



HERBERT
SMITH
FREEHILLS

Deed

Castle Towers Shopping Centre Stage 3 Extension

Planning Agreement

The Hills Shire Council

Roads and Maritime Services

QIC Limited



Contents

Table of contents

1	Definitions, interpretation and agreement components	3
	1.1 Definitions.....	3
	1.2 Interpretation	6
2	Planning Agreement	7
3	Application of this deed	7
4	Operation of this deed	7
5	Showground Road Upgrade Works	7
6	Extension of time	9
7	Payment of the First Monetary Contribution	9
8	Payment of the Second Monetary Contribution	9
9	Dedication of land as a public road and Caveat	10
	9.1 Dedication of land.....	10
	9.2 QIC must not deal with property	10
	9.3 Caveat.....	11
10	Application of sections 94, and 94A of the EPA Act to the Development	11
11	Registration, Consents to Registration, Release and Expenses	12
	11.1 Registration	12
	11.2 Consents to Registration	12
	11.3 Release from Registration	12
	11.4 Registration Expenses.....	12
12	No fetter	13
13	Enforcement	13
14	Explanatory Note	13
15	QIC's right to sell Land	13
16	Dispute resolution	14
	16.1 Notice of dispute.....	14
	16.2 Response to Claim Notice	14
	16.3 Negotiation	14
	16.4 Further notice if not settled	14
	16.5 Mediation.....	14
	16.6 Litigation.....	15
	16.7 Exchange of information.....	15
	16.8 Continue to perform obligations.....	15
17	GST	15
	17.1 Interpretation	15
	17.2 Reimbursements	15
	17.3 Additional amount of GST payable	16



Contents

	17.4 Variation	16
18	General	16
	18.1 Costs	16
	18.2 Notices	17
	18.3 Waiver	17
	18.4 Governing law.....	17
	18.5 Prior agreements superseded.....	17
	18.6 Modification of deed	17
	18.7 Representations and warranties	18
	18.8 Severability.....	18
	18.9 Confidentiality, media releases and enquiries.....	18
	18.10 Counterparts.....	18
	18.11 No fiduciary relationship	18
	18.12 Further acts	18
	Signing page	19
	Schedule 1A	
	Notice details	21
	Schedule 1B	
	Schedule 2A	
	Land to be dedicated as a public road	24
	Schedule 2B	
	Indicative plan of land to be dedicated	25
	Schedule 2C	
	Easement Lands	26
	Schedule 2D	
	Construction Zone Lands	27
	Schedule 3A	
	The Land comprising the Development	28
	Schedule 3B	
	Indicative plan of road reserves	29



HERBERT
SMITH
FREEHILLS

Contents

Schedule 4	
Agreed Concept Design	30
Schedule 5	
Access Licence	31
Schedule 6	
Easement Terms	32
Schedule 7	
Public Positive Covenant	33

Herbert Smith Freehills owns the copyright in this document and using it without permission is strictly prohibited.



Planning Agreement

Date ▶ 10 January 2017

Between the parties

The Hills Shire Council of 3 Columbia Crt, Baukham Hills, NSW
2153

(Council)

Roads and Maritime Services ACN 236 371 088 of 101 Miller
Street, North Sydney, NSW 2060

(RMS)

QIC Limited ACN 130 539 123 of Level 5, Central Plaza Two, 66
Eagle Street, Brisbane, Qld 4000

(QIC)

Recitals

- 1 On 14 August 2007, QIC lodged development application DA 297/2008/HB with Council.
- 2 On 8 February 2011, Council determined to approve the DA by granting the Development Consent, subject to conditions.
- 3 On 5 December 2011, QIC brought the Proceedings, challenging the validity of the Showground Road Condition.
- 4 On 15 March 2012, QIC lodged an application to modify the Development Consent under section 96 of the EPA Act.
- 5 The Modification Application sought to modify the Showground Road Condition.
- 6 QIC agreed to pay RMS a monetary contribution towards the implementation of the Showground Road Upgrade Works in complete satisfaction of all requirements.
- 7 The parties agreed that RMS would carry out the Showground Road Upgrade Works.
- 8 On 12 September 2013, QIC, RMS and Council entered into a voluntary planning agreement under section 93F of the EPA Act which documented the agreement between them in respect of the Showground Road Upgrade Works.
- 9 On 13 March 2014 Council approved the application to modify the Development Consent.
- 10 On 23 December 2014 QIC lodged the New DA with the Council in respect of a new proposal for the Stage 3 Expansion Project



HERBERT
SMITH
FREEHILLS

and amended that proposal on 30 November 2015.

11 The parties wish to document the revised agreement between them in respect of the Showground Road Upgrade Works in this planning agreement which is governed by Subdivision 2 of Division 6 of Part 4 of the EPA Act.

The parties agree as follows:



1 Definitions, interpretation and agreement components

1.1 Definitions

The meanings of the terms used in this agreement are set out below.

Term	Meaning
Agreed Concept Design	the works outlined in drawing NB00115-DG-RD-0031_A prepared by RMS which is contained in Schedule 4.
Approvals	any approval, authorisation, consent, licence, permit, exemption, certificate, notification, or any other approval required by Environmental Laws to carry out the Showground Road Upgrade Works, and includes, without limitation, any determination in respect of those works under Part 5 of the EPA Act.
Business Day	means a day on which banks are open for business in Sydney excluding a Saturday, Sunday or public holiday in that city.
Castle Towers Shopping Centre	the shopping centre located at 6-14 Castle Street, Castle Hill NSW 2154.
Construction Certificate	has the meaning contained in the EPA Act.
Construction Zone Lands	the land described on the plan in Schedule 2D of this deed.
Costs	includes costs, charges and expenses, including those incurred in connection with advisors.
DA	Development Application 297/2008/HB.
Development	the construction and operation of the Stage 3 Expansion Project generally in accordance with: (a) the Development Consent (as modified from time to time under the EPA Act); (b) the New DA (subject to approval by The Hills Shire Council) as modified from time to time under the EPA Act); or (c) any future development consent for an alternative proposal



Term	Meaning
	for the Stage 3 Expansion Project which is similar to the Development Consent or the New DA in terms of nature, scope and density, provided that it does not affect the works to be carried out pursuant to the Agreed Concept Design in any material manner.
Development Consent	development consent granted by The Hills Shire Council in respect of DA 297/2008/HB dated 8 February 2011.
Environmental Laws	any law, whether statute or common law, concerning environmental matters, and includes but is not limited to law concerning land use, development, pollution, contamination, waste disposal, toxic and hazardous substances, conservation of natural or cultural resources and resource allocation including any law relating to exploration for, or development or exploitation of, any natural resource.
EPA Act	<i>Environmental Planning and Assessment Act 1979</i> (NSW)
Excluded Works	any works for the purpose of upgrading Showground Road and related intersections including without limitation the Showground Road Upgrade Works and any upgrade to the Showground Road/Pennant Street intersection.
Explanatory Note	The explanatory note in relation to this deed as required by clause 25E of the <i>Environmental Planning and Assessment Regulation 2000</i> .
First Monetary Contribution	A one-off contribution of \$2,000,000 (GST exclusive) paid to RMS in accordance with clause 7 of this deed for the purpose of the Showground Road Upgrade Works.
Force Majeure Event	is limited to the following specific events or circumstances: <ol style="list-style-type: none">1 earthquake, landslide, fire or explosion, including radioactive or toxic explosion;2 war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or martial law;3 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;4 riot, civil disturbance, blockade or acts of terrorism; or5 epidemic.



Term	Meaning
Government Agency	the Crown, a minister, a government department, a corporation or authority constituted for a public purpose, a local authority or council, a court, of any officer, employee or agent of the forgoing acting as such.
Land	the land described in Schedule 3A and the road reserves depicted on the indicative plan in Schedule 3B.
Mediator	a person appointed as mediator under clause 16.5 of this deed.
New DA	means the development application DA 864/2015/JP submitted to the Council on 23 December 2014 and amended on 30 November 2015.
Prescribed Rate	the rate prescribed from time to time under the <i>Uniform Civil Procedure Rules 2005</i> as the rate of interest on judgment debts plus 2% calculated daily and compounded on the last day of each month.
Proceedings	Land and Environment Court Proceedings No. 41146 of 2011.
Replacement Retention System	has the same meaning as in the Easement.
Second Monetary Contribution	A one-off contribution of \$13,000,000 (GST exclusive) paid to RMS in accordance with clause 8 of this deed for the purpose of the Showground Road Upgrade Works.
Showground Road	Showground Road located in Castle Hill.
Showground Road Condition	Condition 34(9)-(18) of the Development Consent.
Showground Road Upgrade Works	the works described in clause 5 of this deed.
Stage 3 Expansion Project	a project for the expansion of the Castle Towers Shopping Centre on the Land or any part of the Land to substantially increase the retail and commercial floor space by up to approximately 80,000m ² to a total floor space of approximately 193,457m ² .



1.2 Interpretation

- (a) Clause headings are for convenience only and will be ignored in the interpretation of this deed.
- (b) References to a party include the successors and permitted assigns of that party.
- (c) Words importing the singular include the plural and words importing the plural include the singular.
- (d) Words importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual.
- (e) Nothing contained in this deed will be deemed or construed as creating the relationship of partnership.
- (f) References to a month mean a calendar month and a reference to a year means a calendar year.
- (g) References to any document include any permitted amendment, supplement to or replacement or novation of the document.
- (h) References to any legislation or to any section or provision of any legislation includes any:
 - (1) statutory modification or re-enactment of or any statutory provision substituted for that legislation, section or provision; or
 - (2) ordinances, by-laws, regulations and other statutory provision substituted for that legislation, section or provision.
- (i) Other grammatical forms of defined words or expressions have corresponding meanings.
- (j) 'Including' and similar expressions are not words of limitation.
- (k) A reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement.
- (l) A promise on the part of 2 or more persons binds them jointly and severally.
- (m) A reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- (n) A reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- (o) No provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (p) A reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,



is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

- (q) A reference to any monetary amount is in Australian dollars.

2 Planning Agreement

- (a) The parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the EPA Act.
- (b) Schedule 1B sets out the application of section 93F of the EPA Act in this Deed.

3 Application of this deed

This deed applies to the Development.

4 Operation of this deed

The parties agree that this deed operates and binds the parties as of the date this deed is entered into by the parties.

The parties acknowledge and agree that, to the extent that a provision or part of a provision of this deed has already been complied with, that provision or part of a provision does not need to be complied with again as a result of an amendment to this deed.

