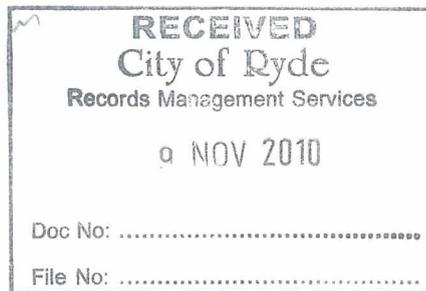


Our Ref: PM:JM:2205  
Your Ref:

8 November 2010

The General Manager,  
Ryde City Council,  
Locked Bag 2069  
RYDE. N.S.W. 1670.



[abn] 33 601 155 745  
170 Victoria Street  
Potts Point NSW 2011  
PO Box 635  
Potts Point NSW 2011  
[t] 02 9331 7400  
[f] 02 9331 7411  
[e] info@moloneylawyers.com

**Attention:** *Mr. Roy Newson*  
**Copy by facsimile:** 9952.8359

Dear Sir

**Re: Request - Section 93H Environmental Planning and Assessment Act 1979  
Registration of Voluntary Planning Agreement.  
Registered Proprietor: Ball Avenue Holdings Pty. Ltd.  
Property: 20-22 Ball Avenue Eastwood**

We refer to the above matter and our prior telephone discussions with Mr. Newson of Council.

We wish to advise that the above Request has been registered as Dealing No. AF827288. A copy is **enclosed** for your records.

Yours faithfully  
**MOLONEY LAWYERS**

**Patrick Moloney**  
Principal

Encl.

Liability limited by a scheme approved under Professional Standards Legislation

Form: 11R  
Release: 3.0  
www.lpma.nsw.gov.au

# REQUEST

New South Wales  
Real Property Act 1900



## AF827288K

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the use of this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any. *PLAN FEE \$97*

(A) **STAMP DUTY**

If applicable. Office of State Revenue use only

(B) **TORRENS TITLE**

Vol.4287 Folio 94: 2A/9691 *AUTO CONSOL 4287-94*

(C) **REGISTERED DEALING**

Number	Torrens Title
--------	---------------

(D) **LODGED BY**

Document Collection Box <b>48T</b>	Name, Address or DX, Telephone, and Customer Account Number if any <b>LLPN: 123819E CITYLINK</b> Reference: <i>Moloney / Pm / Ball Ave</i>	CODE <b>R</b>
------------------------------------	--	------------------

(E) **APPLICANT**

Ryde City Council

(F) **NATURE OF REQUEST**

Section 93H Environmental Planning and Assessment Act 1979 - registration of voluntary planning agreement

(G) **TEXT OF REQUEST**

The Applicant requests that the Voluntary Planning Agreement attached hereto as Annexure "A" between the Applicant and Ball Avenue Holdings Pty Ltd be registered against the land identified above

DATE *25.08.2010*

(H) Certified correct for the purposes of the Real Property Act 1900 by the person whose signature appears below.

Signature: *Joe Strati*

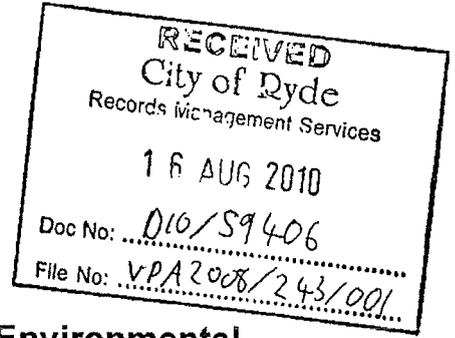
Signatory's name: Joe Anthony Strati  
Signatory's capacity: applicant's solicitor

*P BY 115 F*

(I) This section is to be completed where a notice of sale is required and the relevant data has been forwarded to LPMA through eNOS. The applicant certifies that the eNOS data relevant to this dealing has been submitted and stored under eNOS ID No.  Full name: \_\_\_\_\_ Signature: \_\_\_\_\_

1003

"A"



**Planning Agreement Under Section 93F of the Environmental  
Planning & Assessment Act**

**Subject Land: 18-22 Ball Avenue, Eastwood**

**Ryde City Council**

and

**Ball Avenue Holdings Pty Ltd**

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Date

25 AUGUST

2010  
~~2009~~

## Parties

Ryde City Council ABN 81 621 292 610 of 1 Devlin Street, Ryde, New South Wales

(Council)

