

# Box Hill North Precinct

## Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning

ABN 38 755 709681

EJ Cooper & Son Pty Limited

ACN 000 269 750

Clayton Utz  
Lawyers  
Level 15 1 Bligh Street  
Sydney NSW 2000  
GPO Box 9806  
Sydney NSW 2001  
Tel +61 2 9353 4000  
Fax +61 2 8220 6700  
[www.claytonutz.com](http://www.claytonutz.com)

Our reference 751/17849/80160795

**Contents**

- 1. Definitions and interpretation ..... 1**
  - 1.1 Definitions ..... 1
  - 1.2 Interpretation..... 6
- 2. Operation and application of this deed ..... 7**
  - 2.1 Operation ..... 7
  - 2.2 Planning agreement under the Planning Act ..... 7
  - 2.3 Application ..... 7
  - 2.4 Developer's reporting requirements ..... 7
- 3. Application of Sections 94, 94A and 94EF of the Planning Act ..... 8**
- 4. Development Contributions ..... 8**
  - 4.1 Developer to provide Development Contributions ..... 8
  - 4.2 Acknowledgement ..... 8
  - 4.3 Monetary Contribution and Education Land Contribution..... 8
- 5. Interest for late provision of Monetary Contribution ..... 9**
- 6. Security ..... 9**
- 7. Land ownership or control..... 9**
- 8. Dispute resolution..... 9**
  - 8.1 Not commence..... 9
  - 8.2 Written notice of dispute ..... 9
  - 8.3 Attempt to resolve..... 9
  - 8.4 Mediation ..... 10
  - 8.5 Costs of alternative dispute resolution ..... 10
  - 8.6 Court proceedings ..... 10
  - 8.7 Use of information..... 10
  - 8.8 Continued performance of obligations ..... 10
  - 8.9 No prejudice..... 10
- 9. GST ..... 10**
  - 9.1 Definitions ..... 10
  - 9.2 Intention of the parties ..... 11
  - 9.3 Reimbursements and similar payments ..... 11
  - 9.4 GST payable..... 11
  - 9.5 Variation of GST ..... 12
  - 9.6 Exchange of non-monetary consideration ..... 12
  - 9.7 No Merger..... 12
- 10. Assignment..... 12**
  - 10.1 Assignment of rights or benefits of this deed ..... 12
  - 10.2 Dealings with Land ..... 13
- 11. Capacity ..... 13**
  - 11.1 General warranties ..... 13
  - 11.2 Power of attorney..... 13
- 12. General provisions..... 13**
  - 12.1 Entire agreement ..... 13
  - 12.2 Variation..... 13
  - 12.3 Waiver..... 14
  - 12.4 Further assurances..... 14
  - 12.5 Time for doing acts ..... 14
  - 12.6 Governing law and jurisdiction..... 14
  - 12.7 Severance..... 14
  - 12.8 Preservation of existing rights ..... 14
  - 12.9 No merger..... 14
  - 12.10 Counterparts ..... 14

12.11	Relationship of parties .....	15
12.12	Good faith .....	15
12.13	No fetter .....	15
12.14	Explanatory Note .....	15
12.15	Expenses and stamp duty .....	15
12.16	Notices .....	15
<b>Schedule 1</b>	.....	<b>17</b>
<b>Schedule 2</b>	.....	<b>19</b>
<b>Schedule 3</b>	.....	<b>20</b>
<b>Schedule 4</b>	.....	<b>22</b>
<b>Schedule 5</b>	.....	<b>29</b>
<b>Schedule 6</b>	.....	<b>32</b>
<b>Annexure A</b>	.....	<b>36</b>
<b>Annexure B</b>	.....	<b>37</b>

**Date****Parties**

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

**EJ COOPER & SON PTY LIMITED** (ACN 000 269 750) of 642 Great Western Highway, Girraween, New South Wales, 2145 (**Developer**);

**Introduction**

- A. The Developer either owns the freehold interest in the Land or has the right to develop the Land for the purpose of the Proposed Development.
- B. The Developer intends to develop the Land for the Proposed Development.
- C. The Developer has sought a change to an environmental planning instrument in respect of the Land (being the LEP) by making the Planning Proposal.
- D. The Developer is prepared to make the Development Contributions to the Planning Minister for the provision of infrastructure for public purposes in connection with the Planning Proposal, in accordance with this deed.
- E. The Developer has offered to enter into this deed with the Planning Minister to provide for and secure the Development Contributions.
- F. The parties intend that the delivery of the Development Contributions in accordance with this deed will constitute satisfactory arrangements for the purposes of clause 6.1 of the LEP for the Land.
- G. This deed does not provide for contributions in respect of other land referred to in the Planning Proposal which is not part of the Land, and is not intended to constitute satisfactory arrangements for such other land.

**It is agreed**

---

**1. Definitions and interpretation****1.1 Definitions**

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

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

**Acquisition Cost** means any loss, cost, expense, fee, charge, tax, rate, fine or penalty in connection with the acquisition (whether by compulsory process or otherwise) by any person or the transfer to the Nominated Transferee (including any other transfers which occur prior to that transfer) of any land.

**Address for Service** for a party means the address, contact or facsimile number (as the case may be) of that party appearing in Schedule 2 or any new address, contact or facsimile number (as the case may be) notified by that party to all other parties as its new Address for Service.

**Alternative School Site** has the meaning given to that expression in clause 7 of Schedule 4.

**Authorisation** means a consent, approval, licence, permit, certificate or other form of statutory authorisation, and includes that authorisation as modified, varied or amended from time to time.

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

**Bank Guarantee** means an irrevocable and unconditional undertaking:

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

to pay the face value of that undertaking on demand.

**Base CPI** means the CPI number for the quarter ending 1 March 2014.

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

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

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

**Contamination** has the same meaning as in the *Contaminated Land Management Act 1997* (NSW).

**CPI number** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the parties agree, acting reasonably, will apply.

**CPI Adjustment Date** means 1 July in each year after the date on which this deed is executed.

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

**Dealing** has the meaning given to that expression in clause 10.2.

**Development Contribution** means a contribution to be provided by the Developer in accordance with the provisions of Schedule 4.

**Development Contributions Table** means the table in clause 1(a) of Schedule 4.

**Education Land** means the land to be used for the purposes of a primary school with an area of not less than 2.19 hectares that meets the Site Selection Criteria, as determined in accordance with Schedule 4.

**Education Land Contribution** means the provision of the Education Land in accordance with clauses 7 - 8 of Schedule 4.

**Education Land Dedication Date** means the earlier of:

- (a) the date being 1 Business Day before the issue of a Subdivision Certificate which relates to the 2,000th Residential Lot in respect of the Land; and

- (b) the date being 1 Business Day before the issue of a Plan of Subdivision containing the Nominated School Site, or any part of the Nominated School Site.

**Education Land Security** means the security which the Planning Minister holds, or is entitled to hold, from time to time under this deed as security for the delivery of the Education Land Contribution under this deed.

