

Explanatory Note

Lowes Creek and Maryland Parts Precinct

Planning Agreement

Introduction

The Lowes Creek and Maryland Parts Precinct is proposed to be released under the Government's Precinct Acceleration Protocol (**PAP**). The PAP has been developed by Government to allow the early release of precincts of the Growth Centres for development. A key condition of the PAP is that the early release of these precincts is to be at no cost to Government.

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**"). The Lowes Creek and Maryland Parts Precinct Planning Agreement is a contractual arrangement between the Minister for Planning (ABN 38 755 709 681) (the "**Minister**") representing the NSW Government; Macarthur Developments Pty Ltd (ACN 162 581 900); Arnold Daniel Vitocco; Cameron Brae Pty Ltd (ACN 000 637 525); D. Vitocco Constructions Pty Ltd (ACN 001 681 465); Irene Vitocco; Maryland Homestead Pty Ltd (ACN 160 523 535) and Nonorrah Farm Pty Ltd (ACN 160 533 353) (the "**Developer**").

The Lowes Creek and Maryland Parts Precinct Planning Agreement is authorised under Division 6 of Part 4 of the *Environmental Planning and Assessment Act 1979* (the "**Act**"). The Lowes Creek and Maryland Parts Precinct Planning Agreement outlines the conditions under which the Minister will consider amending the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the "**SEPP**") to rezone the land in the Lowes Creek and Maryland Part Precinct (the **Precinct**), and in particular that the Precinct's early release for development will be at no cost to Government.

The effect of any proposed amendment to the SEPP would be to rezone the Land for urban purposes.

In order to secure the accelerated release of the Lowes Creek and Maryland Part Precinct, the Developer has offered to enter into the Planning Agreement to provide contributions to fully fund the Precinct Planning process (and the Minister's costs of preparing the Planning Agreement) to ensure that if the early release of the precinct occurs, it will occur at no cost to Government.

The Precinct Planning Process will be undertaken by the Department of Planning with due regard to the Probity principles of impartiality, accountability, transparency and obtaining value for money.

The Planning Agreement provides that the Developer will fund the planning process for the Precinct (at an estimated cost of up to \$2,500,000) (**Precinct Planning Contribution**) and will prepare a Services Infrastructure Strategy and Services Infrastructure Implementation Plan to plan for servicing of the Precinct to support its orderly development.

The Developer seeks accelerated release of the Precinct, at its own cost, as the Developer is committed to the development and growth of the precinct.

Once the Precinct Planning process is completed, an amendment to the SEPP to rezone the Land for urban purposes will be considered by the Minister. The Developer proposes to offer to enter into a further planning agreement to deliver essential infrastructure to support the Precinct, including regional transport infrastructure and services infrastructure, in connection with the proposed future rezoning of the Precinct.

Summary of Objectives, Nature and Effect of the Planning Agreements

A key objective of the NSW Government is the supply of land for urban development to the market as quickly as possible consistent with the most efficient use of government funds.

The Developer may become liable to pay the Special Infrastructure Contribution in connection with the Proposed Development or other developments within the Sydney Region Growth Centres.

If the SEPP amendment is made to rezone the Lowes Creek and Maryland Parts Precinct for urban purposes the Developer will be entitled to "offset amounts" (**SIC Offset Amounts**) for a portion of its Precinct Planning Contribution under the Planning Agreement (as determined by the Minister), which could be applied towards its future Special Infrastructure Contribution obligations. Such entitlement will be the actual cost of the Precinct Planning process and will not exceed \$2,500,000.

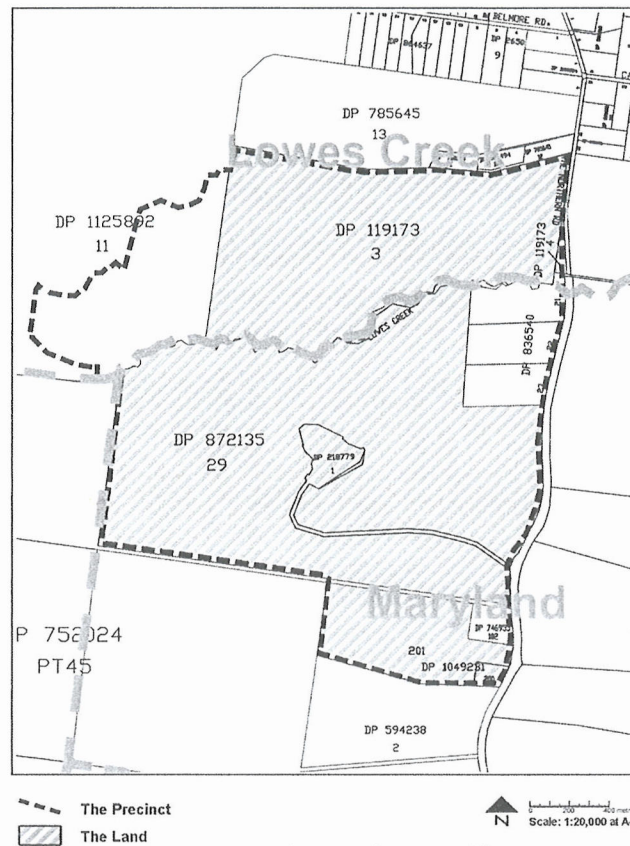
All of the SIC Offset Amounts are subject to indexation.

Description of the Subject Land

The Planning Agreement applies to:

- Lot 3 DP 119173;
- Lot 4 DP 119173;
- Lot 1 DP 218779;
- Lot 29 DP 872135;
- Lot 200 DP 1049231;
- Lot 201 DP 1049231.

and shown hatched in grey on the Subject Land Map below:



If any SEPP Amendment is made to rezone the Land for urban purposes, the Developer intends to make development applications under the Act to develop the Land consistent with the gazetted Lowes Creek and Maryland Parts Precinct (the "**Development**").

It is noted that Section 93F(9) of the Act states that:

A Planning Agreement cannot impose an obligation on a planning authority:

- (a) to grant development consent, or
- (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.

As such, the Planning Agreements have no bearing on whether the SEPP Amendment is made.

The Planning Agreements provide for the Developer to register the Planning Agreements on title to the Land in accordance with section 93H of the Act.

Assessment of Merits of Planning Agreement

The Planning Purpose of the Planning Agreement

In accordance with section 93F(2) of the Act, the Planning Agreement has the following planning purpose:

- The provision of (or the recoupment of the cost of providing) public amenities or public services.

The Planning Agreement provides for the detailed planning of the precinct and planning for the provision of the essential infrastructure that will be required to meet the demands generated by the Development and other development in the precinct.

The Planning Agreement will:

- facilitate the release of land for residential, employment and other urban development in the South West Growth centres of the Sydney Region;
- provide for comprehensive planning for the precinct (which will be consistent with the Growth Centre aims); and
- provide comprehensive planning and strategies for the orderly and economic provision of infrastructure that will be required in the precinct.

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 Planning Agreements describe an appropriate mechanism by which planning outcomes can be achieved without causing additional costs to Government due to the early release of the Land.

How the Planning Agreement Promotes the Public Interest and the Objects of the Environmental Planning and Assessment Act 1979

The Planning Agreement promotes the public interest and following objects of the Environmental Planning and Assessment Act 1979 as contained in section 5 of that Act:

- Section 5(a) (i) "*the proper management, development and conservation of natural and artificial resources for the purpose of promoting the social and economic welfare of the community and a better environment.*" by providing the resources needed for proper co-ordinated planning of the precinct and the essential infrastructure required for the new precinct;
- Section 5(a)(ii) "*the promotion and co-ordination of the orderly and economic use and development of the land*" by ensuring that the land use planning and infrastructure co-ordination occurs prior to zoning;
- Section 5(a)(iii) "*the protection, provision and co-ordination of communication and utility services*" by identifying the land needed for State and local level infrastructure delivery and developing a detailed strategy for the coordinated provision of such services; and
- Section 5(a)(iv) "*the provision of land for public purposes*" by undertaking detailed studies and consultation with relevant authorities to ensure that the land needed for that infrastructure can be made available within the precinct.

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

- Funding for the planning process for the Precinct by the NSW Department of Planning and Environment;

- Funding studies to identify the services and infrastructure that will be necessary to service the whole Precinct, as well as plans and strategies for the staged provision of those services and infrastructure.

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 will ultimately use the infrastructure and services to which these purposes relate.

The Minister for Planning and Infrastructure (**Minister**)

Macarthur Developments Pty Ltd (**Developer**)

Arnold Daniel Vitocco

Shargaz Pty Ltd

D.Vitocco Constructions Pty Ltd

Irene Vitocco

Maryland Homestead Pty Ltd

Nonorrah Farm Pty Ltd (**Landowners**)

Planning Agreement

Precinct Acceleration Protocol Release
for Precinct Planning

Lowes Creek and Maryland Parts Precinct



Handwritten signatures in black and blue ink, including a large signature at the top, a signature below it, and two signatures to the right.

