

# Planning Agreement

**The Minister for Planning**

ABN 38 755 709 681

Minister

**Dandaloo Pty Limited as trustee for the Development Trust**

ABN 42 256 128 029

Land Owner

The Clayton Utz contact for this document is  
**Gary Best and Chloe Dexter on +61 2 9353 4000**

Clayton Utz  
Lawyers  
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia  
PO Box H3 Australia Square Sydney NSW 1215  
T +61 2 9353 4000 F +61 2 8220 6700

**[www.claytonutz.com](http://www.claytonutz.com)**

Our reference 15266/15343/80084835

Legal\303505243.2 - AGREED FORM

## Contents

<b>1.</b>	<b>Definitions and Interpretation .....</b>	<b>1</b>
1.1	Definitions .....	1
1.2	Interpretation .....	12
<b>2.</b>	<b>Status of this Deed .....</b>	<b>12</b>
2.1	Commencement of Planning Agreement and Deed Poll .....	12
2.2	Status of offer .....	13
<b>3.</b>	<b>Planning Agreement under the Act .....</b>	<b>13</b>
<b>4.</b>	<b>Application of this Deed .....</b>	<b>14</b>
<b>5.</b>	<b>Development Contributions .....</b>	<b>14</b>
<b>6.</b>	<b>No warranty, representation or obligation .....</b>	<b>14</b>
<b>7.</b>	<b>Security and enforcement .....</b>	<b>14</b>
7.1	Security .....	14
7.2	Enforcement .....	15
7.3	No prevention to enforcement .....	15
<b>8.</b>	<b>Application of s94, s94A and s94EF of the Act to the Development .....</b>	<b>15</b>
8.1	Application of sections 94, 94A and 94EF of the Act .....	15
8.2	Benefits under this Deed .....	15
<b>9.</b>	<b>Interests in the Land .....</b>	<b>16</b>
9.1	Ownership .....	16
9.2	Registration of this Planning Agreement .....	16
<b>10.</b>	<b>Review or Replacement of this Deed .....</b>	<b>16</b>
<b>11.</b>	<b>Dispute Resolution .....</b>	<b>16</b>
<b>12.</b>	<b>GST .....</b>	<b>16</b>
12.1	Interpretation .....	16
12.2	Reimbursements .....	16
12.3	Additional amount of GST payable .....	17
12.4	Variation .....	17
12.5	Exchange of non-monetary consideration .....	17
12.6	No merger .....	18
<b>13.</b>	<b>Overdue payments .....</b>	<b>18</b>
<b>14.</b>	<b>Release and indemnity .....</b>	<b>18</b>
<b>15.</b>	<b>Explanatory Note .....</b>	<b>19</b>
<b>16.</b>	<b>Effect of Scheduled terms and conditions .....</b>	<b>19</b>
<b>17.</b>	<b>General provisions .....</b>	<b>19</b>
	<b>Schedule 1 - Section 93F Requirements .....</b>	<b>20</b>
	<b>Schedule 2 - Land .....</b>	<b>22</b>

<b>Schedule 3 - Development Contributions Schedule .....</b>	<b>23</b>
<b>Schedule 4 - Development Contribution Procedures .....</b>	<b>24</b>
<b>Schedule 5 - Development Contributions Timetable .....</b>	<b>32</b>
<b>Schedule 6 - Review or Replacement Procedures .....</b>	<b>34</b>
<b>Schedule 7 - Dispute resolution .....</b>	<b>35</b>
<b>Schedule 8 - Security Arrangements .....</b>	<b>39</b>
<b>Schedule 9 - Assignment and Dealing Terms .....</b>	<b>45</b>
<b>Schedule 10 - Default .....</b>	<b>47</b>
<b>Schedule 11 - Costs .....</b>	<b>51</b>
<b>Schedule 12 - General terms .....</b>	<b>52</b>
<b>Annexure A - LEP .....</b>	<b>57</b>
<b>Annexure B - Indicative Cobbitty Road Works Plan .....</b>	<b>74</b>
<b>Annexure C - Explanatory Note .....</b>	<b>76</b>
<b>Annexure D - Proposed Development Timetable .....</b>	<b>82</b>

Deed made at

*Sydney*

on

*27<sup>th</sup> June 2011*

**Parties**

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

**Dandaloo Pty Limited as trustee for the Development Trust ABN 42 256 128 029** of 560 New South Head Road, Double Bay, NSW 2028 ("**Land Owner**")

**Background**

- A. The Land Owner owns the Land.
- B. The Land Owner intends to develop the Land.
- C. The Land Owner sought a new environmental planning instrument (being the LEP) for the purposes of, inter alia, amending the Camden Local Environmental Plan No 74 - Harrington Park.
- D. The 2010 LEP has been made and the LEP has been repealed.
- E. The Land Owner's proposal for the Land includes the making of Development Applications for the Development in accordance with the 2010 LEP.
- F. This deed records a irrevocable offer by the Land Owner to the Minister (pursuant to clause 2.1(a)), and, from the date the Planning Agreement commences to operate (pursuant to clause 2.1(b)), constitutes an agreement between the Land Owner and the Minister that the Land Owner will pay monetary contributions, or provide other material public benefits, or a combination of them, in connection with the 2010 LEP on the terms and conditions of this deed.

**Operative provisions**

---

**1. Definitions and Interpretation**

**1.1 Definitions**

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

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

"**Actual Area**" means the total area (measured in hectares) of the Land which Development Consents and any other approvals which may be required under an Environmental Law in respect of the Land together allow to be developed for Allotments.

"**Actual Security Ratio**" means at any time, the ratio, expressed as a percentage, of:

- (a) the Development Contributions Amount; to
- (b) the Value of the Security.

"**Agreed Heritage Works Amount**" means the amounts specified in Part A of item 1 of the table in Schedule 3 and Part B of item 1 of the table in Schedule 3.

"**Agreed RTA Road Works Amount**" means the amount specified in item 3 of column 1 of the table in Schedule 3.

**"Agreed Vegetation Conservation Works Amount"** means the amount specified in item 2 of column 1 of the table in Schedule 3.

**"Allotment"** means a lot forming part of the Land identified in any Development Application for subdivision of the whole, or any part, of the Land which lot is intended to be developed, subject to development consent and any approval which may be required under any other Environmental Law, by construction of a single dwelling house.

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

**"Approval"** means any approvals, consents, modifications, certificates under Part 4A of the Act, project or concept plan approvals under Part 3A of the Act, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences, conditions or requirements (and any modifications or other variations to them) which may be required by law for the commencement and carrying out, as applicable, of the relevant Contribution Works and the Cobbitty Road Works (if the Land Owner and the Minister agree that the Land Owner must undertake those works pursuant to paragraph 3 of Schedule 4).

**"Assignment and Dealing Terms"** means the obligations imposed on the relevant Parties under, and by virtue of, Schedule 9.

**"Authority"** means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an "accredited certifier" as that term is defined in the Act.

**"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).

**"Bank Guarantee"** means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking on demand.

**"Business Day"** means any day on which banks are open for business generally in Sydney, except for Saturday or Sunday or a day which is a public holiday in Sydney.

**"Certificate of Practical Completion"** means a certificate issued by the Certifier certifying Practical Completion of the relevant Contribution Works.

**"Certifier"** means such person with the appropriate qualifications as is agreed by the Parties.

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

**"Cobbitty Road Contribution Amount"** means the amount referred to in item 4 of column 1 of the table in Schedule 3 (subject to indexation as provided for in that item).

**"Cobbitty Road Works"** means the works to upgrade part of Cobbitty Road the design of such upgrade works to be:

- (a) consistent with the Indicative Cobbitty Road Works Plan; and
- (b) developed and finalised by the Land Owner in accordance with the Cobbitty Road Works Agreement.

**"Cobbitty Road Works Agreement"** means the Works Authorisation Deed - Private Financing & Construction between Council and the Land Owner dated 1 July 2008 as varied or amended from time to time, including any variation required by paragraph 3(g) of Schedule 4.

**"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.

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

**"Contribution Amounts"** means the amount set out in item 4 (if the Land Owner does not elect to carry out the Cobbitty Road Works or the Minister does not approve such election, and in that case, subject to indexation as provided for in that item) and item 5 of column 1 of the table in Schedule 3 as adjusted from time to time in accordance with this Deed.

**"Contribution Works"** means the works described in items 1, 2, 3 and 4 (if the Land Owner elects to carry out the Cobbitty Road Works and the Minister approves such election) in column 1 of the table in Schedule 3.

**"Costs"** means external costs, charges and expenses, including those incurred in connection with advisers.

**"Costs Difference"** has the meaning given to that term in paragraph 3(i)(ii) of Schedule 4.

**"Council"** means Camden Council.

**"Council Planning Agreement"** means the voluntary planning agreement between the Land Owner and the Council in respect of, inter alia, the Vegetation Conservation Works dated 22 August 2008.

**"Date For Practical Completion"** means:

- (a) in respect of a Vegetation Conservation Works Portion, the date on which the Land Owner requests the Final Land Owner Subdivision Certificate;
- (b) in respect of a Heritage Contribution Works Portion, the earlier of the date:
  - (i) set out in the Heritage Agreement for that Heritage Contribution Works Portion as the last date by which that Heritage Contribution Works Portion must be carried out and completed; and
  - (ii) on which the Land Owner requests the Final Land Owner Subdivision Certificate; and
- (c) in respect of the RTA Road Works, the earlier of the date:
  - (i) set out in the RTA Road Works Agreement as the last date by which those road works must be carried out and completed; and
  - (ii) the date on which the Land Owner requests the Final Land Owner Subdivision Certificate;
- (d) in relation to the Cobbitty Road Works (if the Minister and the Land Owner agree that those works are to be undertaken pursuant to paragraph 3 of Schedule 4) the earlier of:
  - (i) the date set out in the Cobbitty Road Works Agreement as the last date by which those road works must be carried out and completed; and
  - (ii) the date on which the Land Owner requests the Final Land Owner Subdivision Certificate; and
  - (iii) the date being the 4th anniversary of the date of this Deed.

**"DECCW"** means the NSW Department of Environment, Climate Change and Water.

**"Deed Poll"** means the deed poll made by the Land Owner for the benefit of the Minister dated **11 MARCH, 2011**.

**"Default Date"** means the date of a Default Notice.

**"Default Notice"** means a notice given by the Minister to the Land Owner pursuant to paragraph 1.4 of Schedule 10.

**"Department"** means the NSW Department of Planning.

**"Development"** means the development described in item 3 of Schedule 2.

**"Development Application"** has the meaning given to that term in the Act.

**"Development Consent"** has the meaning given to that term in the Act.

**"Development Contributions"** means the Contribution Amounts and Contribution Works.

**"Development Contributions Amount"** means, at any time on and from the date the Planning Agreement commences operation in accordance with clause 2.1(b), the aggregate of all amounts specified for each Development Contribution item in column 1 of the table in Schedule 3 (which amounts (for the purpose of this definition), except to the extent the amount

*Book.*  
*LM*  
*SM*

of any part of any Contribution Amount has been paid by the Land Owner at the relevant date, will be as adjusted from time to time in accordance with the provisions of this Deed), less:

- (a) the amount of any part of any Contribution Amounts already paid to the Minister;
- (b) either:
  - (i) the amount determined by the Minister from time to time, acting reasonably, taking into account any material provided to the Minister by the Land Owner for this purpose, as the amount by which the amount referred to in item 1 of column 1 of Schedule 3 (as adjusted from time to time in accordance with the provisions of this Deed) exceeds the costs still to be expended to achieve Practical Completion of each Heritage Contribution Works Portion at that time; or
  - (ii) where Practical Completion of a Heritage Contribution Works Portion is achieved, the Agreed Heritage Works Amount relevant to that Heritage Contribution Works Portion;
- (c) if Practical Completion of the Vegetation Conservation Works Portion described in the Eastern Precinct Vegetation CMP has been achieved, 60% of the Agreed Vegetation Conservation Works Amount, or if Practical Completion of the Vegetation Conservation Works described in the Western Precinct Vegetation CMP has been achieved, 40% of the Agreed Vegetation Conservation Works Amount and if Practical Completion of the Vegetation Conservation Works has been achieved, 100% of the Agreed Vegetation Conservation Works Amount;
- (d) if Practical Completion of the RTA Road Works has been achieved, the Agreed RTA Road Works Amount (as adjusted from time to time in accordance with the provisions of this Deed); and
- (e) if Practical Completion of the Cobbitty Road Works has been achieved, the Cobbitty Road Contribution Amount (as adjusted from time to time in accordance with the provisions of this Deed).

**"Development Contributions Procedures"** means the development contribution procedures set out in Schedule 4 of this Deed.

**"Development Contributions Schedule"** means Schedule 3 of this Deed.

**"Development Contributions Timetable"** means the timetable and milestones for each Development Contribution described in the table in Schedule 5 of this Deed.

**"DG Certificate"** means, in respect of a Development Consent for subdivision, the certificate to be provided by the Director-General to Council as contemplated by section 6.1(2) of the 2010 LEP.

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

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

**"Eastern Precinct"** has the meaning given to that term in Schedule 2.

**"Eastern Precinct Vegetation CMP"** means the document entitled "Harrington Grove East Conservation Management Plan & Bushfire Management Plan"(Project No. 082-005) prepared



by Eco Logical Australia and dated August 2007.

**"Encumbrance"**, in relation to any land, 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
- (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 à 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, in respect of that land.

**"Environmental Law"** means Commonwealth or NSW legislation relating to the environment and includes the Act and the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

An **"Event of Default"** occurs:

- (a) immediately upon an Insolvency Event occurring in respect of the Land Owner; or
- (b) immediately upon a breach of paragraph 1.2 of Schedule 9; or
- (c) when the Land Owner receives a notice from the Minister under paragraph 1.4 of Schedule 10.

**"Explanatory Note"** means the explanatory note in relation to the Planning Agreement, as required by Clause 25E of the Regulation, and attached as Annexure C to this Deed.

**"Final Completion"** means, in relation to the Cobbitty Road Works (if the Minister and the Land Owner agree that those works are to be undertaken pursuant to paragraph 3 of Schedule 4), the point of time at which those works are finally complete in accordance with clause 6.4 of the Cobbitty Road Works Agreement.

**"Final Land Owner Subdivision Certificate"** means the Subdivision Certificate which relates to the last remaining part of the Land to be subdivided into one or more Allotments (as notified by the Land Owner to the Minister).

**"Gazettal Date"** means the date of gazettal of the LEP, being 14 September 2007.

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

**"Heritage Agreement"** means:

- (a) in respect of the Heritage Contribution Works Portion referred to in paragraph (a) of the definition for that term, the document entitled 'Oriental Heritage Agreement' between The Minister for Planning responsible for Administration of the Heritage Act 1977 (NSW) and the Land Owner dated 25 March 2010; and
- (b) in respect of the Heritage Contribution Works Portion referred to in paragraph (b) of the definition for that term, the document entitled 'Harrington Park Heritage

Agreement' between The Minister for Planning responsible for Administration of the Heritage Act 1977 (NSW) and the Land Owner dated 25 March 2010.

**"Heritage Contribution Works"** means the Heritage Contribution Works Portions.

**"Heritage Contribution Works Portion"** means each of the works relating to:

- (a) the restoration of that Heritage Homestead known as 'Orielson' which is the subject of a Heritage Agreement; and
- (b) the restoration of that Heritage Homestead known as 'Harrington Park' which is the subject of a Heritage Agreement.

