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Transport for NSW

Australand C & I Land Holdings Pty Ltd atf Frasers
Property C&I Land Holdings (Horsley Park No.1)
Trust

Voluntary Planning Agreement

Keyhole Lands, Horsley Park

Contents

1	Interpretation	1
1.1	Definitions	1
1.2	Construction	6
2	Operation and application of this deed	7
2.1	Operation	7
2.2	Planning agreement under the Act	7
2.3	Application	7
3	Application of sections 7.11, 7.12 and Div 7.1, subdivision 4 of the Act	7
3.1	Sections 7.11 and 7.12	7
3.2	Division 7.1, subdivision 4	7
4	Development Contributions	7
5	Acquisition of Third Party Land and WSPT Land	8
5.1	Developer to use reasonable endeavours to purchase Third Party Land	8
5.2	Compulsory acquisition of Third Party Land by TfNSW	9
5.3	Compulsory acquisition of WSPT Land by TfNSW	12
6	Works	13
6.1	Obligation to provide Works	13
6.2	Commencement	13
6.3	Delivery	13
6.4	Completion	13
6.5	Restriction on issue of certificates	13
7	Dedication of land by Developer	14
7.1	Obligation to transfer or dedicate land	14
7.2	Dedication or transfer	14
7.3	Obligations on dedication	14
7.4	Obligations on transfer	14
7.5	Compulsory Acquisition	15
8	Security	17
8.1	Provision of Security to TfNSW	17
8.2	Claims under the Bank Guarantee	17
8.3	Release of Security	18
9	Registration	18
9.1	Developer warranty	18
9.2	Registration of deed	19
9.3	Evidence of Registration	19
9.4	Right to lodge caveat	19
9.5	Charge over land	20
9.6	Release and discharge of deed from Land	21

10	Enforcement	21
11	Dispute Resolution	21
11.1	Not commence	21
11.2	Written notice of dispute	21
11.3	Attempt to resolve	22
11.4	Mediation	22
11.5	Court proceedings	22
11.6	Use of information	22
11.7	No prejudice	22
11.8	Continued performance of obligations	23
12	GST	23
12.1	Construction	23
12.2	Intention of the parties	23
12.3	Consideration GST exclusive	23
12.4	Payment of GST	23
12.5	Timing of GST payment	24
12.6	Tax invoice	24
12.7	Adjustment event	24
12.8	Reimbursements	24
12.9	No merger	24
13	Assignment and Novation	24
13.1	Right to assign or novate	24
13.2	Right to transfer land	25
13.3	Assignment by TfNSW	26
14	Capacity	26
14.1	General warranties	26
14.2	Power of attorney	27
15	Developer's limitation of liability	27
16	Reporting Requirement	28
17	General	29
17.1	Entire agreement	29
17.2	Variation	29
17.3	Waiver	29
17.4	Further assurances	29
17.5	Time for doing acts	29
17.6	Governing law and jurisdiction	29
17.7	Severance	29
17.8	Preservation of existing rights	30
17.9	No merger	30
17.10	Counterparts	30
17.11	Relationship of parties	30
17.12	Good faith	30
17.13	No fetter	30

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17.14 Explanatory Note	30
17.15 Costs, expenses and stamp duty	30
17.16 Notices	31
17.17 Electronic execution	32
Schedule 1 - Requirements under the Act	33
Schedule 2 - Development Contributions	36
Schedule 3 - Explanatory Note	39
Execution	40
Annexure A - Novation Deed	42
Annexure B - Works Plan	43
Annexure C - Land Dedication Plan	44

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Date

Parties

Transport for NSW ABN 18 804 239 602 of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**TfNSW**)

Australand C & I Land Holdings Pty Ltd ACN 107 356 641 atf Frasers Property C&I Land Holdings (Horsley Park No.1) Trust of Level 2, 1C Homebush Bay Drive, Rhodes NSW 2138 (**Developer**)

Background

- A The Developer currently owns the Developer Land and intends to carry out development on the Developer Land, in respect of which the Developer proposes to make future Development Applications.
 - B In order to facilitate the Development on the Developer Land, the Developer has sought the Instrument Change.
 - C TfNSW is planning The Horsley Drive Upgrade to meet Western Sydney’s transport needs and support expected industrial and employment growth.
 - D The Developer offers to make the Development Contributions, which include works on The Horsley Drive, on the terms set out in this deed, in connection with the Instrument Change and the carrying out of Development facilitated by the Instrument Change.
 - E In order to make the Development Contributions, the Third Party Land must be acquired by either the Developer or TfNSW. The WSPT Land will be acquired by TfNSW.
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Agreed terms

1 Interpretation

1.1 Definitions

In this deed, the following terms have the following meanings:

- | | |
|-----------------|--|
| Act | The <i>Environmental Planning and Assessment Act 1979</i> (NSW). |
| Approval | Any consent, approval, authorisation, determination, licence, registration, order, permission or concurrence required by |

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	Law, including those under the deed, and includes a Development Consent.
Approved Security	Security required to be provided to TfNSW under the terms of a WAD.
Authority	Any federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.
Bank Guarantee	<p>An irrevocable and unconditional undertaking:</p> <ul style="list-style-type: none"> (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 recipient, in the recipient's absolute discretion, <p>to pay the face value of that undertaking (being such amount as is required under this deed) on demand.</p>
Business Day	A day which is not a Saturday, Sunday or bank or public holiday in Sydney.
Claim	Any claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent, including any claim for compensation arising under the Just Terms Act.
Construction Certificate	Has the meaning given to that expression in the Act.
Costs	Includes any liability, loss, cost, fee, charge, expense, tax, rate, charge, fine, penalty or debt including those incurred in connection with advisors and any compensation payable to any person in accordance with the Law.
Dealing	Selling, transferring, mortgaging, charging or subdividing the land or an interest in land.
Developer Land	<p>The land legally described as at the date of this deed as:</p> <ul style="list-style-type: none"> (a) Lot 58A DP17288; (b) Lots 56 and 57 DP13961; (c) Lots A and B DP361393; (d) Lot 59A DP362022; (e) Lots 1 and 2 DP505934; (f) Lot 61B DP17288; (g) Lot A DP347034;

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	(h) Lots A and B DP357890;
	(i) Lot B DP377249;
	(j) Lots 74A and 74B DP17288;
	(k) Lot 78B DP347873;
	(l) Lot 79A and 79B DP17288; and
	(m) Lot 1 DP849699.
Development	Development of the Developer Land for predominantly industrial warehousing purposes, generally in accordance with the Planning Proposal and the Instrument Change.
Development Application	Has the meaning given to it in the Act.
Development Certification Regulation	The <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> (NSW).
Development Consent	Has the meaning given to it in the Act.
Development Contribution	The development contributions to be provided by the Developer in accordance with schedule 2 .
ELNO	Has the meaning given in the <i>Electronic Conveyancing National Law</i> (NSW).
Enforcement Security	Has the meaning given to that term in clause 8.1(a)(iii) .
Explanatory Note	The explanatory note included at schedule 3 of this deed.
Fairfield LEP	The <i>Fairfield Local Environmental Plan 2013</i> , as amended from time to time.
General Security	Has the meaning given to that term in clause 8.1(a)(i) .
GFA	Has the meaning given to the term “gross floor area” in the Fairfield LEP.
GST	Has the meaning given to that expression in the GST Law.
GST Act	The <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
GST Law	Has the same meaning given to that expression in the GST Act or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

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Instrument Change	The change to the Fairfield LEP as a result of the Planning Proposal.
Interest	Has the same meaning given to that expression in the Just Terms Act.
Just Terms Act	The <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
Land	The Third Party Land and the Developer Land.
Land Contribution	<p>A Development Contribution item comprising land which is required to be dedicated or transferred by the Developer under this deed and which may include:</p> <ul style="list-style-type: none"> (a) Developer Land; and (b) Third Party Land that is purchased by the Developer in accordance with clause 5.1.
Law	Any statute, regulation, rule, proclamation, order, ordinance or by law, whether present or future and whether Commonwealth, State, territorial or local, and the common law.
LRS	NSW Land Registry Services.
Nominated Transferee	In respect of each Land Contribution, the Authority or person nominated by TfNSW to whom the Land Contribution is to be dedicated or transferred under this deed.
Novation Deed	The deed attached as Annexure A .
Occupation Certificate	Has the meaning given to that expression in the Act.
Planning Proposal	<p>Planning Proposal PP-2021-3824, which seeks to amend the Fairfield LEP by:</p> <ul style="list-style-type: none"> (a) rezoning the Developer Land from RU2 Rural Landscape to E4 General Industrial; (b) remove the existing height of buildings control applying to the Developer Land; (c) introduce a floor space ratio control of 0.55:1; (d) reduce the minimum lot size development standard from 10,000m² to 930m²; and (e) remove the minimum lot size for dual occupancy development standard.
Practical Completion	The practical completion of Works in accordance with the WAD for those Works.

