

MALLESONS STEPHEN JAQUES

WARNING TO PURCHASERS:

Before completing the purchase of any land to which this planning agreement relates, be sure that you understand the rights and obligations of the Developer under the *Environmental Planning & Assessment Act 1979*, including section 93H(3).

Section 93H(3) provides that: "A planning agreement that has been registered by the Registrar-General under [section 93H] is binding on, and is enforceable against, the owner of the land from time to time as if each owner for the time being had entered into the agreement."

Planning Agreement

Dated

The Minister for Planning ("Minister")

Johnson Property Group Pty Limited ABN 58 102 465 814 ("Developer")

Bona Vista Properties Pty Ltd ABN 60 095 392 126 ("Bona Vista")

Fernadell Properties Pty Ltd ABN 79 111 748 951 ("Fernadell")

Vermont Quays Pty Ltd ABN 44 098 340 884 ("Vermont Quays")

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Planning Agreement

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Planning Agreement

Details

Interpretation – definitions are at the end of the General terms

Parties	Minister, Developer, Bona Vista, Fernadell and Vermont Quays	
Minister	Name	The Minister for Planning
	ABN	38 755 709 681
	Address	Level 34, Governor Macquarie Tower, 1 Farrer Place Sydney NSW 2000
	Fax	9228 4711
Developer	Name	Johnson Property Group Pty Limited
	ABN	58 102 465 814
	Address	Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Bona Vista	Name	Bona Vista Properties Pty Ltd
	ABN	60 095 392 126
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Fernadell	Name	Fernadell Properties Pty Ltd
	ABN	79 111 748 951
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699

	Attention	Mr Keith Johnson
Vermont Quays	Name	Vermont Quays Pty Ltd
	ABN	44 098 340 884
	Address	C/o:- Suite 3205, Level 32 Chifley Tower 2 Chifley Square, Sydney NSW 2000
	Fax	02 9232 5699
	Attention	Mr Keith Johnson
Governing law	New South Wales	
Date of planning agreement	See Signing page	

Planning Agreement

Operative Provisions

1 Planning Agreement under the Act

The parties agree that this deed is a planning agreement within the meaning of section 93F of the Act.

2 Application of this planning agreement

This planning agreement applies to:

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

3 Operation of this planning agreement

Clauses 8 and 14 of this planning agreement operate immediately. The parties each agree that the other terms of this planning agreement will operate and be effective from the date the LEP is gazetted after it has been made by the Minister pursuant to section 70 of the Act.

4 Definitions and Interpretation

4.1 Definitions

Terms used in this planning agreement which are defined in Schedule 3 ("Interpretation") shall have the same meaning as ascribed to them by that Schedule and such meanings apply unless the contrary intention appears.

4.2 General

In this planning agreement unless the contrary intention appears:

- (a) a reference to this planning agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, a body corporate, an unincorporated association or an authority;

- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
- (g) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (i) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (j) if a party is prohibited from doing anything, it is also prohibited from:
 - (i) allowing or causing it to be done; and
 - (ii) doing or omitting to do anything which results in it happening;
- (k) a reference to a statute, ordinance, code or law includes a statute, ordinance code or law of the Commonwealth of Australia;
- (l) a reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (m) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this planning agreement;
- (n) any capitalised term used, but not defined in this planning agreement, will have the meaning ascribed to it under, and by virtue of, the Act; and
- (o) the Schedules and Annexures form part of this planning agreement.

5 Contributions

5.1 Development Contributions to be made under this planning agreement

The Developer will for the purpose of providing amenities or services to the public at its risk and expense carry out and deliver the Contributions in accordance with the Development Procedures and otherwise in accordance with this planning agreement.

5.2 Application of the Development Contributions

The Developer will carry out and deliver the Contributions at the time or times and in the manner set out in the Contributions and requirements Schedule and in accordance with the Development Procedures.

5.3 Indicative values - in-kind contributions

The parties have ascribed the following notional values to the Contributions:

- (a) School Site: \$2,000,000;
- (b) Intersection Works: \$1,700,000; and
- (c) the Shoulder Works: \$11,200,000.

The parties acknowledge that these are notional values and are indicative only and are not cost caps. Where works are required as part of the Contributions, the Developer must deliver these works, irrespective of the relevant cost.

5.4 Values - monetary contributions

The values of the DEC Contribution and School Building Contribution are:

- (a) DEC Contribution: \$630,000 (subject to CPI adjustment); and
- (b) School Building Contribution: \$976,000 (subject to CPI adjustment).

6 Adequate provision of Contributions

- (a) It is anticipated that the LEP will provide that the Consent Authority must not consent to any Draft Plan of Subdivision that will create a residential lot with an area of less than that otherwise permitted by the LEP unless the Director-General has certified in writing to the Consent Authority that satisfactory arrangements have been made for the Contributions.
- (b) The Developer must (at its cost):
 - (i) use reasonable endeavours to liaise with, and must provide sufficient information to the Minister (or must provide to the Minister such information as the Minister requests (acting reasonably)) to allow the Minister to be satisfied that the terms of this planning agreement have been complied with (which are appropriate for performance at that time) and to allow the Director-General to give the certification referred to in paragraph (a); and
 - (ii) without limiting sub-paragraph (i), the material to be provided by the Developer must include a certification by the Developer addressed to the Minister that the relevant terms of this planning agreement have been complied with, to enable the Director-General to provide the certificate under paragraph (a).

