

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

Central Pitt Town Pty Ltd (ACN 609 524 807) in its capacity as trustee of the
Central Pitt Town Unit Trust

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This deed is dated

Parties:

Minister

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

Developer

Central Pitt Town Pty Ltd (ACN 609 524 807) in its capacity as trustee of the **Central Pitt Town Unit Trust** of Level 12, 48 Hunter Street, Sydney NSW 2000.

Introduction:

- A** Central Pitt Town Pty Ltd has executed a contract for the sale of land for Lot 19 Sec 3 DP979242.
- B** Central Pitt Town Pty Ltd has executed a Put and Call Option Deed with the landowners for Lot 202 in DP1001518.
- C** Central Pitt Town Pty Ltd has executed a contract for the sale of land for Lot 1 in DP1109656
- D** The Developer proposes to carry out the Development on the Land.
- E** The Developer has made a Development Application to the Consent Authority in respect of the Land.
- F** Clause 6.8 of the Hawkesbury Local Environmental Plan 2012 provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.8 of the LEP.
- G** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

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.

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

Base CPI means the CPI number for the quarter ending 31 March 2015.

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



CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the year in which the relevant adjustment is made.

Consent Authority has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer pursuant to clause 4.

Development means staged subdivision of the land from 3 lots into 29 residential lots plus roads, landscaping and required infrastructure in accordance with Development Application 0511/16.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with clause 4.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

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 Schedule 3.

LEP means Hawkesbury Local Environmental Plan 2012.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and includes the Secretary and the Secretary's nominee.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the subdivision of the Land.

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

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

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 6.8 of the LEP.

Secretary means the Secretary of the Department of Planning and Environment.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **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** and **annexures** 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 commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 94, 94A and 94EF of the Act

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

4. Development Contribution

4.1 Developer to provide Development Contribution

- (a) The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution being an amount of \$304,500 on the commencement of this deed, subject to clause 4.1(c).
- (b) The Minister and the Developer acknowledge and agree that the amount of \$304,500 is the Development Contribution for the purposes of this deed and has been calculated on the basis of \$10,500 in respect of 29 lots as comprised in the Development.
- (c) The Development Amount is to be adjusted by multiplying the Development Contribution amount payable by an amount equal to the Current CPI divided by the Base CPI.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

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

5. Dispute Resolution

5.1 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.

5.2 Attempt to resolve

On receipt of notice under clause 5.1, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

5.3 Referral to the Secretary

Should the matter not be resolved under clause 5.2, the matter shall be referred to the Secretary whose determination of the disagreement shall be final and binding on the parties.

6. GST

6.1 Definitions

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

6.2 Intention of the parties

The parties intend that:

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

6.3 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 must 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.

6.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. 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 6.

6.5 Additional Amounts for GST

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

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

6.6 Non monetary consideration

Clause 6.5 applies to non-monetary consideration.

6.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 6.5 the Developer must assume the Minister is not entitled to any input tax credit.

6.8 No merger

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

7. Capacity

7.1 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.

7.2 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.

7.3 Trustee Developer

- (a) Central Pitt Town Pty Ltd (**Trustee**) enters into this deed in its capacity as the trustee for the Central Pitt Town Unit Trust (**Trust**) constituted by a trust deed (**Trust Deed**), and in no other capacity.
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (v) it is not aware of any reason why the assets of the Trust would be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.
- (c) If the Trustee is replaced as the trustee of the Trust in accordance with the Trust Deed, then:
 - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;

- (ii) the Minister and the Trustee (as outgoing trustee) must release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the Trustee as the outgoing trustee must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause and the costs and expenses of registering any new deed on the title to the Land.
- (d) Subject to sub-clause (f) of this clause 11, liability arising under or in connection with this deed is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (e) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust.
- (f) Notwithstanding any other provision of this deed, sub-clauses (d) and (e) of this clause 11 do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (g) Nothing in sub-clause (f) will make the Trustee liable to any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.
- (h) The Trustee is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in sub-clauses (d) to (h) of this clause 11.

8. General Provisions

8.1 No fetter

Nothing in this deed is to 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.

8.2 Explanatory note

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

8.3 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 costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 8.3(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

8.4 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; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent; or

- (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
- (iv) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 93F of 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(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See clause 4.
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 5.
Enforcement of this deed – (section 93F(3)(g))	Contributions are to be delivered on execution. The parties have agreed there is no need for further enforcement provisions.

Requirement under the Act	This deed
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 8.1

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Developer The Director, Central Pitt Town Pty Ltd

Contact: Mr Keith Johnson, Director

Address: Level 12, 48 Hunter Street, Sydney NSW 2000

Facsimile No: (02) 6023 8800

Email: bryang@johnsonpropertygroup.com.au

Schedule 3**Land (clause 1.1)****1. Lots proposed for development**

Lot	Deposited Plan	Folio Identifier
Lot 19, section 3	979242	19/979242
Lot 1	1109656	1/1109656
Lot 202	1001518	202/1001518

Execution page

Executed as a deed

Signed , sealed and delivered for and on
behalf of the **Minister for Planning ABN 38
755 709 681**, in the presence of:

.....
Signature of witness


.....
Signature of the Minister for Planning or
delegate

.....
Name of witness in full


.....
Name of Minister for Planning or delegate

.....
Address of witness

Executed by Central Pitt Town Pty Limited
(ACN 609 524 807) in its capacity as trustee of
the Central Pitt Town Unit Trust in
accordance with section 127 of the
Corporations Act 2001:


.....
Signature of Director

.....
Signature of Director/Secretary


.....
Name of Director in full

.....
Name of Director/Secretary in full

2 December 2016

The Secretary
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2000

Attention: John Borg

Re: Planning Agreement – Central Precinct, Pitt Town

Dear John,

As requested, please find attached two (2) executed versions of the Pitt Town Planning Agreement for our Central Precinct interests ready for exhibition by 16 December 2016.

Feel free to contact me on 0408 991 888 should you wish to discuss.

Yours sincerely
Johnson Property Group



Bryan Garland
Planning Director

1300 888 888
02 8023 8800

Level 12, 48 Hunter Street
Sydney NSW 2000

PO Box A1308
Sydney South NSW 1235

Deed of Amendment and Release

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

Johnson Property Group Pty Limited (ACN 102 465 814)

Bona Vista Properties Pty Limited (ACN 095 392 126)

Fernadell Properties Pty Limited (ACN 111 748 951)

Vermont Quays Pty Limited (ACN 098 340 884)

A handwritten signature in black ink, appearing to be 'J. Johnson', is located at the bottom right of the page.