**"Heritage Homestead"** means, as the context relevantly permits, either or both of the following two items listed on the NSW State Heritage Register:

- (a) Orielson: NSW State Heritage Register No. 1693 of New South Wales, as described on page 11953 of Government Gazette No. 191, 22 December 2006; and
- (b) Harrington Park: NSW State Heritage Register No. 1773 of New South Wales, as described on page 11953 of Government Gazette No. 191, 22 December 2006.

**"Indicative Cobbitty Road Works Plan"** means the plan showing the proposed design of the upgrade works to part of Cobbitty Road as attached to this Deed at Annexure B.

**"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 or such longer period agreed in writing between the Parties) 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 or such longer period

agreed in writing between the Parties;

- (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.

**"Land"** means the land described in paragraph 1 of Schedule 2.

**"Land Owner"** means the party described as such in the section of this Deed headed "Parties".

**"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.

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

**"2010 LEP"** means *Camden Local Environmental Plan 2010*.

**"LEP"** means *Camden Local Environmental Plan No 138*, a copy of which is attached to this Deed at Annexure A.

**"LEP 74"** means *Camden Local Environmental Plan No 74 - Harrington Park*.

**"Minister"** means the party described as such in the section of this Deed headed "Parties".

**"Mortgage"** means the Real Property Act mortgage over the Mortgaged Land granted by the Land Owner in favour of the Minister dated 10 September 2007 registered number AD571570 as varied by the Variation of Mortgage.

**"Mortgaged Land"** means the whole of the land comprised in Lot 6 in Deposited Plan 270613, Lot 7 in Deposited Plan 270613 and Lot 8 in Deposited Plan I132349 as is reduced from time to time in accordance with this Deed.

**"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.

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

**"Planning Agreement"** means this Deed as and when it becomes operative as a planning agreement under and by virtue of clause 2.1(b).

**"Practical Completion"** means:

- (a) in relation to any Vegetation Conservation Works Portion, the point of time at which completion of those works pursuant to the Vegetation Conservation Management Plan which relates to that Vegetation Conservation Works Portion occurs in accordance with that agreement and the Council Planning Agreement;
- (b) in relation to any Heritage Contribution Works Portion, the point of time at which completion of those works pursuant to the Heritage Agreement which relates to that Heritage Contribution Works Portion occurs in accordance with those agreements; and
- (c) in relation to the RTA Road Works, the point of time at which completion of those works pursuant to the RTA Road Works Agreement occurs in accordance with that agreement; and
- (d) in relation to the Cobbitty Road Works (if the Minister and the Land Owner agree that those works must be undertaken pursuant to paragraph 3 of Schedule 4), the point of time at which the completion of those works pursuant to the Cobbitty Road Works Agreement occurs in accordance with that agreement.

**"Proposed Area"** means 195.61 hectares.

**"Proposed Development Timetable"** means the Development timetable proposed (as at the date the Land Owner signs this Deed) by the Land Owner (acting reasonably) which comprises Annexure D.

**"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).

**"Required Security Ratio"** means 80%.

**"Residual Allotment"** means any part of the Land which does not comprise an Allotment.

**"Residual Value"** means the value of the Mortgaged Land (as determined in accordance with Schedule 8), from time to time, taking into account any proposed partial release of Mortgage referred to in paragraph 1.4 of Schedule 8.

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

**"RTA"** means the Roads & Traffic Authority of New South Wales.

**"RTA Road Contribution"** means the contribution described in item 3 of the table in Schedule 3.

**"RTA Road Works"** means the works contemplated under item 3 of column 2 of the table in Schedule 3.

**"RTA Road Works Agreement"** means the signed works authorisation deed between the RTA and the Land Owner dated July 2007 which governs the carrying out of the RTA Road Works.

**"Security"** means the Mortgage and any other security (such as a Bank Guarantee) provided by the Land Owner to the Minister to secure the Land Owner's obligations to the Minister

under this Deed.

**"Security Arrangements"** means those security arrangements set out in Schedule 8.

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

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

**"Transaction Document"** means this Deed, the Mortgage, the Heritage Agreements, the RTA Road Works Agreement, the Council Planning Agreement (to the extent that agreement relates to the Land Owner carrying out or procuring the carrying out of, the design and construction of the Vegetation Conservation Works) and (if the Minister and the Land Owner agree that the Cobbitty Road Works are to be undertaken pursuant to paragraph 3 of Schedule 4) the Cobbitty Road Works Agreement) and any document which the Minister and the Land Owner acknowledge in writing to be a Transaction Document.

A **"Trigger Event"** occurs if:

- (a) the Land Owner defaults in complying with any provision of any Transaction Document which:
  - (i) requires the payment of money or the carrying out of works; or
  - (ii) requires the Land Owner not to sell, transfer or dispose the whole of the Land or a Residual Allotment; or
- (b) a judgment, order or Encumbrance in an amount in excess of \$1,000,000 is enforced against any property of the Land Owner.

**"Trigger Notice"** means a notice given by the Minister under paragraph 1.3 of Schedule 10.

**"Trust Deed"** means the Deed of Settlement dated 11 June 1992 between Lee Thomas as Settlor and the Land Owner as Trustee.

**"Valuation Brief"** means, for the purpose of paragraph 1.3 of Schedule 8, the set of guidelines to be followed in assessing the value of the Mortgaged Land assuming a sale:

- (a) between a willing, but not anxious, buyer and seller;
- (b) on an arm's-length transaction;
- (c) effected after proper marketing; and
- (d) wherein the parties had each acted knowledgeably, prudently, and without compulsion.

**"Value of the Security"** from time to time means the aggregate of:

- (a) the value of the Mortgaged Land, which may be:
  - (i) agreed between the parties from time to time; or
  - (ii) determined from time to time in accordance with paragraph 1.3 of Schedule 8); and
- (b) the face value of any Bank Guarantee provided by:
  - (i) the Land Owner to the Minister in order to secure the Land Owner's

obligations under this Deed; or

- (ii) the Land Owner to the RTA in accordance with the RTA Road Works Agreement where the RTA notifies the Minister that the Land Owner has provided it with a bank guarantee (and including details of that bank guarantee, including the face value and expiry date of that bank guarantee) pursuant to the RTA Road Works Agreement (and including notification of any reduction in the face value of that bank guarantee or return of that bank guarantee to the Land Owner).

**"Valuer"** means a valuer who is a full member of the Australian Property Institute (NSW Division) with not less than 10 years of active engagement and experience in valuing properties which are used for purposes similar to the purpose for which the land the subject of the valuation is to be proposed to be used.

**"Variation of Mortgage"** means the Real Property Act variation of mortgage over the Mortgaged Land between the Land Owner and the Minister dated on or around the date that the Land Owner signs the Deed Poll.

**"Vegetation Conservation Management Plan"** means each of (where applicable):

- (a) document entitled the "Harrington Park Stage 2/ Mater Dei Conservation Management Strategy" (Project No. 61-02) prepared by Eco Logical Australia and dated December 2005 to the extent that that document applies to the Land; and
- (b) the Eastern Precinct Vegetation CMP; and
- (c) the Western Precinct Vegetation CMP.

**"Vegetation Conservation Works"** means the Vegetation Conservation Works in respect of the Land which are identified by the Vegetation Conservation Management Plan.

**"Vegetation Conservation Works Portion"** means:

- (a) the Vegetation Conservation Works described in the Eastern Precinct Vegetation CMP; or
- (b) Vegetation Conservation Works described in the Western Precinct Vegetation CMP,

as the case may be.

**"Vegetation Conservation Works Program"** means program for the carrying out of the Vegetation Conservation Works as identified by the Vegetation Conservation Management Plan.

**"Western Precinct"** has the meaning given to that term in Schedule 2.

**"Western Precinct Vegetation CMP"** means the document entitled "Harrington Grove West Conservation Management Plan & Bushfire Management Plan"(Project No. 082-005) prepared by Eco Logical Australia and dated August 2007.

## 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 (including this Deed) 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; and
  - (l) the Schedules, Exhibits and Annexures form part of this Deed.

---

## 2. Status of this Deed

### 2.1 Commencement of Planning Agreement and Deed Poll

- (a) This Deed applies to the Development.
- (b) Subject to clause 2.1(e), until the Planning Agreement operates pursuant to clause 2.1(b), this Deed constitutes an irrevocable offer to the Minister from the Land Owner to enter into the Planning Agreement.
- (c) Subject to clause 2.1(d), the Planning Agreement operates, and becomes legally binding on both parties if, and only if:
  - (i) each of the following occurs:

- A. Development Consent is granted to any part of the Development;
  - B. public notice of the granting of that Development Consent has been given in accordance with section 101 of the Act and the regulations to which it refers; and
  - C. 3 months have elapsed since the date on which that public notice was given;
- (ii) any Class 4 actions lodged within the relevant three month appeal period referred to in section 101 of the Act by any person (other than any person acting for or on behalf of the Land Owner or any person acting at the direction of the Land Owner in respect of that action) in respect of the validity of that Development Consent have been finally determined;
  - (iii) the carrying out of any part of the Development is subject to a condition of that Development Consent imposed under section 93I(3) of the Act requiring this Planning Agreement to be entered into, provided always that if that Development Consent does not contain such a condition, the Minister is nevertheless entitled to accept the irrevocable offer constituted by this Deed from the Land Owner to enter into the Planning Agreement in the manner contemplated by clause 2.1(c)(iv); and
  - (iv) this Planning Agreement is entered into as required by clause 25C(1) of the Regulation and the Minister dates this Deed the date of his execution of this Deed under this clause,
- and then on and from the date on which the latest in time of the events identified in (i) to (iv) above occurs.
- (d) The parties may, before the date of commencement of operation of the Planning Agreement pursuant to clause 2.1(b), agree in writing that either or both of clause 2.1(c)(i) and clause 2.1(c)(ii) do not apply, and any such agreement between the parties will have effect accordingly.
  - (e) The Minister must notify the Land Owner immediately after the Minister executes this Deed and promptly provide the Land Owner with the Deed as executed by the Minister.
  - (f) Notwithstanding clauses 2.1(a), 2.1(b) and 2.1(d) above, upon execution of this Deed by the Land Owner, this Deed will operate, in relation to paragraph 1.1 of Schedule 8 and Schedule 9, as a deed poll and the provisions of paragraph 1.1 of Schedule 8 and Schedule 9 will be binding on the Land Owner, and will be taken to be given for the benefit of the Minister, notwithstanding the fact that the Minister has not signed this Deed.

## **2.2 Status of offer**

The amendments to this Deed which are made by the Deed Poll are taken to have effect on and from the date on which the Minister signs this Deed.

---

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

This Deed constitutes a planning agreement within the meaning of section 93F of the Act.



---

#### **4. Application of this Deed**

This Deed applies to:

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

---

#### **5. Development Contributions**

The Land Owner will provide, or procure the provision of, the Development Contributions in accordance with:

- (a) the Approvals in relation to the Contribution Works and the Cobbitty Road Works (if the Land Owner and the Minister agree that the Land Owner must undertake those works pursuant to paragraph 3 of Schedule 4);
- (b) the Development Contributions Schedule;
- (c) the Development Contribution Procedures;
- (d) the Development Contributions Timetable; and
- (e) this Deed.

---

#### **6. No warranty, representation or obligation**

The Parties agree that:

- (a) the Minister acknowledges to the Land Owner that it is the Minister's present intention that the Contribution Amounts will be made available for use or expenditure for the purposes set out in the column 2 of the table in Schedule 3; and
- (b) to the extent that a Contribution Amount may be expressly or impliedly intended to be applied for a particular use (whether in this Deed or elsewhere), the Land Owner acknowledges and agrees that:
  - (i) the Minister has not made any warranty or representation that the Contribution Amount must, or will, be used or expended for a particular purpose;
  - (ii) the Minister has no obligation to use or expend a Contribution Amount for a particular purpose; and
  - (iii) the Minister does not have any obligation to monitor or follow-up the use or expenditure of a Contribution Amount including where the Minister transfers a Contribution Amount to any other Authority or person.

---

#### **7. Security and enforcement**

##### **7.1 Security**

The Land Owner has agreed to provide security to the Minister for performance of the Land Owner's obligations under this Deed on the terms and conditions of the Security

Arrangements.

## **7.2 Enforcement**

- (a) This Deed may be enforced by either Party in any court of competent jurisdiction.
- (b) The Land Owner covenants with the Minister that the Land Owner will not rescind or terminate this Deed or make a claim that this Deed is void, voidable, illegal or unenforceable because a condition in a Development Consent requires the Land Owner to enter into this Planning Agreement.
- (c) The Land Owner 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 the Land Owner's breach of any of its obligations under clause 7.2(b).
- (d) This indemnity is a continuing obligation, separate and independent from the Land Owner's other obligations 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 Land Owner 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 any court to enforce any aspect of this Planning Agreement or any matter to which this Deed relates;
- (b) the Minister from exercising any function under any Legislation, including the Act, or any other Act or law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates; or
- (c) without limiting clause 7.2(b), the Land Owner from exercising any right under any Law (including the Act or any other Legislation) relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates.

---

## **8. Application of s94, s94A and s94EF of the Act to the Development**

### **8.1 Application of sections 94, 94A and 94EF of the Act**

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

### **8.2 Benefits under this Deed**

If this Deed does not exclude the application of section 94 to the Land or the Development, then the Development Contributions to be provided by the Land Owner under this Deed, must be taken into consideration in determining a development contribution under section 94 as set

out in Schedule 1.

---

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

### **9.1 Ownership**

The Land Owner represents and warrants to the Minister that it is the legal owner of the Land and holds the Land in its capacity as trustee for The Development Trust.

### **9.2 Registration of this Planning Agreement**

- (a) The Minister has agreed, at the Land Owner's request, not to require the registration of the Planning Agreement entered into pursuant to clause 2.1(b).
- (b) The Land Owner represents and warrants to the Minister that it is the registered proprietor of the Land in its capacity as trustee for The Development Trust.

---

## **10. Review or Replacement of this Deed**

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

---

## **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.

---

## **12. GST**

### **12.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 12 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) In this clause 12, "**monetary consideration**" means any consideration expressed as an amount of money, "**non-monetary consideration**" means any consideration that is not monetary consideration, and "**non taxable supply**" means a supply that is not a taxable supply.
- (c) 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.
- (d) 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 Reimbursements**

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 an entity is entitled for the acquisition to which the cost, expense or amount relates.

### 12.3 Additional amount of GST payable

Subject to clause 12.5, if GST becomes payable on any supply made by a party ("**Supplier**") under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 12), for that supply is exclusive of GST;
- (b) 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 the 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 (or the representative member of any GST group of which 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
- (c) 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 12.3(b).

### 12.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 12.3 and clause 12.5), varies from the additional amount paid by the Recipient under clause 12.3, 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 12.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 12.3.
- (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.

### 12.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 12.3 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 12.3 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 12.3 (or the time at which such GST Amount would have been payable in accordance with clause 12.3 but for the operation of clause 12.5(a)).

## 12.6 No merger

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

---

## 13. Overdue payments

- (a) The Land Owner agrees to pay the Minister interest 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 Minister, calculated on daily balances. The rate to be applied to each daily balance is the rate 2% per annum above the Bank Bill Rate.
- (b) Interest which is not paid when due for payment may be capitalised by the Minister at intervals which the Minister 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 Land Owner'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 Land Owner agrees to pay interest to the Minister 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.

