

Minister for Planning
and
Lend Lease (Communities) Australia Limited

Amendment Deed

Calderwood Urban Development Project

The Allens contact for this document is Mark Stubbings
Exhibition Draft 9/9/2015

Deutsche Bank Place
Corner Hunter and Phillip Streets
Sydney NSW 2000 Australia
Tel +61 2 9230 4000
Fax +61 2 9230 5333
www.allens.com.au

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This Deed is made on

Parties

- 1 **Minister for Planning** (ABN 38 755 709 681) of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**).
- 2 **Lend Lease (Communities) Australia Limited** (ABN 88 000 966 085) of Level 4, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000 (**Developer**).

Recitals

- A The Minister and Developer are parties to a Planning Agreement in relation to Calderwood Urban Development Project dated 16 February 2011 (the **Principal Planning Agreement**) under which the Developer agreed to make Development Contributions on the terms set out in the Principal Planning Agreement.
- B The parties wish to amend the Principal Planning Agreement in the manner set out in this Deed.

It is agreed as follows.

1 Definitions and Interpretation

- (a) Words which are defined in the Principal Planning Agreement and which are used in this Deed have the same meaning in this Deed as in the Principal Planning Agreement, unless the context requires otherwise.
- (b) The provisions of clause 1.2 of the Principal Planning Agreement forms part of this Deed as if set out at length in this Deed.

2 Amendments

The Principal Planning Agreement is amended as follows.

- (a) The text in the table in **Schedule 4, paragraph 1, column 1, section 1** is replaced with the following:

1. Education Contributions

Developer to procure the dedication of 12 hectares for the provision of:

- 1 public primary school at 3 hectares;
- 1 public primary school at 3 hectares; and
- 1 high school at 6 hectares and incorporating a special needs unit,

to be transferred (at no cost) to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training).

- (b) The text in the table in **Schedule 4, paragraph 1, column 3, section 1** in the second and third dot points under the reference to "**Education Milestones**" is replaced with the following:
 - 1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 2,800th Dwelling is proposed to be constructed; and

- 1 high school incorporating a special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,500th Dwelling is proposed to be constructed.
- (c) The text in the table in **Schedule 4, paragraph 1, column 3, section 1** being the second and third dot points under the reference to "**Structure Planning Milestones**" is replaced with the following:
- 1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 2,600th Dwelling is proposed to be constructed; and
 - 1 high school incorporating a special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,300th Dwelling is proposed to be constructed.
- (d) **Schedule 4, paragraph 4(a)** is replaced with the following:
- (a) The Developer is entitled to offset the value (as determined by this paragraph 4 of this **Schedule 4**) of 3.06 hectares of the Contribution Land dedicated to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training) in accordance with this Deed (**Offset Amount**) against its obligation to pay part of the Transport Contribution (up to the Offset Amount). The Offset Amount to be offset is determined as follows:
- Offset Amount = MV x 3.06
- Where:**
- MV** is the market valuation per hectare of the first School Site (as determined in accordance with paragraph 3 of **Schedule 4**)
- For the avoidance of doubt, the offset arrangement that the Developer is entitled to as contemplated by this paragraph 4(a) of **Schedule 4** applies regardless of whether the first School Site to be dedicated is more or less than 3.06 hectares.
- (e) **Schedule 7, paragraph 3(a)** is replaced with the following:
- (a) Primary school sites should be around 3 hectares in size, while 6 hectares is desirable for a high school.

3 Effective Date

This Deed takes effect, and the parties agree to be bound by the Principal Planning Agreement as amended by this Deed, from the date of this Deed (the **Effective Date**).

4 Remaining Provisions Unaffected

- (a) Except as specifically amended by this Deed, all terms and conditions of the Principal Planning Agreement remain in full force and effect. With effect from the Effective Date (as defined in clause 3), the Principal Planning Agreement as amended by this Deed is to be read as a single integrated document incorporating the amendments effected by this Deed.
- (b) The Parties agree that for the purpose of ease of understanding and administration, the conformed copy of the Principal Planning Agreement in schedule 1 of this Deed comprises the Principal Planning Agreement as varied by this Deed.

5 Registration on Title

- (a) As contemplated by section 93H of the Act, the Developer agrees to lodge this Deed for

registration under the Real Property Act in the relevant folio of the Register in relation to that part of the Land described in parts 2 and 3 of Schedule 3 of the Principal Planning Agreement, within 10 Business Days of receipt by the Developer of this Deed signed by the Minister.

- (b) The Developer will procure registration of the Deed under the Real Property Act in the relevant folio of the Register in relation to that part of the Land described in parts 2 and 3 of Schedule 3 of the Principal Planning Agreement, within six months of receipt by the Developer of this Deed signed by the Minister or such longer period agreed to by the Minister in writing.
- (c) The Developer will act expeditiously to procure registration of the Principal Planning Agreement against the folio of the Register in relation to Lot 2 in Deposited Plan 259137 as soon as practicable following the date of this Deed.
- (d) The Developer will provide the Minister with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed and the Principal Planning Agreement in accordance with this clause 5.

6 Expenses and Stamp Duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this Deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all 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, except a Transfer.
- (d) On execution of this Deed, the Developer must provide the Minister with a bank cheque in respect of the Minister's costs pursuant to paragraphs (a) and (b) above which have been notified to the Developer in writing.

7 Governing Law and Jurisdiction

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.

