

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning
Minister

Fitzpatrick Investments Pty Ltd
Developer

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VPA Reference: 2017/8604
177 - 299 Lenore Drive, Erskine Park
Fitzpatrick Industrial Estate (Part)
Auto Nexus Site - DA17/0280

Contents

1.	Definitions and interpretation	1
1.1	Definitions	1
1.2	Interpretation	4
2.	Operation and application of this deed	5
2.1	Operation	5
2.2	Planning agreement under the Act	5
2.3	Application	5
3.	Application of sections 94, 94A and 94EF of the Act	5
4.	Development Contributions	5
4.1	Developer to provide Development Contributions	5
4.2	Acknowledgement	5
4.3	Exclusion of future SIC Determination	6
5.	Interest for late provision of Contribution Amount	6
6.	Enforcement	6
6.1	Developer to provide Security	6
7.	Registration	6
7.1	Registration of deed	6
7.2	Evidence of registration	7
7.3	Release and discharge of deed	7
7.4	Developer's interest in Land	7
8.	Dispute Resolution	7
8.1	Not commence	7
8.2	Written notice of dispute	7
8.3	Attempt to resolve	7
8.4	Mediation	7
8.5	Court proceedings	8
8.6	Not use information	8
8.7	No prejudice	8
9.	GST	8
9.1	Definitions	8
9.2	Intention of the parties	8
9.3	Reimbursement	8
9.4	Consideration GST exclusive	8
9.5	Additional Amounts for GST	9
9.6	Non monetary consideration	9
9.7	Assumptions	9
9.8	No merger	9
10.	Assignment and transfer	9
10.1	Right to assign or novate	9
10.2	Right to transfer Land	9
10.3	Replacement Security	10
11.	Capacity	10
11.1	General warranties	10
11.2	Power of attorney	10
12.	Reporting requirement	11
13.	General Provisions	11
13.1	Entire deed	11

13.2	Variation.....	11
13.3	Waiver.....	11
13.4	Further assurances.....	11
13.5	Time for doing acts	12
13.6	Governing law and jurisdiction.....	12
13.7	Severance.....	12
13.8	Preservation of existing rights	12
13.9	No merger.....	12
13.10	Counterparts	12
13.11	Relationship of parties	12
13.12	Good faith	13
13.13	No fetter.....	13
13.14	Explanatory note.....	13
13.15	Expenses and stamp duty	13
13.16	Notices.....	13
Schedule 1		15
Schedule 2 - Address for Service (clause 1.1).....		17
Schedule 3 - Land (clause 1.1)		18
Schedule 4 - Development Contributions (clause 4)		19
Schedule 5 - Security terms (clause 6).....		21
Schedule 6 - Definition of Net Developable Area (Schedule 4, clauses 1 and 2).....		23
Annexure A : Plan showing Land		26

Planning Agreement

Date

Parties

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

Fitzpatrick Investments Pty Ltd ABN 42 001 662 862 of 22-24 Junction Street, Forest Lodge NSW 2037 (**Developer**)

Background

- A. The Developer owns the Land, known as the 'Auto Nexus Site'.
- B. The Developer proposes to carry out the Development on the Land.
- C. The Developer has made a Development Application to the Consent Authority in respect of the Development on the Land.
- D. Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA 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 (including the Erskine Park Link Road Network) in relation to the land to which the WSEA SEPP applies.
- E. The Developer has offered to enter into this deed with the Minister to secure the Development Contributions in order to enable the Secretary to provide the certification required by clause 29 of the WSEA SEPP.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Address for Service for a party means the contact details of that party appearing in Schedule 2 or any other contact details which that party notifies to all other parties as its Address for Service.

Associate of a person means that person's officer, employee, adviser, contractor (including any other person with whom that person has a contractual relationship), subcontractor or invitee, or any related entity of that person (within the meaning of the *Corporations Act 2001* (Cth)).

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, authority, 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;

- (b) on terms acceptable to the Minister, in the Minister's absolute discretion;
- (c) naming the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries;
- (d) without an expiry date,

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 2017.

