

CLAYTON UTZ

## Planning Agreement

The Minister for Planning

ABN 38 755 709 681

Minister

Rose Property Group Pty Limited

ACN 123 982 141

Developer

Coastal Hamlets Pty Limited

ACN 100 126 994

Landowner

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Our reference 15266/15992/80074328

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**Agreement made at** **on**

**Parties** **The Minister for Planning ABN 38 755 709 681** of Level 34 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000

("Minister")

**Rose Property Group Pty Limited ACN 123 982 141** of 47-51 Riley Street, Woolloomooloo NSW 2011

("Developer")

**Coastal Hamlets Pty Limited ACN 100 126 994** of 47-51 Riley Street, Woolloomooloo NSW 2011

("Landowner")

**Background**

- A. The Landowner owns the Land and the Developer intends to develop the Land.
- B. The Consent Authority has amended the Major Projects SEPP in relation to the Development, and has issued the Concept Plan Approval.
- C. The Developer has lodged or will lodge Project Approval Applications and Development Applications in relation to the Development on the Land.
- D. By way of this deed, the Landowner and the Developer offer to enter into a planning agreement on the terms and conditions of this deed.
- E. The Landowner has agreed to guarantee the Developer's performance under this deed.

**Operative provisions**

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**1. Definitions and Interpretation**

**1.1 Definitions**

The meaning of capitalised terms and the provisions relating to the interpretation of this deed are as follows:

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

**Application** means an application for any Approval.

**Approval** means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the Act approvals, certificates, Construction Certificates, Compliance Certificate, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any variations to them) which may be required by law for the Development or for the commencement or carrying out of works contemplated by this deed.

**Assignment and Dealing Terms** means the obligations imposed on the relevant Parties under, and by virtue of Schedule 10.

**ASX Listing Rules** means the listing rules established by ASX Limited ACN 008 624 691 to, inter alia, govern the admission of entities to the official list, quotation of securities, suspension of securities from quotation and removal of entities from the official list.

**Authority** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under the Building Professionals Act 2005 (NSW).

**Authorised Officer** means, in the case of any Party, a director or secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them, or any other person appointed by that Party to act as an Authorised Officer for the purpose of this deed.

**Bank Bill Rate** means, the average bid rate for Bills having a tenor of 90 days as displayed on the "BBSY" page of the Reuters Monitor System on the day the relevant payment is due (**Due Date**). However, if the average bid rate is not displayed by 10:30 am on the Due Date or if it is displayed but there is an obvious error in that rate, **Bank Bill Rate** means:

- (a) the rate the Minister calculates as the average of the bid rates quoted at approximately 10:30 am on that day by each of five or more institutions chosen by the Minister which provide rates for display on the "BBSY" page of the Reuters Monitor System for Bills of a 90 day tenor which are accepted by that institution (after excluding the highest and the lowest, or in the case of equality, one of the highest and one of the lowest bid rates); or
- (b) where the Minister is unable to calculate a rate under paragraph (a) because it is unable to obtain the necessary number of quotes, the rate set by the Minister in good faith at approximately 10:30 am on that day, having regard, to the extent possible, to the rates otherwise bid for Bills of a 90 day tenor at or around that time.

The rate calculated or set must be expressed as a percentage rate per annum and be rounded up to the nearest fourth decimal place.

The Minister may calculate a rate under paragraph (a) or (b) before 11:00 am on the Due Date, but if the average bid rate appears on the "BBSY" page by 11:00 am and there is no obvious error in it, the "BBSY" page rate applies as the Bank Bill Rate under this deed despite any calculation by the Minister under paragraph (a) or (b).

**Bill** means a bill of exchange as defined in the *Bills of Exchange Act 1909* (Cth), but does not include a cheque.

**Business Day** means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

**Claim** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at Law, in equity, under statute or otherwise.

**Commencement Date** means the date that the Planning Agreement commences to operate.

**Company** means a private or a public company.

**Compliance Certificate** means a certificate referred to in section 109C(1)(a) of the Act.

**Complying Development Certificate** means a complying development certificate referred to in section 85 of the Act.

**Construction Certificate** means a certificate issued under section 109C(1)(b) of the Act.

**Concept Plan** means the concept plan forming part of the Concept Plan Approval.

**Concept Plan Approval** means the "Catherine Hill Bay and Gwandalan Concept Plan MP 06\_0330" approved by the Minister in respect of the Land (amongst other land), including any Modification of it.

**Concept Plan Approval Application** means the Application pursuant to section 75M of the Act made by the Developer to the Consent Authority for Approval to the Concept Plan.

**Consent Authority** means, in relation to an Application, the Authority having the function to determine that Application.

**Control** means in relation to an entity, the capacity to determine the composition of the board of that entity (if applicable), the capacity to appoint or remove the trustee or responsible entity of that entity (if applicable) and/or the capacity to determine the outcome of any decisions made by or in respect of the entity, including in relation to that entity's financial and operating policies, and **Controlled** has a corresponding meaning.

**Corporations Act** means the *Corporations Act 2001* (Cwlth).

**Costs** includes costs, charges and expenses, including those incurred in connection with advisers.

**Development** means the process of designing, obtaining all necessary Approvals, construction and selling all or any part of the Land including without limitation, the carrying out of subdivision, infrastructure works and improvements to the Land.

**Development Application** means each Application made or to be made under Part 4 of the Act, by or on behalf of the Developer, for consent to develop the whole or any part of the Land comprising Hamlet 3, Hamlet 4, Hamlet 5, Hamlet 6 or Hamlet 7 for residential purposes.

**Development Consent** means Approval by the Consent Authority under Part 4 of the Act in response to a Development Application, including any Modification of it.

**Development Contributions** means the payment of the Infrastructure Contribution Amount and the provision of those other contributions specified in Table 2 of Schedule 3.

**Development Contributions Schedule** means the schedule and timetable for each of the Development Contributions set out in Schedule 3 of this deed.

**Director-General** means the Director-General of the Department of Planning from time to time.

**Dispute Resolution Procedures** means the procedures imposed on the relevant Parties under Schedule 7.

**Encumbrance** means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit a prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or

- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

An **Event of Default** occurs immediately upon:

- (a) an Insolvency Event occurring in respect of the Developer or the Landowner; or  
(b) a breach by the Developer or the Landowner of a provision of this deed.

**Explanatory Note** means the note exhibited with a copy of this deed, when this deed is made available for inspection by the public in accordance with the Act, as contemplated by clause 25E of the *Environmental Planning & Assessment Regulation 2000*.

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

**GST** has the meaning it has in the GST Act.

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

**Guarantee and Indemnity** means the guarantee and indemnity set out in Schedule 9.

**Guaranteed Obligations** means all of the Developer's obligations under this deed.

**Hamlet** means a part of the Land, being Hamlet 1, Hamlet 2, Hamlet 3, Hamlet 4, Hamlet 5, Hamlet 6 or Hamlet 7, as relevant.

