

Planning Agreement

Archbold Road, Eastern Creek

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

Sargents Charity Limited (ACN 149 188 198)

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This deed is dated **21 DECEMBER 2016**

Parties:

Minister

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

Developer

Sargents Charity Limited (ACN 149 188 198) of 83 Roper Road, Colyton NSW 2760

Introduction:

- A** The Developer owns the Land.
- B** Mepstead & Associates Pty Ltd made a Development Application on behalf of the Developer with the Consent Authority in respect of the Land for the Subdivision Development.
- C** Sargents Charity Limited made a Development Application with the Consent Authority in respect of the Land for the Factory Development.
- D** The Land is not within a Special Contributions Area as defined by section 93C of the Act.
- E** Clause 29 of the SEPP 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 regional transport infrastructure and services referred to in clause 29 of the SEPP.
- F** 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 SEPP.

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).

Actual Cost means:

- (a) in relation to the Road Works, the final certified contract cost inclusive of variations following compliance with all of the Developer's obligations under the WAD;
- (b) in relation to the land upon which the Road Works are to be constructed, the market value of the Road Widening Land determined in accordance with Schedule 4; and
- (c) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the carrying out of the Road Works and paid by the Developer to third parties for the following:
 - (i) design of the Road Works, project management, fees, investigations, consultant fees, studies or reports specifically required for the Road Works;



- (ii) any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Works; and
- (iii) other matters only where the approval of the Minister to the inclusion of such costs has been given in writing to the Developer.

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.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

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

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

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

Complying Development Certificate has the same meaning as in the Act.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning given to it in the Contaminated Land Management Act 1997 (NSW) and includes asbestos and lead.

Contribution Amount means the value of Development Contributions required to be made by the Developer under this Deed, calculated and indexed in accordance with Schedule 5.

Contribution Offset means the sum of Road Works Offset and the Road Widening Land Offset.

Contribution Rate means the sum of \$182,898 per Net Developable Hectare and subject to indexation.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

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 thereafter.

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

Dealing in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

Developer means Sargents Charity Limited.

Development means the Subdivision Development and the Factory Development.

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 being the:

- (a) Road Works; and
- (b) Road Widening Land Contribution,

in accordance with the terms of this deed and in particular, clause 4.1 and Schedule 4.

Estimated Cost Cap means the sum of Three Million Six Hundred and Forty Three Thousand and Two dollars [\$3,643,002].

Excess Contributions Credit has the meaning given to it in clause 3 of Schedule 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.

Factory Development means the construction, commissioning and operation of a new pie factory pursuant to the Development Application DA16-04837 which has been lodged with Blacktown City Council.

Factory Development Application means the Development Application pertaining to the Factory Development.

Final Reconciliation has the meaning given to that expression in clause 3(a)(iv) of Schedule 4.

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

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

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

Handover means to handover ownership and control of a part or the whole of the Road Works in accordance with the WAD.

Land means the land described in Schedule 3 of this deed.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment and includes the Minister's nominee, whether nominated before or after the date of this deed.

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.

Net Developable Area has the meaning given to that term in Schedule 4 to this deed.

Occupation Certificate has the same meaning as in the Act.

Planning Application means:

- (a) a Development Application; or
 - (b) any other application required under the Act,
- which seeks approval for the development of the Land.

Practical Completion means the Practical Completion of the Road Works in accordance with the WAD.

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

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

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

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **remediate** has a corresponding meaning.

Roads Authority has the meaning given to it in the Roads Act 1993 and includes RMS and Blacktown Council.

Road Widening Land means the strip of land proposed to form part of Archbold Road and shown on the plan forming Annexure B.

Road Widening Land Contribution means the dedication of the Road Widening Land by the Developer to the Roads Authority pursuant to clause 2.1 of Schedule 4.

Road Widening Land Offset has the meaning given to it in clause 2.4 of Schedule 4 of this deed.

Road Works means the road works to the two western lanes of Archbold Road, generally in accordance with the Mepstead and Associates Plan drawing number 3929-ROAD_VPA dated 17 March 2015 at Annexure B.

Road Works Offset has the meaning given to the expression in clause 1.3 of Schedule 4 of this Deed.

