



HOLDING REDLICH

Dated

2021

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Prime Moss Vale Pty Ltd (ABN 43 621 544 554)

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This Planning Agreement is dated

17 July

2021



Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of Level 15, 52 Martin Place, Sydney NSW 2000

Developer

Prime Moss Vale Pty Ltd (ABN 43 621 544 554)
of Suite 30.02, Level 30/420 George St, Sydney NSW 2000

Introduction:

- A The Developer owns the Land.
- B The Developer has lodged a Development Application for Development Consent to carry out the Development on the Land.
- C Clause 6.1(2) of the LEP provides that Development Consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot.
- D The Developer has offered to enter into this deed with the Minister to provide the Development Contributions in connection with the Development in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

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

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

Actual Cost means:

- (a) in relation to the Road Work, the Final Certified Contract Cost inclusive of variations to achieve satisfactory completion by the Developer of the Road Works (as determined by the Roads Authority);
- (b) in relation to the land upon which the Road Works are to be constructed, any reasonably incurred:
 - (i) costs borne by the Developer that are incidental to the acquisition of land from third parties (but excluding the purchase price paid by the Developer for that land); and



- (ii) utility service adjustments required by a Utility Provider; and
- (iii) other costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred and paid by the Developer to third parties for any licence, approval, authority, permit or permission specifically required to be obtained for or in relation to the carrying out of the Road Works, subject to the Minister's approval.

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

Approval means any approval, authorisation, consent, licence, permit, exemption, certificate or any other approval required by law.

Approved Actual Cost has the meaning given to it in clause 5.1(d) of Schedule 4.

Authorised Progress Claim Certificate means a certificate signed by the superintendent for the Road Works confirming that the Developer has paid for the amount specified in that certificate to the third party contractor for work performed under the Construction Contract.

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

Bank Guarantee means an irrevocable and unconditional undertaking:

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

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

Base CPI means the CPI number for the quarter ending 31 March 2020.

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

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

CLM Act means the *Contaminated Land Management Act 1997* (NSW).

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Construction Contract means each contract between the Developer and a third party, meeting the requirements of clause 3.5 of Schedule 4, for the carrying out of the Road Works by that third party.

Contamination has the same meaning as in the CLM Act.

Contribution Amount means an amount of the Monetary Contribution required to be paid by the Developer in accordance with Schedule 4 calculated in accordance with clause 2.1 of Schedule 4.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

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

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

CPI Adjustment Date means 1 July 2021 and each anniversary of 1 July 2021.

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

Department means the NSW Department of Planning, Industry and Environment.

Development means the proposed residential development of the Land into approximately 1200 lots in accordance with concept development application number 20/0227 lodged with Wingecarribee Shire Council on 27 August 2019; including Stage 1 comprising a Torrens Title subdivision of 173 residential lots, two lots for open space or drainage and two residue Lots, with associated works including site clearing, tree removal, bulk earthworks and construction of new roads and public infrastructure, open space and restoration of a section of the Whites Creek on the Land and development the subject of future Staged development applications for the Land or parts of the Land pursuant to the concept development application number 20/0227 lodged with Wingecarribee Shire Council on 27 August 2019, as may be amended from time to time.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

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

ELNO has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

Final Certified Contract Cost means the sum total of all the Authorised Progress Claim Certificates.

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

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

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

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

Intersection Upgrade Works means an intersection upgrade at Illawarra Highway/ Fitzroy Road/Throsby Park Road, generally as shown in Annexure A.

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

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

Minister means the NSW Minister for Planning and Public Spaces and includes (where relevant) the Minister's nominee, the Secretary and the Secretary's nominee.

Modified Road Work means the modified roundabout design/alternative treatment or arrangement to the satisfaction of TfNSW to be undertaken by the Developer in accordance with clause 3.3 of Schedule 4.

Monetary Contribution means the monetary contribution to be provided by the Developer to the Minister in accordance with the terms of this deed.

Offset Amount means the WIK Contribution Value or the Approved Actual Cost (if lower).

Offset Amount Portion has the meaning given to it in clause 5.2(b)(i) of Schedule 4.

Offset Certificate means a certificate issued by the Minister or the Secretary as amended or replaced from time to time under this deed.

