

Planning Agreement

Environmental Planning and Assessment Act 1979

Melrose Precinct VPA

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

SH Melrose PP Land Pty Ltd (ACN 137 331 438)

Deicorp Projects (MPTC) Pty Ltd (ACN 657 628 110)

SH Melrose Land Pty Ltd (ACN 639 001 522)

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This deed is dated

Parties:

Minister

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

Landowner and Offsite Landowner

SH Melrose PP Land Pty Ltd (ACN 137 331 438)
of Ground Floor, 68 Waterloo Road, Macquarie Park NSW 2113

Deicorp Projects (MPTC) Pty Ltd (ACN 657 628 110)
of Level 3, 161 Redfern St, Redfern NSW 2016

SH Melrose Land Pty Ltd (ACN 639 001 522)
of Ground Floor, 68 Waterloo Road, Macquarie Park NSW 2113

Introduction:

- A** The Landowners own the Land and the Offsite Landowner owns the Offsite Land.
- B** A change to the LEP applying to the Land has been sought to enable the Development to be carried out on the Land.
- C** A Development Application will be lodged with the Consent Authority in respect of the Land.
- D** The Landowners and Offsite Landowner have offered to enter into this deed with the Minister to secure the Development Contributions.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

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

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

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

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

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 2021.

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

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

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

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contamination has the same meaning as in the CLM Act.

Contribution Amount means the amount of each monetary contribution being Item A1 and A2, to be paid by the Landowner in accordance with Schedule 4.

Contribution Value for an Item means the amount in Column 2 of the Table for that Item.

CPI means the Consumer Price Index (All Groups Index) for Sydney 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 before 31 March in the year in which the relevant adjustment is made.

Dealing means in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose, encumber or otherwise deal with the Land in whole or part.

Dedication Land means Items B1 and B2.

Development means development on the Land comprising a mixed-use development of predominantly high-density residential units, comprising no more than 434,023m² of residential GFA, within the meaning of the LEP, or any other development of the Land within the meaning of the Act facilitated by the Instrument Change which does not comprise more than 434,023m² of residential GFA, within the meaning of the LEP.

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 in accordance with Schedule 4.

Dwelling has the same meaning as in the LEP.

Education Land means Item B2.

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

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).

Instrument Change means the change to the LEP as a result of the Planning Proposal.

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company 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.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

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

Land means the land described in Part 1 of Schedule 3.

Land Dedication Plan means the plan in Schedule 6.

Landowner means in respect of each parcel comprising the Land the entity noted in Part 1 of Schedule 3 in respect of that parcel.

LEP means the *Parramatta Local Environmental Plan 2011*.

Local VPA means the planning agreement between the City of Parramatta Council and the parties in respect of the Land and the Development which has been or will be entered into on or around the same date as this Deed.

LRS means the NSW Land Registry Services.

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

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

Offsite Land means the land described in Part 2 of Schedule 3.

Offsite Landowner means in respect of each parcel comprising the Offsite Land the entity noted in Part 2 of Schedule 3 in respect of that parcel.

Optional Road Land means Part Lot 2 DP588575 as shown in the Land Dedication Plan.

Planning Application means:

(c) a Development Application; or

(d) any other application required under the Act,

in respect of the Development.

Planning Proposal means the planning proposal, within the meaning of s3.33 of the Act, prepared by Parramatta City Council with reference number PP-2020-1983 in respect of the Land.

Playing Field means Item 4 in Schedule 1 of the Local VPA.

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

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 2021* (NSW).

Remediation of Contaminated land includes:

- (a) if required by any Site Audit Statement, the preparation of a long term management plan for the land;
- (b) investigation, treating, removing, disposing, destroying, reducing, mitigating, dispersing, remediating or containing the Contamination of the land; and
- (c) eliminating or reducing any hazard arising from the Contamination of the land (including by preventing the entry of persons or animals onto the land).

Road Works means Items C1, C2 and C3.

Road Works Land means Item B1.

Road Works Plan means the plan in Schedule 7.

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

Security means a Bank Guarantee or an Insurance Bond.

Site Audit Statement has the same meaning as in the CLM 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.

WAD means a Works Authorisation Deed with Transport for NSW in respect of the construction of an Item of the Road Works.

WAD Security means Security provided to and accepted by Transport for NSW under a WAD.

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 made 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) subject to clause 4.1(b) 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. For the avoidance of doubt, a Landowner is to provide the Development Contributions in Schedule 4 comprising the dedication of land and monetary contributions in respect of the Land that they own and are jointly and severally liable in respect of the carrying out of Development Contributions which comprise works;
- (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.

2.3 Application

This deed applies to:

- (a) the Land;
- (b) the Offsite Land;
- (c) the Instrument Change; and
- (d) the Development.

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

- (a) The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.
- (b) The application of Division 7.1, Subdivision 4 of the Act is excluded if it commences as foreshadowed in the *Environmental Planning and Assessment Amendment (Housing and Productivity Contributions) Bill 2023*.

4. Development Contribution

4.1 Landowner to provide Development Contributions

- (a) The Landowner undertakes to provide to the Minister, or the Minister's nominee, the Development Contributions in accordance with the provisions of Schedule 4.
- (b) Notwithstanding any other provision in this deed, nothing in this deed binds the Offsite Landowner to any obligations relating to the carrying out of Work, or the payment of any Contribution Amounts under this Deed, except to the extent that the Offsite Landowner is also a Landowner.
- (c) For the avoidance of doubt:
 - (i) where this deed requires that a Development Contribution be made prior to the issue of a particular Construction Certificate or Occupation Certificate; and
 - (ii) the Construction Certificate or Occupation Certificate is issued without the making of that Development Contribution in breach of this deed,then despite the breach, it is a requirement of this deed that no further Construction Certificate or Occupation Certificate may be issued for the Development , until the Development Contribution (that was not made) is made.
- (d) Despite the remainder of this clause 4.1, the Minister may at its absolute discretion agree to the delayed delivery of a Development Contribution, taking into consideration security provided whether under this VPA or otherwise to the Minister's satisfaction. If the delayed delivery of a Development Contribution is due to circumstances outside of the control of the Landowners and Offsite Landowner, the Minister will act reasonably in determining whether to agree to delayed delivery of that Development Contribution.

