

Planning Agreement

Precinct Acceleration Protocol Release for Precinct Planning

Catherine Fields Part Precinct

The Minister for Planning and Infrastructure
Minister

Valad Development Management Pty Limited
Developer

Valad Commercial Management Limited
Landowner

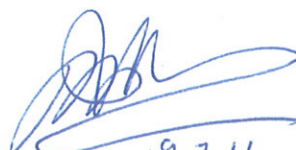

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Table of contents

1.	Interpretation	5
1.1	Definitions	5
1.2	General	11
2.	Planning Agreements.....	12
2.1	Commencement	12
2.2	Planning agreements under the EP&A Act.....	12
2.3	Application of the Planning Agreements	12
2.4	The Contributions	12
3.	Precinct Planning Contributions and Special Infrastructure Contribution Offsets.....	12
3.1	Summary of Precinct Planning Contributions	12
3.2	Approved Precinct Planning Costs	13
3.3	Criteria for Planning Studies	14
3.4	Entitlement to SIC Offset Amount - Approved Precinct Planning Costs.....	15
3.5	Application of Available SIC Offset Amounts.....	15
3.6	Tradeable Credits	16
3.7	Indexation of SIC Offset Amounts and the Relevant Cap.....	16
4.	Application of s94, 94A and 94EF of the EP&A Act	16
5.	Registration of this Deed	17
6.	Termination by Developer	17
7.	Release and Discharge	17
8.	Assignment and other dealings	18
9.	Review of Deed.....	18
10.	Dispute resolution	18
11.	Departmental costs and Costs under this Deed.....	18
12.	Overdue payments	19
12.1	Interest on overdue money	19
12.2	Compounding	19
12.3	Interest on liability merged in judgment or order.....	19
13.	GST	19
13.1	Interpretation.....	19
13.2	Reimbursements.....	20
13.3	Additional amount of GST payable	20
13.4	Variation.....	20
13.5	Exchange of non-monetary consideration	20
13.6	No merger	21
14.	Explanatory Note	21
15.	Notices.....	21

15.1	Form	21
15.2	Change of address	22
15.3	Receipt.....	22
15.4	Receipt - next Business Day.....	22
16.	General provisions	22
17.	Additional Developer Obligations	22
17.1	Intellectual Property and use of Information	22
17.2	Governance of the Precinct Planning Process	22
17.3	Consultation.....	24
17.4	Financials.....	24
18.	Commonwealth EPBC Act.....	24
19.	Planning for the Provision of Services.....	24
19.1	Developer to provide Planning for the Provision of Services	24
19.2	Developer to prepare Services Infrastructure Strategy.....	25
19.3	Developer to update Servicing Infrastructure Strategy	26
19.4	Developer to prepare Services Infrastructure Implementation Plan.....	27
19.5	Developer to update Services Infrastructure Implementation Plan.....	28
19.6	Developer to provide approved Services Infrastructure Strategy and Servicing Infrastructure Implementation Plan	28
20.	Capacity and limitation of liability of Trustee	29
20.1	Capacity	29
20.2	Limitation of liability of Trustee	29
20.3	When the limitation does not apply	29
20.4	Liability must be limited.....	29
20.5	Definitions	29
	Schedule 1 Section 93F Requirements	31
	Schedule 2 - Description of the Land and the Development.....	33
	Schedule 3 - Not used.....	34
	Schedule 4 - Assignment and Dealing	35
	Schedule 5 - General Provisions	37
	Schedule 6 – Costs	41
	Schedule 7 – Department Costs	42
	Annexure A - Catherine Fields Part Precinct Boundary Map.....	46
	Annexure B - Plan of the Land	48

Deed made at **Sydney** on **30 July 2011**

Parties **The Minister for Planning and Infrastructure** ABN 38 755 709 681 of 1
Farrer Place, Sydney NSW 2000 (**Minister**)

Valad Development Management Pty Limited ABN 12 100 248 637 of
Level 9, 1 Chifley Square, NSW 2000 (**Developer**)

Valad Commercial Management Limited ABN 76 101 802 046 of Level 9,
1 Chifley Square, NSW 2000 (**Landowner**)

Background

- A. The Landowner owns the Land which is located in the Western Sydney Growth Areas Special Contributions Area.
- B. Pursuant to a development management agreement, the Landowner appointed the Developer to develop the Land.
- C. For the purposes of this Deed the Developer and the Landowner shall together be referred to as "**the Developer**".
- D. The Developer has sought a change to the SEPP in the form of the Draft SEPP.
- E. Before the SEPP can be changed, the Precinct must be released for Precinct purposes under Clause 276 of the EP& A Regulation, by declaration of the Minister published in the gazette.
- F. The Developer has offered to enter into a planning agreement with the Minister in order to provide the Contributions in connection with the SEPP, including the Precinct Planning Contribution and the planning for the provision of essential services infrastructure to meet the needs created by the future Development of the Part Precinct.
- G. The Developer is or may become liable to pay the Special Infrastructure Contribution in connection with the Development if and when the SEPP is amended or with other developments within the Growth Centres.
- H. The Developer proposes to provide certain of the Contributions, in lieu of paying the Special Infrastructure Contribution in connection with the Development or other developments within the Growth Centres and the parties have entered into this Deed to give effect to this arrangement.
- I. The Developer has also agreed to provide other Contributions for which it will not be entitled to a SIC Offset Amount including the planning for the provision of essential services infrastructure to meet the needs created by the future Development of the Part Precinct.
- J. The Developer's proposal for the Land includes the making of Development Applications for the Development if and when the SEPP is amended.
- K. From the Date of this Deed, this Deed constitutes an agreement between the Developer and the Minister that the Developer will provide material public benefits on the terms and conditions of this Deed
- L. The Developer proposes to offer to enter into a further planning agreement with the Minister to provide Further Contributions including the provision of regional and essential services infrastructure required to meet the needs created by the future Development of the Part Precinct, prior to the exhibition of the Draft SEPP.

Operative provisions

1. Interpretation

1.1 Definitions

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

Application For Approval means an application for any Approval.

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

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Law or by adjoining owners for the commencement and carrying out of the works the subject of this Deed or the Development generally and includes a Part 3A Approval (if relevant), and includes without limitation any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by Sydney Water and Integral Energy for the construction and delivery of the Services Infrastructure.

Approved Precinct Planning Costs mean those costs incurred by the Developer in relation to the Precinct Planning Process prior to the date of publication of the SEPP (as amended consistent with the Draft SEPP) determined by the Minister to be 'Approved Precinct Planning Costs' for the purposes of this Deed in accordance with clause 3 which costs must not exceed the Relevant Cap.

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

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

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

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

Contributions means the provision of the following:

- (a) the Precinct Planning Contribution;
- (b) the planning for the Essential Services Contribution, including:
 - (i) the provision of a Services Infrastructure Implementation Plan;
 - (ii) the provision of a Services Infrastructure Strategy.

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

Council means Camden Council.

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

Deed means this planning agreement

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

Development means the development described in item 1.2 of Schedule 2.

Development Application means:

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

Development Consent means:

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

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

Draft SEPP means the draft instrument proposed to amend the SEPP (following its publication) to allow the Development of the Part Precinct.

Entitle, Entitled and Entitlement means the entitlement of the Developer to certain SIC Offset Amounts pursuant to clause 3.4 to the SIC Offset Amounts as provided for in that clause.