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Register	The Torrens title register maintained under the <i>Real Property Act 1900</i> (NSW).
Regulation	The <i>Environmental Planning and Assessment Regulation 2021</i> (NSW).
Site Audit Report	Has the meaning given in the <i>Contaminated Land Management Act 1997</i> (NSW).
Site Audit Statement	Has the meaning given in the <i>Contaminated Land Management Act 1997</i> (NSW) and, for the purpose of this deed, must be unconditional or on conditions which are satisfactory to TfNSW, acting reasonably.
TfNSW's Nominee	An Authority nominated by TfNSW as being the Authority to which any or part of a Development Contribution is to be provided.
The Horsley Drive Upgrade	The proposed upgrade of The Horsley Drive, which is an existing classified road, between the M7 Motorway and Cowpasture Road.
Third Party Land	<p>The land, excluding the WSPT Land, that is required for the purpose of the Development Contributions not currently owned by the Developer, being those parts of the following parcels as is necessary to facilitate the Works:</p> <ul style="list-style-type: none"> (a) Lots C and D DP398446; and (b) Lots 81A and 81B DP348110.
Third Party Land Purchase Date	The date that the Developer is deemed to have used reasonable endeavours to purchase the Third Party Land in accordance with clause 5.1(c) or 6 months from the date of commencement of this deed, whichever is later and as may be extended in accordance with clause 5.1(d) .
WAD	A works authorisation deed or other infrastructure delivery agreement entered into by TfNSW and the Developer regarding the design, construction, completion and dedication of Works by the Developer.
Works	The works-in-kind required to be made by the Developer under schedule 2 .
WSPT Land	<p>The land owned by Western Sydney Parklands Trust that is required for the purpose of the Development Contributions, being those parts of the following parcels as is necessary to facilitate the Works:</p> <ul style="list-style-type: none"> (a) Lot 98 DP13905; (b) Lots 97A and 97B DP17288; (c) Lots 73A and 73B DP17288;

- (d) Lot A DP403308; and
- (e) Lot 1 DP882937.

1.2 Construction

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to this deed or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this deed;
- (f) the schedules form part of this deed;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) including and includes are not words of limitation;
- (l) a word that is derived from a defined word has a corresponding meaning;
- (m) monetary amounts are expressed in Australian dollars;
- (n) the singular includes the plural and vice-versa;
- (o) words importing one gender include all other genders;
- (p) a reference to a thing includes each part of that thing; and
- (q) 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 later of the date:

- (a) that this deed is signed by all parties; and
- (b) of the Instrument Change.

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 Instrument Change; and
- (c) the Development.

3 Application of sections 7.11, 7.12 and Div 7.1, subdivision 4 of the Act

3.1 Sections 7.11 and 7.12

This deed does not exclude the application of sections 7.11 or 7.12 of the Act to the Development.

3.2 Division 7.1, subdivision 4

The application of Division 7.1, Subdivision 4 of the Act to the Development is not excluded.

4 Development Contributions

- (a) The parties acknowledge that TfNSW intends to undertake The Horsley Drive Upgrade and that the provision of the Development Contributions would be consistent with and contribute to this project.
- (b) Subject to **clause 4(c)**, the Developer agrees to provide, or procure the provision of, the Development Contributions to TfNSW or TfNSW's Nominee in accordance with **schedule 2**.
- (c) The Developer will only be required to provide the Development Contributions if the Instrument Change is effected.

5 Acquisition of Third Party Land and WSPT Land

5.1 Developer to use reasonable endeavours to purchase Third Party Land

- (a) The parties acknowledge that the Third Party Land and WSPT Land are required to deliver the Development Contributions, and that the Developer is in the process of attempting to purchase the Third Party Land so that it can deliver the Development Contributions.
- (b) The Developer must, at its Cost, use reasonable endeavours to purchase the Third Party Land by the Third Party Land Purchase Date for the purpose of undertaking the Works.
- (c) The Developer will be taken to have satisfied an obligation to use reasonable endeavours for the purposes of **clause 5.1(b)** where the Developer has:
 - (i) engaged a qualified valuer (within the meaning of section 59(2) of the Just Terms Act) to prepare a valuation report in relation to the Third Party Land; and
 - (ii) made at least three offers to purchase the relevant part of the Third Party Land during a 12-month period (whether or not such offers are made before the commencement of this deed), each of which is not less than the valuation of that part of the Third Party Land in the valuation report prepared by the valuer under **clause 5.1(c)(i)**.
- (d) If at any time the Developer considers that it will be unable to purchase the Third Party Land by the Third Party Land Purchase Date, but that there is a reasonable prospect of purchasing the Third Party Land after the Third Party Land Purchase Date:
 - (i) the Developer may give TfNSW written notice that it intends to extend the Third Party Land Purchase Date to a date specified in that notice; and
 - (ii) the Third Party Land Purchase Date is extended until the date specified in that notice.
- (e) The Developer may extend the Third Party Land Purchase Date in accordance with **clause 5.1(d)** on as many occasions as it chooses to do so.
- (f) Notwithstanding **clauses 5.1(d)** and **(e)**, and irrespective of whether the Developer has given TfNSW a notice under **clause 5.2(b)**, TfNSW may, at any time, and in its absolute discretion, elect to exercise its powers to acquire some or all of the Third Party Land. To the extent that TfNSW makes any such election, it must notify the Developer and **clauses 5.2(c)-(h)** will apply.

5.2 Compulsory acquisition of Third Party Land by TfNSW

- (a) The parties acknowledge that The Horsley Drive Upgrade is a current project of TfNSW and that the provision of the Development Contributions would be consistent with and contribute to that project.
- (b) If, despite using reasonable endeavours, the Developer is not able to procure the acquisition of any part of the Third Party Land required for the Works by the Third Party Land Purchase Date, the Developer must, within 12 months of the date of this deed, send a written notice to TfNSW requesting that TfNSW (**TP Land Notice**) exercise its powers under section 11 of Schedule 1 of the *Transport Administration Act 1988* (NSW) or section 177 of the *Roads Act 1993* (NSW) to commence a process to compulsorily acquire that part of the Third Party Land required for the Works which has not been purchased by the Developer (**Relevant TP Land**).
- (c) TfNSW agrees to use reasonable endeavours to acquire the Relevant TP Land, by agreement or compulsory process, in accordance with the statutory process prescribed under the Just Terms Act (or any shortened period as may be agreed between TfNSW and the owners of an Interest in the Relevant TP Land), and no later than 2 years from the receipt of the TP Land Notice. The time by which TfNSW must attempt to acquire the Relevant TP Land may be extended by TfNSW by six months at any time by written notice to the Developer. If further extensions are considered by TfNSW, acting reasonably, to be required in order to complete the acquisition of the Relevant TP Land:
 - (i) TfNSW must first notify the Developer and request that the Developer consent to the requested extension; and
 - (ii) if the Developer does not provide its consent (which consent must not unreasonably be withheld), the Developer may indicate to TfNSW that it does not wish to proceed further with the acquisition of the Relevant TP Land in which case the Developer indemnifies TfNSW in relation to any Costs that it has incurred in connection with or in any way related to the acquisition process.
- (d) At any time prior to the acquisition of the Relevant TP Land by TfNSW:
 - (i) the Developer may continue to negotiate with the owners of the Relevant TP Land to purchase the Relevant TP Land; or
 - (ii) the Developer may give notice to TfNSW that it has reached agreement with the owner of any part of the Relevant TP Land to purchase the Relevant TP Land, in which case TfNSW must cease the compulsory acquisition process for that part of the Relevant TP Land.
- (e) The Developer indemnifies and keeps indemnified TfNSW against all:
 - (i) Claims for compensation under the Just Terms Act made against TfNSW, and payments made by TfNSW, as a result of any

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acquisition by TfNSW of the whole or any part of the Relevant TP Land under this clause;

- (ii) determinations of compensation by either the Valuer General or the Land and Environment Court in respect of any acquisition by TfNSW of the whole or any part of the Relevant TP Land under this clause;
- (iii) costs orders made by the Land and Environment Court in respect of any acquisition by TfNSW of the whole or any part of the Relevant TP Land under this clause; and
- (iv) costs incurred by TfNSW arising out of any Claims for compensation, or the operation of the statutory process in the Just Terms Act, including in any Land and Environment Court proceedings.

For the avoidance of doubt, this indemnity only applies in respect of compensation payable for the acquisition of the Relevant TP Land, and not compensation payable for the acquisition of any residue parcel of land of which the Relevant TP Land may form part, except where acquisition of the residue is required as compensation for impacts to the relevant part of the Relevant TP Land would (in the opinion of TfNSW's valuer appointed in accordance with **clause 5.2(h)(i)**) exceed the compensation payable for the acquisition of the whole of that parcel of the Relevant TP Land.