7 Application of s94 and s94A of the Act to the Development

7.1 Application of sections 94 and 94A of the Act

Sections 94 and 94A of the Act apply to the Development.

7.2 Benefits under this planning agreement

Benefits under this planning agreement are excluded from being taken into consideration under section 94 of the Act in its application to development of the Land.

8 Registration of this planning agreement

8.1 Developer

The Developer agrees to procure that this planning agreement is registered on the relevant folios of the Register pertaining to the Land as soon as practicable (and within 10 Business Days after execution of this planning agreement) in accordance with this clause 8.

8.2 Bona Vista Properties Pty Ltd

Bona Vista must do all things necessary to procure the registration of this planning agreement on the folios of the Register for Lot 14 in Deposited Plan 865977 and Lot 132 in Deposited Plan 1025876 within 10 Business Days after execution of this planning agreement, including obtaining the consent of any mortgagee or other person with an interest in those lots to such registration.

8.3 Fernadell Properties Pty Ltd

Fernadell Properties must do all things necessary to procure the registration of this planning agreement on the folio of the Register for Lot 1 in Deposited Plan 133026 within 10 Business Days after execution of this planning agreement, including obtaining the consent of any mortgagee or other person with an interest in those lots to such registration.

8.4 Vermont Quays Pty Ltd

Vermont Quays agrees that, following the transfer to it of title to each of Lot 16 in Deposited Plan 1021340, Lot 17 in Deposited Plan 1021340 and Lot 2 in Deposited Plan 76375, it will do all things necessary to procure the registration of this planning agreement on the folios of the Register relating to the relevant Lot within 10 Business Days after the relevant transfer, including obtaining the consent of any mortgagee or other person with an interest in the relevant lot to such registration.

8.5 The LEP

The Minister reserves its right to delay gazettal of the LEP, amongst other considerations, until after:

- (a) this planning agreement is registered on the folios of the Register for Lot 14 in Deposited Plan 865977, Lot 132 in Deposited Plan 1025876 and Lot 1 in Deposited Plan 133026; and
- (b) the Developer has complied with clause 14 of this planning agreement.

8.6 Effect of registration

The parties agree and acknowledge that if any of the Land is subdivided and sold, then all the obligations in this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of the land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement.

8.7 Release and discharge of this planning agreement

The Minister agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a partial release and discharge of this planning agreement:

- (a) upon full satisfaction of the Developer's obligations under this planning agreement; or
- (b) to effect a transfer of subdivided residential allotments created from the Land where the Developer has, at the time of the request:
 - (i) complied with the relevant terms of this planning agreement; and
 - (ii) provided the Minister with unconditional written confirmation from the RTA (dated no earlier than 10 Business Days prior to the proposed transfer) that, as at the date of the confirmation, the Developer has complied with the relevant terms of the WAD.

9 Review of this planning agreement

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

10 Dispute Resolution

If a dispute between any of the parties arises in connection with this planning agreement or its subject matter, then the process and procedures set out in Schedule 6 ("Dispute Resolution") will apply.

11 Notices

11.1 Form

Unless expressly stated otherwise in this agreement, all notices, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing, signed by the sender (if an individual) or an Authorised Officer of the sender and marked for the attention of the person identified in the Details or, if the recipient has notified otherwise, then marked for attention in the way last notified.

11.2 Delivery

They must be:

- (a) left at the address set out or referred to in the Details;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Details;
- (c) sent by fax to the fax number set out or referred to in the Details; or
- (d) given in any other way permitted by law.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

11.3 When effective

They take effect from the time they are received unless a later time is specified.

11.4 Receipt - post

If sent by post, they are taken to be received three days after posting (or seven days after posting if sent to or from a place outside Australia).

11.5 Receipt - fax

If sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

12 Approvals and Consent

The parties acknowledge that:

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

- (c) this planning agreement does not impose any obligation on a Consent Authority to:
 - (i) grant development consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

13 Assignment and dealings

13.1 Developer dealing with interests

The Developer may not sell, transfer, assign or novate or similarly deal with ("**Dealing**") its right, title or interest in the Land (if any) or its rights or obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without the Minister's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- (a) gives the Minister no less than 10 Business Days notice in writing of the proposed Dealing; and
- (b) procures that the transferee, assignee or novatee executes and delivers to the Minister prior to any such Dealing taking effect, a deed in favour of the Minister in form and substance acceptable to the Minister (acting reasonably) whereby:
 - (i) the transferee, assignee or novatee becomes contractually bound with the Minister to perform all of the Developer's obligations (including obligations which may have arisen before the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this deed; and
 - (ii) the Developer is released from its Future Obligations under this deed.

13.2 Dealings by the Minister

- (a) If another Authority takes over the functions of the Minister under this planning agreement, or if the Minister determines that it is desirable for this to happen, then the Minister may assign or novate or otherwise deal with its rights and obligations under this planning agreement to give effect to this change, and each of the Developer, Bona Vista Properties Pty Ltd, Fernadell Properties Pty Ltd and Vermont Quays Pty Ltd agrees to enter into such documentation, at the cost of the Minister, as may be necessary to confer on the new Authority the rights and obligations of the Minister under this planning agreement.
- (b) Normally any such action would take place by a statutory novation or delegation. However, this clause applies to the extent that it is necessary.

- (c) Without restricting clause 19 ("No fetter"), the Minister must not otherwise deal with its rights and obligations under this planning agreement.

