

Planning Agreement

Fern Bay Seaside Village

Director-General, Department of Environment and Climate Change

Director-General

Aspen Group Limited

Developer

Winten Fern Bay No.2 Pty Limited

Land Owner

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Planning Agreement dated

Parties **Director-General, Department of Environment and Climate Change**
(Director General)

Aspen Group Limited ABN 50 004 160 927 (Developer)

Winten Fern Bay No 2 Pty Limited ACN 123 700 694 (Land Owner)

Background

- A. The Developer has submitted the Project Application to the Department of Planning for Approval to carry out the Development on the Land.
- B. The Developer has provided to the Director-General of the Department of Planning a statement of commitments offering to enter into this agreement to make the Contributions, if approval is granted to the Project Application.
- C. The Land Owner consents to the Developer entering into this agreement.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this agreement the following definitions apply:

4WD Track means a four wheel drive access track.

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

Application means an application for any Approval.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the Park Works, including under the NPW Act.

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

Bank Guarantee means an irrevocable and unconditional undertaking by an Australian bank, and on terms, acceptable to the Director-General, in its absolute discretion, to pay to the Director-General the face value of that undertaking on demand.

Bank Guarantee Amount means the amount of \$1.522 million.

Board means the Worimi Conservation Lands Board of Management, established under Division 6, Part 4A of the NPW Act.

Board's Account means [*details of DECC account in which the Board's funds are administered to be advised*].

Business Day means:

- (a) for receiving a notice under clause 15, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is sent; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in Sydney.

Contribution means the provision of the material public benefits and the monetary contributions set out in the Contributions Table in accordance with this agreement.

Contributions Date means the date by which the relevant Contribution must be carried out or delivered.

Contributions Table means the table and notes included in Schedule 2.

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

Department means the NSW Department of Environment and Climate Change.

Development means the proposed residential subdivision of the Land as described in the Project Application.

Good Industry Practice means the exercise of that degree of professional skill, diligence, and prudence that reasonably would be expected from competent persons performing tasks and functions similar in nature to the Park Works and consistent with the Law.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Interest Rate in relation to interest payable on any payment due under this agreement means the rate which is the 90 day Bank Bill Swap Reference Rate (Average Bid) as published in the Australian Financial Review on the first date on which interest accrues on that payment plus a margin of 3% per annum.

Land means the land the subject of the Project Application, being part Lot 3, Lot 4 and Lot 5 DP270466 located at Seaside Boulevard (or as described in any subsequent subdivision), Fern Bay shown on the plan being Exhibit 2.

Law means:

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

presently applying or as they may apply in the future.

NPW Act means National Parks and Wildlife Act 1974 (NSW).

OH&S Act means the Occupational Health and Safety Act 2000 (NSW).

OH&S Plan means a site specific occupation health and safety management plan to be prepared in relation to the Park Works as required by Part 8.3 of Chapter 8 of the OH&S Regulations.

OH&S Regulation means the Occupational Health and Safety Regulation 2001 (NSW).

Park means Worimi Regional Park and Worimi State Conservation Area.

Park Lease means the lease agreement made by the Minister administering the NPW Act, the acting Director-General and the Worimi Local Aboriginal Land Council, under which the land council leases the Park (and other land) to the Minister administering the NPW Act.

Park Works means the works to be carried out in the Park as set out in the Contributions Table.

Park Works Approval means:

- (a) any Approval;
- (b) any land owner consent; and
- (c) the consent of any Authority,

required for the carrying out of any Park Works.

Park Works Portion means each part of the Park Works set out separately the Contributions Table.

Practical Completion means, in relation to any Park Works Portion, the point of time at which:

- (a) the Director-General is satisfied that the whole of that Park Works Portion has been completed and installed in accordance with all relevant Approvals and this agreement; and
- (b) that Park Works Portion is fit for use and occupation, and capable of being lawfully used and occupied for its intended purpose and as contemplated by this agreement and all relevant Approvals.

Project Application means Major Project Application No. 06_0250 lodged by the Developer with the Minister for Planning.

Project Approval means the approval issued in respect of the Project Application.

Register means the Torrens title register held by Land and Property Information (NSW).

Vegetation Management Plan or **VMP** means the Fern Bay Seaside Village Conservation Offset Package: Worimi Regional Park Vegetation Management Plan, prepared for the Developer by ERM dated [*date*] being Exhibit 3.

VMP Costs means the agreed Costs of the Department in undertaking works under the VMP, including for weed management and track rationalisation detailed in Part C of Schedule 1.

VMP Year means the period beginning on [*date to be agreed*] in each year and ending 12 months later.

1.2 Interpretation

In the interpretation of this agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this agreement;
- (b) if the day on which any act, matter or thing is to be done under this agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
- (c) a reference in this agreement to dollars or \$ means Australian dollars and all amounts payable under this agreement are payable in Australian dollars;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (e) a reference in this agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (f) a reference to a party, clause, part, schedule or attachment is a reference to a party, clause, part, schedule or attachment of or to this agreement;
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;
- (j) references to the word "include" or "including" are to be construed without limitation;
- (k) a reference to this agreement includes the agreement recorded in this agreement;
- (l) a reference to a party to this agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns; and
- (m) any schedules, attachments and exhibits form part of this agreement.

1.3 Inconsistency with VMP

If there is inconsistency between the provisions of this deed and the VMP, the provisions of this agreement prevail.

2. Planning agreement under the Act

The parties agree that this agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3. Application of this agreement

This agreement:

- (a) applies to the Land; and
- (b) is associated with the Development.

4. Operation of this agreement

This planning agreement operates from the date of the Project Approval.

5. Contributions

5.1 Contributions to be made under this agreement

The Developer will for the purpose of providing material public benefits, carry out and deliver the Contributions at its risk and Cost, in accordance with this agreement.

5.2 Application of the Contributions

The Developer will carry out and deliver the Contributions:

- (a) at the time or times and in the manner set out in the Contributions Table; and
- (b) in relation to the Park Works, in accordance with Schedule 3.

6. Application of sections 94, 94A and 94EF

6.1 Exclusion of sections

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

6.2 Benefits under this agreement

If this agreement does not exclude the application of section 94 to the Land or the Development, then the Development Contributions to be provided by the Developer under this agreement, must be taken into consideration, or must not be taken into consideration, in determining a development contribution under section 94 as set out in Schedule 1.

7. Security Arrangements

The Developer agrees to provide security to the Director-General for its obligations under this agreement on the terms and conditions set out in Schedule 4.

8. Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement in the relevant folio of the Register in accordance with section 93H of the Act and warrants that on the date of this agreement, it has the consent of each person to this agreement, who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or

- (ii) is seized or possessed of an estate or interest in the Land.
- (b) The Developer, at its own expense and risk, as soon as reasonably practicable (but in any event no later than 10 Business Days after the granting of the Project Approval) must take all practical steps and otherwise do anything that the Director-General reasonably requires, to, and must, procure:
 - (i) the execution of any documents;
 - (ii) the production of the relevant duplicate certificates of title; and
 - (iii) the registration of this agreement, by the Registrar-General in the relevant folio of the Register.
- (c) The Land Owner consents to registration of this agreement in accordance with clause 8(a) and agrees to do all things to assist the Developer to comply with clause 8(b).

