

DATED

2016

BETWEEN:

COUNCIL OF THE CITY OF BOTANY BAY
("the Council")

AND:

GOODMAN FUNDS MANAGEMENT AUSTRALIA LIMITED
(ABN 69 000 123 071)
("Goodman Funds")

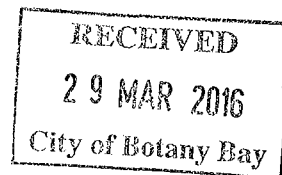
AND:

GOODMAN PROPERTY SERVICES (AUST) PTY LIMITED
(ABN 40 088 981 793)
("Goodman Property")

AND:

TRUST COMPANY LIMITED ("Landowner")

DEED OF AGREEMENT

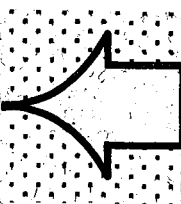


HOUSTON DEARN O'CONNOR Solicitors
Suite 33, 5th Floor
12 Railway Parade
BURWOOD NSW 2134

DX 8565 BURWOOD

Tel: 9744 9247
Fax: 9744 6739
REF: SS113139-536

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THIS AGREEMENT made the day of 2016

BETWEEN: **COUNCIL OF THE CITY OF BOTANY BAY** of 141 Coward Street,
Mascot in the State of New South Wales ("the Council") of the first part

AND: **GOODMAN FUNDS MANAGEMENT AUSTRALIA LIMITED** as
responsible entity for the Goodman Australia Industrial Trust No.3
(ABN 69 000 123 071) of Level 17, 60 Castlereagh Street, Sydney in the said State
("Goodman Funds") of the second part

AND: **GOODMAN PROPERTY SERVICES (AUST) PTY LIMITED** (ABN
40 088 981 793) of Level 17, 60 Castlereagh Street, Sydney in the said State
("Goodman Property") of the third part

AND: **THE TRUST COMPANY LIMITED** as custodian for the
Goodman Australia Industrial Trust No.3 (ACN 004 027 749)
Level 12, 123 Pitt Street, Sydney in the said State ("the Landowner") of the fourth
part.

WHEREAS:

- A. The Landowner holds legal title to the land known as 185-191 O'Riordan Street, Mascot being the land comprised in Certificate of Title Folio Identifier 11/1213409 ("the Motorcade Site"), and which previously comprised Title Folio Identifier 1/878949 and Folio Identifier 1/804703.
- B. The Landowner holds the legal title to the lands comprising the Motorcade Site as custodian for the Goodman Australia Industrial Trust No.3 ("the Trust").
- C. Goodman Funds is the responsible entity (as hereinafter defined) for the time being of the Trust.
- D. On 16 May 2008 Goodman Property lodged with the Council Development Applications 08/287 for demolition, site remediation, erection on the Motorcade Site of a ten (10) storey commercial/retail building, bridge link, retail and showroom ("the East Tower") ("the Stage 1 DA") and 08/289 for the erection of a twelve (12) storey commercial/retail building, bridge link, retail and cafe ("the West Tower") ("the Stage 2 DA") together with associated car

parking, road work and public domain works.

- E. The developments proposed in the Stage 1 DA and the Stage 2 DA provided for a total floor space ratio above the maximum floor space ratio specified for the Motorcade Site ("the Development Standard") and Goodman Property lodged with the Stage 1 DA and the Stage 2 DA an objection to the Development Standard pursuant to State Environmental Planning Policy No. 1.
- F. By letter dated 16 May 2008, which accompanied the Stage 1 DA and the Stage 2 DA, Goodman Property offered to enter into a voluntary planning agreement in respect of the developments proposed on the Motorcade Site requiring Goodman Property to make certain payments to the Council and undertake certain public domain works.
- G. By Notices of Determination both dated 13 July 2010 the Council granted development approval to the Stage 1 DA and the Stage 2 DA subject to the conditions of consent annexed respectively to each of those Notices of Determination.
- H. Consent condition no. 3 in respect of the Development Consent 08/287 ("the Stage 1 Consent") is in the following terms:

"3. (a) *Prior to the issue of a Construction Certificate, the applicant shall enter into and execute a Voluntary Planning Agreement prepared by Council's Solicitors at the applicant's expense to provide for:*

- (i) *Footpath work for the subject site from Bourke Road to King Street;*
- (ii) *The undergrounding of the power poles along the site frontage;*
- (iii) *The relocation of two figs into Mascot Memorial Park; and*
- (iv) *The provision of a regional children's playground within Mascot Park*

The Voluntary Planning Agreement is in addition to the Section 94 Contributions required in conditions 3(b) below.

- (b) *The City of Botany Bay being satisfied that the proposed development will increase the demand for public amenities within the area, and in accordance with council's Section 94 Contributions Plan 2005-2010, a*

sum of \$1,181,566.85 is to be paid to Council prior to the issuing of a Construction Certificate by the Principal Certifying Authority (credit given for existing approved development).

(1)	Community Facilities	\$214,795.35
(2)	Administration	\$16,884.00
(3)	Shopping Centre Improvement	\$75,576.00
(4)	Open Space & Recreation	\$701,490.00
(5)	Transport Management	\$172,821.50

- I. On 24 December 2014 Goodman Property submitted a modification application pursuant to section 96 of the Environmental Planning & Assessment Act 1979 ("the Act"). The application sought amongst other things amendments to condition 3(a) of the Stage 1 Consent.
- J. The Council is agreeable to amending condition 3(a) of the Stage 1 Consent so that the consent condition now requires as follows:
 - a) Upgrading of footpath along the site frontage from Bourke Street to King Street
 - b) Undergrounding of power poles along the site frontage; and
 - c) Payment of \$226,718.95 by way of additional contributions to Council that will not be off set against any contributions required under s.94 of the Act.
- K. The parties have agreed to enter into this planning agreement as required by condition 3(a) of the Stage 1 Consent as modified from time to time.
- L. This planning agreement has been publicly notified in accordance with Section 93(G) of the Act and clause 25(D) of the Environmental Planning & Assessment Regulation.

NOW THIS DEED WITNESSES as follows:

1. This planning agreement shall be binding on the parties hereto and upon their respective heirs, executors, transferees and assigns.
2. This planning agreement does not take effect until Goodman Property has taken up and acted

upon the Stage 1 Consent.

3. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at law or which the Council would otherwise have available to it.
4. In case one or more of the provisions contained in this planning agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be affected.
5. Goodman Funds, Goodman Property and the Landowner jointly and severally covenant and agree with the Council that in addition to payment of the Section 94 Contribution specified in condition 3(b) of the Stage 1 Consent they shall at their expense:
 - (i) prior to the issue of any occupation certificate for the development the subject of the Stage 1 Consent undertake and complete in accordance with specifications provided by the Council the construction of all footpaths and kerb and guttering works along the frontages of the Motorcade Site to Bourke Road and O'Riordan Street, in accordance with condition 75 of the Stage 1 Consent;
 - (ii) prior to the issue of any occupation certificate, procure the relocation underground of all power cabling presently located on poles along the frontages of the Motorcade Site to Bourke Road and O'Riordan Street and the replacement of existing street lighting associated therewith, in accordance with condition 47 of the Stage 1 Consent; and
 - (iii) pay to Council within 14 days of execution of this agreement an additional sum of \$226,718.95 being in lieu of the costs previously incurred by the Council for the upgrading of Lionel Bowen Reserve and Mascot Oval to be put towards future upgrade works.

APPLICATION OF SECTION 94 OF THE ACT

6. This agreement does not exclude the operation of Section 94 of the Act and the benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94.