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This deed is dated

Parties:

Minister

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

Developer

Johnson Property Group Pty Limited (ACN 102 465 814) of Level 12 44-48 Hunter Street, Sydney NSW 2000

Bona Vista

Bona Vista Properties Pty Ltd (ACN 095 392 126) of Level 12 44-48 Hunter Street, Sydney NSW 2000

Fernadell

Fernadell Properties Pty Ltd (ACN 111 748 951) of Level 12 44-48 Hunter Street, Sydney 2000

Vermont Quays

Vermont Quays Pty Ltd (ACN 098 340 884) of Level 12 44-48 Hunter Street, Sydney NSW 2000

Introduction:

- A** The Minister and the Developer are parties to a Principal Planning Agreement in relation to the Development dated 26th July 2006 (the **Principal Planning Agreement** a copy of which is attached as Annexure A) under which the Developer agreed to make 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.
- C** Upon the receipt by the Minister of the final instalment of the DEC Contribution and the Works Contribution as set out in this Deed the parties are released from all obligations contained in this Deed and the obligations contained in the Principal Planning Agreement.

It is agreed:

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 4 of the Principal Planning Agreement forms part of this Deed as if set out at length in this Deed.
- (c) In this Deed unless the context clearly indicates otherwise:

Base CPI means the CPI number for the quarter ending 31 March 2015.



CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this Deed.

CPI Adjustment Date means 1 July 2016 and each anniversary of 1 July 2016.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the year in which the relevant adjustment is made.

2. Amendments

As at the date of this Deed the Principal Planning Agreement is amended as follows:

- (a) In Schedule 2 all of the Lot references are deleted and replaced with "Lot 5010 Deposited Plan 1208144".
- (d) In clause 6(a) the words "Draft Plan of" in the second line is deleted.
- (e) Clauses 5.3(b), 5.3(c) and 5.4(b) are deleted.
- (f) The following clause is inserted as clause 7.3:

"7.3 Application of section 94EF of the Act

Section 94EF of the Act is excluded from applying to the Development".

- (g) In Schedule 3 the following definitions are deleted:

"Building Works"

"Intersection Works"

"Shoulder Works"

"WAD"

- (h) In Schedule 3 the following definitions are amended as follows:

"LEP means the Hawkesbury Local Environmental Plan 2012"

- (i) Clause 1.1 of Schedule 4 is deleted and replaced with the following:

"1.1 Monetary Contributions

All monetary contributions payable under this planning agreement must be paid by bank cheque or deposited by electronic funds transfer into an account specified by the Minister."

- (j) Clause 1 of Schedule 5 is deleted.
- (k) Clause 3 of Schedule 5 is deleted and replaced with the following:

"3 Road Works

- (a) The Developer must pay to the Minister a monetary contribution towards relevant designated State Public Infrastructure (in accordance with clause 5.13A of the LEP), in the amount of \$5,806,500.00 on the execution of this Deed.

- (b) This contribution of \$5,806,500.00 towards road works is calculated on the basis of \$10,500.00 per residential lot and a yield of 553 such lots within the Bona Vista, Fernadell, and Cleary Precincts. This includes 546 lots released to date and an estimated 7 future lots from Cleary Stage 6b.

- (l) Clause 4 of Schedule 5 is deleted.
- (m) The following parts of clause 5 of Schedule 5 are deleted:
 - (i) Clause 5(a)(ii) of Schedule 5;
 - (ii) The words "and the School Building Contribution" in clause 5(b) of Schedule 5;
 - (iii) The words "and the amount of the School Building Contribution" in clause 5(c) of Schedule 5.

3. Transfer of school site

The Minister acknowledges the transfer of the School Site by the Developer in accordance with clause 5.3(a) and Schedule 5 of the Principal Planning Agreement.

4. Payment of DEC contribution and School Building Contribution

- (a) The Developer agrees to pay the Minister upon the execution of this Deed the sum of \$92,923.73 as the final instalment of the DEC Contribution in accordance with clause 5.4 and Schedule 5 of the Principal Planning Agreement.
- (b) The Minister agrees to release the Developer from the obligation to pay a School Building Contribution or carry out any Building Works as described in clause 5.4(b), Schedule 4 and Schedule 5 of the Principal Planning Agreement.

5. Works contribution

- (a) The Minister agrees to release the Developer from the obligation to deliver the Works described in clause 5.3(b), 5.3(c), Schedule 4, and Schedule 5 of the Principal Planning Agreement. .
- (b) The Developer and the Minister agree to the amendment of the Principal Planning Agreement requiring the payment of a single monetary contribution of \$5,806,500.00 that is payable upon the execution of this Deed

This contribution of \$5,806,500.00 is calculated on the basis of \$10,500.00 per residential lot and a yield of 553 such lots within the Bona Vista, Fernadell, and Cleary Precincts. This includes 546 lots released to date and an estimated 7 future lots from Cleary Stage 6b.

6. CPI Indexation

On the CPI Adjustment Date, each of the contributions referred to in paragraphs 6 and 7 above is to be adjusted by multiplying the contribution payable (as previously adjusted in accordance with this clause, where relevant) by an amount equal to the Current CPI divided by the Base CPI.

7. 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**).

8. Release

The Minister and the Developer agree that upon the execution of this Deed, and the payment of the contributions in accordance with clauses 4 and 5 of this Deed, the Minister:

- (a) releases the Developer from all obligations arising from the Principal Planning Agreement; and
- (b) the Minister agrees to do all things reasonably necessary to enable the extinguishment or cancellation of the Principal Planning Agreement from the Register, where applicable; and
- (c) the Minister agrees to return any Bank Guarantee provided by the Developer under the Principal Planning Agreement within a reasonable period.

9. 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 costs and expenses associated with the giving of public notice of this Deed and the Explanatory Note in accordance with the Regulation.
- (c) Subject to clause 24 of the Principal Planning Agreement, the Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this Deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques in respect of the Minister's costs pursuant to clauses 91(a) and 9(b):
 - i. where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this Deed; or
 - ii. where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

10. 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.

11. Counterparts

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

Execution page

Signed , sealed and delivered for and on behalf of
the **Minister for Planning (ABN 38 755 709 681)**,
in the presence of:

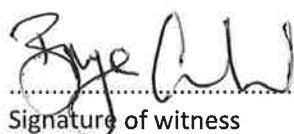
.....
Signature of witness

.....
Signature of the Minister for Planning or
Delegate


.....
Name of witness (block letters)

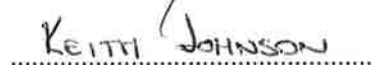
.....
Name of the Minister for Planning or delegate
(block letters)

Executed by Johnson Property Group Pty Limited
(ACN 102 465 814) in accordance with section 127
of the Corporations Act 2001 (Cwlth):

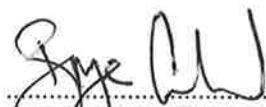

.....
Signature of witness

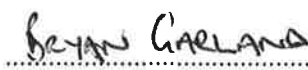

.....
Signature of Director/Secretary


.....
Name of witness (block letters)

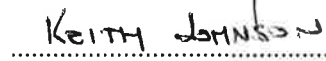

.....
Name of Director/~~Secretary~~ (block letters)

