

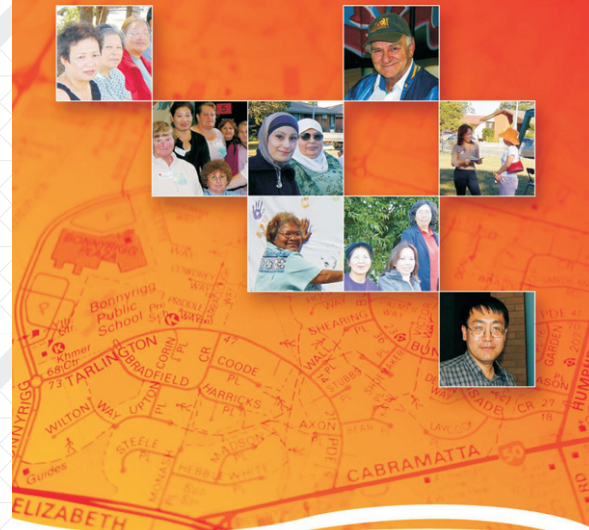
Bonnyrigg 'Living Communities'  
Public Private Partnership project

# Summary of contracts





Bonnyrigg  
'Living Communities'  
Public Private  
Partnership project



# Summary of contracts

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# 1 Introduction

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This report summarises the main contracts, from a public sector perspective, for the Bonnyrigg “Living Communities” project, which is being delivered as a “public private partnership” (PPP).

It has been prepared by the New South Wales Land and Housing Corporation in accordance with the public disclosure provisions of the NSW Government’s November 2001 and December 2006 *Working with Government Guidelines for Privately Financed Projects*, apart from the absence, in the latter case, of a summary of a final pre-contractual “public interest evaluation”.\*

In line with both versions of the *Working with Government Guidelines*, this report:

- Focuses on the project contracts to which the NSW Land and Housing Corporation or the NSW Minister for Housing are parties or which otherwise have a potentially substantive impact on public sector benefits or risks. Other contracts solely between private sector organisations are referred to only to the extent necessary to explain the public sector’s exposure.
- Does not disclose the private sector parties’ cost structures, profit margins, intellectual property or other matters which are expressly confidential under the contracts and the *Guidelines*, on the basis that their disclosure might place the private sector parties at a substantial commercial disadvantage with their competitors.

**This report should not be relied upon for legal advice and is not intended for use as a substitute for the contracts.**

It is based on the contracts as at 20 April 2007. Subsequent amendments of or additions to these contracts, if any, are not reflected in this report.

The contracts themselves are available for inspection on the website of the NSW Department of Housing.

## 1.1 The project

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The Bonnyrigg “Living Communities” project will revitalise an 81-hectare housing estate within the western Sydney suburb of Bonnyrigg, generally bounded by Cabramatta Road, Bonnyrigg Avenue, Edensor Road and Elizabeth Drive.

At present there are some 930 properties on this estate, housing about 3,300 people. 833 of these properties are “social housing” (public, community or aboriginal housing) properties, 822 of them owned by the NSW Land and Housing Corporation (the Department of Housing) and eleven by the NSW Aboriginal Housing Office. The other properties on the estate are privately owned.

It is expected that over the next 14 years the estate will be progressively redeveloped, in 18 stages, with existing “social housing” dwellings being either upgraded or demolished and replaced by 699 new public housing dwellings and more than 1,600 privately owned dwellings. A further 134 public housing dwellings will be built or purchased in nearby areas, to ensure the total stock of “social housing” is maintained.

The project has been developed on the basis of extensive community consultations by the Department of Housing and Fairfield City Council since 2004, and ongoing community consultations will be an important part of implementation of the project.

The “back-to-front” Radburn layout of much of the existing estate, with poor-quality open spaces and dwellings that are near the end of their economic lives and often poorly suited to current tenants’ needs, will be replaced by high-quality, well designed modern housing and redesigned streets, bicycle and pedestrian pathways and parks.

The project also aims to improve the maintenance of public housing and community facilities and the services provided to tenants and the local community, while preserving and supporting the diversity, engagement and social cohesion of the area’s community.

It follows the Department of Housing’s approach to community renewal by simultaneously addressing three interrelated aspects—the built environment, the strength of the community itself and the services provided to the community—with equal commitment, with the overall objective of achieving comprehensive, sustainable and integrated social and physical renewal of the Bonnyrigg housing estate.

In developing the project, the Department of Housing’s philosophy has been that the project:

*“... is not just about the housing, or the parks, or the availability of services, but all those things that make for a sustainable and vibrant community. The project is also about the process of community renewal and how change is managed for the overall benefit of the community, with particular regard to the existing residents.”*

More specifically, the project involves:

- Private sector financing of the redevelopment of the estate, the acquisition and development of associated additional dwellings in nearby areas and the provision of services to tenants in existing, refurbished and new dwellings
- Private sector demolition or refurbishment of the existing “social housing” dwellings and other facilities on the estate, design and construction of the new facilities on the estate

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\* Under the December 2006 *Working with Government Guidelines* a formal “public interest evaluation” considered by the Government at the time it originally decides whether a project will be privately financed must subsequently be updated at specified stages of the procurement processes, and the final version, prepared immediately before the project’s contracts are finalised and executed, must be summarised in a publicly released summary of the contracts. However, the Bonnyrigg “Living Communities” PPP project was developed and its contracts were negotiated and finalised under the previous (November 2001) *Working with Government Guidelines for Privately Financed Projects*, which specified a different structure for the initial “public interest evaluation”—undertaken in this case in December 2004—and did not require subsequent formal updates of this initial evaluation. The project contracts to which the NSW Land and Housing Corporation is a party were executed by the Land and Housing Corporation on 23 December 2006, only 12 days after the release of the December 2006 version of the *Working with Government Guidelines*.

and purchase and refurbishment (or design and construction) of the additional dwellings in nearby areas

- As this redevelopment proceeds, private sector marketing and sale of the new and refurbished dwellings that are to be privately owned, with the NSW Land and Housing Corporation sharing agreed proportions of the income from these private dwelling sales, and
- Until the end of the project on 28 February 2037, private sector maintenance of the existing, new and refurbished public housing and general community facilities and private sector delivery of tenancy, relocation, communication, consultation, community renewal and other services to public housing tenants and other community members

in return for specified (and largely performance-based) monthly payments by the Land and Housing Corporation to the private sector parties during the period these services are being provided.

The private sector participants in the project include:

- Westpac and Becton Property Group as equity investors in the project (through a series of special-purpose entities described later in this report)
- Westpac as the original debt financier and lead debt finance arranger and agent for the project
- A subsidiary of the Becton Property Group, as the principal designer and builder for the project's dwellings and facilities and as the property developer for its privately owned dwellings
- Spotless, as the principal provider of the project's facilities management, communications, consultation, community renewal and tenancy services, and
- St George Community Housing Co-operative, as Spotless' subcontractor for the provision of tenancy management, support and rehousing services to the project's public

housing tenants and also as the landlord for the project's public housing dwellings.

The NSW Department of Housing has estimated that the present value of the cost of the project's facilities and services over the next 30 years, of around \$368 million, will be approximately 6.3% lower than it would have been under conventional public sector delivery (*Table 1*).

## 1.2 Processes for selecting and contracting with the private sector parties

### 1.2.1 Shortlisting of proponents

On 28 January 2005 the NSW Department of Housing issued a *Request for Expressions of Interest* in the financing, planning, community consultation, design, refurbishment, construction, property acquisition, maintenance, facilities management and private property development aspects of the project, with the possible addition of tenancy management services to the services to be provided.

*Responses* to this *Request for Expressions of Interest* were received, by the closing date of 30 March 2005, from five consortia.

These *Responses* were evaluated by an *Eol* Assessment Committee with members from the Department of Housing and NSW Treasury and three independent members, assisted by external advice from Ernst and Young (commercial and financial issues), Blake Dawson Waldron (legal issues) and Fairfield City Council (planning and community issues).

The *Eol* Assessment Committee's activities were overseen by an *Eol* Review Committee, with members from the Department of Housing and NSW Treasury and one independent member, a Project Steering Group, with members from the Department of Housing, NSW Treasury, the NSW Department of Infrastructure Planning and Natural Resources and the NSW Cabinet Office,

**Table 1. "Value for money" comparison between public sector and private sector project delivery.**

Delivery method	"Public sector comparator" (PSC) (hypothetical, risk-adjusted estimate of the cost of the most efficient likely method of public sector delivery)			Private sector delivery
	"PSC best case" (95% probability that PSC cost would be higher than this)	"PSC expected value" (most likely PSC cost estimate)	"PSC worst case" (95% probability that PSC cost would be lower than this)	
Estimated present value of the financial cost of the project (over 30 years) to the NSW Land and Housing Corporation	\$370.7 m	\$392.8 m	\$423.9 m	\$367.9 m
<b>Estimated saving achieved through private sector delivery</b>	<b>0.7%</b>	<b>6.3%</b>	<b>13.2%</b>	

The "expected" cost estimate for the "public sector comparator" of \$392.8 million (@ 5.58%) comprises non-risk adjusted cost estimates of \$208.1 million for development costs and \$122.1 million for operational costs, a risk adjustment and estimated development rights payment together totalling \$26.6 million and a competitive neutrality adjustment of \$36.0 million.

The cost estimate for private sector delivery of \$367.9 million includes a notional upward adjustment reflecting the Department of Housing's estimates of the value of risks which were not transferred to the private sector parties, so as to permit a "like for like" comparison with the cost estimates for the "public sector comparator". Its present value has been estimated using an evaluation discount rate that incorporates a systemic risk premium of 1.52%, in accordance with NSW Treasury policies on the assessment of proposals.

Adjustments have been made to both the "public sector comparator" and private sector cost estimates to recognise ancillary NSW Land and Housing Corporation costs of \$15 million for items that are not included in the project itself but are nonetheless required for the delivery of the project.



and by independent probity auditors from Deloitte Touche Tohmatsu.

The criteria for evaluating the five *Responses* fell into eight categories: the proponents' general understanding of the project and relevant housing issues (5% weighting), their experience, capabilities and approaches in procuring, managing and delivering major capital projects and long-term service contracts (10% weighting), their experience, capabilities and approaches in working with communities and tenants (25%), their experience, capabilities and approaches in bidding for and delivering "public private partnerships" or similar projects with appropriate risk transfers and the provision of long-term value for money (20%), their property development experience, capabilities and approaches (15%), their experience, capabilities and approaches in the planning, design, refurbishment and construction of land and housing projects on occupied sites (10%), their housing facilities management experience, capabilities and approaches (10%) and the compliance of their *Responses* with the requirements of the *Request for Expressions of Interest* (a mandatory criterion, 5%).

On 12 August 2005 the NSW Minister for Housing announced that three of the respondents had been shortlisted and would be invited to submit detailed proposals:

- A "Bonnyrigg Partnerships" consortium (Westpac, Becton, Spotless and St George Community Housing Co-operative)
- A "Sydney West Housing Partnerships" consortium (Macquarie Bank, Urban Pacific, Transfield Services and Hume Community Housing Association), and
- A "Lend Lease and Commonwealth Bank" consortium (Commonwealth Bank, Lend Lease, United and Cumberland Community Housing Association).

### 1.2.2 Selection of the successful proponent

On 19 September 2005 the NSW Land and Housing Corporation issued a *Request for Detailed Proposals* to the three shortlisted proponents.

The "Lend Lease and Commonwealth Bank" consortium withdrew from the process in December 2005, but the other two proponents submitted *Detailed Proposals* by the closing date (as extended by the Land and Housing Corporation) of 15 March 2006.

These *Detailed Proposals* were evaluated by an Evaluation Panel with members from the Department of Housing, NSW Treasury and the NSW Department of Planning and three independent members, assisted by:

- Eleven advisory committees on consultation and communication issues, community renewal issues, resident impact issues, rehousing issues, tenancy management, tenancy support, urban and housing design issues, development and statutory planning issues, facilities management issues, legal issues and commercial and financial issues, and
- Advice from Ernst and Young (financial issues), Blake Dawson Waldron (legal issues), BBC Consulting Planners (planning issues), Milliken Berson Madden (technical issues), Fairfield City Council and the Department of Planning (planning and community issues), Resitech and Annand

Alcock Urban Design (urban design issues) and Shelter NSW (rehousing and tenancy management issues).

The Evaluation Panel's activities were overseen by a Review Committee, with members from the Department of Housing and NSW Treasury and one independent member, the Project Steering Group, with members from the Department of Housing, NSW Treasury, the NSW Department of Planning and the NSW Cabinet Office, and independent probity auditors from Deloitte Touche Tohmatsu.

The criteria for evaluating the *Detailed Proposals* were grouped into seven categories: communication and consultation (10% weighting), tenant-related services (26.7% weighting), facilities management services (10%), development planning (26.7%), commercial and financial (26.7%), management and integration (mandatory criteria, evaluated on an unweighted pass/fail basis) and compliance with the requirements of the *Request for Detailed Proposals* (also evaluated on an unweighted pass/fail basis).

On 5 July 2006 the Land and Housing Corporation advised the two remaining proponents that it wished to undertake "pre-selection" negotiations with them to help resolve specified issues, after which they would be invited to submit *Revised Detailed Proposals*.

These negotiations commenced on 11 July 2006 and concluded on 31 August 2006. They were overseen by independent probity auditors from Deloitte Touche Tohmatsu.

Both proponents then submitted *Revised Detailed Proposals* on 11 September 2006.

The evaluation and oversight processes for the assessment of these *Revised Detailed Proposals* were essentially the same as those previously followed in the assessment of the original *Detailed Proposals*, although on this occasion only ten advisory committees were involved. The evaluation criteria and their weightings were unchanged.

On 18 October 2006 the NSW Premier, Mr Morris Iemma, announced that the Bonnyrigg Partnerships consortium had been selected as the preferred proponent for the project.

### 1.2.3 Execution of the contracts

Following final negotiations, all but four of the project contracts to which the NSW Land and Housing Corporation is a party were executed by that corporation on 23 December 2006. The remaining contracts to which the Land and Housing Corporation is a party—a deed of guarantee by the State of NSW under the Public Authorities (Financial Arrangements) Act (NSW), a deed appointing an independent certifier, a tripartite deed with a security trustee appointed by the project's financiers and a collateral warranty deed with one of the private sector contractors—were executed by the corporation on 20 April 2007.

The project's principal private sector parties executed these contracts progressively between 23 December 2006 and 20 April 2007, along with other project contracts solely between private sector parties.

The principal provisions of most of the project's contracts took effect only upon "financial close", on 20 April 2007 (see section 2.3 of this report).

## 1.3 The structure of this report

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Section 2 of this report summarises the contractual structure of the Bonnyrigg “Living Communities” PPP project and explains the inter-relationships of the various agreements between the public and private sector parties and the various roles of some of the private sector parties.

Sections 3, 4 and 5 then summarise the main features of the agreements affecting public sector rights and liabilities and the sharing of the project’s benefits and risks.

Section 3 focuses on the parties’ primary contractual obligations, while section 4 summarises the NSW Land and Housing Corporation’s securities for the private sector parties’ performance of their obligations and section 5 summarises the NSW Government’s guarantee of the Land and Housing Corporation’s own performance under the contracts.

The report concludes with a reference glossary of the contracts and parties in section 6 and a detailed index in section 7.

# 2 Overview of the project's contracts

## 2.1 The participants in the project

### 2.1.1 Public sector parties to the contracts

The public sector parties to the Bonnyrigg "Living Communities" PPP project contracts (*Figure 1*) are:

- The **New South Wales Land and Housing Corporation** (ABN 45 754 121 940), a statutory corporation established by section 6 of the Housing Act (NSW) and acting in the name of the NSW Department of Housing, and
- The **State of New South Wales**, which has guaranteed the Land and Housing Corporation's performance of its obligations under the project's contracts (see section 5 of this report).

The NSW Land and Housing Corporation is referred to in the project's contracts as "the Corporation", but for easier identification it is referred to in the rest of this report simply as "**Housing**".

The bases of Housing's powers to enter into the project's contracts are:

- Its statutory functions and powers under the Housing Act, including, in particular, its functions and powers to develop and redevelop land for housing, to manage, develop, redevelop and lease its land and to enter into contracts for the construction of buildings on its land and the sale and leasing of its land, taking account of the housing and other objectives of the Housing Act
- More specifically, its powers under the Housing Act to enter into ventures with others for the acquisition, development and management of land for residential, business, public and other purposes, the provision of housing services and/or implementation of the objectives of the Housing Act, subject to the approval of the Minister for Housing (which was granted, under section 60 of the Housing Act, on 19 December 2006) and the NSW Treasurer (which was granted, under section 22L of the Public Authorities (Financial Arrangements) Act (NSW), on 20 December 2006), and
- An approval granted by the NSW Treasurer, on 20 December 2006, for Housing to enter into the project's financing arrangements, in accordance with section 20(1) of the Public Authorities (Financial Arrangements) Act.

### 2.1.2 Private sector parties to the contracts

The private sector parties which have contracted or will contract with Housing and/or the Minister for Housing (*Figure 1*) are:

- **Bonnyrigg Partnerships Nominee Pty Limited** (ACN 123 052 362, ABN 66 123 052 362) ("the Project Company"), a special purpose company which was established for this project and which may not conduct any other business.

In some cases the Project Company has contracted with Housing in its own capacity, while in others it has contracted with Housing and/or the Minister for Housing in its capacity

as the agent and nominee of other private sector parties (the "Partners" and/or "the Development Contractor", as described later in this report).

The Project Company is 50% owned by **WEST BP Pty Limited** (ACN 122, 967 186, ABN 14 122 967 186) ("the **Westpac BP Trustee**"), as the trustee of the WEST BP Trust (ABN 98 238 292 874), which was established by a WEST BP Trust Deed executed by the Westpac BP Trustee on 15 December 2006, and 50% owned by **Becton Bonnyrigg Equity Pty Limited** (ACN 075 580 406) ("the **Becton BP Trustee**"), as the trustee of the Becton Bonnyrigg Equity Trust (ABN 13 204 257 469), which was established by a Becton Bonnyrigg Equity Trust Deed executed by the Becton BP Trustee and Becton Bonnyrigg Holdings Pty Limited on 12 December 2006.

In turn,

- The Westpac BP Trustee and all of the units in the WEST BP Trust are wholly owned by WEST BP Holdco Pty Limited (ACN 122 966 787, ABN 96 122 966 787)
- WEST BP Holdco is wholly owned by Westpac Investment Vehicle No 2 Pty Limited (ACN 123 080 919, ABN 99 123 080 919), which is ultimately wholly owned by Westpac Banking Corporation (ACN 007 457 141, ABN 33 007 457 141)
- The Becton BP Trustee is wholly owned by Becton Construction Services Pty Limited (ACN 054 510 486), as the trustee of the Becton Construction Services Trust, which was established by a Becton Construction Services Trust Deed executed by Becton Construction Services on 10 January 1992
- All of the units in the Becton Bonnyrigg Equity Trust are owned by Becton Bonnyrigg Holdings Pty Limited (ACN 122 649 736, ABN 32 122 649 736), which is also wholly owned by Becton Construction Services as the trustee of the Becton Construction Services Trust, and
- All of the shares in Becton Construction Services and all of the units in the Becton Construction Services Trust are ultimately owned by Becton Property Group Limited (ACN 095 067 771, ABN 64 095 067 771), a public company listed on the Australian Stock Exchange.

- The **Westpac BP Trustee**, as the trustee of the WEST BP Trust, and the **Becton BP Trustee**, as the trustee of the Becton Bonnyrigg Equity Trust (together, "the **Partners**").

The Partners have entered into an unincorporated joint venture known as "Bonnyrigg Partnerships" (ABN 57 420 484 511) ("the **Project Partnership**"), and have appointed the Project Company as their nominee and agent to manage and administer this joint venture, under a **Bonnyrigg Partnerships Joint Venture Agreement**, originally executed on 20 December 2006 and subsequently amended and restated on 23 February 2007, between the Westpac BP

Trustee, the Becton BP Trustee, the Project Company, WEST BP Holdco Pty Limited, Westpac Investment Vehicle No 2 Pty Limited, Becton Bonnyrigg Holdings Pty Limited, Becton Construction Services Pty Limited and Becton Property Group Limited (“the **Partnership Agreement**”).

Like the Project Company, the Partners are special purpose companies established for this project and may not conduct any other business.

In addition to contracting directly with the Partners in the project’s main contract (the Bonnyrigg Living Communities Project Deed, referred to in this report as “the Project Deed”), Housing has, both in the Project Deed and in all the other project contracts to which Housing is a party, contracted with the Project Company as the nominee and agent of the Partners.

Accordingly, in all of these contracts, and in this report, unless the context requires otherwise a reference to “the Project Company” should be read as a reference not only to the Project Company itself—*albeit* only for a limited range of provisions in the case of the Project Deed and several of the contracts solely between private sector parties, and not at all in the case of the Bonnyrigg Living Communities Project Deed of Guarantee (“the PAFA Act Guarantee”) described in sections 2.2 and 5 and several contracts solely between private sector parties—but also, both jointly and individually, to the Partners and the Project Partnership, *except* in the case of some specific Project Deed provisions concerned with the development and sale of privately owned properties, discussed below.

**Westpac Banking Corporation** (ACN 007 457 141, ABN 33 007 457 141) (“**Westpac**”) has promised Housing that Westpac, its wholly owned subsidiaries and the funds, trusts and investment schemes they manage will retain their 50% ownership of the Project Company and their initial equity and subordinated loan commitments to the Project Partnership, as specified in the Partnership Agreement, until the completion of construction of the second of the 18 stages of the project.

- **Bonnyrigg Development Pty Limited** (ACN 122 647 483, ABN 75 122 647 483) (“the **Development Contractor**”), which is obliged to the Project Company to:

- ♦ Design, construct, market and sell the project’s privately owned properties, thereby permitting the Project Company (as the agent of the Partners and also as the agent of the Development Contractor) to meet its private property development obligations to Housing, and
- ♦ Design and construct all other works for the project, including the project’s demolition, refurbishment and commissioning works

and has entered into associated side contracts and an associated security agreement with Housing.

The Development Contractor is another special purpose company established for this project and may not conduct any other business. It is wholly owned by Bonnyrigg Development Holdings Pty Limited (ACN 122 938 890), which is ultimately owned by Becton Property Group Limited.

In addition to contracting directly with the Development Contractor in some of the project’s contracts, Housing has contracted with the Project Company, for the purposes of specified private property development provisions of the Project Deed, not only in its role as the nominee and agent of the Partners but also in its role as the nominee and agent of the Development Contractor.

Accordingly, unless the context requires otherwise, and notwithstanding the Project Company’s simultaneous role as an agent of the Partners, for the purposes of these private property development provisions of the Project Deed and their description in this report, but *only* for these purposes, a reference to “the Project Company” should be read as a reference to the Development Contractor.

- **Becton Property Group Limited** (ACN 095 067 771, ABN 64 095 067 771) (“the **Development Guarantor**”), which has provided a parent company guarantee to the Project Company of the Development Contractor’s performance of its obligations to the Project Company and has entered into an associated side contract with Housing.
- Any “**Construction Contractors**” appointed by the Development Contractor, under “Construction Contracts” worth more than \$2 million (indexed in line with changes in the Consumer Price Index since the March quarter of 2007), to design and/or construct any of the Development Contractor’s residential building works, major site works or in-ground infrastructure.

Each of these Construction Contractors, and any guarantors of their obligations to the Development Contractor under their Construction Contracts (“the **Construction Contractors’ Guarantors**”), will need to execute a specified side contract with Housing, principally concerning the quality of its works and Housing’s rights to “step in” should the Development Contractor breach the relevant Construction Contract.

- **Donald Cant Watts Corke (NSW) Pty Limited** (ACN 097 689 131, ABN 17 097 689 131) (“the **Independent Certifier**”), which has obligations to Housing and the Project Company to review development approval applications and undertake specified inspections and certifications during the completion of construction and commissioning of each stage of the project.
- **Spotless P&F Pty Limited** (ACN 072 293 880, ABN 83 072 293 880) (“the **Facilities Management Contractor**”, also referred to in many of the project’s contracts as “the Services Contractor”), which is obliged to provide specified facilities management, tenancy, community renewal, communication, consultation, management and integration services to the Project Company, thereby enabling the Project Company to meet its services obligations to Housing, and has entered into associated side contracts with Housing.

The Facilities Management Contractor is wholly owned by Spotless Services Australia Pty Limited (ACN 005 309 320, ABN 19 005 309 320), which is ultimately wholly owned by Spotless Group Limited (ACN 004 376 514, ABN 77 004 376 514), a public company listed on the Australian Stock Exchange.

- **Spotless Group Limited** (ACN 004 376 514, ABN 77 004 376 514) (“the **Facilities Management Guarantor**”), which



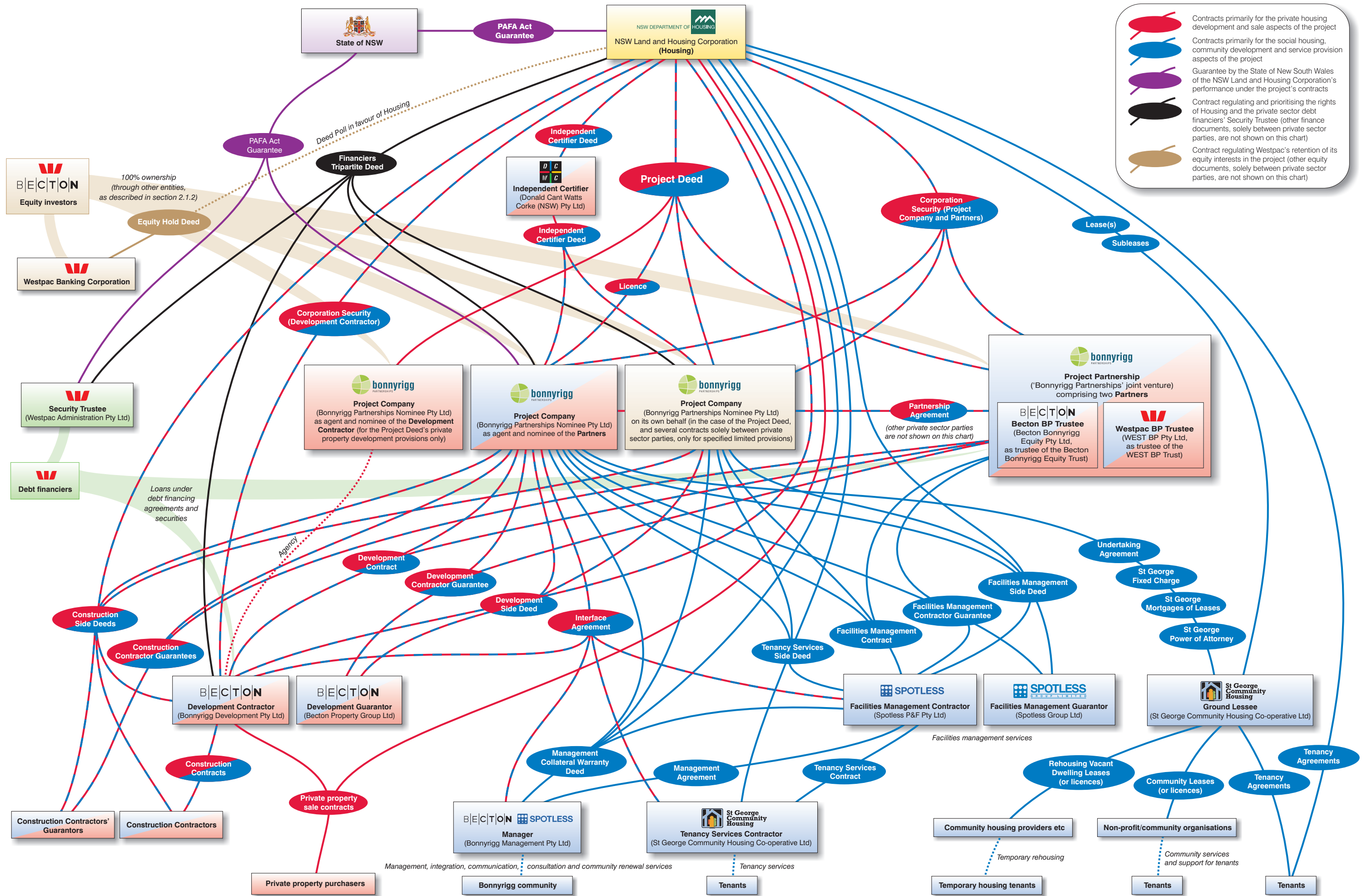


Figure 1. Overview of the structure of the Bonnyrigg "Living Communities" PPP project's contracts from a public sector perspective., focussing on the contracts which currently have (or in some cases potentially might have) public sector parties or which otherwise most directly affect public sector benefits and risks.

has provided a parent company guarantee of the Facilities Management Contractor's performance of its obligations to the Project Company and has entered into an associated side contract with Housing.

- **St George Community Housing Co-operative Limited** (ABN 32 565 549 842), in two roles:
  - ♦ As the Facilities Management Contractor's subcontractor for the provision of tenancy services to the project's public housing tenants and, in this role, as a party to an associated side contract with Housing ("the **Tenancy Services Contractor**"), and
  - ♦ As the lessee of the project's public housing properties, under leases granted to it by Housing, and, in turn, as the landlord of tenancy agreements with the project's public housing tenants ("the **Ground Lessee**").

The Tenancy Services Contractor and Ground Lessee is a non-profit community housing co-operative incorporated under the Co-operatives Act (NSW) and registered with the NSW Department of Housing's Office of Community Housing.

- **Bonnyrigg Management Pty Limited** (ACN 123 052 639) ("the **Manager**"), which:
  - ♦ Is the Facilities Management Contractor's subcontractor for the provision of the project's community renewal, communication, consultation, management and integration services
  - ♦ Is also providing general facilitation, co-ordination, management, communication and "external presentation" services for the Project Company, the Development Contractor, the Facilities Management Contractor and the Tenancy Services Contractor, and
  - ♦ Has executed an associated management collateral warranty deed in favour of Housing.

The Manager is 50% owned by the Becton BP Trustee, as the trustee of the Becton Bonnyrigg Equity Trust, and 50% owned by the Facilities Management Contractor.

- **Westpac Administration Pty Limited** (ACN 008 617 203, ABN 67 008 617 203) ("the **Security Trustee**"), as the security trustee for the project's debt financiers under a Security Trust and Intercreditor Deed executed by Westpac Banking Corporation, the Project Company, the Partners, WEST BP Holdco Pty Limited, the Development Contractor, Bonnyrigg Development Holdings Pty Limited and the Security Trustee on 1 March 2007.

The Security Trustee is wholly owned by Westpac Banking Corporation.

## 2.2 Contractual structure

The contractual structure of the project, inasmuch as the contracts affect or potentially affect public sector rights and obligations, is summarised in *Figure 1*.

The principal contract is the **Bonnyrigg Living Communities Project Deed** ("the **Project Deed**"), dated 12 February 2007, between Housing, the Project Company and the Partners.

The Project Deed sets out the terms under which:

- (a) The Project Company—as the agent and nominee of the Partners and, in the case of the dwellings that are to be privately owned, as the agent and nominee of the Development Contractor—must **finance, refurbish or demolish, design and construct the project's dwellings and other facilities on the Bonnyrigg housing estate and finance, acquire, transfer to Housing and refurbish or demolish, design and construct the project's additional dwellings in nearby areas off the estate.**

The Project Company will satisfy these obligations to Housing through:

- ♦ Equity investments by Westpac and Becton Property Group, as described in section 2.1.2 and as set out in a series of equity agreements, including the **Partnership Agreement** between the Westpac BP Trustee, the Becton BP Trustee, the Project Company, WEST BP Holdco Pty Limited, Westpac Investment Vehicle No 2 Pty Limited, Becton Bonnyrigg Holdings Pty Limited, Becton Construction Services Pty Limited and Becton Property Group Limited, as amended and restated on 23 February 2007.

In line with the *Working with Government Guidelines for Privately Financed Projects* and the express confidentiality provisions of the project's contracts (see section 3.5.6), the details of the project's equity investments and underwritings are generally beyond the scope of this report.

However, as already indicated,

- The Partnership Agreement has expressly appointed the Project Company as the nominee and agent of the Partners to manage and administer the Project Partnership and make undertakings in the project's contracts on their behalf, and
- Westpac has promised Housing, in a **Bonnyrigg Living Communities Project Equity Hold Deed Poll** ("the **Equity Hold Deed**") dated 23 February 2007, that Westpac, its wholly owned subsidiaries and the funds, trusts and investment schemes they manage will retain their 50% ownership of the Project Company and their initial equity and subordinated loan commitments to the Project Partnership, as specified in the Partnership Agreement, until the completion of construction of the second of the 18 stages of the project.
- ♦ Loans from Westpac, and potentially from other debt financiers in the future, to the Partners and to one of the Project Company's subcontractors, the Development Contractor, supported by arrangements for Housing and the Project Company to share the risks associated with movements in interest rates, as described later in this report (see section 3.4.9.1).

In line with the *Working with Government Guidelines for Privately Financed Projects* and the express confidentiality provisions of the project's contracts (see section 3.5.6), the details of the project's debt financing arrangements, other than the provisions for



the sharing of interest rate risks, are generally beyond the scope of this report.

- ◆ The performance by the Development Contractor of its design and construction obligations to the Project Company and the Partners under the **Bonnyrigg Living Communities Development Contract** between the Project Company (in its role as the agent and nominee of the Partners), the Partners and the Development Contractor, dated 12 February 2007 (“the **Development Contract**”)
- ◆ The performance by the project’s Construction Contractors of their design and construction obligations to the Development Contractor under their **Construction Contracts** with the Development Contractor, and
- ◆ The performance by the Project Company, the Development Contractor, the Facilities Management Contractor, the Manager and the Tenancy Services Contractor of their obligations to each other under the **Bonnyrigg Living Communities Interface Agreement** between the Project Company (in its role as the agent and nominee of the Partners), the Development Contractor, the Facilities Management Contractor, the Manager and the Tenancy Services Contractor, originally executed on 12 February 2007 and subsequently amended and restated on 27 February 2007 (“the **Interface Agreement**”), concerning the coordination of the construction and operational and service-provision aspects of the project.

The Development Contractor’s performance of its obligations to the Project Company and the Partners under the Development Contract has been guaranteed to the Project Company and the Partners by the Development Guarantor in a **Bonnyrigg Living Communities Parent Company Guarantee** between the Development Guarantor, the Project Company (in its role as the agent and nominee of the Partners) and the Partners, dated 12 February 2007 (“the **Development Contractor Guarantee**”).

Analogous guarantees of each Construction Contractor’s obligations to the Development Contractor will be provided to the Project Company and the Partners by the Construction Contractors’ Guarantors under “**Construction Contractor Guarantees**”.

The Development Contractor and the Development Guarantor have promised Housing, in a **Development Side Deed** between Housing, the Project Company (in its own capacity and in its role as the agent and nominee of the Partners), the Development Contractor and the Development Guarantor, dated 12 February 2007, that the Development Contractor will satisfy a series of obligations concerning, among other things, its compliance with the Development Contract, the quality of its works and services, materials and equipment, the provision of information to Housing and the notification of defaults to Housing, and that the Development Guarantor will, upon request, extend to Housing any guarantee of the Development Contractor’s performance which it has

provided to the Project Company, such as its guarantee under the Development Contractor Guarantee.

Analogous commitments to Housing must be made under **Construction Side Deeds** which the Project Company, the Development Contractor, each of the Development Contractor’s Construction Contractors and their Construction Contractor Guarantors must execute with Housing before each Construction Contractor may be engaged on any project works.

Housing has granted a **Licence** giving the Project Company—and, through it, the Development Contractor, the Construction Contractors, any other relevant Project Company subcontractors and their officers, employees, agents, advisers and other authorised persons—non-exclusive access, at times set out in the Project Deed, to project sites owned by Housing and defined in the Project Deed.

The **Bonnyrigg Living Communities Independent Certifier Deed** between Housing, the Project Company (in its own capacity and as the agent and nominee of the Partners) and the Independent Certifier, dated 20 April 2007 (“the **Independent Certifier Deed**”), sets out the terms for the Independent Certifier’s appointment by Housing and the Project Company and specifies its development approval obligations and its inspection and certification obligations during the project’s construction works.

- (b) The Project Company—as the agent and nominee of the Partners and as the agent and nominee of the Development Contractor—must **finance, market and sell the new and refurbished dwellings, on and off the estate, that are to be privately owned, with Housing and the Project Company sharing agreed proportions of the income from these private dwelling sales.**

The Project Company will satisfy these obligations to Housing through:

- ◆ The equity investments and loans described in (a) above
  - ◆ The performance by the Development Contractor of its private property marketing and sale obligations to the Project Company and the Partners under the Development Contract, as guaranteed to the Project Company and the Partners by the Development Guarantor under the Development Contractor Guarantee, and
  - ◆ The performance by the Project Company, the Development Contractor, the Facilities Management Contractor, the Manager and the Tenancy Services Contractor of their obligations to each other, under the Interface Agreement, concerning the coordination of the private property development and operational and service-provision aspects of the project.
- (c) The Project Company—as the agent and nominee of the Partners—must **maintain the existing, new and refurbished public housing dwellings and general community facilities, and deliver other specified facility management services, tenancy services, community renewal services, communication and consultation**

services and management and integration services, from a date no later than 20 December 2007 until 28 February 2037 or any earlier termination of the project's contracts.

The Project Company will satisfy these obligations to Housing through:

- ◆ The equity investments and loans described in (a) above
- ◆ The performance by the Facilities Management Contractor of its obligations to the Project Company and the Partners under the **Bonnyrigg Living Communities Services Contract** between the Project Company (in its own capacity for specified representations, but otherwise in its role as the agent and nominee of the Partners), the Partners and the Facilities Management Contractor, originally executed on 12 February 2007, subsequently amended and restated on 27 February 2007 and amended again on 20 April 2007 ("the **Facilities Management Contract**", also referred to in many of the project's contracts as "the **Services Contract**")
- ◆ The performance by the Tenancy Services Contractor of its obligations to the Facilities Management Contractor under the **Bonnyrigg Living Communities Project Tenancy Services Contract** between the Facilities Management Contractor and the Tenancy Services Contractor, dated 12 February 2007 ("the **Tenancy Services Contract**")
- ◆ The performance by the Manager of its obligations to the Facilities Management Contractor under the **Bonnyrigg Living Communities Management Services Contract** between the Facilities Management Contractor and the Manager, dated 27 February 2007 ("the **Management Agreement**")
- ◆ The performance of any other subcontractors appointed by the Project Company, the Facilities Management Contractor, the Tenancy Services Contractor and/or the Manager to deliver services as part of the project, and
- ◆ The performance by the Project Company, the Facilities Management Contractor, the Development Contractor, the Manager and the Tenancy Services Contractor of their obligations to each other, under the Interface Agreement, concerning the coordination of the operational, service-provision, construction and private property development aspects of the project.

The Facilities Management Contractor's performance of its obligations to the Project Company and the Partners under the Facilities Management Contract has been guaranteed to the Partners by the Facilities Management Guarantor in a **Deed of Guarantee and Indemnity** between the Facilities Management Guarantor, the Project Company (in its role as the agent and nominee of the Partners) and the Partners, dated 12 February 2007 ("the **Facilities Management Contractor Guarantee**").

The Facilities Management Contractor and the Facilities Management Guarantor have promised Housing, in a **Services Side Deed** between Housing, the Project

Company (in its own capacity and in its role as the agent and nominee of the Partners), the Facilities Management Contractor and the Facilities Management Guarantor, dated 12 February 2007 ("the **Facilities Management Side Deed**"), that the Facilities Management Contractor will satisfy a series of obligations concerning, among other things, its compliance with the Facilities Management Contract, the quality of its services, materials and equipment, the provision of information to Housing and the notification of defaults to Housing, and that the Facilities Management Guarantor will, upon request, extend to Housing any guarantee of the Facilities Management Contractor's performance which it has provided to the Project Company, such as its guarantee under the Facilities Management Contractor Guarantee.

Similarly,

- ◆ The Tenancy Services Contractor has promised Housing, in a **Tenancy Services Side Deed** between Housing, the Project Company (again in its own capacity and in its role as the agent and nominee of the Partners), the Facilities Management Contractor and the Tenancy Services Contractor dated 12 February 2007, that it will satisfy an equivalent series of obligations concerning, among other things, its compliance with the Tenancy Services Contract, the quality of its services, materials and equipment, the provision of information to Housing, the notification of defaults to Housing and the extension, to Housing, of any guarantees of its performance which it has provided to the Project Company
- ◆ The Manager has promised Housing, in a **Bonnyrigg Living Communities Collateral Warranty Deed** between Housing, the Project Company (in its own capacity for specified representations, but otherwise in its role as the agent and nominee of the Partners), the Facilities Management Contractor and the Manager dated 20 April 2007 ("the **Management Collateral Warranty Deed**"), that it will satisfy a broadly similar series of obligations concerning, among other things, the quality of its services, materials and equipment, insurance requirements, the provision of information to Housing, the notification of defaults to Housing and arrangements following any early termination of the Project Deed, and
- ◆ Analogous collateral warranties in favour of Housing may need to be executed by any other substantive subcontractors appointed by the Project Company, the Facilities Management Contractor, the Tenancy Services Contractor and/or the Manager to deliver services as part of the project, under Project Deed arrangements described later in this report (see sections 3.2.8.1 and 3.4.6.1).

As already indicated, Housing has granted a **Licence** giving the Project Company—and, through it, the Facilities Management Contractor, the Tenancy Services Contractor, the Manager, any other relevant subcontractors and their officers, employees, agents, advisers and other authorised persons—non-exclusive

access, at times set out in the Project Deed, to project sites owned by Housing and defined in the Project Deed.

- (d) **Housing must make monthly performance-based payments to the Project Company**, throughout the period these services are provided, with deductions if the Project Company does not meet specified standards.
- (e) **Housing must grant Leases** of the public housing and other sites it owns, both on and off the Bonnyrigg housing estate, to the Ground Lessee, which (in addition to its role as the Tenancy Services Contractor),
- ◆ Must, in turn, either enter into **Tenancy Agreements** (of a specified form) with new public housing tenants or, if directed to do so by Housing, sublease the relevant site(s) back to Housing, under **Subleases** of a specified form, so that Housing may enter into these Tenancy Agreements itself
  - ◆ May enter into leases or licences ("**Community Leases**") with non-profit or community organisations in accordance with tenant support and community renewal plans described in the Project Deed, and
  - ◆ May enter into leases or licences ("**Rehousing Vacant Dwelling Leases**") with community housing providers or other non-profit organisations for the provision of temporary housing services for tenants.

Under the terms of the Leases and the Project Deed the Project Company will be obliged to carry out several of the Ground Lessee's obligations under the Leases, including obligations concerning the stamping and registration of Leases and Subleases, site conditions, defects and environmental requirements.

The Project Company (in its role as the agent and nominee of the Partners) and the Ground Lessee have also entered into an **Undertaking Agreement**, dated 12 February 2007, under which the Ground Lessee has made several other specific undertakings to the Project Company. The nature of these undertakings cannot be reported in this *Summary of Contracts*, because the parties to the Project Deed have agreed this is "commercially sensitive" information for the purposes of the Project Deed's confidentiality provisions, as described in section 3.5.6.

These obligations of the Ground Lessee to the Project Company will be secured by mortgages over the Leases ("the **St George Mortgages of Leases**"), as agreed to by the Ground Lessee in an Agreement to Execute Mortgage of Lease on 27 February 2007, and a fixed charge over the Ground Lessee's rights under the Leases, the Subleases and the Tenancy Agreements ("the **St George Fixed Charge**", dated 1 March 2007). In addition, the Ground Lessee has granted the Project Company a power of attorney, if the Ground Lessee breaches specified obligations, to exercise its rights and obligations under the Undertaking Agreement, the Leases, the Subleases and the Tenancy Agreements ("the **St George Power of Attorney**", dated 27 February 2007).

- (f) On 28 February 2037, or upon any earlier termination of the Project Deed, the Project Company, the Development

Contractor and the Ground Lessee must **hand over their possession of the project's dwellings, other facilities and sites and their responsibilities for the project's services to Housing or to others as directed by Housing.**

If:

- The Project Company defaults on its obligations to the Development Contractor under the Development Contract, its obligations to Housing under the Project Deed or its obligations to others under other specified project contracts concerning the design, construction and property development aspects of the project, or
- The Development Contractor defaults on the Project Deed's property development obligations, entered into by the Project Company on its behalf, or
- There is an emergency or public safety incident (see section 3.5.10), or
- Housing terminates the Project Deed during the design, construction and property development phases of the project (see section 3.6),

then under the Project Deed and the Development Side Deed, Housing will be able to "step in" to remedy the situation, and/or place a new contractor into the shoes of the Project Company under the Development Contract, so that design, construction and property development aspects of the project can continue.