4.2 Acknowledgement

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

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

5. Interest

5.1 Interest for late payment

- (a) If the Landowner fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Landowner 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 Landowner to provide Security

The Landowner has agreed to provide security to the Minister for the performance of the Landowner'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 15 Business Days of receiving a copy of this deed executed by the Minister, the Landowner and Offsite Landowner 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 or Offsite Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land or Offsite Land,to the registration of this deed on the title to the Land and Offsite Land; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio of the Register for the Land and Offsite Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

- (b) The Landowner and Offsite Landowner will take all practical steps and otherwise do anything 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 and Offsite 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.
- (c) Notwithstanding the above, if the Landowner and Offsite Landowner, having used their best endeavours to do so, are unable to:
 - (i) obtain the consent of any lessee of Lot 2 DP 588575 to the matters in clause 7.1(a); and
 - (ii) register this deed in the relevant folio of the Register for Lot 2 DP588575,
 then the Landowner or Offsite landowner will not be taken to be in breach of this deed, provided that the Offsite Landowner agrees not to sell or transfer the whole or any part of Lot 2 DP 588575 without the Minister's consent, and only if the requirements of clauses 10.2(b)(i), (ii) and (iii) are satisfied.

7.2 Evidence of registration

- (a) The Landowner 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 Landowner will provide the Minister with a copy of the relevant folio of the Register for the Land and Offsite Land (except Lot 2 DP588575 if registration is unable to be achieved on that lot) and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Landowner to release and discharge this deed with respect to any part of the Land and Offsite Land upon the Landowner satisfying all of its obligations under this deed in respect of that part of the Land and Offsite Land, including removing the registration of this deed from the title to that part of the Land and Offsite Land.
- (b) For the purposes of clause 7.3(a) and clause 10.2(a)(ii) an obligation to make a Development Contribution comprising the dedication of land or carrying out of work is taken to be an obligation in respect of a particular part of the Land, if the obligation is to be met before the issue of a Construction Certificate or Occupation Certificate for a particular Dwelling in the Development (for example the 300th Dwelling in the Development), and that particular Dwelling is located on that part of the Land.
- (c) Despite clause 7.3(a) the Minister will not release and discharge this deed with respect to any part of the Land or Offsite Land if the Landowner or Offsite Landowner are in breach of any obligation to make Development Contributions under this deed.

7.4 Interest in Land

- (a) The Landowner represents and warrants that :
 - (i) the ownership of the Land is as set out in Schedule 3; and

- (ii) it is 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, co-operate and to otherwise do all things necessary for the Landowner to comply with the obligations under clause 7, in respect of the Land which it owns.
- (b) The Offsite Landowner represents and warrants that it is:
 - (i) the owner of the Offsite Land; and
 - (ii) 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, co operate and to otherwise do all things necessary for the Offsite Landowner to comply with the obligations under clause 7, except in respect of the Offsite Land identified as Part Lot 2 DP588575.

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 and Offsite Land in accordance with clause 7.1, the Landowner acknowledges that this deed confers on the Minister an interest in the Land and Offsite Land and entitles the Minister to lodge and maintain a caveat on the title to the Land and Offsite Land to prevent any Dealing in respect of the Land or Offsite 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 and Offsite Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 15 Business Days of receipt of a copy of this deed executed by the Minister, the Landowner has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Landowner 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 parties specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2:

- (a) A party may, within 5 Business Days, or 15 Business Days in the case of the Minister, provide notice to each other party that it is not interested in the dispute to which the notice relates, and does not wish to be involved in the dispute resolution process, provided

that a party cannot issue such a notice if the dispute relates to or arises from any act or omission of that party; and

- (b) 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.

8.8 Non participating parties

Where a party provides notice, under clause 8.3(a), that it is not interested in the dispute and does not wish to be involved in the dispute resolution process, that party (**Opting Out Party**):

- (a) will not be involved in the dispute resolution process, unless any other party reasonably forms the view that it is preferable for the proper resolution of the dispute if the Opting out Party remains in the dispute resolution process, in which case the party may issue a notice on the Opting Out Party within a further 5 Business Days to the effect that it must remain in the dispute resolution process, but
- (b) must nevertheless accept, and will be bound by, the outcome of the dispute resolution process, and
- (c) the other parties must provide written notice of the outcome of the dispute resolution process to any Opting Out Party within 5 Business Days of its conclusion.

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.

9.5 Additional Amounts for GST

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

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

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Landowner acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Landowner 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) Except where clause 10.2 or 10.4 applies, 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 (including clause 11.3(b) if applicable) 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) Except where clause 10.4 applies, the Landowner must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land and the Offsite Landowner must not sell or transfer to a Transferee the whole or part of the Offsite Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contributions required under this deed remain outstanding with respect to that portion of the Land or Offsite Land, as the case may be.
- (b) Notwithstanding clause 10.2(a) the Landowner may sell or transfer the whole or any part of the Land to a Transferee and the Offsite Landowner may sell or transfer the whole or any part of the Offsite Land to a Transferee if prior to the proposed sale or transfer the Landowner or Offsite Landowner (as the case may be):
 - (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 Landowner or Offsite Landowner (as the case may be) under this deed or satisfies the Minister, acting reasonably, that the Landowner or Offsite Landowner (as the case may be) will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) unless the Transferee is already a party to this deed, procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably (including provisions contemplated in clause 11.3(b) if applicable), under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Landowner or Offsite Landowner (as the case may be); and

- (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The relevant Landowner that wishes to sell or transfer the Land must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Landowner has complied with clause 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 and on terms acceptable to the Minister,

the Minister will promptly return the Security provided by the Landowner under this deed to the relevant Landowner.

10.4 Release of Landowner

Despite clauses 10.1-10.3, the Minister acknowledges and agrees that if a Landowner or Offsite Landowner (**Exiting Landowner**) transfers all of its Land or Offsite Land to another party to this deed (**Existing Party Transferee**) then on and from the date of the transfer and subject to the Existing Party Transferee providing, to the Minister's satisfaction, evidence that it has entirely assumed ownership of that Land or Offsite Land:

- (a) the Exiting Landowner will be released and discharged from the obligations arising under this deed after the date that the Exiting Landowner has sold or transferred its part of the Land or Offsite Land; and
- (b) the Minister will not seek to enforce the terms of this deed against the Exiting Landowner in the event of a breach of any obligation arising under this deed by any party after the date that the Exiting Landowner has sold or transferred its part of the Land or Offsite Land.

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.