Ball Avenue Holdings Pty Ltd ACN 142 046 348 of 201 Spit Road, Mosman,

New South Wales 2088

(Proposed Owner)

## Background

- A. The Proposed Owner has entered into agreements that give it a right to purchase the Project Land subject to conditions
- B. The Proposed Owner intends to carry out the Development on the Project Land.
- C. The Council is the consent authority charged with assessing and determining development applications
- D. The Proposed Owner lodged the Development Application with Council seeking consent to carry out the Development on the Project Land
- E. As part of the Development Application the Proposed Owner offered to enter into a planning agreement.
- F. The Council has agreed to consider the Development Application and this planning Agreement.
- G. As part of the Development, the Proposed Owner intends to consolidate the existing titles forming the Project Land, then subdivide the Project Land to create the Dedicated Land and the remaining land. The remaining land will then be further subdivided into strata lots
- H. Subject to Council consenting to the Development Application and the Proposed Owner becoming the registered proprietor of the Project Land, the Proposed Owner has agreed to facilitate the transfer of the Dedicated Land to Council

## Agreement

### 1. Definitions

---

In this Agreement the following definitions apply:

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

**Authority** means a government, semi-government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and includes where applicable, an accredited certifier accredited under section 1 09T of the Act.

**Business Day** means Monday to Friday excluding public holidays in New South Wales.

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

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
- (c) any party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

**Consent Authority** means, in relation to the Development, the Ryde City Council.

**Dedicated Land** means the land being approximately 1,114.7 sqm and identified as Approximate area of Proposed Dedication in the survey plan attached at Schedule 1

**Department** means the NSW Department of Lands.

**Development** means the demolition of an existing building, amalgamation of the Project Land and the construction, , and strata subdivision of a 36 unit residential apartment building at No. 18-22 Ball Avenue, Eastwood with associated parking and landscaping.

**Development Application** means development application number 243/2008 for the Development made by the Proposed Owner to Council.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

**FSR** means Floor Space Ratio.

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

**GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

**Landscaping** means the planting shown on Schedule 1 hereto and does not include the construction of an access ramp.

**Law** means:

- (a) the common law including principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws or consents by an Authority presently applying or as they may apply in the future.

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

**Party** means a party to this agreement, including its successors and assigns.

**Plan of Subdivision** means a plan of subdivision as defined in section 195 of the *Conveyancing Act 1919* (NSW) as amended.

30

**Project Land** means the land subject to the Development Application being land in Volume 4287 Folio 194 (being Lots 29-03 in DP 6546) and Lot 2A in DP 9691 generally known as 18-22 Ball Avenue, Eastwood, New South Wales,

**Proposed Owner** means Ball Avenue Holdings Pty Ltd ACN 142 046 348

**Registrar-General** means the Registrar General from time to time of the Department.

**State** means the State of New South Wales.

**State Government** means the government of New South Wales.

**Works** mean those works encompassing landscaping of the Dedicated Land.

## **2. Planning Agreement under the Act**

---

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

## **3. Application of this Agreement**

---

3.1 This Agreement applies to:

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

3.2 This Agreement operates from the later of:

- (a) the date that the Council consents to the Development Application; and
- (b) the date that the Proposed Owner becomes the registered proprietor of the Project Land.

## **4. Specific Obligations of the Proposed Owner**

---

4.1 **Dedicated Land**

- (a) The Proposed Owner agrees to transfer to the Council, at no cost to Council, the Dedicated Land subject to all interests, restrictions or encumbrances registered on the title of the Project Land at the date of this Agreement, other than any mortgages (**Transfer**).
- (b) The Dedicated Land must, by the date of the Transfer, be improved by the landscaping set out in Schedule 1.
- (c) The Proposed Owner must, within 21 days after registration of a Plan of Subdivision which creates a separate title to the Dedicated Land, provide the Council with the following:
  - (i) a transfer form in registrable form for the Dedicated Land in favour of the Council;
  - (ii) the certificate of title for the Dedicated Land or if a separate certificate of title has not been issued for the Dedicated Land, confirmation that the certificates of title for the Project Land have been produced at the Department to enable registration of the Transfer; and
  - (iii) a discharge of any mortgage over the Dedicated Land in registrable form.