Business Day means any day on which banks are open for business generally in Sydney, but does not include a Saturday, Sunday or public holiday, or any day between 25 December and 1 January inclusive.

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

Consent Authority has the same meaning as in the Planning Act.

Construction Certificate has the same meaning as in the Planning Act.

Contribution Amount means the amount of contribution which the Developer is required to make under this deed as described in Schedule 4.

Council means Penrith City Council.

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

CPI Adjustment Date means 1 July 2017 and each anniversary of 1 July 2017.

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

Development means the development of the Land for a freight transport facility and ancillary uses, generally in accordance with Development Application DA17/0280 which has been lodged with the Consent Authority.

Development Application has the same meaning as in the Planning Act.

Development Consent has the same meaning as in the Planning Act.

Development Contributions means the total contributions to be provided by the Developer in accordance with Schedule 4.

Eligible Offset Credits means development contributions:

- (a) that have made towards the provision of regional transport infrastructure and services on other land (not being the Land) to which the WSEA SEPP applies, in accordance with a WSEA VPA; and
- (b) that have not been applied to discharge an obligation to provide a contribution amount,

which the Secretary, in her absolute discretion, has certified in writing as "Eligible Offset Credits" for the purposes of this deed.

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.

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

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

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

Land means the land described in Schedule 3, as shown in the plan comprising Annexure A.

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, the Secretary's nominee and the Ministerial Corporation.

Ministerial Corporation means the corporation sole with the corporate name "Minister administering the *Environmental Planning and Assessment Act 1979*".

Monetary Contribution means the contribution described in Schedule 4.

NDA or Net Developable Area means the net developable area of the Land or the relevant part of the Land calculated in accordance with Schedule 6, or in the event of a dispute or ambiguity, as determined by the Secretary.

Offset Credits Schedule means a schedule which the Minister has issued under a WSEA VPA, identifying the value of Eligible Offset Credits at the time at which the schedule is issued.

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

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).

Satisfactory Arrangements Certificate in respect of any land means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in respect of that land in accordance with clause 29 of the WSEA SEPP.

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

Security means a Bank Guarantee.

Subdivision Certificate has the same meaning as in the Planning Act.

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.

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

WSEA VPA means a planning agreement within the meaning of section 93F of the Planning Act, not being this deed, which applies to land to which the WSEA SEPP applies.

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 an office which ceases to exist is a reference to:
 - (i) whether the body or office holder is an Authority - the Authority which replaces that body or office holder, or (if there is no replacement Authority) having relevant functions which are substantially the same as or similar to those of the former body or office holder; or
 - (ii) whether the body or office holder is not an Authority - either a body of office that the parties agree to substitute for the named body or office or, failing agreement, to a body or office having objects or functions which are substantially the same as those of the named body or office;
- (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 from being done;
- (m) a right for a person to do something, or a power for a person to agree to or determine or be satisfied as to something, is a right to determine to do or not do that thing, or a power to agree to or determine or be satisfied as to that thing (as the case may be), in the person's absolute discretion (and, in the case of a determination, with or without conditions);
- (n) "including" and "includes" are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;

- (p) monetary amounts are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) Notwithstanding clause 2.1(a), the Developer acknowledges and agrees that, on and from the date that this deed is signed by the Developer until this deed is signed by the Minister:
 - (i) this deed operates as a deed poll in favour of the Minister; and
 - (ii) this deed is enforceable against the Developer by the Minister, as though this deed had commenced on the date that it was signed by the Developer.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Planning 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 Planning Act are excluded to the extent stated in Schedule 1.

4. Development Contributions

4.1 Developer to provide Development Contributions

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

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

4.3 Exclusion of future SIC Determination

If, after the date of this deed, the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Planning Act for a special contributions area that includes any part of the Land (**SIC Determination**):

- (a) the SIC Determination is, notwithstanding its terms, taken not to apply to the Land or any part of the Land; and
- (b) the value of the Development Contributions required to be provided under this deed will not be affected by the SIC Determination.