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This Deed made on 25 September 2015

Parties

The Minister for Planning ABN 38 755 709 681
Level 15, 52 Martin Place, Sydney NSW 2000 ("**Minister**")

Macarthur Developments Pty Ltd ACN 162 581 900
PO Box 1010, Narellan NSW 2556 ("**Developer**");

Arnold Daniel Vitocco
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**"); and

Shargaz Pty Ltd ACN 143 979 515
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**"); and

D. Vitocco Constructions Pty Ltd ACN 001 681 465
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**"); and

Irene Vitocco
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**"); and

Maryland Homestead Pty Ltd ACN 160 523 535
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**"); and

Nonorrah Farm Pty Ltd ACN 160 533 353
c/o Macarthur Developments Pty Ltd PO Box 1010, Narellan NSW 2567 ("**Landowner**")

(together referred to as the "Developer")

Background

- A. The Landowners own the Land as set out in Schedule 2. The Land is located in the Western Sydney Growth Areas Special Contributions Area.
- B. The Developer intends to develop the Land.
- C. For the purposes of this Deed the Developer and the Landowners shall together be referred to as "the Developer".
- D. The Developer has sought a change to the SEPP in the form of the Draft SEPP.
- E. Before the SEPP can be changed, the Precinct must be released for Precinct Planning purposes under clause 276 of the EP&A Regulation, by declaration of the Minister published in the gazette.
- F. The Developer has offered to enter into a planning agreement with the Minister in order to provide the Contributions in connection with the gazettal of the Minister's declaration releasing the Precinct for Precinct Planning purposes, including the Precinct Planning Contribution and the planning for the provision of essential services infrastructure to meet the needs created by the future Development of the Precinct.
- G. The Developer will or may become liable to pay the Special Infrastructure Contribution in connection with the Development if and when the SEPP is amended or with other developments within the Growth Centres.

- H. The Developer proposes to provide certain of the Contributions, in lieu of paying the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres and the Parties have entered into this Deed to give effect to this arrangement.
- I. The Developer has also agreed to provide other Contributions for which it will not be entitled to a SIC Offset Amount.
- J. The Developer's proposal for the Land includes the making of Development Applications for the Development if and when the SEPP is amended.
- K. From the Date of this Deed, this Deed constitutes an agreement between the Developer and the Minister that the Developer will provide material public benefits on the terms and conditions of this Deed.
- L. Macarthur Developments Pty Ltd intends to offer to enter into a separate further planning agreement with the Minister over their respective portions of the Land to provide further contributions including the provision of regional and essential services infrastructure required to meet the needs created by the future Development of the Precinct, prior to the exhibition of the Draft SEPP.

Background

1. Interpretation

1.1 Definitions

The following words have these meanings in this Deed unless the contrary intention appears:

"Apply, Applied and Application" each mean, in relation to a SIC Offset Amount, the application of that SIC Offset Amount pursuant to clause 4.5.

"Approval" means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the works the subject of this Deed or the Development generally, and includes without limitation any Development Consent, approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Sydney Water and Endeavour Energy for the construction and delivery of the Services Infrastructure.

"Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs" mean the costs determined by the Minister to be 'Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs' in accordance with clause 4.

"Authority" means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes an accredited certifier accredited under section 109T of the EP&A Act.

"Available SIC Offset Amount" means each SIC Offset Amount to which the Developer has become Entitled under this Deed that has not at the relevant time been previously Applied.

"Bank Guarantee" means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

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

"Consent Authority" means, in relation to an application for any Approval, the Authority having the function to determine the application for the Approval.

"Contributions" means the contributions to be provided by the Developers under clause 2.4.

"Costs" includes all costs, charges and expenses, including those incurred in connection with advisers and legal costs and expenses on a full indemnity basis or solicitor and own client basis, whichever is the higher.

"Council" means Camden Council.

"Date of this Deed" means the date this deed is signed by all the Parties.

"Deed" means this planning agreement including all schedules and annexures.

"Department" means, and includes where relevant, the NSW Department of Planning and Environment, the Secretary of the Department of Planning and Environment and the Minister.

"Development" means the development of the Land for Urban Development.

"Development Application" means any other application to carry out development for which consent is required under the EP&A Act.

"Development Consent" means:

- (a) development consent as that term is defined in the EP&A Act; and
- (b) a Modification.

"Draft SEPP" means the draft instrument proposed to amend the SEPP for Development of the Precinct.

"Endeavour Energy" means the corporation of that name established by section 7 of the *Energy Services Corporations Act 1995* (NSW)

"Entitle", "Entitled" and "Entitlement" means the entitlement of the Developer to certain SIC Offset Amounts pursuant to clause 4.4 as provided for in that clause.

"EP&A Act" means the *Environmental Planning and Assessment Act 1979* (NSW), and includes any subsequent or replacement legislation that governs the use or development of land within New South Wales.

"EP&A Regulation" means the *Environmental Planning and Assessment Regulation 2000* (NSW), and includes any subsequent or replacement legislation that governs the use or development of land within New South Wales.

"Explanatory Note" means the explanatory note relating to this Planning Agreement, as required by clause 25E of the EP&A Regulation.

"Growth Centres" means the North West or South West Growth Centres of Sydney.

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

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

"Intellectual Property" means all rights in copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and all other rights of intellectual property as recognised by New South Wales and Australian law.

"Interest Rate" in relation to interest payable on any payment due under this Deed means the rate which is the Bank Bill Rate plus a margin of 2% per annum.

"Interim Endeavour Energy Services Infrastructure" means such of the Services Infrastructure identified as the Interim Endeavour Energy Services Infrastructure in the Services Infrastructure Strategy, being the electrical feeder connection to the electricity substation.

"Interim Land Release Contribution Policy" has the meaning given to that term in the publication entitled:

"Interim Land Release Contribution Policy
Metropolitan Development Program
Managing Sydney's Urban Growth
October 2005"

published by the Department and the Roads and Traffic Authority of New South Wales, a copy of which is available from the Office of Strategic Lands, Department of Planning and Infrastructure.

"Interim Sydney Water Services Infrastructure" means such of the Services Infrastructure identified as the interim Sydney Water Services Infrastructure in the Services Infrastructure Strategy.

"Land" means the land described in Schedule 2 (or any part or parts of it) and identified as cross hatched in grey and identified as "The Land" and "The Precinct" in the plan comprising Annexure A.

"Landowner" means the Landowners jointly and severally.

"Law" means:

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

"Minister" means the Minister for Planning, or an officer or position holder within the Department nominated by the Minister or the Secretary of the Department.

"Modification" means an approved modification of a Development Consent within the meaning of section 96 of the EP&A Act.

"Other Development" means development or potential development on land within the Precinct where that land is not owned by the Developer.

"Parties" means the parties to this Deed.

"PCG" means the project control group referred to in clause 17.2(a)

"Planning for the Provision of Services Infrastructure" means planning activities described in clause 19.

"PWG" means the project working group referred to in clause 17.2(b).

"Precinct" means the Lowes Creek and Maryland Parts Precinct which is shown on the plan as a black dashed line identified as "The Land" and "The Precinct" comprising Annexure A.

"Precinct Acceleration Costs" means the costs of the Department beyond Precinct Planning Costs incurred as a result of accelerating the development of the Precinct generally in accordance with the Precinct Acceleration Protocol and clause (d), Table 1 of Schedule 3 of this Deed.

"Precinct Acceleration Protocol" means the document entitled *NorthWest and SouthWest Growth Centres Precinct Acceleration Protocol* prepared by the Department.

"Precinct Development Parameters" means the development parameters described in Part A, Section 2 of the Growth Centres Development Code, Growth Centres Commission, October 2006 or other parameters approved by the Department relevant to the Precinct.

"Precinct Planning" means the planning associated with the acceleration of the development of the Precinct.

"Precinct Planning Budget" means the budget set by the PWG in connection with Precinct Planning, under clause 17.2(b).

"Precinct Planning Contribution" means the costs incurred by the Developer generally described in clause 3.

"Planning for the Provision of Services Infrastructure Costs" means those costs of the Department specifically related to the Planning for the Provision of Services Infrastructure from the Precinct Release Date to the date of publication of the SEPP (as amended) consistent with the Draft SEPP.

"Precinct Planning Costs" means those costs of the Department specifically related to the Precinct Planning Process from the Precinct Release Date to the date of publication of the SEPP (as amended) consistent with the Draft SEPP.

"Precinct Planning Process" means the activities ordinarily associated with the preparation adoption and exhibition of the Draft SEPP including:

- (a) design development with a master planner, interpretation of the opportunities and constraints described in the specialist technical studies, preparation of statutory controls such as zoning maps, land use tables, and preparation of the development control plan;
- (b) interaction with Council and assistance with the preparation of Council's Section 94 plans;
- (c) consultation with other State agencies to ensure legislative and technical requirements are complied with. Precinct planning includes landowner and

broader community consultation and responding to issues that arise from this process;

- (d) exhibition of the Draft SEPP.

"Precinct Project Manager" means the person appointed under clause 17.2(a)(1).

"Precinct Release Date" means the date on which the Minister publishes in the NSW Government Gazette a declaration under clause 276 of the EP&A Regulation to declare the Precinct released for Precinct Planning purposes.

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

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

"Relevant Authority" means any, or all, of the Minister, Sydney Water and Endeavour Energy as the context requires and to the extent the context refers to the Sydney Water Services Infrastructure, Sydney Water and to the extent the context refers to the Endeavour Energy Services Infrastructure, Endeavour Energy. Where there is any dispute, Relevant Authority means such of the Minister, Sydney Water and Endeavour Energy as is certified by the Minister.

"Relevant Cap" means \$2.5 million as indexed from the date this deed commences in accordance with clause 4.7.

"SEPP" means the *State Environmental Planning Policy (Sydney Region Growth Centre)* 2006.

"Services" means the water, sewerage and electricity required to adequately serve the Precinct (once developed).

"Services Infrastructure" means the infrastructure described or referred to in the Services Infrastructure Strategy and Servicing Infrastructure Implementation Plan.