**Education Land Value** means the market value of the Education Land as determined in accordance with Schedule 5.

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

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

**GST law** has the same meaning as in the GST Act.

**Land** means the land identified as the Land in Schedule 3.

**LEP** means the *Hills Local Environmental Plan 2012*.

**Liabilities** means claims, actions, demands, proceedings, losses, costs, expenses, fines, penalties and other liabilities (including legal costs on an indemnity basis).

**LPI** means the Land and Property Information New South Wales.

**Monetary Contribution** means the monetary contribution specified in item 1 of the Development Contributions Table, as adjusted from time to time in accordance with this deed.

**Monetary Contribution Security** means the security which the Planning Minister holds, or is entitled to hold, from time to time under this deed as security for the payment of the Monetary Contribution under this deed.

**Net Developable Area** or **NDA** of land means the net developable area of that land.

**Nominated School Site** means the land comprised in lots 44 and 45 in DP255616 and marked 'Nominated School Site' in the plan at Annexure B.

**Nominated Transferee** has the meaning given to that expression in clause 7(d) of Schedule 4.

**Occupation Certificate** has the same meaning as in the Planning Act.

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

**Planning Ministerial Corporation** means the Minister Administering the *Environmental Planning and Assessment Act 1979*, a corporation sole constituted under section 8 of the Planning Act.

**Planning Proposal** means a planning proposal made under Part 3 of the Planning Act and generally in accordance with the planning proposal titled 'Box Hill North Planning Proposal (1/2014/PLP)' exhibited by the Hills Shire Council from 11 February 2014 to 14 March 2014.

**Proposed Development** means the development of the Land for:

- (a) subdivision of the Land into relevant parcels;
- (b) the erection of approximately 4,100 dwellings;
- (c) the establishment of a 5.5 hectare town centre;
- (d) the construction of new roads and infrastructure;
- (e) a primary school site on the Education Land;
- (f) sporting fields and parks;
- (g) environmental conservation; and
- (h) ancillary and associated development and uses,

including all demolition works, site preparation and establishment works, subdivisions, and construction works required, as well as the relevant uses.

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

**Planning Agreement** has the same meaning as in the Planning Act.

**Planning Application** means an application for a Planning Approval.

**Planning Approval** means a development consent under Part 4 of the Planning Act or a project approval under (former) Part 3A of the Planning Act.

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

**Real Property Act** means the *Real Property Act 1900* (NSW).

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

**Required Obligations** has the meaning given to that expression in clause 10.2.

**Residential Lot** means any lot or parcel of land (including a strata title lot) which may be used for residential purposes.

**Site Selection Criteria** means the following criteria applying to the selection of the Education Land (as the case may be) pursuant to Schedule 4, as amended from time to time by written notice to the Developer from the Planning Minister:

- (a) the site must be a single lot of at least 2.19 hectares;
- (b) the site must be adjacent to open space playing fields;
- (c) the site must be fully serviced with water, sewer, power, telecommunications, local traffic infrastructure (such as kerb, gutter, footpath, round about, crossings, pedestrian pathways etc.) and such other utilities and service infrastructure as is necessary for a school;
- (d) the shape of the site must be substantially regular;

- (e) the gradient of the site must be no greater than 1 in 10;
- (f) the site must not be on mapped bush fire prone land;
- (g) the site must be located above the 1 in 100 year flood level;
- (h) the site must be well drained;
- (i) the site must be free of Contamination;
- (j) a site audit statement must be available in respect of the site confirming the site is able to be used as a primary school; and
- (k) the site must have a minimum road frontage of 200 metres with road frontage ideally on 3, but not less than 2 sides.

**Stage** means a stage indicated generally on the precinct plan at Annexure A.

**Stage A** means the subdivision of the Stage A Land into Residential Lots.

**Stage A Land** means the part of the Land which is marked Precinct A on the precinct plan at Annexure A.

**Stage B** means the subdivision of the Stage B Land into Residential Lots.

**Stage B Land** means the area of the Land which is marked Precinct B on the precinct plan at Annexure A.

**Stage C** means the subdivision of the Stage C Land into Residential Lots.

**Stage C Land** means the part of the Land which is marked Precinct C on the precinct plan at Annexure A.

**Stage D** means the subdivision of the Stage D Land into Residential Lots.

**Stage D Land** means the part of the Land which is marked Precinct D on the precinct plan at Annexure A.

**Stage E** means the subdivision of the Stage E Land into Residential Lots.

**Stage E Land** means the part of the Land which is marked Precinct E on the precinct plan at Annexure A.

**Stage F** means the subdivision of the Stage F Land into Residential Lots.

**Stage F Land** means the part of the Land which is marked Precinct F on the precinct plan at Annexure A.

**Stage G** means the subdivision of the Stage G Land into Residential Lots.

**Stage G Land** means the part of the Land which is marked Precinct G on the precinct plan at Annexure A.

**Stage H** means the subdivision of the Stage H Land into Residential Lots.

**Stage H Land** means the part of the Land which is marked Precinct H on the precinct plan at Annexure A.

**Stage I** means the subdivision of the Stage I Land into Residential Lots.



**Stage I Land** means the part of the Land which is marked Precinct I on the precinct plan at Annexure A.

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

**Sunset Date** means 30 June 2025 or such other date as may be agreed between the parties.

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

**Transferee** has the meaning given to that expression in clause 10.2.

**Valuer** means a registered valuer under the *Valuers Act 2003* (NSW) who:

- (a) is both an associate (or a fellow) member and a certified practicing valuer of the Australian Property Institute (Inc) NSW Division;
- (b) has at least 7 years' experience in valuations;
- (c) is independent and not related to the Developer; and
- (d) is instructed on a joint brief from the Parties.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **Planning Minister** includes a reference to the Secretary of the Department of Planning and Environment and also a reference to any person nominated by the Planning Minister for the purposes of this deed specifically or for Planning Agreements to which the Planning Minister is a party generally;
- (b) a reference to **this deed** or another document means this deed or that other document as varied, supplemented, replaced, assigned or novated from time to time, and includes any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (c) 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;
- (d) 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;
- (e) 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;
- (f) **clause headings**, the **introduction** and the **Contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;

- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a **right** or **obligation** of a party is a reference to a right or obligation of that party under this deed;
- (l) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

---

## **2. Operation and application of this deed**

### **2.1 Operation**

This deed will commence on and from the date this deed is signed by the parties.

### **2.2 Planning agreement under the Planning Act**

This deed constitutes a Planning Agreement within the meaning of section 93F of the Planning Act.

### **2.3 Application**

This deed is made in respect of the Proposed Development and the Land, and applies to the Proposed Development and, to the extent permitted by law, to the Land.