9. Release following satisfaction

When the Developer makes a Contribution in accordance with this agreement, the Director-General will if the Director-General is otherwise satisfied that the Contribution has been made (which for Park Works includes reaching Practical Completion), within 28 days of a written request from the Developer, provide written notification to the Developer that contains the following:

- (a) a statement to the effect that the particular Contribution has been satisfied;
- (b) the details of the contribution made by the Developer; and
- (c) a release to the Developer (and its successors) of its particular obligation under this agreement to the extent that it has been satisfied by the Contribution made by the Developer.

10. Assignment and other dealings

10.1 Dealings by Developer

The Developer must not assign, transfer, novate, dispose of, sell or otherwise deal with its right, title or interest in the whole or any part of the Land or its rights or obligations under this agreement to another person (**Transferee**), unless before such assignment, transfer, novation, disposal, sale or other dealing:

- (a) the Developer gives to the Director-General at least 20 Business Days notice in writing of the proposed dealing;
- (b) the Developer satisfies the Director-General that the proposed Transferee is respectable and financially capable of complying with such of the Developer's obligations under this agreement as the Director-General nominates as required to be adopted by the Transferee (**Required Obligations**);
- (c) the Transferee signs a deed in form and substance acceptable to the Director-General containing provisions under which the Transferee agrees to comply with the Required Obligations as if it were the Developer (including obligations which arose before the transfer or assignment) with respect to the land or other interest being dealt with;

- (d) the Transferee gives any bank guarantee, bond or guarantee and indemnity by a third person or other security that the Director-General reasonably requires;
- (e) any default by the Developer has been remedied by the Developer or waived by the Director-General; and
- (f) the Developer and the Transferee pay the Director-General's Costs in relation to that dealing.

10.2 Dealings by Land Owner

The Land Owner must not assign, transfer, novate, dispose of, sell or otherwise deal with its right, title or interest in the whole or any part of the Land or its rights or obligations under this agreement to another person (**Transferee**), unless before such assignment, transfer, novation, disposal, sales or other dealing:

- (a) the Land Owner gives to the Director-General at least 20 Business Days notice in writing of the proposed dealing;
- (b) the Transferee signs a deed in form and substance acceptable to the Director-General containing provisions under which the Transferee agrees to comply with such of the Land Owner's obligations under this agreement as the Director-General nominates as required to be adopted by the Transferee (**Required Obligations**) as if it were the Land Owner (including obligations which arose before the transfer or assignment) with respect to the land or other interest being dealt with;
- (c) any default by the Land Owner has been remedied by the Land Owner or waived by the Director-General; and
- (d) the Land Owner and the Transferee pay the Director-General's Costs in relation to that dealing.

10.3 Release

If the Developer or the Land Owner sells, transfers or disposes of the whole or any part of the Land and fully satisfies the requirements of clause 10.1 or 10.2 (as the case may be), the Developer or the Land Owner (as the case may be) will be released from its obligations under this agreement with respect to the land being sold, transferred or disposed of.

10.4 Dealings by Director-General

The Director-General:

- (a) may assign its rights under this agreement without the consent of any other party;
- (b) may require the other parties to enter into a deed in form and substance acceptable to the Director-General containing provisions under which the transferee and the other parties agree with the assignee to comply with the terms and conditions of this agreement; and
- (c) will pay the other parties' reasonable Costs in relation to that assignment.

11. No breach of Park Lease

Nothing in this agreement is to be construed as requiring the Director-General to do anything that would cause the Minister or the Director-General it to be in breach of any of its obligations under the Park Lease.

12. Review of this agreement

This agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

13. Dispute resolution

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

14. Explanatory Note

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

15. Notices

15.1 Form

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

- (a) delivered or posted to that party at its address set out below;
- (b) faxed to that party at its fax number set out below; or
- (c) emailed to that party at its email address set out below.

Department

Name: Department of Environment and Climate Change
Address: 59-61 Goulburn Street, Sydney NSW 2000
(PO Box A290, Sydney South NSW 1232)
Fax: (02) 9995 5999
For the attention of: *[insert]*

with a copy to:

Name: Department of Environment and Climate Change
Hunter Coast Area
Address: Locked Mail Bag 99
Nelson Bay DC NSW 2315
Fax: (02) 4981 5913
For the attention of: Worimi Conservation Lands Joint Management Coordinator

Developer

Name: Aspen Group Limited
Address: Level 5, 33 York Street, Sydney NSW 2000
Fax: (02) 8916 6747
For the attention of: Peter Fagan
Email: peterf@aspengroup.com.au

Land Owner

Name: Winten Fern Bay No.2 Pty Limited
Address:
Fax:
For the attention of:

15.2 Change of details

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

15.3 Delivery

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

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

15.4 Receipt

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

16. Overdue payments**16.1 Interest on overdue money**

The Developer agrees to pay interest to the Director-General on any amount payable by it under this agreement from when it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Director-General, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate. Interest is to be paid to the Board's Account or as otherwise directed by the Director-General.

16.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Director-General at intervals which the Director-General determines from time to time or, if no determination is made, then on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 16.

16.3 Interest on liability merged in judgment or order

The Developer's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by any other provision of this agreement.

16.4 Tender after termination

If a liability under this agreement becomes merged in a judgment or order, then the payer agrees to pay interest to the Director-General on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgment or order and the rate referred to in this clause 16.

17. GST

17.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 17 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 17.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

17.2 Reimbursements

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

17.3 Additional amount of GST payable

Subject to clause 17.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this agreement:

- (a) any amount payable or consideration to be provided under any provision of this agreement (other than this clause 17), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 17.3(b).

17.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 17.3 and clause 17.5), varies from the additional amount

paid by the Recipient under clause 17.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 17.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 17.3.

- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this agreement as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

17.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 17.3 applies is a taxable supply made by the Recipient (the **Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 17.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 17.3 (or the time at which such GST Amount would have been payable in accordance with clause 17.3 but for the operation of clause 17.5(a)).

17.6 No merger

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

18. General

18.1 Approvals and consent

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

18.2 Costs

The Developer must pay to the Director-General on demand all the Costs of the Director-General's incurred in connection with this agreement, including those for:

- (a) negotiating, preparing and executing this agreement and any subsequent agreement, waiver or amendment relating to it;
- (b) obtaining or giving consent or approval and considering matters in connection with this agreement; and
- (c) exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, rights under this agreement including in connection with the Developer's default.

18.3 Entire agreement

This agreement, including its schedules and exhibits, contains everything to which the parties have agreed in relation to the matters it deals with. No party can rely on an earlier document, or

anything said or done by another party, or by a director, officer, agent or employee of that party, before this agreement was executed, except as permitted by Law.

18.4 Further acts

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

18.5 Governing law and jurisdiction

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

18.6 Joint and individual liability and benefits

Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

18.7 No fetter

Nothing in this agreement is to be construed as requiring an Authority (including the Director-General) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation nothing in this agreement is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

18.8 Representations and warranties

The parties represent and warrant that they have power to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any Law.

18.9 Severability

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

18.10 Modification

No modification of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.

