the School Land;
- (b) location of the ingress and egress points of the School Land (which at the time of this deed are as noted in the plan annexed to this deed at Annexure B);
- (c) size of the School Land (subject to the minimum area noted in clause 3.1(b)(ii)).

The appropriateness of any change to the Proposed Plan is to have regard, where possible and where not prejudicial to the Owner's reasonable ability to carry out the Development, to the 'Advisory Notes for Developers and Consent authority for Master Planning New Education Facility Sites' prepared by the Department of Education and Communities.

#### 3.3 Failure to register Subdivision Plan

The Owner agrees that it will use all reasonable endeavours to obtain all relevant development consents and approvals required to comply with its obligation under clause 3.1(a), however the Minister for Education may not make any claim for compensation or damages against the Owner if the Owner is unable to comply with clause 3.1(a).



### 3.4 Easements

At the time of registration of the Subdivision Plan the Owner may create any easements it requires over the School Land which are required by the Owner to carry out and maintain the Development on the balance of the Land, provided that:

- (a) no overhead power lines, rights of carriageway or rights of footway are permitted to burden the School Land; and
- (b) any other easements may not materially interfere with the required location of buildings on the School Land.

## 4. Dedication of the School Land

---

4.1 The Owner must, at its cost, dedicate to the Minister for Education the School Land.

4.2 Within one (1) month of the Subdivision Plan registering at the Land and Property Information:

- (a) the Owner will deliver to the Minister for Education the following documents:
  - (i) the Certificate of Title for the lot;
  - (ii) a restriction on use dealing which contains the same wording set out in clause 5.1 (**Restriction on Use**);
  - (iii) a discharge of mortgage, surrender of lease or other document to release the lot from any encumbrance; and
  - (iv) transfer in registrable form executed by the registered proprietor of the lot.
- (b) The Minister for Education will at its cost, upon receipt of the above documents, arrange for the following:
  - (i) stamping of the transfer; and
  - (ii) lodgement of the Restriction on Use, discharge of mortgage or other document to release the lot from any encumbrance and the transfer, in that order, at the Land and Property Information.

- 4.3 After the School Land is transferred to the Minister for Education, the Minister for Education will use the land to construct and operate a public primary school.
- 4.4 The parties must adjust council and water rates with respect to the School Land as at the date of transfer.
- 4.5 The Minister for Education acknowledges that the time of transfer the School Land will not be serviced by roads, sewer, water, electricity, gas and communications and that these services will be provided by the Owner at a later time, such time not to be later than the time the school to be constructed on the School Land is operational.
- 4.6 The Minister for Education acknowledges that at the time of transfer, any required remediation to the School land will not have been undertaken. Prior to the commencement of construction of the public primary school by the Minister for Education, the Owner must:
- (a) obtain any approvals required to undertake the remediation of the School Land;
  - (b) implement a remediation action plan and carry out any remediation to enable the School Land to be suitable for use as a public primary school; and
  - (c) obtain and provide a copy of a Site Audit Statement to the Minister for Education in relation to the School Land.

The Site Audit Statement referred to above must be in accordance with the Contaminated Land Management Act 1997 and certify that the School Land is suitable for use and occupation as a public primary school

- 4.7 The parties agree that the transfer of the School Land must occur no later than 31 January 2017, unless a later time is agreed by the Minister for Education (**Sunset Date**). Nothing in this clause prevents the Owner from transferring the School Land at a time earlier than the Sunset Date. The parties agree that the Owner may by written notice extend the Sunset Date for any reasonable period that the registration of the Subdivision Plan is delayed.
- 4.8 Prior to the transfer of the School Land, the Owner agrees to upon request by the Minister for Education provide a written owner's consent to any development application to be lodged by the Minister for Education in relation to the development of the School Land, provided that the Owner is not required to provide the owner's consent:
- (a) prior to the date of registration of the Subdivision Plan; and/or
  - (b) unless the Minister for Education has complied with clauses 6.1(a)(ii), 6.1(a)(iii) and 6.1(a)(iv) of this deed.
- 4.9 The Owner agrees that it will not use the School Land to dump fill or otherwise use the School Land for a construction site without approval by the Minister for Education. The Minister for Education acknowledges and agrees that it must not unreasonably withhold consent to any use or access of the School Land following transfer reasonably required by the Owner to comply with its obligations under this deed.