5. Interest for late provision of Contribution Amount

- (a) If the Developer fails to provide a Contribution Amount (as indexed in accordance with Schedule 4) to the Minister by the due date for provision of the Contribution Amount, the Developer must also pay to the Minister interest on the value of the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is to be compounded daily from the due date for provision of the Contribution Amount until all outstanding amounts (including interest on those amounts) have been provided to the Minister.

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:

- (a) by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5; and
- (b) by registering this deed on the title to the Land in the Register in accordance with clause 7.

7. Registration

7.1 Registration of deed

- (a) The Developer must, within 15 Business Days of receiving a copy of this deed executed by the Minister, procure the registration of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land which is not under the Real Property Act.
- (b) The Developer warrants that it has procured the consent of each person who has an interest in the Land to the registration of this deed.

- (c) The Developer must take all necessary steps to effect registration of this deed, including:
 - (i) the execution of any documents;
 - (ii) the production of the relevant certificates of title; and
 - (iii) the lodgement of this deed in a registrable form at Land and Property Information for registration by the Registrar-General.

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(c)(iii) within 10 Business Days of that lodgement.
- (b) The Developer must provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed 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 the Land after the Developer has satisfied all of its obligations under this deed in respect of the Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the registered proprietor and beneficial 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.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to this deed 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 parties 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, by written notice to the other parties, terminate any dispute resolution process undertaken under this clause 8 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 confidential to the parties and is done in an 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 the GST 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 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 9.

9.5 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.

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) A party within the Developer must not assign or novate, or purport to assign or novate, any of its rights or obligations under this deed without the prior written consent of the Minister.
- (b) A party seeking to assign or novate any of its rights or obligations under this deed (**Assigning Party**) must:
 - (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 to perform the Assigning Party's obligations under this deed insofar as those obligations are to be assigned or 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 were the Assigning Party; and
 - (iii) satisfy the Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred in relation to this clause 10.1.

10.2 Right to transfer Land

- (a) A party within the Developer must not sell or transfer, or purport to sell or transfer, to another person (**Transferee**) the whole or any part of the Land:
 - (i) on which this deed remains registered under section 93H of the Act; or

- (ii) for which the Development Contribution required under this deed remains outstanding,

without the prior written consent of the Minister.

- (b) A party seeking to sell or transfer the whole or any part of the Land to a Transferee (**Transferor**) must:
 - (i) satisfy the Minister (acting reasonably) that the Transferee has sufficient assets, resources and expertise to perform any of the remaining obligations of the Transferor under this deed or satisfies the Minister (acting reasonably) that the Transferor will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procure 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 were the Transferor; and
 - (iii) satisfy the Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred in relation to this clause 10.2.

10.3 Replacement Security

If:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Incoming Party or Transferee (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 which is equivalent to the Security which the Assigning Party or Transferor (as the case may be) has provided and is on terms acceptable to the Minister (acting reasonably),

the Minister will promptly return the Security to the Assigning Party or Transferor (as the case may be).

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 format 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, Subdivision Certificates or Construction 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:
 - A. showing the details of all Contribution Amounts provided under this deed as at the date of the report;
 - B. providing a map which identifies those parts of the Land for which a Contribution Amount has been provided; and
 - C. identifying any non-compliance with this deed and the reason for the non-compliance.
- (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 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.

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 on a day that is not a Business Day, then 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 5pm on a Business Day, then on that day;
 - B. after 5pm on a Business Day, then on the next Business Day after it is sent; or
 - C. on a day that is not a Business Day, then 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 Planning 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 Planning Act.