### **2.4 Developer's reporting requirements**

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report for the preceding period of 1 July to 30 June of which must include the following matters, as applicable:
  - (i) details of all Planning Approvals and Subdivision Certificates issued in relation to the Proposed Development;
  - (ii) a description of the status of the Proposed Development including a plan that identifies what parts of the Proposed Development have been completed, are under construction and are to be constructed;
  - (iii) a forecast in relation to the anticipated progression and completion of the Proposed Development;

- (iv) a compliance schedule showing the details of all Proposed Development Contributions provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
  - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Proposed Development and the Developer's compliance with this deed.

---

### **3. Application of Sections 94, 94A and 94EF of the Planning Act**

The application of section 94EF of the Planning Act is excluded to the extent stated in Schedule 1.

The application of sections 94 and 94A of the Planning Act is not excluded.

---

## **4. Development Contributions**

### **4.1 Developer to provide Development Contributions**

The Developer agrees to provide, or procure the provision of, the Development Contributions to the Planning Minister in accordance with this clause 4 and the provisions of Schedule 4.

### **4.2 Acknowledgement**

The Developer acknowledges and agrees that the Planning Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose, and has not made any representation or warranty that she will use or expend the Development Contributions for any particular purpose;
- (b) has no obligation to repay, or provide any compensation or payment for, the Development Contributions; and
- (c) has not made any representation or warranty that, if the Development Contributions are transferred or provided in any way to another Authority, the Development Contributions will or must be used for any particular purpose by that or any other Authority.

### **4.3 Monetary Contribution and Education Land Contribution**

- (a) The Developer must provide the Monetary Contribution to the Planning Minister:
  - (i) in the amount which is specified in the Development Contributions Table and indexed in the manner specified in the Development Contributions Table;
  - (ii) in the manner specified as the "Manner of Delivery" in the Development Contributions Table;
  - (iii) at or before the time specified as the "Timing" in the Development Contributions Table; and
  - (iv) in any event by the Sunset Date, even if the time specified as the "Timing" in the Development Contributions Table has not passed as at the Sunset Date.

- (b) The Developer must provide the Education Land Contribution to the Planning Minister by the Education Land Dedication Date and in accordance with the provisions of this deed.

---

## 5. Interest for late provision of Monetary Contribution

- (a) If the Developer fails to provide a part of the Monetary Contribution to the Planning Minister under this deed on the due date for provision of that part of the Monetary Contribution, the Developer must also pay to the Planning Minister interest, for that part of the Monetary Contribution, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest will be payable on the daily balance of amounts due from the due date for provision of those amounts until all outstanding amounts (including interest on those amounts) have been provided to the Planning Minister.

---

## 6. Security

The Developer has agreed to provide security to the Planning Minister for the Developer's obligations to provide the Development Contributions by providing Bank Guarantees to the Planning Minister in accordance with the terms and procedures set out in Schedule 5.

---

## 7. Land ownership or control

The Developer represents and warrants that, the Developer:

- (a) is the registered proprietor of the Land; or
- (b) has the rights necessary to become the registered proprietor of the Land and will exercise those rights before they lapse or expire;
- and
- (c) is legally and beneficially entitled to obtain all consents, access rights and Authorisations and to compel any owner of any part of the Land to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under this deed.

---

## 8. Dispute resolution

### 8.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to the deed unless it has complied with this clause 8.

### 8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other parties specifying the nature of the dispute and requiring that the dispute be addressed in accordance with this clause 8.

### 8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques (such as mediation, expert evaluation or other techniques).

## 8.4 Mediation

If the parties do not either resolve the dispute or agree in writing as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for implementation of those procedures; or
- (c) the selection and remuneration of any independent person required for such technique,

within 21 Business Days of receipt of notice under clause 8.2 (or any other period agreed in writing by them) then, subject to clause 8.6, the parties must mediate the dispute in accordance with the Mediation Program of the Law Society of NSW. The parties 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.

## 8.5 Costs of alternative dispute resolution

Each party will be responsible for its own legal and other costs in relation to any process under this clause 8 but the parties must bear equally the costs of an independent person appointed under clause 8.4. This clause 8.5 does not apply to court proceedings.

## 8.6 Court proceedings

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

## 8.7 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 8 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 8 for any purpose other than undertaking the dispute resolution process itself or an attempt to resolve the dispute.

## 8.8 Continued performance of obligations

Despite the existence of a dispute or any process under this clause 8, but subject to any order of a court or the agreement of the parties, the parties will (so far as it is reasonably practicable) continue to perform and comply with their respective obligations under this deed.

## 8.9 No prejudice

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

---

## 9. GST

### 9.1 Definitions

In this clause 9:

- (a) words and phrases used in this clause 9 that are defined in the GST Act have the same meaning as in that Act except that:

- (i) **GST** has the meaning provided in clause 1.1;
  - (ii) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
  - (iii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply;
- (b) unless otherwise expressly stated, all consideration to be provided under any other provision of this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 9;
  - (c) a reference to a supply is to a supply made under or in connection with this deed;
  - (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9;
  - (e) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
  - (f) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

## 9.2 Intention of the parties

The parties intend that subject to the following paragraphs of clause 9:

- (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.

## 9.3 Reimbursements and similar payments

Any payment or reimbursement required to be made under this deed that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

## 9.4 GST payable

Subject to clause 9.6, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Recipient must pay to the Supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**);
- (b) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply;
- (c) the GST Amount must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the supply to which the GST amount relates, whichever is the later.

## 9.5 Variation of GST

If the GST Amount recovered by the Supplier from the Recipient under clause 1.1(a) for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 14 days after the date of the adjustment event.

## 9.6 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 9.4 applies is a taxable supply made by the Recipient (**Recipient Supply**), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 9.4 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 9.4 (or the time at which such GST Amount would have been payable in accordance with 9.4 but for the operation of clause 1.1(a)).

## 9.7 No Merger

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

---

# 10. Assignment

## 10.1 Assignment of rights or benefits of this deed

- (a) The Developer may not assign the rights or benefits of this deed to any person except:
  - (i) to a related body corporate, after obtaining the consent of the Planning Minister, which the Planning Minister must not withhold if she is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
  - (ii) to any other person, with the prior consent of the Planning Minister, which the Planning Minister must not unreasonably condition or withhold.
- (b) The Planning Minister may require, as a condition of any consent given under clause 10.1(a), that the proposed assignor and assignee of rights or benefits of this deed enter into a deed with the Planning Minister, giving the Planning Minister such assurance of ongoing satisfaction of the proposed assignor's obligations under this deed as the Planning Minister (acting reasonably) considers appropriate.
 

That assurance may include provisions under which the proposed assignee agrees to comply with the proposed assignor's obligations as if the proposed assignee were the proposed assignor (including the provision of appropriate security in accordance with Schedule 5 of this deed and other obligations which arose before the date of assignment) and to indemnify the Planning Minister in respect of any breach of this deed by the proposed assignor.
- (c) The Planning Minister may assign the rights and benefits of this deed in her absolute discretion, without the need for consent from the Developer.