RMS means the Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the Transport Administration Act 1988 (NSW).

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in accordance with clause 29 of the SEPP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

SEPP means the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*

Stage A means that area of the Land shown on the plan annexed and marked "Annexure A" to this Deed

Stage B means that area of the Land shown on the plan annexed and marked "Annexure A" to this Deed

Standard Instrument means the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this Deed.

Subdivision Certificate has the same meaning as in the Act.

Subdivision Development means the subdivision of the Land into approximately 8 industrial lots pursuant to the Development Application DA15-1330 which has been lodged with Blacktown City Council.

Subdivision Works means the carrying out of works in, on, under or over land only in connection with the subdivision of Stage B of the Land, including the construction of roads and stormwater drainage, but which do not include the laying of slabs or floors or works in connection with a building.

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.

WAD means a Works Authorisation Deed (or such equivalent deed or agreement) entered into by the Roads Authority and the Developer:

- (a) regarding the design and construction of the Road Works and their Handover to the Roads Authority by the Developer; and
- (b) consistent with the terms of this deed.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

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

- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; 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

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

4.2 Acknowledgement

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

- (i) has no obligation to use or expend the Development Contributions for a particular purpose and has not made any representation or warranty that the Minister will use or expend the Development Contributions for any particular purpose;
- (ii) has no obligation to repay or provide any compensation or payment for the Development Contributions; or
- (iii) has not made any representation or warranty that, if the Development Contributions are transferred or provided in any way to another Authority, the Development Contributions will or must be used for any particular purpose by that or any other Authority.

4.3 Road Works and Road Widening Land Contribution

The Developer must provide:

- (a) the Road Works to the Minister in accordance with clause 1 of Schedule 4 to this deed; and
- (b) the Road Widening Land in accordance with clause 2 of Schedule 4 to this deed.
- (c) If the value of the Road Works and the Road Widening Land calculated in accordance with clauses 1.3 and 2.3 respectively of Schedule 4 to this deed:
 - (i) exceed the Contribution Amount following a Final Reconciliation by the Minister in accordance with clause 3(a) of Schedule 4 to this deed, the Developer will be entitled to an Excess Contributions Credit in accordance with clause 3(b) of Schedule 4 to this deed; or
 - (ii) is less than the Contribution Amount following a Final Reconciliation by the Minister in accordance with clause 3(a) of Schedule 4 to this deed, the Developer must pay the outstanding balance of the Contributions Amount to the Minister as a cash contribution in accordance with clause 3(e) of Schedule 4 of this deed.

4.4 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 5 and clauses 1(b), 2(b) and 4 of Schedule 4.
- (c) If the SIC Amount authorised by the relevant Development Consent is more than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the Contribution Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 5 and clauses 1(b), 2(b) and 4 of Schedule 4.

- (d) Clause 4.4(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (e) In this clause 4.4, a reference to the SIC Amount authorised by the relevant Development Consent is a reference to the amount of the monetary contribution calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

5. Intentionally Omitted

6. Enforcement

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 6.

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense must take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title;
 - (iv) payment of any duty liability arising from this deed under the *Duties Act 1997* (NSW) and even if duty is not liable to be paid, presentation of this deed for marking at the Office of State Revenue; and
 - (v) the lodgement of this deed in a registrable form at the land titles office of NSW for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer agrees to promptly respond to any requisitions made by the Registrar-General in respect of this Deed and/or any ancillary documents in order to procure registration of this deed within three months of the date of this deed in the relevant folio for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a) within 10 Business Days of such lodgement at the land titles office of NSW.
- (b) The Developer must provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed, and

legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Landowner to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

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

8.2 Written notice of dispute

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

8.3 Attempt to resolve

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

8.4 Mediation

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

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

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

8.5 Court proceedings

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

8.6 Not use information

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

8.7 No prejudice

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

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred 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.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.4.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient 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.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Assigning Party's obligations under this deed insofar as those obligations have been novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Landowner must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding clause 10.2(a) the Landowner may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Landowner:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Landowner will continue to be bound by the terms of this deed after the transfer has been effected;

- (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee was the Landowner; and
- (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Landowner must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

11. Capacity

11.1 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.

