

# **Deed**

## **Wilton North Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

**Minister for Planning  
Bradcorp Wilton Park Pty Limited**

[Insert Date]

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## **Wilton North Planning Agreement**

### **Table of Contents**

Deed .....	1
Wilton North Planning Agreement .....	2
Table of Contents .....	2
Parties .....	4
Background .....	4
Operative provisions .....	4
Part 1 - Preliminary .....	4
1 Interpretation .....	4
2 The Planning Agreement .....	11
3 Warranties .....	11
4 Further agreements .....	11
5 Surrender of right of appeal, etc .....	11
Part 2 – Development Contributions .....	12
6 Provision of Development Contributions .....	12
7 Payment of monetary Development Contributions .....	13
8 Carrying out of Work .....	13
9 Application of s7.11, s7.12 and s7.24 of the Act to the Development .....	13
10 Special Infrastructure Contributions .....	13
Part 3 - Provisions Relating to Work Items .....	14
11 Completion and Commencement of Work Items .....	14
12 Works-As-Executed-Plan .....	14
Part 4 – Dispute Resolution .....	14
13 Dispute Resolution .....	14
Part 5 – Security and Enforcement .....	15
14 Security .....	15

# **Wilton North Planning Agreement**

## **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

15	Breach of obligations.....	15
16	Enforcement in a court of competent jurisdiction .....	16
Part 6 – Registration & Restriction on Dealings.....		16
17	Registration of this Deed .....	16
18	Restriction on dealings.....	17
Part 7 – Other Provisions .....		18
19	Risk, Release and Indemnity .....	18
20	Reporting by Developer.....	18
21	Notices .....	19
22	Approvals and Consent .....	19
23	Costs .....	19
24	Entire Deed.....	20
25	Further Acts .....	20
26	Governing Law and Jurisdiction .....	20
27	Joint and Individual Liability and Benefits.....	20
28	No Fetter.....	20
29	Illegality.....	20
30	Severability .....	21
31	Amendment.....	21
32	Waiver .....	21
33	GST.....	21
34	Review.....	22
35	Material adverse effect .....	24
36	Explanatory Note .....	25
Schedule 1 .....		26
Schedule 2.....		28
Schedule 3.....		29
Schedule 4.....		30
Part 1 –Table.....		30
Part 2 – Development Contributions Provisions .....		36
Schedule 5.....		47
Schedule 6.....		49
Schedule 7 .....		52
Execution Page .....		57
Annexure A.....		58

## **Wilton North Planning Agreement**

Under s7.4 of the *Environmental Planning and Assessment Act 1979*

### **Parties**

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

and

**Bradcorp Wilton Park Pty Ltd** ABN 69 086 388 212 of MLC Centre, Level 56, 19-29 Martin Place, Sydney NSW 2000 (**Developer**)

and

### **Background**

- A The Developer owns the Land as set out in Schedule 3. The Land is located in the local government area of Wollondilly Shire Council.
- B The Developer wishes to carry out the Development on the Land.
- C The Developer has sought a change to the environmental planning instruments applying to the Land to enable the Development to be carried out.
- D The Developer has offered to enter into a planning agreement and make Development Contributions in connection with the change to the environmental planning instruments and the carrying out of the Development, in accordance with the terms and conditions of this Deed.

### **Operative provisions**

## **Part 1 - Preliminary**

### **1 Interpretation**

- 1.1 In this Deed the following definitions apply:

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

**Actual Cost** means:

- (a) in relation to an Item of Road Work, the final certified contract cost inclusive of variations following compliance with all of the Developer's obligations under the WAD in respect of that Road Work;

## Wilton North Planning Agreement

### The Minister for Planning

#### Bradcorp Wilton Park Pty Ltd

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- (b) 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 Work and paid by the Developer to third parties for the following:
  - (i) design of the Road Work, project management, fees, investigations, consultant fees, studies or reports specifically required for the Road Work;
  - (ii) any Approval specifically required to be obtained for or in relation to the carrying out of the Road Work; 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.

**Approval** includes approval, consent, licence, permission or the like.

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

**Bank Guarantee** means an 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 or an insurance company subject to prudential supervision by the Australian Prudential Regulatory Authority; 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 March 2018.

**Claim** includes a claim, demand, remedy, suit, injury, damage, loss, liability, action, proceeding or right of action.

**Complying Development Certificate** 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* and includes asbestos and lead.

**Cost** means a cost, charge, expense, outgoing, payment, fee and other expenditure of any nature.

**Cost Cap** means the value for an Item of Road Work contained in Column 2 of the Table in respect of the Road Work, as indexed in accordance with this Deed.

**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 2018 and each anniversary of 1 July 2018 thereafter.

**Current CPI** means the most recent CPI number for the quarter available as at the CPI Adjustment Date in the relevant adjustment year.

**Dedication Land** means all land required to be dedicated by the Developer to the Minister (or the Minister's nominee) under this Deed.

**Deed** means this planning agreement and includes any schedules, annexures and appendices to this planning agreement.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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**Department** means and includes, where relevant, the NSW Department of Planning and Environment, the Secretary and the Minister.

**Development** means the development of the Land for urban purposes including residential housing, community facilities, retail and commercial and employment lands, parks, open space and infrastructure which is made permissible by the Instrument Change.

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

**Development Contribution** means a monetary contribution, the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit, or any combination of them, to be used for, or applied towards a public purpose, as set out in Schedule 4, but does not include any Security or other benefit provided by a Party to the Minister to secure the enforcement of that Party's obligations under this Deed for the purposes of s7.4(3)(g) of the Act.

**Development Rights Holder** in respect of the Direct Access Land means:

- (a) where the owner of the Direct Access Land is not the Developer, the owner of that parcel of land; and
- (b) where the owner of the Direct Access Land is the Developer, the person who has the right (by an agreement between the person and the Developer) to develop that parcel of land.

**Direct Access Land** means land generally in the location shown as 'Dedicated Land – Direct Access Off-Ramp & Bridge Approach' in the Location Plan within lots 26 and 31 of DP 270536 .

**Educational Establishment** has the same meaning as in the *State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017*.

**Existing Public Road Land** means the Hume Motorway public road reserve from the Nepean River to (and including) the Hume Highway and Picton Road intersection.

**Final Lot** means a lot created in the Development for separate residential, retail or commercial occupation and disposition and which is not:

- (a) intended to be further subdivided (including to create a strata or community lot), or
- (b) a Service Lot or a lot of a kind or created for a purpose that is otherwise agreed by the Parties,

not being a lot created by a subdivision of the Land:

- (c) that is to be dedicated or otherwise transferred to the Minister or the Minister's nominee, or
- (d) on which is situated a dwelling-house that was in existence on the date of this Deed.

**GST** has the same meaning as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Instrument Change** means the change to environmental planning instruments proposed in the Planning Proposal.

**Item** means an Item specified in Column 1 of Table.

**Just Terms Act** means the *Land Acquisition (Just Terms Compensation) Act 1991*.

**Land** means the land described in Schedule 3.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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**Land Index** means the '6416.0 - Residential Property Price Indexes: Eight Capital Cities, Residential Property Price Index: Sydney' as published by the ABS.

**LPI** means Land & Property Information.

**Location Plan** means:

- (a) the Design + Planning drawing titled 'Dedicated Land – Direct Access On-Ramp & Sub-arterial Road Connection: Wilton West' reference BRAWI-5-038-1, revision D dated 30 November 2017;
- (b) the Design + Planning drawing titled 'Dedicated Land – Direct Access On-Ramp & Sub-arterial Road Connection: Wilton West' reference BRAWI-5-038-2, revision C dated 17 November 2017; and
- (c) the Design + Planning drawing titled 'Dedicated Land – Direct Access On-Ramp & Sub-arterial Road Connection: Wilton North' reference BRAWI-5-046-1, revision A, dated 20 February 2018,

as set out in Annexure A.

**Lake Work** means the construction of the lake required to be carried out under this Deed, being Item C6.

**MAE Event** — see clause 35.

**Minister** means the Minister for Planning, or person employed in the Department nominated by the Minister or the Secretary for the purposes of this Deed.

**Monetary Contributions** means Items A1, A2, A3, and A4, and any amount taken to be a Monetary Contribution under clause 2.1(e)-(f) of Part 2 of Schedule 4 to this Deed. .

**Novation Deed** means the deed contained in Schedule 7.

**Party** means a party to this Deed.

**Planning Application** means any application for an Approval under the Act which seeks approval for the development of the Land.

**Planning Proposal** means:

- (a) the *Wilton North Wilton Growth Area: Wilton North Precinct: Draft Precinct Plan November 2017*, published by the Department of Planning and Environment;
- (b) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Wilton North Precinct: Application of Flexible Zone Boundary*, marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_FZB\_20170910;
- (c) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Height of Buildings Map*, marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_LZN\_20170910;
- (d) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Land Reservation Acquisition Map*, marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_LRA\_20171025;
- (e) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Land Zoning Map*, marked

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_LZN\_20171025;

- (f) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Residential Density Map*, marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_LZN\_20170910;
- (g) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Areas of Remnant Native Vegetation*, marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_SUA\_20171025; and
- (h) the map titled *State Environmental Planning Policy (Sydney Regional Growth Centers) 2006: Wilton Growth Area: Urban Release Areas Map* marked 'Draft – for exhibition purpose only', and identified by map identification number: SEPP\_SRGC\_WT\_LZN\_20170910.

**Practical Completion** means the Practical Completion of a Road Work in accordance with the WAD for that Road Work.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

**Related Body Corporate** is a body that is related to a given entity within the meaning of s50 of the *Corporations Act 2001* (Cth)

**Required Land** — see clause 2.1(b) of Part 2 of Schedule 4.

**Required Land Proprietor** means a person who is both:

- (a) the registered proprietor of a parcel that is or forms part of the Required Land; and
- (b) free to transfer, dedicate or otherwise deal with the land for the purposes of this Deed without any recourse from any person who has or had the right to develop that land.

**Residential Final Lot** means a Final Lot for separate residential occupation and disposition.

**RMS** means Roads and Maritime Services.

**Road Work** means the road work required to be carried out under this Deed, being Items C1, C2, C3, C4 and C5.

**Roads Act** means the *Roads Act 1993*.

**Roadwork Concept Plans** means:

- (a) the Design + Planning drawing titled 'Sub-arterial Road and On-Ramp Concept Design: Wilton West' reference BRAWI-5-039-1, revision C dated 29 November 2017;
- (b) the Design + Planning drawing titled 'Hume Highway Off-Ramp and Bridge Approach Concept Design: Wilton West' reference BRAWI-5-039-1, revision C dated 29 November 2017,

as set out in Schedule 5.

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

**Security** means a Bank Guarantee, or a bond or other form of security to the satisfaction of the Minister provided in accordance with Schedule 6.

**Service Lot** means a registered lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority;
- (b) for any public utility undertaking (within the meaning of the *Standard*

## Wilton North Planning Agreement

### The Minister for Planning

#### Bradcorp Wilton Park Pty Ltd

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

- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management;
- (d) for avoidance of doubt — association property within the meaning of the *Community Land Development Act 1989* that is to be used for any one or more of the purposes set out in (c) above.

