

Form: 11R  
Release: 4.3

**REQUEST**  
New South Wales  
Real Property Act 1900



**AN687421M**

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

All Statutory Declarations and evidence that are lodged in support of land dealings will be treated as publicly accessible and will be disclosed to persons upon request.

(A) **STAMP DUTY**

If applicable. Revenue NSW use only
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(B) **TORRENS TITLE**

See Annexure A
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(C) **REGISTERED DEALING**

Number	Torrens Title
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(D) **LODGED BY**

Document Collection Box	Name, Address or DX, Telephone, and Customer Account Number if any Clark McNamara Lawyers GPO Box 835, Sydney NSW 2001 Tel: (02) 9299 2223 Fax: (02) 9299 2224	CODE <b>R</b>
	Reference: 27566	

(E) **APPLICANT**

Minister for Planning for the State of New South Wales
--

(F) **NATURE OF REQUEST**

Application for registration of a Planning Agreement on title under section 7.6 of the Environmental Planning and Assessment Act 1979
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(G) **TEXT OF REQUEST**

That the Planning Agreement, provided in Annexure "B" attached, is registered on the title of the folios for the land referred to in Annexure "A".

DATE 30/8/2018

(H) I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence. [See note\* below].

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness: \_\_\_\_\_ Signature of authorised officer: \_\_\_\_\_

Name of witness: See Annexure A Authorised officer's name: See Annexure A  
Address of witness: \_\_\_\_\_ Authority of officer: \_\_\_\_\_  
Signing on behalf of: \_\_\_\_\_

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded through eNOS. The applicant \_\_\_\_\_ certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No. \_\_\_\_\_ Full name: \_\_\_\_\_ Signature: \_\_\_\_\_

Annexure A to Request

Parties:

Applicant: Minister for Planning for the State of New South Wales  
Registered Proprietor: Fitzpatrick Investments Pty Ltd (ACN 001 662 862)


Dated: 30/8/2018

Schedule of Titles:

Lot 2 in Deposited Plan 1215268

I certify that I am an eligible witness and that an authorised officer of the applicant signed this dealing in my presence.

Certified correct for the purposes of the Real Properties Act 1900 by the authorised officer named below.

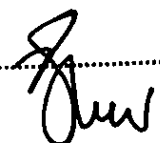
Signature of witness: 

Signature of authorised officer:

Name of witness: ELEANOR ROBERTSON  
Address of witness: 320 PITT ST, SYDNEY

Authorised officer's name:  
Authority of officer:  
Signing on behalf of:

SIGNED by BRENDAN NELSON as delegate  
for the Minister for Planning  
administering the  
Environmental Planning and Assessment Act, 1979

  
.....

Annexure **BA** to **Request**

Parties:

Applicant: Minister for Planning for the State of New South Wales  
Registered Proprietor: Fitzpatrick Investments Pty Ltd ACN 001 662 862

Dated: **30/8/2018**

Certified correct for the purpose of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified:

Company: Fitzpatrick Investments Pty Ltd ACN 001 662 862  
Authority: Section 127 of the Corporations Act 2001



Signature of authorised person:

Signature of authorised person:



Name of authorised person:

Name of authorised person:

Office held: **Sole Director / Secretary**

Office held



# Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning  
Minister



Fitzpatrick Investments Pty Ltd  
Developer

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

Our reference /20526/80187083

VPA Reference: 2017/8407  
177 - 299 Lenore Drive, Erskine Park  
Eastern part of the Fitzpatrick Industrial Estate

L\323024544.12



Annexure "B" to Request

CLAYTON UTZ

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CLAYTON UTZ

## Planning Agreement

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Date **30 AUGUST 2018**

Parties Minister for Planning ABN 38 755 709 681 of Level 15, 52 Martin Place, Sydney NSW 2000 (Minister)

Fitzpatrick Investments Pty Ltd ABN 42 001 662 862 of 22-24 Junction Street, Forest Lodge NSW 2037 (Developer)

### Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development on the Land.
- C. The Developer has made one or more Development Applications to the Consent Authority in respect of the Development on the Land.
- D. Clause 29 of the *State Environmental Planning Policy (Western Sydney Employment Area) 2009 (WSEA SEPP)* provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in relation to the land to which the WSEA SEPP applies.
- E. The Developer has offered to enter into this deed with the Minister to secure the Development Contributions in order to enable the Secretary to provide the certification required by clause 29 of the WSEA SEPP.

### Operative provisions

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#### 1. Definitions and interpretation

##### 1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

**Acceptable Contractor** means a Construction Contractor which:

- (a) is appointed pursuant to an arm's length competitive tender process overseen by the Minister; and
- (b) satisfies the requirements of the Roads Authority and RMS for a contractor to construct regional public roads.

**Actual Costs** means:

- (a) the final certified contract cost paid by the Developer inclusive of variations following compliance with all of the Developer's obligations under the relevant Road Works Agreement in respect of the construction of the Road Works; and

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- (b) the following costs (not exceeding in total an amount that is 15% of the amount in paragraph (a) above) reasonably incurred in the delivery of the WIK Contribution and paid by the Developer to third parties for:
- (i) design of the Road Works, project management, investigations, consultant fees, studies or reports specifically required for the Road Works;
  - (ii) other matters where the approval of the Minister to the inclusion of such costs has been given in writing to the Developer,

to the extent that they are reasonable in quantum and do not exceed the Maximum WIK Value.

**ACM Parts Land** means that part of the Land comprising 11.83 hectares to which Development Consent No. DA15/0843 relates.

**Acquisition Cost** means any loss, cost, expense, fee, charge, tax, rate, fine, Liability or penalty in connection with the acquisition by any person or the transfer to the Minister or to the Minister's nominee (including any other transfers which occur prior to that transfer) of any land.

**Address for Service** for a party means the contact details of that party appearing in Schedule 2 or any other contact details which that party notifies to all other parties as its Address for Service.

**Agreed Valuation Rate** has the meaning given to that term in clause 4.4 of Schedule 4.

**Associate** of a person means that person's officer, employee, adviser, contractor (including any other person with whom that person has a contractual relationship), subcontractor or invitee, or any related entity of that person (within the meaning of the *Corporations Act 2001* (Cth)).

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

**AutoNexus Land** means that part of Lot 2 in DP1215268 comprising an area of approximately 91.56 hectares to which the AutoNexus VPA applies, as generally depicted in the plan at Annexure A in hatching and marked "AutoNexus".

**AutoNexus VPA** means the planning agreement between the Minister and the Developer dated 26 September 2017 with VPA reference No. 2017/8604.

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

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time;
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion;
- (c) naming the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries;
- (d) without an expiry date;

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Base CPI** means the CPI number for the quarter ending 31 March 2017.

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**Business Day** means any day on which banks are open for business generally in Sydney, but does not include a Saturday, Sunday or public holiday, or any day between 25 December and 1 January inclusive.

**Consent Authority** has the same meaning as in the Planning Act.

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

**Construction Contractor** means a contractor engaged to deliver road works to which this deed relates.

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

**Contribution Amount** means, for a particular Trigger Event, the amount of contribution which the Developer is required to make under this deed before the occurrence of that Trigger Event, as described in Schedule 4.

**Council** means Penrith City Council.

**CPI** means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index which the Minister specifies, in his or her sole discretion, for the purposes of this deed.

**CPI Adjustment Date** means 1 July 2017 and each anniversary of 1 July 2017.

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

**Dedication Notice** means a notice issued by the Minister calling for the delivery of the Land Contribution to the Roads Authority or to such other person nominated by the Minister in that notice.

**Detention Basin** means a detention basin for the purposes of stormwater drainage and the catchment of water from the WNSL Road at a location generally shown on the plan at Annexure B or otherwise approved by the Roads Authority.

**Developer's Existing Credits** has the meaning given to that term in clause 3 of Schedule 4.

**Development** means the development of the eastern part of the Fitzpatrick Industrial Estate, which includes the subdivision and development of the Land for the purposes of a warehouse and logistics estate, including, as contemplated by:

- (a) Development Application DA18/0294 - for a six (6) lot subdivision, including two boundary adjustments, construction and dedication of Grady Crescent;
- (b) Development Application DA18/0153 - for the erection of two industrial warehouse buildings and associated hardstand, car parking and landscaping;
- (c) Development Application DA17/0154 - for bulk earthworks and trunk stormwater infrastructure;
- (d) Development Application DA15/0843 - for, among other things, hardstand areas, industrial building, office and a two (2) lot subdivision; and
- (e) any future Development Applications.

**Development Application** has the same meaning as in the Planning Act.

**Development Consent** has the same meaning as in the Planning Act.

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**Development Contributions** means the total contributions to be provided by the Developer in accordance with Schedule 4.

**Drainage Easement** means an easement in gross to drain water:

- (a) in favour of the Roads Authority;
- (b) burdening those parts of the Land which the Roads Authority determines are to be occupied by the Drainage Line;
- (c) on the terms in Part 3 of Schedule 4A to the *Conveyancing Act 1919 (NSW)*; and
- (d) of sufficient width to accommodate the Drainage Line and any activity which is reasonably necessary to maintain the Drainage Line,

or otherwise as determined by the Minister or the Roads Authority, acting reasonably.