"Services Infrastructure Strategy" means the services infrastructure strategy relating to the Precinct prepared by the Developer and approved by the Minister pursuant to clause 19.2 (as updated from time to time).

"Services Infrastructure Implementation Plan" means the services infrastructure implementation plan relating to the Precinct prepared by the Developer and approved by the Minister pursuant to clause 19.4 (as may be updated from time to time).

"Services Infrastructure Works" means the works to be carried out by the Developer to provide the Services Infrastructure.

"SIC Determination" means the document entitled *Environmental Planning and Assessment (Special Infrastructure Contribution Western Sydney Growth Areas) Determination 2011*, as amended, repealed, supplemented, replaced or substituted from time to time.

"SIC Offset Amount" means the amount specified in clause 4.4 of this Deed as being the appropriate SIC Offset Amount for that event.

"SIC Offset Certificate" means a certificate issued under this Agreement specifying:

- (a) the aggregate of all SIC Offset Amount Entitlements of the Developer as at the date of the certificate;

- (b) the aggregate of all SIC Offset Amounts Applied in relation to the Developer as at the date of the certificate; and
- (c) the aggregate of all Available SIC Offset Amounts to which the Developer is Entitled, but which have not been Applied as at the date of the certificate.

"South West Growth Centre" means the area in New South Wales comprising approximately 17,000 hectares and comprising 18 precincts to the south west of Sydney defined by the NSW Government as a growth centre, and which includes the Precinct.

"Special Contributions Area" means the same meaning given to that term in section 93C of the EP&A Act.

"Special Infrastructure Contribution" means a contribution towards the provision of infrastructure determined in accordance with the SIC Determination as indexed from time to time in accordance with the SIC Determination.

"Sydney Water" means Sydney Water Corporation ABN 49 776 225 038.

"Sydney Water Services Infrastructure" means the Services Infrastructure for, and in connection with, the provision of water and sewerage.

"Taxes" means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

"Ultimate Sydney Water Services Infrastructure" means such of the Services Infrastructure identified as the ultimate Sydney Water Services Infrastructure in the Services Infrastructure Strategy.

"Urban Development" includes:

- (a) development for residential purposes;
- (b) community facilities and services, including schools;
- (c) retail centres;
- (d) parks and open space;
- (e) infrastructure; and
- (f) development for commercial purposes.

"Year" means each period of 12 months commencing on 1 July and ending of 30 June.

"Western Sydney Growth Areas" means each and any of:

- (a) the North West or South West Growth Centres of Sydney; and
- (b) any area to which the Interim Land Release Contribution Policy applies (other than the Second Ponds Creek Release Area)

as shown on the map marked Western Sydney Growth Areas – Special Contributions Area Map, as amended, repealed, supplemented or substituted from time to time.

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) "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;
 - (c) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and persons who are bound by this Deed under section 93H(3) of the Act;
 - (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (e) 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;
 - (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (g) 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;
 - (h) 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;
 - (i) "includes" in any form is not a word of limitation;
 - (j) a reference to "\$" or "dollar" is to Australian currency;
 - (k) no rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Deed; and
 - (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreements

2.1 Commencement

This Deed will commence on and from the date this Deed is signed by the Parties.

2.2 Planning agreements under the EP&A Act

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

2.3 Application of the Planning Agreements

This Deed applies to:

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

2.4 The Contributions

The Developer agrees to provide the Precinct Planning Contributions in accordance with this Deed.

3. Precinct Planning Contributions

3.1 Summary of Precinct Planning Contributions

The Precinct Planning Contributions are costs incurred in connection with the Precinct Planning Process both before and after the Date of this Deed. Those costs include:

- (a) costs relating to planning studies which are commissioned under this Deed as part of the Precinct Planning Process;
- (b) costs incurred by the Developer as a result of its reimbursement to the Department for:
 - (1) the Precinct Acceleration Costs;
 - (2) the Precinct Planning Costs;
 - (3) the Planning for the Provision of Services Infrastructure Costs;
 - (4) costs associated with the Department's management responsibilities for Precinct Planning, including those costs set out in Schedule 3;
 - (5) costs associated with reviews or additional planning studies, including but not limited to urban design and statutory planning;
 - (6) costs associated with community consultation including but not limited to hire of venues, printing and other communications; and
- (c) any other costs the Developer is required to fund (or reimburse to the Department) in relation to the Precinct Planning Process as contemplated or referred to in this Deed.

4. Special Infrastructure Contribution Offsets

4.1 Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs

The Parties agree that this clause 4.1 sets out the method for determining the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs that may be used to calculate an Entitlement to SIC Offset Amounts, as follows:

- (a) If and when the SEPP (as amended consistent with the Draft SEPP) is published, the Minister will determine the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs within 60 days of the publication of the SEPP (as amended consistent with the Draft SEPP)

providing that she has received all information necessary to do so from the Developer. The Minister must still determine the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs even if the 60 days has lapsed.

- (b) The Developer must submit all invoices it receives from third parties and otherwise must submit such other information the Developer determines relevant or requested by the Minister to enable the Minister to determine the actual costs incurred by the Developer in relation to the Precinct Planning Process and Planning for the Provision of Services Infrastructure, for the purposes of determining the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs.
- (c) The costs incurred by the Developer in relation to planning studies which are commissioned under this Deed as part of the Precinct Planning Process and Planning for the Provision of Services Infrastructure, will only form part of the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs if they comply with the criteria contained in clause 4.3.
- (d) Once the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs are determined by the Minister, the Minister will advise the Developer in writing of the amount of the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs.
- (e) The Developer may, within 30 days of receipt of the Minister's notice referred to in clause 4.1(d), request that the Minister review her determination of the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs, and the Minister will do so and provide her final determination within 30 days of the date of the request for a review, and in this regard the Minister's determination will be final and binding upon the Parties.
- (f) The Developer acknowledges that the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs determined by the Minister:
 - (1) must not exceed the Relevant Cap;
 - (2) will not include the Precinct Acceleration Costs;
 - (3) will not include any costs incurred by the Developer after the date of publication of the SEPP (as amended consistent with the Draft SEPP); and
 - (4) will not include the costs of commissioning the carrying out of any planning studies as part of the Precinct Planning Process or Planning for the Provision of Services Infrastructure unless those studies are commissioned in compliance with clause 4.3.

4.2 Relevant Cap

- (a) If it appears that the Precinct Planning Contributions are likely to exceed the Relevant Cap the Parties agree that, at the written request of the Developer, the Parties must promptly meet and discuss:
 - (1) the reasons for the likely exceedence (in the context of the original indicative budget and any subsequent iterations of the budget);

- (2) whether the anticipated Precinct Planning Contributions may be reduced; and
- (3) whether the Relevant Cap may be increased,
- (b) The Minister may or may not, at the Minister's absolute discretion, agree in writing to an increase in the Relevant Cap as a consequence of a meeting under clause 4.2(a).
- (c) If the Minister elects to agree to an increase under clause 4.2(b), despite anything else in this Deed, the Relevant Cap is set at the increased monetary amount so determined in writing by the Minister.

4.3 Criteria for Planning Studies

- (a) Prior to commissioning the carrying out of any planning studies as part of the Precinct Planning Process and Planning for the Provision of Services Infrastructure, the Developer must provide the Minister with the proposed brief and scope of services for the study, and obtain the Minister's written agreement that:
 - (1) the study is necessary and relevant to the Precinct Planning Process and Planning for the Provision of Services Infrastructure; and
 - (2) the proposed brief and scope of services is appropriate and complies with the Precinct Planning Process and Planning for the Provision of Services Infrastructure.
- (b) The Developer will make any amendments to the proposed brief and scope of services reasonably requested by the Minister.
- (c) If any amendment is proposed by the Developer to the proposed brief or scope of services for any planning study, then the written agreement of the Minister to that amendment must be obtained.
- (d) The Parties agree that the Minister or the PCG have the sole discretion to commission any planning studies. However the Developer may, upon prior written confirmation by the Minister, commission those studies on behalf of the Minister or the PCG, subject to:
 - (1) satisfying the terms of this clause 4.2; and
 - (2) the Minister or the PCG retaining control over the direction of the planning studies and their content.
- (e) All planning studies must comply with the Precinct Planning Process and Planning for the Provision of Services Infrastructure which includes compliance with the following:
 - (1) planning studies and any future Precinct planning will be undertaken, except as otherwise directed by the Department, consistent with the NSW Government's Metropolitan Strategy; the SEPP (including the relevant Growth Centre Structure Plan); Growth Centres Commission Development Code; Precinct Development Parameters approved by the Department; all other relevant environmental planning instruments; and Directions under Section 117 of the EP&A Act as if they apply to the Precinct Planning Process;

- (2) planning studies are to be commissioned to facilitate precinct level approvals required (as relevant) by:
 - (A) the *Water Management Act 2000* (NSW);
 - (B) *National Parks and Wildlife Act 1974* (NSW) (S.87, 90);
 - (C) *Heritage Act 1977* (NSW);
 - (D) *Rural Fires Act 1997* (NSW); and
 - (E) *Threatened Species Conservation Act 1995* (NSW);
 - (F) *Environment Protection and Biodiversity Act 1999* (Cth); and
- (3) planning studies are to be undertaken consistent with the relevant requirements of:
 - (A) the biodiversity certification of the SEPP; and
 - (B) the Growth Centres Commission's Precinct Assessment Method for Aboriginal Cultural Heritage and Protocol for Aboriginal Stakeholder involvement.
- (f) Copies of all completed planning studies and supporting information must be provided to the Minister.
- (g) All technical studies can be subject to a peer review by the Minister, with the costs of this peer review being incurred by the Developer.