Requirement under the Act	This deed
Development application – (section 93F(2)) The Developer has made, or proposes to make, a Development Application.	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 Planning Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Planning Act is not excluded in respect of the Development.
Applicability of section 94EF of the Planning Act – (section 93F(3)(d))	The application of section 94EF of the Planning 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 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
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
Level 22, 320 Pitt Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6455

Email: john.borg@planning.nsw.gov.au

Developer

Contact: Jamie Stewart, Project Director

Address: 22-24 Junction Street
FOREST LODGE NSW 2037

Facsimile No: (02) 9566 2922

Email: Jamie.stewart@fitzpatrickproperty.com.au

Schedule 3 - Land (clause 1.1)

Lot	Deposited Plan	Registered Proprietor
Part Lot 2	1215268	Fitzpatrick Investments Pty Ltd

as shown by the red broken line in the plan at Annexure A.

Schedule 4 - Development Contributions (clause 4)

1. Development Contributions

The Developer must provide the Development Contributions in accordance with the following schedule:

Development Contributions	Value	Timing	Manner of delivery
Monetary Contribution	Pursuant to clause 2.2 of this Schedule 4.	Pursuant to clause 2.1 of this Schedule 4.	Bank cheque or electronic funds transfer

2. Calculation of the value of a Contribution Amount

2.1 Timing for payment of Contribution Amount

- (a) The Developer must pay to the Minister a Monetary Contribution in the amount of the Contribution Amount:
- (i) before any Construction Certificate or Complying Development Certificate is issued for any part of the Development; or
 - (ii) if any part of the Development is to be carried out without the need for a Construction Certificate or a Complying Development Certificate, then before the earlier of the following:
 - A. commencement of that part of the Development; and
 - B. the issue of a Complying Development Certificate in respect of that part of the Development.
- (b) The parties agree that the requirement to provide a Monetary Contribution in this clause 2.1 of Schedule 4 is a restriction on the issue of a Construction Certificate within the meaning of section 109F of the Planning Act.

2.2 Calculation of Contribution Amount

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

$$CA = N \times WCR$$

where:

"N" means the number of hectares comprised in the NDA of the Land (which at the date of this deed, is estimated to equal 9.1568 hectares).

"WCR" is the amount representing the WSEA contribution rate, which:

- (i) at the date of this deed is \$189,716; and
- (ii) is adjusted from time to time in accordance with clause 2.2(b) of this Schedule 4.

- (b) On each CPI Adjustment Date, the value of WCR is to be adjusted by multiplying \$189,716 by an amount equal to the Current CPI divided by the Base CPI.

2.3 Extension of time for payment of Monetary Contribution

- (a) The Developer may make a request in writing to the Minister for an extension of time to discharge an obligation to provide all or part of a Monetary Contribution required to be paid under clause 2.1(a) of this Schedule 4.
- (b) The Minister may determine (in his absolute discretion) to extend the time for payment of part or all of the Monetary Contribution (**Deferred Contribution Amount**), for a period of up to 12 months after the date on which the Deferred Contribution Amount would be due under clause 2.1(a), if the Developer has provided to the Minister a further Bank Guarantee with a face value of 10% of the value of the Deferred Contribution Amount.
- (c) The Developer may discharge its obligation to provide a Deferred Contribution Amount at any time by paying the full amount of the Deferred Contribution Amount as determined in accordance with this deed at that time.
- (d) If the Developer discharges its obligation to provide a Deferred Contribution Amount in accordance with clause 2.3(c) of this Schedule 4, the Minister will return the Bank Guarantee for that Deferred Contribution Amount.
- (e) The Developer must pay interest in accordance with clause 5 on the value of a Deferred Contribution Amount, from the date it would have been due under clause 2.1(a) of this Schedule 4 had the extension not been granted under clause 2.3(b), until the obligation to provide the Deferred Contribution Amount is discharged. The interest is taken to be part of the Deferred Contribution Amount for this deed.