## **5. Restriction on Use**

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### **5.1 Restriction on Use**

The Minister for Education covenants with the Owner that for a period of 20 years from the date of the transfer of the School Land:

- (a) it will not use the School Land or allow the School Land to be used by any other party for any purpose other than:
  - (i) to construct and allow the operation of a public primary school; and
  - (ii) the use of the school outside of school hours for community and private uses of minimal environmental impact.
- (b) it will not transfer the School Land to any other party unless first procuring that such party enters into a deed with the Owner containing the same terms as this clause 5, to apply for the period of 20 years from the date of the transfer of the School Land to the Minister.

## **6. Minister for Education covenants**

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### **6.1 Covenants**

The Minister for Education covenants with the Owner that:

- (a) it will:
  - (i) at its cost, construct and maintain any necessary fencing on the boundaries of the School Land which are shared with the Land;
  - (ii) consult with the Owner regarding design issues of the public primary school, being matters relating to access, traffic/transport, architectural and urban design prior to the lodgement of any development application;
  - (iii) design the public primary school having regard to any masterplan adopted by the Owner for the Development on the Land;
  - (iv) at its cost, agree to and execute any documentation required to establish any easements over the School Land that are reasonably required by the Owner to ensure that the Development takes place in an orderly manner if there are any easements which have not been created at the time of registration of the Subdivision Plan (but subject at all times to the restrictions in clause 3.4);
- (b) it will at its cost obtain all relevant development consents and approvals required to allow it to utilise the School Land in accordance with clause 5;
- (c) it will use all reasonable endeavours to provide the public primary school, completed and operational, by 1 January 2020 (but no earlier than 1 January, 2019 unless otherwise agreed to by the Owner);
- (d) it will keep the School Land in a clean and tidy state during the time period from the transfer of the School Land up to the point the public primary school is operational;

### **6.2 Project Control Group**

In order to ensure adequate consultation between the Minister for Education and the Owner, the parties agree to establish a project control group. The project control group:



- (a) will consist of representative(s) from each party; and
- (b) may consist of representative(s) from other third parties
- (c) must meet once a month or at such other time as agreed by the parties.
- (d) will commence only after budget approval for the building of a public primary school on the School Land

### 6.3 Acknowledgment

The Minister for Education acknowledges that the covenants in this clause continue after registration of the Subdivision Plan and dedication of the School Land.

### 6.4 First Right of Refusal

- (a) The Minister for Education agrees that if it has not yet constructed and opened a public primary school on the School Land, it may not sell or otherwise transfer, whether by freehold sale or grant of long term lease or other arrangement (**Transfer**), the School Land without first complying with this clause.
- (b) The Minister for Education may not Transfer the School Land without first offering the School Land for sale to the Owner (the **Offer**).
- (c) The Offer must be in writing and must specify the sale price for the School Land, such price being the same price at which the Minister for Education acquired the School Land as stipulated in the works in kind agreement referred to in clause 2.1(a) of this deed.
- (d) The Minister for Education must attach to the Offer a draft contract for sale of the School Land capable of execution by the Owner. The contract must include a provision that the Owner is entitled to set off on completion against the purchase price an allowance for the Owner's transaction costs in acquiring the School Land, including stamp duty, registration fees and the Owner's reasonable legal and other costs and disbursements.
- (e) If the Owner within fourteen (14) days of receipt of the Offer does not:
  - (i) give notice to the Minister for Education that it accepts the Offer; and
  - (ii) return the contract for sale executed by the Owner,
 the Offer will be deemed to have lapsed.
- (f) If the Owner does not accept the Offer, the Minister for Education may effect a Transfer of the School Land, provided that:
  - (i) the School Land cannot be sold at a price lower or on terms more favourable than those offered to the Owner (if this is the case, the Minister for Education must comply with this clause again giving the Owner the opportunity to purchase the School Land on the more favourable terms, provided that the revised offer will be open for 7 days only); and

- (ii) if no Transfer is effected within 6 months of the Offer lapsing, the Minister for Education must comply with this clause again prior to effecting any subsequent Transfer.