---

## 14. Release and indemnity

- (a) The Land Owner agrees that the obligation to provide the Development Contributions is at the risk of the Land Owner. Except for the Excluded Risks, the Land Owner releases the Minister from any claim, liability or loss arising from, and Costs incurred in connection with, the Land Owner's obligation to provide the Development Contributions.
- (b) Except for the Excluded Risks, the Land Owner indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with, the Minister enforcing the Land Owner's obligation to provide the Development Contributions in accordance with this Deed.
- (c) The indemnity in clause 14(b) is a continuing obligation, independent of the Land Owner's other obligations under this Deed and continues after this Deed ends.
- (d) In this clause 14, "**Excluded Risks**" means loss, liability and Costs incurred or suffered by the Minister arising from:
  - (i) the imposition of GST (including losses or Costs arising due to the

timing of a GST liability);

- (ii) the negligence, non-compliance with Law, error or omission of the Minister or the Minister's employees, agents, advisors or contractors; and
- (iii) any appeal or legal challenge to the validity of any Approval or environmental planning instrument brought or commenced by a person other than the Land Owner (and other than any person acting for or on behalf of the Land Owner or any person acting at the direction of the Land Owner in respect of that appeal or legal challenge).

---

**15. Explanatory Note**

- (a) The Explanatory Note must not be used to assist in construing this Deed.
- (b) The Minister agrees to give a copy of the Explanatory Note to Council when a copy of this Deed is given to Council under section 93G(4) of the Act.

---

**16. Effect of Scheduled terms and conditions**

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

---

**17. General provisions**

The Parties agree to the miscellaneous and general provisions set out in Schedule 12.

**Executed** as a Deed.

## Schedule 1 - Section 93F Requirements

SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
<p><b>Planning instrument and/or development application</b> - (Section 93F(1))</p> <p>The Land Owner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a 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 the land to which this Planning Agreement applies</b> - (Section 93F(3)(a))</p>	<p>The whole of the land described in item 1 of Schedule 2.</p>
<p><b>Description of change to the environmental planning instrument to which this Planning Agreement applies</b> - (Section 93F(3)(b))</p>	<p>The gazettal of the 2010 LEP relating to the Land.</p>
<p><b>The scope, timing and manner of delivery of contribution required by this Planning Agreement</b> - (Section 93F(3)(c))</p>	<p>See Schedules 3 to 5 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 in respect of the Development.</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 in respect of the Development.</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 excluded in respect of the Development.</p>
<p><b>Consideration of benefits under this Deed if section 94 applies</b> - (Section 93F(3)(e))</p>	<p>The Development Contributions to be provided by the Land Owner under this Deed must not be taken into consideration in determining a contribution under section 94 in respect of the Development and any other development (as that term is defined in the Act) in relation to the Land.</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 this Planning Agreement</b> - (Section 93F(3)(g))</p>	<p>See clause 7 and Schedule 8.</p>
<p><b>Registration of this Planning Agreement</b> (Sections 93F(3)(g) and 93H)</p>	<p>No (see clause 9.2 of this Deed).</p>

<b>SUBJECT and SUB-SECTION OF THE ACT</b>	<b>THIS PLANNING AGREEMENT</b>
<b>No obligation to grant consent or exercise functions - (Section 93F(9))</b>	See paragraph 9 of Schedule 12.



## Schedule 2 - Land

---

### 1. Title

- (a) Those parts of the land formerly comprised in:
- (i) Lot 3420 in Deposited Plan 1105169 being folio identifier 3420/1105169 (**Eastern Precinct**); and
  - (ii) Lot 101 in Deposited Plan 1107591 being folio identifier 101/1107591 (**Western Precinct**)
- which are identified and delineated by heavy black ink in the plan attached to the LEP.
- (b) The parties acknowledge that as at the date the Land Owner signed the Deed Poll:
- (i) Lot 3420 in Deposited Plan 1105169 and Lot 101 in Deposited Plan 1107591 have been subdivided and those titles no longer exist;
  - (ii) the land formerly comprised in Lot 3420 in Deposited Plan 1105169 has been subdivided and the resulting subdivided titles have been further subdivided a number of times since August 2007 (and will continue to be subdivided after the Land Owner has signed this Deed); and
  - (iii) the Land formerly comprised in Lot 101 in Deposited Plan 1107591 is currently comprised in Lot 6 in Deposited Plan 270613, Lot 7 in Deposited Plan 270613 and Lot 8 in Deposited Plan 1132349.

---

### 2. Encumbrances

As at the date that the Land Owner signs this Deed, the Land is subject to the Encumbrances.

---

### 3. Proposed Development

The subdivision of the Land into approximately 1000 Allotments yielding single dwelling residential allotments together with all necessary road works and ancillary services.

## Schedule 3 - Development Contributions Schedule

### 1. Development Contributions

Column 1 (Item reference)	Column 2
<b>Development Contribution</b>	<b>Intended use</b>
<b>Item 1. Contribution Works</b>	
Part A - \$1.875M	Restoration of the Heritage Homestead known as 'Orielson' for public purposes.
Part B - \$1.875M	Restoration of the Heritage Homestead known as 'Harrington Park' for public purposes
<b>Item 2. Contribution Works - \$6.25M</b>	Vegetation Conservation Works (as defined in clause 1.1 of this Deed) in respect of the Land for public purposes relating to biodiversity as described (in various portions) in the Vegetation Conservation Management Plan.
<b>Item 3. Contribution Works - \$18,000,000</b>	RTA Road Contribution - Road improvements including the first stage of upgrading of the Cobbitty Road/Camden Valley Way intersection.  Indicative concept plans for the RTA Road Works specified above form Exhibit A to this Deed, where available at the date on which this Deed is executed by the Land Owner, on the basis that those plans are subject to further concept design and to detailed design, as well as the terms of appropriate assessments and Approvals.
<b>Item 4. Contribution Amount - \$3,180,000 (subject to indexation by CPI as provided for in Schedule 5), or, where paragraph 3(i) of Schedule 4 applies or the Land Owner elects to carry out the Cobbitty Road Works and the Minister approves such election pursuant to paragraph 3 of Schedule 4, any contribution under those clauses</b>	Cobbitty Road Contribution -  (a) The upgrading of Cobbitty Road from Camden Valley Way to the point which lies 1.5km west from that intersection; or  (b) Road purposes generally.
<b>Item 5. Contribution Amount - \$150,000</b>	DECCW Contribution - For vegetation rehabilitation works to be determined at the discretion of the Director-General in consultation with the DECCW.

## Schedule 4 - Development Contribution Procedures

---

### 1. Land Owner's undertakings

- (a) The Land Owner undertakes to:
- (i) pay the Contribution Amounts to the Minister (or as the Minister directs) as contemplated by, and in accordance with, the Development Contributions Timetable;
  - (ii) comply with the Vegetation Conservation Management Plan and the Council Planning Agreement including carrying out or procuring the carrying out of, the design and construction of the Vegetation Conservation Works in accordance with those agreements;
  - (iii) comply with the Heritage Contribution Agreements including carrying out or procuring the carrying out of the Heritage Contribution Works in accordance with those agreements;
  - (iv) comply with the RTA Road Works Agreement including carrying out or procuring the carrying out of the RTA Road Works in accordance with that agreement;
  - (v) comply with the Cobbitty Road Works Agreement including carrying out or procuring the carrying out of the Cobbitty Road Works, in accordance with that agreement (if the Land Owner elects to undertake the Cobbitty Road Works pursuant to paragraph 3 of Schedule 4 and the Minister consents to that election); and
  - (vi) consult regularly with the Minister, respond within a reasonable period to the Minister's questions, queries and enquiries and generally keep the Minister informed regarding the progress of the Development to the extent such matters relate to the payment, or provision, of a Development Contribution.
- (b) The Land Owner must not vary (or agree to vary) any of the Heritage Agreements, - the Council Planning Agreement insofar as it relates to the Vegetation Conservation Management Plan, the Vegetation Conservation Management Plan or the Cobbitty Road Works Agreement (including in respect of the Cobbitty Road Works) without the prior written approval of the Minister, which approval must not be unreasonably withheld or delayed (and in relation to the Cobbitty Road Works Agreement, the Minister will not be unreasonably withholding or delaying its approval where any variation of such agreement is not consistent with the provisions of paragraph 3(g)(i) of this Schedule 4).
- (c) The Land Owner accepts that under each of the agreements referred to in paragraph 1(a) of this Schedule 4 and paragraph 1(b) of this Schedule 4, it has accepted the risk that the cost of each relevant works the subject of those agreements may increase and therefore it is accepting that it may pay more to carry out those works than as contemplated at the time of signing of this Deed. The parties acknowledge that the acceptance of that risk is, in effect, an agreement by the Land Owner to accept indexation of the Contribution Amounts and satisfies the requirements that the Contribution Amounts be so indexed, in addition to and separate from, any indexation of the Contribution Amounts or any other amount provided expressly for by the terms of this Deed.

---

## 2. Heritage Contribution Works

If the Land Owner has not achieved Practical Completion in respect of a Heritage Contribution Works Portion by the Date For Practical Completion in respect of that Heritage Contribution Works Portion, then:

- (a) the Minister may, prior to Practical Completion in respect of that Heritage Contribution Works Portion, issue a notice to the Land Owner requiring the Land Owner to pay the amount determined by a Certifier (and such notice must include details of the Certifier's method of calculation of such amount) as the anticipated cost yet to be incurred to achieve Practical Completion of that Heritage Contribution Works Portion to the extent that that Heritage Contribution Works Portion has not reached Practical Completion as at the Date For Practical Completion in respect of that Heritage Contribution Works Portion (provided that this amount must not exceed the amount specified in item 1 of column 1 of Schedule 3 of this Deed for that Heritage Contribution Works Portion) within 30 Business Days after the date on which the Land Owner receives that notice; and
- (b) the Land Owner must pay the amount specified in that notice within the period specified in that notice.

---

## 3. Cobbitty Road Works

- (a) The Land Owner may elect to undertake the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement, in lieu of paying the Cobbitty Road Contribution Amount to the Minister, no later than the date which is 183 days after the third anniversary of the date of this Deed.
- (b) As soon as practicable after the earlier of:
  - (i) an election by the Land Owner to undertake the Cobbitty Road Works under clause 2.1 of the Cobbitty Road Works Agreement and as referred to in paragraph 3(a) of this Schedule 4; and
  - (ii) the date which is 183 days after the third anniversary of the date of this Deed,the Land Owner agrees to notify the Minister in writing whether it has elected to undertake the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement.
- (c) Where the Land Owner notifies the Minister that it has made an election to undertake the Cobbitty Road Works pursuant to paragraph 3(b) of this Schedule 4, that notice must request the Minister's approval to undertake those works for the purposes of this Deed.
- (d) As soon as reasonably practicable after receipt of the Land Owner's notice referred to in paragraph 3(c) of this Schedule 4, the Minister must confirm in writing whether the Minister approves the Land Owner's request to undertake the Cobbitty Road Works. In this regard, the Minister may grant or withhold his approval in his sole and unfettered discretion.
- (e) Where the Minister notifies the Land Owner that it agrees to the Land Owner's election to undertake the Cobbitty Road Works, then the Minister and the Land Owner will be taken to have agreed that the Land Owner must undertake the

Cobbitty Road Works pursuant to the Cobbitty Road Works Agreement for the purposes of this Deed, and the Department will be deemed to have agreed to the Land Owner's election under clause 2.1 of the Cobbitty Road Works Agreement.

- (f) The parties acknowledge and agree that the Land Owner is required to design and construct the Cobbitty Road Works under the Cobbitty Road Works Agreement. In addition to its obligations concerning the design of the Cobbitty Road Works under the Cobbitty Road Works Agreement, the Land Owner must ensure that the design of the those works is consistent with the Indicative Cobbitty Road Works Plan.
- (g) If the Land Owner makes an election to undertake the Cobbitty Road Works and the Minister agrees to that election:
  - (i) subject to paragraph 1(b) of this Schedule 4, the Land Owner must use its best endeavours to procure the variation of the Cobbitty Road Works Agreement, or the agreement of the Council to a description of works pursuant to the terms of the Cobbitty Road Works Agreement, to ensure the Cobbitty Road Works Agreement appropriately refers to, and deals with, the Cobbitty Road Works (in addition to any other works contemplated by that agreement which are not ancillary to the Cobbitty Road Works) with the result that the Cobbitty Road Works, and the Land Owner's obligations in relation to the Cobbitty Road Works (including development obligations and the Date for Practical Completion for those works), are able to be separately identified from any other obligations of the Land Owner under the Cobbitty Road Works Agreement; and
  - (ii) for the purposes of this Deed, the Land Owner will be required to undertake the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement only insofar as that agreement relates to the Cobbitty Road Works.
- (h) Promptly after the Land Owner has finalised the design of the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement, the Land Owner must lodge with the Minister:
  - (i) all relevant plans relating to the design of the Cobbitty Road Works; and
  - (ii) a notice confirming the estimated costs to carry out, and achieve Practical Completion of, the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement, certified by an independent consultant (being a person who has the appropriate qualifications and who is appointed by the Land Owner at its cost, with the consent of the Minister) as being the estimated costs of carrying out those Works.
- (i) If the estimated costs of the Cobbitty Road Works specified in the notice referred to in paragraph 3(h)(ii) of this Schedule 4:
  - (i) exceed \$3,180,000 (subject to indexation by CPI as provided for in Schedule 5), the Land Owner accepts the risk for those additional costs and will carry out and complete the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement and this Deed notwithstanding that the estimated, or actual, costs to achieve Practical Completion of the Cobbitty Road Works exceed \$3,180,000 (subject to indexation by CPI as provided for in Schedule 5); and
  - (ii) are less than \$3,180,000 (subject to indexation by CPI as provided for in

Schedule 5), notwithstanding paragraph 3(k)(i) of this Schedule 4 the Land Owner agrees to pay to the Minister the difference between \$3,180,000 (subject to indexation by CPI as provided for in Schedule 5) and the estimated costs of the Cobbitty Road Works specified in the notice referred to in paragraph 3(h)(ii) of this Schedule 4 (**Costs Difference**) in accordance with Column 3 of Item 4 of the table in Schedule 5, and for the purposes of this paragraph 3(i)(ii) of this Schedule 4, the Cobbitty Road Works Contribution Amount will be deemed to be the Costs Difference.

- (j) Where the Minister does not approve the Land Owner's election to undertake the Cobbitty Road Works, then the Land Owner:
  - (i) must not undertake the Cobbitty Road Works; and
  - (ii) must pay the Cobbitty Road Works Contribution Amount in accordance with this Deed.
  
- (k) If the Land Owner elects to undertake the Cobbitty Road Works and the Minister has consented to that election pursuant to paragraph 3 of this Schedule 4, then:
  - (i) subject to paragraph 3(c) and paragraph 3(i)(ii) of this Schedule 4, the Cobbitty Road Contribution Amount will be reduced to zero;
  - (ii) subject to paragraph (e) of the definition of 'Development Contributions Amount' and paragraph 3(i)(ii) of this Schedule 4, the Parties will not have regard to any such Cobbitty Road Contribution Amount when calculating the Actual Security Ratio;
  - (iii) the Land Owner must undertake the Cobbitty Road Works in accordance with the Cobbitty Road Works Agreement; and
  - (iv) paragraphs 3(l) to 3(o) of this Schedule 4 apply.
  
