

*Thurston (Sovereign Hills)
(Barton Ridge West)
*Crawford NH



lindsaytaylorlawyers

Barton Ridge West Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

**Minister for Planning for the State of New South
Wales**

Sovereign Hills Project Pty Ltd

**MMTR Pty Limited, Mel Properties Pty Limited and
Almaty Pty Limited**

Date:

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Summary Sheet

Minister:

Name: Minister for Planning for the State of New South Wales
Address: 23-33 Bridge Street, SYDNEY NSW 2000
Telephone: (02) 9228 6111
Facsimile: (02) 9228 6455
Email: information@planning.nsw.gov.au
Representative: Sam Haddad, Director-General of Planning

Developer

Name: Sovereign Hills Project Pty Limited c/-Lewis Land Group of Companies
Address: Level 31, 9 Castlereagh Street, Sydney NSW 2000
Telephone: (02) 9223 3555
Facsimile: (02) 9223 3061
Email: robert.yandell@lewisland.com.au
Representative: Robert Yandell

Owner:

Name: MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited c/-Lewis Land Group of Companies
Address: Level 31, 9 Castlereagh Street, Sydney NSW 2000
Telephone: (02) 9826 2492
Facsimile: (02) 9826 2451
Email: mauricehiggins@bigpond.com
Representative: Maurice Higgins

Land:

See definition of *Land* in clause 1.1.

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Development:

See definition of *Development* in clause 1.1.

Development Contributions:

See clause 6.

Application of s94, s94A and s94EF of the Act:

See clause 5.

Security:

See clauses 9 & 10.

Registration:

Yes. See clause 18.

Dispute Resolution:

Mediation. See clause 20.

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Parties

Minister for Planning for the State of New South Wales 23-33
Bridge Street, Sydney NSW 2000 (**Minister**)

and

Sovereign Hills Project Pty Ltd ACN 003 823 274 c/-The Lewis Land Group
of Companies, Level 31, 9 Castlereagh Street, Sydney NSW 2000 (**Developer**)

and

MMTR Pty Limited ACN 066 244 871, **Mel Properties Pty Limited** ACN
122 273 858 and **Almaty Pty Limited** ACN 104 852 520 c/-The Lewis Land Group
of Companies, Level 31, 9 Castlereagh Street, Sydney NSW 2000 (**Owner**)

Background

- A The Owner is the registered proprietor of the Land.
- B The Developer has lodged the Development Application with the Council.
- C The Council can only grant Development Consent to the Development Application if the Director-General of Planning has provided the certification required by clause 6.1(3) of the LEP.
- D The Minister, Developer and Owner have agreed to enter into this Agreement to secure the payment of the State Infrastructure Levy in relation to the Development in order to enable the Director-General of Planning to provide the certification required by the LEP.

Operative Provisions

Part 1 - Preliminary

1 Definitions & Interpretation

- 1.1 In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979*.

Agreement means this Agreement and includes any schedules, annexures and appendices to this Agreement.

Area 13 means the land to which the LEP applies.

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Charge means the charge or charges created by this Agreement.

Council means Port Macquarie-Hastings Shire Council.

Developer means a person who has carried out or is carrying out the Development on the Land.

Development means the ⁴²lot residential subdivision of the Land proposed in the Development Application.

Development Application means DA 2007/667 lodged with the Council.

Development Consent has the same meaning as in the Act.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *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.

Land means Lots 3, 4, and 5 in DP 1112929, and Lots 10 and 11 in DP 1130560.

LEP means the *Port Macquarie-Hastings (Area 13 Thrumster) Local Environmental Plan 2008*.

Parties means the parties to this Agreement.

Residential Lot means a lot created on the Land as part of the Development, to be used for residential purposes.

State Infrastructure Levy or SIL means \$2047 per Residential Lot, or \$1365 (Reduced Rate) for each Residential Lot which is created before 30 June 2011 if;

- a. any subdivision works required in connection with the Subdivision Certificate which created that Residential Lot are complete before 30 June 2011; and
- b. the SIL is paid in relation to that Residential Lot before 30 June 2011.