**Executed by Bona Vista Properties Pty Limited
(ACN 095 392 126)** in accordance with section 127
of the Corporations Act 2001 (Cwlth):



.....
Signature of witness



.....
Name of witness (block letters)



.....
Signature of Director/Secretary

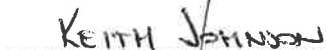

.....
Name of Director/~~Secretary~~ (block letters)

**Executed by Fernadell Properties Pty Limited
(ACN 111 748 951)** in accordance with section 127
of the Corporations Act 2001 (Cwlth):

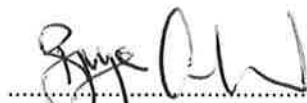

.....
Signature of witness


.....
Name of witness (block letters)


.....
Signature of Director/Secretary

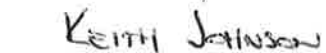

.....
Name of Director/~~Secretary~~ (block letters)

**Executed by Vermont Quays Pty Limited (ACN
098 340 884)** in accordance with section 127 of
the Corporations Act 2001 (Cwlth):


.....
Signature of witness


.....
Name of witness (block letters)


.....
Signature of Director/Secretary


.....
Name of Director/~~Secretary~~ (block letters)

Annexure A

Principal Planning Agreement

A handwritten signature in black ink, appearing to be 'KS' with a long horizontal stroke extending to the right.

MALLESONS STEPHEN JAQUES

WARNING TO PURCHASERS:

Before completing the purchase of any land to which this planning agreement relates, be sure that you understand the rights and obligations of the Developer under the *Environmental Planning & Assessment Act 1979*, including section 93H(3).

Section 93H(3) provides that: "A planning agreement that has been registered by the Registrar-General under [section 93H] is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement."

Planning Agreement

Dated

The Minister for Planning ("Minister")
Johnson Property Group Pty Limited ABN 58 102 465 814 ("Developer")
Bona Vista Properties Pty Ltd ABN 60 095 392 126 ("Bona Vista")
Fernadell Properties Pty Ltd ABN 79 111 748 951 ("Fernadell")
Vermont Quays Pty Ltd ABN 44 098 340 884 ("Vermont Quays")

Mallesons Stephen Jaques

Level 60
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.mallesons.com

Planning Agreement

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Planning Agreement

Details

Interpretation – definitions are at the end of the General terms

Parties	Minister, Developer, Bona Vista, Fernadell and Vermont Quays	
Minister	Name	The Minister for Planning
	ABN	38 755 709 681
	Address	Level 34, Governor Macquarie Tower, 1 Farrer Place Sydney NSW 2000
	Fax	9228 4711
Developer	Name	Johnson Property Group Pty Limited
	ABN	58 102 465 814
	Address	Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Bona Vista	Name	Bona Vista Properties Pty Ltd
	ABN	60 095 392 126
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Fernadell	Name	Fernadell Properties Pty Ltd
	ABN	79 111 748 951
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699

	Attention	Mr Keith Johnson
Vermont Quays	Name	Vermont Quays Pty Ltd
	ABN	44 098 340 884
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Governing law	New South Wales	
Date of planning agreement	See Signing page	

Planning Agreement

Operative Provisions

1 Planning Agreement under the Act

The parties agree that this deed is a planning agreement within the meaning of section 93F of the Act.

2 Application of this planning agreement

This planning agreement applies to:

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

3 Operation of this planning agreement

Clauses 8 and 14 of this planning agreement operate immediately. The parties each agree that the other terms of this planning agreement will operate and be effective from the date the LEP is gazetted after it has been made by the Minister pursuant to section 70 of the Act.

4 Definitions and Interpretation

4.1 Definitions

Terms used in this planning agreement which are defined in Schedule 3 ("Interpretation") shall have the same meaning as ascribed to them by that Schedule and such meanings apply unless the contrary intention appears.

4.2 General

In this planning agreement unless the contrary intention appears:

- (a) a reference to this planning agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;

- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this planning agreement;
- (n) any capitalised term used, but not defined in this planning agreement, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules and Annexures form part of this planning agreement.

5 Contributions

5.1 Development Contributions to be made under this planning agreement

The Developer will for the purpose of providing amenities or services to the public at its risk and expense carry out and deliver the Contributions in accordance with the Development Procedures and otherwise in accordance with this planning agreement.

5.2 Application of the Development Contributions

The Developer will carry out and deliver the Contributions at the time or times and in the manner set out in the Contributions and requirements Schedule and in accordance with the Development Procedures.

5.3 Indicative values - in-kind contributions

The parties have ascribed the following notional values to the Contributions:

- (a) School Site: \$2,000,000;
- (b) Intersection Works: \$1,700,000; and
- (c) the Shoulder Works: \$11,200,000.

The parties acknowledge that these are notional values and are indicative only and are not cost caps. Where works are required as part of the Contributions, the Developer must deliver these works, irrespective of the relevant cost.

5.4 Values - monetary contributions

The values of the DEC Contribution and School Building Contribution are:

- (a) DEC Contribution: \$630,000 (subject to CPI adjustment); and
- (b) School Building Contribution: \$976,000 (subject to CPI adjustment).

6 Adequate provision of Contributions

- (a) It is anticipated that the LEP will provide that the Consent Authority must not consent to any Draft Plan of Subdivision that will create a residential lot with an area of less than that otherwise permitted by the LEP unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made for the Contributions.
- (b) The Developer must (at its cost):
 - (i) use reasonable endeavours to liaise with, and must provide sufficient information to the Minister (or must provide to the Minister such information as the Minister requests (acting reasonably)) to allow the Minister to be satisfied that the terms of this planning agreement have been complied with (which are appropriate for performance at that time) and to allow the Director-General to give the certification referred to in paragraph (a); and
 - (ii) without limiting sub-paragraph (i), the material to be provided by the Developer must include a certification by the Developer addressed to the Minister that the relevant terms of this planning agreement have been complied with, to enable the Director-General to provide the certificate under paragraph (a).

7 Application of s94 and s94A of the Act to the Development

7.1 Application of sections 94 and 94A of the Act

Sections 94 and 94A of the Act apply to the Development.

7.2 Benefits under this planning agreement

Benefits under this planning agreement are excluded from being taken into consideration under section 94 of the Act in its application to development of the Land.

8 Registration of this planning agreement

8.1 Developer

The Developer agrees to procure that this planning agreement is registered on the relevant folios of the Register pertaining to the Land as soon as practicable (and within 10 Business Days after execution of this planning agreement) in accordance with this clause 8.

8.2 Bona Vista Properties Pty Ltd

Bona Vista must do all things necessary to procure the registration of this planning agreement on the folios of the Register for Lot 14 in Deposited Plan 865977 and Lot 132 in Deposited Plan 1025876 within 10 Business Days after execution of this planning agreement, including obtaining the consent of any mortgagee or other person with an interest in those lots to such registration.