## **7. Risk and Warranties**

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### **7.1 Risk**

- (a) The parties are not bound by any warranty, representation, collateral agreement or implied term under the general law or imposed by legislation in relation to the School Land unless:
  - (i) that warranty, representation, agreement or term is contained in the express terms of this deed; or
  - (ii) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties' agreement.
- (b) The Minister for Education acknowledges that the Minister for Education, when entering into this deed, relied exclusively on the following matters in relation to the Land and the School Land independently of any statements, inducements or representations made by or on behalf of the Owner (including by agent acting on behalf of the Owner):
  - (i) the inspection of and investigations relating to the Land made by or on behalf of the Minister for Education;
  - (ii) the skill and judgment of the Minister for Education, its consultants and representatives;
  - (iii) opinions or advice obtained by the Minister for Education independently of the Owner or of the Owner's agents or employees.
- (c) The Minister for Education warrants that it has inspected the School Land and acknowledges that no representations, inducements or warranties have been made by the Owner or its agents or representatives relating to the present state or condition of the School Land, its suitability for the Minister for Education's purposes, the improvements erected on the property, the inclusions or any proposed work to be done to the School Land. The Minister for Education accepts (subject to the provisions of this deed including clause 4.6) the School Land in its condition as at the date of dedication under this deed in its then condition and state of repair, subject to all defects whether latent or patent.

### **7.2 Release and indemnity by the Department of Education**

Subject to the Owner complying with this deed including clause 4.6, the Minister for Education irrevocably releases and indemnifies the Owner, its directors and officers against all Liabilities suffered or incurred by the Owner in respect of any:

- (a) direction, notice, order or the like given under any Environmental Laws after completion; or
- (b) Claim (for negligence or otherwise), after completion; or

- (c) other land owned or occupied by the Owner,

arising out of or in relation to any Contamination or environmental harm of or to the School Land at any time or emanating from the School Land after the dedication of the School Land in accordance with clause 4.

### 7.3 Definitions

In this clause 7, unless the context otherwise requires:

**Claim** includes a requisition, notice, demand, action, proceeding, litigation, investigation, judgment, loss, cost, expense, damage or liability however arising whether present or future;

**Contamination** means the presence in, on or under land, air or water of a substance (whether a solid, liquid, gas, odour or radiation) and any chemicals, agents or other materials contained or formerly contained in such substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land, air or water in the same locality being a presence that presents a risk of harm to human health or any other aspect of the Environment, or could otherwise give rise to a risk of non-compliance or breach of any Environmental Law, and **Contaminant** has a corresponding meaning;

**Environment** includes:

- (a) eco systems and their constituent parts, including people and communities; and
- (b) natural and physical resources; and
- (c) the qualities and characteristics of locations, places and areas; and
- (d) the social, economic, aesthetic and cultural aspects of a thing mentioned in subclause (a), (b) or (c);

**Environmental Law** includes any Law relating to any aspect of the Environment;

**Law** includes any law (including common and criminal laws) directive, Act of Parliament, statute, enactment, legislation, order, ordinance, regulation, rule, by-law, proclamation, notice, authority approval, statutory instrument, proclamation or delegated or subordinate legislation of the Commonwealth or of any State or Territory of Australia or any municipal government or of any authority; and

**Liability or Liabilities** means all threatened or actual actions, proceedings, demands, notices, costs and expenses (investigation costs, clean-up costs, rehabilitation costs, remediation costs and all legal and consultants expenses incurred), loss or damage.

## 8. Assignment

### 8.1 If the Owner agrees to sell or transfer the Land:

- (a) prior to the dedication of the School Land, it must as a condition precedent to the completion of any sale or transfer require the transferee to enter into a deed with the Minister for Education on the same terms as this deed;
- (b) the Minister for Education agrees to enter into a deed with the Owner's transferee on the same terms as this deed promptly upon request.