**Drainage Line** means drainage infrastructure including a drainage line from the Northern WNSL Road Section at Lenore Drive to the Detention Basin.

**Oakdale West Election Deadline** means the date specified by the Secretary in writing, in her absolute discretion, as the 'Oakdale West Election Deadline'.

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

**External WSEA Obligation** means an obligation to make a development contribution relating to the provision of regional transport infrastructure and services on other land (not being the Land) to which the WSEA SEPP applies.

**Future Southern Link Road** means the future road known as the "Southern Link Road", which is to be located to the south of the Land.

**GST** means any form of goods and services tax payable under the GST Legislation.

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

**Key Road Work Terms** has the meaning given to that term in clause 5.1 of Schedule 4.

**Land** means the land described in Schedule 3, generally as depicted in the plan at Annexure A.

**Land Contribution** means the delivery of the Road Work Land as described in clause 4 of Schedule 4.

**Land Parcel** means an allotment which contains part of the Land.

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

**Maximum WIK Value** for a WIK Contribution means the maximum value for that WIK Contribution for the purposes of this deed, as determined by the Minister.

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Minister** means the Minister for Planning and includes the Secretary, the Secretary's nominee and the Ministerial Corporation.

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**Ministerial Corporation** means the corporation sole with the corporate name "Minister administering the *Environmental Planning and Assessment Act 1979*".

**Monetary Contribution** means the contribution described in Schedule 4.

**NDA or Net Developable Area** means the net developable area of the Land or the relevant part of the Land calculated in accordance with Schedule 6, or in the event of a dispute or ambiguity, as determined by the Secretary.

**Northern WNSL Road Section** means the part of the WNSL Road on the Land between Lenore Drive and Lockwood Road, including connection of the WNSL Road to Lockwood Road (which is currently a cul-de-sac) and between Lockwood Road and the northern boundary of the Land, generally as shown on the plan at Annexure B.

**Oakdale West Developer** means the developer, from time to time, of the Oakdale West Estate.

**Oakdale West VPA** means a planning agreement between the Minister and the Oakdale West Developer relating to the development of the Oakdale West Estate.

**Oakdale West Estate** means Lot 11 in DP 1178389 and Lot 1 in DP 663937 and any other land to which the Oakdale West VPA applies.

**Offset Credits** means the value, as determined in accordance with this deed, of any of the Developer's Existing Credits and any of the Development Contributions which the Developer has delivered in accordance with this deed, which have not been applied to discharge the Developer's obligation to provide a Contribution Amount under clause 2 of Schedule 4.

**Offset Credits Schedule** means a schedule which the Minister has issued under clause 2.3 of Schedule 4, identifying the value of any Offset Credits at the time at which the schedule is issued.

**Pelikan Artline Land** means that part of Lot 2 in DP 1215268 comprising an area of 42,411m<sup>2</sup> upon which the determination of development application DA 11/0802.04 authorises the development of a distribution facility, as generally depicted in the plan at Annexure A in hatching and marked "Pelikan Artline".

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

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

**Practical Completion** means the practical completion of the Road Works in accordance with the relevant Road Works Agreement and the handover of the Road Works to the Roads Authority to its satisfaction.

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

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

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

**Residue Super Lot** means a residue Land Parcel which is intended for further subdivision for industrial or commercial purposes, as certified by the Secretary, in her absolute discretion.

**RMS** means Roads and Maritime Services, a statutory corporation established under the *Transport Administration Act 1988* (NSW).

**Roads Authority** means the Council unless the Minister notifies the Developer in writing otherwise.

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**Road Work Land** means:

- (a) the part of the Land, generally as shown on the plan at Annexure B, that is required for the Northern WNSL Road Section;
- (b) the part of the Land, generally as shown on the plan at Annexure B, that is required for the Southern WNSL Road Section;
- (c) in relation to the part of the Land, shown on a certified plan, that is required for the Drainage Easement, that land only insofar as, and to the extent that it comprises the Drainage Easement; and
- (d) the part of the Land, shown on a certified plan, that is required for the Detention Basin,

but does not include any land on which batters and other support structures which the Minister determines are outside the paved surface of the road and verge, unless the Minister otherwise certifies in writing.

**Road Works** means:

- (a) the Northern WNSL Road Section;
- (b) the Detention Basin; and
- (c) the Drainage Line.

**Road Works Agreement** means:

- (a) a works authorisation deed (or WAD) or other legally binding agreement between the Developer or the Oakdale West Developer, as the context requires, or other person acceptable to the Minister and RMS (or other relevant Roads Authority) which governs the delivery of road infrastructure; and
- (b) in the case of a Roads Authority other than RMS, includes an authorisation granted by the Roads Authority under section 138 of the *Roads Act 1993 (NSW)* for that road infrastructure instead of such a deed or agreement, if the Secretary, in her absolute discretion, has certified that authorisation in writing as a "Road Works Agreement".

**Satisfactory Arrangements Certificate** in respect of any land means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services (including the Erskine Park Link Road Network) in respect of that land in accordance with clause 29 of the WSEA SEPP.

**Secretary** means the Secretary of the Department of Planning and Environment.

**Security** means a Bank Guarantee.

**Southern WNSL Road Section** means the section of the WNSL Road between Lockwood Road and the Future Southern Link Road.

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

**Sunset Date** means 30 June 2032 or such other date as may be agreed between the parties.

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

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Trigger Event has the meaning given to that term in clause 2 of Schedule 4.

WNSL Road or Western North South Link Road means a public road and ancillary works to be constructed between Lenore Drive and the Future Southern Link Road, including:

- (a) the Southern WNSL Road Section; and
- (b) the Northern WNSL Road Section.

WIK means works-in-kind.

WIK Contribution means the design, construction, completion and delivery to the roads Authority of the Road Works.

WIK Estimate Notice has the meaning given to that expression in clause 5.4(a) of Schedule 4.

WSEA SEPP means *State Environmental Planning Policy (Western Sydney Employment Area) 2009*.

### 1.2 Interpretation

In this deed

- (a) clause headings, the introduction and the table of contents are inserted for convenience only and do not form part of this deed;

and, unless the context clearly indicates otherwise:

- (b) a reference to this deed or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (c) a reference to legislation or a legislative provision includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (d) a reference to a body or an office which ceases to exist is a reference to:
  - (i) whether the body or office holder is an Authority - the Authority which replaces that body or office holder, or (if there is no replacement Authority) having relevant functions which are substantially the same as or similar to those of the former body or office holder; or
  - (ii) whether the body or office holder is not an Authority - either a body of office that the parties agree to substitute for the named body or office or, failing agreement, to a body or office having objects or functions which are substantially the same as those of the named body or office;
- (e) a reference to the introduction, a clause, a schedule or an annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (f) the schedules and annexures form part of this deed;
- (g) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a natural person includes their personal representatives, successors and permitted assigns;

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- (i) a reference to a corporation includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing from being done;
- (m) a right for a person to do something, or a power for a person to agree to or determine or be satisfied as to something, is a right to determine to do or not do that thing, or a power to agree to or determine or be satisfied as to that thing (as the case may be), in the person's absolute discretion (and, in the case of a determination, with or without conditions);
- (n) "including" and "includes" are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) monetary amounts are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

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## 2. Operation and application of this deed

### 2.1 Operation

- (a) This deed commences on the date that this deed is signed by all the parties.
- (b) The Developer agrees that this deed operates as a deed poll in favour of:
  - (i) the Minister, on and from the date of execution of this deed until the date on which this deed commences;
  - (ii) the Roads Authority, on and from the date of execution of this deed; and
  - (iii) the Minister's nominee, on and from the date on which the Minister's nominee is nominated by the Minister.

### 2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Planning Act and the parties agree on the matters set out in Schedule 1.

### 2.3 Application

This deed applies to:

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CLAYTON UTZ

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

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

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

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## **4. Development Contributions**

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

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contributions in accordance with this clause 4 and the provisions of Schedule 4.

### **4.2 Acknowledgement**

The Developer acknowledges and agrees that subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contributions for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contributions or refund any amount to the Developer; and
- (b) in circumstances where the Development Contributions are transferred to any Authority, has not made any representation or warranty that the Development Contributions will or must be used for a particular purpose by that Authority.

### **4.3 Exclusion of future SIC Determination**

If, after the date of this deed, the Minister determines a special infrastructure contribution (SIC) under section 94EE of the Planning Act for a special contributions area that includes any part of the Land (SIC Determination):

- (a) the SIC Determination is, notwithstanding its terms, taken not to apply to the Development; and
- (b) the value of the Development Contributions required to be provided under this deed will not be affected by the SIC Determination.

---

## **5. Interest for late provision of Contribution Amount**

- (a) If the Developer fails to provide a Contribution Amount (as indexed in accordance with Schedule 4) to the Minister by the due date for provision of the Contribution Amount, the Developer must also pay to the Minister interest on the value of the Contribution Amount, at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is to be compounded daily from the due date for provision of the Contribution Amount until all outstanding amounts (including interest on those amounts) have been provided to the Minister.