8 Counterparts

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

Schedule 1 Conformed Principal Planning Agreement

Dated

Minister for Planning

ABN 38 755 709 681

and

Delfin Lend Lease Limited

ABN 88 000 966 085

Calderwood Urban Development Project

Planning Agreement

Environmental Planning and Assessment Act 1979

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THIS Deed is dated

PARTIES:

MINISTER FOR PLANNING (ABN 38 755 709 681) of Level 34, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

DELFIN LEND LEASE LIMITED (ABN 88 000 966 085) of Level 4, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000 (**Developer**)

INTRODUCTION:

- A** On 16 April 2009, the Minister declared the Development to be a major project pursuant to the *State Environmental Planning Policy (Major Development) 2005*.
- B** On 16 April 2009, the Minister declared the Development to be a potential State Significant Site pursuant to the *State Environmental Planning Policy (Major Development) 2005*.
- C** The Owner is the owner of the Land and has consented to the Developer taking steps to carry out the Development.
- D** The Developer intends to develop the Land.
- E** The Developer has sought a change to Schedule 3 of *State Environmental Planning Policy (Major Development) 2005* to rezone the Land for urban purposes including approximately 4,800 dwellings and 50 hectares of mixed use and/or employment uses.
- F** This Deed constitutes an agreement between the Developer and the Minister that the Developer will make the Development Contributions on the terms and conditions of this Deed.
- G** This Deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act, which applies to the Development by the operation of section 75R(4) of the Act.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

Address for Service means the address of each party appearing in **Schedule 2** or any new address notified by any party to all other parties as its new Address for Service.

Allotment means a lot forming part of the Land identified in any Development Application for subdivision of the whole, or any part, of the Land which lot is intended to be developed, subject to Planning Consent, by construction of one or more Dwellings.

Applicable School Site has the meaning given to that term in paragraph 7 of **Schedule 4**.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Contribution Works or the Development generally and includes an approval under Part 3A of the Act (if relevant).

APRA means the Australian Prudential Regulation Authority.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by a financial institution regulated by APRA; and
- (b) on terms acceptable to the Minister, acting reasonably,

to pay the face value of that undertaking (being such an 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.

Cash Bond has the meaning given in paragraph 1(c) of **Schedule 6**.

Concept Plan Application means a concept plan application under Part 3A of the Act for any part of the Development.

Concept Plan Approval means any concept plan approval given by the Minister under section 75O of the Act for the Concept Plan Application.

Consent Authority means, in relation to an application for Planning Consent, the Authority having the function to determine that application.

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

Contribution Land means the land which the Developer is required to procure to be dedicated as described in **Schedule 4**.

Contribution Works means the works to be undertaken by the Developer as agreed with the RTA pursuant to one or more Works Agreements in lieu of paying the whole or any part of the Transport Contributions as contemplated by **Schedule 4**.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which performs the same function and which the Minister determines, acting reasonably.

DET Guidelines means those guidelines issued from time to time by the NSW Department of Education and Training (a copy of such guidelines existing as at the date of this Deed are attached at **Schedule 7**).

Development means the proposed use of land and associated works located on the Land as described in the Concept Plan Application (as varied by any Concept Plan Approval) that includes approximately 4,800 dwellings, 3 School Sites, 50 hectares of mixed use/employment uses, infrastructure including road layout and utility provision, and land for riparian corridors and conservation.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contributions means the contributions provided for in **Schedule 4**.

Director-General means the Director-General of the Department of Planning.

Dwelling means a room, or suite of rooms, occupied or used, or so constructed or adapted, as to be capable of being occupied or used, as a separate domicile to be erected on the Land as part of the Development.

Education Contributions means the dedication of Contribution Land required to be procured by the Developer under **Schedule 4**.

Education Milestones means those milestones specified as the 'Education Milestones' in the table in paragraph 1 of **Schedule 4**.

Explanatory Note means the explanatory note required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

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

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

Land means the land described in part 1 of **Schedule 3** of this Deed.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future, including applicable principles of common law.

Offset Amount has the meaning given to that term in paragraph 4 of **Schedule 4**.

Owner means the owners of the Land at the date of this Deed.

Part 3A Approval means an Approval by the Minister under Part 3A of the Act.

Planning Agreement means this Deed.

Planning Consent means:

- (a) each Development Consent; and
- (b) each Part 3A Approval.

Proposed Dwellings means, in respect of an Allotment of Unregistered Land, the number of Dwellings proposed to be constructed on that Allotment of Unregistered Land as determined by the Director General (acting reasonably having regard to information provided by the Developer).

Proposed Transport Contribution Amount means, in respect of any Allotment of Unregistered Land, an amount equivalent to PTCA in the following formula:

$$\text{PTCA} = \text{Proposed Dwellings} \times \text{Transport Contribution payable pursuant to this Deed in respect of a Dwelling.}$$

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Registration Land means those parts of the Land over which this Planning Agreement is required to be registered pursuant to **clause 5.2**.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

RTA means the Roads & Traffic Authority of New South Wales.

School Site means each of the parcels of land which comprise the Contribution Land, the proposed locations of which are shown in the Concept Plan Application.

SEPP Amendment means the amendment to *State Environmental Planning Policy (Major Development) 2005* referred to in recital E.

Structure Planning Milestone means those milestones specified as the 'Structure Planning Milestones' in the table in paragraph 1 of **Schedule 4**.

Subdivision Plan means any plan of subdivision approved by the Minister which creates separate lots for the Contribution Land.

Transfer means a transfer in the approved form under the Real Property Act which is duly signed and otherwise in registrable form for the purpose of transferring the Contribution Land to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training).

Transport Contributions means the Contribution Amounts required to be paid by the Developer in the table in paragraph 1 of **Schedule 4**.

Unregistered Land has the meaning given to that term in paragraph 1 of **Schedule 6**.

Works Agreement means any works authorisation deed or agreement entered into by the Developer and the RTA requiring the Developer to carry out all or any part of the Contribution Works.

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 (whether of an identical or similar nature) and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

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

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

This Deed further documents the irrevocable offer made by the Developer by way of letter dated 16 November 2010 to the Minister to enter into the Planning Agreement in accordance with the terms of commitment made by the Developer in a statement of commitments under Part 3A of the Act relevant to the Concept Plan Application.

2.2 Planning agreement under the Act

This Deed constitutes a planning agreement within the meaning of section 93F of the Act, which applies to the Development by the operation of section 75R(4) of the Act.

2.3 Application

This Deed applies to:

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

2.4 Development Contributions

The Developer agrees that the Minister:

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

3 APPLICATION OF S94, 94A AND 94EF OF THE ACT

The application of s94, 94A and 94EF of the Act are excluded to the extent stated in **Schedule 1**.

4 REQUIREMENT TO PROVIDE DEVELOPMENT CONTRIBUTIONS

The Developer undertakes to provide, or procure the provision of, the Development Contributions in the manner and at the times set out in **Schedule 4** and the parties agree to abide by the procedures and obligations set out in **Schedule 4**.