**Hamlet 1** means that part of the Land as identified as "Hamlet 1" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 69 Urban Lots, consistent with the Concept Plan Approval.

**Hamlet 2** means that part of the Land as identified as "Hamlet 2" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 108 Urban Lots, consistent with the Concept Plan Approval .

**Hamlet 3** means that part of the Land as identified as "Hamlet 3" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 83 Urban Lots, consistent with the Concept Plan Approval.

**Hamlet 4** means that part of the Land as identified as "Hamlet 4" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 144 Urban Lots, consistent with the Concept Plan Approval.

**Hamlet 5** means that part of the Land as identified as "Hamlet 5" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 77 Urban Lots, consistent with the Concept Plan Approval.

**Hamlet 6** means that part of the Land as identified as "Hamlet 6" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 71 Urban Lots, consistent with the Concept Plan Approval.

**Hamlet 7** means that part of the Land as identified as "Hamlet 7" on the plan attached as Annexure A, intended by the Developer to comprise a maximum of 48 Urban Lots, consistent with the Concept Plan Approval.

**Infrastructure Contribution Amount** means the infrastructure contribution amount referred to in Table 1 of Schedule 3.

**Insolvency Event** means:

- (a) a "**controller**" (as defined in section 9 of the *Corporations Act 2001 (Cth)*), trustee, administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a corporation;
- (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b) other than under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001 (Cth)*;
  - (ii) winding up a corporation; or
  - (iii) proposing or implementing a scheme of arrangement;
- (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of an individual or his estate under any Insolvency Provision;
- (e) a moratorium of any debts of a person, a personal insolvency agreement or any other assignment, composition or arrangement (formal or informal) with a person's creditors, or any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee, is ordered, declared, or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
- (f) a person becomes, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be, insolvent or unable to pay its debts; or
- (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of a person.

**Insolvency Provision** means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act*); or
- (b) it has a Controller appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a

reconstruction or amalgamation while solvent on terms approved by the Minister);  
or

- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, in each case in connection with that person, which is could result in any of (a), (b) or (c) above; or
- (e) it is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the Foreshore Authority reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Interest Period** means 30 days, or such other period agreed between the Parties.

**Land** means the land described in Schedule 2, and as shown on the plan attached as Annexure A.

**Law** means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority,

presently applying or as they may apply in the future.

**LEADR** means Lawyers Engaged in Alternative Dispute Resolution or, if no such organisation exists, a similar organisation reasonably selected by the Parties to a dispute.

**Legislation** means any statute, rule, ordinance, code, regulation, proclamation, by-law or consent by an Authority.

**LPI** means Land and Property Information NSW or any similar department that may be established from time to time.

**Major Projects SEPP** means the State Environmental Planning Policy (Major Projects) 2005.

**Major Projects SEPP Amendment** means the State Environmental Planning Policy (Major Projects) 2005 (Amendment 26), which amended Schedule 3 of the Major Projects SEPP to include a new Part 14 ("South Wallarah Peninsula Site").

**Minister** means the New South Wales Minister for Planning.

**Modification** means:

- (a) in relation to the Concept Plan Approval or a Project Approval, a "modification" within the meaning of section 75W of the Act; and
- (b) in relation to a Development Consent, a "modification" within the meaning of section 96 of the Act.

**NSW** means the State of New South Wales.

**Occupation Certificate** means a certificate referred to in section 109C(1)(c) of the Act and which may be interim or final as provided for in section 109C(2) of the Act.

**Parent** of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
  - (i) controls the composition of the board of directors of the first mentioned person; or
  - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
  - (iii) holds or has a Relevant Interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a Unit Trust, a person who:
  - (i) controls the right to appoint the trustee; or
  - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
  - (iii) holds or has a Relevant Interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

A person is also a Parent of another person if a part of this definition is satisfied in respect of each Unit Trust and Company in any chain of Unit Trusts or Companies connecting that person and the other person.

**Party** means a party to this deed, including their respective successors and assigns.

**Part 4A Certificate** means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the Act.

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

**Planning Agreement** means the planning agreement that comes into operation upon satisfaction of the requirements set out in clause 2(c), comprising the form and content of this deed.

**Practical Completion** means either:

- (a) where the expression "Practical Completion" is defined in a Road Works Agreement, the definition of "Practical Completion" in that agreement; or

- (b) where the expression "Practical Completion" is not defined in a Road Works Agreement, that stage in the execution of the RTA Works under the relevant Road Works Agreement when:
- (i) the RTA Works (including any associated works necessary for public access) have been completed and are ready for their intended public use and occupation, except for minor omissions and minor defects which:
    - (A) do not impede use of the RTA Works by the public for the continuous safe passage of vehicular traffic and pedestrians;
    - (B) will not prejudice the convenient and safe use of the RTA Works during rectification; and
    - (C) the RTA's authorised representative determines that the Developer has reasonable grounds for not rectifying prior to public use and occupation;
  - (ii) the relevant inspection and testing plan required to be complied with under the Road Works Agreement has been complied with and any other tests necessary to be carried out and passed before the RTA Works, or a part thereof, is used and occupied by the public have been carried and passed and all test results and conformance data identified in the relevant inspection and testing plan has been provided to the RTA;
  - (iii) all relevant legislative requirements in respect of the RTA Works have been carried out or satisfied;
  - (iv) all documents, certifications and information required under the relevant Road Works Agreement which, in the opinion of the RTA, are essential for the use, operation and maintenance of the RTA Works have been supplied, including all shop drawings and draft as-built drawings, all original manufacturers' or suppliers' warranties required by the Road Works Agreement, all Approvals required to be obtained have been obtained from relevant Authorities and all other material as requested by the RTA; and
  - (v) with the approval of the RTA, the Developer has commissioned into operation the Works, including all plant incorporated into the Works and any traffic signalling equipment and demonstrated to the RTA that the commissioning has been successful,

on the basis that any expression used in this paragraph (b) that is not otherwise defined in this deed shall have that meaning usually given to that expression by the RTA in a Road Works Agreement.

**Project Approval** means Approval by the Minister pursuant to section 75J of the Act, in response to a Project Approval Application, including any Modification of it.

**Project Approval Application** means each Application made or to be made pursuant to section 75J of the Act, by or on behalf of the Developer, for approval to develop the whole or any part of the Land comprising Hamlet 1 or Hamlet 2 for residential purposes.

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

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

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

**Related Body Corporate** has the meaning given to that term in section 9 of the Corporations Act.

**Release and Discharge Terms** means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 5.

**Relevant Interest** means the power:

- (a) to exercise, or to control the exercise of, the right to vote attached to a share or unit;  
or
- (b) to dispose of, or to exercise control over the disposal of, a share or unit.

**Review or Replacement Procedures** means the procedures set out in Schedule 6.

**RTA Works** means such road works as are agreed by the Developer and the RTA, which the Parties anticipate will comprise the upgrade of the Pacific Highway and Montefiore Parkway intersection, consisting of the construction of a seagull intersection with part signalisation for northbound vehicles and raised kerbs.