4.4 Entitlement to SIC Offset Amount - Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs

The Parties agree that this clause 4.4 sets out the process to be used to calculate an Entitlement to SIC Offset Amounts, as follows:

- (a) Upon the determination by the Minister of the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs pursuant to clauses 4.1(d) or 4.1(e), the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs (up to a maximum of the Relevant Cap) if the Developer provides to the Minister:
 - (1) a written request requesting such Entitlement;
 - (2) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such Entitlement; and
 - (3) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (b) If Minister has received a request for an Entitlement from the Developer pursuant to clause 4.4(a) (and the Minister is satisfied with the content of the information provided with that request), then:
 - (1) within 90 days of the Minister receiving all the information required under clause 4.4(a), the Minister will notify the Developer in writing

that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts to which the Developer is Entitled (which will be equivalent to the Approved Precinct Planning and Planning for the Provision of Services Infrastructure Costs) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and

- (2) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amounts approved by the Minister as confirmed in his notice pursuant to clause 4.4(b)(1).

The Minister must notify the Developer in writing that its request has been approved and issue a SIC Offset Certificate even though the time period referred to in clause 4.4(b)(1) has lapsed.

- (c) The Developer acknowledges that it may only request an Entitlement to SIC Offset Amounts in the event that the SEPP (as amended by the Draft SEPP) is published.

4.5 Application of Available SIC Offset Amounts

- (a) If the Developer:
 - (1) has an Entitlement to an Available SIC Offset Amount; and
 - (2) becomes liable to make Special Infrastructure Contributions in respect of the Development or any other development undertaken by the Developer within the Western Sydney Growth Areas (**Relevant Development**),

the Developer may issue to the Minister a request for Application of the Available SIC Offset Amount nominated by the Developer in that request to be applied towards the partial or full (as nominated by the Developer) satisfaction of the Developer's obligations to make those Special Infrastructure Contributions (**SIC Obligations**).

- (b) At the same time as issuing any request for Application to the Minister, the Developer must provide to the Minister any SIC Offset Certificate current at the time the Developer makes that request.
- (c) If the Minister is satisfied with a request for Application from the Developer, then:
 - (1) within 90 days of the Minister receiving that request, the Minister will notify the Developer in writing that its request for Application has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to reflect the Application of the Available SIC Offset Amounts the subject of that request and all other updates to that certificate as are appropriate; and
 - (2) on and from the date of the Minister's notice, the Developer will be deemed to have satisfied the SIC Obligations to the extent of the dollar value of the Available SIC Offset Amount so Applied.

The Minister must notify the Developer in writing that its request has been approved and issue a SIC Offset Certificate even though the time period referred to in clause 4.5(c)(1) has lapsed.

4.6 Tradeable Credits

If and when the NSW Government introduces a scheme which enables the Developer to utilise SIC Offset Amounts as an offset to obligations of another person to pay any Special Infrastructure Contribution, then promptly after any request from the Developer, the Minister and the Developer will meet to discuss how the Developer might utilise its SIC Offset Amounts under that scheme and the Minister will take reasonable steps to enable the Developer to do so in accordance with that scheme (to the extent that it is within the Minister's power to take those steps).

4.7 Indexation of SIC Offset Amounts and the Relevant Cap

The Parties acknowledge and agree that:

- (a) the Relevant Cap will be indexed; and
- (b) each SIC Offset Amount will be indexed (until such time as each such SIC Offset Amount no longer constitutes an Available SIC Offset Amount),

in a manner determined and confirmed from time to time in writing by the Minister to the Developer, on a basis consistent with the manner in which the Special Infrastructure Contributions are indexed in accordance with the SIC Determination.

4.8 Application of SIC Offset Amounts pending planning for the provision of Services Infrastructure

Despite anything else in this Deed, the Developer may not make a request under clause 4.4, and the Minister may not issue a SIC Offset Certificate under clause 4.4, unless the Services Infrastructure Strategy and the Services Infrastructure Implementation Plan have been approved under clause 19.

5. Application of sections 94, 94A and 94EF of the EP&A Act

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

6. Registration of this Deed

- (a) The Developer agrees to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and this clause 6.
- (b) The Developer, at its expense and risk, as soon as reasonably practicable (but in any event no later than 30 days after the Date of this Deed) take all practical steps and otherwise do anything that the Minister reasonably requires:
 - (1) to procure
 - (A) the consent of each person who:
 - 1) has an estate or interest in the Land registered under the Real Property Act; or

- 2) is seized or possessed of an estate or interest in the Land; and
 - (B) the execution of any documents; and
 - (C) the production of the relevant duplicate certificates of title, to enable the registration of this Deed under the *Real Property Act* 1900 (NSW) by the Registrar-General in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act; and
- (2) to procure registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act.

7. Termination by Developer

The Developer may give the Minister notice to terminate this Deed at any time, and the Minister will not unreasonably withhold his agreement to terminate this Deed, provided the Minister is satisfied that:

- (a) the Developer is not in breach of this Deed; and
- (b) the Developer has first discharged any of its outstanding obligations under this Deed in relation to the payment of any Costs incurred before and after the date of this Deed in accordance with clauses 2.4, 3, 12 and 14 and Schedule 3, including any ongoing obligations under any contracts entered into by the Department as part of the Precinct Planning Process or accelerating the development of the Precinct generally in accordance with the Precinct Acceleration Protocol.

8. Release and Discharge

- (a) Once the Minister is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request, the Minister agrees to:
 - (1) provide a full release and discharge of this Deed with respect to the whole of the Land;
 - (2) sign all documentation as is necessary to remove this Deed from the title of the Land; and
 - (3) sign such documentation as is necessary to remove any caveat lodged by the Minister in relation to the Land.
- (b) The Developer must, promptly following written demand from the Minister, reimburse the Minister for any Costs the Minister incurs in connection with doing anything required or contemplated by this clause.

9. Security and Assignment and other dealings

The Parties acknowledge that clauses 6, 20 and 21 constitute the security arrangements of this deed

10. Review of Deed

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.

11. Dispute resolution

- (a) A dispute is taken to have arisen under this Deed if one Party gives another Party a notice in writing specifying particulars of the dispute.
- (b) If a notice is given under paragraph (a) above, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- (c) If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of that Law Society, or the President's nominee, to select the mediator.
- (d) If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

12. Departmental costs and Costs under this Deed

- (a) The Department will invoice the Developer for all Precinct Planning Costs and Precinct Acceleration Costs incurred by it arising as a result of services provided by third parties engaged or commissioned by the Department as soon as possible after the Department is invoiced by that third party.
- (b) The Department will invoice the Developer for all other costs which the Developer is required to meet under this Deed.
- (c) The Developer must pay to the Department all amounts invoiced in accordance with this clause 12 within 28 days of the date of the invoice.
- (d) The amounts invoiced by the Department will be at the cost charged to the Department.

13. Overdue payments

13.1 Interest on overdue money

The Developer agrees to pay interest to the Minister on any amount payable by it under this Deed from 28 days after 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 Interest Rate.

13.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Minister on the first day of each calendar month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 13.

13.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer 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.

The Developer'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.

14. GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the GST Act.
- (b) In this clause 14, "**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 14.
- (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.

14.2 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.

14.3 Additional amount of GST payable

Subject to clause 14.5, 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 14), 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:
 - (1) 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

- (2) 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 14.3(b).

14.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 14.3 and clause 14.5), varies from the additional amount paid by the Recipient under clause 14.3, 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 14.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.3.
- (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.

14.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 14.3 applies is a taxable supply made by the Recipient (the Recipient Supply), the GST Amount that would be otherwise be payable by the Recipient to the Supplier in accordance with clause 14.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.3 (or the time at which such GST Amount would have been payable in accordance with clause 14.3 but for the operation of clause 14.5(a)).

14.6 No merger

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

15. Explanatory Note

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

16. Notices

16.1 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 delivered or posted to that Party at its address set out below or faxed to that Party at its fax number set out below:

Minister

Name: The Minister for Planning and Infrastructure
Address: 23-33 Bridge Street
Sydney NSW 2000
Fax: (02) 9228 6455
For the attention of: Director-General

Developer

Name: Macarthur Developments Pty Ltd
Address: PO Box 1010
Narellan NSW 2567
Fax: (02) 4774 9932
For the attention of: Stephen McMahon

Landowners

Name: Arnold Daniel Vitocco
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567

Name: Shargaz Pty Ltd
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567

Fax: (02) 4774 9810

Name: D. Vitocco Constructions Pty Ltd
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567

Fax: (02) 4648 4827

Name: Irene Vitocco
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567

Name: Maryland Homestead Pty Ltd
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567
Fax: (02) 4648 4827

Name: Nonorrah Farm Pty Ltd
Address: c/o Macarthur Developments Pty Ltd
PO Box 1010
Narellan NSW 2567
Fax: (02) 4774 9810

16.2 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 given in accordance with this clause 16.2.

16.3 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 delivered to the relevant address;
- (b) if it is sent by post, 2 Business Days after it is posted; and
- (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.

16.4 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 5.00 pm 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.

17. Additional Developer Obligations

17.1 Intellectual Property and use of information

- (a) The Developer agrees, at its own cost, to ensure that the Minister and all other authorities which may need to use studies brought into existence for the purposes of the Precinct Planning Process are irrevocably licensed to use the Intellectual Property in the studies.