Planning Application means:

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

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Proposed Modified Road Work means a proposed modified roundabout design/alternative treatment or arrangement to the satisfaction of TfNSW as proposed in accordance with clause 3.3(b) of Schedule 4. **Real Property Act** means the *Real Property Act 1900* (NSW).

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

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

Relevant Certificate means:

- (a) a Subdivision Certificate; or
- (b) Construction Certificate or Subdivision Works Certificate, as applicable, in the case of an Urban Lot to be created by registration of a Strata Plan.

Residential Accommodation has the same meaning as in the *Standard Instrument—Principal Local Environmental Plan* as at the date of this deed.

Roads Authority has the meaning given to it in the *Roads Act 1993* and includes TfNSW.

Road Work means:

- (a) Intersection Upgrade Works; or
- (b) the Modified Road Work in accordance with clause 3.3(c) of Schedule 4.

Road Work Land means the land required for the Road Work except land of the Roads Authority.

Secretary means the Secretary of the Department.

Security means the Bank Guarantees for the amounts and on the terms specified in Schedule 5 of this deed.

Service Lot means a 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 Instrument—Principal Local Environmental Plan* as at the date of this deed;
- (c) to be association property within the meaning of the Community Land Development Act 1989 (NSW); or
- (d) for open space, recreation, environmental conservation, drainage or riparian land management,

but does not include a Super Lot.

Subdivision Certificate has the same meaning as in the Act.

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

Super Lot means a lot that forms part of the Land which, following the registration of a Plan of Subdivision, is intended for further subdivision (including strata and community title subdivision) for Residential Accommodation, but does not include a Service Lot.

Stage means a stage of the Development, with the indicative staging of the Development at the date of this deed shown in the plan annexed to this deed as Annexure B.

Strata Plan has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

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.

TfNSW means Transport for NSW.

Urban Lot means a lot that forms part of the Land to be created by the registration of a:

- (a) Plan of Subdivision and is intended to be developed for Residential Accommodation without further subdivision; or
- (b) Strata Plan and has been or is being developed for Residential Accommodation,

but excluding any Service Lots and Super Lots.

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

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

WIK Contribution means the:

- (a) completion of the Road Work; and

- (b) dedication of any Road Work Land to the Minister's nominee or Roads Authority (for the avoidance of doubt, being any Road Work Land not owned by a Roads Authority),

by the Developer in accordance with the terms of this deed.

WIK Contribution Value means the agreed value of the WIK Contribution, as adjusted in accordance with cause 3.1(d) of Schedule 4, being \$2,406,000 and, for the avoidance of doubt, includes:

- (a) the cost of undertaking the Road Work; and
- (b) any costs associated with the acquisition and dedication of the Road Work Land.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;

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

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1 of this deed.

2.3 Application

This deed applies to:

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

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1 of this deed.

4. Development Contributions

4.1 Developer to provide Development Contributions

The Developer undertakes to provide, or procure the provision of, the Development Contributions to the Minister subject to, and in accordance with, the provisions of Schedule 4 of this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

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

5. Interest

5.1 Interest for late payment

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

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed;
 - (ii) the execution of any documents reasonably required to procure the registration of this deed on the title to the Land;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.
- (b) For the avoidance of doubt, the Minister will not agree to release this deed from:
 - (i) any Urban Lot until such time as:
 - (A) the relevant Contribution Amount has been paid for that Urban Lot; and (if applicable)/or
 - (B) the applicable Offset Amount Portion has been applied to the Contribution Amount payable for that Urban Lot in accordance with clause 5.2 of Schedule 4 to this deed; and
 - (ii) from the 500th Urban Lot until such time as the WIK Contribution has been completed subject to clause 3.3 in Schedule 4 and the relevant Offset Amount Portion has been applied to the Contribution Amount payable in accordance with clause 5.2 of Schedule 4 to this deed.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land identified in Schedule 3 of this deed; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.

- (c) If, after 20 Business Days of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

8. Dispute Resolution

8.1 Not commence

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

8.2 Written notice of dispute

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

8.3 Attempt to resolve

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

8.4 Mediation

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

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

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

8.5 Court proceedings

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

8.6 Not use information

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

8.7 No prejudice

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

9. GST

9.1 Definitions

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

9.2 Intention of the parties

The parties intend that:

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

9.3 Reimbursement

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

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

- (a) To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount.
- (b) However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:
 - (i) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
 - (ii) the Developer provides a tax invoice to the Minister.