5 Showground Road Upgrade Works

- (a) Subject to clause 5(c) and clause 5(e), RMS must carry out the upgrade to Showground Road between Pennant Street and Carrington Road to four lanes and associated intersection works including any minor modifications to Council's side roads substantially in accordance with the Agreed Concept Design.
- (b) For the purposes of clause 5(a) above, RMS must:
- (1) prepare detailed design;
 - (2) obtain all necessary Approvals;
 - (3) notify QIC within 14 days of obtaining all Approvals; and
 - (4) subject to clause 9 below, acquire any land required to carry out the upgrade.
- (c) RMS must use all reasonable endeavours:
- (1) to obtain all necessary Approvals;
 - (2) to obtain Approval for the Agreed Concept Design; and
 - (3) to complete the detailed design of the Showground Road Upgrade Works,



- within 24 months after the date on which the First Monetary Contribution is paid.
- (d) The parties acknowledge that:
- (1) the Agreed Concept Design is subject to RMS obtaining all necessary Approvals;
 - (2) subject to RMS' obligation in clause 5(c), as a result of the required Approvals, the final approved and constructed design may differ from the Agreed Concept Design; and
 - (3) RMS will be taken to have complied with clause 5(a) provided that it carries out the Showground Road Upgrade Works in accordance with all Approvals.
- (e) The works described in clause 5(a) above must be completed, subject to clauses 5(f), 5(h), 5(i), 5(j) and clause 6 below within 30 months after the later of:
- (1) the date on which the Second Monetary Contribution is made;
 - (2) the date on which RMS has obtained all necessary Approvals; and
 - (3) the date on which RMS has completed the detailed design of the Showground Road Upgrade Works.
- (f) RMS agrees that it will invite tenders for the construction of the Showground Road Upgrade within 3 months from the payment of the Second Monetary Contribution.
- (g) RMS will not be in breach of this deed for any failure in the performance or observance of any obligation or condition expressed or implied in this deed on its part to the extent that such failure arises directly from a Force Majeure Event which is:
- (1) not caused or contributed to by any fault, act or omission of RMS;
 - (2) mitigated against using all reasonable precautions and any reasonable alternative measures by RMS; and
 - (3) promptly notified to QIC and Council by RMS.
- (h) A Force Majeure Event may be relied upon by RMS only to the extent that it continues to directly affect the performance or observance of this deed by that party and the party will resume performance and observance of this deed immediately after termination or abatement of the Force Majeure Event.
- (i) RMS must resume performance of its obligations under this deed as soon as practicable but, in any case, no later than 20 Business Days after termination or abatement of the Force Majeure Event.
- (j) RMS will not be in breach of this deed for any failure in the performance or observance of any obligation or condition expressed or implied in this deed on its part (including, without limitation, relating to the timing of such performance or observance) to the extent that such failure arises directly from any appeal or legal challenge to the validity of any Approval brought or commenced by a person other than QIC (and other than any person acting for or on behalf of QIC or any person acting at the direction of QIC in respect of that appeal or legal challenge). To the extent that such appeal or legal challenge occurs, RMS relies on this clause to extend the time allowed to perform its obligations in accordance with this deed, by the duration of the appeal or legal challenge.



6 Extension of time

- (a) If:
- (1) RMS is or will be delayed in carrying out the Showground Road Upgrade Works by inclement weather or any industrial action directly affecting the Showground Road Upgrade Works; and
 - (2) within 28 days after the delay occurs RMS gives QIC and Council a written notice for an extension of time for completion of the Showground Road Upgrade Works (**Notice**) setting out:
 - (i) the facts giving rise to the extension of time which is required;
 - (ii) the time by which RMS is delayed,
- RMS shall be entitled to an extension of time for completion of the Showground Road Upgrade Works, which shall be equivalent to the time by which RMS was delayed as specified in the Notice.
- (b) In preparing a Notice, RMS:
- (iii) must act reasonably; and
 - (iv) is not required to have regard to whether RMS can, by committing extra resources or incurring extra expenditure, make up the time lost.
- (c) The effect of the lodgement of a Notice is that the date for completion of the Showground Upgrade Works specified in clause 5(e) will be extended by the time period specified in the Notice.
- (d) Clause 17 applies to the determination of any dispute as to the reasonableness of RMS' actions in preparing a Notice.

7 Payment of the First Monetary Contribution

QIC must pay RMS the First Monetary Contribution by no later than 30 days after the date of this deed.

RMS acknowledges that the First Monetary Contribution has been paid by QIC.

8 Payment of the Second Monetary Contribution

- (a) Subject to clause 8(c), QIC must pay RMS the Second Monetary Contribution by no later than 30 days after each of the following conditions precedent have been satisfied:
- (1) QIC's board grants approval to proceed with the Development;
 - (2) QIC obtains a Construction Certificate for any part of the Development; and
 - (3) RMS has obtained all necessary Approvals in accordance with clause 5(b)(2) above.
- (b) QIC acknowledges and agrees that QIC:



- (1) needs board approval to proceed with the Development; and
- (2) will provide RMS with notice of any board approval to proceed with the Development within 7 days of such board approval being granted.
- (c) In any event, QIC must pay RMS the Second Monetary Contribution by no later than 60 days after the date of this deed, even if the conditions precedent in clause 8(a) have not been satisfied.

9 Dedication of land as a public road and Caveat

9.1 Dedication of land

- (a) QIC agrees, as soon as practicable after the payment of the Second Monetary Contribution but no later than 6 months after the payment of the Second Monetary Contribution, to:
 - (1) dedicate the land outlined in Schedule 2A as depicted on the indicative plan in Schedule 2B to Council as a public road (**Dedicated Lands**) at no cost to RMS or Council for the purpose of the Showground Road Upgrade Works between Pennant Street and Kentwell Avenue including the intersection of Showground Road and Kentwell Avenue; and
 - (2) grant an easement over the land identified in Schedule 2C (**Easement Lands**) generally in accordance with the terms of the Easement included at Schedule 6 to this deed.
- (b) RMS must prepare any plans, notices or other documents required to dedicate the Dedicated Lands to Council under clause 9.1(a)(1).
- (c) Subject to clause 9.1(b), the parties agree to do all things necessary to give effect to the dedication of land and grant of easement identified in clause 9.1(a).
- (d) QIC agrees that:
 - (1) it will enter into an access licence with RMS over the Dedicated Lands, the Easement Lands and the Construction Zone Lands (**Access Lands**) in the terms set out at Schedule 5 on request by RMS; and
 - (2) it will ensure that as at the date of the commencement of the term of an access licence for any part of the Access Lands, there are no improvements, stockpiles or other materials on the surface of the relevant part of the Access Lands which would restrict RMS' ability to use that part of the Access Lands for the purpose identified in the appropriate access licence; and
 - (3) all improvements, stockpiles or other materials have been removed from that part of the Access Lands and disposed of in accordance with all applicable laws

9.2 QIC must not deal with property

- (a) QIC must not during the remaining term of this deed sell, transfer, mortgage, charge or grant a lease or licence or any other right of occupancy to any person over the Dedicated Lands (**Dealing**) without first obtaining Council's consent in writing. Council may, at its absolute discretion, refuse its consent or give



consent with conditions to the extent that the Dealing would have a material adverse effect on Council's interest in the Dedicated Land.

- (b) From the date of this deed until the easement is granted over the Easement Lands in accordance with clause 9.1(a)(2), QIC must not sell, transfer, mortgage, charge or grant a lease or licence or any other right of occupancy to any person over the Easement Lands without first obtaining Council's consent in writing (which should not be unreasonably withheld).
- (c) For the avoidance of doubt, the parties agree that entry into an access licence in accordance with clause 9.1(d), the grant of an easement in accordance with clause 9.1(a)(2) and the registration of a Public Positive Covenant and extinguishment of the Easement in accordance with clause 9.4 is not a Dealing for the purposes of this clause.

9.3 Caveat

After the conditions precedent in clause 8(a) are satisfied:

- (a) QIC agrees that its obligations under this deed create a caveatable interest in the Dedicated Lands.
- (b) QIC must, within 14 days, provide Council with survey plans for the Dedicated Lands suitable to attach to a caveat.
- (c) QIC must not object to, seek to withdraw or issue a lapsing notice for a caveat lodged by Council in respect of the Dedicated Lands.
- (d) Council must not unreasonably withhold its consent to the registration of any dealing by a mortgagee that would not have a material adverse effect on Council's interest in the Dedicated Lands.
- (e) Council will give to QIC a withdrawal of caveat within 7 days of this deed being validly terminated.

9.4 Extinguishment of easement and registration of Public Positive Covenant

The parties agree that, in accordance with the terms of the Easement included at Schedule 6 to this deed and the Public Positive Covenant included at Schedule 7 to this deed, QIC may:

- (a) seek RMS's approval to construct a Replacement Retention System;
- (b) procure the registration on title of the Public Positive Covenant; and
- (c) extinguish the Easement registered on title to the Easement Lands.

10 Application of sections 94, and 94A of the EPA Act to the Development

- (a) The parties agree that this deed excludes the application of sections 94 and 94A of the EPA Act in so far as they relate to the Excluded Works.
- (b) The parties agree that no condition will be imposed, pursuant to sections 94 and 94A of the EPA Act, on
 - (1) any development consent granted for the Development; or



- (2) any modification to any development consent for the Development, relating to the Excluded Works.
- (c) For the avoidance of doubt:
 - (1) sections 94 and 94A of the EPA Act apply to all contributions referred to in condition 44 of the Development Consent other than any contributions in respect of the Excluded Works; and
 - (2) any amount payable under condition 44 of the Development Consent, will not include amounts in respect of the items in the works schedule contained in Appendix A to the Contribution Plan No 9 Castle Hill Town Centre (CP9) which are Excluded Works (currently \$1,560,000 for capital and \$780,000 for land acquisition being total costs apportioned to CP9).
- (d) Council acknowledges and agrees that notwithstanding clauses 10(a), 10(b) and 10(c) above, for the purposes of section 94B(3) of the EPA Act, it would be unreasonable for Council to impose any condition under section 94 in respect of the Excluded Works.

11 Registration, Consents to Registration, Release and Expenses

11.1 Registration

The parties agree that this deed will be registered on the Land pursuant to section 93H of the EPA Act and on registration by the Registrar-General this deed will be binding on and enforceable against the owners of the Land from time to time as if each owner for the time being had entered into this deed.

11.2 Consents to Registration

This deed must be registered on the title of the Land as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to effect the registration of this deed on the title of the Land.

11.3 Release from Registration

Council will at the request of QIC release the Land from registration of this deed where the Dedicated Lands are dedicated to Council in accordance with clause 9.1(a)(1), an easement is granted over the Easement Lands in accordance with clause 9.1(a)(2) and the First Monetary Contribution and Second Monetary Contribution have been paid to RMS and no other money is owing to RMS and Council under this deed. The obligations of the Council are satisfied when Council provides QIC with a signed Request in registrable form for the release of registration of this deed.

11.4 Registration Expenses

QIC must pay Council's reasonable expenses including registration fees, any stamp duty, legal costs and disbursements, for the registration of this deed and the subsequent removal of registration, on an indemnity basis.



12 No fetter

Nothing in this deed shall be construed as requiring the Council or RMS to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

13 Enforcement

This deed may be enforced by any of the parties in any court of competent jurisdiction.

14 Explanatory Note

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

15 QIC's right to sell Land

If:

- (a) the Second Monetary Contribution has not been paid; and
- (b) QIC proposes to sell, transfer or dispose of the whole (or any part) of the Land, QIC must:
 - (1) notify RMS no later than 28 days prior to completion of any sale, transfer or disposal of the Land;
 - (2) procure, prior to completion of the sale, transfer or disposal, appropriate security from the incoming purchaser in the form of a bank guarantee:
 - (i) in favour of RMS; and
 - (ii) to the value of any amount of the First Monetary Contribution and the Second Monetary Contribution which has not, at the time of the provision of the appropriate security, been paid; and
 - (3) ensure that the incoming purchaser, before the sale, transfer or disposal occurs, signs a deed in form and substance acceptable to RMS acting reasonably containing provisions under which the incoming purchaser agrees to comply with the obligations in this deed as if it were QIC (including obligations which arose before the transfer or assignment).
- (c) For the avoidance of doubt, clause 16(b) does not apply to any commercial or retail lease of all or part of the Castle Towers Shopping Centre.



16 Dispute resolution

16.1 Notice of dispute

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

16.2 Response to Claim Notice

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

16.3 Negotiation

The nominated representatives must:

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

16.4 Further notice if not settled

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

16.5 Mediation

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

- (a) the parties must agree the terms of reference of the mediation within 5 business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 business days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause 16.5 must:
 - (1) have reasonable qualifications and practical experience in the area of the dispute; and
 - (2) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;



- (e) the parties must within 5 business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to Costs and expenses:
 - (1) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (2) the Costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

16.6 Litigation

If the dispute is not finally resolved in accordance with clause 16.5, either party is at liberty to litigate the dispute.

16.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 16 for any purpose other than an attempt to settle a dispute between the parties.