7. The parties acknowledge that no separate contribution under Section 94 of the Act has been included in the Development Consent granted in respect of the consent to the Stage 2 DA ("Stage 2 Consent"). The parties hereto agree that the Section 94 Contribution imposed by condition 3(b) of the Stage 1 Consent and this voluntary planning agreement each cover the developments provided for in both the Stage 1 Consent and the Stage 2 Consent.
8. To provide a suitable means of enforcement of this agreement, Goodman Funds, Goodman Property and the Landowner further jointly and severally covenant with the Council:
 - (i) that prior to the issue of a Construction Certificate for the development the subject of the Stage 1 Consent, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this planning agreement over the titles to the Motorcade Site pursuant to Section 93H of the Act from all persons who have an interest in the Motorcade Site;
 - (ii) that forthwith after receiving the consents specified in subclause (i) hereof they shall cause this planning agreement to be registered on the titles of the Motorcade Site;
 - (iii) that if this Planning Agreement is not registered on the titles to the Motorcade Site, and if they propose to sell the Motorcade Site, then they shall:
 - a) within seven (7) days of listing the Motorcade Site for sale, either through an agent or privately, notify the Council of such intention;
 - b) as a condition of any sale, require that the incoming purchaser enter into with Council a like planning agreement to this present planning agreement in which the same covenants as set out herein shall apply;
 - c) within seven (7) days of exchange of contracts, notify the Council of the sale and provide the Council with a copy of the contract;
 - d) within twenty one (21) days of receipt from the Council of a replacement planning agreement between the Council and the purchaser substantially in the form of this

planning agreement, have it executed by the purchaser and return it to the Council;

- e) that if this planning agreement is not registered on the titles to the Motorcade Site, and if they should propose otherwise than by sale to transfer or assign their interest in the Motorcade Site or any part thereof to a transferee or assignee, then they shall before effecting such assignment or transfer have the incoming transferee or assignee enter into an agreement with the Council substantially in the form of this planning agreement insofar as concerns the interest assigned or transferred and shall provide same to the Council.

9. Goodman Funds, Goodman Property and the Landowner further jointly and severally covenant and agree with the Council that in the event that the consents to registration of this planning agreement cannot be obtained from all persons who have an interest in the Motorcade Site as required by clause 8(i), then the Council shall be entitled to register a caveat at Land & Property Information over the titles to the Motorcade Site to protect its interest therein pursuant to this planning agreement.
10. Should Goodman Funds, Goodman Property and the Landowner, or any of them, be in breach of any of the terms of this planning agreement, and not rectify the default within twenty one (21) days of receiving notice from Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to Council, in which case no notice is required) Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this planning agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to the Motorcade Site whether by way of an order of the kind specified in Section 121 B of the Act, or by Class 4 proceedings in the Land and Environment Court, or otherwise.
11. Any amendment or variation to this planning agreement is not effective unless it is in writing and signed by all the parties.
12. The explanatory note put on exhibition with this planning agreement is not to be used in construing the terms of this planning agreement.

13. In the event of any disagreement between the parties hereto arising out the provisions of this planning agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. If a dispute is not resolved within 30 days after such notice is given, then any party which has complied with the provisions of this clause may in writing terminate any conciliation process undertaken under this clause and may then commence court proceedings in relation to the dispute. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (i) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
- (ii) admissions or concessions made by a party during the conciliation in relation to the dispute; and
- (iii) information, documents or other material, including any confidential information, concerning the dispute which are disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.

14.

- a) All words in this clause which are also defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act;
- b) the consideration for any supply under this planning agreement excludes GST;
- c) where a party to this planning agreement is taken to have made a supply to another party, the

recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;

- d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- e) despite any other provision of this agreement, any amount payable under this agreement, which is calculated by reference to an amount paid or incurred by a party to this planning agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

15. RESPONSIBLE ENTITY LIMITATION OF LIABILITY CLAUSE

The provisions of this clause 15 apply despite anything to the contrary in this document.

15.1 Capacity

The Responsible Entity is liable under this agreement in its capacity as responsible entity of the Trust and in no other capacity.