9.6 Non-monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

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

9.8 No merger

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

10. Assignment and transfer

10.1 Right to assign or novate

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

10.2 Right to transfer Land

- (a) Subject to clause 10.2(b), the Developer must not sell or transfer to another person (**Transferee**) the whole or any part of the Land;
 - (i) on which this deed remains registered under section 7.6 of the Act, or
 - (ii) for which the Development Contribution required under this deed remains outstanding with respect to that portion of the Land.
- (b) The Developer may only sell or transfer the whole or any part of the Land to a Transferee prior to satisfying the relevant matters set out in clause 10.2(a) to 10.2(a)(ii) if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 of this deed,

the Minister will promptly return the Security to the Developer.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

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

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents and Relevant Certificates issued in relation to the Development (including the number of Urban Lots to which those Development Consents and Relevant Certificates apply);
 - (ii) details of all Strata Plans lodged in relation to the Development;
 - (iii) 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;
 - (iv) a forecast in relation to the anticipated progression and completion of the Development;
 - (v) a compliance schedule showing the details of all Contribution Amounts 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
 - (vi) when the Developer expects to lodge the next Planning Application;
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary, are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

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

13.2 Variation

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

13.3 Waiver

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

13.4 Further assurances

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

13.5 Time for doing acts

(a) If:

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

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

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

13.7 Severance

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

13.8 Preservation of existing rights

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

13.9 No merger

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

13.10 Counterparts

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

13.11 Relationship of parties

Unless otherwise stated:

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

13.12 Good faith

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

13.13 No fetter

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

13.14 Explanatory note

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

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

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

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service (including as applicable the Landowner and Developer's Legal Advisor) by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Developer, Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

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

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))	No.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6 and clause 7
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Construction Certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an Occupation Certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a Subdivision Certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes

Schedule 2 Address for Service

(clause 1.1)

Minister**Contact:** The Secretary**Address:** Department of Planning, Industry and Environment
4 Parramatta Square
12 Darcy Street
PARRAMATTA NSW 2150**Facsimile No:** Not applicable**Email:** planningagreements@planning.nsw.gov.au**Landowner and Developer** Prime Moss Vale Pty Ltd (ABN 43 621 544 554)**Contact:** Angela Villate**Address:** Suite 30.02,
Level 30/420 George St
Sydney NSW 2000**Facsimile No:** Not applicable**Email:** legal.aus@aoyuangroup.com

Schedule 3 Land

(clause 1.1)

Lot	Deposited Plan	Folio Identifier	Landowner
3	706194	3/706194	Prime Moss Vale Pty Ltd
12	866036	12/866036	Prime Moss Vale Pty Ltd

Schedule 4 Development Contributions

(clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contributions to the Minister in the manner set out in the table below:

Development Contribution	Timing	Value
Monetary Contribution	Prior to the release of the Relevant Certificate in accordance with clause 2.2 of this Schedule 4	\$3,466.67 per Urban Lot within the Development, adjusted in accordance with clause 2 of this Schedule 4 but subject to the application of any Offset Amount Portion in accordance with clause 5.2 of this Schedule 4

2. Monetary Contribution

2.1 Calculation of each Contribution Amount

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

$$X = N \times \$3,466.67 \times (\text{Current CPI/Base CPI}) \text{ Where "N" = number of Urban Lots for which payment is due in accordance with clause 2.2 of this Schedule 4.}$$

2.2 Payment of Contribution Amounts

- (a) The Developer must make Development Contributions to the Minister or the Minister's nominee in accordance with the table below:

Timing	Value of each Contribution Amount (prior to indexation in accordance with clause 2 of this Schedule 4)	Method of payment
Prior to the release of the Relevant Certificate for the 176 th Urban Lot within the Development	\$610,133 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution
Prior to the release of the Relevant Certificate for the 381 st Urban Lot within the Development	\$710,667 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution

Prior to the release of the Relevant Certificate for the 500 th Urban Lot	\$409,067 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Application of Offset Amount in accordance with clause 5.2 of this Schedule following completion of the WIK Contribution in accordance with clauses 3 and 5 of this Schedule
Prior to the release of the Relevant Certificate for the 683 rd Urban Lot	\$637,867 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution and/or application of Offset Amount in accordance with clause 5.2 of this Schedule
Prior to the release of the Relevant Certificate for the 836 th Urban Lot	\$530,400 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution and/or application of Offset Amount in accordance with clause 5.2 of this Schedule
Prior to the release of the Relevant Certificate for the 1001 st Urban Lot within the Development	\$572,000 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution and/or application of Offset Amount in accordance with clause 5.2 of this Schedule
Prior to the release of the Relevant Certificate for the 1200 th Urban Lot within the Development	\$689,867 (with the final Contribution Amount to be calculated in accordance with clause 2 of this Schedule 4)	Payment of Monetary Contribution and/or application of Offset Amount in accordance with clause 5.2 of this Schedule

- (b) For the avoidance of doubt, a Monetary Contribution calculated in accordance with clause 2 of this Schedule 4 must be paid in relation to any Urban Lot which forms part of the Development (including where the Development comprises any further Stages or more than 1200 Urban Lots).
- (c) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the Relevant Certificate.
- (d) The parties agree that the requirement to make a payment or complete the WIK Contribution under this Schedule is a restriction on the issue of the relevant (as applicable):
 - (i) Subdivision Certificate within the meaning of section 6.15(1)(d) of the Act; or
 - (ii) in the case of a Strata Subdivision:
 - (A) restriction on the issue of the relevant Construction Certificate within the meaning of clause 146A of the Regulation; or
 - (B) restriction on the issue of the relevant Subdivision Works Certificate within the meaning of clause 148G of the Regulation.

3. WIK Contribution

3.1 WIK Contribution in lieu of requirement to pay the Monetary Contribution

- (a) The Minister agrees to accept the WIK Contribution in full or partial discharge of the Developer's (or nominee's) liability to make the Development Contribution, in accordance with the terms of this clause.
- (b) The Developer must provide the WIK Contribution in accordance with the requirements of this deed.
- (c) Subject to clause (d) and any agreement under clause 3.3(c), the parties acknowledge and agree that the WIK Contribution Value is \$2,406,000.
- (d) The parties agree that on the CPI Adjustment Date, the WIK Contribution Value is to be adjusted by multiplying that cost by an amount equal to the Current CPI divided by the Base CPI.

3.2 Timing of WIK Contribution

- (a) The Developer must complete the WIK Contribution in accordance with the WAD and this deed and complete the upgrade of the connecting local road from the Land to the intersection at Illawarra Highway/ Fitzroy Road/Throsby Park Road, by no later than the issue of the Relevant Certificate for the 500th Urban Lot.
- (b) The Developer acknowledges and agrees that it will be unable to apply for a Relevant Certificate for any Urban Lot following the 499th Urban Lot within the Development until such time as the WIK Contribution has been completed and the relevant Offset Amount Portion has been applied in accordance with clause 5.2 of this Schedule.

3.3 Road Work to be undertaken

- (a) The parties acknowledge and agree that at the date of this deed, the Road Work will comprise the Intersection Upgrade Works.
- (b) If by the 400th Urban Lot, the Developer is unable to provide the Intersection Upgrade Works because:
 - (i) the Developer is unable, despite reasonable efforts with offers based on an independent market value assessment, to obtain approval to subdivide and purchase or secure the purchase any land owned by third part(ies) (except Roads Authorities) that is required to construct the Intersection Upgrade Works (**Third Party Land**); or
 - (ii) the Third Party Land is not acquired by a Roads Authority,
 then the Developer must, prior to the issue of the Relevant Certificate for the 400th Urban Lot, provide the Minister with a notice which:
 - (iii) states that the Developer intends to provide the Proposed Modified Road Work;
 - (iv) includes evidence (in writing) that TfNSW agrees to the Proposed Modified Road Work; and
 - (v) includes evidence (in writing) from an appropriately qualified quantity surveyor which shows the value of the Proposed Modified Road Work, as agreed with TfNSW (**Proposed Modified Road Work Value**).