**SIC Determination** means a determination under s7.23 of the Act by the Minister of the level and nature of development contributions to be imposed as a condition of Development Consent on land within a Special Contributions Area which applies to a Special Contributions Area that includes all or part of the Land.

**Site Audit Statement** means a site audit statement as defined under the *Contaminated Land Management Act 1997* which:

- (a) states that the land to which the statement relates is suitable for use as a road (in respect of Dedication Land to be dedicated for the purpose of a Road Work), or as an Educational Establishment in respect of the Dedication Land to be dedicated for the purpose of a school site; and
- (b) does not specify any conditions or restrictions on the use of the land as a road (in respect of the Dedication Land to be used for a Road Work) or an Educational Establishment (in respect of the Dedication Land to be used for a school site), unless otherwise agreed by the Minister, acting reasonably.

**Special Contributions Area** has the same meaning as in the Act.

**Special Infrastructure Contribution (SIC)** means a contribution towards the provision of infrastructure determined in accordance with the SIC Determination and required to be paid under a condition of a Development Consent for the Development.

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

**Subdivision Works Certificate** has the same meaning as in the Act.

**Table** means the table in Part 1 of Schedule 4 which is to be read subject to Part 2 of Schedule 4 and the remainder of this Deed, which prevail to the extent of any inconsistency.

**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.

**Work** means:

- (a) when a reference to an object, the physical result of any building, engineering or construction work in, on, over or under land; and
- (b) when a reference to activity, activity directed to produce the physical result of any building, engineering or construction work in, on over or under land.

**WAD** means a Works Authorisation Deed between the Developer and RMS in respect of the construction of an Item of Road Work.

- 1.2 In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- 1.2.2 A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- 1.2.3 If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian currency.
- 1.2.5 A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- 1.2.7 A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- 1.2.9 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.10 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.11 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.12 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.13 A reference to this Deed includes the agreement recorded in this Deed.
- 1.2.14 A reference to a Party to this Deed includes a reference to the servants, agents and contractors of the Party, the Party's successors and assigns.
- 1.2.15 A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
- 1.2.16 Any schedules, appendices and attachments form part of this Deed.
- 1.2.17 Notes appearing in this Deed are operative provisions of this Deed.
- 1.2.18 This Deed confers rights only upon a person expressed to be a Party and not upon any other person.
- 1.2.19 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.
- 1.2.20 Nothing in this Deed requires the Developer:
  - (a) to actually carry out all or any part of the Development; or
  - (b) to produce any or a particular number or type of Final Lots, or

**Wilton North Planning Agreement**

**The Minister for Planning**

**Bradcorp Wilton Park Pty Ltd**

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produce any Final Lots in any particular order.

## **2 The Planning Agreement**

- 2.1 This Deed is a planning agreement within the meaning of s7.4(1) of the Act.
- 2.2 This Deed commences and has force and effect on the date when the Parties have both executed the same copy of this Deed.
- 2.3 The Parties are to insert the date when this Deed is executed by all Parties on the front page and on the execution page.
- 2.4 This Deed applies to the:
  - (a) Land, the Existing Public Road Land and the Direct Access Land;
  - (b) the Instrument Change; and
  - (c) Development.
- 2.5 For avoidance of doubt, clause 2.4 does not cease to apply merely because this Deed is not registered on the title of a Final Lot or because the owner of a Final Lot is not a party to this Deed.

## **3 Warranties**

- 3.1 The Parties warrant to each other that they:
  - 3.1.1 have full capacity to enter into this Deed, and
  - 3.1.2 are able to fully comply with their obligations under this Deed.

## **4 Further agreements**

- 4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Deed that are not inconsistent with this Deed for the purpose of implementing this Deed.

## **5 Surrender of right of appeal, etc.**

- 5.1 The Developer is not to commence or maintain, or to cause or procure the commencement or maintenance, of any proceedings in any court or tribunal or similar body appealing against, or questioning the validity of this Deed, or an Approval relating to the Development in so far as the subject-matter of the proceedings relates to this Deed.
- 5.2 Clause 5.1 does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the *Land and Environment Court Act 1979*) and, in doing so, rely on this Deed as a matter for consideration under section 4.15(1)(a)(iia) of the Act, provided that the validity or reasonableness of, or the need for this Deed is not questioned by the Developer in those proceedings.

## **Part 2 – Development Contributions**

### **6 Provision of Development Contributions**

- 6.1 The Developer is to make Development Contributions to the Minister, RMS or the Minister's nominee, in accordance with Schedule 4 and such contributions must:
- 6.1.1 must be made in accordance with the provisions of this Deed relating to the making of Development Contributions; and
- 6.1.2 otherwise be made to the reasonable satisfaction of the Minister.
- Despite the above, the Lake Work must be provided but there is no requirement under this Deed for ownership to pass to the Minister, RMS or the Minister's nominee.
- 6.2 The Lake Work must be commenced prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1,000th Residential Final Lot or such later date as may be agreed between the Developer and the Secretary.
- 6.3 For the purposes of clause 6.2, the Lake Work is not taken to be commenced unless at least one hectare of land has been substantially disturbed in the course of carrying out bulk earthworks for the purposes of the Lake Work.
- 6.4 Nothing in this Agreement precludes the Developer from electing to make a Development Contribution earlier than it is required to do so.
- 6.5 The Developer acknowledges and agrees that subject to s7.3 of the Act, the Minister:
- 6.5.1 has no obligation to use or expend Development Contributions made under this Deed for a particular purpose and has no obligation to repay the Development Contributions; and
- 6.5.2 in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.
- 6.6 Despite clause 6.5, the Minister is to use or expend Item A4 for the purpose set out in Column 3 of the Table for that Item and apply the money towards that purpose within a reasonable time.
- 6.7 For avoidance of doubt:
- 6.7.1 where this Deed requires that a Development Contribution be made prior to the issue of a Subdivision Certificate for the plan of subdivision that will create a given Residential Final Lot; and
- 6.7.2 the Subdivision Certificate is issued without the making of that Development Contribution in breach of this Deed,
- 6.7.3 then despite the breach, it is a requirement of this Deed that no further Subdivision Certificate may be issued for a plan of subdivision that will create any Residential Final Lot until the Development Contribution (that was not made) is made.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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## **7 Payment of monetary Development Contributions**

- 7.1 A monetary Development Contribution is made for the purposes of this Deed when the Minister receives the full amount of the contribution payable under this Deed in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Minister.
- 7.2 If a monetary Development Contribution required by this Deed is not paid by the due date for payment, the Developer will pay interest on the overdue amount until it is paid at a rate of 2% per annum above the loan reference rate charged by the Commonwealth Bank of Australia from time to time, and as required by the Minister.

## **8 Carrying out of Work**

- 8.1 Without limiting any other provision of this Deed, Road Work is to be carried out in accordance with:
  - 8.1.1 a design and specifications approved by RMS under the terms of a WAD;
  - 8.1.2 any WAD for that Road Work,
  - 8.1.3 any relevant Approval;
  - 8.1.4 any other applicable law.
- 8.2 The Developer, at its own cost, is to comply with any reasonable direction given to it by RMS to prepare or modify a design or specification relating to a Road Work.
- 8.3 Without limiting any other provision of this Deed, the Lake Work is to be carried out in accordance with:
  - 8.3.1 any relevant Approval;
  - 8.3.2 any other applicable law.

## **9 Application of s7.11, s7.12 and s7.24 of the Act to the Development**

- 9.1 This Deed does not exclude the application of s7.11 and 7.12 of the Act to the Development.
- 9.2 This Deed does not exclude the application of s7.24 of the Act to the Development, other than the extent necessary to give effect to clause 4.5 of Part 2 of Schedule 4.

## **10 Special Infrastructure Contributions**

- 10.1 The Parties acknowledge that the Minister may, in the Minister's absolute discretion, make a SIC Determination.
- 10.2 If the Minister makes such a SIC Determination, clause 4 of Schedule 4 applies.
- 10.3 For the avoidance of doubt the Minister is under no obligation to make a SIC Determination.

## **Part 3 - Provisions Relating to Work Items**

### **11 Completion and Commencement of Work Items**

- 11.1 Road Work is completed for the purposes of this Deed when the Developer gives the Minister written evidence that RMS is satisfied that the Road Work is complete for the purposes of any WAD relating to that Road Work.
- 11.2 The Lake Work is completed for the purposes of this Deed when the Developer gives the Minister written evidence that satisfies the Minister, acting reasonably, that the Lake Work is complete.
- 11.3 Lake Work is commenced for the purposes of this Deed when the Developer gives the Minister written evidence that satisfies the Minister, acting reasonably, that the Lake Work has been commenced.

### **12 Works-As-Executed-Plan**

- 12.1 No later than 60 days after a Road Work is completed for the purposes of this Deed, the Developer is to submit to the Minister a full works-as-executed-plan in respect of the Road Work.
- 12.2 The Developer, being the copyright owner in the plan referred to in clause 12.1, gives the Minister a non-exclusive licence to use the copyright in the plans for the purposes of this Deed.

## **Part 4 – Dispute Resolution**

### **13 Dispute Resolution**

- 13.1 A dispute arises under this Deed if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 13.2 If a notice is given under clause 13.1 the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 13.3 If the dispute is not resolved within a further 28 days, the Parties are to mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and are to request the President of the Law Society, or the President's nominee to select a mediator.
- 13.4 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 13.5 Each Party is to bear its own costs arising from or in connection with the appointment of a mediator and the mediation.
- 13.6 The Parties are to share equally the costs of the President, the mediator, and the mediation.
- 13.7 This clause 13:
  - 13.7.1 does not affect the Developer's ability to commence and/or conduct any class 1 proceedings (as set out in section 17 of the *Land and*

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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*Environment Court Act 1979*); and

13.7.2 does not prevent urgent injunctive relief to keep a particular position.

## **Part 5 – Security and Enforcement**

### **14 Security**

- 14.1 The Developer must provide Security for the performance of its obligations under this Deed in accordance with Schedule 6.