15.2 Limitation

Subject to clause 15.4, the liability of the Responsible Entity in respect of any cause of action, claim or loss arising:

- (i) under or in connection with this agreement;
- (ii) in connection with any transaction, conduct or any other agreement contemplated by this agreement; or
- (iii) under or in connection with (to the extent permitted by law) any representation or undertaking given or to be given in connection with this agreement,

(each a Trust Claim), is limited to the Assets. The rights of the parties other than the Responsible Entity to recover any amount in respect of any (and all) Trust

Claims from the Responsible Entity is limited to a right to recover an amount not exceeding the amount which the Responsible Entity is entitled and able to recover from the assets (after taking account of the costs of exercising its right of indemnity or exoneration) and if, after exercise of those rights, any such amount remains outstanding, no further Trust Claim may be made against the Responsible Entity personally.

15.3 Acknowledgement of Limitations

The parties other than the Responsible Entity agree and acknowledge that they must not, in respect of any Trust Claim;

- (i) subject to clause 15.4, bring proceedings against the Responsible Entity in its personal capacity;
 - (ii) seek to appoint an administrator or liquidator to the Responsible Entity;
 - (iii) commence the winding-up, dissolution or administration of the Responsible Entity; or
 - (iv) appoint a receiver, receiver and manager, administrative receiver or similar official to all or any of the Assets of the Responsible Entity,
- except to the extent that the steps taken affect any Assets or the Responsible Entity's right of recourse against, and indemnity from, the assets and nothing else.

15.4 Exception

If the Responsible Entity acts negligently, fraudulently, with wilful misconduct or in breach of trust with a result that:

- (i) the Responsible Entity's right of indemnity, exoneration or recoupment of the assets; or
- (ii) the actual amount recoverable by the Responsible Entity in exercise of those rights,

is reduced in whole or in part or does not exist, then to the extent that such right or the amount so recoverable is reduced or does not exist, the Responsible Entity may be personally liable.

16. LANDOWNER LIMITATION OF LIABILITY CLAUSE

The provisions of this clause 16 apply despite anything to the contrary in this document.

- 16.1 The Landowner enters into this agreement as custodian for the Trust and in no other capacity.
- 16.2 The parties other than the Landowner acknowledge that the Obligations are incurred by the Landowner solely in its capacity as custodian of the Assets and that the Landowner will cease to have any obligation under this agreement if the Landowner ceases for any reason to be owner of the Assets.
- 16.3 The Landowner will not be liable to pay or satisfy any Obligations except to the extent to which it is indemnified or entitled to be indemnified
- (i) by the Responsible Entity; or
 - (ii) out of the Assets in respect of any liability incurred by it.
- 16.4 The obligation of the Responsible Entity to indemnify the Landowner and the right of the Landowner to be indemnified out of the Assets is limited.
- 16.5 The parties other than the Landowner may enforce their rights against the Landowner arising from non-performance of the Obligations only to the extent of the Landowner indemnities referred to in paragraph 16.3.
- 16.6 Subject to paragraph 147, if any party other than the Landowner does not recover all money owing to it arising from non-performance of the Obligations it may not seek to recover the shortfall by:
- (i) bringing proceedings against the Landowner in its personal capacity; or
 - (ii) applying to have the Landowner wound up or proving in the winding up of the Landowner.
- 16.7 Except in the case of and to the extent of fraud, negligence or breach of duty on the part of the Landowner under its custody agreement with the Responsible Entity, the parties other than the Landowner waive their rights and release the Landowner

from any personal liability whatsoever, in respect of any loss or damage:

- (i) which they may suffer as a result of any:
 - (a) breach of the Landowner of any of the Obligations; or
 - (b) non-performance by the Landowner of the Obligations; and
- (ii) which cannot be paid or satisfied by the indemnities set out above in paragraph 16.3 in respect of any liability incurred by it.