- (l) Subject to paragraph 3(m) of this Schedule 4, if the Land Owner has not achieved Practical Completion of the Cobbitty Road Works by the Date For Practical Completion relevant to those works, then within 10 Business Days after it has been determined that Practical Completion has not been achieved:
  - (i) at the request of the Minister, a Certifier must determine (at the cost of the Land Owner) the cost to achieve Final Completion of the Cobbitty Road Works (**Estimated Outstanding Costs**); and
  - (ii) the Land Owner must then pay to the Minister the lesser of:
    - A. an amount equivalent in value to the Estimated Outstanding Costs; and
    - B. \$3,180,000 (subject to indexation by CPI as provided for in Schedule 5).
  
- (m) Where the Land Owner pays the Minister an amount equivalent in value to the Estimated Outstanding Costs pursuant to paragraph 3(l)(ii)A of this Schedule 4 and the actual costs incurred to achieve Final Completion of the Cobbitty Road Works exceed the Estimated Outstanding Costs, the Land Owner must pay to the Minister the Additional Payment. The Additional Payment is to be determined in accordance

with the following formula:

- (i) where the aggregate of AC and the EOC does not exceed the Cobbitty Road Contributions Amount:

$$AP = AC - EOC$$

- (ii) where the aggregate of AC and EOC exceeds the Cobbitty Road Contributions Amount:

$$AP = \$3,180,000 \text{ (subject to indexation by CPI as provided in Schedule 5) - EOC}$$

*Where:*

*AP* means the Additional Payment;

*AC* means the actual costs incurred to achieve Final Completion of the Cobbitty Road Works from the Date For Practical Completion to the date on which Final Completion of the Cobbitty Road Works is achieved; and

*EOC* means the Estimated Outstanding Costs.

- (n) Where the Land Owner pays the Minister an amount equivalent in value to the Estimated Outstanding Costs pursuant to paragraph 3(l) of this Schedule 4 and the Additional Payment (if relevant), the Minister (in its absolute discretion) may use those monies to carry out all or any of the Cobbitty Road Works or for any other purpose whatsoever.
- (o) Promptly after the Land Owner has procured Practical Completion of the Cobbitty Road Works, the Land Owner must notify the Minister in writing that Practical Completion of those works has been achieved. Such notice must include:
  - (i) evidence acceptable to the Minister that the Council is satisfied that Practical Completion of those works has been achieved; and
  - (ii) if requested by the Minister, confirmation and evidence of the actual costs incurred by the Land Owner to procure Practical Completion of the Cobbitty Road Works, including design fees, approval fees, civil construction costs, landscape construction costs, value of land dedicated for road widening, Council fees, certification fees, project management fees and testing costs (as certified by the Certifier).

---

#### **4. Not used**

---

#### **5. Confirmation of satisfactory arrangements**

- (a) The parties recognise that the 2010 LEP requires the Director-General to certify whether certain satisfactory arrangements for the provision of designated State Public Infrastructure have been made in relation to the Land.
- (b) The Land Owner:
  - (i) must not request a DG Certificate if at the time of making any such

request, a Trigger Event has occurred which, at that time, remains to be remedied;

- (ii) acknowledges that the Land Owner's request for a DG Certificate pursuant to paragraph 5(c) of this Schedule 4 may not be considered if, a Trigger Event has occurred which, at that time, remains to be remedied;
  - (iii) must together with any written request for a DG Certificate pursuant to paragraph 5(c) of this Schedule 4, provide to the Minister a certificate stating that it is of the opinion (acting reasonably) that, at the time in question, no Trigger Event (which has occurred) remains to be remedied; and
  - (iv) must, at its Cost, use reasonable endeavours to liaise with, and must provide sufficient information to, the Minister (or must provide to the Minister such information as the Minister requests (acting reasonably)) to allow the Director-General to determine whether to issue the DG Certificate.
- (c) Promptly following receipt of a written request (together with the certificate referred to in paragraph 5(b)(iii) of this Schedule 4) from the Land Owner for a DG Certificate, if the Minister is satisfied (acting reasonably) that, at the time in question, no Trigger Event (which has occurred) remains to be remedied, the Minister must use reasonable endeavours to procure that the Director-General, as soon as reasonably practicable, consider whether and, if appropriate, certify in writing to Council (with a copy to the Land Owner) that satisfactory arrangements have been made for the contribution to the provision of designated State public infrastructure in relation to the land the subject of the relevant Development Application for subdivision.

---

## **6. Appointment and role of a Certifier**

If pursuant to any provision of this Deed, a Certifier is required to determine any matter or thing then the Land Owner and the Minister acknowledge and agree that:

- (a) the Land Owner and the Minister will jointly appoint a Certifier with the appropriate qualifications and experience to promptly determine that matter or thing;
- (b) if the Land Owner and the Minister fail to reach agreement within 10 Business Days of first attempting to reach such agreement as to the Certifier to be appointed to determine the relevant matter or thing, the President of the New South Wales Bar Association (or the President's nominee) will appoint the Certifier;
- (c) unless otherwise specified in this Deed, the Land Owner will pay all costs of that Certifier;
- (d) each Party may make written submissions to the Certifier to facilitate the Certifier making its determination;
- (e) each Party must pay for its own Costs associated with the provision of information or otherwise participating in the Certifier's determination process; and
- (f) the Certifier's decision (subject to any manifest error) will be final and binding on the Parties.



---

## 6A. Certificates of Practical Completion

- (a) The Land Owner must notify the Minister that Practical Completion has been achieved for each of the Contribution Works within 10 Business Days of Practical Completion of each of the Contribution Works.
- (b) The Land Owner must provide a copy of the Certificate of Practical Completion for each of the Contribution Works with the notice referred to in paragraph 6A(a) of this Schedule 4.

---

## 7. Contribution Amount Adjustment

- (a) Subject to paragraph 7(c) of this Schedule 4, if upon the later of the issue of all Approvals which are required by Environmental Laws for the Development and the final determination of any appeals in relation to such approvals, the aggregate of all Actual Areas is less than the Proposed Area then the Development Contributions to be provided by the Land Owner under this Deed will be reduced by RDC,

*where RDC* is calculated in accordance with the following formula:

$$RDC = TDC \times \frac{AAA}{PA}; \text{ and}$$

*where:*

*TDC* means the aggregate of all amounts specified in or calculated pursuant to column 1 of the table in Schedule 3;

*AAA* means the Proposed Area minus the aggregate of all Actual Areas;

*PA* means the Proposed Area.

- (b) Where the aggregate of all Actual Areas is less than the Proposed Area and the total Development Contributions to be provided by the Land Owner under this Deed is in fact adjusted pursuant to paragraph 7(a) of this Schedule 4:
  - (i) the Land Owner acknowledges that there is no obligation on the Minister or any other person or entity to refund or repay any Development Contributions to the Land Owner; and
  - (ii) the Minister agrees to the Land Owner seeking to renegotiate the terms of any of the Heritage Agreements, the Council Planning Agreement (to the extent that agreement relates to the Vegetation Conservation Works), the RTA Road Works Agreement and (if the Land Owner elects to carry out the Cobbitty Road Works and the Minister approves such election) the Cobbitty Road Works Agreement in a manner which would result in the total Development Contributions being provided by the Land Owner being reduced by an amount which is no more than an amount which is equivalent in value to RDC (as determined in accordance with the formula in paragraph 7(a) of this Schedule 4).

- (c) Notwithstanding that the aggregate of all Actual Areas is less than the Proposed Area and the total Development Contributions to be provided by the Land Owner under this Deed, the Cobbitty Road Contribution Amount (including where the Land Owner has elected, and the Minister has approved that election, to carry out the Cobbitty Road Works) will not be reduced in accordance with the formula in paragraph 7(a) of this Schedule 4 and will remain as specified in Item 4 in the table in Schedule 3.

## Schedule 5 - Development Contributions Timetable

### 1. Table

Column 1 (Item reference)	Column 2	Column 3
Development Contribution	Description of Contribution (including amount where relevant)	Date For Practical Completion of Contribution Works OR Date for Payment of Contribution Amount
<b>Part A of Item 1 of the table in Schedule 3</b>	The restoration of the Heritage Homestead known as Orierton (being an amount equivalent to \$1.875M)	Practical Completion of those works must occur by the Date For Practical Completion relevant to those works
<b>Part B of Item 1 of the table in Schedule 3</b>	The restoration of the Heritage Homestead known as Harrington Park (being an amount equivalent to \$1.875M)	Practical Completion of those works must occur by the Date For Practical Completion relevant to those works
<b>Item 2 of the table in Schedule 3</b>	Vegetation Conservation Works (being an amount equivalent to \$6.25M)	Practical Completion of those works must occur by the Date For Practical Completion relevant to those works
<b>Item 3 of the table in Schedule 3</b>	RTA Road Contribution (being an amount equivalent to \$18,000,000)	Practical Completion of those works must occur by the Date For Practical Completion relevant to those works
<b>Item 4 of the table in Schedule 3</b>	Cobbitty Road Contribution (being an amount equivalent to \$3,180,000 + CPIA)	<p>The Development Contribution for item 4 of the table in Schedule 3 will be paid on or before the earlier of:</p> <ul style="list-style-type: none"> <li>• grant of a Subdivision Certificate which relates to land comprising (amongst other land) the 900th Allotment); and</li> <li>• the date that is 4 years after the date of execution of this Deed by the Minister.</li> </ul>
<b>Item 5 of the table in Schedule 3</b>	DECCW Contribution (being \$150,000)	The Development Contribution for item 5 of the table in Schedule 3 will be paid in one lump sum within 5 Business Days of the date that Council issues the first Subdivision Certificate after the date of this Planning Agreement relating to the Land.

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

**A** means the dollar (\$) amount specified or referred to in column 2 of the table in this Schedule 5 prior to indexation by CPI in accordance with this Deed.

**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** = subject to paragraph 2 of this Schedule 5, the most recent CPI prior to the date that payment is due to be made, or where the Land Owner is required to pay the Costs Difference to the Minister pursuant to paragraph 3(i)(ii) of Schedule 43, the most recent CPI prior to the date that payment is made; and

**D** = the most recent CPI before the Gazettal Date.

---

## **2. Indexation Adjustments**

The parties agree that if at any time, an amount is to be adjusted by indexation for the purposes of making a calculation under this Deed, then for the purposes of making a calculation under this Deed (other than a payment contemplated by this Deed), then the indexation to be factored in for the purpose of that calculation shall be calculated in accordance with the indexation procedures set out above, subject to the following variations:

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

**A** means the dollar (\$) amount being adjusted for the purposes of making a calculation under this Deed prior to indexation by CPI.

In respect of the formula for **CPIA**

**C** = the most recent CPI prior to the relevant date for the calculation being made.

## **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.

## Schedule 7 - Dispute resolution

---

### 1. Notice of Dispute

Except for a dispute arising under Schedule 10, 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.

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.

---

### 2. Further steps required before proceedings

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 between a person appointed from time to time by each (under written notice to the other Parties) to represent that Party.

---

### 3. Disputes for expert determination

If the mediation referred to in paragraph 2 of this Schedule 7 has not resulted in settlement of the dispute, the Land Owner or any one Party may, with the prior written consent of each other Party, refer the matter to expert determination in accordance with paragraph 4 of this Schedule 7, such expert to act in accordance with paragraph 6 of this Schedule 7.

---

### 4. Choice of expert

A dispute to be referred to an expert in accordance with paragraph 3 of this Schedule 7 must be determined by an independent expert in the relevant field:

- (a) agreed between and appointed jointly by the Parties; or
- (b) 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.

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.

---

### 5. Requirements for expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) 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;
- (c) must inform the Parties before being appointed of 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.

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.

---

## **6. Directions to expert**

In reaching a determination in respect of a dispute under paragraph 3 of this Schedule 7, the independent expert must give effect to the intent of the Parties entering into this Deed.

---

## **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 oral submissions 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;
- (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;
- (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);
- (e) issue a draft certificate stating the expert's intended determination giving each Party 15 Business Days to make further submissions;
- (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.

---

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

---

## **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.

---

**10. Expert may convene meetings**

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

---

**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.

---

**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 for the purpose of resolving the dispute.

---

**13. Confidentiality of information**

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

- (a) subject to paragraph 13(b) of this Schedule 7, to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
  - (i) to a Party or adviser who has signed a confidentiality undertaking to the same effect as this paragraph 13 of this Schedule 7; or
  - (ii) if required by Law or the ASX Listing Rules to do so; or
- (c) 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.

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:



- (a) 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
- (b) admissions or concessions made by Party during the expert determination or mediation in relation to the dispute; and
- (c) 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 - Security Arrangements

---

### 1. Variation of Mortgage

#### 1.1 Registration of Variation of Mortgage

- (a) Simultaneously with the execution of the Deed Poll by the Land Owner, the Land Owner has entered into the Variation of Mortgage with the Minister over the Mortgaged Land. Prior to the execution of this Deed by the Land Owner the Land Owner entered into registered mortgage AD571570 with the Minister.
- (b) The Land Owner at its own expense will, as soon as reasonably practicable after the date on which the Land Owner signs the Deed Poll, 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 Mortgaged Land registered under the Real Property Act; or
    - B. is seized or possessed of an estate or interest in the Mortgaged Land; and
  - (ii) the execution of any documents reasonably requested by the Minister for registration of the Variation of Mortgage,  
  
to enable the registration of the Variation of Mortgage by Land and Property Management Authority NSW under the Real Property Act in the relevant folios of the register for the Mortgaged Land.
- (c) The Land Owner agrees that in the event that the Land Owner requests a discharge of the Mortgage (whether whole or in part) prior to the point in time when this Planning Agreement commences operation pursuant to clause 2.1(b) of this Deed, then there will be no obligation on the Minister to enter into the Planning Agreement, and in that event, the Land Owner acknowledges and agrees that any condition of any Development Consent requiring the Land Owner to enter into this Planning Agreement will be taken not to be satisfied unless and until this Planning Agreement commences operation pursuant to clause 2.1(b) of this Deed.

#### 1.2 Security Ratio

- (a) As at the date the Land Owner signs this Deed, the parties agree that the Actual Security Ratio is less than the Required Security Ratio.
- (b) The parties agree that at all times the Actual Security Ratio must be no greater than the Required Security Ratio.
- (c) If at any time the Actual Security Ratio is greater than the Required Security Ratio then the Land Owner must, within 20 Business Days after receiving a written request from the Minister provide a Bank Guarantee or other security arrangements acceptable to the Minister to secure its obligations under this Deed to the Minister, and having regard to the additional security so provided, to ensure that the Actual Security Ratio at all times is no greater than the Required Security Ratio.