18.11 Waiver

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

Schedule 1 - Section 93F Requirements

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

| Requirement under the Act | This Planning Agreement |
|--|--|
| <p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> | <p>(a) No</p> <p>(b) Yes</p> <p>(c) Not applicable</p> |
| <p>Description of land to which this agreement applies - (Section 93F(3)(a))</p> | <p>The Land described in the definition of "Land" in clause 1.1.</p> |
| <p>Description of change to the environmental planning instrument to which this agreement applies - (Section 93F(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environment plan to which this agreement applies; OR</p> <p>(b) the development to which the deed applies.</p> | <p>(a) Not applicable</p> <p>(b) The Development described in the definition of "Development" in clause 1.1.</p> |
| <p>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))</p> | <p>As set out in the Contributions Table</p> |
| <p>Applicability of section 94, 94A or 94EF of the Act - (Section 93F(3)(d))</p> <p>Sections 94, 94A or 94EF of the Act:</p> <p>(a) apply to the development;</p> <p>(b) do not apply (wholly or in part) to the development; and</p> <p>(c) if sections do not apply in part to the development, insert details of the extent to which sections does not apply.</p> | <p>(a) Yes</p> <p>(b) Not applicable.</p> <p>(c) Not applicable.</p> |

| Requirement under the Act | This Planning Agreement |
|--|--------------------------------------|
| <p>Consideration of benefits under this agreement if section 94 applies - (Section 93F(3)(e))</p> <p>Are the benefits under this agreement to be taken into consideration if Section 94 of the Act applies?</p> | No. |
| <p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p> <p>This agreement provides a mechanism for the resolution of disputes under the agreement?</p> | Refer to clause 13 and Schedule 5. |
| <p>Enforcement of this agreement (Section 93F(3)(g))</p> <p>The Developer has provided suitable security for its obligations under this agreement such as security bond or guarantee.</p> <p>Registration of this agreement</p> <p>The parties agree that this agreement will be registered in accordance with clause 8.</p> | <p>Refer to clause 7.</p> <p>Yes</p> |
| <p>No obligation to grant consent or exercise functions - (Section 93F(9))</p> <p>The parties acknowledge that this agreement does not impose an obligation on a planning authority to grant a development consent or to exercise any function under the Act in relation to a change to an environmental planning instrument.</p> | Refer to clause 18.7. |

Schedule 2 - Contributions Table

The Developer agrees to carry out and deliver the Contributions in accordance with the table and notes set out below and in accordance with this agreement. All works are to standards and specifications acceptable to the Department.

| Public Purpose Items | VPA Offer | Manner of Delivery (Cash/Works) | Timing |
|---|---|---------------------------------|---|
| Track closure and rehabilitation (refer Note A below) | Closure of tracks in the Park in accordance with the VMP and in consultation with the Department. | Works | Staged closure in accordance with the VMP and full closure within 5 years of the date of Project Approval. Closures to commence as soon as possible after initial waste removal in VMP year 1, and to take place in consultation with the Department |
| | Construct 4WD Track along agreed route. Safety signage as agreed by the Department to be installed as part of track construction. | Works | To be completed within 12 months of the date of Project Approval. |
| | Construct bitumen sealed carpark with 25 car capacity at Park entrance/head of 4WD Track. Parks signage and a Parks interpretation shelter to be installed as part of carpark construction. Carpark to have primary bollard and double cable installed, and Parks gate to provide for management access to Energy Australia easement. | Works | To be completed within 12 months of the date of Project Approval. |
| | Survey and boundary adjustment on title to the Park following track construction to ensure 4WD Track is part of the Park. | Works | To be completed within 12 months of the date of Project Approval. |
| | Construction and formalisation of walking track along agreed route. Parks signage (interpretation and directional) to be installed as part of construction/formalization. | Works | To be completed within 12 months of the date of Project Approval. |
| | Installation of bollards and cable along both sides of constructed 4WD Track, as per Figure 6. Note that primary bollards and double cable specifications to be installed on Park side of constructed 4WD Track. | Works | To be completed within 12 months of the date of Project Approval. |

| Public Purpose Items | VPA Offer | Manner of Delivery (Cash/Works) | Timing |
|----------------------|--|---------------------------------|--|
| | Installation of bollards and double cable extending from end of constructed 4WD Track along existing formed track adjacent to dunes to the Park boundary with Department of Defence, as per Figure 6. Bollards and double cable on Park side of 4WD Track to have primary specifications, with remaining to have secondary specifications. | Works | To be completed within 12 months of the date of Project Approval. |
| | Installation of secondary bollards and double cable extending from constructed 4WD Track along the Park boundary with Aspen Lands, as per Figure 6. | Works | To be completed within 12 months of the date of Project Approval. |
| | Installation of secondary bollards and double cable along Worimi State Conservation Area boundary with Aspen Lands, as per Figure 6. | Works | To be completed within 12 months of the date of Project Approval. |
| | Two standards of bollard and double cabling are to be used – primary and secondary. Figures 1 and 2 show the installation of each standard along the 4WD Track, Park boundaries and carpark. | Works | |
| Waste Removal | Establish baseline waste data and undertake initial waste removal and disposal from the Park, including monitoring for waste and subsequent removal and disposal every 12 months in years 2 to 5, in accordance with the VMP. | Works | Initial waste removal to be completed within 6 months of the date of Project Approval, followed by an inspection in six months time. Annual waste inspections thereafter in VMP years 2 to 5. |
| | Monitoring and site inspection following initial waste removal. | Works | Within 6 months of initial waste removal. |
| | Pre and post waste removal inspections in VMP years 2 to 5. | Works | Within 6 months of each VMP year. |
| Weed removal | Establish baseline weed data and prepare for primary weed management in accordance with the VMP | Works | To be completed within 2 months of the date of Project Approval. |
| | Undertake Primary weed removal works in accordance with VMP (including site inspections, treatment, monitoring and confirmation of weed kill and recommendations for following year) following initial | Works | To be commenced within 3 months and completed within 10 months of for VMP years 1 to 3. |

| Public Purpose Items | VPA Offer | Manner of Delivery (Cash/Works) | Timing |
|-----------------------|--|---------------------------------|--|
| | works in VMP years 1 to 3, including monitoring every 6 months, in accordance with the VMP. | | |
| | Undertake follow up weed management in accordance with the VMP and the results and recommendations from monitoring for years 4 and 5 (including site inspections, treatment, monitoring and confirmation of weed kill and/or removal, and recommendations for following year). | Works | To be commenced within 3 months and completed within 10 months for VMP years 4 and 5. |
| Rehabilitation | Undertake seed collection and propagation from the Park. | Works | To be commenced within 12 months of the date of Project Approval and completed each year for VMP years 1 to 3, in accordance with the VMP. |
| | Undertake initial rehabilitation/ revegetation works in years 1 to 3, including monitoring every 6 months, in accordance with the VMP. | | As required, in accordance with the VMP and in consultation with the Department. |
| Monetary Contribution | Pay Costs of the Department under VMP for VMP years 4 to 20 | Cash | Refer Note C below. |

Requirements for Contributions:

A. Track closure and rehabilitation works

These works include:

- (a) 4WD Track:
 - (i) to be located along boundary with minimal impact on the Park, extending onto Aspen lands with boundary adjustments where required (completed by Aspen);
 - (ii) track construction will ensure:
 - A. adequate track width (10 to 15 metre corridor for track);
 - B. minimal vegetation loss, with track to be stabilised with geofabric and gravel as per specifications agreed with the Department;
 - C. passing bays on high points and every 150 metres; and
 - D. double lane track width on the two steep sections at the beginning and end of the track