Analogous arrangements will apply under the Construction Side Deeds which the Project Company, each of the Development Contractor's Construction Contractors and their Construction Contractor Guarantors must execute with Housing before each Construction Contractor may be engaged on any project works.

Similarly, if:

- The Project Company defaults on its obligations to the Facilities Management Contractor under the Facilities Management Contract, its service-delivery obligations to Housing under the Project Deed or its obligations to Housing or others under other specified project contracts concerning the aspects of the project, or
- The Facilities Management Contractor defaults on its obligations to the Tenancy Services Contractor under the Tenancy Services Contract, or
- The Project Company defaults on its obligations to the Ground Lessee under the Undertaking Agreement, or
- The Ground Lessee defaults on its obligations to Housing under a Lease, or
- There is an emergency or public safety incident (see section 3.5.10), or
- Housing terminates the Project Deed (see section 3.6),

then under the Project Deed and the Facilities Management Side Deed and/or the Tenancy Services Side Deed, as relevant, Housing will be able to "step in" to remedy the situation, and/or place a new contractor into the shoes of the Project Company under the Facilities Management Contract and the Undertaking Agreement, and/or place a new contractor into the shoes of the Facilities Management Contractor under the Tenancy Services Contract, so that the relevant service-provision aspects of the project can continue.

Some of Housing’s rights and obligations under the Project Deed, the Development Side Deed, the Construction Side Deeds, the Facilities Management Side Deed and the Tenancy Services Side Deed are subject to restrictions or additional process requirements under a **Bonnyrigg Living Communities Financiers Tripartite Deed** between Housing, the Project Company (in its own capacity and in its role as the agent and nominee of the Partners), the Development Contractor and the Security Trustee, dated 20 April 2007 (“the **Financiers Tripartite Deed**”). As an example, this agreement requires Housing to notify the Security Trustee before it terminates the Project Deed for a default by the Project Company, giving it an opportunity to cure the default.

Under a **Bonnyrigg Living Communities Fixed and Floating Charge** agreed between Housing, the Project Company (in its own capacity and in its role as the agent and nominee of the Partners) and the Partners and dated 12 February 2007 (“the **Corporation Security (Project Company and Partners)**”), all of the obligations of the Project Company and the Partners to Housing under the project’s contracts are secured by a charge over the assets, undertakings and rights of the Project Company and the Partners.

Similarly, under a **Bonnyrigg Living Communities Fixed and Floating Charge** agreed between Housing and the Development Contractor and dated 12 February 2007 (“the **Corporation Security (Development Contractor)**”), all of the Development Contractor’s obligations to Housing under the project’s contracts, entered into by the Project Company on the Development Contractor’s behalf, are secured by a charge over the assets, undertakings and rights of the Development Contractor.

Priorities between these Corporation Securities and securities held by the project’s private sector debt financiers are governed by the Financiers Tripartite Deed, which also:

- Records Housing’s consent to the private sector securities and the Security Trustee’s consent to the Corporation Securities
- Records the consents of Housing and the Security Trustee to each other’s “step in” rights under the project’s contracts
- In conjunction with the Project Deed, the Development Side Deed, the Construction Side Deeds, the Facilities Management Side Deed and the Tenancy Services Side Deed, regulates the exercise of these “step in” rights, and
- Records the consents of the Project Company and the Development Contractor to these arrangements.

The Development Contractor, the Development Guarantor, the Facilities Management Contractor, the Facilities Management Guarantor and the Tenancy Services Contractor have also expressly consented to the Corporation Securities and these arrangements, in the Development Side Deed, the Facilities Management Side Deed and the Tenancy Services Side Deed, and the Development Contractor’s Construction Contractors will have to do likewise in their Construction Side Deeds.

A **Bonnyrigg Living Communities PPP Project Deed of Guarantee**, between the State of NSW, Housing, the Project Company (in its role as the agent and nominee of the Partners) and the Security Trustee and dated 20 April 2007 (“the **PAFA Act Guarantee**”), provides a guarantee by the State, in

accordance with section 22B of the Public Authorities (Financial Arrangements) Act (NSW), of Housing’s performance of its obligations under the Project Deed, the Development Side Deed, the Construction Side Deeds, the Independent Certifier Deed, the Licence(s), the Facilities Management Side Deed, the Tenancy Services Side Deed, the Financiers Tripartite Deed, the Leases, the Subleases, the Corporation Security (Project Company and Partners), the Corporation Security (Development Contractor) and any other documents approved, in writing, by the NSW Treasurer in the future.

The major contracts for the project other than its private sector equity and financing agreements, the Management Collateral Warranty Deed and the PAFA Act Guarantee—in other words, the Project Deed, the Development Contract, the Development Contractor Guarantee, the Development Side Deed, the Independent Certifier Deed, the Construction Contracts, the Construction Contractor Guarantees, the Construction Side Deeds, the Interface Agreement, the Facilities Management Contract, the Facilities Management Contractor Guarantee, the Facilities Management Side Deed, the Tenancy Services Contract, the Tenancy Services Side Deed, the Management Agreement, the Leases, the Subleases, the Licence(s), the Undertaking Agreement, the St George Mortgages of Leases, the St George Fixed Charge, the St George Power of Attorney, the Financiers Tripartite Deed, the Corporation Security (Project Company and Partners), the Corporation Security (Development Contractor), the Equity Hold Deed, any other subcontracts (and sub-subcontracts, etc) of the Project Company’s works or services and their associated guarantees to the Project Company—are collectively referred to in most of the project’s contracts as “the **project documents**”, and this term is adopted in this report.

If there are any inconsistencies between the obligations imposed under the various contracts to which Housing is a party, the Financiers Tripartite Deed will prevail over the Project Deed and all the other contracts, and it will be followed, in turn, by:

- The Project Deed and all of its schedules except a *Specification*, setting out detailed requirements for the Project Company’s works and services, and a schedule reproducing the Project Company’s final *Proposals* for the project
- The *Specification*, and
- The Project Company’s *Proposals*

*unless* compliance with the *Proposals* would impose more onerous obligations or liabilities on the Project Company, in which case they will take precedence, as relevant, over the rest of the Project Deed and/or the *Specification*.

## 2.3 Conditions precedent

Although the execution of the Project Deed was completed on 12 February 2007, it did not become fully legally binding until 20 April 2007.

Under the terms of the Project Deed, none of the parties’ rights and obligations was to take effect until:

- The NSW Treasurer had approved the Project Deed, and all the other “project documents” to which Housing was or would become a party, under sections 20 and 22L of the



Public Authorities (Financial Arrangements) Act (NSW). This condition was satisfied on 11 January 2007.

- The Minister for Housing had similarly approved the Project Deed, and all the other “project documents” to which Housing was or would become a party, under section 60 of the Housing Act (NSW). This condition was satisfied on 19 December 2006.
- A guarantee by the State of NSW of Housing’s obligations under the Project Deed and the other “project documents” had been executed, under section 22B of the Public Authorities (Financial Arrangements) Act (NSW). This condition was satisfied, on 20 April 2007, with the completion of the execution of the PAFA Act Guarantee.
- Housing had obtained an exemption from regulation 5 of the Residential Tenancies Regulation (NSW), which excludes certain social housing providers from the definition of “social housing tenancy agreement” for the purposes of the Residential Tenancies Act (NSW). This condition was satisfied on 23 February 2007, with the gazettal of the Residential Tenancies Amendment (Social Housing) Regulation 2007.
- Housing had obtained a regulation stipulating that the Project Company, the Partners and the Development Contractor would be exempt from the provisions of the Home Building Act (NSW) for the purposes of the Project Deed. This condition was satisfied on 23 February 2007, with the gazettal of the Home Building Amendment (Exemptions) Regulation 2007. (The exemptions granted by this regulation do not extend to the project’s Construction Contractors.)

In addition, even with the satisfaction of these five conditions, most of the rights and obligations of Housing, the Project Company (in its various roles) and the Partners under the Project Deed, other than specified exceptions, and all of their rights and obligations under the other “project documents” to which Housing is a party, were not to become binding until a further series of conditions precedent had been satisfied by the Project Company or waived by Housing.

These additional conditions precedent were:

- The execution and delivery to Housing of originals of all of the “project documents” other than the Leases, the Subleases, the Construction Contracts and the Construction Side Deeds. This condition precedent was waived by Housing on 20 April 2007, subject to the provision of certified copies of a specified selection of the “project documents”.
- The execution of specified private sector financing agreements, in form and substance satisfactory to Housing’s Project Director, and the delivery of certified copies of these agreements to Housing. This condition precedent was satisfied on 20 April 2007, with an implied waiver of this requirement for three documents not yet executed.
- The execution and delivery to Housing of collateral warranties in favour of Housing by specified types of subcontractors as required under the Project Deed. This condition precedent was satisfied on 20 April 2007, the only relevant collateral warranty being the Management Collateral Warranty Deed.

- The completion of a series of formalities associated with:
  - ♦ Any authorisations required by the Project Company, the Development Contractor, the Development Guarantor, the Construction Contractors, the Construction Contractors’ Guarantors, the Facilities Management Contractor, the Facilities Management Guarantor, the Tenancy Services Contractor and the project’s private sector financiers, or any trustees or agents on their behalf, to enter into and perform the project’s contracts (satisfied on 28 March 2007, apart from the Construction Contractors and the Construction Contractors’ Guarantors, for which the requirements were waived on 20 April 2007, subject to the provision of the relevant documents once Construction Contractors are appointed)
  - ♦ The authorisation of Project Company representatives (satisfied on 28 March 2007)
  - ♦ The registration of the Corporation Securities (satisfied on 13 March 2007)
  - ♦ The provision of evidence of the payment of stamp duty on the “project documents” (satisfied on 14 March 2007), and
  - ♦ The provision of evidence about the structure of, and equity and/or subordinated debt arrangements between, the Project Company and its shareholders (satisfied on 20 April 2007).
- If necessary, the provision, to Housing’s Project Director, of a certified copy of an unconditional approval from the Australian Treasurer advising that there is no objection, under the Foreign Acquisitions and Takeovers Act (Cth), to the ownership of the Project Company and/or its interests in the project. This condition precedent was satisfied on 21 February 2007, when advice was received that no notifications to or approvals by the Australian Treasurer or the Foreign Investment Review Board were required.
- The provision, to Housing’s Project Director, of a private binding ruling by the Australian Taxation Office on the application of section 51AD and Division 16D of Part III of the Income Tax Assessment Act (Cth) to the project’s proposed structure and arrangements. This condition precedent was satisfied on 20 April 2007.
- The provision to Housing, by the Project Company or the Development Contractor, of a bank guarantee, as a construction-phase security bond, in accordance with the Project Deed. This condition precedent was satisfied on 20 April 2007.
- The taking out, and maintenance in full force, of insurance policies required under the Project Deed prior to “financial close”, other than a specified asbestos removalists liability insurance policy. This condition precedent was satisfied on 20 April 2007, apart from the waiving by Housing of an insurer-rating requirement in its application to one of these policies and the substitution and satisfaction of a marginally less demanding requirement.
- The provision, to Housing’s Project Director, of the Project Company’s charging rates for the pricing of specified types of services that will be subject to “benchmarking” under the

Project Deed (see section 3.4.10). This condition precedent was satisfied on 18 April 2007.

- The provision, to Housing's Project Director, of any other opinions, certificates or other documents he or she had reasonably requested. There were no such requests.
- The provision, to Housing's Project Director, of evidence that the project's private sector financing facilities had become unconditional or available, or would do so upon the satisfaction (or waiver by Housing) of all the other additional conditions precedent. This condition precedent was satisfied on 20 April 2007.
- The provision of copies of the private sector participants' audited "base case" financial model for the project and associated materials, as specified in the Project Deed, including an auditor's certificate on terms acceptable to Housing's Project Director. This condition precedent was satisfied on 20 April 2007.

Housing's Project Director certified on 20 April 2007—the project's date of "**financial close**"—that all of these additional conditions precedent had either been satisfied or waived.

Accordingly, all the provisions of the Project Deed, along with the provisions of all the other "project documents" to which Housing is a party, took effect from 20 April 2007.

The accepted satisfaction or waiver of all the additional conditions precedent on or before 20 April 2007 rendered redundant provisions in the Project Deed which stipulated that the Project Company was obliged to ensure the satisfaction of all the additional conditions precedent by a "target financial close date" of 30 April 2007. Had this deadline not been met, through either the satisfaction of the additional conditions precedent by the Project Company or their waiver by Housing, Housing's Project Director would have become entitled to terminate the Project Deed, and the other "project documents" to which Housing is a party, at any time and in his or her absolute discretion.



# 3 The Project Deed and associated certification, lease, payment, step-in and novation arrangements

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## 3.1 General obligations on and acceptance of risks by the Project Company

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### 3.1.1 The principal obligations of the Project Company and the Ground Lessee

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As already indicated in section 2.2, the main obligations on the Project Company to Housing are:

- As the agent and nominee of the Partners and, in the case of the dwellings that are to be privately owned, as the agent and nominee of the Development Contractor, to finance, refurbish or demolish, design and construct the project's dwellings and other facilities on the Bonnyrigg housing estate and to finance, acquire, transfer to Housing and refurbish or demolish, design and construct the project's additional dwellings in nearby areas off the estate
  - ♦ At its own cost, apart from the sharing of development contribution costs under arrangements described in sections 3.2.2.4 and 3.5.12 and the sharing of interest rate risks under arrangements described in section 3.4.9.1 of this report
  - ♦ By dates specified, for each of 18 stages of works on and off the estate, in two schedules to the Project Deed and, in greater detail, in design and works programs to be developed by the Project Company, and
  - ♦ In accordance with detailed requirements set out in a **Bonnyrigg Living Communities Project Deed (Schedule 4 Specification)** ("the *Specification*"), another schedule to the Project Deed—*albeit*, in the case of the private dwellings, only very limited aspects of this document that expressly apply to these dwellings.
- As the agent and nominee of the Partners and as the agent and nominee of the Development Contractor, to finance, market and sell the new and refurbished dwellings, on and off the estate, that are to be privately owned, with Housing and the Project Company sharing agreed proportions of the income from these private dwelling sales.
- As the agent and nominee of the Partners, to maintain the existing, new and refurbished public housing dwellings and general community facilities, and deliver other specified facility management services, tenancy services, community renewal services, communication and consultation services and management and integration services, in accordance

with detailed requirements set out in the *Specification*, from a date no later than 20 December 2007 until 28 February 2037 or any earlier termination of the project's contracts.

- On 28 February 2037, or upon any earlier termination of the Project Deed, to hand over possession of the project's dwellings, other facilities and sites and its responsibilities for the project's services to Housing or to others as directed by Housing.

The main obligations of the Ground Lessee to Housing—in addition to its obligations to the Facilities Management Contractor in its role as one of the Project Company's sub-subcontractors, the Tenancy Services Contractor—are to:

- Accept the Leases of the public housing and other sites Housing owns, both on and off the Bonnyrigg housing estate
- Enter into Tenancy Agreements with new public housing tenants, or sublease the relevant site(s) back to Housing, if directed to do so by Housing, under Subleases of a specified form, so that Housing may enter into these Tenancy Agreements
- Enter into Community Leases with non-profit community organisations in accordance with tenant support and community renewal plans described in the Project Deed
- Enter into Rehousing Vacant Dwelling Leases with community housing providers for the provision of temporary housing services for tenants, and
- Hand over possession of the project's dwellings and other facilities when the Leases end on 28 February 2037 or upon any earlier termination of the Project Deed.

### 3.1.2 Project objectives and co-operation

Housing, the Project Company and the Partners have undertaken to perform their obligations under the Project Deed with the aim of satisfying "intentions" that:

- The Project company will be responsible for refurbishing, managing and maintaining the project's dwellings and providing related services to tenants
- The Project Company will finance, design, demolish, refurbish, construct, complete, maintain and provide other services concerning the project's housing, infrastructure and other facilities
- Housing will pay fees to the Project Company for its provision of its services
- The project will improve not only the physical amenities of the Bonnyrigg housing estate but community engagement,

community building and social cohesion and interaction, providing broader access and opportunities for tenants and other residents while minimising any disruption to Housing, the tenants and residents or the owners, users and occupiers of adjoining properties

- The Development Contractor will finance, develop, market and sell private property
- The Development Contractor will pay Housing a proportion of the receipts from the sale of private property, and
- Upon the termination of the Project Deed, the Project Company, the Development Contractor and the Ground Lessee will transfer possession of and management responsibility for their interests in the project's facilities and sites to Housing or as directed by Housing,

and also with the aim of satisfying much more detailed "objectives" for individual aspects of the project, as set out in the *Specification*.

Housing, the Project Company and the Partners have agreed to cooperate with each other to facilitate the performance of the "project documents". In particular, they have promised to avoid unnecessary complaints, disputes and claims and—subject to each other party's performing its obligations and Housing's rights to "step in" during emergencies and public safety incidents (see section 3.5.10) and terminate the Project Deed in specified circumstances (see sections 3.6.1 to 3.6.4)—not to hinder, prevent or delay each other's performance of its obligations.

They have also agreed that:

- Each of them will do anything any other party reasonably requires them to do to give full effect to the Project Deed, and will ensure its employees and agents do likewise (there are similar commitments by the parties to the Financiers Tripartite Deed, the Development Side Deed, the Independent Certifier Deed, the Facilities Management Side Deed and the Tenancy Services Side Deed), and
- Whenever they become entitled to assert a claim or seek a remedy against another party they will take reasonable and appropriate steps to mitigate, prevent or eliminate the effects of the event or circumstance giving rise to the claim or remedy.

Throughout the project Housing and the Project Company must participate in a six-person Project Co-ordination Group (PCG), chaired by the person appointed by Housing as its Project Director for the project,\* that will discuss and review the project's progress and delivery and play an initial role in resolving any disputes (see section 3.5.8). Except for its dispute resolution role, the decisions of this PCG will not affect the rights and obligations of Housing or the Project Company under the "project documents", and the PCG will not have the power to require them to act or refrain from acting in any way.

Unless the contracts expressly state otherwise, the Project Company may not unreasonably withhold or delay any decision or exercise of its discretion under the "project documents".

Similarly, Housing and its Project Director must act reasonably concerning any decision or exercise of their discretion they are expressly or impliedly required to make under the "project documents", including the imposition of conditions as part of their decisions. However, the Project Deed makes it clear that:

- They will not be acting "unreasonably" if they are acting in accordance with relevant government policies, adopt a "whole of government" approach or act to protect the reputation of Housing, the NSW Department of Housing or the State of NSW, and
- They will not assume any duty of care or other liability to the Project Company or anyone else in granting any approvals or endorsements.

### 3.1.3 No restrictions on Housing's statutory powers

Except in terms of the project-specific commitments made by Housing in the Project Deed itself, the Project Deed does not fetter the discretion of Housing, the NSW Department of Housing or the State of NSW to exercise any of their functions under any laws.

Housing, the Department of Housing and the State will not be liable to the Project Company or the Partners, under the Project Deed or any other "project document", for anything Housing is required to do under any law, the sole exception to this being under the "compensation event" provisions described in section 3.5.12 of this report.

### 3.1.4 No reliance on Housing's information etc

The Project Company has expressly acknowledged in the Project Deed that:

- Subject to any specific terms in the Project Deed, Housing, the Department of Housing, the State of NSW and their officers, employees, agents, contractors and advisers:
  - ◆ Have not made any representations or promises or given any advice to the Project Company about the accuracy, completeness or current applicability of any information, concerning the project, the sites, the existing housing and infrastructure, the works, the project's "stages" or the facilities, which they had provided to the Project Company or its officers, employees, agents, contractors or advisers prior to the execution of the Project Deed
  - ◆ Have assumed no duty of care or other responsibility for this pre-contractual information
  - ◆ Will not be liable for any inaccuracy, omission, unfitness, inadequacy or incompleteness in this pre-contractual information, or for any reliance on the information by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants, even if the information were "misleading or deceptive" or "false or

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\* Housing's Project Director is expressly authorised as an agent of Housing and may delegate his or her powers, duties, discretions and authorities under the Project Deed. Unless expressly indicated otherwise, references in this report to the Project Director should therefore be understood as references both to the Project Director and to any of his or her delegates whose appointment has been notified to the Project Company.

misleading” under the Trade Practices Act (Cth) or equivalent State legislation, and

- ◆ Will not be liable for any failure to make information about the project available to the Project Company.
- In entering into the Project Deed, the Project Company:
  - ◆ Has relied solely on its own independent investigations, information, enquiries and assessments.
  - ◆ Has not relied on any pre-contractual information from Housing or anyone else on its behalf, or any other information for which Housing is or might be responsible.
  - ◆ Has examined the Project Deed, the *Specification*, the sites, the existing housing and infrastructure and their surroundings and any other information made available by Housing or anyone on its behalf, but has relied solely on its own investigations, assessments, skill, expertise and enquiries concerning all information that is relevant to the project’s risks, contingencies and circumstances and its obligations under the “project documents”.
  - ◆ Has been given the opportunity to undertake, and request others to undertake, tests, enquiries and investigations, for design and other purposes, into the matters addressed in pre-contractual information supplied by Housing etc, and in particular has been given access, as required, to the project’s sites and existing housing and infrastructure and has been given a full and adequate opportunity to review the project’s draft *Specification* and “project documents” and identify and correct any defects, omissions and inconsistencies prior to executing the Project Deed.
  - ◆ Has satisfied itself that it will be able to satisfy its project obligations and has adequately allowed for the costs of doing so, that there is no inconsistency between the *Specification* and the Project Company’s ability to fulfil its obligations under the “project’s documents”, and that the *Specification* contains no defects, omissions or inconsistencies which would prevent the project’s completed “stages” from being and remaining fit for their intended purpose.
  - ◆ Has informed itself on all of the project’s employment and industrial relations matters.
- Housing will have no liability for any loss or damage suffered by the Project Company as a result of incorrect or inaccurate assumptions by anyone concerning:
  - ◆ Taxation requirements
  - ◆ The availability of taxation rulings
  - ◆ Project revenues, or
  - ◆ Project costs

unless the incorrectness or inaccuracy is caused by, or constitutes, a “compensation event”, such as a serious breach of the Project Deed by Housing which makes it impossible for the Project Company to perform its obligations, as discussed in section 3.5.12 below.

### 3.1.5 General indemnities by the Project Company and the Development Contractor

The Project Company has undertaken to indemnify Housing, the Department of Housing, the State of NSW and their employees and agents, on demand, against any claims, losses or liabilities—including any claims or liabilities associated with any deaths, personal injuries or property losses or damage—arising directly or indirectly from:

- The Project Company’s design, construction, operation or maintenance activities
- The Project Company’s performance or non-performance of its obligations under any “project document”
- Any activities by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations’ officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than public housing tenants, concerning the financing, design, construction, completion and sale of private property in accordance with the Project Deed
- Any contamination or pollution on or from any of the sites or facilities as a result of the Project Company’s performance or non-performance of its obligations under any “project document”
- The state of repair of existing housing and infrastructure on Housing’s land on or after the date on which the Project Company commences its services, subject to “compensation event” provisions described in sections 3.2.5 and 3.5.12
- Any breach by the Project Company of privacy obligations associated with its tenancy services or its obligations to secure vacant dwellings against trespassing and squatting (see section 3.4.4.4), or
- More generally, any breach of a “project document”, negligence, unlawful act or omission or wilful misconduct by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations’ officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than public housing tenants

but excluding:

- (a) Any claims, losses or liabilities to the extent that they are caused by:
  - ◆ Malicious damage by Housing’s Project Director, any other persons administering or managing the project for Housing or any employees, agents or other contractors of Housing or the State of NSW acting in the course of their employment, provided the damage did not result from a failure by the Project Company to provide its services
  - ◆ Any breach by Housing of its express obligations under the Project Deed or any other “project document”
  - ◆ Any act or omission by a tenant

- ◆ Any negligence, unlawful acts or omissions or wilful misconduct by Housing, its Project Director, any other persons administering or managing the project for Housing or any employees, agents or other contractors of Housing or the State of NSW in the course of their employment
  - ◆ In the case of actions or claims against Housing by a third party, the Project Company's compliance with an express direction by Housing or its Project Director, issued in accordance with the Project Deed, or
  - ◆ Any disturbance of friable asbestos in existing dwellings if:
    - This is not caused by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than public housing tenants, and
    - The risk of such a disturbance is "uninsurable" (see section 3.5.2.3 of this report)
- (b) Any liability for a claim or loss exceeding the higher of:
- ◆ \$100 million, indexed in line with the Consumer Price Index (CPI) from the March quarter of 2007, and
  - ◆ The amount the Project Company can recover for the claim or loss under the insurance policies specified in the Project Deed, or would have been able to recover had it complied with its insurance obligations (see section 3.5.2.1), and
- (c) Any liability for an unforeseeable, indirect or consequential loss, incurred by Housing, the Department of Housing, the State or their employees or agents, which:
- ◆ Has *not* been incurred as a result of a third party claim or loss
  - ◆ Is not able to be recovered by the Project Company under the insurance policies specified in the Project Deed, or would not be able to be recovered had the Project Company complied with its insurance obligations, and
  - ◆ Is not otherwise able to be recovered in accordance with the principles of general law.

Similarly,

- Under the Development Side Deed the Development Contractor has undertaken to indemnify Housing, on demand, against any claims, losses or liabilities arising from:
  - ◆ Any breach of the Project Deed's private property development provisions, which have been entered into by the Project Company on behalf of the Development Contractor, and
  - ◆ Any negligent or unlawful acts or omissions or wilful misconduct by the Development Contractor in performing the obligations imposed by these provisions

- Under the Project Deed the Project Company, as the agent and nominee of the Partners, has unconditionally and irrevocably:
  - ◆ Guaranteed, to Housing, the Development Contractor's performance of its obligations under the private property development provisions, and
  - ◆ Indemnified Housing against any claims, losses or liabilities arising from any breach by the Development Contractor of these obligations
- Under the Project Deed the Project Company, as the agent and nominee of the Partners, has unconditionally and irrevocably:
  - ◆ Guaranteed, to Housing, the Ground Lessee's performance of its obligations to Housing under the Leases, and
  - ◆ Indemnified Housing against any claims, losses or liabilities arising out of a breach of these obligations, the use or occupation of a site by the Ground Lessee or any transfer or termination of the Leases, and
- Under the Financiers Tripartite Deed the Project Company (in its own capacity and as the agent and nominee of the Partners) and the Development Contractor have indemnified Housing and the Security Trustee against any losses, liabilities, expenses or taxes (other than income taxes) incurred by Housing or the Security Trustee in administering, preserving or enforcing any of their rights under the Financiers Tripartite Deed.

Under the Project Deed the Project Company is responsible to Housing for the acts and omissions of any of the Project Company's related corporations, subcontractors or sub-subcontractors, the Ground Lessee, any of these organisations' officers, employees or agents and any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants, as if they were the Project Company's own acts and omission.

Similarly, Housing is responsible to the Project Company for the acts and omissions of Housing's Project Director, any other persons administering or managing the project for Housing or any employees, agents or contractors of Housing or the State of NSW in the course of their employment, other than tenants, the Project Company and its related parties, as if they were Housing's own acts and omissions.

The proportionate liability provisions of the Civil Liability Act (NSW) will not apply to any liabilities under the Project Deed, the Financiers Tripartite Deed or the Independent Certifier Deed. In addition, as discussed in section 3.2.8.1 and referred to in section 3.4.6.1, equivalent exclusions of these provisions must be included in the Project Company's subcontracts and sub-subcontracts.

## 3.2 Design and construction of the project's dwellings and facilities

### 3.2.1 Scope of the works

As indicated in sections 2.2 and 3.1.1, the Project Company must—as the agent and nominee of the Partners and, in the case of the dwellings that are to be privately owned, as the agent and nominee of the Development Contractor—finance,



refurbish or demolish, design and construct the project's dwellings and other facilities on the Bonnyrigg housing estate (Figure 2) and finance, acquire, transfer to Housing and refurbish or demolish, design and construct the project's additional dwellings in nearby areas off the estate—

- At its own cost, apart from the sharing of development contribution costs under arrangements described in sections 3.2.2 and 3.5.12 and the sharing of interest rate risks under arrangements described in section 3.4.9.1
- By dates specified in two schedules to the Project Deed and, in greater detail, in design and works programs to be developed by the Project Company (see section 3.2.7), and
- In accordance with detailed requirements set out in the *Specification*—albeit, in the case of the private dwellings, only very limited aspects of this document that expressly apply to these dwellings.

The works within the Bonnyrigg estate are currently planned to be carried out in 18 “stages”, as described in section 3.2.7 below. The works on dwellings outside the estate are currently planned for 12 of these stages.

The dwellings to be refurbished or designed and constructed must ultimately include 833 public housing dwellings, in a mixture of cottages, villas, townhouses and units both on and near the estate, with no more than 30% of the dwellings ultimately on the estate being public housing dwellings and with an intermingling of public and private housing both on and off the estate.

479 of the 833 public housing dwellings will be for families and will have private ground-level gardens or yards. 212 will be for “seniors” and people with disabilities and 142 will be for other, “non-family” residents. 699 will be on the Bonnyrigg estate, provided this represents no more than 30% of the estate's total number of dwellings, and 134 will be off the estate.

The initial plans developed by the Project Company envisage that there will ultimately be more than 1,600 privately owned dwellings on the estate.

The currently proposed staging of the project and the works to be carried out as part of each stage may be changed in the future under contract variation arrangements described in section 3.5.9 of this report and, in narrower circumstances, under “adverse market conditions” arrangements described in section 3.2.7.4 or “relief event” or “compensation event” arrangements described in sections 3.5.11 and 3.5.12.

Most of the sites of the dwellings and other facilities to be developed or refurbished within the Bonnyrigg housing estate are already owned by Housing and are already available for the construction and service aspects of the project, but some are not yet owned by Housing, are subject to leases or licences or are otherwise not yet available for the project (Figure 2). Arrangements for these additional sites to be made available for the project are described in section 3.2.4.1 below.

The sites of the dwellings to be developed or refurbished outside the Bonnyrigg housing estate are still to be identified. Arrangements for these off-estate housing sites to be acquired and made available for the project are also described in section 3.2.4.1.

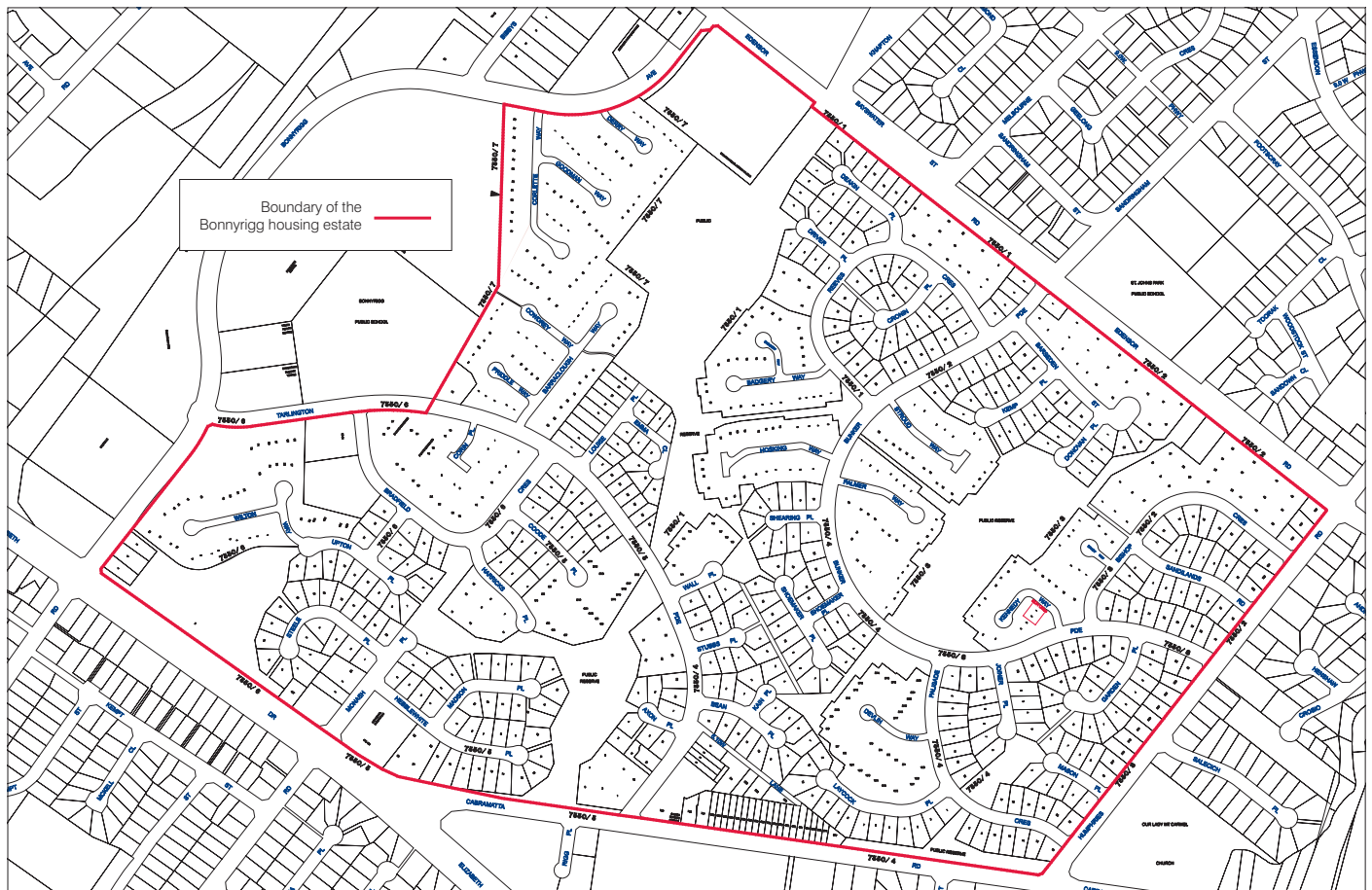


Figure 2. Site Plan of the existing Bonnyrigg housing estate, as at 20 April 2007.

## 3.2.2 Planning and other approvals

### 3.2.2.1 Development approvals

The Project Company must apply for and obtain initial approvals for the project by an “initial target approval date” specified in a schedule to the Project Deed.

These initial approvals must include:

- An overall planning approval for the project under Part 3A of the Environmental Planning and Assessment Act (NSW)
- Any rezonings required for the commencement of works on the first stage of the project or the facilitation of the Project Company’s pre-sales activities (see section 3.3), and
- Any Planning Agreements under section 93F of the Environmental Planning and Assessment Act, developer agreements with utility service providers or other agreement (on terms reasonably acceptable to Housing) relating to Stage 1 which, among other things,
  - ◆ Involve developer contributions, including planning authority fees or works, contributions under sections 94, 94A, 94ED or 94F of the Environmental Planning and Assessment Act and contribution plans under sections 94EA, 94EAA, 94EB or 94EC of the Environmental Planning and Assessment Act, and/or
  - ◆ Arrange for the transfer or dedication of facilities such as utility services’ infrastructure, roads, pathways, parks and community and sporting areas and centres which would otherwise be shared and used by both residents and non-residents of the Bonnyrigg estate.

The Project Company must subsequently apply for and obtain all development approvals and other approvals and assessments required under the Environmental Planning and Assessment Act (NSW) and the Environmental Protection and Biodiversity Conservation Act (Cth) for each subsequent stage of the project’s works, by dates specified in a schedule to the Project Deed.

It must ensure all of these approvals are in accordance with the Project Company’s finally negotiated *Proposals* for the project, which are reproduced in a schedule to the Project Deed and include an initial *Concept Development Plan*, and the need for the project’s housing and facilities to meet or exceed the requirements of the *Specification*.

Housing must reasonably assist the Project Company in obtaining these development approvals. If necessary, this assistance must include the transfer of ownership of utility service infrastructure and similar facilities which must be provided or maintained by other authorities or utility service providers, but it may not extend to the payment of money or satisfaction of other development approval conditions.

The Project Company must give Housing copies of all the development approvals it obtains.

If the initial approvals permit fewer dwellings than the Project Company has proposed (as described above) for the project as a whole, across all of its stages, this will constitute a “compensation event”, potentially entitling the Project Company to claim compensation, and/or obtain extensions of time and/or other relief from its Project Deed obligations, under “compensation event” arrangements described in section 3.5.12 of this report.

In preparing its applications for the initial and subsequent development approvals, the Project Company must:

- Meet and consult with relevant “stakeholders”, conduct planning workshops, attend meetings, make presentations and prepare submissions in accordance with a *Communications and Consultation Protocol* to be prepared and updated in accordance with the *Specification*
- Ensure the concerns and requirements of these “stakeholders” are considered
- Submit drafts of its applications, draft updates of its *Concept Development Plan* and drafts of all other necessary documentation to Housing’s Project Director and the Independent Certifier, for their review, by dates at least two months before each deadline for the obtaining of a stage’s approvals, and
- Give the Project Director and the Independent Certifier any other information they reasonably request.

The Project Director and the Independent Certifier may, but need not, review these drafts and provide comments and recommendations to the Project Company, limited to matters affecting the compliance of the drafts with the Project Deed, within ten business days of receiving the drafts and any additional requested information. If they do so, the Project Company must amend the drafts to reflect these comments and recommendations and resubmit them to the Project Director and the Independent Certifier. The Project Company may lodge its applications with the relevant planning authorities only if the Project Director and the Independent Certifier do not give it any comments or recommendations in response to its submission or any subsequent resubmission of the draft materials.

If the Project Director, any other representatives of Housing, any other “stakeholders” or the Independent Certifier participate in these processes, they will not assume any duty of care or responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed, and the Project Company (and, through it, the Partners and, in the case of the private property developments, the Development Contractor) will remain solely responsible for ensuring the development approvals comply with the Project Company’s obligations under the Project Deed.

If the Project Company, Housing’s Project Director and the Independent Certifier are unable to agree on any comments, recommendations or amendments under these processes, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the original draft documents did comply with the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other “project documents” (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the “compensation event” arrangements described in section 3.5.12.



### 3.2.2.2 Other consents

In addition to obtaining the project's development approvals, the Project Company must:

- Obtain all other statutory, court and tribunal approvals, licences and consents required for the project, including construction, occupation and building certificates under the Environmental Planning and Assessment Act, any necessary environmental protection licences and any necessary approvals under the Heritage Act (NSW), Roads Act (NSW), Water Act (NSW) or Water Management Act (NSW)
- Give Housing's Project Director copies of all the approvals, licences and consents it obtains, and
- Comply with the terms of these approvals, licences and consents and ensure the project is carried out without any breaches of their terms.

### 3.2.2.3 Challenges to development approval conditions and other consent conditions

The Project Company may contest any conditions attached to or proposed for a development approval or any other approval, licence or consent, provided it notifies Housing's Project Director in advance and contests the conditions in good faith, in its own name, as permitted by law and without any material risk to the delivery of the project.

If the Project Company believes a condition might necessitate a contract variation under the arrangements described in section 3.5.9, it must promptly advise the Project Director and it must then contest the condition if he or she directs it to do so within ten business days. In these circumstances the Project Director's direction must be accompanied by an opinion that there is a meritorious basis for contesting the condition, Housing must give the Project Company any reasonable assistance it requests, Housing and the Project Company must equally share the costs of contesting the condition, and the direction by the Project Director will constitute a "relief event", potentially entitling the Project Company to extensions of deadlines under the Project Deed and/or other relief under "relief event" arrangements described in section 3.5.11 of this report.

If the Project Company is contesting a development approval or other consent condition, either at its own behest or as directed by Housing's Project Director, it must keep Housing informed about the progress and nature of this contest and consult with the Project Director in good faith about the conduct of the contest.

If a condition necessitating a contract variation is contested unsuccessfully, the Project Company may apply for the contract variation.

The Project Company and its subcontractors may not apply for or agree to any change to a development approval or other consent, other than under the arrangements described above, without the prior written consent of Housing's Project Director.

### 3.2.2.4 Sharing of higher-than-anticipated development contributions

If a planning authority or planning authorities impose developer contributions, of the types described in section 3.2.2.1 above, and the cumulative cost of these contributions to the project—not counting any developer contributions applied in relation to the project's off-estate housing—exceeds a threshold

specified in the Project Deed, this will constitute a "compensation event", and:

- Housing must pay the Project Company an agreed proportion of the amount by which a sum derived from the estimated costs of some but not all of these development contributions, as calculated in accordance with two schedules to the Project Deed, exceeds an amount equal to this threshold, as indexed in line with the CPI from 20 April 2007, and
- The Project Company may also be entitled to extensions of time and/or other relief from its Project Deed obligations, under the "compensation event" arrangements described in section 3.5.12 of this report.

### 3.2.2.5 Delays in gaining a development approval

If a development approval for a stage of the works has not been granted 30 business days after the relevant deadline, and this situation has *not* been caused, directly or indirectly, by any action or inaction—other than a contesting of an actual or proposed approval or consent condition as directed by Housing's Project Director (section 3.2.2.3)—by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants, this will constitute a "relief event", potentially entitling the Project Company to extensions of deadlines under the Project Deed and/or other relief under the "relief event" arrangements described in section 3.5.11 of this report.

## 3.2.3 Design obligations and intellectual property

### 3.2.3.1 Design development

The Project Company's principal design obligations are to develop and complete detailed designs for each stage's works in accordance with:

- The Project Company's *Proposals* for the project, as reproduced in a schedule to the Project Deed
- The *Specification* (but, in the case of the private dwellings, only very limited aspects of this document that expressly apply to these dwellings, principally concerning their intermingling with public housing)
- Timeframes set out in a *Works Program* to be prepared by the Project Company for each stage of the works (see section 3.2.7.2 below)
- Design review procedures set out in the Project Deed, described below
- Good industry practices, and
- A *Quality Standards (Works)* plan to be developed by the Project Company as specified in the *Specification* (see section 3.2.9.1 below),

so that:

- The stage's constructed works will be, and will remain, fit for their intended purpose, the provision of the services described in sections 3.4.2 to 3.4.4 below

- The project’s public and private housing and other facilities, and the services to be provided by the Project Company, will meet or exceed the requirements of the *Specification*, and
- The works will comply with all applicable development approvals, all other applicable approvals, licences and consents and all other applicable legal requirements.

As part of its development of the detailed designs the Project Company must:

- Meet and consult with relevant “stakeholders”, conduct planning workshops, attend meetings, make presentations and prepare submissions in accordance with the project’s *Communications and Consultation Protocol*, as prepared and updated in accordance with the *Specification*
- Ensure the concerns and requirements of these “stakeholders” are considered
- Give Housing’s Project Director drafts of its detailed design documentation, including information specified in the Project Deed, within timeframes specified in a schedule to the Project Deed, and
- Provide any further information on the development of the detailed designs reasonably requested by the Project Director.

The Project Director may, but need not, review these drafts and provide comments and recommendations to the Project Company, limited to matters affecting the compliance of the drafts with the Project Deed, within 20 business days of receiving the drafts and any additional information. If he or she does so, the Project Company must amend the draft detailed designs to reflect these comments and recommendations and resubmit them to the Project Director.

The Project Company may proceed to the next stage of design development or to construct the works set out in the draft designs only if the Project Director does not give it any comments or recommendations, within 20 business days, in response to the submission or any subsequent resubmission of the drafts and any requested additional information.

If the Project Director, any other representatives of Housing or any other “stakeholders” choose to participate in these processes, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances in the designs, and the Project Company (and, through it, the Partners and, in the case of the private property developments, the Development Contractor) will remain solely responsible for ensuring its designs comply with the requirements of the Project Deed.

If the Project Company and Housing’s Project Director are unable to agree on any comments, recommendations or amendments under these processes, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the original draft detailed designs did comply with the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other “project documents” (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief

from its contractual obligations, under the “compensation event” arrangements described in section 3.5.12.

Once the detailed designs for a stage of the project have been completed they may be modified or added to only under the contract variation arrangements described in section 3.5.9 or, in narrower circumstances, under the “adverse market conditions” arrangements described in section 3.2.7.4 or the “relief event” or “compensation event” arrangements described in sections 3.5.11 and 3.5.12.