- (b) The Developer agrees to ensure all licence fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adoption or use of any documents brought into existence as a result of this Deed.
- (c) The Developer agrees to indemnify and keep indemnified the Minister from and against all actions, proceedings, claims, demands, costs, losses, damages and expenses which may be brought against, made upon or incurred by the Minister in relation to the use by the Minister of any material brought into existence as part of the Precinct Planning Process by the Developer or any other person.

17.2 Governance of the Precinct Planning Process

- (a) The Parties agree that:
 - (1) the Department is ultimately responsible for precinct planning, including endorsement of "Precinct Development Parameters", draft Precinct plans for exhibition and draft Precinct plans for submission to the Minister for Planning and Infrastructure, and may appoint a Precinct Project Manager for the purposes of carrying out the functions of the Precinct Project Manager described in this Deed;
 - (2) a project control group comprising representatives from the Department (Chair) and Council will oversee precinct planning and related studies, including the review of contractor briefs to ensure they are appropriate to deliver the Minister's planning objectives. The Developer will not be represented on the PCG. The administration of the PCG will be coordinated by the Department.
- (b) A project working group comprising representatives of the Department and Council will oversee the day to day planning studies. The Developer and Landowners will both be invited to attend the PWG. The extent of the Developer's involvement will be guided by independent probity advice and will be limited to management issues of the Precinct Planning Process including timeframes and budgets. The PWG and the application of the Precinct Planning Contribution will be guided by a plan which addresses potential risks to the project, including probity risks.
- (c) The Department will nominate a single representative on the PWG. Any alteration by the Department to its representative on the PCG and PWG shall be notified to the Developer in writing.
- (d) The Developer and Landowners will each nominate a single representative to attend the PWG. Any alteration by the Developer to its representative shall be notified to the Department in writing. The Developer can only change its representative to attend the PWG with the prior written approval of the PCG, which shall not be unreasonably withheld.
- (e) In addition to the roles and functions of the PCG and PWG under clauses 17.2(a) to 17.2(d), the Parties agree that:
 - (1) the PWG will monitor and discuss proposed and actual expenditure against the Precinct Planning Budget to manage cost control;
 - (2) the Developer will facilitate the Minister having sole direct access to third parties engaged to provide planning studies;

- (3) the Developer agrees to consult, cooperate and confer with others (subject to commercial-in-confidence constraints) where so directed by the Minister;
- (4) the Minister can commission peer reviews and additional investigations as required and these will be paid in full by the Developer;
- (5) the Developer agrees to obtain all necessary approvals, licences and permits, which may be required for the provision of services contemplated by this Deed;
- (6) the Developer will not, without the prior written consent of the Minister, disclose any information in connection with the services contemplated by this Deed to any person not a Party to this Deed other than:
 - (A) as necessary to perform those services; or
 - (B) with respect to any matter already within public knowledge; or
 - (C) as may be required by law, and

it is agreed this clause 17.2(e)(6) does not merge on completion.

- (f) The Precinct Project Manager will, on a monthly basis, provide the PWG members with a report setting out the Precinct Planning Budget, actual expenditure against the Budget and projected expenditure (by month and year) through to the conclusion of the planning processes contemplated by this Deed.
- (g) The Developer represents and warrants that no conflict of interest exists in the performance of the services contemplated by this Deed at the date the Developer signs this Deed. Immediately upon becoming aware of the existence, or possibility of a conflict of interest, the Developer must advise the Minister in writing.

17.3 Consultation

- (a) Monthly, and at other times on request of a representative of the Department, the Developer will provide information on the progress of planning studies and other issues related to the Precinct to enable the Department to provide regular and ad hoc reports to the Minister. This information will be provided in the form and within timeframes requested by a representative from the Department.
- (b) The Department will prepare a draft consultation strategy for approval by the PCG that will outline the program of consultations to be undertaken to engage Councils/community and interest groups / agencies and other landowners in the Precinct. The strategy will be prepared in consultation with the Councils.
- (c) The Developer and the Department will each nominate a single point of contact for all matters related to planning studies. It is expected that this person will be the primary source of input to the PCG and the PWG from each organisation.

17.4 Financials

- (a) The Developer will fund in a timely manner (upon invoice) all the Department's costs associated with planning studies. These costs will include reasonable contributions to Councils agreed by the Department.
- (b) The Developer will fund costs associated with any independent review or advice related to planning studies considered necessary by the PCG.
- (c) The Developer will fund all costs associated with the production of documentation associated with planning studies and community consultation.
- (d) The Developer will meet all administrative and other related costs associated with PCG and PWG meetings.

18. Changes to Planning Laws

In the event that the EP&A Act is repealed (whether in whole or part) while this Deed is in force in a manner which affects the terms used in, and interpretation of, this Deed, then:

- (a) the Parties' rights and obligations under this Deed will not be affected by the repeal;
- (b) clause 1.2(e) will apply to the definition of the EP&A Act and the SEPP;
- (c) the Draft SEPP will refer to any piece of statute or delegated legislation which has the effect of amending the SEPP for Development of the Precinct;
- (d) the SIC Determination will continue to have full force and effect in relation to this Deed;
- (e) if this Deed is not registrable on title after the repeal pursuant to a statutory provision equivalent to section 93H of the EP&A Act, the Deed will be deemed to be a public positive covenant registered on title pursuant to section 88E of the *Conveyancing Act* 1919, such that:
 - (1) the Parties agree that the effect of registration of this Deed under clause 6 will not be affected by the repeal and this Deed will be binding on, and enforceable against, any Developer or Landowners who takes title to any part of the Land;
 - (2) clause 21 will continue to apply, and the Minister may lodge a caveat on the title to the Land in relation to the matters under this Deed, and
 - (3) the Deed will only be released from the title to the Land pursuant to clause 8.

19. Planning for the Provision of Services Infrastructure

19.1 Developer to provide Planning for the Provision of Services Infrastructure

- (a) The Developer must provide Planning for the Provision of Services Infrastructure for the Precinct (once developed):
 - (1) in accordance with the provisions of this Deed; and
 - (2) at no cost to the Minister or the NSW Government.

- (b) The Parties acknowledge and agree that the Developer must ensure the Planning for the Provision of Services Infrastructure must:
 - (1) support orderly development of the Precinct; and
 - (2) have adequate capacity to serve Other Development as reasonably determined by the Minister.

19.2 Developer to prepare Services Infrastructure Strategy

- (a) Within 12 months of the Precinct Release Date, the Developer must prepare a draft Services Infrastructure Strategy.
- (b) In preparing the draft Services Infrastructure Strategy, the Developer:
 - (1) acknowledges that the development of the Services Infrastructure Strategy will be part of a consultative and cooperative process between the Developer and the Relevant Authorities;
 - (2) must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities make in respect of the draft Services Infrastructure Strategy;
 - (3) must ensure that the draft Services Infrastructure Strategy:
 - (A) identifies the strategy to provide the Services Infrastructure necessary for the orderly and efficient delivery of infrastructure services to service the whole Precinct (once developed), including without limitation:
 - (1) sewerage systems;
 - (2) potable water systems;
 - (3) recycled water systems to meet future urban development of the Precinct as required by clause 18 of the SEPP; and
 - (4) electricity; and
 - (B) identifies:
 - (1) the Services Infrastructure (if any) required to be constructed and transferred to the Relevant Authorities, including any Interim Sydney Water Services Infrastructure, Ultimate Sydney Water Services Infrastructure and Interim Endeavour Energy Services Infrastructure;
 - (2) the targeted timetable for the delivery of the Services Infrastructure, including the sequence of the stages of the Services Infrastructure;
 - (3) how the Developer will:

- (a) provide the Services Infrastructure at no cost to the NSW Government; and
 - (b) comply with the "*No Cost to Government Criteria*" contained in the Precinct Acceleration Protocol;
 - (4) the requirements of the Relevant Authorities in relation to the operation of the Services Infrastructure; and
 - (5) that the Relevant Authorities have endorsed the Services Infrastructure Strategy and contain evidence of that endorsement.
- (c) Within 12 months of the Precinct Release Date, the Developer must submit the draft Services Infrastructure Strategy which conforms to clause 19.2(b)(3) to the Minister.
- (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Strategy submitted pursuant to clause 19.2(c) (and give written notice to the Developer of this decision) within 60 days of receipt of the draft Services Infrastructure Strategy. The Minister must still make this decision even if the even if the 60 day period has lapsed.
- (e) The Minister will not unreasonably withhold his approval to the draft Services Infrastructure Strategy where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have endorsed the draft Services Infrastructure Strategy.
- (f) If, within 12 months of the Precinct Release Date, the Developer has taken all practicable steps to obtain the requirements or endorsement of the Relevant Authorities to the draft Services Infrastructure Strategy under clause 19.2(b)(3)(B)(4) and (5), but not all the Relevant Authorities have provided their requirements or endorsement, the Developer may submit the draft Services Infrastructure Strategy to the Minister even though it does not fully identify the matters referred to in clause 19.2(b)(3)(B)(4) and (5), providing the draft Services Infrastructure Strategy contains evidence of the steps undertaken by the Developer to obtain such requirements or endorsement as the case may be.
- (g) The Parties will meet as soon as practicable after the Developer submits the draft Services Infrastructure Strategy under clause 19.2(f) to discuss the draft submitted, after which the Minister may in his absolute discretion approve or not approve the draft Services Infrastructure Strategy.
- (h) If the Minister notifies the Developer that he has not approved the draft Services Infrastructure Strategy (whether submitted under clause 19.2(c) or clause 19.2(f)), he must promptly provide the Developer with written notice of his reasons.
- (i) The Developer must within 60 Business Days of receipt of any notice from the Minister pursuant to clause 19.2(b)(1), prepare and submit to the Minister a revised draft Services Infrastructure Strategy. Clause 19.2(b) applies to the revised draft Services Infrastructure Strategy in the same manner that it applies to the draft Services Infrastructure Strategy.