16.8 Continue to perform obligations

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

17 GST

17.1 Interpretation

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

17.2 Reimbursements

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total



cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

17.3 Additional amount of GST payable

If GST becomes payable on any supply made by a party ("**Supplier**") under this deed:

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

17.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 17.3), varies from the additional amount paid by the Recipient under clause 17.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

18 General

18.1 Costs

- (a) The parties agree to meet their own Costs in connection with:
 - (1) performing its obligations under this deed.
- (b) QIC must pay on demand Council's costs and expenses including legal costs and disbursements on an indemnity basis, survey fees and consultant's charges reasonably incurred in relation to:
 - (1) the advertising and exhibiting of this planning agreement in accordance with the EPA Act;
 - (2) any request by QIC under this deed;
 - (3) the preparation, lodgement and withdrawal of any caveat over the Dedicated Lands or pursuant to this deed; and
- (c) QIC must pay interest on any money due to Council under clause 19.1(b) but not paid within 14 days of delivery of any tax invoice or demand to QIC at the Prescribed Rate.



18.2 Notices

- (a) A party notifying or giving notice or making a demand under this deed must do so in writing addressed to that party in accordance with the details nominated in Schedule 1A (or any alternative details nominated to the sending party by notice).
- (b) A notice given in accordance with clause 18.2(a) will be deemed to have been given and received:
 - (1) if delivered, on receipt;
 - (2) if posted via registered post, three business days after posting;
 - (3) if sent by facsimile on confirmation of the correct transmission of the facsimile; and
 - (4) any notice received after 5.00 pm or on a day not a business day shall be deemed to have been received at 9.00 am on the next business day.

18.3 Waiver

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

18.4 Governing law

This deed is governed by New South Wales law and each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this deed.

18.5 Prior agreements superseded

This deed:

- (a) wholly replaces and excludes all prior agreements, correspondence, negotiations, representations, explanations and statements between the parties covering or in connection with the matters covered by this deed; and
- (b) is the entire agreement between the parties in respect of the matters covered by this deed.

18.6 Modification of deed

No modification or alteration of any provision of this deed will be valid unless it is in writing and signed by all parties to this deed and complies with the requirements of section 93G of the EPA Act.



18.7 Representations and warranties

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

18.8 Severability

If any provision of this deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

18.9 Confidentiality, media releases and enquiries

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

18.10 Counterparts

This deed may be executed in any number of counterparts that together will constitute one instrument. A party may execute this deed by signing any counterpart.

18.11 No fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between the parties as that of a partnership, joint venture or any form of fiduciary relationship.

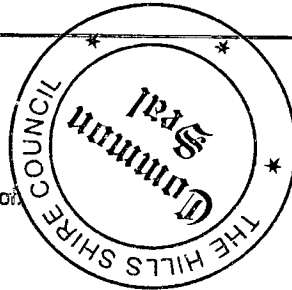
18.12 Further acts

Each party must promptly execute all documents and do all things reasonably required to effect, perfect or complete this deed and all transactions incidental to it.

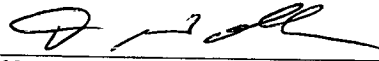


Signing page


Executed as a deed



The common seal of The Hills Shire Council
was affixed under a resolution passed by Council in the presence of

sign here ▶ 
General Manager

print name D. WATSON

sign here ▶ 
Mayor

print name Cr. Yvonne Keane

Signed for
Roads and Maritime Services
by its authorised Delegate

sign here ▶ _____
Delegate

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____



HERBERT
SMITH
FREEHILLS

Signing page

Signed for
QIC Limited
by their attorney

sign here ▶ _____
Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____



Schedule 1A

Notice details

The Hills Shire Council

Address 3 Columbia Crt, Baulkham Hills NSW 2153
Attention General Manager
Phone (02) 9843 0555
Fax (02) 9843 0258
Email council@thehills.nsw.gov.au

Roads and Maritime Services

Address 27 Argyle Street, Parramatta
Attention General Manager, Project Management
Phone 02 8849 2069
Fax 02 8849 2814
Email Peter.LETTS@rms.nsw.gov.au

QIC Limited

Address Level 46, 80 Collins St, Melbourne VIC 3000
Attention Andrew Lannen
Phone (03) 8681 4908
Fax (03) 8681 4901
Email a.lannen@qic.com



Schedule 1B

SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application - (Section 93F(1))</p> <p>QIC has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a development application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of the land to which this Planning Agreement applies - (Section 93F(3)(a))</p>	<p>The whole of the land described in Schedule 3A.</p>
<p>Description of the development to which this Planning Agreement deed applies - (Section 93F(3)(b))</p>	<p>See definition of Development in clause 1.</p>
<p>The scope, timing and manner of delivery of contribution required by this Planning Agreement - (Section 93F(3)(c))</p>	<p>See clauses 1.1, 7 and 8.</p>
<p>Applicability of Section 94 of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94 of the Act is excluded in respect of any development consent granted for, or modification for, the Development relating to the Excluded Works.</p>
<p>Applicability of Section 94A of the Act - (Section 93F(3)(d))</p>	<p>The application of section 94A of the Act is excluded in respect of any development consent granted for, or modification for, the Development relating to the Excluded Works.</p>



SUBJECT and SUB-SECTION OF THE ACT	THIS PLANNING AGREEMENT
Applicability of Section 94EF of the Act - (Section 93F(3)(d))	The application of section 94EF of the Act is not excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies - (Section 93F(3)(e))	The application of section 94 of the Act is excluded in respect of any development consent granted for, or modification for, the Development relating to the Excluded Works.
Mechanism for Dispute resolution - (Section 93F(3)(f))	See clause 17.
Enforcement of this Planning Agreement - (Section 93F(3)(g))	See clause 14.
Registration of this Planning Agreement (Sections 93F(3)(g) and 93H)	Yes (see clause 12 of this deed).
No obligation to grant consent or exercise functions - (Section 93F(9))	See clause 13.



Schedule 2A

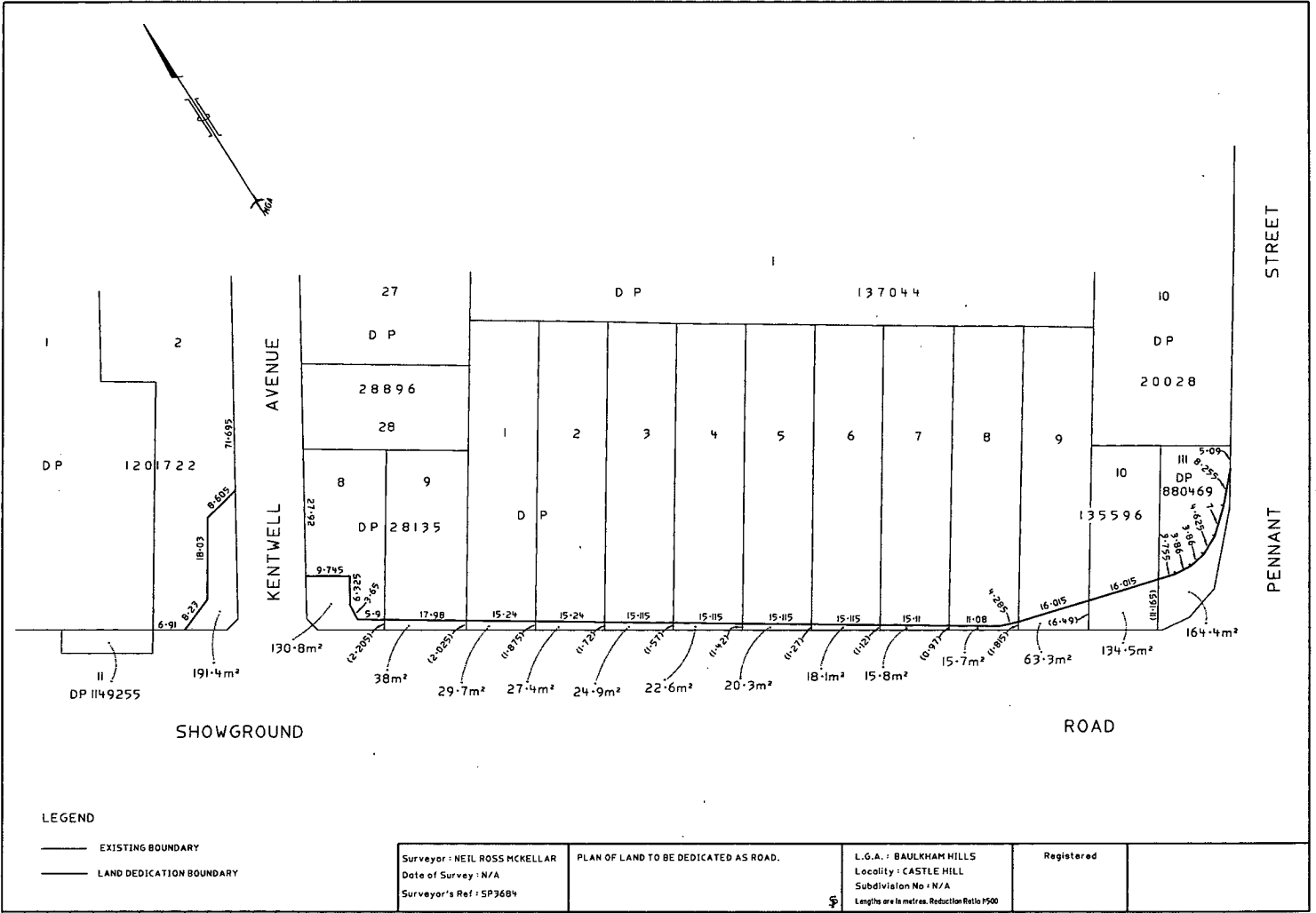
Land to be dedicated as a public road

- Part Lot 7 DP 28135 - (estimated area of 191.4m²)
- Part Lot 8 DP 28135 – (estimated area of 130.8m²)
- Part Lot 9 DP 28135 – (estimated area of 38m²)
- Part Lot 1 DP 135596 – (estimated area of 29.7m²)
- Part Lot 2 DP 135596 – (estimated area of 27.4m²)
- Part Lot 3 DP 135596 – (estimated area of 24.9m²)
- Part Lot 4 DP 135596 – (estimated area of 22.6m²)
- Part Lot 5 DP 135596 – (estimated area of 20.3m²)
- Part Lot 6 DP 135596 – (estimated area of 18.1m²)
- Part Lot 7 DP 135596 – (estimated area of 15.8m²)
- Part Lot 8 DP 135596 – (estimated area of 15.7m²)
- Part Lot 9 DP 135596 – (estimated area of 63.3m²)
- Part Lot 10 DP 135596 – (estimated area of 134.5m²)
- Part Lot 111 DP 880469 – (estimated area of 164.4m²)