(d) The Council must pay stamp duty (if any) on the Transfer and any registration fees.

## **5. Public Purpose**

---

The Dedicated Land is to be used by Council for whatever public purposes it sees fit.

## **6. Specific Obligations of Council**

---

### **6.1 Dedicated Land**

Council agrees to accept the Dedicated Land and to do all things that are necessary to enable the Dedicated Land to be used for a public purpose.

### **6.2 Site Area for FSR Purposes**

Council agrees that for the purposes of considering approval of the Development Application and any future development applications relating to the Project Land and calculating any applicable FSR or density controls and landscape area relating to the Project Land, the Project Land area of 3,629.3m<sup>2</sup> as at the date of this Agreement and prior to the Transfer is maintained.

## **7. Registration**

---

### **7.1 Date of Registration**

This Agreement will not be registered on the Title of the Project Land until the Proposed Owner becomes the registered proprietor of the Project Land.

### **7.2 Effect of Registration**

The Proposed Owner acknowledges that the Council will register this Agreement under Section 93H of the Act on the Project Land and upon registration by the Registrar-General the Agreement will be binding on and enforceable against the owner of the Project Land from time to time as if each owner for the time being had entered into the Agreement.

### **7.3 Consents to Registration**

The Proposed Owner must:

- (a) promptly after the date that the Proposed Owner becomes the registered proprietor of the Project Land obtain the consent to the registration of this Agreement from each person who has an estate or interest in the Project Land;
- (b) sign any Real Property Act dealing, acknowledgement or document, and
- (c) do all other things reasonably necessary to enable this Agreement to be registered pursuant to section 93H of the Act

### **7.4 Release and discharge of this Agreement**

The Council will at the request of the Proposed Owner execute the relevant forms to remove the registration of this Agreement from the certificate of title for the Project Land once the Transfer has been registered at the Department.

## **8. Termination**

---

### **8.1 Termination events**

This agreement may be terminated if:

- (a) the Proposed Owner does not become the registered proprietor of the Project Land within a reasonable period following the date of this agreement;
- (b) parties agree in writing to terminate it.

## **8.2 Automatic Termination**

This agreement is automatically terminated when the transfer is registered pursuant to clause 7.4.

## **9. Application of s94 and s94A of the Act to the Development**

---

Section 94 of the Act shall apply to the development. Section 94A of the Act will not apply to the Development.

## **10. Approvals and Consents**

---

The parties acknowledge that:

- (a) except as otherwise set out in this Agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this Agreement in that party's absolute discretion and subject to any conditions determined by the party;
- (b) a party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions; and
- (c) this Agreement does not impose any obligation on a Consent Authority to grant Development Consent.

## **11. Dispute Resolution**

---

If a dispute between the parties arises in connection with this Agreement or its subject matter, then the process and procedures set out in Schedule 3 ("Dispute Resolution") will apply.

## **12. Costs**

---

- (a) The parties agree to pay their own costs in relation to the negotiation, preparation and execution of this Agreement;
- (b) The Proposed Owner shall pay the Council's costs of advertising and exhibiting this Agreement in accordance with the Act; and
- (c) The Proposed Owner must pay the registration fees on the registration of this Agreement and the Council must pay the registration fee on the subsequent removal of registration.

## **13. Entire Agreement**

---

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

## **14. Further Acts**

---

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

## **15. Governing law and Jurisdiction**

---

### **15.1 Governing Law**

This Agreement is governed by the law in force in the state of New South Wales. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

### **15.2 Serving Documents**

Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at the party's address in Clause 1.

## **16. Joint and individual liability and benefits**

---

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

## **17. No fetter**

---

Nothing in this Agreement shall be construed as requiring the Council 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.

## **18. Representations and warranties**

---

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

## **19. Severability**

---

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

## **20. Modification**

---

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

## **21. Waiver**

---

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

## **22. GST**

---

### **22.1 GST to be added to Amounts Payable**

If GST is payable on a Taxable Supply made under, by reference to or in connection with this agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive,

Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this agreement are exclusive of GST.