8.3 Fernadell Properties Pty Ltd

Fernadell Properties must do all things necessary to procure the registration of this planning agreement on the folio of the Register for Lot 1 in Deposited Plan 133026 within 10 Business Days after execution of this planning agreement, including obtaining the consent of any mortgagee or other person with an interest in those lots to such registration.

8.4 Vermont Quays Pty Ltd

Vermont Quays agrees that, following the transfer to it of title to each of Lot 16 in Deposited Plan 1021340, Lot 17 in Deposited Plan 1021340 and Lot 2 in Deposited Plan 76375, it will do all things necessary to procure the registration of this planning agreement on the folios of the Register relating to the relevant Lot within 10 Business Days after the relevant transfer, including obtaining the consent of any mortgagee or other person with an interest in the relevant lot to such registration.

8.5 The LEP

The Minister reserves its right to delay gazettal of the LEP, amongst other considerations, until after:

- (a) this planning agreement is registered on the folios of the Register for Lot 14 in Deposited Plan 865977, Lot 132 in Deposited Plan 1025876 and Lot 1 in Deposited Plan 133026; and
- (b) the Developer has complied with clause 14 of this planning agreement.

8.6 Effect of registration

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all the obligations in this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of the land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

8.7 Release and discharge of this planning agreement

The Minister agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a partial release and discharge of this planning agreement:

- (a) upon full satisfaction of the Developer's obligations under this planning agreement; or
- (b) to effect a transfer of subdivided residential allotments created from the Land where the Developer has, at the time of the request:
 - (i) complied with the relevant terms of this planning agreement; and
 - (ii) provided the Minister with unconditional written confirmation from the RTA (dated no earlier than 10 Business Days prior to the proposed transfer) that, as at the date of the confirmation, the Developer has complied with the relevant terms of the WAD.

9 Review of this planning agreement

This planning agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

10 Dispute Resolution

If a dispute between any of the parties arises in connection with this planning agreement or its subject matter, then the process and procedures set out in Schedule 6 ("Dispute Resolution") will apply.

11 Notices

11.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

11.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

11.3 When effective

They take effect from the time they are received unless a later time is specified.

11.4 Receipt - post

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

11.5 Receipt - fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

12 Approvals and Consent

The parties acknowledge that:

- (a) except as otherwise set out in this planning agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;
- (b) a party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions; and

- (c) this planning agreement does not impose any obligation on a Consent Authority to:
 - (i) grant development consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

13 Assignment and dealings

13.1 Developer dealing with interests

The Developer may not sell, transfer, assign or novate or similarly deal with ("**Dealing**") its right, title or interest in the Land (if any) or its rights or obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without the Minister's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) gives the Minister no less than 10 Business Days notice in writing of the proposed Dealing; and
- (b) procures that the transferee, assignee or novatee executes and delivers to the Minister prior to any such Dealing taking effect, a deed in favour of the Minister in form and substance acceptable to the Minister (acting reasonably) whereby:
 - (i) the transferee, assignee or novatee becomes contractually bound with the Minister to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this deed; and
 - (ii) the Developer is released from its Future Obligations under this deed.

13.2 Dealings by the Minister

- (a) If another Authority takes over the functions of the Minister under this planning agreement, or if the Minister determines that it is desirable for this to happen, then the Minister may assign or novate or otherwise deal with its rights and obligations under this planning agreement to give effect to this change, and each of the Developer, Bona Vista Properties Pty Ltd, Fernadell Properties Pty Ltd and Vermont Quays Pty Ltd agrees to enter into such documentation, at the cost of the Minister, as may be necessary to confer on the new Authority the rights and obligations of the Minister under this planning agreement.
- (b) Normally any such action would take place by a statutory novation or delegation. However, this clause applies to the extent that it is necessary.

- (c) Without restricting clause 19 ("No fetter"), the Minister must not otherwise deal with its rights and obligations under this planning agreement.

14 Costs

The Developer agrees to pay or reimburse the Costs of the Minister in connection with:

- (a) the negotiation, preparation and execution of this planning agreement; and
- (b) advertising and exhibiting this planning agreement in accordance with the Act,

within 3 Business Days after receipt of a tax invoice from the Minister.

15 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

16 Further Acts

Each party must promptly execute all documents and do all things that another party from time to time reasonably requests to effect, perfect or complete this planning agreement and all transactions incidental to it.

17 Governing Law and Jurisdiction

17.1 Governing law

This planning agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

17.2 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

18 Joint and individual liability and benefits

Except as otherwise set out in this planning agreement, any agreement, covenant, representation or warranty under this planning agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

19 No fetter

19.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- (a) the sovereignty of the Parliament of the State to make any Law;
- (b) the power of the Executive Government of the State to make any statutory rule; or
- (c) the exercise of any statutory power or discretion of any minister of the State or any Authority.

(all referred to in this planning agreement as a "**Discretion**").

19.2 No fetter

No provision of this planning agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this planning agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 19.1 ("**Discretion**") cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

20 Representations and warranties

The parties represent and warrant that they have power to enter into this planning agreement and comply with their obligations under the planning agreement and that entry into this planning agreement will not result in the breach of any law.

21 Severability

- (a) The parties acknowledge that under and by virtue of Section 93F(4) of the Act, any provision of this planning agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.

- (b) The parties acknowledge that under and by virtue of Section 93F(10) of the Act, any provision of this planning agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
 - (i) any provision of the Act; or
 - (ii) the provisions of an environmental planning instrument; or
 - (iii) a development consent applying to the relevant land.
- (c) The parties agree that to the extent permitted by Law, this planning agreement prevails to the extent it is inconsistent with any Law.
- (d) If a clause or part of a clause of this planning agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (e) If any clause or part of a clause is illegal, enforceable or invalid, that clause or part is to be treated as removed from this planning agreement, but the rest of this planning agreement is not affected.

22 Modification

No modification of this planning agreement will be of any force or effect unless it is in writing and signed by the parties.

23 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this planning agreement, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.
- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

24 GST

24.1 Consideration does not include GST

The consideration expressed in this planning agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.

24.2 GST Payable

Subject to subclause 24.3, if anything supplied under or in connection with this planning agreement constitutes a "taxable supply" made for GST exclusive consideration, the supplier may, subject to first issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**).

The GST Amount shall be:

- (a) equal to the "value" of the supply calculated in accordance with the GST Act multiplied by the prevailing GST rate; and
- (b) subject to subclauses 24.3 and 24.4, payable within fourteen days of written demand by the supplier to the recipient.

24.3 Non-Monetary Consideration

The parties acknowledge that some of the supplies made under or in connection with this planning agreement will be made for consideration which is or includes non-monetary consideration.