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## **6. Enforcement**

### **6.1 Developer to provide Security**

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed:

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- (a) by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5; and
- (b) by registering this deed on the title to the Land in the Register in accordance with clause 7.

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## 7. Registration

### 7.1 Registration of deed

- (a) The Developer must, within 10 Business Days of receiving a copy of this deed executed by the Minister, procure the lodgement of this deed at Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land.
- (b) The Developer warrants that it has procured the consent of each person who has an interest in the Land to the registration of this deed.
- (c) The Developer must take all necessary steps to effect the prompt registration of this deed, including:
  - (i) the execution of any documents;
  - (ii) the production of the relevant certificates of title; and
  - (iii) the lodgement of this deed in a registrable form at Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land.

### 7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(c)(iii) within 10 Business Days of that lodgement.
- (b) The Developer must provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

### 7.3 Right to lodge caveat

- (a) Subject to clause 7.3(b), until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.3(a), then the Minister will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
  - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after 20 Business Days of execution of this deed, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including

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legal costs, of exercising the Minister's rights under this clause 7.3 to lodge and withdraw a caveat(s) (as applicable).

#### 7.4 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to the Land after the Developer has satisfied all of its obligations under this deed in respect of the Land.
- (b) The Minister may, in his discretion, permit the release and discharge of this deed with respect to a Land Parcel if:
  - (i) the Developer has discharged its obligation to provide a Contribution Amount in respect of that Land Parcel;
  - (ii) the Developer has satisfied all of its obligations in this deed in respect of that Land Parcel; and
  - (iii) the Developer is not in breach of any obligations in this deed.

#### 7.5 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the registered proprietor and beneficial owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed.

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## 8. Dispute Resolution

### 8.1 Not commence

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

### 8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other parties specifying the nature of the dispute.

### 8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

### 8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or

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- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### 8.5 Court proceedings

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

### 8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is confidential to the parties and is done in an attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

### 8.7 No prejudice

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

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## 9. GST

### 9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in the GST Legislation.

### 9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

### 9.3 Reimbursement

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

### 9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

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## 9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (Supplier) under or in connection with this deed (the GST Amount), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

## 9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

## 9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

## 9.8 No merger

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

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# 10. Assignment and transfer

## 10.1 Right to assign or novate

- (a) A party within the Developer must not assign or novate, or purport to assign or novate, any of its rights or obligations under this deed without the prior written consent of the Minister.
- (b) A party seeking to assign or novate any of its rights or obligations under this deed (Assigning Party) must:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (Incoming Party) has sufficient assets, resources and expertise to perform the Assigning Party's obligations under this deed insofar as those obligations are to be assigned or novated to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred in relation to this clause 10.1.

## 10.2 Right to transfer Land

- (a) A party within the Developer must not sell or transfer, or purport to sell or transfer, to another person (Transferee) the whole or any part of the Land:
  - (i) on which this deed remains registered under section 93H of the Act; or

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- (ii) for which the Development Contribution required under this deed remains outstanding.
- without the prior written consent of the Minister.
- (b) A party seeking to sell or transfer the whole or any part of the Land to a Transferee (Transferor) must:
  - (i) satisfy the Minister (acting reasonably) that the Transferee has sufficient assets, resources and expertise to perform any of the remaining obligations of the Transferor under this deed or satisfies the Minister (acting reasonably) that the Transferor will continue to be bound by the terms of this deed after the transfer has been effected;
  - (ii) procure the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Transferor; and
  - (iii) satisfy the Minister (acting reasonably) that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred in relation to this clause 10.2.

### 10.3 Replacement Security and release

if:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Incoming Party or Transferee (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 which is equivalent to the Security which the Assigning Party or Transferor (as the case may be) has provided and is on terms acceptable to the Minister (acting reasonably).

then the Minister will:

- (c) promptly return the Security to the Assigning Party or Transferor (as the case may be); and
- (d) release the Assigning Party or Transferor (as the case may be) from its obligations under this deed to the extent that they have been assigned or transferred to the Incoming Party or Transferee (as the case may be).

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## 11. Capacity

### 11.1 General warranties

Each party warrants to each other party that:

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

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## 11.2 Power of attorney

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

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## 12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
- (i) details of all Development Consents, Subdivision Certificates or Construction Certificates issued in relation to the Development or the Land;
  - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
  - (iii) a forecast in relation to the anticipated progression and completion of the Development;
  - (iv) a compliance schedule:
    - A. showing the details of all Contribution Amounts provided under this deed as at the date of the report;
    - B. providing a map which identifies those parts of the Land for which Contribution Amounts have been provided;
    - C. identifying the current balance of the Offset Credits;
    - D. identifying any non-compliance with this deed and the reason for the non-compliance.
  - (v) when the Developer expects to lodge the next Development Application;
  - (vi) when the Developer expects that the next Trigger Event will occur.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

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## 13. General Provisions

### 13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### 13.2 Variation

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

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**13.3 Waiver**

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

**13.4 Further assurances**

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

**13.5 Time for doing acts**

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

**13.6 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

**13.7 Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

**13.8 Preservation of existing rights**

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

**13.9 No merger**

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

**13.10 Counterparts**

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

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**13.11 Relationship of parties**

Unless otherwise stated:

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

**13.12 Good faith**

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

**13.13 No fetter**

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

**13.14 Explanatory note**

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

**13.15 Expenses**

- (a) The Developer must pay its own and the Minister's reasonable valuation costs and legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed.
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
  - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
  - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

**13.16 Notices**

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

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- (ii) sent by facsimile transmission; or
  - (iii) sent by prepaid ordinary mail within Australia; or
  - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or on a day that is not a Business Day, then is taken to be given on the next Business Day;
  - (ii) sent by facsimile and the sending party's facsimile machine reports that the facsimile has been successfully transmitted;
    - A. before 5pm on a Business Day, then on that day;
    - B. after 5pm on a Business Day, then on the next Business Day after it is sent; or
    - C. on a day that is not a Business Day, then on the next Business Day after it is sent; or
  - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
  - (iv) sent by email:
    - A. before 5 pm on a Business Day, on that Day;
    - B. after 5 pm on a Business Day, on the next Business Day after it is sent; or
    - C. on a day that it is not a Business Day, on the next Business Day after it is sent,

and the sender does not receive a delivery failure notice before the time specified in this clause 13.16(b)(iv).

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**Schedule 1**

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

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

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Development application – (section 93F(2))</b> The Developer has made, or proposes to make, a Development Application.	Yes
<b>Description of land to which this deed applies – (section 93F(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 93F(3)(b))</b>	See definition of "Development" in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</b>	N/A
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</b>	See Schedule 4
<b>Applicability of sections 94 and 94A of the Planning Act – (section 93F(3)(d))</b>	The application of sections 94 and 94A of the Planning Act is not excluded in respect of the Development.
<b>Applicability of section 94EF of the Planning Act – (section 93F(3)(d))</b>	The application of section 94EF of the Planning Act is excluded in respect of the Development.
<b>Consideration of benefits under this deed if section 94 applies – (section 93F(3)(e))</b>	No
<b>Mechanism for Dispute Resolution – (section 93F(3)(f))</b>	See clause 8
<b>Enforcement of this deed – (section 93F(3)(g))</b>	See clause 6
<b>No obligation to grant consent or exercise functions – (section 93F(10))</b>	See clause 13.13

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Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes

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**Schedule 2 - Address for Service (clause 1.1)**

**Minister**

**Contact:** The Secretary  
**Address:** Department of Planning and Environment  
23-33 Bridge Street  
SYDNEY NSW 2000  
**Facsimile No:** (02) 9228 6455  
**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

**Developer**

**Contact:** Jamie Stewart, Project Director  
**Address:** 22-24 Junction Street  
FOREST LODGE NSW 2037  
**Facsimile No:** (02) 9566 2922  
**Email:** [Jamie.stewart@fitzpatrickproperty.com.au](mailto:Jamie.stewart@fitzpatrickproperty.com.au)

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**Schedule 3 - Land (clause 1.1)**

Lot	Deposited Plan	Registered Proprietor
Lot 2	1215268	Fitzpatrick Investments Pty Ltd

excluding the AutoNexus Land and the Pelikan Airline Land

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**Schedule 4 - Development Contributions (clause 4)**

**1. Development Contributions**

The Developer must provide the Development Contributions in accordance with the following schedule:

Development Contribution	Timing	Manner of delivery
Developer's Existing Credits	Upon execution of this deed	Surrender in accordance with clause 3 of this Schedule 4.
Land Contribution	Pursuant to clause 4.1 of this Schedule 4	Transfer in accordance with clause 4 of this Schedule 4 or compulsory acquisition in accordance with clause 4.5 of this Schedule 4.
Monetary Contributions	Pursuant to clause 2.1(a)(ii) of this Schedule 4.	Bank cheque or electronic funds transfer
WIK Contribution (if applicable)	By the date for Practical Completion identified in the Road Works Agreement	Completion of the Road Works