- (f) The Developer must pay TfNSW, within 30 Business Days of a valid written demand, an amount equivalent to:
 - (i) all Costs reasonably incurred by TfNSW in acquiring the whole or any part of the Relevant TP Land under this clause, including without limitation costs incurred by TfNSW arising out of any Claims for compensation, or the operation of the statutory process in the Just Terms Act, including in any Land and Environment Court proceedings; and
 - (ii) the quantum of all determined Claims against TfNSW in exercising its compulsory acquisition powers under the Just Terms Act, including, without limitation:
 - (A) determinations of compensation by either the Valuer General or the Land and Environment Court in respect of any acquisition by TfNSW of the whole or any part of the Relevant TP Land under this clause; and
 - (B) costs orders made by the Land and Environment Court in respect of any acquisition by TfNSW of the whole or any part of the Relevant TP Land under this clause.
- (g) TfNSW may make a written demand under **clause 5.2(f)**:

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- (i) in relation to any amount determined by a Court to be payable by TfNSW - at any time after the determination of the Court; and
 - (ii) in relation to any other amount referred to in **clause 5.2(f)** - at any time after:
 - (A) TfNSW receives an invoice in respect of that amount; or
 - (B) TfNSW otherwise incurs the obligation to pay the amount.
- (h) The parties agree that, in circumstances where TfNSW has agreed to use reasonable endeavours pursuant to **clause 5.2(c)** to acquire the Relevant TP Land;
 - (i) TfNSW agrees to notify the Developer of the appointment of an independent valuer(s) and any other expert consultants in connection with the acquisition of an Interest in the Relevant TP Land;
 - (ii) TfNSW must provide regular updates to the Developer on the status of the compulsory acquisition of the Relevant TP Land, including all Claims made by the owners of an Interest in the Relevant TP Land, by:
 - (A) providing a written status report on a quarterly basis, or by such other time as may be agreed by the Developer, commencing three months after entry into this Deed, which sets out the progress of the compulsory acquisition of each parcel of the Relevant TP Land, the Costs incurred to date, the amount of any Claims for compensation received and proposed actions to take place prior to issuing of the next status report; and
 - (B) attending a meeting with the Developer following release of the status report to discuss the items outlined in the report; and
 - (iii) TfNSW must provide to the Developer any valuation report on which it seeks to rely in relation to the amount of compensation payable to the owners of an Interest of the Relevant TP Land. For the avoidance of doubt, TfNSW may obtain more than one valuation report in relation to a parcel of the Relevant TP Land.
- (i) Within 30 Business Days of receiving the first valuation report in respect of each parcel of the Relevant TP Land provided by TfNSW in accordance with **clause 5.2(h)(iii)**:
 - (i) the Developer may notify TfNSW that it does not wish TfNSW to proceed to acquire the Relevant TP Land; and
 - (ii) if the Developer notifies TfNSW that it does not wish TfNSW to proceed to acquire the Relevant TP Land:

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- (A) TfNSW will take no further action towards acquiring the Relevant TP Land; and
- (B) the Developer indemnifies TfNSW in relation to any Costs that it has incurred in connection with, or in any way related to, the steps that it has taken under this **clause 5.2**; and
- (iii) if the Developer does not notify TfNSW in accordance with this **clause 5.2(i)**, TfNSW will continue to exercise reasonable endeavours to acquire the Relevant TP Land.
- (j) Prior to TfNSW issuing a proposed acquisition notice under section 11 of the Just Terms Act in respect of any parcel of the Relevant TP Land, TfNSW and the Developer must meet and determine whether the Developer still wishes TfNSW to proceed to acquire the Relevant TP Land, and the Developer must notify TfNSW in writing whether it wishes TfNSW to proceed to acquire the Relevant TP Land.
- (k) Following the meetings under **clause 5.2(i)**:
 - (i) if the Developer notifies TfNSW that it wishes TfNSW to proceed to acquire the Relevant TP Land:
 - (A) TfNSW will continue to exercise reasonable endeavours to acquire the Relevant TP Land; and
 - (B) **clauses 5.2(c)-(h)** will continue to apply;
 - (ii) if the Developer notifies TfNSW that it does not wish TfNSW to proceed to acquire the Relevant TP Land:
 - (A) TfNSW will take no further action towards acquiring the Relevant TP Land; and
 - (B) the Developer indemnifies TfNSW in relation to any Costs that it has incurred in connection with, or in any way related to, the steps that it has taken under this **clause 5.2**.
- (l) The Developer may only notify TfNSW under **clause 5.2(k)(ii)** that it does not wish TfNSW to proceed to acquire the Relevant TP Land if TfNSW has, as at the date of the meeting, received a Claim which exceeds by 50% the amount which is the greater of:
 - (i) a valuation provided by TfNSW pursuant to **clause 5.2(h)(iii)**; or
 - (ii) the valuation prepared by the Developer under **clause 5.1(c)(i)**.

5.3 Compulsory acquisition of WSPT Land by TfNSW

The parties agree that:

- (a) the Developer is not required to use reasonable endeavours to purchase the WSPT Land; and
- (b) TfNSW will use reasonable endeavours to compulsorily acquire the WSPT Land and **clause 5.2** applies, unless the context otherwise requires, to the WSPT Land as if it was part of the Third Party Land and

every reference to "Relevant TP Land" in that clause should be taken to be a reference to "Relevant TP Land and the WSPT Land".

6 Works

6.1 Obligation to provide Works

The Developer must deliver the Works:

- (a) in the manner set out in the tables in **schedule 2**, whichever is applicable; and
- (b) in accordance with this **clause 6**.

6.2 Commencement

Prior to commencing the Works, the Developer must:

- (a) provide evidence to TfNSW that it has obtained all Approvals required for the Works. The Developer must bear the costs of obtaining any Approvals and, to the extent that any such Approval process involves TfNSW, it must pay TfNSW's costs of TfNSW's involvement in that process;
- (b) provide certified copies of the civil design plans for the Works to TfNSW;
- (c) enter into a WAD with TfNSW in relation to the Works on terms and conditions acceptable to TfNSW, including obtaining TfNSW's approval for the design of the Works and the plans submitted under **schedule 2**; and
- (d) provide the Approved Security to TfNSW in accordance with the WAD.

6.3 Delivery

The Developer must carry out and complete the Works in accordance with:

- (a) all Approvals required for the Works; and
- (b) the WAD,

and complete the Works by no later than the time specified in the table in **schedule 2**.

6.4 Completion

- (a) The Works are taken to be completed for the purposes of this deed when the Works achieve Practical Completion in accordance with the WAD.
- (b) The Developer must give TfNSW written notice of Practical Completion of the Works.

6.5 Restriction on issue of certificates

- (a) The parties agree that the requirements to:
 - (i) deliver the Works in accordance with **clause 6.1**; and

- (ii) transfer or dedicate the Land Contribution in accordance with **clause 7.2**,

are restrictions on the issue of the first Occupation Certificate for GFA within the Developer Land after the Instrument Change within the meaning of section 6.10 of the Act and section 48 of the Development Certification Regulation.

- (b) The parties agree that the requirement to enter into a WAD in accordance with **clause 6.2(c)** is a restriction on the issue of a Construction Certificate for GFA within the Developer Land after the Instrument Change within the meaning of section 6.8 of the Act and section 21 of the Development Certification Regulation.

7 Dedication of land by Developer

7.1 Obligation to transfer or dedicate land

The Developer must transfer or dedicate the Land Contribution:

- (a) in the manner set out in the table in **schedule 2**; and
- (b) in accordance with this **clause 7**.

7.2 Dedication or transfer

The Developer must, at its Cost, take all steps required to transfer or dedicate each Land Contribution by the applicable Due Date specified in the table in **schedule 2**, including by first confirming with TfNSW whether the Land Contribution is to be:

- (a) dedicated on Registration of a Plan of Subdivision, in which case **clause 7.3** applies; or
- (b) transferred on Registration of a transfer instrument, in which case **clause 7.4** applies,

and whether the Land Contribution is to be transferred or dedicated (as the case may be) to TfNSW or the Nominated Transferee.

7.3 Obligations on dedication

The Developer will be taken to have satisfied an obligation to dedicate a Land Contribution where:

- (a) a deposited plan is Registered that dedicates land as a public road (but not a temporary public road) under the *Roads Act 1993* (NSW); and
- (b) the Developer has provided TfNSW with a Site Audit Statement and accompanying Site Audit Report confirming that the land is suitable for use for road purposes.