### 3.2.3.2 Intellectual property and moral rights

The Project Company has warranted to Housing that its development and use of detailed designs and any other documents or articles for the project will not infringe any intellectual property rights, moral rights or other legal rights or give rise to any liability to make royalty or other payments.

It has also:

- Granted Housing an irrevocable, perpetual, royalty-free and non-exclusive licence to use any of these materials for the purposes of the project or any other project involving the current project’s works, facilities, stages, sites or services (ownership of the intellectual property in the materials will remain with the Project Company and/or applicable third parties)
- Warranted that it holds all the rights and interests in these licensed materials or has the rights to sub-license rights and interests owned by others, that there are and will be no encumbrances over its rights and interests preventing the licensed materials from being used in accordance with the licence, and that it will not deal with its rights and interests in the licensed materials in any way that would conflict with or reduce these rights and interests
- Indemnified Housing and its employees, agents, contractors and permitted sub-licencees against any claims or losses resulting from a breach of these intellectual property and moral rights warranties, and
- Undertaken not to register or patent any intellectual property rights which it develops, discovers or first puts into practice during the project if this would conflict with or derogate from the licence granted to Housing.

## 3.2.4 Site ownership, access and security

### 3.2.4.1 Ownership and availability of the sites

As already indicated in section 3.2.1, most of the sites of the dwellings and other facilities to be developed or refurbished within the Bonnyrigg housing estate (*Figure 2*) are already owned by Housing and are already available for the construction and service aspects of the project, but 13 sites—11 properties owned by the NSW Aboriginal Housing Office, the estate’s public roads and Bunker Reserve—are not yet owned by Housing, and a further 28 sites owned by Housing are subject to leases or licences which currently prevent their availability for the project.

Housing must:

- Procure the termination of all existing leases and licences to the Aboriginal Housing Office or the Hume Community Housing Association before the Project Company starts providing services as part of the project (as described in

section 3.4.1, this must occur by no later than 20 December 2007), and

- Make each of the other additional sites available for the project—either by terminating its existing lease or licence or by acquiring the site—within six months of receiving a written notice from the Project Company that it needs the site for the project.

If the Project Company wishes to acquire any other properties on the Bonnyrigg housing estate for the purposes of the project, this is entirely its own responsibility and it must make its own arrangements with the relevant owners.

Again as already indicated in section 3.2.1, the sites of the dwellings to be developed or refurbished *outside* the Bonnyrigg housing estate are still to be identified.

The Project Company may nominate any land or housing it considers suitable for the project's off-estate housing by notifying Housing's Project Director in writing. It must then, at its own cost, provide any additional information and arrange any inspections, tests and investigations reasonably required by the Project Director.

Provided the Project Company does so, within ten business days of receiving the notification and any additional requested information he or she has requested Housing's Project Director may, but need not, review the Project Company's proposal and provide comments and recommendations to the Project Company if he or she believes that:

- The proposed property is inconsistent with the Project Company's *Proposals* for the project, as reproduced in a schedule to the Project Deed, or the *Specification*
- On the basis of the available information about the property's condition, the acquisition of the property might materially harm Housing
- There would probably be a material delay in obtaining the necessary approvals for the construction of dwelling(s) on the property or the modification or renovation of its existing dwelling(s) in line with the Project Company's *Proposals*, the *Specification* and the Project Deed, and/or
- The property's title is inadequate or not good and marketable.

If the Project Director provides any such comments or recommendations, a nominated representative of the Project Company and the Project Director must meet and seek to establish ways to address or overcome the problem(s).

The Project Company may proceed with procuring the off-estate property only if:

- The Project Director does not give it any comments or recommendations on its proposal within ten business days, or
- All of the problem(s) identified by the Project Director have been addressed or overcome to his or her reasonable satisfaction.

If the Project Director or any other representatives of Housing choose to participate in these processes, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed, and the Project Company (and, through it, the Partners and, in

the case of the private property developments, the Development Contractor) will remain solely responsible for providing its works and services in accordance with the requirements of the Project Deed.

If the Project Company and Housing's Project Director are unable to agree on ways to address or overcome any problem(s) raised by the Project Director in his or her comments or recommendations, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the Project Company's proposal did comply with the requirements of the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other "project documents" (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the "compensation event" arrangements described in section 3.5.12.

Following the completion of the processes described above the Project Company and Housing must ensure the ownership of the relevant off-estate property or properties is transferred to Housing in accordance with procedures specified in a schedule to the Project Deed. Housing and the NSW Department of Housing are not, however, obliged to assist the Project Company's performance of its obligations under these procedures, review any term sheets submitted by the Project Company or compulsorily acquire any of the properties, either under the Land Acquisition (Just Terms Compensation) Act (NSW) or by any other means.

The Project Company may not commence any works on or services for any off-estate property until it has been acquired by Housing under these procedures. Once an off-estate property's ownership has been transferred, however, its land and any dwelling(s) on it will automatically become available for the project.

If the Project Company discovers any encumbrance, easement, covenant or other adverse right affecting any of the project's sites—*other than* an existing lease or licence on one of the additional but currently unavailable Housing-owned sites on the Bonnyrigg estate or any other adverse right revealed in the "project documents", pre-contractual information provided by or on behalf of Housing, relevant public registers or records or a public housing tenancy agreement—it must immediately notify Housing's Project Director and seek to procure the removal of the adverse right, inasmuch as it disrupts or prevents the Project Company's works and/or services. If the Project Company is in fact disrupted, delayed or prevented from performing its works or services, Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the "compensation event" arrangements described in section 3.5.12, and if the Project Company is also prevented from gaining access to the site (see section 3.2.4.2) it may also be entitled to relief under the "relief event" arrangements described in section 3.5.11. It will not, however, be entitled to any other compensation or relief.

Similarly, if there is any encroachment by or upon any of the project's sites, or if a native title application is lodged for any of the sites (see section 3.2.12), Housing may be liable to compensate the Project Company, and/or to provide relief from

its contractual obligations, under the “compensation event” arrangements described in section 3.5.12.

#### 3.2.4.2 Construction site access

As indicated in section 2.2, Housing has granted a Licence giving the Project Company—and, through it, the Development Contractor, the Construction Contractors, any other relevant Project Company subcontractors and their officers, employees, agents, advisers and other authorised persons—non-exclusive access, for the purposes of the project’s works and services, to:

- The Bonnyrigg housing estate sites which are already owned by Housing and are already available for the project, from 20 April 2007
- Each of the additional Bonnyrigg estate sites from the date on which it becomes available for the project, under the arrangements for this described in section 3.2.4.1, and
- Each off-estate housing property, from the date on which its ownership is transferred to Housing under the arrangement for this described in section 3.2.4.1.

This Licence, which will continue until 28 February 2037 or any earlier termination of the Project Deed, is subject to a series of conditions set out in a schedule to the Project Deed and the rights of others to access the sites, including the rights of public housing tenants under their Tenancy Agreements.

If the Project Company needs to access any other land for the purposes of the project, either within or outside the Bonnyrigg housing estate, this will be its sole responsibility. Housing will not be liable for any losses or delays suffered by the Project Company if it fails to gain this access.

If the Project Company is unable to gain access to a Housing-owned site or dwelling that is available for the project because:

- A tenant has refused to be relocated under the rehousing arrangements described in section 3.4.4.5, despite all reasonable endeavours by the Project Company to gain this access for its works
- Housing, as the owner, has insufficient rights of access itself, other than under the relevant Tenancy Agreement, or
- A court, tribunal or authority has determined that the Project Company or the Ground Lessee has no right of access under the relevant Tenancy Agreement, for reasons other than any failure by the Project Company or the Ground Lessee to comply with the Tenancy Agreement,

this will constitute a “relief event”, potentially entitling the Project Company to extensions of deadlines under the Project Deed and/or other relief under the “relief event” arrangements described in section 3.5.11 of this report.

#### 3.2.4.3 Construction site security

During the construction of each stage of the project the Project Company will have full responsibility for the physical security of the relevant construction sites, including their associated dwellings and other facilities, and any other properties that are being used for its works.

#### 3.2.5 Site conditions

The Project Company has generally accepted the project’s current and future sites, existing dwellings and existing

infrastructure in their current states and physical condition, expressly including any latent or patent defects, any existing contamination or hazardous materials and any existing archæological or heritage artefacts.

However, if:

- Any action or inaction by Housing, Housing’s Project Director, any other persons administering or managing the project for Housing or any employees, agents or contractors of Housing or the State of NSW in the course of their employment, other than tenants, the Project Company itself and its related parties, causes the *overall* condition of the estate’s existing public housing—as distinct from the condition of individual dwellings in isolation—to materially deteriorate, as determined by a comparison of the findings of a “stock condition” survey to be undertaken before the project’s services commence (section 3.4.1) and an equivalent survey completed on 9 November 2005, *or*
- A structural defect in an existing dwelling, existing at the time of commencement of the project’s services but not identified in the 2005 “stock condition” survey, is discovered while works are being carried out or services are being performed at the dwelling, *or*
- Friable asbestos that was not identified in the 2005 “stock condition” survey is discovered while works are being carried out or services are being performed at an existing dwelling, *or*
- There are contaminated materials on a site at the time of commencement of the project’s services, not brought onto the site by or on behalf of the Project Company, and remediation or removal of these materials is required (see section 3.2.11), having regard to the requirements of the Contaminated Land Management Act (NSW), the Environmental Planning and Assessment Act (NSW) and the Protection of the Environment Operations Act (NSW), *other than* as a result of any action by or on behalf of the Project Company not required as part of its performance of the project’s works,

Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the “compensation event” arrangements described in section 3.5.12.

#### 3.2.6 General construction obligations and ownership of the constructed assets

The Project Company must carry out each stage’s construction works in accordance with:

- The Project Company’s *Proposals* for the project, as reproduced in a schedule to the Project Deed
- The Project Deed and, except for the stage’s private dwellings, if any, the *Specification*
- Timeframes set out in the Project Deed (see section 3.2.7.1) and a *Works Program* to be prepared by the Project Company for each stage of the works (see section 3.2.7.2)
- The stage’s detailed designs (section 3.2.3.1)
- Construction-phase management plans, including a *Works Management Plan* and a *Quality Standards (Works)* plan, to



be developed, maintained and updated by the Project Company (see section 3.2.9.1), and

- All applicable laws, including the Building Code of Australia and the building requirements of the Environmental Planning and Assessment Act (NSW),

and with good workmanship, using good quality new and undamaged materials and exercising the skills, care and diligence reasonably expected of professional engineers and builders for facilities of this nature, so that:

- The works do not cause any material damage, nuisance, inconvenience, disturbance or disruption to Housing, its public housing tenants, other residents (both on and off the Bonnyrigg housing estate) or the owners, users and occupiers of adjacent properties, except as contemplated in the *Works Program* (section 3.2.7.2), the Project Company's construction management plans (section 3.2.9.1) and associated protocols
- The works do not interrupt the supply of water, electricity, gas, communications, drainage, sewerage and other utility services to any adjoining properties not included in the stage's current works
- The works do not damage any adjoining property or existing infrastructure not included in the stage's works
- The completed dwellings and other facilities will be, and will remain, fit for their intended purpose, the provision of the services described in sections 3.4.2 to 3.4.4 below
- The completed dwellings and other facilities and the services able to be provided by the Project Company will meet or exceed the requirements of the *Specification*, and
- The completed dwellings and other facilities will comply with all applicable development approvals, all other applicable approvals, licences and consents and all other applicable legal requirements.

Once the detailed designs and initial *Works Program* for a stage of the project have been completed, the works to be undertaken may be modified or added to only under the contract variation arrangements described in section 3.5.9 and the *Works Program* amendment arrangements described in section 3.2.7.2 or, in narrower circumstances, under the "adverse market conditions" arrangements described in section 3.2.7.4 or the "relief event" or "compensation event" arrangements described in sections 3.5.11 and 3.5.12.

Items used for or incorporated into the works must be made in Australia or New Zealand, unless a specified exemption applies or Housing's Project Director consents.

The fixtures of the constructed dwellings and other facilities will be owned by Housing, but all of their chattels and non-fixtures will (as between Housing and the Project Company) remain the property of the Project Company, and will continue to do so until the end of the project.

Conversely, any materials the Project Company removes from the sites will (as between Housing and the Project Company) immediately become the property of the Project Company, unless this is contrary to a legal requirement, the Project Deed or a direction by Housing's Project Director.

In addition to the Development Contractor's obligations to the Project Company and the Partners under the Development

Contract (as guaranteed to the Project Company and the Partners by the Development Guarantor under the Development Contractor Guarantee) and the Development Contractor's obligations to the Project Company under the Interface Agreement, the Development Contractor and the Development Guarantor have directly promised Housing, in the Development Side Deed, that:

- The Development Contractor will satisfy a series of obligations concerning, among other things, its compliance with the Development Contract, the quality of its works and services, materials and equipment, the provision of information to Housing and the notification of defaults to Housing, and
- The Development Guarantor will, upon request, extend, to Housing, any guarantee of the Development Contractor's performance which it has provided to the Project Company, such as its guarantee under the Development Contractor Guarantee.

The Development Contractor has also directly promised Housing, through the Project Company under the Project Deed, that notwithstanding the exemption provided to it by the Home Building Amendment (Exemptions) Regulation 2007 (section 2.3), it will comply with the Home Building Act (NSW) in performing its obligations to the Project Company under the Development Contract, and that it alone will be responsible for developing and marketing the project's private property developments in accordance with the relevant Project Company obligations under the Project Deed.

### 3.2.7 Construction timeframes

#### 3.2.7.1 *Target works commencement and completion dates*

As indicated in section 3.2.1, the works within the Bonnyrigg housing estate are currently planned to be carried out in 18 "stages", and the works on dwellings outside the estate are currently planned for 12 of these stages.

"Target works commencement dates" and "target completion dates" are specified, for each stage, in a schedule to the Project Deed. These target dates may be amended under the contract variation arrangements described in section 3.5.9, provided the Project Company seeks this no later than three months before the relevant stage(s)' "target works commencement date", or, in narrower circumstances, under the "adverse market conditions" arrangements described in section 3.2.7.4 or the "relief event" or "compensation event" arrangements described in sections 3.5.11 and 3.5.12.

The Project Company must start the detailed design and construction of each stage of the project by its "target works commencement date", following the submission of draft detailed designs at least three months before this date, and it must complete each stage's construction by its "target completion date".

If a stage of the works includes the construction of private housing, the stage may achieve "completion"—in accordance with processes described in section 3.2.14—only if, among other things, at least 50% of this private housing has been completed and is available for occupation. If not all of the stage's private dwellings have in fact been completed by the formal "completion" of the stage, the Project Company must

ensure that all of these dwellings are completed within 12 months of the stage's "target completion date". This deadline may be extended under the contract variation arrangements described in section 3.5.9, under the "adverse market conditions" arrangements described in section 3.2.7.4 (provided formal "completion" of the stage has not already occurred) or under the "relief event" or "compensation event" arrangements described in sections 3.5.11 and 3.5.12.

### 3.2.7.2 Works Programs

Within this overall "target works commencement dates" and "target completion dates" framework, the Project Company must develop, maintain, update and comply with detailed *Works Programs* for each stage's works, the requirements for which are set out in the Project Deed, the *Specification*, the Project Company's *Proposals* and timeframes specified in a "development program" schedule to the Project Deed.

The processes stipulated in the Project Deed for the submission, review and amendment of drafts of the Project Company's initial *Works Program* for each stage are precisely analogous to those described in section 3.2.3.1 for the submission, review and amendment of draft detailed designs. The first draft of the *Works Program* for each stage of the works must be submitted to Housing at least two months before the stage's "target works commencement date".

If the Project Director, any other representatives of Housing or any other "stakeholders" choose to participate in these review processes, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed, and the Project Company (and, through it, the Partners and, in the case of the private property developments, the Development Contractor) will remain solely responsible for ensuring its works comply with the requirements of the Project Deed.

If the Project Company and Housing's Project Director are unable to agree on any comments, recommendations or amendments under these processes, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the original draft *Works Program* did not comply with the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other "project documents" (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the "compensation event" arrangements described in section 3.5.12.

The initial *Works Programs* for each stage established under these arrangements must be updated by the Project Company on a monthly basis, taking account of any changes in its works and any delays. These updates may change a stage's "target completion date" only if it has already been adjusted under the mechanisms referred to in section 3.2.7.1.

The Project Company must promptly submit each updated *Works Program* to Housing's Project Director.

If he or she directs it to, the Project Company must meet and consult with relevant "stakeholders" about its amendments, and

then further amend the updated *Works Program(s)* to take account of their concerns.

The Project Director, any other representatives of Housing and any other "stakeholders" may, but need not, review the updated *Works Programs*. If they choose to do so, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed.

### 3.2.7.3 Responses to delays

If the Project Company fails to start its detailed design and construction of a stage's works by its "target works commencement date" or complete its construction of a stage by its "target completion date", it must submit a written *Construction Milestone Failure Report* to Housing's Project Director, within five business days, setting out the reasons the deadline was not met, the date by which the relevant work will now be completed, the effects of the delay on the completion of the stage and the effects, if any, on the completion of all of the project's works.

If the Project Director believes (in response to a *Construction Milestone Failure Report* or, more generally, at any time) that the Project Company will not complete a stage's works by its "target completion date", he or she must direct the Project Company, in writing, to prepare and submit a draft *Corrective Action Plan* to him or her within ten business days, detailing the current state of the works and the actions it will pursue in order to remedy the situation, including an acceleration of the works.

Within ten business days of receiving the draft *Corrective Action Plan* the Project Director must either approve the plan, in which case the Project Company must diligently pursue the actions set out in the plan, amending the relevant *Works Program(s)* accordingly, or reject the plan and advise the Project Company of the reasons for this rejection, in which case the Project Director and the Project Company must meet to discuss and establish an acceptable *Corrective Action Plan*.

If the Project Director and the Project Company cannot agree on a *Corrective Action Plan*, the dispute resolution procedures summarised in section 3.5.8 will apply.

These arrangements will not relieve the Project Company of any of its other obligations under the Project Deed or any other legal requirement.

### 3.2.7.4 Extensions of time and/or other relief for delays caused by adverse housing market conditions

If the Project Company believes it will be or is likely to be delayed in achieving the completion of its works, for a stage that includes private housing, by its "target completion date" as a result of adverse conditions in the housing market, it may apply for an extension of time and/or other relief from its affected obligations, even if it is too late for it to utilise the more generally applicable contract variation arrangements described in section 3.5.9 and even if the "relief event" and "compensation event" arrangements described in sections 3.5.11 and 3.5.12 do not apply.

The maximum possible extension of time for any one claim is 12 months, and for any stage of the works there is a limit of 36 months (or any other limit agreed to by Housing's Project Director and the Project Company) in total. If a claim has already been made for a stage's works, no further claims may be made until six months have elapsed, unless the Project



Director agrees otherwise. No claims may be made for Stage 1 of the project, even if this stage has been amended to include the construction of private housing.

In order to claim an extension of time and/or any other relief under these arrangements, the Project Company must:

- Advise Housing's Project Director of the adverse market conditions and their likely effects as soon as reasonably practicable after it becomes aware of the conditions
- Demonstrate, to the Project Director's reasonable satisfaction, that it has taken all reasonable steps to avoid, prevent or mitigate these effects
- Nominate any extension of time required, and
- Nominate three independent experts willing to advise Housing and the Project Company on these matters.

The Project Director must choose one of these independent experts within three business days of their nomination. The selected expert must then be jointly appointed by Housing and the Project Company, and the Project Company must then submit a report prepared by this expert on whether the Project Company's failure to meet its private housing sales forecasts for the stage has been caused solely by adverse housing market conditions, taking account of a series of factors specified in the Project Deed, together with his or her views on the reasonableness of the requested extension of time.

Housing's Project Director may reasonably request additional information, and if he or she does so this must be provided by the Project Company or the independent expert at the Project Company's cost.

Provided the Project Company complies with these processes and the independent expert verifies the requested extension of time as reasonable, the Project Director must grant the requested extension of time and must also grant the Project Company reasonable relief from other affected obligations, taking account of the independent experts report and any requested additional information.

The Project Company must then continue to take all reasonable steps to avoid, prevent or mitigate the effects of the adverse market conditions, and must immediately advise the Project Director of any new information of relevance and any information rendering its previous advice materially inaccurate or misleading. It will not be entitled to claim any compensation for any additional costs or revenue losses resulting from the extension of time.

If the total extension of time required for any stage of the works in response to adverse market conditions exceeds the limit of 36 months (or any other limit agreed to by Housing's Project Director and the Project Company), either party may seek to terminate the Project Deed by giving the other party 20 business days' notice.

If the notice of termination is issued by the Project Company, Housing's Project Director must either:

- Accept the notice, in which case the arrangements described in section 3.6.1 of this report will apply, or
- Issue a notice in response, within ten business days, specifying that the whole of the Project Deed must continue for all of the project stages that are not currently under construction or are not otherwise in their "construction

phase" as a result of provisions for an early commencement of a stage's "construction phase" in circumstances described in section 3.4.4.5.

If he or she chooses the latter course,

- Housing's monthly "service payments" to the Project Company for its services, under arrangements described in section 3.4.9, must be calculated, from the day after the date on which the Project Deed would have terminated had the Project Director accepted the notice of termination, as if the Project Company were satisfying all of its obligations under the Project Deed and the *Specification*, with the only permitted reductions in these payments being for any costs the Project Company does not incur, and
- The Project Deed will otherwise continue to apply unless Housing decides to terminate it, giving the Project Company at least 30 business days' notice. If it does so, the arrangements described in section 3.6.1 will apply.

## 3.2.8 Subcontractors and workforce conditions

### 3.2.8.1 Subcontracting

In addition to the Project Company's Development Contract with the Development Contractor, the Project Company may subcontract the performance of any part of its works to other "subcontractors", and they in turn may enter into sub-subcontracts. If it does so, the Project Company will not be relieved of its own obligations, and will be fully responsible to Housing for the performance of all its subcontractors and sub-subcontractors.

For many of the works, sub-subcontracting by the Development Contractor is compulsory. The Project Company *must* ensure the Development Contractor enters into Construction Contracts with:

- Construction Contractors, licensed under the Home Building Act (NSW), for all of the project's residential building works, as defined in the Home Building Act, and
- "Duly experienced and qualified" Construction Contractors for all major site works and in-ground infrastructure.

The total amount payable to each of these Construction Contractors (including payments to its related corporations) for any single stage of the works must be more than \$2 million, indexed in line with the CPI from the March quarter of 2007.

The Project Company must:

- Ensure all of its subcontractors and sub-subcontractors are reputable, have sufficient experience and expertise to perform their obligations to the standards required by the Project Deed, apply the Project Deed workforce requirements described in section 3.2.8.2 below, and take out workers' compensation, public liability and professional indemnity insurance consistent with the Project Company's own insurance obligations under the Project Deed (see section 3.5.2.1), as applicable to the relevant works or services
- Reasonably endeavour to ensure each subcontractor's sub-subcontracts exclude the operation of the proportionate liability provisions of the Civil Liability Act (NSW)
- Comply with its obligations under the subcontracts and ensure the subcontractors do likewise, both under the subcontracts and under any sub-subcontracts, and

- Provide monthly reports to the Project Director on its payments to each subcontractor and any formal disputes with a subcontractor or sub-subcontractor (see section 3.2.9.2).

In addition to these general requirements applying to all subcontracts and sub-subcontracts, the Project Deed imposes some special requirements on what it calls “material subcontracts”. These are subcontracts and sub-subcontracts for which:

- The total contract sum, or the aggregate value of all the project contracts with the same subcontractor or sub-subcontractor and its related corporations, will exceed:
  - ♦ \$500,000 per year, indexed in line with the CPI from the March quarter of 2007, prior to each relevant stage’s “construction phase”, which will start once there is site access in accordance with a *Works Program* for the stage’s construction works (or potentially much earlier, if any of its tenants have to be rehoused because of the condition of their existing dwellings on the date the Project Company’s services commence, under arrangements described in section 3.4.4.5)
  - ♦ \$3 million, unindexed, during each relevant stage’s “construction phase”, or
  - ♦ \$500,000 per year, indexed in line with CPI movements from the March quarter of 2007, during each relevant stage’s “operational phase”, after construction is completed, or
- Regardless of their value, have a duration of more than five years and/or cover works or services nominated by Housing’s Project Director as being particularly important.

The Project Company must:

- Ensure a “material subcontractor” is engaged only with Housing’s prior consent. (In addition, Construction Contracts may be entered into by the Development Contractor only if the Project Company gives Housing’s Project Director copies of the draft contracts at least 20 business days before they are executed, and they must be in a form agreed to by Housing, unless the Project Director decides otherwise.)
- Ensure a “material subcontractor”—other than the Development Contractor, the Construction Contractors and (for the project’s services) the Facilities Management Contractor and the Tenancy Services Contractor—is engaged only if it executes a collateral warranty deed, in favour of Housing, on terms set out in a schedule to the Project Deed and equivalent to those already agreed to by the Manager in the Management Collateral Warranty Deed.

In the case of the Development Contractor, the Construction Contractors, the Facilities Management Contractor and the Tenancy Services Contractor, this requirement is replaced by a requirement for them to execute “Side Deeds” with Housing on terms set out in another schedule to the Project Deed. The Development Contractor has already done so in the Development Side Deed, as have the Facilities Management Contractor in the Facilities Management Side Deed and the Tenancy Services Contractor in the Tenancy Services Side Deed, and the Construction Contractors will execute analogous Construction Side Deeds when they are appointed.

- Ensure the Construction Contracts include provisions excluding the operation of the proportionate liability provisions of the Civil Liability Act (NSW) (there are already similar provisions in the Development Contract, the Facilities Management Contract and the Tenancy Services Contract).
  - Obtain the Project Director’s consent before it compromises or waives any material claim against a “material subcontractor”.
  - Obtain the Project Director’s consent before it permits *any* variation or amendment of, departure from or assignment, replacement or termination of the Development Contract, a Construction Contract, the Facilities Management Contract or the Tenancy Services Contract.
  - Obtain the Project Director’s consent before it permits any *material* variation or amendment of, material departure from or assignment, replacement or termination of any “material subcontract” other than the Development Contract, the Construction Contracts, the Facilities Management Contract and the Tenancy Services Contract.
- However, if there is *any* variation or amendment of, departure from or assignment, replacement or termination of *any* “material subcontract” without the Project Director’s prior consent—other than a termination in response to an insolvency of the Development Contractor, the Development Guarantor, the Facilities Management Contractor, the Facilities Management Guarantor or the Tenancy Services Contractor or in response to specified breaches of legal requirements—it will not affect or prejudice Housing’s rights against the Project Company under the Project Deed or any Side Deed or in any other way.
- Immediately notify Housing’s Project Director of any termination of or material amendment to any “material subcontract”.
  - Give Housing full details of any replacement Development Contractor before it is appointed.

### 3.2.8.2 Employment conditions

The Project Company must comply with a series of conditions concerning its own employees, the employees of the Development Contractor, the Construction Contractors, the Facilities Management Contractor and the Tenancy Services Contractor and the employees of any other subcontractors and sub-subcontractors appointed to carry out the project’s works or services under the arrangements summarised in section 3.2.8.1.

These conditions cover matters such as employees’ qualifications, skills, experience and training; pre-employment checks on prospective employees, including police and background checks on persons providing services and/or having contact with public housing tenants; the rights of Housing’s Project Director to carry out his or her own investigations, including police checks, with the consent of the prospective employee(s), and consult with the Project Company concerning the dismissal of unsuitable or unqualified employees; compliance with Housing’s staff codes of conduct, policies and procedures; disciplinary actions; the sole responsibilities of the Project Company and its subcontractors and sub-subcontractors for the employment and conditions of

their employees; human resources and industrial relations policies; and compliance with employment laws.

### 3.2.9 Construction management plans, records, reports, inspections and audits

#### 3.2.9.1 *Management plans and records*

The Project Company must develop design and construction management plans, for each stage's works and as specified in the *Specification*, in accordance with:

- The Project Company's *Proposals* for the project, as reproduced in a schedule to the Project Deed
- The *Specification* (but not for the stage's private dwellings, if any)
- The requirements of the *Quality Standards (Works)* plan, which is one of the construction management plans to be developed by the Project Company, and a *Quality Standards (Services)* plan, one of the operational plans to be developed by the Project Company (see section 3.4.7.1), and
- Timeframes set out in the "development programs" schedule to the Project Deed,

and with an "appropriate" level of professional care, so that the works comply with the project's development approvals, all other relevant approvals, licences and consents and all other legal requirements.

The management plans required under these arrangements are *Detailed Design Programs*, the *Works Programs* described in section 3.2.7.2 and a *Works Management Plan*, incorporating a *Quality Standards (Works)* plan, *Works Method Statements* for each stage of the works, a *Stormwater Management Plan*, a *Traffic Management Plan*, an *Aboriginal Participation Plan* and a *Local Industry Participation Plan*.

The processes stipulated in the Project Deed for the submission, review and amendment of drafts of the initial versions of these plans for each stage are precisely analogous to those described in section 3.2.3.1 for the submission, review and amendment of draft detailed designs and section 3.2.7.2 for the submission, review and amendment of draft *Works Programs*. The draft plans for each stage of the works must be submitted to Housing at least two months before the stage's "target works commencement date".

If the Project Director, any other representatives of Housing or any other "stakeholders" choose to participate in these review processes, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed, and the Project Company (and, through it, the Partners and, in the case of the private property developments, the Development Contractor) will remain solely responsible for ensuring its works comply with the requirements of the Project Deed.

If the Project Company and Housing's Project Director are unable to agree on any comments, recommendations or amendments under these processes, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the original draft plans did comply with the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of

the Project Company to perform its obligations or exercise its rights under the Project Deed or the other "project documents" (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the "compensation event" arrangements described in section 3.5.12.

The Project Company must audit its compliance with its *Quality Standards (Works)* plan at least every three months, in accordance with an audit program that has been agreed with Housing's Project Director. The quality of the works will also be independently audited, as described in section 3.2.9.4 below.

#### 3.2.9.2 *Construction reports*

The Project Company must give Housing's Project Director monthly reports, for each stage of the works and by the fifth business day of each month, on the progress of construction, revisions to the stage's *Works Program* (section 3.2.7.2), expenditures and any significant items potentially affecting the *Works Program*, any adjustments to its progressive payment or drawdown schedules, the status of activities, budgets, works, payments and any disputes under its subcontracts and sub-subcontracts, the anticipated timing of the completion of the stage's private housing (if any), the likely percentage of the project's private housing to be completed as part of the stage, the occurrence or likely occurrence of adverse housing market conditions (section 3.2.7.4), the results on any quality assurance audits in the preceding month, any serious accidents or dangerous events and the progress of any works by a government or council authority on the extension, adjustment or relocation of water, electricity, gas, communication or other utilities.

The Project Director may, but need not, review these reports and give the Project Company written comments and recommendations concerning the compliance of the works with the requirements of the Project Deed. If he or she does so, the Project Company and the Project Director must meet to discuss and establish rectification measures or changes to the works, and if they cannot agree the dispute resolution procedures summarised in section 3.5.8 will apply. In reviewing the reports the Project Director will not become responsible in any way for ascertaining errors, omissions, defects or non-compliances in the works.

The Project Company must also:

- Provide separate monthly reports to the Project Director on its payments to each subcontractor and any formal disputes with a subcontractor or sub-subcontractor (see section 3.2.8.1).
- If requested by the Project Director, give him or her copies of site-specific occupational health and safety records, registers and documents, as described in section 3.2.10 below
- Immediately inform the Project Director of any incident, connected with its works, which has:
  - ♦ Seriously injured or killed a tenant, another resident, an owner or occupier of adjoining premises, any of their invitees or any employee, agent or contractor of Housing or the State of NSW in the course of their employment, and

- ♦ Caused a suspension or cessation of any part of the Project Company's services,

and the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of this event (see also section 3.4.8)

- Immediately inform the Project Director about any "emergency", as defined in the Project Deed, meaning any situation which, in the Project Director's opinion at the time,
  - ♦ Seriously threatens, has caused or will cause material damage or disruption to any person's health and safety, the environment, property or the safe and secure performance of the Project Company's works or provision of its services, the project's dwellings or the project's other facilities, or
  - ♦ Prevents the continuation of the Project Company's works or the provision of its services under normal circumstances, or
  - ♦ Will necessitate the provision of materially greater services or a materially higher level of services,

if this "emergency" has caused the Project Company to suspend or stop performing any of its services, advising the Project Director of the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of the "emergency", and

- Promptly inform the Project Director about any material defects or damage to the sites, works or facilities for which the cost of repairs is more than \$3,000 (indexed in line with the CPI from the March quarter of 2007), the actions it is taking to correct the damage or defect and the estimated time the correction will require (see also section 3.4.8).

The Project Company has promised Housing that all of the reports and data it provides to Housing in accordance with the Project Deed will be accurate and complete, as at the date they are provided.

### 3.2.9.3 *Site inspections, site meetings and inspections of documents etc*

In addition to the meetings of the Project Co-ordination Group described in section 3.1.2,

- Housing's Project Director and his or her representatives may enter any of the constructions sites to inspect the works at any reasonable time and after giving reasonable notice, provided they comply with reasonable safety and security requirements and do not cause unnecessary disruption
- The Project Company must give the Project Director and his or her representatives an opportunity to attend monthly or more frequent site meetings
- The Project Director may, but need not, give the Project Company written comments and recommendations concerning the compliance of the works with the requirements of the Project Deed, and
- If he or she does so, the Project Company and the Project Director must meet to discuss and establish rectification measures or changes to the works, and if they cannot agree the dispute resolution procedures summarised in section 3.5.8 will apply. If this results in a final and binding determination that the works did comply with the Project

Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other "project documents" (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the "compensation event" arrangements described in section 3.5.12.

If the Project Director's exercises his or her rights to inspect or make comments on the works he or she will not become responsible in any way for ascertaining errors, omissions, defects or non-compliances in the works.

In addition to these construction-specific inspection rights, the Project Director and his or her representatives may exercise more general powers under the Project Deed to carry out inspections of the sites and any related systems, registers, manuals, records, plans and programs in order to assess whether the Project Company is complying with its obligations under the Project Deed.

Unless there are circumstances potentially leading to termination of the Project Deed under the arrangements described in sections 3.6.3.5 and 3.6.4, or unless an earlier inspection has revealed any other non-compliance(s) with the Project Deed, these wider-ranging inspections may be carried out no more than twice each financial year.

The Project Director must give the Project Company at least five business days' written notice of each of these inspections, and must consider any reasonable requests by the Project Company for an inspection to be carried out on a different date because it would materially prejudice its ability to provide its services, provided these requests are made at least two business days before the scheduled inspection.

The Project Company must provide reasonable assistance for the inspections, including making records etc available, and the inspectors must minimise their disruption of the Project Company's services, including the Tenancy Services Contractor's services, as much as reasonably practicable.

If an inspection reveals a breach of the Project Deed's requirements, the Project Director must notify the Project Company, providing details and specifying a reasonable period for the breach to be remedied. The Project Company must comply with this notice and remedy the breach, and the Project Director may carry out a further inspection to check whether it has.

Housing will bear the costs of these inspections unless such a breach is discovered, in which case the Project Company must reimburse these costs and any reasonable associated administrative costs, or unless there are continuing circumstances potentially leading to termination of the Project Deed under the arrangements described in sections 3.6.3.5 and 3.6.4.

### 3.2.9.4 *Independent and Housing performance and quality monitoring and audits*

In addition to the inspections described in section 3.2.9.3, Housing may monitor and review the Project Company's delivery of its works in any other way it thinks fit, including random, continuous or routine monitoring of the Project



Company's activities, "benchmarking", analyses of the monitoring carried out and reported by the Project Company, analyses of information in the Project Company's operational records and reports by relevant authorities.

The Project Company must also permit representatives of recognised community organisations (including tenancy, community, cultural and "special needs" organisations and advocacy groups) and associations representing Bonnyrigg housing estate's tenants to review and comment on these monitoring methods and their findings, provided this is done on a confidential basis.

In addition to carrying out its own quality audits, as referred to in section 3.2.9.1, the Project Company must have its compliance with its *Quality Standards (Works)* plan audited at least every 12 months by an independent auditor acceptable to Housing's Project Director.

The Project Director or his or her representative will be entitled to be present during these audits and an audit report must be delivered to the Project Director within a reasonable time.

Housing also has the right to conduct its own quality audits, at its own cost, at any time prior to the completion of all of the project's works. Should such an audit reveal any non-compliance with quality assurance plans by the Project Company or its subcontractors or sub-subcontractors, the Project Company must reimburse Housing for its auditing costs.

These quality assurance and audit arrangements will not relieve the Project Company of any of its other obligations under the Project Deed.

### 3.2.10 Occupational health and safety

The Project Company has promised Housing that in carrying out its works and performing its services it will keep the project's sites and facilities in a good and safe condition, so they do not present any health or safety risks, and, more generally, that it will "ensure the safety of people from harm".

For the purposes of the Occupational Health and Safety Regulation (NSW), the Project Company has been appointed as the "principal contractor" for the project's construction works and may exercise any of Housing's powers as necessary for it to discharge this responsibility.

This appointment is not and will not be affected by the Development Contract, the Construction Contracts or any other subcontracting of the construction work by the Project Company.

If the Project Company fails to comply with its duties as a "principal contractor", Housing may carry out these duties itself, or have them carried out by others, and the Project Company must pay Housing for the costs incurred, as a debt, upon demand.

If requested by Housing's Project Director, the Project Company must give him or her copies of its site-specific occupational health and safety management plans, its subcontractors' safe work method statements and all other registers, records and documents which the Project Company must prepare and maintain as the "principal contractor".

### 3.2.11 Environmental requirements

The Project Company must, in performing its construction works and providing its services,

- Comply with all environmental laws and all relevant industry standards and codes of practice
- Not contaminate or pollute any construction sites, dwellings, other facilities or adjoining properties
- Not bring any waste or hazardous materials onto any sites or facilities
- Not dispose of any waste or hazardous materials on any sites or facilities
- Keep the sites and facilities in a good and safe condition, so that they do not present any health, safety or environmental risk
- Ensure the safety of people and protect the environment from harm
- Immediately notify Housing's Project Director if there is an incident that might breach an environmental law or there is a complaint about contamination or pollution
- Give the Project Director any information it has about contamination or pollution
- Undertake any remediation work that is needed to ensure that each site presents no risk of harm to the environment and is suitable for its proposed use as a dwelling
- Notify the Project Director if it encounters contaminated materials and, with the Project Director, develop a remediation plan for disposing of these materials
- Promptly comply with any environmental law direction or order served on the Project Company or Housing by any court, tribunal or relevant government authority (this liability will continue after the end of the project if it arises because of contamination, pollution or waste disposal during the term of the project), and
- Give the Project Director a copy of any environmental law direction it receives within seven days, and then promptly give him or her, as requested, copies of all reports, invoices and other documents relating to the direction or its compliance with the direction.

Additional, more detailed environmental requirements are set out in the *Specification*.

As already indicated, the Project Company has generally accepted the project's current and future sites, existing dwellings and existing infrastructure in their current states and physical condition, expressly including any existing contamination or hazardous materials, *subject to* Housing's potential liability to compensate the Project Company, grant extensions of time and/or provide other relief from its Project Deed obligations under the "compensation event" arrangements described in section 3.5.12 if:

- Friable asbestos that was not identified in the 2005 "stock condition" survey is discovered while works are being carried out or services are being performed at an existing dwelling, or
- There are contaminated materials on a site at the time of commencement of the project's services, not brought onto



the site by or on behalf of the Project Company, and remediation or removal of these materials is required, having regard to the requirements of the Contaminated Land Management Act (NSW), the Environmental Planning and Assessment Act (NSW) and the Protection of the Environment Operations Act (NSW), *other than* as a result of any actions by or on behalf of the Project Company.

As part of the procedures preceding the formal completion of each stage of the works, described in section 3.2.14 below, the Project Company must undertake a final assessment of contamination on the stage's sites, undertake any remediation work which this assessment shows is required, and subject its assessment and remedial actions to independent review by an accredited site auditor under the Contaminated Land Management Act (NSW), jointly appointed by Housing and the Project Company.

### 3.2.12 Native title claims

If there is a native title claim over any sites or parts of sites, the Project Company must:

- Continue to perform its obligations under the Project Deed unless it is ordered not to by Housing's Project Director, a court, tribunal or other relevant authority or any other legal requirement, and
- Provide all reasonable assistance requested by the Project Director in connection with the claim, including the granting of access to the relevant site(s) when this is reasonably required by Housing.

A native title claim may entitle the Project Company to compensation and/or relief from its contractual obligations under the "compensation event" arrangements described in section 3.5.12.

### 3.2.13 Archæological and heritage artefacts

Any archæological or heritage artefacts discovered on or under any of the sites will (as between Housing and the Project Company) be Housing's absolute property.

The Project Company must:

- Take every precaution to prevent the removal, disturbance, damaging or destruction of any artefacts
- Immediately notify Housing's Project Director if any artefacts are discovered
- Comply with any directions concerning these artefacts by the Project Director or a court, tribunal or other relevant authority, and
- Continue to perform its obligations under the Project Deed as much as possible.

The discovery of an artefact may mean the Project Company is entitled to compensation and/or relief from its contractual obligations under the "compensation event" arrangements described in section 3.5.12.

### 3.2.14 Completion and 'commencement' of the project's stages and 'precincts'

The Project Deed and the Independent Certifier Deed set out detailed requirements and procedures for the formal completion of works on each stage of the project or individual "precincts"

within each stage. (These "precincts" must have at least 35 public and/or private housing properties, and must be agreed to by Housing's Project Director.)

The completion requirements and procedures include:

- The obtaining of all consents, approvals and licences required for the occupation and use of the stage's or precinct's works and the satisfaction of any conditions attached to these consents.
- The relevant stage's final site contamination assessment, remediation works and independent review described in section 3.2.11, with copies of the contamination assessment and review reports being given to Housing's Project Director and the Independent Certifier.
- The drafting, review and registration of subdivision plan(s) and other relevant instruments and documents for the subdivision of the stage's or precinct's properties.
- The identification and listing of minor omissions and defects which, in aggregate, will not themselves, or during their rectification, adversely affect the occupation and use of the stage's or precinct's dwellings and other facilities and/or adversely affect the Project Company's ability to provide its services to the stage or precinct.
- The completion of all the Project Company's works for the stage or precinct as required under the Project Deed—including, if relevant, specific requirements for the completion of the acquisition of the stage's or precinct's off-estate housing properties and the completion of the stage's or precinct's off-estate housing—except for these minor omissions and defects.
- The removal of rubbish and temporary works from the stage's or precinct's sites and the completion of any other work required for the occupation of the stage's or precinct's dwellings and other facilities.
- If the works for the stage or precinct include the construction of private housing, the completion and availability for occupation of at least 50% of this private housing.
- The completion or updating of a *Services Manual* as required for the provision of the Project Company's services to the stage or precinct (see section 3.4.7.1).
- The taking out of insurance policies as required for the post-completion "operational phase" of the stage or precinct (see section 3.5.2.1)
- Formal notification by the Project Company once it considers it has satisfied all of the Project Deed's requirements for formal completion of the stage's or precinct's works.
- Following this, specified consultations, information exchanges and site visits and inspections by the Independent Certifier, acting independently, and the Project Director.
- The rectification by the Project Company of any deficiencies identified by the Independent Certifier, acting independently.
- Following further inspection(s), certification by the Independent Certifier, acting independently, that all the requirements for formal completion of the stage's or precinct's works have in fact been satisfied.

- Within two business days of this certification, the issuing by Housing’s Project Director of a notice:
  - ♦ Formally confirming to the Project Company that completion of the stage’s or precinct’s works has occurred, and
  - ♦ Specifying a “**commencement date**” for the stage or precinct.

In the case of a precinct other than the last precinct to be completed within a stage of the project’s works, this “commencement date” must be the date on which the Project Director issues the notice. In the case of an entire stage or the last precinct to be completed within a stage, the “commencement date” must be the later of the date of the notice and the “target completion date” for the stage (see section 3.2.7.1).

The Project Deed makes it clear that the Project Director’s notification of the completion of a stage’s or precinct’s works will not constitute an approval by Housing of the Project Company’s performance of its obligations or evidence that the relevant facilities comply with or are capable of satisfying the *Specification*.