**2. Calculation of the value of a Contribution Amount**

**2.1 Timing for payment of Contribution Amount**

- (a) Before the occurrence of a Trigger Event, the Developer must:
  - (i) pay a Monetary Contribution in the amount of the Contribution Amount calculated in accordance with clause 2.2 of this Schedule 4;
  - (ii) where the value of the Offset Credits equals or exceeds the value of that Contribution Amount:
    - A. satisfy the Minister of that fact; and
    - B. obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased by the value of that Contribution Amount; or
  - (iii) where the value of the Offset Credits is more than zero but is less than the value of that Contribution Amount:
    - A. satisfy the Minister of that fact;
    - B. pay a Monetary Contribution in the amount of the difference in accordance with clause 2.2 of this Schedule 4; and

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- C. obtain an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased to zero.
- (b) For the purpose of this Schedule 4, a Trigger Event occurs each time:
- (i) a Subdivision Certificate is issued;
  - (ii) a Construction Certificate is issued; or
  - (iii) if any part of the Development may be carried out without the need for a Subdivision Certificate or a Construction Certificate, then on the earlier of the following:
    - A. commencement of that part of the Development;
    - B. the issue of a Complying Development Certificate in respect of that part of the Development.
- (c) If the Developer satisfies the Minister that the issue of the Subdivision Certificate:
- (i) is for the sole purpose of, and has the sole effect of, enabling the registration of the Plan of Subdivision referred to in clause 4.2 of this Schedule 4, and
  - (ii) does not involve the subdivision of any land comprising NDA for which a Monetary Contribution has not been paid or the necessary amount of Offset Credits have not been allocated in accordance with this deed,
- then the issue of that Subdivision Certificate is not a Trigger Event for the purposes of this Schedule 4.
- (d) The parties agree that each of the requirements to provide a Monetary Contribution in this clause 2.1 of Schedule 4 and/or to obtain an updated Offset Credits Schedule from the Minister is:
- (i) where the Trigger Event relates to a Construction Certificate - a restriction on the issue of a Construction Certificate within the meaning of section 109F of the Planning Act; and
  - (ii) where the Trigger Event relates to a Subdivision Certificate - a restriction on the issue of a Subdivision Certificate within the meaning of section 109J(c1) of the Planning Act.
- (e) If, prior to the date of this deed, a Subdivision Certificate or Construction Certificate is issued in respect of the ACM Parts Land:
- (i) a Trigger Event is taken to have occurred at the ACM Parts Land;
  - (ii) the Offset Credits which the Developer holds are taken to have been applied towards the discharge of the obligation to provide the Contribution Amount calculated under clause 2.2(a) of this Schedule 4 for the ACM Parts Land; and
  - (iii) where the value of the Contribution Amount for the ACM Parts Land exceeds the value of the Offset Credits held by the Developer, the Developer must, upon execution of this deed, pay a Monetary Contribution in the amount of the difference.

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## 2.2 Calculation of Contribution Amount

- (a) Each Contribution Amount will be an amount equal to the sum represented by "CA" in the following formula:

$$CA = pNDA \times WCR$$

where:

"pNDA" means the number of hectares comprised in the NDA of each Land Parcel:

- (i) that is the subject of an application for a Construction Certificate; or
- (ii) that is the subject of an application for a Subdivision Certificate (excluding the NDA comprised in any Residue Super Lot that will be created upon the issue of that Subdivision Certificate); or
- (iii) on which any part of the Development is to be carried out without the need for a Construction Certificate or Subdivision Certificate,

excluding any NDA in that Land Parcel for which a Contribution Amount has already been provided under this deed;

"WCR" is the amount representing the WSEA contribution rate, which:

- (iv) at the date of this deed is \$189,716; and
  - (v) is adjusted from time to time in accordance with clause 2.2(b) of this Schedule 4.
- (b) On each CPI Adjustment Date, the value of WCR is to be adjusted by multiplying \$189,716 by an amount equal to the Current CPI divided by the Base CPI.

## 2.3 Offset Credits Schedule

- (a) The Minister may prepare or update the Offset Credits Schedule:
- (i) on the commencement of this Deed - showing the value of the Developer's Existing Credits at that date;
  - (ii) after a Land Contribution is delivered in accordance with this deed - increasing the value of the Offset Credits by the amount of the value of that Land Contribution as determined in accordance with this deed;
  - (iii) after a reconciliation for a WIK Contribution has been completed in accordance with this deed - increasing the value of the Offset Credits by the amount of that WIK Contribution as determined in accordance with this deed;
  - (iv) after the Developer satisfies the Minister in accordance with clause 2.4(c)(ii) of this Schedule 4 in relation to a Deferred Contribution Amount - decreasing the value of the Offset Credits by the amount of that Deferred Contribution Amount;
  - (v) after an amount of Offset Credits has been applied to discharge (in whole or in part) an obligation to provide a Contribution Amount calculated under clause 2.2(a) of this Schedule 4 - decreasing the value of the Offset Credits by the amount applied;

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- (vi) upon the Minister agreeing to the application of Offset Credits to discharge an External WSEA Obligation under clause 6.1 of this Schedule 4 - decreasing the value of the Offset Credits by the amount of the External WSEA Obligation;
  - (vii) upon the Sunset Date or the occurrence of the final reconciliation referred to in clause 6.2 of this Schedule 4;
  - (viii) if it becomes apparent that there is an error or inaccuracy in the Offset Credits Schedule - to correct that error or inaccuracy;
  - (ix) after each CPI Adjustment Date, showing the indexed value of the Offset Credits; and
  - (x) at such other times as the Minister may determine.
- (b) If the Minister prepares or updates the Offset Credits Schedule, the Minister will provide the Developer with a copy of the Schedule as prepared or updated, as soon as possible after it has been prepared or updated (as the case may be).

## 2.4 Extension of time for payment of Contribution Amount

- (a) The Developer may make a request in writing to the Minister for an extension of time to discharge an obligation to provide all or part of a Contribution Amount if:
- (i) a Monetary Contribution is required to be paid under clause 2.1(a)(i) 2.1(a)(iii)B, or 2.1(e)(iii) of this Schedule 4 because the Developer has insufficient Offset Credits to discharge the obligation to provide the Contribution Amount; and
  - (ii) the due date for delivery of the Land Contribution in clause 4.1 of this Schedule 4 has not passed and no part of the Land Contribution has been delivered.
- (b) The Minister may determine to extend the time for payment of part or all of a Contribution Amount (**Deferred Contribution Amount**), for a period of up to 24 months (or such further period as the Minister may determine) after the date on which the Deferred Contribution Amount would be due under clause 2.1, if the Developer has provided to the Minister a Bank Guarantee with a face value of 110% of the value of the Deferred Contribution Amount.
- (c) The Developer may discharge its obligation to pay a Deferred Contribution Amount at any time by:
- (i) paying the full amount of the Deferred Contribution Amount as determined in accordance with this deed at that time; or
  - (ii) where the amount of the Offset Credits has increased since the Minister's decision under clause 2.4(b) of this Schedule 4:
    - A. satisfying the Minister that the value of the Offset Credits equals or exceeds the value of that Deferred Contribution Amount as determined in accordance with this deed at that time; and
    - B. obtaining an updated Offset Credits Schedule from the Minister showing that the value of the Offset Credits has decreased by the value of that Deferred Contribution Amount.

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- (d) If the Developer discharges its obligation to pay a Deferred Contribution Amount in accordance with clause 2.4(c) of this Schedule 4, the Minister will return the Bank Guarantee for that Deferred Contribution Amount.
- (e) The Developer must pay interest in accordance with clause 5 on the value of a Deferred Contribution Amount, from the date of the relevant Trigger Event until the obligation to provide the Deferred Contribution Amount is discharged. The interest is taken to be part of the Deferred Contribution Amount for this deed.

### 2.5 Sunset Date

- (a) On the Sunset Date, the Developer must pay to the Minister an amount representing the value of the Development Contributions for the whole of the Land (calculated in accordance with clause 2.5(b) of this Schedule 4) less the sum of the Contribution Amounts calculated in accordance with clause 2.2 of this Schedule 4 and provided by the Developer and the sum of any Offset Credits which have been applied to any Contribution Amounts in accordance with this deed:
  - (i) irrespective of whether or not the "Timing" for delivery of any part of the Development Contributions identified in clause 1 of this Schedule 4 has passed; and
  - (ii) irrespective of whether any Trigger Event has occurred.
- (b) The value of the Development Contributions is the amount equal to the sum represented by "DC" in the following formula:

$$DC = NDH \times WCR$$

where:

"NDH" means the number of hectares comprised in the Net Developable Area of the Land as though an application for a Subdivision Certificate had been made in respect of the whole of the Land and there are no Residue Super Lots; and

"WCR" is the amount representing the WSEA contribution rate, which:

- (i) at the date of this deed is \$189,716; and
- (ii) is adjusted from time to time in accordance with clause 2.2(b) of this Schedule 4.