**Road Works Agreement** means a works authorisation deed (or other legally binding agreement approved by the Minister in her absolute discretion) between the Developer (or another entity nominated by the Developer) and the RTA which governs the carrying out of the RTA Works.

**RTA** means the Roads and Traffic Authority of NSW or any similar department that may be established from time to time.

**State** means the State of New South Wales.

**Subdivision Certificate** means a certificate issued under section 109C(1)(d) of the Act.

**Taxes** means taxes, levies, imposts, charges and duties imposed by any Authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of the Minister.

**Unit Trust** has the same meaning as "unit trust scheme" in the *Duties Act 1997* (NSW).

**Urban Lot** means a lot within a Hamlet, created by the registration at the LPI of a Plan of Subdivision, which lot is intended to be developed, subject to Project Approval or Development Consent, by construction of residential premises including any lot within that Hamlet that is capable of being further subdivided to create such a lot.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) if more than one person is identified as the Minister, that expression refers to them, and the obligations of the Minister under this deed bind them, jointly and severally;

- (c) **"person"** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **"includes"** in any form is not a word of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency;
- (l) the Schedules and Annexures to this deed form part of this deed; and
- (m) if a party to this deed is made up of more than one person:
  - (i) an obligation of those persons is joint and several;
  - (ii) a right of those persons is held by each of them severally; and
  - (iii) any references to that party is a reference to each of those persons separately, so that (for example), a representation, warranty or undertaking is given by each of them separately.

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## 2. Status of this Agreement

- (a) This deed applies to the Development on the Land.
- (b) Until the Planning Agreement operates, this deed constitutes an irrevocable offer from the Landowner and the Developer to enter into the Planning Agreement if Project Approval is granted in respect of Hamlet 1 or Hamlet 2.
- (c) The Planning Agreement operates only if:
  - (i) Project Approval granted in respect of Hamlet 1 or Hamlet 2 is subject to a condition imposed under section 93I(3) of the Act requiring the Planning Agreement to be entered into;
  - (ii) the Planning Agreement is entered into as required by clause 25C(1) of the Regulation; and

- (iii) the Minister executes this deed.
- (d) The Minister must notify the Developer and the Landowner immediately after the Minister executes this deed and promptly provide the Developer and the Landowner with the deed as executed by the Minister.

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### **3. Planning Agreement under the Act**

The Planning Agreement constitutes a planning agreement within the meaning of section 93F of the Act.

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### **4. Application of the Planning Agreement**

The Planning Agreement applies to:

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

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### **5. Development Contributions**

The Developer will pay or provide, or procure the payment or provision of, the Development Contributions in accordance with the Development Contributions Schedule and the terms of this deed.

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### **6. Acknowledgements**

The Parties agree that:

- (a) the Minister acknowledges to the Developer that it is the Minister's present intention that the Infrastructure Contribution Amount which the Developer pays to the Minister in cash will be made available for use or expenditure as a regional infrastructure contribution;
- (b) to the extent that a Development Contribution may be described in, or implied by this deed, including clause 6(a), as having a particular use (intended or otherwise), the Developer and the Landowner acknowledge and agree that the Minister:
  - (i) has not made any warranty or representation that a Development Contribution must, or will, be used for, or expended on, a particular purpose by any Authority to which the Minister transmits a Development Contribution; and
  - (ii) has no obligation to use or expend a Development Contribution for a particular purpose; and
  - (iii) is not required to repay to the Developer, and the Developer is not entitled to a repayment of, any Development Contribution; and
  - (iv) has no obligation to monitor or follow up the use or expenditure of such a Development Contribution including if the Minister transmits a Development Contribution to any Authority.

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## **7. Security and enforcement**

### **7.1 Security**

In consideration of the Minister entering into this deed, the Landowner has agreed to provide security to the Minister for performance of the Developer's obligations under this deed on the terms and conditions of the Guarantee and Indemnity.

### **7.2 Enforcement**

- (a) This deed may be enforced by either Party in any court of competent jurisdiction.
- (b) The Developer and the Landowner each covenant with the Minister that they will not rescind or terminate this deed or make a claim that this deed is void, voidable, illegal or unenforceable because a condition of Project Approval requires the Developer or the Landowner to enter into a planning agreement on the terms of this deed.
- (c) The Developer indemnifies the Minister against any liability, loss, Claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with any breach of the Developer's or the Landowner's obligations under clause 7.2(b).
- (d) This indemnity is a continuing obligation, separate and independent from the Developer's other obligations under this deed and survives completion, rescission or termination of this deed.
- (e) It is not necessary for the Minister to incur expense or to make any payment before enforcing this indemnity.
- (f) The Developer must pay on demand any amount it must pay under this indemnity.

### **7.3 No prevention to enforcement**

For the avoidance of doubt, nothing in this deed prevents:

- (a) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this deed or any matter to which this deed relates; and
- (b) the Minister from exercising any function under any Legislation, including the Act, or any other Legislation or Law relating to the enforcement of any aspect of this deed or any matter to which this deed relates.

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## **8. Application of sections 94, 94A and 94EF of the Act to the Development**

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

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## **9. Interests in the Land**

### **9.1 Ownership**

The Landowner represents and warrants to the Minister that as at the date of this deed, it is the legal and beneficial owner of the Land.

## 9.2 Registration of the Planning Agreement

- (a) The Landowner and the Developer agree that they will procure the registration of the Planning Agreement entered into pursuant to clause 2(c), under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act;
- (b) The Landowner and the Developer, at their own expense, will promptly after the Planning Agreement comes into operation, take all practical steps, and otherwise do anything that the Minister reasonably requires, to procure:
  - (i) the consent of each person who:
    - A. has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - B. is seized or possessed of an estate or interest in the Land; and
  - (ii) the execution of any documents; and
  - (iii) the production of the relevant duplicate certificates of title,  
to enable the registration of the Planning Agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the register for the Land in accordance with section 93H of the Act;
- (c) The Landowner and the Developer, at their own expense, will take all practical steps, and otherwise do anything that the Minister reasonably requires:
  - (i) to procure the lodgement of the Planning Agreement with the Registrar-General of the LPI as soon as reasonably practicable after the Planning Agreement comes into operation but in any event, no later than 60 Business Days after that date; and
  - (ii) to procure the registration of the Planning Agreement by the Registrar-General of the LPI, either in the relevant folios of the register for the Land (or in the General Register of Deeds if the Planning Agreement relates to land not under the *Real Property Act 1900* (NSW)) as soon as reasonably practicable after the Planning Agreement is lodged for registration but, in any event, no later than 20 Business Days after the date on which the Landowner and the Developer procure the lodgement of the Planning Agreement with the Registrar-General of the LPI.

## 9.3 Release and discharge of this deed

The Minister agrees to release and discharge the Planning Agreement on the Release and Discharge Terms.