Any remaining minor omissions or defects identified and listed under these arrangements must be completed or rectified to the reasonable satisfaction of the Independent Certifier, acting independently, as soon as practicable, and in any event by no later than 20 business days after the date on which the Project Company formally notified completion of the stage.

The costs and expenses of the Independent Certifier, including its fees, must be paid equally by Housing and the Project Company. The Independent Certifier’s obligations may be amended, added to or deleted by Housing and the Project Company through joint notices, which may be issued at any time under arrangements set out in the Independent Certifier Deed.

Within 60 days of the “commencement date” for a fully completed stage of the project the Project Company must give Housing’s Project Director a complete set of “as executed” drawings of the stage in hard copy and electronic form, and within 180 days of the “commencement date” for the stage it must give him or her a detailed survey of the completed facilities by a registered surveyor nominated by the Project Director, with the surveyor’s certification that the completed works are located in accordance with the relevant detailed designs.

### 3.2.15 Development bond

In addition to the securities granted to Housing under the Corporation Security (Project Company and Partners) and the Corporation Security (Development Contractor), summarised in section 4.1, the Project Company has given Housing an unconditional bank guarantee, for an amount specified in the Project Deed, to secure the Project Company’s performance of its design and construction works.

If it is not drawn upon, this “development bond” guarantee is to be reduced to a specified percentage of its initial value 20 business days after the completion of the first stage of the works to have achieved the cumulative completion of 75% or more of the project’s dwellings. The guarantee must then be released entirely six months after the “commencement date” of

the last stage of the project—the Project Deed calls this date the “**full service commencement date**”—or upon any earlier termination of the Project Deed. The released portions of the development bond must be released to the private sector debt financiers’ Security Trustee.

The Project Company may not take any action to restrain any demands or payments under the development bond or any use by Housing of any money they receive under this guarantee.

### 3.2.16 Possible parent company guarantee by the Development Guarantor

As already indicated in sections 2.2 and 3.2.6, the Development Guarantor has promised Housing, in the Development Side Deed, that it will, upon request, extend, to Housing, any guarantee of the Development Contractor’s performance which it has provided to the Project Company, such as its guarantee under the Development Contractor Guarantee.

## 3.3 Marketing and sale of private dwellings

As indicated in sections 2.2 and 3.1, the Project Company must—as the agent and nominee of the Partners and also as the agent and nominee of the Development Contractor—finance, market and sell the new and refurbished dwellings, on and off the estate, that are to be privately owned, with Housing and the Project Company sharing agreed proportions of the income from these private dwelling sales.

The Project Company has subcontracted these obligations to the Development Contractor under the Development Contract, and the Development Contractor’s performance of the obligations has been guaranteed to the Project Company and the Partners by the Development Guarantor under the Development Contractor Guarantee.

The Development Contractor has directly promised Housing, through the Project Company under the Project Deed, that it alone will be responsible for developing and marketing the project’s private property developments in accordance with the Project Company’s relevant obligations under the Project Deed and the *Specification*.

As indicated in sections 2.2, 3.2.6 and 3.2.16, the Development Contractor and the Development Guarantor have also directly promised Housing, in the Development Side Deed, that:

- The Development Contractor will satisfy a series of obligations concerning, among other things, its compliance with the Development Contract, including the performance of its private property development, marketing and sale obligations, the quality of its works and services, materials and equipment, the provision of information to Housing and the notification of defaults to Housing, and
- The Development Guarantor will, upon request, extend, to Housing, any guarantee of the Development Contractor’s performance which it has provided to the Project Company, such as its guarantee under the Development Contractor Guarantee.

### 3.3.1 Marketing and transfers of private property

The Project Deed specifies:

- Procedures to be followed by the Project Company in marketing the properties that are to be sold to private owners and arranging for these Housing-owned properties, both on and off the Bonnyrigg housing estate, to be sold by Housing to private owners
- The standard form of the sale contracts to be used for these sales, unless the Project Company proposes an alternative form and Housing's Project Director does not exercise a power of veto within 20 business days, and
- The standard form of the term sheets to be used in these sales.

Housing, the NSW Department of Housing and the State of NSW have no obligations to assist the Project Company in carrying out its obligations under these arrangements.

Housing's Project Director may, but need not, review the term sheets for the sales. If he or she does so, he or she will not assume any duty of care or responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed.

The Project Director may reject a term sheet only if he or she does so within five business days of its submission by the Project Company and only if:

- He or she believes any requested amendments to the standard or otherwise previously approved form of the sale contract might make the sale of the property materially detrimental to Housing's interests
- The nature or use of the proposed private property or the commercial terms of its sale are inconsistent with the Project Company's *Proposals* for the project, as reproduced in a schedule to the Project Deed, or
- The proposed transaction is not on an arms' length basis for a fair market value.

If the Project Company disagrees with such a rejection of a term sheet, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8.

The Project Company may sell vacant land to a private owner, provided the purchaser enters into a covenant to complete the construction of housing on the land, in accordance with the private housing requirements of the Project Company's *Proposals* and the *Specification*, within two years of the completion of the sale. Housing may, however, veto such a proposed sale if it would be likely to result in a breach of the *Specification*.

Once the sale of a Housing-owned property to a private owner has been completed under these arrangements, for the purposes of the Project Deed and the Lease(s) described in section 3.4.5.1 the property's land will no longer be considered a "site" and its housing and other improvements will no longer be considered part of the project's dwellings and other facilities.

The Project Company must give Housing's Project Director quarterly reports detailing each quarter's private property sale exchanges and settlements, including the properties' individual sale prices and GST arrangements.

If the Project Company believes it will be or is likely to be delayed in achieving the completion of its works for a stage of the project which includes private housing by its "target completion date" as a result of adverse conditions in the housing market, it may invoke the arrangements described in section 3.2.7.4, potentially leading to termination of the Project Deed under arrangements described in sections 3.2.7.4 and 3.6.1.

### 3.3.2 Sharing of the income from private property sales

In return for a payment of \$10 by the Project Company on 20 April 2007 and the agreements between the Project Company, the Partners, the Development Contractor and Housing concerning the private property sales and the sharing of the income generated by these sales (as described below), Housing has agreed that it will assign all of its legal and equitable present and future rights, title and interests in each of the private property sale contracts, and all of its benefits, rights and remedies against anyone under these contracts, to the Development Contractor, on and from the date on which the Project Company commences its services as part of the project (see section 3.4.1), subject to the reassignment of these rights back to Housing in the case of any private properties which remain unsold at the time of any early termination of the Project Deed.

Among other things, this assignment means the Development Contractor will be entitled to the money Housing would otherwise be entitled to receive and retain from the sale of the private properties. This will, however, be offset by a proportion of this money which Housing *will* be entitled to receive or retain under "sales gain share" arrangements set out in the Project Deed, calculated in accordance with a schedule to the Project Deed.

Housing's "sales gain share" for each stage of the project involving private housing must be calculated by the Project Company and advised to Housing's Project Director within ten business days of the sale of the stage's last private property or, if not all of the stage's private properties have been sold by the date 12 months after the stage's "target completion date" and Housing's Project Director so directs, within ten business days of this date.

The calculation of Housing's "sales gain share" for each stage will commence with the calculation of an amount called the "sales gain" for that stage, equal to the sum of all of the stage's private property sale prices *less* the product of a factor specified in the Project Deed and the sum of:

- The direct costs of constructing the private dwellings, and
- A percentage of the direct costs of constructing the stage's infrastructure, equal to the percentage of all of the stage's dwellings on the Bonnyrigg housing estate which are private dwellings,

*not counting* GST liabilities or the planning, development management, interest, bank guarantee, development bond, sales, marketing, supervision, financing or overhead costs of the Project Company, the Development Contractor or any related corporation of the Development Contractor. This amount may be positive or negative.

The next step in the calculation will be to add all of the “sales gains” for this and previous stages.

If this “cumulative sales gain” is less than or equal to a threshold amount specified in the Project Deed, Housing will not be entitled to any “sales gain share” from the stage’s private property sales.

If the “cumulative sales gain” is more than this threshold amount, Housing will be entitled to a “sales gain share” for the stage equal to:

- 45% of the amount by which the “cumulative sales gain” exceeds this threshold amount, or
- If the “cumulative sales gain” exceeds a second and higher specified threshold amount, a specified sum plus 70% of the amount by which the “cumulative sales gain” exceeds this higher specified amount

unless the result of this calculation is less than or equal to Housing’s highest “sales gain share” for any previous stage of the project, in which case Housing will not be entitled to any “sales gain share” for the stage now under consideration.

(The factors and thresholds referred to above are not reported in this *Summary of Contracts* because the parties to the Project Deed have agreed they are “commercially sensitive” information for the purposes of the Project Deed’s confidentiality provisions, as described in section 3.5.6.)

If Housing is entitled to receive a “sales gain share” for the stage, the Project Company must pay or account for this amount within two business days of being advised by Housing’s Project Director that he or she accepts the calculations.

## 3.4 Services and tenancy arrangements

### 3.4.1 Mobilisation

As already indicated in sections 2.2 and 3.1.1, the Project Company must, as the agent and nominee of the Partners, provide services specified in the *Specification* from a “transition date”, which must be no later than 20 December 2007, until 28 February 2037 or any earlier termination of the project’s contracts.

During a “mobilisation phase” prior to this “transition date”, the Project Company must:

- Prepare for the delivery of its services by updating and implementing a *Mobilisation Plan* which is set out in its *Proposals* for the project and specified in the *Specification*, and
- Communicate and consult with tenants, other residents of the Bonnyrigg housing estate, the owners and residents of adjoining properties and recognised community organisations (including tenancy, community, cultural and “special needs” organisations and advocacy groups) and associations representing Bonnyrigg housing estate’s tenants, as required by the *Specification*, the Project Company’s *Proposals* for the project, a *Communication and Consultation Protocol* that is to be developed by the Project

Company (a draft is set out in its *Proposals*) and all applicable legal requirements,

and Housing must, with the Project Company’s assistance,

- Consult and communicate with Bonnyrigg housing estate tenants about the project
- Provide information to the Project Company about the estate’s existing housing, sites and tenants and the ownership of and rights associated with assets, records and manuals, as reasonably necessary for an efficient transfer of responsibilities for the services to the Project Company, and
- Procure a new “stock condition” survey of the estate’s existing housing, so as to identify any material changes in the condition of these dwellings since the November 2005 “stock condition” survey (see sections 3.2.5 and 3.4.9).

Once the Project Company considers it has completed its obligations under the *Mobilisation Plan*, it must notify Housing’s Project Director, providing evidence of this, and the Project Director must then tell the Project Company, within two business days, that:

- The Project Company may start to provide its services, either immediately or, if the Project Company’s notice was issued before 20 October 2007, on a date nominated by the Project Director but no later than 20 October 2007, or
- The Project Company has not completed its obligations under the *Mobilisation Plan*, in which case the dispute may (but need not) be referred by the Project Company, the Partners or Housing for determination under the dispute resolution procedures summarised in section 3.5.8.

### 3.4.2 The types of services to be provided

The services the Project Company must provide from the “transition date” are:

- **“Management and integration” services**, embracing the overall management, coordination and integration activities necessary to ensure the Project Company’s services are delivered in an integrated manner across all stages of the project and throughout the duration of the project.

These services must include “integration” activities (such as the development of organisational structures, reporting systems, communications controls, coordination procedures, project management arrangements, “change management” practices and procedures for ensuring private housing marketing and sales do not adversely affect tenants), quality assurance, information management, environmental management, fire, emergency and disaster response systems, occupational health and safety systems, risk management systems, employee training, employee conduct management, industrial relations, performance monitoring and “helpdesk” services.

The Project Company has subcontracted these “management and integration” services to the Facilities Management Contractor under the Facilities Management Contract, and the Facilities Management Contractor has, in turn, sub-subcontracted the services to the Manager under the Management Agreement.



As already indicated in section 2.2, these tiered subcontracting arrangements are supported by:

- ◆ Promises to Housing by the Facilities Management Contractor and the Facilities Management Guarantor, in the Facilities Management Side Deed, that the Facilities Management Contractor will satisfy a series of obligations concerning, among other things, its compliance with the Facilities Management Contract, the quality of its services, materials and equipment, the provision of information to Housing and the notification of defaults to Housing, and that the Facilities Management Guarantor will, upon request, extend to Housing any guarantee of the Facilities Management Contractor's performance which it has provided to the Project Company, such as its guarantee under the Facilities Management Contractor Guarantee, and
- ◆ Promises to Housing by the Manager, in the Management Collateral Warranty Deed, that it will satisfy a broadly similar series of obligations concerning, among other things, the quality of its services, materials and equipment, insurance requirements, the provision of information to Housing, the notification of defaults to Housing and arrangements following any early termination of the Project Deed.
- **"Communication and consultation" services**, including the preparation, implementation and updating of a *Communication and Consultation Protocol* and the maintenance of a local office on or adjacent to the Bonnyrigg housing estate.

The Project Company has subcontracted these services to the Facilities Management Contractor under the Facilities Management Contract, and the Facilities Management Contractor has, in turn, sub-subcontracted the services to the Manager under the Management Agreement. Again, these arrangements are supported by direct commitments to Housing under the Facilities Management Side Deed and the Management Collateral Warranty Deed, as described above.

- **"Community renewal" services**, including the preparation, implementation and updating of a *Community Renewal Service Plan*, addressing a wide-ranging list of community issues, and project evaluation services.

Again, the Project Company has subcontracted these services to the Facilities Management Contractor under the Facilities Management Contract, the Facilities Management Contractor has, in turn, sub-subcontracted the services to the Manager under the Management Agreement, and these tiered arrangements are supported by direct commitments to Housing under the Facilities Management Side Deed and the Management Collateral Warranty Deed.

- **"Facilities management" services**, including routine, cyclical and responsive dwelling and facility maintenance services (see section 3.4.4.1), annual "stock condition" surveys, monitoring of and reporting on the condition of the project's dwellings and other facilities, dwelling modification services (see section 3.4.4.2), the development, implementation and updating of a protocol for gaining access to tenants' dwellings, services associated with tenants' improvements to their dwellings (see section

3.4.4.3), maintenance, horticultural and cleaning services for shared areas, the maintenance, inspection and assessment of vacant dwellings, pest control, responses to vandalism, graffiti and damage caused by tenants, lift maintenance, forensic cleaning and maintenance services, and "handover" services at the end of the project.

The Project Company has subcontracted these services to the Facilities Management Contractor under the Facilities Management Contract, supported by the direct commitments to Housing by the Facilities Management Contractor and the Facilities Management Guarantor in the Facilities Management Side Deed.

- **"Tenancy" services**, including specified "tenancy management" services (such as eligibility assessments, tenant information, participation, complaints and appeals systems, housing allocations, fraud prevention, tenant file maintenance, the protection of tenants' rights and the provision of compensation for tenants' improvements (see section 3.4.4.3), "tenancy support" services (including the development, implementation and updating of cultural representation and community support protocols) and, until all the project's construction works have been completed, tenant rehousing services (see section 3.4.4.5, and for more information on the tenancy services generally, see section 3.4.4.4).

The Project Company has subcontracted these tenancy services to the Facilities Management Contractor under the Facilities Management Contract, and the Facilities Management Contractor has, in turn, sub-subcontracted the services to the Tenancy Services Contractor under the Tenancy Services Contract. These tiered arrangements are supported by the direct commitments to Housing by the Facilities Management Contractor and the Facilities Management Guarantor in the Facilities Management Side Deed and (as already indicated in section 2.2) an equivalent series of promises to Housing by the Tenancy Services Contractor in the Tenancy Services Side Deed.

The Project Deed makes it clear that all of these Project Company services must be delivered not only for the Bonnyrigg housing estate but also, as applicable, for the project's off-estate housing, and for all of the stages of the project, not only before and after their construction phases but also, as applicable, during their construction phases.

### 3.4.3 The Project Company's general service obligations

All of the Project Company's services must be provided in accordance with:

- The requirements of the Project Deed and all the other "project documents"
- Detailed requirements in the *Specification*, including "condition standards" which it specifies for the periods before and after each stage's construction works
- Management and other plans to be prepared by the Project Company in accordance with the *Specification*, including an overall *Services Manual* and a *Quality Standards (Services)* plan (see section 3.4.7.1)

- All relevant design data, specifications, drawings and other design information prepared by or on behalf of the Project Company for the project
- Good industry practices
- Housing’s policies on public housing and related matters, as listed in a schedule to the Project Deed and as amended by Housing from time to time
- Applicable Tenancy Agreements (see section 3.4.5.2), and
- All applicable approvals, licences, other consents and other legal requirements,

so that the project’s dwellings and other facilities are, and will remain, fit for their intended purpose, the provision of the Project Company’s services in accordance with the Project Deed.

In determining whether this “fitness for intended purpose” requirement is being satisfied in the case of services for existing dwellings, the Project Company’s compliance with the *Specification* will be judged in terms of “condition standards”, as set out in the *Specification*, which are less stringent than those applying for new and refurbished dwellings.

The Project Company must obtain and maintain all the court, tribunal and statutory approvals, licences and other consents required for the provision of its services, continue to comply (as applicable) with the occupational health and safety requirements described in section 3.2.10 and the environmental requirements described in section 3.2.11, allocate all the resources and staff needed for the provision of its services, continue to ensure the continuous supply of utility services to the project’s sites, dwellings and other facilities, monitor its performance of its services in accordance with procedures set out in the *Specification* and, for each stage of the project, have its compliance with its management plans, manuals and programs before and after the stage’s construction phase audited as required by the *Specification* (see section 3.4.7.4).

In delivering its services the Project Company must also:

- Continue to communicate and consult with tenants, other residents of the Bonnyrigg housing estate, the owners and residents of adjoining properties and recognised community organisations (including tenancy, community, cultural and “special needs” organisations and advocacy groups) and associations representing Bonnyrigg housing estate’s tenants, as required by the *Specification*, the Project Company’s *Proposals* and *Communication and Consultation Protocol* and all applicable legal requirements, and
- Use all reasonable endeavours to achieve “continuous improvement” and increase the cost efficiency of its services, taking account of a series of factors specified in the Project Deed. It must submit proposals for “continuous improvement” strategies and methodologies to Housing whenever it updates its *Services Manual* (see section 3.4.7.1) and, if necessary, propose and implement amendments to the *Services Manual* or contract variations (see section 3.5.9).

The sites, dwellings and facilities of each stage of the project, or each precinct within a stage, may be used by the Project Company, during the periods before and after the stage’s or precinct’s construction works, only for the purposes of delivering the services described above and providing

accommodation and associated amenities and services to tenants in accordance with the Project Deed.

The Project Company’s service obligations may be amended only under the contract variation arrangements described in section 3.5.9 and, in narrower circumstances, under the “adverse market conditions” arrangements described in section 3.2.7.4 or the “relief event” or “compensation event” arrangements described in sections 3.5.11 and 3.5.12. Further, in the case of any amendments to aspects of the service obligations defined by the Project Company’s *Proposals* or the *Services Manual*, the Project Company has agreed that changes under the contract variation arrangements described in section 3.5.9 will be required only in order to accommodate any concerns or requirements—as expressed by tenants or other residents, by the owners or residents of adjoining properties or by recognised community organisations (including tenancy, community, cultural and “special needs” organisations and advocacy groups) or associations representing Bonnyrigg housing estate’s tenants—which require a “fundamental” modification of the “underlying” Project Company *Proposals* or *Services Manual*.

### 3.4.4 Specific Project Company service obligations

The Project Deed’s *Specification* sets out numerous requirements, too detailed to include in this *Summary of Contracts*, for each of the individual services listed in section 3.4.2.

Sections 3.4.4.1 to 3.4.4.5 below focus instead on several of the more important Project Deed requirements for specific services or groups of services, set out in the Project Deed itself. Many of these requirements are supplemented by more detailed requirements on the same issues in the *Specification*.

#### 3.4.4.1 Planned cyclical maintenance and replacement services

In addition to its routine and responsive maintenance and repair services, the Project Company must undertake planned cyclical maintenance and replacement services:

- In accordance with a *Cyclical Maintenance and Replacement Plan* which it must prepare and update as part of the overall *Services Manual* described in section 3.4.7.1, and
- In a manner and at times which will, as much as practicable, both facilitate its continued performance of all its services and avoid any need to relocate tenants.

From the fifth anniversary of the “full service commencement date” (section 3.2.15), the Project Company must conduct annual “stock condition” surveys of the project’s new and refurbished housing in order to identify future planned maintenance and repair requirements. It must give Housing’s Project Director copies of these surveys.

The Project Company must review its *Cyclical Maintenance and Replacement Plan* at least annually, as part of annual or more frequent reviews of the *Services Manual* under arrangements described in section 3.4.7.1, so as to plan its cyclical maintenance and replacement works for the following five years.

It must also, by no later than 31 January each year, give Housing a draft program of its planned maintenance works for the following financial year, in accordance with specifications for this program set out in the Project Deed. Housing will be entitled

to review and comment on this draft program before it is finalised, under arrangements analogous to those described in section 3.2.3.1 for the submission, review and amendment of draft detailed designs and the equivalent processes referred to in section 3.2.7.2 for draft construction-phase *Works Programs*, section 3.2.9.1 for draft construction-phase management plans and section 3.4.7.1 for drafts of the *Services Manual*. The Project Company may make material changes to its finalised planned maintenance programs only with the approval of Housing's Project Director.

#### 3.4.4.2 Dwelling modification services

The Project Company must modify dwellings, as required, in accordance not only with the general service requirements listed in section 3.4.3 but also, more specifically, in accordance with a *Dwelling Modification Protocol* to be developed and updated by the Project Company as part of the overall *Services Manual* described in section 3.4.7.1, setting out, among other things, procedures for:

- Tenants, Housing and other "stakeholders" to notify the Project Company that a tenant needs modifications to his or her dwelling
- Assessments of these needs by qualified occupational therapists, and
- Assessments of the comparative economic viability of carrying out the required modifications or rehousing the tenant.

In carrying out its modification works the Project Company must also comply with a series of Project Deed requirements concerning the use of new materials, the quality, safety, healthiness and durability of the goods and materials used, the skills, experience and supervision of its workforce and the minimisation of disturbance to tenants and adjoining properties.

Tenants may be relocated during these works only if criteria described in section 3.4.4.5 below are satisfied.

The Project Company must notify Housing's Project Director of the completion of the works, providing any reasonably required certification, and will be paid according to an annually revised schedule of rates which must be agreed between the Project Director and the Project Company before the "transition date" (section 3.4.1) and then before the start of each financial year (see section 3.4.9.1).

#### 3.4.4.3 Services associated with tenants' improvements to their dwellings

During the "mobilisation phase" of the project (section 3.4.1) Housing must give the Project Company a *Tenant Improvements Schedule* listing all the improvements its tenants on the Bonnyrigg housing estate have made to their dwellings with Housing's consent.

From the "transition date", the Project Company must:

- Receive and keep records of all requests from tenants to carry out improvements to their dwellings, and
- Within ten business days of receiving each of these requests and all necessary supporting information, either give permission for the proposed improvement, subject to the requirements of the relevant Tenancy Agreement (see section 3.4.5.2), any other legal requirements and any other

conditions the Project Company reasonably requires, or refuse permission, provided this refusal is consistent with relevant legal requirements.

The Project Company will not have any obligations to carry out any maintenance, works or other services in relation to approved tenants' improvements, except to the extent that any failure to do so would result in a breach by Housing of any applicable legal requirements or would be contrary to the relevant Tenancy Agreement(s) or the *Specification*.

If a tenant who has made approved improvements prior to the "transition date", as listed in Housing's *Tenant Improvements Schedule*, is rehoused under the arrangements described in section 3.4.4.5 below,

- The Project Company must either relocate the listed improvements, if this is requested by the tenant, or pay the tenant the cost of the improvements, as assessed by the Project Company, *unless* this compensation amount exceeds \$5,000 and Housing's Project Director does not approve its payment, in which case the Project Company will not be obliged either to relocate the improvements or to compensate the tenant
- Housing must reimburse the Project Company, under the "service payment" arrangements described in section 3.4.9, for any relocation costs the Project Company incurs or compensation it pays to the tenant, but if the compensation amount exceeds \$5,000 Housing will be obliged to reimburse the Project Company for any compensation it has paid to the tenant only to the extent that this payment was approved by Housing's Project Director in advance
- Housing will not be liable to reimburse the Project Company for any other associated costs, such as the costs of making good any damage caused by the improvements or their relocation, and
- Any disputes about compensation payments to the tenant must be referred for determination under the dispute resolution procedures described in section 3.5.8.

If a tenant who has made approved improvements *after* the "transition date" is rehoused under the arrangements described in section 3.4.4.5, the Project Company must again either relocate the listed improvements, if this is requested by the tenant, or pay the tenant the cost of the improvements, as assessed by the Project Company, but the Project Company will not be entitled to be reimbursed by Housing for its relocation or compensation costs or for any other associated costs.

If a tenant has made *unapproved* improvements, the Project Company will have no obligations to relocate the improvements or compensate the tenant.

#### 3.4.4.4 Tenancy services generally

Housing and the Project Company have expressly acknowledged, in the Project Deed, that in providing its tenancy services the Project Company will be exercising some of the powers and functions of Housing and the State of NSW concerning public housing and housing management under the Housing Act (NSW) and other legislation.

In exercising these powers and functions, the Project Company must, in addition to meeting the general service requirements listed in section 3.4.3,

- Comply with all relevant legal requirements, including the requirements of the Residential Tenancies Act (NSW) as amended by the Residential Tenancies Amendment (Social Housing) Regulation 2007, which satisfied one of the project's conditions precedent (section 2.3), and
- Ensure it does not cause any material damage, nuisance, inconvenience, disturbance or disruption to Housing, the public housing tenants, other residents (both on and off the Bonnyrigg housing estate) or the owners, users and occupiers of adjacent properties.

The Project Company must use its best endeavours throughout the project—including its "mobilisation phase", prior to the "transition date" (section 3.4.1) and the commencement of its tenancy services—to achieve 100% occupancy of:

- All the existing housing in each stage of the project prior to its construction works, and
- All the refurbished and new housing in each stage from the date three months after the stage's "commencement date" (section 3.2.14),

other than, for periods of up to 30 days, dwellings which Housing and the Project Company have agreed to keep vacant for the purpose of:

- Providing temporary accommodation under arrangements described in sections 3.4.4.5 and 3.4.5.4, or
- Housing frail, aged or vulnerable tenants or tenants with special needs or disabilities.

As part of its provision of its tenancy services, the Project Company must:

- Secure vacant dwellings against trespassing and squatting.
- Select tenants for vacant dwellings, from persons identified in a *Housing Register* created and maintained by Housing as being eligible for public housing in the area, in accordance with an *Allocations Protocol* to be prepared and updated by the Project Company as part of the overall *Services Manual* described in section 3.4.7.1. (Housing has promised to make its *Housing Register* available to the Project Company and to update it in accordance with relevant legal requirements and Housing's policies on public housing and related matters, as listed in a schedule to the Project Deed and as amended by Housing from time to time. Any failure by Housing to make the *Housing Register* available will constitute a "compensation event", potentially entitling the Project Company to claim compensation, and/or obtain extensions of time and/or other relief from its Project Deed obligations, under "compensation event" arrangements described in section 3.5.12 of this report.)
- Procure the Ground Lessee—to which Housing must have leased the relevant sites under the Lease(s) described in section 3.4.5.1—to enter into Tenancy Agreements with these selected new tenants.
- Comply with all of the obligations of the landlord under the Tenancy Agreements, even though the Ground Lessee (and possibly, in some situations, Housing) and not the Project

Company will be the landlord(s) under these agreements (see section 3.4.5.2), and, in particular,

- ♦ Ensure each tenant's quiet enjoyment under his or her Tenancy Agreement
- ♦ Provide any benefits which have been provided by Housing in line with its public housing policies
- ♦ Set and collect rent, other charges and other amounts payable under the Tenancy Agreements (these amounts are payable to Housing for periods prior to the "transition date", but may be retained by the Ground Lessee or the Project Company for all periods from and after that date)
- ♦ Pursue existing arrears from the "transition date"
- ♦ Collect, hold and refund bond money, and
- ♦ Maintain and repair the leased premises.

The Project Company and the Ground Lessee may enforce the terms of the Tenancy Agreements, including their rent, eviction and forfeiture provisions, only in accordance with Housing's public housing policies and all relevant legal requirements. The Project Company must, however, ensure the Tenancy Services Contractor uses its best endeavours to maximise the amount of rent that is payable and collected.

As already indicated in section 2.1, the Ground Lessee and the Tenancy Services Contractor—the Project Company's sub-subcontractor for its tenancy services, including the services fulfilling the Project Company's "landlord" responsibilities under the Tenancy Agreements—are currently the same entity, St George Community Housing Cooperative Limited.

- Procure the Ground Lessee to reasonably endeavour to collect any rent in arrears under existing Tenancy Agreements for periods prior to the "transition date", and account to Housing for these amounts.
- Ensure the Tenancy Services Contractor keeps records of assistance provided to tenants in order to maximise the amount of rent that is payable and collected, and allows Housing's Project Director to inspect these records at reasonable times and after giving reasonable notice.
- Ensure that any use, collection, storage or disclosure of personal information by or to the Project Company, the Ground Lessee and the Tenancy Services Contractor, other than disclosures by the Project Company to Housing, comply with the Privacy and Personal Information Protection Act (NSW), the Health Records and Information Privacy Act (NSW), Housing's *Privacy Code of Practice* and the Project Deed.
- More specifically,
  - ♦ Immediately notify Housing if it becomes aware of any breach of the information protection principles of the Privacy and Personal Information Protection Act or any breach of the Project Deed concerning personal information held for the purposes of the project
  - ♦ Comply with any reasonable requests, concerning personal information held for the purposes of the project, by Housing or the NSW Privacy Commissioner, and



- ◆ Do anything the Privacy Commissioner may reasonably require it to do or would require Housing to do were it undertaking the Project Company's functions.

#### 3.4.4.5 *Rehousing services*

The Project Company *must* rehouse a tenant, in accordance with the Project Deed, if:

- He or she is a tenant of a dwelling about to be refurbished or demolished as part of construction works on a stage of the project
- The Project Company reasonably determines, in accordance with a *Rehousing Service Plan* which it must prepare and update as part of the overall *Services Manual* described in section 3.4.7.1, that relocation is necessary:
  - ◆ Because the tenant is frail or vulnerable or has special needs or a disability
  - ◆ Because of the extent or nature of particular services required, including any planned cyclical maintenance or replacement services (section 3.4.4.1) or dwelling modification services (section 3.4.4.2), or
  - ◆ Because the dwelling is unsafe or is likely to become unsafe

but in the last two cases only if, but for the relocation, the tenant would be exposed to a health and safety risk or the Project Company would otherwise be in breach of a legal requirement

- There is an incident which results in an immediate risk to the tenant's health and safety or prevents them from accessing their dwelling, or
- The tenant asks to be relocated to another of the project's dwellings and is entitled to be relocated to another dwelling owned by Housing under Housing's public housing policies.

If none of (a), (b), (c) or (d) applies, the Project Company may relocate or rehouse a tenant only if this is permitted under the *Services Manual* and, in particular, the *Rehousing Service Plan* or, in situations where the tenant is willing to make the move, if Housing's Project Director agrees. The Project Director has no obligation to act reasonably in making such a decision.

Housing must relocate a tenant of a dwelling that is about to be refurbished or demolished to another public housing dwelling, but not to another dwelling on the Bonnyrigg housing estate or any of the project's off-estate dwellings, if:

- He or she was a public housing tenant immediately before the "transition date" (section 3.4.1) and asks to be relocated away from the estate and the project's off-estate housing within the first two years after the "transition date", or
- He or she is entitled to be relocated in this way under Housing's public housing policies,

and in either of these circumstances, if the tenant's request is made more than six months before the "target works commencement date" for his or her dwelling's stage (section 3.2.7.1), Housing must rehouse the tenant by no later than this "target works commencement date".

During each 12-month period following the "transition date" Housing must make up to 70 vacant dwellings—not counting those made vacant as a result of tenant relocations under situations (a), (b) or (c) above—available to the Project Company for the purposes of its provision of its rehousing services. This obligation to provide vacant dwellings is capped at 210 dwellings in total over the entire duration of the project. Housing must bring any off-estate dwellings which it provides for this purpose up to condition standards listed in the *Specification*, either by carrying out any necessary works itself, at its own cost, or by requiring the Project Company to carry out these works, in which case Housing must reimburse the Project Company for its costs as part of the "service payment" arrangements described in section 3.4.9.

Any failure by Housing to make vacant dwellings available in accordance with these requirements will constitute a "compensation event", potentially entitling the Project Company to claim compensation, and/or obtain extensions of time and/or other relief from its Project Deed obligations, under "compensation event" arrangements described in section 3.5.12 of this report.

The Project Company must:

- Stipulate the number of vacant dwellings it needs from Housing, and when these dwellings will be needed, in 12-month *Rehousing Plans* it is required to prepare under the *Specification*
- Update its *Rehousing Plans* and notify Housing if it finds it needs additional properties (provided the limits described above are not exceeded and Housing is given at least 12 months' notice, Housing must make these additional properties available)
- Propose suitable alternative accommodation for each tenant whom it must relocate, and
- Provide further information and arrange inspections as reasonably requested by Housing's Project Director.

Housing's Project Director may, but need not, review the Project Company's proposal for suitable alternative accommodation and may reject the proposal, provided he or she does so within ten business days of receiving the proposal, if the proposed accommodation:

- Is unsuitable for or inconsistent with the Project Company's *Proposals* for the project or the *Specification*
- More specifically, is part of temporary housing arrangements, described below, for the period after the relevant stage's "commencement date" (section 3.2.14), and does not meet the condition standards specified for refurbished and new dwellings other than those used for temporary accommodation, or
- Is unsuitable for the particular tenant or, more specifically, does not have the facilities or modifications required to accommodate them in accordance with Housing's public housing policies.

If the Project Director chooses to participate in these inspection and/or review processes, he or she will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the Project Deed, and the Project Company will remain solely responsible for the provision of its

works and services in accordance with the Project Deed and the *Specification*.

If the Project Company disagrees with a rejection by the Project Director, the dispute must be determined under the dispute resolution procedures described in section 3.5.8.

In addition to the arrangements described above for the Project Company to arrange “permanent” rehousing, a tenant who must be rehoused because of any of the factors described in (b) and (c) at the start of this section 3.4.4.5 may be *temporarily* rehoused by the Project Company in an existing, refurbished or new public housing dwelling or in a private dwelling, provided:

- The Project Company’s proposals for this temporary accommodation are subject to notification and optional review processes analogous to those described above
- The dwelling used for the temporary rehousing at least meets condition standards specified for temporary housing in the *Specification*, and
- Unless the tenant and Housing’s Project Director both agree otherwise, the temporary dwelling is in a location permitted by the *Specification*, the tenant is in temporary housing for no longer than 36 months in total, and the tenant is in temporary housing, as a result of any of the factors described in (b) at the start of section 3.4.4.5, on no more than two occasions in any five-year period.

In its relocation and rehousing of tenants under any of the arrangements described above and providing associated services—such as tenant notifications and liaison, storage, removal and transport services, but not extending to the packing and unpacking of tenants’ personal possessions—the Project Company must, in addition to meeting the general service requirements listed in section 3.4.3, comply with its *Rehousing Service Plan*, accommodate tenants’ reasonable concerns and requirements, and minimise any material damage, nuisance, inconvenience, disturbance or disruption to Housing, the public housing tenants, other residents (both on and off the Bonnyrigg housing estate) or the owners, users and occupiers of adjacent properties.

If a tenant has to be rehoused under any of the arrangements described above because of the condition of his or her existing dwelling on the “transition date” (section 3.4.1), the “construction phase” for the entire stage of the project in which the dwelling is located will be deemed to have commenced as soon as the tenant vacates his or her existing dwelling (potentially many years before the stage’s “construction phase” would otherwise commence, triggered by site access in accordance with a *Works Program* for the stage’s construction works). Among other things, this means that from that date, and until the relevant “commencement dates” for the stage and its precincts (section 3.2.14),

- The Project Company will become fully responsible for the security of all of the stage’s sites and their dwellings and other facilities (section 3.2.4.3)
- Housing will have to reimburse the Project Company and the Ground Lessee for a proportion of any council rates they pay for any of the stage’s sites, equal to the proportion of the stage’s properties which are to be developed, are being developed or have been developed for private housing—in contrast to the situation before and after the “construction

phase”, when Housing is liable to reimburse them for council rate payments on all sites *other than* sites with dwellings which have been constructed or refurbished for private housing (see sections 3.4.9.1 and 3.5.1)

- Housing will not have to reimburse the Project Company or the Ground Lessee for any water, sewerage or electricity rates or charges they pay for any of the stage’s sites, dwellings or other facilities—in contrast to the situation before and after the “construction phase”, when Housing will be liable to reimburse them for these rates and charges, except in the case of sites with new or refurbished dwellings which have been developed for private housing (see sections 3.4.9.1 and 3.5.1)
- If the stage’s new “construction phase” starts before 20 April 2009, the Project Company will be prevented from adjusting the private sector parties’ “base case” financial model, and hence the calculation of Housing’s “service payments” to the Project Company (see section 3.4.9), to reflect increases in building costs, even if construction occurs many years later
- Housing will not be liable to contribute to the costs of repairing malicious damage to existing housing, even though it otherwise would have this liability, under arrangements described in section 3.5.2.2, during the period prior to the commencement of construction works for the relevant stage(s) of the project
- The monetary thresholds in the definition of “material subcontracts” will be amended, as described in section 3.2.8.1 and referred to in section 3.4.6.1, potentially affecting the rights of Housing and obligations of the Project Company—under arrangements described, for convenience, in section 3.2.8.1—concerning subcontracting by the Project Company to provide its services before construction works actually commence
- The Project Company will not be obliged to have its compliance with its service obligations for the stage internally audited, as would otherwise be required by the Project Deed and the *Specification* under arrangements described in section 3.4.7.2 (these services will, however, continue to be subject to the right of Housing’s Project Director to audit the Project Company’s compliance, as described in section 3.4.7.4)
- If adverse housing market conditions entitle the Project Company to give Housing a notice of termination of the Project Deed under the arrangements described in section 3.2.7.4, the stage will be excluded from the scope of any response by Housing’s Project Director requiring the full continuation of the Project Deed in all stages of the project that are not in their “construction phase” (see section 3.2.7.4), and
- If the Project Deed is terminated because of adverse housing market conditions (section 3.2.7.4), the occurrence of a specified type of “uninsurable” risk (section 3.5.2.3) or the occurrence of a “*force majeure* event” (section 3.5.13), or if it is terminated by Housing under “voluntary” termination arrangements described in section 3.6.2, the compensation Housing must pay to the Project Company will be increased, in accordance with “termination payment” formulae for this compensation described in sections 3.6.1.2 and 3.6.2.2.

The Project Company must advise Housing's Project Director whenever any stage's "construction phase" is deemed to have commenced early as a result of such a rehousing.

### 3.4.5 Leases, subleases and licences

#### 3.4.5.1 *Granting and amendment of the Leases*

On and from the "transition date" (section 3.4.1),

- Housing must grant Lease(s) of all of the project's sites to the Ground Lessee, until 28 February 2037 or any earlier termination of the project's contracts, subject to:
  - ♦ The Licence to access these sites which Housing has already granted to the Project Company—and, through it, the Development Contractor, the Construction Contractors, any other relevant Project Company subcontractors and their officers, employees, agents, advisers and other authorised persons—for the purposes of the project's works and services, as described in section 3.2.4.2, and
  - ♦ Arrangements for the removal from the Leases of specified types of sites, as nominated by Housing, at any time, which are to be transferred to or dedicated for use by to another authority or a utility services provider, and
- The Project Company must procure the Ground Lessee's acceptance of these Lease(s).

The Project Deed sets out procedures for the preparation, execution and registration of these Leases, which must be on terms set out in a schedule to the Project Deed, including a single rent payment to Housing under each Lease of \$1.

Under the terms of the Leases and the Project Deed the Project Company will be obliged to carry out several of the Ground Lessee's obligations under the Leases, including obligations concerning the stamping and registration of Leases and Subleases, site conditions, defects and environmental requirements.

The Project Company has unconditionally and irrevocably guaranteed the Ground Lessee's performance of its obligations to Housing under the Leases, and has indemnified Housing against any claims, losses or liabilities arising out of a breach of these obligations, the use or occupation of a site by the Ground Lessee or any transfer or termination of the Leases under arrangements described below.

If:

- The Ground Lessee repudiates or terminates a Lease
- A Lease is invalid or does not bind the Ground Lessee, or
- The Ground Lessee ceases to be the Tenancy Services Contractor, becomes insolvent or ceases to be a non-profit community housing provider,

the Project Company must notify Housing as soon as practicable, and definitely within five business days, and then must, within 20 business days or any longer period agreed to by Housing, either remedy the situation or, if it cannot be remedied, procure a transfer of the Lease from the Ground Lessee to a new lessee approved by Housing's Project Director, on terms reasonably acceptable to the Project Director. Any new lessee must be a non-profit community housing provider unless the Project Director approves otherwise. If the remedy or transfer is

not achieved by the deadline, the Lease will be deemed to have been transferred to the Project Company.

More generally, provided none of the situations listed above applies, the Project Company may, at any time, ask Housing to transfer the Lease(s) to another specified non-profit community housing provider or to another person or organisation acceptable to Housing.

Housing may, in its absolute discretion, accept a surrender of the Lease(s) and grant new lease(s) on the same terms, as an alternative to the forced and voluntary transfer arrangements described above.

#### 3.4.5.2 *Tenancy Agreements and Subleases*

As already indicated in section 3.4.4.4, the Project Company must procure the Ground Lessee to enter into Tenancy Agreements with tenants selected by the Project Company as part of its tenancy services.

These Tenancy Agreements must be in a form that is to be included in a *Tenancy Management Service Plan* to be developed and updated by the Project Company as part of the overall *Services Manual* described in section 3.4.7.1, or in any other form approved by Housing's Project Director, and they must also comply with all relevant legal requirements, the *Specification* and Housing's policies on public housing and related matters, as listed in a schedule to the Project Deed and as amended by Housing from time to time.

As already indicated in section 2.2, the Ground Lessee has made several specific undertakings to the Project Company, of relevance to these arrangements, in the Undertaking Agreement, but the nature of these undertakings cannot be reported in this *Summary of Contracts* because the parties to the Project Deed have agreed this is "commercially sensitive" information for the purposes of the Project Deed's confidentiality provisions (see section 3.5.6). These obligations will be secured by mortgages over the Leases (the "St George Mortgages of Leases") and a fixed charge, granted under the St George Fixed Charge, over the Ground Lessee's rights and interests under the Leases, the Tenancy Agreements and any Subleases entered into under arrangements described below. They will also be backed up by the St George Power of Attorney, under which the Project Company may, if the Ground Lessee breaches specified obligations, exercise the Ground Lessee's rights and obligations under the Leases, the Tenancy Agreements, the Subleases and the Undertaking Agreement.

Although the Ground Lessee will be the landlord for most of the project's new Tenancy Agreements, Housing may, at any time during the project, choose to be the formal landlord itself if this has been requested by a tenant and agreed to by Housing. If Housing makes this choice, its Project Director may give the Project Company a notice requiring the Ground Lessee to lease nominated site(s) back to Housing for a specified period of time.

The Project Deed sets out procedures for the preparation, execution and registration of these Subleases, which must be on terms set out in a schedule to the Project Deed, including a single rent payment to the Ground Lessee under each Sublease of \$1.

Provided the Project Company has complied with its obligations under the Project Deed and the *Specification*, Housing must

execute Tenancy Agreements with the relevant tenant(s) within ten business days of being requested to do so by the Project Company.

Notwithstanding these formalities, during the term of each Sublease, unless Housing's Project Director directs otherwise the Project Company must procure the Ground Lessee and the Tenancy Services Contractor, as Housing's agents, to carry out the obligations described in section 3.4.4.4 concerning the management of the relevant Tenancy Agreement(s). In return, the Project Company will be entitled to receive and retain all rents, non-rent charges and other amounts payable to Housing under these Tenancy Agreements.

Housing has agreed, however, that if the Project Company cannot reasonably exercise any right or rights of Housing under these Tenancy Agreements, Housing will exercise this right or rights if reasonably requested to do so by the Project Company, provided the Project Company provides sufficiently detailed information and pays Housing's reasonable costs.

Housing may vary a Tenancy Agreement only in accordance with the contract variation procedures described in section 3.5.9.