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### 3. Developer's Existing Credits

- (a) The Developer:
  - (i) agrees that, as at the date of this deed, the Council recognises that the Developer has \$1,420,384.72 in unapplied 'section 94 credits', in recognition of excess contributions made by the Developer to the Council for the delivery of the public road known as 'Lenore Drive Link Road' (Developer's Existing Credits); and
  - (ii) agrees that, on and from the date of this deed, the Developer's Existing Credits are surrendered irrevocably.
- (b) The Minister agrees to recognise the irrevocable surrender of the Developer's Existing Credits as the creation of Offset Credits if:
  - (i) the Developer has provided a written notice to the Council and the Minister; and

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- (ii) the Developer has procured a written notice from the Council,  
acknowledging that the Developer's Existing Credits have been surrendered  
irrevocably.

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#### 4. Land Contribution

##### 4.1 Timing of delivery of Land Contribution

- (a) The Developer must deliver the Land Contribution in the manner described in clause 4.2 of this Schedule 4, within 90 Business Days (unless a later date has been agreed with the Minister, acting reasonably) of receiving a Dedication Notice attaching a survey plan delineating the Road Work Land, as approved by the Minister.
- (b) The Developer must:
- (i) promptly, upon request, provide access to the Land to any surveyor engaged by the Minister or the Oakdale West Developer; and
  - (ii) use its best endeavours to obtain the survey plan referred to at clause 4.1(a) of this Schedule 4 from the Oakdale West Developer and the Minister, as soon as possible after the date on which the Developer executes this deed; and
  - (iii) provide a copy of that survey to the Minister within 5 Business Days after the Developer first obtains it.

##### 4.2 Manner of delivery of Land Contribution

- (a) The Developer must (at its cost):
- (i) prepare and register a Plan of Subdivision to create a separate lot or lots for the parts of the Road Work Land (except the Drainage Easement) required by the Roads Authority for:
    - A. the Northern WNSL Road Section;
    - B. the Detention Basin; and
    - C. the Southern WNSL Road Section,and noting the Drainage Easement on that Plan of Subdivision;
  - (ii) procure the Roads Authority's approval to the terms, location, alignment and dimensions of the Drainage Easement; and
  - (iii) procure the registration of the Drainage Easement.
- (b) Promptly following registration of the Plan of Subdivision, or as otherwise agreed between the parties and the Roads Authority, the Developer must deliver to the Roads Authority or to the Minister's nominee:
- (i) a form of transfer in respect of the land comprising the Road Work Land, in favour of the Roads Authority or the Minister's nominee (as the case may be), for consideration equal to \$1, executed by the Developer and in registrable form;

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- (ii) the certificates of title for the Northern WNSL Road Section, the Detention Basin and the Southern WNSL Road Section; and
  - (iii) evidence of the registration of the Drainage Easement.
- (c) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer to the Road Work Land and the registration of the Drainage Easement.
  - (d) The Road Work Land must, upon transfer, be free from all encumbrances and affectations (including any charge or liability for rates, taxes and charges), other than service easements or such other encumbrances as agreed with the Minister.
  - (e) The Developer will pay all rates and taxes owing in respect of the Road Work Land up to and including the date on which the Developer delivers the form of transfer and certificates of title for the Road Work Land to the Roads Authority or the Minister's nominee (as the case may be), after which time the Roads Authority or the Minister's nominee (as the case may be) will be responsible for all rates and taxes in relation to the land subject to the Land Contribution.
  - (f) The Developer must ensure that the Road Work Land is transferred to the Roads Authority or the Minister's nominee without the Roads Authority, the Minister or the Minister's nominee incurring any Acquisition Cost.
  - (g) The Developer indemnifies and agrees to keep indemnified the Minister, the Roads Authority and the Minister's nominee against all Liabilities connected in any way to any Contamination which:
    - (i) existed on or before the date on which the Road Work Land is transferred to or acquired by the Minister, the Roads Authority or the Minister's nominee; or
    - (ii) occurs in any way in connection with the acts or omissions of the Developer or any of its Associates.
  - (h) For the avoidance of doubt, the indemnity in clause 4.2(g)(ii) does not apply to the extent that the Contamination was caused or contributed to by the Oakdale West Developer or the Minister.

**4.3 Access to land adjacent to Road Work Land for batters etc**

The Developer must, upon request by the Minister or the Roads Authority, grant to the Construction Contractor, the Minister, RMS and the Roads Authority, and such other persons as the Minister may nominate, a construction licence over:

- (a) any Road Work Land which has not been transferred in accordance with clause 4.2 of this Schedule 4 at the time of that request;
- (b) all parts of the Land adjacent to the Road Work Land on which the drawings for the WNSL Road indicate there will be batters or earthworks or other works or structures in connection with the WNSL Road; and
- (c) all other parts of the land which it is necessary for the proposed licensees to access or occupy for the purpose of constructing and delivering the WNSL Road, or ensuring that the WNSL Road is constructed and delivered,

on terms which:

- (d) include consideration equal to \$1;

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- (e) provide for a term of 3 years; and
- (f) the Minister or the Roads Authority may specify, acting reasonably.

**4.4 Valuation of the Road Work Land**

- (a) The parties agree that the value of the Road Work Land delivered as part of the Land Contribution shall be calculated by reference to the following table, by multiplying the area of the Road Work Land which meets the criteria in the first and second columns by the corresponding rate in the third column (Agreed Valuation Rate):

Tenure	Zoning	Agreed Valuation Rate
Freehold	IN1 General Industrial	\$300 per m <sup>2</sup>
	E2 Environmental Conservation	\$90 per m <sup>2</sup>
Drainage Easement	Any	\$75 per m <sup>2</sup>

On each CPI Adjustment Date that occurs on or after 1 July 2019, the Agreed Valuation Rate is to be adjusted by multiplying each of the rates specified in the third column by an amount equal to the Current CPI divided by the CPI number for the quarter ending 31 March 2019.

- (b) Subject to clause 4.4(c) of this Schedule 4, the Minister will recognise the amount calculated under clause 4.4(a) of this Schedule 4, as the value of the Land Contribution.
- (c) If the Developer has received, will receive, or has entered into any arrangement under which it may receive any financial benefit from a third party, for the reservation, transfer or acquisition of the Road Work Land, the value of the Road Work Land is deemed to have been reduced by an amount representing the value of that financial benefit.

**4.5 Compulsory Acquisition**

- (a) If the Developer does not transfer the Road Work Land as required by clause 4.1 or clause 4.7 of this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister compulsorily acquiring the whole or any part of the Road Work Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*, for the amount of \$1.00.
- (b) The Developer and the Minister agree that:
  - (i) clause 4 of this Schedule 4 is an agreement between them for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
  - (ii) in this clause 4 of this Schedule 4 they have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and keeps indemnified the Minister, the Minister's nominee and the Roads Authority against any Acquisition Cost incurred by the Minister, the Minister's nominee or the Roads Authority in connection with any acquisition of the whole or any part of the Road Work Land, including any

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compensation or amount payable to any person who immediately before the acquisition had an 'interest' in the Road Work Land within the meaning of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).

#### 4.6 Reimbursement of the Minister's Costs

The Developer must pay to the Minister or the Minister's nominee, promptly on demand, an amount equivalent to any Acquisition Costs which the Minister or the Minister's nominee incurs in acquiring the Road Work Land under clause 4.4 of this Schedule 4.

#### 4.7 Boundary adjustments and additional Road Work Land

- (a) If, after Practical Completion of the Road Work, parts of the Road Works extend outside the boundaries of the Road Work Land and into the Land, the Developer must:
- (i) promptly inform the Minister;
  - (ii) obtain the Minister's approval to the actual alignment of the Road Works; and
  - (iii) procure a realignment of boundaries at the Developer's cost, so that the boundaries of the Road Work Land reflect the actual alignment of the Road Works, as approved by the Minister.
- (b) Clause 4.2 of this Schedule 4 applies to the transfer of any land under this clause 4.7 of this Schedule 4 in the same way as it applies to land which is transferred under clause 4.2 of this Schedule 4.
- (c) If, as a result of the realignment of boundaries, the total land area of the Road Work Land changes:
- (i) subject to clause 4.7(d) of this Schedule 4, the Minister will provide an updated Offset Credits Schedule showing that the value of the Offset Credits has increased or decreased by an amount equal to the applicable Agreed Valuation Rate multiplied by the number of m<sup>2</sup> of additional or reduced land area (as the case may be); and
  - (ii) the value of the Land Contribution is taken to be adjusted upwards or downwards by that amount.
- (d) If the value of the Offset Credits is insufficient to cover the amount equal to the applicable Agreed Valuation Rate multiplied by the number of m<sup>2</sup> of reduced land area, then:
- A. the Minister will provide an updated Offset Credits Schedule showing that the value of the Offset Credits has decreased to zero; and
  - B. the Developer must within 5 Business Days pay a Monetary Contribution in the amount of the shortfall.

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## 5. Works in Kind Contribution (WIK Contribution)

### 5.1 Step in process for the WIK Contribution

- (a) The Developer acknowledges that, as at the date of this deed, the Oakdale West Developer has made an offer to enter into an Oakdale West VPA with the Minister under which the Oakdale West Developer may elect to deliver the Road Works.