## 9.4 Caveat

- (a) Each of the Landowner and the Developer acknowledge and agree that:
  - (i) the Minister is deemed to have acquired, and the Landowner is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Minister has a sufficient interest in the Land in respect of which to lodge with the LPI a caveat notifying that interest; and

- (ii) it will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Minister;
  - (iii) it will indemnify and keep indemnified the Minister against all Claims made against the Minister (including, without limitation, Claims made by the Landowner, the Developer or any other person who has an estate or interest in any part of the Land registered under the Real Property Act, by virtue of or in connection to the Minister lodging a caveat in the relevant folio of the Register for the Land.
- (b) The Minister must, at the Landowner's and the Developer's cost (with any such cost to be reimbursed to the Minister promptly on demand), lodge with the LPI a withdrawal of caveat in respect of all the Land within 5 Business Days after the Landowner and the Developer comply with clause 9.2(a).

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## **10. Review or replacement of this deed**

The Parties agree that this deed will be reviewed or modified in the circumstances, and in accordance with, the Review or Replacement Procedures.

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## **11. Dispute resolution**

The Parties agree that any disputes under or in relation to this deed will be resolved in accordance with the Dispute Resolution Procedures.

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## **12. GST**

### **12.1 Interpretation**

In this clause 12:

- (a) except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) 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 12; and
- (c) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

### **12.2 Intention of the parties**

Without limiting the operation of this clause 12, 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;
- (b) no tax invoices will be exchanged between the parties; and
- (c) no additional amounts will be payable on account of GST.

### 12.3 Reimbursement

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

### 12.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 12.

### 12.5 Additional amount of GST payable

Subject to clause 12.7, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this deed:

- (a) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on that supply ("**GST Amount**"), and:
  - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
  - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (b) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 12.5(a).

### 12.6 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.5 and clause 12.7), varies from the additional amount paid by the Recipient under clause 12.5, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12.6(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.5.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

### 12.7 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 12.5 applies is a taxable supply made by the Recipient (the

"**Recipient Supply**"), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 12.5 shall:

- (i) if the Supplier is the Minister, be reduced by the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of the Recipient Supply; and
  - (ii) in any other case, 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 12.5 (or the time at which such GST Amount would have been payable in accordance with clause 12.5 but for the operation of clause 12.7(a)).

## 12.8 No merger

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

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## 13. Overdue payments

- (a) Each of the Developer and the Landowner agrees to pay ("**the payer**") interest to the Minister ("**the payee**") on any amount payable by it under this deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the payee, calculated on daily balances. The rate to be applied to each daily balance is the rate 3% per annum above the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised by the payee at intervals which the payee determines from time to time, or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.
- (c) The payer's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this deed.
- (d) If a liability under this deed becomes merged in a judgment or order, then the payer agrees to pay interest to the payee on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 13.

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## 14. Release and indemnity

- (a) The Developer agrees that the obligation to provide the Development Contributions is at the risk of the Developer. The Developer releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Developer's obligation to provide the Development Contributions.
- (b) The Developer indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Development Contributions in accordance with this deed and/or the Minister exercising the Minister's rights under or by virtue of this deed,

except to the extent caused or contributed to by the Minister's negligent act or default under this deed.

- (c) The indemnity in clause 14(b) is a continuing obligation, independent of the Developer's other obligations under this deed and continues after this deed ends.

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## **15. Costs**

- (a) The Developer agrees to pay the Costs incurred by the Minister in relation to the negotiation, preparation, execution, advertising, stamping and registration of this deed, including, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.
- (b) The Developer agrees to pay or reimburse the Minister on demand for:
- (i) Costs of the Minister in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the actual or contemplated enforcement or preservation of any rights under this deed) waiver, variation, release or discharge in connection with this deed; and
  - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this deed or a payment or receipt or any transaction contemplated by this deed,

including in each case, without limitation, legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

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## **16. Explanatory Note**

The Explanatory Note must not be used to assist in construing the Planning Agreement.

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## **17. Effect of Schedulised terms and conditions**

The Parties agree to comply with the terms and conditions contained in the Schedules to this deed as if those rights and obligations were expressly set out in full in the operative parts of this deed.

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## **18. General provisions**

The Parties agree to the miscellaneous and general provisions set out in Schedule 11.

**Executed** as a deed.

## Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THE PLANNING AGREEMENT
<p><b>Planning instrument and/or Development Application</b> - (Section 93F(1))</p> <p>The Developer has:</p> <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Project Approval Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<p><b>Description of the land to which the Planning Agreement applies</b> - (Section 93F(3)(a))</p>	<p>The whole of the Land.</p>
<p><b>Description of change to the environmental planning instrument to which the Planning Agreement deed applies</b> - (Section 93F(3)(b))</p>	<p>Not applicable.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement</b> - (Section 93F(3)(c))</p>	<p>See Schedules 3 to 4 inclusive.</p>
<p><b>Applicability of section 94 of the Act</b> - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is not excluded.</p>
<p><b>Applicability of section 94A of the Act</b> - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is not excluded.</p>
<p><b>Applicability of section 94EF of the Act</b> - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is not excluded.</p>
<p><b>Mechanism for dispute resolution</b> - (Section 93F(3)(f))</p>	<p>See clause 11 and Schedule 7.</p>
<p><b>Enforcement of the Planning Agreement</b> - (Section 93F(3)(g))</p>	<p>See clause 7 and Schedule 9.</p>
<p><b>Registration of the Planning Agreement</b> (Section 93F(3)(g))</p> <p>The Parties agree that the Planning Agreement will be registered in accordance with clause 9.2.</p>	<p>Yes</p>

<b>SUBJECT and SUB-SECTION OF THE ACT</b>	<b>THE PLANNING AGREEMENT</b>
<b>No obligation to grant consent or exercise functions - (Section 93F(9))</b>	No obligation. See paragraph 8 of Schedule 11.

## Schedule 2 - Land

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### 1. Title

The whole of the land described in the following table:

<b>Lot</b>	<b>Deposited Plan</b>	<b>Registered Proprietor</b>
100	1129872	Landowner
101	1129872	Landowner

## Schedule 3 - Development Contributions Schedule

### 1. Development Contributions

The Developer undertakes to pay, make or provide the following Development Contributions as set out and provided for in the Tables below.