1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- 1.2.2 A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
- 1.2.4 A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- 1.2.5 A reference in this Agreement to a \$ value is a reference to the value exclusive of GST.
- 1.2.6 A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-

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enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- 1.2.7 A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced.
- 1.2.8 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- 1.2.9 A reference to the Minister in relation to the exercise of a power, authority or duty includes a reference to a delegate of the Minister or any other person duly authorised by the Minister.
- 1.2.10 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 1.2.13 References to the word 'include' or 'including' are to be construed without limitation.
- 1.2.14 A reference to this Agreement includes the agreement recorded in this Agreement.
- 1.2.15 A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- 1.2.16 Any schedules, appendices and attachments form part of this Agreement.
- 1.2.17 Notes appearing in this Agreement are operative provisions of this Agreement.

2 Application of this Agreement

- 2.1 This Agreement applies to the Land and to the Development.

3 Further Agreements Relating to this Agreement

- 3.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

4 Surrender of right of appeal, etc.

- 4.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating

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to the Development or an approval under s96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

5 Application of s94, s94A and s94EF of the Act to the Development

- 5.1 This Agreement does not exclude the application of s94 and s94A to the Development, and payments made under this Agreement are not to be taken into consideration when determining a development contribution under s94 of the Act in relation to the Development.
- 5.2 This Agreement does not exclude the application of s94EF to the Development.

Part 2 – Development Contributions

6 Payment of State Infrastructure Levy

- 6.1 The Owner agrees to pay the State Infrastructure Levy, if Development Consent is granted to the Development.
- 6.2 The SIL may be paid in a lump sum, or on a per lot basis in connection with each Residential Lot.
- 6.3 The SIL must be paid at a time nominated by the Director-General of Planning or his nominee, and, in relation to each Residential Lot, must be paid no later than the completion of the sale of that Residential Lot.
- 6.4 If the SIL is to be paid as a lump sum:
 - 6.4.1 the amount paid must be \$2047 per Residential Lot; and
 - 6.4.2 the Developer will be granted a credit in the amount of \$682 for each Residential Lot which would qualify for the Reduced Rate (**Credit**).
- 6.5 The Minister agrees to offset the Credit against contributions towards State infrastructure which the Owner may be required to pay in the future in connection with other developments within Area 13.
- 6.6 The Owner must provide the Minister with details of any contract for sale which the Owner enters into in relation to the Land or any Residential Lot, including the anticipated completion date for that contract, and must give the Minister 10 business days notice of the date on which completion of that contract is to occur.
- 6.7 The Owner must give the Minister 10 business days prior notice of the transfer of a Residential Lot if there is no contract for sale of that Residential Lot.

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7 Procedures relating to payment of State Infrastructure Levy

- 7.1 The State Infrastructure Levy or part thereof, is paid for the purposes of this Agreement when the Minister receives the amount to be paid in cash or by unendorsed bank cheque or by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the Minister.
- 7.2 The Developer is to give the Minister not less than 2 business days written notice of its intention to pay the State Infrastructure Levy or part thereof.

8 Certification

- 8.1 The parties understand that the Director-General of Planning will issue the certification required by clause 6.1(3) of the LEP in relation to each of the Residential Lots proposed in the Development on execution of the Agreement, provided that the Owner has complied with clause 17 of this Agreement.

Part 3 – Other Provisions

9 Charge

- 9.1 On the date of execution of this Agreement, the Owner grants to the Minister a fixed and specific charge over the Owner's right, title and interest in the Land, and the Owners' right, title and interest in any Residential Lot as security for the making of the State Infrastructure Levy.
- 9.2 The Owner must do all things necessary to enable the Minister to register the Charge.