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- (b) If, by the Oakdale West Election Deadline, the Oakdale West Developer has not notified the Developer that the Oakdale West Developer has elected to deliver the Road Works under the Oakdale West VPA and the Minister has accepted that election, the Developer must:
- (i) provide the Oakdale West Developer with a notice requesting that the Oakdale West Developer confirm that the Oakdale West Developer has elected to deliver the Road Works under the Oakdale West VPA and the Minister has accepted that election within 30 Business Days of the date of the notice; and provide the Minister with a copy of the notice.
- (c) If, 30 Business Days after service of a notice under clause 5.1(b) of this Schedule 4, the Oakdale West Developer has not confirmed that the Oakdale West Developer has elected to deliver the Road Works under the Oakdale West VPA and the Minister has accepted that election in accordance with the Developer's notice, the Developer may, within a further 30 Business Days (unless a longer period is agreed with the Minister), give the Minister written notice that the Developer wishes to deliver the Road Works in place of the Oakdale West Developer (Step In Request), together with:
- (i) a statement of the key terms which will be incorporated in the proposed Road Works Agreement for the Road Works, including:
- A. the nature and amount of security to be provided for the Road Works;
- B. the definition of "Practical Completion" for the WIK Road Works;
- C. the process for achieving Practical Completion;
- (Key Road Work Terms);
- (ii) written evidence:
- A. that the Relevant Roads Authority agrees in principle to the provision of the Road Works; and
- B. of the Relevant Roads Authority's comments on the Key Road Works Terms as described in the Step In Request,
- and the following process will apply:
- (iii) the Minister must notify the Developer in writing, within 20 Business Days after receiving a Step In Request and the material specified in clause 5.1(c)(i) and (ii) of this Schedule 4, whether or not the Minister agrees with those Key Road Work Terms;
- (iv) if the Minister notifies the Developer that the Minister does not agree with those Key Road Work Terms, then the parties must negotiate in good faith and use their best endeavours to agree the Key Road Work Terms;
- (v) if 20 Business Days (or such other period as the parties may agree) have passed since the Developer's statement of Key Road Work Terms and the material specified in clause 5.1(c)(ii) of this Schedule 4 have been provided to the Minister and the parties have not reached agreement on the Key Road Work Terms, then the Minister may, within a further 10 Business Days, and if the Minister has consulted with the relevant Roads Authority for the proposed Road Works Agreement, and

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by written notice to the Developer, determine the Key Road Work Terms which must be incorporated in the Road Works Agreement.

- (d) The Developer may withdraw a Step In Request at any time up to the date on which the Key Road Work Terms are agreed or, in the absence of agreement, the date which is 20 Business Days after or the Minister provides notice of the Key Road Work Terms under clause 5.1(c)(v) of this Schedule 4.

### 5.2 Election to provide the WIK Contribution

If one of the dates specified in clause 5.1(c) of this Schedule 4 has passed and the Minister has not received a withdrawal of the Step In Request, then the Minister may, in his absolute discretion, accept the Step In Request, as varied to include the Key Road Work Terms as agreed or determined in accordance with clause 5.1 (Step in Event).

### 5.3 WIK Contribution Delivery Arrangements

If the Step In Event occurs, the Developer must complete the following steps:

- (a) **Step 1 - Estimates** - reaching agreement on, or otherwise having determined as outlined below, suitable estimates of the value of the WIK Contribution;
- (b) **Step 2 - Delivery** - undertaking the necessary works to achieve Practical Completion of the WIK Contribution; and
- (c) **Step 3 - WIK Reconciliation** - a reconciliation of Actual Costs incurred by the Developer for the WIK Contribution with the Maximum WIK Value determined by the Minister.

### 5.4 Step 1 - WIK Contribution Estimates

- (a) Prior to commencing work for a WIK Contribution, and within 90 Business Days of the Step In Event in clause 5.2 of this Schedule 4 occurring (or such later date as may be agreed by the parties), the Developer must:
  - (i) obtain all relevant approvals required to construct the Road Works;
  - (ii) provide the Minister with a notice (WIK Estimate Notice) which sets out:
    - A. an estimate of the Actual Costs to complete the delivery of the WIK Contribution;
    - B. details of:
      - 1) the authorisations obtained to deliver the WIK Contribution;
      - 2) construction drawings for the Road Works which have been certified and approved by the Roads Authority and any other relevant public authorities prior to the construction of the Road Works;
      - 3) any security which the relevant Roads Authority requires for the WIK Contribution under a Road Works Agreement; and
      - 4) the nature and amount of security to be provided for the WIK Contribution; and

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- (iii) provide to the Minister, with the WIK Estimate Notice, a copy of the executed Road Works Agreement incorporating the Key Road Work Terms agreed or determined in accordance with clause 5.1(c) of this Schedule 4).
- (b) The Minister will notify the Developer in writing, within 20 Business Days after receiving the WIK Estimate Notice and the material specified in clause 5.4(a) of this Schedule 4, whether or not the Minister accepts the estimate of costs in the WIK Estimate Notice as the Maximum WIK Value.
- (c) If the Minister notifies the Developer that the Minister does not accept that estimate of costs as the Maximum WIK Value, the parties must negotiate in good faith and use their best endeavours to agree the Maximum WIK Value.
- (d) If 20 Business Days (or such other period as the parties may agree) have passed since the date on which the Minister's notice was provided under clause 5.4(b) of this Schedule 4 and the parties have not reached agreement on the Maximum WIK Value, then the Minister may, after consulting with the relevant Roads Authority, and acting reasonably, determine the Maximum WIK Value.

## 5.5 Step 2 - Delivery of WIK Contribution

The Developer must:

- (a) within 15 Business Days of receiving notice of the Minister's determination of the Maximum WIK Value, subject to clause 1 of Schedule 5, provide the Minister with Security for the Maximum WIK Value;
- (b) within 35 Business Days of receiving notice of the Minister's determination of the Maximum WIK Value, provide to the Minister (for the Minister's review) the proposed Construction Contract for the delivery of the WIK Contribution, which:
  - (i) is to be executed by the Developer and an Acceptable Contractor;
  - (ii) identifies an independent superintendent to oversee the work;
  - (iii) identifies the terms and conditions applicable to carrying out the construction of the Road Works;
  - (iv) identifies the proposed contract value for the Road Works; and
- (c) within 10 Business Days of receiving the Minister's reasonable comments on the Construction Contract, provide the Minister with a revised version of the Construction Contract incorporating those comments, for the Minister's approval;
- (d) within 15 Business Days of receiving the Minister's approval to the proposed Construction Contract, provide the Minister with a copy of that Construction Contract as executed by the Developer and the Acceptable Contractor;
- (e) comply in all respects with the Road Works Agreement for the WIK Contribution;
- (f) notify the Minister if the Developer becomes aware that there has been, or is likely to be, a non-compliance with the Road Works Agreement for the WIK Contribution, specifying:
  - (i) the nature of the non-compliance or likely non-compliance; and
  - (ii) how and when the Developer will ensure that the non-compliance is rectified or the likely non-compliance is avoided (as the case may be); and

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- (g) give the Minister written notice at least 40 Business Days prior to the date of Practical Completion of the Road Works.

## 5.6 Step 3 - WIK Reconciliation

- (a) Within 10 Business Days after Practical Completion of the Road Works, the Developer must submit:
  - (i) a report to the Minister (**WIK Actual Contribution Report**) which:
    - A. provides an itemised breakdown and details of the Developer's proposal for Actual Costs incurred by the Developer in providing the WIK Contribution, including accounts for the Actual Costs;
    - B. shows that the Actual Costs have been reduced by the amount of any input tax credit which the Developer is entitled to claim; and
    - C. provides a reconciliation of the Actual Costs with the Maximum WIK Value, together with a report by an independent quantity surveyor who is appointed with the consent of the Minister (acting reasonably), which supports that reconciliation and which confirms that it is the opinion of the quantity surveyor that each item of the proposed Actual Costs is reasonable in quantum and was reasonably incurred;
  - (ii) a tabulated and indexed folder of tax invoices for, and documentary evidence of the payment of, each of the items which the Developer proposes as Actual Costs; and
  - (iii) such other information that the Minister requests to enable the Minister to determine the Actual Costs.
- (b) The Minister may commission an accountant or a quantity surveyor (or both) at the Developer's expense, to review the materials submitted by the Developer and to assist with the Minister's determination of the Actual Costs.
- (c) Once the Actual Costs are determined by the Minister, the Minister will advise the Developer in writing of the Actual Costs.

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## 6. Excess Contributions and Additional Payments

### 6.1 Use of Offset Credits at other WSEA SEPP land

- (a) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, an amount of Offset Credits to discharge an obligation to make a development contribution except in accordance with this deed.
- (b) The Minister may agree to allow the Developer to apply an amount of Offset Credits to discharge an External WSEA Obligation if the Developer:
  - (i) provides Security for 50% of the amount of the Offset Credits; or
  - (ii) demonstrates that the Minister holds Security with a face value equivalent to at least 50% of the Monetary Contributions which the Minister estimates would be payable under this deed.
- (c) If the Minister agrees to allow an amount of Offset Credits to be applied to discharge an External WSEA Obligation:

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- (i) that amount of Offset Credits will be taken to have been surrendered to the Minister; and
- (ii) the Minister will provide an updated Offset Credits Schedule to the Developer showing that the value of the Offset Credits has decreased by that amount.

