
The Minister for Planning

Goodman Property Services (Aust) Pty Limited

The Trust Company Limited as custodian for the
Carter Street Trust

The Trust Company Limited as custodian for the
Hill Road Trust

The Trust Company Limited as custodian for the
IBC Trust

Tallina Pty Ltd as trustee for the Carter Street Trust

Tallina Pty Ltd as trustee for the Hill Road Trust

Tallina Pty Ltd as trustee for the IBC Trust

Australia YMCI Pty Ltd



Deed of Novation for Planning Agreement

Contribution Area 5

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Date 24 MARCH 2016

Parties

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

Goodman Property Services (Aust) Pty Limited ABN 40 088 981 793 of Level 17, 60 Castlereagh Street, Sydney NSW 2000 (**Developer**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Carter Street Trust ABN 12 909 843 665 (**First Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the Hill Road Trust ABN 54 244 152 320 (**Second Landowner**)

The Trust Company Limited ABN 59 004 027 749 as custodian for the IBC Trust ABN 30 476 081 229 (**Third Landowner**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the Carter Street Trust ABN 12 909 843 665 (**First Trustee**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the Hill Road Trust ABN 54 244 152 320 (**Second Trustee**)

Tallina Pty Ltd ACN 090 716 895 as trustee for the IBC Trust ABN 30 476 081 229 (**Third Trustee**)

Australia YMCJ Pty Ltd ACN 607 884 711 of Suite 152, 414-418 Pitt Street, Sydney NSW 2000 (**New Party**)

Background

- A The Minister, the Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee are parties to the Planning Agreement.
- B The Planning Agreement relates to the whole of the Land.
- C The First Landowner and First Trustee propose to enter into the Dealing with the New Party in relation to the Transfer Land.
- D The Developer, the First Landowner and First Trustee wish to novate the Required Obligations, being their obligations under the Planning Agreement which relate to the Transfer Land, to the New Party.
- E The Planning Agreement has yet to be registered on title to the Land. The Minister has registered a caveat over the whole of the Land which, in accordance with the Planning Agreement, will be withdrawn from the Transfer

Land once evidence is provided of registration of the Planning Agreement over the Transfer Land.

Agreed terms

1 Definitions

In this document these terms have the following meanings:

CA 3 and 4 Novation Deed	The Novation Deed for Contribution Areas 3 and 4 entered into by the parties on or about the date of this document.
Commencing Date	Has the meaning given in clause 2.
Dealing	Entry into the Put Option Deed.
Effective Date	Completion of the Property 2 Contract as defined in and arising from the Dealing being a contract for sale of the Transfer Land.
GST	Has the same meaning as in the GST Law.
GST Law	Has the meaning given to that term in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Hill Road Contract	A contract, entered into pursuant to the Put Option Deed for the sale of the land which at the date of the Planning Agreement means the land comprised in folio identifier 301/541070.
IBC Contract	A contract for the sale of the land which at the date of the Planning Agreement means the land comprised in folio identifier 2/234801, folio identifier 26/225350, folio identifier 27/225350 and folio identifier 28/225350.
Planning Agreement	The planning agreement dated 18 November 2015 and made between the Minister, the Developer, the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee.
Property 2 Contract	A contract for the sale of the Transfer Land.
Put Option Deed	The irrevocable offer and put option deed between the

	First Landowner and the First Trustee as grantor and the New Party as grantee entered into on or about the date of this document.
Required Obligations	<p>The First Landowner's and First Trustee's obligations under the Planning Agreement which relate to the Transfer Land, including:</p> <ul style="list-style-type: none">(a) payment of the Contribution Amounts in accordance with clause 2 of Schedule 3 of the Planning Agreement; and(b) substitution of any Bank Guarantee under clause 13.2(l)(iii) of the Planning Agreement, <p>along with the additional obligations under this document.</p>
Road Land	The land comprising part of folio identifier 2/234801 and folio identifier 26/225350 which is part of Contribution Area 5, marked in orange on Annexure A.
Subdivision Application	The application for consent to subdivide part of the Land in accordance with the Subdivision Plan, lodged with Auburn Council on 22 September 2015 and which has been given application reference number DA15/327.
Subdivision Plan	The plan of subdivision of part of the Land, a draft copy of which is attached as Annexure B.
Transfer Land	The land shown as Lot 12 in the Subdivision Plan which presently comprises part of folio identifier 25/225350, which will form part of Contribution Area 5, being that part of the Land subject to the Dealing.

2 Commencement

2.1 Commencing Date

This document commences on the Commencing Date, being the date that is the latest of:

- (a) registration of the Planning Agreement on title to the whole of the Transfer Land;
- (b) provision of evidence regarding registration of the Planning Agreement to the Minister, in accordance with clause 8.2 of the Planning Agreement; and
- (c) withdrawal of the caveat in favour of the Minister and registered on title to the Transfer Land, from all titles comprising the Transfer Land.

2.2 Compliance with obligations relating to the Transfer Land between Commencing Date and Effective Date

During the period between the Commencing Date and the Effective Date, the Developer and the First Landowner, the Second Landowner, the Third Landowner, the First Trustee, the Second Trustee and the Third Trustee remain responsible for complying with all obligations relating to the Transfer Land under the Planning Agreement.