5 REGISTRATION ON TITLE

5.1 Land ownership

The Developer represents and warrants that it is:

- (a) the owner of that part of the Land described in part 2 of **Schedule 3**; or
- (b) legally and beneficially entitled to become the owner of that part of the Land described in part 2 of **Schedule 3** and will become the legal and beneficial owner of that land, prior to the date that this Deed is required to be registered under **clause 5.2** of this Deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals in relation to that part of the Land described in part 3 of **Schedule 3** and to compel any person referred to in or contemplated by **clause 5.2(b)(i)** in relation to that land to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under **clause 5.2** in relation to that land.

5.2 Registration of Deed

- (a) As contemplated by section 93H of the Act, the Developer agrees to procure the registration of this Deed under the Real Property Act in the relevant folio of the Register as soon as practicable after:
 - (i) in relation to that part of the Land described in part 2 of **Schedule 3**, the date the Developer becomes the registered proprietor of that land;
 - (ii) in relation to that part of the Land described in part 3 of **Schedule 3**, the date of this Deed; and
 - (iii) in relation to any other part of the Land which the Developer becomes the registered proprietor of, or otherwise enters into arrangements in relation to the development of that Land, the date the Developer so becomes the registered proprietor of, or enters into arrangements for the development of, that land,

noting that registration of this Deed shall be undertaken progressively, so that this Deed is registered on each part of the Land referred to in paragraph (a) above as soon as practicable in respect of that part of the Land.

- (b) In relation to the land referred to in paragraph (a), the Developer, at its own expense, must take all practical steps and otherwise do anything that the Minister reasonably requires to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in that land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in that land;
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement and registration of this Deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this Deed relates to land not under the Real Property Act.
- (c) The Developer will provide the Minister with a copy of the relevant folio of the Register within 10 Business Days of registration of this Deed in accordance with this **clause 5.2**.
- (d) The obligations of the Developer under this **clause 5.2** to procure registration of this Planning Agreement on title in respect of certain parts of the Land is to be read together with the processes contained in **Schedule 6**.

5.3 Release and discharge of Deed

- (a) If, in respect of an Allotment on which one or more Dwellings are proposed to be constructed and which is not capable of further subdivision (**Relevant Lot**), the Developer has fully satisfied its obligations under this Deed in relation to the payment of Contribution Amounts for the Dwellings proposed for that Relevant Lot and the Developer is not otherwise in default under this Deed (as determined by the Director General (acting reasonably) and notified to the Developer in writing), then at the written request of the Developer (such request to contain all necessary title particulars that are relevant to the request), the Minister must (at the Developer's cost) promptly:
 - (i) provide a release and discharge (in immediately registrable form) of the Planning Agreement to the extent that the Planning Agreement affects that Relevant Lot; and
 - (ii) do all things necessary to enable the extinguishment of the Planning Agreement from the title of that Relevant Lot,

and the Minister agrees to use best endeavours to procure the outcomes referred to in paragraphs (i) and (ii) above as soon as practicable after the relevant request.

- (b) The land to be released and discharged from this Planning Agreement in accordance with **clause 5.3(a)** will also include parts of the Land which are not Allotments or Dwellings or which are not zoned, or intended to be developed, for Allotments or Dwellings.

6 SECURITY

6.1 Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this Deed by:

- (a) registering this Deed on the title to the Land in accordance with **clause 5.2**; and
- (b) providing the Bank Guarantees or otherwise paying cash bonds to the Minister in accordance with the terms and procedures set out in **Schedules 5, 6 and 8**.

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 7**.

7.2 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.

7.3 Attempt to resolve

On receipt of notice under **clause 7.2**, 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.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under **clause 7.2** (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.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 7.2** then any party which has complied with the provisions of this **clause 7** may in writing terminate any dispute resolution process undertaken under this **clause 7** and may then commence court proceedings in relation to the dispute.

7.6 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 7** 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 7** for any purpose other than in an attempt to settle the dispute.

7.7 No prejudice

This **clause 7** 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.

8 GST

8.1 Definitions

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

8.2 Intention of the parties

Without limiting any other provision of this **clause 8**, 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.

8.3 Reimbursement

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

8.4 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 8**.

8.5 Additional Amounts for GST

Subject to **clause 8.7**, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with **clause 8.5(a)**.

8.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with **clauses 8.5 and 8.7**), varies from the additional amount paid by the Recipient under **clause 8.5**, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of

that variation from, the Recipient. Any payment, credit or refund under this **clause 8.6(a)** is deemed to be a payment, credit or refund of the GST Amount payable under **clause 8.5**.

- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

8.7 Non monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which **clause 8.5** applies is a taxable supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with **clause 8.5** shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with **clause 8.5** (or the time at which such GST Amount would have been payable in accordance with **clause 8.5** but for the operation of **clause 8.7(a)**).

8.8 No merger

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

9 ASSIGNMENT

9.1 Consent

- (a) This Deed is personal to each party and no party may assign the rights or benefits of this Deed to any person except, subject to **clause 9.1(c)**, in the case of the Developer:
 - (i) to a related body corporate (within the meaning of section 50 of the *Corporations Act 2001*), providing that the Developer:
 - (A) must notify the Minister of the name of the assignee as soon as practicable prior to the assignment occurring; and
 - (B) must guarantee the obligations of that related body corporate under or in connection with the Deed referred to in paragraph (iii) below and provide to the Minister a duly executed deed (on terms reasonably acceptable to the Minister) which documents that guarantee; or

- (ii) to any other person, with the prior consent of the Minister, which must not be unreasonably withheld if he is reasonably satisfied that the assignee has sufficient assets, resources and expertise to perform all of the Developer's obligations under this Deed,

and, in either case prior to any such assignment:

- (iii) the Developer delivers to the Minister a deed signed by the assignee which contains provisions under which the assignee agrees to comply with all of the obligations of the Developer under this Deed as if it were joined as a party to this Deed in the place of the Developer (as the case may be) (including obligations which arose before the assignment);
- (iv) any default by the Developer under any provision of this Deed (as determined by the Minister (acting reasonably) and notified to the Developer in writing) has been remedied by the Developer or waived by the Minister on such conditions as the Minister may determine in his absolute discretion in relation to that waiver;
- (v) the Developer pays the Minister's reasonable Costs in relation to that assignment; and
- (vi) the Minister is satisfied acting reasonably, having regard to all evidence and other supporting material provided by the Developer, that the proposed assignee has obtained, whether by way of assignment by the Developer, or otherwise, the same rights in relation to the development of the Land (or the relevant part of the Land) as the Developer had prior to that assignment, in order to enable that assignee to fulfil all obligations to be performed by that assignee under or by virtue of this Deed.