2.4 Surrender of Eligible Offset Credits

- (a) The Developer may make a request in writing that the Minister recognise the surrender by the Developer of Eligible Offset Credits as discharging the Developer's obligation to pay all or part of a Monetary Contribution or Deferred Contribution Amount under this deed.
- (b) The Minister may agree to recognise the surrender by the Developer of Eligible Offset Credits as discharging the Developer's obligation to pay all or part of a Monetary Contribution or Deferred Contribution Amount, if the Developer:
 - (i) has satisfied the Minister that the value of those Eligible Offset Credits equals or exceeds the value of the Monetary Contribution or Deferred Contribution Amount (or part, as the case may be) as determined in accordance with this deed at that time; and
 - (ii) has obtained an updated Offset Credits Schedule from the Minister in accordance with the WSEA VPA under which the Eligible Offset Credits were accrued, showing that the value of the Developer's Eligible Offset Credits has decreased by the value of the Monetary Contribution or Deferred Contribution Amount (or part, as the case may be).

Schedule 5 - Security terms (clause 6)

1. Provision of Security

Upon execution of this deed by the Developer, the Developer must provide to the Minister one or more Bank Guarantees with a total face value equivalent to \$1,737,191.47.

2. Claims under Bank Guarantees

- (a) The Minister may:
- (i) call upon any Security where the Developer has failed to comply with any obligation in this deed to:
 - A. provide a Contribution Amount, Deferred Contribution Amount or interest under this deed; or
 - B. comply with any obligation to pay money to the Minister under this deed,at or before the time required by this deed; and
 - (ii) retain and apply monies obtained from the call upon the Security towards any costs and expenses incurred by the Minister in rectifying such failures.
- (b) For the purposes of this deed, any costs and expenses which another Authority incurs in rectifying a failure under this deed are taken to be costs and expenses incurred by the Minister in rectifying such a failure.
- (c) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (d) If:
- (i) the Minister calls upon the Security; and
 - (ii) has applied all or part of the monies obtained from the call upon the Security; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,
- then the Developer must provide to the Minister a replacement Security for a face value equivalent to the face value of the Security which has been called upon.
-

3. Release of Security

- (a) If:
- (i) the Developer satisfies the Minister that all of the obligations secured by the Security have been fulfilled; and
 - (ii) the whole of the monies secured by the Security have not been expended,

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

Schedule 6 - Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

1. Net Developable Area

- (a) The Net Developable Area of a part of the Land is the area of land, measured in hectares, comprising the allotments to which the relevant application for a Subdivision Certificate, Construction Certificate or Complying Development Certificate relates, subject to the other provisions of this Schedule 6.
- (b) For the avoidance of doubt the Net Developable Area includes the area of any land that a development consent authorises, or requires, 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.
- (c) The Net Developable Area does not include the area of any land that the development consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
 - (i) government school (within the meaning of the *Education Act 1990*),
 - (ii) TAFE establishment,
 - (iii) emergency services facility,
 - (iv) health services facility owned or operated by a public authority,
 - (v) golf course,
 - (vi) passenger transport facility,
 - (vii) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
 - (viii) public transport corridor (other than a road corridor),
 - (ix) public utility undertaking,
 - (x) bus depot, whether or not owned or operated by a public authority,
 - (xi) recreation area,
 - (xii) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Planning Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
 - (xiii) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Planning Act.
- (d) The following areas of land are also not to be included in the calculation of the Net Developable Area for the relevant development:
 - (i) any part of the land to which the development consent for the relevant development relates that is at or below the level of a 1:100 ART (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,

- (ii) any part of the land to which the development consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Planning Act.
- (e) The Net Developable Area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.
- (f) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
 - (i) land that is within the curtilage of a building listed on the State Heritage Register, or
 - (ii) land that is within Zone E4 Environmental Living.
- (g) For the purpose of calculating the Net Developable Area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (h) In this clause, **curtilage**, in relation to a building, means 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.
- (i) The Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for a relevant development 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.

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

Full name of witness

Full name of Minister for Planning or delegate

Executed by Fitzpatrick Investments Pty Ltd
ABN 38 755 709 681 in accordance with
section 127 of the Corporations Act 2001 (Cth):


Signature of ~~director~~ **SOE DIRECTOR**

Signature of company secretary/director

HUNTER RUSSELL COTTLE
Full name of director

Full name of company secretary/director

Annexure A : Plan showing Land