**Table 1 of Schedule 3 - Infrastructure Contribution**

Column 1: Infrastructure Contribution Amount	Column 2: Date Infrastructure Contribution Amount is payable
<b>Item 1</b>	
<p>The Infrastructure Contribution Amount is <b>\$2,211,000</b>, payable in instalments as contemplated in Column 2</p>	<p>The Infrastructure Contribution Amount is payable in instalments.</p> <p>Each instalment of the Infrastructure Contribution Amount is payable in respect of a Hamlet, as follows:</p> <ul style="list-style-type: none"> <li>(a) <b>Hamlet 1 - \$254,265</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(b) <b>Hamlet 2 - \$397,980</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(c) <b>Hamlet 3 - \$305,855</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(d) <b>Hamlet 4 - \$530,640</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(e) <b>Hamlet 5 - \$283,745</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(f) <b>Hamlet 6 - \$261,635</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3);</li> <li>(g) <b>Hamlet 7 - \$176,880</b> (as that amount is increased by movements in the CPI as provided for in this Schedule 3).</li> </ul> <p>Each instalment of the Infrastructure Contribution Amount (relevant to a Hamlet) is to be paid on or prior to the date of issue of a Subdivision Certificate in respect of that part of the Land which includes the 1st Urban Lot to be created within that Hamlet.</p>

**Table 2 of Schedule 3 - Roads Contribution**

Column 1	Column 2
<b>Development Contribution</b>	<b>Intended use</b>
Item 2. Roads Contribution  RTA Works to be undertaken in accordance with a Road Works Agreement with the RTA, within the time and as contemplated by paragraph 3.1 of Schedule 4.	<b>Roads Contribution</b>

**In respect of indexation by CPI the following applies:**

Each instalment of the Infrastructure Contribution Amount is to be increased by movements in the CPI in accordance with the following formula (provided that, at all times, each instalment of the Infrastructure Contribution Amount is never less than its nominal dollar value as at the date of this deed):

**A** means the dollar (\$) amount specified in Column 3 of Table 1 in this Schedule 3 payable prior to indexation by CPI.

**CPI** means the published Consumer Price Index (Sydney - All Groups), or if that index is no longer published, then any other index which, in the reasonable opinion of the Minister, is a similar index.

**CPIA** means the amount determined in accordance with the following formula (which may be a negative amount where D is greater than C):

$$\text{CPIA} = \frac{A \times C}{D} - A$$

where:

C = the most recent CPI prior to the date that payment is due to be made; and

D = the most recent CPI before the Commencement Date.

## Schedule 4 - Development Contribution Procedures

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### 1. Developer's undertakings

#### 1.1 Undertakings

The Developer:

- (a) undertakes to pay the Infrastructure Contribution Amount set out in Table 1 of Schedule 3 to the Minister, in accordance with paragraph 2.1 of this Schedule 4;
- (b) undertakes to carry out the RTA Works and comply with all its obligations under or pursuant to the Road Works Agreement with the RTA (or such other legally binding agreement approved by the Minister in her discretion), as provided in paragraph 3.1 of this Schedule 4;
- (c) undertakes to respond within a reasonable period to the Minister's questions, queries and enquiries (acting reasonably) regarding the progress of the Development, to the extent such matters relate to the payment, or provision, of a Development Contribution.

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### 2. Infrastructure Contribution Amount

- (a) The Developer must pay each instalment of the Infrastructure Contribution Amount in respect of each Hamlet on the date referred to in Item 1 of Column 2 of Table 1 of Schedule 3 which corresponds to that Hamlet.
- (b) Any payment required to be made under, or by virtue of paragraph 2.1(a) of this Schedule 4, must be made by the relevant party by bank cheque payable to the other party.

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### 3. Road Contributions

#### 3.1 Road Works

- (a) The Developer must:
  - (i) enter into a Road Works Agreement with the RTA (on terms acceptable to both the Developer and the RTA), in respect of the carrying out and completion of the RTA Works, unless otherwise agreed in writing by the Director-General in his absolute discretion; and
  - (ii) achieve Practical Completion of the RTA Works,  
  
by the date of issue of a Subdivision Certificate which relates to the 1st Urban Lot to be created in respect of the Land.
- (b) The Developer must notify the Minister promptly following entry into an agreement as contemplated by paragraph 3.1(a)(i), and provide the Minister with a copy of that agreement.
- (a) The Developer must comply with the terms and conditions of that agreement, including any requirements to provide security and achieve Practical Completion of the RTA Works.

- (b) The Developer must procure the RTA to provide a letter to the Minister on or prior to the date specified in paragraph 3.1(a), issued by or on behalf of the Chief Executive of the RTA, confirming Practical Completion of the RTA Works.

## Schedule 5 - Release and Discharge Terms

### 1.1 Release and Discharge Terms

- (a) Once the Developer has:
  - (i) paid an instalment of the Infrastructure Contribution Amount in respect of a Hamlet; and
  - (ii) achieved Practical Completion of the RTA Works under a Road Works Agreement entered into by the Developer in respect of the RTA Works;

as required by this deed, and any default by the Developer or the Landowner under the Planning Agreement has been remedied by the Developer or the Landowner (as relevant) or waived by the Minister, the Minister must promptly, at the request and cost of the Developer:

- A. provide a release and discharge of the Planning Agreement to the extent that the Planning Agreement affects that Hamlet; and
  - B. do all things necessary to enable the extinguishment of the Planning Agreement from title of the Urban Lots within that Hamlet.
- (b) For the avoidance of doubt, the Minister is not required to provide a release and discharge of the Planning Agreement in respect of any Hamlet (or procure the removal of registration of the Planning Agreement from title of the Urban Lots within any Hamlet) unless the Minister is satisfied that:
  - (i) the Developer has fully satisfied its obligations to pay the relevant instalment of the Infrastructure Contribution Amount payable in respect of that Hamlet in accordance with the Development Contributions Schedule; and
  - (ii) the Landowner and the Developer are not otherwise in default of their obligations under this deed at the time of the Developer's request.

## **Schedule 6 - Review or Replacement Procedures**

The Parties may agree to review this deed. Any review or modification will be conducted in the circumstances and in the manner determined by the Parties. For clarity, no such review or replacement shall have any force or effect unless and until formal legal documents are signed by the Parties.

## Schedule 7 - Dispute resolution

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### 1. Notice of Dispute

- (a) If a dispute between any of the Parties arises in connection with this deed or its subject matter, then any Party may give to the other Parties a notice of dispute in writing adequately identifying and providing details of the dispute.
- (b) The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter, the subject of the dispute, unless each Party indemnifies the other Parties against cost, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

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### 2. Further steps required before proceedings

- (a) Any dispute between the Parties arising in connection with this deed or its subject matter must as a condition precedent to the commencement of litigation first be the subject of mediation by a mediator agreed from time to time by each Party to the dispute.
- (b) If the Parties to the dispute cannot agree on a mediator within 10 Business Days of receipt by the relevant Party of the notice referred to in paragraph 2(a), either Party may request LEADR to appoint a mediator.
- (c) Each party must use its best efforts to resolve the dispute by a mediation procedure to be agreed upon by each Party to the dispute.
- (d) If mediation does not result in the resolution of the dispute within 30 Business Days of the notice referred to in paragraph 2(a) (or such longer period as the Parties agree in writing), then either Party is entitled to commence litigation in respect of that dispute.

---

### 3. Disputes for expert determination

If the mediation referred to in paragraph 2 has not resulted in settlement of the dispute, any Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4, such expert to act in accordance with the requirements of this Schedule 7.