3 Notification prior to completion

The Developer must provide the Minister with an update on the status and likely date(s) for completion of the IBC Contract, the Hill Road Contract and the Property 2 Contract:

- (a) every 3 months from the date of this document;
- (b) no later than 50 days before the Effective Date; and
- (c) within 5 days of any request in writing for an update by or on behalf of the Minister.

4 Novation

4.1 Planning Agreement

Subject to clause 4.2 and with effect from the Effective Date:

- (a) the New Party will be required to perform the Required Obligations in accordance with the Planning Agreement; and
- (b) the Developer and the First Landowner and First Trustee are released and discharged from the Required Obligations, and from all claims (whether for costs, damages, fees, expenses or otherwise) relating to the Required Obligations.

4.2 Reference in Planning Agreement

With effect from the Effective Date, all references to the Developer, the First Landowner and First Trustee in the Planning Agreement which relate to the Required Obligations are to be construed as references to the New Party.

4.3 Address for notices

The Minister must address all notices and communications to be given or made by it and which relate to the Required Obligations, to the New Party under the Planning Agreement to the following address:

New Party:

Address: Suite 152, 414-418 Pitt Street, Sydney NSW 2000

Fax: 02 8281 4567

Contact Person: Company Secretary

5 Requirements for Road Land

- (a) The parties acknowledge that:
 - (i) Lot 2 in DP 234801 must be subdivided (and if necessary consolidated with Lot 26 DP 225350) to create separate lots for the Road Land and the balance of Lot 2 in DP 234801 in order to enable the inclusion of the Road Land in any future subdivision to create Contribution Area 5;
 - (ii) Registration of the Subdivision Plan to create the Transfer Land as a single parcel is a condition precedent to completion of the Property 2 Contract; and
 - (iii) if the IBC Contract and the Hill Road Contract complete, the New Party will be the proprietor of the Road Land and the land which (at the date of this document) comprises folio identifier 26/225350.
- (b) If the IBC Contract and the Hill Road Contract complete and the Property 2 Contract completes, the New Party must by 8 September 2026 create Contribution Area 5 as a single parcel.
- (c) If the Property 2 Contract completes, but the IBC Contract and the Hill Road Contract do not complete, by 30 March 2018, the New Party:
 - (i) acknowledges that the CA 3 and 4 Novation Deed requires the Third Landowner to subdivide Lot 2 in DP 234801 (and if necessary consolidate with Lot 26 in DP 225350) to create separate lots for the Road Land and the balance of Lot 2 in DP 234801, and transfer the Road Land to the First Landowner (which at that time will be the New Party) by 8 September 2026; and
 - (ii) must accept the transfer of the Road Land from the Third Landowner by 8 September 2026; and
 - (iii) must by 8 September 2026 create Contribution Area 5 as a single parcel.
- (d) If by 30 March 2018 the Property 2 Contract has not completed, and whether or not the IBC Contract and the Hill Road Contract have completed, the parties acknowledge that the CA 3 and 4 Novation Deed provides for:
 - (i) the subdivision of Lot 2 in DP 234801 (and if necessary consolidation with Lot 26 in DP 225350) to create separate lots for the Road Land and the balance of Lot 2 in DP 234801; and
 - (ii) the transfer of the Road Land to the First Landowner.

6 Additional security

- (a) On the Effective Date the New Party must provide to the Minister security in the form of a Bank Guarantee in the amount of \$200,000, in order to exercise enforcement rights to secure the payment of the Contribution

Amount relating to Contribution Area 5 and to secure the removal of any encumbrances from the Road Land.

- (b) Subject to clause 6(c), the provisions of Schedule 4 of the Planning Agreement apply to the Bank Guarantee provided under clause 6(a).
- (c) The Bank Guarantee referred to in clause 6(a) is to be provided in relation to Contribution Area 5 in lieu of the Bank Guarantee required to be provided for that Contribution Area under clause 1.2(a) of Schedule 4 of the Planning Agreement. On provision of the Bank Guarantee referred to in clause 6(a), the Bank Guarantee provided for Contribution Area 5 under clause 1.2(a) of Schedule 4 of the Planning Agreement will be released in accordance with clause 1.4 of Schedule 4 of the Planning Agreement.

7 Affirmation of the Planning Agreement

- (a) The Planning Agreement will be read and construed subject to this document, and in all other respects the provisions of the Planning Agreement are ratified and confirmed, and, subject to the variation and novation contained in this document, the Planning Agreement will continue in full force and effect.
- (b) For the avoidance of doubt, nothing in this document is to be read or construed as constituting a waiver of any right or remedy of the Minister:
 - (i) under the Planning Agreement; or
 - (ii) in relation to the creation of:
 - (A) the Contribution Areas in accordance with the Plan; or
 - (B) roads lots, including the strip of land between the Contribution Areas shown on the Plan,by the other parties to the Planning Agreement.

8 Indemnities

- (a) With effect from the Effective Date, the New Party indemnifies the Developer, the First Landowner and the First Trustee on demand against all liabilities, claims, damages and loss which the Developer, the First Landowner or the First Trustee suffer or incur in relation to the Required Obligations, including those which arise or relate to acts or omissions occurring on or after the Effective Date.
- (b) With effect from the Effective Date, the New Party indemnifies the Minister in respect of any breach of the Planning Agreement in respect of the Transfer Land by the Developer the First Landowner and the First Trustee on demand, including those which arise or relate to breaches in respect of the Transfer Land occurring on or after the Effective Date.

