

Planning Agreement

Marsden Park Industrial Precinct

The Minister for Planning

Minister

Marsden Park Developments Pty Ltd

Developer

Ganian Pty Limited

Land Owner

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Our reference 15266/15343/80090852

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Contents

1.	Interpretation	1
1.1	Definitions	1
1.2	General	12
2.	Planning Agreements.....	13
2.1	First Planning Agreement	13
2.2	Offer to enter into Second Planning Agreement	13
2.3	Planning agreements under the EP&A Act	14
2.4	Application of the Planning Agreements	14
2.5	First Planning Agreement Contributions	14
2.6	Second Planning Agreement Contributions	14
3.	Contributions and Special Infrastructure Contribution Offsets.....	15
3.1	Delivery of RTA Works Portions	15
3.2	Entitlement to SIC Offset Amounts	15
3.3	Provision of a Bank Guarantee	16
3.4	Actual Costs of achieving a Milestone	17
3.5	Application of Available SIC Offset Amounts	18
3.6	Tradeable Credits	18
3.7	Indexation of SIC Offset Amounts and the Relevant Cap	18
3.8	Precinct Planning Contributions.....	19
3.9	Approved Precinct Planning Costs	19
3.10	Criteria for Planning Studies	20
3.11	Entitlement to SIC Offset Amount - Approved Precinct Planning Costs.....	21
4.	Application of s94, 94A and 94EF of the EP&A Act.....	22
5.	Interests in the Land	22
5.1	Ownership.....	22
5.2	Caveat	22
6.	Registration of this Deed	22
7.	Release and Discharge	23
8.	Assignment and other dealings	23
9.	Review of Deed	23
10.	Dispute resolution	23
11.	Department costs	23
12.	Overdue payments	23
12.1	Interest on overdue money	23
12.2	Compounding	24
12.3	Interest on liability merged in judgment or order.....	24
12.4	Tender after termination	24
13.	GST	24
13.1	Interpretation.....	24
13.2	Reimbursements.....	24

13.3	Additional amount of GST payable	24
13.4	Variation.....	25
13.5	Exchange of non-monetary consideration	25
13.6	No merger.....	25
14.	Explanatory Note	25
15.	Notices.....	26
15.1	Form	26
15.2	Change of address	26
15.3	Receipt.....	26
15.4	Receipt - next Business Day.....	26
16.	General provisions	26
17.	Additional Developer Obligations	27
17.1	Delivery of certain Milestones	27
17.2	Not used	27
17.3	Minimum requirements to subdivide Land	27
17.4	Intellectual Property and use of Information	29
17.5	Governance of the Precinct Process	29
17.6	Consultation.....	30
17.7	Financials.....	30
17A	Provision of Services	31
17A.1	Developer to provide Services.....	31
17A.2	Developer to prepare Services Infrastructure Strategy.....	31
17A.3	Developer to update Servicing Infrastructure Strategy	33
17A.4	Developer to prepare Services Infrastructure Implementation Plan.....	33
17A.5	Developer to update Servicing Infrastructure Implementation Plan.....	35
17B	Approvals, design and construction of Services Infrastructure Works.....	35
17B.1	Developer to obtain all Approvals	35
17B.2	Design responsibility.....	36
17B.4	Services Infrastructure Construction Contracts	37
17B.5	Developer to provide Relevant Authority with copy of Services Infrastructure Construction Contract.....	38
17B.6	Developer liable for acts of contractors	38
17B.7	Application of clauses 17B.4 to 17B.6	38
17B.8	Review of Services Infrastructure Works and Services Infrastructure Construction Contracts	39
17B.9	Providing documents to Relevant Authority	39
17C	Operation and Maintenance	42
17C.1	Operation and Maintenance Contract.....	42
17C.2	Developer to provide Relevant Authority with copy of Operation and Maintenance Services Contract.....	43
17C.3	Developer liable for acts of contractors	43
17C.4	Application of clauses 17C.1 to 17C.2.....	43
17D	Transfer of Sydney Water Infrastructure.....	44
17D.1	Sydney Water to access and use Interim Sydney Water Services Infrastructure.....	44

17D.2	Developer to transfer Ultimate Sydney Water Services Infrastructure.....	44
17D.3	Contracts relating to Other Developments.....	46
17D.4	Developer to mortgage Land and charge Services Infrastructure	47
17D.5	Discharge of Developer Mortgage and Developer Charge	47
17E	Integral Energy Services Infrastructure	48
17E.1	Agreed Substation Site	48
17E.2	Developer to transfer Agreed Substation Site.....	48
17E.3	Developer to transfer Integral Energy infrastructure	49
17F	Subdivision of the Land	50
17F.1	Issue of Subdivision Certificate and Occupation Certificate	50
18.	Commonwealth EPBC Act	50
19.	Special Infrastructure Contributions	50
	Schedule 1 - Section 93F Requirements	51
	Schedule 2 - Description of the Land and the Development.....	53
	Schedule 3 - Contributions Schedule.....	54
	Schedule 4 - RTA Works Portions Procedures	58
	Schedule 5 - Dispute Resolution	59
	Schedule 6 - Registration of Deed	60
	Schedule 7 - Release and Discharge Terms	61
	Schedule 8 - Bank Guarantees.....	62
	Schedule 9 - Assignment and Dealing	64
	Schedule 10 - General Provisions	66
	Schedule 11 - Costs	70
	Schedule 12 - Minimum Annual Production of Subdivided Land.....	71
	Schedule 13 – Department Costs	72
	Schedule 14 – Acceptance of Developer's Offer	77
	Annexure A - Explanatory Note	79
	Annexure B - Marsden Park Industrial Draft Indicative Layout Plan.....	80
	Annexure C - SIC Offset Certificate	81
	Annexure D - Staging Plan	82
	Annexure E - Concept Design Plans	83
	Annexure F - Plan of the Land	84

Annexure G - Infrastructure Delivery Report.....85
Annexure H - Sale Contract.....86

Deed made at Sydney on TENTH NOVEMBER 2010

Parties **The Minister for Planning** of 1 Farrer Place, Sydney NSW 2000 (**Minister**)
Marsden Park Developments Pty Ltd ACN 123 238 282 of 920 Richmond Road Marsden Park 2765 (**Developer**)
Ganian Pty Limited ACN 079 625 835 of [insert details] (**Land Owner**)

Background

- A. The Developer owns the Land which is located in a Special Contributions Area.
- B. The Developer intends to develop the Land.
- C. The Developer has sought a change to the SEPP in the form of the Draft SEPP.
- D. The Developer is or may become liable to pay the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres.
- E. 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.
- F. The Developer has also agreed to provide other Contributions for which it will not be entitled to a SIC Offset Amount including the provision of essential services and infrastructure to meet the needs created by the future urban development of the Precinct.
- G. The Developer's proposal for the Land includes the making of Development Applications for the Development.
- H. By this Deed, the Developer enters into the First Planning Agreement, and offers to enter into the Second Planning Agreement, to provide the Contributions specified in this Deed.
- I. From the Date of this Deed (in respect of the First Planning Agreement Contributions) and from the date the Second Planning Agreement commences to operate (pursuant to clause 2.2) (in respect of the Second Planning Agreement Contributions), this Deed constitutes an agreement between the Developer and the Minister that the Developer will provide material public benefits in connection with the SEPP on the terms and conditions of this Deed.

Operative provisions

1. Interpretation

1.1 Definitions

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

Additional Contribution means the commitments made by the Developer under clause 18.3.

Agreed Financial Arrangements has the meaning given to that term in clause 17D.2(b)(i).

Agreed Substation Site means that part of the Land comprised in proposed lots 2911 and 2913, Fulton Road, Marsden Park or such other lot as agreed between Integral Energy and the Developer.

Application For Approval means an application for any Approval.

Apply, Applied and **Application** each mean, in relation to a SIC Offset Amount, the application of that SIC Offset Amount pursuant to clause 3.5(c)(ii).

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 a Part 3A Approval (if relevant), and includes without limitation any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Sydney Water and Integral Energy for the construction and delivery of the Services Infrastructure.

Approved Precinct Planning Costs mean those costs incurred by the Developer in relation to the Precinct Planning Process prior to the date of gazettal of the SEPP (as amended consistent with the Draft SEPP) determined by the Minister to be 'Approved Precinct Planning Costs' for the purposes of this Deed in accordance with clause 3.8 which costs must not exceed the Relevant Cap.

ASIC means the Australian Securities and Investments Commission.

Authorised Progress Claim Certificate means a certificate addressed to the Minister signed by a director of the Developer confirming that the Developer has paid the amount specified in that Certificate (providing that such confirmation is only made if the amount has actually been paid or otherwise where the amount has not been paid but rather set-off against obligations owed to the Developer by the relevant third party contractor, those set-off arrangements have been accepted by the Minister) to the third party contractor for work performed under the Construction Contract.

Authority means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes, without limitation, an accredited certifier accredited under section 109T of the EP&A Act, Sydney Water and Integral Energy.

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

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

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

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

Bank Guarantee means an irrevocable and unconditional undertaking:

(a) by an Australian bank and which is an eligible financial institution for the purposes of Treasury Circular NSW TC08/01 dated 21 February 2008; and

(b) on terms,

acceptable to the Minister, in the Minister's absolute discretion, to pay the face value of that undertaking (being such an amount as is required under this Deed) on demand.

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

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

Concept Design Plans means those concept design plans comprising Annexure E.

Consent Authority means, in relation to an Application For Approval, the Authority having the function to determine the Application For Approval.

Contributions means the provision of the following:

(a) the RTA Works Portions;

(b) the Precinct Planning Contribution;

(c) the Essential Services Contribution; and

(d) the Additional Contribution..

Contributions Schedule means the table and notes included in Schedule 3.

Construction Contract means a contract between the Developer and a third party for the carrying out of one or more of the RTA Works Portions by that third party.

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 Blacktown City Council.

Date of this Deed means the date this deed is dated on page 1 of this Deed.

Deed means:

(a) the First Planning Agreement (which is entered into, and which is operative with effect from, the Date of this Deed); and

- (b) the Second Planning Agreement as and when the Second Planning Agreement becomes operative as a 'planning agreement' under and by virtue of clause 2.2.

Department means, and includes where relevant, the NSW Department of Planning, the Director General of the NSW Department of Planning and the Minister.

Developable Land means the land located within the Precinct and zoned for urban purposes following the amendment to the Growth Centres State Environment Planning Policy which makes the Precinct Plan.

Developer Charge has the meaning given to that term in clause 17D.4(a)(ii).

Developer Secured Liabilities has the meaning given to that term in clause 17D.4(a).

Development means the development described in item 2 of Schedule 2.

Development Application means:

- (a) each Part 4 Application; and
(b) each Part 3A Application.

Development Consent means:

- (a) each 'Development Consent' as that term is defined in the EP&A Act; and
(b) each Modification,

which is determined by the Consent Authority in response to a Part 4 Application.

Development Contributions Procedures means the procedures set out in Schedule 4 of this Deed.

Draft SEPP means the draft instrument proposed to amend the SEPP (following its gazettal) which the parties acknowledge comprises Exhibit A to this deed.