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### 4. Choice of expert

- (a) A dispute to be referred to an expert in accordance with paragraph 3 must be determined by an independent expert in the relevant field:
  - (i) agreed between and appointed jointly by the Parties; or
  - (ii) in the absence of agreement within 5 Business Days of the agreement of the Parties to refer the matter to expert determination under paragraph 3, appointed by the President or other senior officer for the time being of the body administering the relevant field.

- (b) If the Parties cannot agree as to the relevant field, any one Party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.

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## **5. Requirements for expert**

- (a) The expert appointed to determine a dispute:
  - (i) must have a technical understanding of the issues in contest;
  - (ii) must not have a significantly greater understanding of one Party's business or operations which might allow the other side to construe this greater understanding as a bias or a conflict of interest;
  - (iii) must inform the Parties before being appointed the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (b) The Parties must enter into an agreement with the expert appointed under this Schedule 7 setting out the terms of the expert's determination and the fees and expenses payable to the expert.

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## **6. Directions to expert**

In reaching a determination in respect of a dispute under paragraph 3, the independent expert must give effect to the intent of the Parties entering into this deed and the Planning Agreement.

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## **7. Expert not arbitrator**

The expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) proceed in any manner as the expert thinks fit but must observe the rules of natural justice but not the rules of evidence, not accept verbal submission unless both Parties are present and on receipt of written submissions from one Party ensure that a copy of such submission is given promptly to the other Party; and
- (c) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
- (d) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions; and
- (f) issue a final certificate stating the expert's determination; and
- (g) act with expedition with a view to issuing the final certificate as soon as practicable.

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## **8. Compliance with directions**

The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

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## **9. Expert may commission reports**

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants.

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## **10. Expert may convene meetings**

- (a) The expert will hold a meeting with all the Parties present to discuss the dispute.
- (b) The meeting must be conducted in a manner which the expert considers appropriate.
- (c) The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (d) The Parties agree that a meeting under this paragraph is not a hearing and is not an arbitration.

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## **11. Final determination of expert**

- (a) The Parties agree that the final determination by an expert will be final and binding upon them.
- (b) The expert or mediator will not be liable in respect of the expert determination or mediation, except in the case of fraud or misfeasance by the expert or mediator.
- (c) The Parties agree to release and indemnify the expert from and against all Claims, except in the case of fraud or misfeasance by the expert, which may be made against the expert by any person in respect of the expert's appointment to determine the dispute.

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## **12. Other courses of action**

If the mediation referred to in paragraph 2 or the expert determination required or agreed under paragraph 3 has not resulted in resolution of the dispute, any one Party may take whatever course of action it deems appropriate (including commencing and prosecuting any proceedings in any court of competent jurisdiction) for the purpose of resolving the dispute.

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## **13. Confidentiality of information**

- (a) The Parties agree, and must procure that, the mediator and expert agrees as a condition of his or her appointment:

- (i) subject to paragraph (ii) below, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
  - (ii) not to disclose any confidential documents, information and other material except:
    - A. to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13; or
    - B. if required by Law or the ASX Listing Rules to do so; or
  - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (i) views expressed or proposals or suggestions made by a Party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
  - (ii) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
  - (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

**Schedule 8 - Not used**

## Schedule 9 - Guarantee and Indemnity

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### 1. Guarantee and Indemnity

#### 1.1 Consideration

The Landowner acknowledges that Minister is acting in reliance on the Landowner incurring obligations and giving rights under the guarantee and indemnity provided under this Schedule 9.

#### 1.2 Guarantee

The Landowner unconditionally and irrevocably guarantees to the Minister the due and punctual performance and observance by the Developer of the Guaranteed Obligations.

#### 1.3 Liability

If the Developer does not comply with the Guaranteed Obligations on time and in accordance with this deed, then the Landowner agrees to comply with those obligations on demand from Minister. A demand may be made whether or not the Minister has made demand on the Developer.

#### 1.4 Claims against the Landowner

- (a) The Minister may claim against the Landowner under this guarantee and indemnity even though the Minister has not first enforced or exhausted any of their rights against the Developer for payment, which includes, without limitation, making demands and taking proceedings until judgment.
- (b) Any amount which the Landowner is liable to pay the Minister under paragraph 1.5 must be paid within 5 Business Days of a demand being made by the Minister on the Landowner.

#### 1.5 Indemnity

- (a) The Landowner indemnifies Minister against any liability or loss arising from, and any Costs it incurs, if:
  - (i) the Developer does not, or is unable to, comply with (whether in full or in part) the Guaranteed Obligations (including the obligation to pay money); or
  - (ii) an obligation the Developer would otherwise have under this deed (including an obligation to pay money) is found to be unenforceable; or
  - (iii) the Guaranteed Obligations are not, or have never been, enforceable against the Landowner or is not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the obligations under paragraph 1.2 being void, voidable or unenforceable and whether or not the Minister knew, or should have known, anything about that transaction; or
  - (iv) a representation or warranty by the Developer in this deed is found to have been incorrect or misleading when made or taken to be made; or

- (v) the Developer disregards an order by a court of competent jurisdiction for specific performance of the Guaranteed Obligations other than by reason of the wrongful repudiation or default by the Minister; or
  - (vi) the Developer becomes Insolvent.
- (b) The Minister need not incur expense or make payment before enforcing this right of indemnity under this paragraph 1.5.
- (c) The Landowner agrees to pay amounts due under this paragraph 1.5 on demand from the Minister.

## **1.6 Extent of guarantee and indemnity**

- (a) The guarantee in paragraph 1.2 and the indemnity in paragraph 1.5 are continuing obligations and extend to all of the Guaranteed Obligations. The Landowner waives any right it has of first requiring the Minister to commence proceedings or enforce any other right against the Developer or any other person before claiming from the Landowner under the guarantee and indemnity provided in this Schedule 9.
- (b) Performance by the Landowner to or in favour of the Minister will be a good discharge as against the Developer.
- (c) This guarantee and indemnity is security for the whole of the money payable under the guarantee and indemnity provided in this Schedule 9.

## **1.7 Acknowledgment**

The Landowner acknowledges that, before entering into the guarantee and indemnity provided in this Schedule 9, it:

- (a) was given a copy of this deed and had full opportunity to consider their provisions; and
- (b) is responsible for making itself aware of the financial position of the Developer.

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## **2. Interest**

### **2.1 Obligation to pay interest**

The Landowner agrees to pay interest on any amount under this guarantee and indemnity which:

- (a) is not paid by it on the due date for payment; and
- (b) is not otherwise incurring interest.

The interest accrues daily from (and including) the first day of an Interest Period to (but excluding) the last day of an Interest Period and is calculated on actual days elapsed and a year of 365 days.

The Landowner agrees to pay interest under this paragraph on demand from the Minister.

### **2.2 Rate of interest**

The rate of interest applying to each daily balance is the rate 2% per annum above the Bank Bill Rate.