7.4 Obligations on transfer

- (a) The requirement for the Developer to transfer a Land Contribution is satisfied where the Developer (at its Cost):

- (i) delivers to TfNSW (or the Nominated Transferee) a form of transfer in respect of the land comprising the Land Contribution in favour of TfNSW (or the Nominated Transferee), executed by the Developer and in Registrable form;
 - (ii) has provided evidence to TfNSW that the transfer of the Land Contribution has been effected in favour of TfNSW (or the Nominated Transferee) by means of electronic lodgement through Property Exchange Australia Ltd or another ELNO; and
 - (iii) has provided TfNSW with a Site Audit Statement and accompanying Site Audit Report confirming that the land is suitable for use for road purposes.
- (b) If a separate lot is required for the transfer of a Land Contribution, the Developer must (at its Cost):
 - (i) obtain Development Consent and all other Approvals necessary to create a separate lot for the Land Contribution; and
 - (ii) in accordance with the applicable Development Consent and all other necessary approvals, prepare and Register a Plan of Subdivision or other plan as required by law to create one or more separate lots for the Land Contribution.
- (c) The Developer must (at its Cost):
 - (i) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Land Contribution; and
 - (ii) take any other necessary action to give effect to the transfer of the Land Contribution to TfNSW (or the Nominated Transferee) 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 TfNSW in writing.

7.5 Compulsory Acquisition

- (a) If the Developer does not transfer or dedicate any of the land required for a Land Contribution to TfNSW or the Nominated Transferee by the time specified for the relevant Land Contribution item in Column 5 of the table in **schedule 2**, TfNSW may compulsorily acquire the whole or any part of that land which has not been dedicated or transferred (**Relevant Land**) in accordance with the Just Terms Act, for the amount of \$1.00, and may, in addition to any other remedy available to TfNSW, call upon any Security provided under **clause 8.1** to cover any costs.

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- (b) The Developer and TfNSW (or the Nominated Transferee, as appropriate) agree that:
 - (i) this **clause 7.5** is an agreement between them for the purposes of section 30 of the Just Terms Act; and
 - (ii) in this **clause 7.5** they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer must ensure that the Relevant Land to be acquired by TfNSW (or the Nominated Transferee) is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) other than service easements or such other encumbrances as agreed by TfNSW (or the Nominated Transferee) in writing, on the date that TfNSW (or the Nominated Transferee) will compulsorily acquire the Relevant Land pursuant to this clause. The Developer indemnifies and keeps indemnified TfNSW (or the Nominated Transferee, as appropriate) against all Claims for compensation under the Just Terms Act made against TfNSW (or the Nominated Transferee) as a result of any acquisition by TfNSW of the whole or any part of the Relevant Land under this clause.
- (d) Prior to TfNSW exercising its rights to compulsorily acquire the Relevant Land under this **clause 7.5**, the Developer must provide TfNSW with a Site Audit Statement and accompanying Site Audit Report confirming that the Relevant Land is suitable for use for road purposes. To the extent that the Site Audit Statement and accompanying Site Audit Report confirming that the Relevant Land is suitable for use for road purposes are not provided by the Developer in accordance with this **clause 7.5(d)**:
 - (i) TfNSW may nevertheless elect to proceed with the compulsory acquisition; and
 - (ii) the Developer is not relieved of its obligation to provide the Site Audit Statement and accompanying Site Audit Report confirming that the Relevant Land is suitable for use for road purposes.
- (e) The Developer must pay TfNSW (or the Nominated Transferee, as appropriate), within 20 Business Days of a written demand, an amount equivalent to all Costs incurred by TfNSW (or the Nominated Transferee) in acquiring the whole or any part of the Relevant Land under this **clause 7.5** and the quantum of all determined Claims against TfNSW (or the Nominated Transferee) in exercising acquisition rights.
- (f) The parties agree that this deed operates as a deed poll in favour of the Nominated Transferee (where applicable), insofar as this deed relates to the transfer or dedication of land to the Nominated Transferee.

8 Security

8.1 Provision of Security to TfNSW

- (a) Upon execution of this deed, the Developer must provide to TfNSW a Bank Guarantee or Bank Guarantees with a face value amount of:
 - (i) \$12,500,000 for the performance of the Developer's obligations under this deed (**General Security**);
 - (ii) \$1,000,000 for legal and other costs associated with the acquisition process referred to in **clause 5.2**; and
 - (iii) \$250,000 for legal costs associated with enforcement of this deed and costs associated with delivery of the Development Contributions if the Developer fails to perform its obligations to provide the Development Contributions on the due date (**Enforcement Security**).
- (b) If following the provision of any valuation reports in respect of all parcels of the Relevant TP Land and WSPT Land pursuant to **clause 5.2(h)(iii)** TfNSW reasonably considers that it requires the Developer to provide an additional amount in respect of General Security, it may serve a notice in writing to the Developer and, if TfNSW does so, the Developer must provide to TfNSW a Bank Guarantee or Bank Guarantees with a face value amounts specified in the notice. The total quantum of security specified in a notice issued under this **clause 8.1(b)** may not exceed the total of:
 - (i) the amount of compensation determined in the valuation reports provided pursuant to **clause 5.2(h)(iii)**; and
 - (ii) a further 25% of the amount in **clause 8.1(b)(i)** to account for contingencies.
- (c) Any Bank Guarantee provided under **clauses 8.1(a)** or **(b)** must:
 - (i) name "Transport for NSW ABN 18 804 239 602" as the relevant beneficiary; and
 - (ii) not have an expiry date.

8.2 Claims under the Bank Guarantee

- (a) TfNSW may:
 - (i) call upon any Bank Guarantee provided to it under this deed where the Developer has:
 - (A) failed to provide a Development Contribution on or after the date for provision under this deed or is otherwise in default under this deed in a material respect; or
 - (B) failed to comply with its obligations under **clause 5.2(f)**; and

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- (ii) retain and apply such money towards achieving performance of the Development Contribution and any Costs incurred by TfNSW in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee, TfNSW must give the Developer not less than 10 Business Days written notice of the intention to do so. If the Developer rectifies its failure to provide a Development Contribution stipulated in a notice provided under this clause before TfNSW calls upon a Bank Guarantee, TfNSW may not call upon a Bank Guarantee for that purpose.
- (c) If TfNSW:
 - (i) calls upon a Bank Guarantee;
 - (ii) applies all or part of such money towards achieving performance of the Development Contribution and any Costs incurred in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Bank Guarantee in accordance with **clause 8.2(b)**,

then the Developer must provide TfNSW with a replacement Bank Guarantee to ensure that, at all times, until the date the Bank Guarantee(s) is released in accordance with **clause 8.3**, TfNSW is in possession of a Bank Guarantee(s) for a face value equivalent to the amounts required to be provided in accordance with **clause 8.1**.

8.3 Release of Security

- (a) TfNSW must promptly return any Bank Guarantee(s) provided for the General Security after the Developer provides the Approved Security under the WAD.
- (b) In respect of the Enforcement Security, if:
 - (i) the Developer has paid or satisfied all of its obligations under this deed; and
 - (ii) the whole of the Bank Guarantee has not been expended and the money accounted for in accordance with **clause 8.2**,

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

9 Registration

9.1 Developer warranty

The Developer represents and warrants that it is:

- (a) the registered proprietor of the Developer Land; and

- (b) legally and beneficially entitled to obtain all Approvals and to compel any person referred to or contemplated by **clause 9.2(a)(i)** to assist, cooperate and otherwise do all things necessary for the Developer to comply with its obligations under this **clause 9**.

9.2 Registration of deed

- (a) Within 20 Business Days of the Developer receiving a copy of this deed executed by TfNSW, the Developer must, at its own Cost, take all practical steps and otherwise do anything reasonable and lawful to procure:
 - (i) the consent of each person who has:
 - (A) a Registered estate or interest in the Developer Land; or
 - (B) is seized or possessed of an estate or interest in the Developer Land,
 to the Registration of this deed on title to the Developer Land;
 - (ii) the execution of any documents required to enable Registration of this deed on title to the Developer Land; and
 - (iii) the electronic lodgement of this deed through an ELNO for Registration on the relevant folios of the Register for the Developer Land.
- (b) The Developer must, at its own Cost, take all practical steps and otherwise do anything necessary to procure Registration of this deed on the relevant folios of the Register for the Developer Land as soon as practicable after lodging this deed for Registration, including promptly responding to any requisitions made by the Registrar-General in respect of this deed or any ancillary documents.

9.3 Evidence of Registration

The Developer must provide TfNSW with:

- (a) evidence of the lodgement of this deed under **clause 9.2(a)(iii)** within 10 Business Days of such lodgement at LRS; and
- (b) a copy of the relevant folios of the Register for the Developer Land and a copy of the Registered dealing containing this deed within 10 Business Days of Registration of this deed.

9.4 Right to lodge caveat

- (a) Subject to **clause 9.4(c)**, until such time as this deed is Registered on the title of the Developer Land in accordance with **clause 9.2**, the Developer must not Deal with the Developer Land without TfNSW's prior written consent (such consent which is not to be unreasonably withheld, but which may, if granted, be subject to conditions including conditions to the effect that the Developer and any incoming party comply with the requirements of **clause 13**, including entry into a Novation Deed, prior to any Dealing).