11.3 Trustee Landowner

- (a) At the date of this deed none of the Landowners are acting in a capacity as a trustee.
- (b) If a future Landowner (subject to compliance with clause 10) is novated the rights and obligations under this deed, and is acting in a capacity as trustee (**Trustee**) under a trust

deed (**Trust Deed**) then that Trustee must in addition to complying with the relevant obligations in clause 10:

- (i) warrant that:
 - (A) it is the sole trustee of the relevant trust and no action has been taken to remove or replace it;
 - (B) entry into this deed is for the benefit of the beneficiaries of the relevant trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (C) it is not in breach of the Trust Deed;
 - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (E) it is not aware of any reason why the assets of the relevant trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
- (ii) indemnify the Minister, and agree to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty as contemplated in this clause; and
- (iii) must agree that prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
 - (A) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
 - (B) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
 - (C) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
 - (D) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 11.3(b)(iii) and the costs and expenses of registering any new deed on the title to the Land.

- (c) Where a future Landowner is acting in its capacity as a Trustee and has complied with clause 10 and clause 11.3 (b) and subject to clause 11.3(e), liability arising under or in connection with this deed is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (d) Where a future Landowner is acting in its capacity as a Trustee and has complied with clause 10 and clause 11.3 (b), no party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
 except under or in connection with clause 11.3(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 11.3(c) and 11.3(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 11.3(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Landowner 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 Construction Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;

- (iv) a compliance schedule 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
 - (v) when the Landowner expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Landowner 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 Landowner'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 Electronic execution

The Minister and the Landowner acknowledge and agree that:

- (a) a party may electronically sign a soft copy of this deed and by doing so will:
 - (i) bind itself to this deed; and
 - (ii) satisfy any statutory or other requirements for this deed to be in writing and signed by that party as a deed; and
- (b) a soft copy of this deed signed by a party will constitute an executed original counterpart and if that document is printed with that party's electronic signature appearing that print-out will also constitute an executed original counterpart.

13.12 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.

13.13 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.

13.14 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.

13.15 Explanatory note

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

13.16 Expenses and stamp duty

- (a) The Landowner must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Landowner must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Landowner 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 Landowner 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 13.16(a) and (b):
 - (i) where the Minister has provided the Landowner 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 Landowner with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.17 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) 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 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1 – Table 1 - Requirements under section 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(1)) The Landowner has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) 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))	Amendment to LEP as set out in the Planning Proposal
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 is not excluded in respect of the Development by this deed
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
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.14

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 – see the Table in Schedule 4
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes – see the Table in Schedule 4
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2 – Address for Service**Address for Service (clause 1.1)****Minister****Contact:** The Secretary**Address:** Department of Planning, Industry and Environment
320 Pitt Street
SYDNEY NSW 2000**Email:** planningagreements@planning.nsw.gov.au**Landowner and Offsite Landowner****SH Melrose PP Land Pty Limited ACN 137 331 438****Contact:** Atsuhide Seguchi and Alex Grujovski**Address:** Ground Floor, 68 Waterloo Road, Macquarie Park NSW 2113**Email:** hide_seguchi@sekisuihouse.com.au and
Alex.Grujovski@sekisuihouse.com.au**SH Melrose Land Pty Ltd ACN 639 001 522****Contact:** Atsuhide Seguchi and Alex Grujovski**Address:** Ground Floor, 68 Waterloo Road, Macquarie Park NSW 2113**Email:** hide_seguchi@sekisuihouse.com.au and
Alex.Grujovski@sekisuihouse.com.au**Deicorp Projects (MPTC) Pty Ltd ACN 657 628 110****Contact:** Mr Fouad Deiri**Address:** Level 3, 161 Redfern St, Redfern NSW 2016**Email:** fd@deicorp.com.au

Schedule 3 – Land and Offsite Land (clause 1.1)**1. Land**

Address	Lot and DP	Landowner
84 Wharf Road, Melrose Park	Lot 201 DP1265603 Lot 6 DP232929 Lot 11 DP787611	SH Melrose PP Land Pty Limited ACN 137 331 438
33 Hope Street, Melrose Park	Lot 200 in DP1265603	Deicorp Projects (MPTC) Pty Ltd ACN 657 628 110
44a Wharf Road, Melrose Park	Lot 12 DP787611	SH Melrose PP Land Pty Limited ACN 137 331 438
38-42 Wharf Road, Melrose Park	Lot 10 DP1102001	SH Melrose PP Land Pty Limited ACN 137 331 438
27 Hughes Avenue, Ermington	Lot 1 DP213196	SH Melrose PP Land Pty Limited ACN 137 331 438

2. Offsite Land

Address	Lot and DP	Landowner
1226 Victoria Road, Melrose Park	Part Lot 10 DP128851	SH Melrose PP Land Pty Limited ACN 137 331 438
1222 Victoria Road, Melrose Park	Part Lot 12 DP128851	SH Melrose PP Land Pty Limited ACN 137 331 438
1220 Victoria Road, Melrose Park	Part Lot 13 DP128851	SH Melrose PP Land Pty Limited ACN 137 331 438
1218 Victoria Road, Melrose Park	Part Lot 14 DP128851	SH Melrose PP Land Pty Limited ACN 137 331 438
700 Victoria Road, Ermington	Part Lot 17A DP440585	SH Melrose PP Land Pty Limited ACN 137 331 438
661 Victoria Road, Ermington	Lot 2 DP1248652 Lot 3 DP1248652 Part Lot 4 DP1248652 Part Lot 6 DP1248652 Lot 7 DP1248652	SH Melrose Land Pty Limited ACN 639 001 522
659 Victoria Road, Ermington	Part Lot 4 DP1248652 Lot 5 DP1248652 Part Lot 6 DP1248652	SH Melrose Land Pty Limited ACN 639 001 522
657 Victoria Road, Melrose Park	Part Lot 2 DP588575	SH Melrose Land Pty Limited ACN 639 001 522

Schedule 4– Development Contributions

See Parts 1 and 2 Following

Part 1 - Table

Column 1 Item	Column 2 Contribution Value	Column 3 Manner & Extent	Column 4 Timing
A. Monetary Contributions			
1. Bridge Contribution - Melrose Park Bridge Parramatta River Crossing	\$2,394.10 per Dwelling indexed in accordance with clause 1(b) of Part 2 of this Schedule 4	\$2,394.10 per Dwelling indexed in accordance with clause 1(b) of Part 2 of this Schedule 4	Prior to the issue of each Occupation Certificate for the occupation of Dwellings in the Development with the payment to be in respect of the number of Dwellings to which the Occupation Certificate relates.
2. Road works Contribution – Victoria Road	\$15,606,971	\$3,121.39 per Dwelling indexed in accordance with clause 1(b) of Part 2 of this Schedule 4	Prior to the issue of each Occupation Certificate for the occupation of Dwellings in the Development with the payment to be in respect of the number of Dwellings to which the Occupation Certificate relates.
B. Dedication of Land			
1. Land for Road Works (Road Works Land)	\$984,000	Dedication to the Minister or Minister's Nominee of approximately 4,470m ² of land generally in the location shown on Sheet 2 of the Land Dedication Plan, but excluding that part that is within Lot 2 DP588575	Within 3 months of Practical Completion of Item C3.
2. Land for school site (Education Land)	\$1,560,427 in respect of preparatory works	Remediation, base embellishment, and services for a parcel of land of approximately 9,916 m ² to the reasonable satisfaction of the Minister	Prior to 1 December 2024