10 Caveat

- 10.1 The Owner agrees to the Minister lodging a caveat over the Land and each Residential Lot relating to the interest secured by the Charge.
- 10.2 The Minister agrees that the caveat will not prevent the registration of a plan of subdivision in respect of the Development.

11 Priority

- 11.1 The Owner agrees that it has no power to create any mortgage or charge over the Land or any Residential Lot ranking in priority equal with or ahead of the Charge.

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12 Minister to consent to subdivision of the Land

- 12.1 The Minister undertakes to do all things necessary to enable the Owner to subdivide the Land in accordance with any Development Consent granted to the Development Application, including providing her consent, as caveator and chargee, to the subdivision of the Land.

13 Enforcement

- 13.1 For the purpose of this clause, **Enforcement Date** means in respect of each Residential Lot, the date on which the SIL is due to be paid in accordance with clause 6 of this Agreement, unless the State Infrastructure Levy has been paid in relation to that Residential Lot.
- 13.2 After the Enforcement Date, the Owner is to execute and do all such things as the Minister may reasonably require for the purpose of the Minister exercising the powers, authorities and discretions conferred by this Agreement on the Minister. In particular, the Owner will as requested by the Minister:
- 13.2.1 execute all transfers, conveyances, assignments and assurances of the Residential Lot whether to the Minister or nominee,
- 13.2.2 perform, or cause to be performed, all acts and things necessary or desirable to give effect to the Minister's powers, authorities and discretions, and
- 13.2.3 give all notices, orders and directions which the Minister considers to be expedient.
- 13.3 After the Enforcement Date, the Minister may, at the Minister's discretion and without notice:
- 13.3.1 enter upon and take possession of the Residential Lot or any part of it, or
- 13.3.2 with or without taking such possession, at the Minister's discretion, sell, call in or convert into money, the Residential Lot:
- (a) together or in parcels,
- (b) at public auction or by private contract, and
- (c) for a lump sum or a sum payable by instalments or for a sum on account and a mortgage charge for the balance, or
- 13.3.3 if exercising rights under clause 13.3.2
- (a) upon every such sale, make any special or other stipulations as to title or evidence or commencement of title or otherwise which the Minister may deem proper,
- (b) buy in or rescind or vary any contract of sale of the Residential Lot and resell the same without being responsible for any loss which may be incurred, and
- (c) compromise and effect compositions and, for any of those purposes, execute and make all such assurances and things as the Minister thinks fit.
- 13.4 At any time after the Enforcement Date, the Minister may, at the Minister's discretion, do any of the following things for the purpose of exercising the Minister's powers of sale under clause 13.3:

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- 13.4.1 appoint a receiver or manager or receiver and manager of the Residential Lot,
- 13.4.2 remove any receiver or manager so appointed,
- 13.4.3 pay such receiver or manager such remuneration as the Minister thinks fit,
- 13.4.4 repair and keep in repair the buildings, factories, works, machinery, plant and other property on the Residential Lot,
- 13.4.5 insure all or any of the Residential Lot or anything on it of an insurable nature against loss or damage by fire and other risks as the Minister sees fit,
- 13.4.6 settle, arrange, compromise and submit to arbitration any accounts, claims, questions or disputes whatsoever which may arise in connection with the Residential Lot and execute releases or other discharges,
- 13.4.7 bring, take, defend, compromise, submit to arbitration or discontinue any actions, suits or proceedings whatsoever and whether civil or criminal in relation to the Residential Lot,
- 13.4.8 execute and do such acts, deeds and things as to the Minister may appear necessary or proper for or in relation to any of the above things,
- 13.4.9 generally do and cause to be done such acts and things which the Owner might have done for the protection and the improvement of the Residential Lot.
- 13.5 A receiver and manager appointed by the Minister will have all of the powers of taking possession, selling and dealing with a Residential Lot as are given to the Minister under this Agreement.
- 13.6 The proceeds derived from the sale of a Residential Lot pursuant to clause 13.3 will be applied as follows:
 - 13.6.1 first, in paying all costs and expenses properly incurred or to be incurred in the performance or exercise of any of the powers vested in the Minister under this Agreement or otherwise in respect of this security including the remuneration of the receiver and manager (if any),
 - 13.6.2 second, in or towards payment of the State Infrastructure Levy, and
 - 13.6.3 last, in paying the surplus (if any) to the Owner.