- (c) Within 30 days of receipt of an acceptable notice in accordance with clause 3.4(b) of this Schedule:
 - (i) if the Proposed Modified Road Work Value does not exceed the WIK Contribution Value by 10% or more - for the purposes of this deed, the Road Work will be the Proposed Modified Road Work (**Modified Road Work**); and
 - (ii) if the Proposed Modified Road Work Value exceeds the WIK Contribution Value by 10% or more - the Minister and the Developer will meet within 15 Business Days to discuss and attempt to agree as to how the Developer might provide the Proposed Modified Road Work and the Offset Amount which the Minister may agree, acting reasonably, to attribute to the Proposed Modified Road Work. Any subsequent agreement including any variation to the Proposed Modified Road Work or Offset Amount, will constitute the Road Work and the Offset Amount will be varied as agreed.
- (d) If the Developer is unable to reach an agreement with TfNSW (acting reasonably) with respect to the Proposed Modified Roadwork (as required by clause 3.4(b)(ii) of this Schedule), then:
 - (i) the Developer must provide a notice to the Minister stating that the Developer has been unable to reach an agreement with TfNSW; and
 - (ii) the Developer and the Minister will meet within 15 Business Days of receipt of that notice from the Developer by the Minister to discuss and attempt to agree (acting reasonably) and in consultation with TfNSW on any necessary changes to this deed with respect to the provision of the WIK Contribution.

3.4 Conditions precedent prior to commencement of Road Work

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

- (a) if Development Consent is required — provide evidence to the Minister that it has obtained Development Consent for the Road Work;
- (b) prior to the issue of the Relevant Certificate for the 450th Urban Lot, enter into a WAD with TfNSW, on such terms and conditions as are:
 - (i) consistent with the requirements of this deed, including this Schedule 4; and
 - (ii) acceptable to TfNSW and the Minister (acting reasonably); and
 - (iii) provide a copy to the Minister of the executed WAD to carry out the Road Works.

3.5 Construction Contract for the Road Works

- (a) The Developer must provide written notice to the Minister which confirms that it intends to commence the Road Works (the **Notice**). The Developer may only enter into a Construction Contract with a contractor appointed under the competitive tender process on an arm's length basis. Further, the contractor must be approved by TfNSW and meet all of TfNSW's requirements.
- (b) The Developer must undergo a competitive tender process in awarding a Construction Contract for the Road Works and provide evidence of such tender process upon request from the Minister.

- (c) The Notice must be accompanied by a copy of each Construction Contract in place for the Road Works.
- (d) If further Construction Contract(s) are entered into after the Notice has been issued the Developer must provide a written notice to the Minister of that fact as soon as is practicable and follow the process for appointing a construction contractor described in paragraph (b) above. The Developer will provide the Minister with a copy of the Construction Contract(s).
- (e) Each Construction Contract must:
 - (i) identify a superintendent for the Road Works;
 - (ii) provide a reasonable itemisation of works comprising the Road Works, which, in relation to construction work, may be by a bill of quantities;
 - (iii) identify the contract value for each item of the Road Works; and
 - (iv) identify the terms and conditions applicable to the carrying out of the Road Works.

4. Road Work Land

4.1 Transfer of the Road Work Land

- (a) The Developer must transfer the Road Work Land (if the Road Work Land includes any land that is not owned by the Roads Authority) in accordance with clause 4.2 and 4.3 of this Schedule 4.

4.2 Subdivision of Road Works Land

- (a) Before dedicating the Road Work Land to the Minister's nominee or Roads Authority, or transferring the Road Work Land in accordance with clause 4.3 of this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent (if any is required) and any other approvals necessary to create a separate lot for the Road Work Land; and
 - (ii) in accordance with the applicable Development Consent (if any) and any other necessary approvals, prepare and register a Plan of Subdivision (or road dedication plan) to create a separate lot for the Road Work Land (**Road Work Land Subdivision**).

4.3 Transfer of the Road Work Land

- (a) The Developer must procure the transfer of the Road Works Land to the Minister's nominee or the Roads Authority as the case may be in accordance with this deed within 3 months of the date of the Road Work Land Subdivision, and in any event within 3 months of completion of the Road Work.
- (b) In satisfying the Minister or the Roads Authority of its obligation under clause 4.3(a) of this Schedule 4, the Developer must deliver to the Roads Authority:
 - (i) a form of transfer in respect of the land comprising the Road Work Land in favour of the Minister's nominee free of cost, executed by the Developer or owner of the relevant Road Work Land (as applicable) and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and