		and the Department of Education, being in the general location shown on Sheet 3 of the Land Dedication Plan, and Dedication of the parcel to the Minister or Minister's nominee	
3. Early delivery of Playing Field	Nil	Early delivery of Playing Field	Despite the provisions of the Local VPA, for the purposes of this deed, the Playing Field is required to be completed and dedicated by 1 December 2025, but otherwise in accordance with the Local VPA
C. Carrying out of Road Works			
1. Road Works Stage 1	<p>\$11,630,468 indexed in the same way that Contribution Amounts are indexed under this Schedule 4.</p> <p>It is acknowledged that the left in and left out access from Victoria Road to NSR-2 (including the circa 100m widening of Victoria Road and the construction of the full width of NSR-2) is in progress.</p> <p>The balance of the works remaining being the widening of Wharf Road to enable a left out from Wharf Road to Victoria Road is valued at \$2,211,274.</p>	The balance of the works remaining on Victoria Road at Wharf Road to enable a left out from Wharf Road to Victoria Road generally as shown on that part of Sheet SKC008A in the Road Works Plan. For the avoidance of doubt the works relating to the left in and left out access from Victoria Road to NSR-2 (including the circa 100m widening of Victoria Road and the construction of the full width of NSR-2) is excluded	Practical Completion of this Item of Road Works must be achieved prior to the issue of the Occupation Certificate for the first Dwelling in the Development.

2. Road Works Stage 2	\$8,068,990 indexed in the same way that Contribution Amounts are indexed under this Schedule 4	Upgrade of the Victoria Road and Wharf Road intersection generally as shown on Sheet SKC008B in the Road Works Plan.	Practical Completion of this Item of Road Works must be achieved prior to the issue of the Occupation Certificate for the 600 th Dwelling in the Development.
3. Road Works Stage 3	\$51,717,345 indexed in the same way that Contribution Amounts are indexed under this Schedule 4	Upgrade of Victoria Road and Kissing Point Road intersection generally as shown on Sheet SKC008C in the Road Works Plan.	Practical Completion of this Item of Road Works must be achieved prior to the issue of the Occupation Certificate for the 1,900 th Dwelling in the Development

Part 2 - Development Contributions Provisions (clause 4)**1. Monetary Development Contributions**

- (a) The Landowner must pay to the Minister or the Minister's nominee the monetary Development Contributions in the manner set out in the Table.
- (b) On the CPI Adjustment Date, each Contribution Amount is to be adjusted by multiplying the Contribution Amount payable (as previously adjusted in accordance with this clause, where relevant) by an amount equal to the Current CPI divided by the Base CPI.
- (c) The Landowner must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for any Construction Certificate or Occupation Certificate for the construction of Dwellings in the Development.
- (d) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Construction Certificate or Occupation Certificate for the Development on the development lot to which the payment relates, within the meaning of section 6.8 and 6.10 of the Act and clause 21 and 48 of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

2. Design, Construction and Handover of the Road Works**2.1 Pre-conditions to Commencement of Road Works**

- (a) Prior to commencement of an Item of the Road Works, the Landowner 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(s) with Transport for NSW in respect of the Road Work, on such terms and conditions as are:
 - (A) consistent with the requirements of this Deed, including this Schedule 4; and
 - (B) acceptable to Transport for NSW and the Minister,
 - (iii) provide a copy to the Minister of the executed WAD(s) to carry out the Road Work.

2.2 Timing of Road Works

- (a) The Landowner must enter into a WAD for each Item of the Road Works or that relates to the Item of the Road Works and carry out and complete each Item of the Road Works in accordance with the WAD (if applicable) for that Road Work by no later than the times specified in the Table.
- (b) An Item of the Road Works is taken to be completed for the purposes of this deed when the Item of Road Works achieve Practical Completion. The Landowner must give the Minister written notice of the Practical Completion of the Road Works.

3. Dedication of Dedication Land

3.1 Dedication Land as a Development Contribution

The relevant Landowner must dedicate the Dedication Land in accordance with clause 3.3 of this Schedule 4 and the Table.

3.2 Subdivision of Dedication Land

- (a) Before dedicating the Dedication Land in accordance with clause 3.3 of this Schedule 4, the relevant Landowner may (at its cost):
 - (i) obtain Development Consent (if required) and any other approvals necessary to create a separate Torrens title 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.

3.3 Dedication of Dedication Land

- (a) The relevant Landowner and Offsite Landowner must procure the dedication of the Road Works Land by way of transfer to the Minister or Minister's Nominee in accordance with clause 3.3 of this Schedule 4 prior to the time specified in the Table.
- (b) The relevant Landowner 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 3.3 of this Schedule 4 prior to the time specified in the Table.
- (c) In satisfying its obligations under clause 3.3(a) and (b) of this Schedule 4, the relevant Landowner or Offsite Landowner (as the case may be) must:
 - (i) deliver to the Minister (or the Minister's nominee):
 - (A) a form of transfer in respect of the Dedication Land in favour of the Minister or Minister's Nominee free of cost, executed by the registered proprietor and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; or
 - (B) evidence that a transfer has been effected by means of electronic lodgement through an ELNO; and
 - (C) in the case of the Education Land only, a Site Audit Statement confirming that the Education Land is suitable for its proposed use in accordance with this deed.
 - (ii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General of the LRS 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 Minister or 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 Minister's Nominee in writing.
- (d) For avoidance of doubt, clause 3.3(c)(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 Landowner or Offsite Landowner (as the case may be) could not prevent from affecting the Dedication Land and in respect of which no action can be taken by the Landowner or Offsite Landowner (as the case may be).