Schedule 2B

Indicative plan of land to be dedicated

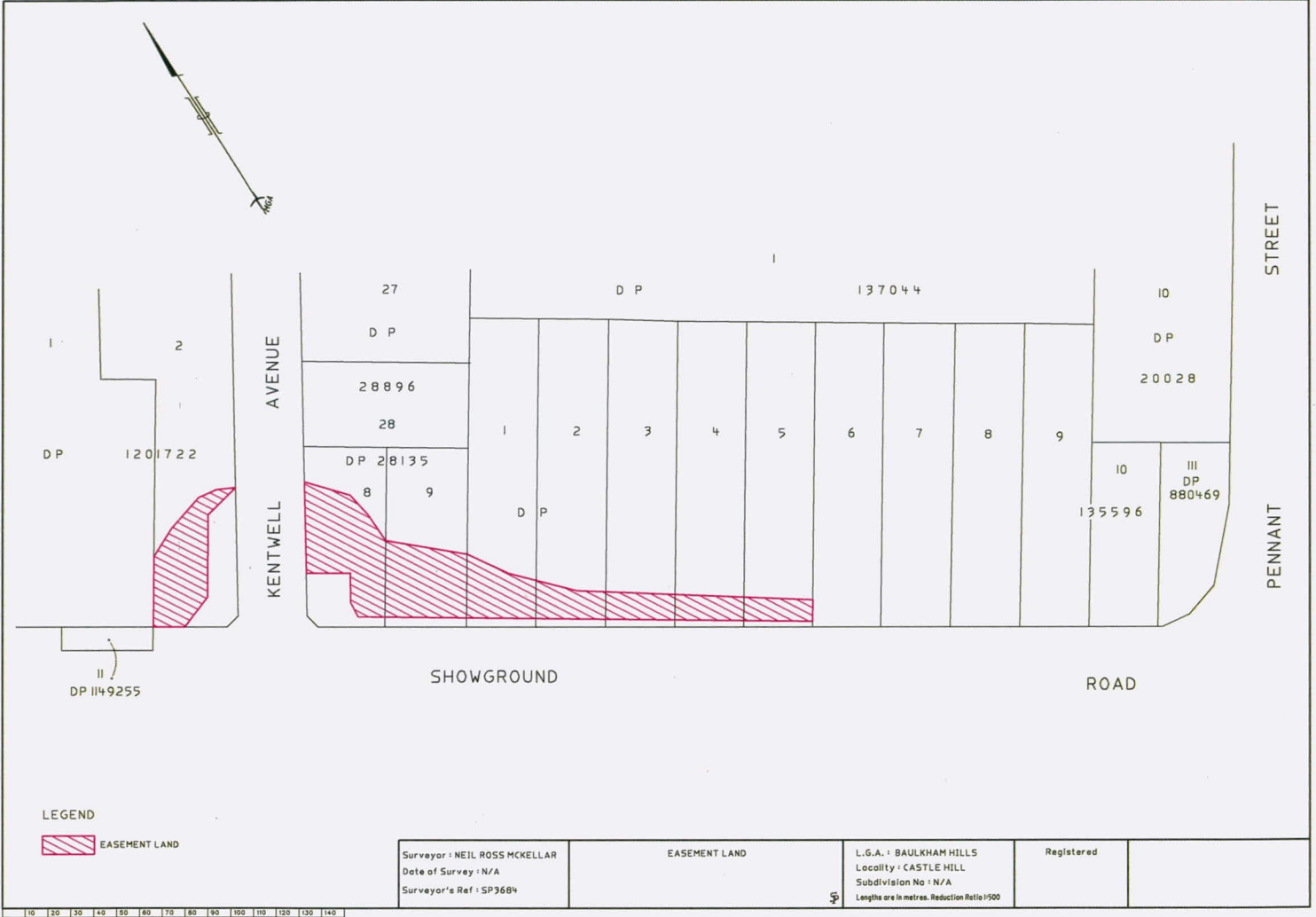




HERBERT
SMITH
FREEHILLS

Schedule 2C

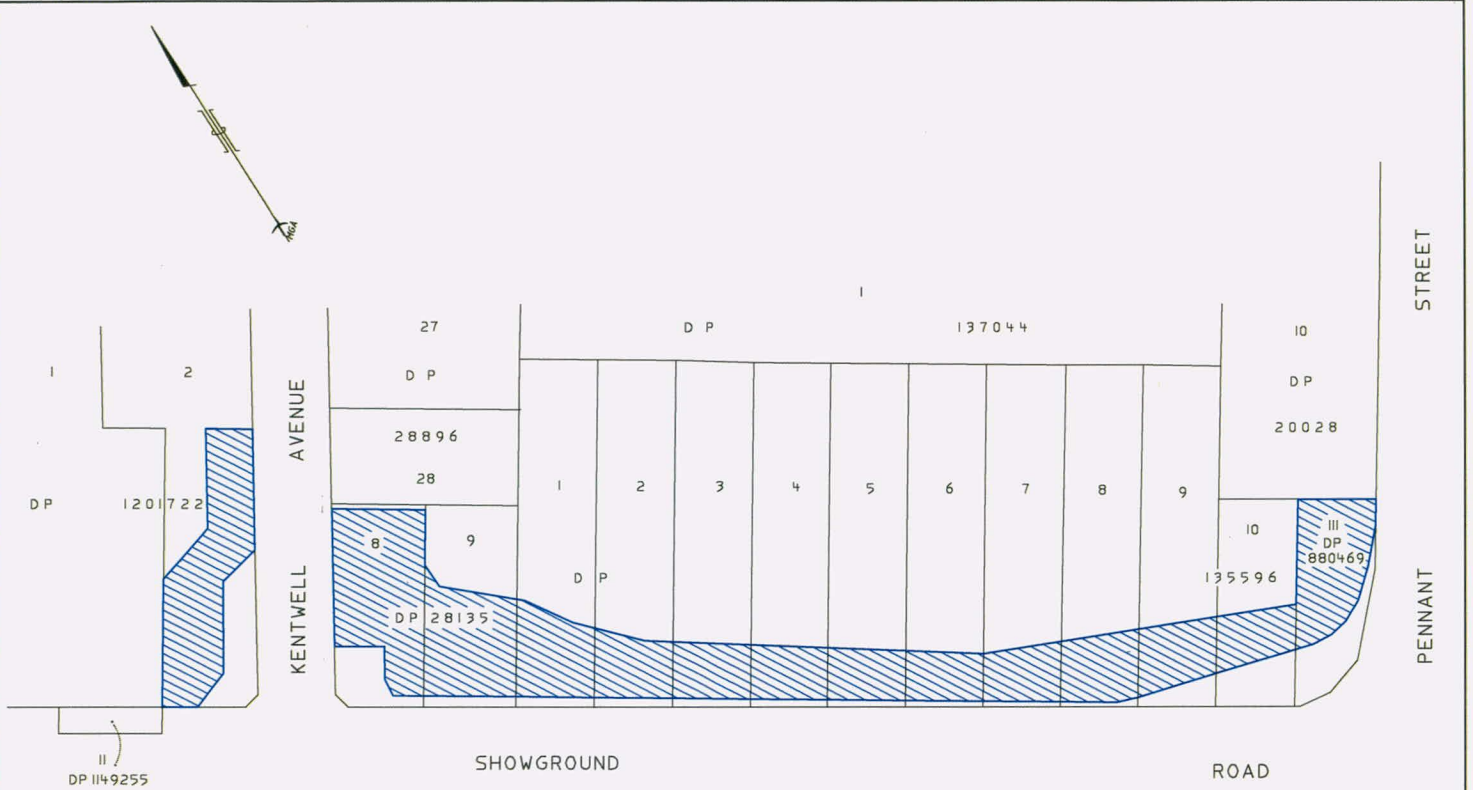
Easement Lands





Schedule 2D

Construction Zone Lands



LEGEND

 LAND TO BE LEASED FOR CONSTRUCTION PURPOSES

Surveyor: NEIL ROSS MCKELLAR
Date of Survey: N/A
Surveyor's Ref: SP3684

LEASED FOR CONSTRUCTION PURPOSES

L.G.A.: BAULKHAM HILLS
Locality: CASTLE HILL
Subdivision No: N/A
Lengths are in metres. Reduction Ratio 1:500

Registered



Schedule 3A

The Land comprising the Development

Property Details

Lot 101 DP 1000798
Lot 3 DP 658279
Lot 1 DP 574504
Lot 1 DP135699
Lot 500 DP 1006106
Lot 101 DP 774379
Lot 102 DP 774379 (Telstra Land)
Lot 2 DP 1031770 (Castle Place)
Lot 1 DP 1031769 (Castle Street)
Lots C & D DP 41171
Lot 600 DP 1025421
Lot 2 DP 1201722
Lot 10 DP 20028
Lot 111 DP 880469
Lots 1 – 10 DP 135596
Lots 12 & 13 DP 2496
Lot 1 DP 137044
Lots 23 – 28 DP 28896
Lots 8 & 9 DP 28135

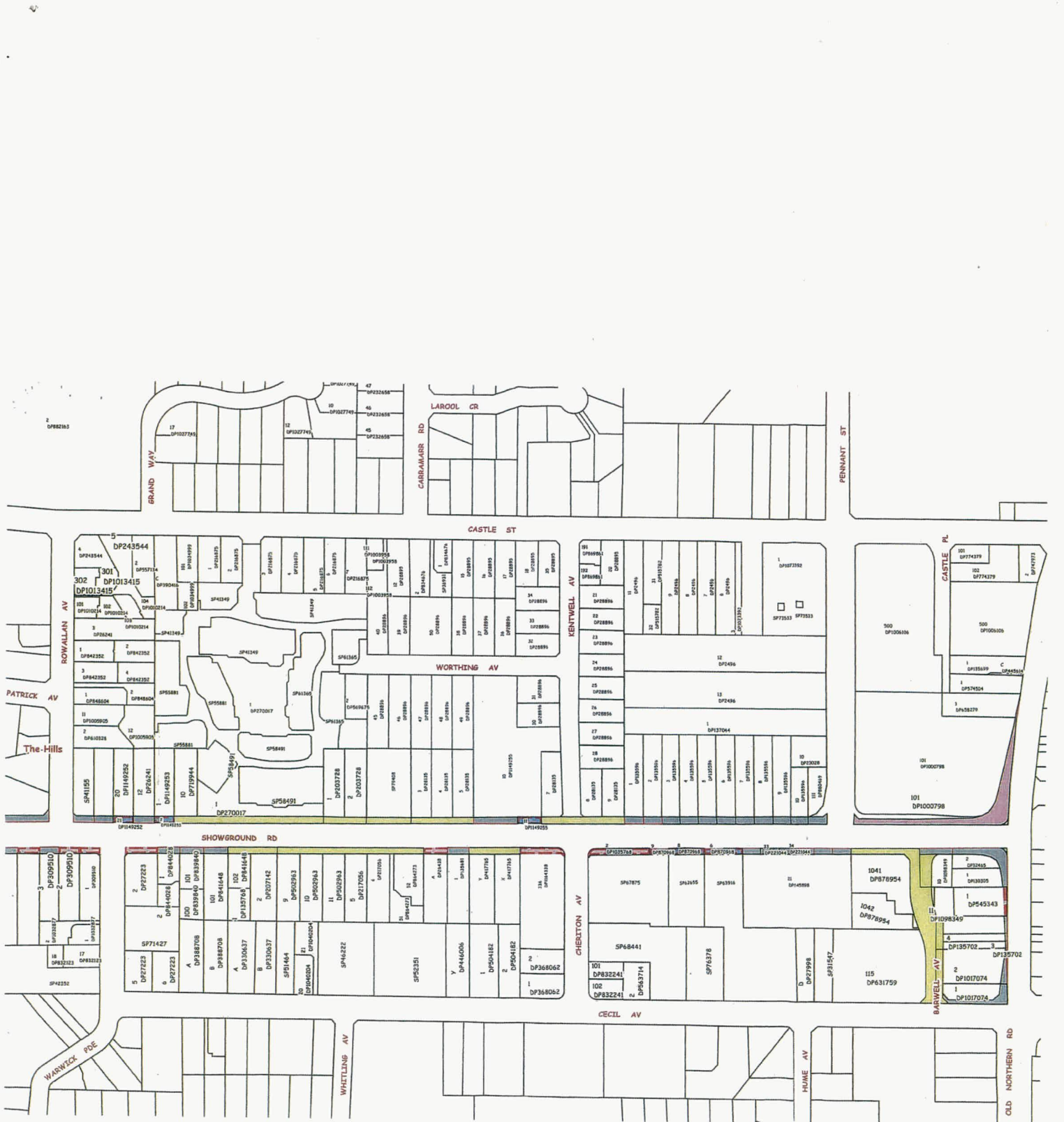
Road Reserves

Kentwell Avenue between Showground Road and Worthing Place (Southern Portion)
Showground Road reserve from the intersection of Old Northern Road to Carrington Road
Pennant Street from Showground Road to Castle Street (Southern Portion)
North West Railway Reserve (Tunnel Strata) Lot 121 DP 1180956