Entitle, Entitled and Entitlement means the entitlement of the Developer to certain SIC Offset Amounts pursuant to clauses 3.2(d)(ii), 3.3(b)(ii) and 18.3(d)(ii) to the SIC Offset Amounts as provided for in those clauses.

EP&A Act means the Environmental Planning and Assessment Act 1979 (NSW).

EP&A Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Explanatory Note means the explanatory note relating to this Planning Agreement, as required by clause 25E of the Environmental Planning and Assessment Regulation 2000 (NSW), being Annexure A.

First Planning Agreement means all clauses in this Deed excluding:

- (a) clause 2.6
(b) clauses 3.1 to 3.5;
(c) clause 18.1;

- (d) clause 18.3;
- (e) clauses 17A to 17F;
- (f) Schedule 3;
- (g) Schedule 4; and
- (h) Schedule 12.

For the avoidance of doubt, the clauses referred to in paragraphs (a) to (g) above do not form part of, and have no force or effect pursuant to, the First Planning Agreement.

First Planning Agreement Contributions means the Precinct Planning Contributions.

Growth Centres 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.

GST has the meaning it has in the GST Act.

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

Infrastructure Delivery Report means the report prepared by APP Corporation for the delivery of infrastructure at the Precinct dated 22 June 2009, as annexed to this Deed at Annexure G.

Integral Energy means Integral Energy Australia ABN 59 253 130 878.

Integral Energy Services Infrastructure means the Services Infrastructure for, and in connection with, the provision of electricity.

Integral Energy Services Infrastructure Land means that part of the Land:

- (a) upon which the Integral Energy Services Infrastructure is constructed;
- (b) in which Interim Energy requires an interest, including without limitation as easement; or
- (c) which is reasonably required by Integral Energy in connection with its legal and beneficial ownership of the Integral Energy Services Infrastructure.

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 Integral Energy Services Infrastructure means such of the Services Infrastructure identified as the Interim Integral Energy Services Infrastructure in the Services Infrastructure Implementation Plan.

Interim Integral Energy Services Infrastructure Land means that part of the Land:

- a) upon which the Interim Integral Energy Services Infrastructure is constructed;
- b) in which Integral Energy requires an interest, including without limitation as easement; or
- c) which is reasonably required by Integral Energy in connection with its legal and beneficial ownership of the Interim Integral Energy Services Infrastructure.

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.

Interim Sydney Water Licence has the meaning given to that term in clause 17D.1(c)(ii).

Interim Sydney Water Services Infrastructure means such of the Services Infrastructure identified as the Interim Sydney Water Services Infrastructure in the Services Infrastructure Implementation Plan.

Interim Sydney Water Services Infrastructure Land means that part of the Land:

- a) upon which the Interim Sydney Water Services Infrastructure is constructed;
- b) in which Sydney Water requires an interest, including without limitation as easement; or
- c) which is reasonably required by Sydney Water in connection with its legal and beneficial ownership of the Interim Sydney Water Services Infrastructure.

Land means the land described in item 1 of Schedule 2 (or any part or parts of it) which is identified and delineated by heavy dark blue ink in the plan comprising Annexure F.

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.

Marsden Park Sydney Water Reservoir Site means that part of the Sydney Water Services Infrastructure Land which is comprised in the indicative site labelled "Proposed Sydney Water Site" on the plan attached to this Deed at Annexure B.

Milestone means, in respect of each 'Construction Milestone' identified in column 3 of the table in paragraph 1.4 of Schedule 3, the Developer:

- (a) spending no less in monetary terms as is equivalent to the percentage of the Construction Contract value; and

(b) such other works or activities,

specified in column 2 of that table relevant to that Milestone in carrying out the relevant RTA Works Portion.

Ministerial Determination means a determination by the Minister pursuant to either:

(a) section 94EE of the EP&A Act; or

(b) section 116O of the EP&A Act (once it commences),

that development contributions are to be made for the provision of public infrastructure in relation to development or a class of development in relation to, inter alia, the Land.

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

North West Growth Centre means the area in New South Wales comprising approximately 10,000 hectares and comprising 16 precincts to the north west of Sydney defined by the NSW Government as a growth centre, and which includes the Precinct.

Occupation Certificate has the meaning given to that term in the EP&A Act.

Operation and Maintenance Contract has the meaning given to that term in clause 17C.2(a).

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

Other Development Contract has the meaning given to that term in clause 17D.3(c).

Other Development Request has the meaning given to that term in clause 17D.3(a).

Part 3A Application means:

(a) each Application For Approval made to the Minister pursuant to section 75E of the EP&A Act;

(b) each environmental assessment and any other document required to be submitted to the Director-General of the Department pursuant to section 75H of the EP&A Act; and

(c) each Application For Approval made to the Minister for a Part 3A Modification,

which relates to any part of the Development.

Part 4 Application means:

(a) each 'Development Application' as that term is defined in the EP&A Act; and

(b) each Application For Approval for a Modification,

which relates to any part of the Development.

Part 3A Approval means each and any (as the case requires):

(a) Project Approval; and

(b) any Part 3A Modification,

determined by the Minister in response to a Part 3A Application.

Part 3A Modification means a "modification" of a Project Approval within the meaning of section 75W of the EP& A Act.

PCG means the project control group referred to in clause 18.5(a)(ii).

PWG means the project working group referred to in clause 18.5(b).

Planning Agreement means each and any of (as the case may be):

- (a) the First Planning Agreement with effect from the Date of this Deed; and
- (b) the Second Planning Agreement as and when it is entered into and is operative under and by virtue of clause 2.2.

Planning Consent means:

- (a) each Development Consent; and
- (b) each Part 3A Approval.

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

Precinct means the Marsden Park Industrial Precinct which is shown on the Precinct Plan comprising Annexure B.

Precinct Acceleration Costs means those costs of the Department specifically related to the management of the Stage 2 Precinct Acceleration Protocol Process.

Precinct Acceleration Protocol means the document entitled "the North West and South West Growth Centres Precinct Acceleration Protocol" prepared by the NSW Department of Planning.

Precinct Plan means the precinct plan for the Marsden Park Industrial Precinct, a copy of which is attached to this Deed at Annexure B.

Precinct Plan Date means the date of publication of the amendment to the Growth Centres State Environment Planning Policy which makes the Precinct Plan.

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

Precinct Planning Budget means the total amount spent in connection with Precinct Planning.

Precinct Planning Contribution means the costs incurred by the Developer in relation to the Precinct Planning Process generally described in clause 3.8.

Precinct Planning Costs means those costs of the Department specifically related to the Precinct Planning Process.

Precinct Planning Package means the technical planning studies and statutory planning documents (SEPP, DCP, S94 plan and this Planning Agreement) which will be placed on

public exhibition and amended following exhibition to achieve gazettal of the SEPP (as amended).

Precinct Planning Post Rezoning Costs means those costs of the Department for Precinct Planning incurred following gazettal of the of the SEPP (as amended consistent with the Draft SEPP).

Precinct Planning Process means the activities ordinarily associated with the preparation and adoption of an amendment to the SEPP (consistent with 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 the Council and assistance with the preparation of that Council's Section 94 plan;
- (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) publication of the SEPP (as amended consistent with the Draft SEPP).

Project Approval means the approval of the Minister to carry out a project pursuant to Part 3A of the EP&A Act

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

Real Property Charge has the meaning given to that term in clause 17D.4(a)(i).

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

Relevant Authority means any, or all, of the Minister, Sydney Water and Integral 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 Integral Energy Services Infrastructure, Integral Energy. Where there is any dispute, Relevant Authority means such of the Minister, Sydney Water and Integral Energy as is certified by the Minister.

Relevant Cap means \$1.93M as indexed from 1 April 2008 in accordance with clause 3.7

RTA means the NSW Roads and Traffic Authority.

RTA Works Portion means each and any (as the case may be) of the five stages of work described in paragraphs (a) to (f) in paragraph 1.2 of Schedule 3.

Sale Contract means the draft sale contract between the Land Owner and Integral Energy for the sale and purchase of the Agreed Substation Site as annexed to this Deed at Annexure H.

Second Planning Agreement means all clauses in this Deed excluding:

- (a) clause 2.1
- (b) clause 2.5
- (c) clauses 3.8 to 3.11;

- (d) clause 12;
- (e) clause 18.4 to 18.7; and
- (f) Schedule 13.

For the avoidance of doubt, the clauses referred to in paragraphs (a) to (g) above do not form part of, and have no force or effect pursuant to the Second Planning Agreement.

Second Planning Agreement Contributions means each of:

- (a) the RTA Works Portions;
- (b) the Services infrastructure Contribution; and
- (c) the Additional Contribution.

Scope means the scope of the RTA Works Portions as described in paragraph 1.1 of Schedule 3.

SEPP means the State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

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

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

Services Infrastructure Construction Contract has the meaning given to that term in clause 17B.4(a).

Services Infrastructure Contract has the meaning given to that term in clause 17A.4(b)(iii)D1.

Services Infrastructure Contributions means those obligations of the Developer in relation to the provision of the Services Infrastructure pursuant to clauses 17A, 17B, 17C, 17D and 17E.

Services Infrastructure Design Documents has the meaning given to that term in clause 17B.2(b).

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 17A.4 (as may be updated from time to time).

Services Infrastructure Implementation Plan Date means 1 July in each Year.

Services Infrastructure Land Contract has the meaning given to that term in clause 17A.4(b)(iii)D2.

Services Infrastructure Strategy means the services infrastructure strategy relating to the Precinct prepared by the Developer and approved by the Minister pursuant to clause 17A.2 (as updated from time to time). **Services Infrastructure Works** means the works to be carried out by the Developer to provide the Services Infrastructure.

SIC Practice Note means the document entitled *Growth Centres Special Infrastructure Contribution Practice Note, December 2006* published by the Growth Centres Commission as amended, supplemented or substituted from time to time.

SIC Offset Amount means:

- (a) in respect of a Milestone, the amount specified in column 2 of the table in paragraph 1.4 of Schedule 3 corresponding to that Milestone as indexed in accordance with clause 3.7; and
- (b) in respect of any other event contemplated in this deed in relation to which the Developer may become Entitled to a SIC Offset Amount, the amount specified in this Deed as being the appropriate SIC Offset Amount for that event.

SIC Offset Certificate means a certificate in the form of Annexure C specifying:

- (a) the aggregate of all SIC Offset Amount Entitlements as at the date of the certificate;
- (b) the aggregate of all SIC Offset Amounts Applied 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.

Special Contributions Area means has 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 Ministerial Determination and the SIC Practice Note as indexed from time to time in accordance with the SIC Practice Note.

Specified Amount means an amount of no less than the then current Special Infrastructure Contribution payable for 10 hectares or where the area of the relevant land the subject of the relevant SIC Offset Amount exceeds 10 hectares a total amount determined at the rate for the then current Special Infrastructure Contribution applied to the whole of that land.

Stage 2 Precinct Acceleration Protocol Process means the process of managing Stage 2 of the Precinct Acceleration Process.

Staging means the staging of all the RTA Works Portions as generally indicated in paragraph 1.2 of Schedule 3 and the Staging Plan.

Staging Plan means the staging plan comprising Annexure D.

Subdivision Certificate has the same meaning given to that term in the EP&A Act.