## 10.2 Dealings with Land

- (a) The Developer may not sell, transfer, assign, dispose of or mortgage the whole or any part of the Land (**Dealing**) or its interests in the Land unless, before a Developer enters into the Dealing with another person (**Transferee**):
- (i) the Developer satisfies the Planning Minister (acting reasonably) that the proposed Transferee is financially capable of complying with those of the Developer's obligations under this deed which the Planning Minister (acting reasonably) specifies, by notice in writing to the Developer, must be adopted by the Transferee (**Required Obligations**);
  - (ii) the Transferee signs a deed in favour of the Planning Minister under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including the provision of appropriate security in accordance with Schedule 5 of this deed and other obligations which arose before the Dealing) and to indemnify the Planning Minister in respect of any breach of this deed by the Developer;
  - (iii) any default by the Developer has been remedied by the Developer, unless that default has been waived expressly by the Planning Minister; and
  - (iv) the Developer and the Transferee pay the Planning Minister's reasonable costs in relation to that Dealing.
- (b) If the Developer enters into a Dealing and fully satisfies the requirements of clause 10.2(a) with respect to that Dealing, the Developer will be released from its obligations under this deed with respect to the land the subject of that Dealing.

---

## 11. Capacity

### 11.1 General warranties

Each party warrants to each other party that:

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

### 11.2 Power of attorney

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

---

## 12. General provisions

### 12.1 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.

### 12.2 Variation

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



### **12.3 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.

### **12.4 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.

### **12.5 Time for doing acts**

- (a) If:
- (i) the time for doing any act or thing required to be done; or
  - (ii) a notice period specified in this deed,
- expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

### **12.6 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.

### **12.7 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.

### **12.8 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.

### **12.9 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.

### **12.10 Counterparts**

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

## 12.11 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.

## 12.12 Good faith

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

## 12.13 No fetter

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

## 12.14 Explanatory Note

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

## 12.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Planning Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Planning Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Planning Minister with bank cheques in respect of the Planning Minister's costs pursuant to clauses 12.15(a) and 12.15(b) above:
  - (i) where the Planning Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Planning Minister 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 the Planning Minister for payment.

## 12.16 Notices

- (a) Any notice, demand, consent, approval, report, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or

- (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
- (i) hand delivered - on the date of delivery; or
  - (ii) sent by facsimile transmission during any Business Day - on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
  - (iii) sent by prepaid ordinary mail within Australia - on the date that is 2 Business Days after the date of posting.

**Schedule 1**

**Table 1 - Requirements under section 93F of the Planning Act (clause 2.2)**

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

<b>REQUIREMENT UNDER THE PLANNING ACT</b>	<b>THIS DEED</b>
<p><b>Planning instrument and/or project application - (section 93F(1))</b> The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a project/development application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of land to which this deed applies - (section 93F(3)(a))</b></p>	See Schedule 3.
<p><b>Description of the change to the environmental Planning Instrument to which this deed applies – (section 93F(3)(b))</b></p>	See definition of the Planning Proposal
<p><b>Description of development to which this deed applies - (section 93F(3)(b))</b></p>	See definition the Proposed Development
<p><b>The scope, timing and manner of delivery of contribution required by this deed - (section 93F(3)(c))</b></p>	See clause 4 and Schedule 4.
<p><b>Applicability of sections 94 and 94A of the Planning Act - (section 93F(3)(d))</b></p>	The application of sections 94 and 94A is not excluded.
<p><b>Applicability of section 94EF of the Planning Act - (section 93F(3)(d))</b></p>	The application of section 94EF is excluded.
<p><b>Consideration of benefits under this deed if section 94 applies - (section 93F(3)(e))</b></p>	The Development Contributions to be provided by the Developer under this deed must not be taken into consideration in determining a contribution under section 94.
<p><b>Mechanism for Dispute Resolution - (section 93F(3)(f))</b></p>	See clause 8
<p><b>Enforcement of this deed - (section 93F(3)(g))</b></p>	See clause 6
<p><b>Registration of the Planning Agreement - (section 93H)</b></p>	No

## Schedule 1

REQUIREMENT UNDER THE PLANNING ACT	THIS DEED
<b>No obligation to grant consent or exercise functions</b> - (section 93F(10))	See clause 12.13

Table 2 - Other Matters

REQUIREMENT UNDER THE ACT	THIS DEED
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued</b> - (clause 25E(2)(g) of the Regulation)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued</b> - (clause 25E(2)(g) of the Regulation)	Yes
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued</b> - (clause 25E(2)(g) of the Regulation)	Yes

**Schedule 2****Address for Service (clause 1.1)****Planning Minister**

Contact: The Secretary

Address: Department of Planning and Environment  
23-33 Bridge Street  
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

**Developer**

Company: EJ Cooper & Son Pty Ltd

Address: 642 Great Western Highway, PENDLE HILL NSW 2145

Facsimile No: (02) 9636 9636

### Schedule 3

#### Land (clause 1.1)

No.	Title reference	Registered Proprietors	Whether this deed is to be registered on title
1.	Lot 1 DP 11126	John Geehan Cox and Daphne Gwen Cox	No
2.	Lot 1 DP 207750	Antonio Brisindi and Angela Brisindi	No
3.	Lot 1 DP 564211	John Saliba and Josephine Saliba	No
4.	Lot 10 DP 593517	Joseph Sant and Stella Sant	No
5.	Lot 15 DP 255616	George Galdes and Carmen Galdes as joint tenants in ½ share; Ivan Zalac and Margaret Josephine Zalac as joint tenants in ½ share.	No
6.	Lot 16 DP 255616	John Martin Camilleri	No
7.	Lot 17 DP 255616	John Derek Earl and Lorraine Irene Earl	No
8.	Lot 18 DP 255616	Carmelo Portelli and Vitorina Mary Portelli	No
9.	Lot 2 DP 11126	Mario Lawrence Rechichi and Mary Anne Lawler	No
10.	Lot 2 DP 253552	Debra Ann Kavanagh in 1/6 share; Tracey Marie Akuila in 1/6 share; Aiden Kavanagh in 1/6 share; Roby Edwards and Ross Edwards as joint tenants in 3/6 share.	No
11.	Lot 21 DP 255616	Verna Joy Howes	No
12.	Lot 22 DP 255616	EJ Cooper & Son Pty Limited	No
13.	Lot 23 DP 255616	Garry Galea and Mary Galea	No
14.	Lot 25 DP 255616	Saviour D'Anastasi	No
15.	Lot 26 DP 255616	Carmelo D'Anastasi and Pauline Vincentina D'Anastasi	No