### **15 Breach of obligations**

- 15.1 If the Developer is in breach of any obligation under this Deed, the Minister may give a written notice to the Developer:
- 15.1.1 specifying the nature and extent of the breach,
  - 15.1.2 requiring the Developer to:
    - (a) rectify the breach if it reasonably considers it is capable of rectification, or
    - (b) pay compensation to the reasonable satisfaction of the Minister in lieu of rectifying the breach if it reasonably considers the breach is not capable of rectification, and
  - 15.1.3 specifying the period within which the breach is to be rectified or compensation paid, being a period that is reasonable in the circumstances.
- 15.2 If the Developer fails to fully comply with a notice referred to in clause 15.1, the Minister may, without further notice to the Developer, call-up the Security provided by the Developer under this Deed and apply it to remedy the Developer's breach, subject to and in accordance with clause 4.3 of Schedule 4 and Schedule 6.
- 15.3 Any reasonable costs incurred by the Minister in remedying a breach in accordance with clause 15.2 may be recovered by the Minister by either or a combination of the following means:
- 15.3.1 by calling-up and applying the Security provided by the Developer under this Deed (subject to and in accordance with clause 4.3 of Schedule 4 and Schedule 6), or
  - 15.3.2 as a debt due in a court of competent jurisdiction.
- 15.4 For the purpose of clause 15.3, the Minister's reasonable costs of remedying a breach the subject of a notice given under clause 15.1 include, but are not limited to:
- 15.4.1 the costs of the Minister's servants, agents and contractors reasonably incurred for that purpose,
  - 15.4.2 all fees and charges necessarily or reasonably incurred by the Minister in remedying the breach, and
  - 15.4.3 all legal costs and expenses reasonably incurred by the Minister, by reason of the breach.
- 15.5 Nothing in this clause 15 prevents the Minister from exercising any rights it may have at law or in equity in relation to a breach of this Deed by the Developer, including but not limited to seeking relief in an appropriate court.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

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## **16 Enforcement in a court of competent jurisdiction**

- 16.1 Without limiting any other provision of this Deed, the Parties may enforce this Deed in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Deed prevents:
  - 16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates, or
  - 16.2.2 the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

## **Part 6 – Registration & Restriction on Dealings**

### **17 Registration of this Deed**

- 17.1 The Parties agree to register this Deed for the purposes of s7.6(1) of the Act.
- 17.2 Within 10 business days of receiving a copy of this Deed executed by the Minister, the Developer is to lodge with LPI:
  - 17.2.1 an instrument requesting registration of this Deed on the title to the Land duly executed by the Developer,
  - 17.2.2 certificates of title for the Land; and
  - 17.2.3 the written consent of each person referred to in s7.6(1) of the Act to that registration,in order to enable the Deed to be registered on the title to the Land.
- 17.3 The Developer is to do such other things as are reasonably necessary to enable registration of this Deed to occur.
- 17.4 The Developer must provide the Minister with evidence of lodgment of this Deed with LPI for registration within 10 business days of lodgment, and evidence of the registration of this Deed within 10 business days of receiving notification from LPI that it has been registered.
- 17.5 The Parties are to do such things as are reasonably necessary to remove any notation relating to this Deed from the title to the Land once the Developer has completed its obligations under this Deed to the reasonable satisfaction of the Minister or this Deed is terminated or otherwise comes to an end for any other reason.
- 17.6 The Parties agree to do all things reasonably required by the other Party to promptly release and discharge this Deed with respect to a Final Lot or Service Lot, upon its creation.
- 17.7 On the date of execution of this Deed, the Developer grants to the Minister a fixed and specific charge over the Developer's right, title and interest in the Land, to secure:
  - 17.7.1 the performance of the Developer's obligation to make Development Contributions under this Deed, and
  - 17.7.2 any damages that may be payable to the Minister, or any costs which may be incurred by the Minister in the event of a breach of this Deed by the Developer,and the charge granted will be released on the registration of this Deed on the

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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title to the Land.

- 17.8 The Developer acknowledges and agrees that:
  - 17.8.1 when this Deed is executed (and prior to the initial registration of the Deed on the title of the Land):
    - (a) the Minister has, or is deemed to have acquired (and the Developer is deemed to have granted), an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900*; and
    - (b) consequently (for that period) the Minister will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - 17.8.2 it must not object to the Minister lodging a caveat in the relevant folios of the register for the Land (prior to the initial registration of this Deed on the title of the Land);
  - 17.8.3 it must not (prior to the initial registration of the Deed on the title of the Land) seek to remove any caveat lodged by the Minister (provided the caveat does not prevent the registration of a plan of subdivision in respect of the Land).
- 17.9 The Minister:
  - 17.9.1 must register a withdrawal of any caveat in respect of the Land within fifteen business days after the initial registration of the Deed on the title of the Land; and
  - 17.9.2 must not lodge any other caveats on the titles to any of the Land, other than in accordance with clause 17.8.2.
- 17.10 The Developer must reimburse the Minister for the Minister's reasonable costs of:
  - 17.10.1 lodging a caveat under clause 17.8.2; or
  - 17.10.2 registering a withdrawal of any caveat under clause 17.9.1.

## **18 Restriction on dealings**

- 18.1 The Developer is not to:
  - 18.1.1 transfer the Land, or
  - 18.1.2 assign the Developer's rights or obligations under this Deed, or novate this Deed,to any person unless:
  - 18.1.3 the Developer has, at no cost to the Minister, first procured the execution by the person to whom the Land or part (other than a Final Lot or Service Lot) is to be transferred or the Developer's rights or obligations under this Deed are to be assigned or novated, of a deed in favour of the Minister on terms reasonably satisfactory to the Minister and generally in accordance with the Novation Deed, and
  - 18.1.4 the Minister has given written notice to the Developer stating that the Minister considers that the purchaser, transferee, assignee or novatee, other than a transferee of a Final Lot, is reasonably capable of performing its obligations under this Deed, and
  - 18.1.5 the Developer is not in any unremedied breach of this Deed, and
  - 18.1.6 the Minister otherwise consents to the transfer, assignment or novation, such consent not to be unreasonably withheld.
- 18.2 If the Minister gives consent under clause 18.1 the Minister must also enter into the deed referred to in clause 18.1.3.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- 18.3 The Developer acknowledges and agrees that it remains liable to fully perform its obligations under this Deed unless and until it has complied with its obligations under clause 18.1.
- 18.4 Clause 18.1 does not apply to the conversion of any part of the Land into association property within the meaning of the *Community Land Development Act 1989* or common property (within the meaning of the *Strata Schemes Development Act 2015*).

## **Part 7 – Other Provisions**

### **19 Risk, Release and Indemnity**

- 19.1 The Developer performs this Deed at its own risk and its own cost.
- 19.2 The Developer releases the Minister from any Claim it may have against the Minister arising in connection with the performance of the Developer's obligations under this Deed, provided that this clause does not prevent the Developer making a Claim against the Minister in respect of a breach of this Deed by the Minister which is not caused or contributed to by the Developer, provided the Developer deals with the Claim by notifying a Dispute under this Deed and following the procedures under clause 13.
- 19.3 The Developer indemnifies the Minister from and against all Claims that may be sustained, suffered, recovered or made against the Minister and against any Costs incurred arising from any act or omission by the Developer, its servants or agents in connection with the performance of the Developer's obligations under this Deed, except where the damage, expense, loss or liability suffered or incurred by the Minister is caused or contributed to by any negligent act or negligent omission of the Minister or any of the Minister's servants or agents (including employees employed within the Department).

### **20 Reporting by Developer**

- 20.1 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:
  - 20.1.1 details of all Development Consents, Construction Certificates, Complying Development Certificates, Subdivision Works Certificates and Subdivision Certificates issued in relation to the Development;
  - 20.1.2 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;
  - 20.1.3 a forecast in relation to the anticipated progression and completion of the Development;
  - 20.1.4 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
  - 20.1.5 when the Developer expects to lodge the next Planning Application.
- 20.2 Upon the Secretary's request, the Developer must deliver to the Secretary all

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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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.

- 20.3 This clause 20 ceases to apply 12 months after the date when the Developer has completed all of the Development Contributions required to be made under this Deed.

## **21 Notices**

- 21.1 Any notice, consent, information, application or request that is to or may be given or made to a Party under this Deed is only given or made if it is in writing and sent in one of the following ways:
- 21.1.1 delivered or posted to that Party at its address set out in Schedule 2,
  - 21.1.2 faxed to that Party at its fax number set out in Schedule 2, or
  - 21.1.3 emailed to that Party at its email address set out in Schedule 2:
- 21.2 If a Party gives another Party 3 business days' notice of a change of its address, fax number or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted, faxed or emailed to the latest address or fax number.
- 21.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 21.3.1 delivered, when it is left at the relevant address,
  - 21.3.2 sent by post, 2 business days after it is posted,
  - 21.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number, or
  - 21.3.4 sent by email and the sender does not receive a delivery failure message from the sender's internet service provider within a period of 24 hours of the email being sent.
- 21.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

## **22 Approvals and Consent**

- 22.1 Except as otherwise set out in this Deed, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Deed in that Party's absolute discretion and subject to any conditions determined by the Party.
- 22.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## **23 Costs**

- 23.1 The Developer is to pay to the Minister the Minister's reasonable costs of preparing, negotiating, executing and stamping this Deed, and any document related to this Deed on execution of this Deed (if the costs are known and notified to the Developer prior to that time) or otherwise within 7 days of a written demand by the Minister for such payment.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- 23.2 The Developer is also to pay to the Minister the Minister's reasonable costs of enforcing this Deed within 7 days of a written demand by the Minister for such payment, but only when there is an actual breach of the Deed by the Developer.

## **24 Entire Deed**

- 24.1 This Deed contains everything to which the Parties have agreed in relation to the matters it deals with.
- 24.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Deed was executed, except as permitted by law.

## **25 Further Acts**

- 25.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Deed and all transactions incidental to it.

## **26 Governing Law and Jurisdiction**

- 26.1 This Deed is governed by the law of New South Wales.
- 26.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 26.3 The Parties are not to object to the exercise of jurisdiction by those courts on any basis.

## **27 Joint and Individual Liability and Benefits**

- 27.1 Except as otherwise set out in this Deed:
- 27.1.1 any agreement, covenant, representation or warranty under this Deed by 2 or more persons binds them jointly and each of them individually, and
- 27.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

## **28 No Fetter**

- 28.1 Nothing in this Deed shall be construed as requiring the Minister to do anything that would cause the Minister to be in breach of any of the Minister's obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- 28.2 For the avoidance of doubt, clause 28.1 does not affect any obligation of a consent authority (under section 4.15(1)(a)(iia) of the Act) to take this Deed into consideration.

## **29 Illegality**

- 29.1 If this Deed or any part of it becomes illegal, unenforceable or invalid as a

## **Wilton North Planning Agreement**

### **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

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result of any change to a law, the Parties are to co-operate and do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.

## **30 Severability**

- 30.1 If a clause or part of a clause of this Deed can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 30.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

## **31 Amendment**

- 31.1 No amendment of this Deed will be of any force or effect unless it is in writing and signed by the Parties to this Deed in accordance with clause 25D of the Regulation.

## **32 Waiver**

- 32.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 32.2 A waiver by a Party is only effective if it:
- 32.2.1 is in writing,
  - 32.2.2 is addressed to the Party whose obligation or breach of obligation is the subject of the waiver,
  - 32.2.3 specifies the obligation or breach of obligation the subject of the waiver and the conditions, if any, of the waiver,
  - 32.2.4 is signed and dated by the Party giving the waiver.
- 32.3 Without limitation, a waiver may be expressed to be conditional on the happening of an event, including the doing of a thing by the Party to whom the waiver is given.
- 32.4 A waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given, and is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.
- 32.5 For the purposes of this Deed, an obligation or breach of obligation the subject of a waiver is taken not to have been imposed on, or required to be complied with by, the Party to whom the waiver is given.

## **33 GST**

Note: The Parties have a common belief that

- GST does not apply to transactions for making supplies (commonly referred to as in kind developer contributions) under this Deed, because the Developer has entered into this Deed in order to secure a right to develop land (as per Division 82 of the GST Law; and/or

## Wilton North Planning Agreement

### The Minister for Planning

#### Bradcorp Wilton Park Pty Ltd

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- the Deed provides for fees or charges for a supply of a regulatory nature made by an Australian government agency and are therefore not the provision of consideration (as per Division 81 of the GST Law and regulation 81.15.01 of the *A New Tax System (Goods and Services Tax) Regulations 1999*).