- (b) Walking track:
 - (i) track to be stabilised through mulching; and
 - (ii) signage at track entrances from carpark and 4WD Track
- (c) Carpark:
 - (i) the area is to be agreed on site with the Department however it should be capable of achieving 25 vehicle spaces with minimal tree removal;
 - (ii) the carpark should be located and designed so as that vehicles are forced to enter the 4WD Track through the carpark;
 - (iii) the seal will be bitumen - all weather surface and spaces marked in accordance with the Department's standard requirements, and designed to ensure that vehicles with trailers cannot park; and
 - (iv) the carpark should be provided with standard Department covered signage and interpretation shelter with park information approved by the Department.
- (d) Bollard and cable:

Bollard and double cabling is to be provided as per specifications agreed with the Department:

 - (i) the 4WD Track is to have bollards located on both sides of the track for the full length to the junction of the track alignment and the now disused haul road, and then along the;
 - (ii) the bollards located between the 4WD Track and the Park shall be extended along the eastern boundary of the park to meet the boundary of the park with land currently owned by Department of Defence;
 - (iii) the bollards between the track and the park extending along the boundary with Aspen lands, and across the eastern park boundary are to be of a higher construction standard to ensure that they are vandalism proof; and
 - (iv) the bollards located along the boundary between the 4WD Track and the Aspen lands are to be extended for the full length of the eastern boundary of the Aspen land.

The boundary along Aspen lands and the Worimi State Conservation Area is to have bollards.
- (e) All works and materials used are to be in accordance with specifications approved by the Department.

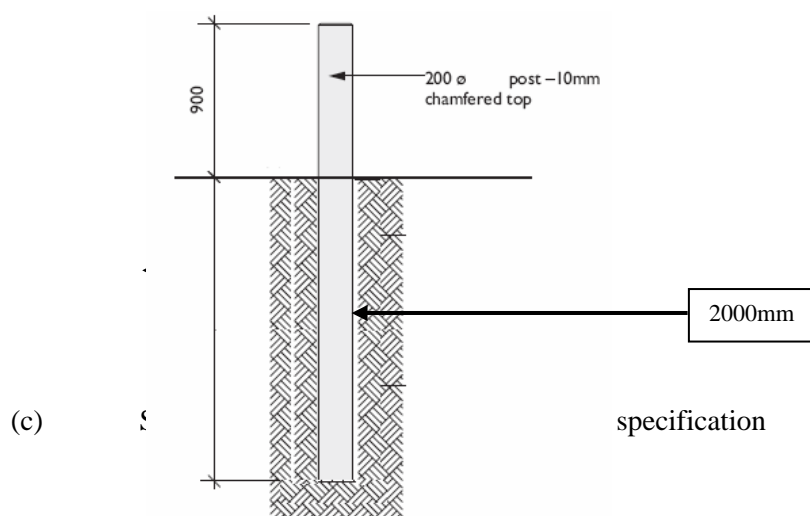
B. Specifications

- (a) Fence design standard
 - (i) All bollards to be 200 mm Eco pine
 - (ii) Bollard spacing 4000 mm – 12 per strain assembly

- (iii) Strainer post and directional stays (2) every 48 meters concreted full depth
- (iv) Strainer post and directional stays (2) every direction change concreted full depth
- (v) Primary bollard – 200mm x 3000mm
- (vi) Secondary bollard – 200mm x 1800mm
- (vii) Line posts to be driven
- (viii) Line posts to be pointed prior to driving
- (ix) Any cutting of bollard to be sealed prior to placement into soil
- (x) 20mm galvanised wire rope
- (xi) Galvanised wire rope clamps
- (xii) Cut ends of wire rope brazed and all nuts welded to prevent undoing
- (xiii) 2 cables per panel
- (xiv) Cable spacing – top cable 200mm from the top of the bollard and bottom cable 300 mm above the ground level (leaving 400mm between cables)

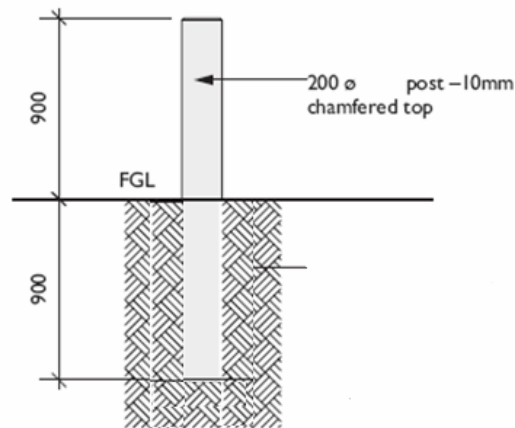
- (b) Primary Bollard style and installation specification 4x4 Access Track dual fence
- Primary Bollard - 200mm x 3000 mm driven at a ratio of 1:2
 - Min 900mm out of ground
 - Min 2000mm in ground

Figure 1



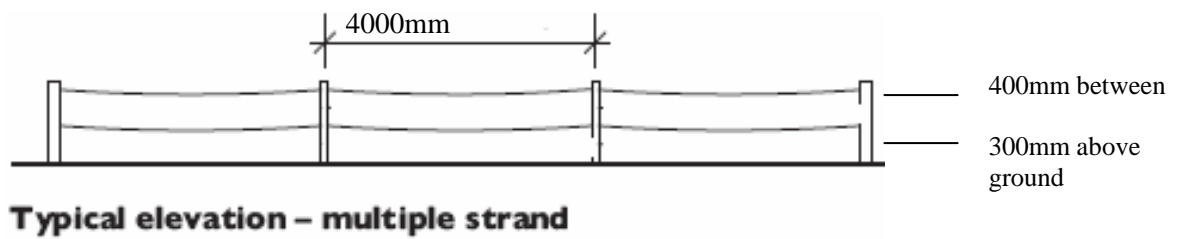
- Secondary Bollard - 200 mm x 1800 mm at a ratio of 2:1
- Min 900mm out of ground
- Min 900mm in ground

Figure 2



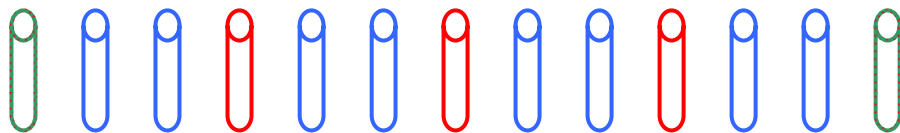
(d) Bollard and double cabling specification

Figure 3

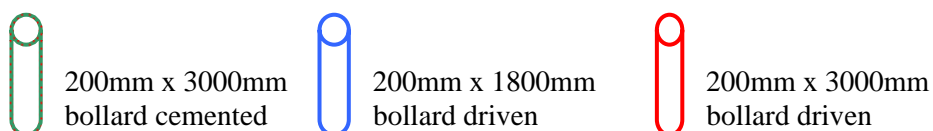


(e) Primary bollard and double cabling specification per 48m strain

Figure 4

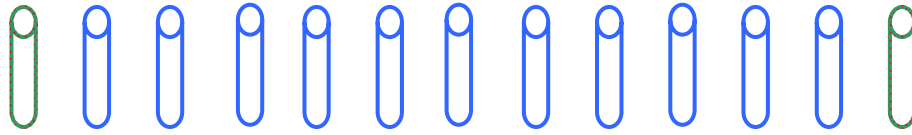


with bollards 4000mm spaced, and where:

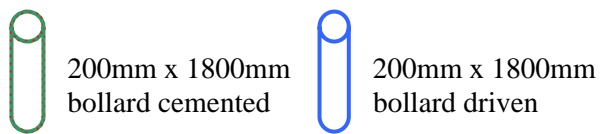


- (f) Secondary bollard and double cabling specifications per 48m strain

Figure 5

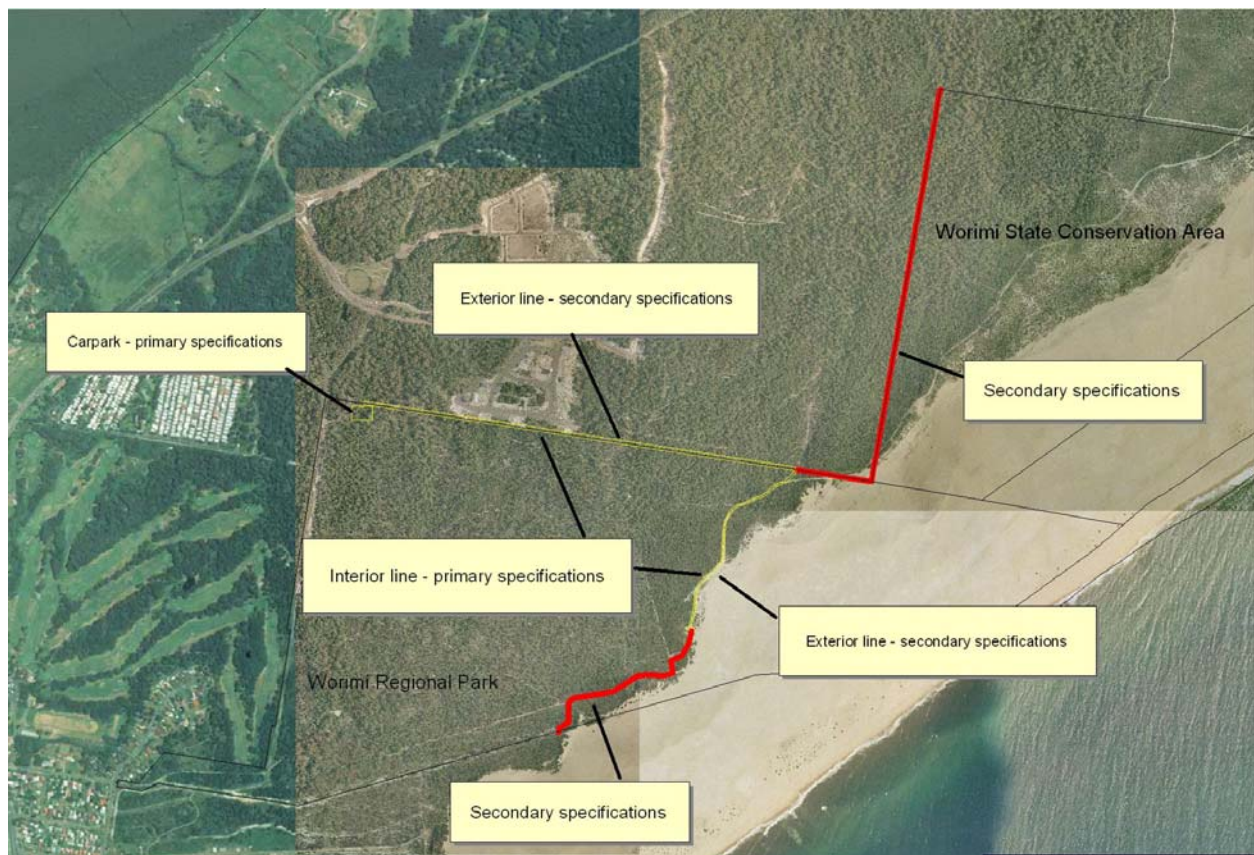


with bollards 4000mm spaced, and where:



- (g) Location of primary and secondary bollard and double cabling

Figure 6



C. Costs under VMP

- (a) The Developer must pay the VMP Costs for each VMP Year as set out in this Part C.
- (b) For VMP Years 1 to 4, the Developer must pay the VMP Costs within 30 days of the start of each VMP Year.
- (c) For VMP Years 5 to 20, the Developer must pay the VMP Costs within 30 days of the start of the fifth VMP year.
- (d) The VMP Costs are:
 - (i) VMP Year 1: \$32,500.00
 - (ii) VMP Year 2: \$20,800.00
 - (iii) VMP Year 3: \$22,150.00
 - (iv) VMP Year 4: \$25,600.00
 - (v) VMP Years 5 to 20: \$1,522,000.00

[Note: *these amounts may require indexation depending on the determination of commencing date.*]

- (e) The Developer must pay the VMP Costs to the Board's Account or as otherwise directed by the Director-General.

Schedule 3 - Park Works Procedures

3.1 Approvals

The Developer must at its risk and expense:

- (a) prepare all Applications and obtain all Approvals (and Park Works Approvals) necessary to carry out the Park Works; and
- (b) comply with all conditions of all such Approvals (and Park Works Approvals).

3.2 Design responsibility

The Developer agrees to procure:

- (a) the design of the Park Works; and
- (b) the preparation of plans and specifications of the Park Works,

(and to achieve Practical Completion of each Park Works Portion) in accordance with this agreement.

3.3 Plans and Specifications

The Developer must promptly give copies of the plans and specifications of the Park Works to the Director-General for approval.

3.4 Construction

The Developer must procure the execution and completion of the Park Works in accordance with:

- (a) the Approvals (including the Park Works Approvals);
- (b) the plans and specifications approved by the Director-General;
- (c) the Vegetation Management Plan;
- (d) the Park Lease; and
- (e) its other obligations under this agreement.

3.5 Park Works Contracts

In respect of any contract entered into by the Developer for the carrying out of the Park Works, the Developer must:

- (a) include as a tender assessment or selection criteria local Aboriginal employment, or if that is not practicable, Aboriginal employment;
- (b) allow a premium of up to 20% higher total contract cost for a tenderer or contractor who fulfils this criteria; and
- (c) consider the provision of training opportunities for Aboriginal people associated with the carrying out of any part of the Park Works.

3.6 Review of Park Works and Construction Documents

The Developer acknowledges and agrees that:

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

3.7 Access to Park

The Director-General grants to grants to the Developer, and the Developer accepts the grant of a licence to access to the Park on the terms set out in paragraph 3.8, subject to the Developer obtaining the consent of the Board to such access.

3.8 Terms of Developer access to the Park

- (a) The Director-General must facilitate the Developer's access to the Park:
 - (i) after the date of this agreement after giving reasonable notice and details, but, only in connection with:
 - A. obtaining Approvals; and
 - B. to carry out further investigations of the Park and survey work; and
 - (ii) subject to paragraph 3.9, to carry out the Park Works in accordance with the Park Works Approvals.
- (b) The Developer acknowledges that:
 - (i) any right of access granted to the Developer will be non-exclusive;
 - (ii) the Director-General and the Board are entitled to continue to use the Park for their own purposes;
 - (iii) any right of access to the Park granted to the Developer will confer on the Developer a right only to such use and control as is necessary to carry out the Works (and to authorise contractors, agents, employees and consultants to execute the Parks Works and to enter into sub-licences for that purpose); and
 - (iv) the Developer must comply with further directions given by officers of the Department in carrying out the Park Works.