### 3.4.5.3 Community Leases

In addition to leasing dwellings to public housing tenants under Tenancy Agreements, the Ground Lessee may enter into leases or licences ("**Community Leases**") with non-profit or community organisations in accordance with a *Tenancy Support Service Plan* and/or a *Community Renewal Service Plan* which the Project Company must prepare and update as part of the overall *Services Plan* described in section 3.4.7.1, provided:

- There are no more than 12 Community Leases at any time, and
- Any tenancy agreements made with public housing tenants by the holder of a Community Lease are on terms similar to those defined for the Tenancy Agreements made by the Ground Lessee and Housing (see section 3.4.5.2)—i.e. as set out in a form that is to be included in the *Tenancy Management Service Plan* to be developed and updated by the Project Company as part of the overall *Services Manual* described in section 3.4.7.1—or on terms which otherwise conform with the Project Company's *Tenancy Support Service Plan* or *Community Renewal Service Plan*.

The Project Company must ensure the Ground Lessee complies with these conditions.

### 3.4.5.4 Rehousing Vacant Dwelling Leases

The Ground Lessee may also enter into leases or licences of vacant dwellings ("**Rehousing Vacant Dwelling Leases**") with non-profit community housing providers, or other non-profit organisations providing "social" and affordable housing, so that they may use these dwellings to provide temporary housing, in **4 e** lute discretion. **p** rty, at any time and in his or here nts"s Project Company as part of the project's rehousing services, (section 3.4.4.5), provided:

- The vacant dwellings have become available less than six months before the "target works commencement date" (section 3.2.7.1) for construction works in the stage(s) of the project in which they are situated

- There are no public housing tenants on Housing's *Housing Register* who would be entitled to be housed in these dwellings for the period they will remain available, as part of the Project Company's tenancy services described in section 3.4.4.4
- There are no more than 20 Rehousing Vacant Dwelling Leases at any time
- The Rehousing Vacant Dwelling Leases are granted in accordance with a *Local Allocation Strategy* set out in the Project Company's *Proposals* for the project, as amended by the Project Company from time to time with the consent of Housing's Project Director, and
- Any tenancy agreements made with public housing tenants by the holder of a Rehousing Vacant Dwelling Lease are on terms similar to those defined for the Tenancy Agreements made by the Ground Lessee and Housing (see section 3.4.5.2) or on terms which otherwise conform with the Project Company's *Local Allocation Strategy*.

The Project Company must ensure the Ground Lessee complies with these conditions..

### 3.4.5.5 Access licence

In addition to the leases and licences described above, the non-exclusive Licence granted by Housing on 20 April 2007 for the Project Company—and, through it, the Development Contractor, the Construction Contractors, any other relevant Project Company subcontractors and their officers, employees, agents, advisers and other authorised persons—to access the project's sites for the purposes of the project's works, described in section 3.2.4.2, will also apply, throughout the project, for the purposes of the Project Company's provision of its services, subject to the timeframes and conditions described in section 3.2.4.2.

## 3.4.6 The Project Company's workforce and subcontractors

### 3.4.6.1 Subcontracting

In addition to the Project Company's Facilities Management Contract with the Facilities Management Contractor and the latter's Management Agreement with the Manager and Tenancy Services Contract with the Tenancy Services Contractor, the Project Company may subcontract the performance of any part of its services to other "subcontractors", and they in turn may enter into sub-subcontracts, provided the Project Company's tenancy services are subcontracted or sub-subcontracted only to non-profit community housing providers or other entities approved by Housing's Project Director in advance. If the Project Company does further subcontract or sub-subcontract its services, it will not be relieved of its own obligations, and will be fully responsible to Housing for the performance of all its subcontractors and sub-subcontractors.

The Project Deed's general requirements for all of the Project Company's subcontracts and sub-subcontracts, and its particular requirements for "material" subcontracts—the applicability of which may be affected by any early rehousing of existing tenants in circumstances described in section 3.4.4.5—have already been described in section 3.2.8.1.



### 3.4.6.2 Employment conditions

The Project Company must comply with a series of conditions concerning its own employees, the employees of the Facilities Management Contractor and the Tenancy Services Contractor and the employees of any other subcontractors and sub-subcontractors appointed to carry out the project's services.

These conditions are the same as those already outlined in section 3.2.8.2.

### 3.4.7 Services management plans, manuals, monitoring, reports, inspections and audits

#### 3.4.7.1 Management plans and manuals

As indicated in sections 3.4.3 and 3.4.4, the Project Company must develop, complete, comply with and from time to time amend and update a large number of management plans and protocols for its services, assembled into an overall *Services Manual*.

This *Services Manual* must include:

- A *Management and Integration Service Plan*, incorporating an *Integration Service Plan*, the *Quality Standards (Services)* plan, an *Information Management Plan*, an *Occupational Health and Safety Plan*, an *Environmental Management Plan*, a *Disaster, Fire and Emergency Management Plan*, a *Risk Management Plan*, an *Employee Training Management Plan*, an *Employee Conduct Management Plan*, an *Industrial Relations Management Plan*, a *Performance Monitoring System Plan* and Helpdesk procedures
- A *Communication and Consultation Service Plan*, setting out how the Project Company will comply with the *Communication and Consultation Protocol*
- A *Community Renewal Service Plan*
- A *Facilities Management Service Plan*, incorporating the *Cyclical Maintenance and Replacement Plan*, the Project Company's annual "stock condition" survey reports, the *Dwelling Modifications Protocol*, a *Dwelling Modifications Works Program*, an *Access Protocol*, a *Scheduled Cleaning Program*, a *Vacant Dwelling Protocol* and a *Pest Control Program*
- A *Tenancy Management Service Plan*, incorporating a *Tenancy Management Manual* and all associated protocols, a *Tenant Information Protocol*, a *Tenant Participation Protocol*, a *Complaints and Appeals Protocol*, the *Allocations Protocol* and a *Rental Fraud Action Plan*
- A *Tenancy Support Service Plan*, including a *Cultural Representation Protocol* and a *Community Support Protocol*
- The *Rehousing Service Plan*, incorporating a *Rehousing Assessment Plan*, the 12-month *Rehousing Plan*, a *Tenant Moving Service Manual* and a *Tenant Damage Compensation Protocol*
- An *Off-Estate Housing Plan*, and
- Any other service-related management plans, programs, reports and protocols developed by the Project Company, with descriptions of the Project Company's intended "outcomes", approaches, key activities and resourcing for the delivery of its services.

Detailed requirements for the content of each of these plans and protocols are set out in the *Specification*. Initial versions of the *Services Manual* and its immediately relevant subsidiary plans and protocols are presented in the Project Company's *Proposals* for the project and are reproduced in a schedule to the Project Deed.

Timeframes for the preparation and submission of drafts of the additional principal components of the *Services Manual* are set out in another schedule to the Project Deed. Most of these timeframes are for plans which will then apply for all stages of the project, with progressive updating as described below, but the timeframes for the *Facilities Management Service Plan* envisage multiple versions, each specific to an individual stage of the project, and a new *Rehousing Plan* must be submitted each year.

As part of its development and updating of the *Services Manual* and its subsidiary plans and protocols the Project Company must:

- Meet and consult with relevant "stakeholders", conduct planning workshops, attend meetings, make presentations and prepare submissions in accordance with the project's *Communications and Consultation Protocol*
- Ensure the concerns and requirements of these "stakeholders" are considered, to the extent that they are consistent with the requirements of the Project Deed
- If it believes the accommodation of any particular concerns and requirements of the "stakeholders" would involve a "fundamental" modification of the *Services Manual* and therefore necessitate a contract variation under the procedures described in section 3.5.9, refer these matters to Housing's Project Director and accommodate the concerns and requirements only if the Project Director requests a variation (any disputes about whether a contract variation is necessary must be dealt with under the dispute resolution procedures described in section 3.5.8)
- Give the Project Director drafts of the *Services Manual* and its plans within the specified timeframes, and
- Provide any further information reasonably requested by the Project Director.

Under arrangements broadly analogous to those described in section 3.2.3.1 for the submission, review and amendment of draft detailed designs and the equivalent processes referred to in section 3.2.7.2 for draft construction-phase *Works Programs*, section 3.2.9.1 for draft construction-phase management plans and section 3.4.4.1 for draft planned maintenance works programs,

- The Project Director may, but need not, review these drafts and provide comments and recommendations to the Project Company, limited to matters affecting the compliance of the drafts with the Project Deed, provided he or she does so within 20 business days of receiving the drafts and any additional information
- If the Project Director provides any comments or recommendations, a representative of the Project Company must meet with the Project Director to discuss and establish any necessary amendments to the drafts, and

- The Project Company must resubmit amended drafts of the *Services Manual* documents to the Project Director, and the optional review processes will again apply to these revised drafts.

If the Project Director, any other representatives of Housing or any other “stakeholders” choose to participate in these processes, they will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances in the draft *Services Manual* documentation, and the Project Company (and, through it, the Partners) will remain solely responsible for ensuring its services comply with the requirements of the Project Deed.

If the Project Company and Housing’s Project Director are unable to agree on appropriate amendments to the draft documentation under these processes, the dispute must be dealt with under the dispute resolution procedures described in section 3.5.8. If this results in a final and binding determination that the original drafts did comply with the Project Deed, or if the actions of the Project Director constitute a breach of the Project Deed by Housing and substantially frustrate the ability of the Project Company to perform its obligations or exercise its rights under the Project Deed or the other “project documents” (section 2.2), Housing may be liable to compensate the Project Company, and/or to provide relief from its contractual obligations, under the “compensation event” arrangements described in section 3.5.12.

The Project Company has expressly acknowledged that the *Services Manual* will need to be further developed, amended and updated throughout the project, taking account of the status of each stage of the project and each precinct within each stage, any changes in law and Housing’s public housing policies (see section 3.5.7), changes in the requirements of other authorities or utility services providers, changes in the *Specification* and other contract variations (see section 3.5.9), “continuous improvement” changes (section 3.4.3), changes in good industry practices, any deficiencies in or omissions from previous versions of the *Services Manual*, and, in the case of the *Rehousing Service Plan* within the *Manual*, changes in the availability of dwellings and the needs of tenants to be rehoused in temporary accommodation (section 3.4.4.5).

Throughout the project the Project Company must further develop and update the *Services Manual* and its various plans as required in the *Specification*. More specifically, it must promptly amend the *Services Manual* to take account of the occurrence of any of the factors listed above, and in any event it must update the *Services Manual* and its plans at least every 12 months. Each update must be accompanied by proposals for “continuous improvement”.

Housing’s Project Director may also, at any time, direct the Project Company to further develop, update or amend its *Services Manual*, within a specified timeframe, if he or she reasonably believes:

- The Project Company has not done this as required, or
- The provision of services in accordance with the *Services Manual* no longer complies with the Project Deed, is causing or contributing to material damage, nuisance, inconvenience, disturbance or disruption to Housing, the public housing tenants, other residents or the owners, users and occupiers of adjacent properties or (in the case of the *Rehousing*

*Service Plan*) will cause “unnecessary” disruption etc to these people in the future.

Whenever the Project Company develops, updates or otherwise amends the *Services Manual* it must promptly submit a draft of the amended *Services Manual* to Housing’s Project Director, and the optional review processes described above will then apply, together with their associated dispute resolution requirements and “compensation event” provisions. In the particular case of any amendment of the *Rehousing Service Plan*, analogous processes, requirements and provisions will apply, but the review and comment period will be only ten business days, rather than 20, and if the Project Director provides comments or recommendations the Project Company must simply amend and resubmit the draft documentation, without any need for meetings between the parties.

The *Services Manual* and its plans may be amended only under the arrangements described above, the contract variation arrangements described in section 3.5.9 or, in narrower circumstances, the “adverse market conditions” arrangements described in section 3.2.7.4 or the “relief event” or “compensation event” arrangements described in sections 3.5.11 and 3.5.12.

#### 3.4.7.2 Project Company monitoring and reports

The Project Company must monitor, audit and report to Housing on its performance of its services in accordance with detailed requirements in the Project Deed and the *Specification*.

In addition to satisfying the detailed requirements of the *Specification* concerning specific services, the Project Company must:

- Give Housing any information readily available to the Project Company, other than commercially sensitive information, if the Project Company reasonably believes it would assist Housing in evaluating the project.
- Appoint an independent expert, selected in consultation with Housing and engaged on terms satisfactory to Housing, to conduct a longitudinal study of the experiences of a representative panel of residents and their attitudes to the project. Housing must reimburse the Project Company for the costs of this study, as part of the “service payment” arrangements described in section 3.4.9.
- Quite separately from this longitudinal study, arrange at least annual customer and tenant satisfaction surveys, by independent, reputable surveyors and using survey methods and questionnaires agreed to by Housing’s Project Director, and give Housing summaries and details of the findings as reasonably requested by the Project Director.
- Have its compliance with its service obligations for each stage, before and after its “construction phase”, audited as required by the *Specification*.
- Conduct annual “stock condition” surveys of the project’s new and refurbished housing from the fifth anniversary of the “full service commencement date” (section 3.2.15), use the results to identify future planned maintenance and repair requirements, and give Housing’s Project Director copies of these surveys (see section 3.4.4.1).

- Provide *Monthly Performance Reports* to Housing, setting out all of its failures to provide its services as specified (see section 3.4.9).
- By no later than 31 January each year, give Housing an *Annual Performance Report* for the previous financial year, presenting information specified in detail in the *Specification*, and then give Housing's Project Director any evidence or other information he or she reasonably requires in order to verify and audit the information in this report.
- Provide monthly reports to the Project Director on its payments to each subcontractor and any formal disputes with a subcontractor or sub-subcontractor.
- If requested by the Project Director, give him or her copies of site-specific occupational health and safety records, registers and documents.
- Provide Housing with specified financial reports, as described in section 3.5.3.
- Notify and provide reports to the Project Director in any of the circumstances described in section 3.4.8.

As already indicated, the Project Company has promised Housing that all of the reports and data it provides to Housing in accordance with the Project Deed will be accurate and complete, as at the date they are provided.

#### 3.4.7.3 Inspections

As already indicated in section 3.2.9.3, Housing's Project Director and his or her representatives may inspect the project's sites, dwellings and other facilities and any related systems, registers, manuals, records, plans and programs in order to assess whether the Project Company is complying with its obligations under the Project Deed.

Unless there are circumstances potentially leading to termination of the Project Deed under the arrangements described in sections 3.6.3.5 and 3.6.4, or unless an earlier inspection has revealed any other non-compliance(s) with the Project Deed, these wide-ranging inspections may be carried out no more than twice each financial year.

The Project Director must give the Project Company at least five business days' written notice of each of these inspections, and must consider any reasonable requests by the Project Company for an inspection to be carried out on a different date because it would materially prejudice its ability to provide its services, provided these requests are made at least two business days before the scheduled inspection.

The Project Company must provide reasonable assistance for the inspections, including making records etc available, and the inspectors must minimise their disruption of the Project Company's services, including the Tenancy Services Contractor's services, as much as reasonably practicable.

If an inspection reveals a breach of the Project Deed's requirements, the Project Director must notify the Project Company, providing details and specifying a reasonable period for the breach to be remedied. The Project Company must comply with this notice and remedy the breach, and the Project Director may carry out a further inspection to check whether it has.

Housing will bear the costs of these inspections unless a breach is discovered, in which case the Project Company must

reimburse these costs and any reasonable associated administrative costs, or unless there are continuing circumstances potentially leading to termination of the Project Deed under the arrangements described in sections 3.6.3.5 and 3.6.4.

In addition to these general inspection powers and arrangements, the Project Deed and, in particular, the *Specification* have numerous requirements for Project Company and/or subcontractor records and systems to be made available for inspection or auditing by Housing upon request. For example, as already indicated in section 3.4.4.4, the Project Company must ensure that the Tenancy Services Contractor's records of assistance provided to tenants in order to maximise the amount of rent that is payable and collected may be inspected by Housing's Project Director at any reasonable time, after providing reasonable notice.

#### 3.4.7.4 Independent and Housing monitoring and audits of the services

In addition to the inspections described in section 3.4.7.3, Housing may monitor and review the Project Company's performance of its services in any other way it thinks fit, including analyses of Helpdesk records, random, continuous or routine monitoring of the Project Company's activities, "benchmarking", analyses of the monitoring carried out and reported by the Project Company, analyses of information in the Project Company's operational records, analyses of the results of customer and tenant satisfaction surveys, reports by relevant authorities, and analyses of performance data and condition survey data.

The Project Company must also permit representatives of recognised community organisations (including tenancy, community, cultural and "special needs" organisations and advocacy groups) and associations representing Bonnyrigg housing estate's tenants to review and comment on these monitoring methods and their findings, provided this is done on a confidential basis.

Housing's Project Director has the right to audit the Project Company's compliance with any part of the *Services Manual* at any time, provided it gives the Project Company at least 20 business days' notice.

This general power is supplemented by numerous specific rights to audit individual aspects of the Project Company's services, as detailed in the *Specification*.

#### 3.4.8 Notification of safety and industrial relations issues, emergencies, defects and damage

Throughout the project the Project Company must:

- Identify and enquire into any activity performed as part of its services which might give rise to health and safety risks to tenants, the owners and occupiers of adjoining properties or the officers, employees, agents or consultants of Housing, the Project Company or any of its subcontractors or sub-subcontractors, and notify Housing's Project Director as soon as reasonably practicable if any are identified
- Identify and enquire into any accidents or other incidents involving any loss, injury, death or damage, or risk of loss, injury, death or damage, to persons or property as a result of, or in connection with, its services, and again give the Project

Director a detailed written report as soon as reasonably practicable but definitely within five business days

- Regularly inform the Project Director about any industrial action that might affect its services
- Promptly inform the Project Director if industrial action causes or might cause a suspension or cessation of its services, providing information about the actions it has taken or proposes to take to overcome or minimise the effects
- Immediately inform the Project Director about any incident, connected with its services, which has:
  - ♦ Seriously injured or killed a tenant, another resident, an owner or occupier of adjoining premises, any of their invitees or any employee, agent or contractor of Housing or the State of NSW in the course of their employment, and
  - ♦ Caused the Project Company to suspend or stop performing any of its services

and the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of this event

- Immediately inform the Project Director about any “emergency”, as defined in the Project Deed (see section 3.2.9.2), if it has caused the Project Company to suspend or stop performing any of its services, advising the Project Director of the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of the “emergency”, and
- Promptly inform the Project Director about any material defects or damage to the sites, dwellings or other facilities for which the cost of repairs is more than \$3,000 (indexed in line with the CPI from the March quarter of 2007), the actions it is taking to correct the damage or defect and the estimated time the correction will require.

### 3.4.9 Monthly ‘service payments’ by Housing to the Project Company

Housing must make monthly “service payments” to the Project Company, calculated in accordance with a “service payment calculation” schedule to the Project Deed and as described below, throughout the project.

The principal components of these payments will be payable only once the Project Company’s services commence (i.e. from the project’s “transition date”, as established under the procedures described in section 3.4.1) and will be performance-based, while other components will not. The monthly payments may incorporate adjustments to reflect any amounts owing to Housing by the Project Company, if Housing chooses to exercise its set-off rights under the Project Deed, and/or any GST, and will also incorporate an adjustment, either up or down, reflecting the project’s arrangements for the sharing of interest rate risks.

#### 3.4.9.1 *Formulae for calculating the ‘service payments’*

Under the “service payment calculation” schedule to the Project Deed, the data inputs for calculating each monthly “service payment”—in all cases before applying any of the performance-based adjustments described in section 3.4.9.2

and before applying a “floor” limit discussed in section 3.4.9.3—are:

- A single “annual transitional service fee” covering all stages of the project, calculated from an amount shown in a table annexed to the schedule. A portion of this amount, as shown in the same table, is to be adjusted by indexing it in line with CPI movements since the March quarter of 2007.
- The total number of dwellings on the “transition date”, as identified in the mobilisation-phase “stock condition” survey described in section 3.4.1.
- The total number of dwellings, at the end of the month for which the payment is being calculated, in all “precincts” (within the project’s stages) for which the construction and refurbishment of dwellings had not yet been completed (section 3.2.14), and the total numbers of dwellings in a series of specific dwelling categories (vacant dwellings, temporary housing dwellings, unavailable dwellings, etc) stipulated in the “service payment calculation” schedule.
- The equivalent numbers of these dwellings assumed in the private sector parties’ “base case” financial model for the project, producing an overall forecast shown in a table in an annex to the “service payment calculation” schedule.
- For each stage, an “annual full service fee”, calculated from an amount shown in another table annexed to this schedule, with a specified portion of this amount being adjusted by indexing it in line with CPI movements since the March quarter of 2007.
- For each stage, the number of dwellings, at the end of the month for which the payment is being calculated, in precincts for which construction and refurbishment had been completed, and the numbers of dwellings in each of another series of dwelling categories stipulated in the “service payment calculation” schedule.
- The equivalent numbers of these dwellings assumed in the private sector parties’ “base case” financial model for the project, producing an overall forecast for each stage as shown in a table in an annex to the “service payment calculation” schedule.
- For each stage, the number of dwellings for the stage set out in the Project Company’s *Concept Development Plan* (section 3.2.2.1).
- An “annual lifecycle refurbishment fee” specified in the “service payment calculation” schedule, with this fee being reduced after the completion of all of the project’s construction works.
- The total amount of rent payable by the project’s public housing tenants during the month for which the “service payment” is being calculated, including any amounts payable under tenancy agreements with the lessees or licensees of Community Leases (section 3.4.5.3) and Rehousing Vacant Dwelling Leases (section 3.4.5.4).
- The total of the Project Company’s actual annual insurance premiums for insurance policies required under the Project Deed (see section 3.5.2.1), as specified in the “service payment calculation” schedule for the first three years following the “transition date” and as subsequently adjusted up or down, if necessary, to take account of the findings of



triennial insurance “benchmarking” arrangements described in section 3.5.2.1.

- The Project Company’s expenditures, during the month for which the “service payment” is being calculated, on the following “pass through” costs specified in the “service payment calculation” schedule:
  - ♦ Land tax, council rates and water, sewerage and electricity rates and charges for stages which are not in their “construction phase”, except in the case of sites with new or refurbished dwellings which have been developed for private housing (see sections 3.4.4.5 and 3.5.1)
  - ♦ Any relocation costs or compensation to rehoused tenants who had made approved improvements to their dwellings, other than any compensation payments of more than \$5,000 not approved by Housing’s Project Director in advance (sections 3.4.4.3 and 3.4.4.5)
  - ♦ Any dwelling modification costs, as calculated in accordance with an annually revised schedule of rates (section 3.4.4.2)
  - ♦ Any costs of bringing vacant dwellings provided by Housing for the purposes of the Project Company’s rehousing services up to the specified minimum condition standards (section 3.4.4.5), and
  - ♦ The costs of the longitudinal study of the experiences of a representative panel of residents and their attitudes to the project (section 3.4.7.2).
- The interest—on the amount of the private sector parties’ senior debt subject to “floating” interest rates which was predicted by the private sector parties’ “base case” financial model (as updated from time to time in accordance with arrangements described in section 3.4.9.5) to be outstanding in the quarter for the month for which the “service payment” is being calculated—that this “base case” financial model predicted would be payable during the quarter in question.
- The interest, on the private sector parties’ outstanding senior debt subject to “floating” interest rates as predicted by the “base case” financial model, that would have been payable had the *actual* floating interest rate on the first business day of this quarter been applied and had the actual debt been equal to this predicted debt.

The month’s “service payment”—before applying the “floor” limit discussed in section 3.4.9.3—must be calculated by:

- (1) Calculating the month’s “monthly transitional service fee” by first calculating a proportion of the indexed “annual transitional service fee” on the basis of the number of days in the month and by then adjusting the result to reflect several of the dwelling numbers described above, in accordance with several formulae set out in the “service payment calculation” schedule.
- (2) Calculating the month’s “monthly full service fee” for each stage of the project with any completed precincts, by first calculating a proportion of the stage’s indexed “annual full service fee” on the basis of the number of days in the month and by then adjusting the result to reflect the stage’s various dwelling numbers described

above, again in accordance with formulae set out in the “service payment calculation” schedule.

- (3) Calculating the month’s “monthly lifecycle refurbishment fee”, again by first calculating a proportion of the “annual lifecycle refurbishment fee” on the basis of the number of days in the month and by then adjusting the result to reflect various dwelling numbers in accordance with a formula set out in the “service payment calculation” schedule.
- (4) Adding the results of the calculations referred to in steps (1), (2) and (3) to produce an overall “monthly fee” for the month in question.
- (5) Subtracting, from this “monthly fee”, the total amount of rent payable by the project’s public housing tenants during the month for which the “service payment” is being calculated, including any amounts payable under tenancy agreements with the lessees or licensees of Community Leases (section 3.4.5.3) and Rehousing Vacant Dwelling Leases (section 3.4.5.4).
- (6) Adding, to the result of the calculation in step (5), a “monthly insurance component”, calculated by first calculating a proportion of the Project Company’s annual benchmarked insurance premiums, as described above, on the basis of the number of days in the month, and by then adjusting the result to reflect an annually determined indexation factor based on changes in the CPI since specified quarters before the “transition date” or, if an insurance “benchmarking” has occurred, before the latest benchmarking date.
- (7) Adding, to this total, all of the month’s “pass through” costs, as described above.
- (8) Adding, to this total, a “floating rate component” reflecting the project’s arrangements for the sharing of interest rate risks, equal to one-third of the amount by which the “actual” interest payment for the relevant quarter, as described above, would have exceeded the “base case” interest payment. This may be a positive or negative amount (in other words, Housing will pay more if interest rates are higher than predicted, and *vice versa*).
- (9) Subtracting, from this result, the month’s “**performance failure deductions**”, “**condition failure deductions**”, “**repeat condition failure deductions**” and “**reporting failure deductions**”, calculated as described in section 3.4.9.2 below.

### 3.4.9.2 Performance-based deductions

“**Performance failures**” are failures by the Project Company to satisfy detailed “key performance indicators” (“KPIs”) for its services, as set out in a table in the *Specification*.

These KPIs cover most aspects of the Project Company’s performance of its service obligations, as described in sections 3.4.2, 3.4.3, 3.4.4 and 3.4.7. They range from general measures—such as the proportions of surveyed tenants expressing satisfaction with each broad category of the Project Company’s services (sections 3.4.2 and 3.4.7.2), with initial targets of at least 60% prior to 30 June 2009, increasing to at least 65% during the following three years and at least 70% thereafter—to highly specific measures concerning individual contractual obligations, such as the submission of specified

plans and reports by specified deadlines. The *Specification* nominates a “reporting period” (of a month, a quarter or a financial year) for each KPI, and in many cases it also nominates a target period for the rectification of any breaches of the standards specified for the KPI.

The reduction in Housing’s monthly “service payments” to the Project Company as a result of any “performance failure” is to be calculated on the basis of “performance failure points” specified for each relevant KPI in the *Specification* and in accordance with formulae and other requirements set out in the “service payment calculation” schedule.

If a “performance failure” is not rectified within the target period (if any) specified for the relevant KPI in the *Specification*, further “performance failure points” will be accrued at the end of this period.

If there are failures to satisfy any particular KPI in any three of four consecutive “reporting periods” (of a month, a quarter or a financial year) specified for the KPI in the *Specification*, even if each of the failures is rectified, the “performance failure points” for these failures during the third and any subsequent reporting periods will be increased by 50%, except in specified circumstances.

No “performance failure points” will be incurred, however, if Housing’s Project Director:

- Is reasonably satisfied that a failure to satisfy a KPI was directly caused by and limited to the duration of planned cyclical maintenance or replacement service activities (section 3.4.4.1) or was directly caused by a “compensation event” (see section 3.5.12), or
- In his or her sole discretion, grants an extension of time on a deadline set in the KPI, and the Project Company meets this revised deadline.

The payment deduction associated with each “performance failure point” will depend on the total number of these points accrued during the month: the greater the number of points, the greater the deduction for each point.

Under “bedding in” arrangements specified in the “service payment calculation” schedule, these deductions will be reduced by 50% during the first six calendar months or portion of a calendar month after the “transition date”.

“**Condition failures**” are failures by the Project Company to respond to and/or to rectify any failure to meet condition standards for the project’s dwellings, areas shared by tenants and other facilities, as specified in the *Specification*, within timeframes specified in the *Specification* for each of four defined “levels” of failures, the most serious of which—requiring responses within one hour and rectification within four hours or the provision of temporary housing—are incidents resulting in an immediate risk to the tenant’s health and safety or preventing them from accessing their dwelling.

The reduction in Housing’s monthly “service payments” to the Project Company as a result of any “condition failure” is to be calculated in accordance with formulae and other requirements set out in the “service payment calculation” schedule, and will depend on, among other things:

- The numbers of public housing dwellings and common tenant areas affected by the “condition failure”

- The time taken to respond to or rectify the problem, with “time weightings” reflecting the “level” of the failure potentially increasing the deduction if further delays occur, especially in the case of the more serious failures
- In situations where Housing’s Project Director agreed to a temporary fix within the timeframes set in the *Specification* and specified a longer timeframe for a permanent fix, whether both these deadlines were met
- Whether the Project Director instructed the Project Company not to respond or rectify the problem
- In situations where the Project Company elected to temporarily rehouse the affected tenant(s) (section 3.4.4.5), whether the tenant(s) were able to return by dates proposed by the Project Company in consultation with the tenant(s) and agreed to by the Project Director at his or her discretion, and
- Whether the “condition failures” resulted from a “relief event” (see section 3.5.11).

No “condition failure deduction” will be incurred for any particular “condition failure” if Housing’s Project Director is reasonably satisfied that the failure was directly caused by and limited to the duration of planned cyclical maintenance or replacement service activities (section 3.4.4.1), or was directly caused by:

- A utility service failure not resulting from the performance or otherwise of the project’s works or services, or
- A “compensation event” (see section 3.5.12).

Under “bedding in” arrangements specified in the “service payment calculation” schedule, “condition failure deductions” will be reduced by 50% during the first six calendar months or portion of a calendar month after the “transition date”.

“**Repeat condition failure deductions**” will apply if the any particular “condition failure” occurs in the same dwelling or the same common tenant area on more than three occasions in any three months. These deductions will apply, in addition to the “condition failure deductions” described above, for any fourth or subsequent occurrence of the same “condition failure”. They will again depend on whether a public housing dwelling or a common tenant areas is affected, but the calculation of the deduction will start from bases only half of those used for the calculation of the relevant “condition failure deduction” and the deduction will not be increased through the application of “time weightings”.

Again, under “bedding in” arrangements specified in the “service payment calculation” schedule, “repeat condition failure deductions” will be reduced by 50% during the first six calendar months or portion of a calendar month after the “transition date”.

“**Reporting failures deductions**” will be applied if the Project Company has failed to report or has inaccurately reported a “performance failure” or a “condition failure” in a previous month, unless this was rectified before Housing paid the relevant “service payment”. These deductions will be equal to 50% of the adjustments to the Project Company’s “performance failure deductions” or “condition failure deductions” (and, if relevant, “repeat condition failure deductions”) that would

otherwise been applied for the previous month, and will be applied in addition to the late application of these adjustments.

Once more, however, under the “bedding in” arrangements “reporting failure deductions” will be reduced by 50% during the first six calendar months or portion of a calendar month after the “transition date”.

#### 3.4.9.3 The ‘floor’ on the monthly ‘service payments’

The deductions described above may not reduce any month’s total “service payment”, calculated as described in section 3.4.9.1, below the value of its “floating rate component”, regardless of whether this is a positive or negative amount. (If the “service payment” ends up being a negative amount, the Project Company must pay Housing, as described below.) Any “excess” deductions will not be carried over to the following month.

#### 3.4.9.4 Reporting, invoicing and payment arrangements

Under procedural requirements in the Project Deed for implementing these monthly “service payment” arrangements,

- The bases for any payment deductions and any adjustments must be presented in a *Monthly Performance Report* which the Project Company must submit to Housing’s Project Director before the eighth day of each month
- The Project Company must submit an invoice, in a form specified in the Project Deed, on or around the first day of each month, and
- Housing must pay the Project Company within 20 business days of receiving the *Monthly Performance Report* and the invoice, unless the invoice shows a net amount is owed to Housing (as a result of the combined effects of the deductions and any adjustments), in which case the Project Company must pay Housing within 20 business days.

Housing may retain or set off any amounts payable to it by the Project Company, but the Project Company may not retain or set off any amounts payable to it by Housing. Any late payments will attract daily interest at 3% pa above the BBSY bank bill rate.

If Housing’s Project Director disputes any amount set out in a monthly invoice, Housing may withhold its payment of the disputed amount while the issue is resolved under the dispute resolution procedures described in section 3.5.8, but it will be liable to pay the Project Company daily interest (at 3% pa above the BBSY bank bill rate) if it is determined that the Project Company was entitled to the disputed amount. Conversely, if it is determined that the Project Company has been overpaid, or that it has withheld an amount to which Housing was entitled, it must pay interest at this rate on the overpaid or withheld amount, on top of its repayment to Housing.

#### 3.4.9.5 Adjustments to the ‘base case’ financial model and the bases for calculating the ‘service payments’

The Project Company must submit an amended version of the private sector parties’ “base case” financial model for the project for the approval of Housing’s Project Director:

- In three particular circumstances specified in the “service payment calculation” schedule to the Project Deed, as described below, and

- More generally, as soon as reasonably practicable following any adjustments to the “service payments calculation” schedule as a result of the application of the “contract variation” procedures described in section 3.5.9, the “adverse housing market conditions” procedures described in section 3.2.7.4, the “compensation event” procedures described in section 3.5.12 or the “benchmarking” and market testing procedures described in section 3.4.10, or as the result of a refinancing of the project (see section 3.5.4.3).

Under the provisions set out in the “service payment calculation” schedule, an amended version of the “base case” financial model must be submitted:

- Whenever this is necessitated by the Project Deed’s provisions for amending the timing of any stage of the project’s works and/or any subsequent stages, and/or the number of dwellings in any stage, through a “contract variation” (sections 3.5.9.1 and 3.5.9.4), in response to adverse housing market conditions (section 3.2.7.4), in response to a “relief event” (section 3.5.11) or in response to a “compensation event” (section 3.5.12).

In these circumstances the amendments to the “base case” financial model must address, and for the purposes of calculating changes in the “annual full service fee” must be confined to, the revised “commencement dates” for the stages (section 3.2.14), the revised periods of application of the various service fees used to calculate the monthly “service payments” (section 3.4.9.1), the revised dates for the indexation of construction costs, adjustments to the costs of the dwellings as result of changes in the number of dwellings and/or the timing of construction (in accordance with a formula specified in the “service payment calculation” schedule) and changes to the non-indexed component of the “annual full service fee” for each stage (subject to caps specified in the schedule).

- Before the “target works commencement date” of each stage of the project (section 3.2.7.1).

These amendments to the “base case” financial model must address, and for the purposes of calculating changes in the “annual full service fee” must be confined to, adjustments to the costs of the dwellings to reflect movements in the NSW Department of Commerce’s Building Price Index (Enterprise Bargaining Agreement) (“BPI”) and changes to the non-indexed component of the “annual full service fee” for the stage (subject to a cap specified in the schedule).

- Before the “commencement date” for each “precinct” within a stage (section 3.2.14).

These amendments to the “base case” financial model must address, and for the purposes of calculating changes in the “annual full service fee” must be confined to, changes, if any, to (a) the date of commencement of the “full service fee” for the stage and adjustment of the project’s “transitional service fee” (section 3.4.9.1), and (b) the non-indexed component of the “annual full service fee” for the stage (again subject to a cap specified in the schedule).

The Project Deed sets out procedures for the Project Company to submit drafts of amended versions of the “base case” financial model, with specified supporting information and an independent audit of its proposals, and for Housing’s Project Director to review the application and either approve the new

“base case” model or suggest amendments, followed by consultations and agreement on the necessary amendments or, failing agreement, referral of the dispute for independent expert determination under the dispute resolution procedures described in section 3.5.8.

Although the Project Director is obliged to participate in these processes, he or she will not assume any duty of care or any responsibility to ascertain errors, omissions, defects or non-compliances with the requirements of the Project Deed.

Quite separately from these arrangements, revisions to the schedule of rates used to calculate any “pass through” dwelling modification costs (sections 3.4.4.2 and 3.4.9.1), as initially determined by Housing’s Project Director and the Project Company before the “transition date” (section 3.4.1), must be agreed between the Project Director and the Project Company before the start of each financial year. (This annually revised schedule of rates will also be used to help determine compensation payments to the Project Company for so-called “minor changes” under the project’s “contract variation” arrangements, as described in section 3.5.9.1.)

### 3.4.10 Benchmarking and market testing of services

The Project Company may—and, if so directed by Housing’s Project Director, must—conduct “benchmarking” exercises, every five years from the “transition date”, to determine the relative quality and cost competitiveness of its communication and consultation services, its community renewal services, its tenancy services and specified aspects of its facilities management services (the cleaning of common areas shared by tenants, forensic cleaning, graffiti cleaning, cleaning after pest infestations, malicious damage repairs and pest control).

Any such “benchmarking” exercise must be conducted in good faith and in accordance with procedures specified in the Project Deed and a “benchmarking and market testing” schedule to the Project Deed and agreed between Housing and the Project Company.

Under these procedures the differences (if any) between the Project Company’s costs for each of the benchmarked services and the costs of “reputable organisations possessing an appropriate degree of skill, resources, reputation and financial standing” are to be agreed between Housing’s Project Director and the Project Company. If they cannot agree, the Project Director may require the relevant services to be subjected to competitive market testing, as described below. If the Project Director does not take this course, either party may refer the matter for determination under the dispute resolution procedures summarised in section 3.5.8.

Competitive market testing will also be required if the cost difference for any service disclosed by the benchmarking exercise is greater than 15%, or if there is a determination under the dispute resolution procedures that market testing of any of the benchmarked services is required.

Timeframes and procedures for any market testing—including the “grouping” of the services to be tendered, the identification and selection of tenderers and the awarding of contract(s) to the tenderer(s) identified by the Project Company as providing the best value for money—are set out in the same schedule to the Project Deed. The successful tenderer(s) will replace the Project

Company’s previous subcontractor(s) or sub-subcontractor(s) in providing the relevant services.

If a “benchmarking” exercise shows the Project Company’s costs for any of the particular services in question have been within 5% of the “benchmark” for the same services, there will be no adjustment of the monthly “service payments” to the Project Company, but if the difference exceeds 5%, either way, the monthly “service payments” to the Project Company must be adjusted to reflect the portion of this difference in excess of 5%, using a methodology which must be proposed by the Project Company and then either agreed to by the Project Director or determined under the dispute resolution procedures described in section 3.5.8.

If a market testing exercise finds *any* difference between the costs, the monthly “service payments” to the Project Company must be adjusted to reflect the whole of this difference, again using a methodology to be proposed by the Project Company and either agreed to by the Project Director or determined under the dispute resolution procedures described in section 3.5.8.

If the “service payments” and the “service payment calculation” schedule to the Project Deed are adjusted under these arrangements, the private sector parties’ “base case” financial model for the project must also be amended, as discussed in section 3.4.9.5.

### 3.4.11 Special arrangements for the last two years of the services

On a date 18 months to two years before the scheduled end of the project (i.e. between 28 February 2035 and 28 August 2035) Housing’s Project Director may procure an audit of the project’s sites, dwellings and other facilities to:

- Assess whether they have been and are being maintained as required under the Project Deed, and
- Determine the amount of money that will need to be spent during the remaining period to 28 February 2037—beyond any components of the monthly “service payments” (section 3.4.9) that are to be paid to the Project Company for scheduled maintenance or lifecycle replacements—in order to:
  - ◆ Ensure that on 28 February 2037 the sites and the facilities (other than the local office provided as part of the Project Company’s communication and consultation services) will be in the condition required by the *Specification*, and
  - ◆ Rectify any breaches of the Project Company’s obligations.

Housing’s Project Director must give the Project Company at least ten business days’ notice of the date on which he or she wishes such a “handover audit” to be conducted. He or she must consider any reasonable request for the audit to be carried out on a different date in order to avoid material prejudice to the Project Company’s ability to provide its services, provided this request is made at least five business days before the originally notified date.

The independent auditor is to be appointed by agreement between Housing and the Project Company or, if they cannot agree within two business days of a nomination by Housing, the President of the Australian Institute of Quantity Surveyors.



Housing and the Project Company must each meet half of the audit's costs.

The Project Company must provide reasonable assistance, free of charge, to any person carrying out the audit, and the Project Director must promptly give it a copy of the audit report when he or she receives it.

Within 20 days of receiving the audit report the Project Company must give the Project Director an unconditional bank guarantee, in favour of Housing, in a form specified in a schedule to the Project Deed, from an Australian bank with specified minimum credit ratings, expiring no earlier than 28 February 2038 and with a face value equal to the amount of money the auditor reports as being necessary for the purposes described above.

If the termination audit reveals rectification work is required, the Project Director must notify the Project Company of the required work, specifying a reasonable period within which it must be completed, and the Project Company must carry out this work within the specified period, at its own cost.

If the Project Company fails to carry out the necessary rectification and/or maintenance work with appropriate professional care, in accordance with good industry practices and within the notified timeframe, or is not diligently pursuing these works, Housing may carry out the works itself or procure others to do so. The Project Company will then be liable to pay the costs incurred as a debt to Housing, which may deduct or set off this amount against any amount payable to the Project Company or take enforcement action, including action under the bank guarantee, if the debt is not paid.

Provided all the required rectification and/or maintenance works have been completed, have been independently certified by the independent auditor, satisfy the Project Director and have been paid for by the Project Company by 28 February 2037 or (if it is later) the date nominated by the Project Director for the completion of the works, Housing must release and return the Project Company's bank guarantee as soon as practicable.

### 3.4.12 Transition to Housing or another contractor

During the three months ending on 28 February 2037, or during the period after any notice of termination of the Project Deed under the arrangements described in section 3.6, and then for the following 12 months, the Project Company—and, for the purposes of the private property development aspects of the project, the Development Contractor—must fully cooperate with the transfer of any or all of the Project Company's services to Housing or to any new contractor providing the same or similar services.

Among other things, it must:

- Transfer all of the Project Company's and Development Contractor's titles to and interests and rights in the project's sites, works and facilities to Housing or the new contractor, in a condition complying with the Project Deed and free of any encumbrances
- Procure the surrender of the Ground Lessee's titles to and interests and rights in the project and its sites, works and facilities to Housing or the new contractor

- Liaise with Housing's Project Director and/or the new contractor and provide reasonable assistance and advice concerning the services and their transfer
- Give the new contractor access to the sites, works and facilities at reasonable times and on reasonable notice, provided this does not interfere with its services
- Give the Project Director and/or the new contractor all the information about the project's sites, works, facilities and services needed for an efficient transfer, including an up-to-date *Services Manual* and other specified data and documents, and
- More generally, facilitate a smooth transfer of responsibility for the works and services and take no action at any time, before or after the expiry or early termination of the Project Deed, to prejudice or frustrate the transfer.

The Project Company must also ensure, by no later than the expiry or early termination of the Project Deed, that all documents and computer records which contain information about any public housing tenant and which are in its own possession, custody or control or the possession, custody or control of any of its subcontractors or sub-subcontractors are delivered to Housing's Project Director.

After the expiry or termination of the Project Deed Housing and the Project Company must:

- Continue to account to each other, on a monthly basis, to ensure that the Ground Lessee (and, through it, the Project Company) receives all the rent, non-rent charges and other amounts paid or payable by tenants under the Tenancy Agreements for periods prior to the end of the project, and that Housing receives these amounts for all subsequent periods
- Provide information to each other, as reasonably requested, to enable these matters to be verified, and
- In the Project Company's case, procure the Ground Lessee to do likewise.

## 3.5 Miscellaneous general provisions of the Project Deed and Housing's other 'project documents'

### 3.5.1 Liabilities for taxes, rates, charges and stamp duty

As between Housing and the Project Company, the Project Company must pay, or cause the Ground Lessee to pay, all water, sewerage and electricity rates and charges, all council rates and all land taxes, under the Land Tax Act (NSW) and the Land Tax Management Act (NSW), for the project's sites, dwellings and other facilities for periods from the "transition date" (section 3.4.1), except to the extent that these amounts are payable by tenants under their Tenancy Agreements and/or Housing's public housing policies.