- (e) Despite clause 3.3(c)(iii), if, despite having used its best endeavours, the Landowner or Offsite Landowner (as the case may be) cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 3.3(c)(iii), then:
 - (i) the relevant landowner may request that the Minister agree to accept the land subject to those encumbrances and affectations; and
 - (ii) the Minister may withhold the Minister's agreement at the Minister's absolute discretion.
- (f) The Landowner and Offsite Landowner indemnify and agree to keep indemnified the Minister or Minister's nominee against all Claims made against the Minister or Minister's nominee arising as a result of any Contamination over the whole or any part of the Road Works Land that existed on or before the date that the Road Works Land is transferred to the Minister or Minister's Nominee and as a result of the carrying out of the Road Works by the Landowner or Offsite Landowner or any other works which may be carried out by the Minister or the Minister's nominee. This indemnity is limited to the extent:
 - (i) that the WAD contains indemnities in favour of the Minister and Minister's nominee relating to Contamination and the carrying out of the Road Works and other works, and if the Minister indicates in writing acting reasonably to the Landowner and Offsite Landowner that this clause does not apply or applies only to a limited extent; and/or
 - (ii) to which the relevant Landowner and Offsite Landowner would be (or would have been at any time prior to the transfer of the Dedication Land) the person responsible for the Contamination under section 6 of the CLM Act.
- (g) The relevant Landowner will pay all rates and Taxes owing in respect of the Dedication Land up to and including the date that the relevant Landowner delivers the form of transfer and certificates of title for the Dedication Land pursuant to clause 3.3 of this Schedule 4, after which time the Minister or Minister's Nominee will be responsible for any rates and Taxes in relation to the Dedication Land.
- (h) The Landowner and Offsite Landowner indemnify and keep indemnified the Minister or the Minister's nominee in relation to any failure of the Landowner or Offsite Landowner to comply with clauses 3.1 to 3.5 of this Schedule 4.
- (i) The parties agree that this Deed operates as a deed poll in favour of the Minister's nominee where the Dedication Land is to be dedicated to the Minister's nominee.

3.4 Site Audit Statement

- (a) If part of the Education Land to which a Site Audit Statement relates is dedicated to the Minister's nominee, the Landowner agrees in relation to the Site Audit Statement provided to the Minister in accordance with clause 3.3(c)(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 Minister's nominee; 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 Minister's nominee and must do whatever the Minister's nominee reasonably requires to enable the Minister's nominee to enjoy that benefit.

3.5 Compulsory Acquisition

- (a) If the relevant Landowner or Offsite Landowner does not transfer an Item of Dedication Land as required by clause 3.3 of this Schedule 4 the Minister may elect to, and the Landowner or Offsite Landowner (as the case may be) consents to, the Minister compulsorily acquiring the whole or any part of the Item of Dedication Land in accordance with the Just Terms Act in the amount of \$1.00.
- (b) The relevant Landowner and Offsite Landowner and the Minister agree that, if clause 3.5(a) applies:
 - (i) this clause 3.5 is an agreement between them for the purposes of section 30 of the Just Terms Act; and
 - (ii) in this clause 3.5 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The relevant Landowner or Offsite Landowner (as the case may be) 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 Landowner or Offsite Landowner (as the case may be) is liable to transfer the Item of Dedication Land to the Minister or Minister's nominee in accordance with this clause.
- (d) The relevant Landowner 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 3.5.
- (e) The relevant Landowner 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 as contemplated by this clause.

3.6 Additional Requirements for Transfer of Education Land

- (a) Prior to the transfer of the Education Land, the relevant Landowner must, at its cost, ensure, and provide evidence to the Minister that the Education Land:
 - (i) is serviced by:
 - (A) roads, including NSR – 4 and EWR - 6;
 - (B) sewer;
 - (C) water;
 - (D) electricity; and
 - (E) communications,
 - (ii) is sufficiently level to safely permit the construction and operation of a school; and
 - (iii) has adequate drainage and appropriate geotechnical conditions to permit the construction and operation of a school.

- (b) The relevant Landowner must, prior to the transfer of the Education Land, undertake the Remediation Works referred to in clause 3.6(c) of this Schedule.
- (c) In this Schedule '**Remediation Works**' means the Remediation of Contamination over, on or under, above or migrating through or from the Education Land, in order to make the Education Land suitable for its use as a school, and to obtain a Site Audit Statement as required by clause 3.3(c)(i)(C) including by:
 - (i) undertaking Remediation in accordance with any remedial action plan or voluntary management proposal relating to the Contamination or Remediation of the Education Land;
 - (ii) undertaking Remediation in accordance with the conditions of all approvals required to be obtained in order to complete the Remediation of the Education Land in accordance with the remedial action plan or any voluntary management proposal relating to the Contamination or Remediation of the Education Land;
 - (iii) engaging a Site Auditor to oversee the Remediation of the Education Land;
 - (iv) obtaining and complying with the conditions of any approvals required to be obtained under any laws concerning the environment;

and complying with the requirements, notices and directions issued or administered by any Authority in respect of Contamination of the Education Land.
- (d) The relevant Landowner must ensure that any work (including earthworks and retaining walls) building or structure it causes to be constructed near the Education Land, and upon which the construction of the school would likely rely, is constructed in accordance with the applicable Australian Standards and does not prevent or impede the construction and operation of a school on any part of the Education Land.

3.7 Dedication of Optional Road Land

- (a) The Parties acknowledge the existence of a long term lease (**Lease**) over the Optional Road Land.
- (b) As at the date of this Deed, the Minister does not require the dedication of the Optional Road Land, and this deed does not propose the carrying out of any works on the Optional Road Land.
- (c) If at any time the Minister or Minister's nominee determines, in their absolute discretion that the Optional Road Land is required for the purposes of additional road works, the Minister may issue a notice to the Offsite Landowner requiring the dedication of the Optional Road Land free of cost to the Minister or Minister's Nominee.
- (d) If a notice is issued pursuant to clause 3.7(c), the Offsite Landowner must dedicate the Optional Road Land to the Minister or Minister's nominee within 3 months of the date of the notice subject to Council's agreement in writing considering its role as a party to a voluntary planning agreement that relates to the same land.
- (e) The notice issued under clause 3.7(c) must indicate if the dedication may be subject to the Lease. If the notice indicates that the dedication cannot be subject to the Lease, the Offsite Landowner must terminate the Lease (subject to Council's agreement in writing considering its role as a party to a voluntary planning agreement that relates to the same land) and the Offsite Landowner indemnifies the Minister and Minister's nominee in respect of any Claims arising from the termination of the Lease.

- (f) If a notice is issued under clause 3.7(c) and Council's agreement is given in writing to the dedication considering its role as a party to a voluntary planning agreement that relates to the same land, the Optional Road Land becomes part of the Dedication Land and the Road Land and the provisions of this deed in respect of dedication of the Road Land and Dedication Land apply, subject to this clause 3.7.