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

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

Essential Services Contributions means those potential future obligations of the Developer in relation to the provision of services and infrastructure which are proposed to be offered as part of the further planning agreement referred to in background recital L, as outlined in the Services Infrastructure Strategy and Services Infrastructure Implementation Plan pursuant to clause 19 of this Deed.

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

Further Contributions means the contributions that that Parties expect will be included in the further planning agreement envisaged in background recital L. At this stage, it is expected that such contributions would include the provision of the essential services and infrastructure (including the dedication of certain infrastructure land) identified in the Precinct Planning, the Services Infrastructure Strategy and the Servicing Infrastructure Implementation Plan.

Growth Centres means

- (a) the North West or South West Growth Centres of Sydney.

GST has the meaning it has in the GST Act.

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

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

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

Interim Integral Energy Services Infrastructure means such of the Services Infrastructure identified as the stage 1 interim Integral Energy Services Infrastructure in the Services Infrastructure Implementation Plan.

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

“Interim Land Release Contribution Policy
Metropolitan Development Program
Managing Sydney’s Urban Growth
October 2005”

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

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

Land means the land described in item 1.1 of Schedule 2 (or any part or parts of it) which is identified and delineated by heavy dark blue ink in the plan comprising Annexure B.

Law means:

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

Minister means the Minister for Planning and Infrastructure, or an officer or position holder within the Department nominated by the Minister or the Director-General of the Department.

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

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

Part 3A Application means:

- (a) each Application For Approval made to the Minister pursuant to section 75E of the EP&A Act;
- (b) each environmental assessment and any other document required to be submitted to the Director-General of the Department pursuant to section 75H of the EP&A Act; and
- (c) each Application For Approval made to the Minister for a Part 3A Modification,

which relates to any part of the Development.

Part 4 Application means:

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

which relates to any part of the Development.

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

- (a) Project Approval; and
- (b) any Part 3A Modification,

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

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

Parties means the parties to this Deed.

PCG means the project control group referred to in clause 18.3(a)

Part Precinct means that part of the Catherine Fields Precinct which is shown on the plan entitled "Catherine Fields Part Precinct Boundary Map" comprising part of Annexure A. The final extent of the Part Precinct will be subject to the outcome of the Precinct Boundary Review.

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

Planning Consent means:

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

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

Precinct means the Catherine Fields Precinct which is shown on the plan entitled "South West Growth Centre Precinct Boundary Map" comprising part of Annexure A.

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

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

Precinct Development Parameters means the development parameters described in Part A, Section 2 of the Growth Centres Development Code, Growth Centres Commission, October 2006.

Precinct Plan means the precinct plan for the Part Precinct.

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

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

Precinct Planning Contribution means the costs incurred by the Developer in relation to the Precinct Planning Process generally described in clause 3.

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

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

- (a) design development with a master planner, interpretation of the opportunities and constraints described in the specialist technical studies, preparation of statutory controls such as zoning maps, land use tables, and preparation of the development control plan;
- (b) interaction with the Council and assistance with the preparation of the Council's Section 94 plans;
- (c) consultation with other State agencies to ensure legislative and technical requirements are complied with. Precinct planning includes landowner and broader community consultation and responding to issues that arise from this process;
- (d) publication of the SEPP (as amended consistent with the Draft SEPP).

Precinct Release Date means the date on which the Minister makes a declaration under clause 276 of the EP&A Regulation to declare the Part Precinct released for Precinct Planning purposes.

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

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

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

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

Relevant Cap means \$3M as indexed from 1 April 2008 in accordance with clause 3.7.

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

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

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

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

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

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

Services Infrastructure Contract has the meaning given to that term in clause 19.4(b)(iii)D.1).

Services Infrastructure Land Contract has the meaning given to that term in clause 19.4(b)(iii)D.2).

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

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

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

SIC Offset Certificate means a certificate specifying:

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

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

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

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

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

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

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

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) excluding GST together with any related interest, penalties, fines and

expenses in connection with them, except if imposed on, or calculated having regard to, net income of a person.

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

Urban Development includes:

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

Western Sydney Growth Areas means each and any of:

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

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

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

1.2 General

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (d) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this

Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;

- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to "\$" or **"dollar"** is to Australian currency;
- (k) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed; and
- (l) any capitalised term used, but not defined in this Deed, will have the meaning ascribed to it under, and by virtue of, the EP&A Act.

2. Planning Agreements

2.1 Commencement

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

2.2 Planning agreements under the EP&A Act

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

2.3 Application of the Planning Agreements

This Deed applies to:

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

2.4 The Contributions

The Developer agrees:

- (a) to provide the Precinct Planning Contributions in accordance with clause 3; and
- (b) to provide the planning for the Essential Services Contributions in accordance with clause 19 of this Deed.

3. Precinct Planning Contributions and Special Infrastructure Contribution Offsets

3.1 Summary of Precinct Planning Contributions

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

- (a) costs relating to planning studies which the Minister commissions as part of the Precinct Planning Process;
- (b) costs incurred by the Developer as a result of its reimbursement to the Department for:

- (i) the Precinct Acceleration Costs;
 - (ii) the Precinct Planning Costs;
 - (iii) costs associated with the Department's management responsibilities for Precinct Planning, including but not limited to the Precinct Project Manager and Council(s) co-ordinator;
 - (iv) costs associated with reviews or additional planning studies, including but not limited to urban design and statutory planning;
 - (v) costs associated with community consultation including but not limited to hire of venues, printing and other communications; and
- (c) any other costs the Developer is required to fund (or reimburse to the Department) in relation to the Precinct Planning Process as contemplated or referred to in this Deed.

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

3.2 Approved Precinct Planning Costs

- (a) If and when the SEPP (as amended consistent with the Draft SEPP) is published, the Minister will determine the Approved Precinct Planning Costs within 60 days of the publication of the SEPP (as amended consistent with the Draft SEPP) providing that he has received all information necessary to do so from the Developer.
- (b) The Developer must submit all invoices it receives from third parties and otherwise must submit such other information the Developer determines relevant or requested by the Minister to enable the Minister to determine the actual costs incurred by the Developer in relation to the Precinct Planning Process, for the purposes of determining the Approved Precinct Planning Costs.
- (c) The costs incurred by the Developer in relation to planning studies which the Minister commissions as part of the Precinct Planning Process, will only form part of the Approved Precinct Planning Costs if they comply with the criteria contained in clause 3.3.
- (d) Once the Approved Precinct Planning Costs are determined by the Minister, the Minister will advise the Developer in writing of the amount of the Approved Precinct Planning Costs.
- (e) The Developer may, within 30 days of receipt of the Minister's notice referred to in clause 3.2(d), request that the Minister review his determination of the Approved Precinct Planning Costs, and the Minister will do so and provide his final determination within 30 days of the date of the request for a review.
- (f) The Developer acknowledges that the Approved Precinct Planning Costs determined by the Minister:
 - (i) must not exceed the Relevant Cap;
 - (ii) will not include the Precinct Acceleration Costs; and

- (iii) will not include any costs incurred by the Developer after the date of publication of the SEPP (as amended consistent with the Draft SEPP).