## 9. Default by Owner

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In addition to the parties' rights at law, the parties specifically agree that if:

- (a) the Owner breaches any of its obligations under this deed that apply after the dedication of the School Land has occurred; and
- (b) the Owner does not remedy such breach within 120 days of having received written notice of the breach by the Minister for Education,

the Minister for Education may terminate this deed and:

- (c) the Minister for Education's obligations under clause 5 of this deed will cease; and
- (d) the Owner must execute a dealing to release the Restriction on Use.

## 10. General provisions

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### 10.1 Costs

Each party must pay its own costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of, or any consent given or made; and
- (b) that party performing any action in complying with any liability arising,

under this document, or any agreement or document executed or effected under this document, unless this document provides otherwise.

### 10.2 GST

If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this document (including for the avoidance of doubt the supply of the School Land), the recipient must pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply.

### 10.3 Notices

- (a) Any notice may be served by delivery in person, by post or by fax to the address or number of the recipient most recently notified by the recipient to the sender.
- (b) Any notice to or by a party under this document must be in writing and signed by either:
  - (i) the sender or, if a corporate party, an authorised officer of the sender; or
  - (ii) the party's solicitor.
- (c) Any notice is effective for the purposes of this document on delivery to the recipient or production to the sender of a fax confirmation report before 4.00 pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00 am on the next day following delivery or receipt.

**10.4 Governing law and jurisdiction**

- (a) This document is governed by and construed under New South Wales law.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in New South Wales.
- (c) By execution of this document, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this clause in relation to both itself and its property.

**10.5 Amendments**

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

**10.6 Third parties**

This document confers rights only on a person expressed to be a party to it, and not on any other person.

**10.7 Precontractual negotiation**

This document:

- (a) expresses and incorporates the entire agreement between the parties concerning its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties concerning that subject matter or any term of that agreement.

**10.8 Further assurances**

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

**10.9 Continuing performance**

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performing this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
  - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
  - (ii) survives and continues after performance of this document.



#### 10.10 Waivers

Any failure by a party to exercise any right under this document does not operate as a waiver. The single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

#### 10.11 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

#### 10.12 Severability

Any clause of this document which is invalid in any jurisdiction, is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining clauses of this document or the validity of that clause in any other jurisdiction.

#### 10.13 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute the same document.

### 11. Definitions and interpretation

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#### 11.1 Definitions

In this document, unless the context requires otherwise:

**GST** means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

#### 11.2 Interpretation

In this document, unless the context requires otherwise:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) a reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;

- (h) the use of the word includes or including is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression at any time includes reference to past, present and future time and performing any action from time to time;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and severally and is for the benefit of them jointly and severally;
- (k) a reference to a clause described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (l) a reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

**Executed as a deed.**

**Signed sealed and delivered** on behalf of **The Minister for Education** in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Minister / Delegate

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print address

**Signed on behalf of SH Camden Valley Pty Ltd  
(as Trustee for the SH Camden Valley Unit  
Trust) ABN 37 137 331 376 by:**