This clause 33 has been included in the event that the Parties are mistaken.

33.1 In this clause:

**Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice** have the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Input Tax Credit** has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

**Taxable Supply** has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 33.2 Subject to clause 33.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 33.3 Clause 33.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Deed to be GST inclusive.
- 33.4 No additional amount shall be payable by the Minister under clause 33.2 unless, and only to the extent that, the Minister (or the representative member of any GST group of which the Minister is a member) is entitled to an Input Tax Credit for the Minister's acquisition of the Taxable Supply giving rise to the liability to pay GST, and shall only be payable after the benefit of that Input Tax Credit has been received.
- 33.5 No payment of any amount pursuant to this clause 33, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 33.6 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 33.7 This clause continues to apply after expiration or termination of this Deed.

## 34 Review

- 34.1 The Parties agree to review this Deed if either party gives the other Party a written notice to the effect that the first Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.
- 34.2 For the purposes of clause 34.1, the relevant changes include (but are not limited to):

34.2.1 the Instrument Change has not been made within 12 months

## Wilton North Planning Agreement

### The Minister for Planning

#### Bradcorp Wilton Park Pty Ltd

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of the date this Deed commenced; or

- 34.2.2 the Instrument Change has the effect that satisfactory arrangements must be made for the provision of state public infrastructure before the making of a development application (or grant of a Development Consent) for all or any part of the Development and within 6 months of the date of the Instrument Change, the Secretary has not certified that satisfactory arrangements have been made for the provision of state public infrastructure in respect of the Development as a result of entry into this Deed;
- 34.2.3 the Minister or another public authority determines that Items C2 and C3 are not required and instead a different bridge and off ramps and associated infrastructure are required in a different location (**Relocated Road Infrastructure**); and
- 34.2.4 any change to a law that restricts or prohibits or enables the Minister or any other planning authority to restrict or prohibit any aspect of the Development.
- 34.3 If a notice is issued under clause 34.1, the Parties are to meet, negotiate in good faith, and use all reasonable endeavours to agree on and implement appropriate amendments to this Deed arising from the change of circumstances described in a notice under clause 34.1.
- 34.4 If requested by the Developer, the Minister is to consider, as part of a review under this clause, whether to terminate this Deed if the circumstances in 34.2.1 or 34.2.2 occur.
- 34.5 If the circumstances in clause 34.2.3 occur and no SIC Determination has been made, then, the Parties are to meet to negotiate in good faith and use all reasonable endeavours to agree on and implement amendments to this Deed to ensure that appropriate and reasonable Development Contributions are made by the Developer towards the Relocated Road Infrastructure having regard to:
  - 34.5.1 the reasonable cost of the Relocated Road Infrastructure and its location; and
  - 34.5.2 the expectation by the Developer that any Relocated Road Infrastructure to which it would agree should deliver a benefit to the Land that is equivalent to the benefit that would have been delivered to the Land by Items C2 and C3.
- 34.6 If this Deed becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Deed is entered into.
- 34.7 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 34.1 (but not clause 34.6) is not a Dispute for the purposes of this Deed and is not a breach of this Deed.
- 34.8 Despite clause 34.7, a failure of the Parties to reach agreement under clause 34.5 constitutes a Dispute for the purposes of this Deed, if no SIC Determination has been made at that time.
- 34.9 If as a result of a review under this clause the Parties decide to terminate this Deed, any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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## 35 Material adverse effect

35.1 For the purposes of this clause 35 a **MAE Event** occurs:

35.1.1 In respect of a Road Work, if:

- (a) the amount notified by the Minister for the cost of a Road Work under clause 2.3(b) of Part 2 of Schedule 4 is less than the Cost Cap;
- (b) the SIC Determination has been prepared on the basis that the Road Work would (taking into account indexation) cost more than the amount so notified; and
- (c) the Minister has not, within 180 days of giving the notice under clause 2.3(b) of Part 2 of Schedule 4, amended the SIC Determination, or issued a new SIC Determination, that is consistent with the Road Work costing no more than the amount so notified (taking into account indexation), or

35.1.2 In respect of the dedication of Dedication Land, if:

- (a) the Minister has issued a notice under clause 3.7 of Part 2 of Schedule 4 in respect of Dedication Land based on the values for Dedication Land in this Deed which are \$125 per sqm (as at the date of this Deed and subject to indexation in accordance with the Land Index) in respect of land for Road Works and \$250 per sqm (as at the date of this Deed and subject to indexation in accordance with the Land Index) in respect of land for a school site (**VPA Land Values**);
- (b) the SIC Determination has been prepared on the basis of values for land for Road Works and school sites of more than the VPA Land Values (**SIC Land Values**); and
- (c) the Minister has not, within 180 days of giving the notice under clause 3.7 of Part 2 of Schedule 4, amended the SIC Determination, or issued a new SIC Determination, that is based on the VPA Land Values.

35.2 If the Developer believes that an MAE Event has occurred it must notify the Minister accordingly.

35.3 If a notice is given under clause 35.2 then, as soon as possible, but no later than 20 business days after the Minister has received that notice, the parties must negotiate in good faith and endeavor to agree on whether or not a MAE Event has occurred:

35.4 If the parties do not reach agreement on these matters within 20 Business Days after commencing the negotiations then any party may refer the matter for dispute resolution under the dispute resolution procedure in clause 13.

35.5 If such a dispute is not referred to dispute resolution under the dispute resolution procedure within 18 months after the end of the 20 business day period referred to in clause 35.3 the Developer is deemed to have accepted that an MAE Event has not occurred.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- 35.6 The Minister must provide to the Developer, on request, such existing documents as are reasonably necessary to establish whether or not a MAE Event has occurred (such documents being limited to documents concerning the calculation of the amounts payable under the SIC Determination).
- 35.7 As soon as practicable but no later than 20 business days after it has been agreed or determined that a MAE Event has occurred, the Minister will issue a revised notice under clause 2.3(b) or clause 3.7 of Part 2 of Schedule 4 in which the Road Work Offset or Dedication Land Offset originally notified by the Minister in respect of the particular Road Work or Dedication Land the subject of the MAE Event, is increased by:
- 35.7.1 if the MAE Event relates to a Road Work, the amount of the additional SIC payable by the Developer as a result of the value of that Road Work in the SIC Determination being more than the Actual Cost of that Road Work; or
- 35.7.2 if the MAE Event relates to dedication of Dedication Land, the amount which is the difference between the Dedication Land Offset calculated under this Deed for the Dedication Land, and the amount the Dedication Land Offset would have been under this Deed if the value of the Dedication Land under this Deed was determined using the SIC Land Values rather than the VPA Land Values.

## **36 Explanatory Note**

- 36.1 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note is not to be used to assist in construing this Deed.

## Schedule 1

### Section 7.4 Requirements

<b>Requirement under the Act</b>	<b>This Deed</b>
<p><b>Planning instrument and/or development application</b> – (section 7.4(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a development application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>Yes</p> <p>Yes</p> <p>No</p>
<b>Description of land to which this Deed applies</b> – (section 7.4(3)(a))	The land to which this Deed applies is described in clause 2.4.
<b>Description of change to the environmental planning instrument to which this Deed applies</b> – (section 7.4(3)(b))	Amendment to the <i>State Environmental Planning Policy (Sydney Region Growth Centres) 2006</i> to make the Development permissible
<b>The scope, timing and manner of delivery of contributions required by this Deed</b> – (section 7.4(3)(c))	Part 2 and Schedule 4
<b>Applicability of sections 7.11 and 7.12 of the Act</b> – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 are not excluded in respect of the Development.
<b>Applicability of section 7.24 of the Act</b> – (section 7.4(3)(d))	The application of section 7.24 of the Act is not excluded in respect of the Development, other than the extent necessary to give effect to clause 4.5 of Part 2 of Schedule 4.
<b>Consideration of benefits under this Deed if section 94 applies</b> – (section 7.4(3)(e))	No. The Development Contributions under the Deed must not be taken into consideration in determining a contribution under s7.11 of the Act in respect of the Development or any other development on the Land.

**Wilton North Planning Agreement**

**The Minister for Planning**

**Bradcorp Wilton Park Pty Ltd**

<b>Mechanism for Dispute Resolution –</b> (section 7.4(3)(f))	See Part 4
<b>Enforcement of this Deed –</b> (section 7.4(3)(g))	See Part 2 and Schedule 4 (in relation to the preconditions for the issue of Subdivision Certificates) and Part 5
<b>No obligation to grant consent or exercise functions –</b> (section 7.4(10))	See clause 28

## **Schedule 2**

(clause 1.1)

### **Address for Service**

**The Minister:**

Name: The Minister for Planning

Address: Level 15, 52 Martin Place, Sydney NSW 2000

Facsimile: (02) 9228 6455

Email: [PlanningAgreements@planning.nsw.gov.au](mailto:PlanningAgreements@planning.nsw.gov.au)

Representative: Director Development Contributions

**Developer:**

Name: Bradcorp Wilton Park Pty Ltd [UPDATE]

Address: MLC Centre, Level 56, 19-29 Martin Place, Sydney NSW 2000

Facsimile: (02) 8877 0077

Email: [mminogue@bradcorp.com.au](mailto:mminogue@bradcorp.com.au)

Representative: Mark Minogue (Company  
Secretary)

**Schedule 3**

(clause 1.1)

**Land**

Lot 1 DP1215383

Lot 2 DP1215383

Lot 4 DP702024

Lot 1 DP629828

## **Schedule 4**

(Clause 6)

### **Development Contributions**

#### **Part 1 –Table**

**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

Column 1 Item/ Contribution	Column 2 Value	Column 3 Manner & Extent	Column 4 Timing
<b>A. Monetary Contributions</b>			
1. Hume Highway and Picton Road Interchange Interim Upgrade	\$7,800,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	\$1,392.86 per Final Residential Lot to be paid in 3 instalments of \$2,600,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	An instalment of \$2,600,000 (indexed in accordance with clause 1 of Part 2 of this Schedule 4) must be paid prior to the issue of the Subdivision Certificate in relation to a plan of subdivision which creates the 100th Residential Final Lot, the 200th Residential Final Lot and the 300th Residential Final Lot, provided that the total amount of contributions does not exceed the amount in Column 2.
2. Public Transport	\$4,740,400 indexed in accordance with clause 1 of Part 2 of this Schedule 4	\$846.50 per Residential Final Lot to be paid in 28 instalments indexed in accordance with clause 1 of Part 2 of this Schedule 4	Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates Final Lots, an instalment of \$169,300 (indexed in accordance with clause 1 of Part 2 of this Schedule 4) must be paid for each tranche of 200 Residential Final Lots (or part thereof) to which the plan of subdivision relates, provided that the total amount of contributions does not exceed the amount in Column 2.