11.2 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.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report in a form acceptable to the Secretary for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Construction Certificates, Complying Development Certificates and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Development Contributions provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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

13.2 Variation

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

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

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

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

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

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

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

13.14 Explanatory note

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

13.15 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 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

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

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; 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) Yes |
| 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 Schedule 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(5)) | The Development Contributions to be provided by the Developer under the deed must not be taken into consideration in determining a contribution under section 94. |
| Mechanism for Dispute Resolution – (section 93F(3)(f)) | See clause 8 |
| Enforcement of this deed – (section 93F(3)(g)) | See clause 6 |
| No obligation to grant consent or exercise functions – (section 93F(10)) | See clause 13.13 |

Table 2 – Other matters

| Requirement under the Act | This deed |
|---|----------------------|
| Registration of the Planning Agreement – (section 93H of the Act) | Yes (see clause 7) |
| 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) | Yes (see Schedule 4) |
| 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) | Yes (see Schedule 4) |
| 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) | Yes (see Schedule 4) |

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

Contact: Ian Allen

Address: 83 Roper Road, Colyton NSW 2760

Facsimile No:

Email: grumpyschizoid@bigpond.com

Schedule 3**Land (clause 1.1)**

| Lot | Deposited Plan |
|------------|-----------------------|
| 102 | 1189012 |
| 103 | 1189012 |

Schedule 4

Development Contributions (clause 4)

1. Design, Construction and Handover of the Road Works

1.1 Conditions to Commencement of Road Works

Prior to commencement of the Road Works, the Developer must:

- (a) provide evidence to the Minister that it has obtained Development Consent for the Road Works;
- (b) enter into a WAD with the Road Authority, on such terms and conditions as are:
 - (i) consistent with the requirements of this deed, including this Schedule 4; and
 - (ii) acceptable to the Road Authority and the Minister,
- (c) provide a copy to the Minister of the executed WAD to carry out the Road Works; and
- (d) provide evidence to the Minister of the security provided for the Road Works under the WAD having regard to the requirements of clause 2 of Schedule 6 of this deed.

1.2 Timing of Road Works

- (a) The Developer must complete the Road Works in accordance with the WAD and by no later than the issue of a:
 - (i) Occupation Certificate for the Factory Development on Stage A of the Land; or
 - (ii) Construction Certificate, Complying Development Certificate or Subdivision Certificate for the Subdivision Development on Stage B of the Land,
 whichever is the earlier.
- (b) Notwithstanding clause 1.2(a) the Developer will not be required to complete the Road Works prior to the issue of any Construction Certificate or Complying Development Certificate for Subdivision Works.

1.3 Road Works Offset

- (a) Unless otherwise agreed with the Minister, within 3 months of the Road Works achieving Practical Completion under the WAD, the Developer must provide to the Minister documentation that evidences the Actual Cost of the Road Works (**Offset Documentation**). The Offset Documentation is to include an independent certification of the Actual Cost from an independent quantity surveyor engaged by the Developer who is a member of the Australian Institute of Quantity Surveyors.
- (b) Within 3 months of the Offset Documentation being provided to the Minister, the Minister, acting reasonably, is to notify the Developer of the amount of the approved cost of the Road Works (**Road Works Offset**) under this deed having regard to the Estimated Cost Cap and Actual Cost of the Road Works.
- (c) The parties agree that, for the purpose of clause 1.3b of this Schedule 4, where:
 - (i) the Actual Cost is greater than the Estimated Cost Cap, the Minister will give a Road Works Offset for the value of the Estimated Cost Cap (or any revised figure approved under clause 1.3(e)); and

- (ii) the Actual Cost is lower than the Estimated Cost Cap, the Minister will give a Road Works Offset for the value of the Actual Cost.
- (d) The Developer acknowledges and agrees that it will not be entitled to any Road Works Offset in circumstances where the Roads Authority has exercised its step in rights under the WAD or the Developer otherwise fails to provide the Road Works pursuant to the WAD.
- (e) If the cost of the Road Works exceeds the Estimated Cost Cap, the Parties agree that within three months of achieving Practical Completion of the Road Works, the Developer may submit to the Minister in writing:
 - (i) the reasons for the exceedance; and
 - (ii) a recommendation for a revised Estimated Cost Cap.
- (f) The Minister may or may not, at the Minister's absolute discretion, agree in writing to an increase in the Estimated Cost Cap as a consequence of receiving written notification under clause 1.3(e).
- (g) If the Minister elects to agree to an increase under clause 1.3(e), despite anything else in this Deed, the Estimated Cost Cap is set at the increased monetary amount so determined in writing by the Minister.