### 1.3 Mortgaged Land

- (a) The Land Owner:
- (i) must, prior to requiring a partial discharge of the Mortgage in accordance with paragraph 1.4 of this Schedule 8 or paragraph 1.4A of this Schedule 8;
  - (ii) must, whenever the Minister requests the Land Owner to do so; and
  - (iii) may, at any other time,
- provide the Minister with a valuation of the Mortgaged Land (less the area of any land in respect of which the Land Owner is requiring a partial discharge of the Mortgage) ("**Reduced Mortgaged Land**"), determined in good faith and acting reasonably (addressed to the Minister and detailing the method used to determine the valuation) in order to assist the Minister to determine whether or not the Actual Security Ratio (based on the Reduced Mortgaged Land) is greater than the Required Security Ratio.
- (b) The Minister may agree or disagree with the valuation provided by the Land Owner in accordance with paragraph 1.3(a) of this Schedule 8, by notice provided to the Land Owner within 5 Business Days after the date on which the Minister receives that valuation. If the Minister does not provide such a notice to the Land Owner within that period, then the Minister is taken to have disagreed with the valuation.
- (c) If the Minister disagrees (or is deemed to have disagreed) with the valuation provided by the Land Owner in accordance with paragraph 1.3(b) of this Schedule 8, the parties must jointly prepare a Valuation Brief and appoint a Valuer.
- (d) In the event that the Land Owner and the Minister are unable to reach agreement on the Valuer to be appointed or the Valuation Brief within 10 Business Days after the date on which the Land Owner receives a notice in accordance with paragraph 1.3(b) (or the date the Minister is deemed to have disagreed with the valuation) the Land Owner or the Minister must ask the president of the New South Wales division of the Australian Property Institute Incorporated to appoint a Valuer or finalise the Valuation Brief within a further 5 Business Days.
- (e) The Valuer must be instructed to complete the valuation of the Reduced Mortgaged Land within 20 Business Days of his appointment and determine the value of the Reduced Mortgaged Land in accordance with the Valuation Brief.
- (f) The decision of the Valuer shall be final and binding on both the Land Owner and the Minister.
- (g) The Valuer shall act as an expert and not as an arbitrator.
- (h) In the event that the value of the Reduced Mortgage Land as determined by the Valuer appointed under paragraph 1.3(d) of this Schedule 8:
- (i) is less than that which would be required for the Actual Security Ratio (based on the Reduced Mortgage Land) to be no greater than the Required Security Ratio, then the Land Owner must pay the costs of the Valuer; or
  - (ii) is equal to or more than that which would be required for the Actual Security Ratio (based on the Reduced Mortgage Land) to be no greater

that the Required Security Ratio, then the Minister must pay the costs of the Valuer.

- (i) For the purposes of this Deed, the Actual Security Ratio shall be calculated on the assumption that the Value of the Security includes the amount of any Bank Guarantee which the Land Owner offers to provide to the Minister at the time at which the Land Owner provides the Minister with a valuation under paragraph 1.3(a) of this Schedule 8.

#### **1.4 Discharge of Mortgage**

- (a) The Land Owner may, from time to time, by written notice to the Minister, request the Minister to partially or fully discharge the Mortgage. The Land Owner may provide forms of discharge of mortgage to the Minister with such notice.
- (b) A notice under paragraph 1.4(a) of this Schedule 8 may request that the Minister accept a Bank Guarantee to partially or fully secure the Land Owner's obligations under this Deed (provided that the Actual Security Ratio (if relevant, based on the Mortgaged Land) determined pursuant to paragraph 1.3 of this Schedule 8 is no greater than the Required Security Ratio).
- (c) The Minister must partially or fully discharge the Mortgage (as the case may be) on the basis contemplated by paragraph 1.4(a) of this Schedule 8 and paragraph 1.4(b) of this Schedule 8 provided that:
  - (i) at the time in question, there is no Trigger Event (which has occurred) that remains to be remedied;
  - (ii) prior to, or at the time of, the discharge, the Land Owner provides any relevant Bank Guarantee pursuant to paragraph 1.4(b) of this Schedule 8 and the Minister is satisfied with that Bank Guarantee (acting reasonably); or
  - (iii) at the time of the partial or full discharge of Mortgage (as the case may be) the Actual Security Ratio (if relevant, based on the Reduced Mortgaged Land) (calculated on the assumption set out in paragraph 1.4(a) of this Schedule 8) is no greater than the Required Security Ratio.
- (d) If the Minister is required to partially or fully discharge the Mortgage pursuant to this paragraph 1, then the Minister must within 20 Business Days after notice from the Land Owner pursuant to paragraph 1.4(a) of this Schedule 8 provide a discharge of the Mortgage (in respect of the relevant part of the Mortgaged Land) in registrable form and return the title deed for the relevant part of the Mortgaged Land (and if no such separate title deed exists, produce the appropriate title deeds at Land and Property Management Authority NSW for the purposes of facilitating the partial or full discharge of Mortgage (in respect of the relevant part of the Mortgaged Land), to the Land Owner to enable the Land Owner to procure the removal from the Register of the Mortgage by Land and Property Management Authority NSW from the relevant folio of the Register which relates to the relevant part of the Mortgaged Land.

#### **1.4A Partial discharge of Mortgage following Practical Completion of Vegetation Conservation Works or Heritage Works**

Without limiting paragraph 1.4 of this Schedule 8:

- (a) where Practical Completion of the Vegetation Conservation Works or Heritage Contributions Works has been achieved, the Land Owner may, from time to time but not more than once in a 12 month period, request the Minister to partially discharge the Mortgage. The Land Owner must provide forms of discharge of mortgage to the Minister with such notice, including a confirmation of that part of the Mortgaged Land which is to be discharged from the Mortgage;
- (b) the Minister must partially discharge the Mortgage on the basis contemplated by paragraph 1.4A(a) of this Schedule 8 provided that:
  - (i) the Land Owner has notified the Minister that it has achieved Practical Completion of the Vegetation Conservation Works or Heritage Contributions Works (as the case may be) and provided a copy of the Certificate of Practical Completion for the relevant Contribution Works to the Minister in accordance with paragraph 6A of Schedule 4;
  - (ii) at the time of the partial discharge of Mortgage, there is no Trigger Event (which has occurred) that remains to be remedied; and
  - (iii) at the time of the partial discharge of Mortgage, the Actual Security Ratio (based on the Reduced Mortgaged Land) (calculated on the assumption set out in paragraph 1.3(a) of this Schedule 8) is no greater than the Required Security Ratio; and
- (c) if the Minister is required to partially discharge the Mortgage pursuant to this paragraph 1.4A of this Schedule 8, then the Minister must within 20 Business Days after notice from the Land Owner pursuant to paragraph 1.4A(a) of this Schedule 8 provide a discharge of the Mortgage (in respect of the relevant part of the Mortgaged Land) in registrable form and return the title deed for the relevant part of the Mortgaged Land (and if no such separate title deed exists, produce the appropriate title deeds at Land and Property Management Authority NSW for the purposes of facilitating the partial discharge of Mortgage in respect of the relevant part of the Mortgaged Land), to the Land Owner to enable the Land Owner to procure the removal from the Register of the Mortgage by Land and Property Management Authority NSW from the relevant folio of the Register which relates to the relevant part of the Mortgaged Land.

**1.4B Partial discharge of Mortgage following completion of Vegetation Conservation Works Portion**

Without limiting paragraph 1.4 of this Schedule 8:

- (a) where the Land Owner has completed a Vegetation Conservation Works Portion in accordance with the Vegetation Conservation Management Plan and Council Planning Agreement, the Land Owner may, from time to time but not more than once in a 12 month period, request the Minister to partially discharge the Mortgage. The Land Owner may provide forms of discharge of mortgage to the Minister with such notice, including a confirmation of that part of the Mortgaged Land which is to be discharged from the Mortgage;
- (b) the Minister must partially discharge the Mortgage on the basis contemplated by paragraph 1.4B(a) of this Schedule 8 provided that:
  - (i) the Land Owner provides the Minister with a certificate from a conservation expert reasonably acceptable to the Minister certifying that:

- A. the Vegetation Conservation Works Portion has been completed in accordance with the Vegetation Conservation Management Plan and Council Planning Agreement (to the extent that agreement relates to the Land Owner carrying out or procuring the carrying out of, the design and construction of the Vegetation Conservation Works); and
  - B. at the time of the partial discharge of Mortgage, the Land Owner is not in breach of the Vegetation Conservation Management Plan or Council Planning Agreement (to the extent that agreement relates to the Land Owner carrying out or procuring the carrying out of, the design and construction of the Vegetation Conservation Works);
- (ii) at the time of the partial discharge of Mortgage, there is no Trigger Event (which has occurred) that remains to be remedied;
  - (iii) at the time of the partial discharge of Mortgage the Actual Security Ratio (if relevant, based on the Reduced Mortgaged Land) (calculated on the assumption set out in paragraph 1.3(a) of this Schedule 8) is no greater than the Required Security Ratio; and
  - (iv) the Land Owner provides the Minister with all information the Minister reasonably requires in relation to the Land Owner's request in paragraph 1.4B of this Schedule 8, including any information or evidence relating to the value of the mortgaged Land and to assist the Minister to determine whether or not the Actual Security Ratio (based on the Reduced Mortgaged Land) is greater than the Required Security Ratio; and
- (c) If the Minister is required to partially discharge the Mortgage pursuant to this paragraph 1.4B of this Schedule 8, then the Minister must within 20 Business Days after notice from the Land Owner pursuant to paragraph 1.4B(a) of this Schedule 8 provide a discharge of the Mortgage (in respect of the relevant part of the Mortgaged Land) in registrable form and return the title deed for the relevant part of the Mortgaged Land (and if no such separate title deed exists, produce the appropriate title deeds at Land and Property Management Authority NSW for the purposes of facilitating the partial discharge of Mortgage (in respect of the relevant part of the Mortgaged Land), to the Land Owner to enable the Land Owner to procure the removal from the Register of the Mortgage by Land and Property Management Authority NSW from the relevant folio of the Register which relates to the relevant part of the Mortgaged Land.

## 1.5 Subdivision

- (a) Subject to paragraph 1.5(b) of this Schedule 8, the Minister must expeditiously execute any documents reasonably requested by the Land Owner, including consents, and produce the appropriate title deeds at Land and Property Management Authority NSW for the purposes of enabling the Land Owner to register plans of subdivision of the Mortgaged Land.
- (b) In making any request under paragraph 1.5(a) of this Schedule 8, the Land Owner must provide the Minister with a certificate from a Valuer certifying that the subdivision the subject of the Land Owner's request does not, and will not, have a material adverse effect on the value of the Mortgaged Land.

---

## **2. Discharge of Mortgage**

The Minister agrees to provide a discharge of the Mortgage in registrable form and return the relevant title deed, to the Land Owner to procure the removal from the Register of the Mortgage by Land and Property Management Authority NSW from the relevant folio of the Register of the whole of the Mortgaged Land, once either:

- (a) the Land Owner has completed all of its obligations under this Deed; or
- (b) the Value of the Security which is required to ensure that the Actual Security Ratio is no greater than the Required Security Ratio is satisfied by the value of Bank Guarantees held by the Minister at that time.

---

## **3. Costs**

The Costs incurred by the parties under this Schedule 8 ("Security Arrangements") will be determined in accordance with Schedule 11, except as provided in paragraph 1.3.

## Schedule 9 - Assignment and Dealing Terms

### 1.1 Land Owner's right to sell Land

The Land Owner must not sell, transfer or dispose of the whole of the Land (but excluding any Allotment in respect of which a Subdivision Certificate has been issued by Council for which the Land Owner has fully satisfied its obligations under this Deed at that time to pay the relevant Contribution Amount), unless before it sells, transfers or disposes of the whole of the Land to another person ("**Transferee**"):

- (a) it satisfies the Minister acting reasonably that the proposed Transferee is respectable and financially capable of complying with such of the Land Owner's obligations under the Transaction Documents (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Minister acting reasonably shall nominate must be adopted by the Transferee ("**Required Obligations**");
- (b) the Transferee signs a deed in form and substance acceptable to the Minister acting reasonably containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Land Owner (including obligations which arose before the transfer or assignment) and provides to the Minister such security as the Minister reasonably requires to secure the obligations of the Transferee to the Minister under that deed;
- (c) the Transferee signs (at no cost to the Minister or The Minister for Planning responsible for the Administration of the Heritage Act 1977 (NSW)) deeds in favour of The Minister for Planning responsible for the Administration of the Heritage Act 1977 (NSW), on terms satisfactory to The Minister for Planning responsible for the Administration of the Heritage Act 1977 (NSW), where the Transferee agrees to perform those obligations being performed by the Land Owner under the Heritage Agreements (including obligations which arose before the transfer, assignment or disposition);
- (d) the Transferee signs (at no cost to the Minister or the RTA) a deed in favour of the RTA on terms satisfactory to the RTA where the Transferee agrees to perform those obligations being performed by the Land Owner under the RTA Road Works Agreement (including obligations which arose before the transfer, assignment or disposition);
- (e) (if the Minister and the Land Owner agree that the Cobbitty Road Works are to be undertaken pursuant to paragraph 3 of Schedule 4), the Transferee signs (at no cost to the Minister or Council) a deed in favour of Council on terms satisfactory to Council where the Transferee agrees to perform those obligations being performed by Council under the Cobbitty Road Works Agreement (including obligations which arose before the transfer, assignment or disposition);
- (f) the Minister is satisfied (acting reasonably) that the Transferee has provided security to the same extent of the security that has been provided by the Land Owner to ensure compliance with any obligations under the Heritage Agreements, the RTA Road Works Agreement and (where relevant) the Cobbitty Road Works Agreement, which remain to be performed;
- (g) any default by the Land Owner has been remedied by the Land Owner or waived by the Minister; and
- (h) the Land Owner and the Transferee pay the Minister's reasonable Costs in relation



to that assignment.

## **1.2 Residual Allotments**

In addition to the obligations in paragraph 1.1 of this Schedule 9, the Land Owner must not sell, transfer or dispose of Residual Allotments in the Land unless:

- (a) such sale, transfer or disposal is to an Authority or as part of a community title scheme; or
- (b) before it sells, transfers or disposes of the Residual Allotments to another person ("Transferee") the proposed Transferee enters into a new planning agreement in relation to such Residual Allotment (substantially on the same terms as the Planning Agreement, but taking into account any continuing obligations of the Land Owner to the Minister under this Deed) in accordance with section 93F of the Act with the Minister, on terms reasonably acceptable to the Minister and provides to the Minister such security as the Minister reasonably requires to secure the obligations of the Transferee to the Minister under that planning agreement.

## **1.3 Release**

If the Land Owner sells, transfers or disposes of:

- (a) the whole of the Land and satisfies the requirements of paragraph 1.1 of this Schedule 9, the Land Owner will be and is released from its obligations under this Deed with respect to the land being sold, transferred or disposed of and the Minister agrees to promptly do all that is necessary to fully discharge the Mortgage; or
- (b) any Residual Allotment of the Land and satisfies the requirements of paragraph 1.2 of this Schedule 9, the Land Owner will be and is released from its obligations under this Deed with respect to the land being sold, transferred or disposed of and the Minister agrees to promptly do all that is necessary to partially discharge the Mortgage to the extent that the Mortgage relates to the relevant Residual Allotment.

## **1.4 Minister's right to assign**

The Minister:

- (a) may assign its rights under this Deed to another Minister of the State of New South Wales or to a statutory body representing the Crown without the Land Owner's consent; and
- (b) must require the transferee and the Land Owner to enter into a deed in form and substance acceptable to the Minister and the Land Owner each acting reasonably containing provisions under which the transferee and the Land Owner agree to comply with the terms and conditions of this Deed and
- (c) will pay the other Parties' reasonable Costs in relation to that assignment.

## **1.5 Conditional Contracts**

Notwithstanding paragraphs 1.1 and 1.2 of this Schedule 9, the Land Owner is entitled to enter into contracts for sale of all or part of the Land which are conditional (to the extent paragraphs 1.1 and 1.2 of this Schedule 9 apply) on compliance with paragraphs 1.1 and 1.2 of this Schedule 9 (as applicable).

## Schedule 10 - Default

---

### 1. Event of Default

#### 1.1 Event of Default

The Land Owner must ensure that no Event of Default occurs.