## **2.3 Compounding**

Interest payable under paragraph 2.1 which is not paid when due for payment may be added to the overdue amount by the Minister at intervals which the Minister determines from time to time or, if no determination is made, every 30 days. Interest is payable on the increased overdue amount at the rate set out in paragraph 2.2 and in the manner set out in paragraph 2.1.

## **2.4 When Interest Periods begin and end**

The first Interest Period begins on the date that any amount under this guarantee and indemnity is due for payment which is not paid. Each subsequent Interest Period begins on the day when the preceding Interest Period ends. An Interest Period which would otherwise end on a day which is not a Business Day ends on the next Business Day (unless that day falls in the following month, in which case the Interest Period ends on the previous Business Day). However, an Interest Period ends when all amounts due to the Minister under this guarantee and indemnity are paid.

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## **3. Payments**

The Landowner agrees to make payments under this guarantee and indemnity:

- (a) in full without set-off or counterclaim, and without any deduction in respect of Taxes unless prohibited by law; and
- (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds; and
- (c) on the basis that the Minister is irrevocably authorised to apply payments in any manner it sees fit.

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## **4. No merger**

This guarantee and indemnity does not merge with or adversely affect, and is not adversely affected by, any of the following:

- (a) any other guarantee, indemnity, mortgage, charge or other Encumbrance, or other right or remedy to which the Minister is entitled; or
- (b) a judgment which the Minister obtains against the Landowner, the Developer or any other person in connection with this planning agreement.

The Minister may still exercise its rights under this guarantee and indemnity as well as under the judgment, mortgage, charge or other Encumbrance or the right or remedy.

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## **5. Rights of Minister are protected**

The rights given to the Minister under this guarantee and indemnity, and the Landowner's liabilities under it, are not affected by any act or omission, including mistakes, of the Minister or any other person. For example, those rights and liabilities are not affected by:

- (a) any act or omission (including mistakes):
  - (i) varying or replacing this planning agreement;
  - (ii) granting time to, compounding or compromising with or wholly or partially releasing or giving a concession (such as more time to pay) to,

- the Developer, provided that the Landowner obtains the benefit of such release or concession;
- (iii) granting time to, compounding or compromising with or wholly or partially releasing or giving a concession (such as more time to pay) to, any person who gives a guarantee or indemnity in connection with any of the obligations of the Developer;
  - (iv) by which a person becomes a Landowner after the date of this guarantee and indemnity;
  - (v) by which the obligations of any person who guarantees any of the Developer's obligations (including obligations under this guarantee and indemnity) may become unenforceable;
  - (vi) by which any person who was intended to guarantee any of the Developer's obligations does not do so, or does not do so effectively;
  - (vii) by which a person who is co-surety or co-indemnifier is discharged under an agreement or by operation of law;
- (b) a person dealing in any way with this planning agreement or this guarantee and indemnity;
  - (c) any person including the Landowner or the Developer becoming Insolvent;
  - (d) changes in the membership, name or business of any person;
  - (e) acquiescence or delay by the Minister or any other person;
  - (f) a change in the legal capacity, rights or obligations of a person;
  - (g) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
  - (h) judgment against the Developer or another person;
  - (i) the receipt of a dividend after a person becomes Insolvent or the payment of a sum or sums to the account of the Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
  - (j) any part of the obligations guaranteed and indemnified under this guarantee and indemnity being irrecoverable;
  - (k) subject to paragraph 9, an assignment of rights in connection with the obligations guaranteed and indemnified under this guarantee and indemnity;
  - (l) the acceptance or repudiation or other termination in connection with the obligations guaranteed and indemnified under this guarantee and indemnity;
  - (m) the invalidity or unenforceability of an obligation or liability of any person for any reason, including by operation of law; or
  - (n) any variation or novation of a right of the Minister or material alteration of this deed, in respect of the Developer, a Landowner or another person.

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## 6. Landowner's rights are suspended

As long as any Guaranteed Obligation is required, or may be required, to be complied with in connection with this guarantee and indemnity, the Landowner may not, without the Minister's consent:

- (a) reduce its liability under this guarantee and indemnity by claiming that it or the Developer or any other person has a right of set-off or counterclaim against the Minister; or
- (b) claim or receive the benefit of another guarantee, indemnity, mortgage, charge or other Encumbrance of which the Minister has the benefit.
- (c) claim an amount from the Developer, or another Landowner (including a person who has signed this guarantee and indemnity as a "Landowner"), under a right of indemnity in connection with this planning agreement; or
- (d) claim in competition with the Minister an amount in the liquidation, administration or insolvency of the Developer or of another Landowner of any of the obligations of the Developer (including a person who has signed this guarantee and indemnity as a "Landowner").

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## 7. Reinstatement of rights

Under law relating to liquidation, administration, insolvency or the protection of creditors, a person may claim that a transaction (including a payment) in connection with the Guaranteed Obligations or other money payable under this paragraph is void or voidable. If a claim is made and upheld, conceded or compromised, then:

- (a) the Minister is immediately entitled as against the Landowner to the rights in connection with this guarantee and indemnity to which it was entitled immediately before the transaction; and
- (b) on request from the Minister, the Landowner agrees to do anything (including signing any document) to restore to the Minister any mortgage, charge or other Encumbrance (including this guarantee and indemnity) held by it from the Landowner immediately before the transaction.

### 7.2 Landowner's right to prove

Following the occurrence of an Event of Default and whilst it subsists, the Landowner for valuable consideration irrevocably appoints Minister and each Authorised Officer of Minister severally as its attorneys.

Each attorney may:

- (a) in the name of the Landowner or the attorney do anything which the Landowner may lawfully do to exercise a right of proof of the Landowner following the Developer becoming Insolvent (including, without limitation, executing agreements and instituting, conducting and defending legal proceedings and receiving any dividend arising out of that right); and
- (b) delegate its powers (including, without limitation, this power of delegation) to any person for any period and may revoke a delegation; and

- (c) exercise or concur in exercising its powers even if the attorney has a conflict of duty in exercising its powers or has a direct or personal interest in the means or result of that exercise of powers.

The Landowner agrees to ratify anything done by an attorney or its delegate in accordance with this paragraph 7.

The attorney need not account to the Landowner for any dividend received on the exercise of that right of proof until the Minister has received all of the money payable under this guarantee and indemnity.

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## **8. Costs**

### **8.1 Landowner agree to pay**

- (a) The Landowner agrees to pay or reimburse the Minister on demand all duties, fees, Taxes and charges which are payable in connection with this guarantee and indemnity or a payment or receipt or other transaction contemplated by it.
- (b) The Landowner agrees to pay or reimburse the Minister's reasonable Costs in making, exercising, preserving or enforcing rights and doing anything in respect of the Landowner under this guarantee and indemnity.

### **8.2 Items included in Costs**

The Landowner agrees that the Costs referred to in this guarantee and indemnity include reasonable legal Costs in accordance with any written agreement as to legal costs (whether or not the Developer or Landowner are parties to that agreement) or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor and own client basis.