3.9 Conditions to commencement of Park Works

The Developer must not commence the Park Works:

- (a) before giving to the Director-General at least 7 Business Days notice of its intention to commence the Park Works within 2 Business Days after the date for commencement of works specified in any such notice;
- (b) until it has obtained all Approvals (including under the NPW Act) necessary for commencement of the Park Works (and , in the case of Approvals under legislation not administered by the Department, has provided the Director-General with copies of those Approvals); and
- (c) it has effected the insurances referred to in paragraph 3.17 and provided the Director-General with evidence, as reasonably required by the Director-General, of such compliance.

3.10 Developer responsibilities

Until Practical Completion, the Developer is responsible for:

- (a) the care of the Park Works;
- (b) providing all things and taking all measures reasonably within its control to protect people and property in relation to the Park and any adjacent land where failure to do so may render the Director-General or the Developer liable under any Law; and
- (c) taking any urgent action in relation to the Park and any adjacent land necessary to protect people and the consequences of any failure to take such action where failure to do so may render the Director-General or the Developer liable under any Law.

In addition to any other remedies of the Director-General, the Director-General may take urgent action in the case of an emergency to protect people or property and the costs and liabilities incurred or suffered by the Director-General in taking such urgent action constitutes a debt due from the Developer to the Director-General payable on demand and the Developer will keep the Director-General indemnified in respect of all such costs and liabilities.

3.11 Indemnity from Developer

- (a) The Developer indemnifies and agrees to keep indemnified the Minister, the Director-General, the employees or officers of the Minister or the Director-General, any other person acting under the direction or control of the Minister or the Director-General for any purpose and the Crown in right of New South Wales against all Costs, losses and damages that the Minister and/or the Director-General may sustain or incur as a result, whether directly or indirectly, arising from:
 - (i) the carrying out of the Park Works; and
 - (ii) the design or construction of any part of the Park Works.
- (b) The indemnity given by the Developer does not cover any loss or damage that is caused or contributed to by a negligent act or omission of the Minister or the Director-General or its personnel.

3.12 Damage

If the Developer damages property (including vegetation, habitat, public utilities and services) in the Park or on any adjacent land, the Developer must promptly make good the damage (including by rehabilitation) and pay compensation to the reasonable satisfaction of the Director-General.

3.13 Occupational Health and Safety

- (a) For the purposes of Chapter 8 of the OH&S Regulation, the Director-General:
 - (i) appoints the Developer as the principal contractor for the Park Works; and
 - (ii) authorises the Developer to exercise such authority of the Director-General as is necessary to enable the Developer to discharge the responsibilities imposed on a principal contractor under Chapter 8 of the OH&S Regulation.
- (b) The Developer agrees that it will be the principal contractor for each Park Works Portion or will otherwise fulfil and exercise the functions and obligations of principal contractor in respect of such activities as if the Developer had been appointed as principal contractor and must:
 - (i) [40] Business Days prior to commencement of the relevant Park Works Portion prepare the OH&S Plan (relevant to that Park Works Portion) and submit that plan to the Director-General for its approval;
 - (ii) maintain the OH&S Plan in accordance with Part 8.3 of Chapter 8 of the OH&S Regulation;
 - (iii) promptly provide any updated OH&S Plan to the Director-General; and
 - (iv) comply with the NSW Government "Occupational Health and Safety Management Systems Guidelines".
- (c) The Developer warrants that compliance with the OH&S Plan will enable the Developer to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation.
- (d) If it is not feasible to do the relevant Park Works Portion in accordance with the OH&S Plan (applicable to that Park Works Portion), the Developer must:
 - (i) use such occupational health and safety plans and systems as may be necessary to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation; and
 - (ii) design and implement any such plans and systems in conformity with the general duties imposed on persons under Division 1 of Part 2 of the OH&S Act.
- (e) The Developer must provide the Director-General, quarterly or more frequently on request from the Director-General, with a copy of all registers, records and documents that the Developer is required to prepare or maintain as a principal contractor under the OH&S Regulation.

- (f) In addition to its duties as principal contractor, during the performance of the relevant Park Works Portion and its other obligations under this deed, the Developer must:
 - (i) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while doing the relevant Park Works Portion comply with, the OH&S Plan and all statutory obligations of the Developer; and
 - (ii) comply with any reasonable direction of the Director-General given following a perceived breach of the OH&S Regulation or the OH&S Plan.
- (g) The Developer must take all measures required under any Law or by any relevant Public Authority to protect people and property on or adjacent to the Site and the relevant Park Works Portion in connection with the execution of the relevant Park Works Portion.
- (h) If the Developer fails to comply with an obligation under this paragraph 3.13, the Director-General may perform, or have performed, the obligation on the Developer's behalf and recover the Costs incurred as a debt.
- (i) If and to the extent that the Director-General (acting reasonably) considers it necessary to undertake any activity, give any direction or otherwise perform any of the works or services pursuant to paragraph (h) for which the Developer is responsible under this paragraph 3.13, the parties acknowledge and agree that in doing so, the Director-General is not acting as a principal contractor, nor is the Director-General to be taken, for any purpose, to be the principal contractor. In these circumstances, the Developer indemnifies the Director-General against any loss, expense or damage of any nature, including Costs, suffered or incurred by the Developer arising out of the performance or authorisation of the performance of any works or services referred to in this paragraph.

3.14 **Aboriginal Objects and Historic Relics**

- (a) The Developer must immediately report to the Director-General the discovery of any Aboriginal Object or Historic Relic during the course of carrying out of the Park Works and in such event such work shall cease immediately and the Developer shall comply with all directions made by the Director-General in relation to the Objects in accordance with the Act.
- (b) The Developer must carry out and perform at its cost all necessary protection or salvage works specified by the Director-General in connection with all known Objects affected by the Developer's activities in accordance with the directions of the Director-General and to his or her satisfaction.
- (c) For the purpose of this paragraph the terms:
 - (i) **Aboriginal Object** has the meaning given in the NPW Act;
 - (ii) **Historic Relic** has the same meaning as the term "relic" in the Heritage Act 1977; and
 - (iii) **Objects** means Aboriginal Objects and/or Historic Relics.

3.15 Good Industry Practice

The Developer must ensure that the Park Works are designed and carried out according to Good Industry Practice.

3.16 Quality of Material and Work

The Developer must procure the Park Works to be carried out:

- (a) using good quality materials, which must be suitable for the purpose for which they are required under this agreement;
- (b) without the use of asbestos in any form;
- (c) in compliance with the Department's Park Facilities Manual and such standards which the Director-General determines from time to time; and
- (d) so that the Park Works, when completed, are suitable for the purpose for which they are required as contemplated by the relevant Approvals and the Vegetation Management Plan.

3.17 Insurance

The Developer must ensure that there is effected and maintained an insurance policy covering such risks, and on terms, acceptable to the Director-General including physical loss, damage or destruction of the Park Works (including any associated temporary works), third party liability, contractors and professional indemnity insurance. The policy must provide cover for the period from the date of the commencement of construction of the Park Works until the end of any relevant defects liability period.