However, Housing will be liable to reimburse the Project Company for:

- All land taxes payable by the Project Company or the Ground Lessee, *other than* land taxes payable on sites with new or

refurbished dwellings which have been developed for private sale

- All council rates payable by the Project Company or the Ground Lessee for sites in stages of the project which are not in their “construction phase”, *other than* sites with new or refurbished dwellings which have been developed for private sale
- A proportion of council rates payable by the Project Company or the Ground Lessee for sites in stages of the project which are in their “construction phase”, equal to the proportion of the stage’s properties which are to be developed, are being developed or have been developed for private housing, and
- All water, sewerage or electricity rates or charges payable by the Project Company or the Ground Lessee for sites, dwellings and other facilities in stages of the project which are not in their “construction phase”, *other than* sites with new or refurbished dwellings which have been developed for private sale.

Housing will not, however, be liable to reimburse the Project Company for:

- Any water, sewerage or electricity rates or charges payable by the Project Company or the Ground Lessee for any sites, dwellings and other facilities in stages of the project which are in their “construction phase”, even if construction on these sites has not yet commenced (see, in particular, section 3.4.4.5) and even if they are in a “precinct” which has already been redeveloped and has passed its “commencement date” (section 3.2.14), or
- Any penalties or additional charges for late payments etc.

As already indicated in section 3.4.9.1, for stages of the project which are not in their “construction phase” these reimbursements will be incorporated as “pass through cost” components of Housing’s monthly “service payments” to the Project Company. For stages in their “construction phase”, they will be invoiced as separate items on a monthly basis.

Housing will also be liable to pay all NSW stamp duty and registration fees or charges on the “project documents” (section 2.2), any surrenders or terminations of the Leases (section 3.4.5.1), any surrenders or terminations of Tenancy Agreements (section 3.4.5.2), any dedications or transfers of sites to another authority or a utility services provider (section 3.4.5.1) and any acquisitions of approved off-estate properties (section 3.2.4.1).

The Project Company will be liable to pay all other taxes, levies and charges, other than GST (for which there are separate arrangements) and income tax, in connection with the transactions contemplated in the “project documents”, expressly including stamp duty connected with the private property developments, and any amendments to or consents, approvals, waivers, releases or discharges of or under the “project documents”.

## 3.5.2 Insurance and loss or damage

### 3.5.2.1 Insurance obligations

The Project Company must take out and maintain the following insurance policies, as specified in an “insurances” schedule to the Project Deed:

- Contracts works all risks insurance for the full reinstatement value of each stage’s construction works, from the start of the stage’s demolition and construction works until the end of its defects correction period (section 3.2.14).
- Advance consequential loss insurance covering any loss of anticipated gross profit and increased costs arising from any construction delays of 26 weeks or more, from the start of each stage’s works until the stage’s works are completed (section 3.2.14).
- Asbestos removalists liability insurance for any intended asbestos removal work, and any other insurance a responsible corporation would take out to cover unintentional disruption of asbestos or other potentially harmful substances, from the “transition date” (section 3.4.1) until the end of the project.
- Public and products liability insurance for the project’s works, for at least \$100 million per occurrence (or a higher amount directed by Housing’s Project Director under arrangements described below) and covering the liabilities of the Project Company, the Development Contractor, the Construction Contractor, the Facilities Management Contractor and their employees, agents and consultants, from 20 April 2007 until the end of any applicable defects liability periods.
- All risks property insurance, for the full replacement or reinstatement value of completed works and all plant and equipment relevant to the Project Company’s ability to perform its obligations, from the start of each stage’s works until the stage’s works are completed.
- Professional indemnity insurance, covering the liabilities of the Project Company and the Development Contractor and the activities of their employees, subcontractors, consultants and agents, for at least \$20 million per claim and \$40 million in total, from the start of the first stage’s works until seven years after the “full service commencement date” (section 3.2.15).
- Fidelity insurance, for at least \$1 million per event and \$2 million in total or higher amounts directed by Housing’s Project Director, covering Project Company losses caused by any misappropriations or other dishonesty by its directors, employees or agents in connection with the sharing of income from private property sales (section 3.3.2), from a date before any private property sale deposits are taken until one year after the settlement of all of the private property sales.
- Public and products liability insurance for the project’s services, for at least \$100 million per occurrence or a higher amount directed by Housing’s Project Director and covering the liabilities of the Project Company, the Facilities Management Contractor, the Tenancy Services Contractor and their employees, agents and consultants, throughout the project.
- All risks property insurance, for the full replacement or reinstatement value of the project’s sites, facilities and all other property and material relevant to the Project Company’s ability to perform its obligations, from the “transition date” until the end of the project.

(If new or refurbished dwellings intended for private sale remain unsold at the time construction works for their stage of the project are formally completed under the arrangements described in section 3.2.14, and are not covered by the Project Company's construction-period all risks property insurance, the Project Company must procure the Development Contractor to take out and maintain equivalent insurance.)

- Professional indemnity insurance, covering the liabilities of the Project Company, the Facilities Management Contractor, the Tenancy Services Contractor and the Manager and the activities of their employees, subcontractors, consultants and agents, for at least \$20 million per claim and \$40 million in total, from 20 April 2007 until 28 February 2044 or seven years after any earlier termination of the project.
- Business interruption insurance for lost profits and increased costs of working during business interruption periods of 26 weeks or more, from the "transition date" until the end of the project.

(Again, if new or refurbished dwellings intended for private sale remain unsold at the time construction works for their stage of the project are formally completed, and the associated business interruption risks are not covered by the Project Company's business interruption insurance, the Project Company must procure the Development Contractor to take out and maintain equivalent insurance.)

- Transit insurance for the full replacement value of tenants' property and goods, during all relocations throughout the project.
- Compulsory third party motor vehicle insurance, throughout the project.
- Third party property damage plant and vehicle insurance for at least \$20 million per occurrence or a higher amount directed by Housing's Project Director, throughout the project.
- Workers' compensation insurance, including coverage for common law claims of at least \$50 million per event or a higher amount directed by the Project Director, throughout the project.

The terms of these insurance policies must comply with requirements set out in the "insurances" schedule to the Project Deed.

The Project Company must use its best endeavours to ensure the Development Contractor, the Construction Contractors, the Facilities Management Contractor, the Tenancy Services Contractor, the Manager, its other subcontractors and sub-subcontractors and its agents and consultants maintain insurance policies on the same terms, as appropriate for the nature of their work or services.

As indicated above, in the case of several of the required insurance policies the Project Director may increase the required insurance cover. He or she may do so only on every third anniversary of the "transition date" (section 3.4.1), and then only if he or she, in accordance with procedures set out in the "insurances" schedule, has obtained an opinion from a reputable broker that this is necessary under contemporary prudent insurance practices.

The premiums for all of the insurance policies described above will be subject to competitive "benchmarking" during three-month periods leading up to every third anniversary of the "transition date". If the premiums have changed in real terms,

- The "monthly insurance components" of the monthly "service payments" (section 3.4.9.1) must be adjusted accordingly, disregarding any change in the premiums attributable to the insurance history or other relevant acts or omissions of the Project Company or any of its subcontractors or sub-subcontractors, including their performance under the "project documents" (section 2.2), and
- The "base case" financial model for the project must be amended, in accordance with the procedures for this referred to in section 3.4.9.5.

### 3.5.2.2 Liabilities for and responses to loss or damage

From the "transition date" (section 3.4.1) the Project Company will generally bear the risks of loss or damage to its works and the project's sites, dwellings and other facilities, and it has undertaken to provide related indemnities, subject to a number of exceptions, as already described in section 3.1.5.

More specifically, the Project Company will not be entitled to compensation, under the "compensation event" arrangements described in section 3.5.12, for any loss or damage to any part of the project's sites or facilities caused by Housing, Housing's Project Director, any other persons administering or managing the project for Housing or any employees, agents or contractors of Housing or the State of NSW in the course of their employment, other than tenants, the Project Company itself and its related parties.

However, if there is *malicious* damage to existing housing before the start of the "construction phase" of the relevant stage of the project, or new or refurbished housing after the "commencement date" for the site's "precinct" or stage of the project (section 3.2.14),

- The Project Company must meet the first \$200,000 per financial year (indexed in line with the CPI from the March quarter of 2007) of any reasonable replacement and reinstatement costs which are:
  - ♦ Not recovered by the Project Company from tenants, in accordance with relevant Housing public housing policies, the *Services Manual* (section 3.4.7.1) and relevant project protocols, and
  - ♦ Not covered, or required to be covered, by insurance as specified in the Project Deed (section 3.5.2.1), including any relevant insurance deductibles
- Housing must meet any such reasonable replacement and reinstatement costs in excess of \$200,000 per financial year (as indexed), up to a limit of \$100,000 in any financial year (again indexed in line with the CPI from the March quarter of 2007), *provided*:
  - ♦ The Project Company has sought to recover the costs from tenants, if they are liable, within six months of repairing the damage, and
  - ♦ Housing's Project Director agreed to the applicable insurance deductibles before the relevant insurance policies were taken out, and

- If subsequent cost recoveries by the Project Company take the total of these costs below \$200,000 per year (as indexed), the Project Company must repay Housing's contribution, less any Project Company costs in making these recoveries.

As indicated in sections 3.2.9.2 and 3.4.8, the Project Company must promptly inform the Project Director about any material defects or damage to the sites, works or facilities for which the cost of repairs is more than \$3,000 (indexed in line with the CPI from the March quarter of 2007), the actions it is taking to correct the damage or defect and the estimated time the correction will require.

The Project Company must promptly repair any loss or damage to any part of the project's sites, works, dwellings or other facilities so that, to the greatest possible extent, it can continue to comply with its obligations under the "project documents". In doing so, it must minimise any impacts on tenants and the project's sites, works, facilities and services and it must keep Housing's Project Director informed of its progress.

All insurance proceeds received for the loss or damage must be applied by the Project Company to repair, reinstate and/or replace the relevant works or the affected parts of the sites or facilities. The private sector debt financiers' Security Trustee has promised Housing that, notwithstanding any other provisions in the project's financing agreements, any insurance proceeds placed into an insurance account as required under these agreements will be released only for these purposes, and no action will be taken to prevent the release of these amounts.

In some circumstances loss or damage to the project's works or facilities may entitle the Project Company to seek relief from its contractual obligations under the "relief event" arrangements described in section 3.5.11, and in more extreme circumstances the *force majeure* provisions described in section 3.5.13 may apply.

### 3.5.2.3 Uninsurable risks

Notwithstanding the insurance requirements described in section 3.5.2.1, the Project Company is not required to insure against risks which are, or become, "**uninsurable**" risks, in the sense that:

- The insurance otherwise required under the Project Deed is not available, for that risk, with reputable insurers in the recognised international insurance market, and coverage of the risk is not available under any relevant statutory scheme, or
- The insurance premium for the risk would be so high or the terms and conditions so onerous that the risk is generally not being insured against, with reputable insurers in the recognised international insurance market, by prudent, competent and experienced providers of services similar to those of the Project Company.

If a risk that would otherwise have to be covered by an insurance policy becomes uninsurable, the Project Company must notify Housing's Project Director within five business days, or immediately if the risk is a public liability risk.

If Housing and the Project Company agree that the risk is uninsurable and that the "uninsurability" has not been caused by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project

Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants, or if these are the conclusions of dispute resolution procedures as summarised in section 3.5.8, Housing and the Project Company must meet to discuss how the risk should be managed, including possible self-insurance.

If the risk that has become uninsurable is a public liability risk,

- This meeting must be held within two business days of the Project Company's notification, unless the parties agree on a longer period
- If the Project Company elects not to perform obligations under the Project Deed which would expose it to the uninsurable risk, and notifies Housing's Project Director, it will not be held to be in breach of the Project Deed during the period before the parties meet and agree on ways of managing the risk, and
- In these circumstances, Housing's monthly "service payment" to the Project Company for its services in the relevant month (section 3.4.9) will be calculated as if the withheld services were still being performed during the period, but will be reduced by an amount equal to:
  - ♦ The costs saved by the Project Company in not performing these services, or
  - ♦ If they are greater, the costs incurred by Housing if it carries out the affected services itself, under arrangements described in section 3.6.3.1.

Provided these procedural requirements are satisfied, if an uninsurable risk that would otherwise have to be insured under one of the all risks property insurance policies or business interruption policies described in section 3.5.2.1 then eventuates, but Housing and the Project Company cannot agree on how to manage it,

- The Project Deed will continue
- The monthly "service payments" to the Project Company (section 3.4.9) must be adjusted to deduct amounts equal to the premiums payable for insuring the risk immediately before it became uninsurable, as agreed between the parties or determined under the dispute resolution procedures described in section 3.5.8, and
- Housing's Project Director must, at his or her option, either:
  - ♦ Pay the Project Company an amount equal to the insurance proceeds it would have received had the insurance continued to be available, in which case the Project Company must apply this payment to repair, reinstate and/or replace the relevant works or the affected parts of the sites or facilities, or
  - ♦ If only part(s) of the project's sites or facilities are affected, require the Project Company to request a "**facilities removal contract variation**", through the "change procedure" discussed in section 3.5.9.1, under which the affected sites or facilities would cease to be subject to the Project Deed and the Project Company would be entitled to compensation equal to a percentage of the compensation that would be payable for a full termination of the Project Deed if all



the project's sites and facilities were affected (section 3.6.1.2), or

- ♦ If all of the project's sites and facilities are affected, terminate the Project Deed and pay the Project Company an amount specified in a "termination payments" schedule to the Project Deed and described in section 3.6.1.2.

### 3.5.3 Financial reporting and audits

The Project Deed sets out requirements for the Project Company to:

- Maintain accounts and other financial and financial planning records and have them audited annually
- Ensure the Development Contractor, the Construction Contractors, the Facilities Management Contractor and the Tenancy Services Contractor do likewise
- Make its financial records available to Housing's Project Director for inspection, on five business days' notice, as described in sections 3.2.9.3 and 3.4.7.3
- Submit annual business plans and budgets to the Project Director, by no later than the preceding 1 April, for each financial year following the completion of works on the first stage of the project
- Provide unaudited financial statements to the Project Director every six months
- Provide annual audited financial statements to the Project Director, both for itself and for the Development Contractor, the Facilities Management Contractor and the Tenancy Services Contractor, and
- Promptly give the Project Director copies of all the documents, reports, plans, materials, certificates and notices it provides to the project's financiers.

Housing's Project Director may arrange independent financial audits of the Project Company's annual financial statements and other financial information at any time until 28 August 2037 or the date six months after any earlier termination of the Project Deed.

If the Project Director notifies the Project Company of such an audit, the auditor will be appointed by the Project Director and the audit will be carried out at Housing's expense. If the audit uncovers inaccuracies or incompleteness in the accounts or records, the Project Company must fix these deficiencies, appropriate adjustments must be made to Housing's monthly "service payments" to the Project Company (section 3.4.9) if the deficiencies have affected past payments, and the Project Company must reimburse Housing for the costs of the audit.

### 3.5.4 Substitutions and restrictions on changes in ownership or control, assignments, encumbrances and refinancing

#### 3.5.4.1 *Changes in entities, ownership or control*

If any authority, institution, association or body referred to in the Project Deed is reconstituted, renamed or replaced, or its powers or functions are transferred to another organisation, the Project Deed will be taken to refer to that new organisation. Similarly, if the authority etc ceases to exist, the Project Deed will

be taken to refer to the organisation which serves the same purpose or objects.

If a substitute for the Project Company is appointed by the Partners as their nominee and agent under the Partnership Agreement, this substitute will automatically take the place of the Project Company under the Project Deed and all the other "project documents" as soon as Housing is advised of the appointment.

The Project Company has promised Housing that there will be no changes in:

- The legal or beneficial ownership of the Project Company and the entities that own it, as described in section 2.1.2 (the "**Project Company group**"), other than changes in the ownership of shares, units or other equity interests listed on a prescribed financial market, changes in the trustees, managers or responsible entities of the Becton Bonnyrigg Equity Trust, the WEST BP Trust or other specified trusts, or transfers of equity interests between related corporations, or
- The ownership structure described in section 2.1.2

without the prior written consent of Housing's Project Director.

If an entity ultimately controlling any member of the "Project Company group" is listed on a prescribed financial market, and there is a change in the control of the Project Company or any other member of the Project Company group as a result of a change in the ownership of this listed entity, the Project Company must promptly notify Housing's Project Director, providing full details and any other information reasonably needed by Housing for it to decide whether to consent to the change.

Housing will then have ten business days to notify its acceptance or rejection of the change in control. If it rejects the change, the Project Company must, within 90 days, procure an end to the equity holdings, voting power or other control that produced the change in control, without causing any further change in control other than a reversal or a change approved by Housing in advance.

Similarly, if there is a change in the control of the Development Contractor, the Facilities Management Contractor or the Tenancy Services Contractor, or if the Project Company becomes aware of a change in the control of a Construction Contractor or any other "material subcontractor" (sections 3.2.8.1 and 3.4.6.1), the Project Company must promptly notify Housing's Project Director, providing full details and any other information reasonably needed by Housing for it to decide whether to consent to the change.

If Housing rejects the change—which it may do if the new controller is not a reputable entity, is unsuitable because of its activities or business or cannot properly carry out the relevant subcontractor's obligations, or if the change means the subcontractor no longer has the expertise, ability and financial and commercial standing to properly carry out its obligations—the Project Company must, at its own cost, terminate or cause the termination of the relevant subcontract and appoint a replacement subcontractor to carry out the same services, in accordance with the subcontracting arrangements described in sections 3.2.8.1 and 3.4.6.1, as applicable, and the same tendering procedures as the Project Deed specifies for

market testing of the Project Company's services (section 3.4.10).

If the Independent Certifier Deed is terminated, under arrangements set out in that deed, or if an incumbent Independent Certifier ceases to act in this role, Housing's Project Director and the Project Company must, unless they agree otherwise, appoint a replacement by no later than ten business days after the termination or cessation. If they cannot agree on the identity of the replacement, they must appoint a nominee of the President of the Royal Australian Institute of Architects.

#### 3.5.4.2 Transfers and encumbrances

Housing and the Project Company may not deal separately with their interests under the Project Deed and the Leases, and any dealings with their interests under these documents must occur at the same time, on substantially the same terms and with the same parties.

Similarly, Housing may not deal with its interests under the Financiers Tripartite Deed independently of its interests under the Project Deed.

The Project Company, the Partners and the Development Contractor must obtain Housing's consent before they may sell, transfer, lend or otherwise dispose of any part of their businesses or assets, other than by granting a security permitted under the project's contracts as described below, if this would materially affect their ability to perform their obligations under the "project documents" (section 2.2).

Housing must not grant any security interest or encumbrance over or otherwise dispose of any or all of its rights, obligations or interests under the "project documents" without the prior written consent of the Project Company and the Development Contractor, except in the case of a transfer of its interests under the contracts to any governmental body, agency or department constituting the State of NSW or guaranteed by the State.

Similarly, the Project Company and the Development Contractor must not grant any security interest or encumbrance over or otherwise dispose of any or all of their rights, obligations or interests under the "project documents" without Housing's prior written consent, except in the case of the granting of security interests in accordance with the project's financing agreements.

The Security Trustee and its representatives may not assign or dispose of any property that is subject to the project financiers' securities unless this is done in accordance with the Financiers Tripartite Deed.

More specifically, the Security Trustee has promised Housing, in the Financiers Tripartite Deed, that:

- It will not transfer or dispose of any of its rights or obligations under the project's financing agreements, including the Financiers Tripartite Agreement, unless the transferee is:
  - ◆ Acceptable to Housing, or
  - ◆ A related corporation of the Security Trustee that is a qualified and authorised security trustee carrying on a business similar to that of the Security Trustee, *and* has entered into a tripartite deed with Housing on substantially the same terms as the Financiers Tripartite Deed

- It will not permit any of the project's financiers to transfer or dispose of any of their rights or obligations under the project's financing agreements unless the transferee is a bank or financial institution in an OECD country with specified minimum credit ratings or is otherwise acceptable to Housing, and
- The Security Trustee, the Project Company and the Development Contractor will not dispose of, declare a trust over or otherwise create an interest in their rights under the Financiers Tripartite Deed without Housing's consent.

In addition,

- Unless Housing's Project Director agrees otherwise in advance, any replacement for an existing Partner under the Partnership Agreement must be:
  - ◆ Another trustee, manager or responsible entity of a trust, superannuation fund or managed investment scheme permitted under the project's equity agreements and, as relevant, the Becton Bonnyrigg Equity Trust Deed and/or the WEST BP Trust Deed (section 2.1.2)
  - ◆ A related corporation of the retiring Partner, or
  - ◆ Any trust whose trustee, manager or responsible entity is a related corporation of the retiring Partner.
- Unless the Project Director agrees otherwise in advance, any replacement for the existing Ground Lessee must be a non-profit community housing provider.
- There are restrictions, under the Project Deed, on the assignment or replacement of the Development Contract, any Construction Contract, the Facilities Management Contract, the Tenancy Services Contract or any other "material" subcontract or sub-subcontract, as already described in section 3.2.8.1 and referred to in section 3.4.6.1
- The Project Company, the Development Contractor and the Development Guarantor have promised Housing, in the Development Side Deed, that:
  - ◆ They will not dispose of, declare a trust over or otherwise create an interest in their rights under the Development Side Deed without Housing's consent, and
  - ◆ The Development Contractor and the Development Guarantor will not dispose of, declare a trust over or otherwise create an interest in their rights under the Development Contract, the Development Contractor Guarantee or any finance securities associated with the Development Contract unless this is done in accordance with the Corporation Security (Development Contractor) and the project's financing agreements, as relevant, or with Housing's written consent.
- When each Construction Contractor is appointed (section 3.2.8.1) the Project Company, the Development Contractor, the Construction Contractor and its Construction Contractor Guarantor must make analogous promises to Housing in their associated Construction Side Deed, concerning any assignments of and the creation of interests in this Construction Side Deed, the relevant Construction Contract,

the relevant Construction Contract Guarantee and associated financing securities.

- The Project Company, the Facilities Management Contractor and the Facilities Management Guarantor have promised Housing, in the Facilities Management Side Deed, that:

- ◆ They will not dispose of, declare a trust over or otherwise create an interest in their rights under the Facilities Management Side Deed without Housing's consent, and
- ◆ The Facilities Management Contractor and the Facilities Management Guarantor will not dispose of, declare a trust over or otherwise create an interest in their rights under the Facilities Management Contract, the Facilities Management Contractor Guarantee or any finance securities associated with the Facilities Management Contract unless this is done in accordance with the Corporation Security (Project Company and Partners) and the project's financing agreements, as relevant, or with Housing's written consent.

- The Project Company, the Facilities Management Contractor and the Tenancy Services Contractor have promised Housing, in the Tenancy Services Side Deed, that:

- ◆ They will not dispose of, declare a trust over or otherwise create an interest in their rights under the Tenancy Services Side Deed without Housing's consent, and
- ◆ The Tenancy Services Contractor will not dispose of, declare a trust over or otherwise create an interest in its rights under the Tenancy Services Contract, the Undertaking Agreement (to which it is a party in its role as the project's Ground Lessee) or any finance securities associated with these contracts unless this is done in accordance with the Corporation Security (Project Company and Partners) and the project's financing agreements, as relevant, or with Housing's written consent.

### 3.5.4.3 Refinancing

The consent of Housing's Project Director is required before:

- The Project Company, the Development Contractor or the Security Trustee may terminate any of the project's financing agreements or enter into new financing agreements or arrangements, other than debt obligations incurred in the ordinary course of business
- The Project Company, the Development Contractor or the Security Trustee may materially amend a financing agreement
- The Project Company may materially waive any term of a financing agreement
- The Development Contractor may materially waive any term of a financing agreement in a way which would be *likely* to increase Housing's liabilities in the event of an early termination of the Project Deed or lead to a breach of the Project Deed's ownership requirements (section 3.5.4.1) or which would have a material adverse effect on Housing, in these or any other ways, or

- The Security Trustee may materially waive any term of a financing agreement in a way which would have a material adverse effect on Housing.

More specifically, the Project Company may not refinance the project (other than its private property development aspects) without the Project Director's consent, except through any action already contemplated in the financing agreements and the private sector participants' "base case" financial model as it was on 20 April 2007, if this would:

- Produce a financial gain for the project's equity investors, after deducting the direct costs of the refinancing to Housing and the Project Company and making other adjustments specified in the Project Deed, or
- Increase or change the profile of Housing's liabilities under the Project Deed or any other "project document" (section 2.2).

If such a refinancing is proposed, the Project Company must submit a "refinancing report" to Housing's Project Director, explaining the proposal and its impacts on Housing's actual and contingent liabilities under the "project documents" and providing detailed financial information as specified in the Project Deed, including a calculation of the total expected refinancing gain, expressed in net present value terms.

There is no explicit deadline for Housing to accept or reject a refinancing proposal, beyond its general obligation to act reasonably (section 3.1.2).

If Housing consents to a proposed refinancing, it will be entitled to receive 50% of the estimated refinancing gain. It may elect to take this as lump sum payments when the refinancing occurs, or through reductions in its monthly "service payments" to the Project Company under the arrangements described in section 3.4.9, or through a combination of both of these approaches.

Following any refinancing the Project Company must give Housing's Project Director the revised "base case" financial model for the project within five business days and Housing's monthly "service payments" to the Project Company must be adjusted to reflect the changes (section 3.4.9.5).

Certified copies of all new or amended financing agreements and all waivers of their terms must be given to the Project Director within ten business days of their execution, both following any refinancing and more generally.

### 3.5.5 Amendments to and waivers of Housing's 'project documents' and other project contracts

The terms of the Project Deed may be amended only by a document signed by or on behalf of Housing, the Project Company and the Partners. Analogous provisions are included in most of the other project contracts to which Housing is a party, and Housing has also agreed, in the Financiers Tripartite Deed, that it will not materially amend the Project Deed or any of the other "project documents" (section 2.2) in ways that might affect the interests of the project's financiers without the Security Trustee's consent, which may not be unreasonably withheld or delayed.

Any non-exercise of or delay in exercising a power or right under the Project Deed or most of the other contracts will not operate

as a waiver, and a full or partial waiver or consent by any of the parties will be effective only if it is given or confirmed in writing.

The Project Deed reinforces these general principles with several specific denials of waivers that might otherwise be suggested by Housing actions or inaction, some of which have already been cited.

Subject to the “contract variation” arrangements described in section 3.5.9, the party requesting any amendment of a “project document” or waiver of its terms must pay all the associated costs.

The Project Deed, the Independent Certifier Deed and the Financiers Tripartite Deed make it clear that Housing’s Project Director and his or her representatives have no authority to orally waive any of the obligations of the Project Company or release it from these obligations, and that any waiver or release by Housing must be expressly identified as such, in writing, and signed personally by the Project Director and not by any of his or her delegates.

As already indicated in sections 3.2.8.1 and 3.4.6.1, there are and will be restrictions, under the Project Deed, on amendments to and waivers of rights or obligations under the Development Contract, the Construction Contracts, the Facilities Management Contract, the Tenancy Services Contract and any other “material” subcontract or sub-subcontract.

The Development Contractor and the Development Guarantor have promised Housing, in the Development Side Deed, that they will not amend the Development Contract, the Development Contractor Guarantee or any finance securities associated with the Development Contract, waive any of their terms or enter into any other arrangements with the parties to these contracts unless Housing consents.

Directly analogous undertakings must be made by the Construction Contractors and the Construction Contractors’ Guarantors under the Construction Side Deeds and have been made by the Facilities Management Contractor and the Facilities Management Guarantor under the Facilities Management Side Deed and by the Tenancy Services Contractor under the Tenancy Services Side Deed.

### 3.5.6 Confidentiality

Under the Project Deed, the Development Side Deed, the Construction Side Deeds, the Independent Certifier Deed, the Facilities Management Side Deed, the Tenancy Services Side Deed and the Financiers Tripartite Deed, all matters “relating to” the Project Deed and all the other “project documents” (section 2.2) must be kept confidential unless they fall within a series of exemptions, including:

- The tabling of the major project contracts in State Parliament
- Disclosures required by law

- Disclosures of documents which the Project Company, acting reasonably, has agreed do not contain any “**commercially sensitive information**” (meaning any information about the project’s financing facilities, the Project Partnership’s cost structures or profit margins, the project’s detailed designs, *Works Management Plan*, *Works Programs*, *Services Manual* or other proprietary material created by or for the Project Company or used for the project facilities’ design, construction or services, or any other commercially sensitive information which has to be kept confidential in accordance with the NSW Government’s *Working with Government Guidelines for Privately Financed Projects*, but expressly *not* including any material prepared or used for the private property development aspects of the project)\*
- Disclosures by Housing’s Project Director to any NSW Government department or agency
- Disclosures to prospective investors and financiers, and
- Disclosures to the NSW Auditor-General in accordance with the Public Finance and Audit Act (NSW).

### 3.5.7 Changes in law

The Project Deed’s definition of “**change in law**” encompasses:

- New legislation (including subordinate legislation and legally enforceable guidelines) which was not reasonably foreseeable on 20 April 2007
- Court decisions which change binding precedents, and
- New Housing policies, other than those listed in the Project Deed’s schedule of Housing’s public housing and related policies (section 3.4.3) as at 20 April 2007.

The Project Company is not generally entitled to any compensation, extension of time or other relief from its obligations under the Project Deed as a result of any such “change in law”.

However,

- Housing must use all reasonable endeavours to give the Project Company access to any relief, implementation arrangements or programs that are extended to Housing or the NSW Department of Housing, or to the State of NSW in general, in response to a “change in law”
- Housing’s Project Director may issue a written notice to the Project Company directing it not to comply with a new Housing policy
- If a “change in law” results in cost savings for the project, Housing’s monthly “service payments” to the Project Company (section 3.4.9) must be adjusted to reflect this saving, with all of the savings flowing to Housing
- If a “change in law” is a “**discriminatory change in law**”—applying to this project but not to other similar projects procured by Housing or the State of NSW, applying to the

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\* “Commercially sensitive” information that is not reported in this *Summary of Contracts* includes the threshold for the sharing of any higher-than-anticipated development contributions and Housing’s agreed share of any such additional costs (sections 3.2.2.4 and 3.5.12), the “target approval dates” for the initial and subsequent development approvals for the project (section 3.2.2.1), the “target works commencement dates” and “target completion dates” for each stage of the project (sections 3.2.1 and 3.2.7.1), the details of the Project Company’s *Proposals*, including its concepts for the developments involved in each of the project’s stages (section 3.2.1), the value and amortisation of the “development bond” bank guarantee (section 3.2.15), the factors and thresholds to be used in calculating Housing’s “sales gain share” from the sale of private dwellings (section 3.3.2), the Ground Lessee’s obligations to the Project Company under the Undertaking Agreement (sections 2.2 and 3.4.5.2), the interest rates and financial data to be used in calculating Housing’s monthly “service payments” to the Project Company (section 3.4.9.1), part of the definition of “qualifying change in law” (section 3.5.7) and provisions in the Project Deed’s “estimated cost effect” schedule concerning the calculation of compensation for a “compensation event” involving a “qualifying change in law” of this undisclosed type (sections 3.5.9 and 3.5.12).



Project Company but not to others, applying to any or all of this project's sites, works, facilities or services but not to other similarly situated land, works or facilities, applying to privately financed projects in NSW but not to other projects, or having the effect of removing one or more of the exemptions from the provisions of the Home Building Act (NSW) currently held by the Project Company, the Partners and the Development Contractor for the purposes of this project (section 2.3) or the project's current exemption from regulation 5 of the Residential Tenancies Regulation (NSW) (section 2.3)—the Project Company may be entitled to apply for relief from its obligations, and/or to claim compensation, under the "compensation event" arrangements described in section 3.5.12, and

- The Project Company may also be entitled to apply for relief from its obligations and/or to claim compensation under these "compensation event" arrangements if the "change in law" is a "qualifying change in law", meaning any "change in law", other than a change in tax law, that:
  - ♦ On or after the "transition date" (section 3.4.1), requires the Project Company to incur additional capital expenditure on any of the project's facilities in relation to its services (other than services provided as part of the project's works)
  - ♦ On or after the third anniversary of the "transition date", requires the Project Company to incur capital expenditure on any of the project's works, or
  - ♦ At any time, requires the Project Company to incur additional operating expenditure at any of the project's facilities, other than cost increases affecting businesses generally, beyond cost increases affecting only the provision of public housing,

or a particular type of change in law specified in the Project Deed but not able to be reported in this *Summary of Contracts* because of the confidentiality requirements described in section 3.5.6.

However, the compensation payable by Housing under the "compensation event" arrangements following a "qualifying change in law" may be (at most) only a portion of the Project Company's increase in costs, as specified in an "estimated cost effect" schedule to the Project Deed (see sections 3.5.9 and 3.5.12).

### 3.5.8 Dispute resolution

The Project Deed sets out detailed procedures which may (and in specified circumstances must) be followed for the resolution of disputes between Housing and the Project Company, other than disputes concerning the Independent Certifier Deed, which must be settled under different dispute resolution procedures set out in the Independent Certifier Deed.

The Project Deed's dispute resolution procedures essentially involve three sequential stages, with the procedures starting in most cases at the first stage. In some situations, however, the Project Deed stipulates that a dispute may or must be resolved through procedures starting at the second stage, so in these situations the first stage may or must be bypassed, and in one situation—disputes about changes to the "base case" financial model and/or the "service payment calculation" schedule to the Project Deed (section 3.4.9.5)—the Project Deed stipulates that

any disputes must be resolved through independent expert determination, one of the options for the third stage, so in this situation the first two stages must be bypassed.

The "normal" sequence of stages is:

- (1) Any dispute between Housing, on the one hand, and the Project Company or the Partners, on the other hand, other than the exceptions described above, may be referred by any of these parties for resolution by the Project Co-ordination Group, whose other roles are described in section 3.1.2, simply by giving the other parties a notice to this effect, providing reasonable details about the nature of the dispute.

The Project Co-ordination Group may resolve disputes only through unanimous decisions.
- (2) If the Project Co-ordination Group fails to resolve a dispute referred to it within five business days, the dispute may be referred by Housing or the Project Company for determination by the chief executive officers of Housing and the Project Company.

These persons and their delegates must then meet to resolve the dispute. If they do resolve the dispute, they must issue their joint decision in writing and it will be contractually binding on the parties.
- (3) If the chief executive officers do not resolve a dispute within five business days of its referral to them, or if they do not meet within this period, the Project Co-ordination Group must, within the next two business days, refer the dispute to independent expert determination or arbitration, under arrangements set out in the Project Deed, or to some other dispute resolution procedure.

If the chief executive officers and their delegates have not met, or if they cannot agree about which of the three options for "stage 3" dispute resolution should be adopted by the Project Co-ordination Group and/or which expert or arbitrator to appoint, they may ask the President of The Institute of Arbitrators and Mediators Australia to choose the dispute resolution method and nominate a panel of three experts or three arbitrators (as appropriate) from which Housing's Project Director may select the expert or arbitrator to be appointed. If the Project Director fails to make this selection within three business days of the nomination of the panel, the Project Company may make the selection.

The processes for independent expert determinations and arbitrations are set out in the Project Deed. Arbitrations must be conducted in accordance with the Commercial Arbitration Act (NSW).

Any determination by an independent expert will be binding on all the parties unless the dispute is referred to arbitration or litigation within ten business days of the decision. Any award by an arbitrator will be final and binding on the parties.

Housing and the Project Company must continue to perform their obligations under the Project Deed, notwithstanding the dispute, throughout all these dispute resolution processes.

If a "formal" dispute or difference arises under the Development Contract, a Construction Contract, the Facilities Management Contract, the Tenancy Services Contract or any other subcontract or sub-subcontract, the Project Company must immediately inform Housing's Project Director of the dispute

and its effects, if any, on the operation of the Project Deed. If Housing consents, the Project Company and the relevant subcontractor or sub-subcontractor may use the dispute resolution procedures set out in the Project Deed, provided the subcontractor or sub-subcontractor agrees to be bound by the results.

Under the Independent Certifier Deed's dispute resolution procedures—which that deed states must be exhausted before a dispute may be litigated—any of the parties may refer a dispute for resolution by the relevant chief executive officers, by giving the other parties a notice to this effect and providing reasonable details about the matters in dispute. The chief executive officers or their delegates must then meet and use reasonable endeavours, acting in good faith, to resolve the dispute within seven business days or any later date agreed to by the parties. If they do resolve the dispute, they must issue their joint decision in writing and it will be contractually binding on the parties. The Independent Certifier must continue to perform its obligations while the dispute is being resolved.

### 3.5.9 Variations

#### 3.5.9.1 *Contract variations under the 'change procedure'*

The Project Deed specifies a formal and detailed "change procedure" which must be followed, except in some limited circumstances described below, if Housing or the Project Company wishes to make a "**contract variation**", *meaning* any change to:

- The *Specification*
- The Project Company's *Proposals* for the project
- A stage of the project
- The Project Company's completed detailed designs for a stage of the project (section 3.2.3.1)
- The Project Company's *Works Program* for a stage of the project, other than under the updating processes described in section 3.2.7.2
- The Project Company's design and construction works for a stage of the project
- The project's facilities
- The Project Company's services, or
- The Project Company's *Services Manual*, other than under the updating processes described in section 3.4.7.1.

This "change procedure" also extends to:

- Changes of these types identified by the Project Company which it *must* propose, even if it does not wish to, because the changes would result in an "improvement, innovation or time or cost saving", and
- Changes which are *deemed* to be changes requested by Housing, even if they are in practice requested by the Project Company, because the proposed change:
  - ♦ Has been requested, at the direction of Housing's Project Director, for the purpose of removing specified sites or facilities from the project following the eventuation of an "uninsurable" risk, under the arrangements described in section 3.5.2.3

- ♦ Has been directly necessitated by a "compensation event" (see section 3.5.12), or
- ♦ Has been requested, at the behest of either party, for the purpose of removing specified sites or facilities from the project after these sites or facilities have been affected by a "relief event" which has become a "*force majeure* event" for more than 180 days, under arrangements described in section 3.5.13.

(The Project Deed calls the first and third of these types of variations "**facilities removal contract variations**".)

Notwithstanding these general variation rights, the Project Company has agreed, as already indicated in sections 3.4.3 and 3.4.7.1, that changes to aspects of its services governed by its *Proposals* or *Services Manual* may be made only in order to accommodate any concerns or requirements, expressed by tenants or other residents, by the owners or residents of adjoining properties or by recognised community organisations (including tenancy, community, cultural and "special needs" organisations and advocacy groups) or associations representing Bonnyrigg housing estate's tenants, which require a "fundamental" modification of the "underlying" Project Company *Proposals* or *Services Manual*.

The "change procedure", which is set out in a schedule to the Project Deed, encompasses both generally applicable procedures and special procedures, imposing limits on the application of some of the general procedures and applying additional requirements, in the cases of:

- Changes to the timing of stage(s) of the project and/or the number of dwellings in a stage (these changes are also subject to additional requirements under the Project Deed itself, as described in section 3.5.9.2 below)
- Changes involving "**additional work**", *meaning* additional work requiring capital expenditure on project sites or facilities, other than works required as part of the Project Company's services, after the relevant precinct's or stage's "commencement date" (section 3.2.14) (and see section 3.5.9.3 below)
- "Facilities removal contract variations"
- Changes necessitated by "compensation events", and
- Changes requested by Housing under "voluntary withdrawal of dwellings" arrangements for more than 20 dwellings, as described in section 3.5.9.4 below (the "change procedure" will not apply if 20 or fewer dwellings are to be withdrawn).

If compensation is payable under the "change procedure", under circumstances described below, the amount of this compensation must be calculated, in most but not all cases, in accordance with another detailed schedule to the Project Deed, an "**estimated cost effect**" schedule. This schedule again specifies both generally applicable requirements and requirements specific to:

- Changes involving "additional work"
- "Facilities removal contract variations"
- Changes necessitated by "compensation events" involving higher-than-anticipated development contributions, as described in section 3.2.2.4

- Changes necessitated by “compensation events” involving a material deterioration in the condition of the project’s existing housing, as revealed in the “stock condition” survey to be undertaken during the project’s mobilisation phase (section 3.4.1), and
- Changes necessitated by “compensation events” involving a “qualifying change in law” (section 3.5.7), with different formulae to be applied depending on whether or not the “qualifying change in law” involved was a change in Housing’s public housing and related policies.

The only exceptions to the requirement to use the formal “change procedure”, other than those referred to above, are “**minor changes**” to the project’s works or services, directed by Housing’s Project Director, with an estimated cost effect—as determined in accordance with a schedule to the Project Deed, and in aggregate in the case of changes which in substance amount to a single variation—of \$10,000 or less, indexed to the CPI from the March quarter of 2007. In these cases, the Project Company will not be entitled to any extension of time or other relief from its obligations concerning the changed matters, and will be entitled to be compensated only for the lesser of the costs it actually incurs in relation to the change and an amount calculated using the same annually updated schedule of rates as is used to determine payments to the Project Company for its dwelling modification services (sections 3.4.4.2, 3.4.9.1 and 3.4.9.5).

For variations under the “change procedure” the processes to be followed, the procedural cost-sharing arrangements, the types of compensation and/or other relief available, the adjustments to be made to Housing’s monthly “service payments” (section 3.4.9), the variation financing and compensation payment arrangements and (in some situations) the right (or otherwise) of Housing to terminate the Project Deed during the procedures and pay compensation as if this termination were a “voluntary” termination as described in section 3.6.2 all vary, depending on, among other things,

- The nature of the change being contemplated
- The party requesting or deemed to be requesting the change
- Whether Housing initially and finally accepts or rejects the Project Company’s variation proposals (which it must prepare even for changes initiated by Housing)
- Whether the change being contemplated is one of the types necessitating special procedures and/or triggering different “estimated cost effect” calculations, as listed above, and
- Whether the Project Company has taken all reasonably necessary steps to mitigate and minimise the effects of the change.

In broad terms, however,

- Variations requested or deemed to be requested by Housing and variations compulsorily requested by the Project Company because they would result in an “improvement, innovation or time or cost saving” will potentially entitle the Project Company to an extension of time, relief from its other obligations and/or compensation payments, with the details depending on the “change procedure” and “estimated cost effect” schedules to the Project Deed, but

- Other variations requested by the Project Company will not entitle it to any extensions of time, other relief or compensation.

In the case of a variation that produces a cost saving, other than a “facilities removal contract variation”, the saving must be equally shared by Housing and the Project Company if the variation was proposed by the Project Company, but if the variation was proposed by Housing, or deemed to be proposed by Housing, Housing will be entitled to all of the saving.

If Housing’s Project Director accepts a variation proposal the “base case” financial model for the project and the “service payment calculation” schedule to the Project Deed must be updated, in accordance with the arrangements described in section 3.4.9.5.

### 3.5.9.2 *Additional requirements for changes to the project’s stages*

The Project Company may propose a change to the *timing* of a stage of the project, and any subsequent stages, under the “change procedure” described in section 3.5.9.1, but only if its proposal:

- Is made at least three months before the “target completion date” of the relevant stage (section 3.2.7.1)
- Otherwise complies with the *Specification*
- Will not reduce the total number of stages
- Will not delay the project’s “full service commencement date” (section 3.2.15)
- Includes amendments to the Project Deed’s “service payment calculation” schedule as described in section 3.4.9.5, and
- Will not increase or decrease the “monthly fee” components of Housing’s monthly “service payments” to the Project Company (section 3.4.9.1) in any financial year by more than 10%.

The Project Company may also propose a change in the *number of dwellings* in a stage of the project, but in this case it may do so only if its proposal:

- Is made at least three months before the stage’s “target completion date”
- Will not reduce the project’s total number of dwellings, over all stages of the project
- Will not defer the construction or refurbishment of more than 30 dwellings in total, over all stages of the project, at any particular time
- Will not defer the construction or refurbishment of more than 20% of the dwellings which would otherwise be constructed or refurbished as part of any particular stage of the project for more than three subsequent stages, and
- Includes amendments to the Project Deed’s “service payment calculation” schedule as described in section 3.4.9.5.

If Housing’s Project Director is satisfied the relevant conditions have been met, he or she *must* approve any such proposals within 20 business days of their submission or within 30 business days if further information has to be obtained from the Project Company.

### 3.5.9.3 'Additional work' by other contractors

If Housing and the Project Company cannot agree on a contract variation for "additional work" (as defined in section 3.5.9.1 above), Housing may undertake the proposed work itself, or appoint another contractor to perform this work, in which case:

- The Project Company must not hinder or delay Housing or its contractor from undertaking the work
- Housing may request the Project Company to enter into a coordination and interface agreement with the contractor concerning part or all of the design, construction, commissioning, completion, handing over and facilities management of the "additional work"
- The Project Company must comply with all reasonable requests of this nature in a timely manner, and
- Housing may be liable to compensate the Project Company for (among other things) the effects of the contractor's work on the Project Company's services and any defects in its work, and/or to provide other relief to the Project Company, under the "compensation event" arrangements described in section 3.5.12.