In relation to those supplies (which are referred to in this clause as **Consideration in Kind Supplies**) it is agreed as follows:

- (a) if the consideration for a Consideration in Kind Supply is wholly non-monetary:
 - (i) the non-monetary consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under subclause 24.2;
 - (ii) the parties agree that the GST inclusive market value of each Consideration in Kind Supply and the consideration for that supply (being, in turn, a Consideration in Kind Supply) are equal;
 - (iii) the parties will each include in any Tax Invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the Tax Invoice relates being the "price" for that supply;
 - (iv) prior to the issue of the Tax Invoices referred to in subparagraph (iv) of this subclause the parties shall use their best endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, shall accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties and shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia;

- (b) if the consideration is, in part, monetary and, in part, non-monetary then:
 - (i) part of the supply shall be treated as made for the non-monetary consideration and shall for the purposes of this clause be treated as a "Consideration in Kind Supply" to that extent and shall be subject to the operation of paragraph (a) of this subclause;
 - (ii) the remaining part of the supply shall be treated as made for monetary consideration which is GST exclusive and subject to the operation of subclause 24.2.

24.4 Market Value

If the Commissioner of Taxation or a Court determines for any reason whatsoever that any of the Consideration in Kind Supplies referred to in subclause 24.3 which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, then:

- (a) if the Consideration in Kind Supply made by a party is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the second party, then the first party will pay to the second party an additional amount equal to the difference multiplied by the prevailing GST rate within 10 business days of the date the relevant determination is made;
- (b) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determinations by the Commissioner or Court; and
- (c) any amount payable under this subclause 24.4 is GST inclusive and will not be increased on account of GST under subclause 24.2.

24.5 Adjustment Event

If in relation to a taxable supply under or in connection with this planning agreement an "adjustment event" occurs that gives rise to an "adjustment", then the GST Amount will be adjusted accordingly and, where clause 24.2 applies to the taxable supply and a payment is necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 business days of the issue of an "adjustment note" by the supplier who must issue an "adjustment note" immediately upon becoming aware of the "adjustment event" concerned.

24.6 Reimbursement

Notwithstanding any other provision of this planning agreement, any amount payable under or in connection with this planning agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this planning agreement, will be reduced by an amount equal to any

input tax credit to which that party is entitled in respect of that cost, expense or amount.

24.7 Defined GST Terms

Terms in this clause 24 in quotation marks shall have the meaning ascribed to them in the GST Act.

25 Effect of Scheduled terms and conditions

The parties agree to comply with the terms and conditions contained in the Schedules as if those rights and obligations were expressly set out in full in the operative parts of this planning agreement.

26 New Laws

If the Developer is obliged by a New Law to do something or pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

27 Confidentiality

27.1 This deed not confidential

The parties agree that the terms of this planning agreement are not confidential and this planning agreement may be treated as a public document and exhibited or reported without restriction by any party.

27.2 Other confidential information

The parties agree, and must procure that any mediator or expert appointed under Schedule 6 ("Dispute Resolution") agrees as a condition of their appointment:

- (a) Confidential Information has been supplied to some or all of the parties in the negotiations leading up to the making of this planning agreement; and
- (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this planning agreement; and
- (c) subject to paragraphs (d) and (e) below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- (d) a party may disclose Confidential Information in the following circumstance:

- (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause 27 ("Confidentiality"); or
- (ii) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
- (e) for a purpose necessary in connection with an expert determination or mediation.

27.3 Proceedings

The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

EXECUTED as a deed

Planning Agreement

Schedule 1 - s93F Requirements

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application - (Section 93F(1)) The Developer has <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a development application; (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) Yes
The Land affected by this planning agreement - (Section 93F(3)(a))	The Land described in Schedule 2.
The environmental planning instrument or the development affected by this planning agreement - (Section 93F(3)(b)) Describe: <ul style="list-style-type: none"> (a) the proposed change to the environmental planning instrument to which the agreement applies; OR	<ul style="list-style-type: none"> (a) Draft Hawkesbury Local Environmental Plan 1989 (Amendment No. 145) OR
<ul style="list-style-type: none"> (b) the development to which the agreement applies. 	

SCHEDULE 1 - s93F REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))	See Schedules 4 and 5 to this planning agreement.
Applicability of Sections 94 or 94A of the Act - (Section 93F(3)(d)) Section 94 of the Act (a) applies wholly to the development; (b) does not apply to the development; (c) parts (insert sections) apply to the development.	See clause 7 of this planning agreement.
Section 94A of the Act (a) applies wholly to the development; (b) does not apply to the development; (c) parts (insert sections) apply to the development. Application of s93F(5) of the Act	See clause 7 of this planning agreement.
Consideration of benefits if under this planning agreement if Section 94 applies - (Section 93F(3)(e)) Are the benefits under this planning agreement to be taken into consideration if Section 94 of the Act applies?	See clause 7 of this planning agreement.
Dispute resolution - (Section 93F(3)(f)) This planning agreement provides a mechanism for the resolution of disputes under the agreement.	Clause 10 ("Dispute resolution") and Schedule 6 ("Dispute resolution") provide a mechanism for the resolution of disputes under this planning agreement.

SCHEDULE 1 - s93F REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT

THIS PLANNING AGREEMENT

Security - (Section 93F(3)(g))

The Developer has provided suitable security for its obligations under this planning agreement such as a security bond or guarantee.

See Schedules 4 and 5 to this planning agreement which provide for delivery of Contributions secured by registration and controls on the release of the Land for the Development

No obligation - (Section 93F(9))

The parties acknowledgement that this planning agreement does not impose an obligation on a planning authority to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.

See clause 12 of this planning agreement.

Planning Agreement

Schedule 2 - Land (clause 2)

Land means the land comprising the following folio identifiers:

Lot 14 in Deposited Plan 865977

Lot 132 in Deposited Plan 1025876

Lot 1 in Deposited Plan 133026

Lot 16 in Deposited Plan 1021340

Lot 17 in Deposited Plan 1021340

Lot 2 in Deposited Plan 76375

Planning Agreement

Schedule 3 - Interpretation (clause 4)

1 Definitions and Interpretations

Capitalised terms used in this planning agreement which are defined in this Schedule 3 ("Interpretation") shall have the meaning ascribed to them as set out below.

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

Application means an application for any Approval.

Authorised Officer means in the case of any party, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this planning agreement.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier accredited under section 109T of the Act.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of the Minister and which does not have an expiry date and is otherwise in form and substance acceptable to the Minister, to pay on demand to the Minister the Guarantee Amount .

Business Day means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

Building Works has the meaning given to it in clause 6 of Schedule 5 to this planning agreement.

Certificate means a certificate issued by the Director-General to the Consent Authority as contemplated in clause 55(3) of the LEP and clause 6(a) of this planning agreement.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or

- (d) is information which may reasonably be considered to be of a confidential nature.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Contributions means the obligations imposed on the Developer (including the benefits to be provided by the Developer) under, and by virtue of, Schedule 5 ("Contributions and requirements Schedule").