3.18 Amount of property insurance

The insurance cover in relation to works insurance must be for an amount not less than the full insurable value of the Park Works on a full reinstatement and replacement basis (including extra costs of reinstatement, costs of demolition and removal of debris, and professional fees).

3.19 Public liability insurance

The insurance cover in relation to public or third party liability insurance must:

- (a) be written on an occurrence basis for an amount not less than \$10,000,000 (or such other reasonable amount nominated from time to time by the Director-General) in respect of any one occurrence arising out of or in the course of or caused by the execution of the Park Works; and
- (b) include a cross liability clause in which the insurer agrees:
 - (i) to waive all rights which entitle it to enforce the rights of others (otherwise known as "rights of subrogation"), or to take action against any of the persons insured; and
 - (ii) for this purpose, to act as if a separate policy had been issued to each of those persons insured.

3.20 Insurance generally

All insurances which the Developer is required by this agreement to effect and maintain:

- (a) must be with insurers approved by the Director-General (which approval shall not be unreasonably withheld) and shall be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonably acceptable to or required by the Director-General;
- (b) no exclusions, endorsements or alterations are to be made in or to any such policy of insurance unless first approved in writing by the Director-General (which approval shall not be unreasonably withheld);
- (c) all such policies are to be taken out in the names of the Director-General, the Minister, the Department and the Crown in right of New South Wales and the Developer for their respective rights and interests; and
- (d) must not in any respect limit or derogate from the liabilities or obligations of the Developer under this agreement.

The Director-General shall be entitled in his or her own name and as the attorney of the Developer in the name of the Developer or otherwise to institute all proceedings against any insurer to recover from it any amount for loss, damage, destruction or injury or other monies payable under any indemnity in favour of the Director-General, Minister or the Crown in right of New South Wales.

3.21 Providing proof of insurance

Whenever reasonably requested in writing by the Director-General, the Developer must give the Director-General certificates of the insurance policies which the Developer is required by this agreement to effect and maintain.

3.22 Premiums

The Developer must punctually pay all premiums in respect of all insurances.

3.23 Additional Obligations

The Developer must:

- (a) ensure that, before commencing any activity under this agreement, the Developer and each subcontractor hold the workers compensation insurance required by Law and in this regard, any subcontractor taken to be an employee of the Developer under the Law must be covered by the Developer's workers compensation insurance;
- (b) ensure that it has such other special insurances as may be appropriate and required by the Director-General from time to time;
- (c) not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice any insurance or might prejudice any claim under any insurance policy;
- (d) if necessary, rectify anything which might prejudice any insurance policy;
- (e) reinstate an insurance policy if it lapses;

- (f) immediately notify the Director-General in writing if an insurer gives notice of cancellation in respect of any insurance policy; and
- (g) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

3.24 Application of insurance proceeds

If all or any part of the Park Works is damaged or destroyed prior to Practical Completion of those works:

- (a) all insurance proceeds in respect of that damage or destruction must be applied to repair or reinstate the Park Works;
- (b) if the insurance proceeds received under the Insurances in respect of the damage or destruction are less than the cost of repairing or replacing the Park Works (or those insurances are void or unenforceable and there are no proceeds), the Developer must complete the repair and replacement of the Park Works using its own funds; and
- (c) if the insurance proceeds received under the insurances in respect of the damage or destruction exceed the costs of repairing or replacing the Park Works, the Developer will be entitled to keep that excess.

3.25 Practical Completion

When the Developer is of the opinion that a Park Works Portion has reached Practical Completion, the Developer must request the Director-General to confirm that Practical Completion has been reached.

3.26 Director-General to respond

Within 20 Business Days after the receipt of the Developer's request, the Director-General must either:

- (a) confirm that the Park Works Portion has reached Practical Completion; or
- (b) if the Director-General is of the opinion that the Park Works Portion has not reached Practical Completion, give the Developer the reasons for this opinion and provide a list of work required to be completed in order for the Park Works Portion to reach Practical Completion.

3.27 Dispute where Practical Completion not confirmed

If within 20 Business Days after receipt of the Developer's request the Director-General does not either confirm Practical Completion of the Park Works Portion or give the Developer reasons for not confirming Practical Completion, then either the Director-General or the Developer may regard the circumstances as constituting a dispute between the Director-General and the Developer.

3.28 Carrying out required work

On receipt of the detailed list referred to in paragraph 3.26(b), the Developer must carry out the work referred to in that list and, on completion of that work, request the Director-General to confirm Practical Completion. If the Director-General is satisfied that all such work has

been completed in accordance with this agreement then, the Director-General confirm that Practical Completion has been reached within 20 Business Days after receipt of the Developer's request. Otherwise the provision of paragraphs 3.26 to 3.28 inclusive re-apply.

3.29 Prerequisites for Practical Completion

Despite paragraph 3.25, the Director-General has no obligation to confirm that Practical Completion has been reached and Practical Completion will be reached unless and until the Developer has given the Director-General:

- (a) a survey prepared by a licensed surveyor showing the location of the relevant Park Works Portion if the Department so requests;
- (b) where relevant, copies of all necessary documents and Approvals issued by the relevant Authority acknowledging completion of the Park Works Portion, and if appropriate permitting use and occupation of the Park Works Portion; and
- (c) copies of all other certificates, consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of each relevant part of the Park Works have been delivered to the Director-General.

3.30 Effect of Confirmation

Confirmation by the Director-General that a Park Works Portion has reached Practical Completion is evidence that Practical Completion has been achieved, but not an acknowledgment that otherwise the Developer has complied with its obligations under this agreement.

3.31 Rectification

- (a) As soon as possible after the Date of Practical Completion the Developer must rectify any defects or omissions in the relevant Park Works.
- (b) At any time during the period commencing on the Date of Practical Completion and ending on the date being 12 months later, the Director-General may inspect the Park Works Portion for the purpose of ascertaining what defects and omissions (if any) in the Park Works Portion are required to be made good by the Developer.
- (c) The Director-General may give notice to the Developer that:
 - (i) part of the Park Works Portion is defective, giving details; and
 - (ii) the works required to rectify the defect;
 - (iii) provides an estimate of the Costs to rectify such works; and
 - (iv) allows the Developer a reasonable period to rectify such works.
- (d) If the Developer fails to complete or rectify such works within the period required by a notice issued under paragraph 3.31(c), then:
 - (i) the Director-General may have such works completed or rectified at the Developer's expense;
 - (ii) the Director-General's estimate of the Costs to rectify such works will be a debt due from the Developer to the Director-General payable on

demand and amounts so paid must be applied by the Director-General in completing or rectifying such works.

- (iii) if the amount estimated is less than the actual Costs incurred by the Director-General in completing or rectifying such works under this paragraph the shortfall will be a debt due by the Developer to the Director-General payable on demand; and
- (iv) if the amount estimated (and that amount has been paid by the Developer to the Director-General) is greater than the actual Costs incurred by the Director-General in completing or rectifying such works under this paragraph the excess will be a debt due by the Director-General to the Developer payable on demand at any time after such works have been completed or rectified.