2. Dedication of Road Widening Land

2.1 Road Widening Land as a Development Contribution

The Developer must transfer the Road Widening Land in accordance with clause 2.4 of this Schedule 4.

2.2 Valuation of Road Widening Land

- (a) The amount to be applied against the Developer's liability to provide the Contribution Amount will equal the market value of the Road Widening Land calculated in accordance with this clause.
- (b) The Developer must:
 - (i) provide the Minister with a valuation of the Road Widening Land prior to transfer of the Road Widening Land to the Roads Authority in accordance clause 2.4; and
 - (ii) ensure the valuation has been carried out:
 - (A) by a valuer appointed in accordance with clause 2.2 of this Schedule 4; and
 - (B) in accordance with clause 2.2 of this Schedule 4.
- (c) Where the Developer has provided the Minister with a valuation of the Road Widening Land in accordance with clause 2.2 of this Schedule 4, the Minister, within 20 Business Days of receiving the valuation, must appoint a valuer to prepare a valuation report for the Road Widening Land for the Minister, who:
 - (i) is a registered valuer under the *Valuers Act 2003* (NSW) and is not restricted under that Act from valuing the Road Widening Land;
 - (ii) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
 - (iii) is then practising as a valuer;

- (iv) is independent and not related to any party to this deed;
 - (v) has at least 5 years' experience in valuations; and
 - (vi) has a practical understanding of the development and planning process to prepare a valuation for the Road Widening Land.
- (d) Any valuation provided by each Party's valuer must comply with the following:
- (i) The valuation report prepared by the valuer must confirm that the valuer satisfies each of the requirements set out in clause 2.2 of this Schedule 4.
 - (ii) The valuer is required to determine the market value of the Road Widening Land as a freehold lot with vacant possession as at the date of inspection.
 - (iii) In determining the market value of the Road Widening Land, the valuer must assume that the land:
 - (A) is free of all encumbrances;
 - (B) is or can be fully serviced to its boundary; and
 - (C) has appropriate public road frontage and access.
 - (iv) In determining the market value of the Road Widening Land, the valuer must comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this clause 2.2, in which case this clause 2.2 prevails.
 - (v) The valuer must provide a comprehensive valuation report which must include the following matters:
 - (A) confirmation of instructions;
 - (B) identification of the subject land being valued;
 - (C) date of inspection and valuation;
 - (D) registered proprietor;
 - (E) legal description of the subject land including the certificate of title folio identifier and reference to any easements, rights of way, covenants, caveats and/or other encumbrances on title;
 - (F) services and amenities;
 - (G) site identification;
 - (H) location description, including any external factors that influence the desirability of the Education Land, either positively or negatively;
 - (I) current zoning and town planning considerations;
 - (J) a detailed explanation of the valuation methodologies adopted including all calculations and workings;
 - (K) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation; and