Sydney Water means Sydney Water Corporation ABN 49 776 225 038. **Sydney Water Contract** has the meaning given to that term in clause 17C.1.

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

Sydney Water Services Infrastructure Land means each of the Interim Sydney Water Services Infrastructure Land and the Ultimate Sydney Water Services Infrastructure Land.

Sydney Water Services Infrastructure Works means those Services Infrastructure Works relating to the construction of the Sydney Water Services Infrastructure.

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 Implementation Plan and which includes, without limitation, Sydney Water Services Infrastructure intended to ultimately also service land outside the Precinct.

Ultimate Sydney Water Services Infrastructure Land means that part of the Land:

- a) upon which the Ultimate Sydney Water Services Infrastructure is constructed;
- b) in which Sydney Water requires an interest, including without limitation as easement;
or
- c) which is reasonably required by Sydney Water in connection with its legal and beneficial ownership of the Ultimate Sydney Water Services Infrastructure.

Works Authorisation Deed means a works authorisation deed or other legally binding agreement with the RTA which governs the carrying out of the RTA Works Portions by or on behalf of the Developer.

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

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;
- (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;
- (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;
- (m) an approval by Sydney Water or Integral Energy pursuant to clauses 17A, 17B, 17C, 17D and 17E will be deemed to be the approval of the Minister for the purposes of this Deed. If there is any dispute between the Developer and Sydney Water or Integral Energy in relation to any approval, that dispute will be deemed to be between the Developer and the Minister and will be resolved in accordance with the dispute resolution procedures in Schedule 5.

2. Planning Agreements

2.1 First Planning Agreement

- (a) On and from the Date of this Deed, the Developer and the Minister agree that the First Planning Agreement is entered into and is operative.
- (b) On and from the date that the First Planning Agreement is entered into, all clauses of this Deed operate and apply other than the clauses and schedules of this Deed referred to in paragraphs (a) to (h) of the definition of 'First Planning Agreement'.
- (c) For the avoidance of doubt, the clauses and schedules of this Deed referred to in paragraphs (a) to (h) of the definition of 'First Planning Agreement' do not form part of, and have no force or effect pursuant to, the First Planning Agreement.

2.2 Offer to enter into Second Planning Agreement

- (a) Until the Second Planning Agreement is entered into and is operative pursuant to clause 2.2(b), this Deed (other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement') constitutes an irrevocable offer to the Minister from the Developer to enter into the Second Planning Agreement (on the terms of this Deed (other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement')).
- (b) The Second Planning Agreement operates and becomes legally binding on both parties, and the parties will be taken to have entered into the Second Planning Agreement if, and only if:
 - (i) a condition of a Planning Consent (granted to any part of the Development) is imposed pursuant to Section 93I(3) of the EP&A Act requiring a planning agreement, on the terms of the Second Planning Agreement, to be entered into and the Minister accepts the offer made by the Developer pursuant to clause 2.2(a) to enter into the Second Planning Agreement (such acceptance to be by way of notice in writing to the

Developer in or to the effect of the form of the notice set out in Schedule 14); or

- (ii) if no Planning Consent in relation to any part of the Development which imposes an obligation pursuant to Section 93I(3) of the EP&A Act requiring a planning agreement on the terms of the Second Planning Agreement to be entered into, has been issued by the first anniversary of the Date of this Deed, the Minister may accept the offer made by the Developer pursuant to clause 2.2(a) to enter into the Second Planning Agreement (such acceptance to be by way of notice in writing to the Developer in or to the effect of the form of the notice set out in Schedule 14).
- (c) On and from the date that the parties are taken to have entered into the Second Planning Agreement pursuant to clause 2.2(b), the Developer agrees to provide the Second Planning Agreement Contributions to the Minister on the terms of the Second Planning Agreement.
- (d) The parties acknowledge that the Second Planning Agreement comprises all clauses of this Deed other than the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement'.
- (e) For the avoidance of doubt, the clauses and schedules of this Deed referred to in paragraphs (a) to (f) of the definition of 'Second Planning Agreement' do not form part of, and have no force or effect pursuant to, the Second Planning Agreement.
- (f) The Developer must notify the Minister in writing promptly after becoming aware that the first Planning Consent is granted to any part of the Development (and at the same time, provide a copy of that Planning Consent to the Minister).

2.3 Planning agreements under the EP&A Act

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

2.4 Application of the Planning Agreements

The Planning Agreements constituted by this Deed apply to:

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

2.5 First Planning Agreement Contributions

The Developer agrees to provide the Precinct Planning Contributions in accordance with clause 3.8.

2.6 Second Planning Agreement Contributions

The Developer agrees:

- (a) to provide the RTA Works Portions in accordance with clause 3.1;
- (b) to provide the Services Infrastructure Contributions in accordance with clauses 17A, 17B, 17C, 17D and 17E; and

- (c) to provide the Additional Contributions in accordance with clause 18.3.

3. Contributions and Special Infrastructure Contribution Offsets

3.1 Delivery of RTA Works Portions

- (a) Subject to clauses 3.1(b) to 3.1(d), the Developer must undertake the RTA Works Portions and achieve the Milestones (to the satisfaction of the Minister) in accordance with Schedule 3 and Schedule 4 .
- (b) At any time before the Developer commences work in respect of any Milestone, the Minister may give notice to the Developer that the Minister no longer requires the Developer to achieve that Milestone.
- (c) With effect from the date of any notice by the Minister to the Developer pursuant to clause 3.1(b), the Developer's obligation to achieve any Milestone referred to in that notice shall cease and this deed (and the table in paragraph 1.4 of Schedule 3 shall be read as if the Developer has no obligation to achieve that Milestone).
- (d) The Developer acknowledges that any potential Entitlement to a SIC Offset Amount that the Developer would have received had it achieved that Milestone will no longer apply.

3.2 Entitlement to SIC Offset Amounts

- (a) The parties agree that if the NSW Government introduces a scheme which entitles the Developer to SIC Offset Amounts as a result of the Developer having achieved a Milestone or which enables the Developer to apply those SIC Offset Amounts towards the partial or full satisfaction of Developer's obligations to make a Special Infrastructure Contribution, the provisions of clause 3 shall not apply to the extent those provisions are inconsistent with the scheme introduced by the NSW Government.
- (b) If the Developer achieves a Milestone (to the satisfaction of the Minister) the Developer will be entitled to SIC Offset Amounts in relation to that Milestone in accordance with this clause 3.2. The works to be carried out to achieve that Milestone must be subject to a construction or other contract which separately identifies those works, whether through a separate bill of quantities or separate contract. That contract must be provided to the Minister prior to commencing the works required to achieve that Milestone and if satisfactory to the Minister (in his sole and unfettered discretion), the Minister must confirm his satisfaction within 90 days of receipt of the contract from the Developer.
- (c) The Developer may request from the Minister an Entitlement to SIC Offset Amounts in relation to a Milestone upon achievement of that Milestone (to the satisfaction of the Minister) if the Developer provides to the Minister:
 - (i) a written request requesting such Entitlement together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether that Milestone has been achieved;
 - (ii) 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

- (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (d) If a Milestone is achieved to the satisfaction of the Minister and the Minister has received a request for an Entitlement from the Developer in relation to that Milestone, then:
 - (i) within 90 days of the Minister receiving all the information required under clause 3.2(c), 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 following the achievement of that Milestone (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
 - (ii) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amount which corresponds to that Milestone.
- (e) If a Milestone is not achieved to the satisfaction of the Minister and the Minister has received a request for Entitlement from the Developer in relation to that Milestone, then within 90 days of the Minister receiving all the information required under clause 3.2(c), the Minister will notify the Developer in writing that its request for Entitlement has not been approved and will, at the same time, return any SIC Offset Certificate which had been provided to the Minister by the Developer pursuant to clause 3.2(c) to the Developer and provide the Developer with details as to why the Minister is of the opinion that the relevant Milestone has not been achieved.

3.3 Provision of a Bank Guarantee

- (a) If at any time a Milestone has not been achieved, but the Developer wishes to become Entitled to SIC Offset Amounts in relation to the whole of that Milestone and Apply the whole or any part of those SIC Offset Amounts, then the Developer may provide to the Minister:
 - (i) a Bank Guarantee with a face value equivalent to the SIC Offset Amount to which the Developer wishes to become so Entitled which must be for an amount no less than the Specified Amount, together with a request for Entitlement in relation to such requested Entitlements; and
 - (ii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister,

provided that in no circumstance is the Developer entitled to a SIC Offset Amount under this clause (and provide a Bank Guarantee under this clause 3.3(a) in respect of that SIC Offset Amount) in excess of \$3,375,000.
- (b) If the Minister has received a request for Entitlement from the Developer pursuant to clause 3.3(a) and the Minister is satisfied with the Bank Guarantee that the Developer has provided pursuant to that clause then:
 - (i) within 90 days of the Minister receiving the Bank Guarantee and the Developer's request, 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 for which the Developer is Entitled (being amounts equivalent to the face value of the Bank Guarantee) (in addition to all previous

Entitlements) and all other updates to that certificate as are appropriate; and

- (ii) on and from the date of the Minister's notice, the Developer is to be Entitled to the SIC Offset Amount referred to in clause 3.3(b)(i).
- (c) If the Developer provides to the Minister:
- (i) a written request that that Bank Guarantee be returned together with an Authorised Progress Claim Certificate and such other supporting documentation as is necessary for the Minister to determine whether the Developer had achieved the Milestone for which the Bank Guarantee had been provided; and
 - (ii) 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 the Bank Guarantee to be returned,

then if the Minister is satisfied that that Milestone has actually be achieved, the Minister is to release and return that Bank Guarantee to the Developer within 90 days of any such request.

- (d) For the avoidance of doubt, the Developer acknowledges and agrees that:
- (i) if the Developer receives an Entitlement for SIC Offset Amounts in relation to a Milestone pursuant to this clause 3.3, it will not receive any further Entitlements upon actual achievement of that Milestone pursuant to clause 3.2 ; and
 - (ii) the provision of one or more Bank Guarantees to the Minister pursuant to this clause 3.3 does not in any way release the Developer from its obligations to undertake the RTA Works Portions and achieve the Milestones in accordance with this Deed.
- (e) In the event that the Developer fails to achieve the Milestone to which the Bank Guarantee relates to the satisfaction of the Minister by the date which is two years after the date the relevant Bank Guarantee is provided (**Proposed Achievement Date**), then the Developer agrees to pay to the Minister an amount equivalent to the face value of that Bank Guarantee within 14 days of the Proposed Achievement Date and if the Developer fails to make such payment within this period, then the Minister may call upon that Bank Guarantee and retain the proceeds of such claim for use in connection with the achievement of that Milestone.
- (f) Payment of an amount by Developer to the Minister pursuant to clause 3.3(e) and any amount called upon (and retained) from a Bank Guarantee by the Minister pursuant to clause 3.3(e), will be taken to constitute achievement of the relevant Milestone to which the payment relates, and the provisions of clause 3.3(d)(i) apply in relation to the achievement of that Milestone..