- (b) If the Developer satisfies the requirements of paragraph (a), the Developer will be fully released from its obligations under this Deed (subject to any guarantee obligations referred to or contemplated by paragraph (a)(i)(B) above).

- (c) The Developer must not assign the rights or benefits of this Deed to any person unless and until the later of:

- (i) the date this Deed is registered on title to all those parts of the Land on which this Planning Agreement is to be registered pursuant to **clause 5.2** (excluding that part of the Land denoted by an asterisk in part 1 of Schedule 3 which the Developer has not become the registered proprietor of, or otherwise has not entered into arrangements in relation to the development of that Land at the time of any such proposed assignment); and

- (ii) the date that the Bank Guarantee required to be provided pursuant to paragraph 1 of **Schedule 5** has been provided to the Minister in accordance with **Schedule 5**.

10 WARRANTIES OF CAPACITY

10.1 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.

10.2 Power of attorney

If an attorney executes this Deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 INTEREST

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

12 GENERAL PROVISIONS

12.1 Entire Deed

This Deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

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

12.3 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.

12.4 Further assurances

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

12.5 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.

12.6 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.

12.7 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.

12.8 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.

12.9 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.

12.10 Counterparts

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

12.11 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.

12.12 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.

12.13 No fetter

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

12.14 Explanatory note

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

12.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements (up to a maximum amount of \$15,000 excluding GST) in connection with the negotiation, preparation, execution and carrying into effect of this Deed.

- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all 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, except a Transfer.
- (d) On execution of this Deed, the Developer must provide the Minister with a bank cheque in respect of the Minister's costs pursuant to paragraphs (a) and (b) above which have been notified to the Developer in writing.

12.16 Notices

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

12.17 Damages or loss suffered

The Developer acknowledges and agrees that if it does not comply with certain provisions of this Deed, damage or loss may be suffered by the Minister for Education and Training. The Developer further acknowledges that any such damage or loss will be deemed to be damage or loss suffered by the Minister, to the intent that the Minister can institute and prosecute claims against the Developer for such damages or losses for and on behalf of the Minister for Education and Training.

13 RIGHTS AND OBLIGATIONS

The Minister and the Developer agree that they each (respectively) have the benefit of, and otherwise must comply with, their respective rights and obligations set out in any Schedule to this Planning Agreement.

14 REVIEW OF DEVELOPMENT CONTRIBUTIONS

The Minister agrees that in the event the NSW Government introduces a special infrastructure contribution or equivalent contribution (being contributions contemplated by s94EF of the Act) applicable to, and in respect of, the Land:

- (a) the Developer may request in writing for the Minister to meet (and following such request, the Minister agrees to promptly so meet) in good faith to discuss and renegotiate this Planning Agreement having regard to that special infrastructure contribution or equivalent contribution, with the intent that the Developer should be obliged to provide Development Contributions under this Planning Agreement yet to be provided pursuant to this Deed at a rate per Dwelling, taking into account the dedication of the Contribution Lands, no greater than that which is required by any such special infrastructure contribution or equivalent contribution; and
- (b) if that special infrastructure contribution or equivalent contribution is determined at a rate greater than the rate per Dwelling, taking into account the dedication of the Contribution Lands, to be provided by the Developer pursuant to this Deed, then the Minister agrees that the Developer will not be required to provide any such contributions on a basis greater than that required by this Deed.

EXECUTED as a Deed

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

.....
Signature of Witness

.....
Signature of the Minister for Planning

.....
Name of Witness in full

.....
Minister for Planning

Signed sealed and delivered by **Delfin**)
Lend Lease Limited ABN 88 000 966 085)
in accordance with section 127 of the)
Corporations Act:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary

SCHEDULE 1

Requirements under section 93F to the Act (clause 2.2)

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

REQUIREMENT UNDER THE ACT	THIS DEED
Planning instrument and/or development application – (section 93F(1)) The Developer has: (a) made, or proposes to make, a Development Application/Project Application. (b) sought a change to an environmental planning instrument (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	 (a) Yes (b) Yes (c) N/A
Description of land to which this Deed applies – (Section 93F(3)(a))	See Schedule 3
Description of change to the environmental planning instrument to which this Deed applies or the development to which the agreement applies – (Section 93F(3)(b))	State Environmental Planning Policy (Major Development) 2005 and definition of "Development".
The scope, timing and manner of delivery of contribution required by this Deed – (Section 93F(3)(c))	See Schedule 4
Applicability of section 94 of the Act – (section 93F(3)(d))	The application of section 94 of the Act is not excluded in respect of the Development on the basis that the Development Contributions being provided by the Developer under this Deed are separate to and independent from the contributions contemplated under that section.
Applicability of section 94A of the Act – section 93F(3)(d))	The application of section 94A of the Act is not excluded in respect of the Development on the basis that the Development Contributions being provided by the Developer under this Deed are separate to and independent from the contributions contemplated under that section.
Applicability of section 94EF of the Act – section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.