Contributions and requirements Schedule means the terms and conditions imposed on the relevant parties under Schedule 5 ("Contributions and requirements Schedule").

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

CPI means the Consumer Price Index All Groups Sydney, as published by the Australian Bureau of Statistics.

DEC Contribution has the meaning given to it in clause 5 of Schedule 5 to this planning agreement.

Department means the Department of Planning.

Details means the section of this planning agreement entitled "Details".

Developer means the party described as such in the Details.

Development means the development of the Land proposed to be carried out or procured by the Developer in accordance with the LEP.

Development Procedure means the terms and conditions imposed on the relevant parties under Schedule 4 ("Development Procedure").

Director-General means the Director-General from time to time of the Department.

Draft Plan of Subdivision means a draft plan of subdivision to create one or more allotments comprising part of the Land.

Future Obligations means any obligations under or by virtue of this deed which at the time of any proposed assignment or novation contemplated by clause 13.1 ("Developer dealing with interests") are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect.

Guarantee Amount means \$216,360.

GST has the meaning it has in the GST Act.

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

Intersection Works means the works to upgrade 5 intersections on Pitt Town Road in locations and to the standards and requirements set out in the Letter (agreed to by the Developer in the Second Letter) and in the WAD.

Land means the whole of the land comprised in the titles described in Schedule 2 ("Land").

Law means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

Letter means the letter from the RTA to Mr Keith Johnson dated 5 April 2006, a copy of which is at Annexure 2 to this planning agreement.

LEP means the Local Environmental Plan substantially in accordance with the Draft Hawkesbury Local Environmental Plan 1989 (Amendment No. 145).

Minister means the Minister for the time being administering the Act.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

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

Register means the Torrens title register held by the New South Wales office of Land and Property Information.

Relevant Agency means:

- (a) in respect of the Intersection Works and the Shoulder Works, the RTA; and
- (b) in respect of the Building Works, the NSW Department of Education and Training.

School Site means the land having an area not less than 1.35 hectares shown as proposed lot 2 on the plan prepared by Rose Atkins, reference 3454 School 2 and dated 12 May 2006 attached at Annexure 1.

School Building Contribution has the meaning given to it in clause 5 of Schedule 5 to this planning agreement.

Second Letter means the letter from the Developer to the Director General of the RTA dated 5 April 2006, a copy of which is at Annexure 3 to this planning agreement.

Shoulder Works means works to upgrade road shoulders on Pitt Town Road in the locations and to the standards and requirements set out in the Letter (agreed to by the Developer in the Second Letter) and in the WAD.

State means the State of New South Wales.

State Government means the government of New South Wales.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them.

WAD means the Works Authorisation Deed to be agreed between the Developer and the RTA in relation to the Intersection Works and Shoulder Works.

Planning Agreement

Schedule 4 - Development Procedure (clause 5)

1 Developer

1.1 Developer

The Developer must:

- (a) carry out and deliver the:
 - (i) Intersection Works;
 - (ii) Shoulder Works; and
 - (iii) Building Works (if undertaken) (together, "**the Works**"),in consultation with and having regard to the requirements of the Relevant Agency (as appropriate); and
- (b) consult in good faith and act reasonably with the Relevant Agency in relation to the scope, design and delivery of the Works.

The Developer acknowledges and agrees that, whilst it may be obliged by or under this planning agreement to supply the Works for the benefit of, or in accordance with requirements stipulated by, a Relevant Agency, its obligation to do so is owed to, and enforceable by, the Minister in addition to any enforcement rights available to any other Relevant Agency.

Planning Agreement

Schedule 5 - Contributions and requirements Schedule (clause 5.2)

The Developer agrees to provide the Contributions and satisfy the relevant requirements at its cost and risk in the time and manner specified below.

1 Enter into WAD

The Developer must enter into the WAD and provide a copy of the executed WAD to the Minister and the Director-General prior to the issue of the Certificate.

2 School Site

2.1 Dedication

The Developer must dedicate the School Site in the Draft Plan of Subdivision creating the first residential allotments in the Development to the Minister or to such other Authority as may be nominated by the Minister ("**Nominated Authority**") and the Developer and Fernadell must take such steps as may be necessary to deliver title to the relevant land to the Minister or the Nominated Authority free of all encumbrances (other than encumbrances which have been consented to by the Minister) which may include providing the certificate of title and a transfer in registrable form.

2.2 Compulsory Acquisition

- (a) In the event that the School Site is not thus dedicated, Fernadell, in accordance with section 30 of the Land Acquisition (Just Terms Compensation) Act 1991, consents to the Minister (or such the Nominated Authority) compulsorily acquiring the School Site for the amount \$1 in full and final payment of compensation without having to go through the pre-acquisition procedure under that Act.
- (b) If the Minister or the Nominated Authority must pay compensation to any person other than Fernadell in accordance with the compulsory acquisition then the Developer must reimburse the amount of that compensation to the Minister upon request.

3 Intersection Works

The Developer must complete the Intersection Works in accordance with the terms of the WAD and to the satisfaction of the RTA.

4 Shoulder Works

The Developer must complete the Shoulder Works in accordance with the terms of the WAD and to the satisfaction of the RTA.

5 DEC and School Building Contributions

- (a) The Developer must pay to the Minister:
 - (i) a contribution towards the Department of Environment and Conservation (NSW) of \$630,000 increased in accordance with paragraph (c) ("**DEC Contribution**"); and
 - (ii) a contribution towards school buildings and associated works and infrastructure to be built on the Land of \$976,000 increased in accordance with paragraph (c) ("**School Building Contribution**").
- (b) The Developer must pay the DEC Contribution and the School Building Contribution either:
 - (i) prior to the issue of the first Certificate; or
 - (ii) if the Developer has delivered the Bank Guarantee to the Minister in accordance with clause 6 of this Schedule 5, then on or prior to the release of the first linen plans for the subdivision of the Land ("**Final Payment Date**").
- (c) The amount of the DEC Contribution and the amount of the School Building Contribution must each be increased to reflect any increase in the CPI since the LEP is gazetted, with the relevant amount being calculated as at the date of payment.

6 Bank Guarantee

6.1 Delivery to the Minister

Prior to the issue of the Certificate, the Developer must deliver the Bank Guarantee to the Minister.

6.2 New Authority

Where:

- (a) the Developer has provided the Bank Guarantee; or
- (b) another Authority takes over the functions of the Minister under this planning agreement ("**New Authority**"),

then:

- (c) the Developer must deliver a replacement Bank Guarantee to the New Authority; and

- (d) the Minister will return to the Developer the Bank Guarantee at the same time the Developer delivers the replacement Bank Guarantee to the New Authority;

6.3 Minister may call on Bank Guarantee

If:

- (a) the School Site is not transferred to the Minister or the Nominated Authority in accordance with clause 2 of Schedule 5; or
- (b) the Developer does not, on or prior to the Final Payment Date pay in full both the DEC Contribution and the School Building Contribution,

then:

- (c) the Developer is in breach of an essential obligation under this planning agreement; and
- (d) without limiting any other remedies available to the Minister, the Minister may call on the Bank Guarantee without notice to the Developer. If the Minister so calls on the Bank Guarantee, then no later than seven days after the Minister gives the Developer a notice asking for it, the Developer agrees to deliver to the Minister a replacement or additional Bank Guarantee so that the amount guaranteed is the Guarantee Amount.