#### 1.2 Land Owner to notify the Minister

The Land Owner must notify the Minister within 5 Business Days after it becomes aware that a Trigger Event or an Event of Default has occurred, giving the Minister full details of the Trigger Event or the Event of Default, as the case may be.

#### 1.3 Trigger Notice

If a Trigger Event occurs, the Minister may give the Land Owner a notice specifying the Trigger Event ("**Trigger Notice**") and stating that the Land Owner must remedy that Trigger Event within 30 Business Days (in the case of obligations requiring the payment of money) or 40 Business Days (in the case of obligations requiring the carrying out of works and all other obligations) after service of the Trigger Notice on the Land Owner.

#### 1.4 Trigger Event not remedied

If the Land Owner does not remedy a Trigger Event within the period specified in the Trigger Notice, or an Event of Default referred to in paragraph (a) or (b) of the definition of Event of Default in clause 1.1 has occurred, the Minister may give the Land Owner a notice ("**Default Notice**") stating that an Event of Default has occurred. The Default Notice must contain the amount to be payable by the Land Owner pursuant to paragraph 2.1 of this Schedule 10 and details of the Minister's method of calculation of such amount; and in that regard, interest for the purposes of the definition "IN" in paragraph 2.1(a) of this Schedule 10 will be calculated assuming all outstanding amounts will be paid by the Land Owner on the 30th Business Day after the date of the Default Notice together with the daily rate at which interest will become payable after that date.

---

## 2. Contribution Amounts

### 2.1 Event of Default

- (a) If the Minister gives the Land Owner a Default Notice:
- (i) subject to paragraph 2.1(a)(ii) of this Schedule 10, all other Land Owner obligations under this Deed are suspended and are taken to have been satisfied in full in the event of payment by the Land Owner pursuant to paragraph 2.1(a)(ii) of this Schedule 10 (and in the event of payment by the Land Owner after the expiry of the 30 Business Day period referred to in paragraph 2.1(a)(ii) of this Schedule 10), together with payment by the Land Owner of any other monies which are due and payable in addition to the payment referred to in paragraph 2.1(a)(ii) of this Schedule 10); and
  - (ii) subject to paragraph 2.1(e) of this Schedule 10, the Land Owner must pay to the Minister, within 30 Business Days after the date on which the Land Owner receives that Default Notice, the amount equivalent to "AP"

calculated in accordance with the following formula:

$$AP = CAD + IN + PVFCA + PVWA$$

*Where:*

*CAD* means the aggregate of all Contribution Amounts which are due and payable by the Land Owner to the Minister as at the Default Date;

*IN* means all interest and costs due and payable by the Land Owner to the Minister under this Deed;

*PVFCA* means the aggregate of each of the amounts determined as "PVFCA" in accordance with the formula set out in paragraph 2.1(b) of this Schedule 10, in respect of any Contribution Amounts which the Land Owner may become liable to pay to the Minister under and by virtue of Schedule 5 of this Deed; and

*PVWA* means the aggregate of each of the amounts determined in accordance with the formula in paragraph 2.1(c) of this Schedule 10 in respect of each amount falling within the definition of "WA" in paragraph 2.1(c) of this Schedule 10.

- (b) For the purposes of paragraph 2.1(a) of this Schedule 10, "PVFCA" will be determined in accordance with the following formula:

$$PVFCA = P \div (1 + I)^n,$$

where:

*P* means each Contribution Amount (and for the Cobbitty Road Contribution Amount having regard to indexation of such amount in accordance with the applicable indexation provisions of Schedule 5, on the basis that the reference to 'the date that payment is due to be made' for the purposes of 'C' in the relevant formulas in that Schedule 5 shall be deemed to mean the date of the most recent published CPI occurring immediately before the occurrence of the Event of Default) which, as at the Default Date, is otherwise still to become due and payable by the Land Owner to the Minister under this Deed;

*I* means the Bank Bill Rate plus 1.14%;

*n* means the number of years and days (such days to be expressed as a fraction of 365) from the Default Date up to and including, in respect of each amount identified as "P", the date specified in Annexure D as the anticipated date that amount would have become payable under this Deed, but for the occurrence of the Event of Default and the provisions of paragraph 2.1(a) of this Schedule 10.

- (c) For the purpose of paragraph 2.1(a) of this Schedule 10, PVWA will be calculated in accordance with the following formula:

$$PVWA = WA \div (1 + I)^n,$$

*where:*

*WA* means the aggregate of each of the following amounts:

- (i) the amount determined by the Certifier as the anticipated cost yet to be incurred to achieve Practical Completion of each Vegetation Conservation Works Portion to the extent that that Vegetation

Conservation Works Portion has not reached Practical Completion as at the Default Date, provided that this amount must not exceed the amount specified in item 2 of column 1 of Schedule 3 of this Deed with that amount being indexed on the same basis set out in Schedule 5 and on the basis that "CPIA" in the formula in Schedule 5 refers to that amount and the reference to "the date that payment is due to be made" in the definition of "C" in Schedule 5 shall be deemed to mean the date of the publication of the most recent CPI occurring immediately before such determination by the Certifier;

- (ii) the amount determined by the Certifier as the anticipated cost yet to be incurred to achieve Practical Completion of the Heritage Contribution Works Portion that relates to Part A of item 1 of the table in Schedule 3 to the extent that that Heritage Contribution Works Portion has not reached Practical Completion as at the Default Date, provided that this amount must not exceed the amount specified in item 1 of column 1 of Schedule 3 of this Deed for that Heritage Contribution Works Portion with that amount being indexed on the same basis set out in Schedule 5 and on the basis that "CPIA" in the formula in Schedule 5 refers to that amount and the reference to "the date that payment is due to be made" in the definition of "C" in Schedule 5 shall be deemed to mean the date of the publication of the most recent CPI occurring immediately before such determination by the Certifier;
- (iii) the amount determined by the Certifier as the anticipated cost yet to be incurred to achieve Practical Completion of the Heritage Contribution Works Portion that relates to Part B of item 1 of the table in Schedule 3 to the extent that that Heritage Contribution Works Portion has not reached Practical Completion as at the Default Date, provided that this amount must not exceed the amount specified in item 1 of column 1 of Schedule 3 of this Deed for that Heritage Contribution Works Portion with that amount being indexed on the same basis set out in Schedule 5 and on the basis that "CPIA" in the formula in Schedule 5 refers to that amount and the reference to "the date that payment is due to be made" in the definition of "C" in Schedule 5 shall be deemed to mean the date of the publication of the most recent CPI occurring immediately before such determination by the Certifier;
- (iv) the amount determined by the Certifier as the anticipated cost yet to be incurred to achieve Practical Completion of the RTA Road Works to the extent that the RTA Road Works have not reached Practical Completion as at the Default Date, provided that this amount must not exceed the amount specified in item 3 of column 1 of Schedule 3 of this Deed with that amount being indexed on the same basis set out in Schedule 5 and on the basis that "CPIA" in the formula in Schedule 5 refers to that amount and the reference to "the date that payment is due to be made" in the definition of "C" in Schedule 5 shall be deemed to mean the date of the publication of the most recent CPI occurring immediately before such determination by the Certifier;
- (v) where the Land Owner elects to carry out the Cobbitty Road Works and the Minister approves such election, the amount determined by the Certifier as the anticipated cost yet to be incurred to achieve Practical Completion of the Cobbitty Road Works to the extent that the Cobbitty Road Works have not reached Practical Completion as at the Default

Date, provided that this amount must not exceed the amount in item 4 of column 1 of Schedule 3 of this Deed with that amount being indexed on the same basis set out in Schedule 5 and on the basis that "CPIA" in the formula in Schedule 5 refers to that amount and the reference to "the date that payment is due to be made" in the definition of "C" in Schedule 5 shall be deemed to mean the date of the publication of the most recent CPI occurring immediately before such determination by the Certifier.

*I* means the Bank Bill Rate plus 1.14%;

*n* means the number of years and days (such days to be expressed as a fraction of 365) from the Default Date up to and including, in respect of each amount identified as "WA" the date specified in Annexure D as the anticipated date that amount would have become payable, but for the occurrence of the Event of Default and the provisions of paragraph 2.1(a) of this Schedule 10.

- (d) If the Land Owner complies with its obligation in paragraph 2.1(a)(ii) of this Schedule 10, then the Mortgage must be discharged immediately by the Minister and the title deeds to the Mortgaged Land and any Bank Guarantees returned to the Land Owner.
- (e) If within 10 Business Days of the Land Owner receiving the Default Notice, the Land Owner provides written notice to the Minister disputing the amount specified in the Default Notice as being the amount payable by the Land Owner pursuant to paragraph 2.1(a)(ii) of this Schedule 10, then the Land Owner and the Minister agree that the Certifier will be called upon to determine the amount payable by the Land Owner pursuant to paragraph 2.1(a)(ii) of this Schedule 10 and such determination will be final and binding on the Parties. The Land Owner must pay the amount determined by (and notified in writing to both the Minister and the Land Owner) the Certifier as being "AP" for the purposes of paragraph 2.1(a)(ii) of this Schedule 10 within 30 Business Days of the date of the Certifier's notification to the Parties.

## **2.2 Enforcement of Mortgage**

If the Land Owner does not fully satisfy its obligations under paragraphs 2.1(a)(ii) of this Schedule 10 within the time specified in such paragraph then, and only then may the Minister enforce all its rights under and pursuant to the Mortgage or any other security provided by the Land Owner to the Minister.

---

## **3. Costs**

The Land Owner will be liable to reimburse the Minister for the Minister's Costs incurred under this Schedule 10 as contemplated by Schedule 11.

**Schedule 11 - Costs**

Land Owner – 100% of all Costs.

## Schedule 12 - General terms

---

### 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

Land Owner

Address: c/- Harrington Estates (NSW) Pty Ltd  
1 Forestgrove Drive  
Harrington Park NSW 2567

Telephone: (02) 4631 3200

Fax: (02) 4631 3290

Attention: Mr Terry Goldacre

And, concurrently in the case of any Trigger Notice or Default Notice:

Address: 560 New South Head Road  
Double Bay NSW 2028

Telephone: (02) 9327 2030

Fax: (02) 9327 2647

Attention: Lee Thomas

#### 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;
- (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, after 5pm on that 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.

---

## **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 his absolute discretion and subject to any conditions determined by the Minister. The Minister is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

---

## **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 Schedule 9.

---

## **4. Costs**

- (a) The reasonable legal and advertising costs regarding the negotiation, preparation, execution, advertising, stamping and registration of this Deed and any deeds in relation to this Deed are to be borne by the Parties and in the proportions as set out in Schedule 11.
- (b) The Land Owner 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 contemplated or actual enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and
  - (ii) 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.



---

## **5. 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 this Deed were executed, except as permitted by law.

---

## **6. Further Acts**

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

---

## **7. 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.

---

## **8. 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.

---

## **9. 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.

---

## **10. 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.

---

## **11. 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 the relevant document, but the rest of this Deed is not affected.

---

## **12. 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.

---

## **13. 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.

---

## **14. Confidentiality**

### **14.1 This deed not confidential**

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

---

## **15. Liability of the Trustee under this Deed**

- (a) The Land Owner enters into this Deed as trustee of The Development Trust and in this paragraph 15 is referred to as the "**Trustee**".
- (b) The Trustee's liability under Deed is limited to the amount that it is entitled to receive in the exercise of its right of indemnity against the assets of the Trust in respect of the relevant liability.
- (c) If any party to this Deed does not recover any money owing to it in respect of any liability of the Trustee under or arising out of this Deed by enforcing its rights, it may not seek the shortfall by:
  - (i) bringing proceedings against the Trustee in its personal capacity; or
  - (ii) applying to have the Trustee wound up or proving in its winding up (or equivalent bankruptcy applications where the Trustee is an individual) unless another creditor has initiated proceedings to wind the Trustee up (or have the Trustee declared bankrupt where the Trustee is an individual).
- (d) Paragraphs 15(b) and 15(c) of this Schedule 12 do not apply, and the Trustee will be personally liable, to the extent that any right of indemnity of the Trustee under

the Trust Deed is reduced or limited due to:

- (i) the Trustee's wilful misconduct, negligence or fraud; or
- (ii) the Trustee acting outside its authority under the Trust Deed.

---

## 16. Trustee representations and warranties

The Land Owner (as trustee of the Development Trust) represents and warrants to the Minister that:

- (a) **(Trustee)**: it has power to enter into the Transaction Documents in its capacity as trustee of the Development Trust;
- (b) **(Trust validly created)**: the Development Trust has been validly created and is in existence at the date the Land Owner signs this Deed;
- (c) **(Trustee validly appointed)**: the Land Owner has been validly appointed as trustee of the Development Trust and is presently the sole trustee of the Development Trust;
- (d) **(Trust Deed)**: the Development Trust is solely constituted by the Trust Deed, a true copy of which was provided to the Minister's solicitors before the Land Owner signed this Deed;
- (e) **(Vesting date not declared)**: a date has not been declared under the Trust Deed as the date on which the Development Trust will be vested or come to an end;
- (f) **(No proceedings)**: no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Development Trust or the Land Owner's trusteeship of the Development Trust;
- (g) **(No acquisition of trust assets)**: the Land Owner has not done, or failed to do, any act whereby any of the assets of the Development Trust have been acquired by any other person, no assets of the Development Trust are presently registered in the name of any other person, and no person, other than the beneficiaries previously notified to the Land Owner has acquired any right of any kind whether vested or contingent in any asset of the Development Trust;
- (h) **(Commercial benefit)**: it is to the commercial benefit of the Development Trust that the Land Owner enters into the Transaction Documents in its capacity, *inter alia*, as trustee of the Development Trust and mortgages the property of the Development Trust as provided in the Transaction Documents; and
- (i) **(Rights of indemnity and exoneration against Trust assets)** the Land Owner as trustee of the Development Trust has valid rights of indemnity and exoneration against the assets of the Development Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Land Owner under the Transaction Documents.