**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

3. Social Infrastructure	\$12,305,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	\$2,197.32 per Residential Final Lot paid in 28 instalments of \$439,464 indexed in accordance with clause 1 of Part 2 of this Schedule 4	Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates Residential Final Lots, an instalment of \$439,464 (indexed in accordance with clause 1 of Part 2 of this Schedule 4) must be made for each tranche of 200 Residential Final Lots (or part thereof) to which the plan of subdivision relates, provided that the total amount of contributions does not exceed the amount in Column 2.
4. Engagement of a Wilton Business Development Director	\$2,500,000 indexed in accordance with clause 1 of Part 2 of this Schedule 4	One instalment only for the engagement — within the Department or another organisation nominated by the Secretary — of a Wilton Business Development Director for 5 years who is to endeavour to secure non-population based employment to the Wilton township.	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1,000 <sup>th</sup> Residential Final Lot.
<b>B. Dedication of Land</b>			
1. Land for Northern Ramps (B)	\$787,500 which is to be substituted with the amount indexed under clause 3 of Part 2 of Schedule 4.	Approximately 6,300m <sup>2</sup> of land for on-ramp generally in the location as shown as 'B' on the Location Plan	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300 <sup>th</sup> Residential Final Lot
2. Land for Sub Arterial (A)	\$7,112,500 which is to be substituted with the amount indexed under clause 3 of Part 2 of Schedule 4.	Approximately 56,900m <sup>2</sup> of land for a public road generally in the location as shown as 'A' on the Location Plan	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300 <sup>th</sup> Residential Final Lot

**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

3. Land for Sub Arterial (C)	\$1,850,000 which is to be substituted with the amount indexed under clause 3 of Part 2 of Schedule 4.	Approximately 14,800m <sup>2</sup> of land for a public road generally in the location as shown as 'C' on the Location Plan	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1,250th Residential Final Lot
4. Land for primary school	\$7,500,000 which is to be substituted with the amount indexed under clause 3 of Part 2 of Schedule 4.	A parcel of land of approximately 3 hectares in area to the reasonable satisfaction of the Department of Education and being the in the general location of the of the 'indicative primary school location' on the Location Plan	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 4,500 <sup>th</sup> Residential Final Lot
<b>C. Carrying out of Work</b>			
1. Northern Ramps – North On Ramp	\$10,148,504 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300th Residential Final Lot, subject to the provisions of any WAD for this Item of Road Work

**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

2. Direct Access/Bridge/Pedestrian/Cycle over highway – Lights	\$13,596,339 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300th Residential Final Lot, subject to the provisions of any WAD for this Item of Road Work
3. Duplicate Bridge	\$10,540,000 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300th Residential Final Lot, subject to the provisions of any WAD for this Item of Road Work
4. Sub Arterial Road (A)	\$7,237,136 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 300th Residential Final Lot, subject to the provisions of any WAD for this Item of Road Work
5. Sub Arterial Road (C)	\$2,694,724 indexed under clause 2.3(c) of Part 2 of Schedule 4	Works to be constructed to a design approved by RMS and generally in accordance with the Roadwork Concept Plans	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 1,250th Residential Final Lot, subject to the provisions of any WAD for this Item of Road Work
6. Lake	Not applicable	Works to be constructed as an approximately 11-hectare artificial lake generally in the location and configuration shown for the southern 'proposed lake' in 'Figure 2: Wilton North Precinct Indicative Layout Plan' in the Planning Proposal.	Prior to the issue of the Subdivision Certificate for the plan of subdivision which will create the 3,000th Residential Final Lot or such later date as may be agreed between the Developer and the Secretary.

## **Part 2 – Development Contributions Provisions**

### **1. Monetary Contributions**

- (a) The Developer must make Monetary Contributions in accordance with the Table and this clause.
- (b) On each CPI Adjustment Date, the value of the Monetary Contributions remaining to be paid pursuant to the Table will be adjusted by multiplying the amount of the Monetary Contributions by an amount equal to the Current CPI divided by the Base CPI.
- (c) On the making of a Monetary Contribution in accordance with clause 1(a) of this Schedule 4, the Minister must, as soon as practicable, issue a notice to the Developer stating the amount of the offset to be granted for the Monetary Contribution which will be the amount of monetary Development Contributions paid (**Monetary Offset**).

### **2. Design, Construction and Handover of the Road Work**

#### **2.1 Pre-conditions to Commencement of Road Work**

- (a) Prior to commencement of an Item of Road Work, the Developer must:
  - (i) if Development Consent is required - provide evidence to the Minister that it has obtained Development Consent for the Road Work;
  - (ii) enter into a WAD with RMS in respect of the Road Work, on such terms and conditions as are:
    - consistent with the requirements of this Deed, including this Schedule 4; and
    - acceptable to RMS and the Minister,
  - (iii) provide a copy to the Minister of the executed WAD to carry out the Road Work;
  - (iv) provide evidence to the Minister of the security provided for the Road Work under the WAD for that Road Work having regard to the requirements of clause 2 of Schedule 6 of this Deed.
- (b) Prior to commencement of an Item of Road Work that must be constructed on any part of the Direct Access Land that is not a public road, the Developer must use all reasonable endeavours to acquire from the Development Rights Holder of the part of the Direct Access Land on which the Item of Road Work is to be constructed (**Required Land**) the development rights for the Required Land, and if the Developer does so such that the Direct Access Land is subdivided (if necessary) and the Developer becomes the Required Land Proprietor:
  - (i) the Required Land is taken to be Dedication Land under this Deed;
  - (ii) the Required Land is taken to be an Item of Dedication Land in the Table;
  - (iii) the value of the Required Land under Column 2 of the Table is

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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\$1,403,500 indexed in accordance with clause 3.2 of Part 2 of Schedule 4; and

- (iv) the timing of the dedication of the Required Land under Column 4 of the Table is taken to be the same time as the time at which the relevant Item of Road Work is required to be completed, or, if the Instrument Change has been made, such earlier time as required by the RMS (but the RMS must not require the dedication to take place earlier than immediately prior to the issue of the Subdivision Certificate which will create the first Residential Final Lot).
- (c) If the Developer does not acquire the development rights in the Required Land pursuant to clause 2.1(b) within 12 months of the date of this Deed, the Developer may notify the Minister of that fact, and in doing so must provide the Minister with written evidence of the offers made by the Developer to the Development Rights Holder of the Required Land, and evidence to the effect that the offers could reasonably be regarded as being equal to or more than what would be available as compensation to the Required Land Proprietor under Division 4 of Part 3 of the Just Terms Act if there was an acquisition of the Required Land, including the development rights for that land.
- (d) If a notice is given by the Developer under clause 2.1(c) of this Schedule 4 the Minister must give consideration to acquiring the Required Land the subject of the notice himself or herself (or making arrangements for another public authority to acquire the Required Land) under the Just Terms Act for the purposes of a public road.
- (e) If the Minister (or another public authority arranged by the Minister) decides to acquire the Required Land the subject of a notice under clause 2.1(c), then clause 3.6(b) to (e) of this Part 2 of Schedule 4 applies, and any amount the Developer pays to the Minister pursuant to clause 3.6(e) is:
  - (i) taken to be a Monetary Contribution under this Deed and an Item in the Table; and
  - (ii) the value of the Monetary Contribution under Column 2 of the Table is the amount paid by the Developer under clause 3.6(e); and
  - (iii) the timing for the making of the Monetary Contribution is as reasonably required by the Minister.
- (f) If the Developer does not acquire the development rights to the Required Land and the Minister decides not to acquire or have another public authority acquire the Required Land then:
  - (i) The Developer is not obliged to make Development Contribution Item C2;
  - (ii) the Developer must make a monetary Development Contribution in respect of the provision of road works required elsewhere as a result of Item C2 not being provided, which is taken to be a Monetary Contribution and an Item in the Table;
  - (iii) the value of the Monetary Contribution under Column 2 of the Table is to be agreed by the Minister and the Developer, in accordance with clause 2.1(g); and
  - (iv) the timing for the making of the Monetary Contribution is as advised by

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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the Minister, acting reasonably.

- (g) In agreeing on the value of the Monetary Contribution required under clause 2.1(f), the Minister and the Developer must use all reasonable endeavours to reach an agreement and, in doing so, must have regard to:
  - (i) whether there is a SIC Determination at the time;
  - (ii) the reasonable cost of any road infrastructure required elsewhere as a result of Item C2 not being provided; and
  - (iii) the expectation by the Developer that any benefit of the road infrastructure provided instead of Item C2 to which it would agree should deliver a benefit to the Land that is equivalent to the benefit that would have been delivered to the Land by Item C2,

and a failure of the Parties to reach an agreement constitutes a Dispute for the purposes of this Deed.

- (h) Despite clause 2.1(e) of this Part 2 of Schedule 4, clause 3.6(c) only applies in relation to the Required Land to the extent the Developer is reasonably able to do so without infringing on the rights of the Development Rights Holder.

#### 2.2 Timing of Road Work

- (a) The Developer must complete each Item of Road Work in accordance with the WAD for that Road Work by no later than the time specified in Column 4 of the Table.

#### 2.3 Road Work Offset

- (a) Unless otherwise agreed with the Minister, within 3 months of each Item of Road Work achieving Practical Completion under the relevant WAD, the Developer must provide to the Minister documentation that evidences the Actual Cost of the Road Work (**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 Work (**Road Work Offset**) under this Deed which will be the lesser of the Cost Cap and the Actual Cost of the Road Work. The Minister must accept the accuracy of the independent certification of the Actual Cost provided under clause 2.3(a) unless the Minister has obtained a further independent certification of the Actual Cost from an independent quantity surveyor engaged by the Minister who is a member of the Australian Institute of Quantity Surveyors. Any such further certification must be provided to the Developer who must be given a reasonable opportunity to comment before any decision as to the Actual Cost is made. Any decision as to the Actual Cost may only be based on the two certifications and any comment made by the Developer.
- (c) On each CPI Adjustment Date before issue of a notice under clause 2.3(b), each value of the Cost Cap will be adjusted by multiplying the amount of the Cost Cap by an amount equal to the Current CPI divided by the Base CPI.
- (d) If the cost of the Road Work exceeds the Cost Cap, the Parties agree that within

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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three months of achieving Practical Completion of the Road Work, the Developer may submit to the Minister in writing:

- (i) the reasons for the exceedance; and
  - (ii) a recommendation for a revised Cost Cap.
- (e) The Minister may or may not, at the Minister's absolute discretion, agree in writing to an increase in the Cost Cap as a consequence of receiving written notification under clause 2.3(c).
- (f) If the Minister elects to agree to an increase under clause 2.3(c), despite anything else in this Deed, the Cost Cap is set at the increased monetary amount so determined in writing by the Minister.
- (g) The Developer acknowledges and agrees that its entitlement to the Road Work Offset is proportionally reduced in circumstances where RMS has exercised its step in rights under the relevant WAD or the Developer otherwise fails to provide the Road Work pursuant to the relevant WAD and the extent of the reduction must reflect the proportion of the costs of carrying out the Road Work (being costs that this Deed anticipates will be borne by the Developer) that were instead borne by RMS.
- (h) The Developer must complete the Road Work regardless of whether the cost of doing so exceeds the Cost Cap.

### **3. Dedication of Dedication Land**

#### **3.1 Dedication Land as a Development Contribution**

The Developer must transfer the Dedication Land in accordance with clause 3.4 of this Schedule 4 and the Table.

#### **3.2 Indexation of Valuation of Dedication Land**

A value for Dedication Land contained in Column 2 of the Table in Part 1 of Schedule 4 is to be indexed from the date of this Deed to the date of dedication of the Dedication Land in accordance with Land Index.