## **23. Confidentiality**

---

### **23.1 This deed not confidential**

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

### **23.2 Other confidential information**

The parties agree, and must procure that any mediator or expert appointed under Schedule 3 ("Dispute Resolution") agrees as a condition of their appointment:

- (a) Confidential Information has been supplied to some or all of the parties in the negotiations leading up to the making of this Agreement; and
- (b) the parties may disclose to each other further Confidential Information in connection with the subject matter of this Agreement; and
- (c) subject to paragraphs (d) and (e) below, to keep confidential all Confidential Information, disclosed to them during or in relation to the expert determination or mediation; and
- (d) a party may disclose Confidential Information in the following circumstance:
  - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as this clause; or
  - (ii) in order to comply with a Law, State Government policy, local government policy or the ASX Listing Rules; or
- (e) for a purpose necessary in connection with an expert determination or mediation.

### **23.3 Proceedings**

The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material, including Confidential Information concerning the dispute which are disclosed by a party during the expert determination

or mediation unless such information, documents or facts will have been otherwise discoverable in judicial or arbitral proceedings.

## **24. Effect of terms and conditions in Schedule**

---

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

## **25. New Laws**

---

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

## **26. Notices**

---

- (a) Any notice, consent or other communication under this Agreement must be in writing and signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and be:
  - (i) delivered to that party's address; or
  - (ii) sent by pre-paid mail to that party's address; or
  - (iii) transmitted by facsimile to that party's address.
- (b) A notice given to a party in accordance with this clause is treated as having been given and received:
  - (i) if delivered to a party's address, on the day of delivery if a Business Day, otherwise on the next Business Day; and
  - (ii) if sent by pre-paid mail, on the third Business Day after posting; and
  - (iii) if transmitted by facsimile to a party's address and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next Business Day.
- (c) For the purpose of this clause the address of a party is the address set out in this Agreement or another address of which that party may from time to time give notice to each other party.

## **27. Proposed Owners limitation of liability clause**

---

- (a) The Proposed Owner enters into this Agreement solely in its capacity as Ball Avenue Holdings Pty Ltd and it will undertake all covenants, terms and conditions on its part to be observed or performed solely in that capacity. No debt, duty, liability or obligation arising under this agreement will accrue to, or be enforceable against, the Proposed Owner in its personal capacity. The Proposed Owner ceases to have any obligations and liabilities under agreement if the Proposed Owner ceases for any reason to be custodian of the Fund.
- (b) The Proposed Owner is not required to satisfy any liability arising under or in respect of this agreement out of any funds, property or assets other than to the extent to which it is entitled to and does actually obtain an indemnity from the trustee of the Fund. However, this does not apply to the extent that the Proposed Owner's right to be indemnified by the trustee of the Fund has been reduced by reason of fraud,

negligence or breach by the Proposed Owner] in the performance of the Proposed Owner's duties as custodian of the Fund.

- (c) If any party to this agreement other than the Proposed Owner does not recover all money owing to it in under this agreement it may not seek to recover the shortfall by bringing proceedings against the Proposed Owner in its personal capacity or applying to have the Proposed Owner wound up or proving in the winding up of the Proposed Owner
- (d) The Proposed Owner is not obliged to do or refrain from doing anything under agreement (including incurring any liability) unless its liability is limited in the same manner as set out in this clause.

EXECUTED as an Agreement on this 25<sup>th</sup> day of August ~~2009~~ 2010

for and on behalf of  
SIGNED SEALED AND DELIVERED by  
Ryde City Council in the presence of:

by its authorised officer

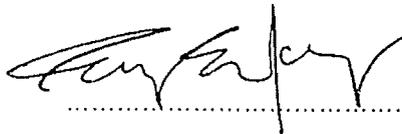
  
.....

JOE STRATI  
(SOLICITOR)

  
.....  
Witness

SUSAN LEDINGHAM  
1 DESLIN ST  
RYDE.

EXECUTED by Ball Avenue Holdings Pty Ltd  
In accordance with its constitution in the presence of:

  
.....

Signature Authorised officer  
DIRECTOR (SOLE)  
~~SOLE SECRETARY~~

LAWRENCE CHONG  
.....