- (L) the valuation amount.
- (e) If two or more of the comparable sales analysed cannot reasonably be considered as being directly comparable (in terms of, but not restricted to, date of sale, size, development capability, zoning and physical and ecological constraints etc) then each valuer must undertake a feasibility or residual land value approach to the valuation.
- (f) In the event that the valuations prepared by each valuer vary by less than 10%, the average of the valuation amounts will be adopted as the value for the Road Widening Land.
- (g) In the event that the valuations vary by more than 10%, then the valuers must meet to compare the valuations and attempt to find common ground (whether this be mutual agreement on value or, at the very least, agreement as to certain valuation drivers, methodologies or inputs). Following this meeting, the valuers must review their valuations. If the valuations continue to vary by more than 10%, the valuation to apply to the Road Widening Land will be determined by a further valuer appointed by the President of the Australian Property Institute (NSW Division). If a further valuer is appointed:
 - (i) that further valuer must:
 - (A) prepare a valuation report for the Road Widening Land in accordance with clause 2.2 of this Schedule 4; and
 - (B) act as an expert whose decision is final and binding on the parties, in the absence of manifest error; and
 - (ii) the Developer and the Minister must pay the costs associated with the appointment of the further valuer in equal proportions.
- (h) Where the Minister exercises the compulsory acquisition right under clause 2.5 of this Schedule 4, the valuation process set out in clause 2.2 of this Schedule 4 will apply.
- (i) Notwithstanding clause 2.2(b) of this Schedule 4, the Developer may elect to attribute a value to the Road Widening Land of Ten Thousand Dollars [\$10,000] and where such value is elected, the agreed market value of the Road Widening Land will be Ten Thousand Dollars [\$10,000] \$10,000 and clauses 2.2(b)-(g) will not apply.

2.3 Subdivision of Road Widening Land

- (a) Before transferring the Road Widening Land in accordance with clause 2.4 of this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent and all other approvals necessary to create a separate lot for the Road Widening Land; and
 - (ii) in accordance with the applicable Development Consent and all other necessary approvals, prepare and register a Plan of Subdivision to create a separate lot for the Road Widening Land (**the Road Widening Land Subdivision**).

2.4 Transfer of Road Widening Land

- (a) The Developer must procure the transfer of the Road Widening Land to the Roads Authority in accordance with this deed within 3 months of the date of the Road Widening Land Subdivision, and in any event within 3 months of completion of the Road Works.
- (b) In satisfying its obligation under clause 2.4(a) of this Schedule 4, the Developer must:
 - (i) deliver to the Roads Authority:

- (A) a form of transfer in respect of the land comprising the Road Widening Land in favour of the Roads Authority for a consideration of \$1, executed by the Developer and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (B) the certificate of title for the Road Widening Land;
- (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Road Widening Land; and
- (iii) take any other necessary action to give effect to the transfer of the title of the Road Widening Land to the Roads Authority free of all encumbrances (including any mortgages, easements, covenants and Planning Agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances (including easements creating rights of access to the Factory Development) as agreed by the Minister in writing.
- (c) The Developer indemnifies and agrees to keep indemnified the Roads Authority against all Claims made against the Roads Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Road Widening Land but only in relation to Contamination that existed on or before the date that the Road Widening Land is transferred to the Roads Authority.
- (d) The Developer will pay all rates and Taxes owing in respect of the Road Widening Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Road Widening Land pursuant to clause 2.4 of this Schedule 4, after which time the Roads Authority will be responsible for any rates and Taxes in relation to the Road Widening Land.
- (e) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the Roads Authority) in relation to any failure of the Developer to comply with clauses 2.1 to 2.5 of this Schedule 4.
- (f) The parties agree that this deed operates as a deed poll in favour of the Roads Authority (where applicable).

2.5 Compulsory Acquisition

- (a) If the Developer does not transfer the Road Widening Land as required by clause 2.4 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister compulsorily acquiring the whole or any part of the Road Widening Land and any other land required in connection with the Road Widening Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer and the Minister agree that:
 - (i) this clause 2.5 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 2.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Road Widening Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Developer is liable to transfer the Road Widening Land to the Minister in accordance with this clause.

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

2.6 Road Widening Land Offset

Upon the transfer of the Road Widening Land to the Road Authority in accordance with clause 2.4 of this Schedule 4 (excluding where the Minister has exercised the Minister's compulsory acquisition rights under clause 2.5 of this Schedule 4), the Minister must, within 30 Business Days, issue a notice to the Developer stating the discharge amount that has been credited to the Road Widening Land Contribution (**Road Widening Land Offset**), being the value of the Road Widening Land calculated in accordance with clause 2.2 of this Schedule 4.