3.4 Actual Costs of achieving a Milestone

The Developer acknowledges that if the actual Cost of achieving a Milestone (or completing the whole or any party of the RTA Works Portions) exceeds the SIC Offset Amount relevant to that Milestone the Developer must bear any excess Cost and will not receive any Entitlements for further SIC Offset Amounts in relation to that Milestone nor will it be entitled to may any claim against the Minister or any other person for reimbursement of such excess Cost.

3.5 Application of Available SIC Offset Amounts

- (a) If the Developer:
 - (i) has an Entitlement to an Available SIC Offset Amount; and
 - (ii) becomes liable to make Special Infrastructure Contributions in respect of the Development or any other development undertaken by the Developer within the Growth Centres (**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 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
 - (i) 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
 - (ii) 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.

3.6 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 (to the extent that it is within the Minister's power to take those steps).

3.7 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 paragraph 2.7 of the SIC Practice Note as amended from time to time.

3.8 Precinct Planning Contributions

The Precinct Planning Contributions are costs incurred by the Developer 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 the Developer commissions as part of the Precinct Planning Process;
- (b) costs incurred by the Developer as a result of its reimbursement to the Department for:
 - (i) the Precinct Acceleration Costs;
 - (ii) the Precinct Planning Costs;
 - (iii) the Precinct Planning Post Rezoning Costs;
 - (iv) costs associated with the Precinct Project Manager, Council, the urban designer and statutory planner;
 - (v) costs associated with reviews or additional planning studies;
 - (vi) community consultation costs in relation to the hire of venues, printing and other communications;
 - (vii) costs associated with drainage and urban design; and
 - (viii) those costs related to the tasks detailed in clause 18.5 and Schedule 13; 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.

The parties acknowledge that the Developer has incurred certain costs comprising a substantial part of the Precinct Planning Contribution prior to the Date of this Deed.

3.9 Approved Precinct Planning Costs

- (a) The Minister will determine the Approved Precinct Planning Costs within 60 days of the gazettal of the SEPP (as amended consistent with the Draft SEPP) providing that he has received all information necessary to do so from the Developer.
- (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, for the purposes of determining the Approved Precinct Planning Costs.
- (c) The costs incurred by the Developer in relation to planning studies which it commissions as part of the Precinct Planning Process, will only form part of the Approved Precinct Planning Costs if they comply with the criteria contained in clause 3.10.

- (d) Once the Approved Precinct Planning Costs are determined by the Minister, the Minister will advise the Developer in writing of the amount of the Approved Precinct Planning Costs.
- (e) The Developer may, within 30 days of receipt of the Minister's notice referred to in clause 3.9(d), request that the Minister review his determination of the Approved Precinct Planning Costs, and the Minister will do so and provide his final determination within 30 days of the date of the request for a review.
- (f) The Developer acknowledges that the Approved Precinct Planning Costs determined by the Minister:
 - (i) must not exceed the Relevant Cap;
 - (ii) will not include the Precinct Acceleration Costs;
 - (iii) will not include the Precinct Planning Post Rezoning Costs; and
 - (iv) will not include any costs incurred by the Developer after the date of gazettal of the SEPP (as amended consistent with the Draft SEPP).

3.10 Criteria for Planning Studies

- (a) Prior to commissioning the carrying out of any planning studies as part of the Precinct Planning Process, 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:
 - (i) the study is necessary and relevant to the Precinct Planning Process; and
 - (ii) the proposed brief and scope of services is appropriate and complies with the Precinct Planning Process.
- (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) All planning studies must comply with the Precinct Planning Process which includes compliance with the following:
 - (i) 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); GCC Development Code; Precinct Development Parameters approved by the Department; all other relevant State Environmental Planning Policies; Regional Environmental Plans; and Directions under Section 117 of the EP&A Act;
 - (ii) planning studies are to be commissioned to facilitate precinct level approvals required (as relevant) by:
 - A. the Water Act 2000 Regulation Amendment;
 - B. National Parks and Wildlife Act (S.87,90);

- C. Heritage Act;
 - D. Rural Fires Act; and
 - E. Threatened Species Conservation Act; and
- (iii) planning studies are to be undertaken consistent with the relevant requirements of:
- A. the biodiversity certification of the SEPP; and
 - B. the GCC's Precinct Assessment Method for Aboriginal Cultural Heritage and Protocol for Aboriginal Stakeholder involvement.
- (e) Copies of all completed planning studies and supporting information must be provided to the Minister.
- (f) All technical studies commissioned and managed by the Developer can be subject to a peer review by the Minister, with the costs of this peer review being incurred by the Developer.

3.11 Entitlement to SIC Offset Amount - Approved Precinct Planning Costs

- (a) Upon the determination by the Minister of the Approved Precinct Planning Costs pursuant to clauses 3.9(d) or 3.9(e), the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the Approved Precinct Planning Costs (up to a maximum of the Relevant Cap) if the Developer provides to the Minister:
- (i) a written request requesting such Entitlement;
 - (ii) 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
 - (iii) 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 3.11(a) (and the Minister is satisfied with the content of the information provided with that request), then:
- (i) within 90 days of the Minister receiving all the information required under clause 3.11(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 Costs) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
 - (ii) 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 3.11(b)(i).

4. Application of s94, 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 I.

5. Interests in the Land

5.1 Ownership

- (a) The Land Owner represents and warrants to the Minister that it is the legal and beneficial owner of the Land.
- (b) The representation and warranty in this clause 5.1 is given by the Land Owner as at the date:
 - (i) the Land Owner signs this Deed;
 - (ii) the Minister signs this Deed; and
 - (iii) on which the Land Owner is required to deal with the Required Land or do anything under this Deed in relation to the Required Land. (in respect of so much of the Land as is required to permit performance by the Developer of relevant obligations under this Deed ("Required Land")),

5.2 Land Owner obligations

To the extent any obligation imposed on the Developer under this Deed requires anything to be done by the owner of the Land:

- (a) the Land Owner will do that thing and otherwise comply with those obligations; and
- (b) the Developer will procure the Land Owner do that thing and otherwise comply with those obligations.

6. Caveat

The Developer acknowledges and agrees that:

- (a) when this Deed is executed by the Developer (whether or not the Minister has executed this Deed), the Minister is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act 1900 (NSW) and consequently the Minister has a sufficient interest in the Land in respect of which to lodge with the NSW Land and Property Information a caveat notifying that interest; and
- (b) the Minister may lodge a caveat on the Land to protect his rights under this Deed and the Developer will not object to the Minister lodging a caveat in the relevant folio of the Register for the Land nor will it seek to remove any caveat lodged by the Minister.

7. Registration of this Deed

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 in accordance with Schedule 6.

8. Release and Discharge

The Minister agrees to release and discharge this Deed and remove any caveat lodged by the Minister pursuant to clause 6 on the release and discharge terms contained in Schedule 7.

9. Assignment and other dealings

The parties agree that provisions of Schedule 9 apply in relation to any proposed assignment or dealing in relation to the Land or of a party's interest in 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

The parties agree that any disputes under or in relation to this Deed will be resolved in accordance with the procedures set out in Schedule 5.

12. Department costs

- (a) The Department will invoice the Developer for all those costs incurred by it in relation to the Precinct Planning Process which are costs 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 monthly 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) Without limiting the Developer's obligations under clause 12(c), the Minister agrees to consult with the Developer regarding any expenditure which is not consistent with Precinct Planning Budget.
- (e) Costs that have been incurred by the Department as at the Date of this Deed or that are anticipated to be incurred by the Department after the Date of this Deed in connection with the Precinct Planning Process are generally described in Schedule 13.
- (f) The Developer agrees to comply with all of its obligations under and pursuant to Schedule 13.

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

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.

13.4 Tender after termination

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 judgement or order and the rate referred to in this clause 13.

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:

- (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 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 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
Address: 23-33 Bridge Street
Sydney NSW 2000
Fax: (02) 9228 6455
For the attention of: Director General

Developer

Name: Marsden Park Developments
c/o APP Corporation
Address: Level 6, 53 Berry Street
North Sydney NSW 2060
Fax: 02 9954 1951
For the attention of: Owen Walsh

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 15.2.

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 5pm on that day in the place of the party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

17. General provisions

The parties agree to the miscellaneous and general provisions set out in Schedule 10 apply.

18. Additional Developer Obligations

18.1 Delivery of certain Milestones

- (a) The Developer acknowledges and agrees that, in respect of each stage specified in column 1 of the table in paragraph 1.3 in Schedule 3 (each such stage being more fully described in paragraph 1.2 of Schedule 3), it must achieve that stage prior to the issue of a Subdivision Certificate for the proposed subdivision of so much of the Land as is specified in each corresponding column 2 of the table in paragraph 1.3 in Schedule 3 and that it must not apply for a Subdivision Certificate for that proposed subdivision until it has achieved the corresponding stage (and provided evidence of such achievement to the Minister (to the Minister's satisfaction)).
- (b) The Developer acknowledges that (and agrees not to make any objection if) any Planning Consent for subdivision of the whole or any part of the Land may include as a condition that prior to the issue of any Subdivision Certificate for the whole or any part of the Land the Developer must submit to the Consent Authority written evidence from the Minister (or the Director General of the Department) that the Developer is not in breach at that time of its obligations under this Deed.
- (c) The Minister agrees that if:
 - (i) such a condition is imposed;
 - (ii) that a condition requires written evidence from the Minister;
 - (iii) immediately prior to the issue of any Subdivision Certificate for the whole or any part of the Land, the Developer requests in writing to the Minister that he provide written evidence that the Developer is not in breach at that time of its obligations under this Deed; and
 - (iv) the Minister is of the opinion (in his sole and unfettered discretion) that at the time of the Developer's request, the Developer is not in breach of its obligations under this Deed,

then Minister will provide written confirmation to the Consent Authority that the Developer is not in breach at that time of its obligations under this Deed.

- (d) If the events described in paragraphs (i), (iii) and (iv) of clause 18.1(c) occur, but the condition of consent requires written evidence from the Director-General of the Department, then the Minister will confirm to the Director-General of the Department (promptly after any request from the Developer) that at that time the Developer was not in breach of its obligations under this Deed and request the Director-General to consider providing written confirmation to the Consent Authority that the Developer was not in breach at that time of its obligations under this Deed.

18.2 Not used

18.3 Minimum requirements to subdivide Land.

- (a) Following release of the Land for 'urban' development under the Precinct Acceleration Protocol, the Developer undertakes to subdivide the Land and create lots which may be used (after obtaining the necessary Planning Consents) for uses and purposes specified within the SEPP (as amended consistent with the Draft

SEPP) with areas not less than those specified in the table in Schedule 12 (**Prescribed Area**) within the timeframe specified in the table relevant to that area (**Prescribed Timeframe**). To secure this undertaking, the Developer makes the promises outlined in clause 18.3(b) to the Minister.