## Schedule 3

No.	Title reference	Registered Proprietors	Whether this deed is to be registered on title
16.	Lot 27 DP 255616	Michael John Mathers and Jane Gould Mathers	No
17.	Lot 29 DP 255616	Norma Jean Pike	No
18.	Lot 3 DP 11126	Maguires Road Pty Limited	No
19.	Lot 30 DP 255616	Frederick Dominello and Janet Elaine Dominello	No
20.	Lot 31 DP 255616	Diverse Construction Group Pty Ltd	No
21.	Lot 4A DP 135304	Paul Lyttleton Gaudry and Margaret Mary Gaudry	No
22.	Lot 4B DP 135304	Paul Lyttleton Gaudry and Margaret Mary Gaudry	No
23.	Lot 4 DP 253552	Eugene Kavanagh	No
24.	Lot 40 DP 255616	Mahmoud Hussein and Jamila Hussein	No
25.	Lot 41 DP 255616	Paul Sammut and Diane Sammut	No
26.	Lot 43 DP 255616	Zaren Bugeja and Rose Bugeja	No
27.	Lot 44 DP 255616	Joseph Bugeja and Stephen Bugeja	No
28.	Lot 45 DP 255616	Edward Micallef, Mario Micallef, Emanuel Micallef, Gino Micallef and Alexius Micallef	No
29.	Lot 46 DP 255616	Edward Micallef, Mario Micallef, Emanuel Micallef, Gino Micallef and Alexius Micallef	No
30.	Lot 47 DP 255616	EJ Cooper & Son Pty Limited	No
31.	Lot 5 DP 658286	Twihaven Pty Limited	No
32.	Lot 9 DP 593517	Brian Michael Eveston and Susan Eveston	No



**Schedule 4**

**Development Contributions (clause 4)**

**1. Development Contributions**

(a) The Developer undertakes to provide the following Development Contributions in the manner set out in the table below;

Item	Contribution	Amount / Value	Indexation	Manner of Delivery	Timing
1.	Monetary Contribution	\$16,730,000	Yes (see clause 3 of this Schedule 4)	Cash, bank cheque or electronic funds transfer.	Pursuant to clauses 1(b) and 5 of this Schedule 4.
2.	Education Land Contribution	To be determined in accordance with clauses 7 - 9 of this Schedule 4.	No.	Dedication to the Planning Minister or Nominated Transferee of unencumbered fee simple title to the Education Land in accordance with this Schedule 4.	On the Education Land Dedication Date.

(b) The following table sets out the parts of the Monetary Contribution for each Stage of the Proposed Development.

	Monetary Contribution parts	Timing	Indicative NDA	Amount of part (subject to indexation)
1.	Stage A Land	Pursuant to clause 5 of this Schedule 4.	39 hectares	\$2,577,135
2.	Stage B Land	Pursuant to clause 5 of this Schedule 4.	40 hectares	\$2,649,894
3.	Stage C Land	Pursuant to clause 5 of this Schedule 4.	7 hectares	\$451,353
4.	Stage D Land	Pursuant to clause 5 of this Schedule 4.	25 hectares	\$1,646,348
5.	Stage E Land	Pursuant to clause 5 of this Schedule 4.	19 hectares	\$1,281,533

**Schedule 4**

	<b>Monetary Contribution parts</b>	<b>Timing</b>	<b>Indicative NDA</b>	<b>Amount of part (subject to indexation)</b>
6.	Stage F Land	Pursuant to clause 5 of this Schedule 4.	28 hectares	\$1,840,580
7.	Stage G Land	Pursuant to clause 5 of this Schedule 4.	23 hectares	\$1,525,807
8.	Stage H Land	Pursuant to clause 5 of this Schedule 4.	35 hectares	\$2,363,560
9.	Stage I Land	Pursuant to clause 5 of this Schedule 4.	36 hectares	\$2,393,790

**2. Monetary Contribution**

- (a) Subject to clause 4.2 of this deed, the parties acknowledge and agree that the Monetary Contribution is a cash contribution towards the provision of regional infrastructure within, or in the vicinity of the Box Hill North Urban Release Area or the North-West Growth Centre.
- (b) The Monetary Contribution is based on a fixed base amount of \$16,730,000, which will be subject to indexation in accordance with clause 3 of this Schedule 4.
- (c) Subject to clause 4 of this Schedule 4, the Developer must ensure that:
  - (i) the Land is subdivided:
    - A. in the Stages depicted in the precinct plan at Annexure A; and
    - B. in the sequence that the Monetary Contribution parts are set out in the table at clause 1(b) of this Schedule 4; and
  - (ii) the Monetary Contribution parts are paid according to the timing of events set out in the table at clause 1(b) of Schedule 4.

**3. Indexation of the Monetary Contribution**

On each CPI Adjustment Date until provision in full of the Monetary Contribution in accordance with clause 5 of Schedule 4, the Monetary Contribution will be adjusted by multiplying the Monetary Contribution by a factor equal to the Current CPI divided by the Base CPI.

**4. Change to the Monetary Contribution parts**

- (a) The Developer may make a written request to the Planning Minister to:
  - (i) vary the sequence in which the Monetary Contribution parts are set out in the table at clause 1(b) of this Schedule 4;
  - (ii) redistribute the indicative NDA between the Monetary Contribution parts and vary the layout of the Stages depicted in the precinct plan at Annexure A; or

**Schedule 4**

- (iii) vary the amounts in the column in the table at clause 1(b) of this Schedule 4 headed "Amount of part (subject to indexation)",

provided that:

- (iv) the sum of each of the amounts in the column in the table at clause 1(b) of this Schedule 4 headed "Amount of part (subject to indexation)" will be no less than the fixed base amount of \$16,730,000;
- (v) the sum of the amounts of the Monetary Contribution parts which have been paid (less any amount attributable to indexation) and the Monetary Contribution parts which are yet to be paid by the Developer (less any amount attributable to indexation) will be no less than the fixed base amount of \$16,730,000; and
- (vi) the number of Stages does not change.
- (b) The Planning Minister may, in her absolute discretion and by notice in writing, agree to a change requested by the Developer under clause 4(a) of this Schedule 4.
- (c) On issue of a written notice by the Planning Minister under clause 4(b) of this Schedule 4, clause 1(b) of this Schedule 4 and (if appropriate) the precinct plan at Annexure A are deemed to be varied in accordance with the notice, and the provisions of this deed will apply *mutatis mutandis*.

**5. Provision of the Monetary Contribution**

- (a) The Developer must provide to the Planning Minister the part of the Monetary Contribution for each Stage of the Proposed Development:
- (i) before any Subdivision Certificate is issued for that Stage or any other Stage of the Proposed Development for which a Monetary Contribution part has yet to be paid in full; or
- (ii) if the subdivision of the Land into that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full) is to be carried out without the need for a Subdivision Certificate, then before any of the following events occur:
- A. any application for a Complying Development Certificate is made in respect of that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full), and
- B. any Construction Certificate is issued for that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full); and
- C. that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full) is commenced; and
- D. any Occupation Certificate is issued for that Stage (or any other Stage for which a Monetary Contribution part has yet to be paid in full),

provided that the appropriate part of the Monetary Contribution (as determined in accordance with this deed) is to be paid only once for each Stage of the Proposed Development.