3. Excess Contributions Credit and Additional Payments

- (a) Where the Minister has issued a notice(s) to the Developer under:
 - (i) clause 1.3(b) of this Schedule 4 in respect of the Road Works Offset; and
 - (ii) clause 2.6 of this Schedule 4 in respect of the Road Widening Land Offset,
 the parties agree that following completion of the Development:
 - (iii) the Developer will provide written notification to the Minister of the completion of the Development within 3 months of completion and will provide any evidence, reasonably required by the Minister, to demonstrate that such completion has occurred; and
 - (iv) the Minister will undertake a final reconciliation to calculate the Contribution Amount based on the total Net Developable Area of the Development completed on the Land (**Final Reconciliation**).
- (b) Where the Final Reconciliation indicates that the value of the Development Contribution provided by the Developer in accordance with clauses 1 and 2 of this Schedule 4 exceeds the Contribution Amount, then the Developer will be entitled to a credit for the amount that the value of the Development Contribution provided exceeds the Contribution Amount (**Excess Contributions Credit**) in accordance with clauses 3(c) and 3(d) of this Schedule 4.
- (c) Subject to clause 3(d) of this Schedule 4, any Excess Contributions Credit which has been generated under this deed:
 - (i) may be used by:
 - (A) any person or entity comprising the Developer (**Contributions Credit Recipient**) provided all of the persons or entities comprising the Developer have provided written consent to this to the Minister's satisfaction,
 - (B) a Related Body Corporate of the Contributions Credit Recipient or a partnership of those related entities, or

- (C) any other entity that the Minister might approve on written request by all of the persons or entities comprising the Developer in the Minister's absolute discretion,

to satisfy any obligation to make a development contribution relating to the provision of regional transport infrastructure and services on any land to which the SEPP applies owned by:

- (A) the Contributions Credit Recipient,
- (B) a Related Body Corporate of the Contributions Credit Recipient or a partnership of those related entities, or
- (C) any other entity that the Minister might approve on written request by all of the persons or entities comprising the Developer in the Minister's absolute discretion; and

- (ii) will be adjusted on each CPI Adjustment Date until the Excess Contributions Credit has been used, in accordance with the following formula:

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

Where

CC is the newly adjusted Excess Contributions Credit.

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

Current CPI is defined in clause 1 of this deed.

Base CPI is defined in clause 1 of this deed.

An Excess Contributions Credit is taken to have been used under a Planning Agreement for the purpose of this Schedule 4 when the Planning Agreement provides for the use of the Excess Contributions Credit.

- (d) The parties agree that any Excess Contributions Credit which has been generated under this deed must be used by the Contributions Credit Recipient in accordance with clause 3(c)(i) of this Schedule 4 within ten (10) years of the date of the Final Reconciliation after which time it will be considered to have been wholly surrendered or forfeited to the Minister by the Developer (including the Contributions Credit Recipient) and no Claim may be made by the Developer (or the Contributions Credit Recipient) against the Minister in respect of any such surrender or forfeiture.
- (e) Where the Final Reconciliation indicates that the Development Contribution provided by the Developer in accordance with this Schedule 4 is less than the Contribution Amount, then the Developer must pay the balance of the Contribution Amount as a cash contribution to the Minister within 10 Business Days of receiving a notice from the Minister notifying the Developer of the outstanding Contribution Amount.

Schedule 5

Calculation of Contribution Amount

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

$$X = N \times \$182,898$$

"N" means the number of hectares comprised in the Net Developable Area of the Land to which a Subdivision Certificate application or Construction Certificate application for the Factory Development and Subdivision Development relates. If any part of the Development is to be carried out without the need for a Construction Certificate or Subdivision Certificate, then the number of hectares comprised in the Net Developable Area of the Land to which a Complying Development Certificate application for the Factory Development and Subdivision Development relates.

- (b) Notwithstanding anything to the contrary in Schedule 7 of this deed, Net Developable Area is not to include any land that is to be dedicated under this deed.
- (c) On each CPI Adjustment Date, the value of X in sub-paragraph (a) of this Schedule 5 will be adjusted by multiplying X by an amount equal to the Current CPI divided by the Base CPI.

Schedule 6

Security Terms (clause 5.1)

1. Developer to provide Security

- (a) In order to secure the:
 - (i) the carrying out of the Road Works in accordance with Schedule 4 of this deed and the WAD; and
 - (ii) any costs associated with the Minister exercising any rights under this deed to secure the transfer of the Road Widening Land,

the Developer has agreed to provide security in accordance with this Schedule 6.