3.3 Criteria for Planning Studies

- (a) Prior to commissioning the carrying out of any planning studies as part of the Precinct Planning Process, the Developer must provide the Minister with the proposed brief and scope of services for the study, and obtain the Minister's written agreement that:
 - (i) the study is necessary and relevant to the Precinct Planning Process; and
 - (ii) the proposed brief and scope of services is appropriate and complies with the Precinct Planning Process.
- (b) The Developer will make any amendments to the proposed brief and scope of services reasonably requested by the Minister.
- (c) If any amendment is proposed by the Developer to the proposed brief or scope of services for any planning study, then the written agreement of the Minister to that amendment must be obtained.
- (d) The parties agree that the Minister or the PCG have the sole discretion to commission any planning studies. However the Developer may commission those studies on behalf of the Minister or the PCG subject to satisfying the terms of this clause 3.3 and subject to the Minister or the PCG retaining control over the direction of the planning studies and their content.
- (e) All planning studies must comply with the Precinct Planning Process which includes compliance with the following:
 - (i) planning studies and any future Precinct planning will be undertaken, except as otherwise directed by the Department, consistent with the NSW Government's Metropolitan Strategy; the SEPP (including the relevant Growth Centre Structure Plan); Growth Centres Commission Development Code; Precinct Development Parameters approved by the Department; all other relevant environmental planning instruments; and Directions under Section 117 of the EP&A Act as if they apply to the Precinct Planning Process;
 - (ii) planning studies are to be commissioned to facilitate precinct level approvals required (as relevant) by:
 - A. the *Water Management Act 2000* (NSW);
 - B. *National Parks and Wildlife Act 1974* (NSW) (S.87,90);
 - C. *Heritage Act 1977* (NSW);
 - D. *Rural Fires Act 1997* (NSW); and
 - E. *Threatened Species Conservation Act 1995* (NSW);
 - F. *Environment Protection and Biodiversity Act 1999* (Cth); and
 - (iii) planning studies are to be undertaken consistent with the relevant requirements of:

- A. the biodiversity certification of the SEPP; and
 - B. the Growth Centres Commission's Precinct Assessment Method for Aboriginal Cultural Heritage and Protocol for Aboriginal Stakeholder involvement.
- (f) Copies of all completed planning studies and supporting information must be provided to the Minister.
 - (g) All technical studies can be subject to a peer review by the Minister, with the costs of this peer review being incurred by the Developer.

3.4 Entitlement to SIC Offset Amount - Approved Precinct Planning Costs

- (a) Upon the determination by the Minister of the Approved Precinct Planning Costs pursuant to clauses 3.2(d) or 3.2(e), the Developer may request from the Minister an Entitlement to SIC Offset Amounts equivalent to the Approved Precinct Planning Costs (up to a maximum of the Relevant Cap) if the Developer provides to the Minister:
 - (i) a written request requesting such Entitlement;
 - (ii) such other information as is reasonably requested by the Minister (promptly after any such request) in order for the Minister to assess the Developer's request for such Entitlement; and
 - (iii) any SIC Offset Certificate current at the time the Developer makes its request to the Minister.
- (b) If Minister has received a request for an Entitlement from the Developer pursuant to clause 3.4(a) (and the Minister is satisfied with the content of the information provided with that request), then:
 - (i) within 90 days of the Minister receiving all the information required under clause 3.4(a), the Minister will notify the Developer in writing that its request has been approved and will, at the same time, issue a SIC Offset Certificate to the Developer updated to include the SIC Offset Amounts to which the Developer is Entitled (which will be equivalent to the Approved Precinct Planning Costs) (in addition to all previous Entitlements) and all other updates to that certificate as are appropriate; and
 - (ii) on and from the date of the Minister's notice, the Developer is Entitled to the SIC Offset Amounts approved by the Minister as confirmed in his notice pursuant to clause 3.4(b)(i).
- (c) The Developer acknowledges that it may only request an Entitlement to SIC Offset Amounts in the event that the SEPP (as amended by the Draft SEPP) is published.
- (d) The Developer acknowledges that it may not request an Entitlement to SIC Offset Amounts for the Essential Services Contribution.

3.5 Application of Available SIC Offset Amounts

- (a) If the Developer:

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

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

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

3.6 Tradeable Credits

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

3.7 Indexation of SIC Offset Amounts and the Relevant Cap

The parties acknowledge and agree that:

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

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

4. Application of s94, 94A and 94EF of the EP&A Act

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

5. Registration of this Deed

- (a) The Developer agrees to procure the registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act and this clause 5.
- (b) The Developer, at its expense and risk, as soon as reasonably practicable (but in any event no later than 30 days after the Date of this Deed) take all practical steps and otherwise do anything that the Minister reasonably requires:
 - (i) to procure
 - A. the consent of each person who:
 - 1) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - 2) is seized or possessed of an estate or interest in the Land; and
 - B. the execution of any documents; and
 - C. the production of the relevant duplicate certificates of title, to enable the registration of this Deed under the *Real Property Act 1900* (NSW) by the Registrar-General in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act; and
 - (ii) to procure registration of this Deed in the relevant folio of the Register for the Land in accordance with section 93H of the EP&A Act.

6. Termination by Developer

- (a) The Developer may give the Minister notice to terminate this Deed at any time, and the Minister will not unreasonably withhold his agreement to terminate this Deed, provided the Minister is satisfied that:
 - i. the Developer is not in breach of this Deed; and
 - ii. the Developer has first discharged any of its outstanding obligations under this Deed in relation to the payment of any Costs incurred before and after the date of this Deed in accordance with clause 3, 11 and 13 and Schedule 3, 6 and 7, including any ongoing obligations under any contracts entered into by the Department as part of the Precinct Planning Process.

7. Release and Discharge

- (a) Once the Minister is satisfied that the Developer has fully complied with all of its obligations under this Deed, at the Developer's request, the Minister agrees to:
 - (i) provide a full release and discharge of this Deed with respect to the whole of the Land;
 - (ii) sign all documentation as is necessary to remove this Deed from the title of the Land; and

(iii) sign such documentation as is necessary to remove any caveat lodged by the Minister in relation to the Land.

(b) The Developer must, promptly following written demand from the Minister, reimburse the Minister for any Costs the Minister incurs in connection with doing anything required or contemplated by this clause.

8. Assignment and other dealings

The parties agree that provisions of Schedule 4 apply in relation to any proposed assignment or dealing in relation to the Land or of a party's interest in this Deed.

9. Review of Deed

The parties may agree to review this Deed. Any review or modification will be conducted in the circumstances and in the manner determined by the parties.

10. Dispute resolution

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

11. Departmental costs and Costs under this Deed

- (a) The Department will invoice the Developer for all those costs incurred by it in relation to the Precinct Planning Process which are costs arising as a result of services provided by third parties engaged or commissioned by the Department as soon as possible after the Department is invoiced by that third party.
- (b) The Department will invoice the Developer for all other costs which the Developer is required to meet under this Deed.
- (c) The Developer must pay to the Department all amounts invoiced in accordance with this clause 11 within 28 days of the date of the invoice.
- (d) Without limiting the Developer's obligations under clause 11(c), the Minister agrees to consult with the Developer regarding any expenditure which is not consistent with Precinct Planning Budget.
- (e) Costs that have been incurred by the Department as at the Date of this Deed or that are anticipated to be incurred by the Department after the Date of this Deed

in connection with the Precinct Planning Process are generally described in Schedule 7.

- (f) The Developer agrees to comply with all of its obligations under and pursuant to Schedule 7.
- (g) The Developer agrees to comply with all of its obligations under and pursuant paragraph 1.2 of Schedule 5 to this Deed.

12. Overdue payments

12.1 Interest on overdue money

The Developer agrees to pay interest to the Minister on any amount payable by it under this Deed from 28 days after it becomes due for payment, during the period that it remains unpaid, on demand or at times determined by the Minister, calculated on daily balances. The rate to be applied to each daily balance is the Interest Rate.