14 Costs

The Developer agrees to pay or reimburse the Costs of the Minister in connection with:

- (a) the negotiation, preparation and execution of this planning agreement; and
- (b) advertising and exhibiting this planning agreement in accordance with the Act,

within 3 Business Days after receipt of a tax invoice from the Minister.

15 Entire agreement

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

16 Further Acts

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

17 Governing Law and Jurisdiction

17.1 Governing law

This planning agreement is governed by the law in force in the place specified in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

17.2 Serving documents

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

18 Joint and individual liability and benefits

Except as otherwise set out in this planning agreement, any agreement, covenant, representation or warranty under this planning agreement 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.

19 No fetter

19.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- (a) the sovereignty of the Parliament of the State to make any Law;
- (b) the power of the Executive Government of the State to make any statutory rule; or
- (c) the exercise of any statutory power or discretion of any minister of the State or any Authority.

(all referred to in this planning agreement as a "**Discretion**").

19.2 No fetter

No provision of this planning agreement is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this planning agreement is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents to ensure the objective of this clause is substantially satisfied;
- (b) in the event that clause 19.1 ("Discretion") cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.

20 Representations and warranties

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

21 Severability

- (a) The parties acknowledge that under and by virtue of Section 93F(4) of the Act, any provision of this planning agreement is not invalid by reason only that there is no connection between the Development and the object of the expenditure of any money required to be paid by that provision.

- (b) The parties acknowledge that under and by virtue of Section 93F(10) of the Act, any provision of this planning agreement is void to the extent to which it requires or allows anything to be done that, when done, would breach:
 - (i) any provision of the Act; or
 - (ii) the provisions of an environmental planning instrument; or
 - (iii) a development consent applying to the relevant land.
- (c) The parties agree that to the extent permitted by Law, this planning agreement prevails to the extent it is inconsistent with any Law.
- (d) If a clause or part of a clause of this planning 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.
- (e) If any clause or part of a clause is illegal, enforceable or invalid, that clause or part is to be treated as removed from this planning agreement, but the rest of this planning agreement is not affected.

22 Modification

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

23 Waiver

- (a) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this planning agreement, 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.

24 GST

24.1 Consideration does not include GST

The consideration expressed in this planning agreement (unless otherwise specified) is GST exclusive and does not include any amount for GST.

24.2 GST Payable

Subject to subclause 24.3, if anything supplied under or in connection with this planning agreement constitutes a "taxable supply" made for GST exclusive consideration, the supplier may, subject to first issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply (**GST Amount**).

The GST Amount shall be:

- (a) equal to the "value" of the supply calculated in accordance with the GST Act multiplied by the prevailing GST rate; and
- (b) subject to subclauses 24.3 and 24.4, payable within fourteen days of written demand by the supplier to the recipient.

24.3 Non-Monetary Consideration

The parties acknowledge that some of the supplies made under or in connection with this planning agreement will be made for consideration which is or includes non-monetary consideration.

In relation to those supplies (which are referred to in this clause as **Consideration in Kind Supplies**) it is agreed as follows:

- (a) if the consideration for a Consideration in Kind Supply is wholly non-monetary:
 - (i) the non-monetary consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under subclause 24.2;
 - (ii) the parties agree that the GST inclusive market value of each Consideration in Kind Supply and the consideration for that supply (being, in turn, a Consideration in Kind Supply) are equal;
 - (iii) the parties will each include in any Tax Invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the Tax Invoice relates being the "price" for that supply;
 - (iv) prior to the issue of the Tax Invoices referred to in subparagraph (iv) of this subclause the parties shall use their best endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement, shall accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties and shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia;

- (b) if the consideration is, in part, monetary and, in part, non-monetary then:
 - (i) part of the supply shall be treated as made for the non-monetary consideration and shall for the purposes of this clause be treated as a "Consideration in Kind Supply" to that extent and shall be subject to the operation of paragraph (a) of this subclause;
 - (ii) the remaining part of the supply shall be treated as made for monetary consideration which is GST exclusive and subject to the operation of subclause 24.2.

24.4 Market Value

If the Commissioner of Taxation or a Court determines for any reason whatsoever that any of the Consideration in Kind Supplies referred to in subclause 24.3 which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, then:

- (a) if the Consideration in Kind Supply made by a party is determined to have a greater GST inclusive market value than the reciprocal Consideration in Kind Supply made by the second party, then the first party will pay to the second party an additional amount equal to the difference multiplied by the prevailing GST rate within 10 business days of the date the relevant determination is made;
- (b) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determinations by the Commissioner or Court; and
- (c) any amount payable under this subclause 24.4 is GST inclusive and will not be increased on account of GST under subclause 24.2.

24.5 Adjustment Event

If in relation to a taxable supply under or in connection with this planning agreement an "adjustment event" occurs that gives rise to an "adjustment", then the GST Amount will be adjusted accordingly and, where clause 24.2 applies to the taxable supply and a payment is necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 business days of the issue of an "adjustment note" by the supplier who must issue an "adjustment note" immediately upon becoming aware of the "adjustment event" concerned.

24.6 Reimbursement

Notwithstanding any other provision of this planning agreement, any amount payable under or in connection with this planning agreement, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this planning agreement, will be reduced by an amount equal to any

input tax credit to which that party is entitled in respect of that cost, expense or amount.