- (b) In the event the Developer fails to subdivide the Land and create lots pursuant to clause 18.3(a) in respect of any Prescribed Area within the relevant Prescribed Timeframe the Developer must, within 14 days of written demand from the Minister, pay to the Minister such amount determined by the Minister as his reasonable estimate of the Special Infrastructure Contributions that would have otherwise been payable by the Developer in respect of that Prescribed Area if Special Infrastructure Contributions were due and payable in respect of that Prescribed Area (**Prescribed Payment**).
- (c) If, in respect of a Prescribed Area, a Prescribed Payment is made and the Developer subsequently pays to the Minister any Special Infrastructure Contributions in accordance with the Ministerial Determination and the SIC Practice Note in respect of that Prescribed Area, the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the amount of Special Infrastructure Contributions so paid if the Developer provides to the Minister:
 - (i) a written request requesting such Entitlement together with evidence that such Special Infrastructure Contributions have been paid in relation to that Prescribed Area;
 - (ii) 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
 - (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (d) If the Minister has received a request for an Entitlement from the Developer pursuant to clause 18.3(c) (and the Minister is satisfied with the content of the information provided with that request), then:
 - (i) within 90 days of the Minister receiving all the information required under clause 18.3(c), 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 relevant Prescribed Payment) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
 - (ii) 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 18.3(d)(i).
- (e) The amounts payable by the Developer to the Minister under clause 18.3(b) are intended to be used for substantially the same purposes for which any Special Infrastructure Contribution for that Prescribed Area was intended to be used (as if that contribution was actually paid by the Developer to the Minister at that time for the Prescribed Area).

18.4 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.

18.5 Governance of the Precinct Process

- (a) The parties agree that:
 - (i) 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;
 - (ii) 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, Council and the Developer will oversee the day to day planning studies. The PWG will be guided by a plan which addresses potential probity risks.
- (c) As at the Date of this Deed, the representatives of the Department, and the Developer on the PWG are Bruce Colman and Owen Walsh of APP Corporation. Any alternation by a party to its representatives on the PCG and PWG shall be notified to the other party in writing.
- (d) The Developer can only change its representative on 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 18.5(a) to 18.5(d), the parties agree that:
 - (i) the PWG will monitor proposed expenditure against the Precinct Planning Budget to manage cost control;
 - (ii) the Developer will facilitate the Minister having direct access to third parties engaged by the Developer to provide planning studies;

- (iii) the Developer agrees to consult, cooperate and confer with others (subject to commercial-in-confidence constraints) where so directed by the Minister;
- (iv) the Minister can commission peer reviews and additional investigations as required and these will be paid in full by the Developer;
- (v) the Developer agrees to obtain all necessary approvals, licences and permits, which may be required for the provision of services contemplated by this Deed;
- (vi) 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 18.5(e)(vi) does not merge on completion.
- (f) 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.

18.6 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 Council / community and interest groups / agencies and other landowners in the Precinct. The strategy will be prepared in consultation with the Council.
- (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.

18.7 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 Council 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.

17A Provision of Services

17A.1 Developer to provide Services

- (a) The Developer must provide the Services Infrastructure for the whole Precinct (once developed):
 - (i) in accordance with the provisions of this Deed; and
 - (ii) at no cost to the Minister or the NSW Government.
- (b) The parties acknowledge and agree that the Developer must ensure the Services Infrastructure:
 - (i) support orderly development of the Precinct; and
 - (ii) have adequate capacity to serve Other Developments
as reasonably determined by the Minister.

17A.2 Developer to prepare Services Infrastructure Strategy

- (a) Within 6 months of the Precinct Plan Date, the Developer must prepare a draft Services Infrastructure Strategy.
- (b) In preparing the draft Services Infrastructure Strategy, the Developer:
 - (i) 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;
 - (ii) 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;
 - (iii) must ensure that the draft Services Infrastructure Strategy:
 - A. details the staged provision by the Developer of the Services Infrastructure necessary for orderly and efficient delivery of servicing to the whole Precinct (once developed), comprising:
 - 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. specifies:

- 1) the Services Infrastructure required to be constructed and transferred to the Relevant Authorities, including any Interim Sydney Water Services Infrastructure, Ultimate Sydney Water Services Infrastructure and Integral Energy Services Infrastructure;
- 2) the timetable for the construction and transfer of the Services Infrastructure including the sequence of the stages of the Services Infrastructure to be constructed and transferred and the targeted timeframes for each stage;
- 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 construction of the Services Infrastructure, including the construction standards for the Services Infrastructure and how the Developer will comply with those requirements; and
- 5) that the Relevant Authorities have endorsed the Services Infrastructure Strategy and contain evidence of that endorsement; and

C. is consistent with the provisions of the Infrastructure Delivery Report.

- (c) Within 6 months of the Precinct Plan Date, the Developer must submit the draft Services Infrastructure Strategy to the Minister.
- (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Strategy.
- (e) The Minister will not unreasonably withhold its approval to the draft Services Infrastructure Strategy where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have approved the draft Services Infrastructure Strategy.
- (f) If the Minister notifies the Developer that it has not approved the draft Services Infrastructure Strategy, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Minister pursuant to clause 17A.2(f), prepare and submit to the Minister a revised draft Services Infrastructure Strategy. Clause 17A.2(b) and clauses 17A.2(d) to

17A.2(h) (inclusive) apply to the revised draft Services Infrastructure Strategy in the same manner they apply to the draft Services Infrastructure Strategy.

- (h) If the Minister approves the revised draft Services Infrastructure Strategy, it must promptly give the Developer written notice of that approval.

17A.3 Developer to update Servicing Infrastructure Strategy

- (a) Subject to clause 17A.3(b), the Developer will promptly update (at its expense) the Servicing Infrastructure Strategy 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) Clauses 17A.2(b) to 17A.2(h) (inclusive) (except in respect of the reference to the time period in clause 17A.2(c)) apply to any update of the Services Infrastructure Strategy in the same manner they apply to the draft Services Infrastructure Strategy.

17A.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 Strategy, the Developer:
 - (i) 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; and
 - (ii) 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 acceleration of the construction and transfer of the Services Infrastructure reasonably required by the Relevant Authorities where:
 - A. an Other Development is proposed to be undertaken in the Precinct by a developer;
 - B. that Other Development proposes to increase the area of Developable Land within the Precinct;
 - (iii) 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 North West Growth Centre;
 - B. specifies:

- 1) how the Developer will implement the Services Infrastructure Strategy, including without limitation a timetable for the construction of the Services Infrastructure and the transfer of the Services Infrastructure to the Relevant Authorities in each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan;
 - 2) the proposed costs for the construction of the Services Infrastructure including the cost for the construction of the Services Infrastructure in each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan; and
 - 3) the areas to be serviced by the Services Infrastructure, and where those areas have not been determined by the date of the Services Infrastructure Implementation Plan a mechanism to determine the areas 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 the pro forma contracts required by the Relevant Authorities to effect the transfer of:
- 1) the Services Infrastructure (**Services Infrastructure Contract**); and
 - 2) the Services Infrastructure Land (**Services Infrastructure Land Contract**)
- 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 to the Minister.
- (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Implementation Plan.
- (e) The Minister will not unreasonably withhold its approval to the Services Infrastructure Implementation Plan where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have:
- (i) confirmed that 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
 - (ii) approved the Services Infrastructure Implementation Plan.

- (f) If the Minister notifies the Developer that it has not approved the draft Services Infrastructure Implementation Plan, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Minister pursuant to clause 17A.4(f), prepare and submit to the Minister a revised draft Services Infrastructure Implementation Plan. Clause 17A.4(b) and clauses 17A.4(d) to 17A.4(h) (inclusive) apply to the revised draft Services Infrastructure Implementation Plan in the same manner that they apply to the draft Services Infrastructure Implementation Plan.
- (h) If the Minister approves the revised draft Services Infrastructure Strategy, it must promptly give the Developer written notice of that approval.

17A.5 Developer to update Servicing Infrastructure Implementation Plan

- (a) Subject to clause 17A.5(b) Developer must (at its expense) update the Servicing Infrastructure Implementation Plan every Year on the Services Infrastructure Implementation Plan Date.
- (b) Clauses 17A.4(b) to 17A.4(h) (inclusive) (except in respect of the reference to the time period in clause 17A.4(c)) apply to any update of the Services Infrastructure Implementation Plan in the same manner they apply to the draft Services Infrastructure Implementation Plan.

17B Approvals, design and construction of Services Infrastructure Works

17B.1 Developer to obtain all Approvals

- (a) The Developer must, at its risk and expense, prepare all Applications For Approval and take all steps which are reasonably necessary to obtain the Approvals in accordance with the timetable specified for the Services Infrastructure in the Services Infrastructure Implementation Plan.
- (b) The Developer must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities may make in respect of:
 - (i) the proposed terms and conditions of an Application For Approval;
 - (ii) terms and conditions which a Relevant Authority indicates may be imposed on any consent; and
 - (iii) terms and conditions which a Relevant Authority indicates are required as a matter of standard policy or as a matter of the Relevant Authority's standard practice.
- (c) If, during the consultation process referred to in clause 17B.1(b), the Developer receives advice, comments or recommendations from a Relevant Authority in relation to matters which ought to be taken into account when preparing an Application For Approval, the Developer must pay all due regard to any such advice, comments or recommendations in its Application For Approval.

- (d) The Developer must, in the identical form it is proposed to be lodged with the Consent Authority, lodge with the Relevant Authority for its approval the proposed Application For Approval.
- (e) The Relevant Authority must approve, or otherwise withhold its approval to, the proposed Application For Approval in its sole discretion.
- (f) If a Relevant Authority does not approve the proposed Application For Approval, it will promptly notify the Developer of its reasons.
- (g) Upon receipt by the Developer of any notice referred to in clause 17B.1(f), the Developer must amend the proposed Application For Approval taking the Relevant Authority's reasons into account and re-submit the amended proposed Application For Approval to the Relevant Authority.
- (h) The Developer must comply with all conditions of all Approvals.

17B.2 Design responsibility

- (a) The Developer agrees to:
 - (i) design the Services Infrastructure with the skill, care and diligence expected of a professional designer experienced in works of a similar nature to the Services Infrastructure; and
 - (ii) ensure that each member appointed to the Developer's design team performs its design responsibilities with the skill, care and diligence expected of a professional designer experienced in carrying out those responsibilities.
- (b) The Developer agrees to develop the design of the Services Infrastructure Works (**Services Infrastructure Design Documents**):
 - (i) in accordance with:
 - A. this Deed;
 - B. the requirements of the Relevant Authorities;
 - C. the Services Infrastructure Strategy; and
 - D. the Services Infrastructure Implementation Plan; and
 - (ii) to a level of detail:
 - A. required by the Relevant Authorities; and
 - B. necessary to support an Application For Approval for the relevant Approval.

17B.3 Construction phase

- (a) The Developer must at its risk and expense carry out, complete, commission, and where required by the Services Infrastructure Implementation Plan or otherwise as directed in writing by the Relevant Authority, decommission the Services Infrastructure in accordance with:

- (i) the Services Infrastructure Strategy;
 - (ii) the Services Infrastructure Implementation Plan;
 - (iii) the relevant Approvals;
 - (iv) the Services Infrastructure Design Documents;
 - (v) the requirements of the Relevant Authorities; and
 - (vi) its other obligations under this Deed.
- (b) The parties acknowledge and agree that where the Developer
- (i) is required to update the Services Infrastructure Implementation Plan because of an acceleration of the construction and transfer of the Services Infrastructure in accordance with a timetable which differs to that contemplated in the Servicing Infrastructure Implementation Plan; and
 - (ii) updates the Services Infrastructure Implementation Plan to take account of that acceleration of the construction and transfer of the Services Infrastructure,

the scope and methodology governing the construction and transfer of the Services Infrastructure in the Services Infrastructure Implementation Plan will not be changed except to the extent that it is necessary because of that acceleration.