Consideration of benefits under this Deed if section 94 applies to the development – section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 7
Enforcement of this Deed – (section 93F(3)(g))	See clause 6
Registration of this Deed The parties agree that this Deed will be registered in accordance with clause 5.2	Yes
No obligation to grant consent or exercise functions – (section 93F(9))	See clause 12.13

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: Director-General, Department of Planning

Address: 23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Developer

Contact: Ken James, Company Secretary - Delfin Lend Lease Limited

Address: Level 4, 30 The Bond, 30 Hickson Road, Millers Point NSW 2000

Facsimile No: (02) 9383 8138

SCHEDULE 3

Land (clause 1.1)

Part 1

Lot	Deposited Plan	Lot	Deposited Plan
4	259137	2	608238
5	259137	1	998349
1	1044038	1	194903
2	2534	3	259137
1	259137	22	809156
112	851153	2	259137
*1	608238	6	259137
*21	809156	*10	619547
1	996926	2	158988
*8	259137	*42	878122
*1	558196		

Part 2

Lot	Deposited Plan	Lot	Deposited Plan
1	996926	6	259137

Part 3

Lot	Deposited Plan	Lot	Deposited Plan
4	259137	2	608238
5	259137	1	998349
1	1044038	1	194903
2	2534	3	259137

Lot	Deposited Plan	Lot	Deposited Plan
1	259137	22	809156
112	851153	2	259137
		2	158988

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contributions

The Developer undertakes to make the Development Contributions referred to in column 1 of the table in this paragraph in the manner and timing referred to in columns 2 and column 3 (respectively) in the table in this paragraph.

Column 1 Development Contribution	Column 2 Manner of Delivery	Column 3 Timing
1. Education Contributions		
<p>Developer to procure the dedication of 13 hectares for the provision of:</p> <ul style="list-style-type: none"> • 1 public primary school at 3 hectares; • 1 public primary school at 3 hectares and incorporating a special needs unit at 1 hectare for a total of 4 hectares; and • 1 high school at 6 hectares; <p>to be transferred (at no cost) to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training).</p> <p><u>Developer to procure the dedication of 12 hectares for the provision of:</u></p> <ul style="list-style-type: none"> • <u>1 public primary school at 3 hectares;</u> • <u>1 public primary school at 3 hectares; and</u> • <u>1 high school at 6 hectares and incorporating a special needs unit,</u> <p><u>to be transferred (at no cost) to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training).</u></p>	See paragraph 2.	<p>The Education Milestones are:</p> <ul style="list-style-type: none"> • 1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 600th Dwelling is proposed to be constructed • 1 public primary school incorporating special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 2,800th Dwelling is proposed to be constructed • 1 high school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,500th Dwelling is proposed to be constructed • <u>1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment</u>

Column 1 Development Contribution	Column 2 Manner of Delivery	Column 3 Timing
		<p><u>on which the 2,800th Dwelling is proposed to be constructed; and</u></p> <ul style="list-style-type: none"> • <u>1 high school incorporating a special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,500th Dwelling is proposed to be constructed.</u> <p>The Structure Planning Milestones are:</p> <ul style="list-style-type: none"> • 1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 400th Dwelling is proposed to be constructed • 1 public primary school incorporating special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 2,600th Dwelling is proposed to be constructed • 1 high school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,300th Dwelling is proposed to be constructed • <u>1 public primary school: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment</u>

Column 1 Development Contribution	Column 2 Manner of Delivery	Column 3 Timing
		<p><u>on which the 2,600th Dwelling is proposed to be constructed; and</u></p> <ul style="list-style-type: none"> • <u>1 high school incorporating a special needs unit: before the issue of a Subdivision Certificate which relates to land comprising (amongst other land) an Allotment on which the 1,300th Dwelling is proposed to be constructed.</u>
2. Transport Contributions		
<p>\$5,647 per Dwelling proposed to be constructed on the Land, the number of such Dwellings as determined by the Director General (acting reasonably having regard to information provided by the Developer) (subject to indexation referred to in paragraph 5 of this Schedule 4).</p> <p>If the Director General does not make a determination within 10 Business Days of receipt of the relevant information from the Developer in relation to the number of Dwellings, the Developer may pay the instalment of the Transport Contribution based on the number of Dwellings provided for in the information provided by the Developer and the Director-General may, if he or she determines that the amount of the instalment of the Transport Contribution paid by the Developer does not reflect the number of Dwellings proposed to be constructed on a particular part of the Land, may require any shortfall in that payment to be paid either at the time that a further instalment of the Transport Contribution is payable under this Deed, or may require that payment to be made at such time as is nominated in writing by the Director-General, being no less than 20 Business Days after the date of a written notice to the Developer requiring that payment.</p>	Payment to the Minister.	For each instalment of the Transport Contribution for each Dwelling, payment must be made before the issue of a Subdivision Certificate in respect of that part of the Land comprised in a Plan of Subdivision the subject of that Subdivision Certificate on which that Dwelling is proposed to be constructed (the number of such Dwellings as determined by the Director General (acting reasonably having regard to information provided by the Developer)).

The Minister acknowledges that any determination by the Director General in relation to the number of Dwellings proposed to be constructed as contemplated by the table in this

paragraph 1 of **Schedule 4** is made solely for the purposes of determining the amount of the Transport Contributions payable by the Developer pursuant to this Planning Agreement, and not for any other purpose and without limitation, the amount paid in respect of Transport Contributions in respect of any part of the Land does not limit any application the Developer might subsequently make for a modification of any Planning Consent in relation to that part of the Land.

2 **Delivery of Contribution Land**

- (a) Prior to the relevant Structure Planning Milestone for the relevant School Site, the Developer must propose in writing to the Director General the proposed location and configuration of the relevant School Site. The Director General must determine the actual location and configuration of the relevant School Site having regard to:
 - (i) the impositions and requirements of the Development applying at the time;
 - (ii) the Concept Plan Application (as varied by the Concept Plan Approval) and the DET Guidelines applying at the time; and
 - (iii) the detail and reasoning incorporated in the Developer's proposal referred to in this paragraph (a).
- (b) In determining the actual location and configuration of the relevant School Site, the Director General must (unless the parties otherwise agree) nominate that part of the Land referred to in the Concept Plan Application (as varied by the Concept Plan Approval) as the relevant School Sites allowing for minor variations.
- (c) The first School Site that is to be dedicated to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training) under this Deed is to be valued in accordance with the land valuation process in paragraph 3 of this **Schedule 4**.
- (d) The parties agree to use reasonable endeavours to undertake the steps referred to in paragraphs (a) to (c) by the relevant Structure Planning Milestone so that paragraph (e) is able to be complied with by the relevant Education Milestone.
- (e) As soon as possible after:
 - (i) agreement by the Developer and the Minister in relation to the location and configuration of the relevant School Site; and
 - (ii) in respect of the first School Site to be dedicated, the later of the date that paragraph (a) occurs and the date of determination of the market value of the relevant School Site under paragraph 3 of this **Schedule 4**,

the Developer must (at its cost and at no cost to the Minister) prepare and procure registration of a Subdivision Plan to create a separate lot or lots for the relevant School Site and must deliver to the Minister:

(iii) a form of Transfer in respect of the land comprising the relevant School Site in favour of the Minister (or, if the Minister directs in writing, in favour of the Minister for Education and Training) and specifying a consideration of \$1, executed by the relevant Owner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and

(iv) the certificate or certificates of title for the relevant School Site,

and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the relevant School Site to the transferee free of all encumbrances and affectations (including, any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this Deed or easements or covenants which have been agreed by the Minister or the Minister for Education and Training. The Minister agrees to use reasonable endeavours to procure that the Minister for Education and Training acts reasonably in relation to requests concerning the creation of such reservations, easements or other affectations.

(f) The parties acknowledge and agree that the Developer is only required to service the School Sites to be dedicated (or compulsory acquired) for use as a school.

3 Land valuation process

(a) This land valuation process applies to the first School Site referred to in paragraph 2(c) of this **Schedule 4**.

(b) The Developer will be entitled to offset the amount referred to in paragraph 4 of this **Schedule 4** against its obligation to pay part of the Transport Contribution (up to the Offset Amount).

(c) As soon as possible after the determination by the Director General in relation to the location and configuration of the first School Site to be dedicated, the Minister and the Developer must each appoint a valuer (and in respect of the valuer appointed by the Minister, the Developer agrees to pay upon demand the Minister's reasonable costs associated with such appointed valuer up to a maximum amount of \$10,000) who:

(i) is a registered valuer under the *Valuers Act* 2003 (NSW) and is not restricted under that Act from valuing the subject property;

- (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
 - (iii) is then practising as a valuer;
 - (iv) is independent and not related to any other party relevant to the relevant Education Contribution;
 - (v) has at least 5 years experience in residential development valuations; and
 - (vi) who has a practical understanding of the development and planning process to prepare a valuation for the relevant land,
- (the **Valuer**).
- (d) Each Valuer must prepare a valuation in accordance with this **paragraph 3**.
 - (e) Any valuation provided by a Valuer must comply with the following:
 - (i) The valuation report prepared by the Valuer must confirm that the Valuer satisfies each of the requirements set out in **paragraph (c)** above.
 - (ii) The Valuer is required to determine the market value (per hectare) of the subject land as a freehold lot with vacant possession as at the date of inspection.
 - (iii) The Valuer must, in determining the market value of the subject land in accordance with **paragraph (e)(ii)** above, assume that the subject land:
 - (A) is free of all encumbrances;
 - (B) is or can be fully serviced to its boundary;
 - (C) is an individual lot suitable in size, but no larger than the size necessary, for the permissible uses as contemplated under the SEPP Amendment and Concept Plan Approval applying to the subject land;
 - (D) has appropriate public road frontage and access; and
 - (E) is capable of being developed for its intended use as contemplated under the SEPP Amendment and Concept Plan Approval applying to the subject land without reliance upon the implementation of any additional public infrastructure external to the site.

- (iv) The Valuer must, in determining the market value of the subject land, comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this **paragraph 3**, in which case this **paragraph 3** prevails.
- (v) The market value of the subject land must have regard to the highest and best use of the site consistent with its permissible use as contemplated by the SEPP Amendment and Concept Plan Approval applying to the subject land.
- (vi) The Valuer must provide a comprehensive valuation report which shall include the following matters:
 - (A) confirmation of instructions;
 - (B) identification of the subject land being valued;
 - (C) date of inspection and valuation;
 - (D) registered proprietor;
 - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title, and comment on the effect, if any, of such encumbrances;
 - (F) services and amenities;
 - (G) site identification;
 - (H) location description, including any external factors that influence the desirability of the subject land, either positively or negatively for the permitted use;
 - (I) zoning and town planning considerations;
 - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
 - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation and the relativity of comparable sales must be fully explained;
 - (L) the valuation amount; and
 - (M) the statements required in **paragraphs (e)(ii) and (iii)** above.

- (f) In the event that no less than two of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each Valuer must undertake a feasibility or residual land value approach to the valuation.
- (g) In the event that the valuations vary by less than 10%, the average of the valuation amounts shall be adopted as the value for the subject land.
- (h) In the event that the valuations vary by more than 10%, then the Valuers shall meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the Valuers shall review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the subject land will be determined by a further Valuer appointed by the Australian Property Institute (NSW Division) acting as an expert and not as an arbitrator, in compliance with **paragraph (e)** and whose decision is final and binding, in the absence of manifest error. The Developer and the Minister must pay the costs associated with any valuer appointed for this purpose in equal proportions.

4 **Offset for Transport Contribution**

- ~~(a) The Developer is entitled to offset the value (as determined by this paragraph 4 of this **Schedule 4**) of 3.31 hectares of the Contribution Land dedicated to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training) in accordance with this Deed (**Offset Amount**) against its obligation to pay part of the Transport Contribution (up to the Offset Amount). The Offset Amount to be offset is determined as follows:~~

$$\text{Offset Amount} = \text{MV} \times 3.31$$

Where:

~~**MV** is the market valuation per hectare of the first School Site (as determined in accordance with paragraph 3 of **Schedule 4**)~~

~~For the avoidance of doubt, the offset arrangement that the Developer is entitled to as contemplated by this paragraph 4(a) of **Schedule 4** applies regardless of whether the first School Site to be dedicated is more or less than 3.31 hectares.~~

- (a) The Developer is entitled to offset the value (as determined by this paragraph 4 of this **Schedule 4**) of 3.06 hectares of the Contribution Land dedicated to the Minister (or, if the Minister directs in writing, to the Minister for Education and Training) in accordance with this Deed (**Offset Amount**)

against its obligation to pay part of the Transport Contribution (up to the Offset Amount). The Offset Amount to be offset is determined as follows:

$$\text{Offset Amount} = \text{MV} \times 3.06$$

Where:

MV is the market valuation per hectare of the first School Site (as determined in accordance with paragraph 3 of **Schedule 4**)

For the avoidance of doubt, the offset arrangement that the Developer is entitled to as contemplated by this paragraph 4(a) of **Schedule 4** applies regardless of whether the first School Site to be dedicated is more or less than 3.06 hectares.