12.2 Compounding

Interest which is not paid when due for payment may be capitalised by the Minister on the first day of each calendar month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 12.

12.3 Interest on liability merged in judgment or order

If a liability under this Deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the Minister on the amount of that liability as an independent obligation. This interest accrues from the date the liability becomes due for payment both before and after the judgment or order until it is paid, at a rate that is the higher of the rate payable under the judgement or order and the rate referred to in this clause 12.

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

13. GST

13.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 13 have the meanings given to those terms by the GST Act.
- (b) In this clause 13, "**monetary consideration**" means any consideration expressed as an amount of money, "**non-monetary consideration**" means any consideration that is not monetary consideration, and "**non taxable supply**" means a supply that is not a taxable supply.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 13.
- (d) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

13.2 Reimbursements

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

13.3 Additional amount of GST payable

Subject to clause 13.5, if GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this Deed:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 13), for that supply is exclusive of GST;
- (b) any party ("**Recipient**") that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply ("**GST Amount**"), and:
 - (i) where that GST Amount is payable by the Minister, the GST Amount will be limited to the amount of the input tax credit (if any) to which the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) is entitled in relation to the Minister's acquisition of that supply and is payable within 5 Business Days after the Minister (or the representative member of any GST group of which the Minister, in any capacity, is a member) has received the benefit of that input tax credit; and
 - (ii) in any other case, the GST Amount is payable at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 13.3(b).

13.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 13.3 and clause 13.5), varies from the additional amount paid by the Recipient under clause 13.3, 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 13.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 13.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this Deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

13.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 13.3 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 13.3 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 13.3 (or the time at which such GST Amount would have been payable in accordance with clause 13.3 but for the operation of clause 13.5(a)).

13.6 No merger

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

14. Explanatory Note

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

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 Deed is only given or made if it is in writing and delivered or posted to that party at its address set out below or faxed to that party at its fax number set out below:

Minister

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

Developer

Name: Valad Development Management Pty Limited
Address: Level 9, 1 Chifley Square
Sydney NSW 2000
Fax: (02) 8257 6655
For the attention of: Denis Ghersinich

Landowner

Name: Valad Commercial Management Limited
Address: Level 9, 1 Chifley Square
Sydney NSW 2000
Fax: (02) 8257 6655
For the attention of: Denis Ghersinich

15.2 Change of address

If a party gives another party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application, or request is only given or made by that other party if it is delivered, posted or faxed to the latest address or fax number given in accordance with this clause 15.2.

15.3 Receipt

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

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

15.4 Receipt - next Business Day

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

16. General provisions

The parties agree that the miscellaneous and general provisions set out in Schedule 5 apply.

17. Additional Developer Obligations

17.1 Intellectual Property and use of Information

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

17.2 Governance of the Precinct Planning Process

- (a) The parties agree that:
 - (i) the Department is ultimately responsible for precinct planning, including endorsement of Precinct "Development Parameters", draft Precinct plans

for exhibition and draft Precinct plans for submission to the Minister for Planning and Infrastructure;

- (ii) a project control group comprising representatives from the Department (Chair) and Council will oversee precinct planning and related studies, including the review of contractor briefs to ensure they are appropriate to deliver the Minister's planning objectives. The Developer will not be represented on the PCG. The administration of the PCG will be coordinated by the Department.
- (b) A project working group comprising representatives of the Department and Council will oversee the day to day planning studies. The Developer will be invited to attend the PWG. The extent of the Developer's involvement will be guided by independent probity advice and be limited to management issues of the Precinct Planning Process including timeframes and budgets. The PWG and the application of the Precinct Planning Contribution will be guided by a plan which addresses potential risks to the project, including probity risks.
- (c) The Department will nominate a single representative on the PWG. Any alteration by the Department to its representative on the PCG and PWG shall be notified to the Developer in writing.
- (d) The Developer will nominate a single representative to attend the PWG. Any alteration by the Developer to its representative shall be notified to the Department in writing. The Developer can only change its representative to attend the PWG with the prior written approval of the PCG, which shall not be unreasonably withheld.
- (e) In addition to the roles and functions of the PCG and PWG under clauses 17.2(a) to 17.2(d), the parties agree that:
 - (i) the PWG will monitor proposed expenditure against the Precinct Planning Budget to manage cost control;
 - (ii) the Developer will facilitate the Minister having sole direct access to third parties engaged to provide planning studies;
 - (iii) the Developer agrees to consult, cooperate and confer with others (subject to commercial-in-confidence constraints) where so directed by the Minister;
 - (iv) the Minister can commission peer reviews and additional investigations as required and these will be paid in full by the Developer;
 - (v) the Developer agrees to obtain all necessary approvals, licences and permits, which may be required for the provision of services contemplated by this Deed;
 - (vi) the Developer will not, without the prior written consent of the Minister, disclose any information in connection with the services contemplated by this Deed to any person not a party to this Deed other than:
 - A. as necessary to perform those services; or
 - B. with respect to any matter already within public knowledge;
or

- C. as may be required by law court order or Stock Exchange listing rules, and

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

- (f) The Developer represents and warrants that no conflict of interest exists in the performance of the services contemplated by this Deed at the date the Developer signs this Deed. Immediately upon becoming aware of the existence, or possibility of a conflict of interest, the Developer must advise the Minister in writing.

17.3 Consultation

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

17.4 Financials

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

18. Commonwealth EPBC Act

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

19. Planning for the Provision of Services

19.1 Developer to provide Planning for the Provision of Services

- (a) The Developer must provide planning for the provision of Services Infrastructure for the whole Part Precinct (once developed):

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

19.2 Developer to prepare Services Infrastructure Strategy

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

- 3) how the Developer will:
 - a) provide the Services Infrastructure at no cost to the NSW Government; and
 - b) comply with the "*No Cost to Government Criteria*" contained in the Precinct Acceleration Protocol;
 - 4) the requirements of the Relevant Authorities in relation to the operation of the Services Infrastructure; and
 - 5) that the Relevant Authorities have endorsed the Services Infrastructure Strategy and contain evidence of that endorsement; and
- (c) Within 12 months of the Precinct Release Date, the Developer must submit the draft Services Infrastructure Strategy to the Minister.
 - (d) The Minister must approve, or otherwise withhold its approval to, the draft Services Infrastructure Strategy within 60 days of receipt of the draft Services Infrastructure Strategy.
 - (e) The Minister will not unreasonably withhold his approval to the draft Services Infrastructure Strategy where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have approved the draft Services Infrastructure Strategy.
 - (f) If the Minister notifies the Developer that he has not approved the draft Services Infrastructure Strategy, he must promptly provide the Developer with written notice of his reasons.
 - (g) The Developer must within 60 Business Days of receipt of any notice from the Minister pursuant to clause 19.2(f), prepare and submit to the Minister a revised draft Services Infrastructure Strategy. Clause 19.2(b) applies to the revised draft Services Infrastructure Strategy in the same manner that it applies to the draft Services Infrastructure Strategy.
 - (h) If the Minister approves the revised draft Services Infrastructure Strategy, he must give the Developer written notice of that approval within 60 days.