**6.2 Final reconciliation**

- (a) The Developer must provide written notice to the Minister, at least 30 Business Days prior to the occurrence of the final Trigger Event for the Development, evidence which the Minister (acting reasonably) requires to demonstrate that the Trigger Event will be the last to occur prior to completion of the Development (Final Trigger Event Notice).
- (b) As soon as practicable after receiving the Final Trigger Event Notice, the Minister will undertake a final reconciliation which will:
  - (i) determine the total value of the Contribution Amounts which would have been payable based on the actual NDA for the Land (Development Contributions Amount); and
  - (ii) reconcile the Development Contributions Amount against the sum of:
    - A. the value of the Land Contribution for the Road Work Land which has been transferred to the Minister or the Minister's nominee;
    - B. the value of the Monetary Contributions which the Developer has paid;
    - C. the value of the Developer's Existing Credits which the Developer has surrendered; and
    - D. if the Developer has elected to deliver, and has delivered, the WIK Contribution, the lesser of the Actual Cost of the WIK Contribution and the Maximum WIK Value,less the value of any Offset Credits which have been applied to discharge an External WSEA Obligation under clause 6.1 of this Schedule 4  
**(Interim Contribution Amount).**
- (c) Where the final reconciliation indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 is less than the Development Contributions Amount, then the Developer must pay the shortfall as a Monetary Contribution to the Minister within 10 Business Days of receiving a notice from the Minister notifying the Developer of the shortfall.
- (d) Where the final reconciliation indicates that the Interim Contribution Amount provided by the Developer in accordance with this Schedule 4 exceeds the Development Contributions Amount, then the Developer will be entitled to a credit for the amount that the value of the Development Contribution provided exceeds the Development Contributions Amount (**Excess Contributions Credit**) in accordance with clauses 6.2(e) and (f) of this Schedule 4.
- (e) Subject to clause 6.2(g) of this Schedule 4, any Excess Contributions Credit which has been generated under this deed may be used by:

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- (i) the Developer,
  - (ii) a Related Body Corporate (within the meaning of the *Corporations Act* 2001 (Cth)) of the Developer; or
  - (iii) any other person which the Minister determines to approve on written request by the Developer,
- (Contributions Credit Recipient) to discharge an External WSEA Obligation which relates to land which is owned by the Developer.
- (f) An Excess Contributions Credit is taken to have been used under a Planning Agreement for the purpose of this Schedule 4 when the Planning Agreement provides for the use of the Excess Contributions Credit.
  - (g) The parties agree that any Excess Contributions Credit which has been generated under this deed must be used by the Contributions Credit Recipient in accordance with this clause 6.2 of this Schedule 4 within 20 years of the date of the final reconciliation. After that time it will be taken to have been wholly surrendered and forfeited to the Minister and no Claim may be made against the Minister in respect of any such surrender or forfeiture.

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**Schedule 5 - Security terms (clause 6)**

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**1. Provision of Security**

- (a) Upon execution of this deed, the Developer must provide to the Minister one or more Bank Guarantees with a total face value equivalent to \$888,921.22.
- (b) If, following execution of this deed, the Developer:
- (i) elects to provide a WIK Contribution;
  - (ii) enters into a Road Works Agreement with the Roads Authority in relation to the WIK Contribution in accordance with this deed;
  - (iii) provides security to the Roads Authority under that Road Works Agreement for the Maximum WIK Value; and
  - (iv) satisfies the Minister as to the adequacy of the security provided to the Roads Authority for the Road Works including providing all information reasonably required by the Minister regarding the security provided under that Road Works Agreement,
- then:
- (v) the Minister will accept the security provided under that Road Works Agreement as securing the performance of the Developer's obligation under Schedule 4 of this deed to carry out the Road Works, and
  - (vi) the amount of Security required under clause 1(a) of this Schedule 5 will be reduced by the amount of the security provided under that Road Works Agreement.

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**2. Claims under Bank Guarantees**

- (a) The Minister may:
- (i) call upon the Security where the Developer has failed to comply with any obligation in this deed to:
    - A. pay a Contribution Amount or interest;
    - B. deliver the WIK Contribution; or
    - C. comply with any other obligation to pay money to the Minister under this deed (including for Acquisition Costs under clause 4.6 of Schedule 4),by the time required by this deed; and
  - (ii) retain and apply monies obtained from the call upon the Security towards any costs and expenses incurred by the Minister in rectifying such failures.
- (b) For the purposes of this deed, any costs and expenses which another Authority incurs in rectifying a failure under this deed are taken to be costs and expenses incurred by the Minister in rectifying such a failure.
- (c) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.

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**3. Release of Security**

If:

- (a) the Developer satisfies the Minister that all of the obligations secured by the Security have been fulfilled; and
- (b) the whole of the monies secured by the Security have not been expended or applied towards the discharge of an obligation secured by the Security,

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable to the Developer).

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Schedule 6 - Definition of Net Developable Area (Schedule 4, clauses 1 and 2)

**1. Net Developable Area**

- (a) The Net Developable Area of a part of the Land is the area of land, measured in hectares, comprising the allotments to which the relevant application for a Subdivision Certificate, Construction Certificate or Complying Development Certificate relates, subject to the other provisions of this Schedule 6.
- (b) The Net Developable Area includes the area of any land that a Development Consent authorises, or requires, to be used as a road, or reserved or dedicated as a public road, but does not include:
- (i) any existing road which was constructed before 17 July 2017 to which works are required to be carried out under a Development Consent; or
  - (ii) any road referred to in clauses (c) (xii) or (xiii).
- (c) The Net Developable Area does not include the area of any land that a Development Consent authorises, or requires, to be reserved, dedicated or otherwise set aside as, or for the purpose of, any of the following:
- (i) government school (within the meaning of the *Education Act 1990*),
  - (ii) TAFE establishment,
  - (iii) emergency services facility,
  - (iv) health services facility owned or operated by a public authority,
  - (v) golf course,
  - (vi) passenger transport facility,
  - (vii) public reserve or drainage reserve (within the meaning of the *Local Government Act 1993*),
  - (viii) public transport corridor (other than a road corridor),
  - (ix) public utility undertaking,
  - (x) bus depot, whether or not owned or operated by a public authority,
  - (xi) recreation area,
  - (xii) roads, or other public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Planning Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
  - (xiii) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with this Determination or an earlier determination of the Minister under section 94EE of the Planning Act.
- (d) The following areas of land are also not to be included in the calculation of the Net Developable Area for the relevant development:

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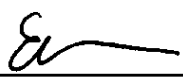
- (i) any part of the land to which the Development Consent for the relevant development relates that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if that part of the land is unsuitable for the relevant development by virtue of it being at or below that level,
  - (ii) any part of the land to which the Development Consent for the relevant development relates that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Planning Act,
  - (iii) any area of land that is within Zone E2 Environmental Conservation,
  - (iv) any area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land, if the Secretary is satisfied that the area is unsuitable for the relevant development by virtue of the easement.
- (e) The Net Developable Area for a relevant development comprising subdivision of land for the purpose only of creating a lot of more than 0.1 hectare in area to contain an existing lawful habitable dwelling is taken to be reduced by 0.1 hectare.
- (f) This clause applies to a relevant development if any lot of land to which the development consent for the development relates includes (wholly or partly):
- (i) land that is within the curtilage of a building listed on the State Heritage Register, or
  - (ii) land that is within Zone E4 Environmental Living.
- (g) For the purpose of calculating the Net Developable Area for a relevant development to which this clause applies, any such lot that is more than 0.1 hectare in area is taken to be 0.1 hectare.
- (h) In this clause, *curtilage*, in relation to a building, means the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register.
- (i) The Secretary may make any determination required to be made for the purpose of calculating the Net Developable Area for a relevant development and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.

Annexure "B" to Request

**CLAYTON UTZ**

Executed as a deed.