Schedule 5 – Security terms (clause 6)

1. Landowner to provide Security

- (a) In order to secure the payment or performance of the Development Contributions the Landowner has agreed to provide the Securities.
- (b) Each Security 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; and
 - (ii) not have an expiry date.

2. Primary Security

- (a) At the time the Landowner signs this deed, the Landowner must provide a Security to the Minister having a face value amount of \$200,000 (**Primary Security**) in order to secure the Landowner’s obligations under this deed.
- (b) From the date of execution of this deed until the date that the Landowner has met all of its obligations under this deed, the Minister is entitled to retain the Primary Security.

3. Claims under Primary Security

- (a) The Minister may:
 - (i) call upon the Primary Security where the Landowner has failed to make a Development Contribution on or after the date for making of the Development Contribution under this deed; and
 - (ii) retain and apply such monies towards any Contribution Amount owing and any costs and expenses incurred by the Minister in rectifying any default by the Landowner under this deed.
- (b) Prior to calling upon the Primary Security the Minister must give the Landowner not less than 10 Business Days written notice of his or her intention to call upon the Primary Security.
- (c) If:
 - (i) the Minister calls upon the Primary Security; and
 - (ii) applies all or part of such monies towards a Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Landowner under this deed; and
 - (iii) has notified the Landowner of the call upon the Primary Security in accordance with clause 3(b) of this Schedule 5,

then the Landowner must provide to the Minister a replacement Security to ensure that at all times until the date that the Primary Security is released in accordance with clause 4 of this Schedule, the Minister is in possession of Security for a face value equivalent to the amount of the Primary Security.

4. Release of Primary Security

If:

- (a) the Landowner has satisfied all of its obligations under this deed secured by the Primary Security; and
- (b) the whole of the monies secured by the Primary Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

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

5. Road Works Security

- (a) Subject to clause 5(c), the Landowner must provide Securities to the Minister having the following face value amounts at the following times to secure the performance by the Landowner of the obligation to carry out the Road Works:
 - (i) prior to the issue of a Construction Certificate for the construction of the first Dwelling in the Development, a Security of \$1,105,637 in respect of the Item C1;
 - (ii) prior to the issue of a Construction Certificate for the construction of the 600th Dwelling in the Development, a Security of \$4,034,495 in respect of Item C2;
 - (iii) prior to the issue of a Construction Certificate for the construction of the 1900th Dwelling in the Development, a Security of \$25,858,672 in respect of Item C3;
- (b) The value of each of the Securities to be provided under clause 5 (a) is to be indexed between the date of this deed, and the date that the Security is provided in the same way as Contribution Amounts are indexed under Schedule 4.
- (c) If the Landowner provides evidence satisfactory to the Minister that WAD Security has been provided in respect of an Item of Road Works, the Securities required under clause 5(a) need not be provided or, if applicable, the Minister will return the Road Works Security provided under this clause 5 in respect of that Item of Road Works.

6. Claims under Road Works Security

- (a) The Minister may:
 - (i) call upon the relevant Road Works Security to remedy any breach of the Landowner's obligation to deliver the Item of Road Works to which that Road Works Security relates; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying that breach.
- (b) Prior to calling upon a Road Works Security the Minister must give the Landowner not less than 10 Business Days written notice of his or her intention to call upon the Road Works Security.
- (c) If:

- (i) the Minister calls upon a Road Works Security; and
- (ii) applies all or part of such monies towards any costs and expenses incurred by the Minister in rectifying the default by the Landowner under this deed; and
- (iii) has notified the Landowner of the call upon the Road Works Security in accordance with clause 6(b) of this Schedule 5,

then the Landowner must provide to the Minister a replacement Security to ensure that at all times until the date that the Road Works Security is released in accordance with clause 7 of this Schedule, the Minister is in possession of Security for a face value equivalent to the amount required under clause 5 of this Schedule.

7. Release of Road Works Security

Without limiting clause 5(c) of this Schedule, if the Landowner has satisfied all of its obligations under this deed relating to an item of Road Works secured by the relevant Road Works Security, then the Minister will promptly return the relevant Road Works Security or any unused part of it (less any costs, charges, duties and taxes payable) to the Landowner.

8. Education Land Security

- (a) When this Deed commences in accordance with clause 2.1, the Landowner must provide a Security to the Minister having a face value amount of \$1,560,427 (**Education Land Security**) (indexed between the date of this deed and provision of the Security in the same way as Contribution Amounts are indexed under Schedule 4) in order to secure the performance by the Landowner of its obligations under this deed in connection with the Remediation Works and dedication of the Education Land.
- (b) Until the Landowner has completed its obligations under Schedule 4 in connection with the Remediation Works and the dedication of the Education Land, the Minister will be entitled to retain the Education Land Security.

9. Claims under Education Land Security

- (a) The Minister may:
 - (i) call upon the Education Land Security to remedy any breach of the Landowner's obligations in connection with the Remediation Works or dedication of the Education Land; and
 - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying that breach.
- (b) Prior to calling upon the Education Land Security the Minister must give the Landowner not less than 10 Business Days written notice of his or her intention to call upon the Education Land Security.
- (c) If:
 - (i) the Minister calls upon the Education Land Security; and
 - (ii) applies all or part of such monies towards any costs and expenses incurred by the Minister in rectifying the default by the Landowner under this deed of the type referred to in clause 9(a); and

- (iii) has notified the Landowner of the call upon the Education Land Security in accordance with clause 9(b) of this Schedule 5,