- (b) The Offset Amount is to be applied towards the Developer's obligation to pay the Transport Contribution (or any part of it) next payable after the dedication of the first School Site.
- (c) Prior to application of any part of the Offset Amount (as contemplated by paragraph 4(b) of this **Schedule 4**) (**Partial Offset Amount**), that Partial Offset Amount must be increased to reflect any increase in the CPI since the date of this Deed with the relevant amount being calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

Where:

A is the Partial Offset Amount after the relevant indexation adjustment;

B is the amount of the Partial Offset Amount prior to any indexation adjustment;

C is the CPI most recently published before the application of that Partial Offset Amount pursuant to paragraph 4(b) of **Schedule 4**; and

D is the CPI most recently published before the date of this Deed.

5 **Indexation of Transport Contributions**

The amount specified as the Transport Contribution in the table in paragraph 1 of this **Schedule 4** must be increased to reflect any increase in the CPI since the date of this Deed with the relevant amount being calculated in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

Where:

A is the indexed amount at the relevant date for payment of the relevant Transport Contribution;

B is the amount of the Transport Contribution referred to in column 1 of the table in paragraph 1 of this **Schedule 4**;

C is the CPI most recently published before the relevant date for payment of the relevant Transport Contribution; and

D is the CPI most recently published before the date of this Deed.

6 **Works-in-kind Option**

- (a) At any time prior to the date on which any Transport Contribution is required to be paid by the Developer to the Minister in accordance with paragraph 1 of this **Schedule 4**, the Developer may in writing to the Minister, request the Minister's approval to enter into an agreement with the RTA, to undertake works in kind. Any such agreement with the RTA may, with the RTA's agreement, be in the form of a Works Agreement.
- (b) Prior to the Developer entering into any Works Agreement contemplated by paragraph 6(a) of this **Schedule 4**, the Developer and the Minister will meet and agree in good faith the amount that the Developer is entitled to offset (having regard to the value of the works the subject of that agreement) against its obligation to pay part of the Transport Contribution and the parties will enter into such documentation as is necessary to give effect to that agreement.

7 **Compulsory Acquisition**

- (a) This paragraph 7 of **Schedule 4** only applies to the extent that the Developer either becomes the registered proprietor of any School Site or otherwise has contractual rights with the registered proprietor of any School Site which are consistent with this paragraph 7 of **Schedule 4** (**Applicable School Site**).
- (b) If the Developer does not transfer an Applicable School Site as required by this Planning Agreement, the Developer agrees to the Minister compulsorily acquiring that Applicable School Site in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00.
- (c) The Developer and the Minister agree that:
 - (i) this paragraph 7 of **Schedule 4** is an agreement between the Minister and the Developer for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and

- (ii) in this paragraph 7 of **Schedule 4** the Minister and the Developer have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) Except as otherwise agreed between the Developer and the Minister, the Developer must ensure that the relevant Applicable School Site is free of all encumbrances and affectations (including, any charge or liability for rates, taxes and charges) except those reservations, easements and other affectations (but not including any mortgage or charge) as registered as at the date of this Deed or easements or covenants which have been agreed by the Minister or the Minister for Education and Training, on both the date that the Developer is liable to procure the transfer the relevant Applicable School Site to the Minister in accordance with paragraph 7 of this **Schedule 4** and the date on which the Minister compulsorily acquires the relevant Applicable School Site in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

SCHEDULE 5

Bank Guarantee - Transport Contributions (clause 6.1)

1 Bank Guarantee Required

The Developer has agreed to provide security to the Minister in the form of a Bank Guarantee for the face value of \$400,000 to secure the Developer's obligations to pay the Transport Contributions to the Minister in accordance with this Deed and the terms and conditions of this **Schedule** and **Schedule 8** apply in relation to those security arrangements. Such Bank Guarantee is to be provided by the Developer to the Minister prior to the issue of any Planning Consent for any part of the Development by the relevant Consent Authority (other than a Concept Plan Approval).

2 Claims under Bank Guarantee

The Developer agrees that the Minister may make claims under a Bank Guarantee provided by it on the following basis:

- (a) the Minister may call upon the Bank Guarantee (in full or in part) in the event that the Developer breaches its obligations to make the Transport Contributions and retain and use such monies in his reasonable discretion to compensate the Minister for the Developer's breach of those obligations; and
- (b) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of his intention to do so.

3 Release of Bank Guarantee

If the Developer has satisfied all of its obligations to make all of the Transport Contributions under this Deed which were secured by the Bank Guarantee, and:

- (a) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with paragraph 2(a) of this Schedule; and
- (b) the Minister is satisfied, acting reasonably, that there are no actual or contingent liabilities arising as a result of the payment of the Transport Contributions,

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

SCHEDULE 6

Bank Guarantee or payment of cash - Development Contributions (clause 6.1)

1 Bank Guarantee or payment of cash

If prior to determination by the Consent Authority of Planning Consent for development of any part of the Registration Land, this Planning Agreement has not been registered on title to any part of that land (**Unregistered Land**), then prior to any such determination by the relevant Consent Authority, the Developer must either:

- (a) procure registration of this Planning Agreement on that Unregistered Land in accordance with **clause 5.2**;
- (b) provide security to the Minister in the form of a Bank Guarantee for the face value equivalent to the Proposed Transport Contribution Amount relevant to that Unregistered Land to secure the Developer's obligations to pay the Transport Contributions in relation to those Proposed Dwellings on that Unregistered Land; or
- (c) pay to the Minister an amount equivalent to the Proposed Transport Contribution Amount in respect of that Unregistered Land as security for the Developer's obligation to pay the Transport Contribution in respect of those Proposed Dwellings (**Cash Bond**),

and the terms and conditions of this **Schedule** and **Schedule 8** apply in relation to those arrangements.