- (b) Until such time as this deed is Registered on the title of the Developer Land, the Developer acknowledges that this deed confers on TfNSW an interest in the Developer Land and entitles TfNSW to lodge and maintain a caveat on the title to the Developer Land to prevent any Dealing in respect of the Developer Land.
- (c) If TfNSW lodges a caveat in accordance with **clause 9.4(b)**, then TfNSW 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 Developer Land promptly, following Registration of this deed in accordance with **clause 9.2**.
- (d) If, after 20 Business Days of the Developer receiving a copy of this deed executed by TfNSW, the Developer has failed or has been unable to achieve the Registration of this deed in accordance with **clause 9.2**, the Developer must pay TfNSW's reasonable costs and expenses, including legal costs, of exercising TfNSW's rights under **clause 9.4(b)** to lodge and withdraw any caveat(s).

9.5 Charge over land

- (a) To support any caveat referred to in **clause 9.4**, the Developer charges its rights, titles and interests in the Developer Land in favour of TfNSW to secure:
 - (i) the proper and timely performance of its obligations under this deed; and
 - (ii) any damages that may be payable by that party to TfNSW in the event of any breach by that party of this deed.
- (b) At any time prior to the Registration on title of this deed pursuant to **clause 9.2**, upon receipt of a written request from TfNSW, the Developer must at its cost take all practical steps and otherwise do anything necessary to procure:
 - (i) the consent of each person who has:
 - (A) a Registered estate or interest in the Developer Land; or
 - (B) is seized or possessed of an estate or interest in the Developer Land,
 to the Registration of a charge on title to the Developer Land;
 - (ii) the execution of any documents required to enable Registration of a charge on title to the Developer Land;
 - (iii) the electronic lodgement of a charge through an ELNO for Registration on the relevant folios of the Register for the Developer Land; and

- (iv) Registration of the charge as soon as practicable after lodgement, including promptly responding to any requisitions made by the Registrar-General.
- (c) The provisions in **clauses 9.4(c)** and **(d)** also apply in respect of any charge Registered on the title of the Developer Land.

9.6 Release and discharge of deed from Land

- (a) The Developer will be released from its obligations under this deed once the Developer has satisfied its obligations to provide the Development Contributions in accordance with this deed and satisfied all of its other obligations under this deed.
- (b) Following the Developer's satisfaction of its obligations under this Deed, TfNSW will do all things reasonably required by the Developer to have the Registrar-General remove this deed (or any charge Registered on title to the Developer Land) from the relevant folio(s) of the Register for the Land.

10 Enforcement

The Developer has agreed to provide security to TfNSW for the performance of the Developer's obligations to provide the Development Contributions under this deed by:

- (a) agreeing to restrictions on the issue of Occupation Certificates under **clauses 6.5**;
- (b) consenting to the compulsory acquisition of the Relevant Land in accordance with **clause 7.5**;
- (c) providing monetary security in accordance with **clause 8.1**; and
- (d) registering this deed on title to the Developer Land in accordance with **clause 9**.

11 Dispute Resolution

11.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this **clause 10**.

11.2 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 and requiring the dispute be addressed in accordance with this **clause 10**.

11.3 Attempt to resolve

On receipt of a notice under **clause 11.2**:

- (a) a party may, within 10 Business Days, 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 to dispute must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

11.4 Mediation

If the parties to the dispute do not agree within 20 Business Days of receipt of a notice under **clause 11.2** (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 material steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

then, subject to **clause 11.5**, the parties to the dispute must mediate the dispute in accordance with the Law Society of NSW's Mediation Program. The parties to the dispute must, as soon as possible, request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

11.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under **clause 11.2** (or any other period agreed in writing by the parties), then any party to the dispute which has complied with the provisions of this **clause 10** may, by written notice to the other party or parties to the dispute, terminate any dispute resolution process undertaken under this clause and any party to the dispute may then commence court proceedings in relation to the dispute.

11.6 Use of information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this **clause 10** is to attempt to resolve the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this **clause 10** for any purpose other than in an attempt to resolve the dispute.

11.7 No prejudice

This **clause 10** 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.

11.8 Continued performance of obligations

Despite the existence of a dispute under this **clause 10**, but subject to any order of a court or the agreement of the parties, the parties must continue to perform their obligations under this deed.

12 GST

12.1 Construction

In this **clause 12**:

- (a) unless there is a contrary indication, words and expressions which are not defined in this deed but which have a defined meaning in the GST Law have the same meaning as in the GST Law; and
- (b) references to GST payable and input tax credit entitlements include:
 - (i) notional GST payable by, and notional input tax credit entitlements of the Commonwealth, a State or a Territory (including a government, government body, authority, agency or instrumentality of the Commonwealth, a State or a Territory); and
 - (ii) GST payable by, and the input tax credit entitlements of, the representative member of a GST group of which the entity is a member.

12.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Act 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.

12.3 Consideration GST exclusive

Unless otherwise expressly stated, all consideration, whether monetary or non-monetary, payable or to be provided under or in connection with this deed is exclusive of GST (**GST-exclusive consideration**). 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 **clause 12.4**.

12.4 Payment of GST

Notwithstanding **clause 12.2**, if GST is payable on any supply made by:

- (a) a party; or
 - (b) an entity that is taken under the GST Law to make the supply by reason of the capacity in which a party acts,
- (**Supplier**) under or in connection with this deed, the recipient of the supply, or the party providing the consideration for the supply, must pay to the Supplier an amount equal to the GST payable on the supply.

12.5 Timing of GST payment

The amount referred to in **clause 12.4** must be paid in addition to and at the same time and in the same manner (without any set-off or deduction) that the GST-exclusive consideration for the supply is payable or to be provided.

12.6 Tax invoice

The Supplier must deliver a tax invoice or an adjustment note to the recipient of a taxable supply before the Supplier is entitled to payment of an amount under **clause 12.4**.

12.7 Adjustment event

If an adjustment event arises in respect of a supply made by a Supplier under or in connection with this deed, any amount that is payable under **clause 12.4** will be calculated or recalculated to reflect the adjustment event and a payment will be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.

12.8 Reimbursements

- (a) Where a party is required under or in connection with this deed to pay for, reimburse or contribute to any expense, loss, liability or outgoing suffered or incurred by another party or to indemnify another party in relation to such an expense, loss, liability or outgoing (**Reimbursable Expense**), the amount required to be paid, reimbursed, contributed to or indemnified by the first party will be reduced by the amount of any input tax credits to which the other party is entitled in respect of the Reimbursable Expense.
- (b) This **clause 12.8** does not limit the application of **clause 12.4**, if appropriate, to the Reimbursable Expense as reduced in accordance with **clause 12.8(a)**.

12.9 No merger

This **clause 12** does not merge on the completion, rescission or other termination of this deed or on the transfer of any property supplied under this deed.

13 Assignment and Novation**13.1 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 obtain the consent of TfNSW and:
 - (i) satisfy TfNSW (acting reasonably), which satisfaction must be recorded in writing, that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, capacity, 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 TfNSW substantially in the form of the Novation Deed and on terms satisfactory to TfNSW (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;
 - (iii) satisfy TfNSW, acting reasonably, which satisfaction must be recorded in writing, that it is not in material breach of its obligations under this deed; and
 - (iv) must not be in any unremedied breach of this deed.
- (b) The Assigning Party must pay TfNSW's reasonable legal costs and expenses incurred under this **clause 13.1**.
 - (c) Any change of ownership or control (as defined in section 50AA of the *Corporations Act 2001 (Cth)*) of a party shall be deemed to be an assignment of this agreement for the purposes of this clause.

13.2 Right to transfer land

- (a) Subject to **clause 13.2(e)**, the Developer must not enter into any Dealing with another person (**Transferee**) with respect to the whole or any part of the Developer 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.
- (b) Notwithstanding **clause 13.2(a)**, the Developer may sell or transfer the whole or any part of the Developer Land if, prior to the proposed sale or transfer, the Developer:
 - (i) satisfies TfNSW (acting reasonably), which satisfaction must be recorded in writing, that the proposed Transferee has sufficient assets, capacity, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies TfNSW, acting reasonably, that the Developer 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 TfNSW substantially in the form of the Novation Deed and on terms satisfactory to TfNSW (acting reasonably) under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer;

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- (iii) satisfies TfNSW, acting reasonably, which satisfaction must be recorded in writing, that it is not in material breach of its obligations under this deed; and
- (iv) is not in any unremedied breach of this deed.
- (c) Notwithstanding **clause 13.2(a)**, the Developer may mortgage or charge the whole or any part of the Developer Land if, prior to the proposed mortgage or charge being granted, the Developer procures that the mortgagee or secured party enters into a deed with TfNSW agreeing that in enforcing the mortgage or charge over the Developer Land any right to sell or transfer of the whole or any part of the Developer Land must be exercised in accordance with **clause 13.2(b)**.
- (d) The Developer must pay TfNSW's reasonable legal costs and expenses incurred under this **clause 13.2**.
- (e) This **clause 13.2** does not apply to any Dealing between the Developer and a related body corporate as defined in section 50 of the *Corporations Act 2001* (Cth) with respect to the whole or any part of the Developer Land.