24.7 Defined GST Terms

Terms in this clause 24 in quotation marks shall have the meaning ascribed to them in the GST Act.

25 Effect of Scheduled terms and conditions

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

26 New Laws

If the Developer is obliged by a New Law to do something or pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

27 Confidentiality

27.1 This deed not confidential

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

27.2 Other confidential information

The parties agree, and must procure that any mediator or expert appointed under Schedule 6 ("Dispute Resolution") agrees as a condition of their appointment:

- (a) Confidential Information has been supplied to some or all of the parties in the negotiations leading up to the making of this planning agreement; and
- (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this planning agreement; and
- (c) subject to paragraphs (d) and (e) below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- (d) a party may disclose Confidential Information in the following circumstance:

- (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause 27 ("Confidentiality"); or
- (ii) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
- (e) for a purpose necessary in connection with an expert determination or mediation.

27.3 Proceedings

The parties must keep confidential and must not to 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; and
- (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, including Confidential Information concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

EXECUTED as a deed

Planning Agreement

Schedule 1 - s93F Requirements

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application - (Section 93F(1)) The Developer has (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a development application; (c) entered into an agreement with, or is otherwise associated with, a person to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) Yes
The Land affected by this planning agreement - (Section 93F(3)(a))	The Land described in Schedule 2.
The environmental planning instrument or the development affected by this planning agreement - (Section 93F(3)(b)) Describe: (a) the proposed change to the environmental planning instrument to which the agreement applies; OR	(a) Draft Hawkesbury Local Environmental Plan 1989 (Amendment No. 145) OR
(b) the development to which the agreement applies.	

SCHEDULE 1 - s93F REQUIREMENTS	
SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))	See Schedules 4 and 5 to this planning agreement.
Applicability of Sections 94 or 94A of the Act - (Section 93F(3)(d)) Section 94 of the Act (a) applies wholly to the development; (b) does not apply to the development; (c) parts (insert sections) apply to the development.	See clause 7 of this planning agreement.
Section 94A of the Act (a) applies wholly to the development; (b) does not apply to the development; (c) parts (insert sections) apply to the development. Application of s93F(5) of the Act	See clause 7 of this planning agreement.
Consideration of benefits if under this planning agreement if Section 94 applies - (Section 93F(3)(e)) Are the benefits under this planning agreement to be taken into consideration if Section 94 of the Act applies?	See clause 7 of this planning agreement.
Dispute resolution - (Section 93F(3)(f)) This planning agreement provides a mechanism for the resolution of disputes under the agreement.	Clause 10 ("Dispute resolution") and Schedule 6 ("Dispute resolution") provide a mechanism for the resolution of disputes under this planning agreement.

SCHEDULE 1 - s93F REQUIREMENTS

SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
Security - (Section 93F(3)(g)) The Developer has provided suitable security for its obligations under this planning agreement such as a security bond or guarantee.	See Schedules 4 and 5 to this planning agreement which provide for delivery of Contributions secured by registration and controls on the release of the Land for the Development
No obligation - (Section 93F(9)) The parties acknowledgement that this planning agreement does not impose an obligation on a planning authority to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.	See clause 12 of this planning agreement.

Planning Agreement

Schedule 2 - Land (clause 2)

Land means the land comprising the following folio identifiers:

Lot 14 in Deposited Plan 865977

Lot 132 in Deposited Plan 1025876

Lot 1 in Deposited Plan 133026

Lot 16 in Deposited Plan 1021340

Lot 17 in Deposited Plan 1021340

Lot 2 in Deposited Plan 76375

Planning Agreement

Schedule 3 - Interpretation (clause 4)

1 Definitions and Interpretations

Capitalised terms used in this planning agreement which are defined in this Schedule 3 ("Interpretation") shall have the meaning ascribed to them as set out below.

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

Application means an application for any Approval.

Authorised Officer means in the case of any party, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this planning agreement.

Authority means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes, where applicable, an accredited certifier accredited under section 109T of the Act.

Bank Guarantee means an unconditional and irrevocable undertaking issued by a major Australian trading bank in favour of the Minister and which does not have an expiry date and is otherwise in form and substance acceptable to the Minister, to pay on demand to the Minister the Guarantee Amount.

Business Day means a day on which banks are open for general banking business in New South Wales (not being a Saturday, Sunday or public holiday in that place).

Building Works has the meaning given to it in clause 6 of Schedule 5 to this planning agreement.

Certificate means a certificate issued by the Director-General to the Consent Authority as contemplated in clause 55(3) of the LEP and clause 6(a) of this planning agreement.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or

(d) is information which may reasonably be considered to be of a confidential nature.

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

Contributions means the obligations imposed on the Developer (including the benefits to be provided by the Developer) under, and by virtue of, Schedule 5 ("Contributions and requirements Schedule").

Contributions and requirements Schedule means the terms and conditions imposed on the relevant parties under Schedule 5 ("Contributions and requirements Schedule").

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

CPI means the Consumer Price Index All Groups Sydney, as published by the Australian Bureau of Statistics.

DEC Contribution has the meaning given to it in clause 5 of Schedule 5 to this planning agreement.

Department means the Department of Planning.

Details means the section of this planning agreement entitled "Details".

Developer means the party described as such in the Details.

Development means the development of the Land proposed to be carried out or procured by the Developer in accordance with the LEP.

Development Procedure means the terms and conditions imposed on the relevant parties under Schedule 4 ("Development Procedure").