- (j) If the Minister approves the revised draft Services Infrastructure Strategy, he must give the Developer written notice of that approval within 60 days.

19.3 Developer to update Servicing Infrastructure Strategy

- (a) Subject to clause 19.3(b), the Developer will promptly update (at its expense) the Services Infrastructure Strategy approved by the Minister upon written request by a Relevant Authority.
- (b) The Parties acknowledge and agree that the Developer will not be required to update the Services Infrastructure Strategy more than once a Year.
- (c) The Parties acknowledge and agree that the Developer may require the Services Infrastructure Strategy to be updated more than once a Year.
- (d) Clauses 19.2(b) to 19.2(j) (inclusive) (except in respect of the reference to the time period in clause 19.2(e)) apply to any update of the Services Infrastructure Strategy in the same manner they apply to the draft Services Infrastructure Strategy.

19.4 Developer to prepare Services Infrastructure Implementation Plan

- (a) Within 12 months of the date on which the Minister approves the Services Infrastructure Strategy, the Developer must prepare a draft Services Infrastructure Implementation Plan.
- (b) In preparing the draft Services Infrastructure Implementation Plan, the Developer:
 - (1) acknowledges that the development of the draft Services Infrastructure Implementation Plan will be part of a consultative and cooperative process between the Developer and the Relevant Authorities for the orderly and efficient staged delivery of infrastructure to the precinct;
 - (2) must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities make in respect of the draft Services Infrastructure Implementation Plan, including without limitation in respect of any modifications to the Services Infrastructure Implementation Plan reasonably required by the Relevant Authorities where an Other Development is proposed to be undertaken in the Precinct by a developer;
 - (3) must ensure that the draft Services Infrastructure Implementation Plan:
 - (A) is consistent with:
 - (1) the Services Infrastructure Strategy; and
 - (2) the servicing plans of each of the Relevant Authorities relating to the South West Growth Centre;
 - (B) specifies:

- (1) how the Developer will implement the Services Infrastructure Implementation Plan, including without limitation a timetable for the delivery of the Services Infrastructure to the Relevant Authorities;
 - (2) the proposed costs for the construction of the Services Infrastructure including the cost of each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan; and
 - (3) the areas (including any areas outside the Precinct) to be serviced by the Services Infrastructure;
 - (C) confirms that the Relevant Authorities have endorsed the Services Infrastructure Implementation Plan and contain evidence of that endorsement; and
 - (D) contains any pro forma contracts required by the Relevant Authorities to effect the transfer of:
 - (1) the Services Infrastructure; and
 - (2) the Services Infrastructure Land from the Developer to the Relevant Authorities.
- (c) Within 12 months of the date on which the Minister approves the draft Services Infrastructure Strategy, the Developer must submit the draft Services Infrastructure Implementation Plan which conforms to clause 19.4(b)(3) to the Minister.
- (d) The Minister must approve, or otherwise withhold his approval to, the draft Services Infrastructure Implementation Plan submitted pursuant to clause 19.4(c) (and give written notice to the Developer of this decision) within 60 days of receipt of the draft Services Infrastructure Implementation Plan. The Minister must still make this decision even if the 60 day period has lapsed.
- (e) The Minister will not unreasonably withhold his approval to the Services Infrastructure Implementation Plan where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have:
- (1) confirmed that where required the Services Infrastructure contemplated by the Services Infrastructure Implementation Plan is to be constructed and transferred to the Relevant Authorities to a standard required by the Relevant Authorities; and
 - (2) endorsed the Services Infrastructure Implementation Plan.
- (f) If, within 12 months of the date on which the Minister approves the draft Services Infrastructure Strategy, the Developer has taken all practicable steps to obtain the endorsement of the Relevant Authorities to the draft Services Infrastructure Implementation Plan and any pro forma contracts under clause 19.4(b)(3)(C) and (D), but not all the Relevant Authorities have provided their endorsement or pro forma contracts, the Developer may submit the draft Services Infrastructure Implementation Plan to the Minister even though it does not fully identify the matters referred to in clause 19.4(b)(3)(C) and (D), providing the draft Services Infrastructure Implementation Plan contains

evidence of the steps undertaken by the Developer to obtain such endorsement or pro forma contracts as the case may be.

- (g) The Parties will meet as soon as practicable after the Developer submits the draft Services Infrastructure Implementation Plan under clause 19.4(f) to discuss the draft submitted, after which the Minister may in his absolute discretion approve or not approve the draft Services Infrastructure Implementation Plan.
- (h) If the Minister notifies the Developer that he has not approved the draft Services Infrastructure Implementation Plan (whether submitted under clause 19.4(c) or clause 19.4(f)), he must promptly provide the Developer with written notice of his reasons.
- (i) The Developer must within 60 Business Days of receipt of any notice from the Minister pursuant to clause 19.4(f), prepare and submit to the Minister a revised draft Services Infrastructure Implementation Plan. Clause 19.4(b) applies to the revised draft Services Infrastructure Implementation Plan in the same manner that it applies to the draft Services Infrastructure Implementation Plan.
- (j) If the Minister approves the revised draft Services Infrastructure Implementation Plan, he must give the Developer written notice of that approval within 60 days. The Minister must still give the Developer written notice of the approval even if the 60 day period has lapsed.

19.5 Developer to update Services Infrastructure Implementation Plan

- (a) The Developer must (at its expense) update the Services Infrastructure Implementation Plan not more than once every Year on the 1 July in each Year.
- (b) Clause 19.4(b) to 19.4(j) (inclusive) (except in respect of the reference to the time period in clause 19.4(e)) apply to any update of the Services Infrastructure Implementation Plan in the same manner they apply to the draft Services Infrastructure Implementation Plan.

19.6 Developer to provide approved Services Infrastructure Strategy and Services Infrastructure Implementation Plan

Subject to clauses 19.2 to 19.5 inclusive, the Developer must attain the Minister's approval of the Services Infrastructure Strategy and the Servicing Infrastructure Implementation Plan prior to the public exhibition of the Draft SEPP.

20. Bank Guarantees

20.1 Developer to provide Bank Guarantees

- (a) In order to secure the payment of the Contributions, the Developer has agreed to provide security in the form of Bank Guarantees.
- (b) Each Bank Guarantee must:
 - (1) name the "Minister for Planning and Infrastructure and Department of Planning and Infrastructure ABN 38 755 709 681" as the relevant beneficiaries; and

- (2) not have an expiry date.

20.2 Bank Guarantee

- (a) Upon execution of this deed, the Developer will provide security to the Minister in the form of the Bank Guarantee for a face value equivalent to \$20,000.
- (b) From the date of execution of this deed until the date that the Developer has provided the Contributions in full, the Minister will be entitled to retain the Bank Guarantee.

20.3 Claims under Bank Guarantees

- (a) The Minister may call upon a Bank Guarantee where:
 - (1) the Developer has failed to pay the Contributions on or before the date for payment under this deed; or
 - (2) the Developer has failed to provide one or more Bank Guarantees to ensure that at all times the value of the security held by the Minister is for a face value equivalent to \$20,000,

and retain and apply such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon a Bank Guarantee the Minister must give the Developer not less than 10 Business Days written notice.
- (c) If :
 - (1) the Minister calls upon the Bank Guarantee; and
 - (2) applies all or part of such monies towards the costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (3) has notified the Developer of the call upon the Bank Guarantee in accordance with clause 20.3(b),

then the Developer must provide to the Minister a replacement Bank Guarantee to ensure that at all times until the date that the Developer has provided the Contributions in full, the Minister is in possession of a Bank Guarantee for a face value equivalent to \$20,000.

20.4 Release of Bank Guarantee

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee have not been expended and the monies accounted for in accordance with clause 20.3,

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

21. Assignment and Dealing

21.1 Developer may not alienate

The Developer must not assign, transfer, novate, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest in any Services Infrastructure or any Services Infrastructure Works, on terms which would prevent performance of the Developer's obligations required under this Deed.

21.2 Developer's proposed assignment of rights

- (a) Unless the matters specified in clause 21.2(b) are satisfied, the Developer is not to assign or novate in whole or in part to any person the Developer's rights or obligations under this Deed.
- (b) The matters required to be satisfied for the purposes of clause 21.2(a) and clause 21.3(b) are as follows:
 - (1) the Developer has, at no cost to the Minister, first procured the execution by the person to whom the Developer's rights or obligations (including SIC Offset Amounts) under this Deed are to be assigned or novated, of an agreement in favour of the Minister on terms satisfactory to the Minister acting reasonably (and the Minister acknowledges that relevant terms corresponding, to the extent appropriate, with those in this Deed, would be satisfactory);
 - (2) the Minister, by notice in writing to the Developer, has stated that evidence satisfactory to the Minister has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the agreement referred to in clause 21.2(b)(1); and
 - (3) the Developer is not in breach of this Deed or, if it is, the proposed assignee or novatee has covenanted to remedy that default.