2 Claims under Bank Guarantee

The Developer agrees that the Minister may make claims under any Bank Guarantee provided by it in accordance with the terms and conditions of this **Schedule 6** on the following basis:

- (a) the Minister may call upon the Bank Guarantee (in full or in part) in the event that the Developer breaches its obligations to make the Transport Contributions in respect of any Dwelling proposed to be constructed on the relevant Unregistered Land for which the Bank Guarantee had been provided as security and retain and use such monies in his reasonable discretion to compensate the Minister for the Developer's breach of those obligations; and
- (b) the Minister agrees not to make any claim under a Bank Guarantee without providing at least 10 Business Days' prior written notice to the Developer of his intention to do so.

3 **Release of Bank Guarantee**

If the Developer has satisfied all of its obligations to make all of the Transport Contributions in respect of Dwellings proposed to be constructed on the Unregistered Land for which the Bank Guarantee or Cash Bond had been provided as security or the Developer procures registration of this Planning Agreement on the relevant Unregistered Land in accordance with **clause 5.2**, and:

- (a) the whole of the monies secured by the Bank Guarantee or Cash Bond have not been expended and the monies accounted for in accordance with paragraph 2(a) of this **Schedule**; and
- (b) the Minister is satisfied, acting reasonably, that there are no actual or contingent liabilities arising as a result of the payment of the relevant Transport Contributions,

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

SCHEDULE 7

DET Guidelines

Requirements for New School Sites

Requirements for new school sites as determined by the New South Wales Department of Education and Training are outlined below. These are only broad guidelines which may vary slightly with individual new developments.

1 School Provision Thresholds - One primary school site per 2000-2500 new homes and one high school site per 6000-7500 new homes

Consideration must be made with respect to:

- (a) possible diversion of some students in new areas to existing schools;
- (b) impact of existing or proposed non-government schools;
- (c) the type and speed of residential development;
- (d) the possible need for additional sites in large developments to cater for temporary enrolment peaks; and
- (e) the nature of the population.

2 General Site Location Principles

- (a) Primary school local catchment area should remain flexible over time.
- (b) The school should be located on a distributor or collector road (to alleviate noise and traffic problems).
- (c) As far as possible, a primary school should be within 1.6kms road distance of the bulk of its likely drawing area to minimise the demand for bus transport.
- (d) It is an advantage to locate a school adjacent to a community playing field.
- (e) Encourage opportunities for joint use of land, eg. for child care and open space.
- (f) High schools should be located away from commercial centres, especially where liquor outlets may be located.

3 **Specific Site Selection**

In general the following attributes are desired:

- ~~(a) Primary school sites should be around 3 hectares in size, while 6.0 hectares is desirable for a high school.~~
- (a) Primary school sites should be around 3 hectares in size, while 6 hectares is desirable for a high school.
- (b) Slope not greater than 1 in 10.
- (c) Site above the 1 in 100 year flood level and well drained.
- (d) Shape of the site should be substantially regular.
- (e) Site should be fully serviced with respect to water, sewer, power, telephone, kerb and gutter, footpath and sealed road.
- (f) Site should be free of possible restrictions to development, such as service and access easements (especially high tension electricity, mobile phone towers and drainage) through the site; free from environmental restraints and contamination.

The specific site should always be discussed with the Department of Education and Training's Asset Management Directorate personnel.

SCHEDULE 8

Bank Guarantees and Cash Bonds - General Requirements

1 Expiry of Bank Guarantees

- (g) If any Bank Guarantee provided by the Developer in accordance with this Deed is expressed as expiring on a certain date, the Developer must provide the Minister with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 2 of this **Schedule 8**.
- (h) The provision of the Bank Guarantee does not:
 - (i) relieve the Developer from any of its obligations under any other provision of this Deed; or
 - (ii) limit the right of the Minister to recover from the Developer in full all money payable to the Minister under this Deed, including without limitation, interest on any such amounts or damages or other losses incurred by the Minister.

2 Failure to replace expired Bank Guarantee

If the Developer fails to provide the Minister with a replacement Bank Guarantee in accordance with paragraph 1 of this **Schedule 8**, the Minister may call on the full amount of such Bank Guarantee after giving 10 Business Days prior written notice to the Developer.

3 Cash deposit

- (a) If the Minister makes demand under any Bank Guarantee pursuant to paragraph 2 of this **Schedule 8** or, if the Minister receives a Cash Bond from the Developer pursuant to paragraph 1(c) of **Schedule 6**, the Minister must hold the full amount so paid to the Minister as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the Banking Act, 1959 in the name of the Minister and with beneficial ownership vesting at all times in the Minister (**Cash Deposit Account**). The Cash Deposit will operate to secure the same obligations under this Deed that the relevant Bank Guarantee or Cash Bond secured.
- (b) As beneficial owner of the Cash Deposit, the Minister may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Minister for any liability, loss, cost, charge or

expense incurred by the Minister because of failure by the Developer to comply with those of the Developer's obligations under this Deed that the relevant Bank Guarantee or Cash Bond secured.

- (c) All costs, charges, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Minister withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Minister under this Deed in connection with the obligations under this Deed secured by the relevant Bank Guarantee or Cash Bond and the Developer has satisfied all of its obligations under this Deed which were secured by the relevant Bank Guarantee or Cash Bond, the Minister must promptly pay the balance of the Cash Deposit Account, less all costs, charges, duties and taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Minister to release the Cash Deposit until the Minister is reasonably satisfied that no moneys are, or may become, payable to the Minister under this Deed in relation to obligations secured by the relevant Bank Guarantee or Cash Bond.

4 **Release of Cash Deposit**

The Minister must promptly release the Cash Deposit to the Developer if the Developer provides the Minister with a replacement Bank Guarantee complying with the requirements of paragraph 1 of this **Schedule 8**.

Executed and delivered as a Deed

Executed as a deed by the **Minister for Planning** in the presence of:

Witness Signature

Minister for Planning Signature

Print Name

Minister for Planning

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by affixing the common seal of **Lend Lease (Communities) Australia Limited** in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name