### 3.5.9.4 'Voluntary' withdrawals of dwellings from the project

Housing may "voluntarily" withdraw up to 50 new or refurbished public housing dwellings from the project, in total, with withdrawals being able to be made at any times after the "commencement dates" for the dwellings' "precincts" or stages (section 3.2.14) unless the Project Company is able to reasonably satisfy Housing's Project Director that a proposed withdrawal would have a material adverse impact on its ability to market and sell the project's private property developments.

If Housing chooses to make such a withdrawal, it must notify the Project Company at least ten and not more than 40 business days before the proposed withdrawal date. Housing may then, at any time before the notified withdrawal date, expand or contract the list of dwellings to be withdrawn from the project, extend the withdrawal date or withdraw the notice altogether.

If more than 20 dwellings are to be withdrawn as part of the notified withdrawal, as amended, Housing must request a "contract variation" in accordance with the "change procedure" described in section 3.5.9.1, but if 20 or fewer dwellings are to be withdrawn the "change procedure" will not apply and Housing's monthly "service payments" to the Project Company must not be adjusted.

During the last 20 business days before the proposed withdrawal date Housing may survey the dwellings that are to be withdrawn, in accordance with procedures set out in the Project Deed, to assess whether the dwellings' condition will comply with the *Specification* when they are withdrawn. If the survey uncovers any non-compliances, Housing may recover the costs of its survey from the Project Company and issue a notice requiring the Project Company to rectify the condition of the dwelling(s), at its own expense, within a specified period before they are withdrawn. If the Project Company fails to comply with this notice, it must pay Housing the reasonable costs of the necessary rectification works, as agreed with Housing or as determined under the dispute resolution procedures described in section 3.5.8, within ten business days of the dwellings' withdrawal, and if it fails to do so Housing may deduct this

amount from payments it would otherwise have to make to the Project Company.

Dwellings withdrawn from the project under these arrangements may not be offered for private sale before the project's "full service commencement date" (section 3.2.15) without the Project Company's consent.

### 3.5.10 Emergencies and public safety incidents

As already indicated in sections 3.2.9.2 and 3.4.8, the Project Company must immediately inform Housing's Project Director about any "**emergency**", *meaning* any situation which, in the Project Director's opinion at the time,

- Seriously threatens, has caused or will cause material damage or disruption to any person's health and safety, the environment, property or the safe and secure performance of the Project Company's works or provision of its services, the project's dwellings or the project's other facilities, *or*
- Prevents the continuation of the Project Company's works or the provision of its services under normal circumstances, *or*
- Will necessitate the provision of materially greater services or a materially higher level of services,

if this "emergency" has caused the Project Company to suspend or stop performing any of its services, advising the Project Director of the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of the emergency.

Similarly, and again as already indicated, the Project Company must immediately inform the Project Director about any "**public safety incident**", *meaning* any incident connected with its works or services which has:

- Seriously injured or killed a tenant, another resident, an owner or occupier of adjoining premises, any of their invitees or any employee, agent or contractor of Housing or the State of NSW in the course of their employment, and
- Caused the Project Company to suspend or stop performing any of its services,

and the action the Project Company has taken or proposes to take to respond to, overcome or minimise the effects of this event.

If an emergency or public safety incident of these types occurs, Housing's Project Director may instruct the Project Company to:

- Immediately suspend its works or services
- Perform any of its works or services for which it is not fulfilling its obligations, and/or
- Undertake additional or alternative services, as and when required by the Project Director,

to deal with the emergency or public safety incident and ensure its normal works and/or services resume as soon as reasonably practicable.

If the emergency or public safety incident was caused, directly or indirectly, by any negligence, wilful misconduct or contractual breach by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants, the



Project Company must bear the costs of any additional or alternative services it is directed to provide.

Otherwise, however, Housing must pay for any additional third party costs incurred by the Project Company or its subcontractors and sub-subcontractors in providing any additional or alternative services as directed.

If Housing's Project Director:

- Reasonably believes action must be taken to respond to an emergency or public safety incident as described above, but the Project Company has either failed to promptly remedy a breach of its obligations that caused the emergency or incident or is unable or unwilling to provide additional or alternative services as directed, or
- Reasonably believes that the Project Company must suspend its works or services and/or that Housing must "step in" in order to deal with the emergency or public safety incident, or in order to discharge a legislative, public or constitutional duty,

he or she may exercise specific "step in" rights granted to Housing in responding to emergencies and public safety incidents, as set out in a schedule to the Project Deed.

These rights are in addition to Housing's "step in" powers described in sections 3.6.3.1, 3.6.3.2 and 3.6.3.5(a) and any "step in" rights that might be able to be exercised by the project debt financiers' Security Trustee in the circumstances, under arrangements described in sections 3.6.3.2, 3.6.3.5 and 3.6.3.6.

If Housing's Project Director decides to exercise Housing's emergency and public safety incident "step in" rights, he or she must notify the Project Company of the action Housing wishes to take, the reasons for and likely timeframes of this action and, if practicable, the effects of the proposed action on the Project Company and its obligations to provide its services.

Housing and its representatives may then take the notified action and any additional, consequential action it reasonably believes to be necessary, and the Project Company must provide all reasonable assistance.

If the action taken by Housing prevents the Project Company from providing any part of its services, the Project Company will be relieved of these particular obligations during the period they cannot be performed. If Housing's action is being taken because of a breach of the Project Deed by the Project Company, the costs incurred by Housing in taking the action and any savings made by the Project Company through its not providing the affected services will be deducted from Housing's monthly "service payments" to the Project Company (section 3.4.9). On the other hand, if Housing's action was *not* necessitated, directly or indirectly, by a breach of the Project Deed or any other "project document" (section 2.2) by the Project Company, the Partners or the Ground Lessee, the Project Company may be entitled to compensation and/or relief from its Project Deed obligations under the "compensation event" arrangements described in section 3.5.12.

During its emergency or public safety incident "step in" Housing may also "step in" to assume the rights of the Project Company under the Development Contract, the Facilities Management Contract and/or the Undertaking Agreement, and/or the rights of the Development Contractor under Construction Contract(s) and/or the rights of the Facilities Management Contractor under

the Tenancy Services Contract. If it does so, Housing may also procure the novation (transfer) of these subcontract(s) and sub-subcontract(s), their associated parent company guarantee(s)—the Development Contractor Guarantee, the Facilities Management Contractor Guarantee and the Construction Contractor Guarantee(s)—and the Undertaking Agreement from the Project Company, the Development Contractor and/or the Facilities Management Contractor, as relevant, to a substitute contractor or subcontractor(s), as described in sections 3.6.3.2 below. These rights of Housing under the side deeds will be suspended, however, if the Security Trustee exercises its own "step in" rights under the project's financing agreements, in accordance with Financiers Tripartite Deed arrangements described in sections 3.6.3.2, 3.6.3.5 and 3.6.3.6.

Housing must reasonably endeavour to complete its emergency or public safety incident "step in" action promptly, except in the case of an action that is being taken because of a breach of the Project Deed by the Project Company. Housing's Project Director must give the Project Company reasonable notice of the completion or cessation of the "step in" action, and Housing must complete or end its "step in" action in accordance with the notice, after which the Project Company must immediately resume any services it had been prevented from carrying out.

### 3.5.11 'Relief events'

"**Relief events**" are defined in the Project Deed as any:

- Fire, explosion, storm, lightning, flood, ionising radiation, earthquake, war, armed conflict, terrorism, riot, civil commotion or protest
- Failure by any government, council, government department, statutory authority, court or tribunal or any electricity, gas, communications, water, sewerage, drainage or other utility service provider to carry out works or provide services
- Shortage of power, fuel or transport
- Event causing loss or damage to the project's works or facilities (section 3.5.2.2)
- Supersonic shock waves
- Blockade or embargo
- Official or unofficial strike, lockout, "go slow" or other industrial dispute affecting the construction industry, the facilities management industry or significant sectors of these industries in general, but not any industrial action affecting only one or more of the project's sites, stages or facilities
- Inability by the Project Company to gain access to a Housing-owned site or dwelling that is available for the project because:
  - ♦ A tenant has refused to be relocated under the rehousing arrangements described in section 3.4.4.5, despite all reasonable endeavours by the Project Company to gain this access for its works
  - ♦ Housing, as the owner, has insufficient rights of access itself, other than under the relevant Tenancy Agreement, or
  - ♦ A court, tribunal or authority has determined that the Project Company or the Ground Lessee has no right of access under the relevant Tenancy Agreement, for

reasons other than any failure by the Project Company or the Ground Lessee to comply with the Tenancy Agreement

- Direction by Housing's Project Director requiring the Project Company to contest any conditions attached to or proposed for a development approval or any other approval, licence or consent, under the arrangements described in section 3.2.2.3, or
- Failure to obtain a development approval for a stage of the project by 30 business days after the target date for this approval (sections 3.2.2.1 and 3.2.2.5),

*other than* any such event directly or indirectly caused by any action or inaction—apart from a contesting of an actual or proposed approval or consent condition as directed by Housing's Project Director—by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants.

If any of these "relief events" occurs, and it :

- Causes or is likely to cause a delay in obtaining a development approval for a stage of the project by 30 business days after the relevant target date for this approval
- Causes or is likely to cause a delay in completing any stage's works by the relevant "target completion date" (sections 3.2.7.1 and 3.2.14)
- Causes or is likely to cause a delay in completing any stage's private housing by 12 months after the stage's "target completion date" (section 3.2.7.1), or
- Affects the ability of the Project Company to perform any of its other obligations under the Project Deed and the other "project documents" (section 2.2),

the Project Company may apply for relief from its Project Deed obligations, in accordance with rights, obligations and procedures set out in a "relief event" schedule to the Project Deed.

Any claim for relief in these circumstances must be lodged by the Project Company as soon as practicable and by no later than ten business days after it first becomes aware of the "relief event" and its effects. Full details must then be provided to Housing's Project Director within five business days of this claim, or every two months if the "relief event" has continued and then within five business days of the end of the "relief event".

Provided these notification requirements are met, the Project Director must grant reasonable extensions to the relevant "target dates" (section 3.2.7.1) and provide other reasonable relief under the Project Deed, but only to the extent that would be required if the Project Company were taking reasonable steps to mitigate the effects of the "relief event", even if it is not doing so.

The Project Company will not be entitled to any compensation for increased costs or lost revenue, and Housing's rights to make performance-based deductions from its monthly "service payments" to the Project Company (sections 3.4.9.1 and 3.4.9.2) will not be affected. However, if Housing extends a

stage's "target completion date", the "service fee" component of these payments must be adjusted, in accordance with the procedures described in section 3.4.9.5, if the Project Company requests such an adjustment.

If the Project Company is more than five business days late in notifying the Project Director of the "relief event" or providing full details, it will not be entitled to any relief for the period of the delay.

If the Project Company becomes aware of any new information about the "relief event", it must notify the Project Director and the relief granted must be amended accordingly.

If the parties disagree about whether a "relief event" has occurred, whether there is an entitlement to relief or the extent of the relief required, either of them may refer the matter for resolution under the dispute resolution procedures summarised in section 3.5.8.

If a "relief event" or its effects continue or can reasonably be expected to continue for a continuous period of more than 180 days, directly causing Housing or the Project Company to be unable to comply with a material part of their obligations under the Project Deed, the *force majeure* provisions described in section 3.5.13 will apply.

### 3.5.12 'Compensation events'

"**Compensation events**" are defined in the Project Deed as:

- Any breach of the Project Deed or any other "project document" by Housing which substantially frustrates the Project Company's performance of its obligations or exercising of its rights under the "project documents"
- Any failure by the Project Company, Housing's Project Director and the Independent Certifier to agree on suggested amendments to the Project Company's draft applications and other documentation required for the project's development approvals and associated updates to its *Concept Development Plan*, under arrangements described in section 3.2.2.1, followed by a final and binding determination under the dispute resolution procedures described in section 3.5.8 that the original draft documents did comply with the Project Deed
- Any failure by the project's development approval under Part 3A of the Environmental Planning and Assessment Act (NSW), either initially or as subsequently amended, to permit at least the number of dwellings, for the project as a whole and across all of its stages, that the Project Company has proposed in its *Proposals* (section 3.2.2.1)
- Any imposition, by a planning authority or planning authorities, of developer contributions, including planning authority fees or works, contributions under sections 94, 94A, 94ED or 94F of the Environmental Planning and Assessment Act and contribution plans under sections 94EA, 94EAA, 94EB or 94EC of the Environmental Planning and Assessment Act, with a cumulative cost to the project—not counting any developer contributions applied in relation to the project's off-estate housing—of more than a threshold amount specified in the Project Deed (sections 3.2.2.1 and 3.2.2.4)
- Any failure by the Project Company and Housing's Project Director to agree on suggested amendments to the Project

Company's draft detailed designs, under arrangements described in section 3.2.3.1, followed by a final and binding determination under the dispute resolution procedures described in section 3.5.8 that the original draft detailed designs did comply with the Project Deed

- Any failure by the Project Company and Housing's Project Director to agree on ways of addressing or overcoming problem(s) raised by the Project Director in commenting on an off-estate property which the Project Company has nominated for acquisition, under arrangements described in section 3.2.4.1, followed by a final and binding determination under the dispute resolution procedures that the Project Company's original proposal did comply with the Project Deed
- The existence of any encumbrance, easement, covenant or other adverse right affecting any of the project's sites, *other than* an existing lease or licence on any of the additional but currently unavailable Housing-owned sites on the Bonnyrigg estate listed in a schedule to the Project Deed (as described in section 3.2.4.1) or any other adverse right revealed in the "project documents" (section 2.2), pre-contractual information provided by or on behalf of Housing, relevant public registers and records or a public housing tenancy agreement
- Any encroachment by or upon any of the project's sites
- Any material deterioration in the *overall* condition of the estate's existing public housing (as distinct from the condition of individual dwellings in isolation), as determined by a comparison of the findings of the "stock condition" survey to be undertaken before the project's services commence (section 3.4.1) and the equivalent survey completed on 9 November 2005, if this deterioration is caused by any action or inaction by Housing, Housing's Project Director, any other persons administering or managing the project for Housing or any employees, agents or contractors of Housing or the State of NSW in the course of their employment, other than tenants, the Project Company itself and its related parties (section 3.2.5)
- The existence of any structural defect in an existing dwelling, present at the time of commencement of the project's services but not identified in the 2005 "stock condition" survey, which is discovered while works are being carried out or services are being performed at the dwelling (section 3.2.5)
- The existence of any friable asbestos which was not identified in the 2005 "stock condition" survey but which is discovered while works are being carried out or services are being performed at an existing dwelling (section 3.2.5)
- Any need to remediate or remove contaminated materials which are or were on a site at the time of commencement of the project's services and have not been brought onto the site by or on behalf of the Project Company, having regard to the requirements of the Contaminated Land Management Act (NSW), the Environmental Planning and Assessment Act (NSW) and the Protection of the Environment Operations Act (NSW), provided this need to remediate or remove the materials has not been caused by any actions by or on behalf of the Project Company which were not required as part of its performance of the project's works (sections 3.2.5, 3.2.11 and 3.4.3)
- Any failure by the Project Company and Housing's Project Director to agree on suggested amendments to the Project Company's draft *Works Programs* or design and construction management plans, under arrangements described in sections 3.2.7.2 and 3.2.9.1, followed by a final and binding determination under the dispute resolution procedures described in section 3.5.8 that the original draft document(s) did comply with the Project Deed
- Any failure by the Project Company and Housing's Project Director to agree on changes to the Project Company's works or other rectification measures in response to comments by the Project Director about the works, under arrangements described in section 3.2.9.3, followed by a final and binding determination under the dispute resolution procedures that the works did comply with the Project Deed
- Any native title claim (section 3.2.12)
- Any discovery of an archaeological or heritage artefact (section 3.2.13)
- Any failure by the Project Company and Housing's Project Director to agree on suggested amendments to the Project Company's draft subdivision plans, as part of the processes for the completion of each precinct's or stage's works described in section 3.2.14, followed by a final and binding determination under the Project Deed's dispute resolution procedures that the original draft document(s) did comply with the Project Deed
- Any failure by Housing to make its *Housing Register* available to the Project Company or the Tenancy Services Contractor for the purposes of the Project Company's tenancy services, as described in section 3.4.4.4, provided this failure has not been caused by any action or inaction by the Project Company, any related corporations, the Ground Lessee, any subcontractors or sub-subcontractors of the Project Company, any of these organisations' officers, employees or agents or any invitees of the Project Company, its subcontractors or sub-subcontractors, other than tenants
- Any failure by Housing to make vacant dwellings available to the Project Company, for the purposes of the Project Company's provision of its rehousing services, in accordance with the requirements for this described in section 3.4.4.5
- Any failure by the Project Company and Housing's Project Director to agree on suggested amendments to drafts of the Project Company's *Services Manual* or *Rehousing Service Plans*, under arrangements described in section 3.4.7.1, followed by a final and binding determination under the project's dispute resolution procedures that the original draft document(s) did comply with the Project Deed
- Any performance of "additional work"—i.e. work requiring capital expenditure on project sites or facilities, other than work required as part of the Project Company's services, after the relevant precinct's or stage's "commencement date" (section 3.2.14)—by Housing or a contractor other than the Project Company, under the arrangements described in section 3.5.9.3
- Any "discriminatory change in law" (section 3.5.7)

- Any “qualifying change in law” (section 3.5.7), or
- Any exercise by Housing of its emergency and public safety incident “step in” rights, under the arrangements described in section 3.5.10, *unless* Housing’s action is being taken because of a Project Company breach of the Project Deed or any of the other “project documents” (section 2.2).

If any of these “compensation events” occurs, and it:

- Causes or is likely to cause a delay in obtaining a development approval for a stage of the project by 30 business days after the relevant target date for this approval
- Causes or is likely to cause a delay in completing any stage’s works by the relevant “target completion date” (sections 3.2.7.1 and 3.2.14)
- Causes or is likely to cause a delay in completing any stage’s private housing by 12 months after the stage’s “target completion date” (section 3.2.7.1)
- Affects the ability of the Project Company to perform any of its other obligations under the Project Deed and the other “project documents” (section 2.2), or
- Causes the Project Company to incur additional costs or lose revenue associated with the project,

the Project Company may apply for relief from its Project Deed obligations, and/or claim compensation, in accordance with rights, obligations and procedures set out in a “compensation event” schedule to the Project Deed.

Any claim for relief and/or compensation in these circumstances must be lodged by the Project Company as soon as practicable and by no later than 15 business days after it first became aware of the “compensation event” and its effects.

Except in the case of a “compensation event” involving an encroachment by or upon a project site owned by Housing,

- Full details, including the steps taken to mitigate, prevent or eliminate the effects of the “compensation event”, must then be provided to Housing’s Project Director within ten business days of this claim or, if the “compensation event” is continuing and is not a “discriminatory change in law” or a “qualifying change in law”, every two months until the end of the “compensation event” and its effects, and then (in a final notice) within ten business days of the end of the event and its effects
- The Project Director may request any further information he or she needs to assess the claim, and
- Provided these notification requirements are met, the Project Director must grant reasonable extensions to the relevant “target dates” (section 3.2.7.1), provide other reasonable relief under the Project Deed, and pay the Project Company compensation—calculated in accordance with the “estimated cost effect” schedule to the Project Deed (section 3.5.9) and, in the case of a “compensation event” involving the remediation or removal of contamination, additional specifications set out in the Project Deed itself—but only to the extent that would be required if the Project Company were taking reasonable steps to mitigate the effects of the “compensation event”, even if it is not doing so, and
- If the Project Company is more than five business days late in notifying the Project Director of the “compensation event”

or providing full details, it will not be entitled to any relief or compensation for the period of the delay.

In the case of a “compensation event” involving an encroachment by or upon a project site owned by Housing, the arrangements set out in the “compensation event” schedule are simply that the Project Company and Housing must immediately meet to discuss and determine, in good faith, an effective way of dealing with the situation. Compulsory acquisition by Housing is expressly one of the options.

If the Project Company becomes aware of any new information about the “compensation event” and its effects, it must notify the Project Director and the relief and/or compensation granted must be amended accordingly.

If the parties disagree about whether a “compensation event” has occurred, whether there is an entitlement to relief and/or compensation, the extent of any delay incurred, the extent to which the Project Company has been prevented from performing its other obligations under the Project Deed or any other “project document”, the impact on costs or revenue or the extent of the relief and compensation sought, either of them may refer the matter for resolution under the dispute resolution procedures summarised in section 3.5.8.

### 3.5.13 Force majeure

A “relief event” (section 3.5.11) will become a “**force majeure event**”, as defined in the Project Deed, if it or its effects continue or can reasonably be expected to continue for a continuous period of more than 180 days, directly causing any of the parties to the Project Deed to be unable to comply with a material part or all of its obligations under the Project Deed.

If a “*force majeure* event” occurs, the affected party or parties must notify the other parties as soon as practicable, providing details of the event, its effects and any actions proposed to mitigate the effects.

Housing, the Project Company and the Partners must then consult with each other, in good faith and as soon as practicable, and attempt to agree on appropriate terms to deal with the effects of the “*force majeure* event” and facilitate continued performance of the Project Deed.

Following any “*force majeure* event” the parties must at all times use reasonable endeavours to prevent and mitigate the effects of any delay and the Project Company must do everything required under good industry practices to overcome or minimise the effects of the event.

Housing will continue to be entitled to make performance-based deductions from its monthly “service payments” to the Project Company under the arrangements described in sections 3.4.9.1 and 3.4.9.2.

If a “*force majeure* event” ends or no longer prevents the affected party or parties from performing their obligations under the Project Deed, they must notify the other parties as soon as practicable and from that point the Project Deed must continue to be performed on the same terms as immediately before the “*force majeure* event”.

If a “*force majeure* event” prevents the Project Company from carrying out its Project Deed obligations at only one or some of the project’s sites or facilities, but not at all of them, and this continues to be the case 180 or more days after the occurrence



of the “relief event” that has become a “*force majeure* event”, either party may propose a “facilities removal contract variation”, in accordance with the “change procedure” discussed in section 3.5.9.1, under which the affected site(s) and/or facility or facilities would cease to be subject to the Project Deed.

As already indicated in section 3.5.9.1, if such a variation is requested by the Project Company it will be deemed to be a request by Housing, entitling the Project Company to compensation and relief from its obligations as described in section 3.5.9.1, with the Project Company being entitled to compensation equal to a percentage of the compensation that would be payable for a full termination of the Project Deed for *force majeure* under the arrangements described below (section 3.6.1.2).

If Housing and the Project Company cannot agree on how to mitigate the effects of a “*force majeure* event” and facilitate continued performance of the Project Deed within 180 days of the start of the relevant “relief event”, and the event and/or its effects are still continuing and have prevented the affected party or parties from complying with the Project Deed for more than 180 days, any of the parties to the Project Deed may give the others 20 business days’ notice that it intends to terminate the Project Deed for *force majeure*.

If the notice of termination is issued by the Project Company, Housing’s Project Director must either:

- Accept the notice, in which case the arrangements described in section 3.6.1 will apply, or
- Issue a notice in response, within ten business days, specifying that the whole of the Project Deed must continue.

If he or she chooses the latter course,

- Housing’s monthly “service payments” to the Project Company (section 3.4.9) must be calculated—from the day after the date on which the Project Deed would have terminated had the Project Director accepted the notice of termination or, if the “*force majeure* event” occurred during the “construction phase” for a stage, that stage’s “target completion date” (section 3.2.7.1)—as if the Project Company were satisfying all of its obligations under the Project Deed and the *Specification*, with the only permitted reductions in these payments being for any costs the Project Company does not incur, and
- The Project Deed will otherwise continue to apply unless Housing decides to terminate it, giving the Project Company at least 30 business days’ notice. If it does so, the arrangements described in section 3.6.1 will apply.

## 3.6 Defaults and termination of the Project Deed

The following sections of this *Summary of Contracts* describe the main provisions of the Project Deed, the Financiers Tripartite Deed and the project’s other “side deeds” for:

- Termination of the project’s contracts for adverse housing market conditions (section 3.2.7.4), for the occurrence of an “uninsurable risk” affecting all the project’s sites and facilities (section 3.5.2.3) or for *force majeure* (section 3.5.13)
- “Voluntary” termination of the project’s contracts by Housing

- The handling of breaches of the contracts, and
- Termination of the project’s contracts for various types of serious defaults.

### 3.6.1 Termination for adverse market conditions, an uninsurable risk or *force majeure*

#### 3.6.1.1 *General termination arrangements*

If the Project Deed is terminated for:

- Adverse housing market conditions necessitating a total extension of time for any stage of the works of more than 36 months (or any other limit agreed to by Housing’s Project Director and the Project Company), under the arrangements described in section 3.2.7.4
- The occurrence of an “uninsurable risk”, affecting all the project’s sites and facilities, that would otherwise have to be insured under one of the all risks property insurance policies or business interruption insurance policies described in section 3.5.2.1, under the arrangements described in section 3.5.2.3, or
- A continuing “*force majeure* event”, under the arrangements described in section 3.5.13,

then:

- The Lease(s) and Subleases (if any) will also terminate, if they have commenced
- Housing must pay compensation to the Project Company, in the form of a “**termination payment**”, as prescribed in a “termination payments” schedule to the Project Deed and described in section 3.6.1.2 below
- If any private property sale contracts have not reached completion, the Development Contractor’s legal and equitable rights, title and interests in these contracts will return to Housing
- Housing’s Project Director may require the Project Company, at no cost to Housing beyond its “termination payment”, to:
  - ♦ Transfer its title to and rights and interests in any of the project’s works, facilities and/or stages
  - ♦ Novate (transfer) the Development Contract and/or the Facilities Management Contract to Housing or a replacement contractor, with Housing or the replacement contractor stepping into the shoes of the Project Company under these subcontracts in accordance with novation provisions in the Development Side Deed and/or the Facilities Management Side Deed (see section 3.6.3.2), and/or
  - ♦ Procure the novation by the Development Contractor of the Construction Contracts to Housing or a replacement contractor, and/or the novation by the Facilities Management Contractor of the Tenancy Services Contract to Housing or a replacement contractor, in accordance with the novation provisions of the Construction Side Deeds and/or the Tenancy Services Side Deed (section 3.6.3.2)
- If Housing requires the novation of the Project Company’s interests to a replacement contractor and notifies the Independent Certifier of this, the Independent Certifier Deed will be novated to the new contractor, but if Housing does not

do this the Independent Certifier Deed will automatically terminate

- Any rights and liabilities accrued by Housing, the Project Company and the Partners prior to the termination of the Project Deed will continue
- During the period ending 12 months after notice of the termination was given, the Project Company—and, for the purposes of the private property development aspects of the project, the Development Contractor—must fully cooperate with the transfer of any or all of the Project Company's services to Housing or to any new contractor providing the same or similar services, as already described in section 3.4.12
- Housing and the Project Company must continue to account to each other and exchange information so that the Ground Lessee (and, through it, the Project Company) receives all the rent, non-rent charges and other amounts paid or payable by tenants under the Tenancy Agreements for periods prior to the end of the project, and Housing receives these amounts for all subsequent periods, again as already described in section 3.4.12, and
- The Project Company must procure the Ground Lessee to do likewise.

### 3.6.1.2 Termination payments

Following the termination of the Project Deed for adverse housing market conditions, an “uninsurable risk” or *force majeure*, the Project Company will be entitled to receive a “termination payment” equal to:

- The debts (if any) that are outstanding under the project's financing agreements, including those funding the private property development aspects of the project, on the termination date, *plus*
- The net amounts payable by the Project Company and the Development Contractor to the project's financiers as a result of prepayments under their financing agreements, including interest rate hedging costs and other breakage costs, *provided* the Project Company and the financiers mitigate the payments payable by the as much as reasonably possible, *plus*
- Half of the share capital, shareholder loans and subordinated loans invested by the project's equity investors in the Project Company, *less* any capital repayments by the Project Company, *plus*
- Half of the share capital, shareholder loans and subordinated loans invested by the project's equity investors in the Development Contractor in connection with the stages of the project currently in their “construction phase”, *less* any dividends, distributions, interest payments, principal repayments or other payments on these investments, *plus*
- Half of the losses that have been or are reasonably likely to be properly incurred by the Project Company, as a direct result of the termination of the Project Deed, in connection with the project and its works and services—including supply contract and other subcontract breakage costs, expenditures in anticipation of future works or services, demobilisation costs and redundancy payments—or in the ordinary course of its business, *provided* the Project Company and its

subcontractors reasonably endeavour to mitigate these losses, *less*

- All credit balances in the Project Company's and Development Contractor's bank accounts with the financiers on the termination date, *less*
- All other cash, on deposit or otherwise, held by or to the benefit of the Project Company and the Development Contractor on the termination date, *less*
- Any gains which have accrued or will accrue to the Project Company as a result of the termination of the Project Deed and the other “project documents”, *less*
- Any amounts the Project Company owes to Housing, under the “project documents”, on the termination date, *and less*
- Any amounts the Project Company is entitled to recover under any insurance policy, not counting any amounts owed by Housing,

with adjustments, as necessary, to avoid any “double counting”, including any payments of amounts already paid to the Project Company as part of compensation following a “compensation event” (section 3.5.12).

This “termination payment” must be paid as a single lump sum within 90 business days of the termination of the Project Deed.

From the termination date until the payment is made, interest will accrue on the “termination payment” at the interest rate applying for the project's senior debt facilities for the public housing aspects of the project.

## 3.6.2 ‘Voluntary’ termination by Housing

### 3.6.2.1 General termination arrangements

Housing may terminate the Project Deed at any time—even if there have been no defaults by the Project Company, no adverse housing market conditions, no uninsurable risk events and no *force majeure* events—simply by giving the Project Company at least 120 business days' written notice, nominating the date on which the Project Deed will terminate.

If Housing “voluntarily” terminates the Project Deed in this way, the consequences will be the same as those described in section 3.6.1.1, except that in this case Housing's “termination payment” to the Project Company must be calculated as described in section 3.6.2.2.

### 3.6.2.2 Termination payments

Following any “voluntary” termination of the Project Deed by Housing, the Project Company will be entitled to receive a “termination payment” equal to:

- The debts (if any) that are outstanding under the project's financing agreements, including those funding the private property development aspects of the project, on the termination date, *plus*
- The net amounts payable by the Project Company and the Development Contractor to the project's financiers as a result of prepayments under their financing agreements, including interest rate hedging costs and other breakage costs, *provided* the Project Company and the financiers mitigate the payments payable by the as much as reasonably possible, *plus*

- An amount which, in combination with any associated dividend, distribution, interest, principal or other payments made by the Project Company to the project's equity investors prior to the termination of the Project Deed, will give these investors an internal rate of return equal to the return forecast in the project's "base case" financial model, *plus*
- An amount, solely in connection with the stages of the project currently in their "construction phase", which, in combination with any dividend, distribution, interest, principal or other payments made by the Development Contractor to the project's equity investors prior to the termination of the Project Deed, will give these investors an internal rate of return equal to the return forecast in the private sector participants' "base case" financial model for the Development Contract, *plus*
- All of the losses that have been or are reasonably likely to be properly incurred by the Project Company, as a direct result of the termination of the Project Deed, in connection with the project and its works and services—including supply contract and other subcontract breakage costs, expenditures in anticipation of future works or services, demobilisation costs and redundancy payments—or in the ordinary course of its business, *provided* the Project Company and its subcontractors reasonably endeavour to mitigate these losses, *less*
- All credit balances in the Project Company's and Development Contractor's bank accounts with the financiers on the termination date, *less*
- All other cash, on deposit or otherwise, held by or to the benefit of the Project Company and the Development Contractor on the termination date, *less*
- Any gains which have accrued or will accrue to the Project Company as a result of the termination of the Project Deed and the other "project documents", *less*
- Any amounts the Project Company owes to Housing, under the "project documents", on the termination date, *and less*
- Any amounts the Project Company is entitled to recover under any insurance policy, not counting any amounts owed by Housing,

again with adjustments, as necessary, to avoid any "double counting", including any payments of amounts already paid to the Project Company as part of compensation following a "compensation event" (section 3.5.12).

This "termination payment" must again be paid as a single lump sum within 90 business days of the termination of the Project Deed.

From the termination date until the payment is made, interest will accrue on the "termination payment" at the interest rate applying for the project's senior debt facilities for the public housing aspects of the project.

### 3.6.3 Actions to remedy Project Company contract breaches and 'defaults' and 'termination events'

#### 3.6.3.1 *Housing's general powers to seek remedies or 'step in' following Project Company, Development Contractor or Ground Lessee breaches*

If the Project Company fails to perform or comply with any of its obligations under the Project Deed or any other "project document" (section 2.2), Housing may pursue any statute-based, common law or equitable remedies available to it in the circumstances, including, if relevant, its bank securities (sections 3.2.15 and 3.4.11) and/or its rights under the Corporation Securities (section 4).

In addition, if:

- The Project Company breaches any of its obligations under the Project Deed or the other "project documents"
- The Development Contractor breaches any of its obligations (through the Project Company) under the Project Deed's private property development provisions, or
- The Ground Lessee breaches any of its obligations under the Lease(s), the performance of all of which has been unconditionally and irrevocably guaranteed by the Project Company (section 3.4.5.1),

Housing may (but need not) perform these obligations itself, or secure their performance, with the costs it incurs in doing so being payable by the Project Company, as a debt, on demand.

Housing's Project Director must give the Project Company as much notice as practicable if Housing intends to take this "step in" action. If advance notice is not practicable, the Project Company must be promptly advised after the action is taken.

The Project Company must pay all of the expenses associated with any Project Company breach of the Project Deed or the other "project documents".

These general provisions are supplemented by much more detailed provisions allowing Housing and/or the Security Trustee to "step in" in particular circumstances, as already discussed for emergencies and public safety incidents (section 3.5.10) and as detailed in the rest of this section 3.6.3.

#### 3.6.3.2 *Housing's remedy, 'step in' and transfer rights under the Side Deeds*

Under the Development Side Deed, the Construction Side Deeds, the Facilities Management Side Deeds and the Tenancy Services Side Deed ("the **Side Deeds**"), if:

- The Project Company breaches the Development Contract or the Facilities Management Contract
- The Development Contractor breaches a Construction Contract, or
- The Facilities Management Contractor breaches the Tenancy Services Contract,

the relevant subcontractor or sub-subcontractor—the Development Contractor, the Facilities Management Contractor, the Construction Contractor or the Tenancy Services Contractor, respectively—may not terminate the Development Contract, the

Construction Contract, the Facilities Management Contract or the Tenancy Services Contract (or, in the case of the Tenancy Services Contractor, which is also the Ground Lessee, its Undertaking Agreement with the Project Company, either), or give a notice of termination under its subcontract, without giving Housing at least 60 days' written notice of its intention to do so, providing details of the grounds for termination, the proposed termination date and any amounts owed or expected to be owed to it by the Project Company, the Development Contractor or the Facilities Management Contractor.

(For the sake of simplicity, in the discussion below these subcontracts and sub-subcontracts are referred to generically as "subcontracts", and the party in breach of a subcontract or sub-subcontract, such as the Project Company in the case of the Development Contract and the Development Contractor in the case of a Construction Contract, is referred to generically as the "head contractor".)

After issuing its notice to Housing the subcontractor must then give Housing at least weekly updates on whether the default by the head contractor has been remedied.

If the breach is not remedied, Housing may, in its sole discretion and at any time during the 60 days following the initial notification by the subcontractor, elect to make its own arrangements to remedy the breach, short of a full assumption by Housing of the rights and obligations of the head contractor under the subcontract in accordance with Side Deed "step in" provisions described below.

If Housing elects to make its own arrangements, it must notify the relevant subcontractor within a reasonable period and the subcontractor must then use its best endeavours to reach an agreement with Housing on these arrangements. The subcontractor may not terminate its subcontract, or exercise any of its other powers under the subcontract concerning the head contractor's breach, unless:

- An agreement with Housing is not reached within 60 days of Housing's notice, *and*
- Housing has not "stepped in" and taken over all the rights of the head contractor under the subcontract, under provisions described below, or exercised its powers under the Corporation Securities (see section 4.1)—subject to priorities set out in the Financiers Tripartite Deed (see section 4.2)—to appoint an agent, manager, receiver, receiver/manager or administrator to do likewise.

Under the Side Deeds Housing or an agent, manager, receiver, receiver/manager or administrator appointed under a Corporation Security may, but need not, "step in" and assume the rights and obligations of the head contractor under the relevant subcontract if:

- Housing is already exercising its "step in" rights following an emergency or public safety incident, as described in section 3.5.10, *or*
- The subcontractor has notified Housing of a breach of the subcontract by its head contractor and the 60-day period following this notice has not expired, *or*
- The Project Company has breached any of its obligations under the Project Deed, even if the subcontractor has never

notified Housing of any breach of the subcontract by the head contractor,

*and* the Security Trustee has not exercised its own "step in" rights under the project's financing agreements, in accordance with Financiers Tripartite Deed arrangements described in sections 3.6.3.5 and 3.6.3.6 below.

If Housing decides to take this "step in" action, it must give the subcontractor, and/or its parent company guarantor (if any), at least two days' written notice, including, where relevant, reasonable details of the background events.

During any "step in" by Housing or its agent, manager, receiver, etc under the subcontract,

- The subcontract and its associated parent company guarantee of the subcontractor's performance (if any) will remain in full force, as though Housing is directly a party to the subcontract in the place of the subcontract's head contractor.
- The subcontractor must continue to perform all its obligations under the subcontract.
- Housing may enforce any of the head contractor's rights under the subcontract and its associated parent company guarantee (if any).
- The subcontractor may terminate the subcontract only if:
  - ♦ Before the "step in", it had not been paid any amount owing to it under the subcontract at the time it originally notified Housing of the head contractor's breach (as independently certified to the reasonable satisfaction of Housing and any agent/manager/receiver etc)
  - ♦ It is not paid any amount falling due to it under the subcontract during the 60 days after it originally notified Housing of the head contractor's breach, or any other previously unknown amount which becomes payable to it after this original notification, within 30 days of notifying Housing of this liability (again as independently certified to the reasonable satisfaction of Housing and any agent/manager/receiver etc), *or*
  - ♦ Grounds for termination of the subcontract under its own terms arise after the "step in".
- Housing may, with 30 days' notice in writing to the subcontractor, procure the novation (transfer) of the head contractor's rights and liabilities under the subcontract and its associated parent company guarantee (if any) to a substitute head contractor nominated by Housing's Project Director, provided the subcontractor notifies Housing that the substitute head contractor satisfies suitability criteria set out in the relevant Side Deed. The subcontractor must provide its advice within 30 days of receiving all the information reasonably required for it to make this decision, and may not unreasonably withhold or delay its advice.

If Housing has "stepped in" but the Security Trustee then exercises its own "step in" rights in accordance with the Financiers Tripartite Deed arrangements described in section 3.6.3.5 or section 3.6.3.6, Housing must "step out" for the duration of the Security Trustee's "step in" period, and may not exercise the novation and other rights described above during this period.



Housing may terminate its “step in” at any time by giving the subcontractor at least 30 days’ written notice.

The Project Company must pay Housing, on demand, for all the costs, losses, liabilities, claims, expenses and taxes it incurs in exercising its “step in” and other rights under the Side Deeds.

### 3.6.3.3 Notices about multiple, frequent and ‘persistent’ Project Company breaches of the ‘project documents’

If a particular *type or class* of breach of the Project Company’s obligations under the Project Deed or any other “project document” (section 2.2) occurs more than once—regardless of whether the breaches have been remedied and regardless of whether they have affected the same facility or stage of the project, but not counting any breaches of a “key performance indicator” in the *Specification* (section 3.4.9.2) or any breaches already amounting to a “Project Company termination event” as defined in section 3.6.3.5 below—Housing’s Project Director may serve a formal “warning notice” on the Project Company, advising it that if the same type or class of breach recurs or continues this may result in the termination of the Project Deed.

If the same type or class of breach then recurs or continues 30 days or more after the warning notice, the Project Director may serve a formal “final warning notice”, in which case a continuation or four or more recurrences of the same type or class of breach within the following six months will be deemed to amount to a “**persistent breach**”, entitling Housing to terminate the Project Deed on the grounds of a “Project Company termination event”, subject to the rights of the Security Trustee under the Financiers Tripartite Deed, under the arrangements described in sections 3.6.3.5 and 3.6.4.

Similarly, if the Project Company *frequently* breaches the “project documents”—regardless of whether these breaches are of the same type or class, but this time including breaches of “key performance indicators”—and this:

- Substantially frustrates the project’s objectives (section 3.1.2)
- Causes material damage, nuisance, inconvenience, disturbance or disruption to Housing, the project’s public housing tenants, other residents (both on and off the Bonnyrigg housing estate) or the owners, users and occupiers of adjacent properties
- Otherwise has a material adverse effect on the interests of Housing and the project’s tenants, including Housing’s ability to administer the Project Deed, or
- Indicate the Project Company does not regard itself as being bound by the Project Deed,

Housing’s Project Director may serve a formal “final notice” on the Project Company, advising it that if frequent breaches continue or recur they may result in the termination of the Project Deed.

If frequent breaches then continue or recur within six months of such a notice, they too will be deemed to amount to a “persistent breach”, entitling Housing to terminate the Project Deed, subject to the rights of the Security Trustee under the Financiers Tripartite Deed, on the grounds of a “Project Company termination event” under the arrangements described in sections 3.6.3.5 and 3.6.4.

### 3.6.3.4 Procedures for the Project Company to remedy defined types of breaches

If:

- The Project Company or a Partner materially breaches any of its obligations under the Project Deed or any other “project document”, other than its obligations to obtain each stage’s development approvals and commence and complete its works by the relevant “target dates” (sections 3.2.2.1 and 3.2.7.1), but this breach does not amount to a “Project Company termination event” as defined in section 3.6.3.5 below
- The Development Contractor materially breaches any of its obligations (through the Project Company) under the Project Deed’s private property development provisions
- Any representation or warranty by the Project Company, the Partners or the Ground Lessee in the Project Deed or any other “project document” proves to be untrue
- Any representation or warranty by the Development Contractor (through the Project Company) in the Project Deed proves to have been untrue at the time it was made
- The Project Company, the Ground Lessee, the Development Contractor, a Construction Contractor, the Facilities Management Contractor, the Tenancy Services Contractor or any other subcontractor or sub-subcontractor of the Project Company engages in fraud or misleading and deceptive conduct in performing any part of the project
- The Project Company fails to comply with a *Corrective Action Plan* produced in response to a potential failure to complete a stage’s works by its “target completion date” (section 3.2.7.3), or
- An obligation to provide debt financing for the project is terminated, withdrawn or cancelled as a result of a breach of any of the project’s financing agreements,

Housing’s Project Director may issue a formal “breach notice” to the Project Company, giving reasonable details of the breach.

If the breach can reasonably be remedied within ten business days of this notice, the Project Company must do so.

If the breach can be remedied, but not reasonably within ten business days, the Project Company must submit a detailed *Cure Plan* to Housing’s Project Director within ten business days of his or her notice, setting out the steps it will take to remedy the breach and mitigate its effects. This *Cure Plan* must be acceptable to the Project Director, in his or her absolute discretion, and must be diligently implemented in accordance with its terms.

If the “breach” cannot be remedied, the Project Company must submit a detailed *Prevention Plan*, again within ten business days of the Project Director’s notice, setting out the steps it will take to prevent any recurrence of the breach. This *Prevention Plan* must be acceptable to the Project Director, in his or her absolute discretion, and must be diligently implemented in accordance with its terms.

If the Project Company fails to remedy the breach or provide or implement a *Cure Plan* or *Prevention Plan*, as relevant, this will be deemed to be a “**project default**”, entitling Housing to terminate the Project Deed, subject to the rights of the Security Trustee under the Financiers Tripartite Deed, on the grounds of a

“Project Company termination event” under the arrangements described in sections 3.6.3.5 and 3.6.4.