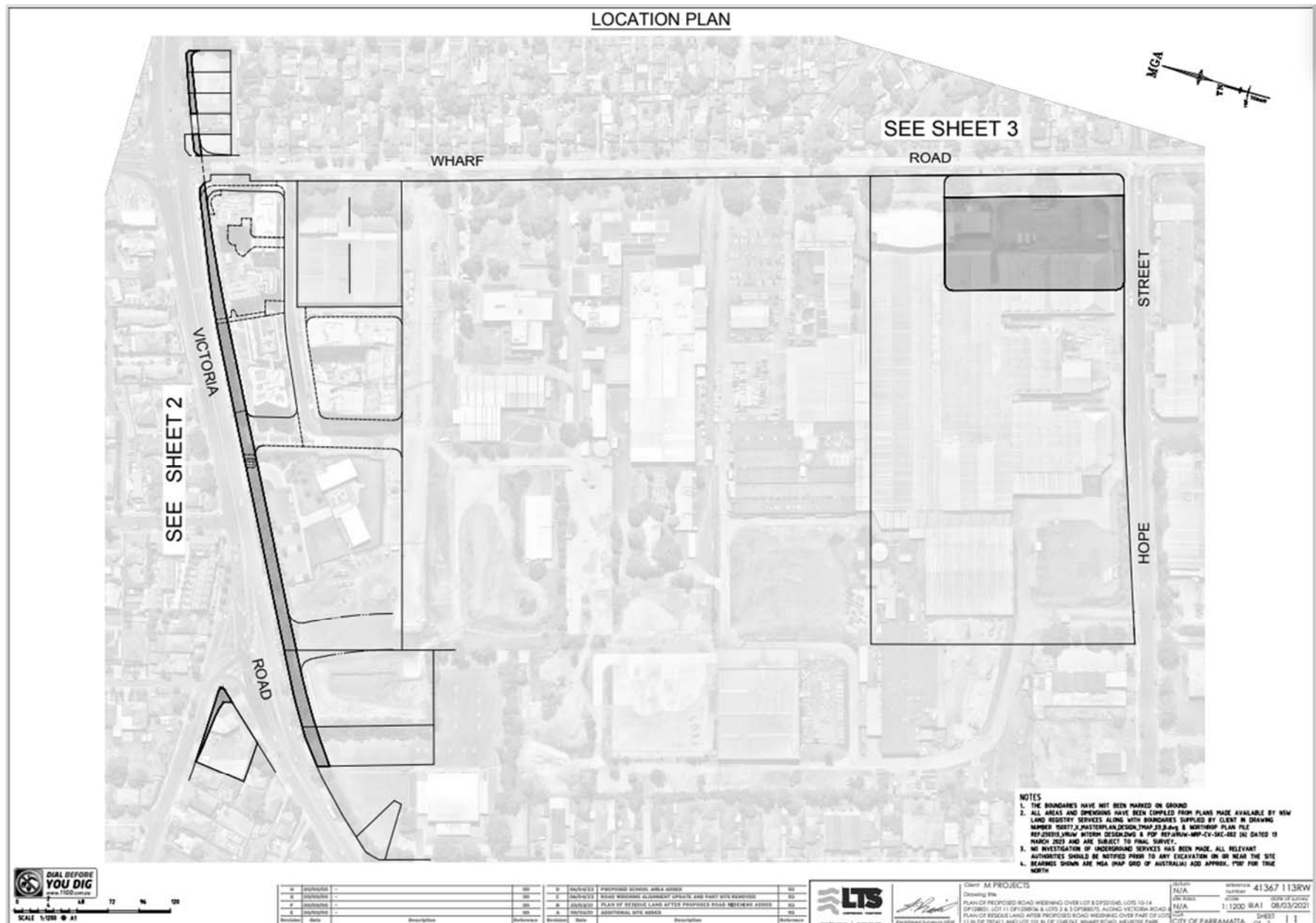
then the Landowner must provide to the Minister a replacement Security to ensure that at all times until the date that the Education Land Security is released in accordance with clause 10 of this Schedule, the Minister is in possession of Security for a face value equivalent to the amount required under clause 8 of this Schedule.

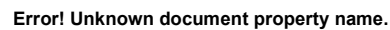
- (d) If the Minister calls on the Education Land Security, the Minister may take any action and obtain any approvals necessary to Remediate the Education Land as required under this deed and the Landowner must do all things necessary to enable the Minister to obtain such approvals.
- (e) All costs incurred by the Minister under clause 9(d) of this Schedule are recoverable from the relevant Landowner either through the Education Land Security or by payment by the relevant Landowner within 10 Business Days of a demand by the Minister and if unpaid, as a debt due in a Court of competent jurisdiction.