19.3 Developer to update Servicing Infrastructure Strategy

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

19.4 Developer to prepare Services Infrastructure Implementation Plan

- (a) Within 12 months of the date on which the Minister approves the Services Infrastructure Strategy, the Developer must prepare a draft Services Infrastructure Implementation Plan.
- (b) In preparing the draft Services Infrastructure Implementation Plan, the Developer:
 - (i) acknowledges that the development of the draft Services Infrastructure Implementation Plan will be part of a consultative and cooperative process between the Developer and the Relevant Authorities for the orderly and efficient staged delivery of infrastructure to the precinct;
 - (ii) must consult and discuss with the Relevant Authorities and pay all due regard to any reasonable comments or suggestions the Relevant Authorities make in respect of the draft Services Infrastructure Implementation Plan, including without limitation in respect of any modifications to the Services Infrastructure Implementation Plan reasonably required by the Relevant Authorities where
 - A. an Other Development is proposed to be undertaken in the Part Precinct by a developer;
 - (iii) ensure that the draft Services Infrastructure Implementation Plan:
 - A. is consistent with:
 - 1) the Services Infrastructure Strategy; and
 - 2) the servicing plans of each of the Relevant Authorities relating to the South West Growth Centre;
 - B. specifies:
 - 1) how the Developer will implement the Services Infrastructure Implementation Plan, including without limitation a timetable for the delivery of the Services Infrastructure to the Relevant Authorities;
 - 2) the proposed costs for the construction of the Services Infrastructure including the cost of each stage of the Services Infrastructure identified in the Servicing Infrastructure Implementation Plan; and
 - 3) the areas (including any areas outside the Part Precinct) to be serviced by the Services Infrastructure;
 - C. confirms that the Relevant Authorities have endorsed the Services Infrastructure Implementation Plan and contain evidence of that endorsement; and
 - D. contains the pro forma contracts required by the Relevant Authorities to effect the transfer of:

- 1) the Services Infrastructure (**Services Infrastructure Contract**); and
- 2) the Services Infrastructure Land (**Services Infrastructure Land Contract**)

from the Developer to the Relevant Authorities.

- (c) Within 12 months of the date on which the Minister approves the draft Services Infrastructure Strategy, the Developer must submit the draft Services Infrastructure Implementation Plan to the Minister.
- (d) The Minister must approve, or otherwise withhold his approval to, the draft Services Infrastructure Implementation Plan within 60 days of receipt of the draft Services Infrastructure Implementation Plan.
- (e) The Minister will not unreasonably withhold his approval to the Services Infrastructure Implementation Plan where the Developer provides satisfactory evidence to the Minister that the Relevant Authorities have:
 - (i) confirmed that the Services Infrastructure contemplated by the Services Infrastructure Implementation Plan is to be constructed and transferred to the Relevant Authorities to a standard required by the Relevant Authorities; and
 - (ii) approved the Services Infrastructure Implementation Plan.
- (f) If the Minister notifies the Developer that he has not approved the draft Services Infrastructure Implementation Plan, he must promptly provide the Developer with written notice of his reasons.
- (g) The Developer must within 60 Business Days of receipt of any notice from the Minister pursuant to clause 19.4(f), prepare and submit to the Minister a revised draft Services Infrastructure Implementation Plan. Clause 19.4(b) applies to the revised draft Services Infrastructure Implementation Plan in the same manner that it applies to the draft Services Infrastructure Implementation Plan.
- (h) If the Minister approves the revised draft Services Infrastructure Implementation Plan, he must give the Developer written notice of that approval within 60 days.

19.5 Developer to update Services Infrastructure Implementation Plan

- (a) Subject to clause 19.5(b) the Developer must (at its expense) update the Services Infrastructure Implementation Plan not more than once every Year on the Services Infrastructure Implementation Plan Date.
- (b) Clause 19.4(b) to 19.4(h) (inclusive) (except in respect of the reference to the time period in clause 19.4(c)) apply to any update of the Services Infrastructure Implementation Plan in the same manner they apply to the draft Services Infrastructure Implementation Plan.

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

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

20. Capacity and limitation of liability of Trustee

20.1 Capacity

Valad Commercial Management Limited enters into this deed only in its capacity as trustee of the Trust (**Trustee**), and in no other capacity.

20.2 Limitation of liability of Trustee

- (a) The Trustee's liability to any person in connection with this deed (or any transaction in connection with it) is limited, and can be enforced against the Trustee, only to the extent to which:
 - (i) the liability can be satisfied out of the Trust Property by the Trustee exercising its right of indemnity out of the Trust Property; and
 - (ii) the Trustee is actually indemnified for the liability.
- (b) Payment by the Trustee of an amount equal to the amount (if any) it receives under its right of indemnity in respect of any such liability constitutes a complete discharge by the Trustee of that liability.
- (c) If any other party to this document does not recover all money owing to it arising from non-performance of the Trustee's obligations under this document by enforcing the rights referred to in clause 20.2(a), it may not seek to recover the shortfall by:
 - (i) bringing proceedings against the Trustee in its personal capacity; or
 - (ii) applying to have the Trustee wound up or proving in the winding up of the Trustee.
- (d) This clause 20.2 applies despite anything else in this deed but subject to clause 20.3.

20.3 When the limitation does not apply

The limitation under clause 20.2 ("Limitation of liability of Trustee") does not apply to a liability to the extent that it is not satisfied because there is a reduction in the extent of the Trustee's indemnification out of the Trust Property either as a result of the Trustee's fraud, negligence or wilful default, or by operation of law. To the extent that an act or omission is caused or contributed to by any other person, that act or omission is not fraud, negligence or wilful default by the trustee for the purposes of this clause 20.3.

20.4 Liability must be limited

The Trustee is not obliged to do or not do any thing in connection with this deed (including enter into any other document or transaction or incur any liability) unless the Trustee's liability is limited in a manner which is consistent with this clause 20.4.

20.5 Definitions

Trust means Oran Park Development Trust.

Trust Property means, all the Trustee's rights, property and undertaking which are the subject of the Trust:

- (a) of whatever kind and wherever situated; and
- (b) whether present or future.

Schedule 1 Section 93F Requirements

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

Requirement under the EP&A Act	This Planning Agreement
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this Deed applies - (Section 93F(3)(a))</p>	<p>The Land described in paragraph 1.1 of Schedule 2.</p>
<p>Description of change to the environmental planning instrument or the development to which this Deed applies - (Section 93F(3)(b))</p> <p>Describe:</p> <p>(a) the proposed change to the environment plan to which this Deed applies; OR</p> <p>(b) the development to which this Deed applies.</p>	<p>(a) An amendment of the SEPP in accordance with the Draft SEPP</p> <p>(b) The Development described in paragraph 1.2 of Schedule 2.</p>
<p>The scope, timing and manner of delivery of Contribution required by this Planning Agreement - (Section 93F(3)(c))</p>	<p>Refer to clauses 3, 11, 17 and 19.</p>
<p>Applicability of Section 94 of the EP&A Act to the Development - (Section 93F(3)(d))</p>	<p>The application of section 94 of the EP&A Act is not excluded in respect of the Development.</p>
<p>Applicability of Section 94A of the EP&A Act to the Development - (Section 93F(3)(d))</p>	<p>The application of section 94A of the EP&A Act is not excluded in respect of the Development.</p>
<p>Applicability of Section 94EF of the EP&A Act to the Development - (Section 93F(3)(d))</p>	<p>The application of section 94EF of the EP&A Act is not excluded in respect of the Development.</p>
<p>Consideration of benefits under this Deed if section</p>	<p>No. The Development Contributions to be</p>