3.32 Detailed design and specification process

The parties agree that in respect of each Park Works Portion:

- (a) the final plans and specifications for each Park Works Portion must be agreed by the Director-General and the Developer before work on the Park Works Portion commences; and
- (b) the parties must use their best endeavours to obtain the co-operation and consent of the Board and if necessary, the Worimi Aboriginal Land Council, in accordance with the Park Lease to carry out such works.

Schedule 4 - Security Arrangements

4.1 Face value of Bank Guarantee

The Developer must on the date of this agreement, provide to the Director-General, a Bank Guarantee for the Bank Guarantee Amount.

4.2 Reduction or replacement

The Director-General agrees that the face value of any Bank Guarantees will reduce in amount, or be replaced by a Bank Guarantee with a face value of reduced amount, as determined by the Director-General, having regard to payments made and works undertaken by the Developer from time to time and in accordance with this deed and the VMP.

4.3 Expiry of Bank Guarantees

- (a) If any Bank Guarantees provided by the Developer are expressed as expiring on a certain date, the Developer must provide the Director-General with a replacement Bank Guarantee 20 Business Days prior to the expiry of any Bank Guarantee subject to paragraph 4.4.
- (b) The provision of the Bank Guarantee does not:
 - (i) relieve the Developer from any of the obligations on its part under any other provision of this agreement; or
 - (ii) limit the right of the Director-General to recover from the Developer in full all money payable to the Director-General under this agreement, including without limitation interest on any such amounts or damages or other losses incurred by the Director-General.

4.4 Failure to replace expired Bank Guarantee

If the Developer fails to provide the Director-General with a replacement Bank Guarantee in accordance with paragraph 4.3, the Director-General may call on the full amount of such Bank Guarantee after giving 10 Business Days prior written notice to the Developer.

4.5 Cash deposit

- (a) If the Director-General makes demand under any Bank Guarantee pursuant to paragraph 4.4, the Director-General must hold the full amount so paid to the Director-General as a cash deposit (**Cash Deposit**) in a separate account opened with any body corporate that is an authorised deposit-taking institution for the purposes of the Banking Act 1959 in the name of the Director-General and with beneficial ownership vesting at all times in the Director-General (**Cash Deposit Account**). The Cash Deposit will operate to secure all the obligations of the Developer under this agreement.
- (b) As beneficial owner of the Cash Deposit, the Director-General may, at any time and without notice to the Developer, withdraw money (including accrued interest) from the Cash Deposit Account and retain that money absolutely to satisfy or reimburse the Director-General for any liability, loss or Cost incurred by the Director-General because of failure by the Developer to comply with all of its obligations under this agreement.

- (c) All Costs, duties and taxes payable in connection with the Cash Deposit Account or interest accruing on moneys credited to the Cash Deposit Account may be satisfied by the Director-General withdrawing money from the Cash Deposit Account and applying the money for that purpose.
- (d) If no moneys are, or may become, payable to the Director-General under this agreement and the Developer has satisfied all of its obligations under this agreement, the Director-General must pay the balance of the Cash Deposit Account, less all Costs, duties and taxes payable in connection with such payment, to the Developer.
- (e) For the avoidance of doubt, the Developer has no right to require the Director-General to release the Cash Deposit until the Director-General is reasonably satisfied that no moneys are, or may become, payable to the Director-General under this agreement.

4.6 Release of Cash Deposit

The Director-General must release the Cash Deposit to the Developer if the Developer provides the Director-General with a replacement Bank Guarantee complying with the requirements of paragraph 4.3.

4.7 Claims under Bank Guarantee

The parties agree that the Director-General may make claims under any Bank Guarantee in relation to any failure by the Developer to satisfy its obligations under this agreement.

Schedule 5 - Dispute Resolution

5.1 No arbitration or court proceedings

If a dispute arises out of this agreement (**Dispute**), a party must comply with this Schedule 5 before starting arbitration or court proceedings (except proceedings for interlocutory relief).

5.2 Notification

A party claiming a dispute has arisen must give the other parties to the Dispute notice setting out the details of the Dispute.

5.3 Parties to resolve Dispute

During the 14 days after a notice is given under paragraph 5.2 (or longer if the parties to the Dispute agree in writing), each party to the Dispute must use its reasonable efforts to resolve the Dispute. If the parties cannot resolve the Dispute within that period, they must refer the Dispute to a mediator if one of them requests.

5.4 Appointment of mediator

If the parties to the Dispute cannot agree on a mediator within 7 days after a request under paragraph 5.3, a party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) or the President's nominee to appoint a mediator.

5.5 Role of mediator

The role of a mediator is to assist in negotiating a resolution of the Dispute. A mediator may not make a binding decision on a party to the Dispute except if the party agrees in writing.

5.6 Costs

Each party to a Dispute must pay its own costs of complying with this Schedule 5. The parties to the Dispute must equally pay the costs of any mediator.

5.7 Disputes for expert determination

If mediation has not resulted in settlement of the dispute and has been terminated, the parties (if they agree) may refer the matter to expert determination in accordance with paragraph 5.8.

5.8 Choice of expert

A dispute to be referred to an expert in accordance with paragraph 5.7 must be determined by an independent expert of at least five years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 7 days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field.

5.9 Agreeing the relevant field

If the parties cannot agree as to the relevant field, either party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

5.10 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

5.11 Agreement with expert

The parties must enter into an agreement with the expert appointed under paragraph 5.8 setting out the terms of the expert's determination and the expert's fees.

5.12 Directions to expert

In reaching a determination in respect of a dispute under paragraph 5.7, the expert must give effect to the intent of the parties entering into this agreement and the purposes of this agreement.

5.13 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft certificate stating the expert's intended determination giving each party 14 days to make further submissions;

- (h) issue a final certificate stating the expert's determination within two months of being so appointed, or such other time as agreed by the parties; and
- (i) act with expedition with a view to issuing the final certificate as soon as practicable.

5.14 Complying with directions of expert

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

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

5.15 Expert may convene meetings

The expert will hold a meeting with all the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

5.16 Meeting not a hearing

The parties agree that a meeting under paragraph 5.15 is not a hearing and is not an arbitration.

5.17 Confidentiality of information

The parties agree, and must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to paragraph (b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation;
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as paragraph (a); or
 - (ii) if required by Law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

5.18 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;

- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

5.19 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them unless the determination involves a cost (excluding the Costs incurred by a party in the course of the mediation or determination) to either disputing party (whether by way of payment of money or the carrying out of work) exceeding \$100,000.

5.20 Expert's costs

If any expert does not award costs, the disputing parties must each pay an equal share of the expert's costs in making the determination.

5.21 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this agreement.

5.22 Termination of Process

A party to a Dispute may terminate the dispute process by giving notice to each other after it has complied with clauses 5.1 to 5.3. Clauses 5.6, 5.17 and 5.20 survive termination of the dispute resolution process.

Executed as a deed.

Signed sealed and delivered by the
**Director-General, Department of
Environment and Climate Change** in the
presence of:

Signature of Witness

Signature of Director-General

Name of Witness in full

Name in Full

Executed by **Aspen Group Limited** in
accordance with section 127 of the Corporations
Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole
Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary
in full

Executed by **Winten Fern Bay No 2 Pty
Limited** in accordance with section 127 of the
Corporations Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or sole Director and sole
Secretary

Name of Secretary/other Director in full

Name of Director or sole Director and sole Secretary
in full

Exhibit 1 - Plan of the Land

Exhibit 2 - Vegetation Management Plan