- (ii) the certificate of title for the Road Work Land;
 - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Road Work Land; and
 - (iv) take any other necessary action to give effect to the transfer of the title of the Road Work Land to the Minister's nominee 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 Minister or nominee in writing.
- (c) For avoidance of doubt, clause 4.3(b)(iv) of this Schedule 4 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 Road Works Land could not prevent from affecting the Road Works Land and in respect of which no action can be taken by the Developer or owner of the Road Works Land.
- (d) Despite clause 4.3(b)(iv) of this Schedule 4, 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 4.3(b)(iv), then:
- (i) the Developer may request that the Minister's nominee 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 deed; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,
 the Minister or nominee may agree to accept the land subject to those encumbrances; and
- (e) in other circumstances, the Minister may withhold the Minister's or Minister's nominee's agreement at the Minister's absolute discretion.
- (f) The Developer indemnifies and agrees to keep indemnified the Minister and the Minister's nominee against all Claims made against the Minister or Minister's nominee as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Road Works Land but only in relation to Contamination that existed on or before the date that the Road Works Land is transferred to the Minister's nominee.
- (g) The Developer will pay all rates and Taxes owing in respect of the Road Work Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Road Work Land pursuant to clause 3.4 of this Schedule 6 or the date of acquisition (as applicable), after which time the Minister or Minister's nominee will be responsible for any rates and Taxes in relation to the Road Work Land.
- (h) The parties agree that this deed operates as a deed poll in favour of the Minister's nominee (where applicable).

4.4 Compulsory Acquisition

- (a) If the Developer owns at the date of this deed or later acquires the Road Work Land, but does not transfer the Road Work Land as required by clause 4.3 of this Schedule 4, the

Minister may elect to, and the Developer consents to, the Minister or the Minister's nominee compulsorily acquiring the whole or any part of the Road Work Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.

- (b) To the extent relevant, the Developer and the Minister agree that:
 - (i) this clause 4.4 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 4.4 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and keeps indemnified the Minister and the Minister's nominee against all Claims made against the Minister or Minister's nominee as a result of any acquisition by the Minister or the Minister's nominee of the whole or any part of the Road Works Land under this clause 4.4.
- (d) The Developer must pay the Minister or Minister's nominee, promptly on demand, an amount equivalent to all Costs incurred by the Minister in acquiring the whole or any part of the Road Work Land as contemplated by this clause 4.4.

5. Completion of the WIK Contribution

5.1 Completion Notice

- (a) If the Developer considers that it has completed the WIK Contribution in accordance with the requirements of the Roads Authority and this deed, the Developer will provide notice to the Minister stating that the Developer considers that the WIK Contribution has been completed (**Completion Notice**), together with:
 - (i) a certificate from the Roads Authority confirming that:
 - (A) the Road Work has been completed; and
 - (B) the Road Work Land (if applicable) has been dedicated to the Roads Authority or Minister's nominee;
 - (ii) a report to the Minister which:
 - (A) provides an itemised breakdown and details of the Actual Costs incurred by the Developer, including accounts for the Actual Costs;
 - (B) shows that the Actual Costs have been reduced by the amount of any input tax credit which the Developer is entitled to claim;
 - (C) provides a reconciliation of the Actual Costs with the WIK Contribution Value;
 - (D) includes a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each of the items which the Developer proposes as Actual Costs; and
 - (iii) such other supporting documentation as is necessary for the Minister (or nominee) acting reasonably to determine whether that the Road Work has been completed and the Actual Cost associated with the Road Work.

- (b) The Developer must promptly provide any additional information reasonably requested by the Minister (or nominee).
- (c) The Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the materials submitted by the Developer and to assist with the Minister's assessment of the Completion Notice and the Actual Cost associated with the WIK Contribution.
- (d) The Minister (or nominee) will, within 45 days of receiving the Completion Notice and all the certificates and information required under this clause 5.1 of this Schedule determine:
 - (i) whether the WIK Contribution has been completed; and
 - (ii) the actual Costs which the Minister will recognise as being properly attributable to the WIK Contribution and therefore available to discharge the Developer's obligation to pay the Monetary Contribution (**Approved Actual Costs**).
- (e) If the Minister (or the Minister's nominee), acting reasonably, is satisfied that the WIK Contribution has been provided, the Minister will:
 - (i) accept the WIK Contribution in lieu of the Developer making the Monetary Contribution to discharge (partly or in full) the Developer's obligations to pay the Monetary Contribution; and
 - (ii) issue an Offset Certificate to the Developer which will set out the Offset Amount that has been credited for the WIK Contribution.
- (f) If the Minister or Nominated Officer, acting reasonably, is not satisfied that the WIK Contribution has been provided, the Minister or Nominated Officer will notify the Developer and provide an explanation as to why he or she considered that the WIK Contribution has not been completed and, if applicable, provide details of:
 - (A) any additional work or tasks which must be undertaken; and/or
 - (B) any information or documents which must be provided,