Name of Authorised officer

.....

Signature of Authorised officer

.....

Name of Authorised officer

201 SPIT ROAD,  
MOSMAN. NSW 2088

**SIGNED SEALED AND DELIVERED**  
for and on behalf of **ARAB BANK**  
**AUSTRALIA LIMITED** by ROD  
BIRCHALL and RENCE  
CHARTINE its duly  
constituted Attorneys who are personally  
known to me:

  
\_\_\_\_\_  
Witness

) **ARAB BANK AUSTRALIA LIMITED**  
) **BY ITS ATTORNEY** who hereby states  
) he has no notice of revocation of the Power  
) of Attorney registered in the office of the  
) Registrar General Book 4418 No. 565  
) under the authority of which he has  
) executed this instrument.

  
\_\_\_\_\_  
Name:  
\_\_\_\_\_  
Name: **RENCE CHARTINE**

**Schedule 1 – Architectural Plan: DA003 Revision I dated 11/12/ 2009 and Landscaping Works**





**Schedule 2 – Section 93F Requirements**

SUBJECT and SUB SECTION OF THE ACT	THIS PLANNING AGREEMENT
<p>Planning instrument and/or development application (Section 93F(1))</p> <p>The Proposed Owner 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) Yes</p>
<p><b>The Land affected by this Agreement - (Section 93F(3)(a))</b></p>	<p>The Project Land.</p>
<p><b>The environmental planning instrument or the development affected by this planning agreement - (Section 93F(3)(b))</b></p> <p>Describe:</p> <p>(a) the proposed change to the environmental planning instrument to which the agreement applies;</p> <p>OR</p> <p>(b) the development to which the agreement applies.</p>	<p>See definition of Development in this Agreement.</p>
<p><b>The scope, timing and manner of delivery of contribution required by this planning agreement - (Section 93F(3)(c))</b></p>	<p>See clause 6 of this Agreement.</p>
<p><b>Applicability of Sections 94 or 94A of the Act - (Section 93F(3)(d))</b></p>	
<p>Section 94 of the Act</p> <p>(a) applies wholly to the development;</p> <p>(b) does not apply to the development;</p> <p>(c) parts (insert sections) apply to the development.</p>	<p>Applies.</p>

SUBJECT and SUB SECTION OF THE ACT	THIS PLANNING AGREEMENT
<p>Section 94A of the Act</p> <p>(a) applies wholly to the development;</p> <p>(b) does not apply to the development;</p> <p>(c) parts (insert sections) apply to the development.</p> <p>Application of s93F(5) of the Act</p>	<p>Does not apply</p>
<p>Consideration of benefits if under this planning agreement if Section 94 applies - (Section 93F(3)(e))</p> <p>Are the benefits under this planning agreement to be taken into consideration if Section 94 of the Act applies?</p>	<p>No.</p>
<p><b>Dispute resolution</b> - (Section 93F(3)(f))</p> <p>This planning agreement provides a mechanism for the resolution of disputes under the agreement.</p>	<p>Clause 10 ("Review of this Agreement") and Schedule 3 ("Dispute resolution") provide a mechanism for the resolution of disputes under this Agreement.</p>
<p><b>Security</b> - (Section 93F(3)(g))</p> <p>The Proposed Owner has provided suitable security for its obligations under this planning agreement such as a security bond or guarantee.</p>	<p>Not applicable.</p>
<p><b>No obligation</b> - (Section 93F(9))</p>	
<p>The party's acknowledgement that this planning agreement does not impose an obligation on a planning authority to grant development consent or to exercise any function under this Act in relation to a change to an environmental planning instrument.</p>	<p>See clause 10 of this Agreement.</p>

## **Schedule 3 – Dispute Resolution**

### **1 Dispute Resolution**

#### **1.1 Notice of Dispute**

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

#### **1.2 Response to Notice**

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

#### **1.3 Negotiation**

The nominated representatives must:

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

#### **1.4 Further Notice if not Settled**

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

#### **1.5 Mediation**

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

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

- (f) the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
  - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
  - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behavior in which case the Mediator may require the full costs of the mediation to be borne by that party.

#### **1.6 Litigation**

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

#### **1.7 Continue to perform obligations**

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