9 Warranties and representations

9.1 Warranties

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

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

9.2 Survival of warranties

The warranties and representations in clause 9.1 survive the execution of this document and the novation of the Planning Agreement.

10 Limitation of liability for the Carter Street Trust

The provisions of this clause 10 apply despite anything to the contrary in this document.

10.1 Definitions

In this clause 10:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Carter Street Custody Agreement dated 11 February 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner under or in respect of this document.
- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the Carter Street Trust ABN 12 909 843 665.

- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

10.2 Limitation of the First Landowner's Liability

- (a) The First Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the First Landowner acknowledge that the Obligations are incurred by the First Landowner solely in its capacity as custodian of the Assets and that the First Landowner will cease to have any Obligation under this document if the First Landowner ceases for any reason to be owner of the Assets.
- (c) The First Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the First Landowner may enforce their rights against the First Landowner arising from non-performance of the Obligations only to the extent of the First Landowner indemnities referred to in clause 10.2(c).
- (e) Subject to clause 10.2(e)(i), if any party other than the First Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the First Landowner in its personal capacity; or
 - (ii) applying to have the First Landowner wound up or proving in the winding up of the First Landowner.
- (f) The provisions of this clause 10.2 do not apply to any obligation or liability of the First Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the First Landowner's indemnification from the Trustee or out of the Assets as a result of the First Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the First Landowner under its custody agreement with the Trustee, the parties other than the First Landowner waive their rights and release the First Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
 - (i) breach by the First Landowner of any of its Obligations; or

- (ii) non-performance by the First Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 10.2(c) in respect of any liability incurred by it.

The parties other than The First Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the First Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the First Landowner for the purposes of clause 10.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the First Landowner in a way which exposes the First Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the First Landowner for the purposes of clause 10.2(e)(i).

10.3 Limitation of Trustee's Liability

(a) Capacity

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

(b) Limitation

Subject to clause 10.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover from the Trustee 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 in respect of that outstanding amount.

(c) Acknowledgment of limitations

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

- (i) subject to clause 10.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) 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.

(d) Exception

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

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) 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 will be personally liable.

11 Limitation of liability for the Hill Road Trust

The provisions of this clause 11 apply despite anything to the contrary in this document.

11.1 Definitions

In this clause 11:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.
- (c) **Custody Agreement** means the Hill Road Trust Custody Agreement dated 30 October 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Second Landowner under or in respect of this document.
- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.

- (f) **Trust** means the Hill Road Trust ABN 54 244 152 320.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

11.2 Limitation of the Second Landowner's Liability

- (a) The Second Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Second Landowner acknowledge that the Obligations are incurred by the Second Landowner solely in its capacity as custodian of the Assets and that the Second Landowner will cease to have any Obligation under this document if the Second Landowner ceases for any reason to be owner of the Assets.
- (c) The Second Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Second Landowner may enforce their rights against the Second Landowner arising from non-performance of the Obligations only to the extent of the Second Landowner indemnities referred to in clause 11.2(c).
- (e) Subject to clause 11.2(e)(i), if any party other than the Second Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Second Landowner in its personal capacity; or
 - (ii) applying to have the Second Landowner wound up or proving in the winding up of the Second Landowner.
- (f) The provisions of this clause 11.2 do not apply to any obligation or liability of the Second Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Second Landowner's indemnification from the Trustee or out of the Assets as a result of the Second Landowner's fraud, negligence or breach of duty.
- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Second Landowner under its custody agreement with the Trustee, the parties other than the Second Landowner waive their rights and release the Second Landowner from any personal liability

whatsoever, in respect of any Loss or damage which they may suffer as a result of any:

- (i) breach by the Second Landowner of any of its Obligations; or
- (ii) non-performance by the Second Landowner of the Obligations, but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 11.2(c) in respect of any liability incurred by it.

The parties other than The Second Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Second Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Second Landowner for the purposes of clause 11.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Second Landowner in a way which exposes the Second Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Second Landowner for the purposes of clause 11.2(e)(i).

11.3 Limitation of Trustee's Liability

(a) Capacity

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

(b) Limitation

Subject to clause 11.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover any amount from the Trustee 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 in respect of that outstanding amount.

(c) Acknowledgment of limitations

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

- (i) subject to clause 11.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) 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.

(d) Exception

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

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) 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 will be personally liable.

12 Limitation of liability for the IBC Trust

The provisions of this clause 12 apply despite anything to the contrary in this document.

12.1 Definitions

In this clause 12:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trust.
- (b) **Constitution** means the constitution of the Trust as amended from time to time.

- (c) **Custody Agreement** means the IBC Trust Custody Agreement dated 11 May 2005.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Third Landowner under or in respect of this document.
- (e) **Tallina** means Tallina Pty Ltd ACN 090 716 895.
- (f) **Trust** means the IBC Trust ABN 30 476 081 229.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.

12.2 Limitation of the Third Landowner's Liability

- (a) The Third Landowner enters into this document as custodian for the Trust and in no other capacity.
- (b) The parties other than the Third Landowner acknowledge that the Obligations are incurred by the Third Landowner solely in its capacity as custodian of the Assets and that the Third Landowner will cease to have any Obligation under this document if the Third Landowner ceases for any reason to be owner of the Assets.
- (c) The Third Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified:
 - (i) by the Trustee; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- (d) The parties other than the Third Landowner may enforce their rights against the Third Landowner arising from non-performance of the Obligations only to the extent of the Third Landowner indemnities referred to in clause 12.2(c).
- (e) Subject to clause 12.2(e)(i), if any party other than the Third Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Third Landowner in its personal capacity; or
 - (ii) applying to have the Third Landowner wound up or proving in the winding up of the Third Landowner.
- (f) The provisions of this clause 12.2 do not apply to any obligation or liability of the Third Landowner to the extent that it is not satisfied because, under the Custody Agreement or by operation of law, there is a reduction in the extent of the Third Landowner's indemnification from the

Trustee or out of the Assets as a result of the Third Landowner's fraud, negligence or breach of duty.