Requirement under the EP&A Act	This Planning Agreement
<p>94 applies to the Development- (Section 93F(3)(e))</p> <p>Are the benefits under this Deed to be taken into consideration if Section 94 of the EP&A Act is not excluded?</p>	<p>provided by the Developer under this Deed must not be taken into consideration in determining a contribution under section 94 in respect of the Development or any other development (as that term is defined in the EP&A Act) in relation to the Land.</p>
<p>Mechanism for Dispute resolution - (Section 93F(3)(f))</p> <p>This Deed provides a mechanism for the resolution of disputes under the agreement?</p>	<p>Refer to clause 10.</p>
<p>Enforcement of this Deed (Section 93F(3)(g))</p> <p>This Deed provides for enforcement by a suitable means in the event of a breach.</p>	<p>Refer to clauses 5 and 12</p>
<p>Registration of this Deed</p> <p>The parties agree that this Deed will be registered in accordance with clause 5.</p>	<p>Yes</p>
<p>No obligation to grant consent or exercise functions - (Section 93F(9))</p> <p>The parties acknowledge that this Deed does not impose an obligation on a Consent Authority to grant a Development Consent, Part 3A Approval or to exercise any function under the EP&A Act in relation to a change to an environmental planning instrument.</p>	<p>Refer to paragraph 1.8 of Schedule 5.</p>

Schedule 2 - Description of the Land and the Development

1.1 Title

Those parts of the land comprised in:

- (a) Lot 24 in Deposited Plan 31996
- (b) Lot 25 in Deposited Plan 31996
- (c) Lot 26 in Deposited Plan 31996
- (d) Lot 27 in Deposited Plan 213330
- (e) Lot 28 in Deposited Plan 213330

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

1.2 Proposed Development

The development of the Land for Urban Development.

Schedule 3 - Not used

Schedule 4 - Assignment and Dealing

1.1 Developer may not alienate

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

1.2 Developer's proposed assignment of rights

- (a) Unless the matters specified in paragraph 1.2(b) of this Schedule 4 are satisfied, the Developer is not to assign or novate in whole or in part to any person the Developer's rights or obligations under this Deed.
- (b) The matters required to be satisfied for the purposes of paragraphs 1.2(a) and 1.3(b) of this Schedule 4 are as follows:
 - (i) the Developer has, at no cost to the Minister, first procured the execution by the person to whom the Developer's rights or obligations (including SIC Offset Amounts) under this Deed are to be assigned or novated, of an agreement in favour of the Minister on terms satisfactory to the Minister acting reasonably (and the Minister acknowledges that relevant terms corresponding, to the extent appropriate, with those in this Deed, would be satisfactory);
 - (ii) the Minister, by notice in writing to the Developer, has stated that evidence satisfactory to the Minister has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations as referred to under paragraph 1.2(b)(i) of this Schedule 4, equally as the Developer would have done; and
 - (iii) the Developer is not in breach of this Deed or, if it is, the proposed assignee or novatee has covenanted to remedy that default.

1.3 Right of Developer to sell Land

The Developer must not sell or transfer the whole or any part of the Land for which a Special Infrastructure Contribution has not been paid or for which an Available SIC Offset Amount has not been Applied pursuant to clause 1 in respect of that Land, unless before it sells, transfers or disposes of any such part of the Land to another person (**Transferee**):

- (a) it satisfies the Minister acting reasonably that the proposed Transferee is respectable and financially capable of complying with such of the Developer's obligations under this Deed (including, without limitation, by providing financial statements for the proposed transferee and credit standing) as the Minister acting reasonably shall nominate as relevant to the sale or transfer must be adopted by the Transferee (in place of the Developer) (**Required Obligations**);
- (b) the requirements specified in paragraph 1.2 of this Schedule 4 are satisfied; and
- (c) the rights of the Minister under this Deed are not diminished or fettered in any way.

1.4 Minister's assignment of rights

The Minister:

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

Schedule 5 - General Provisions

1.1 Approvals and Consent

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

1.2 Costs

- (a) Unless otherwise specified in this Deed, all Costs relating to this Deed are to be borne by the parties in the proportions specified in Schedule 6 and are payable on demand.
- (b) Without limiting paragraph 1.2(a) of this Schedule 5, the Developer agrees to pay or reimburse the Minister on demand for:
 - (i) Costs of the Minister in connection with any exercise or non-exercise of rights (including, without limitation, in connection with the contemplated or actual enforcement or preservation of any rights under this Deed) waiver, variation, release or discharge in connection with this Deed; and
 - (ii) Taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees which may be payable or determined to be payable in connection with this Deed or a payment or receipt or any transaction contemplated by this Deed.

1.3 Effect of terms and conditions in Schedules

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

1.4 Entire agreement

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

1.5 Further acts

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

1.6 Governing Law and jurisdiction

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

1.7 Enforcement

- (a) This Deed may be enforced by either party in any court of competent jurisdiction.
- (b) For the avoidance of doubt, nothing in this Deed prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Deed or any matter to which this Deed relates; and
 - (ii) an Authority or the Minister from exercising any function under the EP&A Act or any other Law relating to the enforcement of any aspect of this Deed or any matter to which this Deed relates; and
- (c) The Developer covenants with the Minister that the Developer will not rescind or terminate this Deed or make a claim that this Deed is void, voidable, illegal or unenforceable because a condition in a Planning Consent requires the Developer to enter into the Planning Agreement.
- (d) The Developer indemnifies the Minister against any liability, loss, claim, damages, costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process) arising from or incurred in connection with the Developer's breach of any of its obligations under paragraph 1.7(c) of this Schedule 5.
- (e) The indemnity in paragraph 1.7(d) of this Schedule 5 is a continuing obligation, separate and independent from the Developer's other obligations and survives completion, rescission or termination of this Deed.
- (f) It is not necessary for the Minister to incur expense or to make any payment before enforcing the indemnity in clause paragraph 1.7(d) of this Schedule 5.
- (g) The Developer must pay on demand any amount it must pay under the indemnity in paragraph 1.7(d) of this Schedule 5.

1.8 No fetter

Nothing in this Deed is to be construed as requiring an Authority (including the Minister) to do anything that would cause it to be in breach of any of its obligations at Law, and without limitation:

- (a) nothing in this Deed is to be construed as limiting or fettering in any way the exercise of any statutory discretion or duty; and
- (b) nothing in this Deed imposes any obligation on an Authority to:
 - (i) grant any Planning Consent; or
 - (ii) exercise any function or power under the EP&A Act in relation to a change, or a proposed change, in an environmental planning instrument.

1.9 Joint and individual liability and benefits

Except as otherwise set out in this Deed, any agreement, covenant, representation or warranty under this Deed by two or more persons binds them jointly and each of them individually, and

any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

1.10 Representations and warranties

The Developer represents and warrants that:

- (a) **(power)** it has power to enter into this Deed and comply with its obligations under the Deed;
- (b) **(no contravention or exceeding power)** this Deed does not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject, or cause a limitation on its powers or the powers of its officers to be exceeded;
- (c) **(authorisations)** it has in full force and effect the authorisations necessary for it to enter into this Deed to which it is a party, to comply with its obligations and exercise its rights under this Deed and to allow this Deed to be enforced;
- (d) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with the terms of the Deed;
- (e) **(no immunity)** does not have immunity from the jurisdiction of a court or from legal process;
- (f) **(benefit)** it benefits by entering into this Deed to which it is a party; and
- (g) **(capacity)** unless otherwise stated in this deed it does not enter this Deed as an agent for any other person or as trustee of any trust or on behalf or for the benefit of any other person.

The Developer acknowledges that the Minister has entered into this Deed to which it is a party in reliance on the representations and warranties in this paragraph 1.10 of this Schedule 5.