21.3 Right of Developer sell land

The Developer must not sell or transfer the whole or any part of the Land for which a Special Infrastructure Contribution has not been paid or for which an Available SIC Offset Amount has not been Applied in respect of that Land, unless before it sells, transfers or disposes of any such part 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 Developer's obligations under this Deed (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 requirements specified in clause 21.2 are satisfied; and
- (c) the rights of the Minister under this Deed are not diminished or fettered in any way.

21.4 Minister's assignment of rights

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 Developer's consent;
- (b) must require the transferee and the Developer to enter into a deed in form and substance acceptable to the Minister and the Developer each acting reasonably containing provisions under which the transferee and the Developer agree to comply with the terms and conditions of this Deed; and
- (c) will pay the Developer's reasonable Costs in relation to that assignment.

22. General Provisions

22.1 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 the Minister's 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.

22.2 Costs

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) Without limiting clause 22.2(a), the Developer agrees to pay or reimburse the Minister within 14 days for:
 - (1) 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
 - (2) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

22.3 Entire agreement

The Parties intend this Deed to constitute the entire agreement and understanding between them in relation to the subject matters of this Deed and agree that any prior agreements or arrangements between them relating to the subject matter of this Deed are rescinded and have no further force or effect. No Party can rely on an earlier document, anything said or done by another Party, or by an officer, agent or employee of that Party, before the Date of this Deed, except as permitted by law.

22.4 Further acts

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

22.5 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.

22.6 Enforcement

- (a) This Deed may be enforced by any Party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (1) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
 - (2) an Authority or the Minister from exercising any function under the EP&A Act Of any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates; and
- (c) The Developer covenants with the Minister that the Developer 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 Developer to enter into the Planning Agreement.
- (d) The Developer indemnifies the Minister against any liability, loss, claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with the Developer's breach of any of its obligations under clause 22.7(e).
- (e) The indemnity in clause 22.7(d) is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed.
- (f) It is not necessary for the Minister to incur expense or to make any payment before enforcing the indemnity in clause 22.7(d).
- (g) The Developer must pay within 14 days any amount it must pay under the indemnity in clause 22.7(d).

22.7 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Minister) 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 in this Deed imposes any obligation on an Authority to:
 - (1) grant any Development Consent; or
 - (2) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

22.8 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.

22.9 Representations and warranties

- (a) Macarthur Developments Pty Ltd; Arnold Daniel Vitocco, Shargaz Pty Ltd; Irene Vitocco; Maryland Homestead Pty Ltd and Nonorrah Farm Pty Ltd represent and warrant that:
 - (1) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
 - (2) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
 - (3) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a Party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
 - (4) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
 - (5) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
 - (6) **(benefit)** it benefits by entering into this Deed to which it is a Party; and
 - (7) **(capacity)** it does not enter this Deed as an agent for any other person or as trustee of any trust or on behalf or for the benefit of any other person.
- (b) The Developer acknowledges that the Minister has entered into this Deed to which it is a Party in reliance on the representations and warranties in this clause 22.9.

22.10 Trustee Developer

- (a) D. Vitocco Constructions Pty Ltd enters into this deed in its capacity as the trustee for The Vitocco Family Trust.

- (b) D. Vitocco Constructions Pty Ltd warrants that:
 - (i) it is the sole trustee of The Vitocco Family Trust and no action has been taken to remove or replace it;
 - (ii) it is authorised under the trust deed of The Vitocco Family Trust to enter into this deed;
 - (iii) it is not in breach of the trust deed of The Vitocco Family Trust; and
 - (iv) it has the power under the deed constituting The Vitocco Family Trust to execute and perform its obligations under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the trust deed constituting The Vitocco Family Trust.

- (c) If the trustee of The Vitocco Family Trust is replaced in accordance with the trust deed of The Vitocco Family Trust then:
 - (i) the Minister and the replacement trustee will enter into a new deed on the same terms as this deed; and
 - (ii) the Minister and the outgoing trustee will release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the outgoing trustee will pay the reasonable costs and expenses of the Minister in relation to the replacement of a trustee under this clause and the costs and expenses of registering ant new deed on the title to the Land.

22.11 Severability

- (a) If a clause or part of a clause 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 clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Deed, but the rest of this Deed is not affected.

22.12 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.

22.13 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.

22.14 Confidentiality

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

22.15 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Developer's obligation to provide the Contributions.
- (b) The Developer indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Minister exercising the Minister's rights under or by virtue of this Deed.
- (c) The indemnity in clause 22.14(b) is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

22.16 Relationship of the Parties

Unless otherwise stated:

- (a) nothing in this Deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no Party has the authority to bind any other Party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other Party or pledge any other Party's credit.

Schedule 1 – Section 93F Requirements

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Planning Agreement complying with the EP&A Act.

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application – (Section 93F(1))</p> <p>The Developer 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) and (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this Deed applies – (Section 93F(3)(a))</p>	<p>The Land described in paragraph 1.1 of Schedule 2</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies – (Section 93F(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environment plan to which this Deed applies; OR</p> <p>(b) the development to which this Deed applies.</p>	<p>(c) An amendment of the SEPP in accordance with the Draft SEPP</p> <p>(d) The Development described in paragraph 1.2 of Schedule 2.</p>
<p>The scope, timing and manner of delivery of the Contributions required by this Planning Agreement – (Section 93F(3)(c))</p>	<p>Refer to clauses 3, 12, 17 and 19.</p>
<p>Applicability of Section 94 of the EP&A Act to the Development – (Section 93F(3)(d))</p>	<p>The application of section 94 of the EP&A Act is not excluded in respect of the Development.</p>
<p>Applicability of Section 94A of the EP&A Act to the Development – (Section 93F(3)(d))</p>	<p>The application of section 94A of the EP&A Act is not excluded in respect of the Development.</p>
<p>Applicability of Section 94EF of the EP&A Act to the Development – (Section 93F(3)(d))</p>	<p>The application of section 94EF of the EP&A Act is not excluded in respect of the Development.</p>

Requirement under the EP&A Act	This Planning Agreement
<p>Consideration of benefits under this Deed if section 94 applies to the Development – (Section 93F(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&A Act is not excluded?</p>	<p>No. The Contributions to be provided by the Developer under this Deed must not be taken into consideration in determining a contribution under section 94 in respect of the Development or any other development (as that term is defined in the EP&A Act) in relation to the Land.</p>
<p>Mechanism for Dispute resolution – (Section 93F(3)(f))</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 11.</p>
<p>Enforcement of this Deed – (Section 93F(3)(g))</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 6 and 13.</p>
<p>Registration of this Deed</p> <p>The Parties agree that this Deed will be registered in accordance with clause 6.</p>	<p>Yes.</p>
<p>No obligation to grant consent or exercise functions – (Section 93F(9))</p> <p>The Parties acknowledge that this Deed does not impose an obligation on a Consent Authority to grant a Development Consent, Part 3A Approval or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to clause 22.7.</p>

Schedule 2 – Description of the Land and the Development

Title

Those parts of the land comprised in

Lot	Deposited Plan	Owner
3	119173	Shargaz Pty Ltd
4	119173	Shargaz Pty Ltd
1	218779	Nonorrah Farm Pty Ltd and Maryland Homestead Pty Ltd
29	872135	Nonorrah Farm Pty Ltd and Maryland Homestead Pty Ltd
200	1049231	Arnold Daniel Vitocco and Irene Vitocco
201	1049231	D. Vitocco Constructions Pty Ltd

which is identified as cross hatched in grey and identified as “The Land” and “The Precinct” in the plan comprising Annexure A.

Schedule 3 - Department Costs

- (a) In accordance with the requirement in the Precinct Acceleration Protocol that precinct acceleration will result in "no cost to Government", the Developer (being the Developer for the accelerated release of the Precinct) agrees to cover the costs of the Department, both before and after the date of this Deed, including payment for:
- (1) an infrastructure analyst and any legal or probity advice needed in the planning for the Precinct;
 - (2) costs associated with the Department's management responsibilities for Precinct Planning and Planning for the Provision of Services Infrastructure, including but not limited to the Precinct Project Manager and Council(s) co-ordinator;
 - (3) costs associated with reviews or additional planning studies, including but not limited to urban design and statutory planning costs; and
 - (4) community consultation costs in relation to the hire of venues, printing and other communications.

The tables below list the types of activities to be paid for (or that have been paid for) by the Developer. Costs will be paid by the Developer on a monthly basis to the Department upon receipt of a consolidated tax invoice issued by the Department.

- (b) The costs of the Department relating to Precinct Planning and Planning for the Provision of Services Infrastructure will be reimbursed by the Developer and will be paid monthly. The cost to the Developer will be the actual cost to the Department. Costs for external services engaged by the Department will be reimbursed at cost upon presentation of an invoice. The total monthly cost will be invoiced plus GST and paid monthly to the Department.
- (c) In order to account for the different resources, activities, commencement and conclusion dates for the accelerated development of the Precinct and Precinct Planning activities, the costs of the Department have been split into the following categories:
- (1) **"Precinct Acceleration Costs"**; and
 - (2) **"Precinct Planning and Planning for the Provision of Services Infrastructure Costs"**.
- (d) Activities and resources of the Department which have or will generate a cost for the Developer are set out in the following tables:

Table 1. Department – Precinct Acceleration Costs

Infrastructure Analyst and Precinct Project Manager

Overall coordination of Department activities in relation to the Precinct Acceleration Protocol process for the acceleration of the Precinct. Management of communications between the Department, the Developer, Council, agencies and all other stakeholders. Internal and external reporting including Department briefing updates and presentations. Preparation and distribution of agendas and minutes as required. Records management.