**Annexure A - LEP**



New South Wales

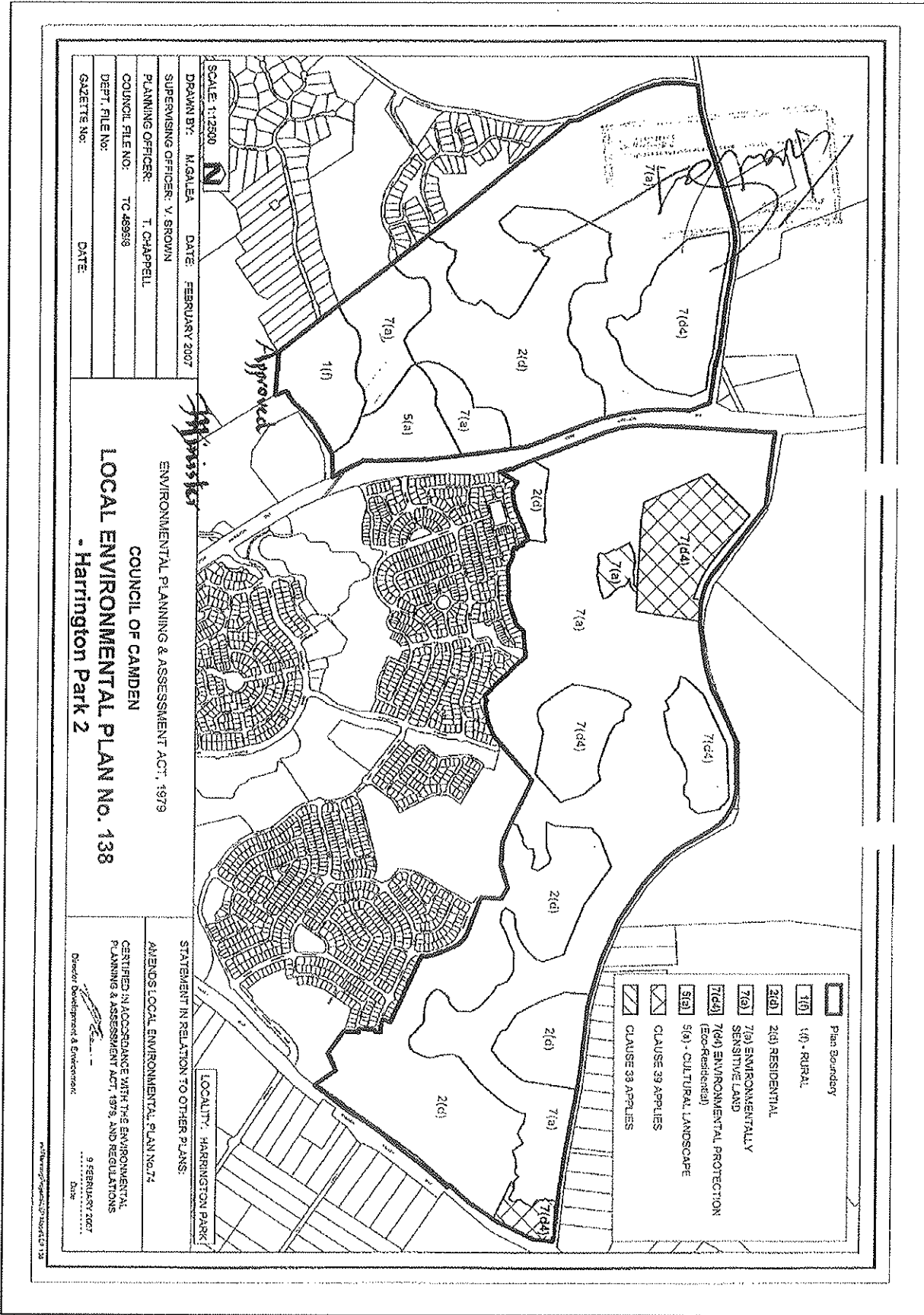
## Camden Local Environmental Plan No 138

under the

Environmental Planning and Assessment Act 1979

I, the Minister for Planning, make the following local environmental plan under the  
*Environmental Planning and Assessment Act 1979*. (P03/00494/PC)

Minister for Planning



SCALE 1:12500  
 DRAWN BY: M. GALEA DATE: FEBRUARY 2007  
 SUPERVISING OFFICER: V. BROWN  
 PLANNING OFFICER: T. CHAPPEL  
 COUNCIL FILE NO: TC 48938  
 DEPT. FILE NO:  
 GAZETTE No: DATE:

ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979  
 COUNCIL OF CAMDEN  
**LOCAL ENVIRONMENTAL PLAN No. 138**  
 - Harrington Park 2

STATEMENT IN RELATION TO OTHER PLANS:  
 LOCALITY: HARRINGTON PARK  
 AMENDS LOCAL ENVIRONMENTAL PLAN No. 74  
 CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL  
 PLANNING & ASSESSMENT ACT, 1979, AND REGULATIONS  
 Director, Development & Environment  
 9 FEBRUARY 2007  
 Date

- Plan Boundary
- 10 - RURAL
- 2(a) RESIDENTIAL
- 7(a) ENVIRONMENTALLY SENSITIVE LAND
- 7(d4) ENVIRONMENTAL PROTECTION (Eco-Residential)
- 5(a) - CULTURAL LANDSCAPE
- CLAUSE 39 APPLIES
- CLAUSE 39 APPLIES
- CLAUSE 39 APPLIES

## Camden Local Environmental Plan No 138

under the

Environmental Planning and Assessment Act 1979

### 1 Name of plan

This plan is *Camden Local Environmental Plan No 138*.

### 2 Aims of plan

The aims of this plan are:

- (a) to rezone part Lot 3420, DP 1105169 and Lot 101, DP 1107551 at Harrington Park 2 (as shown edged heavy black on the map marked "Camden Local Environmental Plan No 138—Harrington Park 2" deposited in the office of the Council of Camden) to Zone No 1 (J) (Rural Zone), Zone No 2 (G) (Residential), Zone No 5 (a) (Cultural Landscape), Zone No 7 (A) (Environmentally Sensitive Land Zone) and Zone No 7 (B4) (Environmental Protection (Eco-Residential) Zone) under *Camden Local Environmental Plan No 74 Harrington Park*, and
- (b) to promote the development of Harrington Park 2 in a way that is environmentally sensitive and responds positively to the site's heritage and scenic character while maintaining regionally significant remnant bushland, and
- (c) to provide a viable, regionally significant habitat corridor in an east-west direction across the site that retains the high value remnant Cumberland Plain Woodland and includes the riparian corridors, and
- (d) to protect the scenic character of the area and significant views to and from the site, and
- (e) to require that, prior to the subdivision of land into lots of less than 40 hectares for residential uses, that satisfactory arrangements have been made for the provision of regional transport infrastructure and services, and
- (f) to provide appropriate easements in accordance with the conservation management plans around the areas of heritage significance, and

- 
- (g) to facilitate the ongoing management and conservation of the natural and cultural heritage of the site, and
  - (h) to avoid development in areas of potentially high salinity or excessively steep areas, and
  - (i) to ensure that future residents of the site are able to conveniently access employment, shops, educational and community facilities and recreational opportunities both within the site and in the surrounding area, and
  - (j) to ensure that development is staged in a manner that is efficient in terms of infrastructure use and provision, and
  - (k) to facilitate sustainable water management practices, and
  - (l) to provide opportunities for environmentally sensitive housing in a bushland setting.

**3 Land to which plan applies**

This plan applies to land within the local government area of Camden as shown edged heavy black on the map marked "Camden Local Environmental Plan No 138—Harrington Park 2" deposited in the office of Camden Council.

**4 Amendment of Camden Local Environmental Plan No 74—Harrington Park**

*Camden Local Environmental Plan No 74—Harrington Park* is amended as set out in Schedule 1.



---

## Schedule 1 Amendments

(Clause 4)

[1] **Clause 5 Adoption of model provisions**

Insert "*hotel*" after "*home occupation*" in clause 5 (a)

[2] **Clause 6 Definitions**

Insert in appropriate order in the definition of *the map* in clause 6 (1):

Canberra Local Environmental Plan No 138 Harrington Park 2

[3] **Clause 6 (1)**

Insert in alphabetical order:

*backpackers' accommodation* means tourist and visitor accommodation:

- (a) that has shared facilities, such as a communal bathroom, kitchen or laundry, and
- (b) that will generally provide accommodation on a bed basis (rather than by room).

*bed and breakfast accommodation* means tourist and visitor accommodation comprising a dwelling (and any ancillary buildings and parking) where the accommodation is provided by the permanent residents of the dwelling for a maximum of 8 guests and

- (a) meals are provided for guests only, and
- (b) cooking facilities for the preparation of meals are not provided within guests' rooms, and
- (c) dormitory-style accommodation is not provided.

*bush fire hazard reduction work* has the same meaning as in the *Rural Fires Act 1997*

Note. The term is defined as follows:

*bush fire hazard reduction work* means:

- (a) the establishment or maintenance of fire breaks on land, and
- (b) the controlled application of appropriate fire regimes or other means for the reduction or modification of available fuels within a predetermined area to mitigate against the spread of a bush fire but *does not* include construction of a track, trail or road.

*drainage* means any activity which intentionally alters the hydrological regime of any locality by facilitating the removal of surface or ground water. It may include the construction,

---

deepening, extending, opening, installation or laying of any canal, drain or pipe, either on the land or in such a manner as to encourage drainage of adjoining land.

*environmental facility* means a building or place which provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures.

*environmental protection works* means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like.

*home occupation* means an occupation carried on in a dwelling, or in a building ancillary to a dwelling, by one or more permanent residents of the dwelling that does not involve:

- (a) the employment of persons other than those residents, or
- (b) interference with the amenity of the neighbourhood by reason of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise, or
- (c) the display of goods, whether in a window or otherwise, or
- (d) the exhibition of any notice, advertisement or sign (other than a notice, advertisement or sign exhibited on that dwelling to indicate the name of the resident and the occupation carried on in the dwelling), or
- (e) the sale of items (whether goods or materials), or the exposure or offer for sale of items, by retail,

but does not include bed and breakfast accommodation or methals.

*hotel accommodation* means a building (whether or not a hotel within the meaning of the *Liquor Act 1982*) that provides tourist and visitor accommodation consisting of rooms or self-contained units, but does not include backpackers' accommodation, a boarding house or bed and breakfast accommodation.

*maintenance building* means a building for the storage and maintenance of equipment and other items associated with the maintenance of the land on which the building is located and associated land.

*pub* means licensed premises under the *Liquor Act 1983* the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel accommodation and whether or not food is sold on the premises.

[4] Clause 6 (1), definition of "village centre"

Omit the definition. Insert instead:

*village centre* means a group of buildings situated on land that comprises any or all of the following:

child care centres, clubs, community facilities, conference facilities, gymnasiums, hotel accommodation, meeting rooms, motels, multi-unit housing, offices, places of public worship, professional consulting rooms, public buildings, pubs, recreation areas, refreshment rooms, service stations and shops.

[5] Clause 8 Zones indicated on the map

Insert in order of zone number:

Zone No 1 (f) (Rural "F" (0.2 ha)) edged heavy black and lettered "1 (f)",

Zone No 7 (a) (Environmentally Sensitive Land) edged heavy black and lettered "7 (a)",

Zone No 7 (d4) (Environmental Protection (Eco-Residential))-- edged heavy black and lettered "7 (d4)".

[6] Clause 9 Zone objectives and development control table

Insert after the name relating to Zone No 1 (c) (Rural "E" (0.6ha)) in the Table to the clause:

Zone No 1 (f) (Rural "F" (0.2 ha))

1 Objectives of zone

The objectives are as follows:

- (a) to provide for small holding rural residential living opportunities having ready access to rural areas and facilities on land that does not have prime crop or pasture potential,
- (b) to ensure development is carried out in a manner that minimises risk from natural hazards, particularly bush fires and flooding,
- (c) to permit housing forms which are consistent with the environmental and scenic quality of the area.

- (d) to ensure that the scenic impact of development is minimised,
- (e) to encourage the retention and provision of a range of facilities related to horse agistment and horse riding activities.

**2 Without development consent**

Development for the purpose of:

bush fire hazard reduction work authorised by the *Rural Fires Act 1997*; environmental protection work; carried out in accordance with a conservation management plan approved by the Council; horse occupancies.

**3 Only with development consent**

Development for the purpose of:

advertisements; cycleways; drainage; dwelling houses; footpaths; horse businesses, horse stables; minor buildings and facilities ancillary to the stabling and riding of horses; roads; subsurface mining; utility installations

**4 Prohibited**

Any development not included in items 2 and 3.

**[7] Clause 9, Table**

Insert, after paragraph (b) of item 1 in the matter relating to Zone No 2 (d):

- (i) to protect the ecological integrity of bush and riparian corridors by facilitating sensitive development on land adjoining land within Zone No 7 (a) and Zone No 7 (d4) and integrating existing bushland into planning for open space and active recreation areas,
- (ii) to ensure that development retains the significance of heritage items and archaeological sites and their settings and does not adversely impact on significant views,
- (k) to protect the rural character of Country Roads.

[8] Clause 3, Table

Under item 1 of the matter relating to Zone No 5 (a). Insert instead:

1 Objectives of zone

The objective is to conserve the heritage significance of the cultural landscape of Harrington Park and Orielen, including buildings, associated structures and surrounding vistas.

[9] Clause 3, Table

Insert after the matter relating to Zone No 6 (b) (Open Space—Waterway Buffer):

Zone No 7 (a) (Environmentally Sensitive Land)

1 Objectives of zone

The objectives are as follows:

- (a) to ensure the protection and management of environmentally sensitive land for the principal purpose of biodiversity conservation,
- (b) to conserve, restore and enhance native flora and fauna habitat and the ecological viability of land identified for biodiversity protection purposes,
- (c) to provide for development of a limited scale to support passive recreation and ecological interpretation,
- (d) to foster habitat connectivity by providing links with other natural areas, as part of an open space and bush corridor network,
- (e) to conserve, restore and enhance the functions and habitats of watercourses and their associated riparian areas.

2 Without development consent

Development for the purpose of:

bush fire hazard reduction work authorised by the *Rural Fires Act 1997*; environmental protection works carried out in accordance with a conservation management plan approved by the Council; horse occupations.

**3 Only with development consent**

Development for the purpose of:

advertisements; advertising structures; cycleways; drainage; environmental facilities; footpaths; maintenance buildings (associated with environmental protection works); recreation areas; roads; subsurface rining; utility installations.

**4 Prohibited**

Any development not included in item 2 or 3

**Zone No 7 (24) {Environmental Protection  
{Eco-Residential}}**

**1 Objectives of zone**

The objectives are as follows:

- (a) to provide for residential development that incorporates design, construction and operational practices that significantly reduce or eliminate negative impacts on the environment through energy efficiency, water conservation, pollution prevention, biodiversity conservation and reducing resource consumption,
- (b) to ensure a distinctive character and urban form that reflects and responds to the natural context of the area and minimises bush fire risk,
- (c) to provide a subdivision pattern which allows for pedestrian and vehicular connectivity and permeability,
- (d) to provide sustainable water quality and quantity controls,
- (e) to ensure that subdivision design retains significant remnant native trees while still achieving an urban setting for housing and associated infrastructure,
- (f) to ensure that development retains the significance of heritage items and archaeological sites and their settings and does not adversely impact on significant views,
- (g) to protect the rural character of Cobbitty Road.

**2 Without development consent**

Development for the purpose of:  
bush fire hazard reduction work authorised by the *Rural Fires Act 1997*; environmental protection works carried out in accordance with a conservation management plan approved by the Council; home occupations.

**3 Only with development consent**

Development for the purpose of:  
advertisements; advertising structures; community facilities; cycleways; dams; drainage; dwelling houses; environmental facilities; footpaths; home businesses; recreation areas; roads; subsurface mining; utility installations.

**4 Prohibited**

Any development not included in item 2 or 3

[10] **Clauses 16 and 17**

Omit the clauses. Insert instead:

**16 Noise reduction**

- (i) The Council must not grant development consent to the subdivision of any land for residential purposes adjoining Camden Valley Way, The Northern Road or Celebrity Road, unless:
- (a) the Council is satisfied that:
- (i) a program, detailing appropriate noise attenuation measures to reduce traffic noise to potentially affected properties, has been prepared and will achieve or surpass the environmental goal, and
  - (ii) the program has been prepared by a person who, in the opinion of the Council, is a qualified noise consultant and that person has formulated the program based on current acoustic assessment, and
  - (iii) the program is in accordance with the requirements of the *Environmental Criteria for Road Traffic Noise* (Environment Protection Authority, 1999), and

- (iv) any proposed noise attenuation measures will not have a significant impact on identified view corridors and will be of a kind that are sympathetic to the surrounding landscape, and
- (h) if the Roads and Traffic Authority is the roads authority (within the meaning of the *Roads Act 1993*) for the relevant road, the Council has given the Authority details of the subdivision proposal and the program and taken into account any submission made by the Authority within 28 days of providing the details to it.
- (2) For the purpose of this clause, the environmental goal for traffic noise is a maximum LA10, 18-hour noise level of 63dB(A) when measured at 1 metre from the residential facade lines or other sensitive locations relative to Camden Valley Way, The Northern Road or Cabbitty Road, respectively.