6.4 Return of Bank Guarantee

Within one month after the Developer satisfies its obligation to:

- (a) deliver or procure the delivery of the School Site in accordance with clause 2;
- (b) pay the DEC Contribution; and
- (c) pay the School Building Contribution,

the Minister must, if the Minister has not called on the Bank Guarantee under this clause 6, return the Bank Guarantee (or any remaining balance of it) to the Developer.

Planning Agreement

Schedule 6 - Dispute Resolution (clause 10)

1 Dispute Resolution

1.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement ("**Claimant**"), it must give written notice to the other party ("**Respondent**") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("**Claim Notice**").

1.2 Response to Notice

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

1.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

1.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute ("**Dispute Notice**").

1.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) the Mediator appointed pursuant to this clause 1.5 of Schedule 6 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

1.6 Litigation

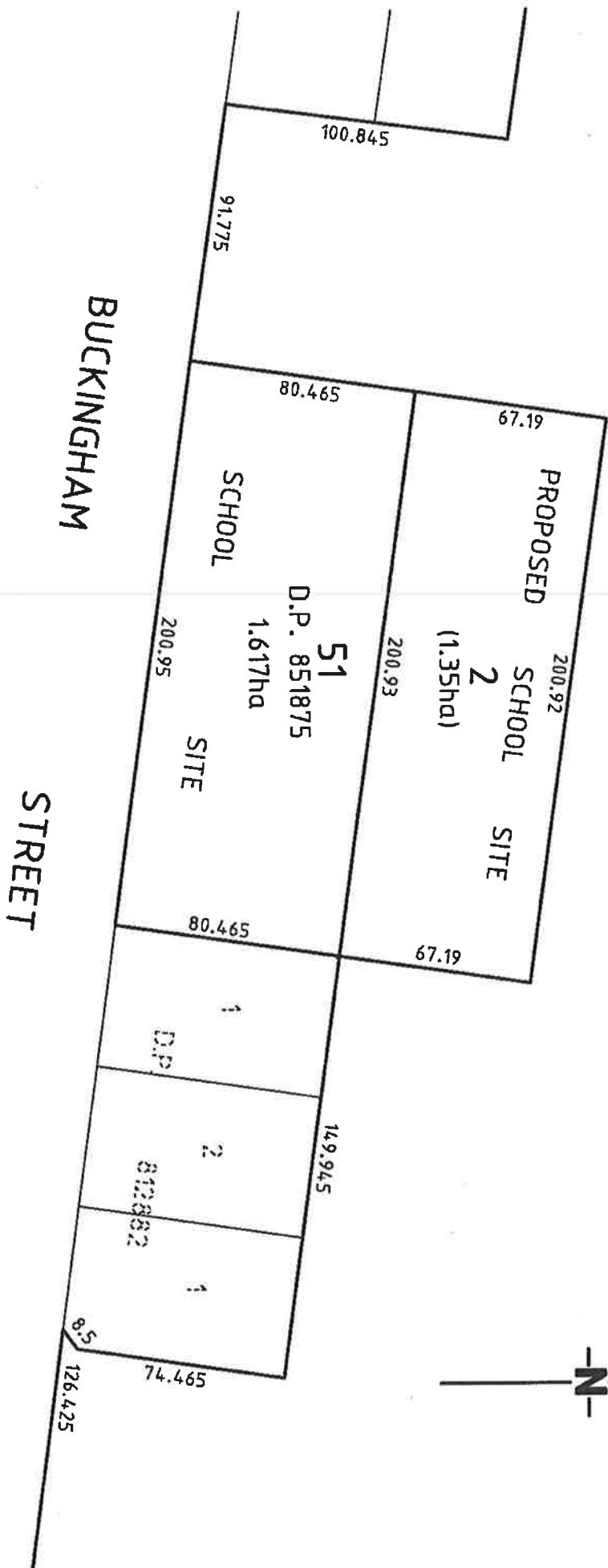
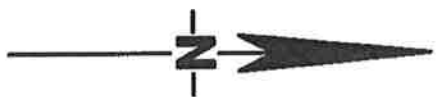
If the dispute is not finally resolved in accordance with clause 1 of Schedule 6, either party is at liberty to litigate the dispute.

1.7 Continue to perform obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

Planning Agreement

Annexure 1 - Plan showing School Site



ROSE ATKINS
consulting surveyors
142 SUNNYHOLT ROAD, BLACKTOWN
PO BOX 6743, BLACKTOWN 2148
PH: (02) 9883 0299 FAX: (02) 9871 7386
Email: rna@rosegatkins.com.au

FOR:

JOHNSON PROPERTY GROUP

**BUCKINGHAM STREET
PITF TOWN**

PROPOSED SCHOOL SITE

1:2000
0 20 40 60 80 100
Metres

DATE N/A.	DESIGN N/A.	CHECKED 12/05/06	REF: 3454 SCHOOL2
AZIMUTH N/A.	DRAWN RN	SHEET 1 OF 1 SHEETS	

Annexure 2 - Letter (clause 4 and Schedule 3)

5M1841

Mr Keith Johnson
Johnson Property Group
Suite 3205, Level 32, The Chifley Tower
2 Chifley Square
SYDNEY NSW 2000

Dear Mr Johnson

RE Upgrading of Pitt Town Road associated with the Pitt Town Development

I refer to the meeting held on Wednesday 28 March 2006 with officers of the Roads and Traffic Authority (RTA) and the Department of Planning (DoP) concerning the scope of works on Pitt Town Road included the draft Planning Agreement (PA). As you are aware, the PA was a requirement of the Minister for Planning, in his letter of 25 October 2005.

It is noted from the Minister for Planning's letter that the required developer contribution is \$34,000 per lot plus other works. RTA advice to the DoP on 27 May 2005 indicated that approximately \$31,100 per lot was to be allocated for arterial road improvements. Based on your landholding having a yield of 393 lots, the applicable contribution for arterial road improvements would be approximately \$12.2 M.

The RTA has been subsequently advised that discussions have occurred between you and the DoP and that these discussions have resulted in the drafting of a planning agreement indicating that your company would carry out intersection improvements and upgrading of Pitt Town Road shoulders estimated by the RTA to cost \$1.7 M and \$11.2 M respectively (being works identified in the RTA's letter to the DoP dated 27 May 2005).