The parties agree that the obligation of the Developer to transfer the Road Widening Land in accordance with clauses 2.1 and 2.4 of Schedule 4 of this deed is also secured by clause 6 of this deed and clause 2.5 of Schedule 4 of this deed.

- (b) Any Bank Guarantee(s) required to be provided under this Schedule 6 must:
 - (i) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiary; and
 - (ii) not have an expiry date.

2. Security Requirements

- (a) If, upon execution of this deed, the Developer has:
 - (i) entered into a WAD with the Roads Authority in relation to the Road Works;
 - (ii) provided security to the Roads Authority for the Estimated Cost Cap of the Road Works under the WAD or such other figure to the satisfaction of the Roads Authority; and
 - (iii) satisfied the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to the Roads Authority for the Road Works including providing all information reasonably required by the Minister regarding the security provided under the WAD,

the Minister will accept the security provided under the WAD as security for the performance of the Developer's obligation under Schedule 4 of this deed to carry out the Road Works, and will provide written notification to the Developer of the Minister's position under this clause 2(a) within 20 Business Days of receiving all required information from the Developer regarding the security provided under the WAD.

- (b) If, upon execution of this deed, the Developer has not entered into a WAD with the Roads Authority in relation to the Road Works, the Developer must provide a Bank Guarantee to the Minister for the Estimated Cost Cap of the Road Works, to secure its obligation to carry out the Road Works.
- (c) If, following execution of this deed, the Developer;
 - (i) enters into a WAD with the Roads Authority in relation to the Road Works in accordance with this deed;

- (ii) provides security to the Roads Authority for the Estimated Cost Cap of the Road Works under the WAD; and
- (iii) satisfies the Minister, in the Minister's absolute discretion, as to the adequacy of the security provided to the Roads Authority for the Road Works including providing all information reasonably required by the Minister regarding the security provided under the WAD,

the Minister will accept the security provided under the WAD as securing the performance of the Developer's obligation under Schedule 4 of this deed to carry out the Road Works, and will provide written notification to the Developer of the Minister's position under this clause 2(c) within 20 Business Days of receiving all required information from the Developer regarding the security provided under the WAD.

- (d) Where clause 2(c) of this Schedule 6 applies, the Minister will return the Bank Guarantee provided by the Developer under clause 2(b) of this Schedule 6 within 20 Business Days of the Minister notifying the Developer of the Minister's acceptance of the security provided under the WAD.
- (e) If the Developer does not satisfy the Minister as to the adequacy of the security provided for the Roads Works under the WAD in accordance with clause 2(a) or clause 2(c) of this Schedule 6, then:
 - (i) the Developer will be required to provide a Bank Guarantee for the difference between the amount of the security provided under the WAD and the Estimated Cost Caps of the Road Works;
 - (ii) upon receipt of the Bank Guarantee required by the Minister under clause 2(e)(i) of this Schedule 6, the Minister will accept that Bank Guarantee and the security provided under the WAD as securing the performance of the Developer's obligation under Schedule 4 of this deed to carry out the Road Works; and
 - (iii) the Minister will return the Bank Guarantee provided under clause 2(b) of this Schedule 6 to the Developer within 10 Business Days of receiving the Bank Guarantee under clause 2(e)(i) of this Schedule 6.

3. Claims under a Bank Guarantee

- (a) The Minister may call upon a Bank Guarantee(s) provided in accordance with clause 2(b) and 2(e) of this Schedule 6:
 - (i) where the Developer has failed to complete the Road Works in accordance with Schedule 4 of this deed; or
 - (ii) where the Developer is in default of its obligations to transfer the Road Widening Land to the Minister in accordance with this deed; and

retain and apply such monies towards:

 - (iii) achieving performance of the Road Works; and
 - (iv) the Costs incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee(s) the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If:

- (i) the Minister calls upon a Bank Guarantee(s); and
- (ii) applies all or part of such monies towards the Costs incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Bank Guarantee(s) in accordance with clause 3(b) of this Schedule 6,

then the Minister may request that the Developer provide an additional Guarantee(s) to secure performance of the Developer's obligations under this Deed in accordance with clause 4 of this Schedule 6.