### 3.6.3.5 *Housing’s termination and transfer rights and the Security Trustee’s ‘step in’ and transfer rights following a ‘Project Company termination event’*

“**Project Company termination events**”—which include but are not limited to Project Company breaches of the Project Deed or the other “project documents” to which Housing is a party—are defined in the Project Deed as:

- Any failure by the Project Company to commence all of its services by 20 December 2007 (section 3.4.1)
- Any failure by the Project Company to commence its works on the first stage of the project by 18 July 2009 or, if the current “target works commencement date” for this stage is extended under a “contract variation” (section 3.5.9) or in response to adverse housing market conditions (section 3.2.7.4), a “relief event” (section 3.5.11) or a “compensation event” (section 3.5.12), the date six months after the first stage’s revised “target works commencement date”
- Any failure by the Project Company to complete any stage’s works by the date 12 months after the stage’s “target completion date”, as extended (if at all) under the arrangements listed above (sections 3.2.7.1 and 3.2.14)
- Any belief by the Independent Certifier that a stage’s works will not be completed by the date 12 months after its “target completion date”
- Any wilful and substantial cessation of any of the Project Company’s works contemplated by a *Works Program*, other than under the Project Deed’s provisions for the granting of relief (sections 3.2.7.4, 3.5.9, 3.5.11 and 3.5.12), for 20 or more consecutive business days or for a total of 60 or more business days in any financial year
- Any wilful cessation of a substantial part of the Project Company’s services, other than under the Project Deed’s provisions for the granting of relief, for 15 or more consecutive business days or for a total of 30 or more business days in any financial year
- Any expression or demonstration by the Project Company, in writing or by its conduct, that it intends to stop performing a material part of its obligations under the Project Deed
- Any failure by the Project Company to complete the construction of all of the private housing in any stage of the project by the date 12 months after the stage’s “target completion date” (section 3.2.7.1), as extended (if at all) under a “contract variation” (section 3.5.9) or in response to adverse housing market conditions (section 3.2.7.4), a “relief event” (section 3.5.11) or a “compensation event” (section 3.5.12)
- Any insolvency (of specified types) of the Project Company
- Any failure by the Project Company, following any insolvency (of the same specified types) of the then-current Development Contractor, to replace the Development Contractor with a reputable, solvent, well-resourced and experienced new Development Contractor, acceptable to Housing, within 45 days of the date on which the Project Company became aware of the insolvency or ought to have become aware of the insolvency, or by any later deadline agreed to by Housing’s Project Director
- Any failure by the Project Company, following any insolvency (of the same specified types) of the then-current Development Guarantor, Facilities Management Contractor, Facilities Management Guarantor or Tenancy Services Contractor, to replace the insolvent subcontractor, sub-subcontractor or parent company guarantor with a reputable, solvent, well-resourced and experienced equivalent, within 90 days of the date on which the Project Company became aware of the insolvency or ought to have become aware of the insolvency
- Any breach of the law by the Project Company, the Development Contractor, a Construction Contractor, the Facilities Management Contractor, the Tenancy Services Contractor or any other Project Company subcontractor or sub-subcontractor, including any failure to continue to hold all approvals, consents and licences required for the project, if Housing’s Project Director believes this breach of the law is material to the Project Company’s performance of its obligations under the Project Deed and if the breach is not remedied within 60 days of the date on which the Project Company became aware of the breach or ought to have become aware of the breach
- Any revocation or repudiation of the Project Deed or revocation, repudiation or termination of any other “project document” (section 2.2)
- Any illegality, invalidity or unenforceability of the Project Deed or any other “project document”, other than as contemplated in or permitted by these documents, which is not remedied within 60 days of the date on which the Project Company became aware of the illegality, invalidity or unenforceability or ought to have become aware of the illegality, invalidity or unenforceability
- Any *claim* of such illegality, invalidity or unenforceability by the Project Company or the relevant subcontractor or sub-subcontractor, if the claimed illegality, invalidity or unenforceability is not remedied within the same 60-day deadline
- Anything making it unlawful for the Project Company, the Development Contractor, the Construction Contractors, the Facilities Management Contractor or the Tenancy Services Contractor to perform any of their obligations under the Project Deed and the other “project documents”, *other than* unlawfulness which (a) has directly resulted from a “change in law” by the State of NSW that is not a “discriminatory change in law” (section 3.5.7) and (b) is remedied within 30 days of the date on which the Project Company becomes aware of the unlawfulness or ought to have become aware of the unlawfulness
- Any breach by the Project Company of the Project Deed’s restrictions on changes in ownership or control, assignments and encumbrances (section 3.5.4)
- Any situation in which, over three consecutive calendar months, the sum of:
  - ♦ All “condition failure deductions” (section 3.4.9.2), and

- ◆ All reductions in “monthly transitional service fees” and “monthly full service fees” (section 3.4.9.1) as a result of the unavailability of dwellings

made as part of the calculation of Housing’s monthly “service payments” to the Project Company (section 3.4.9) exceeds 5% of the “service payments” that would have been payable by Housing for these three months had none of the deductions described in section 3.4.9.2 been made

- Any situation in which, for any individual calendar month, the sum of:
  - ◆ All of the month’s “condition failure deductions” (section 3.4.9.2), and
  - ◆ All reductions in the month’s “monthly transitional service fee” and “monthly full service fee” (section 3.4.9.1) as a result of the unavailability of dwellings

made as part of the calculation of Housing’s monthly “service payment” to the Project Company for the month (section 3.4.9.1) exceeds 10% of the “service payment” that would have been payable by Housing for this month had none of the deductions described in section 3.4.9.2 been made

- Any “persistent breach”, on either of the bases described in section 3.6.3.3, and
- Any “project default”, as described in section 3.6.3.4.

The Project Company must immediately notify Housing’s Project Director if it becomes aware of a “Project Company termination event” or anything likely to become a “Project Company termination event”.

**(a) Actions by Housing to overcome the effects of a ‘Project Company termination event’**

In responding to a “Project Company termination event” Housing may:

- Exercise any of its general rights to seek remedies or “step in” if there have been Project Company, Development Contractor or Ground Lessee breaches of the “project documents”, as described in section 3.6.3.1
- “Step in”, either itself or through an agent, manager, receiver, receiver/manager or administrator appointed under the Corporation Securities (section 4.1), under the Development Side Deed, Construction Side Deed, Facilities Management Side Deed and Tenancy Services Side Deed “step in” arrangements described in section 3.6.3.2, to assume the rights and obligations of:
  - ◆ The Project Company under the Development Contract, the Facilities Management Contract and/or the Undertaking Agreement
  - ◆ The Development Contractor under the Construction Contract(s), and/or
  - ◆ The Facilities Management Contractor under the Tenancy Services Contract

*provided* the Security Trustee has not exercised its own “step in” rights under the project’s financing agreements, in accordance with Financiers Tripartite Deed arrangements described in (b) below and in section 3.6.3.6, and

- If it exercises these Side Deed “step in” rights—or even if it does not, provided the “Project Company termination event” is still subsisting—procure the novation (transfer) of the rights and obligations of:
  - ◆ The Project Company under the Development Contract, the Development Contractor Guarantee, the Construction Contractors’ Guarantee(s), the Facilities Management Contract, the Facilities Management Contractor Guarantee and/or the Undertaking Agreement
  - ◆ The Development Contractor under the Construction Contract(s), and/or
  - ◆ The Facilities Management Contractor under the Tenancy Services Contract

to a substitute head contractor nominated by Housing’s Project Director under the Side Deeds’ novation arrangements described in section 3.6.3.2, again *provided* the Security Trustee has not exercised its own “step in” rights under the project’s financing agreements, in accordance with Financiers Tripartite Deed arrangements described in (b) below and section 3.6.3.6.

**(b) ‘Stepping in’ by the Security Trustee**

Under the Project Deed Housing may terminate the Project Deed for a subsisting “Project Company termination event” simply by giving the Project Company 20 business days’ written notice (see section 3.6.4.1).

Under the Financiers Tripartite Deed, however, Housing has:

- Expressly acknowledged and consented to the rights of the Security Trustee, under the project’s financing agreements, to remedy or procure the remedy of any Project Company breach of the Project Deed or any other “project document” (section 2.2), and
- Promised not to issue a termination notice for a subsisting “Project Company termination event” without first giving the Security Trustee at least 20 business days’ written notice of its intention to do so, specifying the proposed date for the termination notice and providing details of the “Project Company termination event”.

At any time after being notified by Housing that it intends to terminate the Project Deed for a “Project Company termination event”, but no later than one business day before the date on which Housing proposes to issue its termination notice, the Security Trustee may—but need not—notify Housing that it intends to exercise its rights under the Financiers Tripartite Deed to “step in” itself, or have an agent, manager, receiver, receiver/manager or administrator appointed under the financing securities “step in”, from a specified date within the next 20 business days.

If the Security Trustee decides not to “step in”, and the “Project Company termination event” is still subsisting, Housing may issue a termination notice under the Project Deed at any time after the latest date on which a “step in” notice may be given by the Security Trustee, and the arrangements described in section 3.6.4 will apply.

However, if the Security Trustee does issue a notice that it intends to “step in”, Housing may not terminate the Project Deed prior to the proposed “step in” date, the Security Trustee

must give Housing details about its proposed agent, manager, receiver, receiver/manager or administrator, and Housing and the Security Trustee must consult with each other, within five business days, to:

- Determine the content of a *Step-In Report* which they must jointly produce, at the Project Company's cost, setting out:
  - ◆ The outstanding obligations of the Project Company and (through it) the Development Contractor to Housing under the Project Deed
  - ◆ A program to remedy breaches of the Project Deed and/or any other "project document" (and/or prevent the recurrence of breaches not able to be remedied)
  - ◆ Details on the proposed performance of the Project Company's and Development Contractor's obligations to Housing during the "step in" period
  - ◆ A program to remedy any associated defaults under the project's debt financing agreements
  - ◆ Details of the timing of the "step in" period and the proposed actions, and
  - ◆ Details of proposed insurance arrangements, and
- Make any necessary arrangements if Housing chooses to have an auditor and/or technical adviser verify any of the information in the *Step-In Report*.

Any "stepping in" agent, receiver, receiver/manager, administrator or other representative appointed by the Security Trustee must (in Housing's Project Director's opinion) be suitable and appropriate for carrying out the project and must satisfy the Project Director that, in conjunction with appropriate contractors, they will be able to carry out the obligations of the Project Company under the Project Deed during the "step in" period.

**(c) *The rights and obligations of Housing and the Security Trustee during the Security Trustee's 'step in' period***

During the Security Trustee's "step in" period,

- Housing's rights and obligations under the Project Deed will continue, subject to the provisions of the Financiers Tripartite Deed
- The Security Trustee or its representative will "step into the shoes of" the Project Company under the project's contracts, in accordance with details set out in the Financiers Tripartite Deed
- The Security Trustee and its representative must not knowingly exercise their rights in any manner which interferes with the provision of the project, the delivery of services under the Project Deed or Housing's exercising of its powers, and they must minimise any damage, nuisance, inconvenience, disturbance or disruption to Housing, its public housing tenants, other residents (both on and off the Bonnyrigg housing estate) or the owners, users and occupiers of adjacent properties
- The Security Trustee must ensure its representative updates the *Step-In Report* and gives Housing's Project Director detailed reports, at least monthly, on the status of the project and the implementation of the *Step-In Report*

- The Security Trustee must nominate a substitute representative if the Project Director notifies it that he or she does not approve of the original representative, and if the substitute is not acceptable to Housing and an acceptable substitute is not nominated by the Security Trustee within ten business days the "stepping in" by the Security Trustee will be deemed to have ended, and
- Housing may terminate the Project Deed, by written notice to the Project Company, the Security Trustee and the Security Trustee's representative, only if:
  - ◆ The Security Trustee or its representative notifies Housing that it does not intend to cure a breach causing the "Project Company termination event"
  - ◆ Prior to the preparation of the *Step-In Report*, the Security Trustee (or its representative) and the Project Company are not, in Housing's Project Director's reasonable opinion, using all reasonable endeavours to remedy a continuing breach of the Project Deed or any other "project document" that would otherwise entitle Housing to terminate the Project Deed
  - ◆ After the preparation of the *Step-In Report*, the Security Trustee or its representative is not curing a "project document" breach that is identified in the *Step-In Report* or is not performing an obligation in accordance with the *Step-In Report*, as updated, or
  - ◆ A new "Project Company termination event" occurs, and it does not arise from a "project document" breach that is identified in and is being remedied in accordance with the *Step-In Report*.

**(d) *Extensions and termination of the Security Trustee's 'step in' period***

The Security Trustee's initial "step in" period may not exceed 180 days. The Security Trustee may, however, seek extension(s) of its "step in" period by up to 90 days in total, giving Housing's Project Director an updated *Step-In Report* with a detailed description of the steps being taken and proposed by the Security Trustee. If the Security Trustee or its representative is not diligently remedying a "project document" breach that is identified in the *Step-In Report* or is not performing an obligation in accordance with the *Step-In Report*, as updated, the Project Director may grant or reject this extension in his or her absolute discretion.

The Security Trustee's representative may at any time terminate the "step in" by giving Housing ten days' written notice.

If the "Project Company termination event" which led to the "step in" is still continuing when the "step in" ends or is deemed to have ended, Housing will become entitled to terminate the Project Deed, by giving the Project Company 20 business days' written notice, and the arrangements described in section 3.6.4 will apply.

**(e) *Transfers to new contractors nominated by the Security Trustee***

At any time during the Security Trustee's "step in" period the Security Trustee may notify Housing that it wishes to procure the novation (transfer) of the Project Company's or Development Contractor's rights and responsibilities under the Project Deed



and the other “project documents” to a substitute contractor nominated by the Security Trustee and approved by Housing.

Housing’s Project Director must notify the Security Trustee whether the proposed transferee is acceptable within 30 days of receiving all the information Housing needs to make this decision.

Housing may, however, withhold or delay its decision if:

- It is not being reasonably satisfied the proposed substitute contractor:
  - ◆ Has the necessary legal capacity, power or authority
  - ◆ Has or has access to the necessary technical competence and financial standing or resources, and
  - ◆ Is a suitable or appropriate organisation to have an interest in the project’s sites and facilities, or
  - ◆ Complies with other reasonable criteria notified by Housing, and/or
- Housing believes the proposed substitute contractor is not sufficiently independent of the Project Company or the Development Contractor.

Once Housing has granted its consent, the Security Trustee may procure the approved novation(s) at any time that is at least 60 days after its original notice to Housing.

On the date of the novation the substitute contractor and the Security Trustee—or, if applicable, the project’s new financiers—must enter into a tripartite deed with Housing on substantially the same terms as the Financiers Tripartite Deed.

Once the novation of the Project Deed becomes effective any existing grounds for Housing to terminate the Project Deed will cease to have any effect, provided the substitute contractor remedies any continuing “project document” breaches within the times specified in the *Step-In Report*.

### 3.6.3.6 The Security Trustee’s ‘step in’ and transfer rights following a finance default

The Security Trustee has “step in” and transfer rights following a default under the project’s private sector debt financing agreements—including defaults under the financing agreements for the project’s private property development aspects—which are closely analogous to its rights following a “Project Company termination event”, described in section 3.6.3.5 above.

The Security Trustee must notify Housing within two business days if it becomes aware of any finance default, providing reasonable details and indicating whether, when and how it intends to exercise its rights under the financing agreements. It must also promptly notify Housing if its intentions change or it is instructed to take action to enforce the debt financiers’ securities.

## 3.6.4 Termination by Housing for a ‘Project Company termination event’

### 3.6.4.1 General termination arrangements

If a “Project Company termination event” occurs and

- The Security Trustee decides not to “step in”, or

- The Security Trustee’s “step in” period, in response to the “Project Company termination event” (section 3.6.3.5) and/or a finance default (section 3.6.3.6), has expired

and the “Project Company termination event” is still continuing, Housing may terminate the Project Deed by giving the Project Company 20 business days’ notice.

The consequences of such a termination will be the same as those described in section 3.6.1.1, except that in this case:

- Housing may procure the novation of the Development Contract, the Facilities Management Contract, the Construction Contracts and the Tenancy Services Contract even if Housing has not “stepped in” under the Side Deed arrangements described in section 3.6.3.2
- Housing may also procure the novation of the Project Company’s rights and interests under the Undertaking Agreement, and
- Housing’s “termination payment” to the Project Company must be determined in accordance with the processes and formulae described in sections 3.6.4.2 to 3.6.4.4.

### 3.6.4.2 Housing’s right to elect to call new tenders following a termination for a ‘Project Company termination event’

If Housing terminates the Project Deed for a “Project Company termination event” it may, in its sole discretion, either:

- Call new tenders for the provision of the project’s services, subject to conditions and procedures set out in the “termination payments” schedule to the Project Deed, *provided* criteria listed below are satisfied, or
- Require an expert determination of the “termination payment” payable to the Project Company, if any, as set out in the same schedule.

The option to call new tenders will be available only if:

- All of the Project Company’s works for all stages of the project have been completed (section 3.2.14)
- Housing’s Project Director notifies the Project Company that Housing intend to take this course within 20 business days after the termination of the Project Deed
- The Security Trustee did not exercise its “step in” rights, under the Financiers Tripartite Deed arrangements described in sections 3.6.3.5, for the “Project Company termination event” which has since entitled Housing to terminate the Project Deed
- The Project Company and the Security Trustee have not procured a novation of the Project Deed from the Project Company to a suitable substitute contractor, and have not made reasonable efforts to do so, and
- There is a “liquid” market—with at least two willing, suitable and unrelated parties in the market for “public private partnership” or similar contracts for the provision of services similar to those specified in the Project Deed—that is sufficient for the price likely to be achieved through a tender to be a reliable indicator of “fair value”.

### 3.6.4.3 *Procedures and termination payments if Housing calls new tenders*

If Housing is entitled to call new tenders and chooses to do so,

- Housing’s Project Director and the Project Company must follow procedures set out in the “termination payments” schedule to the Project Deed.
- Housing may at any time elect to abandon the tendering process and require an expert determination of the “termination payment” instead (see section 3.6.4.4).
- If Housing persists with and completes the tendering process, its “termination payment” to the Project Company will be an amount equal to:
  - ◆ The highest capital sum offered by any tenderer complying with the tender’s qualification criteria, *plus*
  - ◆ All credit balances in bank accounts held by or on behalf of the Project Company on the date the successful tender was received, to the extent these amounts are not otherwise taken into account in the successful tender, *plus*
  - ◆ Any insurance proceeds and other amounts which are owed to the Project Company and which it is entitled to retain, to the extent these amounts are not included in the Project Company’s bank balances and to the extent they are not otherwise taken into account in the successful tender, *less*
  - ◆ The costs reasonably incurred by Housing in carrying out the tender process, *and less*
  - ◆ Any amounts Housing is entitled to set off or deduct under the Project Deed, including all its reasonable costs associated with the “Project Company termination event”,

with adjustments, if necessary, to avoid any “double payments” as a result of any earlier “compensation event” compensation payments (section 3.5.12) and any other adjustments that are needed to avoid “double counting”.

- In the interim period between the termination of the Project Deed and the earlier of the date on which the “termination payment” is paid and the date on which a new contract with the successful tenderer is entered into, Housing must make monthly payments to the Project Company, again calculated in accordance with the “termination payments” schedule to the Project Deed, equal to:
  - ◆ One-third of the interest payments and principal repayments to be made under the senior debt financing facilities for the public housing aspects of the project during the relevant quarter, as shown in the project’s “base case” financial model, *plus*
  - ◆ The month’s “floating rate component”, reflecting the project’s arrangements for the sharing of interest rate risks and calculated as described in section 3.4.9.1.

If the “termination payment” amount is negative, Housing need not make any “termination payment” to the Project Company, the Project Company must pay Housing this amount and Housing will be released from all its liabilities to the Project Company for breaches and/or termination of the Project Deed or any other “project document”.

Otherwise, the (positive) “termination payment” must be paid as a single lump sum on or before the date on which a new contract with the successful tenderer is entered into. No interest will be payable on this amount.

Upon the payment of the “termination payment” Housing will be released from all its liabilities to the Project Company for breaches and/or termination of the Project Deed or any other “project document”.

### 3.6.4.4 *Procedures and termination payments if new tenders are not called or if retendering is ended*

If Housing elects to require expert determination of the “termination payment” that is payable to the Project Company, if any, or has no option but to use expert determination,

- The Project Company will be entitled to receive interim monthly payments, as described above, only if Housing initially elected to call tenders.
- The independent expert, appointed by both Housing and the Project Company, must estimate the fair market value of a contract on the same terms as the Project Deed, apart from specified exceptions, in accordance with formulae and other specifications in the “termination payments” schedule to the Project Deed, including a “cap”—equal to the “termination payment” that would have been payable had the Project Deed been terminated for adverse housing market conditions, an “uninsurable” risk or *force majeure* (section 3.6.1.2)—if the Project Deed was terminated on or before the completion of the Project Company’s works for the second stage of the project. The expert’s determination will be final and binding.
- Housing’s “termination payment” to the Project Company will be equal to:
  - ◆ The independent expert’s estimate of the fair market value of this hypothetical replacement for the Project Deed, *plus*
  - ◆ All credit balances in bank accounts held by or on behalf of the Project Company on the date the expert’s determination was made, *plus*
  - ◆ Any insurance proceeds and other amounts which are owed to the Project Company and which it is entitled to retain, to the extent these amounts are not included in the Project Company’s bank balances, *less*
  - ◆ The costs reasonably incurred by Housing in carrying out the tender process (if it initially chose to use this process) and in connection with the estimation of the project’s fair market value, *and less*
  - ◆ Any amounts Housing is entitled to set off or deduct under the Project Deed, including all its reasonable costs associated with the “Project Company termination event”,

with adjustments, if necessary, to avoid any “double payments” as a result of any earlier “compensation event” compensation payments (section 3.5.12) and any other adjustments that are needed to avoid “double counting”.

If the “termination payment” amount is negative, Housing need not make any “termination payment” to the Project Company, the Project Company must pay Housing this amount and Housing will be released from all its liabilities to the Project

Company for breaches and/or termination of the Project Deed or any other “project document”.

Otherwise, the (positive) “termination payment” must be paid as a single lump sum within 90 business days of the date on which the Project deed was terminated.

From the termination date until the payment is made, interest will accrue on the “termination payment” at the interest rate applying for the project’s senior debt facilities for the public housing aspects of the project.

Upon the payment of the “termination payment” Housing will be released from all its liabilities to the Project Company for breaches and/or termination of the Project Deed or any other “project document”.

### 3.6.5 Termination by the Project Company for a default by Housing

If:

- Any breach of the Project Deed or any other “project document” (section 2.2) by Housing substantially frustrates the Project Company’s performance of its obligations under the Project Deed or makes it impossible for the Project Company to perform these obligations, in either case for a continuous period of two months or more

- There is an expropriation or requisition of a material part of the assets and/or shares of the Project Company or interests of the Project Partnership by a government, council, government department, statutory authority, court or tribunal in New South Wales, or
- Housing fails to pay the Project Company any undisputed amount specified in its monthly invoices (section 3.4.9.4)—or any other amount of money, totalling more than \$100,000 (indexed to the CPI from the March quarter of 2007), that is due to it under the Project Deed—within 20 business days of a formal demand by the Project Company,

the Project Company may issue a termination notice to Housing, within 20 business days of becoming aware of this default, giving Housing 120 days’ notice that it intends to terminate the Project Deed for the default, as specified in the notice.

If Housing fails to rectify or overcome the effect of the default within the notice period, the Project Deed will terminate at the end of this notice period.

The consequences of such a termination will be the same as those described in section 3.6.1.1, except that in this case Housing’s “termination payment” to the Project Company must be determined in accordance with the same processes and formulae as those applying for “voluntary” terminations of the Project Deed by Housing, already described in section 3.6.2.2.

# 4 The Corporation Securities and interactions between Housing's securities and the debt financiers' securities

## 4.1 The Corporation Securities

Under the two "Corporation Securities"—the Corporation Security (Project Company and Partners) and the Corporation Security (Development Contractor)—the Project Company (in its own capacity and as the agent and nominee of the Partners), the Partners and the Development Contractor have granted Housing fixed and floating charges over all the present and future real and personal property assets, undertakings and rights of the Project Company, the Project Partnership, the Partners and the Development Contractor as securities for:

- The punctual payment of all amounts they owe to Housing under the Project Deed and the other "project documents" (section 2.2), and
- The performance of all their other obligations to Housing under the Project Deed and the other "project documents".

The Security Trustee, the Facilities Management Contractor, the Facilities Management Guarantor and the Tenancy Services Contractor have expressly acknowledged and consented to the creation of the charges under both of the Corporation Securities, and the Construction Contractors and the Construction Contractors' Guarantors must do likewise when they are appointed. The Development Contractor and the Development Guarantor have similarly expressly acknowledged and consented to the creation of the charges under the Corporation Security to which they are not parties, the Corporation Security (Project Company and Partners).

The Project Company, the Partners and the Development Contractor have warranted that there are and will be no encumbrances over their charged property other than those created under the project's private sector debt financing securities or the "project documents", any liens arising in the ordinary course of business or any encumbrances which are expressly approved, in advance, by Housing and for which the amount secured and/or the time for payment do not increase beyond the terms of Housing's approval.

They have also promised that except as already expressly permitted under the "project documents" (section 3.5.4) they will not, without Housing's consent, dispose of, permit the creation of an interest in or part with possession of any of the charged property, or deal with the charged property in any way other

than in the ordinary course of its ordinary business, or permit anything that might render the charged property liable to surrender or forfeiture or otherwise materially reduce the value of Housing's security.

The relative priorities of the charges created by the Corporation Securities and the debt financiers' securities are governed by the Financiers Tripartite Deed, as discussed in section 4.2 below. Under these arrangements, the charges created by the Corporation Securities generally rank behind the debt financiers' securities but ahead of all other securities affecting the charged property.

To ensure Housing's charges will have priority over any subsequently registered charges, unless Housing agrees otherwise, the maximum prospective liability secured by Housing's charges has been set, for the purpose of determining priorities between the charges under the Corporations Act (Cth) and *only* for this purpose, at \$250 million. The Corporation Securities make it clear that notwithstanding this provision, Housing's charges may secure prospective liabilities that are higher than this "maximum" amount.

Subject to the priorities between securities and enforcement rights specified in the Financiers Tripartite Deed,

- The charges created by both Corporation Securities may be immediately enforced by Housing, without notice, if:
  - ♦ A "Project Company termination event" occurs (section 3.6.3.5)
  - ♦ Housing does not receive a "sales gain share" payment to which it is entitled under the arrangements for the sharing of income from private property sales described in section 3.3.2
  - ♦ Housing exercises its rights to "step in" following an emergency or public safety incident (section 3.5.10), or
  - ♦ There is a default under the project's private sector debt financing agreements, including the financing agreements for the project's private property development aspect, and the relevant financier(s) or the Security Trustee have taken steps to enforce their rights under these agreements



- The charges created by the Corporation Security (Project Company and Partners) may be immediately enforced by Housing, without notice, if:
  - ◆ The Project Company fails to comply with any of its obligations following a termination of the Project Deed (sections 3.6.1, 3.6.2, 3.6.4 and 3.6.5)
  - ◆ The Project Company or a Partner disposes of or deals with the charged property of the Project Company, the Project Partnership and the Partners contrary to the Corporation Security (Project Company and Partners), or takes any steps towards doing so, or
  - ◆ The Project Company or a Partner breaches any of its other obligations under the Corporation Security (Project Company and Partners) in a way which Housing believes is likely to have a material adverse effect on the value of the charged property or Housing's security interest, and
- The charges created by the Corporation Security (Development Contractor) may be immediately enforced by Housing, without notice, if:
  - ◆ There is a Development Contractor "insolvency event" (of a type defined in the Project Deed), even if this does not result in a "Project Company termination event" (section 3.6.3.5)
  - ◆ The Development Contractor disposes of or deals with its charged property contrary to the Corporation Security (Development Contractor), or takes any steps towards doing so, or
  - ◆ The Development Contractor breaches any of its other obligations under the Corporation Security (Development Contractor) in a way which Housing believes is likely to have a material adverse effect on the value of the Development Contractor's charged property or Housing's security interest.

In these circumstances, and again subject to the Financiers Tripartite Deed, Housing may appoint receiver(s) and/or receiver(s)/manager(s) of the charged property, exercising powers set out in the relevant Corporation Security, and Housing and its authorised representatives may, as relevant, exercise specified powers of attorney granted by the Project Company, the Partners and the Development Contractor.

## 4.2 Consents to and priorities between Housing's charges and the debt financiers' securities

The Financiers Tripartite Deed formally records:

- Housing's consent to the debt financiers' securities under the project's private sector debt financing agreements, and

- As already indicated in section 4.1, the Security Trustee's consent to the charges created by the Corporation Securities.

With the exception of what are termed "**Corporation priority amounts**"—any amounts owed to Housing by the Project Company or the Development Contractor under the "project documents" before any "stepping in" by the Security Trustee under the arrangements described in section 3.6.3.5 and 3.6.3.6—each of the debt financiers' securities has priority over Housing's charges, up to the aggregate of:

- All of the amounts outstanding under the project's financing agreements and a specified contingent equity agreement, and
- All financing agreement enforcement costs.

Beyond this limit, the financiers' securities and Housing's charges have equal priority.

Accordingly, any money received in enforcing the debt financiers' securities or Housing's charges must be applied:

- First, to pay any "Corporation priority amounts"
- Second, to pay the sums secured by the debt financiers' securities, up to the limit described above, and
- Third, and on a 50:50 basis, to pay all other sums of money (if any) secured by the financiers' securities and Housing's charges.

Until all the amounts secured by the debt financiers' securities have been paid, Housing may not take any action to enforce its charges, apply for the winding up of the Project Company or the Development Contractor or apply for the appointment of a liquidator to the Project Company or the Development Contractor unless the Security Trustee agrees, the only exceptions to this being actions by Housing under the Corporation Securities to:

- Enforce its rights following an emergency or public safety incident (section 3.5.10), or
- Enforce its rights, if:
  - ◆ The Project Company breaches any of its obligations under the "project documents"
  - ◆ The Development Contractor breaches any of its obligations (through the Project Company) under the Project Deed's private property development provisions, or
  - ◆ The Ground Lessee breaches any of its obligations under the Lease(s),

to perform these obligations itself, or secure their performance, under the arrangements described in section 3.6.3.1.

# 5 NSW Government guarantee of Housing's performance

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Under the PAFA Act Guarantee the State of NSW has, in accordance with section 22B of the Public Authorities (Financial Arrangements) Act (NSW), granted the Project Company (in its capacity as the agent and nominee of the Partners) and the Security Trustee a guarantee of Housing's performance of its obligations under the Project Deed, the Development Side Deed, the Construction Side Deeds, the Independent Certifier Deed, the Licence(s), the Facilities Management Side Deed, the Tenancy Services Side Deed, the Financiers Tripartite Deed, the Lease(s), any Subleases, the Corporation Security (Project Company and Partners), the Corporation Security (Development Contractor) and any other documents approved, in writing, by the NSW Treasurer in the future.

This guarantee is a continuing obligation. It will remain in force until seven months after the term of these contracts (i.e. until 28

September 2037 or seven months after any earlier termination of the contracts), regardless of any settlements, intervening payments or anything else which might otherwise affect the State's liability as guarantor at law or in equity.

The State must satisfy its obligations under its guarantee within 21 days of a demand made on it by the Project Company or the Security Trustee. Such a demand may be made only if any period of time allowed under the "project documents" for Housing to remedy its failure to perform has already expired.

In turn, Housing has indemnified the Queen, the State, the NSW Government and the NSW Treasurer against any and all liabilities they may incur because of the PAFA Act Guarantee.

# 6 Glossary of contracts and parties

<b>Becton BP Trustee</b>	Becton Bonnyrigg Equity Pty Limited (one of “the Partners”)
<b>Community Leases</b>	Leases or licences which may be issued by St George Community Housing Cooperative Limited, in its role as “the Ground Lessee”, to non-profit or community organisations in accordance with tenant support and community renewal plans described in the Project Deed (see section 3.4.5.3)
<b>Construction Contracts</b>	Future design and construction contracts between Bonnyrigg Development Pty Limited (“the Development Contractor”) and Construction Contractors with a value of more than \$2 million (indexed in line with the CPI since the March quarter of 2007)
<b>Construction Contractors</b>	Construction contractors entering into Construction Contracts with Bonnyrigg Development Pty Limited (“the Development Contractor”) (see above)
<b>Construction Contractor Guarantees</b>	Future parent company guarantees, to Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners” (WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”)), of the performance by Construction Contractors of their obligations to Bonnyrigg Development Pty Limited (“the Development Contractor”) under their Construction Contracts
<b>Construction Contractors’ Guarantors</b>	The parent companies of future Construction Contractors providing Construction Contractor Guarantees to Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”
<b>Construction Side Deeds</b>	Future side deeds, in a form specified in the Project Deed and analogous to the Development Side Deed, the Facilities Management Side Deed and the Tenancy Services Side Deed, which Construction Contractors and their Construction Contractors’ Guarantors must execute with the NSW Land and Housing Corporation (“Housing”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners” (WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”))
<b>Corporation</b>	New South Wales Land and Housing Corporation (referred to as “Housing” in this report)
<b>Corporation Securities</b>	The Corporation Security (Development Contractor) and the Corporation Security (Project Company and Partners) (see below)
<b>Corporation Security (Development Contractor)</b>	Bonnyrigg Living Communities Fixed and Floating Charge executed by the NSW Land and Housing Corporation (“Housing”) and Bonnyrigg Development Pty Limited (“the Development Contractor”), dated 12 February 2007
<b>Corporation Security (Project Company and Partners)</b>	Bonnyrigg Living Communities Fixed and Floating Charge executed by the NSW Land and Housing Corporation (“Housing”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”—WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”)—and dated 12 February 2007
<b>Development Contract</b>	Bonnyrigg Living Communities Development Contract executed by Bonnyrigg Development Pty Limited (“the Development Contractor”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”—WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”)—and dated 12 February 2007
<b>Development Contractor</b>	Bonnyrigg Development Pty Limited
<b>Development Contractor Guarantee</b>	Bonnyrigg Living Communities Parent Company Guarantee executed by Becton Property Group Limited (“the Development Guarantor”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”—WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”)—and dated 12 February 2007
<b>Development Guarantor</b>	Becton Property Group Limited
<b>Development Side Deed</b>	Development Side Deed executed by the NSW Land and Housing Corporation (“Housing”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”), Bonnyrigg Development Pty Limited (“the Development Contractor”) and Becton Property Group Limited (“the Development Guarantor”), dated 12 February 2007
<b>Equity Hold Deed</b>	Bonnyrigg Living Communities Project Equity Hold Deed Poll executed by Westpac Banking Corporation (“Westpac”), dated 23 February 2007
<b>Facilities Management Contract</b>	Bonnyrigg Living Communities Services Contract between Spotless P&F Pty Limited (“the Facilities Management Contractor”, also known as “the Services Contractor”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”, WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”). This contract is also described in some contracts as “the Services Contract”. It was originally executed on 12 February 2007, amended and restated on 27 February 2007 and amended again on 20 April 2007.
<b>Facilities Management Contractor</b>	Spotless P&F Pty Limited, also known as “the Services Contractor”
<b>Facilities Management Contractor Guarantee</b>	Deed of Guarantee and Indemnity executed by Spotless Group Limited (“the Facilities Management Guarantor”), Bonnyrigg Partnerships Nominee Pty Limited (“the Project Company”) and “the Partners”—WEST BP Pty Limited (“the Westpac BP Trustee”) and Becton Bonnyrigg Equity Pty Limited (“the Becton BP Trustee”)—and dated 12 February 2007
<b>Facilities Management Guarantor</b>	Spotless Group Limited

<b>Facilities Management Side Deed</b>	Services Side Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), Spotless P&F Pty Limited ("the Facilities Management Contractor", also described in some contracts as "the Services Contractor") and Spotless Group Limited ("the Facilities Management Guarantor"), dated 12 February 2007. This contract is referred to in some of the project contracts as "the Services Side Deed".
<b>Financiers Tripartite Deed</b>	Bonnyrigg Living Communities Financiers Tripartite Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), Bonnyrigg Development Pty Limited ("the Development Contractor") and Westpac Administration Pty Limited ("the Security Trustee"), dated 20 April 2007
<b>Ground Lessee</b>	St George Community Housing Co-operative Limited (which also has another role, as "the Tenancy Services Contractor")
<b>Housing</b>	New South Wales Land and Housing Corporation (referred to as "the Corporation" in most of the project's contracts)
<b>Independent Certifier</b>	Donald Cant Watts Corke (NSW) Pty Limited
<b>Independent Certifier Deed</b>	Bonnyrigg Living Communities Independent Certifier Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and Donald Cant Watts Corke (NSW) Pty Limited ("the Independent Certifier"), dated 20 April 2007
<b>Interface Agreement</b>	Bonnyrigg Living Communities Interface Agreement executed by Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), Bonnyrigg Development Pty Limited ("the Development Contractor"), Spotless P&F Pty Limited ("the Facilities Management Contractor", also known as "the Services Contractor"), Bonnyrigg Management Pty Limited ("the Manager") and St George Community Housing Co-operative Limited (in its role as "the Tenancy Services Contractor"). This contract was originally executed on 12 February 2007 and was subsequently amended and restated on 27 February 2007.
<b>Leases</b>	Leases which the NSW Land and Housing Corporation ("Housing") must issue to St George Community Housing Cooperative Limited, in its role as "the Ground Lessee" (see section 3.4.5.1)
<b>Licence</b>	Non-exclusive site access license granted by the NSW Land and Housing Corporation ("Housing") to Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), its subcontractors and their officers, employees, agents, advisers and other authorised persons
<b>Management Agreement</b>	Bonnyrigg Living Communities Management Services Contract executed by Bonnyrigg Management Pty Limited ("the Manager") and Spotless P&F Pty Limited ("the Facilities Management Contractor", also known as "the Services Contractor"), dated 27 February 2007
<b>Management Collateral Warranty Deed</b>	Bonnyrigg Living Communities Collateral Warranty Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), Bonnyrigg Management Pty Limited ("the Manager") and Spotless P&F Pty Limited ("the Facilities Management Contractor", also known as "the Services Contractor"), dated 20 April 2007
<b>Manager</b>	Bonnyrigg Management Pty Limited
<b>PAFA Act Guarantee</b>	Bonnyrigg Living Communities PPP Project Deed of Guarantee between the State of NSW, the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and Westpac Administration Pty Limited ("the Security Trustee"), dated 20 April 2007
<b>Partners</b>	The partners in the "Project Partnership" established by the Partnership Agreement: WEST BP Pty Limited ("the Westpac BP Trustee") and Becton Bonnyrigg Equity Pty Limited ("the Becton BP Trustee")
<b>Partnership Agreement</b>	Bonnyrigg Partnerships Joint Venture Agreement, executed by "the Partners" (WEST BP Pty Limited ("the Westpac BP Trustee") and Becton Bonnyrigg Equity Pty Limited ("the Becton BP Trustee")), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), WEST BP Holdco Pty Limited, Westpac Investment Vehicle No 2 Pty Limited, Becton Bonnyrigg Holdings Pty Limited, Becton Construction Services Pty Limited and Becton Property Group Limited. This contract was originally executed on 20 December 2006 and was subsequently amended and restated on 23 February 2007.
<b>Project Company</b>	Bonnyrigg Partnerships Nominee Pty Limited, <i>plus</i> , in most cases, depending on the context, the Partners and/or the Development Contractor (see sections 2.1.2 and 2.2)
<b>Project Deed</b>	Bonnyrigg Living Communities Project Deed, executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and "the Partners"—WEST BP Pty Limited ("the Westpac BP Trustee") and Becton Bonnyrigg Equity Pty Limited ("the Becton BP Trustee")—and dated 12 February 2007
<b>"Project documents"</b>	The Project Deed, the Development Contract, the Development Contractor Guarantee, the Development Side Deed, the Independent Certifier Deed, the Construction Contracts, the Construction Contractor Guarantees, the Construction Side Deeds, the Interface Agreement, the Facilities Management Contract, the Facilities Management Contractor Guarantee, the Facilities Management Side Deed, the Tenancy Services Contract, the Tenancy Services Side Deed, the Management Agreement, the Leases, the Subleases, the Licence(s), the Undertaking Agreement, the St George Mortgages of Leases, the St George Fixed Charge, the St George Power of Attorney, the Financiers Tripartite Deed, the Corporation Security (Project Company and Partners), the Corporation Security (Development Contractor), the Equity Hold Deed, any other subcontracts (and sub-subcontracts, etc) of the Project Company's works or services and their associated guarantees to the Project Company
<b>Project Partnership</b>	An unincorporated joint venture by the Partners, known as "Bonnyrigg Partnerships", established by the Partnership Agreement
<b>Rehousing Vacant Dwelling Leases</b>	Leases or licences which may be issued by St George Community Housing Cooperative Limited, in its role as "the Ground Lessee", to community housing providers or other non-profit organisations for the provision of temporary housing services for tenants (see section 3.4.5.4)
<b>Security Trustee</b>	Westpac Administration Pty Limited



<b>Services Contract</b>	Bonnyrigg Living Communities Services Contract between Spotless P&F Pty Limited ("the Facilities Management Contractor", also known as "the Services Contractor"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and "the Partners", WEST BP Pty Limited ("the Westpac BP Trustee") and Becton Bonnyrigg Equity Pty Limited ("the Becton BP Trustee"). This contract is referred to in this report and some of the contracts as "the Facilities Management Contract". It was originally executed on 12 February 2007, amended and restated on 27 February 2007 and amended again on 20 April 2007.
<b>Services Contractor</b>	Spotless P&F Pty Limited, referred to in this report and some of the contracts as "the Facilities Management Contractor"
<b>Services Side Deed</b>	Services Side Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), Spotless P&F Pty Limited ("the Facilities Management Contractor", also described in some contracts as "the Services Contractor") and Spotless Group Limited ("the Facilities Management Guarantor"), dated 12 February 2007. This contract is referred to in this report and some of the project contracts as "the Facilities Management Side Deed".
<b>Specification</b>	Bonnyrigg Living Communities Project Deed (Schedule 4 Specification) (i.e. Schedule 4 to the Project Deed)
<b>St George Fixed Charge</b>	Fixed Charge (over the Ground Lessee's rights under the Leases, the Tenancy Agreements and any Subleases) executed by Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and St George Community Housing Co-operative Limited, in its role as "the Ground Lessee", dated 1 March 2007
<b>St George Mortgages of Leases</b>	Mortgages which must be granted over the Leases in accordance with the Agreement to Execute Mortgage of Lease and Authority to Complete executed by St George Community Housing Co-operative Limited, in its role as "the Ground Lessee", dated 27 February 2007
<b>St George Power of Attorney</b>	Power of Attorney executed by Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company") and St George Community Housing Co-operative Limited, in its role as "the Ground Lessee", dated 27 February 2007
<b>Subleases</b>	Subleases of sites subject to Leases which St George Community Housing Co-operative Limited, in its role as "the Ground Lessee", may be required to grant to the NSW Land and Housing Corporation ("Housing") (see section 3.4.5.2)
<b>Tenancy Agreements</b>	Tenancy agreements with public housing tenants. Existing Tenancy Agreements have the NSW Land and Housing Corporation ("Housing") as the landlord. In most cases future Tenancy Agreements will have St George Community Housing Co-operative Limited, in its role as "the Ground Lessee", as the landlord, but for sites subject to Subleases (if any) the NSW Land and Housing Corporation ("Housing") will be the landlord.
<b>Tenancy Services Contract</b>	Bonnyrigg Living Communities Project Tenancy Services Contract executed by St George Community Housing Co-operative Limited, in its role as "the Tenancy Services Contractor", and Spotless P&F Pty Limited ("the Facilities Management Contractor"), dated 12 February 2007
<b>Tenancy Services Contractor</b>	St George Community Housing Co-operative Limited (which also has another role, as "the Ground Lessee")
<b>Tenancy Services Side Deed</b>	Tenancy Services Side Deed executed by the NSW Land and Housing Corporation ("Housing"), Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), St George Community Housing Co-operative Limited (in its role as "the Tenancy Services Contractor") and Spotless P&F Pty Limited ("the Facilities Management Contractor", also known as "the Services Contractor"), dated 12 February 2007
<b>Undertaking Agreement</b>	Undertaking Agreement executed by St George Community Housing Co-operative Limited (in its role as "the Ground Lessee") and Bonnyrigg Partnerships Nominee Pty Limited ("the Project Company"), dated 12 February 2007
<b>Westpac BP Trustee</b>	WEST BP Pty Limited (one of "the Partners")
<b>Westpac</b>	Westpac Banking Corporation

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