### **8.3 Payment of third party losses**

The Landowner agrees to pay an amount equal to any liability or loss and any Costs suffered or incurred by:

- (a) any attorney appointed by the Minister under this guarantee and indemnity; or
- (b) any employee, officer, agent or contractor of the Minister in the course of preserving, exercising or enforcing rights (or considering such).

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## **9. Dealing with interests**

- (a) The Landowner must not assign any of its rights or obligations under this guarantee and indemnity without the prior consent of the Minister.
- (b) The rights and obligations of the Landowner and the Minister under this guarantee and indemnity are not capable of assignment except in accordance with paragraphs 9(a).
- (c) The Landowner agrees to act reasonably in providing its consent to any assignment by the Minister where that assignment is to the same person who takes an assignment of the Minister's rights under this deed with the consent of the Developer.

## Schedule 10 - Assignment and Dealing Terms

### 1.1 Landowner's right to sell Land

- (a) The Landowner must not sell, transfer or dispose of the whole or any part of the Land (other than an Urban Lot) unless, before it sells, transfers or disposes of any such part of the Land to another person ("**Transferee**"):
- (i) it satisfies the Minister acting reasonably that the proposed Transferee is financially capable (including, without limitation, by providing financial statements for, and credit standing of, the proposed transferee) of complying with such of the Landowner's obligations under this deed as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
  - (ii) the rights of the Minister under this deed are not diminished or fettered in any way;
  - (iii) the Transferee signs a deed in form and substance acceptable to the Minister containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Landowner (including obligations which arose before the transfer or assignment); and
  - (iv) the Minister is satisfied that it holds appropriate security to secure the Landowner's obligations under this deed, including, without limitation, a guarantee and indemnity in respect of the Transferee's obligations to comply with the Required Obligations (if so required by the Minister);
  - (v) any default by the Landowner or the Developer has been remedied by the Landowner or waived by the Minister; and
  - (vi) the Landowner and the Transferee pay the Minister's reasonable Costs in relation to that assignment.

### 1.1 Minister's right to assign

The Minister:

- (b) may assign its rights under this deed without the Landowner's or the Developer's consent; and
- (c) may require the Landowner and/or the Developer to enter into a deed in form and substance acceptable to the Minister containing provisions under which the transferee and the Landowner and/or Developer agree to comply with the terms and conditions of this deed; and
- (d) will pay the other Parties' reasonable Costs in relation to that assignment.

### 1.2 No change in control

A person may only become or cease to be a Parent of the Landowner or the Developer with the Minister's consent provided that before that event occurs:

- (e) the Landowner or the Developer (whichever is relevant) satisfies the Minister acting reasonably that the Landowner or the Developer (whichever is relevant), as Controlled by the new Parent ("**New Parent**"), will have the capability, experience

and expertise to carry out the proposed Development and to satisfy the Landowner's or the Developer's (whichever is relevant) obligations under this deed ("**Required Obligations**");

- (f) the New Parent signs a deed in form and substance acceptable to the Minister containing provisions under which:
  - (i) the New Parent agrees to comply with the Required Obligations as if it were the Landowner or the Developer (whichever is relevant) (including obligations which arose before the transfer or assignment) with respect to the land being sold, transferred or disposed of; and
  - (ii) the New Parent acknowledges and agrees that the rights of the Minister under this deed are not diminished or fettered in any way;
- (g) any default by the Landowner or the Developer has been remedied by the Landowner or the Developer or waived by the Minister; and
- (h) the Landowner or the Developer (whichever is relevant) and the New Parent pay the Minister's reasonable Costs in relation to that consent.

## Schedule 11 - General terms

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### 1. Notices

#### 1.1 Form

Any notice, consent, information, application or request that must or may be given or made to a Party under this deed is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out below; or
- (b) faxed to that Party at its fax number set out below:

Minister

Address: 22-33 Bridge Street  
Sydney, NSW, 2000

Telephone: (02) 9228 6111

Fax: (02) 9228 6195

Attention: Director-General

Developer

Address: 51 Riley Street, Woolloomooloo

Telephone: 8302 1400

Fax: 8302 1444

Attention: Nick Jackman

Landowner

Address: 51 Riley Street, Woolloomooloo

Telephone: 8302 1400

Fax: 8302 1444

Attention: Bryan Rose

#### 1.2 Change of address

If a Party gives another Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

#### 1.3 Receipt

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address;

- (b) if it is sent by post, 2 Business Days after it is posted; or
- (c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

#### **1.4 Receipt - next Business Day**

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day or after 5pm on any Business Day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

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### **2. Approvals and Consent**

Except as otherwise set out in this deed, and subject to any statutory obligations, the Minister may give or withhold an approval or consent to be given under this deed in her absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give her reasons for giving or withholding consent or for giving consent subject to conditions.

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### **3. Assignment and dealings**

None of the Parties to this deed may assign or otherwise deal with its rights under this deed or allow any interest in them to arise or be varied in each case unless stated otherwise in this deed.

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### **4. Entire Agreement**

This deed contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, anything said or done by another Party, or by an Authorised Officer, agent or employee of that Party, before the Planning Agreement was executed, except as permitted by Law.

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### **5. Further Acts**

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

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### **6. Governing Law and Jurisdiction**

This deed is governed by the Law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

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### **7. Joint and individual liability and benefits**

Except as otherwise set out in this deed, any agreement, covenant, representation or warranty under this deed by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

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## **8. No fetter**

Nothing in this deed is to be construed as requiring an Authority to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing this deed imposes any obligation on a Consent Authority to:
  - (i) grant development consent or project approval; or
  - (ii) exercise any function or power under the Act in relation to a change, or a proposed change, in an environmental planning instrument.

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## **9. Representations and warranties**

- (a) The Parties represent and warrant that they have power to enter into this deed and comply with their obligations under this deed and that entry into this deed will not result in the breach of any Law.
- (b) The Parties agree that the Minister enters into this deed for and on behalf of the State of New South Wales and for the benefit of the State Government as a juristic entity.

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## **10. Severability**

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

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## **11. Modification**

No modification of this deed will be of any force or effect unless it is in writing and signed by the Parties as a deed.

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## **12. Waiver**

- (a) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another Party.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

---

**13. Planning Agreement not confidential**

The Parties agree that the terms of this deed and the Planning Agreement are not confidential and this deed and the Planning Agreement may be treated as a public document and exhibited or reported without restriction by any Party.

**Executed as a deed**

**Executed by Rose Property Group Pty Limited ACN 123 982 141** in accordance with section 127 of the *Corporations Act* by or in the presence of:

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

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed by Coastal Hamlets Pty Limited ACN 100 126 994** in accordance with section 127 of the *Corporations Act* by or in the presence of:

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

\_\_\_\_\_  
Name of Secretary/other Director in full

**Signed by The Honourable Kristina Keneally M.P.**

Minister for Planning for the State of New South Wales

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

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

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
The Honourable Kristina Keneally M.P.  
Minister for Planning

# Annexure A - Plan