Director-General means the Director-General from time to time of the Department.

Draft Plan of Subdivision means a draft plan of subdivision to create one or more allotments comprising part of the Land.

Future Obligations means any obligations under or by virtue of this deed which at the time of any proposed assignment or novation contemplated by clause 13.1 ("Developer dealing with interests") are required to be performed or satisfied by the Developer at any time from or after the date on which that assignment or novation takes effect.

Guarantee Amount means \$216,360.

GST has the meaning it has in the GST Act.

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

Intersection Works means the works to upgrade 5 intersections on Pitt Town Road in locations and to the standards and requirements set out in the Letter (agreed to by the Developer in the Second Letter) and in the WAD.

Land means the whole of the land comprised in the titles described in Schedule 2 ("Land").

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.

Letter means the letter from the RTA to Mr Keith Johnson dated 5 April 2006, a copy of which is at Annexure 2 to this planning agreement.

LEP means the Local Environmental Plan substantially in accordance with the Draft Hawkesbury Local Environmental Plan 1989 (Amendment No. 145).

Minister means the Minister for the time being administering the Act.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

RTA means the Roads and Traffic Authority of New South Wales.

Register means the Torrens title register held by the New South Wales office of Land and Property Information.

Relevant Agency means:

- (a) in respect of the Intersection Works and the Shoulder Works, the RTA; and
- (b) in respect of the Building Works, the NSW Department of Education and Training.

School Site means the land having an area not less than 1.35 hectares shown as proposed lot 2 on the plan prepared by Rose Atkins, reference 3454 School 2 and dated 12 May 2006 attached at Annexure 1.

School Building Contribution has the meaning given to it in clause 5 of Schedule 5 to this planning agreement.

Second Letter means the letter from the Developer to the Director General of the RTA dated 5 April 2006, a copy of which is at Annexure 3 to this planning agreement.

Shoulder Works means works to upgrade road shoulders on Pitt Town Road in the locations and to the standards and requirements set out in the Letter (agreed to by the Developer in the Second Letter) and in the WAD.

State means the State of New South Wales.

State Government means the government of New South Wales.

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.

WAD means the Works Authorisation Deed to be agreed between the Developer and the RTA in relation to the Intersection Works and Shoulder Works.

Planning Agreement

Schedule 4 - Development Procedure (clause 5)

1 Developer

1.1 Developer

The Developer must:

- (a) carry out and deliver the:
 - (i) Intersection Works;
 - (ii) Shoulder Works; and
 - (iii) Building Works (if undertaken) (together, “**the Works**”),in consultation with and having regard to the requirements of the Relevant Agency (as appropriate); and
- (b) consult in good faith and act reasonably with the Relevant Agency in relation to the scope, design and delivery of the Works.

The Developer acknowledges and agrees that, whilst it may be obliged by or under this planning agreement to supply the Works for the benefit of, or in accordance with requirements stipulated by, a Relevant Agency, its obligation to do so is owed to, and enforceable by, the Minister in addition to any enforcement rights available to any other Relevant Agency.

Planning Agreement

Schedule 5 - Contributions and requirements Schedule (clause 5.2)

The Developer agrees to provide the Contributions and satisfy the relevant requirements at its cost and risk in the time and manner specified below.

1 Enter into WAD

The Developer must enter into the WAD and provide a copy of the executed WAD to the Minister and the Director-General prior to the issue of the Certificate.

2 School Site

2.1 Dedication

The Developer must dedicate the School Site in the Draft Plan of Subdivision creating the first residential allotments in the Development to the Minister or to such other Authority as may be nominated by the Minister ("**Nominated Authority**") and the Developer and Fernadell must take such steps as may be necessary to deliver title to the relevant land to the Minister or the Nominated Authority free of all encumbrances (other than encumbrances which have been consented to by the Minister) which may include providing the certificate of title and a transfer in registrable form.

2.2 Compulsory Acquisition

- (a) In the event that the School Site is not thus dedicated, Fernadell, in accordance with section 30 of the Land Acquisition (Just Terms Compensation) Act 1991, consents to the Minister (or such the Nominated Authority) compulsorily acquiring the School Site for the amount \$1 in full and final payment of compensation without having to go through the pre-acquisition procedure under that Act.
- (b) If the Minister or the Nominated Authority must pay compensation to any person other than Fernadell in accordance with the compulsory acquisition then the Developer must reimburse the amount of that compensation to the Minister upon request.

3 Intersection Works

The Developer must complete the Intersection Works in accordance with the terms of the WAD and to the satisfaction of the RTA.

4 Shoulder Works

The Developer must complete the Shoulder Works in accordance with the terms of the WAD and to the satisfaction of the RTA.

5 DEC and School Building Contributions

- (a) The Developer must pay to the Minister:
 - (i) a contribution towards the Department of Environment and Conservation (NSW) of \$630,000 increased in accordance with paragraph (c) ("**DEC Contribution**"); and
 - (ii) a contribution towards school buildings and associated works and infrastructure to be built on the Land of \$976,000 increased in accordance with paragraph (c) ("**School Building Contribution**").
- (b) The Developer must pay the DEC Contribution and the School Building Contribution either:
 - (i) prior to the issue of the first Certificate; or
 - (ii) if the Developer has delivered the Bank Guarantee to the Minister in accordance with clause 6 of this Schedule 5, then on or prior to the release of the first linen plans for the subdivision of the Land ("**Final Payment Date**").
- (c) The amount of the DEC Contribution and the amount of the School Building Contribution must each be increased to reflect any increase in the CPI since the LEP is gazetted, with the relevant amount being calculated as at the date of payment.