- (g) Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Third Landowner under its custody agreement with the Trustee, the parties other than the Third Landowner waive their rights and release the Third Landowner from any personal liability whatsoever, in respect of any Loss or damage which they may suffer as a result of any:
 - (i) breach by the Third Landowner of any of its Obligations; or
 - (ii) non-performance by the Third Landowner of the Obligations but only to the extent to which the liability cannot be paid or satisfied by the indemnities set out above in clause 12.2(c) in respect of any liability incurred by it.

The parties other than The Third Landowner acknowledge that the whole of this document is subject to this clause.

- (h) The parties acknowledge that the Trustee is responsible under the Constitution for performing a variety of obligations relating to the Trust, including under this document. The parties agree that no act or omission of the Third Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Third Landowner for the purposes of clause 12.2(e)(i) to the extent to which the act or omission was caused or contributed to by any failure of the Trustee or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Trustee or any other person.
- (i) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Third Landowner in a way which exposes the Third Landowner to any personal liability and no act or omission of such a person will be considered fraud, negligence or breach of duty of the Third Landowner for the purposes of clause 12.2(e)(i).

12.3 Limitation of Trustee's Liability

(a) Capacity

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

(b) Limitation

Subject to clause 12.3(d), the liability of the Trustee in respect of any cause of action, Claim or Loss arising:

- (i) under or in connection with this document;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this document; or

- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this document,

(each, a **Trust Claim**) and the right of each party other than the Trustee to recover any amount from the Trustee 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 in respect of the outstanding amount.

(c) Acknowledgment of limitations

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

- (i) subject to clause 12.3(d), bring proceedings against the Trustee in its personal capacity;
- (ii) seek to appoint an administrator or liquidator to the Trustee;
- (iii) commence the winding-up, dissolution or administration of the Trustee; or
- (iv) 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.

(d) Exception

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

- (i) the Trustee's right of indemnity, exoneration or recoupment of the Assets; or
- (ii) 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 will be personally liable.

13 Trustee's representations and warranties

13.1 Definitions

In this clause 13:

- (a) **Assets** includes all assets, property and rights, real and personal, of any value whatsoever, of the Trusts.
- (b) **Beneficiaries** means the beneficiaries of the Trusts.
- (c) **Custody Agreements** means the following:
 - (i) the IBC Trust Custody Agreement dated 11 May 2005;
 - (ii) the Hill Road Trust Custody Agreement dated 30 October 2002; and
 - (iii) the Carter Street Custody Agreement dated 11 February 2002.
- (d) **Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Landowner, the Second Landowner and the Third Landowner under or in respect of this document.
- (e) **Trusts** means the Carter Street Trust ABN 12 909 843 665, the Hill Road Trust ABN 54 244 152 320 and the IBC Trust 30 476 081 229.
- (f) **Trust Deeds** means:
 - (i) the IBC Trust Constitution dated 11 May 2005 between the Trustee and the relevant unit holders;
 - (ii) the Hill Road Trust Constitution dated 30 October 2002 between the Trustee and the relevant unit holders; and
 - (iii) the Carter Street Trust Constitution dated 11 February 2002 between the Trustee and the relevant unit holders.
- (g) **Trustee** means the entity from time to time acting in the Trustee's Capacity, which on the making of this document is Tallina.
- (h) **Trustee's Capacity** means the capacity in which the Trustee enters into this document, being as trustee of the Trust.
- (i) **Trustee Documents** means this document and any documents created under or in connection with this document.

13.2 The Trustee's representations and warranties

The Trustee represents and warrants to the Minister that:

- (a) **powers of Trustee and custodian:**
 - (i) the Trustee has power as trustee of the Trusts to execute the Trustee Documents; and
 - (ii) each Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;

- (b) **due performance:** in executing the Trustee Documents, the Trustee and its representatives have properly performed their obligations to the Beneficiaries;
- (c) **Trustee action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Trustee's obligations under, the Trustee Documents has been taken;
- (d) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with each of the Landowner's obligations under, the Trustee Documents has been taken;
- (e) **Trustee instructions** the Trustee will give all necessary instructions to all Landowners to enable the Landowners to execute and deliver, and comply with all of their obligations under, the Trustee Documents;
- (f) **sole Trustee and custodian:**
 - (i) the Trustee is the only trustee of the Trusts; and
 - (ii) the Landowners are the only custodians of the relevant Trusts;
- (g) **no removal of Trustee:** no action has been taken to remove the Trustee as trustee of the Trusts or to appoint an additional trustee of the Trusts;
- (h) **no removal of custodian:** no action has been taken to remove any or all of the Landowners as custodians of the relevant Trusts or to appoint any additional custodian of the relevant Trusts;
- (i) **Trustee's right of indemnity:**
 - (i) the Trustee has a right to be fully indemnified out of the Assets;
 - (ii) the Trustee has not released or disposed of the Trustee's equitable lien over the Assets which secures that indemnity;
 - (iii) the Trustee has not committed any breach of trust or done or omitted to do anything which has prejudiced or limited its rights of indemnity or equitable lien; and
 - (iv) the Assets are sufficient to satisfy that indemnity;
- (j) **custodian's right of indemnity:**
 - (i) each Landowner has a right to be fully indemnified from the Assets and by the Trustee for all liabilities under the Trustee Documents;
 - (ii) the Landowners have not released or disposed of the Landowners' equitable lien over the Assets which secures that indemnity;
 - (iii) the Landowners have not committed any breach of the Custody Agreement or done or omitted to do anything which has prejudiced or limited their rights of indemnity or equitable lien; and
 - (iv) the Assets are sufficient to satisfy that indemnity;