<p>Deputy Director General and Executive Director, Land Release</p> <p>Executive management of the Stage 2 Precinct Acceleration Protocol process. Direction, review and sign-off of all Precinct Acceleration Protocol activities. Executive liaison, reporting and presentations. Interpretation and overview of Department protocols and procedures.</p>
<p>Legal Advice</p> <p>Interpretation and adherence with the EP&A Act and all other regulatory instruments. Review of Developer/agency contracts and agreements.</p>

Table 2. Department – Precinct Planning and Planning for the Provision of Services Infrastructure Costs

<p>Precinct Project Manager</p> <p>Overall coordination and management of the Precinct Planning Process including implementation of the Precinct Acceleration Protocol, Participation in the PCG and PWG. Liaison with Council, infrastructure providers and statutory bodies. Review and report on all Precinct Planning activities being undertaken by the Developer.</p>
<p>Council Costs including provision of a Precinct Project Co-ordinator</p> <p>Council assistance including technical assistance, a Precinct Project Co-ordinator for overall coordination and management of the Precinct Planning Process within Council. Implementation of the Precinct Acceleration Protocol. Participation in the PCG and PWG. Liaison with Council, infrastructure providers and statutory bodies. Review and report on all Precinct Planning activities being undertaken by the Developer.</p>
<p>Executive Director, Land Release</p> <p>Executive management of the Precinct Planning Process including review and direction of the Project Manager. Participation in PCG as deemed necessary. Executive liaison, reporting and presentations. Interpretation and overview of Department's planning protocol and procedures. Liaison with the Minister's Office.</p>
<p>Department Community Liaison Manager</p> <p>Interaction, review, liaison and reporting on Developer community liaison activities. Participation in the PCG and PWG as deemed necessary. Provide input and support to the Department's Project Manager as required.</p>
<p>Additional Investigations & Planning Studies (as required)</p> <p>Additional investigations and planning studies, including Precinct Planning related infrastructure advice, as required by the Department in order for it to manage and implement the Precinct Planning Process being undertaken by the Developer. These costs will also include reasonable contributions to Council agreed by the Department as well as costs associated with any independent review for advice related to planning studies considered necessary by the PCG.</p>
<p>Legal Advice</p> <p>Interpretation and adherence with the EP&A Act and all other regulatory instruments. Input and review of this Deed. Review of Developer/agency contracts and agreements.</p>

Executed as a deed on 25 September

2015

SIGNED SEALED AND DELIVERED The
Minister for Planning and Infrastructure in
the presence of:

.....
Signature of witness

MICHAEL LAWRENCE TEOH
.....
Name of witness in full [PLEASE PRINT]

.....
Signature of Minister

ROBERT STOKES
.....
Name of Minister

**EXECUTED BY Macarthur Developments
Pty Ltd** ACN 162 581 900 in accordance with
section 127 of the *Corporations Act 2001*:

.....
Signature of Director

Arnold Vitocco
.....
Name of Director [PLEASE PRINT]

.....
Signature of Director/Secretary

DAVID HAZLETT
.....
Name of Director/Secretary

EXECUTED by Arnold Daniel Vitocco

.....
Signature

.....
Signature of witness

STEPHEN McMAHON
.....
Name of witness in full [PLEASE PRINT]

EXECUTED by Shargaz Pty Ltd ACN 143 979
515 in accordance with section 127 of the
Corporations Act 2001:

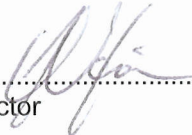
.....
Signature of Director

David Cameron Hazlett.....
Name of Director

.....
Signature of Secretary

Winton Anton.....
Name of Secretary

EXECUTED by D. Vitocco Constructions Pty Ltd
ACN 001 681 465 in accordance with section 127 of the *Corporations Act 2001*:


.....
Signature of Director

Arnold Vitocco
Name of Director

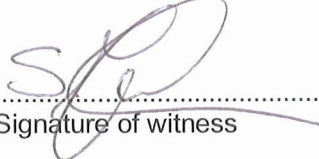

.....
Signature of Director

Irene Vitocco
Name of Director

EXECUTED by Irene Vitocco


.....
Signature

.....
Name of Director

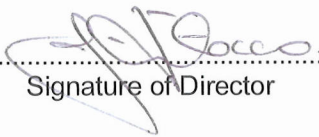

.....
Signature of witness

STEPHAN MCMAHON
.....
Name of witness in full [PLEASE PRINT]

EXECUTED by Maryland Homestead Pty Ltd
ACN 160 523 535 in accordance with section 127 of the *Corporations Act 2001*:


.....
Signature of Director

Arnold Vitocco
Name of Director


.....
Signature of Director

Irene Vitocco
Name of Director

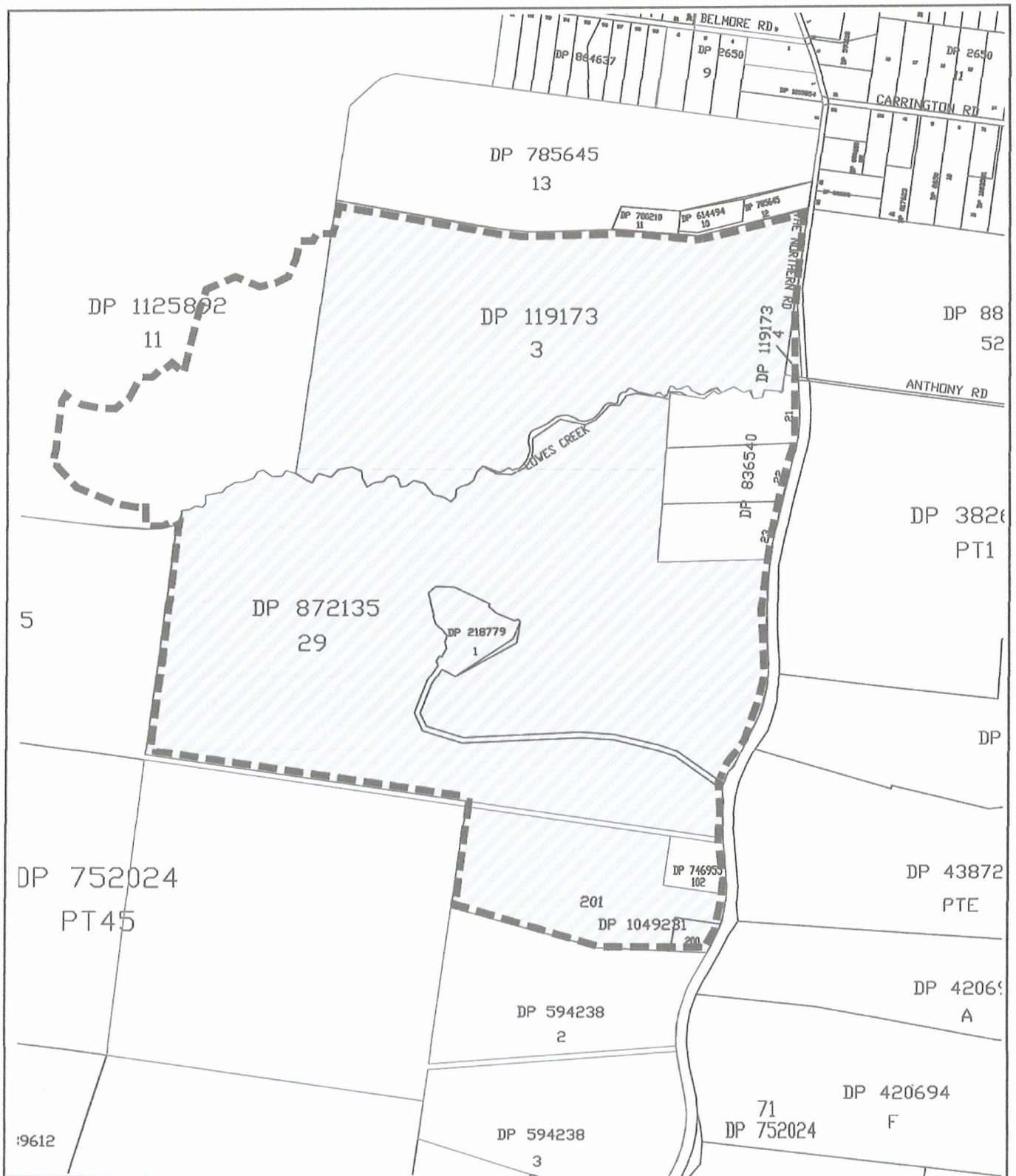
EXECUTED by Nonorrah Farm Pty Ltd
ACN 160 533 353 in accordance with section 127 of the *Corporations Act 2001*:


.....
Signature of Sole Director/Sole Secretary

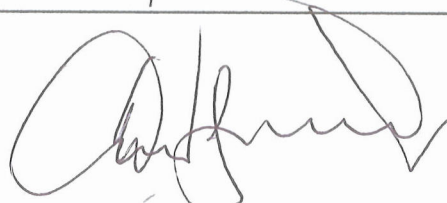


David Cameron Hazlett
Name of Sole Director/Sole Secretary



Annexure A – Lowes Creek and Maryland Part Precinct Boundary

Annexure A: Land Subject to VPA - Lowes Creek and Maryland Parts Precinct



 The Precinct
 The Land

 N
 0 200 400 metres
 Scale: 1:20,000 at A4