17B.4 Services Infrastructure Construction Contracts

- (a) The parties acknowledge that the Developer may enter into a contract with a third party contractor for the carrying out, completion, commissioning and where required by the Services Infrastructure Implementation Plan, decommissioning of the whole or any part of the Services Infrastructure Works (**Services Infrastructure Construction Contracts**).
- (b) The Developer agrees with the Minister that it will not enter into a Services Infrastructure Construction Contract without the prior approval of the Relevant Authority.
- (c) In requesting the Relevant Authority's approval, the Developer must:
 - (i) provide to the Relevant Authority a copy of the draft Services Infrastructure Construction Contract;
 - (ii) provide to the Relevant Authority all details and information relating to the proposed contractor and the Services Infrastructure Works to be undertaken by that contractor;
 - (iii) certify in writing to the Relevant Authority that the Services Infrastructure Construction Contract:
 - A. complies with the provisions of:
 - 1) this Deed;
 - 2) the Services Infrastructure Strategy; and

3) the Services Infrastructure Implementation Plan;
and

B. includes provisions which adequately provide for the practical completion, final completion, commissioning and, if relevant, the decommissioning of the Services Infrastructure Works.

- (d) The Developer warrants to the Relevant Authority that the contractor which is party to the Services Infrastructure Construction Contract will be a person that the Developer is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Developer's obligations under this Deed in relation to the carrying out of the Services Contribution Works.
- (e) The Relevant Authority must approve or otherwise withhold its approval to, the draft Services Infrastructure Construction Contract.
- (f) If the Relevant Authority notifies the Developer that it has not approved the draft Services Infrastructure Construction Contract, it must promptly provide the Developer with written notice of its reasons.
- (g) The Developer must within 30 Business Days of receipt of any notice from the Relevant Authority pursuant to clause 17B.4(f), prepare and submit to the Relevant Authority a revised draft Services Infrastructure Construction Contract. Clause 17B.4(c) applies to the revised draft Services Infrastructure Construction Contract in the same manner that it applies to the draft Services Infrastructure Construction Contract.
- (h) If the Relevant Authority approves the revised draft Services Infrastructure Construction Contract, it must promptly give the Developer written notice of that approval.

17B.5 Developer to provide Relevant Authority with copy of Services Infrastructure Construction Contract

- (a) Promptly following execution of any Services Infrastructure Construction Contract the Developer must provide a copy of that contract to the Relevant Authority.
- (b) The Developer must comply with all its obligations under any Services Infrastructure Construction Contract.

17B.6 Developer liable for acts of contractors

A Services Infrastructure Construction Contract does not relieve the Developer from any liability or obligation under this Deed. The Developer is liable to the Relevant Authority for the acts and omissions of any contractor or person engaged by the Developer in connection with the Services Infrastructure Works.

17B.7 Application of clauses 17B.4 to 17B.6

Where the Developer enters into more than one Services Infrastructure Construction Contract in respect of the Services Infrastructure Works, the Developer must comply with clauses 17B.4 to 17B.6 for each such Services Infrastructure Construction Contract.

17B.8 Review of Services Infrastructure Works and Services Infrastructure Construction Contracts

The Developer acknowledges and agrees that:

- (a) the Relevant Authorities are not obliged to critically analyse the plans and specifications of the Services Infrastructure Works;
- (b) the Relevant Authorities are not responsible for any errors omissions or non-compliance with any Law or the requirement of any Authority by reason of agreeing to the plans and specifications of the Services Infrastructure Works;
- (c) the Relevant Authorities are not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Services Infrastructure Works; and
- (d) no comment, review or information supplied to the Developer by the Relevant Authorities alters or alleviates the Developer from its obligation to construct and complete the Services Infrastructure Works in accordance with this Deed.

17B.9 Providing documents to Relevant Authority

If a Relevant Authority reasonably so requires, the Developer must use all reasonable endeavours to procure the issue and delivery to the Relevant Authority of copies of the following items (as may be relevant) in relation to the Services Infrastructure Works:

- (a) a copy of as built drawings and all warranties and operations manuals given in connection with the Services Infrastructure Works; and
- (b) a copy of all certificates issued by any Authority in relation to any part of the Services Infrastructure Works which have not previously been delivered to the Relevant Authority, including any certificates of practical completion relating to the Services Infrastructure Works

promptly, and in any event within 20 Business Days, after request by the Relevant Authority.

17B.10 Developer responsibilities

The Developer is responsible for:

- (a) the care of the Services Infrastructure;
- (b) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Land where failure to do so may render the Relevant Authorities or the Developer liable under the Law; and
- (c) taking any urgent action in relation to the Land described in clause 17B.10(b) necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Relevant Authorities or the Developer liable under the Law

at all times prior to the transfer of (or transfer of control of) the Services Infrastructure to the Relevant Authority;

17B.11 Damage

If the Developer or the employees or agents of the Developer damage any public utilities and services or property on or adjacent to the Land, the Developer must promptly make good the damage and pay any compensation which the Law requires the Developer to pay.

17B.12 Insurance

- (a) The Developer must ensure that there is effected and maintained an insurance policy covering such risks, and on terms, reasonably acceptable to the Relevant Authorities including physical loss, damage or destruction of the Services Infrastructure Works (including any associated temporary works), third party liability, contractors, workers compensation, motor vehicle and professional indemnity insurance. The policies must provide cover for the period from the date of the commencement of construction of the relevant Services Infrastructure Works until the end of any relevant defects liability period for those Services Infrastructure Works and in the case of professional indemnity insurance, to a date not earlier than 6 years after the end of any such defects liability period.
- (b) If the Relevant Authorities reasonably determine that a Services Infrastructure Construction Contract for the whole or any part of the Services Infrastructure Works does not contain adequate insurance provisions, the Developer must comply with clauses 17B.12 and 17B.13 in relation to those Services Infrastructure Works.

17B.13 Developer's insurance obligations

- (a) The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the relevant Services Infrastructure Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).
- (b) All insurances which the Developer is required by this Deed to effect and maintain must:
 - (i) be with reputable insurers reasonably acceptable to the Relevant Authorities;
 - (ii) note the rights and interests of the Relevant Authorities; and
 - (iii) not in any respect limit or derogate from the liabilities or obligations of the Developer under this Deed.
- (c) Upon demand by the Relevant Authorities, the Developer must give the Relevant Authorities:
 - (i) copies of all policies, cover notes, renewal certificates and endorsements slips; and
 - (ii) evidence satisfactory to the Relevant Authorities of the insurance policies which the Developer is required by this Deed to effect and maintain.
- (d) The Developer must punctually pay all premiums and excesses in respect of all insurances.
- (e) The Developer must:

- (i) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
 - (ii) if necessary, rectify anything which might prejudice any insurance policy;
 - (iii) reinstate an insurance policy if it lapses;
 - (iv) immediately notify the Relevant Authorities in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
 - (v) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (f) If all or any part of the Services Infrastructure Works are damaged or destroyed prior to the practical completion of those works:
- (i) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Services Infrastructure Works;
 - (ii) if the insurance proceeds received under the insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Services Infrastructure Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Services Infrastructure Works using its own funds; and
 - (iii) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Services Infrastructure Works, the Developer will be entitled to keep that excess.
- (g) Where the Developer has effected any insurance policy referred to in this Deed before the date of this Deed, the Developer:
- (i) warrants that it informed the insurer of the extent of its entitlement to an input tax credit for the last premium it paid at or before the time of first making any subsequent claim under the insurance policy; and
 - (ii) must inform the insurer of the extent of its entitlement to an input tax credit for any future premium it pays immediately after paying that premium.

Where the Developer effects any insurance policy referred to in this Deed after the date of this Deed, the Developer must inform the insurer of the extent of its entitlement to an input tax credit for any premium it pays immediately after paying that premium.

17C Operation and Maintenance

17C.1 Operation and Maintenance Contract

- (a) The parties acknowledge that the Developer must enter into a contract with Sydney Water or a third party operator for the operation and maintenance of the whole or any part of the Sydney Water Services Infrastructure no later than practical completion of the whole or that part of the Sydney Water Services Infrastructure (**Operation and Maintenance Contract**).
- (b) The parties acknowledge that any third party operator (other than Sydney Water) that is a party to an Operation and Maintenance Contract must:
 - (i) be experienced in the operation and maintenance of water related assets; and
 - (ii) procure all licences in connection with the operation and maintenance of the whole or any part of the Sydney Water Services Infrastructure as required by the *Water Industry Competition Act 2006* (NSW) or as required by any Law.
- (a) The Developer agrees with the Minister that it will not enter into a Operation and Maintenance Contract without the prior approval of the Relevant Authority, except where it enters into an Operation and Maintenance Contract with Sydney Water.
- (b) In requesting the Relevant Authority's approval, the Developer must:
 - (i) provide to the relevant Authority a copy of the draft Operation and Maintenance Contract;
 - (ii) provide to the relevant Authority all details and information relating to the proposed third party operator and the Sydney Water Services Infrastructure to be operated and maintained by that operator;
 - (iii) certify in writing to the Relevant Authority that the Operation and Maintenance Contract:
 - A. complies with the provisions of:
 - 1) this Deed;
 - 2) the Services Infrastructure Strategy; and
 - 3) the Services Infrastructure Implementation Plan; and
 - B. expressly permits:
 - 1) the Developer to transfer the Sydney Water Infrastructure to Sydney Water in accordance with the terms of this Deed; and
 - 2) Sydney Water to solely operate and maintain the Sydney Water Services Infrastructure immediately upon completion of the transfer of the Sydney Water Services Infrastructure and Sydney Water

Services Infrastructure Land from the Developer to Sydney Water.

- (c) The Developer warrants to the Relevant Authority that any third party operator that is party to an Operation and Maintenance Contract (other than Sydney Water) will be a person that the Developer is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Developer's obligations under this Deed in relation to the operation and maintenance of the Sydney Water Services Infrastructure until such time as the Sydney Water Services Infrastructure is transferred from the Developer to Sydney Water.
- (d) The Relevant Authority must approve or otherwise withhold its approval to, the draft Operation and Maintenance Contract.
- (e) If the Relevant Authority notifies the Developer that it has not approved the draft Operation and Maintenance Contract, it must promptly provide the Developer with written notice of its reasons.
- (f) The Developer must within 30 Business Days of receipt of any notice from the Relevant Authority pursuant to clause 17C.2(e), prepare and submit to the Relevant Authority a revised draft Operation and Maintenance Contract. Clauses 17C.2(b) to 17C.2(g) apply to the revised draft Operation and Maintenance Contract in the same manner that they apply to the draft Operation and Maintenance Contract.
- (g) If the Relevant Authority approves the revised draft Operation and Maintenance Contract, it must promptly give the Developer written notice of that approval.

17C.2 Developer to provide Relevant Authority with copy of Operation and Maintenance Services Contract

- (h) Promptly following execution of any Operation and Maintenance Contract the Developer must provide a copy of that contract to the Relevant Authority.
- (i) The Developer must comply with all its obligations under the Operation and Maintenance Contract.