- (k) **no default:**
 - (i) the Trustee has not defaulted in the performance and observance of its obligations as trustee of the Trusts; and
 - (ii) so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement so far as the Trustee is aware, the Landowners have not defaulted in the performance and observance of their obligations as custodians of the Trusts or under the Custody Agreement;
- (l) **Trusts or Custody Agreement not terminated:** no action has been taken or, so far as the Trustee is aware, is contemplated to terminate the Trusts or the Custody Agreement;
- (m) **full disclosure:** the Trustee has disclosed to the Minister full particulars of the Trusts, the Custody Agreement and any other trust or fiduciary relationship affecting the Assets and, without limitation, has given to the Minister copies of any instruments creating or evidencing the Trusts and the Custody Agreement;
- (n) **Trusts duly constituted:** the Trusts are duly constituted and are not void, voidable or otherwise unenforceable;
- (o) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (p) **capacity of Trustee:** the Trustee:
 - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as trustee of the Trusts; and
 - (ii) is not insolvent.

13.3 Trustee's additional obligations

- (a) The Trustee must:
 - (i) ensure the Assets are not mixed with any other property;
 - (ii) comply with the Trustee's obligations as trustee of the Trusts;
 - (iii) not release, dispose of or otherwise prejudice the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries;
 - (iv) at the Minister's request, exercise the Trustee's right of indemnity against, and equitable lien over, the Assets and the Trustee's right of indemnity (if any) against the Beneficiaries; and
 - (v) not, without obtaining the Minister's prior written approval:
 - (A) terminate any or all of the Trusts;

- (B) resettle the Assets; or
 - (C) vary the terms of the Trust if to do so would adversely affect the Trustee's right of indemnity against, or equitable lien over, the Assets or the Trustee's right of indemnity (if any) against the Beneficiaries.
- (b) The Trustee covenants that it will not retire or be replaced as trustee of any or all of the Trusts unless:
 - (i) another entity has been appointed in its place for the relevant Trusts;
 - (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as trustee for the relevant parcel of Land; and
 - (iii) unless the new entity is a Developer-Related Entity, the Trustee obtains the Minister's prior written consent, which must not be unreasonably withheld, to the appointment of the new entity.

13.4 The Landowners' representations and warranties

Each Landowner represents and warrants to the Minister that:

- (a) **custodian's power:** the Landowner has power as custodian of the relevant Trusts to execute the Trustee Documents;
- (b) **due performance:** in executing the Trustee Documents, the Landowner and its representatives have properly performed their obligations to the Beneficiaries and Trustee;
- (c) **custodian action taken:** all necessary action required by the Trust Deeds and the Custody Agreement to authorise the unconditional execution and delivery of, and compliance with the Landowner's obligations under, the Trustee Documents has been taken;
- (d) **no removal of custodian:** so far as the Landowner is aware, no action has been taken to remove the Landowner as custodian of the relevant Trusts or to appoint an additional custodian of the relevant Trusts;
- (e) **custodian duly appointed:** each Landowner has been duly appointed as custodian of the relevant Trusts;
- (f) **capacity of custodian:** the Landowner:
 - (i) is duly incorporated in accordance with the laws of its place of incorporation as stated in this document, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as custodian of the Trusts; and
 - (ii) is not insolvent.

13.5 The Landowners' additional obligations

- (a) Each Landowner must:

- (i) ensure the Assets are not mixed with any other property;
 - (ii) comply with the its obligations under the Custody Agreements as custodian of the relevant Trusts;
 - (iii) not release, dispose of or otherwise prejudice the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;
 - (iv) at the Minister's request, exercise the Landowner's right of indemnity against, and equitable lien over, the Assets and the Landowner's right of indemnity (if any) against the Beneficiaries;
- (b) Each Landowner covenants that it will not retire or be replaced (and each Trustee covenants that it will not remove the Landowner or cause the Landowner to retire) as custodian of any or all of the Trusts unless:
 - (i) another entity has been appointed in its place for the relevant Trusts; and
 - (ii) the new entity agrees to be bound by the Trustee Documents, the Trust Deeds and the Custody Agreements (as applicable) as Landowner for the relevant parcel of Land.
- (c) No Landowner may take any action to amend the Trust Deeds or the Custody Agreements without the prior written consent of the Minister, acting reasonably.

14 GST

14.1 Construction

In this clause 14:

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

14.2 Consideration GST exclusive

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

14.3 Payment of GST

If GST is payable on any supply made by:

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

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

14.4 Timing of GST payment

The amount referred to in clause 14.3 must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

14.5 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under clause 14.3.