4. Right to Call for Additional Security

- (a) Notwithstanding clause 2 of this Schedule 6, if the Minister, acting reasonably, at any time considers that an additional Bank Guarantee(s) is required to secure the Developer's obligations under this deed, the Developer must provide such additional Bank Guarantee(s) for the amount specified by the Minister within 10 Business Days of a written request by the Minister and clauses 3 and 5 of this Schedule 6 apply.
- (b) Without limiting the operation of clause 4(a) of this Schedule 6, the Minister may require the Developer to provide a Bank Guarantee for an amount determined by the Minister if it becomes apparent to the Minister that the value of the Development Contribution to be provided under this deed will be less than the Contribution Amount.

5. Release of Bank Guarantee(s)

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by a Bank Guarantee(s); and
- (b) the whole of the monies secured by the Bank Guarantee(s) have not been expended and the monies accounted for in accordance with clause 3 of this Schedule 6,

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

Schedule 7

Definition of Net Developable Area

1. The Net Developable Area of a part of the Land is the area of land, in hectares, comprising the area to which the relevant application for a Subdivision Certificate, Construction Certificate or Complying Development Certificate for that part of the Land relates, subject to the other provisions of this Schedule 7 and for the avoidance of doubt includes the area of any land which is to be used as a road or reserved or dedicated as a public road but does not include any existing road to which works are to be carried out.
2. The Net Developable Area does not include the area of any land that the proposed Development reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school,
 - (b) TAFE establishment,
 - (c) emergency services facility,
 - (d) health services facility owned or operated by a public authority,
 - (e) golf course,
 - (f) passenger transport facility,
 - (g) place of public worship,
 - (h) public open space, including a public reserve (within the meaning of the *Local Government Act 1993*),
 - (i) drainage reserve (within the meaning of the *Local Government Act 1993*),
 - (j) public utility undertaking,
 - (k) bus depot,
 - (l) recreation area,
 - (m) existing roads to which works (such as widening) are required to be carried out;
 - (n) cemetery (within the meaning of the *Cemeteries and Crematoria Act 2013*),
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act; and
 - (p) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with any Special Infrastructure Contributions Determination made under section 94EE of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of it being at or below that level,

- (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act,
 - (c) any area of land that is within Zone E2 Environmental Conservation,
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
 - (e) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of the easement,
 - (f) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the development by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in a proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
 5. The net developable area does not include the area of any lot in a proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
 6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this Deed commences) and:
 - (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area.
 7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area.
 8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
 9. In this Schedule 7, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006):
 - (c) emergency services facility,
 - (d) health services facility,

- (e) passenger transport facility,
- (f) place of public worship,
- (g) public utility undertaking,
- (h) recreation area,
- (i) school.

10. In this Schedule, a reference to:

- (j) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone, and
- (k) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the Heritage Act 1977, and
- (l) a "strata scheme" means a reference to a strata scheme as that term is defined in the Strata Scheme (Freehold Development) Act 1973 or a leasehold strata scheme as that term is defined in the Strata Scheme (Leasehold Development) Act 1986.



Execution page

Executed as a deed


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

.....
Signature of witness

.....
Name of witness in full

.....
Address of witness

Executed by Sargents Charity Limited
(149 188 198) in accordance with section 127 of
the Corporations Act.

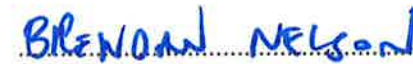
x 
.....
Signature of Director

b 
.....
Name of Director

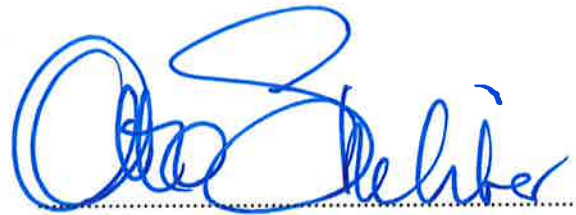
Pls print name



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


.....

Name of the Minister for Planning or delegate



.....
Signature of Director/Secretary


.....

Name of Director/Secretary

Annexure A