**Schedule 4**

- (b) The parties agree that the requirement to provide a part of the Monetary Contribution under clause 5(a) of this Schedule 4 is a restriction on the issue of:
  - (i) an Occupation Certificate within the meaning of section 109H(2) of the Planning Act;
  - (ii) a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act; and
  - (iii) a Construction Certificate, within the meaning of section 109F of the Planning Act and clause 146A of the Planning Regulation.
- (c) On the Sunset Date, the Developer must deliver to the Planning Minister the Monetary Contribution less the sum of the parts of the Monetary Contribution which the Developer has paid:
  - (i) irrespective of whether the "Timing" for delivery of any parts of the Monetary Contribution set out in the table at clause 1(b) of this Schedule 4 has passed; and
  - (ii) irrespective of whether any Stages have been commenced or completed.

**6. Education Land Contribution**

The Developer must transfer or procure the transfer of the Education Land Contribution to the Planning Minister or the Nominated Transferee by the Education Land Dedication Date in accordance with clauses 7 and 8 of this Schedule 4.

**7. Suitability of the Education Land Contribution**

- (a) The Developer has nominated as the Education Land the Nominated School Site.
- (b) Prior to the creation of the 1,500th Residential Lot or the date being 6 months before the Education Land Dedication Date (whichever is earlier), the Developer must:
  - (i) ensure that the Nominated School Site satisfies the Site Selection Criteria, and is suitable, in all respects, for the purposes of a primary school;
  - (ii) give written notice to the Planning Minister:
    - A. attaching certification from an appropriately qualified expert approved by the Planning Minister (such approval not to be unreasonably withheld) confirming that each of the Site Selection Criteria have been satisfied; and
    - B. inviting the Planning Minister or the Nominated Transferee to nominate dates for the Planning Minister or the Nominated Transferee to attend the Nominated School Site for a site inspection.
- (c) The Developer must, within 5 Business Days of a written request for access, provide access to the Nominated Transferee (if applicable), the Planning Minister, her contractors and agents to the Nominated School Site, for the purpose of the Planning Minister confirming whether or not the site meets the requirements of the Site Selection Criteria.

## Schedule 4

- (d) The Planning Minister will provide written notice to the Developer, within 20 Business Days of the date of the Planning Minister's inspection, stating:
- (i) whether or not the Nominated School Site meets the requirements of the Site Selection Criteria;
  - (ii) if applicable, the reasons why the Nominated School Site does not meet the requirements of the Site Selection Criteria;
  - (iii) if applicable, whether the outstanding requirements of the Site Selection Criteria can be resolved at the Nominated School Site; and
  - (iv) the nominated person to whom the Education Land is to be transferred (**Nominated Transferee**).
- (e) If the Planning Minister fails to provide a written notice to the Developer within the time specified in clause 7(d) of this Schedule 4, or if the written notice so provided states that the Nominated School Site does not meet the requirements of the Site Selection Criteria, the Developer may notify the Planning Minister in writing:
- (i) within 5 Business Days of the date on which the notice was due pursuant to clause 7(d) of this Schedule 4, if the Planning Minister failed to provide the notice; or
  - (ii) within 5 Business Days of receipt of the notice referred to in clause 7(d) of this Schedule 4,
- that the Parties are deemed to be in dispute as to whether the Nominated School Site meets the requirements of the Site Selection Criteria, in which event that dispute must be determined in accordance with Schedule 6.
- (f) Where the Developer accepts the Planning Minister's assessment that the Nominated School Site does not meet the requirements of the Site Selection Criteria, or it is determined pursuant to Schedule 6 that the Nominated School Site does not meet the requirements of the Site Selection Criteria, the Developer must, within 10 Business Days of the date of the notice under clause 7(d) or the date of the determination (as relevant):
- (i) nominate an alternative location within the Land for the Education Land Contribution (**Alternative School Site**), which meets the Site Selection Criteria; or
  - (ii) complete whatever works or do whatever things as are necessary to ensure that the Nominated School Site meets the requirements of the Site Selection Criteria.
- (g) Where a nomination is made by the Developer pursuant to clause 7(f)(i) of this Schedule 4, clauses 7(a) to (f) of this Schedule 4 re-apply to the Alternative School Site on the basis that all references to "Nominated School Site" are replaced with "Alternative School Site".
- (h) In determining a dispute under Schedule 6 in relation to an Alternative School Site, the appointed expert may nominate, on a joint brief from the Parties, a site which is different from any of those previously nominated under this clause 7 of this Schedule 4.
- (i) For the purposes of clause 7(h) of this Schedule 4, the joint brief from the Parties must specify that the appointed expert:
- (i) must nominate a site that forms part of the Land;

**Schedule 4**

- (ii) must:
  - A. ensure that the Alternative School Site satisfies the Site Selection Criteria; and
  - B. otherwise have regard to clause 7 of this Schedule 4, in determining the Alternative School Site; and
- (iii) must consider any other issues that either party (acting reasonably) believes the appointed expert should take into account in determining the location of the Alternative School Site.

**8. Transfer of the Education Land Contribution**

- (a) The Developer must (at its cost) prepare and register a Plan of Subdivision to create a single separate lot for the Education Land Contribution.
- (b) On or before the Education Land Dedication Date, the Developer must:
  - (i) procure the transfer of the Education Land Contribution to the Planning Minister or the Nominated Transferee for \$1;
  - (ii) deliver to the Planning Minister or the Nominated Transferee:
    - A. a form of transfer in respect of the Education Land Contribution executed by the registered proprietor of that land and in registrable form; and
    - E. the certificates of title for the Education Land Contribution;
  - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Education Land Contribution; and
  - (iv) take any other necessary action (including paying stamp duty associated with the transfer or contract for sale) to give effect to the transfer of the title of the Education Land Contribution to the Planning Minister or the Nominated Transferee free of all encumbrances and affectations (including any, charge or liability for rates, Taxes and charges) except as agreed with the Nominated Transferee and the Planning Minister.
- (c) The Developer indemnifies and agrees to keep indemnified the Planning Minister, the Planning Ministerial Corporation and the Nominated Transferee from and against all Liabilities connected in any way to any Contamination which existed on or before the date on which the Education Land Contribution is transferred to the Nominated Transferee, except insofar as the actions of the Planning Minister, the Planning Ministerial Corporation and the Nominated Transferee, or their officers, employees, agents or contractors actions, including in obtaining development consent or developing the Education land, cause, contribute to, or exacerbate the Contamination.
- (d) The Developer:
  - (i) must ensure that the Education Land Contribution is transferred to the Nominated Transferee without the Planning Minister, the Planning Ministerial Corporation or the Nominated Transferee incurring any Acquisition Cost in connection with that Education Land Contribution or its acquisition or transfer; and

## Schedule 4

- (ii) indemnifies and keeps indemnified the Planning Minister, the Planning Ministerial Corporation and the Nominated Transferee in relation to any failure to comply with this clause 8 of this Schedule 4.