14.6 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this document, any amount that is payable under clause 14.3 will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

14.7 Reimbursements

- (a) Where a party is required under or in connection with this document to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This clause 14.7 does not limit the application of clause 14.3, if appropriate, to the Reimbursable Expense as reduced in accordance with clause 14.7(a).

14.8 Calculations based on other amounts

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

- (a) any expense, loss, liability or outgoing suffered or incurred by another person (**Cost**), that reference will be to the amount of that Cost excluding the amount of any input tax credit entitlement of that person relating to the Cost suffered or incurred; and

- (b) any price, value, sales, proceeds, revenue or similar amount (**Revenue**), that reference will be to that Revenue determined by deducting from it an amount equal to the GST payable on the supply for which it is consideration.

14.9 No merger

This clause 14 does not merge on the completion, rescission or other termination of this document or on the transfer of any property supplied under this document.

15 Stamp duty and costs

The Developer, the Third Landowner, the Third Trustee and the New Party are jointly and severally responsible for the Minister's legal costs incidental to the negotiation, preparation and execution of this document.

16 Further acts

- (a) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this document.
- (b) This document binds each party which signs it even if other parties do not, or if the execution by other parties is defective, void or voidable.

17 Amendment

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

18 Governing law and jurisdiction

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

19 Counterparts

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

20 General

20.1 Construction

Unless expressed to the contrary, in this document:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
- (g) Capitalised terms not defined in this document have the meanings given to them in the Planning Agreement.

20.2 Headings

Headings do not affect the interpretation of this document.

20.3 Effect of execution

This document is not binding on any party unless it or a counterpart has been duly executed by each party.

Execution

Executed as a deed/agreement.

Minister

Signed, sealed and delivered by The
Minister for Planning in the presence
of:

Signature of Witness

MARLENE BEZZINA

Name of Witness

Signature of Minister DELEGATE

SIMON OFFICEL

Name of Minister DELEGATE

Developer

Signed sealed and delivered for and on
behalf of **Goodman Property Services
(Aust) Pty Limited** by its attorney under
power of attorney Book 487 No. 25 who states
that no notice of revocation of the power of
attorney has been received in the presence
of:

Signature of witness

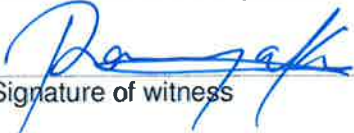
CARLA ELLIOTT
Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square
Address of witness Sydney NSW 2000

Carl Bicego

First Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the Carter Street Trust** by its attorney under power of attorney Book 4476 No. 134 who states that no notice of revocation of the power of attorney has been received in the presence of:


Signature of witness

RAMYA KUMAR
Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square
Address of witness Sydney NSW 2000

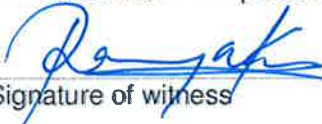


Attorney Trent Franklin
Manager Custody

Name of Attorney (print)

Second Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the Hill Road Trust** by its attorney under power of attorney Book 4476 No. 134 who states that no notice of revocation of the power of attorney has been received in the presence of:


Signature of witness

RAMYA KUMAR
Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square
Address of witness Sydney NSW 2000

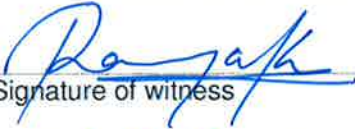


Attorney Trent Franklin
Manager Custody

Name of Attorney (print)

Third Landowner

Signed sealed and delivered for and on behalf of **The Trust Company Limited as custodian for the IBC Trust** by its attorney under power of attorney Book ~~4676~~ ¹²⁴ No. ~~124~~ who states that no notice of revocation of the power of attorney has been received in the presence of:


Signature of witness

RAMYA KUMAR
Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square
Address of witness Sydney NSW 2000


Attorney **Trent Franklin**
Manager Custody

Name of Attorney (print)

Attorney

Trustees

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the Carter Street Trust** by its attorney under power of attorney Book ~~1507~~ ⁷⁶ No. ~~76~~ who states that no notice of revocation of the power of attorney has been received in the presence of:


Signature of witness

CARLA ELLIOTT
Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square
Address of witness Sydney NSW 2000


Attorney **Carl Bicego**

Name of Attorney (print)

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the Hill Road Trust** by its attorney under power of attorney Book ⁴⁵⁰⁷ No ⁷⁶ who states that no notice of revocation of the power of attorney has been received in the presence of:



Signature of witness

CARLA ELLIOTT

Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square

Address of witness Sydney NSW 2000



Attorney

Carl Bicego

Name of Attorney (print)

Signed sealed and delivered for and on behalf of **Tallina Pty Ltd as trustee for the IBC Trust** by its attorney under power of attorney Book ⁴⁵⁰⁷ No ⁷⁶ who states that no notice of revocation of the power of attorney has been received in the presence of:



Signature of witness

CARLA ELLIOTT

Name of witness (BLOCK LETTERS)

Corrs Chambers Westgarth
8 Chifley, 8-12 Chifley Square

Address of witness Sydney NSW 2000



Attorney

Carl Bicego

Name of Attorney (print)

New Party

Executed by Australia YMCI Pty Ltd)
ACN 607 884 711 in accordance with)
section 127 of the *Corporations Act*)
2001 (Cth):)



.....
Company Secretary/Director

Youheng Zang

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



.....
Director

Rui Pan

.....
Name of Director (print)