13.3 Assignment by TfNSW

TfNSW may assign the rights and benefits of this deed to another public Authority in its absolute discretion, without the need for prior consent from the other parties to this deed.

14 Capacity

14.1 General warranties

- (a) Each party warrants to each other party that:
 - (i) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
 - (ii) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.
- (b) The Developer represents and warrants that:
 - (i) it is duly registered and remains in existence;
 - (ii) the execution, delivery and performance of this deed does not violate its constitution or any Law applying to it;
 - (iii) the execution, delivery and performance of this deed does not violate any Law, or any document or agreement to which it is a party or which is binding on it or the Land, including any matters or interests not registered on the title of the Land;
 - (iv) any document or agreement to which it is a party or which is binding on it or any of its assets, including any matters or interests

not registered on the title of the Land, does not in any way limit its ability to perform its obligations under this deed; and

- (v) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or the Land, which has not been advised in writing to TfNSW.

14.2 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.

15 Developer's limitation of liability

- (a) The Developer enters into this deed as trustee of the Developer Trust and in no other capacity. Each party acknowledges that the Developer's Obligations are incurred by the Developer solely in its capacity as trustee of the Developer Trust.
- (b) The Developer will not be liable to pay or satisfy any Developer's Obligations out of any Assets out of which the Developer is not entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust.
- (c) Each party may enforce its rights against the Developer arising from non-performance of the Developer's Obligations only to the extent of the Developer's right of indemnity out of the Assets of the Developer Trust.
- (d) If a party does not recover all money owing to it arising from non-performance of the Developer's Obligations by enforcing the rights referred to in **clause 15(c)**, it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Developer in its personal capacity; or
 - (ii) applying to have the Developer wound up or proving in the winding up of the Developer unless another creditor has initiated proceedings to wind up the Developer.
- (e) Each party other than the Developer waives its rights, and releases the Developer from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which it may suffer as a result of any:
 - (A) breach by the Developer of its duties under this deed; or
 - (B) non-performance by the Developer of the Developer's Obligations; and

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- (ii) which cannot be paid or satisfied out of the Assets out of which the Developer is entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust.
- (f) The provisions of this **clause 15** do not apply to any Developer's Obligation which cannot be paid or satisfied out of the Assets in respect of which the Developer is not entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust because of fraud, negligence, breach of trust or breach of duty on the part of the Developer.
- (g) In this **clause 15**:
 - (i) **Assets** includes all assets, property and rights real or personal of any nature whatsoever;
 - (ii) **Developer's Obligations** means all obligations and liabilities of whatsoever kind, undertaken by or devolving on the Developer under or in respect of this deed; and
 - (iii) **Developer Trust** means the Frasers Property C&I Land Holdings (Horsley Park No.1) Trust.

16 Reporting Requirement

- (a) The Developer must provide at least 20 Business Days' written notice to TfNSW of the lodgement of any Development Application or application for a Construction Certificate or an Occupation Certificate which triggers any obligation under this deed.
- (b) On each anniversary of the date of this deed, or as otherwise agreed with TfNSW, the Developer must deliver to TfNSW a report which must include those matters set out below, as applicable:
 - (i) a description of the status of the Development and the Development Contribution;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development and the Development Contribution; and
 - (iii) an estimated date for when the Developer expects to submit any application for an Occupation Certificate in respect of any part of the Developer Land.
- (c) Within 30 Business Days following receipt of a written request from either TfNSW, the Developer must deliver to TfNSW all documents and other information which, in the reasonable opinion of TfNSW, are necessary to assess the status of the Development.

17 General

17.1 Entire agreement

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.

17.2 Variation

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

17.3 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.

17.4 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.

17.5 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

17.6 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.

17.7 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.

17.8 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.

17.9 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, will not merge on the occurrence of that event but will remain in full force and effect.

17.10 Counterparts

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

17.11 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.

17.12 Good faith

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

17.13 No fetter

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

17.14 Explanatory Note

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

17.15 Costs, expenses and stamp duty

- (a) The Developer must pay its own and TfNSW's legal costs and disbursements in connection with the negotiation, preparation, execution, registration and administration of this deed.
- (b) TfNSW's administrative costs of review of plans, civil works inspections and project management incurred in connection with this deed are to be covered by the Developer, in accordance with the terms of the WAD.
- (c) The Developer must pay all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

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- (d) 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, on any transfer of land).
- (e) The Developer must pay TfNSW's costs pursuant to **clauses 17.15(a) and (b)**:
 - (i) where TfNSW has provided the Developer with written notice of the sum of such costs prior to execution of this deed, on the date of execution of this deed; or
 - (ii) where TfNSW has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by TfNSW for payment.

17.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and either;
 - (i) hand delivered to the address shown below;
 - (ii) sent by email to the email address shown below, but only if the relevant party has included an email address below; or
 - (iii) sent by prepaid ordinary mail within Australia to the address shown below:

TfNSW

Contact: Rachel Cumming

Address: 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150

Email: rachel.cumming@transport.nsw.gov.au

Developer

Contact: Michaela Leerdam

Address: Level 15, 180 George Street, Sydney NSW 2000

Email: michaela.leerdam@frasersproperty.com.au

- (b) A Notice may be sent by email only if:
 - (i) it states (or any attachment states) the name of the sending party and a person duly authorised by the sending party;
 - (ii) it states (or any attachment states) that the email (or the attachment) is a communication either under this deed or in connection with this deed; and
 - (iii) for an email which contains attachments - the attachments are in a format which the receiving party can open, view and download at no additional cost,

and communications sent by email are taken to be signed by the named sender.

- (c) A Notice is taken to be given if:
 - (i) hand delivered, on the date of delivery; or
 - (ii) sent by email during any Business Day, on the date that the sending party's email records indicate the email was sent, unless the sender also receives a delivery failure notification or other information indicating that the email has not been delivered to the intended recipient; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is seven Business Days after the date of posting.
- (d) A party may change its address, email address or contact information as specified in **clause 17.16(a)** at any time by way of a Notice issued to the other parties.

17.17 Electronic execution

The parties 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 that 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.

Schedule 1

Requirements under the Act

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

Table 1 – Requirements under section 7.4 of the Act

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1) of the Act) 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) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a) of the Act)	The Land as defined in clause 1 .
Description of the change to the environmental planning instrument and the development to which this deed applies – (section 7.4(3)(b) of the Act)	The Instrument Change as defined in clause 1 and the Development as defined in clause 1 .
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c) of the Act)	See schedule 2 .
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d) of the Act)	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4(3)(d) of the Act)	The application of Division 7.1, Subdivision 4 of the Act is not excluded in respect of the Development.

Requirement under the Act	This deed
Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e) of the Act)	The Development Contribution to be provided by the Developer under this deed must not be taken into consideration in determining a development contribution in respect of the Development under section 7.11 of the Act.
Mechanism for Dispute Resolution – (section 7.4(3)(f) of the Act)	See clause 10 .
Enforcement of this deed – (sections 7.4(3)(g) and 7.6 of the Act)	See clause 10 .
No obligation to grant consent or exercise functions – (section 7.4(9) of the Act)	See clause 17.13 .

Table 2 – Other Matters

Requirement under the Act or regulations	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes – see clause 9 .
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (section 21 of the Development Certification Regulation)	Yes – see clause 6.5(b) .
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (section 48 of the Development Certification Regulation)	Yes – see clause 6.5(a) .
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a	No

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Requirement under the Act or regulations	This deed
subdivision certificate is issued – (section 34 of the Development Certification Regulation)	

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Schedule 2

Development Contributions

Once the Third Party Land and WSPT Land are acquired by the Developer and/or TfNSW in accordance with **clause 5**, the Developer must provide the Development Contributions in accordance with the specifications set out below:

Column 1	Column 2	Column 3	Column 4
Item No.	Item	Description	Timing (Due Date)
A. Works			
1	The Horsley Drive Signalised Intersection Enhancement	<p>1. Construction of new signalised intersection at the junction of The Horsley Drive (a State road) and a proposed new north-south local road within the Land, as indicatively shown on the plan at Annexure B, which is to be delivered by the Developer pursuant to a WAD, and to be constructed to a design approved by TfNSW in accordance with the terms of that WAD.</p> <p>The traffic signal design will accommodate:</p> <ul style="list-style-type: none"> (a) Eastbound: a separate slip lane to access the site with an additional 2 through lanes on The Horsley Drive; and (b) Westbound: provision for right turning lane(s) and a minimum of 2 through lanes on The Horsley Drive. 	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

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Column 1	Column 2	Column 3	Column 4
Item No.	Item	Description	Timing (Due Date)
		<p>In addition, the installation of traffic signals, and intersection and pedestrian line marking.</p> <p>2. Road upgrade to the northern side of The Horsley Drive to include road widening, provisions for bus shelter/stops, footpath, shared cycleway and pedestrian path, street trees and street lighting, which is to be delivered by the Developer pursuant to a WAD, in accordance with a design approved by TfNSW. To the extent that TfNSW has carried out, or is carrying out works in connection with the upgrade of The Horsley Drive at the time that this contribution is being provided, the Developer's works must tie in to TfNSW's works. These works will also include:</p> <p>(a) fencing, signage, lighting, road sheeting and basic roadside landscaping as required; and</p> <p>(b) utility relocation and adjustment.</p>	
B. Land Dedication			
2	Dedication of land necessary to facilitate the Development Contributions by the Developer to TfNSW or the	Dedication to TfNSW or the Nominated Transferee of approximately 13,294m ² of the Developer Land generally in the location shown on the plan at Annexure C , plus any Third Party Land that is purchased by the Developer in accordance with clause 5.1 and upon which the Works have been or are to be constructed, subject to any adjustments necessary in circumstances where TfNSW has carried out, or is carrying out,	To be delivered prior to the issue of the first Occupation Certificate for GFA within the Developer Land arising from the Instrument Change.