14 Discharge

- 14.1 If Development Consent is not granted to the Development Application, or on payment of the State Infrastructure Levy in full, then on the making of a request by the Owner, the Minister is to promptly give the Owner a discharge of the Charge in registrable form and remove any and all caveats which the Minister holds over the Land or any Residential Lot.
- 14.2 If the State Infrastructure Levy is paid on a per lot basis in connection with each Residential Lot, then if the Owner:
 - 14.2.1 pays the State Infrastructure Levy in relation to a Residential Lot, and

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- 14.2.2 lodges with the Minister a written request and all documents necessary to enable the Minister to discharge the Charge and remove any caveat which the Minister holds over the Residential Lot, the Minister will promptly execute those documents and return them to the Owner for registration.

15 Special Priority

- 15.1 For the purposes of section 282(3) of the *Corporations Act 2001* (Cth), and as applicable, the parties agree that the maximum amount of the prospective liability secured by this Agreement is 110% of the amount of the State Infrastructure Levy.

16 Enforcement in a court of competent jurisdiction

- 16.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.
- 16.2 For the avoidance of doubt, nothing in this Agreement prevents:
- 16.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,
- 16.2.2 the Minister from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

17 Costs and Registration

- 17.1 The Owner is to pay the Minister's costs of preparing, negotiating and executing this Agreement and any document related to this Agreement.
- 17.2 The Owner is responsible for the payment of any duty, and all registration fees payable in relation to this Agreement and any caveat registered pursuant to this Agreement, including any fees associated with the discharge of a Charge or removal of any caveat from the title to the Land or the Residential Lots.
- 17.3 On execution, the Owner is to:
- 17.3.1 provide the Minister with an instrument in registrable form under the *Real Property Act 1900* that is effective to register the Charge on the title to the Land,
- 17.3.2 procure the production to the Department of Lands of the certificate of title to the land the subject of the Charge,
- 17.3.3 provide the Minister with a bank cheque in respect of:
- (a) duty on this Agreement,
 - (b) the applicable fee for registration of this Agreement,
 - (c) the applicable fee for registration of a caveat over the Land in relation to the Charge, and

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- (d) the Minister's costs pursuant to clause 17.1 which have been notified in writing to the Owner.

- 17.4 On execution, the Owner must also provide the Minister with calculation worksheets in respect of the amounts referred to in clause 17.3.3(a).
- 17.5 On request by the Minister, the Owner must execute any further documents and do all such things necessary to give effect to this Agreement and its registration.

18 Registration of this Agreement

- 18.1 The Parties agree to register this Agreement subject to obtaining the agreement of the persons specified in s93H(1) of the Act.

19 Review of this Agreement

- 19.1 The Developer is to provide to the Minister by not later than each anniversary of the date on which this Agreement is entered into a report detailing the performance of its obligations under this Agreement.
- 19.2 The report referred is to be in such a form and to address such matters as may be notified by the Minister to the Developer from time to time.
- 19.3 The Parties agree to review this Agreement every 3 years, and otherwise if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 19.4 For the purposes of clause 19.3, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Minister or any other planning authority to restrict or prohibit any aspect of the Development.
- 19.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 19.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 19.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 19.7 A failure by a Party to agree to take action requested by the other Party as a consequence of a review referred to in clause 19.3 is not a dispute for the purposes of clause 20 and is not a breach of this Agreement.

20 Dispute Resolution - mediation

- 20.1 This clause applies to any dispute under this Agreement.
- 20.2 Such a dispute is taken to arise if one Party gives another Party a notice in writing specifying particulars of the dispute.
- 20.3 If a notice is given under clause 20.2, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.