#### **3.3 Subdivision of Dedication Land**

- (a) Before transferring the Dedication Land in accordance with clause 3.4 of this Schedule 4, the Developer must (at its cost):
- (i) obtain Development Consent (if required) and any other approvals necessary to create a separate lot for each Item of Dedication 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 each Item of Dedication Land.

#### **3.4 Transfer of Dedication Land**

- (a) The Developer must procure the transfer of the part of the Dedication Land for road works (**Road Works Land**) to the RMS in accordance with this Deed:
- (i) prior to the time specified in the Table; or
  - (ii) if the Instrument Change has been made — at the time required by RMS,

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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whichever is the earlier.

- (b) For avoidance of doubt Road Works Land includes land taken to be Dedication Land under clause 2.1(b) and clause 3.4(c) of this Schedule 4 applies to that land subject to the modification made by clause 2.1(b)(iv) of this Schedule 4.
- (c) The Developer must procure the transfer of the part of the Dedication Land proposed for a school site (**Education Land**) to the Minister (or the Minister's Nominee) in accordance with clause 3.4 of this Schedule 4 prior to the time specified in the Table.
- (d) In satisfying its obligations under clause 3.4(a) and (c) of this Schedule 4, the Developer must:
  - (i) deliver to the RMS (in respect of the Road Works Land) and the Minister (or the Minister's nominee) in respect of the Education Land (**Relevant Dedication Authority**):
    - (A) a form of transfer in respect of the Dedication Land in favour of the Relevant Dedication Authority free of cost, executed by the Developer and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue;
    - (B) the certificate of title for the Dedication Land; and
    - (C) a Site Audit Statement for the relevant Dedication Land.
  - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General of the LPI in relation to the transfer of the Dedication Land; and
  - (iii) take any other necessary action to give effect to the transfer of the title of the Dedication Land to the Relevant Dedication 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 as agreed by the Relevant Dedication Authority in writing.
- (e) For avoidance of doubt, clause 3.4(d)(iii) does not apply in relation to encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the Dedication Land could not prevent from affecting the Dedication Land and in respect of which no action can be taken by the Developer or owner of the Dedication Land .
- (f) Despite clause 3.4(d)(iii), if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 3.4(d)(iii), then:
  - (i) the Developer may request that the Minister agree to accept the land subject to those encumbrances and affectations; and
  - (ii) if the encumbrance or affectation:
    - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this Agreement; or

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- (B) is not a charge arising as a result of unpaid taxes or charges,
- the Minister may agree to accept the land subject to those encumbrances; and
- (iii) in other circumstances, the Minister may withhold the Minister's agreement at the Minister's absolute discretion.
- (g) The Developer indemnifies and agrees to keep indemnified the Relevant Dedication Authority against all Claims made against the Relevant Dedication Authority as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Dedication Land but only in relation to Contamination that existed on or before the date that the Dedication Land is transferred to the Relevant Dedication Authority.
- (h) The Developer will pay all rates and Taxes owing in respect of the Dedication Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Dedication Land pursuant to clause 3.4 of this Schedule 4, after which time the Relevant Dedication Authority will be responsible for any rates and Taxes in relation to the Dedication Land.
- (i) The Developer indemnifies and keeps indemnified the Minister (or at the Minister's election, the RMS or the Minister's nominee) in relation to any failure of the Developer to comply with clauses 3.1 to 3.5 of this Schedule 4.
- (j) The parties agree that this Deed operates as a deedpoll in favour of RMS where RMS is the Relevant Dedication Authority.

#### **3.5 Site Audit Statement**

- (a) The Developer agrees in relation to any Site Audit Statement provided to the Minister in accordance with clause 3.4(d)(i)(C):
- (i) to the extent that it is legally able to do so and where necessary, having obtained the consent of any other party, to assign the Site Audit Statement to the Relevant Dedication Authority; and
- (ii) to the extent that it is not legally able to assign the Site Audit Statement, to hold its rights and interest in the Site Audit Statement for the benefit of the Relevant Dedication Authority and must do whatever the Relevant Dedication Authority reasonably requires to enable the Relevant Dedication Authority to enjoy that benefit.

#### **3.6 Compulsory Acquisition**

- (a) If the Developer does not transfer an Item of Dedication Land as required by clause 3.4 of this Schedule 4, or if clause 2.1(e) applies, the Minister may elect to, and the Developer consents to, the Minister compulsorily acquiring the whole or any part of the Item of Dedication Land and any other land required in connection with that Dedication Land in accordance with the Just Terms Act in the amount of \$1.00.
- (b) The Developer and the Minister agree that:
- (i) this clause 3.6 is an agreement between them for the purposes of section 30 of the Just Terms Act; and
- (ii) in this clause 3.6 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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- (c) The Developer must ensure that the Item of Dedication 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 Item of Dedication Land to the Relevant Dedication Authority 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 Dedication 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 Dedication Land and any other land required in connection with the Dedication Land as contemplated by this clause.

#### 3.7 Dedication Land Offset

Upon the transfer of an Item of Dedication Land to the Relevant Dedication Authority in accordance with clause 3.4 of this Schedule 4 (excluding where the Minister has exercised the Minister's compulsory acquisition rights under clause 3.6 of this Schedule 4), the Minister must, within 30 business days, issue a notice to the Developer stating the value of the Item of Dedication Land being the value in the Table, indexed in accordance with clause 3.2 of this Schedule 4 (**Dedication Land Offset**).

#### 4. SIC Offsets

Note:

The Parties intention is that whilst a SIC Determination may not have been made as at the date of this Deed, the provisions of this Deed operate so that an aspect of the SIC Determination is effectively backdated to the date of this Deed, provided it is made before all Development Contributions required by the Deed are made.

As a result, and to fairly apportion the value of the VPA Contributions evenly over the course of the Development, any credit available in respect of the VPA Contributions is to be applied against the sum of the Pre-SIC Amount and SICs that are required to be made under Development Consents. A SIC Top-up Payment is required on making of the first SIC Determination (in relation to developed lots approved before a SIC Determination was made) and a further per-lot top-up payment is required in relation to undeveloped lots that were approved before the first SIC Determination is made). These top-up payments, like the VPA Contributions, are offset against the sum of the Pre-SIC Amount and SICs..

#### 4.1 Definitions

- (a) **Attributable VPA Contribution** means AVC in the following formula:

$$AVC = \frac{A \times B}{5,600}$$

where

**A** is the sum of the values of the VPA Contributions contained in Column 2 of the Table on the date the first SIC Determination is made (with a nil value being assigned to the Lake Work);

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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**B** is the number of Residential Final Lots for which Development Consent has been granted prior to the first SIC Determination being made;

- (b) **Available Credit** means any amount of the SIC Offset which has not been applied to satisfy any SIC liability or Pre-SIC Amount in respect of the Development;
- (c) **Credit Recipient** means any person comprising the Developer;
- (d) **Per Lot SIC Top-up Payment** means the SIC Top-up Payment divided by the number of Residential Final Lots for which Development Consent has been granted prior to the first SIC Determination being made;
- (e) **Pre-SIC Amount** means the amount that would have been payable in respect of SICs for that part of the Development for which Development Consents have been granted before the date that the first SIC Determination is made;
- (f) **Pre-SIC Undeveloped Residential Final Lot** means a Residential Final Lot for which Development Consent was granted before the first SIC Determination was made, but for which no Subdivision Certificate was issued before the first SIC Determination.
- (g) **SIC Offset** means the amount calculated in accordance with clause 4.4(a);
- (h) **SIC Top-up Payment** means the difference between the Pre-SIC Amount and the Attributable VPA Contribution; and
- (i) **VPA Contributions** means the Development Contributions in the Table.

#### 4.2 SIC Determination prior to any Development Consent

If a SIC Determination is made at any point before the grant of any Development Consents for the Development, then the Developer will be entitled to apply for a SIC Offset in accordance with clause 4.4 and 4.5.

#### 4.3 SIC Determination during Development

- (a) If the first SIC Determination is made at any point after the grant of any Development Consents for the Development, but before all of the VPA Contributions are made, then the Developer will be required to pay the SIC Top-up Payment.
- (b) The Minister may determine the Pre-SIC Amount in the Minister's absolute discretion, provided that the Pre-SIC Amount cannot be more than the sum of any SICs that would have been payable under Development Consents for the Development granted prior to the date the SIC Determination is made, if the ~~first~~ SIC Determination had applied to those Development Consents.
- (c) As soon as practicable after the date that the first SIC Determination is made, the Minister will notify the Developer of:
  - (i) the Pre-SIC Amount;
  - (ii) the Attributable VPA Contribution; and
  - (iii) the SIC Top-up Payment.
- (d) Within 10 days of receipt of the notice from the Minister under clause 4.3(c), the Developer must either:

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- (i) pay an amount to the Minister equal to the sum of the Per Lot SIC Top-up Payment for each Residential Final Lot that is depicted in a plan of subdivision that is the subject of a Subdivision Certificate issued prior to the first SIC Determination being made; or
    - (ii) provide a Bank Guarantee for that same amount, to secure the payment of that amount..
  - (e) As soon as practicable after the Developer has complied with clause 4.3(d), the Minister must issue a notice to the Developer stating the amount of the offset to be granted in respect of the Per Lot SIC Top-up Payments, which will be the amount of Per Lot SIC Top-up Payments made or the subject of the Bank Guarantee.
  - (f) The Minister may call upon a Bank Guarantee provided in accordance with clause 4.3(d)(ii) of this Schedule 4 where the Developer has failed to pay the amount required under clause 4.3(d)(i) of this Schedule 4 within 8 weeks of the receipt of the notice from the Minister.
  - (g) When this occurs, the Minister may retain such monies in lieu of the amounts that would have otherwise been payable under clause 4.3(d)(ii) of this Schedule 4.
  - (h) If the Developer pays the amount required under clause 4.3(d)(i) of this Schedule 4 (prior to any calling upon of the Bank Guarantee by the Minister) the Minister will promptly return the Bank Guarantee(s) (less any costs, charges, duties and taxes payable) to the Developer.
  - (i) Prior to the issue of each Subdivision Certificate in relation to a plan of subdivision which creates any Pre-SIC Undeveloped Residential Final Lot, the Developer must pay the Per Lot SIC Top-up Payment for each Pre-SIC Undeveloped Residential Final Lot the subject of the given Subdivision Certificate.
  - (j) On the second and subsequent CPI Adjustment Date after the first SIC Determination is made, the value of any Per Lot SIC Top-up Payment remaining to be paid will be adjusted by multiplying the amount of the Per Lot SIC Top-up Payments remaining to be paid by an amount equal to the Current CPI divided by the Current CPI as at the first CPI Adjustment Date that occurred immediately after the first SIC Determination was made.
  - (k) As soon as practicable after the Developer has made a payment under clause 4.3(i), the Minister must issue a notice to the Developer stating the amount of the offset to be granted in respect of that payment, which will be the amount of the payment.