16.8 The parties other than the Landowner acknowledge that the whole of this agreement is subject to this clause and subject to paragraph 16.7 the Landowner shall in no circumstances be required to satisfy any liability arising under, or for non-performance or breach of any Obligations under or in respect of, this agreement or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than to the extent that this agreement requires satisfaction out of the Assets under the Landowner's control and in its possession as and when they are available to the Landowner to be applied in exoneration for such liability.

16.9 The parties acknowledge that the Responsible Entity of the Trust is responsible under the Constitution for performing a variety of Obligations relating to the Trust, including under this agreement. The parties agree that no act or omission of the Landowner (including any related failure to satisfy any Obligations) will constitute fraud, negligence or breach of duty of the Landowner for the purposes of clause 16.7 to the extent to which the act or omission was caused or contributed to by any failure of the Responsible Entity or any other person or fulfill its obligations relating to the Trust or by any other act or omission of the Responsible Entity or any other person.

16.10 No attorney, agent or other person appointed in accordance with this agreement has authority to act on behalf of the Landowner in a way which exposes the Landowner to any personal liability and no act or omission of such a person will

be considered fraud, negligence or breach of duty of the Landowner for the purposes of clause 16.7.

17. The second and third parties hereto shall be jointly and severally responsible for the payment of the Council's reasonable legal costs in connection with the preparation of the agreement.

18. Definitions

In clauses 15 and 16:

Assets means all assets, property and rights real and personal of any value whatsoever of the Trust.

Constitution means the constitution of the Trust as amended from time to time.

Obligations means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Landowner under or in respect of this agreement.

Trust means the Goodman Australia Industrial Trust No. 3 ABN constituted under the Constitution.

Responsible Entity means the responsible entity of the Trust from time to time acting in the Trustee's Capacity which at the date of this agreement is Goodman Funds.

Trustee Capacity means the capacity in which the Responsible Entity enters into this document, being as responsible entity of the Trust

19. Execution of counterparts

- (1) This planning agreement may be executed in any number of counterparts.
- (2) All counterparts together constitute one planning agreement.
- (3) A party may execute this planning agreement by signing any counterpart.

20. Entire understanding

(1) This Agreement:

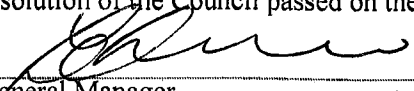
- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this planning agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

21. Governing Law

(1) This document is governed by and is to be construed in accordance with the laws applicable in New South Wales. Each party submits to the jurisdiction of the courts exercising jurisdiction in New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those Courts.

IN WITNESS WHEREOF the parties have set their hands and seals on the day first hereinbefore written.

The Common Seal of Council of the City of Botany Bay was hereunto affixed pursuant to a resolution of the Council passed on the day of

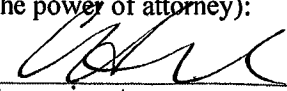

General Manager

Mayor

Signed for Goodman Funds Management Australia Limited by its attorney pursuant to Power of Attorney Registered No. 641 Book 4513 dated

27/02/07

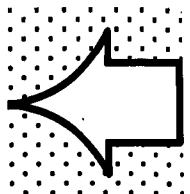
(who states that by executing this document that the attorney has received no notice of revocation of the power of attorney):


Witness signature

CAMERON RIBENACK.
Print Name

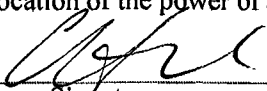

Attorney Signature
Samantha Evans

Print Name



Signed for Goodman Property Services (Aust)
Pty Limited by its attorney pursuant to Power
of Attorney Registered No. 75 Book 4507
dated 18/12/06

(who states that by executing this document
that the attorney has received no notice of
revocation of the power of attorney):



Witness Signature

CAMERON RUBENACH

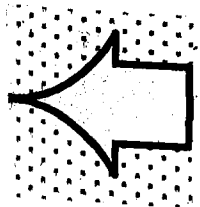
Print Name



Attorney Signature

Samantha Evans

Print Name



Signed for Trust Company Limited by its
attorney pursuant to Power of Attorney
Registered No. 46134 Book 4676
dated 18/09/2014