Schedule 3B

Indicative plan of road reserves



EC added

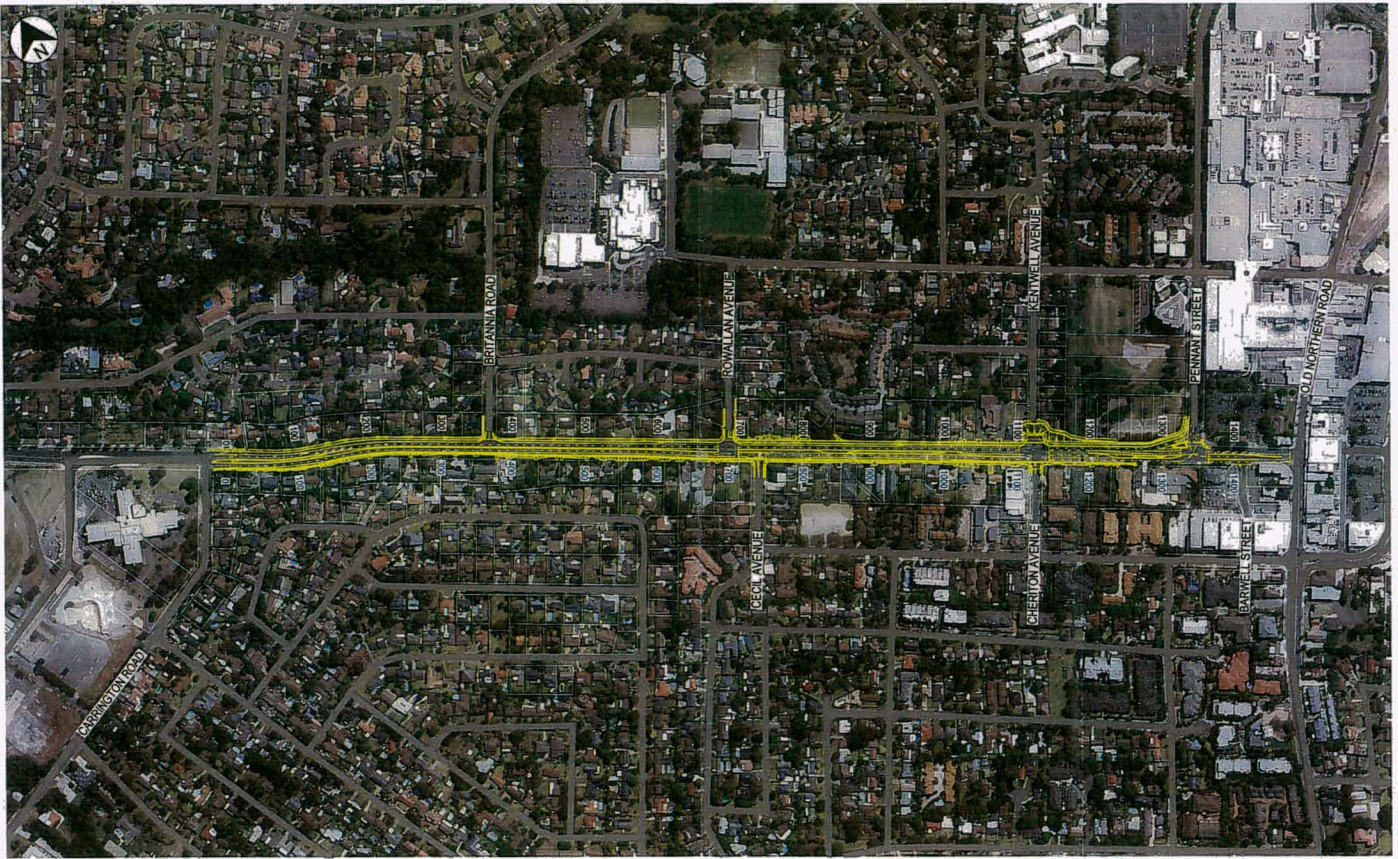




HERBERT
SMITH
FREEHILLS

Schedule 4

Agreed Concept Design





Schedule 5

Access Licence

Deed of licence for access

QIC Limited

Licensor

Roads and Maritime Services

Licensee

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 195/17849/80128671

Contents

1.	Definitions and interpretation	2
1.1	Definitions	2
1.2	Interpretation	3
2.	The Grant of licence	4
2.1	Licence	4
2.2	Personal rights only	4
2.3	No dealing	4
2.4	Holding over	4
2.5	Licensee early termination	4
3.	No reliance	5
4.	Licence Fee	5
5.	Access over Land	5
6.	Licensee's obligations and Release	5
6.1	Obligations	5
6.2	Release	6
7.	Licensor's acknowledgement	6
8.	Licensor's obligations	6
8.1	Removal of improvements etc. from Licensed Area	6
8.2	Licensor's use of the Licenced Area	6
8.3	Holding Over	6
9.	Insurance	7
10.	Principal Contractor	7
11.	Indemnities and release	7
11.1	Licensee accepts risk	7
11.2	Indemnity	7
11.3	Release	7
12.	Sale of the Land	8
12.1	Sale	8
12.2	Head lease	8
13.	Default	8
14.	Licence ends	8
14.1	Events	8
14.2	Licensee to vacate	8
15.	General	9
15.1	Notices	9
15.2	Governing law	9
15.3	Jurisdiction	9
15.4	Stamp duties	10
15.5	Licensee's Employees	10
15.6	Amendments	10
15.7	Counterparts	10
15.8	Waiver	10
15.9	Further acts and documents	10
15.10	Severance	11
16.	GST	11
16.1	Definitions and interpretation	11
16.2	Reimbursements	11

16.3 GST payable 11
16.4 Variation 12
16.5 Penalties 12
17. Reference schedule 12
Annexure A - Plan of Licensed Area 15
Annexure B - Asbestos Clearance Certificate 16

Deed of licence

Date

Parties **QIC Limited ACN 130 539 123** of Level 5, Central Plaza Two, 66 Eagle Street, Brisbane QLD 4000 (**Licensor**)

Roads and Maritime Services ACN 236 371 088 of 101 Miller Street, North Sydney NSW 2060 (**Licensee**)

Background

- A. The Licensor owns the Land on which the Licensed Area is located.
- B. The Licensee has asked the Licensor to grant the Licensee a licence of the Licensed Area for the Permitted Use.
- C. The Licensor has agreed to grant the licence subject to this deed.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Asbestos Clearance Certificate means the Clearsafe Asbestos Clearance Certificate dated 8 October 2015 and attached to this deed at Annexure B.

Commencing Date means the date in item 2.

Construction Zone Lands has the same meaning as in clause 1.1 of the Planning Agreement.

Contamination means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Dedicated Lands has the same meaning as in clause 9.1(a)(1) of the Planning Agreement.

Easement means the easement to be granted over the Easement Lands in accordance with clause 9.1(a)(2) of the Planning Agreement.

Easement Lands has the same meaning as in clause 9.1(a)(2) of the Planning Agreement.

Environmental Laws has the same meaning as in clause 1.1 of the Planning Agreement.

Expiry Date means, subject to clause 2.5, the date in item 3.

GST includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and

- (b) "GST equivalents" payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

GST law has the same meaning as in the GST Act.

Land means the land specified in item 1 on which the Licensed Area is located.

Licensed Area means that part of the Land specified in item 4.

Licensee's Employees means the Licensee's employees, officers, consultants, agents, contractors and invitees or any of them.

Licensee's Property means all the operating plant, equipment and property owned, leased or used by or on behalf of the Licensee in the Licensed Area.

Licensor's Employees means the Licensor's employees, officers, consultants, agents, contractors and invitees or any of them.

Licensor's Property means all the operating plant, equipment and property owned, leased or used by or on behalf of the Licensor in the Licensed Area.

Permitted Use means the use specified in item 5.

Planning Agreement means the Voluntary Planning Agreement entered into between The Hills Shire Council, the Licensor and the Licensee dated ~~[to be inserted]~~.

Showground Road Upgrade Works has the same meaning as in the Planning Agreement.

Surface means the ground level of the relevant land as at the date of this deed.

Term means the term of the licence granted under this deed for the Licensed Area, beginning on the Commencing Date and ending on the Expiry Date.

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) a capitalised term which is not defined in this deed but is defined in the Lease has the meaning given to that term in the Lease;
- (c) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (d) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (f) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency; and
- (m) a reference to an item is to an item in the reference schedule to this deed.

2. The Grant of licence

2.1 Licence

The Licensor grants the Licensee and the Licensee accepts the grant of a non-exclusive licence for the Term for the Permitted Use, subject to this deed. The Licensor will give the Licensee and the Licensee's Employees all necessary access over the Licensed Area to enable the Licensee to carry out the Showground Road Upgrade Works on the Licensed Area.

2.2 Personal rights only

The rights conferred on the Licensee by this deed are personal rights in contract only and do not create any tenancy or any estate or interest in the Licensed Area.

2.3 No dealing

The Licensee must not sublicense or part with or share possession of the Licensed Area or assign, novate or otherwise transfer any of its rights or obligations under this deed without the Licensor's consent (which must not be unreasonably withheld).

2.4 Holding over

If the Licensor has not granted the Licensee a new licence of the Licensed Area and the Licensee continues to occupy the Licensed Area after the Expiry Date, the Licensee occupies the Licensed Area under a monthly licence that:

- (a) subject to clause 14.1, either party may terminate on one months' notice ending on any day; and
- (b) on the same terms as this deed (with any changes appropriate to a monthly licence).

2.5 Licensee early termination

The Licensee may terminate the licence and this deed at any time by giving not less than 14 days' written notice to the Licensor.

3. No reliance

The Licensee warrants that:

- (a) it has inspected the Licenced Area;
- (b) unless stated otherwise in the deed, it has not entered into this deed in reliance on any express or implied statement, representation, promise or warranty made by the Licensor or on its behalf in respect of any matter relating to the Licenced Area or which has or may affect the Licenced Area, including but not limited to:
 - (i) its state of repair;
 - (ii) its environmental condition; and
 - (iii) its suitability for the Permitted Use;
- (c) the Licensee relies on its own enquiries in relation to all matters affecting the Licenced Area, whether or not disclosed in this deed; and
- (d) it has satisfied itself about whether the Licenced Area is suitable for the Permitted Purpose.

4. Licence Fee

The Licensee is not required to pay a licence fee or any other moneys to the Licensor for use of the Licensed Area in accordance with this deed.

5. Access over Land

The Licensor grants the Licensee and the Licensee's Employees a right to go, pass and repass at all times with or without vehicles, tools, plant, equipment and machinery across so much of the Land as may be reasonably necessary for the purpose of accessing the Licensed Area for the Permitted Use. The Licensee must comply with the Licensor's reasonable directions in relation to accessing the Land.

6. Licensee's obligations and Release

6.1 Obligations

The Licensee must:

- (a) not use the Licensed Area for any purpose except the Permitted Use;
- (b) not make any alterations or additions to the Licensed Area, other than those required to undertake the Permitted Use and the Showground Road Upgrade Works;
- (c) comply on time with all laws (including Environmental Laws) and the requirements of authorities in connection with the Licensed Area and the Licensee's use and occupation of the Licensed Area;
- (d) promptly make good any damage that it causes to the Dedicated Lands or the Licensor's Property on the Licensed Area during the Term in carrying out the Permitted Use (excluding damage that forms part of or is contemplated by the Showground Road Upgrade Works), including remediation of any Contamination or pollution on, in, under or emanating from the Dedicated Lands caused by the Licensee or the Licensee's Employees;

- (e) promptly make good any damage that it causes to the Easement Lands during the Term in carrying out the Permitted Use (excluding damage that forms part of or is contemplated by the Showground Road Upgrade Works), including remediation of any Contamination or pollution on, in, under or emanating from the Easement Lands caused by the Licensee or the Licensee's Employees; and
- (f) promptly make good any damage that it causes to the Construction Zone Lands during the Term in carrying out the Permitted Use (excluding damage that forms part of or is contemplated by the Showground Road Upgrade Works), including remediation of any Contamination or pollution on, in, under or emanating from the Construction Zone Lands:
 - A. caused by the Licensee or the Licensee's Employees; and
 - B. in the case of asbestos, asbestos identified in the Asbestos Clearance Certificate.

6.2 Release

The Licensee releases the Licensor from and against all claims, actions, damage, loss, liability, costs or expenses for which the Licensor will or may become liable in respect of any Contamination or pollution required to be remediated by the Licensee pursuant to clauses 6.1(d), 6.1(e) and 6.1(f) of this deed on the Dedicated Lands, the Construction Zone Lands and the Easement Lands.