17C.3 Developer liable for acts of contractors

The entry into a Operation and Maintenance Contract does not relieve the Developer from any liability or obligation under this Deed. The Developer is liable to the Relevant Authority for the acts and omissions of any contractor, operator or person engaged by the Developer in connection with the Services Infrastructure Works.

17C.4 Application of clauses 17C.1 to 17C.2

Where the Developer enters into more than one Operation and Maintenance Contract in respect of the Sydney Water Services Infrastructure, the Developer must comply with clauses 17C.1 to 17C.3 for each such Operation and Maintenance Contract.

17D Transfer of Sydney Water Infrastructure

17D.1 Sydney Water to access and use Interim Sydney Water Services Infrastructure

- (a) The Developer grants to Sydney Water the right to access, use and licence the Interim Sydney Water Services Infrastructure and the Interim Sydney Water Services Infrastructure Land for the purposes contemplated by this Deed.
- (b) Rights granted to Sydney Water by virtue of clause 17D.1(a) are intended to give Sydney Water control of the Interim Sydney Water Services Infrastructure and the Interim Sydney Water Services Land in accordance with Sydney Water standard practice.
- (c) Notwithstanding clause 17D.1(b), the Developer must (at the Developer's risk and expense):
 - (i) within [*insert*] Business Days of request by Sydney Water, meet with Sydney Water to agree terms (reasonably acceptable to Sydney Water) for the access to and use of the Interim Sydney Water Services Infrastructure and Interim Sydney Water Services Infrastructure Land by Sydney Water; and
 - (ii) promptly enter into a form of contract with Sydney Water (on terms reasonably acceptable to Sydney Water) documenting such terms of access and use (**Interim Sydney Water Licence**).
- (d) The Developer must act reasonably, in good faith and take into account the reasonable requirements of Sydney Water when negotiating, consulting and agreeing the terms of access, use and licence of the Interim Sydney Water Services Infrastructure and Interim Sydney Water Services Infrastructure Land by Sydney Water and the form of the Interim Sydney Water Licence.
- (e) The rights granted to Sydney Water in clause 17D.1(a) are intended to be legally fully effective and binding unless and until, the Developer and Sydney Water enter into the Interim Sydney Water Licence, the terms of which are intended to replace the rights granted to Sydney Water under clause 17D.1(a).

17D.2 Developer to transfer Ultimate Sydney Water Services Infrastructure

- (a) Upon demand by Sydney Water the Developer must (at the Developer's risk and expense) transfer:
 - (i) the Ultimate Sydney Water Services Infrastructure; and
 - (ii) the Ultimate Sydney Water Services Infrastructure Landto Sydney Water.
- (b) The Developer must within 120 Business Days of the demand made by Sydney Water referred to in clause 17D.2(a):
 - (i) the Developer must agree financial arrangements (on terms reasonably acceptable to Sydney Water) with Sydney Water for the transfer of the

Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water (**Agreed Financial Arrangements**);

- (ii) agree a form of contract with Sydney Water (on terms reasonably acceptable to Sydney Water) documenting the terms of the Agreed Financial Arrangements and sign that contract promptly after it has been agreed;
- (iii) in respect of the transfer of the Ultimate Sydney Water Services Infrastructure:
 - A. deliver to Sydney Water the Services Infrastructure Contract, on terms satisfactory to Sydney Water in its sole discretion, as executed by the Developer;
 - B. give to Sydney Water all documents and certificates for the relevant Ultimate Sydney Water Services Infrastructure as may be necessary in the opinion of Sydney Water to effect the transfer of the relevant Ultimate Sydney Water Services Infrastructure to Sydney Water free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges); and
 - C. procure the assignment upon completion of the transfer of any component of the relevant Ultimate Sydney Water Services Infrastructure to Sydney Water of all collateral warranties, guarantees, covenants and other agreements (if any) relating in any way whatsoever to the relevant Ultimate Sydney Water Services Infrastructure; and
- (iv) in respect of the transfer of the Ultimate Sydney Water Services Infrastructure Land:
 - A. deliver to Sydney Water:
 - 1) the Services Infrastructure Land Contract, on terms satisfactory to Sydney Water in its sole discretion, as executed by the Developer; and
 - 2) a transfer of land in respect of the Ultimate Sydney Water Services Infrastructure Land in registrable form except for acceptance by Sydney Water and marking by the Office of State Revenue and as executed by the Developer and;
 - B. give to Sydney Water the certificate or certificates of title for the Ultimate Sydney Water Services Infrastructure Land; and
 - C. take any other necessary action to give effect to the transfer of the title of the Ultimate Sydney Water Services Infrastructure Land to Sydney Water free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

- (c) Upon the transfer of the Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water, the Minister will procure Sydney Water to pay such monies to the Developer as is required to be paid in accordance with the contract documenting the terms of the Agreed Financial Arrangements.
- (d) The parties must:
 - (i) act reasonably and in good faith when negotiating, consulting and agreeing the Agreed Financial Arrangements and the form of contract documenting such Agreed Financial Arrangements with Sydney Water; and
 - (ii) pay all due regard to any reasonable comments or suggestions each may make in respect of the Agreed Financial Arrangements and the form of contract documenting such Agreed Financial Arrangements.
- (e) If the Developer and Sydney Water fail to agree the Agreed Financial Arrangements within 120 Business Days of demand by Sydney Water as referred to in clause 17D.2(a), the Developer must immediately transfer to Sydney Water:
 - (i) the Ultimate Sydney Water Services Infrastructure; and
 - (ii) the Ultimate Sydney Water Services Infrastructure Land.
- (f) Upon the transfer of the Ultimate Sydney Water Services Infrastructure and the Ultimate Sydney Water Services Infrastructure Land to Sydney Water pursuant to clause 17D.2(e), the Minister will procure Sydney Water to pay an amount which is equivalent to the lowest consideration that has been offered by one party to the other party in discussions between Sydney Water and the Developer relating to the financial arrangements for the transfer of the Ultimate Sydney Water Services Infrastructure and Ultimate Sydney Water Services Infrastructure Land from the Developer to Sydney Water in relation to that transfer.

The Developer and Sydney Water will be deemed to be in dispute in respect of the financial arrangements relating to the transfer of the Ultimate Sydney Water Services Infrastructure and Ultimate Sydney Water Services Infrastructure Land and that dispute will be resolved in accordance with the dispute resolution procedures in Schedule 5.

17D.3 Contracts relating to Other Developments

- (a) The Developer acknowledges that, before the Developer transfers the whole or any part of the Sydney Water Services Infrastructure to Sydney Water, a developer of an Other Development may request to connect into or use that Sydney Water Services Infrastructure so that Other Development has that access to the Sydney Water Services Infrastructure and the associated supply of Services (**Other Development Request**).
- (b) If, prior to the transfer of the whole or any part of the Sydney Water Services Infrastructure to Sydney Water, the Developer receives an Other Development Request, the Developer must act in accordance with the written directions of Sydney Water in responding to that Other Development Request.
- (c) Following receipt of an Other Development Request, the Developer must enter into a contract with the developer of that Other Development for the provision of water

and/or sewerage from the Sydney Water Services Infrastructure to that Other Development (**Other Development Contract**), if, and only if, so directed by Sydney Water in accordance with the Services Infrastructure Strategy. The Developer shall not charge any fee, cost or expense in relation to any Other Development, contract (including without limitation any Other Development Contract) or complying with any such directions from Sydney Water.

17D.4 Developer to mortgage Land and charge Services Infrastructure

- (a) Upon demand by Sydney Water, the Developer must grant to Sydney Water:
 - (i) a Real Property charge over the Marsden Park Sydney Water Reservoir Site (**Real Property Charge**); and
 - (ii) a fixed and floating charge over:
 - A. the Sydney Water Services Infrastructure located on the Marsden Park Sydney Water Reservoir Site; and
 - B. the Marsden Park Sydney Water Reservoir Site (**Developer Charge**)

to secure the Developer's obligations to construct so much of the Sydney Water Services Infrastructure that is located on the Marsden Park Sydney Water Reservoir Site and transfer to Sydney Water so much of the Sydney Water Services Infrastructure Land that is comprised in the Marsden Park Sydney Water Reservoir Site in accordance with clauses 17A, 17B, 17C and 17D (**Developer Secured Liabilities**).

- (b) The Developer at its own expense will, promptly after the Real Property Charge and Developer Charge are entered into, take all practical steps, and otherwise do anything that Sydney Water reasonably requires to procure:
 - (i) the consent of each person who has an estate or interest in:
 - A. the Sydney Water Services Infrastructure that is located on the Marsden Park Sydney Water Reservoir Site; and
 - B. the Marsden Park Sydney Water Reservoir Site;
 - (ii) the execution of any documents reasonably requested by Sydney Water for registration of the Real Property Charge and the Developer Charge as a first ranking security

to enable the registration of the Real Property Charge and the Developer Charge as a first ranking security (free of all encumbrances and affectations including any charge or liability for rates, taxes and charges) by either the Land and Property Management Authority NSW under the Real Property Act in the relevant folios of the register for the Marsden Park Sydney Water Reservoir Site or by ASIC (as the case may be).

17D.5 Discharge of Developer Mortgage and Developer Charge

- (a) The parties acknowledge that the Real Property Charge and Developer Charge will be released following the satisfaction by the Developer of the Developer Secured Liabilities.

- (b) The Minister will procure Sydney Water to, promptly after the Developer discharges the Developer Secured Liabilities, take all steps, and otherwise do anything that the Developer reasonably requires, to discharge the Developer Mortgage and the Developer Charge.

17E Integral Energy Services Infrastructure

17E.1 Agreed Substation Site

- (a) The Developer agrees to enter into the Sale Contract for the sale of the Agreed Substation Site to Integral Energy in accordance with the provisions of this clause 17E.1.
- (b) Within six months of a request from Integral Energy the Developer must deliver to Integral Energy the Sale Contract, on terms satisfactory to Integral Energy, as executed by the Developer.
- (c) The Developer must:
 - (i) comply with its obligations in the Sale Contract in accordance with that contract;
 - (ii) do all things reasonably required by Integral Energy to create a separate registered lot or lots for the Agreed Substation Site;
 - (iii) pay all costs in connection with the preparation and registration of the Plan of Subdivision creating a separate registered lot or lots for the Agreed Substation Site; and
 - (iv) complete the Sale Contract in accordance with the terms of the Sale Contract.