#### **4.4 SIC Offset**

- (a) The Developer may request an offset against SICs that are required to be made under Development Consents for the Development and any Pre-SIC Amount to the extent of the sum of the amounts contained in notice(s) issued to the Developer under:
  - (i) clause 1(c) of this Schedule 4 in respect of the Monetary Offset;
  - (ii) clause 2.3(b) of this Schedule 4 in respect of the Road Work Offset;

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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- (iii) clause 3.7 of this Schedule 4 in respect of the Dedication Land Offset, and
  - (iv) clause 4.3(e) and clause 4.3(k) of this Schedule 4 in respect of the SIC Top-up Payment.

#### 4.5 Potential Credit

- (a) If (or once) a Pre-SIC Amount exists, the Developer must firstly use any Available Credit to offset this amount.
- (b) The Developer must:
  - (i) if no Pre-SIC Amount exists — firstly;
  - (ii) if a Pre-SIC Amount exists — secondly,use any Available Credit to satisfy any SIC required to be made in respect of the Development, unless the Minister agrees otherwise in the Minister's absolute discretion.
- (c) The Developer is not obliged to pay the SIC to the extent that it is offset by an Available Credit.
- (d) If the amount of a SIC required to be made exceeds the Available Credit, the Developer must pay the difference between the amount of the SIC and the Available Credit at the time when that SIC is due for payment. If the amount of a SIC required is less than an amount as indexed, of Available Credit as per the relevant notice issued under clause 4.4(a), the unused portion of the indexed amount under the notice remains as Available Credit.
- (e) If there is any Available Credit remaining when:
  - (i) all VPA Contributions have been made; and
  - (ii) all SICs and SIC Top-up Payments (if any are required) have been paid (to the extent required after application of any Available Credit);

then, provided that a SIC Determination is made before all VPA Contributions are made, and Developments Consents for 5,600 Residential Final Lots in the Development have been granted, the Available Credit may be used by:

- (iii) the Credit Recipient, provided that all of the persons comprising the Developer have provided written consent to this to the Minister's satisfaction,
- (iv) a Related Body Corporate of the Credit Recipient or a partnership of those related entities, or
- (v) any other person that the Minister might approve on written request by all of the persons comprising the Developer in the Minister's absolute discretion,

to satisfy any special infrastructure contribution within the meaning of the Act which is required to be made in respect of the development of land within the Priority Growth Area known as Wilton New Town after the date of this Deed, if that land is owned by:

- (i) the Credit Recipient,
- (ii) a Related Body Corporate of the Credit Recipient or a partnership of those

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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related entities, or

- (iii) 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.

#### **4.6 Indexation of SIC Offset**

- (a) Once a SIC Determination is made, the amounts contained in notices referred to in clause 4.4(a) which have not been offset against a SIC, or the Pre-SIC Amount are to be indexed from the date of the relevant notice until the amount is applied to satisfy a SIC or the Pre-SIC Amount, in the same manner in which SICs are indexed under the SIC Determination, or if SICs are not to be indexed under the SIC Determination, in the same manner as the amounts in the notices were indexed before the notice was issued.
- (b) For the purpose of clause 4.6(a) the amounts contained in notices issued under clause 4.4(a), as indexed, will be considered to have been applied to SICs or the Pre-SIC Amount in the order in which the notices were issued.

## Schedule 5

(clause 1.1)

### Roadwork Concept Plans



**Bradcorp Wilton Park Pty Ltd**



## **Schedule 6**

(clause 14)

### **Security Requirements**

#### **1. Developer to provide Security**

- (a) In order to secure:
  - (i) the payment of monetary Development Contributions;
  - (ii) the carrying out of the Road Work or the Lake Work; and
  - (iii) any costs associated with the Minister exercising any rights under this Deed to secure the transfer of the Dedication Land,the Developer has agreed to provide Security in accordance with this Schedule 6.
- (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 favouree; and
  - (ii) not have an expiry date.

#### **2. Security Requirements**

- (a) On the date of entry into this Deed, the Developer must provide a Bank Guarantee to the Minister in the amount of \$200,000 to be held by the Minister until all of the Developer's obligations under this Deed are complete, despite any other provision of this Schedule 6.
- (b) Subject to clause 2(c) of this Schedule 6, prior to the issue of a Construction Certificate or Subdivision Works Certificate for any subdivision works for the Development (other than investigative works), or the issue of a Subdivision Certificate in respect of the subdivision of the Land, the Developer must provide an additional Bank Guarantee to the Minister in the amount of \$4,750,000 to secure the Developer's obligation to carry out the part of the Road Work being Item C1.
- (c) If the Developer enters into a WAD in respect of Item C1, the Developer must provide notice to the Minister that the Developer has entered into that WAD and that notice must be accompanied by a copy of the WAD and a Bank Guarantee in the amount of \$2,000,000 to secure the remainder of the Developer's obligations under this Deed (when this provision applies it operates to the exclusion of clause 2(b) of this Schedule 6).
- (d) Within 20 business days of receipt of the notice and Bank Guarantee under clause 2(c), the Minister will return any Bank Guarantee provided under clause 2(b), or any part of that Bank Guarantee which has not been called up under clause 3 of this Schedule 6, to the Developer.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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- (e) The Minister will hold the Bank Guarantee provided under clause 2(c) until all of the Developer's obligations under this Deed are complete.
- (f) Subject to paragraph (h) of this clause, at any time the Developer may substitute one or more Bank Guarantees with one or more Bank Guarantees of the same value.
- (g) When a substitution is made under clause 2(f), the Minister must promptly release and return the substituted Bank Guarantee(s) (without calling up those Bank Guarantee(s)) to the person that originally provided the Bank Guarantee(s) (being a person that, at the time of provision, was a person that wholly or partly comprised the Developer).
- (h) If the Developer substitutes a Bank Guarantee under paragraph (f) on more than one occasion in any 12 month period, then the Developer will meet the Minister's costs, which may include internal administrative costs, of attending to the substitution.

### **3. Claims under a Bank Guarantee**

- (a) The Minister may call upon a Bank Guarantee(s) provided in accordance with clause 2 of this Schedule 6:
  - (i) where the Developer has failed to complete the Road Work or the Lake Work in accordance with this Deed; or
  - (ii) where the Developer is in default of its obligations to transfer Dedication Land to the Minister or the Minister's nominee in accordance with this Deed; andretain and apply such monies towards:
  - (iii) achieving performance of the Road Work or the Lake Work; or
  - (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 the Minister:
  - (i) 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 Bank Guarantee(s) to secure performance of the Developer's obligations under this Deed in accordance with clause 4 of this Schedule 6.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

#### **Bradcorp Wilton Park Pty Ltd**

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#### **4. Right to Call for Additional Security**

- (a) Notwithstanding clause 2 of this Schedule 6, if the Developer has breached this Deed in a material respect, the Minister may, acting reasonably, determine that an additional Bank Guarantee(s) is required to secure the Developer's obligations under this Deed.
- (b) If the Minister makes a determination under clause 4(a) 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.

#### **5. Release of Bank Guarantee(s)**

If:

- (b) the Developer has satisfied all of its obligations under this Deed secured by a Bank Guarantee(s) , or this Deed is terminated; and
- (c) 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**

(clause 1.1)

### **Novation Deed**

**THIS DEED OF NOVATION IS MADE ON THE \_\_\_\_\_ day of \_\_\_\_\_**

**BETWEEN**

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

**AND**

**[Drafting Note: insert details of the existing Developer] (Existing Developer)**

**AND**

**[Drafting Note: insert details of Transferee] (New Developer)**

#### **BACKGROUND**

- A** The Existing Developer and the Minister are parties to the 'Wilton North Planning Agreement' dated **[Drafting Note: insert date of Planning Agreement]** (the "**Planning Agreement**").
- B** The Existing Developer has entered into an agreement to transfer the Land or part of the Land to the New Developer, or to assign its rights and obligations under the Planning Agreement to the New Developer.
- C** Clause 18.1 of the Planning Agreement requires the Existing Developer to, among other things, procure the execution of a deed by the New Developer with the Minister on terms satisfactory to the Minister, as a precondition to the sale of any part of the Land or assignment of rights and obligations under the Planning Agreement.
- D** This Deed is entered into in accordance with the terms of clause 18.1.3 of the Planning Agreement.

#### **OPERATIVE PROVISIONS**

##### **1. Definitions**

- (a) Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this Deed, has the same meaning as defined in the Planning Agreement.
- (b) In this Deed:

## **Wilton North Planning Agreement**

### **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

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**Deed** means this deed and includes any schedules, annexures and appendices to this deed.

**Effective Date** means the date that the Land or part of the Land is transferred to the New Developer, or rights and obligations under the Planning Agreement are assigned to the New Developer.

## **2. Interpretation**

In the interpretation of this Deed, the following provisions apply unless the context otherwise requires:

- (a) Headings are inserted for convenience only and do not affect the interpretation of this Deed.
- (b) A reference in this Deed to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) If the day on which any act, matter or thing is to be done under this Deed is not a business day, the act, matter or thing must be done on the next business day.
- (d) A reference in this Deed to dollars or \$ means Australian dollars and all amounts payable under this Deed are payable in Australian currency.
- (e) A reference in this Deed to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST.
- (f) A reference in this Deed to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (g) A reference in this Deed to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (h) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Deed.
- (i) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (j) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (k) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (l) References to the word 'include' or 'including' are to be construed without limitation.
- (m) A reference to this Deed includes the agreement recorded in this Deed.
- (n) A reference to a party to this Deed includes a reference to the servants, agents and contractors of the party, the party's successors and assigns.

## Wilton North Planning Agreement

### The Minister for Planning

### Bradcorp Wilton Park Pty Ltd

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- (o) A reference to 'dedicate' or 'dedication' in relation to land is a reference to dedicate or dedication free of cost.
  - (p) Any schedules, appendices and attachments form part of this Deed.
  - (q) Notes appearing in this Deed are operative provisions of this Deed.
  - (r) This Deed confers rights only upon a person expressed to be a Party and not upon any other person.

### 3. Novation

[Drafting Note: If the whole of the Land and all rights and obligations are being transferred to the New Developer]

On and from the Effective Date, the Planning Agreement is novated from the Existing Developer to the New Developer, with the effect that:

- (a) the New Developer replaces the Existing Developer under the Planning Agreement and becomes a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Existing Developer is to be read as a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement to which, but for this Deed, the Existing Developer would have been entitled at and after the Effective Date; and
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement which, but for this Deed, the Existing Developer would have been required to perform or discharge at and after the Effective Date.

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land]

On and from the Effective Date:

- (a) the New Developer is taken to be a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Existing Developer includes a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement; and
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement;
- (e) the Existing Developer remains entitled to the rights and benefits under the Planning Agreement; and
- (f) the Existing Developer remains obliged to perform all obligations and discharge all liabilities under the Planning Agreement.

### 4. Release by Minister

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land, delete this clause]

## **Wilton North Planning Agreement**

### **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

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With effect from the Effective Date, the Minister releases the Existing Developer from all obligations and liabilities under or in respect of the Planning Agreement to be performed or discharged at or after the Effective Date.

#### **5. Release by Existing Developer**

[Drafting Note: If the Existing Developer retains obligations under the Planning Agreement or remains an owner of part of the Land, delete this clause]

With effect from the Effective Date, the Existing Developer releases the Minister from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Date.