by the Developer, in order to complete the WIK Contribution. The Developer may, after taking into account the Minister explanation and undertaking the work or providing the information or documents required, re-submit a Completion Notice together with any necessary documentation.

- (g) Subject to this deed, the Developer acknowledges and agrees that:
 - (i) if the Approved Actual Costs are less than the WIK Contribution Value, the Offset Amount will be the Approved Actual Costs; and
 - (ii) if the Approved Actual Costs are more than the WIK Contribution Value, the Offset Amount will be the WIK Contribution Value.

5.2 Application of Offset Amounts

- (a) Upon the Developer becoming liable to pay a Contribution Amount with respect to any Urban Lot beyond the 500th Urban Lot of the Development, the Developer must not later than 30 days prior to the Contribution Amount being payable in accordance with clause 2.2

of this Schedule, provide the Minister with a notice in writing (**Contribution Notice**) which states:

- (i) the Stage and/or Urban Lots to which the Contribution Notice relates;
 - (ii) the Contribution Amount payable; and
 - (iii) that the Developer intends to apply an amount of the Offset Amount to the Contribution Amount.
- (b) Upon receipt of a satisfactory Contribution Notice (in the Minister's absolute discretion, acting reasonably):
- (i) that portion of the Offset Amount outlined in the Contribution Notice (**Offset Amount Portion**) will be taken to have been surrendered to the Minister; and
 - (ii) the Minister will provide an updated Offset Certificate to the Developer showing that:
 - (A) the value of the Offset Amount has decreased by the Offset Amount Portion; or
 - (B) the value of the Offset Amount is nil,**(Updated Offset Certificate).**
- (c) If any remaining Offset Amount on the Offset Certificate is less than the relevant Contribution Amount (**Shortfall Amount**), the Developer must pay to the Minister the Shortfall Amount within 5 Business Days of receipt of the Updated Offset Certificate (and prior to the date on which the Contribution Amount is payable in accordance with clause 2.2 of this Schedule.
- (d) The Developer acknowledges and agrees that if, following the release of the Relevant Certificate for the final Urban Lot within the Development, any part of the Offset Amount has not been applied (**Unapplied Offset Amount**), under no circumstances shall it be or become entitled to a refund of any part of the Unapplied Offset Amount.

Schedule 5 Security terms

(clause 6.1)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution, the Developer has agreed to provide the Security in the form of the Bank Guarantee as set out in the table below.
- (b) Each Bank Guarantee must:
 - (i) name the “Minister for Planning and Public Spaces” and the “Department of Planning, Industry and Environment ABN 20 770 707 468” as the relevant beneficiaries;
 - (ii) be in the amount as set out in the table below;
 - (iii) be as security for the Secured Obligation as set out in the table below; and
 - (iv) not have an expiry date.

Bank Guarantee Amount	Secured Obligation
\$200,000	All obligations imposed on the Developer under this deed

2. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the relevant Security provided in accordance with this deed where the Developer has failed to provide the Monetary Contribution for the development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Development Contribution and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security and if the Developer remedies the breach or non-compliance to the Minister’s satisfaction within that period the Minister will not call upon the Security.
- (c) If:
 - (i) the Minister calls upon a Security; and
 - (ii) applies all or part of such monies towards the Development Contribution and any costs and expenses 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 Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 3 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 1 of this Schedule 5.

3. Release of Security

3.1 Release of the Bank Guarantee

If:

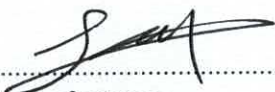
- (a) the Developer has paid the Monetary Contribution and satisfied all of its obligations under this deed with regards to the Secured Obligation for the Bank Guarantee; and
- (b) the whole of the Bank Guarantee has not been expended

then the Minister will promptly return the Bank Guarantee (less, if applicable, any amounts properly claimed by the Minister from the Bank Guarantee under this deed) to the Developer.