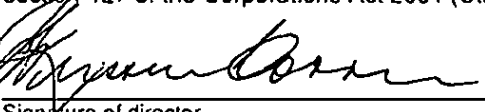
Signed, sealed and delivered for and on behalf  
of the Minister for Planning  
ABN 38 755 709 681, in the presence of:

  
\_\_\_\_\_  
Signature of witness  
**ELEANOR ROBERTSON**  
320 PITT ST, SYDNEY  
Full name and address of witness

SIGNED by BRENDAN NELSON as delegate  
for the Minister for Planning  
administering the  
Environmental Planning and Assessment Act, 1979

  
\_\_\_\_\_  
Signature of the Minister for Planning or delegate  
  
\_\_\_\_\_  
Full name of Minister for Planning or delegate

Executed by Fitzpatrick Investments Pty Ltd  
ABN 38 755 709 681 in accordance with  
section 127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of director

**HUNTER RUSSELL CORTIE**  
\_\_\_\_\_  
Full name of director  
as sole director/secretary

\_\_\_\_\_  
Signature of company secretary/director

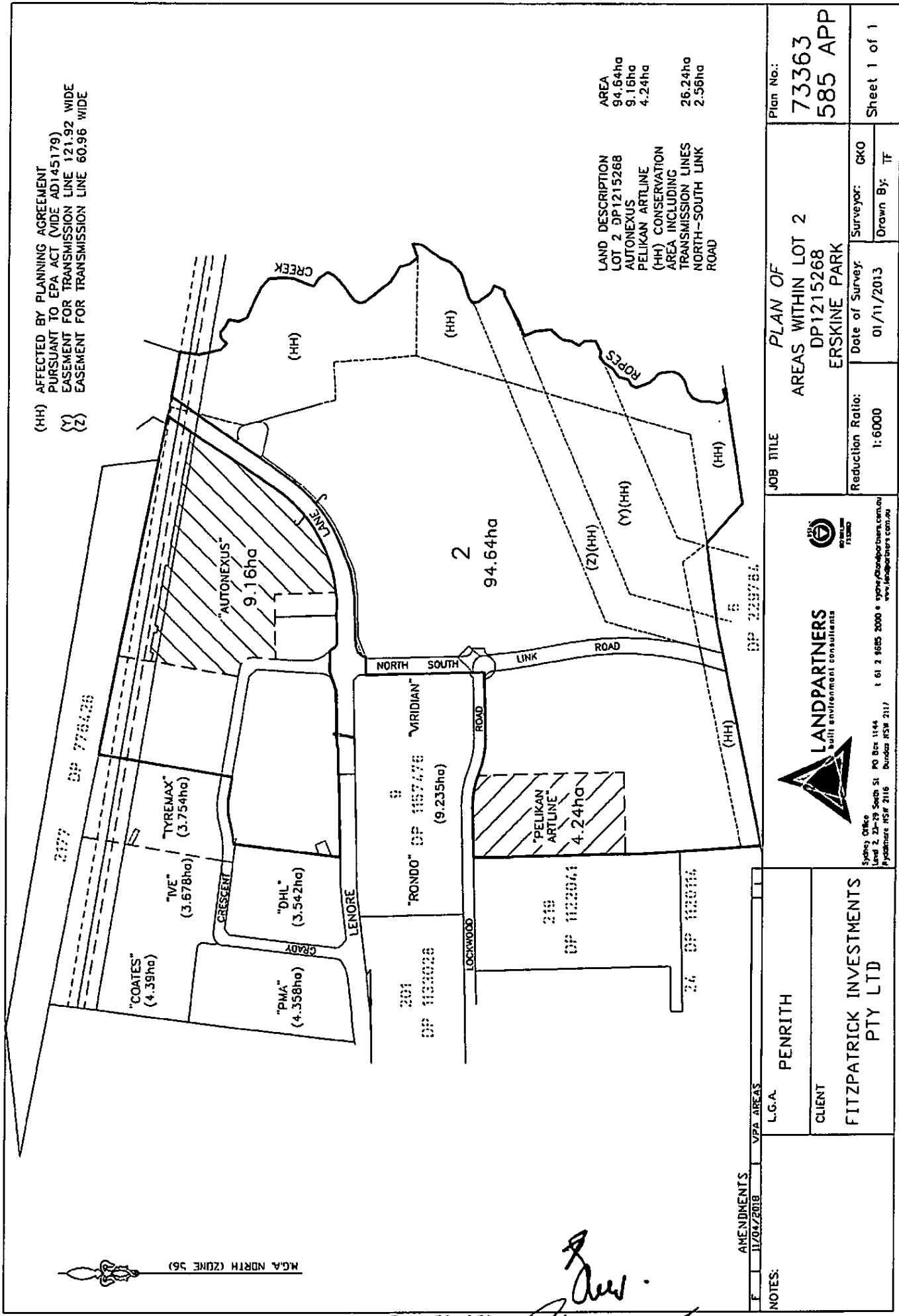
\_\_\_\_\_  
Full name of company secretary/director

Annexure "B" to Request

**CLAYTON UTZ**

Annexure A Plan showing Land

Annexure "B" to Request



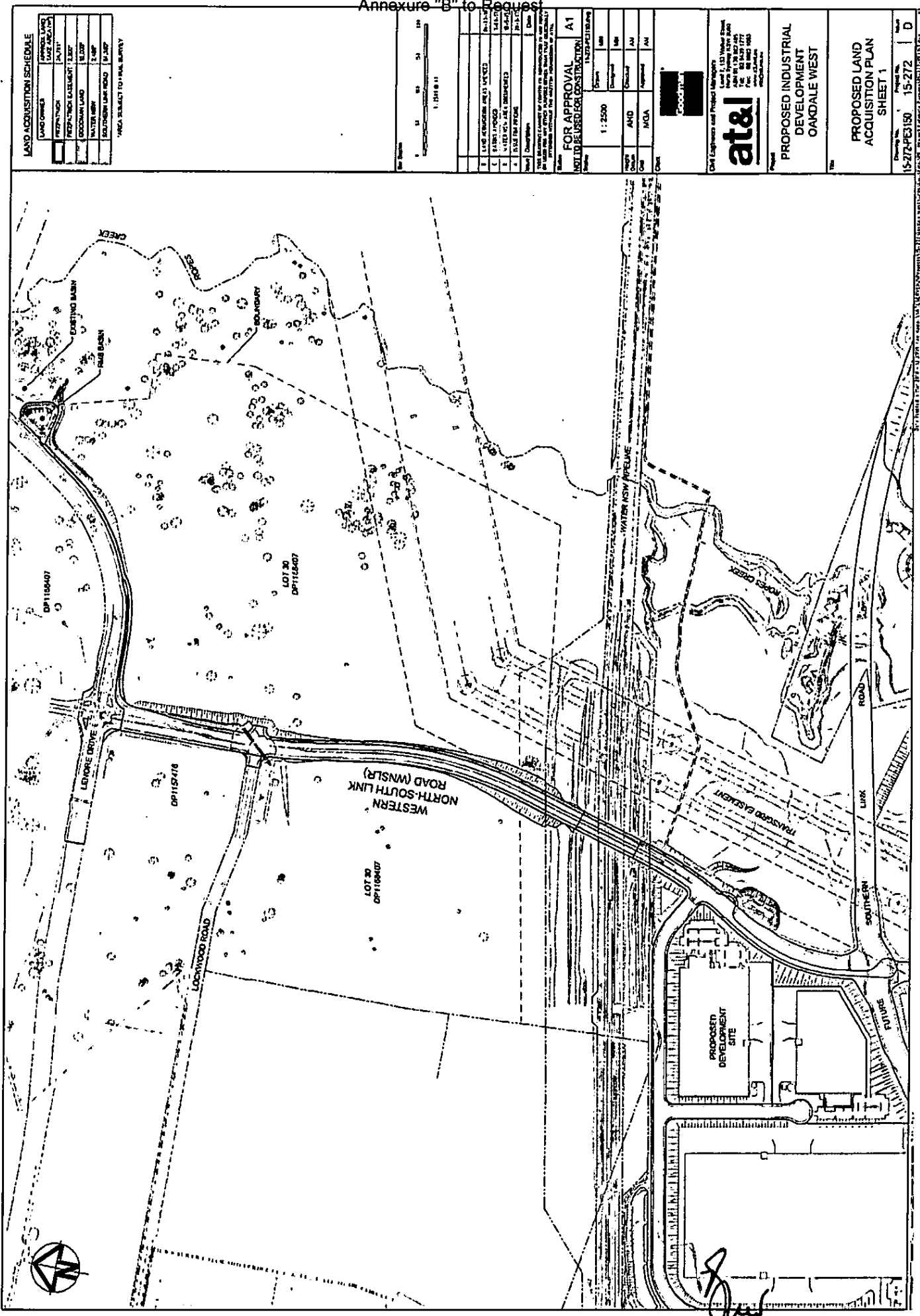
*Handwritten signature and initials*

Annexure "B" to Request

**CLAYTON UTZ**

**Annexure B**

Annexure "B" to Request



**LAND ACQUISITION SCHEDULE**

LAND ACQUISITION SCHEDULE	AMOUNT OF LAND ACQUIRED
PREP/WORK	1.00%
PREP/WORK BASEMENT	1.00%
COCKPIT LAND	1.00%
WATER MAIN	1.00%
SOUTHERN LINK ROAD	1.00%

\*VMSA RELATED TO FINAL SURVEY



1. LAND ACQUISITION SCHEDULE	AMOUNT OF LAND ACQUIRED
PREP/WORK	1.00%
PREP/WORK BASEMENT	1.00%
COCKPIT LAND	1.00%
WATER MAIN	1.00%
SOUTHERN LINK ROAD	1.00%

Scale: 1:2500  
 Date: 15/07/2018

**FOR APPROVAL**  
**NOT TO BE USED FOR CONSTRUCTION**

**at&i**  
 Civil Engineering and Project Management  
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 www.atand.com.au

**PROPOSED INDUSTRIAL DEVELOPMENT OAKDALE WEST**

**PROPOSED LAND ACQUISITION PLAN SHEET 1**

Project No: 15-274PES190 15-272 | D

*Handwritten signature*