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- 20.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales published from time to time and must request the President of the Law Society, or the President's nominee, to select a mediator.
- 20.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.

21 Entire Agreement

- 21.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 21.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

22 Further Acts

- 22.1 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.

23 Governing Law and Jurisdiction

- 23.1 This Agreement is governed by the law of New South Wales.
- 23.2 The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them and they will not object to the exercise of jurisdiction by those courts on any basis.

24 Joint and Individual Liability and Benefits

- 24.1 Except as otherwise set out in this Agreement:
- 24.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
- 24.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

25 Representations and Warranties

- 25.1 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.

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26 Modification

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

27 Counterparts

- 27.1 This Agreement is not to be executed in counterparts.

28 Notices

- 28.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- 28.1.1 delivered or posted to that Party at its address set out in the Summary Sheet, or
 - 28.1.2 faxed to that Party at its fax number set out in the Summary Sheet.
- 28.2 If a Party gives the other Party 3 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 28.3 Any notice, consent, information, application or request is to be treated as given or made if it is:
- 28.3.1 delivered, when it is left at the relevant address,
 - 28.3.2 sent by post, 2 business days after it is posted, or
 - 28.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 28.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

29 GST

- 29.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an

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acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 29.2 Subject to clause 29.4, 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.
- 29.3 Clause 29.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 29.4 No additional amount shall be payable by the Minister under clause 29.2 unless, and only to the extent that, the Minister (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 29.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 29.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 29.5.2 that any amounts payable by the Parties in accordance with clause 29.2 (as limited by clause 29.4) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 29.6 No payment of any amount pursuant to this clause 29, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 29.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 29.8 This clause continues to apply after expiration or termination of this Agreement.

30 Waiver

- 30.1 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 breach of obligation by, another Party.
- 30.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

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MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited

- 30.3 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.

31 Explanatory Note Relating to this Agreement

- 31.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 31.2 Pursuant to clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Planning Agreement.

Barton Ridge West Planning Agreement
Minister for Planning for the State of New South Wales
Sovereign Hills Project Pty Limited
MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited

Execution

Executed as an Agreement

Dated:

Signed on behalf of the Developer:

In accordance with s127 of the Corporations Act 2001

.....
Director

Name of officer:

.....
Solo **Director/Company Secretary**

Name of officer

John Cleland

Signed on behalf of MMTR Pty Limited: by its Attorney Sovereign Hills Project Pty Limited ACN 003 823 274 under P.A. of 1-1-05 Registered Book 7774 No 795.
In accordance with s127 of the Corporations Act 2001

.....
Director

Name of officer:

.....
Solo **Director/Company Secretary**

Name of officer

John Cleland.

Signed on behalf of Mel Properties Pty Limited:

In accordance with s127 of the Corporations Act 2001

.....
Director

Name of officer: *R. Yon Soll*

.....
Director/Company Secretary

Name of officer

M HIGGINS

Barton Ridge West Planning Agreement

Minister for Planning for the State of New South Wales

Sovereign Hills Project Pty Limited

MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited

Signed on behalf of Almaty Pty Limited: By its attorney Sovereign Hills Project Pty Limited ACN ~~603 823 378~~ under P.O. of 1-1-05 Registered Book 7774 No 790
In accordance with s127 of the Corporations Act 2001

.....
Director

Name of officer:


S/e Director/Company Secretary

Name of officer John Cleland

Signed by Minister


.....
Witness


.....
Minister

Name of Witness

Stephen Fern

Barton Ridge West Planning Agreement
Minister for Planning for the State of New South Wales
Sovereign Hills Project Pty Limited
MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited

Appendix

(Clause 31)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Draft Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

Introduction

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of the proposed draft planning agreement (the "**Planning Agreement**") prepared under section 93F of the *Environmental Planning and Assessment Act 1979* (the "**Act**").