6 Bank Guarantee

6.1 Delivery to the Minister

Prior to the issue of the Certificate, the Developer must deliver the Bank Guarantee to the Minister.

6.2 New Authority

Where:

- (a) the Developer has provided the Bank Guarantee; or
- (b) another Authority takes over the functions of the Minister under this planning agreement ("**New Authority**"),

then:

- (c) the Developer must deliver a replacement Bank Guarantee to the New Authority; and

- (d) the Minister will return to the Developer the Bank Guarantee at the same time the Developer delivers the replacement Bank Guarantee to the New Authority;

6.3 Minister may call on Bank Guarantee

If:

- (a) the School Site is not transferred to the Minister or the Nominated Authority in accordance with clause 2 of Schedule 5; or
- (b) the Developer does not, on or prior to the Final Payment Date pay in full both the DEC Contribution and the School Building Contribution,

then:

- (c) the Developer is in breach of an essential obligation under this planning agreement; and
- (d) without limiting any other remedies available to the Minister, the Minister may call on the Bank Guarantee without notice to the Developer. If the Minister so calls on the Bank Guarantee, then no later than seven days after the Minister gives the Developer a notice asking for it, the Developer agrees to deliver to the Minister a replacement or additional Bank Guarantee so that the amount guaranteed is the Guarantee Amount.

6.4 Return of Bank Guarantee

Within one month after the Developer satisfies its obligation to:

- (a) deliver or procure the delivery of the School Site in accordance with clause 2;
- (b) pay the DEC Contribution; and
- (c) pay the School Building Contribution,

the Minister must, if the Minister has not called on the Bank Guarantee under this clause 6, return the Bank Guarantee (or any remaining balance of it) to the Developer.

Planning Agreement

Schedule 6 - Dispute Resolution (clause 10)

1 Dispute Resolution

1.1 Notice of Dispute

If a party claims that a dispute has arisen under this Agreement ("**Claimant**"), it must give written notice to the other party ("**Respondent**") stating the matters in dispute and designating as its representative a person to negotiate the dispute ("**Claim Notice**").

1.2 Response to Notice

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

1.3 Negotiation

The nominated representatives must:

- (a) meet to discuss the matter in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 Business Days after they have met.

1.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute ("**Dispute Notice**").

1.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

- (c) the Mediator appointed pursuant to this clause 1.5 of Schedule 6 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

1.6 Litigation

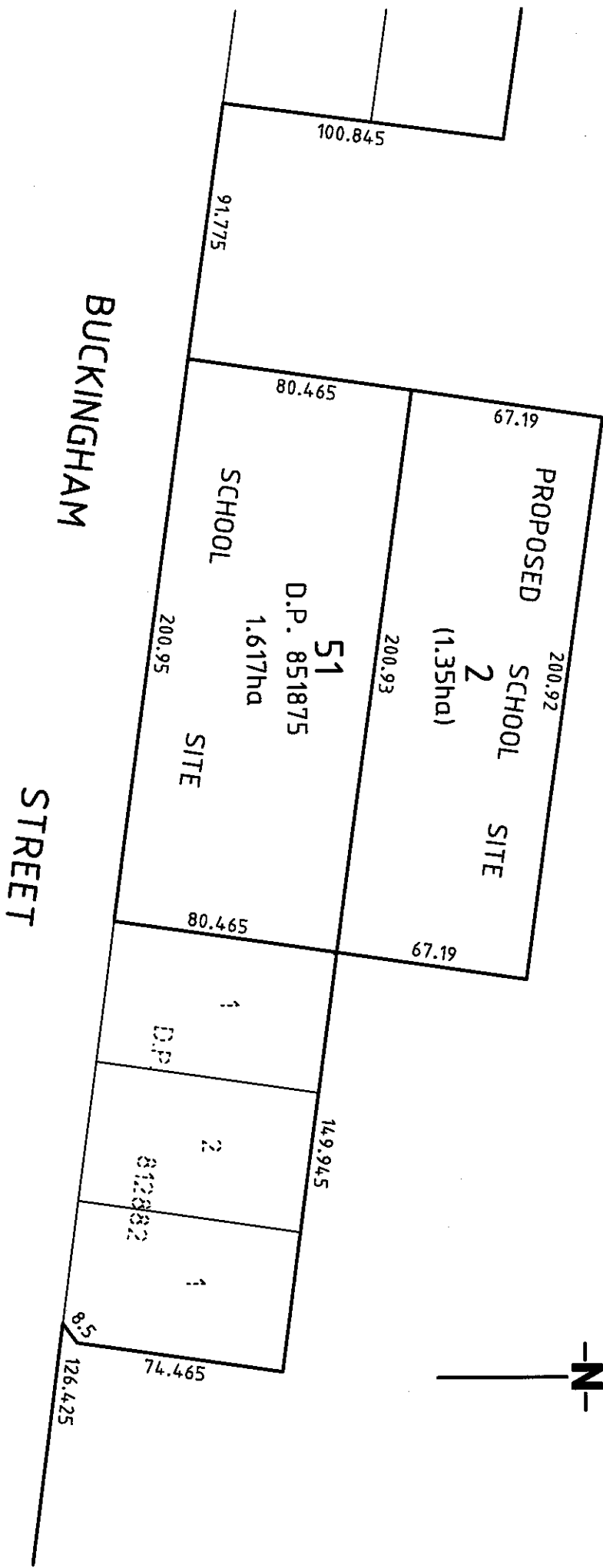
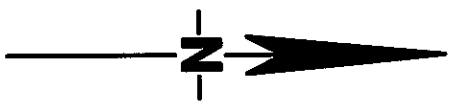
If the dispute is not finally resolved in accordance with clause 1 of Schedule 6, either party is at liberty to litigate the dispute.