#### 17 Restricted vehicular access

The Council may consent to development on land that adjoins The Northern Road or Camden Valley Way:

- (a) only if any vehicular access to the land from those roads is made by way of an existing intersection or another road, or
- (b) if the Council is of the opinion that such vehicular access is not practicable, only if the Council has given the Roads and Traffic Authority details of the development proposal and taken into account any submission made by that Authority about the proposed development within 28 days of providing the details to it.

#### [11] Clause 22 Protection of trees

insert at the end of clause 22 (6) (L) (iii):

, or

- (iv) the *Horrington Park Stage 2 Matter Del Conservation Management Plan* approved by the Council on 9 October 2006 and held in the offices of the Council and any site-specific conservation management plan that may be submitted to the Council by an applicant in relation to a development application.



- 
- [12] **Clause 22B Clearing**  
Omit clause 22B (1). Insert instead:  
(1) Land within Zone No 1 (f), 2 (d), 5 (a), 7 (a) or 7 (34) must not be cleared for any purpose, except with the consent of the Council.
- [13] **Clause 22B (4) (c) and (c1)**  
Omit clause 22B (4) (c). Insert instead:  
(c) bush fire hazard reduction work authorized by the *Rural Fires Act 1997*.  
(c1) environmental protection works carried out in accordance with a conservation management plan approved by the Council.
- [14] **Clause 30**  
Omit the clause. Insert instead:  
**30 Development in the vicinity of Harrington Park Homestead and Orierton Homestead**  
The Council must not consent to development in the vicinity of the Harrington Park Homestead or the Orierton Homestead unless it has made an assessment of the likely effect that the carrying out of the development will have on the heritage significance of the relevant Homestead, its curtilage and its setting and on views into and out of the site.
- [15] **Part 5**  
Insert after Part 4:  
**Part 5 Special Provisions applying to Harrington Park 2**  
**34 Application of Part**  
This Part applies to the land shown edged heavy black on the map marked "Camden Local Environmental Plan No 138 - Harrington Park 2".  
**35 Refreshment rooms on certain land within Zone No 7 (a)**  
(1) This clause applies to land within Zone No 7 (a) that is at the top of Greer Hill and shown hatched on the map marked "Camden Local Environmental Plan No 138 - Harrington Park 2".

- (2) Despite any other provision of this plan, the Council may grant consent to development for the purposes of refreshment rooms.
- (3) Before granting consent to development for the purpose of a refreshment room, the Council must take into account the visual impact of the development, its scale, its impact on view corridors to and from the site, parking, light spill, materials and external finishes and any environmental impacts on surrounding land within Zone No 7 (a).

**36 Location of housing on land within Zone No 7 (d4)**

Consent must not be granted to development on land within Zone No 7 (d4) that is shown hatched on the map marked "Cemdes Local Environmental Plan No 138 - Harrington Park 2" unless the Council is satisfied that the development will be carried out, and any housing and associated facilities will be located, in such a manner that minimises the removal of existing native vegetation.

**37 Bush fire protection**

- (1) This clause does not apply to development on bush fire prone land.  
*Note.* Section 488A of the Act and section 100B of the Rural Fires Act 1997 deal with development on bush fire prone land.
- (2) Before granting consent to any development on land within Zone No 2 (d) or Zone 7 (d4) that is adjacent to land within Zone 7 (a), the Council must take into account whether:
  - (a) the development is likely to have a significant adverse effect on the implementation of any strategies for bush fire control and fuel management adopted by the Council, and
  - (b) a significant threat to the lives of residents, visitors or emergency services personnel may be created or increased as a result of the development or the access arrangements to and from the site of the development, and
  - (c) the increased demand for emergency services during bush fire events created by the development would lead to a significant decrease in the ability of the emergency services personnel to effectively control major bush fires, and
  - (d) the measures to be adopted to avoid or mitigate the threat from bush fire, including siting of the development, design of structures and materials used, clearing of vegetation, fuel free and fuel reduced areas and landscaping and fire

control aids, such as roads and water supplies, are inadequate for the locality or would result in unacceptable environmental impacts.

- (3) In taking into account matters as required by subclause (2), the consent authority must take into account:
- (a) any relevant bush fire management plan that has been approved by the Council, and
  - (b) the specifications and requirements of *Planning for Bushfire Protection*, ISBN 0 9585987 8 9, produced by the NSW Rural Fire Service (or, if another document is prescribed by the regulations for the purposes of section 78BA (1) (a) of the Act, that document), that are relevant to the development.

**38 Restriction on certain subdivisions—provision of regional transport infrastructure and services**

- (1) This clause applies to land within Zone No 2 (d) (Residential "d") or Zone No 7 (d4) (Environmental Protection (Non-Residential)) but does not apply if any of that land is within a special contributions area (as defined in section 93C of the Act).
- (2) The object of this clause is to require assistance towards the provision of regional transport infrastructure and services to satisfy needs that will arise from development of land to which this clause applies, but only if that land is developed intensively for urban purposes.
- (3) Despite any other provision of this Plan, consent must not be granted for a subdivision of land to which this clause applies that will create a lot with an area of less than 40 hectares unless the Director-General has certified in writing to the Council that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in relation to the land comprising that lot.
- (4) The reference in subclause (3) to a lot with an area of less than 40 hectares does not include a reference to any such lot:
- (a) identified in the certificate as a residue lot, or
  - (b) that is proposed in the development application to be reserved or dedicated for public open space, public roads, public utilities, educational facilities, or any other public purpose.
- (5) Subclause (3) does not apply to a subdivision for the purpose only of rectifying an encroachment on any existing allotment.



## **Annexure B - Indicative Cobbitty Road Works Plan**



**Annexure C - Explanatory Note**

**Draft Planning Agreement relating to Harrington Grove**  
**Minister for Planning and Dandaloo Pty Limited as trustee for the**  
**Development Trust**

**Explanatory Note**

**Introduction**

The purpose of this explanatory note is to provide a plain English summary to support the notification of the proposed planning agreement (the "**Planning Agreement**") prepared under subdivision 2 of Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the "**Act**").

This explanatory note has been prepared jointly by the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000* (the "**Regulation**").

**Parties to the Planning Agreement**

The parties to the Planning Agreement are Dandaloo Pty Limited as trustee for the Development Trust (the "**Developer**") and the Minister for Planning (the "**Minister**").

The Developer made an offer to the Minister to enter into a planning agreement in or around August 2007 in connection with it seeking a new environmental planning instrument (being the *Camden Local Environmental Plan no 138*, which has since been replaced by the *Camden Local Environmental Plan 2010*) for the purposes of, amongst other things, amending the *Camden Local Environmental Plan no 74 - Harrington Park*.

The Minister has not accepted that offer and has not signed the Planning Agreement comprised in that offer.

The Developer has made an amended offer to the Minister to enter into a planning agreement by varying the terms of the Planning Agreement which the Developer signed in or around August 2007.

**Description of the Subject Land**

The Planning Agreement applies to those parts of the land previously comprised in:

- Lot 3420 in Deposited Plan 1105169; and
- Lot 101 in Deposited Plan 1107591

which are identified and delineated by heavy black ink in the plan attached to the *Camden Local Environmental Plan No 138* (the "**Land**").

The Land previously comprised in Lot 3420 in Deposited Plan 1105169 and Lot 101 in Deposited Plan 1107591 have been subdivided and those allotments no longer exist.

The Land formerly comprised in Lot 3420 in Deposited Plan 1105169 has been subdivided and the resulting subdivided allotments have been further subdivided a number of times since August 2007 (and will continue to be subdivided on a regular basis).



The Land formerly comprised in Lot 101 in Deposited Plan 1107591 is currently comprised in Lot 6 in Deposited Plan 270613, Lot 7 in Deposited Plan 270613 and Lot 8 in Deposited Plan 1132349.

### **Description of the Development**

The Developer intends to subdivide the Land into approximately 1,000 single dwelling residential lots together with all necessary road works and ancillary services (the "Development").

### **Summary of Objectives, Nature and Effect of the Draft Planning Agreement**

The Planning Agreement provides that the Developer will make various cash contributions or works-in-kind to the Minister towards designated regional public infrastructure, on the terms and conditions of the Planning Agreement (the "Contributions").

The Contributions comprise the following:

- restoration contribution works to the Heritage Homestead known as "Orierton" for public purposes to a cost equivalent of \$1.875 million;
- restoration contribution works to the Heritage Homestead known as "Harrington Park" for public purposes to a cost equivalent of \$1.875 million;
- vegetation conservation contribution works in respect of the Land for public purposes relating to biodiversity to a cost equivalent of \$6.25 million;
- road improvement contribution works including the first stage of upgrading the Cobbitty Road/Camden Valley Way intersection to a cost equivalent of \$18 million;
- a cash contribution amount of \$3.18 million to be used by the Minister for the upgrading of Cobbitty Road from Camden Valley Way to the point which lies 1.5 km west from that intersection or for general transport and road purposes, or if elected by the Developer, the provision of contribution works for the upgrade of Cobbitty Road; and
- a cash contribution amount of \$150,000 to be used for vegetation rehabilitation works at the discretion of the Director General of Planning.

The cash contribution in respect of the Cobbitty Road works is subject to indexation in accordance with the consumer price index (Sydney - All Groups).

The objective of the Planning Agreement is to facilitate the payment of the cash contributions and the delivery of the contribution works to the Minister, or such other party as the Minister directs.

The Planning Agreement requires the cash contribution in respect of:

- the Cobbitty Road works to be paid no later than either the date which is 4 years following the execution of the Planning Agreement or the date on which a certificate is granted for the subdivision of the 900th lot comprising the Development (whichever is the earlier) (noting that this is payable if the Developer does not elect to carry out the contribution works instead); and
- the vegetation rehabilitation works to be paid no later than within 5 business days of the date on which the first subdivision certificate is granted for the subdivision of the Land

following the execution of the Planning Agreement.

The Developer may carry out works-in-kind in relation to the Cobbitty Road works in lieu of paying the cash contribution of \$3.18 million if the Developer elects to do so by the date which is 3.5 years after the date of the Planning Agreement and, the Minister consents to such election. The Developer has entered into a contract with Camden Council in relation to the Cobbitty Road works. If the Developer elects to carry out the Cobbitty Road contribution works (and the Minister has consented to such election), it must comply with the provisions of that contract relating to those works (with an estimated cost of \$11,588,720, inclusive of GST).

The Developer has entered into a number of other contracts with third party entities in relation to the contribution works, including Camden Council (in respect of the vegetation conservation contribution works), the Roads and Traffic Authority of NSW ("**RTA**") (in respect of the road improvement contribution works) and the Minister (in respect of the restoration contribution works) (the "**Contracts**"). The completion dates for those works are as follows:

- the Developer must complete the restoration contribution works and RTA works by the date which is the earlier of the dates specified for completion of those works in the relevant Contracts, or the date on which the Developer requests the subdivision certificate relating to the last remaining part of the Land which is to be subdivided into one or more allotments (the "**Final Subdivision Certificate**");
- if the Developer elects to carry out the Cobbitty Road contribution works, those works must be completed by the date which is the earlier of the date specified for completion of those works in the relevant Contract, the fourth anniversary of the date on which the Minister accepts the offer and signs the Planning Agreement, or the date on which the Developer requests the Final Subdivision Certificate which relates to the last remaining part of the Land which is to be subdivided into one or more allotments; and
- the Developer must complete the vegetation conservation works by the date on which the Developer requests the Final Subdivision Certificate.

If the Developer fails to pay the cash contributions by the date specified in the Planning Agreement, then the Developer must pay the Minister an amount which is equivalent to the outstanding cash contributions due to the Minister under the Planning Agreement.

If the Developer fails to deliver the works contributions to the Minister by the dates specified in the Contracts, the Developer must pay the Minister the anticipated costs which are required to complete the contribution works. The anticipated costs will be capped at the cash equivalent for each of the contribution works specified in the Planning Agreement.

The Minister has the benefit of a mortgage over part of the Land. If the Developer does not pay the cash contributions or deliver the contribution works by the required dates, the Minister will be able to enforce its mortgage.

The *Camden Local Environmental Plan 2010* provides that Camden Council (as the relevant consent authority) cannot grant consent for the Development unless the Director-General of Planning has certified in writing that certain satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the Land.

The Planning Agreement once executed will allow the Director General of Planning to determine whether satisfactory arrangements for State public infrastructure have been made in relation to the Land.

## **Assessment of the Merits of the Draft Planning Agreement**

### **The Planning Purpose of the Planning Agreement**

In accordance with section 93F of the Act, the Planning Agreement has the following public purposes:

- the provision of public amenities or public services;
- the provision of transport or infrastructure relating to the Land; and
- the conservation or enhancement of the natural environment.

The Minister and Developer have assessed the Planning Agreement and both hold the view that the provisions of the Planning Agreement provide a reasonable means of achieving the public purposes set out above. This is because the Developer will be providing contributions (either by way of cash contributions or contribution works) towards the restoration of heritage homesteads, conservation of vegetation and road improvements and upgrades.

### **How the Planning Agreement Promotes the Public Interest**

The Planning Agreement promotes the public interest by procuring contributions from the Developer for:

- the provision of road and transport infrastructure;
- the provision of vegetation conservation works; and
- the restoration of heritage homesteads.

### **How the Planning Agreement Promotes the Objects of the Act**

The Planning Agreement promotes the following objects of the Act:

- the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and a better environment;
- the protection, provision and co-ordination of communication and utility services;
- the provision and co-ordination of community services and facilities; and
- the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats.

The Planning Agreement promotes the objects of the Act set out above by requiring the Developer to provide contributions (either cash contributions or contribution works) set out in this explanatory note under the heading "*Summary of Objectives, Nature and Effect of the Planning Agreement*" for the following purposes:

- the restoration of heritage homesteads;
- the provision of transport or road infrastructure relating to the Land; and

- the conservation of vegetation.

Each of these purposes represents an important public benefit, and the Developer's offer to contribute towards these purposes will provide an important positive impact on the public who use the infrastructure and services to which these purposes relate.

## **Annexure D - Proposed Development Timetable**

Payments to be made under this Deed shall be deemed to become payable on each anniversary of the Default Date on the assumption that, on that anniversary date, a Subdivision Certificate creating 1.50 Allotments was issued.

**Executed as a Deed**

**Executed by Dandaloo Pty Limited as trustee for the Development Trust ABN 42 256 128 029** in accordance with section 127 of the *Corporations Act* by or in the presence of:

M. O'Keefe  
Signature of Secretary/other Director

BARRY STANLEY JOHN O'KEEFE  
Name of Secretary/other Director in full



A circular blue ink stamp with the text "COMMON SEAL" around the top edge and "DANDALOO PTY. LIMITED" in the center. Below the company name, it says "A.C.N. 002 350 543".

[Signature]  
Signature of Director

LEE THOMAS  
Name of Director in full

**Signed** by me, Sam G Haddad  
as delegate of **The Minister for Planning** and I hereby certify that I have no notification of revocation of such delegation and in the presence of:

[Signature]  
Signature of witness

Louise Higgins  
Full name of witness

ct-23 Bridge St, Sydney  
Full address of witness

[Signature]  
Signature of delegate

Sam G Haddad  
Minister for Planning, delegate of The