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Column 1	Column 2	Column 3	Column 4
Item No.	Item	Description	Timing (Due Date)
	Nominated Transferee	<p>works in connection with the upgrade of The Horsley Drive at the time that this contribution is being provided.</p> <p>The land must be dedicated 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 TfNSW in writing.</p>	

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Schedule 3

Explanatory Note

Explanatory Note

Environmental Planning and Assessment Regulation 2021

Section 205

Voluntary Planning Agreement – Keyhole Lands, Horsley Park

Australand C & I Land Holdings Pty Ltd atf Frasers Property C&I
Land Holdings (Horsley Park No.1) Trust

Transport for NSW

1 Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed planning agreement in relation to the property known as Keyhole Lands, Horsely Park (**Planning Agreement**) under section 7.4 of the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**).

This Explanatory Note has been prepared in accordance with section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulation**).

Words appearing with capital letters in this note have the meanings given to them in this note or, if not defined in this note, in the Planning Agreement.

2 Parties

The parties to the Planning Agreement are:

1. Transport for NSW (ABN 18 804 239 602) of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 (**TfNSW**); and
2. Australand C & I Land Holdings Pty Ltd (ACN 107 356 641) as trustee for the Frasers Property C&I Land Holdings (Horsley Park No.1) Trust of Level 2, 1C Homebush Bay Drive, Rhodes NSW 2138 (**Developer**).

3 Description of the Land to which the Planning Agreement applies

The Land to which the Planning Agreement applies is defined in clause 1.1 of the Planning Agreement (**Land**). The Land is located within the Fairfield local government area.

4 Description of the Development / changes to environmental planning instrument

The Developer proposes to carry out the Development on the Developer Land predominantly to create industrial warehousing facilities. In order to facilitate the Development, the Developer has sought amendments to the *Fairfield Local Environmental Plan 2013* (**LEP**) to:

1. rezone the land identified in the Planning Proposal from RU2 Rural Landscape to E4 General Industrial;
2. remove the existing height of buildings control applying to the Developer Land;
3. introduce a floor space ratio control of 0.55:1;
4. reduce the minimum lot size development standard from 10,000m² to 930m²; and
5. remove the minimum lot size for dual occupancy development standard.

The Developer has entered into the Planning Agreement with TfNSW under section 7.4 of the Act in connection with the change to the LEP resulting from the Planning Proposal and the future development of the Land.

5 Summary of Objectives, Nature and Effect of the Planning Agreement

5.1 Objectives

The objective of the Planning Agreement is to provide for the delivery of public benefits in connection with the Planning Proposal and Development by requiring the Developer to construct a new signalised intersection at the junction of The Horsley Drive and a proposed new north-south road within the Land, upgrade the northern side of The Horsley Drive, and dedicate certain land for public roads.

5.2 Nature

The Planning Agreement is a planning agreement under section 7.4 of the Act. It is a voluntary agreement under which the Developer makes Development Contributions (as defined in clause 1.1 of the Planning Agreement) for public purposes (as defined in section 7.4(2) of the Act).

The Development Contributions are broadly described as works and the dedication of land to deliver infrastructure.

The details, staging and timing of these Development Contributions are set out in Schedule 2 of the Planning Agreement. The works are broadly described in section 5.1 above, and an indicative plan of the works appears at the end of this explanatory note.

Some of the land to be dedicated is currently owned by third parties. The Planning Agreement makes provision for the Developer using reasonable endeavours to acquire this land. In the event that the Developer is not able to acquire the land despite using reasonable endeavours, the Developer may request TfNSW to consider using its land acquisition powers to acquire the land at the Developer's cost. The Planning Agreement sets out the basis on which this may occur. A map showing the land to be dedicated also appears at the end of this explanatory note.

The Developer is not required to pay a monetary contribution under the Planning Agreement.

The Planning Agreement sets out the security arrangements that are required to be provided by the Developer to secure the performance on the Development Contributions, and their enforcement if necessary.

5.3 Effect

The Planning Agreement:

- relates to the Planning Proposal and the carrying out of the Development;
- does not exclude the application of sections 7.11 and 7.12, or Division 7.1, subdivision 4, of the Act to the Development;
- provides for the delivery of Development Contributions by the Developer by requiring the dedication of parts of the Land and carrying out of Works; and
- is required to be registered on the title to the Developer Land.

6 Assessment of the merits of the Planning Agreement

6.1 The Planning Purposes Served by the Draft Planning Agreement

The Planning Agreement is consistent with and promotes the objects in section 1.3 of the Act. In particular, the Planning Agreement promotes and co-ordinates the orderly and economic use and development of the land to which it applies.

6.2 How the Planning Agreement Promotes the Public Interest

The Planning Agreement sets out arrangements for the delivery of infrastructure to meet the needs of the Development and the broader State road network, and to provide for the dedication of roads to TfNSW.

The Planning Agreement promotes the public interest by promoting the objects of the Act as set out in section 1.3 of the Act and through the provision of the public benefits outlined above.

6.3 Whether the Planning Agreement Conforms with TfNSW's Planned Projects

TfNSW is planning to upgrade The Horsley Drive to meet Western Sydney's transport needs and support expected industrial and employment growth. The Development Contributions will contribute to this planned upgrade. The Developer will undertake some of the works required for the upgrade, reducing the works that TfNSW is required to undertake.

The acquisition of land contemplated by the Planning Agreement will facilitate this upgrade. In these circumstances, and noting that the cost will be borne by the Developer, TfNSW believes that the acquisition of land, whether through the Developer acquiring the land, or through TfNSW exercising its acquisition powers (if required) is an appropriate way to deliver the public benefits contemplated by the Planning Agreement.

6.4 Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

Yes. The Developer is required to deliver the road upgrade works prior to the issue of an Occupation Certificate for Gross Floor Area within the Developer Land. The Developer is also required to enter into a works authorisation deed regarding the design, construction, completion and dedication of the road upgrade works, which must occur prior to the issue of a Construction Certificate for Gross Floor Area within the Developer Land.

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Execution

Executed as a deed.

Signed sealed and delivered by)
Transport for NSW ABN 18 804 239 602)
by its authorised delegate in the presence
of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate (print)

Electronic signature of me,

Electronic signature of me,

[insert full name]

[insert full name]

affixed by me on

affixed by me on

[insert date and time]

[insert date and time]

[strike through above if document is not executed electronically]

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)
[strike through above if document is not witnessed electronically]

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Signed sealed and delivered by
Australand C & I Land Holdings Pty Ltd
(ACN 107 356 641) in its capacity as trustee
of the Frasers Property C&I Land Holdings
(Horsley Park No.1) Trust in accordance with
section 126(1) of the *Corporations Act 2001*
(Cth):


DocuSigned by:

4C9D20541759420...

Signature of joint agent / attorney

Ian Barter

Name of joint agent / attorney

DocuSigned by:

58FF557B4546408...

Signature of joint agent / attorney

Roland Martin

Name of joint agent / attorney

By signing this document, each signatory
states that they have received no notice
of revocation of their authority to sign.