As indicated in the attachment B of the 27 May 2005 letter, the RTA's intention with regard to the upgrading of Pitt Town Road (and the associated cost estimates) provided to DoP has always been to include the provision of clear zones, construction and sealing of the road shoulders and resurfacing of the existing road pavement from Windsor Road to the main access to the development site i.e. the Cattai Road/Mitchell Road intersection.

We note your assertion that the draft PA did not adequately indicate that the upgrading of Pitt Town Road included resurfacing of the existing road pavement. Given your concerns about the description of the scope of works in the draft PA, the RTA is prepared to omit the requirement to resurface the existing pavement on the condition that the shoulder upgrading and improvements to the five intersections (see below) are carried out in accordance with all the RTA's relevant design guidelines and are to include the following scope:

- Shoulder construction – Continuous 2m wide sealed shoulders from Windsor Road to the end of Pitt Town Road with pavement consisting of 400mm of road base (DGB20), 10mm prime seal and 14mm rubberised spray seal. Alternatively a 360mm road base (DGB20) and 40mm AC14 wearing course could be provided in place of the spray seal. The join between the shoulder works and existing pavement is to be formed by either excavation with a rotor mill or saw cut. Appropriate drainage (subsoil and surface) is to be provided in accordance with RTA requirements. Services and other road safety hazards, including but not limited to power poles, trees etc within the shoulders and clear zone (determined as per the RTA's

design guidelines) are to be relocated. Only if road safety hazards cannot be relocated due to the proximity of property boundaries, can they then be treated by protection (eg by use of guard rail).

- Intersection Improvement works - The following five intersections with Pitt Town Road - Charles Street, Woiesley Road, Pitt Town Bottoms Road/Saunders Road, Schofield Road, Glebe Road are to be upgraded with localised widening to provide appropriate left turn and right turn bays. The first four intersections are to be upgraded in accordance with the RTA's AUR and AUL intersection treatments with the Pitt Town Road/Woiesley Road being upgraded in accordance with the RTA's CHR intersection treatment.
- The existing lane widths are to be maintained and the existing line marking removed and the intersections resurfaced in asphalt and re-line marked to cater for turning movements. Note that upgrading of the Cattai Road/Mitchell Road and the intersection off Bathurst Street and Eldon Street are to be carried out in accordance with the TMAP/Council's Section 94 Plan for the Development Site and are not included in the five Intersections specified in the RTA's correspondence on the developer for regional road improvement.

Without the resurfacing of the remainder of the existing pavement, it is expected that the cost of the works would be substantially less than the value of the works indicated in the current draft PA and the RTA will advise the DoP and the Minister for Planning accordingly.

Design of the improvement works are to be submitted to the RTA for its review and approval as part of the preparation of the Works Authorisation Deed (WAD) - as specified in the draft PA.

As Pitt Town Road is a classified state road, the RTA has the discretion of authorising other parties to undertake works on that road. If the RTA is not satisfied that the above works will be undertaken to the appropriate standard, the RTA will require a cash contribution of \$31,100 per lot for the works to be undertaken by the RTA.

Please indicate your intentions with respect to the scope of works by way of letter addressed to the undersigned.

With regard to the issue of security, the RTA cannot accept your proposal for a zero level of security for the works. However, given that the PA will be registered on the title of the developable land, the RTA can reduce the required level of security in line with its general construction contract (GC21). The RTA would therefore require, in line with the standard requirements of GC21, for each WAD signed, both pre-completion and post-completion unconditional undertakings from a financial institution (approved by the RTA and on terms outlined in the WAD). The amounts for the pre and post-completion security are 5% and 1% respectively, of the estimated cost of the works. The pre-completion security would be released soon after the completion of the works, whilst the post-completion security would be held until the defects rectification period is finished. These amounts are industry standard and are required to ensure adequate performance of the contract.

Should you wish to discuss this issue further, please contact Mark Ozlinga on 9218 6618.

Yours sincerely

BSW

5/4/06

B.J. Watters

A/Director, Road Network Infrastructure

Cc Department of Planning, Mr Andrew Watson

Annexure 3 - Second Letter (clause 4 and Schedule 3)



Wednesday, April 5, 2006

The Director General
Roads and Traffic Authority
Level 6, Centennial Plaza
260 Elizabeth Street
Surry Hills NSW 2010

Attention: Mr. Brian Watters

Dear Sir,

RE: Upgrading of Pitt Town Road associated with the Pitt Town Development.

We thank you for your letter 5 April 2006 regarding the above matter.

We wish to confirm that the scope of works, as outlined in your letter of 5 April 2006 is satisfactory.

Further, we have reviewed the Authorities requirement for pre and post-completion security and confirm that we are able to accept requirements with respect to its general construction contract (GC21).

It is our intention to now enter into a Planning Agreement with the Minister for Planning and subsequently a Works Authorisation Deed with the Roads and Traffic Authority, on terms as we had previously agreed to in draft Planning Agreement.

We look forward to your earliest attentions in this regard.

Yours Sincerely,
Johnson Property Group

Keith Johnson
Managing Director

cc Andrew Watson - Department of Planning

Signing page

DATED: 26/7/06

SIGNED SEALED AND)
DELIVERED by The MINISTER)
FOR PLANNING in the presence
of:


Signature of Witness

GAIL CONNOLLY
Name of Witness
[BLOCK LETTERS]

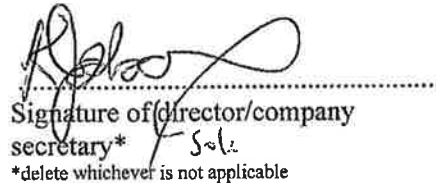

Signature of Minister

FRANK SARTOR
Name
[BLOCK LETTERS]

EXECUTED by THE JOHNSON)
PROPERTY GROUP PTY LTD in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cwlth) by)
authority of its directors:)


Signature of director ~~Witness~~

ANDREW MUTTON
Name of director (block letters)
~~Witness~~



Signature of (director/company
secretary* ~~sole~~
*delete whichever is not applicable

KEITH JOHNSON
Name of (director/company secretary*
(block letters) ~~sole~~
*delete whichever is not applicable

EXECUTED by BONA VISTA
PROPERTIES PTY LTD in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of director witness

ANDREW MUTTON
Name of director (block letters)
witness

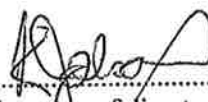

Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of director/company secretary*
(block letters) sole
*delete whichever is not applicable

EXECUTED by FERNADELL
PROPERTIES PTY LTD in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of director witness

ANDREW MUTTON
Name of director (block letters)
witness

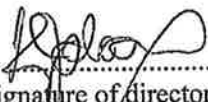

Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of director/company secretary*
(block letters) sole
*delete whichever is not applicable

EXECUTED by VERMONT
QUAYS PTY LTD in accordance
with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of director witness

ANDREW MUTTON
Name of director (block letters)
witness


Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of director/company secretary*
(block letters) sole
*delete whichever is not applicable