### 9. Compulsory acquisition of Education Land

- (a) If the Developer does not transfer the Education Land Contribution by the Education Land Dedication Date, then without limiting any other rights or remedies which the Planning Minister may have under this deed or otherwise, the Planning Minister may elect that the Planning Minister, Planning Ministerial Corporation or the Nominated Transferee may compulsorily acquire the whole or any part of the Nominated School Site or the Alternative School Site as the Education Land in accordance with the Acquisition Act.
- (b) The Developer and the Planning Minister agree that, where the Developer is the registered proprietor of the land to be acquired under this clause 9 of Schedule 4:
  - (i) the Developer consents to the Planning Minister, Planning Ministerial Corporation or the Nominated Transferee compulsorily acquiring the whole or any part of that Land in accordance with the Acquisition Act, for the amount of \$1.00;
  - (ii) this clause 9 of Schedule 4 is an agreement between each of them for the purposes of section 30 of the Acquisition Act; and
  - (iii) in this clause 9 of Schedule 4, they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and keeps indemnified the Planning Minister, Planning Ministerial Corporation and the Nominated Transferee in respect of all Liabilities or Acquisition Costs incurred by the Planning Minister, Planning Ministerial Corporation or the Nominated Transferee in connection with:
  - (i) any acquisition (by compulsory process or otherwise) by the Planning Minister, Planning Ministerial Corporation or the Nominated Transferee of the whole or any part of the Education Land, including (without limitation):
    - A. any legal or associated costs; or
    - B. any compensation or amount payable to any person who immediately before the acquisition had an 'interest' in the Education Land within the meaning of the Acquisition Act; and
  - (ii) anything which the Planning Minister, Planning Ministerial Corporation or the Nominated Transferee, acting reasonably, does to ensure that the Education Land satisfies the Site Selection Criteria.
- (d) The parties agree that this deed operates as a deed poll in favour of the Nominated Transferee on and from the date on which the Nominated Transferee is nominated by the Planning Minister.

## Schedule 5

### Security (clause 6)

#### 1. Bank Guarantees

Each Bank Guarantee provided by the Developer under this Schedule 5 must:

- (a) name the "Minister for Planning and Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
- (b) not have an expiry date.

#### 2. Developer to provide security

- (a) The Developer acknowledges that the valuation report prepared by the Valuer, sets out the Education Land Value as at the date of this deed, on the basis that the Education Land is the Nominated School Site.
- (b) Upon execution of this deed, the Developer must provide to the Planning Minister one or more Bank Guarantees with a total face value equivalent to the sum of:
  - (i) the Monetary Contribution; and
  - (ii) 120% of the Education Land Value, as determined in the valuation specified in clause 2(a) of this Schedule 5.
- (c) If a site other than the Nominated School Site (or, if an Alternative School Site has been identified in accordance with this deed, a site other than that Alternative School Site) is identified as the Education Land for the purposes of this deed, then the Developer must provide to the Planning Minister:
  - (i) a valuation of that land, prepared by a Valuer, and approved by the Planning Minister (such approval not to be withheld unreasonably); and
  - (ii) one or more Bank Guarantees with a total face value equivalent to 120% of the value of that land; and

the Planning Minister must return the Education Land Security which she currently holds as soon as practicable after receiving the Bank Guarantees specified in clause 2(e)(ii) of this Schedule 5.

- (d) At every second CPI Adjustment Date, the Developer must provide to the Planning Minister an updated valuation of the Nominated School Site (or, if an Alternative School Site has been identified in accordance with this deed, that Alternative School Site) prepared by a Valuer, and approved by the Planning Minister (such approval not to be withheld unreasonably).
- (e) Subject to clause 3 of this Schedule 5, the Developer must ensure that, at any given time, the value of the security which the Planning Minister holds under this deed is for a total of:
  - (i) the amounts of Monetary Contribution Security which have not yet been provided to the Planning Minister; and
  - (ii) the amount being 120% of the value of the Education Land as determined in the most recent valuation prepared under clause 2(d) of this Schedule 5,



## Schedule 5

so that the Planning Minister is always in a position to make claims on the security which the Planning Minister would be entitled to make under this deed in the circumstances described in clause 4 of this Schedule 5.

- (f) If the value of the security which the Planning Minister holds is for less than the total described in clause 2(e) of this Schedule 5 (for example, if the total increases as a result of a CPI adjustment or because of an updated valuation under clause 2(d)), the Developer must provide further Bank Guarantees to cover the shortfall in value within 10 Business Days after the shortfall occurs.

### 3. Planning Minister entitled to retain security

- (a) The Planning Minister will be entitled to retain the Monetary Contribution Security in an amount which equals the sum of the parts of the Monetary Contribution (including any interest) which the Developer has not yet provided in accordance with this deed.
- (b) The Planning Minister will be entitled to retain the Education Land Security until the Developer has satisfied in full its obligations relating to the provision of the Education Land Contribution in accordance with this deed.

### 4. Calls upon security

- (a) The Planning Minister may call upon any Monetary Contribution Security where:
  - (i) the Developer has failed to comply with any obligation in this deed to provide a part of the Monetary Contribution (including any interest) at or before the time specified in this deed; or
  - (ii) the Sunset Date has passed, and the Developer has not delivered all Monetary Contribution parts;
  - (iii) the Planning Minister has called on the Education Land Security under clause 4(b) of this Schedule 5 and the monies obtained from that security are insufficient to cover the costs, expenses, Acquisition Cost or Liabilities referred to in clause 4(b) of this Schedule 5.

and the Planning Minister may retain monies obtained from that security and apply those monies towards the costs and expenses incurred by the Planning Minister in rectifying any failures by the Developer, or to cover any shortfall.

- (b) The Planning Minister may call upon the Education Land Security where:
  - (i) the Developer has failed:
    - A. to provide the Education Land Contribution by the date required under this deed, or
    - B. otherwise to comply with this deed in relation to the Site Selection Criteria or the Education Land Contribution; or
  - (ii) the Planning Minister incurs any Acquisition Cost or Liabilities in connection with the Education Land Contribution (including any compensation or other amount payable in connection with an acquisition of the Education Land),

and the Planning Minister may retain monies obtained from any Education Land Security and apply those monies towards the costs and expenses incurred by the Planning Minister in rectifying any such failures by the Developer or providing

## Schedule 5

reasonable compensation for any failures or recovering any Acquisition Cost or Liabilities (as the case may be).

- (c) If the Planning Minister:
- (i) calls upon any security in accordance with this clause 4 of this Schedule 5; and
  - (ii) applies all or part of the monies obtained from that call in the manner authorised in this clause 4 of this Schedule 5,
- then:
- (iii) the Planning Minister must notify the Developer in writing of the amount of the call; and
  - (iv) promptly after receiving that notice, the Developer must provide to the Planning Minister replacement security to ensure that the Developer complies with clause 2(c) of this Schedule 5.