17E.2 Developer to transfer Agreed Substation Site

Within 10 Business Days of satisfaction of the conditions to effect completion of the Sale Contract (as contained in the clause entitled "Completion" in the Sale Contract, the Developer must (at its risk and expense) deliver to Integral Energy:

- (a) a form of transfer in respect of the land comprising the Agreed Substation Site in favour of Integral Energy for a consideration of \$1, executed by the Developer and in registrable form except for acceptance by Integral Energy and marking by the Office of State Revenue; and
- (b) the certificate or certificates of title for the Agreed Substation Site,

and must take any other necessary action to give effect to the transfer of the title of the Agreed Substation Site to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

17E.3 Developer to transfer Interim Integral Energy infrastructure

- (a) Subject to clause 17E.3(b), the Developer must transfer (at the Developer's risk and expense) to Integral Energy by the dates specified in the Services Infrastructure Implementation Plan:
 - (i) the Interim Integral Energy Services Infrastructure; and
 - (ii) the Interim Integral Energy Services Infrastructure Land.
- (b) The Developer must:
 - (i) in respect of the transfer of the Integral Energy Services Infrastructure:
 - A. deliver to Integral Energy the Services Infrastructure Contract, on terms satisfactory to Integral Energy, as executed by the Developer;
 - B. give to Integral Energy all documents and certificates for the relevant Integral Energy Services Infrastructure as may be necessary in the opinion of Integral Energy to effect the transfer of the relevant Interim Integral Energy Services Infrastructure to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges); and
 - C. procure the assignment upon completion of the transfer of any component of the relevant Interim Integral Energy Services Infrastructure to Integral Energy of all collateral warranties, guarantees, covenants and other agreements (if any) relating in any way whatsoever to the relevant Interim Integral Energy Services Infrastructure; and
 - (ii) in respect of the transfer of the Interim Integral Energy Services Infrastructure Land:
 - A. deliver to Integral Energy :
 - 1) the Integral Energy Services Infrastructure Land Contract, on terms satisfactory to Integral Energy, as executed by the Developer; and
 - 2) a transfer of land in respect of the Interim Integral Energy Services Infrastructure Land in registrable form except for acceptance by Integral Energy and marking by the Office of State Revenue and as executed by the Developer;
 - B. give to Integral Energy the certificate or certificates of title for the Interim Integral Energy Services Infrastructure Land; and
 - C. take any other necessary action to give effect to the transfer of the title of the Interim Integral Energy Services Infrastructure Land to Integral Energy free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges).

17F Subdivision of the Land**17F.1 Issue of Subdivision Certificate and Occupation Certificate**

No Subdivision Certificate or Occupation Certificate in respect of the Land may issue unless the relevant Consent Authority has received a notice from:

- (a) Sydney Water that the Developer has complied with those requirements of this Deed relating to the provision of Services Infrastructure in connection with water and sewerage that are required by the Services Infrastructure Implementation Plan to be complied with by the time of the issue of that Subdivision Certificate or Occupation Certificate; and
- (b) Integral Energy that the Developer has complied with those requirements of this Deed relating to the provision of Services Infrastructure in connection with electricity that are required by the Services Infrastructure Implementation Plan to be complied with by the time of the issue of that Subdivision Certificate or Occupation Certificate.

19. Commonwealth EPBC Act

Following completion of the strategic assessment of the Growth Centres under the Environment Protection and Biodiversity Conservation Act 1999 (Cwlth), the parties agree to meet and discuss in good faith any variation required to be made to this deed having regard to such arrangements.

20. Special Infrastructure Contributions

- (a) The Developer acknowledges that it will be required to make a Special Infrastructure Contribution in relation to any development it proposes to carry out within the Precinct.
- (b) The Developer acknowledges that any condition imposed on a development consent granted to the Developer in relation to development within the Precinct is likely to require the Developer to obtain a certificate from the Minister stating that the Special Infrastructure Contribution has been satisfied in respect of the development.

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) or (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 item 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>(a) An amendment of the SEPP in accordance with the Draft SEPP</p> <p>(b) The Development described in item 2 of Schedule 2.</p>
<p>The scope, timing and manner of delivery of Contribution required by this Planning Agreement - (Section 93F(3)(c))</p>	<p>As set out in the Contributions Schedule</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 Development 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 and Schedule 5.</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 5, 7 and 13</p>
<p>Registration of this Deed</p> <p>The parties agree that this Deed will be registered in accordance with clause 7.</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 paragraph 1.8 of Schedule 10.</p>

Schedule 2 - Description of the Land and the Development

1. Title

Those parts of the land comprised in:

- (a) Lot 8 in Deposited Plan 262886 being folio identifier 8/262886;
- (b) Lot 9 in Deposited Plan 262886 being folio identifier 9/262886;
- (c) Lot 10 in Deposited Plan 262886 being folio identifier 10/262886;
- (d) Lot 11 in Deposited Plan 262886 being folio identifier 11/262886;
- (e) Lot 12 in Deposited Plan 262886 being folio identifier 12/262886;
- (f) Lot 13 in Deposited Plan 262886 being folio identifier 13/262886;
- (g) Lot 14 in Deposited Plan 262886 being folio identifier 14/262886;
- (h) Lot 15 in Deposited Plan 262886 being folio identifier 15/262886;
- (i) Lot 16 in Deposited Plan 262886 being folio identifier 16/262886;
- (j) Lot 26 in Deposited Plan 262886 being folio identifier 26/262886;
- (k) Lot 27 in Deposited Plan 262886 being folio identifier 27/262886;
- (l) Lot 32 in Deposited Plan 262886 being folio identifier 32/262886;
- (m) Lot 33 in Deposited Plan 262886 being folio identifier 33/262886;
- (n) Lot 34 in Deposited Plan 262886 being folio identifier 34/262886;
- (o) Lot 35 in Deposited Plan 262886 being folio identifier 35/262886;
- (p) Lot 36 in Deposited Plan 262886 being folio identifier 36/262886;
- (q) Lot 47 in Deposited Plan 262886 being folio identifier 47/262886;
- (r) Lot 291 in Deposited Plan 1076555 being folio identifier 291/1076555; and
- (s) Lot 292 in Deposited Plan 1076555 being folio identifier 292/1076555,

which is identified and delineated by heavy dark blue ink in the plan comprising Annexure F.

2. Proposed Development

The development of the Land into a business park.

Schedule 3 - Contributions Schedule

1.1 RTA Works Portion - Scope

The Scope of the RTA Works Portions is generally an upgrade of the section of Richmond Road from Townson Road to Grange Avenue generally in accordance with the Concept Design Plans contained in Annexure E, including the following:

- (a) The western leg of the four-way signalised intersection upgrade at the Townson Road intersection to the extent necessary to transition into other works to be undertaken by others, being the remaining three legs of the signalised intersection, to provide an entrance into the Precinct;
- (b) signalised four-way intersection at South Street (including transitions);
- (c) left-in / left-out non-signalised intersection at Grange Avenue (including transitions);
- (d) the road cross section to be in accordance with the RTA Route Strategic Master Plan for Richmond Road Corridor (figures 3.2 1.3 & 3.2 1.4) and consistent with the cross section for the adjacent road works to be built by other developers; and
- (e) the design and construction of bus stop(s) as determined by the Department and RTA.

The Developer must use its best endeavours and work collaboratively with the RTA to acquire and/or dedicate any land required for the provision of the RTA Works Portions.

1.2 RTA Works Portion - Staging

The staging of the RTA Road Works Portions is to be acceptable to the RTA and be generally in accordance with the staging shown in the Staging Plan at Annexure D and the indicative staging arrangement as follows:

- (a) Stage 0: In the event that the three legs of the Townson Road signalised intersection to be carried out by others is not in place at the appropriate time, a temporary safe access, acceptable to the RTA, must be constructed.
- (b) Stage 1: Construction of the western leg of the four-way signalised intersection upgrade at the Townson Road intersection to the extent necessary to transition into other works to be undertaken by others, being the remaining three legs of the signalised intersection, to provide an entrance into the Precinct. Stage 1 is to be constructed generally in conjunction and completed no later than the remainder of the Townson Road signalised intersection upgrade.
- (c) Stage 2: The upgrade of the South Street Intersection to a four way signalised intersection, including transitions.
- (d) Stage 3: Construction of the North bound lanes of Richmond Road from Townson Road to South Street Intersections.
- (e) Stage 4: Construction of the North bound lanes of Richmond Road from South Street to Grange Avenue with transitions to marry into the existing construction of

Richmond Road. These works to include the upgrade of the Grange Avenue Intersection to a left in left out intersection.

- (f) Stage 5: Reconstruction of the South Bound Lanes of Richmond Road from Townson Road to Grange Avenue.

1.3 RTA Road Works Portion Delivery Timetable

Infrastructure Stage	Milestone
0	Prior to seeking the release of any subdivision certificate or occupation certificate the first land release.
1	To be constructed generally in conjunction and completed no later than the remainder of the Townson Road signalised intersection upgrade to be undertaken in that area by others.
2	Prior to release of the 65 th Ha of the Land.
3	Prior to release of the 100 th Ha of the Land
4	Prior to release of the 150 th Ha of the Land
5	Prior to release of the 180 th Ha of the Land

The RTA Works Portions described in Infrastructure Stages 2 to 5 inclusive, are to be constructed and practical completion attained prior to seeking the release of any subdivision certificate or occupation certificate that seeks to release the portion of the Land over the prescribed Milestone.

1.4 RTA Works Portion Table

Column 1	Column 2	Column 3	
Stage	SIC Offset Amount per Construction Milestone \$ (See Note**))	Construction Milestone	
		No.	Description
Total for Stage 0 (as referred to in paragraph 1.2(a) of Schedule 3)	Nil		

1	\$210,300	1	Expenditure of 25% of the value of the Construction Contract
1	\$210,300	2	Expenditure of 50% of the value of the Construction Contract
1	\$210,300	3	Expenditure of 75% of the value of the Construction Contract
1	\$210,300	4	Expenditure of 100% of the value of the Construction Contract
1	\$210,300	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
Total for Stage 1	\$1,051,500		
2	\$2,103,800	1	Expenditure of 25% of the value of the Construction Contract
2	\$2,103,800	2	Expenditure of 50% of the value of the Construction Contract
2	\$2,103,800	3	Expenditure of 75% of the value of the Construction Contract
2	\$2,103,800	4	Expenditure of 100% of the value of the Construction Contract
2	\$2,103,800	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
Total for Stage 2	\$10,519,000		
3	\$1,067,700	1	Expenditure of 25% of the value of the Construction Contract
3	\$1,067,700	2	Expenditure of 50% of the value of the Construction Contract
3	\$1,067,700	3	Expenditure of 75% of the value of the Construction Contract
3	\$1,067,700	4	Expenditure of 100% of the value of the Construction Contract
3	\$1,067,700	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works

Total for Stage 3	\$5,338,500		
4	\$1,443,000	1	Expenditure of 25% of the value of the Construction Contract
4	\$1,443,000	2	Expenditure of 50% of the value of the Construction Contract
4	\$1,443,000	3	Expenditure of 75% of the value of the Construction Contract
4	\$1,443,000	4	Expenditure of 100% of the value of the Construction Contract
4	\$1,443,000	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
Total for Stage 4	\$7,215,000		
5	\$938,100	1	Expenditure of 25% of the value of the Construction Contract
5	\$938,100	2	Expenditure of 50% of the value of the Construction Contract
5	\$938,100	3	Expenditure of 75% of the value of the Construction Contract
5	\$938,100	4	Expenditure of 100% of the value of the Construction Contract
5	\$938,100	5	The later of handover of the relevant RTA Works Portion, acceptance of those works by the RTA and completion of any defects liability period for those works
Total for Stage 5	\$4,690,500		
Total for all Stages	\$28,814,500		

Note**: These figures are indexed to December 2008.