7. Licensor's acknowledgement

The Licensor acknowledges and agrees that it:

- (a) is responsible for the remediation of any Contamination in, on or under the Licensed Area, other than the Contamination for which the Licensee is required to remediate under clauses 6.1(d), 6.1(e) and 6.1(f) of this deed; and
- (b) is responsible for all asbestos on the land the subject of the Asbestos Clearance Certificate to the extent that it is not identified in the Asbestos Clearance Certificate.

8. Licensor's obligations

8.1 Removal of improvements etc. from Licensed Area

The Licensor must, at its cost, ensure that on or before the Commencing Date there are no improvements (including buildings and structures), stockpile waste including any asbestos or other materials on the Surface of the Licensed Area which would restrict the Licensee's ability to use the Licensed Area for the Permitted Use.

8.2 Licensor's use of the Licenced Area

The Licensor acknowledges that the Licensor or the Licensor's Employees may not access the Licenced Area during the Term except with the prior written consent of the Licensee (with or without reasonable conditions), which the Licensee must not unreasonably refuse.

8.3 Holding Over

The Licensor must not, during the Term and any period of holding over under clause 2.4, grant a lease or licence or any other right of occupancy to any person over the Licensed Area without the Licensee's consent (which must not be unreasonably withheld).

9. Insurance

Before the Licensee or the Licensee's Employees may access the Land or the Licenced Area in accordance with this deed, the Licensee must:

- (a) effect and maintain public liability insurance for an amount of not less than \$20,000,000 in respect of any one claim or occurrence; and
- (b) ensure that any contract entered into in respect of the Showground Road Upgrade Works carried out on the Licenced Area contains provisions requiring the contractor to have in place the following insurances:
 - (i) contract works insurance; and
 - (ii) public liability insurance for an amount of not less than \$20,000,000 in respect of any one claim or occurrence.

10. Principal Contractor

The Licensee acknowledges that during the Term it is the principal contractor for the purposes of clause 293 of the *Work Health and Safety Regulation 2011*.

11. Indemnities and releases

11.1 Licensee accepts risk

The Licensee uses the Licensed Area at its own risk.

11.2 Indemnity

The Licensee indemnifies the Licensor from and against any claim, action, damage, loss, liability, cost or expense which the Licensor incurs or is liable in respect of or arising from:

- (a) any damage, loss, injury or death, to the extent to which the same is caused or contributed to by the negligent acts or omissions of the Licensee or the Licensee's Employees in carrying out the Permitted Use on the Licensed Area under this deed, during the Term; and
- (b) any default by the Licensee or the Licensee's Employees under this deed,

except to the extent that such claim, action, damage, loss, liability, cost or expense has been caused or contributed to by the act, negligence, default, or breach of this deed by the Licensor, the Licensor's Employees or any third parties (including any person occupying the Licensed Area under or through a lease, licence or other right of occupation granted by the Licensor (other than under this deed) and not being the Licensee's Employees).

11.3 Release

The Licensee releases the Licensor from and against all claims, causes of action, damages, loss, liability, costs or expenses for which the Licensor will or may be or become liable in respect of or arising from:

- (i) the Licensee exercising its rights under this deed; and
- (ii) any action by the Licensor to remedy a breach of this deed by the Licensee,

except to the extent caused by the negligent acts or omissions of the Licensor.

12. Sale of the Land

12.1 Sale

If the Licensor sells the Land:

- (a) the Licensor must ensure that the purchaser enters into an agreement with the Licensee that preserves the Licensee's rights and obligations under this deed; and
- (b) the Licensor is no longer bound by this deed from the time the purchaser enters into the agreement referred to in clause 12.1(a) except in respect of matters arising before the date of that agreement.

12.2 Head lease

If the Licensor grants a head lease of the Land, the Licensor must ensure that the head lease expressly preserves the rights and obligations of the Licensee under this deed.

13. Default

The Licensee is in default under this deed and the Licensor may terminate this deed if the Licensee does not remedy that default within a reasonable time after the Licensor serves a written notice on the Licensee requiring the Licensee to remedy the default.

14. Licence ends

14.1 Events

This deed ends on the earliest to occur of:

- (a) the Expiry Date (but if the Licensee holds over under this deed, the date the holding over ends); and
- (b) the date this deed is terminated.

14.2 Licensee to vacate

When this deed ends, the Licensee must, except with respect to those parts of the Licensed Area that are the Dedicated Lands or the Easement Lands:

- (a) vacate the Licensed Area and leave it in a safe condition;
- (b) remove all waste brought onto or excavated from the Licensed Area by or on behalf of the Licensee;
- (c) remove the Licensee's Property (unless it is not required to be removed pursuant to the Showground Road Upgrade Works) and any other items brought onto the Licensed Area by or on behalf of the Licensee; and
- (d) hand over to the Licensor any security access devices or keys to the Licensed Area.

15. General

15.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as shown in item 6 (or as otherwise notified by that party to each other party from time to time);
- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, of the addressee, or sent by email to the addressee, in accordance with clause 15.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of delivery by hand) on delivery; and
 - (iv) (in the case of delivery by email) at the time of departure from the sender's mail server unless the sender receives within two hours an automated message generated by the addressee's mail server that the email has not been delivered. If an automated reply is received indicating that the addressee is no longer at that email address, or will not receive the email immediately, then it shall not constitute notice,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

Notwithstanding clause 15.1(d), a party may by notice in writing to the other party require all notices to that party to be served personally or by mail.

15.2 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

15.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 15.3(a).

15.4 Stamp duties

The Licensee:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;
- (b) indemnifies the Licensor against any liability arising from failure to comply with clause 15.4(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

15.5 Licensee's Employees

The Licensee must ensure that the Licensee's Employees comply, if appropriate, with the Licensee's obligations under this deed.

15.6 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

15.7 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

15.8 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

15.9 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

15.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

16. GST

16.1 Definitions and interpretation

In this clause 16:

- (a) **Agreed Price** means the amount the Recipient is required to pay under any provision of this deed (except this clause 16) for a supply;
- (b) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise;
- (c) a reference to a supply is a supply under this deed;
- (d) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (e) words and phrases used that are also used in the GST Act have the same meaning as in that Act, except that:
 - (i) "GST" has the meaning given in clause 1.1;
 - (ii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply; and
 - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause.

16.2 Reimbursements

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

16.3 GST payable

Despite the other provisions of this deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount equal to the GST in connection with that supply;
- (c) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply; and

- (d) the additional amount payable under clause 16.3(b) must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the taxable supply to which the additional amount relates, whichever is the later.

16.4 Variation

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 14 days after the date of the adjustment event.

16.5 Penalties

If the Recipient does not comply with its obligations under this deed or with its obligations under the GST law in connection with this deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

17. Reference schedule

- | | |
|---------------|--|
| Item 1 | Land |
| | As shown on the plan attached to Annexure A. |
| Item 2 | Commencing Date |
| | Within 7 days from the date of execution of the Planning Agreement. |
| Item 3 | Expiry Date |
| | The Expiry Date is: |
| | (i) with respect to the Dedicated Lands, 11.59pm on the date immediately prior to registration of the transfer of the Dedicated Lands to the Council under clause 9.1(a)(1) of the Planning Agreement; and |
| | (ii) with respect to the Licensed Area other than the Dedicated Lands, 24 months from the Commencing Date. |
| Item 4 | Licensed Area |
| | The area shown as the "Licensed Area" on the plan attached to Annexure A. |
| Item 5 | Permitted Use |
| | The Licensee may use the Licensed Area to: |
| | (i) do all things reasonably necessary to carry out and complete the Showground Road Upgrade Works in accordance with its obligations under the Planning Agreement; |
| | (ii) install and construct temporary facilities and services, barricades, guards, fencing, security services and devices, warning signs, lighting and remove obstructions and protect services and otherwise do all things |

reasonably necessary to ensure the safety and security of the Licensed Area and the Showground Road Upgrade Works; and

(iii) for any other use which the Licensor approves (acting reasonably).

Item 6**Address for service of notices****Licensee:**

Name: Roads and Maritime Services
Address: 27 Argyle Street, Parramatta
For the attention of: General Manager, Project Delivery

Licensor:

Name: QIC Limited
Address: Level 46, 80 Collins Street, Melbourne
For the attention of: Andrew Lannen

Executed as a deed.

**Executed by Roads and Maritime Services
ACN 236 371 088** by its authorised Delegate in
the presence of:

Signature of witness

Signature of Delegate

Full name of witness

Full name of Delegate

Executed by QIC Limited ACN 130 539 123 in
accordance with section 127 of the Corporations
Act 2001 (Cth):

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Annexure A - Plan of Licensed Area

Annexure B - Asbestos Clearance Certificate

Schedule 6 - Easement

1. Definitions and interpretation

1.1 Definitions

In this easement:

Authority includes any government, statutory, public or other authority or body having jurisdiction over the Benefited Land, the Burdened Land, the Easement Area or any part thereof or any matter or thing in relation thereto.

Benefited Land means *[insert title references]*. Where the context permits, the term includes all improvements, infrastructure or any other structures on the Benefited Land.

Burdened Land means *[insert title references]*. Where the context permits, the term includes all improvements, infrastructure or any other structures on the Burdened Land.

Business Day means a day other than a Saturday, Sunday or public holiday in New South Wales.

Date of the Easement means the date this document was executed.

Easement means the easement on the terms and conditions set out in this document.

Easement Area means *[the area shaded pink on the plan annexed as Annexure A]*. Where the context permits, the term includes all improvements, infrastructure or any other structures on the Easement Area.

Existing Improvements means all improvements, infrastructure or any other structures on the Easement Area as at the Date of the Easement. Where the context permits, the term includes any New Improvements approved by the Grantee and constructed by or on behalf of the Grantor in accordance with this Easement.

Grantee means the registered proprietor of the Benefited Land. Where the context permits, the term includes the Grantee's agents, employees, contractors, subcontractors, lessees, licensees and invitees and all other persons authorised by the Grantee.

Grantor means the registered proprietor of the Burdened Land. Where the context permits, the term includes the Grantor's agents, employees, contractors, subcontractors, lessees, licensees and invitees and all other persons authorised by the Grantor.

GST includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

GST law has the same meaning as in the GST Act.

LPI means Land and Property Information, New South Wales.

New Improvements means any alteration to the Easement Area after the Date of the Easement, including:

- (a) altering an Existing Improvement;
- (b) altering the level of the Easement Area;
- (c) excavating the Easement Area;
- (d) constructing on the Easement Area any improvements, infrastructure or any other structures; and
- (e) planting, clearing or removing any trees, undergrowth or vegetation on the Easement Area,

but does not include the Replacement Retention System.

New Improvements do not include any alteration to the Easement Area after the Date of the Easement that is minor and will not (to the satisfaction of the Grantee acting reasonably):

- (a) adversely affect the exercise or enjoyment of rights by the Grantee under this Easement; or
- (b) cause the Grantor to be in breach of the Grantor's obligations under this Easement.

Replacement Retention System means any retention system to be constructed by the Grantor at the Grantor's cost as a replacement for the batter or embankment constructed by the Grantee.

- 1.2 Headings are for convenience only and do not affect the construction, interpretation or meaning of this Easement.
- 1.3 A reference to any statute, regulation, ordinance, local law or other statutory instrument will be deemed to extend to all statutes, regulations, ordinances, local laws or other statutory instruments amending, consolidating or replacing them.
- 1.4 Words indicating the singular include the plural and vice versa.
- 1.5 Words indicating one gender will include all other genders.
- 1.6 A reference to a person includes a reference to corporations and other entities recognised by law and includes a reference to a person's legal personal representatives, administrators, successors, assigns and transferees.
- 1.7 If the Grantor consists of two or more persons:
 - (a) a reference in this Easement to that party is to be read as a reference to each of those persons individually, and to each of them jointly; and
 - (b) those persons are bound by this Easement both individually and jointly.
- 1.8 Where under or pursuant to this Easement the day on or by which any act, matter or thing is to be done is not a Business Day, such an act, matter or thing may be done on the next proceeding Business Day.
- 1.9 A reference to the Easement Area and the Benefited Land includes the land's surface, sub-surface and strata above the surface.