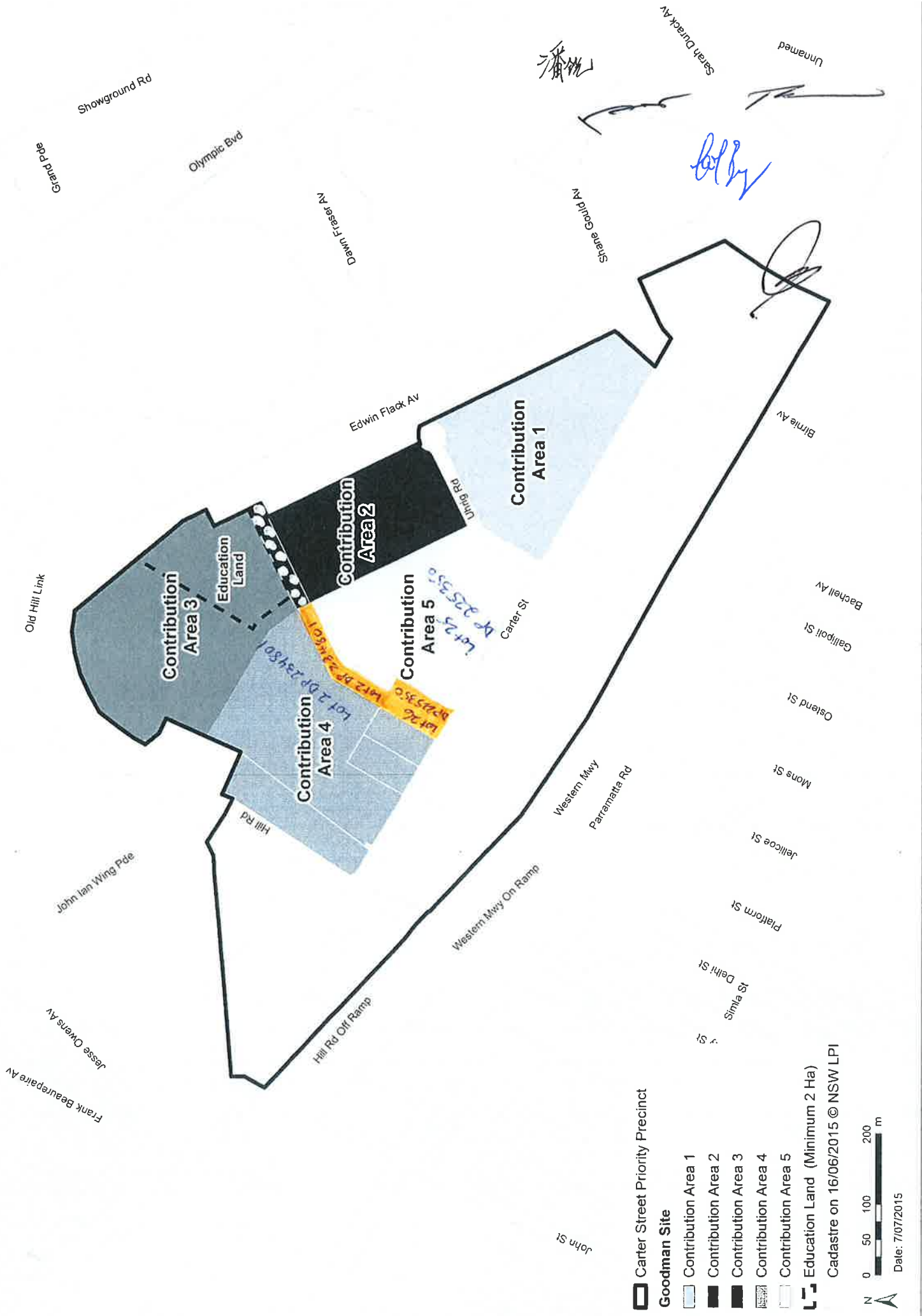


Annexure A



Road Land





Carter Street Priority Precinct

Goodman Site

Contribution Area 1

Contribution Area 2

Contribution Area 3

Contribution Area 4

Contribution Area 5

Education Land (Minimum 2 Ha)

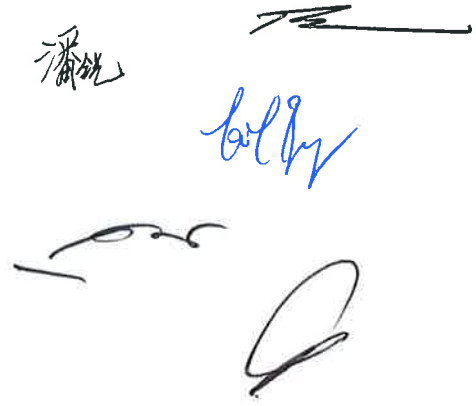
Cadastral on 16/06/2015 © NSW LPI



Date: 7/07/2015

Annexure B

Subdivision Plan

The block contains several handwritten marks. At the top right is a horizontal line with a short vertical tick at its end. Below this, to the left, are the Chinese characters '潘銳' (Pan Rui) in black ink. To the right of the characters is a blue ink signature that appears to read 'bolby'. Below the characters and signature are two more black ink marks: a horizontal line with a small loop at its end, and a large, stylized, circular signature.