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Annexure A

Novation Deed

Transport for NSW

Australand C & I Land Holdings Pty Ltd atf Frasers
Property C&I Land Holdings (Horsley Park No.1)
Trust

[New Developer]

Novation Deed

For the Voluntary Planning Agreement: Keyhole
Lands, Horsley Park

Contents

1	Interpretation	1
1.1	Definitions	1
1.2	Construction	2
2	Novation	3
2.1	Original Agreement	3
2.2	Liability before Effective Date	3
2.3	Address for notices	3
3	Affirmation of the Original Agreement	4
4	Warranties and representations	4
4.1	Warranties	4
4.2	Survival of warranties	4
5	Developer's limitation of liability	4
6	General	5
6.1	Entire agreement	5
6.2	Variation	6
6.3	Waiver	6
6.4	Further assurances	6
6.5	Time for doing acts	6
6.6	Governing law and jurisdiction	6
6.7	Severance	6
6.8	Preservation of existing rights	6
6.9	No merger	6
6.10	Counterparts	7
6.11	Relationship of parties	7
6.12	Good faith	7
6.13	No fetter	7
6.14	Costs, expenses and stamp duty	7
6.15	Electronic execution	7
	Execution	9

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Date

Parties

Transport for NSW ABN 18 804 239 602 of 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150 (**TfNSW**)

and

Australand C & I Land Holdings Pty Ltd ACN 107 356 641 atf Frasers Property C&I
Land Holdings (Horsley Park No.1) Trust of Level 2, 1C Homebush Bay Drive, Rhodes
NSW 2138 (**Developer**)

and

[New Developer] ACN **[insert]** of **[insert address]** (**New Developer**)

Background

- A TfNSW, and the Developer are parties to the Original Agreement.
- B The Original Agreement relates to the whole of the Developer Land.
- C The Developer proposes to transfer **[the whole / part]** of its interests in the Land to the New Developer and wishes to novate **[all of its rights and obligations / the Novated Rights and Obligations]** under the Original Agreement to the New Developer.
- D **[Insert any other appropriate recitals]**.

Agreed terms

1 Interpretation

1.1 Definitions

In this deed, the following terms have the following meanings. Capitalised terms which are not defined in this deed have the meanings given to those terms in the Original Agreement:

Effective Date	[insert] .
[Novated Rights and Obligations]	[If only part of the Developer’s rights and obligations are to be novated, insert those rights and obligations under the

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Original Agreement that relate to the Land to be transferred to the New Developer].

Original Agreement

The *Voluntary Planning Agreement: Keyhole Lands, Horsley Park*, dated [insert] between TfNSW and the Developer.

1.2 Construction

In this deed, unless the context clearly indicates otherwise:

- (a) a reference to this deed or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this deed;
- (f) the schedules form part of this deed;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an obligation or warranty on the part of two or more persons binds each person jointly and severally;
- (l) including and includes are not words of limitation;
- (m) a word that is derived from a defined word has a corresponding meaning;
- (n) monetary amounts are expressed in Australian dollars;
- (o) the singular includes the plural and vice-versa;
- (p) words importing one gender include all other genders;

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- (q) a reference to a thing includes each part of that thing; and
- (r) 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 Novation

2.1 Original Agreement

Subject to **clause 2.2** and with effect from the Effective Date:

- (a) the New Developer is substituted for the Developer as a party to the Original Agreement [in so far as the Original Agreement relates to the Novated Rights and Obligations and the New Developer agrees to perform the Novated Rights and Obligations];
- (b) all references to the Developer in the Original Agreement are to be construed as references to the New Developer [in so far as the Original Agreement relates to the Novated Rights and Obligations];
- (c) the New Developer will be bound by the Original Agreement, and will be entitled to the benefit of the Original Agreement, as if the New Developer was a party to the Original Agreement instead of the Developer [in so far as the Original Agreement relates to the Novated Rights and Obligations]; and
- (d) the Developer is released and discharged from all obligations and liabilities, and from all claims (whether for costs, damages, fees, expenses or otherwise), arising under the Original Agreement [in so far as it relates to the Novated Rights and Obligations], except in respect of any obligation, liability or claim that arose prior to the Effective Date.

2.2 Liability before Effective Date

Despite **clause 2.1**, the Developer is not released, relieved or discharged from liability under the Original Agreement before the Effective Date, or any breach of any provision of the Original Agreement by the Developer occurring before the Effective Date (to the extent that it is not remedied by the Effective Date) [in so far as the Original Agreement relates to the Novation Rights and Obligations].

2.3 Address for notices

TfNSW must address all notices and communications to be given or made by it to the New Developer under the Original Agreement to the following address:

New Developer:

Address: ☒

Fax: ☒

Contact Person: ☒

Email: ☒

3 Affirmation of the Original Agreement

The Original Agreement will be read and construed subject to this deed, and in all other respects the provisions of the Original Agreement are ratified and confirmed, and, subject to the variation and novation contained in this deed, the Original Agreement will continue in full force and effect.

4 Warranties and representations

4.1 Warranties

Each party represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed;
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms; and
- (d) its unconditional execution and delivery of, and compliance with its obligations under, this deed do not contravene:
 - (i) any law or directive from a government entity;
 - (ii) its constituent documents;
 - (iii) any agreement or instrument to which it is a party; or
 - (iv) any obligation of it to any other person.

4.2 Survival of warranties

The warranties and representations in **clause 4.1** survive the execution of this deed and the novation of the Original Agreement.

5 Developer's limitation of liability

- (a) The Developer enters into this deed as trustee of the Developer Trust and in no other capacity. Each party acknowledges that the Developer's Obligations are incurred by the Developer solely in its capacity as trustee of the Developer Trust.
- (b) The Developer will not be liable to pay or satisfy any Developer's Obligations out of any Assets out of which the Developer is not entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust.
- (c) Each party may enforce its rights against the Developer arising from non-performance of the Developer's Obligations only to the extent of the Developer's right of indemnity out of the Assets of the Developer Trust.

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- (d) If a party does not recover all money owing to it arising from non-performance of the Developer's Obligations by enforcing the rights referred to in **clause 5(c)**, it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Developer in its personal capacity; or
 - (ii) applying to have the Developer wound up or proving in the winding up of the Developer unless another creditor has initiated proceedings to wind up the Developer.
- (e) Each party other than the Developer waives its rights, and releases the Developer from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which it may suffer as a result of any:
 - (A) breach by the Developer of its duties under this deed; or
 - (B) non-performance by the Developer of the Developer's Obligations; and
 - (ii) which cannot be paid or satisfied out of the Assets out of which the Developer is entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust.
- (f) The provisions of this **clause 5** do not apply to any Developer's Obligation which cannot be paid or satisfied out of the Assets in respect of which the Developer is not entitled to be indemnified in respect of any liability incurred by it as trustee of the Developer Trust because of fraud, negligence, breach of trust or breach of duty on the part of the Developer.
- (g) In this **clause 5**:
 - (i) **Assets** includes all assets, property and rights real or personal of any nature whatsoever;
 - (ii) **Developer's Obligations** means all obligations and liabilities of whatsoever kind, undertaken by or devolving on the Developer under or in respect of this deed; and
 - (iii) **Developer Trust** means the Frasers Property C&I Land Holdings (Horsley Park No.1) Trust.

6 General

6.1 Entire agreement

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.

6.2 Variation

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

6.3 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.

6.4 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.

6.5 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 5.00pm on the specified day, it is taken to have been done on the following business day.

6.6 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.

6.7 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.

6.8 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.

6.9 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,

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will not merge on the occurrence of that event but will remain in full force and effect.

6.10 Counterparts

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

6.11 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.

6.12 Good faith

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

6.13 No fetter

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

6.14 Costs, expenses and stamp duty

- (a) The New Developer must pay its own and TfNSW's legal costs and disbursements in connection with the negotiation, preparation, execution, registration and administration of this deed.
- (b) The New 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).
- (c) The New Developer must pay TfNSW's costs pursuant to **clause 6.14(a)**:
 - (i) where TfNSW has provided the New Developer with written notice of the sum of such costs prior to execution of this deed, on the date of execution of this deed; or
 - (ii) where TfNSW has not provided the New Developer with prior written notice of the sum of such costs prior to execution, within 10 Business Days of demand by TfNSW for payment.

6.15 Electronic execution

The parties acknowledge and agree that:

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- (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 that 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.

draft

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Execution

Executed as a deed.

Signed sealed and delivered by)
Transport for NSW ABN 18 804 239 602)
by its authorised delegate in the presence
of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate (print)

Electronic signature of me,

Electronic signature of me,

[insert full name]

[insert full name]

affixed by me on

affixed by me on

[insert date and time]

[insert date and time]

[strike through above if document is not executed
electronically]

This document was signed in counterpart and witnessed
over audio visual link in accordance with section 14G of the
Electronic Transactions Act 2000 (NSW)
[strike through above if document is not witnessed
electronically]

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Signed sealed and delivered by _____)
Australand C & I Land Holdings Pty Ltd)
(ACN 107 356 641) atf Frasers Property
C&I Land Holdings (Horsley Park No.1)
Trust in accordance with s127(1) of the
Corporations Act 2001 (Cth):

.....
Company Secretary/ Director

.....
Company Secretary/ Director

.....
Name of Company Secretary/ Director
(print)

.....
Name of Company Secretary/ Director
(print)

Electronic signature of me,

[insert full name]

Electronic signature of me,

[insert full name]

affixed by me on

[insert date and time]

affixed by me on

[insert date and time]

[strike through above if document is not executed
electronically]

[strike through above if document is not executed
electronically]

[Insert execution block for New Developer]

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Annexure B

Works Plan

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Annexure C

Land Dedication Plan

THIS DRAWING MAY BE PREPARED IN COLOUR AND MAY BE INCOMPLETE IF COPIED
100mm ON A1 SIZE ORIGINAL