(who states that by executing this document
that the attorney has received no notice of
revocation of the power of attorney):



Witness Signature

Stephanie Fehon

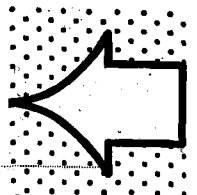
Print Name



Attorney Signature
Trent Franklin

Manager Custody

Print Name



10 March 2016

Guy Smith and Clarissa Di Pietro
Goodman Property Services (Aust) Pty Ltd
Level 17, 60 Castlereagh Street
SYDNEY NSW 2000

Goodman Funds Management Australia Limited as
responsible entity for the Goodman Australia Industrial
Trust No. 3
Level 17, 60 Castlereagh Street
SYDNEY NSW 2000

The Trust Company Limited as custodian for the
Goodman Australia Industrial Trust No. 3
Level 12, 123 Pitt Street
SYDNEY NSW 2000

Norton Rose Fulbright Australia
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DX 368 Sydney
nortonrosefulbright.com

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Email
felicity.rourke@nortonrosefulbright.com

Our reference:
2833367

Dear Guy and Clarissa

**Planning Agreement between Goodman Entities, The Trust Company Limited and Council of the City
of Botany Bay**
Land: 185 – 191 O’Riordan Street, Mascot

1 Entities

We act for the following entities in relation to the Planning Agreement referred to in this letter:

- (1) Goodman Property Services (Aust) Pty Ltd; and
- (2) Goodman Funds Management Australia Limited as responsible entity for the Goodman Australia Industrial Trust No. 3,

(together the **Goodman Entities**), and
- (3) The Trust Company Limited as custodian for the Goodman Australia Industrial Trust No 3
(**Trust Company**).

2 Agreement

The Planning Agreement is between the Goodman Entities, the Trust Company and the Council of the City of Botany Bay. The Planning Agreement applies to the land known as 185-191 O’Riordan Street Mascot NSW comprised in Certificate of Title Folio Identifier 11/1213409, and which previously comprised Title Folio Identifier 1/878949 and Folio Identifier 1/804703. The land is known as the “Motorcade Site”.

3 Enclosures

We enclose, for execution by the Trust Company and the Goodman Entities, four copies of the Planning Agreement.

4 Legal Certification

We confirm that:

APAC-#29856167-v1

10 March 2016

 **NORTON ROSE FULBRIGHT**

- (1) the terms of the Planning Agreement reflect the instructions of the Goodman Entities;
- (2) other than in respect of matters on which we have specific instructions from the Goodman Entities, in our opinion the Planning Agreement does not impose any unusual onerous obligations on the Goodman Entities;
- (3) the Planning Agreement contains the limitation of liability clauses which are in the form provided to us by Goodman Property Services (Australia) Pty Ltd for:
 - (a) Goodman Funds Management Australia Limited as the responsible entity for the Goodman Australia Industrial Trust No 3; and
 - (b) the Trust Company Limited as custodian for the Goodman Australia Industrial Trust No 3; and
- (4) the Planning Agreements are in order for execution and will, when executed by the parties, constitute legally binding obligations on the parties under the laws of New South Wales.

5 Execution Instructions

Please arrange for the Planning Agreements to be executed on behalf of the Goodman Entities and on behalf of the Trust Company, in accordance with the instructions set out below.

The Planning Agreement will need to be registered on the titles of certain land referred to in the Planning Agreement. To meet the LPI registration requirements, the Planning Agreement needs to be executed as follows. All persons signing will need to sign:

- (1) The first page of the VPA; and
- (2) The relevant execution blocks on pages 14 and 15.

We have placed 'sign here' tags in each relevant place.

Please do not date the Planning Agreements, as this will occur when they are signed on behalf of the Council.

Please contact us if you have any questions or wish to discuss.

Yours faithfully


Felicity Rourke
Partner and Head of Office
Norton Rose Fulbright Australia

Encls.