2. **Easement for batter and easement for support**

- 2.1 The Grantor grants to the Grantee an easement for batter on the terms and conditions set out in this document and an easement for support to permit and suffer the Grantee's improvements, infrastructure or any other structures or works on the Benefited Land to be supported laterally by the works constructed by the Grantee under clause 2.2 or the Replacement Retention System.
- 2.2 The Grantee may construct on the Easement Area whatever batter or embankment is reasonably necessary to support the surface or subsurface of the Benefited Land or any part of it or any improvements, infrastructure or any other structures or works on the Benefited Land.
- 2.3 The Grantee may do anything reasonably necessary for the purpose specified in clause 2.2, including:
 - (a) entering the Burdened Land to:
 - (i) inspect the Burdened Land to prevent or rectify any infringement of the rights of the Grantee under this Easement; and
 - (ii) maintain, repair, change or replace all or part of the batter or embankment on the Easement Area;
 - (b) take anything onto the Burdened Land; and
 - (c) carrying out work.
- 2.4 In exercising its rights under this Easement, the Grantee must:
 - (a) ensure all work is done in a proper and workmanlike manner;

- (b) cause as little inconvenience as is practicable to the Grantor and any occupier of the Burdened Land;
- (c) cause as little damage as is practicable to the Burdened Land; and
- (d) make good any damage caused or contributed to by the Grantee.

2.5 The Grantor must do all things reasonably necessary to ensure that support for the batter or embankment on the Easement Area by the Burdened Land is maintained.

2.6 With the exception of the carrying out of any works in accordance with an approval issued by the Grantee pursuant to clause 3.4(a), 3.4(c) or clause 4.4(a), the Grantor must not, without the prior written consent of the Grantee:

- (a) remove or allow or suffer another person to remove support for the batter or embankment on the Easement Area by the Burdened Land;
- (b) change or allow or suffer another person to change support for the batter or embankment on the Easement Area by the Burdened Land;
- (c) do or allow or suffer another person to do anything that interferes with the support for or provided by or the stability of the batter or embankment on the Easement Area.

3. Consent required for New Improvements

3.1 The Grantor must not carry out or permit or suffer to be carried out any New Improvements without the Grantee's prior written consent (which must not be unreasonably withheld) in accordance with this clause 3.

3.2 When seeking the Grantee's consent, the Grantor must provide the Grantee with:

- (a) a copy of plans and specifications for any proposed New Improvements in a form and containing such information as the Grantee may reasonably require;
- (b) details of the manner and method of construction of the New Improvements;
- (c) detailed geotechnical information regarding the New Improvements in a form and containing such information as the Grantee may reasonably require; and
- (d) evidence that the Grantor has effected or procured the effecting of such insurances as are required under clause 8.

3.3 Following receipt of the Grantor's application under clause 3.2, the Grantee may request the Grantor to provide further information regarding the proposed New Improvements, including but not limited to:

- (a) updated or further plans and/or specifications addressing such matters as the Grantee may reasonably require;
- (b) details of any contractor the Grantee proposes to engage to carry out the New Improvements; and
- (c) such other information as the Grantee may reasonably require.

3.4 The Grantee must, within a reasonable time after receiving the Grantor's application under clause 3.2 and such further information as is requested under clause 3.3:

- (a) approve the Grantor's application;
- (b) refuse the Grantor's application; or
- (c) approve the Grantor's application subject to reasonable conditions.

3.5 If the Grantee issues written approval for New Improvements pursuant to clause 3.4(a) or 3.4(c), then the Grantor may only carry out the New Improvements that are approved and must in carrying out those New Improvements:

- (a) comply with any reasonable conditions imposed by the Grantee;

- (b) ensure such work is performed in a proper and workmanlike manner, using new and good quality materials that are fit for purpose, by suitably qualified contractors and supervised by a person nominated by the Grantee (if required by the Grantee);
- (c) cause as little inconvenience as is practicable to the Grantee and the Grantee's use and enjoyment of the Easement Area and the Benefited Land;
- (d) cause as little damage as is practicable to the Easement Area and the Benefited Land and any improvements, infrastructure or any other structures or works on them;
- (e) restore the Easement Area and the Benefited Land to their former condition (unless the Grantee provides otherwise);
- (f) make good any damage caused or contributed to by the Grantor or the Grantor's agents, employees, contractors, subcontractors, lessees, licensees and invitees and all other persons authorised by the Grantor;
- (g) pay on demand all costs incurred by the Grantee in considering the proposed New Improvements and in the supervision of that work, including the fees of architects, engineers and other consultants employed by the Grantee;
- (h) obtain at its expense from all relevant Authorities all approvals or permits necessary to enable such proposed work to be lawfully executed, and on request by the Grantee, produce copies of all such approvals and permits; and
- (i) upon completion of the proposed work, produce to the Grantee all certificates of compliance issued by any such Authority.

3.6 If the New Improvements are not physically commenced within 12 calendar months of the Grantee's approval, then the approval will lapse (unless otherwise stated by the Grantee) and the Grantor must not carry out such New Improvements unless and until a further application for approval is made and approved under this clause 3.

4. **Consent required for Replacement Retention System**

4.1 The Grantor must not:

- (a) alter the batter or embankment in any way; or
- (b) construct a Replacement Retention System,

without the Grantee's prior written consent in accordance with this clause 4.

4.2 The Grantee's prior written consent will not be unreasonably withheld subject to the Grantor providing the Grantee with the following when seeking the Grantee's consent:

- (a) a copy of plans and specifications for any proposed Replacement Retention System in a form and containing such information as the Grantee may reasonably require;
- (b) a plan prepared by a surveyor showing the location of the proposed Replacement Retention System (**Survey Plan**);
- (c) details of the manner and method of construction of the Replacement Retention System;
- (d) detailed geotechnical information regarding the Replacement Retention System in a form and containing such information as the Grantee may reasonably require;
- (e) confirmation that the Replacement Retention System is designed to the specifications contained in AS5100 and RMS Bridge Technical Directions (or any replacement specifications from time to time); and
- (f) evidence that the Grantor has effected or procured such insurances as are required under clause 8.

4.3 Following receipt of the Grantor's application under clause 4.2, the Grantee may request the Grantor to provide further information regarding the proposed Replacement Retention System, including but not limited to:

- (a) updated or further plans and/or specifications addressing such matters as the Grantee may reasonably require;
 - (b) such other information as the Grantee may reasonably require.
- 4.4 The Grantee must, within a reasonable time after receiving the Grantor's application under clause 4.2 and such further information as is requested under clause 4.3:
- (a) approve, in writing, the Grantor's application with or without reasonable conditions which may include a reasonable timeframe for completion of the Replacement Retention System; or
 - (b) refuse, in writing, the Grantor's application.
- 4.5 If the Grantee issues written approval for the Replacement Retention System pursuant to clause 4.4(a), then the Grantor may only construct the Replacement Retention System that is approved and must in constructing the Replacement Retention System:
- (a) comply with any reasonable conditions imposed by the Grantee;
 - (b) ensure the work is constructed to RMS Road and Bridge Specifications (or any replacement specifications from time to time);
 - (c) ensure such work is performed in a proper and workmanlike manner, using new and good quality materials that are fit for purpose, by a suitably qualified contractor at the appropriate RMS category for bridge construction and supervised by a person nominated by the Grantee (if required by the Grantee);
 - (d) ensure that within a reasonable time after completion of the Replacement Retention System, a structural engineer provides a certification to the Grantee that the work has been carried out in accordance with the specifications identified in clause 4.5(b);
 - (e) cause as little inconvenience as is practicable to the Grantee and the Grantee's use and enjoyment of the Easement Area and the Benefited Land;
 - (f) cause as little damage as is practicable to the Easement Area and the Benefited Land and any improvements, infrastructure or any other structures or works on them;
 - (g) restore the Easement Area (where practicable) and the Benefited Land to their former condition (unless the Grantee provides otherwise);
 - (h) make good any damage caused or contributed to by the Grantor or the Grantor's agents, employees, contractors, subcontractors, lessees, licensees and invitees and all other persons authorised by the Grantor;
 - (i) pay on demand all costs incurred by the Grantee in considering the proposed Replacement Retention System and in the supervision of that work, including the fees of architects, engineers and other consultants employed by the Grantee;
 - (j) obtain at its expense from all relevant Authorities all approvals or permits necessary to enable such proposed work to be lawfully executed, and on request by the Grantee, produce copies of all such approvals and permits; and
 - (k) upon completion of the proposed work, produce to the Grantee all certificates of compliance issued by any such Authority.
- 4.6 A failure to comply with any conditions of any approval granted by the Grantee pursuant to clause 3.4(c) or 4.4(a), will constitute a breach of the Grantor's obligations under this Easement.
- 4.7 Upon completion of the Replacement Retention System pursuant to clause 4.5, the Grantor will be responsible for the carrying out of, and all costs incurred with respect to, the maintenance, repair or replacement of all or part of the Replacement Retention System to ensure that support for the Grantee's improvements, infrastructure or any other structures or works on the Benefited Land is maintained to the Grantee's satisfaction acting reasonably.

- 4.8 If the Grantee refuses the Grantor's application for the Replacement Retention System pursuant to clause 4.4(b), the Grantee must provide the Grantor with written reasons for its decision.
- 4.9 If the Replacement Retention System is not physically commenced within 12 calendar months of the Grantee's approval or completed within any timeframe stipulated in the Grantee's approval, then the approval will lapse (unless otherwise stated by the Grantee) and the Grantor must not carry out such Replacement Retention System unless and until a further application for approval is made and approved under this clause 4.

5. Positive Covenant

- 5.1 After completion of the Replacement Retention System pursuant to clause 4.5, at the Grantor's cost:
- (a) the Grantor will procure a plan illustrating the location of the Replacement Retention System suitable to permit registration in LPI;
 - (b) the parties will simultaneously prepare and execute:
 - (i) the standard "Positive Covenant" LPI application form incorporating the terms in Annexure B and attaching the plan in clause 5.1(a);
 - (ii) the standard "Cancellation or extinguishment of Easement" LPI application form ; and
 - (iii) the Survey Plan;
 - (c) the Grantor will obtain any consent required from any person having an interest in the Easement Area;
 - (d) the Grantor will promptly lodge the "Positive Covenant" and the "Cancellation or extinguishment of Easement" simultaneously with the LPI and provide a copy of the LPI registration notice to confirm registration to the Grantee;
 - (e) the parties will promptly comply with any requisitions issued by LPI; and
 - (f) the parties will do all things necessary to effect registration of the Positive Covenant and Cancellation or extinguishment of Easement.
- 5.2 The Grantor will pay on demand all reasonable costs incurred by the Grantee pursuant to the matters identified in clauses 3, 4 or this clause 5 including the reasonable fees of engineers and other consultants employed by the Grantee.

6. Additional obligations of the Grantor

The Grantor must:

- (a) not do or permit or suffer anything to be done that will or may:
 - (i) cause the Grantor to be in breach of the Grantor's obligations under this Easement; or
 - (ii) interfere with, prevent or impede the Grantee from exercising or enjoying its rights under this Easement;
- (b) ensure that the Grantor and others authorised by the Grantor comply with this Easement;
- (c) comply with all laws; and
- (d) comply with the Grantee's reasonable directions in relation to the use of the Easement Area to maintain the integrity and support of the Benefited Land.

7. Rights of the Grantee

- 7.1 If the Grantor breaches the Grantor's obligations under this Easement, the Grantee may serve not less than 14 days' notice on the Grantor requiring the Grantor to remedy the breach or, if the breach is not capable of being remedied, to compensate the Grantee for any cost, loss, damage or expense arising from or in connection with the Grantor's breach.