This Explanatory Note relates to the Planning Agreement proposed to be entered into by the parties described below in respect of land at Thrumster, in the Local Government Area of Port Macquarie-Hastings.

Parties to the Draft Planning Agreement

The parties to the Planning Agreement are Sovereign Hills Project Pty Ltd (the "**Developer**"), MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited (the "**Owner**") and the Minister for Planning (the "**Minister**").

The Developer has made an offer to the Minister to enter into the Planning Agreement to ensure that satisfactory State infrastructure is available to serve the proposed development.

Description of the Subject Land

The land to which the Planning Agreement applies is located at Thrumster, in the Local Government Area of Port Macquarie-Hastings. The Planning Agreement applies to the following land (the "**Land**"):

- Lots 3, 4 and 5 Deposited Plan 1112929.
- Lots 10 and 11 Deposited Plan 1130560.

Barton Ridge West Planning Agreement
Minister for Planning for the State of New South Wales
Sovereign Hills Project Pty Limited
MMTR Pty Limited, Mel Properties Pty Limited and Almaty Pty Limited

Description of the Development Application

The Developer proposes a 42 lot residential subdivision of the Land (the "Development").

Summary of Objectives, Nature and Effect of the Draft Planning Agreement

The Planning Agreement provides that the Owner will provide a contribution towards regional infrastructure which will be required as a consequence of the Development of \$2047 per residential lot (or \$1365 for each residential lot created before 30 June 2011), in accordance with the Planning Agreement (the "**Contribution**"). It is intended that these funds will contribute towards regional roads serving the Development and the acquisition of a public school site at Thrumster.

The objective of the Planning Agreement is to facilitate the payment of the Contribution to the Minister. The Planning Agreement requires the Contribution to be paid at a time nominated by the Director General of Planning (or his nominee) but not later than the completion of the sale of that lot. If the Contribution is paid as a lump sum, the amount paid must be \$2047 per residential lot, and the Developer will be granted a credit of \$682 for each residential lot which is created prior to 30 June 2011. The credit may only be used against contributions towards State infrastructure which the Owner may be required to pay in the future in connection with other developments within Thrumster.

The Contribution will be secured by the Planning Agreement in three ways:

- The Planning Agreement grants a charge over the Owner's interest in the Land in favour of the Minister.
- The Planning Agreement allows the Minister to lodge a caveat over the Land.
- The Planning Agreement will be registered on the title to the Land and will bind all successors in title to the Land.

The Planning Agreement once executed will allow the Director General of Planning to determine whether satisfactory arrangements for State public infrastructure have been made.

Clause 6.1(3) of the *Port Macquarie-Hastings (Area 13 Thrumster) Local Environmental Plan 2008* provides that Port Macquarie-Hastings Shire Council (as the relevant consent authority) cannot grant consent for the Development Application unless the Director-General has certified in writing that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure.

Assessment of the Merits of the Draft Planning Agreement

The Planning Agreement promotes the public interest by making provision for the Owner to make contributions towards regional infrastructure.

By requiring the Owner who will benefit from the development, to make contributions towards regional infrastructure, the orderly and economic use and development of land is promoted by the Planning Agreement.

Barton Ridge West Planning Agreement
Minister for Planning for the State of New South Wales
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The Planning Agreement serves the planning purpose of timely provision of infrastructure by recouping some of the costs of providing regional infrastructure.

No relevant capital works program by the Minister is associated with the Planning Agreement.

Promotion of the Objects of the Act

By providing contributions towards the provision regional infrastructure, the Planning Agreement promotes the following objects of the Act:

- the promotion and co-ordination of the orderly and economic use and development of land; and
- the provision of land for public purposes.

The contributions made under the Planning Agreement will promote these objects by allowing regional roads serving the Development to be appropriately developed and for the acquisition of land for a public school site.

Interpretation of Planning Agreement

This Explanatory Note is not to be used to assist in construing the Planning Agreement.