*K. Fukano*

\_\_\_\_\_  
Secretary/~~Director~~

**Kohji Fukano**

\_\_\_\_\_  
Print name

*Toru Abe*

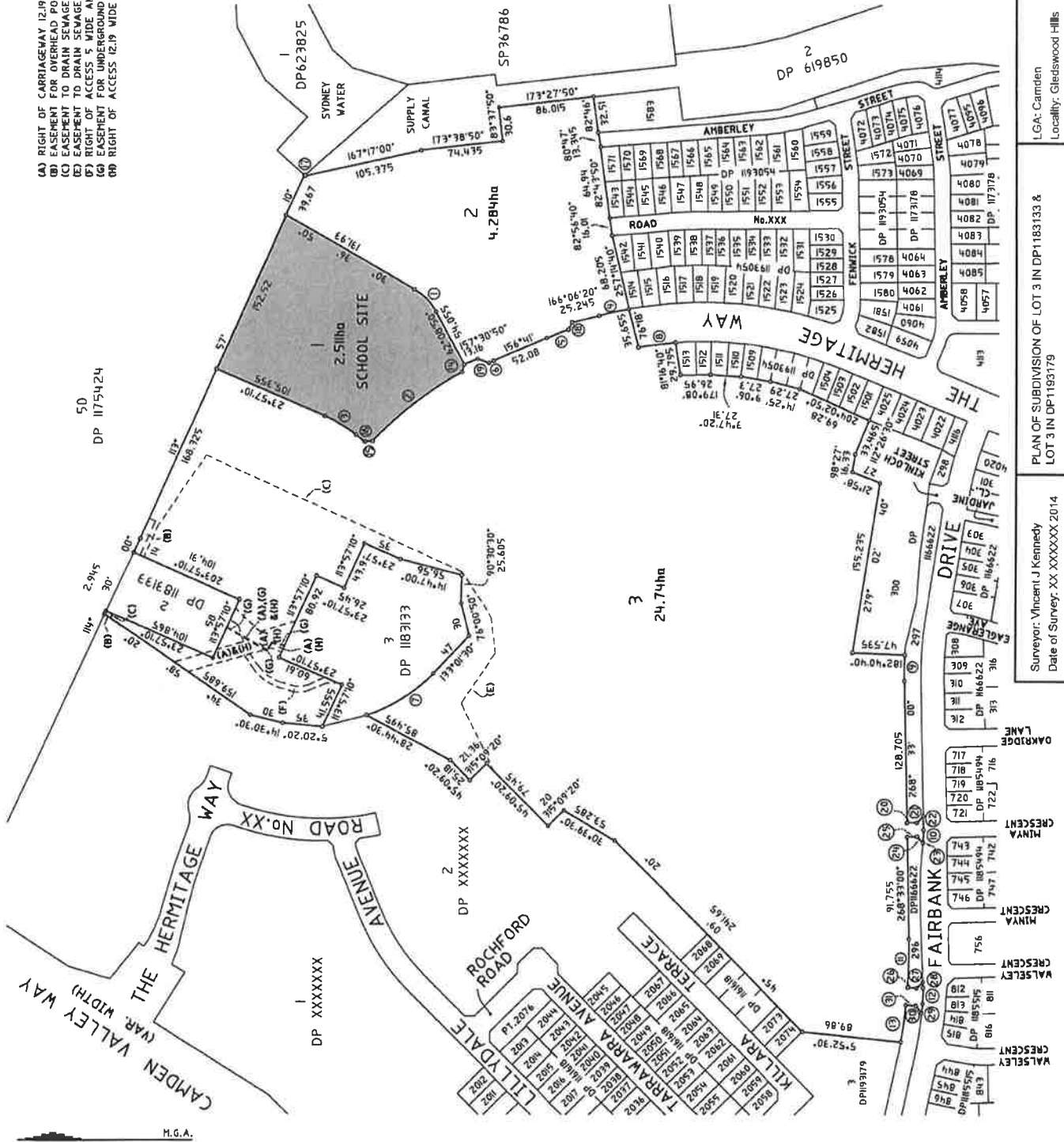
\_\_\_\_\_  
Director

**Toru Abe**

\_\_\_\_\_  
Print name

**Annexure A: Plan of School Land**

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- (A) RIGHT OF CARRIAGEWAY 12.19 WIDE AND VARIABLE (DP183333)  
 (B) EASEMENT FOR OVERHEAD POWER LINES 6 WIDE (DP183333)  
 (C) EASEMENT TO DRAIN SEWAGE OVER EXISTING LINE OF PIPES (APPROXIMATE POSITION) (DP183333)  
 (D) EASEMENT TO DRAIN SEWAGE OVER EXISTING LINE OF PIPES (APPROXIMATE POSITION) (DP183333)  
 (E) RIGHT OF ACCESS 5 WIDE AND VARIABLE (DP183333)  
 (F) EASEMENT FOR UNDERGROUND CABLES 1 WIDE (DP183333)  
 (G) RIGHT OF ACCESS 12.19 WIDE AND VARIABLE (DP183333)