- 7.2 If:
- (a) the Grantor does not comply with the notice under clause 7.1; or
 - (b) in the Grantee's opinion there is an emergency relating to the support or stability to the batter, embankment or Replacement Retention System on the Easement Area (in which case no prior notice by the Grantee to the Grantor is required before the Grantee exercises its rights under this clause 7.2),

the Grantee may do anything reasonably necessary to rectify the breach and to protect the support or stability to the batter, embankment or Replacement Retention System on the Easement Area, including demolishing or altering any unauthorised improvements, infrastructure, works or structures on the Easement Area or ensuring the support for or provided by or the stability of the batter, embankment or Replacement Retention System on the Easement Area, including by constructing any necessary support or temporary support on the Burdened Land and the Easement Area.

7.3 The Grantor must pay or reimburse the Grantee for all reasonable costs and expenses suffered or incurred by the Grantee in rectifying the Grantor's breach on demand, including legal fees.

7.4 Where the Grantor breaches the Grantor's obligations under this Easement, and the Grantee reasonably believes that the continuation of that breach may jeopardise the support for or provided by or the stability of the batter or embankment on the Easement Area, then, in addition to the Grantee's rights under clauses 7.1 and 7.2, the Grantee may serve notice on the Grantor requiring the Grantor to cease work immediately on the New Improvements until the Grantee is reasonably satisfied that the continuation of the New Improvements will not jeopardise the support for or provided by or the stability of the batter or embankment on the Easement Area.

8. Insurance

8.1 Before commencement of:

- (a) the New Improvements;
- (b) alteration of the batter or embankment; or
- (c) construction of the Replacement Retention System on the Easement Area,

the Grantor must:

- (d) effect and maintain public liability insurance for an amount of not less than \$20,000,000 in respect of any one occurrence;
- (e) ensure that any contract entered into in respect of the works identified in clause 8.1(a), 8.1(b) or 8.1(c) contains provisions requiring the contractor to have in place the following insurances (**Contractor's Insurances**):
 - (i) contract works insurance for the full replacement of the New Improvements or the batter or embankment;
 - (ii) public liability insurance for an amount of not less than \$20,000,000 in respect of any one occurrence; and
 - (iii) product liability insurance; and
- (f) effect and maintain or procure the effecting of such other insurances as the Grantee may reasonably require.

8.2 Unless otherwise agreed by the Grantee, the insurances under this clause 8:

- (i) must be with reputable insurers;
- (ii) must be on terms and conditions reasonably required by the Grantee;
- (iii) must, in respect of the public liability insurances under clause 8.1(d) and clause 8.1(e)(ii), note the Grantee as an interested party;

- (iv) must, in respect of the Contractor's Insurances:
 - A. be in the names of the Grantor, the contractor, all subcontractors and suppliers and operate as if there was a separate policy of insurance covering each of them;
 - B. the commission of a vitiating act (including non-disclosure or misrepresentation), fraud, omission, breach or default by any one of the insured does not prejudice the insurance of any other insured; and
 - C. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds.
- (b) Before commencement of any the works identified in clause 7.1(a), 7.1(b) or 7.1(c), and as and when the Grantee reasonable requires, the Grantor must produce to the Grantee the policy of insurance, the receipt for the last premium, and the certificate of currency in respect of each policy of insurance required under this clause 8.

9. Indemnity and release

- (a) Subject to clause 9(c), the Grantor indemnifies the Grantee from and against all claims and causes of action for which the Grantee is liable in respect of or arising from:
 - (i) any loss, damage, injury or death to the extent to which the same is caused or contributed to by the negligent acts or omissions of the Grantor in complying with any provisions of this Easement; and
 - (ii) any breach or default by the Grantor under this Easement,

except to the extent that such claim or cause of action has been caused or contributed to by the act, negligence, omissions, default, or breach of this Easement by the Grantee, or the Grantee's agents, employees, contractors, subcontractors, lessees, licensees and invitees and all other persons authorised by the Grantee.
- (b) The Grantor releases the Grantee from and against all claims and causes of action for which the Grantee will or may be or become liable in respect of or arising from:
 - (i) the Grantee exercising its rights under this Easement, except to the extent caused by the negligence of the Grantee;
 - (ii) any action by the Grantee to remedy a breach of this Easement by the Grantor;
 - (iii) any approval under clause 3.4(a) and clause 3.4(c) and any refusal to issue an approval under clause 3.4(b) except to the extent that the Grantee fails to:
 - A. act reasonably in considering and determining any application for consent in accordance with clause 3 (including unreasonably withholding consent);
 - B. act reasonably in imposing conditions under clause 3.4(c); or
 - C. determine the Grantor's application within a reasonable time after receiving the application under clause 3.2 and such further information as is requested under clause 3.3;
 - (iv) any approval under clause 4.4(a) and any refusal to issue an approval under clause 4.4(b) except to the extent that the Grantee fails to:
 - A. act reasonably in considering and determining any application for consent in accordance with clause 4 (including unreasonably withholding consent or failing to provide written reasons in accordance with clause 4.8);
 - B. act reasonably in imposing conditions under clause 4.4(a); or

C. determine the Grantor's application within a reasonable time after receiving the application under clause 4.2 and such further information as is requested under clause 4.3; and

(v) the Grantee issuing a notice under clause 7.4 except to the extent that the Grantee acts unreasonably in issuing the notice.

(c) This clause continues to operate notwithstanding the extinguishment of this Easement for a period of 6 years from the date of extinguishment.

9.2 Notice

Each communication (including each application, approval, request and demand) under or in connection with the Easement:

(a) must be in writing;

(b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Grantee:

Name: Roads and Maritime Services

Address: 27 Argyle Street, Parramatta

For the attention of: General Manager, Project Delivery

Grantor:

Name: QIC Limited

Address: Level 46, 80 Collins Street, Melbourne

For the attention of: Andrew Lannen

(c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent or delegate of, that party;

(d) must be delivered by hand or posted by prepaid post to the address of the addressee, in accordance with clause 9.2(b); and

(e) is taken to be received by the addressee:

(i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail; and

(iii) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

10. Governing Law

The laws of New South Wales govern this document.

11. **Severability**

If a provision of this Easement is illegal or unenforceable it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Easement.

12. **GST**

12.1 In this clause 11:

- (a) words and phrases used in this clause 12 that are defined in the GST Act have the same meaning as in that Act except that:
 - (i) **GST** has the meaning provided in clause 1.1;
 - (ii) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise; and
 - (iii) **Recipient** means a party who provides or is liable to provide consideration under this Easement for a supply;
- (b) unless otherwise expressly stated, all consideration to be provided under any other provision of this Easement is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12;
- (c) a reference to a supply is to a supply made under or in connection with this Easement;
- (d) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12;
- (e) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member; and
- (f) a reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

12.2 Any payment or reimbursement required to be made under this Easement that is calculated by reference to an amount paid or incurred will be limited to the total amount less any input tax credit to which an entity is entitled for an acquisition to which the amount relates.

12.3 Despite the other provisions of this Easement, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Recipient must pay to the Supplier an additional amount equal to the amount of that GST (**GST Amount**);
- (b) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply; and
- (c) the GST Amount must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the supply to which the additional amount relates, whichever is the later.

12.4 If the GST Amount recovered by the Supplier from the Recipient under clause 11.3(a) for a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 7 days after the date of the adjustment event.

Annexure A - Easement Area

Annexure B - Annexure A to Positive Covenant



HERBERT
SMITH
FREEHILLS

Schedule 7

Public Positive Covenant

Annexure A to Positive Covenant

Parties: Roads and Maritime Services ABN 76 236 371 088 (as Grantee) and QIC Limited ABN 95 942 373 762 (as Grantor)

Dated

1. Interpretation

1.1 Definitions

In this instrument:

Benefited Land means *[insert title references]*. Where the context permits, the term includes all improvements, infrastructure or any other structures on the Benefited Land.

Burdened Land means *[insert title references]*. Where the context permits, the term includes all improvements, infrastructure or any other structures on the Burdened Land.

Engineer means a suitably qualified engineer, approved by the Grantee, acting reasonably, experienced in undertaking inspections and reporting on the repair and condition of retention systems similar to the Replacement Retention System.

Engineer's Report means a report prepared by an Engineer outlining the repair and condition of the Replacement Retention System and containing such information as the Grantee reasonably requires.

Replacement Retention System means any retention system to be constructed by the Grantor at the Grantor's cost as a replacement for the batter or embankment constructed by the Grantee in the location shown by the plan annexed at Schedule 1.

Reporting Date has the meaning given in clause 3.1(d).

1.2 Headings

Headings do not affect the interpretation of this instrument.

1.3 Rules of interpretation

In this instrument, and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this instrument) is to that document as varied, novated, ratified or replaced from time to time;

- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this instrument, and a reference to this instrument includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

2. Run with the Land

The conditions and covenants, including this clause 2, in this positive covenant in this instrument are covenants and agreements between:

- (a) the Grantee for itself and its successors, assigns and transferees; and
- (b) the Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Burdened Land or any part of it with which the right is capable of enjoyment.

3. Positive Covenant

3.1 Terms of grant

The Grantor must at its own cost:

- (a) ensure the Replacement Retention System remains in good order, repair and condition necessary to maintain support for the surface or subsurface of the Benefited Land, including undertaking any structural repair to and replacement of the Replacement Retention System to the Grantee's satisfaction acting reasonably;
- (b) provide ongoing support for the Benefited Land;
- (c) in carrying out its obligations under this instrument:
 - (i) ensure all work is done in a proper and workmanlike manner;
 - (ii) cause as little inconvenience as is practicable to the Grantee and any occupier of the Benefited Land;
 - (iii) cause as little damage as is practicable to the Benefited Land; and
 - (iv) make good any damage caused or contributed to by the Grantor;
- (d) procure an Engineer, every two years from the date of this instrument (**Reporting Date**), to:
 - (i) inspect the Replacement Retention System; and

(ii) prepare an Engineer's Report,

and provide the Engineer's Report to the Grantee. The Engineer's Report must be provided to the Grantee not later than 1 month after the relevant Reporting Date.

3.2 Access

- (a) Subject to clause 3.2(b), the Grantor must permit the Grantee to enter upon the Burdened Land:
- (i) for the purpose of ascertaining whether the conditions and covenants of this instrument have been observed and performed;
 - (ii) to view the state of repair and condition of the Replacement Retention System and the ongoing support for the Benefited Land; and
 - (iii) for the purpose of rectifying any failure by the Grantor to comply with clause 3.1(d).
- (b) The Grantee must except in an emergency or when it would not be reasonable or practicable to do so, give reasonable notice and enter at reasonable times.

3.3 Step in rights

- (a) If the Grantor fails to undertake its obligations in accordance with this instrument, the Grantee may notify the Grantor in writing requiring it to rectify that failure (**Rectification Notice**).
- (b) If the Grantor has not rectified its failure:
- (i) in the case of a failure to:
 - A. repair, maintain and replace the Replacement Retention System; and
 - B. provide ongoing support for the Benefited Land,within a reasonable period (having regard to the nature of the breach); or
 - (ii) in the case of a failure to provide the Engineer's Report under clause 3.1(d), within 3 months,
- from the date of receipt by it of the Rectification Notice, the Grantee may rectify that failure, and where necessary, go onto the relevant part of the Burdened Land and carry out that obligation.
- (c) Any reasonable expense incurred by the Grantee in rectifying the failure of the Grantor will be a debt due by the Grantor to the Grantee payable on written receipt for the amount of such debt.

3.4 Insurance

- (a) The Grantor must effect and maintain public liability insurance for an amount of not less than \$20,000,000 in respect of any one occurrence.
- (b) The policy the Grantor takes out under this clause 3.4 must:
- (i) be with reputable insurers;
 - (ii) be on terms and conditions reasonably required by the Grantee; and

(iii) note the Grantee as an interested party.

(c) The Grantor must produce to the Grantee when the Grantee reasonably requires the policy of insurance, and receipt for the last premium, and the certificate of currency in respect of the policy of insurance required under this clause 3.4.

4. Release, Vary or Modify

The Grantee is empowered to release, vary or modify this positive covenant with the written consent of the Grantor.