Execution page

Executed as a deed

**Signed, sealed and delivered by the Minister
for Planning and Public Spaces (ABN 20 770
707 468), in the presence of:**


.....
Signature of witness


SAUGHYUO YANG
.....
Name of witness in full

12 DARCY ST, PARRAMATA NSW 2150
.....
Address of witness


.....
Signature of the Minister for Planning and Public
Spaces or delegate

BRETT WHITWORTH
.....
Name of Minister for Planning and Public Spaces
or delegate

**Executed by Prime Moss Vale Pty Ltd (ABN 43
621 544 554) in accordance with section 127 of
the Corporations Act:**

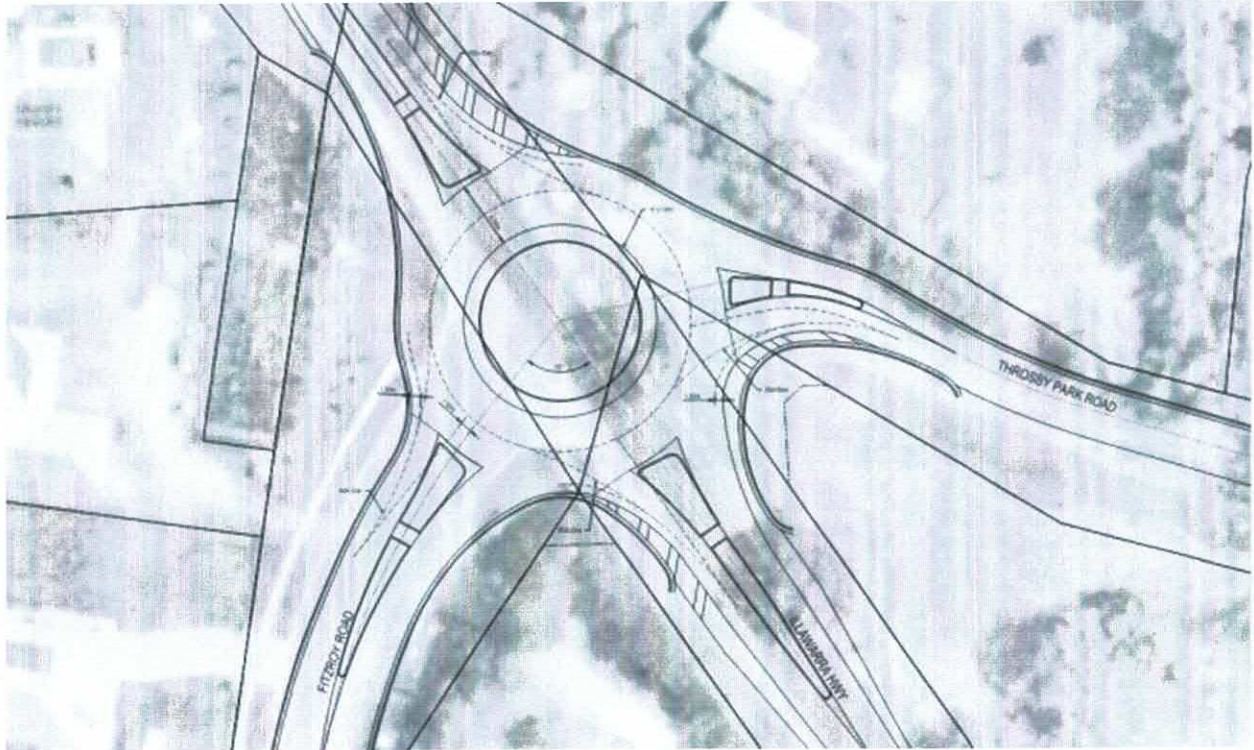

.....
Signature of Director

Eifon Li
.....
Name of Director


.....
Signature of Director/Secretary
ADRIAN LIAW
.....
Name of Director/Secretary

Annexure A Intersection Upgrade Work

Source: Appendix B - Regional Traffic Upgrades, PoPC & Contribution Estimate Chelsea Gardens Development Moss Vale (V7)



Brett Whitlock

[Signature]

Annexure B Staging Plan