1.11 Severability

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

1.12 Modification

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

1.13 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Deed, does not amount to a waiver of any obligation of, or a breach of obligation by, another party.
- (b) A waiver by a party is only effective if it is in writing.

- (c) A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

1.14 Confidentiality

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

1.15 Release and indemnity

- (a) The Developer agrees that the obligation to provide the Contributions is at the risk of the Developer. The Developer releases the Minister from any Claim, liability or loss arising from, and Costs incurred in connection with, the Developer's obligation to provide the Contributions.
- (b) The Developer indemnifies the Minister against all liabilities or loss arising from, and any Costs incurred in connection with the Minister enforcing the Developer's obligation to provide the Contributions in accordance with this Deed and/or the Minister exercising the Minister's rights under or by virtue of this Deed.
- (c) The indemnity in paragraph 1.15(b) of this Schedule 5 is a continuing obligation, independent of the Developer's other obligations under this Deed and continues after this Deed ends.

Schedule 6 – Costs

Developer - 100% of all Costs including the Minister's legal and advertising costs in connection with this Deed.

Schedule 7 – Department Costs

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

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

- (b) The basic costs of the Department (relating to the management of the Stage 2 Precinct Acceleration Protocol Application “Precinct Acceleration”) will be reimbursed by the Developer.
- (c) The basic costs of the Department relating to Precinct Planning will be paid monthly. Costs for external services engaged by the Department will be reimbursed at cost upon presentation of an invoice. The total monthly cost will be invoiced plus GST and paid monthly to the Department.
- (d) In order to account for the different resources, activities, commencement and conclusion dates for acceleration of the Part Precinct and Precinct Planning activities the costs of the Department have been split into the following categories:
- (i) “**Precinct Acceleration**” are those Department costs specifically related to the management of the Stage 2 Precinct Acceleration Protocol Application.
 - (ii) “**Precinct Planning**” are those Department costs specifically related to the Precinct Planning Process and will be paid as a monthly cost from the date of gazettal of the release of the Part Precinct to the date of publication of the SEPP (as amended consistent with the Draft SEPP).
- (e) The above costs will be identified separately in a combined monthly invoice, plus GST and must be paid by the Developer on a monthly basis. (The first month’s invoice will be proportioned to reflect any part month). The basic activities of the Department which have or will generate a cost for the Developer are set out in the following tables:

Precinct Acceleration

The precinct planning costs to be paid by the Developer are to include but not limited to the following items.

Resource/Activity
Department – Precinct Acceleration
<p>Infrastructure Analyst and Precinct Project Manager</p> <p>Overall coordination of Department activities in relation to the Stage 2 PAP process for the acceleration of the Precinct. Management of communications between the Department, the Developer, Council, agencies and all other stakeholders. Internal and external reporting including Department briefing updates and presentations. Preparation and distribution of agendas and minutes as required. Records management.</p>
<p>Deputy Director General and Executive Director, Land Release</p> <p>Executive management of the Stage 2 PAP process. Direction, review and sign-off of all PAP activities. Executive liaison, reporting and presentations. Interpretation and overview of Department protocols and procedures.</p>
<p>Legal Advice</p> <p>Interpretation and adherence with the EP&A Act and all other regulatory instruments. Review of Developer/agency contracts and agreements.</p>

Precinct Planning

Department – Precinct Planning
<p>Department – Precinct Planning</p> <p>The following figures are monthly estimates to be used for cashflow purposes. The cost to the Developer will be actual cost to the Department.</p>
<p>Precinct Project Manager</p> <p>Overall coordination and management of the Precinct Planning Process including implementation of the PAP. Participation in the Project Control Group (PCG) and Precinct Working Group (PWG). Liaison with Council, infrastructure providers and statutory bodies. Review and report on all Precinct Planning activities being undertaken by the Developer.</p>
<p>Council Costs including provision of a Precinct Project Co-ordinator –</p> <p>Council assistance including technical assistance, a Precinct Project Co-ordinator for overall coordination and management of the Precinct Planning Process within Council. Implementation of the PAP. Participation in the PCG and PWG. Liaison with Council, infrastructure providers and statutory bodies. Review and report on all Precinct Planning activities being undertaken by the Developer.</p>
<p>Executive Director, Land Release</p> <p>Executive management of the Precinct Planning Process including review and direction of the Project Manager. Participation in PCG as deemed necessary. Executive liaison, reporting and presentations. Interpretation and overview of Department’s planning protocol and procedures. Liaison with the Minister’s Office.</p>
Department Community Liaison Manager

Interaction, review, liaison and reporting on Developer community liaison activities. Participation in the PCG and PWG as deemed necessary. Provide input and support to the Department's Project Manager as required.

Additional Investigations & Planning Studies (as required)

Additional investigations and planning studies, including Precinct Planning related infrastructure advice, as required by the Department in order for it to manage and implement the Precinct Planning Process being undertaken by the Developer. These costs will also include reasonable contributions to Council agreed by the Department as well as costs associated with any independent review for advice related to planning studies considered necessary by the PCG.

Legal Advice

Interpretation and adherence with the EPA & Act and all other regulatory instruments. Input and review of this Deed. Review of Developer/agency contracts and agreements.

Executed as a deed

Signed sealed and delivered by The Minister for Planning and Infrastructure, in the presence of:

Signature of Witness

CARL BOWEN

Name of Witness in full

Signature of Minister

BRADLEY RONALD HAZZARD

Name of Minister

Executed by Valad Commercial Management Limited ABN 12 100 248 637 in accordance with: registered power of attorney Book ~~4585~~ No ~~516~~, in the presence of:

4614 273

Signature of Witness

Gary HARSTED

Name of Witness

Executed by Valad Development Management Pty Limited ABN 76 101 802 046 in accordance with: registered power of attorney Book ~~4585~~ No ~~516~~, in the presence of:

4614 273

Signature of Witness

Gary HARSTED

Name of Witness

Signature of Attorney

Kim Elizabeth Sides

Name of Attorney

Signature of Attorney

Radha Shivakumar

Name of Attorney

Signature of Attorney

Kim Elizabeth Sides

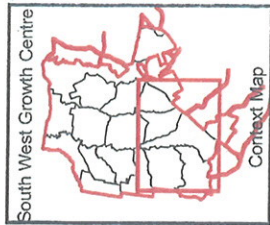
Name of Attorney

Signature of Attorney

Radha Shivakumar

Name of Attorney

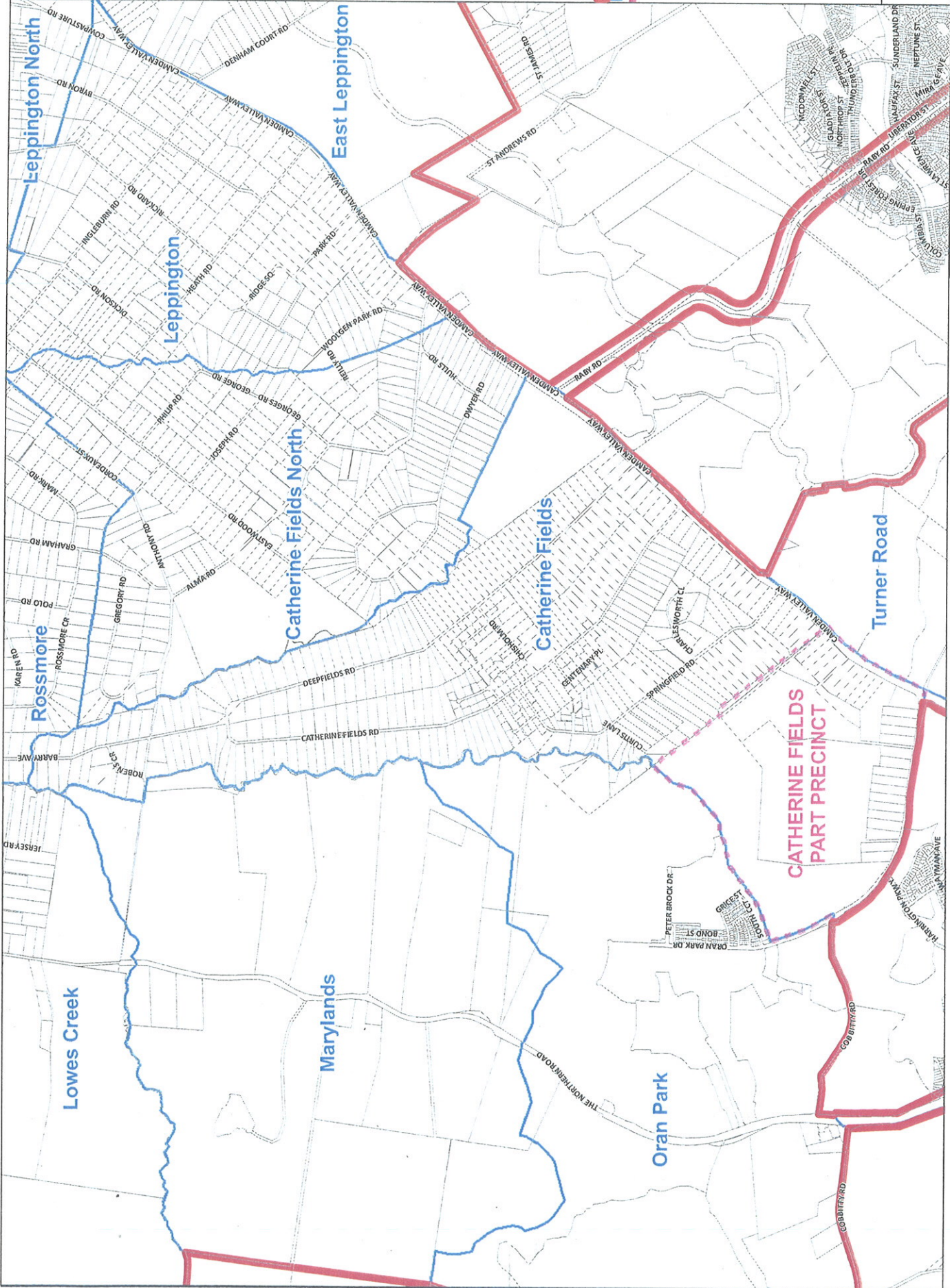
Annexure A - Catherine Fields Part Precinct Boundary Map



Legend
 SW Growth Centre Boundary
 SW Precinct Boundary
 Catherine Fields Part Precinct Boundary

December 2010

Disclaimer:
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Catherine Fields Part Precinct

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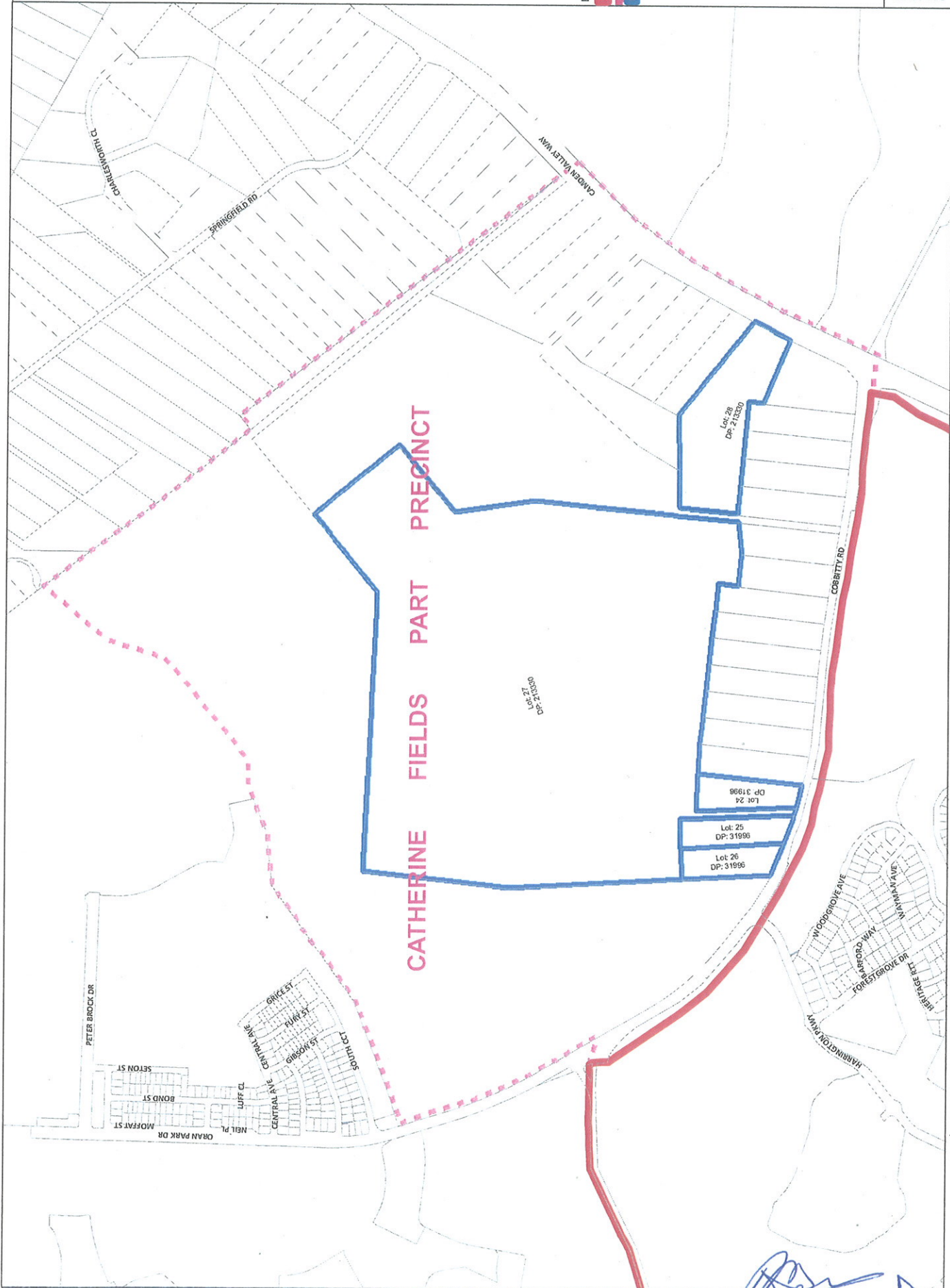
Annexure B - Plan of the Land



Legend
 SW Growth Centre Boundary
 Catherine Fields Part Precinct Boundary
 Valid - Subject Land

December 2010

Disclaimer
 The information contained on this map is, to the best of the Government's knowledge, correct. However, no warranty is made by the Government as to the accuracy, reliability and no liability is accepted for any loss or damage arising from any person relying upon or using the information contained on this map.



Catherine Fields Part Precinct - Subject Land

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