### 5. Release of the Bank Guarantees

- (a) If:
- (i) the amount of security which the Planning Minister holds exceeds the amount of security which the Planning Minister is entitled to hold under:
    - A. clause 3(a) of this Schedule 5 for the Monetary Contribution Security; or
    - B. clause 3(b) of this Schedule 5 for the Education Land Security,

**(Excess Security Situation)**, then;
  - (ii) the Developer may provide the Planning Minister with a written notice containing:
    - A. evidence that an Excess Security Situation has occurred;
    - B. a request for return of the Bank Guarantees for the security to which the Excess Security Situation relates; and
    - C. evidence that, if those Bank Guarantees are returned, the Developer will still comply with clause 2(c) of this Schedule 5.
- (b) If the Planning Minister is satisfied that:
- (i) an Excess Security Situation has occurred; and
  - (ii) if the Planning Minister returns those Bank Guarantees, the Developer will still comply with clause 2(c) of this Schedule 5,

then the Planning Minister must promptly return those Bank Guarantees (less any costs, charges, duties and Taxes payable), or the remainder of the monies secured by those Bank Guarantees, to the Developer.

## Schedule 6

### Expert Determination (Schedule 6)

#### 1. Application of this Schedule 6

- (a) This Schedule applies if the parties cannot agree on the suitability of the Nominated School Site or the Alternative School Site (as the case may be) under clause 7 of Schedule 4, or if there is a dispute as to the value of the Nominated School Site or the Alternative School Site (as the case may be) under clause 2(c) or 2(d) of Schedule 5.
- (b) A party who wishes to refer a matter for expert determination in accordance with this deed must provide a written notice to the other parties which specifies the issues which that party wishes to have determined by an expert in accordance with this Schedule 6.

#### 2. Agreement on or nomination of expert

- (a) If a notice has been given under clause 1(b) of this Schedule 6, the parties must use all reasonable endeavours to agree on a person who is independent of all the parties, and is qualified in fields which are relevant to the determination of the issues specified in the notice, as the expert to determine the issues .
- (b) If the parties have not reached agreement on an expert within 10 Business Days after a notice has been given under clause 1(b) of this Schedule 6:
  - (i) any party may, by written notice (a copy of which the party must provide to the other parties), request the president of the Law Society of NSW or the president's delegate to nominate an expert; and
  - (i) if a notice is issued in accordance with clause 1.1(c)(i) of this Schedule 6, each of the Planning Minister and the Developer may propose three persons for the president to consider in nominating an expert.

#### 3. Appointment of expert

- (a) The parties must use their best endeavours to finalise the terms of the expert's retainer as soon as possible and, in any event, within 10 Business Days after the expert has been agreed or nominated under clause 2 of this Schedule 6.
- (b) If the expert appointed under clause 3(a) of this Schedule 6 dies or resigns, or the parties agree to replace the expert, before the expert issues a determination under this Schedule 6, then clauses 2 and 3(a) of this Schedule 6 re-apply as if a notice was given under clause 1(a) of Schedule 6 in respect of the same issues on the day on which all parties become aware that the expert has died or resigned or they agree to replace the expert.
- (c) If the expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the expert's capacity to act independently or impartially:
  - (i) the expert must inform the parties immediately; and
  - (i) in much circumstances, the appointment of the expert will terminate unless the parties agree otherwise; and

## Schedule 6

- (ii) if they agree to replace the expert, the parties must promptly do all things necessary to do so, unless the expert resigns before the parties have terminated the expert's engagement.

### 4. **Role and powers of the expert**

The parties acknowledge and agree that the expert should, and they will use their best endeavours to ensure that expert will:

- (a) act as an expert and not as an arbitrator;
- (b) act independently of the parties, and act fairly and impartially as between the parties, giving each party a reasonable opportunity of presenting its case and countering any arguments of any opposing party, and a reasonable opportunity to make submissions on the matters for expert determination and the procedure for the expert determination;
- (c) proceed in any matter he or she thinks fit;
- (d) determine whether it is appropriate to co-opt legal or other technical expertise to assist his or her coordination of the dispute;
- (e) conduct any investigation which he or she considers necessary to resolve the dispute;
- (f) examine such documents, and interview such persons, as he or she may require; and
- (g) make such directions for the conduct of the expert determination as he or she considers necessary.

### 5. **Steps leading to commencement of expert determination**

The parties agree to comply with any procedural directions the expert may give in the preparation for or in the course of a preparatory conference

### 6. **Representation and attendance**

During any conference or any stage of the expert determination, the parties may be represented by a legal representative and other persons with information or knowledge relevant to the expert determination.

### 7. **Obligation of parties**

The parties shall take all reasonable steps for the expeditious and cost-effective conduct of the expert determination. These steps include, but are not limited to, complying without delay with any direction or ruling by the expert as to the procedural or evidentiary matters.

### 8. **Confidentiality**

The parties must do, and must ensure that their representatives do, and must use their best endeavours to ensure that the expert and his or her representatives do, the following:

- (a) keep confidential any information which is provided to the expert and the other parties in the course of the expert determination process on the basis that it is confidential; and
- (a) not disclose or otherwise use that information other than for the purposes of the expert determination.

## Schedule 6

### 9. Determination of expert

- (a) The parties acknowledge and agree that determination of the expert, in order to be valid under this deed:
- (i) must be in writing, accompanied by reasons;
  - (ii) subject to subclause (b) below, will be final and binding on the parties; and
  - (iii) is not an arbitration within the meaning of any statute.
- (b) If the determination of the expert contains a clerical mistake, an error arising from an accidental inclusion or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect of form, then:
- (i) the party which noticed the relevant matter must notify the other parties in writing promptly,
  - (ii) the parties must use their best endeavours to ensure that the expert corrects the determination within 10 Business Days after they receive notice under clause 9(b) of this Schedule 6; or
  - (iii) if the expert does not correct the determination within that time, the parties may agree to appoint a substitute expert in accordance with the procedures established by clause 2 of this Schedule 6.

### 10. Costs

Each party will:

- (a) bear its own costs in respect of any preparation and/or representation at any expert determination; and
- (a) pay one-half of the expert's costs and any incidental costs of facilitating the expert determination.

### 11. No suspension of contractual obligations

The referral of a dispute for expert determination under this Schedule 6 does not suspend the contractual obligations of the parties under this deed.

### 12. No prejudice

This Schedule 6 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.

**EXECUTED AS A DEED**

**Signed sealed and delivered** for and on behalf of the Planning Minister for Planning in the presence of:

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

\_\_\_\_\_  
Signature of the Planning Minister for Planning

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Minister for Planning

**Signed sealed and delivered** for and on behalf of EJ Cooper & Son Pty Ltd ACN 000 269 750 in accordance with section 127 of the Corporations Act 2001:

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Print Name

Annexure A