1.7 Continue to perform obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

Planning Agreement

Annexure 1 - Plan showing School Site



BUCKINGHAM

STREET

 ROSE ATKINS consulting surveyors 142 SUNNYHOLT ROAD, BLACKTOWN PO BOX 6745, BLACKTOWN 2148 PH: (02) 9853 0299, FAX: (02) 9871 7389 E-MAIL: mail@reg.com.au	FOR:	JOHNSON PROPERTY GROUP	BUCKINGHAM STREET PTY TOWN		1:2000		0 20 40 60 80 100 Metres	
			PROPOSED SCHOOL SITE	DATE: 12/05/06	CHECKED: REF: 3454 SCHOOL 2			

Annexure 2 - Letter (clause 4 and Schedule 3)

5M1841

Mr Keith Johnson
Johnson Property Group
Suite 3205, Level 32, The Chifley Tower
2 Chifley Square
SYDNEY NSW 2000

Dear Mr Johnson

RE Upgrading of Pitt Town Road associated with the Pitt Town Development

I refer to the meeting held on Wednesday 28 March 2006 with officers of the Roads and Traffic Authority (RTA) and the Department of Planning (DoP) concerning the scope of works on Pitt Town Road included the draft Planning Agreement (PA). As you are aware, the PA was a requirement of the Minister for Planning, in his letter of 25 October 2005.

It is noted from the Minister for Planning's letter that the required developer contribution is \$34,000 per lot plus other works. RTA advice to the DoP on 27 May 2005 indicated that approximately \$31,100 per lot was to be allocated for arterial road improvements. Based on your landholding having a yield of 393 lots, the applicable contribution for arterial road improvements would be approximately \$12.2 M.

The RTA has been subsequently advised that discussions have occurred between you and the DoP and that these discussions have resulted in the drafting of a planning agreement indicating that your company would carry out intersection improvements and upgrading of Pitt Town Road shoulders estimated by the RTA to cost \$1.7 M and \$11.2 M respectively (being works identified in the RTA's letter to the DoP dated 27 May 2005).

As indicated in the attachment B of the 27 May 2005 letter, the RTA's intention with regard to the upgrading of Pitt Town Road (and the associated cost estimates) provided to DoP has always been to include the provision of clear zones, construction and sealing of the road shoulders and resurfacing of the existing road pavement from Windsor Road to the main access to the development site i.e. the Cattai Road/Mitchell Road intersection.

We note your assertion that the draft PA did not adequately indicate that the upgrading of Pitt Town Road included resurfacing of the existing road pavement. Given your concerns about the description of the scope of works in the draft PA, the RTA is prepared to omit the requirement to resurface the existing pavement on the condition that the shoulder upgrading and improvements to the five intersections (see below) are carried out in accordance with all the RTA's relevant design guidelines and are to include the following scope:

- Shoulder construction – Continuous 2m wide sealed shoulders from Windsor Road to the end of Pitt Town Road with pavement consisting of 400mm of road base (DGB20), 10mm prime seal and 14mm rubberised spray seal. Alternatively a 360mm road base (DGB20) and 40mm AC14 wearing course could be provided in place of the spray seal. The join between the shoulder works and existing pavement is to be formed by either excavation with a rotor mill or saw cut. Appropriate drainage (subsoil and surface) is to be provided in accordance with RTA requirements. Services and other road safety hazards, including but not limited to power poles, trees etc within the shoulders and clear zone (determined as per the RTA's

design guidelines) are to be relocated. Only if road safety hazards cannot be relocated due to the proximity of property boundaries, can they then be treated by protection (eg by use of guard rail).

- Intersection Improvement works - The following five intersections with Pitt Town Road -- Charles Street, Wolessley Road, Pitt Town Bottoms Road/Saunders Road, Schofield Road, Glebe Road are to be upgraded with localised widening to provide appropriate left turn and right turn bays. The first four intersections are to be upgraded in accordance with the RTA's AUR and AUL intersection treatments with the Pitt Town Road/Wolessley Road being upgraded in accordance with the RTA's CHR intersection treatment.
- The existing lane widths are to be maintained and the existing line marking removed and the intersections resurfaced in asphalt and re-line marked to cater for turning movements. Note that upgrading of the Cattai Road/Mitchell Road and the intersection off Bathurst Street and Eldon Street are to be carried out in accordance with the TMAP/Council's Section 94 Plan for the Development Site and are not included in the five intersections specified in the RTA's correspondence on the developer for regional road improvement.

Without the resurfacing of the remainder of the existing pavement, it is expected that the cost of the works would be substantially less than the value of the works indicated in the current draft PA and the RTA will advise the DoP and the Minister for Planning accordingly.

Design of the improvement works are to be submitted to the RTA for its review and approval as part of the preparation of the Works Authorisation Deed (WAD) - as specified in the draft PA.