SCHEDULE OF SHORT LINES

No	BEARING	DIST.	No	BEARING	DIST.
14	106°49'	7.11	23	274°48'	1.15
15	175°39'	7.205	24	146°40'	8.06
16	39°33'	0.02	25	358°33'	8.7
17	222°41'	0.81	26	184°35'	8.05
18	16°35'	7.205	27	135°52'	7.985
19	18°58'	0.95	28	267°09'	4.985
20	178°33'	8.8	29	275°53'	8.52
21	193°33'	8.485	30	50°19'	8.38
22	248°33'	12.57	31	4°35'	8.8

SCHEDULE of CURVED BOUNDARIES

No	BEARING	CHORD	ARC	RADIUS
1	226°23'	28.15	28.51	51.8
2	321°37'10"	101.24	101.695	300.2
3	31°45'00"	32.365	32.465	89.3
4	347°06'	21.2	21.21	360.2
5	330°24'	21.28	21.285	356.6
6	336°41'	4.825	4.825	306.6
7	147°34'10"	70.32	71.085	140
8	172°34'00"	33.395	33.39	324.6
9	270°37'	23.395	23.4	324.8
10	271°40'	10.9	10.905	100
11	271°10'00"	43.65	43.65	475.2
12	271°16'	14.365	14.375	100
13	277°44'20"	33.5	33.505	475.2

Surveyor: Vincent J Kennedy  
 Date of Survey: XX XXXXX 2014  
 Surveyor's Ref: 7005 SL3

PLAN OF SUBDIVISION OF LOT 3 IN DP1183133 &  
 LOT 3 IN DP1183179

LGA: Camden  
 Locality: Gledswood Hills  
 Subdivision No:  
 Lengths are in metres, Reduction Ratio 1:2500

Registered  
 DP DRAFT

2.7

**Annexure B: Plan of Ingress / Egress locations to School Land**



**NOTES:**

1. THIS PLAN HAS BEEN PREPARED FOR PLANNING PURPOSES ONLY.
2. ALL DIMENSIONS AND AREAS SHOWN HEREON ARE SUBJECT TO FINAL SURVEY.

**PLAN OF LAND AT THE HERMITAGE WAY,  
GLEDSDOOD HILLS CAMDEN LGA.**

DATE	CHECKED	SCALE	DATUM	REFERENCE
1 OCTOBER 2013	V.K.	1:1000	A1	7005/300

**YSCO GEOMATICS**  
 LAND & ENGINEERING SURVEYING  
 PROJECT MANAGEMENT  
 SOIL AND WATER MANAGEMENT  
 ENVIRONMENTAL PLANNING & DESIGN

SITE & SURVEYING: MRS. RETIRED, 2008  
 LAND & ENGINEERING SURVEYING: MRS. RETIRED, 2008  
 PROJECT MANAGEMENT: MRS. RETIRED, 2008  
 SOIL AND WATER MANAGEMENT: MRS. RETIRED, 2008  
 ENVIRONMENTAL PLANNING & DESIGN: MRS. RETIRED, 2008

**YSCO GEOMATICS**  
 LAND & ENGINEERING SURVEYING  
 PROJECT MANAGEMENT  
 SOIL AND WATER MANAGEMENT  
 ENVIRONMENTAL PLANNING & DESIGN

SITE & SURVEYING: MRS. RETIRED, 2008  
 LAND & ENGINEERING SURVEYING: MRS. RETIRED, 2008  
 PROJECT MANAGEMENT: MRS. RETIRED, 2008  
 SOIL AND WATER MANAGEMENT: MRS. RETIRED, 2008  
 ENVIRONMENTAL PLANNING & DESIGN: MRS. RETIRED, 2008

**DIAL 1100**  
 REPAIR 1100

THE DIAL 1100 IS A REGISTERED TRADE MARK OF THE DIAL 1100 GROUP.

**DATE**      **REVISIONS**      **BY**

*K.F. CP*