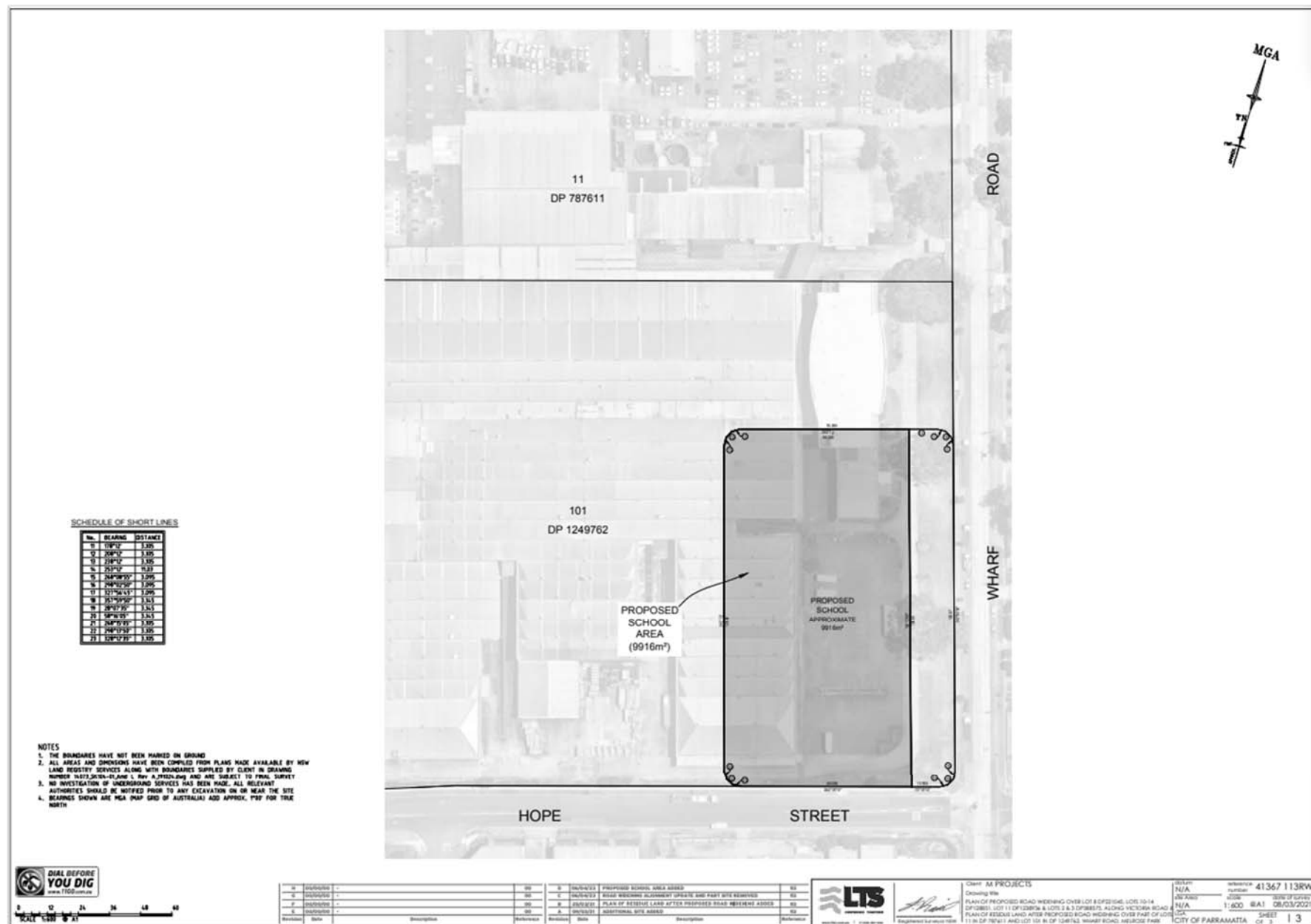
10. Release of Education Land Security

If the Landowner has satisfied all of its obligations under this deed secured by the Education Land Security then the Minister will promptly return the Education Land Security or any unused part of it (less any costs, charges, duties and taxes payable) to the Landowner.

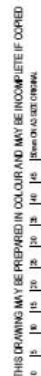
Schedule 6 – Land Dedication Plan

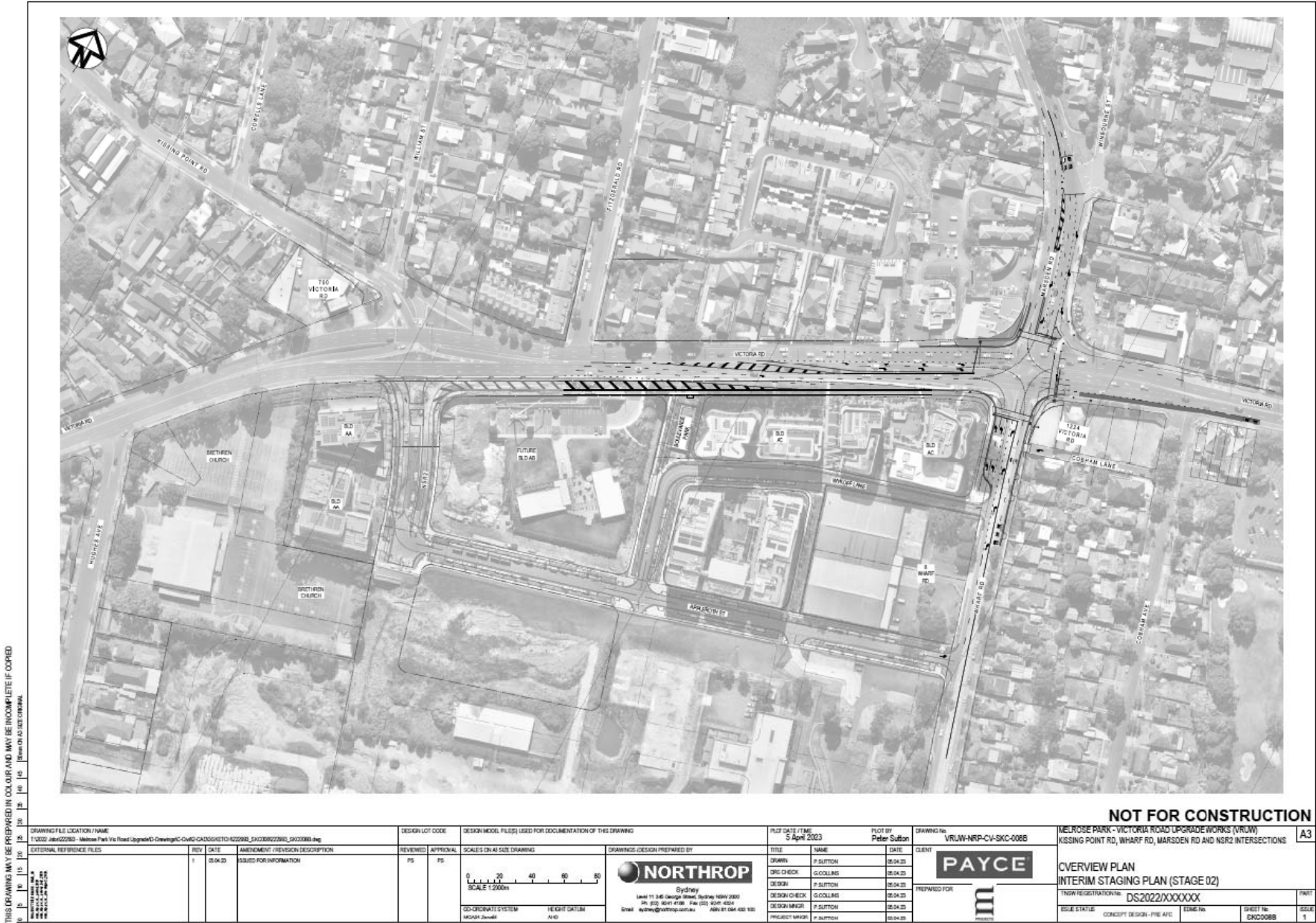






Schedule 7 – Road Works Plan







Execution page

Executed as a deed

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

.....
Signature of witness

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

.....
Name of witness in full

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

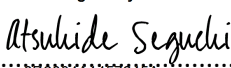
*Electronic signature of me, [..insert name of delegate..] affixed by me, or at my direction, on [..insert date..]


.....
Address of witness

*Electronic signature of me, [..insert name of witness..] affixed by me, or at my direction, on [..insert date..]

*I have signed [a counterpart of the deed OR a scanned copy of the signed deed sent to me electronically by the signatory], having witnessed the signing of the deed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by SH Melrose PP Land Pty Limited (ACN 137 331 438) in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

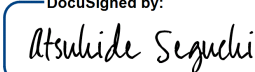
DocuSigned by:

.....
Signature of Director

DocuSigned by:

.....
Signature of Director/Secretary

...Atsuhide Seguchi.....
Name of Director in full

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

Signed, sealed and delivered by SH Melrose
Land Pty Limited (ACN 639 001 522) in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

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.....
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Signature of Director


DocuSigned by:

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Signature of Director/Secretary

...Atsuhide Seguchi.....
Name of Director in full

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

Signed, sealed and delivered by Deicorp
Projects (MPTC) Pty Limited (ACN 657 628
110) in accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:

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.....
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Signature of Director

.....
Signature of Director/Secretary

...Fouad Deiri.....
Name of Director in full

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