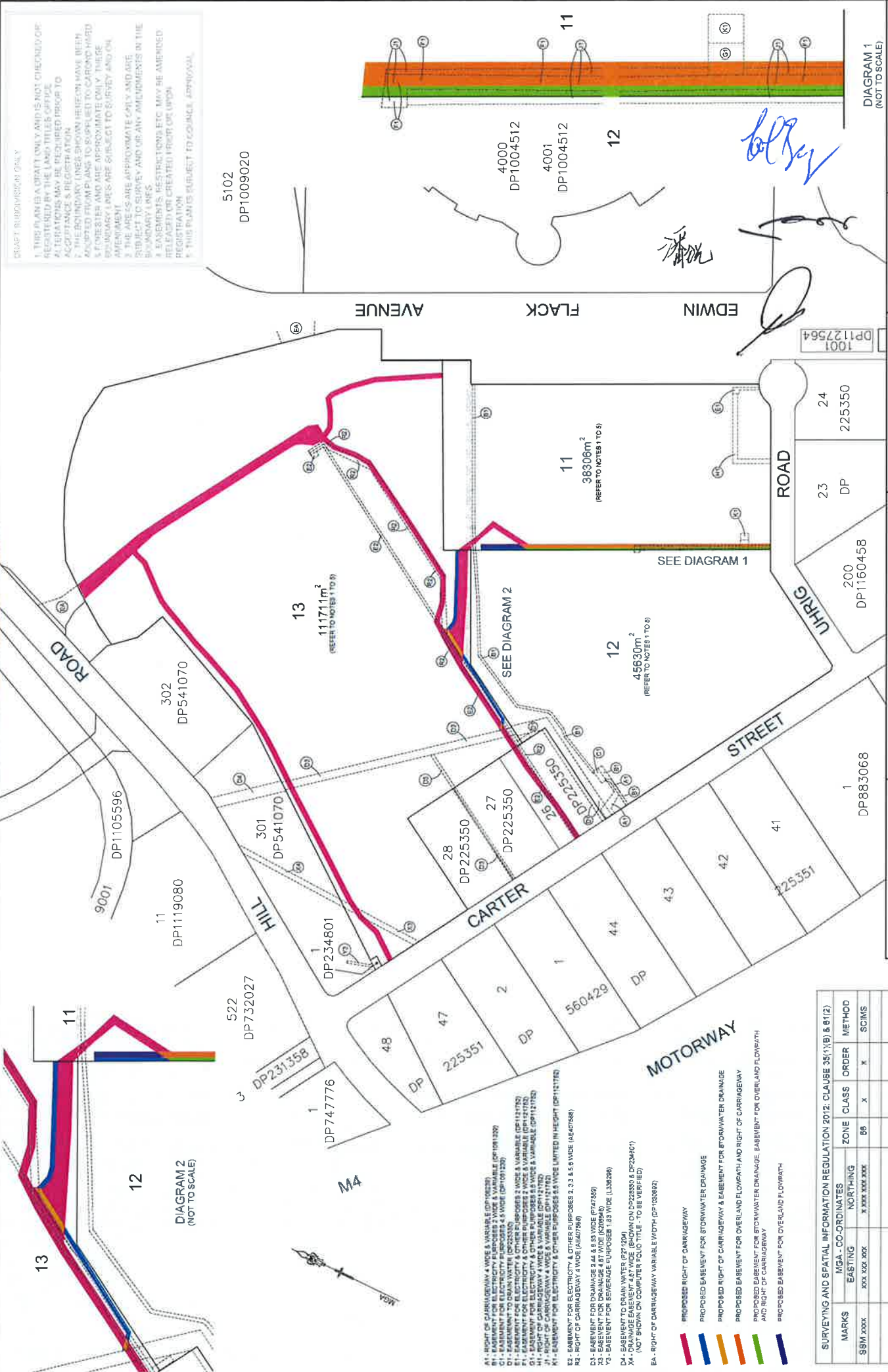


DIAGRAM 1 (NOT TO SCALE)

DIAGRAM 2 (NOT TO SCALE)

Registered:

LGA: AUBURN
Locality: LIDCOMBE
Subdivision No:
Lengths are in metres. Reduction Ratio 1:2000

PLAN OF SUBDIVISION OF LOT 25 IN DP225350 AND LOT 2 IN DP234801

Surveyor: MATTHEW WILLIAM CLEARY
Date of Survey: 28/04/2015
Surveyor's Ref: 117424513_02

DP DRAFT

LEGEND

- PROPOSED RIGHT OF CARRIAGEWAY
- PROPOSED EASEMENT FOR STORMWATER DRAINAGE
- PROPOSED RIGHT OF CARRIAGEWAY & EASEMENT FOR STORMWATER DRAINAGE
- PROPOSED EASEMENT FOR OVERLAND FLOWPATH AND RIGHT OF CARRIAGEWAY
- PROPOSED EASEMENT FOR STORMWATER DRAINAGE EASEMENT FOR OVERLAND FLOWPATH AND RIGHT OF CARRIAGEWAY
- PROPOSED EASEMENT FOR OVERLAND FLOWPATH

MARKS MGA - CO-ORDINATES

MARKS	EASTING	NORTHING	ZONE	CLASS	ORDER	METHOD
SBM xxxx	xxxx xxx xxx	xxxx xxx xxx	B6	X	X	SCIMS

SOURCE MGA CO-ORDINATES ADOPTED FROM SCIMS ON THE xxx/xxxxx
COMBINED SEA LEVEL & SCALE FACTOR = 0.00000

10 20 30 40 50 60 70 80 90 100 110 120 130 140 150