As Pitt Town Road is a classified state road, the RTA has the discretion of authorising other parties to undertake works on that road. If the RTA is not satisfied that the above works will be undertaken to the appropriate standard, the RTA will require a cash contribution of \$31,100 per lot for the works to be undertaken by the RTA.

Please indicate your intentions with respect to the scope of works by way of letter addressed to the undersigned.

With regard to the issue of security, the RTA cannot accept your proposal for a zero level of security for the works. However, given that the PA will be registered on the title of the developable land, the RTA can reduce the required level of security in line with its general construction contract (GC21). The RTA would therefore require, in line with the standard requirements of GC21, for each WAD signed, both pre-completion and post-completion unconditional undertakings from a financial institution (approved by the RTA and on terms outlined in the WAD). The amounts for the pre and post-completion security are 5% and 1% respectively, of the estimated cost of the works. The pre-completion security would be released soon after the completion of the works, whilst the post-completion security would be held until the defects rectification period is finished. These amounts are industry standard and are required to ensure adequate performance of the contract.

Should you wish to discuss this issue further, please contact Mark Ozlinga on 9218 6618.

Yours sincerely

BJW

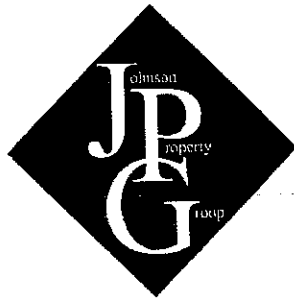
5/4/06

BJ Watters

A/Director, Road Network Infrastructure

Cc Department of Planning, Mr Andrew Watson

Annexure 3 - Second Letter (clause 4 and Schedule 3)



Wednesday, April 5, 2006

The Director General
Roads and Traffic Authority
Level 6, Centennial Plaza
260 Elizabeth Street
Surry Hills NSW 2010

Attention: Mr. Brian Watters

Dear Sir,

RE: Upgrading of Pitt Town Road associated with the Pitt Town Development.

We thank you for your letter 5 April 2006 regarding the above matter.

We wish to confirm that the scope of works, as outlined in your letter of 5 April 2006 is satisfactory.

Further, we have reviewed the Authorities requirement for pre and post-completion security and confirm that we are able to accept requirements with respect to its general construction contract (GC21).

It is our intention to now enter into a Planning Agreement with the Minister for Planning and subsequently a Works Authorisation Deed with the Roads and Traffic Authority, on terms as we had previously agreed to in draft Planning Agreement.

We look forward to your earliest attentions in this regard.

Yours Sincerely,
Johnson Property Group

Keith Johnson
Managing Director

cc Andrew Watson - Department of Planning

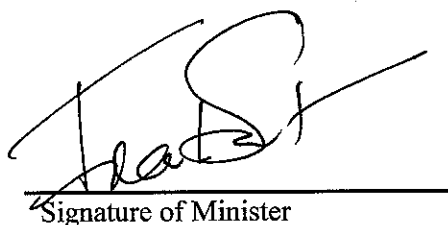
Signing page

DATED: 26/7/06

SIGNED SEALED AND)
DELIVERED by The MINISTER)
FOR PLANNING in the presence
of:


Signature of Witness

GAIL CONNOLLY
Name of Witness
[BLOCK LETTERS]

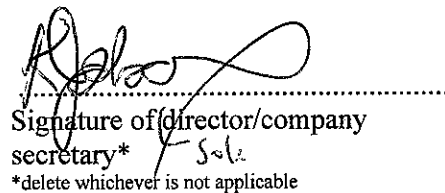

Signature of Minister

FRANK SARTOR
Name
[BLOCK LETTERS]

EXECUTED by THE JOHNSON)
PROPERTY GROUP PTY LTD in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cwlth) by)
authority of its directors:)

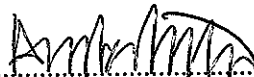

Signature of ~~director~~ witness

ANDREW MUTTON
Name of ~~director~~ (block letters)
witness

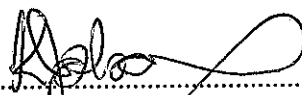

Signature of director/company
secretary* ~~So~~
*delete whichever is not applicable

KEITH JOHNSON
Name of director/company secretary*
(block letters) ~~So~~
*delete whichever is not applicable

**EXECUTED by BONA VISTA
PROPERTIES PTY LTD** in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of ~~director~~ witness

ANDREW MINTON
Name of ~~director~~ (block letters)
witness


Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of (director/company secretary*
(block letters) sole
*delete whichever is not applicable

**EXECUTED by FERNADELL
PROPERTIES PTY LTD** in
accordance with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of ~~director~~ witness

ANDREW MINTON
Name of ~~director~~ (block letters)
witness

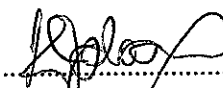

Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of (director/company secretary*
(block letters) sole
*delete whichever is not applicable

**EXECUTED by VERMONT
QUAYS PTY LTD** in accordance
with section 127(1) of the
Corporations Act 2001 (Cwlth) by
authority of its directors:


Signature of ~~director~~ witness

ANDREW MINTON
Name of ~~director~~ (block letters)
witness


Signature of director/company
secretary*
*delete whichever is not applicable

KEITH JOHNSON
Name of (director/company secretary*
(block letters) sole
*delete whichever is not applicable