#### **6. Obligations and liabilities arising before the Effective Date**

Nothing in this deed releases the Existing Developer or the Minister from any obligation or liability under the Planning Agreement arising before the Effective Date.

#### **7. Confirmation of Planning Agreement**

The Minister, Existing Developer and New Developer confirm and ratify the terms of the Planning Agreement subject to the variation and novation contained in this Deed.

#### **8. Security**

The Minister will release to the Existing Developer any Security provided by the Existing Developer under the Planning Agreement provided that the New Developer has first provided the Minister with a replacement Security satisfactory to the Minister such that the Minister holds the amount of Security the Minister is entitled to hold under the Planning Agreement.

#### **9. Notices**

Any notice or communication to or by a party to this Deed must be:

- (a) sent to the Minister or to the Existing Developer in the manner required by clause 21 of the Planning Agreement;
- (b) sent to the New Developer in the manner set out in clause 21 of the Planning Agreement, assuming that the following address for service of notices to the New Developer is specified in Schedule 2 of the Planning Agreement:

"Contact: [Drafting Note: insert contact name of New Developer]

Address: [Drafting Note: insert address of New Developer]

Email: [Drafting Note: insert email address of New Developer].

and any communication to the New Developer under the Planning Agreement must be given in accordance with paragraph (b) above.

#### **10. Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. The executed counterparts together constitutes the Deed. This Deed commences on the date when the last party has executed this Deed or a counterpart of this Deed.

## **Wilton North Planning Agreement**

### **The Minister for Planning**

### **Bradcorp Wilton Park Pty Ltd**

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#### **11. Costs**

The Existing Developer shall reimburse the Minister for the costs and disbursements of the Minister in connection with:

- (a) the preparation, negotiation or execution of this Deed; or
- (b) the placing of any document on notification relating to this Deed

#### **12. Stamp duty etc**

The Existing Developer must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this Deed or any payment or receipt or other transaction contemplated by this instrument of novation.

#### **13. Entire Agreement**

This Deed contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation was executed.

#### **14. Governing law and jurisdiction**

This Deed is governed by and must be construed according to the law applying in New South Wales.

**Execution page Executed** as a deed.

**[Drafting Note: Insert execution block for the Minister]**

**[Drafting Note: Insert execution block for the Existing Developer]**

**[Drafting Note: Insert execution block for the New Developer]**

**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

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**Execution**

**Executed as a Deed**

**Dated:**

**Signed sealed and delivered by the Minister for Planning**

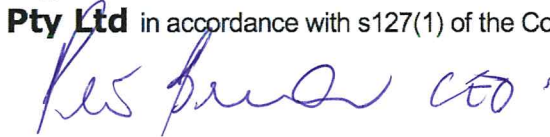
\_\_\_\_\_  
**Name of Minister**

\_\_\_\_\_  
**Signature of Minister**

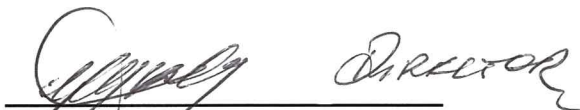
\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

**Signed sealed and delivered on behalf of Bradcorp Wilton Park Pty Ltd** in accordance with s127(1) of the Corporations Act (Cth) 2001

  
\_\_\_\_\_  
**Name/Position**

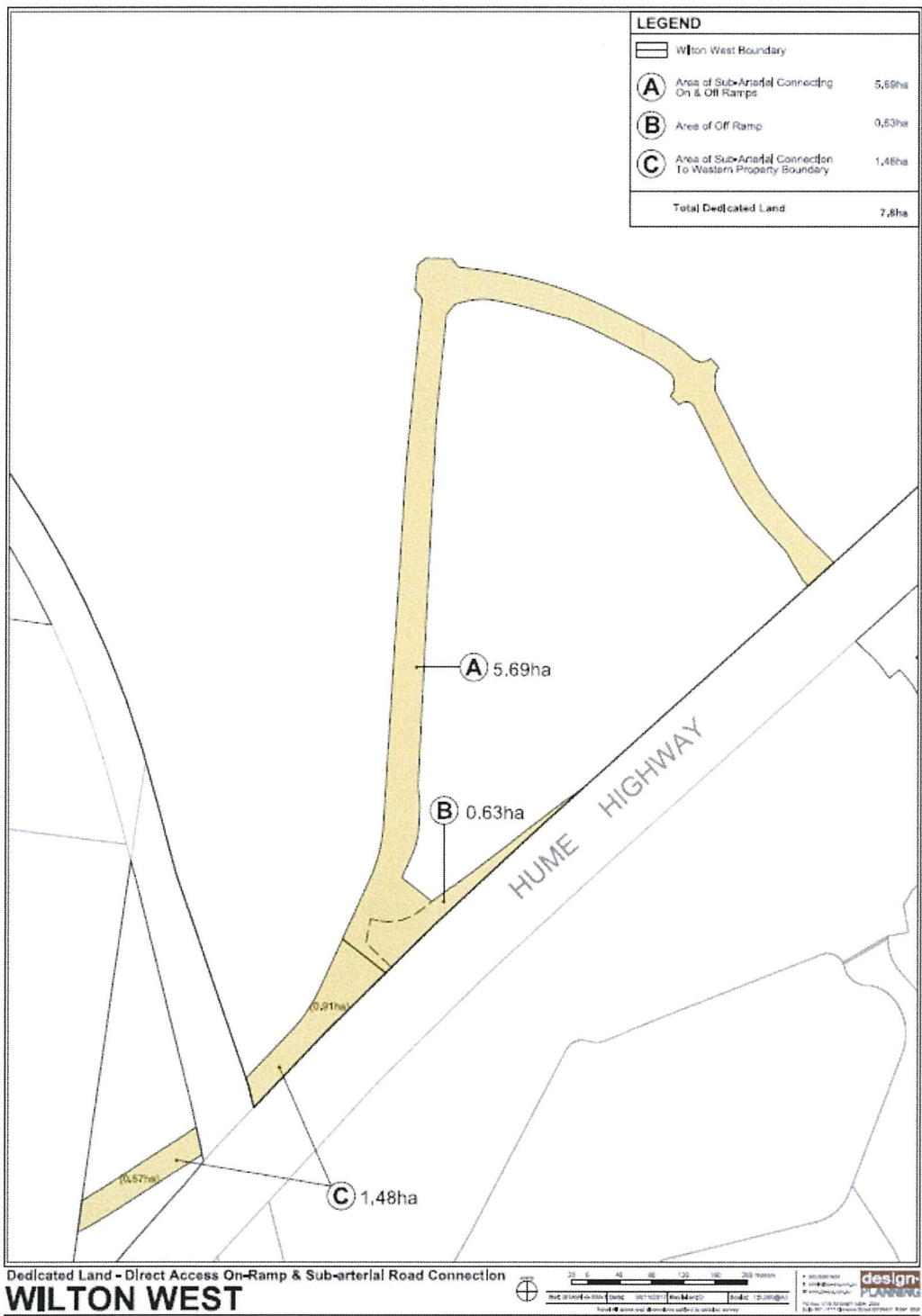
**Name/Position**

  
\_\_\_\_\_  
**Name/Position**

Annexure A

(clause 1.1)

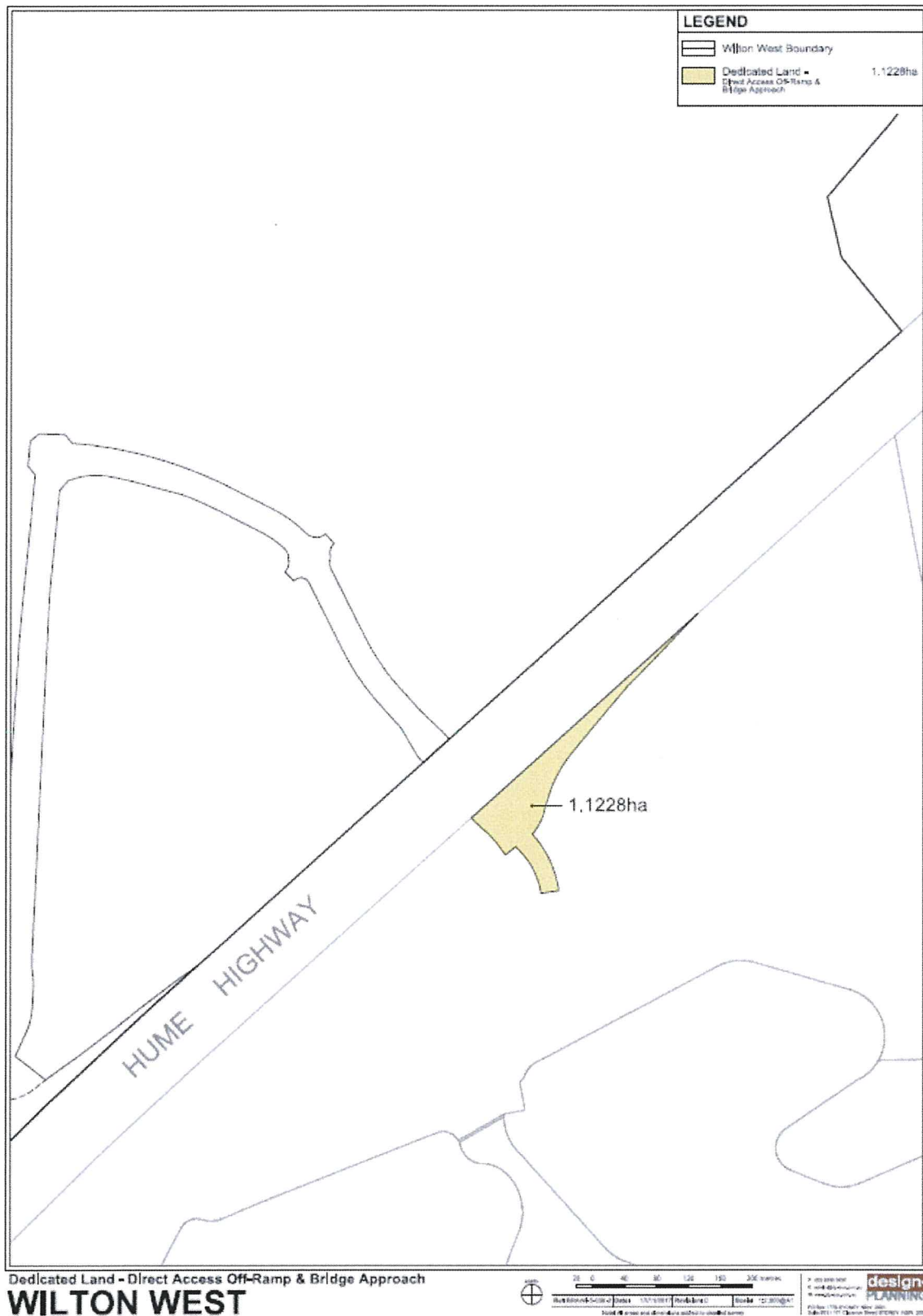
Location Plan



# Wilton North Planning Agreement

The Minister for Planning

Bradcorp Wilton Park Pty Ltd



**Wilton North Planning Agreement**  
**The Minister for Planning**  
**Bradcorp Wilton Park Pty Ltd**

